

Item #10



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

M E M O R A N D U M

DATE: March 15, 2002
TO: Montgomery County Planning Board
FROM: A. Malcolm Shaneman
Development Review Division
(301) 495-4587
SUBJECT: Informational Maps for Subdivision Items on the
Planning Board's Agenda for March 21, 2002.

Attached are copies of plan drawings for Items #08, #09, #10. These subdivision items are scheduled for Planning Board consideration on March 21, 2002. The items are further identified as follows:

Agenda Item #08 - Subdivision Regulation Waiver SRW-02008
Farmington, Block 1, Lot 7

Agenda Item #09 - Preliminary Plan 1-02076
~~Travilah Meadows~~

Agenda Item #10 - Preliminary Plan 1-85245A
Decoverly Hall

Attachment

VICINITY MAP FOR
DISCOVERLY HALL (1-85245A)



Map compiled on March 16, 2002 at 10:04 AM | Site located on base sheet no - 220NW10

NOTICE

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Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998

Key Map



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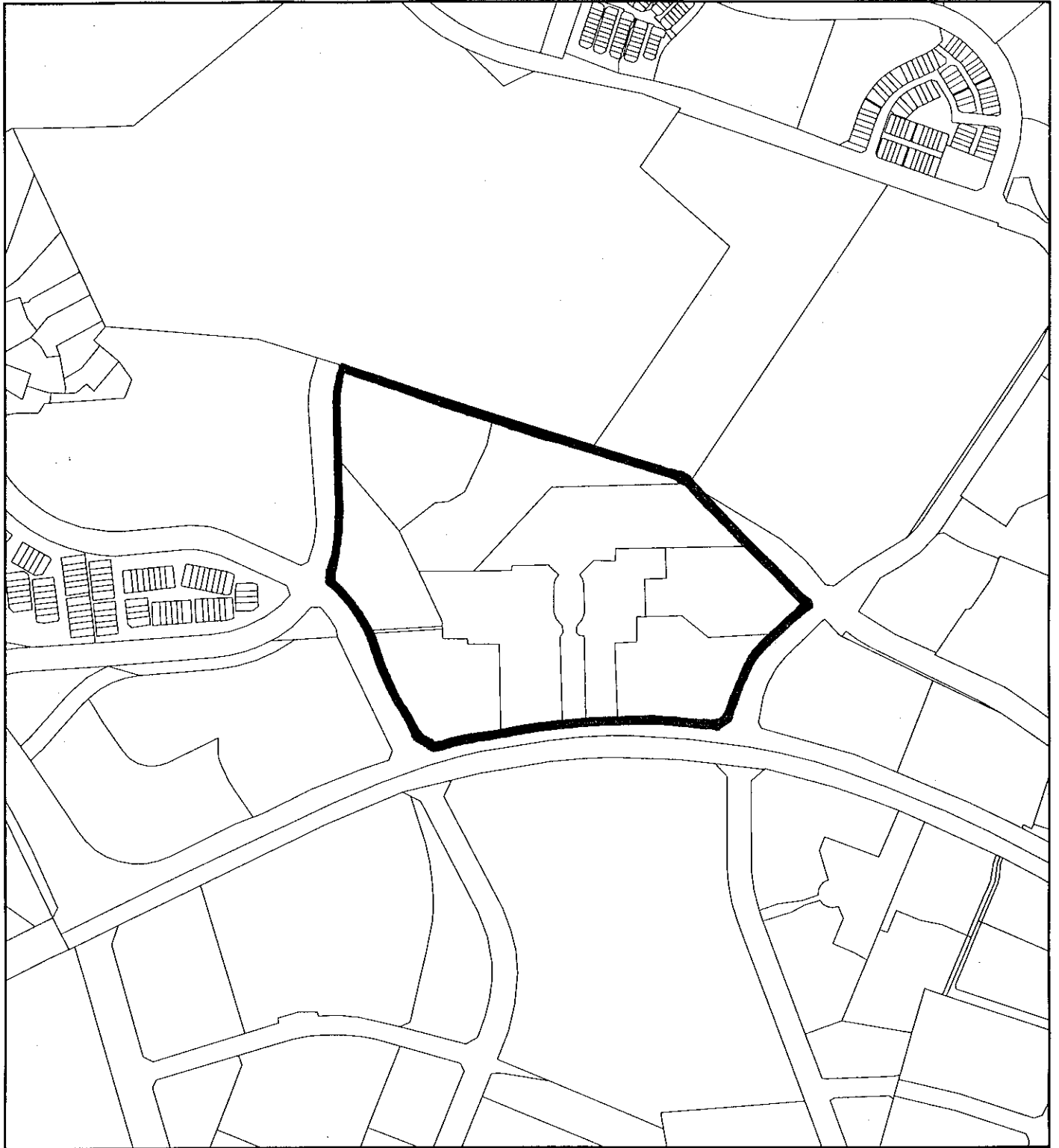
Research & Technology Center



