MEMORANDUM

DATE: April 7, 2006

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *R&K*
Development Review Division

FROM: Catherine Conlon, Subdivision Supervisor (301-495-4542)
Development Review Division *CC*

SUBJECT: SRW2006-02, Kensington Heights, Subdivision Regulations Waiver Request

Background

As part of recent redevelopment of Westfield Wheaton Shopping Mall, the owners of the mall, having received right of way permits from the State Highway Administration (SHA), built a new entrance road to the shopping center at the intersection of University Boulevard and Valley View Drive. The entrance included the installation of a new traffic signal device and construction of a deceleration access lane along the southerly side of University Boulevard on land owned by Westfield. Because the redevelopment did not require subdivision and eventual re-platting of the property, part of the deceleration lane is now located outside the current SHA right of way for University Boulevard on a narrow strip of residential part lots. A portion of the Westfield access road is also located on these part lots. The access road is also constructed across a portion of the larger adjacent Westfield parcel. Westfield wishes to record a plat which changes the existing property lines to accomplish the following:

- convey the land including the deceleration lane to the state,
- locate the entirety of the access road on the shopping center parcel,

- create a single outlot containing the residentially-zoned land on the south side of the access road for potential future conveyance; and
- conform the lot lines to the “as-built” conditions of the shopping center access road.

To effectuate this change, the applicant wishes to use two minor subdivision processes included in the Subdivision Regulations. The first is to consolidate the existing residential parts of lots into one lot, and the second is to do a minor lot line adjustment between the resulting residential lot and the adjacent existing commercial lot. By letters of February 9, 2006 and April 3, 2006 (Attachments A and B), the applicant’s attorney has requested a waiver of the Subdivision Regulations pursuant to section 50-38(a)(1) to permit the first minor subdivision to consolidate the existing parts of lots.

Section 50-35A(3) of the Subdivision Regulations provides an opportunity for existing lots and parts of lots to be combined through the submission of a record plat without the need to submit a preliminary plan of subdivision. The minor subdivision provision specifically states:

“Consolidation of Two or More Lots or a Part of a lot into One Lot.

Consolidating more than one lot into a single lot is permitted under the minor subdivision procedure provided:

- a. Any conditions applicable to the original subdivision remain in full force and effect and the number of trips generated on the new lot do not exceed those permitted for the original lots or as limited by an Adequate Public Facilities agreement.
- b. Any consolidation involving a part of a lot may occur under the minor subdivision process if the part of a lot was created by deed recorded prior to June 1, 1958.”

The provision requires that parts of lots which are consolidated through this process be limited to those which were created prior to June 1, 1958. The subject application includes two small parts of lots that were created in 1959, and not pre-1958, as required by the Subdivision Regulations (Attachment C). These two parts of lots are not buildable in their own right. The applicant is requesting a waiver of the Section 50-35A(3) provisions to permit these two small parts of lots to be consolidated with four other existing parts of lots which do meet the requirements of the minor subdivision process, without having to submit a preliminary plan of subdivision. The waiver requested by the applicant is covered in Section 50-38(a)(1), which states that:

“The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.”

If the Planning Board approves the applicant’s request for consolidation of the lots as a minor subdivision plat, the applicant intends to proceed with the second minor subdivision record plat to adjust the lot lines between the resulting residential lot and the existing commercial lot to place the shopping center access road entirely on the commercial lot (Attachment D).

Applicant's Position

In this case, the applicant's justification for this request is that the owners of the Westfield Shopping Mall have decided to sell the residential acreage it owns that adjoins the shopping center. To do so, the residential acreage needs to be separated from the commercial shopping center parcel, and an existing part of the commercial access to the shopping center which now crosses parts of the residential acreage needs to be incorporated into the shopping center parcel. The applicant believes the minor subdivision platting process is the appropriate means to accomplish these objectives based on the following practical difficulties and unusual circumstances:

- Westfield purchased the shopping center and various residential lots in the Kensington Heights community in 1997 as part of a full package.
- Westfield (being a retail commercial developer) desires to sell the residential lots to a residential developer, and wants to do so by creating a platted lot unencumbered by the shopping center roadway.
- A preliminary plan of subdivision for the residential acreage cannot be submitted at this time since there is no development plan for the acreage.
- Design requirements for the shopping center's access road necessitated use of a small area of the residential acreage. The access road crosses a small portion of the residential acreage and this road should be fully incorporated into the commercial lot.
- Sale of the residential acreage encumbered by the commercial road poses legal, insurance and liability issues that Westfield and potential residential buyers wish to avoid. Prospective buyers for the residential acreage have asked Westfield to separate the roadway from the residential acreage as a condition of purchasing the property.
- Proceeding with the minor plat now would create a suitable lot for conveyance only, reserving for future development applications (to be filed by the purchaser of the residential property) any decisions as to potential development or use of the residential acreage.

Citizen's Position

Staff received letters from two nearby civic and citizens associations concerning this subdivision waiver request. In their letter of April 6, 2006 (Attachment E), the Kensington Heights Citizens Association (KHCA) oppose the waiver request based on their belief that the land should not be resubdivided until a specific development plan is submitted and approved. They also don't believe there are any problems affecting the existing use of the land which need to be addressed through the minor subdivision process. KHCA is concerned that consolidation of the existing lots will create development opportunities which do not currently exist for the property under current zoning. They also believe that the development standards of the current zone may apply differently to one consolidated lot as opposed to the existing parts of lots in their current configuration. Rather than see the residential lots consolidated, KHCA would prefer that the Planning Board permit lot line adjustments between each of the existing part lots and the larger Westfield parcel to facilitate separation of the mall access road.

