



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #
3/1/07

MEMORANDUM

February 16, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

FROM: Catherine Conlon, Development Review Division (301-495-4540) *CC*
Karl Moritz, Research and Technology Center (301-650-5612) *KM*
Shahriar Etemadi, Transportation Planning Division (301-495-2168) *SE*

SUBJECT: Request for extension of the Adequate Public Facilities validity period for
Preliminary Plan 119870120 (1-87012), Churchill – Far North Village

STAFF RECOMMENDATION: Denial

BACKGROUND

The preliminary plan for Churchill – Far North Village, also referred to as Water's Landing Corporate Park and the Lerner Property ("Subject Property"), was approved by the Planning Board at two separate regularly scheduled public hearings, the first on October 27, 1988 and the second on November 11, 1995. The approvals included a total of 1.3 million square feet of office use in the Town Sector zone. The date of mailing of the Planning Board Opinion for the 1988 approval was November 3, 1988 (Attachment A), and the opinion for the 1995 approval was mailed November 28, 1995¹ (Attachment B). Pursuant to Section 50-20(c)(3)(A) of the Montgomery County Code, Subdivision Regulations, the validity period of the adequate public facilities (APF) review for the Subject Property is set at 12 years from the date of mailing of the 1995 Planning Board Opinion, or November 28, 2007. On February 12, 2002 the preliminary plan was brought before the Planning Board at a regularly scheduled hearing to amend the previous conditions of approval. That request was approved; the date of mailing of the Planning

¹ Although portions of the project were approved in the 1988, the date for APF time limit purposes is 1995.

Board Opinion was January 31, 2003. (Attachment C) To date, the Applicant has recorded the property and met some of the conditions of approval, but none of the square footage related to the project has been built.

On September 26, 2006 staff received a request for an extension of the APF validity period on behalf of the developer of the property, North Village – 270 Limited Partnership (“Applicant”). The request is for an additional 12 years until November 28, 2019. Discussion of the request by the Planning Board was previously scheduled for January 11, 2007, but the item was postponed at the Applicant’s request to provide an opportunity for further discussion between staff and the applicant. A subsequent meeting did take place, and the following discussion summarizes staff’s findings.

REQUIRED FINDINGS FOR APF EXTENSION

Section 50-20(c) establishes the terms under which an APF validity period may be extended. The Applicant’s representative is making the subject request pursuant to Section 50-20(c)(10) which states:

“The Planning Board may extend a determination of adequate public facilities once for up to 12 more years beyond the otherwise applicable validity period if the Board finds that:

- (A) the preliminary subdivision plan for the development required a significant commitment of funds by the Applicant, amounting to at least \$2,500,000, to comply with specified infrastructure conditions;
- (B) the Applicant has met or exceeded the required infrastructure conditions during the original validity period; and
- (C) the Applicant’s satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable master or sector plan.

This provision was approved by the Montgomery County Council on March 21, 2006, as part of subdivision regulation amendment (SRA) 05-03. This SRA, among other things, made changes to the rules governing the validity period of a finding of APF, including extension provisions. The provision noted above was added at the request of the Applicant during the SRA review. On December 1, 2005, the Planning Board held a public worksession on SRA 05-03. At that work session, the Planning Board reviewed the provision as it relates to the Subject Property and declined to support it. A summary of the project as discussed in the Planning Board’s December 1, 2005 packet is included in Attachment D. It has been revised slightly to bring it up-to-date.

During the Council’s debate on this provision, the Council made it clear that the provision does not require the Planning Board to approve an extension if the conditions are met. Instead, the provision removes a prohibition against extensions beyond 12 years under certain circumstances.

Applicant's Position

By letter dated September 22, 2006 (Attachment E), the Applicant's representative outlines the Applicant's justification for the requested extension. The Applicant believes that their application meets the legal standards of all three provisions in Section 50-20(c)(10), and that the extension should be granted. With regard to the requirement that a significant commitment of funds be made toward infrastructure requirements, the letter cites current expenditures of \$1,100,128.50 towards required offsite road projects and a written commitment by the Applicant to construct additional road improvements that will cost an additional \$5,000,000. The letter also notes that 59 acres have been dedicated to MNCPPC as parkland, with an estimated value of 1.5 – 2.0 million dollars. The Applicant maintains that Section 50-20(c)(10)(a), as discussed above, is thereby satisfied.