1 : 7200

VICINITY MAP FOR

DISCOVERLY HALL (1-85245A)



Map compiled on March 16, 2002 at 9:58 AM | Site located on base sheet no - 220NW10

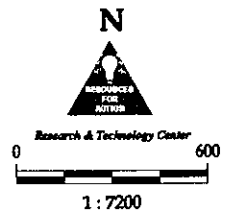
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Key Map



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

8787 Georgia Avenue - Silver Spring, Maryland 20910-3760



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

MEMORANDUM

DATE: February 22, 2002

TO: Montgomery County Planning Board *JRD*

VIA: Joseph R. Davis, Chief, Development Review Division

FROM: A. Malcolm Shaneman, Supervisor, Development Review Division *AMS*

REVIEW TYPE: Preliminary Plan, Subdivision Regulation Waiver Pursuant to Section 50-38 and Amendment to Approved Preliminary Plan for the Extension of the Adequate Public Facilities Validity Period Pursuant to Section 50-20(c)(3)

PROJECT NAME: Discoverly Hall

CASE NO. 1-85245

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations
Sections 50-38 Waivers from Requirements of the Chapter and 50-20
Limitations on the Issuance of Building permits

ZONE: O-M

LOCATION: North Side of Key West Avenue West of Omega Drive and South of
Diamondback Drive

MASTER PLAN: Gaithersburg and Vicinity

APPLICANT: Boston Properties

SUBMITTED: January 22, 2002

HEARING DATE: March 21, 2002

STAFF RECOMMENDATION: Grant Waiver Pursuant to Section 50-38 and Approve
Amendment for the Extension of the Adequate Public Facilities Validity Period to July 25, 2007

Summary of Issues

On January 22, 2002, Boston Properties filed a request for waiver, pursuant to Section 50-38 of the Subdivision Regulations from Section 50-20(c)(3)(iv)(E) of the Subdivision Regulations. This provision requires Adequate Public Facilities (APF) validity period extension requests to be filed before the expiration of the validity period. Staff has reviewed the applicants request as it relates to the appropriate regulations and has determined, based on the facts particular to this case, a waiver request and approval to amend the preliminary plan conditions to grant an extension of the APF validity period are both warranted.

The applicant acknowledges that they made a mistake in not timely submitting a request for the extension on the APF review due to a mistaken understanding of the provisions found in Section 50-20. Except for the timely submission of the extension request, staff has determined that the Decoverly Hall subdivision meets the three (3) requirements for granting an extension found in Section 50-20(c)(3)(iv)(E). Currently in the R & D Policy Area there is a negative staging ceiling for non-residential development. The expiration of the Decoverly Hall plan did not bring the R & D Policy Area out of moratorium. There are currently no applications for subdivision of non-residential projects pending in the policy area "queue". The attached memorandum (page 3), prepared by the Research and Technology staff, analyzed the request in light of the Subdivision Regulations and Annual Growth Policy. Staff believes granting the waiver request would not adversely affect the administration of the provisions found in the Adequate Public Facilities Ordinance.