In their letter of April 4, 2006 (Attachment F), the Kensington View Civic Association concur with the concerns raised by KHCA and oppose the subdivision waiver request. Both Kensington View and KHCA strongly believe that no action should be taken by the Planning Board at this time which might preclude a comprehensive analysis of the best use for the subject property with full citizen participation.

Staff's Position

A preliminary plan of subdivision could be submitted to effectuate the applicant's desired changes, but the plat resulting from following this process would be no different than the one being requested through minor subdivision. Without a specific development plan for the residential land area, only an unbuildable outlot would be permitted. In staff's opinion, it would be inappropriate to review a preliminary plan at this time because adequate public facilities, access, forest conservation, and stormwater management reviews, among others, can only be completed when a specific use is selected for the site. Therefore, staff recommends approval of the waiver request based on the practical difficulty involved with the submission of a preliminary plan of subdivision for the residential acreage by the applicant without a specific development plan.

Staff is also persuaded that unusual circumstances exist in this case in that the access road was located across lot lines when the shopping center redeveloped. As noted above, the redevelopment occurred without benefit of regulatory review. While not illegal, crossing the lot lines has proven to be an inadvisable way to align a road, since the applicant now believes that it creates liability issues if portions of the land under the access road were conveyed to another party. In staff's opinion, there is merit to "cleaning up" a messy situation by providing a means to clearly separate the shopping center access road and associated deceleration lane from the future residential development area.

It is germane to this discussion to note that, under the provisions of 50-35A(a)(3), the applicant could consolidate all but the two post-1958 part lots into a potentially developable lot with a minor subdivision record plat. The applicant's proposal includes the two post-1958 part lots, but consolidates the land area into an outlot. By designating the consolidated land as an outlot, no future building permit could be issued until a preliminary plan application and subsequent record plat are submitted and approved. Neither of these scenarios would result in development potential that does not exist under the current R-60 zoning. If development under zoning other than the existing R-60 is proposed, such a preliminary plan would need to be preceded by a rezoning application. In staff's opinion, the citizen concerns regarding the need for a comprehensive review of a development proposal are addressed by creating an outlot which requires such review to be done prior to issuance of any building permits on the site.

Staff believes the waiver is the minimum necessary and is not inconsistent with the purposes and objectives of the General Plan. In this case, the applicant is requesting the waiver to ultimately permit recordation of two plats that will create a single outlot on the south side of the mall access road and re-plat the Westfield mall parcel to include the land for the access road. The resulting outlot consolidates the existing pieces of residential property south of the access road into a single entity which will have no building potential until a future subdivision plan is

approved, and the outlot is re-platted. Pursuant to Section 50-20, building permits cannot be issued for an outlot.

CONCLUSION

SRW200602 for Kensington Heights has been reviewed pursuant to Section 50-38 of the Montgomery County Subdivision Regulations. The request is for relief from full compliance with Section 50-35A(a)(3) of the regulations, which requires that parts of lots included in a minor subdivision under that section, be recorded prior to June 1, 1958. Based on the discussion and analysis in this report, staff finds the request is the minimum necessary to effect the change, and is not contrary to the local master plan or the General Plan. The applicant has provided sufficient evidence that this is an unusual circumstance and that there is a practical difficulty that precludes the submission of a preliminary plan. Therefore, staff recommends approval of the subdivision waiver request.

Attachments

- Attachment A – February 9, 2006 Applicant Letter
- Attachment B – April 3, 2006 Applicant Letter
- Attachment C – Proposed consolidation plat
- Attachment D – Proposed minor lot line adjustment plat
- Attachment E – April 6, 2006 Citizen Letter
- Attachment F – April 4 2006 Citizen Letter

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 ELSIE L. REID
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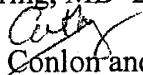
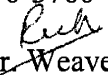
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February 9, 2006

Ms. Cathy Conlon, Chief
 Mr. Richard Weaver
 Subdivision Review, Development Review Division
 Montgomery County Planning Department, M-NCPPC
 8787 Georgia Avenue
 Silver Spring, MD 20910-3760

Dear Ms.  Conlon and Mr.  Weaver:

On behalf of Westfield Corporation, and pursuant to Section 50-38(a)(1) of the Subdivision Ordinance, we are submitting this justification letter in connection with an Application for a Subdivision Waiver of Section 50-35A(a)(3)(b), as applied to the proposed consolidation into one outlot as a Minor Plat, of several undeveloped parts of residential lots, which adjoin Westfield Wheaton Shopping Center. Section 50-35A(a)(3)(b) [Consolidation of Part Lots as Minor Plats] requires that all of the part lots must have been created before June 1, 1958 for a consolidation of part lots to proceed as a Minor Plat. Most of the part lots here in question meet that criteria, but there are two small pieces of the several part lots Westfield seeks to consolidate that were platted in 1959.

The Subdivision waiver will allow Westfield to create an outlot (one that will require Planning Board approval for its future development), so that it may then adjust the residential outlot property line with the lot line for its commercial shopping center lot. The objective is to achieve a record lot for the Westfield Wheaton shopping center that will be separated from the residential acreage which adjoins the shopping center. Future development of any part or all of the residential acreage will be subject to all development review requirements then in effect. Neither clearing of vegetation nor any development on the proposed outlot is planned in connection with these minor plats.

The plat, "Minor Plat No. 1," if you will, for which the Subdivision Waiver is sought, would allow the consolidation of several residentially zoned "part lots" which adjoin Westfield Wheaton along University Boulevard. Again, no development is proposed on these lots at this time. This consolidation lot is being requested, per the suggestion of Richard Weaver of the Development Review Division, in order that a second, "Minor Plat No. 2," if you will, a lot line

Ms. Cathy Conlon
Mr. Richard Weaver
February 9, 2006
Page 2

adjustment, can be accomplished between the commercially zoned Westfield Wheaton lot and the newly consolidated residential parcel.