The Applicant also believes that they have met or exceeded the infrastructure conditions during the APF validity period as required under Section 50-20(c)(10)(b). Some of the required road projects have been completed, but the letter acknowledges that significant portions of other required roads (Crystal Rock Drive and Dorsey Mill Road), are not complete. The letter states, however, that the design of these improvements are final and portions have been submitted to MCDPS for approval and permits. The Applicant suggests that construction bidding was to have taken place in October 2006 and that, with an approval of the extension by the Board; construction would commence in late 2006. The Applicant is willing to provide binding, enforceable assurances to the Board to guarantee timely compliance with the conditions for transportation improvements to meet the requirement for the extension.

Finally, the Applicant also believes that the combination of infrastructure already provided, and the additional that they are committing to, represent a significant and necessary public benefit to the County and implement infrastructure goals of the master plan. The letter highlights the vision of the Germantown Employment Corridor and how critical this project is in maintaining an acceptable jobs/housing ratio. The required roads are believed to be important to lessening traffic congestion problems on I-270 and to the Corridor Cities Transitway. The Applicant strongly believes that the road improvements that they are required to participate in are very important to the overall success of the Employment Corridor on both the west and east sides of I-270.

Staff's Position

Staff is recommending that the Planning Board make the same finding made during review of SRA 05-03, and deny the request for APF extension. Staff suggests that the applicant submit an updated traffic study that would be reviewed by the Planning Board as an amendment to the approved preliminary plan. The Board would be able to establish a new APF validity period as part of that review.

Staff justifies this position because for the past decade, the Planning Board and County Council have articulated a policy goal to move toward a smaller, more active pipeline of approved development. Actions to support this goal have included:

- reducing the time limits of a finding of adequate public facilities from 12 years for all projects to 5 years for most projects (up to 12 in for larger projects), and
- tightening extension provisions so that extensions are typically granted only to those projects that are well underway but need some additional time to be completed.

Further, staff does not believe that the extension has significant public benefits. The Applicant notes that there are transportation improvement conditions associated with the existing approval, but it is not necessary to extend the APF finding of this project to continue to require that these improvements be made. Staff has previously advised the Applicant that they could apply for a new APF finding at any time. The requirement for an updated traffic study is not, in staff's opinion, onerous, and is reasonable given the growth that has occurred since the project was originally approved. Had the Applicant chosen to pursue a new APF finding, rather than an exemption to the rules, the APF finding would likely have been processed and complete by now.

Staff also disagrees with the applicant that the extension of Crystal Rock Road, which is the major remaining road improvement they would complete if the APF is extended, is a project that is critical to the master plan goals. This section of roadway is essential for the subject property when it is constructed, but the more important improvements from an overall master plan standpoint are extension of Century Boulevard onto this property to Dorsey Mill Road, and extension of Dorsey Mill Road to I-270 (Attachment F).

Transportation Planning staff have carefully evaluated the Applicant's request for extension of the APFO validity for this development and concluded that this extension should not be granted for the following reasons:

1. Since the original traffic study for this application, the traffic conditions, roadway systems and other land uses in the area have changed significantly. As such, there is no reasonable basis for Transportation Planning staff to accurately assess the current impact of this development on area roadways.
2. The growth policy and associated Local Area Transportation Review Congestion Standards have changed significantly in the 1980s and 1990s. The new congestion standards, as well as the criteria for assessing the traffic impact of the proposed development, would consequently produce different results if we assessed this development today.
3. The Applicant has indicated in meetings with our staff that development mix may change. Staff would like to be given a basic level of certainty as to what the Applicant intends to do with this property before granting any extension.
4. By extending the APF validity period, this development stays in the development pipeline and its traffic will be used as background development for other potential Applicants. This influences the types of improvements required by other Applicants for the local roadways and intersections. In other words, if the APFO validity extension is granted, other future Applicants who intend to go forward with their development are forced to take into consideration the impact of this development without a guarantee that this project will actually be implemented.

Staff firmly believes the best possible remedy for the developer's situation is for the developer to request a new APF finding as soon as possible. A developer need not wait until the current APF expires to request a new one. Staff understands that this involves some uncertainty for the developer, as background traffic is likely to have changed since the developer's original study. However, that change in background traffic argues for, rather than against, the need for a new traffic analysis.