Should the request for waiver not be granted, the preliminary plan will remain in an expired status. The applicant would then be required to submit a new application for preliminary plan. The preliminary plan would proceed through the review process and be subject to any new rules and regulations that may have not been in effect when the original application was approved in 1986. Most importantly, the applicant would have to satisfy the APF requirements based on current requirements and road conditions.

Staff has attached the appropriate sections of the Subdivision Regulations pertaining to the validity period for APF review and the Planning Board opinion of approval for the preliminary plan.

Attachments

Staff Analysis of Request	3 – 4
Subdivision Regulations; Section 50-20(c)(3) and 50-38	5 – 10
Applicants Request Dated March 8, 2002	11 – 14
Planning Board Opinion Dated December 10, 1986	15 –



March 15, 2002

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Memorandum

To: A. Malcolm Shaneman, Development Review

From: Karl Moritz, Research & Technology Center *Karl*

Re: Background and Staff Concerns for the Request of Extension of Finding of Adequate Public Facilities: Discoverly Hall

Background

Discoverly Hall is a non-residential subdivision located in the R&D Village Policy Area. It was approved in 1986 for a total of 832,100 square feet of office space. Approximately 620,000 square feet (or 75 percent) of the project has been constructed, with the most recent completion – a 260,000 square foot office building – occurring in 2000.

On July 25, 2001, a finding of adequate public facilities (APF) for non-residential subdivisions approved on or before July 25, 1989 expired unless the Planning Board granted an extension. The Planning Board may grant an extension if the subdivision is more than 40 percent complete, has constructed all of the required infrastructure, and has demonstrated that it is an “active” project by completing at least 10 percent of the approved development in the previous four years.

The Discoverly Hall subdivision meets all of these conditions for extension.

However, a further requirement of the subdivision regulations is that the applicant must apply for an extension prior to the expiration date of the APF finding. The Discoverly Hall subdivision expired on July 25, 2001 without an extension request, and the project was removed from the pipeline of approved development shortly thereafter.

The R&D Village Policy Area is currently in moratorium for new non-residential subdivision approvals. Not counting Discoverly Hall, the current net remaining capacity for jobs in the R&D Village is –193 jobs.

Because Discoverly Hall subdivision’s expiration did not bring the R&D Village Policy Area out of moratorium, the capacity released by its expiration has not been allocated to any other subdivision.

Public notice of the pending expiration of pre-1989 non-residential subdivisions was significant. In addition to the discussions of the issue that surrounded the extension provisions (which were publicly debated in 1999), the expirations were a major issue in the 2001-2003 AGP Policy Element. Both the Staff Draft and Final Draft 2001-2003 AGP Policy Element included a list of subdivisions expected to expire on July 25, 2001 through December 31, 2001. The Decoverly Hall subdivision was on that list.

Staff Concerns

The implementation of the twelve-year time limit for a finding of adequate public facilities has resulted in the long-awaited removal of old projects from the pipeline of approved development. The issue of a pipeline "clogged" with dead projects has been a major issue in every AGP policy element since 1994. The capacity released from expired projects has two major benefits: it increases the likelihood that capacity will be available for new projects to be approved, and it improves the county's ability to plan because the pipeline contains projects that are more likely to move to construction.

In assessing Decoverly Hall's request for an extension, staff's main concern is to maintain the integrity of the requirements for a "timely and valid" finding of adequate public facilities. While we agree that the legislative intent of the subdivision regulations is that "active" projects such as Decoverly Hall are extended, we also strongly believe that the requirement that the extension request be filed before the project expires is important.

When a project expires and is removed from the pipeline of approved development, that capacity cannot be allocated to anyone else if there is any question that the expired project could be extended. If the capacity released by Decoverly Hall had already been allocated to another subdivision, staff would strenuously object to a belated extension of Decoverly Hall's request.

Additionally, staff would object if staff believed that Decoverly Hall's request could serve as a precedent that will allow other expiring projects, either in the past or in the future, to return for an extension. Staff expects that this extension will serve as "the exception that proves the rule" by publicly reinforcing the County's commitment to enforcing the rule that requests for extension must be filed prior to a project's expiration.