The lot line adjustment will bring the commercial ring road that provides ingress and egress to the shopping center from University Boulevard, as shown on the attached drawing, wholly within the Westfield Wheaton commercial complex. A portion of that entrance road (along University Road at the new traffic signal serving the University and Valley View intersection) now crosses a small corner of the residentially zoned land, and it is desirable to bring the entire road into the commercial lot.

Westfield understands that further development on the residentially zoned outlot will necessitate Planning Board review, including compliance with all subdivision and development review requirements in effect at that time.

The subdivision waiver sought here is simply to proceed with the minor plat process. This waiver is justified because of the unusual circumstances applicable to these residential lots that adjoin the existing Westfield Wheaton shopping center, specifically the fact that one of the primary University Boulevard entrances to the shopping center's ring road crosses a portion of the residential lots. Granting the waiver of the pre-1958 requirement is the minimum necessary to achieve the desired result and will be consistent with the County's General Plan and in the public interest. Any future development on the outlot will be subject to Planning Board approval. Maintenance of the commercial road on the commercial lots makes good planning sense. The necessary dedication of public right of way to the State Highway Administration along University Boulevard will be accomplished during the Minor Plat process.

I would be happy to supply any further information you may require. Thank you.

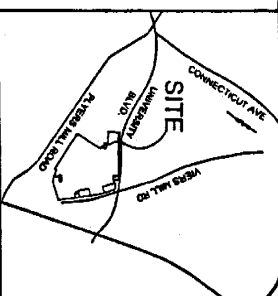
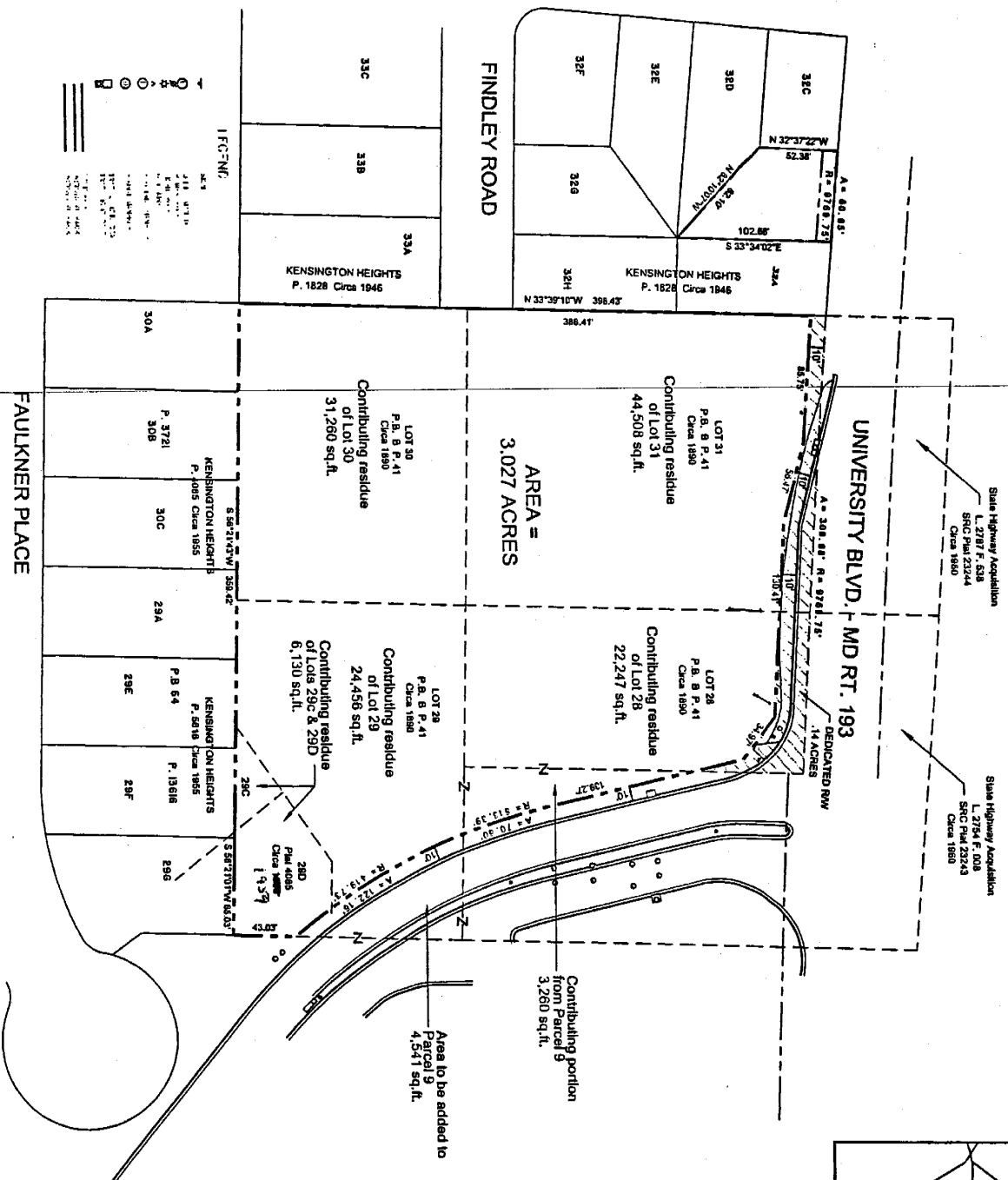
Sincerely,



Elsie L. Reid

ELR/jmt
Enclosures

cc: Jim Agliata, Vice President
Westfield Corporation, Inc.
Anthony C. Alessi, Development Director
Westfield Group
Devin John Doolan, Esq.
Jim Crawford, Dewberry & Davis
Richard Weaver, Subdivision Coordinator
Development Review Division, MNCPPC