Attachments

Attachment A – November, 1988 Opinion

Attachment B – November, 1995 Opinion

Attachment C – January, 2003 Opinion

Attachment D – Summary of Board's Discussion of SRA 05-03

Attachment E – Applicant's Justification for Extension

Attachment F - Master Plan Roadway Map

RECEIVED
FEB 03 2003

CLARK, FINE, ROCK & SACKETT, INC.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION



Date Mailed: January 31, 2003

Action: Approved Staff Recommendation
Motion of Comm. Bryant, seconded by
Comm. Wellington with a vote of 5-0;

Comms. Berlage, Bryant,
Robinson, Perdue, and
Wellington voting in favor

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-87012

NAME OF PLAN: CHURCHILL-FAR NORTH VILLAGE

On 01/13/87, NORTH VILLAGE-270 LIMITED PARTNERSHIP submitted an application for the approval of a preliminary plan of subdivision of property in the TS zone. The application proposed to create 12 lots on 110.20 acres of land. The application was designated Preliminary Plan 1-87012. On 12/12/02, Preliminary Plan 1-87012 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-87012 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-87012.

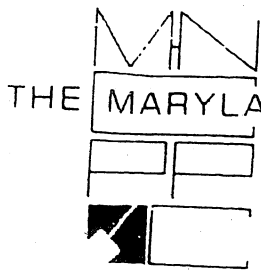
Approval of Request to Revise the Previous Conditions of Approval, Subject to the Following Amendments:

Incorporate Revised Conditions 4 -7 into Prior Planning Board Opinion Dated November 28, 1995

- (4) Participate in the County's future CIP Project to construct the four-lane divided highway portion of Century Boulevard from its current terminus near Farther Hurley Boulevard to its intersection with Dorsey Mill Road by allocating a portion of their impact taxes when paid to this project
- (5) Construct Crystal Rock Drive as a four-lane divided roadway from its current terminus to its intersection with future Dorsey Mill Road as shown on Site Plan 8-02003
- (6) Participate in construction of an acceleration lane on Father Hurley Boulevard to accommodate the movement from northbound Crystal Rock Drive to eastbound Father Hurley Boulevard
- (7) Participate in constructing an acceleration lane on Crystal Rock Drive to accommodate the movement from westbound Father Hurley Boulevard to northbound Crystal Rock Drive including reconstruction/reconfiguration of the median and travel lanes on the northern leg of the intersection
- (8) All applicable conditions of approval of Planning Board Opinions dated October 27, 1988 and November 28, 1995 remain in full force and effect

Date of mailing

Attachment B



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring Maryland 20910-3760

Action: Approved Staff Recommendation
(Motion of Comm. Aron, seconded by Comm. Baptiste, with a vote of 4-0; Comms. Aron, Baptiste, Holmes, and Richardson voting in favor, with Comm. Hussmann being absent).

MONTGOMERY COUNTY PLANNING BOARD

OPINION

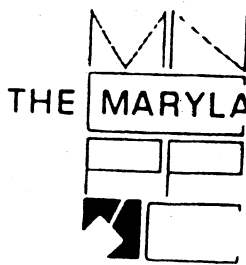
Preliminary Plan 1-87012
NAME OF PLAN: CHURCHILL-FAR NORTH VILLAGE

On 01-13-87, C/O THE ASSOCIATED CO. , submitted an application for the approval of a preliminary plan of subdivision of property in the TS zone. The application proposed to create 12 lots on 110.20 ACRES of land. The application was designated Preliminary Plan 1-87012. On 11-16-95, Preliminary Plan 1-87012 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-87012 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-87012, subject to the following conditions:

Purpose: Previous Planning Board action of 10-27-88 approved a maximum of 240,000 square feet of office development. Based on the FY 96 Annual Growth Policy there is capacity available for the remaining 4,240 jobs or 1,060,000 square feet pending this application. With the roadway improvements currently programmed and those proposed by the applicant this application may proceed for approval. All previous conditions remain in full force and effect.