Staff believes that the public notice of the approaching expiration date was more than adequate. While staff will continue to bring to the Planning Board a Final Draft AGP Ceiling Element that includes lists of projects expected to expire, staff does not believe that any additional public notice of future expirations is a legal requirement. Staff also notes that it would not be possible to send notices to the "owners" of expiring subdivisions because such owners are not required to keep an up-to-date address on file with the Department. In the past the Department has attempted to contact by mail older pipeline projects and a majority of those letters were returned by the Post Office as undeliverable.

MONTGOMERY COUNTY CODE
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- (5) A building permit may be approved for the reconstruction of a one-family dwelling that is located on part(s) of a previously platted lot(s), recorded by deed prior to June 1, 1958, in the event that the dwelling is destroyed or seriously damaged by fire, flood or other natural disaster.
- (6) A building permit may be approved for an addition to an existing one-family dwelling, a porch, deck, fence or accessory structures associated with an existing one-family dwelling located on part(s) of a previously platted lot(s), recorded by deed prior to June 1, 1958.
- (c) (1) Words and phrases used in this subsection have the meanings indicated in Section 8-30.
- (2) Except as provided in paragraph (4) of this subsection and article IV of chapter 8, a building permit may be issued only if a timely determination of the existence of adequate public facilities to serve the proposed development has been made under this chapter.
- (3) A determination of adequate public facilities made under this chapter is timely and remains valid:
- (i) For twelve (12) years from the date of preliminary plan approval for plans approved on or after July 25, 1989, but before October 19, 1999. However, an adequate public facilities determination for an exclusively residential subdivision remains valid after twelve (12) years if fifty (50) percent of the entire subdivision has received building permits and the developer submits a letter of intent to develop the remainder by a specified date;
 - (ii) Until July 25, 2001, for a preliminary plan of subdivision that allows nonresidential development which was approved on or after January 1, 1982, but before July 25, 1989; and
 - (iii) For no less than 5 and no more than 12 years, as determined by the Planning Board at the time of subdivision, for projects approved on or after October 19, 1999.
 - (iv) The determination of adequate public facilities for a preliminary plan of subdivision that allows nonresidential development may be extended by the Planning Board beyond the validity periods in (i), (ii) and (iii) if:

- (A) At least forty percent (40%) of the approved development has been built, is under construction, or building permits have been issued, such that the cumulative amount of development will meet or exceed the percentage requirement of this paragraph;
 - (B) All of the infrastructure required by the conditions of the original preliminary plan approval has been constructed or payments for construction have been made; and
 - (C) The development is an "active" project as demonstrated by at least 10 percent of the project having been completed within the last four years before an extension request is made, or at least 5 percent of the project having been completed within the last 4 years before an extension request is made, if 60 percent of the project has been built or is under construction.
- (v) For development projects consisting of more than one preliminary plan, the requirements in (iv) (A) through (C) above apply to the combined project. A project consists of more than one preliminary plan if the properties covered by the preliminary plans of subdivision are contiguous and:
- (A) were owned or controlled by the same applicant at the time of subdivision, and approved contemporaneously, or
 - (B) were owned or controlled by different applicants at the time of subdivision, but covered by a single comprehensive design plan approved by the Planning Board.
- (vi) Submittal and Review Requirements
- (A) A new development schedule or phasing plan for completion of the project must be submitted to the Planning Board for approval;
 - (B) No additional development beyond the amount approved in the determination of adequate public facilities for the preliminary plan of subdivision may be proposed or approved;
 - (C) No additional public improvements or other conditions beyond those required for the original preliminary plan may be required by the Planning Board; and