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DATE: APRIL, 2005 Revised 11/1/05
 SCALE: 1" = 50'

REAL PROPERTY EXHIBIT PLAT
 PARTS OF LOTS 28-31 - KENSINGTON HEIGHTS
 SITUATED IN THE WHEATON (13TH) ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND

Dewberry
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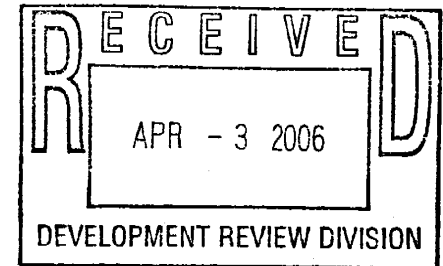
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 ROBERT L. BROWNELL
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 LILLIAM L. MACHADO

April 3, 2006

Catherine A. Conlon,
 Supervisor
 Development Review Division
 Montgomery County Planning Board
 8787 Georgia Avenue
 Silver Spring, MD 20910



Re: SRW2006-02

Dear Cathy:

In support of Westfield's request for Planning Board approval to permit, by means of the Minor Plat process, the consolidation of various parts of vacant residential lots it owns into a single "outlot," we offer the following additional information. As you know, we have applications pending for a waiver of the minor subdivision ordinance provisions and approval of two minor plats, one to consolidate part lots into a single outlot and one to adjust the lot line between the new outlot and the commercial shopping center parcel.

In essence, the justification for this request is that Westfield has decided to sell the residential acreage it owns that adjoins the shopping center. To do so, it needs to separate the residential acreage from the commercial shopping center parcel. As a practical matter, however, it cannot submit a preliminary plan of subdivision to create a new residential lot or lots, as the desired land use, residential density, lot configuration, or traffic demand are not known. Further, because a part of the commercial access to the shopping center crosses the residential acreage, Westfield needs to effect the dedication of the entrance lane to the shopping center along University Boulevard to the State Highway Administration and incorporate the entirety of the access road within the shopping center parcel. Westfield respectfully submits that the Minor Plat process is an appropriate means to accomplish these objectives.

Specifically, these are the practical difficulties and unusual circumstances supporting this request:

°Westfield purchased the shopping center, along with various residential lots in the Kensington Height's community in 1997, from the Gudelsky family, as part of a full package.

°Westfield (being a retail commercial developer) desires to sell the residential lots to a residential developer. To do so, it wants to create a platted lot unencumbered by the shopping center roadway.

°Westfield cannot submit a preliminary plan of subdivision for the residential acreage as it has no development plan for the acreage, so that there would be insufficient information before the Planning Board to review such an application.

°Access to Westfield Wheaton crosses a small portion of the residential lots and the road way should be fully incorporated in the commercial lot. Apparently design requirements for the access road necessitated the use of a very small area of the residential acreage owned by Westfield for the road.

°Sale of the residential acreage, encumbered by the commercial road poses legal, insurance and liability issues that Westfield and potential residential buyers wish to avoid. Prospective buyers for the residential acreage have asked Westfield to separate the roadway from the residential acreage as a condition of purchasing the property.

°Proceeding with the minor plats now, as proposed by Westfield, would create a suitable lot for purposes of conveyance only, reserving for future development applications (to be filed by a purchaser of the property from Westfield) any decisions as to potential development or use of the residential acreage.

By way of background, the residential lots in question, for purposes of the proposed minor plats, were initially platted in the late nineteenth century and over time were re-subdivided, sometimes by plat and sometimes by deed or SHA projects. All the lots are classified for zoning purposes as R-60, single-family residential lots. The shopping center, owned by Westfield, zoned C-2 (except for one small section zoned C-T) and now known as Westfield Wheaton, adjoins these various residential lots.

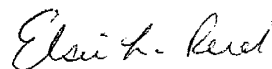
As part of the recent redevelopment of the shopping center, Westfield, having received right of way permits from the State Highway Administration, built a new entrance lane to the shopping center at the intersection of University Boulevard and Valley View Drive, which included the installation of a new traffic signal device and a deceleration access lane along the southerly side of University Boulevard, all of which improvements were constructed on land owned by Westfield. Part of the deceleration lane is, however, outside the current SHA right of way for University Boulevard and lies on a narrow strip of some of the residential part lots. Westfield intends to convey this land to the State. Also, a small section of the access drive crosses a portion of the residential lots on the edge of the shopping center parcel. The minor plats being submitted for approval will evidence the dedication to SHA of the actual right of way for the deceleration entrance lane and locate the entirety of the access road on the shopping center parcel, essentially conforming the lot lines to the "as-built" conditions of the shopping center access road.

Westfield is not a residential developer, and it does not wish to develop the residential lots as part of the shopping center parcel. Rather it desires to sell the residential acreage of approximately 3.4 acres, **as is**, to a third party which will have to pursue whatever development entitlements it envisions for the site through the full regulatory approval process, including preliminary plan of subdivision approval. Sale of the residential acreage encumbered by the access road poses difficult legal issues with respect to creating or reserving easement rights to the shopping center. It also raises security, liability and insurance issues between the residential landowner and Westfield. Prospective buyers want the uses, commercial road and residential land, separated by lot lines. **The Minor Plat process is the means to facilitate the sale of the residential property and the securing of the commercial entrance to the shopping center within the center's boundaries.**

The waiver of the subdivision ordinance requirements pertains to the residue of two very small residential part lots, 29C and 29D that were platted in 1959, and not pre-1958, as required by the Subdivision Ordinance. Neither of these small part lots are suitable for development at this time, and they are vacant. Because the effect of the waiver will not result in any development approval for these lots, or the new "outlot," we submit that granting the waiver will not violate any planning policies. Any future development of the resulting "outlot" will require the developer applicant to proceed through the full development review processes, including any rezoning or special exception applications. In fact the consolidation would allow Westfield to convey a platted outlot, consistent with the requirements of the Subdivision Ordinance, rather than having to convey various residues of part lots, not shown as such on any record plats.