Approval to revise Condition No. 1 as follows:

Prior to recording of plats, submit an amended agreement with the Planning Board to reflect the approval of an additional 1,060,000 square feet of office development resulting in a maximum total of 1.3 Million square feet (240,000 square feet previously approved). Applicant shall provide for the necessary roadway improvements as outlined in 11-9-95 Transportation Division memo.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Attachment C

Action: Approved Staff Recommendation with Modifications, (Motion of Comm. Keeney, seconded by Comm. Floreen, with a vote of 5-0; Commissioners Keeney, Floreen, Christeller, Henry and Hewitt voting in favor).

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-87012

NAME OF PLAN: CHURCHILL-FAR NORTH VILLAGE

On 01-13-87, PRUDENTIAL, submitted an application for the approval of a preliminary plan of subdivision of property in the TS zone. The application proposed to create 12 lots on 81.00 ACRES of land. The application was designated Preliminary Plan 1-87012. On 10-27-88, Preliminary Plan 1-87012 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-87012 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-87012, subject to the following conditions:

1. Agreement with Planning Board to participate in construction of Middlebrook Road, Crystal Rock Drive, Wisteria Drive and Century Blvd. (or Aircraft Drive/Crystal Rock Drive connection) per 10/24/88 Transportation Division memo with improvements to be under construction prior to applicant receiving any building permits. Agreement to limit development to specific uses that will generate 400 or less peak hour trips
2. Conditions of DEP stormwater management approval
3. Dedication of area labeled "public open space" and "private open space" parcel adjacent to Parcel HB to M-NCPPC with final boundary to be determined at site plan
4. No clearing, grading or recording of lots prior to site plan approval by M-NCPPC
5. Environmental Planning Division concerns relating to stream buffers and stormwater management controls to be addressed at site plan

6. Final alignment of Crystal Rock Drive to be determined at site plan
7. Necessary easements
8. Dedication and construction of Crystal Rock Drive (100' right-of-way unless reduced to 80' at site plan review)

Date of Mailing: November 3, 1988

ATTACHMENT D

Summary of the Water's Landing Corporate Park Project as Discussed in the Planning Board's December 1, 2005 Packet

Request for Special Extension Amendment

Robert Brewer, representing the North Village – 270 Limited Partnership, developer of the Water's Landing Corporate Park in Germantown, submitted a letter requesting that SRA 05-03 be amended to permit the extension of a finding of adequate public facilities beyond 12 years. This project, totaling 1.3 million square feet, has an approval date of 1995 which means that its APF finding will expire in 2007. None of the project has been built.

The developer requested that the County Code include a provision that would allow the Planning Board to extend the project's APF finding by twelve years. If an extension of that length were to occur in 2007, the project would be extended to 2019. The request points out that the developer contributed nearly \$1,000,000 in the late 1980s toward the widening of Middlebrook Road from four to six lanes between MD 118 and Great Seneca Highway, dedicated 59 acres of parkland in 1994, and contributed about \$170,000 toward an improvement of the Crystal Rock Drive/Father Hurley Blvd intersection. Among the road improvement conditions of the project's current approval are: a loop road (Crystal Rock and Century Blvd) which would serve the development itself in addition to general traffic, and a portion of a road through the development that will lead to a publicly-funded bridge over I-270.

Staff recommended, and the Planning Board agreed, to oppose this amendment. Staff has emphasized on many occasions that traffic conditions change considerably over the course of 12 years and that APF tests conducted in the mid 1990s will no longer be valid in 2007, let alone through 2019. Therefore, staff believes that extensions should be permitted only in cases where there is a compelling public policy objective, to provide some extra time for projects that are in the final stages of completion, or if actions by the public sector have kept the private developer from moving forward. None of these conditions are true in this case.

Staff notes that the developer's main financial contribution, the widening of Middlebrook Road, was more than a decade ago and actually completed prior to the 1995 preliminary plan approval. In staff's view, the developer has had ample opportunity to begin construction on his project since then. More than 9.3 million square feet of office space was built in Montgomery County since 1995.

The dedication of parkland is not related to the APF finding.

September 22, 2006

Dr. Royce Hanson
Chair, Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Request for Extension of Adequate Public Facilities Determination
Churchill – Far North Village
Preliminary Plan No. 1-87012

Dear Dr. Hanson:

Our law firm represents North Village – 270 Limited Partnership (“Partnership”), the applicant in preliminary plan of subdivision approval No. 1-87012. This letter represents the formal request of the applicant to extend the duration of its adequate public facilities determination from the current expiration date of November 28, 2007 for a period of twelve additional years.