- (D) If the preliminary plan is for a development project located in an area that is subject to a moratorium under the Annual Growth Policy, a traffic mitigation program must be in place, or the project must otherwise be subject to existing traffic mitigation requirements of the code.
 - (E) An application for an extension must be filed before the expiration of the validity period for which the extension is requested.
 - (vii) The length of the extension of the validity period allowed under (iv) above must be based on the approved new development schedule under (vi) (A) above, but must not exceed 2 ½ years for projects up to 150,000 square feet, or 6 years for projects 150,000 square feet or greater. The extension expires if the development is not proceeding in accordance with the phasing plan, unless a revision to the schedule or phasing plan is approved by the Planning Board.
 - (viii) An amendment to the new development schedule approved under subsection (vi) (A) may be approved by the Planning Board if documentation is provided to show financing has been secured for either: (1) completion of at least one new building in the next stage of the amended development schedule; or (2) completion of infrastructure required to serve the next stage of the amended development schedule.
- (4) Paragraph (2) of this subsection does not apply to:
- (i) Proposed development that is exclusively residential on a lot or parcel recorded before July 25, 1989, or otherwise recorded in conformance with a preliminary plan of subdivision approved before that date;
 - (ii) Proposed development that is otherwise exempted from the requirement for adequate public facilities for preliminary plan of subdivision approval under this chapter or other law; and
 - (iii) Proposed nonresidential development on a lot or parcel recorded before January 1, 1982, or otherwise in conformance with a preliminary plan of subdivision approved before January 1, 1982, if it is registered and otherwise satisfies the requirements of article IV of chapter 8. On or after July 25, 2001, a new adequate public facilities determination is required.

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§50-37

The decision of the Director of the Department of Permitting Services is final, subject only to review by the Chief Administrative Officer. The Board, the County, or any other public agency with jurisdiction may take any legal or other action necessary to enforce the provisions of an agreement, including, where applicable, withholding water and sewer service or suspending or revoking well or sewage disposal permits or authorizations.

- (3) In cases under paragraph (2) above wherein the subdivider or developer is required by regulations of the Washington Suburban Sanitary Commission to record a final plat dedicating to public use public roads in excess of his immediate building plans in order to obtain installation of water and sewer to the site of his proposed building operations, the agreement may provide that posting of surety required by the road construction code for road improvements for such excess platting may be delayed as approved by the County in accordance with a time sequence of proposed development set forth in the agreement. (Mont. Co. Code 1965, § 10-26; 1973 L.M.C., ch. 25, § 8; Ord. No. 7-41, § 4; Ord. No. 8-90, § 1; Ord. No. 10-12, § 3; Ord. No. 13-26, § 1; Ord. No. 13-36, § 1; Ord. No. 13-57, §5; Ord. No. 13-62, §1; Ord. No. 13-113, § 1.)

Editor's note—Section 1 of Ord. No. 13-113, amending Section 5 of Ord. 13-36 states: "Sunset. On July 1, 2001, any function transferred by this Act to the Department of Permitting Services reverts to the Department which administered that function before August 1, 1996."

Sec. 50-38. Waivers from requirements of this chapter.

(a) *Authority of Board.*

- (1) 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.
- (2) Large Scale Development or Preservation of Open Space, Forest and Tree Conservation, Environmentally Sensitive Areas, or Prevention of Soil Erosion. The standards and requirements of this Chapter may be modified by the Board if it determines that:
 - a. a plan and program for a new town, a complete community or a neighborhood unit will provide adequate public spaces and improvements for the circulation of traffic, recreation, light, air, and service needs of the tract when fully developed and populated, and that legal provisions to assure conformity to the plan are satisfactory; or