Please let me know if I can supply any additional information to you. We intend to file the minor plat applications today. Thank you.

Sincerely,



Elsie L. Reid

cc: Anthony Alessi, Development Director, Westfield Corporation
Jim Crawford, Dewberry & Davis
Devin John Doolan, Esq.

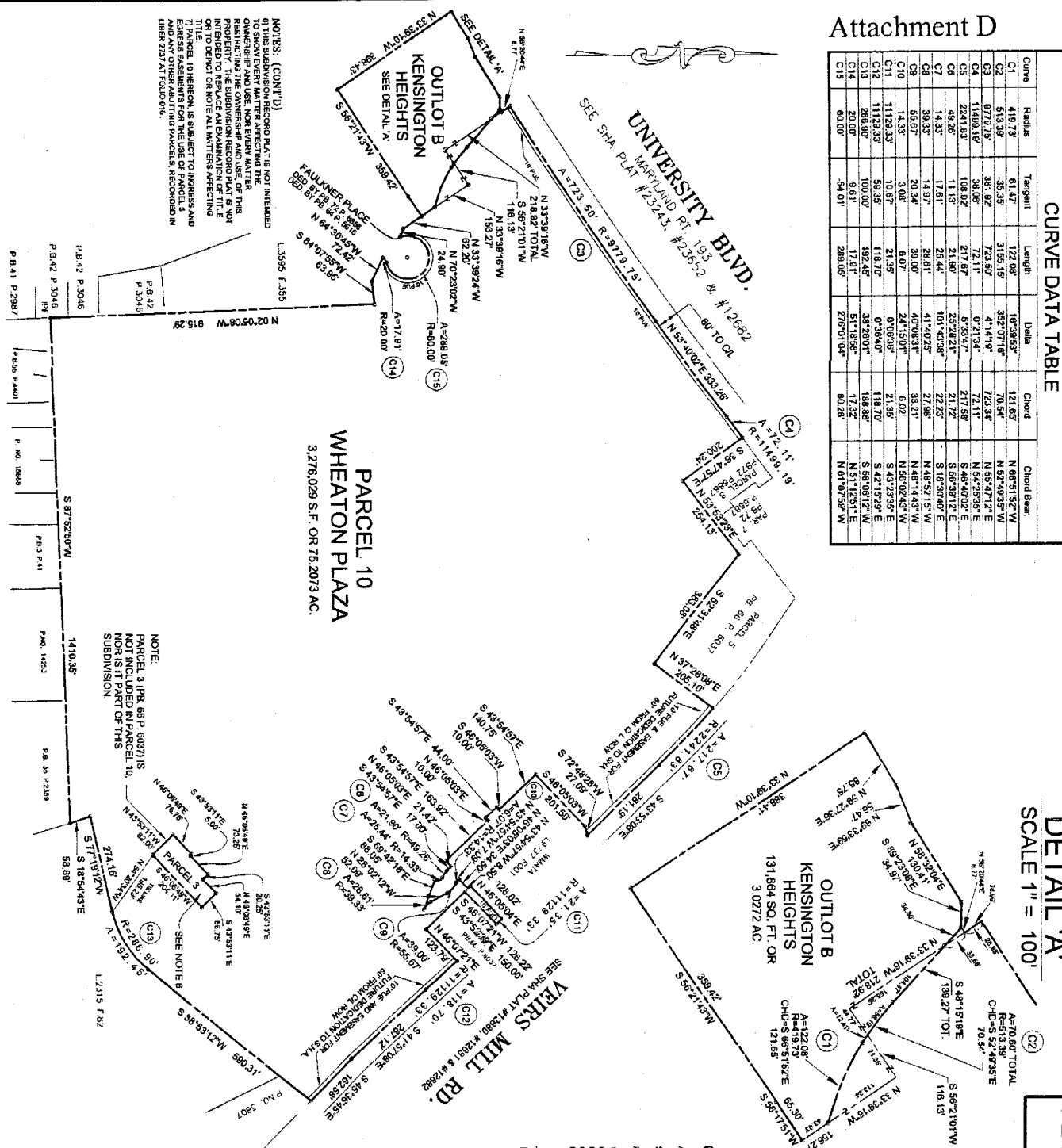
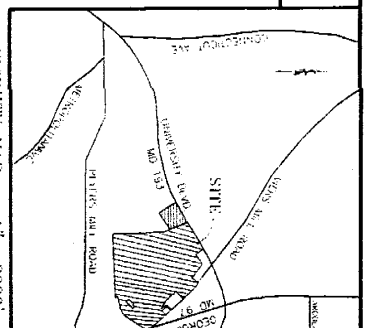
Attachment D

CURVE DATA TABLE

Curve	Radius	Tangent	Delta	Chord	Chord Bear.
C1	418.27	81.47	122.08°	163.95°	N 89°51'52" W
C2	513.29	35.35	115.61°	359.07°	N 52°40'55" W
C3	879.15	36.92	123.50°	723.54°	N 55°42'12" E
C4	1140.10	36.00	122.11°	722.11°	N 54°25'36" E
C5	2241.83	108.82	67°13'47"	217.58°	S 69°39'12" E
C6	48.26	11.13	21.60°	21.72°	S 56°59'12" E
C7	14.33	17.61	25.44°	22.23°	S 18°50'40" E
C8	39.33	28.61	41°40'25"	27.86°	N 48°52'15" W
C9	65.67	20.34	40°08'31"	38.21°	N 48°14'43" W
C10	14.33	3.06	6.07°	6.02°	S 43°23'59" E
C11	11129.33	10.87	0°09'49"	21.35°	N 56°02'43" W
C12	11129.33	59.33	0°18'40"	118.70°	S 42°15'29" E
C13	286.00	100.00	182.45°	188.88°	S 58°08'12" W
C14	20.00	9.81	51°18'56"	17.32°	N 51°12'51" E
C15	60.00	280.05	276°01'04"	80.28°	N 61°07'58" W

DETAIL 'A'
SCALE 1" = 100'

PLAT NO.