As described in this letter, the adequate public facilities determination extension (“APF Extension”) request is based on the applicant’s complete fulfillment of the statutory conditions of Section 50-20 (c)(10) of the Montgomery County Code and is being filed at this time to enable the applicant to construct Crystal Rock Drive from its current terminus to Century Boulevard. This timing is also consistent with the Planning Board’s present consideration of amendments to the Germantown Master Plan, and the Urban Land Institute’s forthcoming study recommendations concerning Germantown’s Employment Corridor.

Background Information for Application Request

The Partnership is controlled by Lerner Enterprises, a major regional developer of retail, office, industrial, residential and mixed use projects. The site contained approximately 175 acres when it was purchased in 1987; after dedications for Black Hill Regional Park and for roads, it has approximately 75 developable acres. It is located at the northern end of Germantown’s Employment Corridor on the west side of I-270, between Crystal Rock Drive and Century Boulevard. The 1989 Germantown Master Plan recommended this site for employment density of 1,300,000 square feet in the Town Sector zone. Since that time, the property has received all rezoning, subdivision and site plan approvals for full development in accordance with its master planned density.

The site is currently improved by Waters Landing Golf Range along its I-270 frontage pursuant to a special exception approved by the County Board of Appeals. As discussed below, the Partnership has devoted significant efforts and invested large sums of money developing the site as Waters Landing Corporate Park. Since the Partnership only builds projects of the highest quality, it has not yet constructed any of its office density on the site due to the relative absence of demand for Class A office buildings in Germantown.

The property received subdivision approvals in 1988 (240,000 square feet of development) and 1995 (1,060,000 square feet of development) in case No. 1-87012. Since then, the Partnership prepared, filed and received approvals for two site plan applications collectively covering the entirety of the site and its full subdivision density of 1,300,000 square feet (Site Plan #8-99006, dated January 14, 1999 [Phase I]; Site Plan #8-02003, dated November 4, 2002 [Phase II]). Subdivision plats for the entire property were recorded on January 7, 2000 (for the Phase I site plan) and on February 27, 2003 (for the Phase II site plan). On January 31, 2003, the Planning Board approved an amendment of some preliminary plan conditions. In addition, since its acquisition, the Partnership has:

1. Widened Middlebrook Road from Route 118 to Great Seneca Highway in 1991, with related improvements, at a cost of \$929,550 paid in August, 1992.
2. Participated in the construction of improvements to the intersection of Crystal Rock Drive and Father Hurley Boulevard in 2002-2003, at a cost of \$170,578.52.
3. Dedicated 59 acres to Black Hill Regional Park in 1994.
4. Dedicated property for an exit ramp for the I-270 interchange with Father Hurley Boulevard.
5. Dedicated Crystal Rock Drive and Master Planned Road I-4 (Dorsey Mill Road) through the site, including executing Public Improvement Agreements and recording plats for all roads in 1990 and 1991.
6. Executed a Road Participation Agreement dated March 11, 2004 with Montgomery County, Maryland and Oxbridge Development, LLC for participation in the public-private construction of Century Boulevard from its current terminus south of Father Hurley Boulevard northward to connect with the extension of Crystal Rock Drive at Dorsey Mill Road. The Partnership's key obligations under the Road Participation Agreement are to coordinate its construction of Crystal Rock Drive through its property with the construction of the extension of Century Boulevard, and to convey to Oxbridge Development a portion of its property south of Dorsey Mill Road for transit station parking.

Applicable Legal Standard

Through an amendment passed unanimously by the Montgomery County Council in March, 2006, Section 50-20 (c)(10) of the Montgomery County Code permits the Planning Board to grant an extension of an adequate public facilities determination, as follows:

“The Board may extend a determination of adequate public facilities once for up to 12 more years beyond the otherwise applicable validity period if the Board finds that:

(A) the preliminary subdivision plan for the development required a significant commitment of funds by the applicant, amounting to at least \$2,500,000 to comply with specified infrastructure conditions;

(B) the applicant has met or exceeded the required infrastructure conditions during the original validity period; and

(C) the applicant’s satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable master or sector plan.”