**PARCEL 10
WHEATON PLAZA**
3.276,029 S.F. OR 75.2073 AC.

NOTE:
PARCEL 3 (P.B. 66 P. 6037) IS NOT INCLUDED IN PARCEL 10 SUBDIVISION

NOTES:
1) ALL TERMS, CONDITIONS, AGREEMENTS, LIMITATIONS, AND REQUIREMENTS ASSOCIATED WITH ANY PRELIMINARY PLAN, SITE PLAN, PROJECT PLAN OR OTHER PLAN, AND/OR DEVELOPMENT OF THIS PROJECT SUBMITTED TO THE MONTGOMERY COUNTY PLANNING BOARD AND APPROVED BY THE BOARD SHALL BE INCORPORATED INTO THIS SUBDIVISION RECORD PLAT. THE RECORD PLAT SHALL BE THE FINAL AND AUTHORITY FOR PUBLIC REVIEW DURING NORMAL BUSINESS HOURS.
2) THE PLAT CONCERNING THE REDEVELOPMENT OF SECT. 40.25, NOT THE MONTGOMERY COUNTY SUBDIVISION REGULATIONS, BEING CHAPTER 60 OF THE COUNTY CODE, THIS PLAT INVOLVES A MERGERS AND ACQUISITION AS PROVIDED FOR IN SECTION 60.34(A)(1).
3) THE PLAT CONCERNING THE REDEVELOPMENT OF SECT. 40.25, NOT THE MONTGOMERY COUNTY SUBDIVISION REGULATIONS, BEING CHAPTER 60 OF THE COUNTY CODE, THIS PLAT INVOLVES A MERGERS AND ACQUISITION AS PROVIDED FOR IN SECTION 60.34(A)(1).
4) THE PROPERTY SHOWN HEREON IS DERIVED FROM THE MAP, RECORD, AND SURVEY ON 1980-08-21 (M&L).

MONTGOMERY COUNTY PLANNING BOARD
APPROVED: _____
CHAIRMAN
ASST. SECRETARY TREASURER

MONTGOMERY COUNTY DEPARTMENT OF PERMITTING SERVICES
APPROVED: _____
BY: _____
DIRECTOR

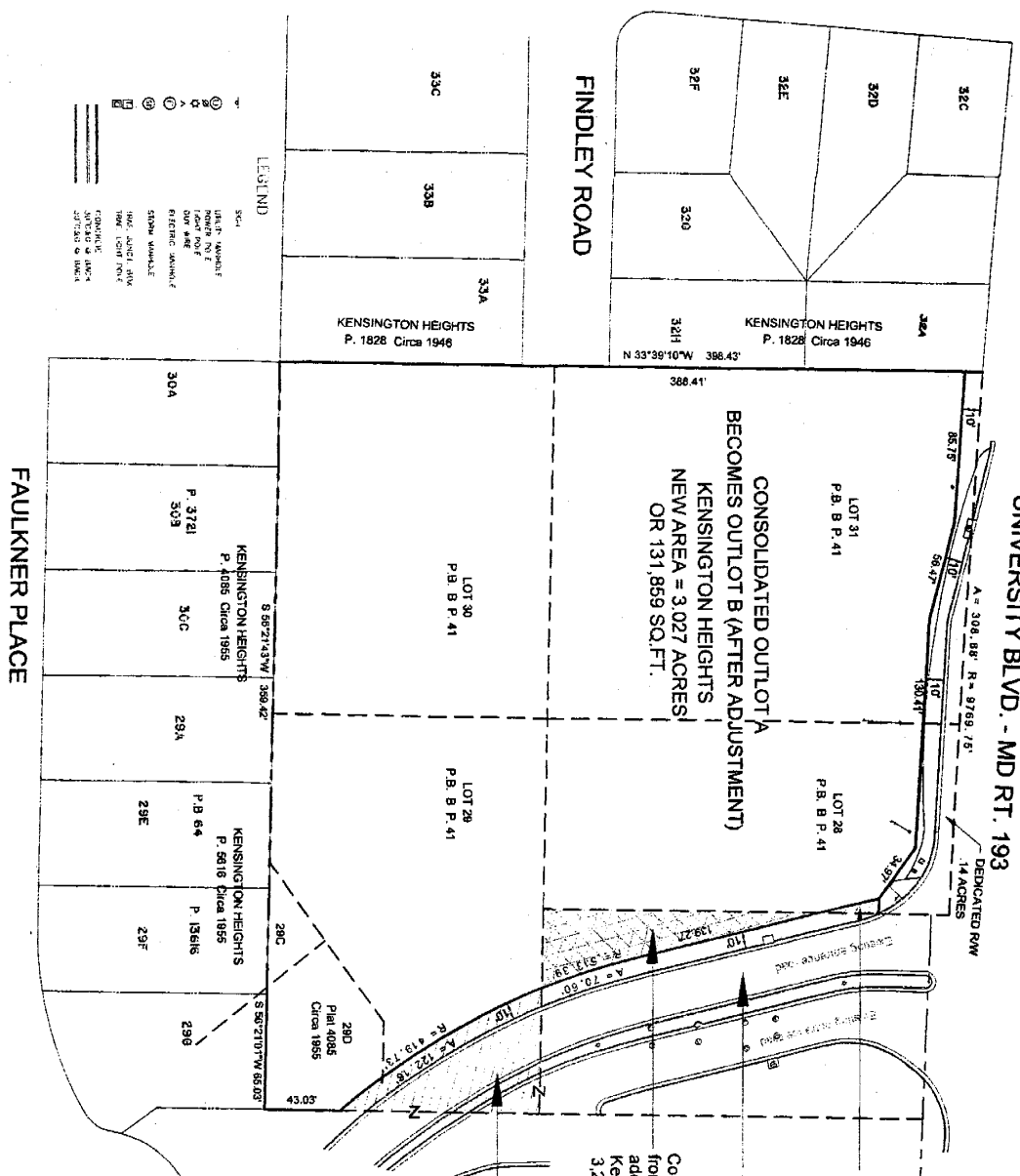
RECORDED
PLAT NO. _____

Dewberry
203 Perry Parkway, Suite 1
Gathersburg, MD 20877-2169
(301) 948-8300 Fax: (301) 258-7607

SUBDIVISION RECORD PLAT
WHEATON PLAZA-PARCEL 10
KENNINGTON HEIGHTS-OUTLOT B
ROCKVILLE (9TH) ELECTION DISTRICT
MONTGOMERY COUNTY, MD
DATE: FEBRUARY 2006 SCALE: 1" = 200'

SURVEYOR'S CERTIFICATE
I HEREBY CERTIFY THAT THE PLAN SHOWN HEREON IS CORRECT FOR THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF AND INFORMATION, AND THAT IT PART OF THE LANDS CONVEYED TO WHEATON PLAZA REGIONAL SHOPPING CENTER, A MARYLAND GENERAL PARTNERSHIP, BY DEEDS RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND, IN LIEU 7912 AT FOLIO 0762, LIEU 3820 AT FOLIO 0007, AND LIEU 3582 AT FOLIO 0007, AND LIEU 7783 AT FOLIO 382, SAID LAND ALSO BEING A RESUBDIVISION OF PARCEL 9, WHEATON PLAZA, RECORDED AS PLAT 21081, AND A RESUBDIVISION OF OUTLOT A, KENNINGTON HEIGHTS.
I FURTHER CERTIFY THAT, ONCE ENGAGED AS STATED IN THE OWNERS CERTIFICATE HEREON, I PROMISE INDICATED THAT (S) WILL BE SET AT THE PROPERTY CORNERS AS SHOWN HEREON, IN ACCORDANCE WITH SECTION 60-34(B)(2) OF THE MONTGOMERY COUNTY CODE.
THE TOTAL AREA OF THIS PLAT IS 3,207,893 SQUARE FEET OR 75.2063 ACRES OF LAND, NONE OF WHICH IS IDENTIFIED AS BOUNDARY-OF-WAY BY THIS PLAT.

EMIC V. DAVY
PROFESSIONAL LAND SURVEYOR (D. REG. NO. 10771)
DATE: FEBRUARY 2006



LEGEND

- ① 5% LOT AREA
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UNIVERSITY BLVD. - MD RT. 193

FAULKNER PLACE

FINDLEY ROAD

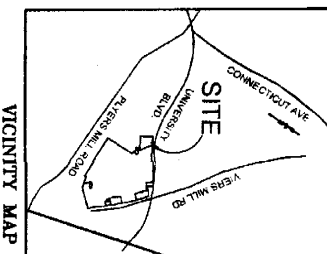
CONSOLIDATED OUTLOT A
BECOMES OUTLOT B (AFTER ADJUSTMENT)
KENSINGTON HEIGHTS
NEW AREA = 3.027 ACRES
OR 131,859 SQ. FT.

EXISTING PARCEL 9
ANTICIPATED PARCEL 10
KENSINGTON HEIGHTS

Area to be added to existing
Parcel 9, Wheaton Plaza
148 sq. ft.

Contributing portion
from Parcel 9 to be
added to Outlot A
Kensington Heights
3,260 sq. ft.

Area to be added to existing
Parcel 9, Wheaton Plaza
4,541 sq. ft.



CALCULATION TO DETERMINE COMPLIANCE WITH SECT 50-35A(a)(1)a. AKA. (5% RULE)	
AREA OUTLOT A =	133,288 SQ. FT.
AREA PARCEL 9 =	3,274,611 SQ. FT.
COMBINED AREA =	3,407,899 SQ. FT.
CONTRIB. BY OUTLOT A =	4,541 SQ. FT.
CONTRIB. BY PARCEL 9 =	3,260 SQ. FT.
COMBINED ADJUSTMENT =	7,801 SQ. FT.
	7,801 + 3,407,899 = 0.0023
	OR 0.23% (LESS THAN 5%)

SKETCH PLAN - FOR MINOR LOT LINE ADJUSTMENT

DATE: MARCH, 2006
SCALE: 1" = 50'

EXCHANGE BETWEEN CONSOLIDATED OUTLOT A - KENSINGTON HEIGHTS AND PARCEL 9, WHEATON PLAZA
SITUATED IN THE WHEATON (19TH) ELECTION DISTRICT

Dewberry
203 Perry Parkway, Suite 1
Gaithersburg, MD 20877-2169
(301) 948-8300 Fax: (301) 258-7607



Kensington Heights Citizens Association

Your Neighborhood Association!
www.kensingtonheightsweb.com

2005-7 Officers

President

Wayne M. Goldstein
301-942-8079

Vice President

Sean Neary
301-946-5698

Secretary

Carl Day
301-949-6903

Treasurer

Karen Cordry
301-933-3640

Parliamentarian

Carl Day
301-949-6903

Immediate Past President

Donna R. Savage
301-942-2447

△ △ △ △ △ △ △ △

Beautification

Abigail Adelman
301-942-6893
Jane Folsom
301-942-6918

By-Laws and Communication (plus Web site)

Carl Day
301-949-6903

Crime Statistician

John O'Connor
301-962-6357

Database Admin.