Compliance with Legal Standard

In this case, the Partnership submits that the legal standard has been fully satisfied and that the Planning Board should grant the requested extension. Submitted as part of this application are the subdivision opinions of the Planning Board from 1988 and 1995. Set forth below is a recitation of the infrastructure conditions, and the Partnership’s position on their completion and cost. Please note that Conditions 2, 4, 5, 6 and 7 of the 1988 plan, and Condition 8 of the January 31, 2003 Amendment, are not addressed since they do not relate to infrastructure.

Infrastructure Condition No. 1 (1988) (Intersection Improvements)

Opinions:

Condition No. 1 (1988) reads: “Agreement with Planning Board to participate in construction of Middlebrook Road, Crystal Rock Drive, Wisteria Drive and Century Blvd. (or Aircraft Drive/Crystal Rock Drive connection) per 10/24/88 Transportation Division memo

with improvements to be under construction prior to receiving any building permits.
Agreement to limit development to specific uses that will generate 400 or less peak hour trips.”

This Condition No. 1 was revised in part in 1995 as follows:

Condition No. 1 (1995, revised): “Prior to recording of plats, submit an amended agreement with the Planning Board to reflect the approval of an additional 1,060,000 square feet of office development resulting in a maximum total of 1.3 Million square feet (240,000 square feet previously approved). Applicant shall provide for the necessary roadway improvements as outlined in 11-9-95 Transportation Division memo.”

The November 9, 1995 Transportation Division memo contains the following:

“1. Total development under this preliminary plan does not exceed 1.3 million square feet of office use including the previously approved 240,000 square feet.

2. At the intersection of Father Hurley Boulevard and Crystal Rock Drive, the applicant shall construct a third left-turn lane on southbound Crystal Rock Drive, and a second right-turn lane on westbound Father Hurley Boulevard. These improvements are not needed for the first 950,000 square feet of development of North Village or when Century Boulevard between Father Hurley Boulevard and Crystal Rock Drive is constructed.

3. The applicant shall agree that the roadway improvements listed above shall be under construction prior to the issuance of building permits for development exceeding 950,000 square feet. If, however, Century Boulevard is constructed between Father Hurley Boulevard and Crystal Rock Drive, the full development (1.3 million square feet) can be approved without these roadway improvements.

4. The applicant shall agree that all necessary roadway design work must be complete and approved by the Montgomery County Planning Board prior to issuance of building permits as identified in the above staging.”

The Planning Board, on January 31, 2003, approved another revision to Condition No. 1 and the Transportation Division memo of November 9, 1995 due to changed intersection conditions. The revised condition reads:

“(6) Participate in construction of an acceleration lane on Father Hurley Boulevard to accommodate the movement from northbound Crystal Rock Drive to eastbound Father Hurley Boulevard.

(7) Participate in constructing an acceleration lane on Crystal Rock Drive to accommodate the movement from westbound Father Hurley Boulevard to northbound Crystal

Rock Drive including reconstruction/reconfiguration of the median and travel lanes on the northern leg of the intersection.”

Applicant's Response

The Partnership submits that it has complied fully with Condition No. 1, as revised on January 31, 2003, by participating in a consortium which constructed all of the required intersection improvements in 2002—2003. The Partnership paid the sum of \$170, 578.52 for these improvements. In addition, the Partnership helped fund the widening of Middlebrook Road from Route 118 south to Great Seneca Highway in 1991 and paid the sum of \$929,550 in August, 1992 for this improvement.

Infrastructure Condition No. 3 (1988) (Park and Open Space Dedications)

Opinion

Condition No. 3 (1988) reads: “Dedication of area labeled ‘public open space’ and ‘private open space’ parcel adjacent to Parcel HB to M-NCPPC with final boundary to be determined at site plan.”

Applicant's Response

The Partnership submits that it complied with the “public open space” dedication to MNCPPC by dedicating the 59 acres to Black Hill Regional Park in 1994. With respect to the “private open space” parcels, the Partnership’s two approved site plans require a number of such spaces for this purpose. Therefore, the Partnership has fulfilled this condition.

Infrastructure Condition No. 8 (1988) (Crystal Rock Drive Construction)

Opinions

Condition No. 8 (1988) reads: “Dedication and construction of Crystal Rock Drive (100’ right-of-way unless reduced to 80’ at site plan review).”

This Condition No. 8 was revised by the Planning Board’s Amendment of January 31, 2003 to read as follows:

“(5) Construct Crystal Rock Drive as a four-lane divided roadway from its current terminus to its intersection with future Dorsey Mill Road as shown on Site Plan 8-02003.”