Carole Connor
301-933-2079

Education

Mark R. Adelman
301-942-6893

History

Aaron & Megan Garnett
301-949-9793

Land Use

currently vacant

Newsletter, Online

Christina & Frank Csarlo
301-949-6040

Newsletter, Print

Lisa Roberts
301-962-4986

Traffic and Safety

Bob Gac
301-933-8656
Jane Harding
301-933-0513

Affiliated with:

Allied Civic Group
Coalition of Kensington
Communities
MC Civic Federation
Wheaton Citizens Coalition

Recipient of the

1998 Wheaton-Kensington
Civic Association Award

KHCA represents 717 single-family
homes in Kensington, Maryland.

TO: Kathleen Conlon, Chief, and Richard Weaver
Subdivision Review, Development Review Division
Montgomery County Planning Department, M-NCPPC
delivered in person

FROM: Kensington Heights Citizens Association
(Wayne Goldstein, president) *WMG/drs*

DATE: April 6, 2006

RE: Westfield Subdivision Request for Waiver, SRW-2006-02

This letter is submitted by the Kensington Heights Citizens Association (KHCA) in response to Westfield Corporation's request for a Subdivision Waiver. The requested waiver would consolidate several of Westfield's residentially zoned lots within Kensington Heights (residues of lots 28, 29, 30, and 31) into a single lot. It would also provide for the exchange of small portions of several of those lots, for adjacent commercially zoned Westfield property, which is assertedly necessary because portions of the access road and required right-of-way at University Boulevard and Valley View were built on residentially zoned land.

KHCA is opposed to the waiver request at this time. It is our understanding that, under Section 50-38(a)(1) of the Subdivision Regulations, a waiver is only to be allowed where "practical difficulties or unusual circumstances" prevent full compliance with the applicable regulations. We do not believe the circumstances identified in Westfield's letter meet that criteria, since there is no development proposal at this time for the Planning Department to consider or evaluate. In general, it is our opinion that this land should not be resubdivided until a specific project is proposed that would require the parcels in question to be resubdivided for project approval. We are unaware of any problems that exist for Westfield with respect to the current use of these parcels that need to be addressed through this process.

In addition, we believe there are numerous issues that would arise with respect to the use of these lots that should be addressed before (not after) a change is made in the subdivision of these lots. For example, consolidation of the lots would automatically change the required amount of green space on and access requirements to the separate lots. The Kensington Heights community has a number of ideas about the best use for these lots in light of the current and anticipated rapid development in the adjacent Wheaton area, including that the County should acquire the land for needed green space, an option we are currently pursuing. We strongly believe that all such issues should be dealt with comprehensively rather than by making important decisions in a piecemeal fashion. Accordingly, we request that Westfield's Subdivision Waiver request be denied at this time.

If the Planning Board considers granting Westfield's request, KHCA urges that the request to exchange the minor land parcels be separated from the decision to allow consolidation of the separate parcels into one lot. In any event, if the Board is inclined to grant the consolidation request, we believe it is imperative that this combined lot be designated as an unbuildable outlot to ensure a full Planning Board review for any proposed development on this land.

copy to: Anthony Alessi, Development Director, Westfield
Elsie L. Reid, Attorney, Furey, Doolan & Abell, LLP
Natalie Cantor, Director, Mid-County Services Center
Khalid Afzal, Community Planner, Park & Planning

TO: Kathleen Conlon, Subdivision Review, 04 April 2006
Montgomery County Planning Department, M-NCPPC

FROM: Kensington View Civic Association, Land Use and Zoning Committee

RE: SRW-2006-02 (Westfield Subdivision Request for Waiver)

The Kensington View Civic Association opposes this request by the Westfield Corporation for a waiver of zoning ordinance requirements as described in SRW-2006-02. This action should not be allowed until a development plan for this site (lots) is submitted in order to discuss the impact of the requested waiver in the context of the end use of the lots.

Our understanding is that, under Section 50-38(a)(1) of the Subdivision Regulations, a waiver of any development standards is only allowed when "*practical difficulties or unusual circumstances*" prevent full compliance with the applicable regulations. It is not possible to make this judgment without knowing what regulations will be 'applicable' to the future development and what difficulties and circumstance prohibit compliance until plans are submitted for review. Westfield representatives have stated that they will not be the developer of this site and that discussions of options have occurred with several developers. Addressing the issues created when Westfield created the ring road access at Valley View and University Boulevard that resulted in the several odd pieces of land described in the application should occur when a developer submits plans, in order that all zoning and lot line concerns can be discussed concurrently.

Our Kensington View community is located across University Boulevard from the subject site and would likely be impacted by traffic and pedestrian issues related development of these parcels. The density of development that could occur on the site, either under current zoning as single family detached houses, or through the resubdivision process to request a much greater density on one consolidated parcel must be considered in the context of the whole intersection, including potential redevelopment of adjacent and opposing properties. Conceivably, other modifications could be required by the county or the state to the roads, stacking lanes, setbacks, easements, etc. in addition to fixing the current odd pieces of the parcels. These actions should occur all at the same time, rather than in a piecemeal fashion.

For these reasons, Kensington View Civic Association urges denial of SRW-2006-02. We also support the positions stated by the Kensington Heights Citizens Association. The appropriate time for discussion of the action requested is in the context of a development plan for the site. Our association would like to participate in future discussions of development for this site.

Virginia Sheard, Kensington View Civic Association

3303 Geiger Avenue, Kensington, MD 20895 301-949-3372

copies: Anthony Alessi, Development Director, Westfield Corporation
Elsie L. Reid, Furey, Doolan & Abell, LLP
Khalid Afzal, Community Planner, MNCPPC