Applicant's Response

The Partnership submits that it has partially fulfilled this condition as of the date of this filing, and that it will provide assurances of completion of this condition as a part of the Planning Board's approval of any extension. The Partnership dedicated the roadbeds of Crystal Rock Drive and Dorsey Mill Road, and signed the requisite Public Improvement Agreements with Montgomery County, Maryland, in 1990 and 1991. A portion of Crystal Rock Drive was constructed into the property in the early 1990s. The Partnership's civil engineers have completed the design of the remaining extension of Crystal Rock Drive and Dorsey Mill Road, and have submitted portions of the design to obtain the appropriate permits from the County's Department of Permitting Services. The Partnership intends to bid two consecutive sections of extended Crystal Rock Drive (the second section includes Dorsey Mill Road), comprising the entirety of the project, to road contractors in October, 2006. The civil engineers have prepared construction cost estimates for the road construction, which indicate an approximate cost of over \$5,000,000. The construction schedule estimates substantial completion of the roads prior to the adequate public facilities duration deadline of November 28, 2007. The Partnership proposes to post a bond or other security with the appropriate governmental agency as evidence of binding assurances that these roads will be completed timely. The Partnership proposes that the Planning Board's approval of the APF Extension require substantial completion of this condition prior to November 28, 2007, otherwise the APF Extension would become null and void.

Infrastructure Condition No. 4 (2003) (CIP Project Participation)

Opinion

Condition No. 4 of the Planning Board's Amendment of January 31, 2003 states:

"(4) Participate in the County's future CIP Project to construct the four-lane divided highway portion of Century Boulevard from its current terminus near Father Hurley Boulevard to its intersection with Dorsey Mill Road by allocating a portion of their impact taxes when paid to this project."

Applicant's Response

The Partnership's impact taxes are not due until building permits are ready to be issued for the office buildings to be constructed on the property. Since no building permits have been

filed, no impact taxes are due. Therefore, to date, the Partnership has fully complied with this condition.

Significant Commitment of Funds for Infrastructure (50-20 (c)(10)(A))

As described earlier, the Partnership has expended the sum of \$1,100,128.50 for the Middlebrook Road widening and the intersection improvements. It will incur and pay, prior to November 28, 2007, more than \$5,000,000 for the construction of Crystal Rock Drive and Dorsey Mill Road. In addition, it dedicated approximately 59 acres of its property for Black Hill Regional Park in 1994, having an estimated value of between \$1.5—2.0 million. In the aggregate, these sums exceed \$7.5 million in infrastructure contributions by the Partnership to fulfill conditions of its subdivision approvals. As such, the Partnership clearly satisfies the standard set forth in Section 50-20 (c)(10)(A).

Met or Exceeded Infrastructure Conditions During Validity Period (50-20 (c)(10)(B))

This application demonstrates that the Partnership met or exceeded the required infrastructure conditions during the original validity period of its subdivision approval (by November 28, 2007). With the exception of the completion of construction of the remaining portion of Crystal Rock Drive (and Dorsey Mill Road), the Partnership long ago completed the other relevant infrastructure conditions. The design for the balance of Crystal Rock Drive and Dorsey Mill Road has been completed, and portions already have been submitted to the County's Department of Permitting Services for approval and permits. Funds for the road construction have been raised within the Partnership to meet these requirements. The construction will be bid by road contractors during October, 2006. The remaining construction of Crystal Rock Drive and Dorsey Mill Road is scheduled to commence in late 2006 promptly after the Planning Board grants the requested APF Extension, and will be completed by November 28, 2007. The Partnership will provide binding, enforceable assurances to the Planning Board to guarantee timely compliance with this condition. We submit that these actions satisfy the legal standard set forth in Section 50-20 (c)(10)(B).

Significant and Necessary Benefit to County (50-20 (c)(10)(C))

The legal standard (Section 50-20 (c)(10)(C)) requires that the fulfillment of the infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of the applicable master plan. The 1989 Germantown Master Plan explicitly called for the construction of Crystal Rock Drive and Dorsey Mill Road (I-4) as essential roadways in the Employment Corridor. Moreover, it required Middlebrook Road to be widened and for Black Hill Regional Park to be expanded. By fulfilling these

clearly articulated Germantown Master Plan goals, the Partnership has provided significant and necessary public benefits to the County.

One of the most important recommendations of the 1989 Germantown Master Plan is its creation and vision of the Employment Corridor. This Employment Corridor stretches along both sides of I-270 from the Middlebrook Road interchange on the south to the Black Hill Regional Park boundary on the north, past the Father Hurley Boulevard interchange. Job development in this Employment Corridor is critically important to create an acceptable jobs/housing ratio, and to lessen traffic congestion farther south on I-270. It also is intended to support the Corridor Cities Transitway, and the Partnership's property accommodates the Corridor Cities Transitway and alignment through its construction of a portion of Crystal Rock Drive and entirely by its construction of Dorsey Mill Road. The forthcoming Urban Land Institute Study of the Employment Corridor reemphasizes the importance of the 1989 Germantown Master Plan objectives, and the Planning Board's own imminent reexamination of the Germantown Master Plan surely will conclude that this area of jobs' concentration is a very important resource for the County given its superior geographic location and transportation network.

The Partnership's property contains critical master plan roadway links, Crystal Rock Drive and Dorsey Mill Road. The Crystal Rock Drive completion, together with the extension of Century Boulevard addressed in the County's 2004 Road Participation Agreement, enables vehicular traffic to access the entirety of the Employment Corridor on the west side of I-270. The completion of Dorsey Mill Road, together with the County's construction of the bridge over I-270 (for which the Partnership has been assured that funds will be available in the near term), will enable a critical additional vehicular and pedestrian link (and the Corridor Cities Transitway) between the west and east sides of I-270, as advocated strongly by the Urban Land Institute study.

In addition to the foregoing, the Partnership's completion of Crystal Rock Drive and Dorsey Mill Road, as public roads, helps assure the buildout of the Employment Corridor in fulfillment of the master plan objectives. This is because the property's accessibility and visibility is significantly enhanced, making it far more likely that major Class A office users will be attracted to this site. For all of these reasons, the Partnership submits that this application meets the legal standard of Section 50-20 (c)(10)(C).

Phasing and Timing Considerations

The Partnership requests an APF Extension for a period of an additional twelve years, until November 28, 2019. This duration is justified based on the enormous size of the project (1.3 million square feet of office development) and the significant investment in infrastructure made by the Partnership. The development of the ten office buildings proposed for the

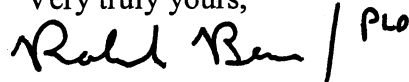
property (four of them are 200,000 square feet each along I-270) requires this long term extension to accommodate the buildings' design, permitting, construction, and lease-up activities. This extended timeframe is not unusual for large office parks, and, in fact, is fairly typical. Other major office parks (e.g. Rock Spring Park and Westfarm in Montgomery County) have taken equally as long or longer to complete.

The Partnership requests action by the Planning Board as soon as possible, preferably during October, 2006. Prompt approval of this APF Extension application will enable construction to begin before winter weather arrives and while contractors' bids are still valid. Any significant delays in the APF Extension approval will jeopardize the construction of the roads and the impetus for the current application.

Conclusion

For all of the foregoing reasons, the Partnership requests that the Planning Board approve an extension of twelve years, from November 28, 2007 until November 28, 2019, for its subdivision approval in Preliminary Plan No. 1-87012. This request is based upon the Partnership's complete compliance with the legal standard for the extension set forth in Section 50-20 (c)(10) of the Montgomery County Code. Thank you very much.

Very truly yours,



Robert G. Brewer, Jr.

Cc: Ms. Faroll Hamer
Ms. Rose Krasnow
Ms. Cathy Conlon
Ms. Sue Edwards
Mr. Shahriar Etemadi
Mr. Karl Moritz

GOAL AND ADOPTION

to the Germantown Master Plan, development of the Maryland Washington of Highways within Montgomery County, Montgomery County Council, sitting as 11 1498 on June 13, 1989, and the 11 26, 1989, and has been adopted by and Planning Commission by Resolution y advertised public hearings pursuant le of Maryland, 1986 (1988 Supplement).

TAL PARK AND PLANNING COMMISSION

Gus Bauman

Gus Bauman
Vice Chairman

Edward Navarre

Edward Navarre
Secretary-Treasurer