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- b. a variance will promote the preservation or creation of open space, forest and tree conservation, preservation of environmentally sensitive areas, or the prevention of soil erosion in the public interest. The Board shall also have the power to modify or vary the requirements of this Chapter where, in the opinion of the Board, the preservation or creation of open space, the prevention of soil erosion or the preservation of exceptional natural topography and trees worthy of preservation in the public interest will be best served thereby.
- (3) **Moderate Price Development.** Approval for such a subdivision shall not be granted until the Board shall have reviewed all of the plans of subdivision and development, including the dwelling units and community facilities to be constructed to ascertain the feasibility and practicability that the objectives of this variation from the requirements of the chapter will be achieved. In determining such feasibility and practicality the Board shall obtain assurances that any and all waivers required of other land development codes, rules and regulations shall have been granted by the appropriate authorities. The Board shall also determine and be satisfied that at least a substantial number of dwelling units in a proposed subdivision shall not exceed a sale price of twenty-five thousand dollars (\$25,000.00). When any such subdivision includes, abuts, or is in the immediate vicinity of any recorded subdivision or developed neighborhood then the Board may hold a public hearing on the proposed subdivision before approving same. Where a variation for an increase in density is requested in a town sector zone or planned neighborhood zone, the Board shall be satisfied that all increased numbers of dwelling units may be accomplished without adverse impact on the school, water, road and sewer systems necessary to support the development of the affected property; shall be satisfied that all increased numbers of dwelling units shall not exceed a sale price of twenty thousand dollars (\$20,000.00); shall be satisfied that the increase in development of dwelling units shall provide for at least 0.75 people per acre on the whole zone plan; and shall increase dwelling units proportionately only to the maximum of an additional 1.5 people per acre on such zone plan.
- (b) *Procedure for granting variations.*
- (1) **Written Request to the Board.** A request for a variation from this chapter shall be addressed to the board in writing, stating all facts warranting variation.
- (2) **Referral for Recommendations.** The Board must refer a copy of each request to the Chief Planning Engineer, the Department of Public Works and Transportation, the Washington Suburban Sanitary Commission and the Board of Education for investigation, report, and written recommendation before acting on the request. Any report and recommendation must be submitted to the Board

within 30 days after the staff receives it, or the recommendation must be treated as favorable. A request for a variation, filed under this section, constitutes a waiver of the time requirements set forth in Sections 50-35 and 50-36 and extends the time permitted for such review for 45 additional days.

- (3) Resolution. The decision of the Board shall be in the form of a resolution adopted by the Board by a majority of those voting; and a copy of said resolution shall be forwarded to each agency mentioned in paragraph (2) above.
 - (4) Conditions. In granting a variation, the Board may require such conditions in lieu of full compliance as will, in its judgment, secure substantially the objectives of the requirements so modified and protect the public interest.
 - (5) General Considerations. Notwithstanding the provisions herein, the Board shall not be authorized to vary or modify the provisions of Chapter 59 of this Code, the road construction code, the building code, health laws or other ordinances or regulations of the County. Pursuant to a moderate price development as contemplated in this Chapter, the Board and the County Council shall cooperate to achieve such waiver within their respective jurisdictions as may enhance the objectives, fulfillments and purposes of that development.
- (c) *Board may require special conditions.* In granting a variation, the Board may require such conditions in lieu of full compliance as will, in its judgment, secure substantially the objectives of the requirements so modified and protect the public interest.
- (d) *Nonwaiver of other ordinances.* Notwithstanding the provisions herein, the Board shall not be authorized to vary or modify the provisions of Chapter 59 of this Code, the road construction code, the building code, health laws or other ordinances or regulations of the County. (Mont. Co. Code 1965, § 104-27; Ord. No. 6-26; Ord. No. 6-123; Ord. No. 6-168; 1973 L.M.C., ch. 25, § 8; Ord. No. 12-16, § 1; Ord. No. 13-26, § 1; Ord. 13-57, § 6.)

Sec. 50-39. Residential cluster subdivision.

- (a) *Purpose.* The cluster method of subdivision is intended to promote both flexibility and variety of housing types in residential communities without sacrificing existing per acre dwelling densities or changing the character of the neighborhood. This method of development is also intended to encourage the preservation of existing topography and to promote forest conservation under Chapter 22A while providing useful community green or open space.

LINOWES AND BLOCHER LLP

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March 8, 2002

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VIA HAND DELIVERY

Mr. Joseph Davis
Maryland-National Capital Park and Planning Commission
Development Review
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Re: Decoverly Hall - Preliminary Plan No. 1-85245 (the "Preliminary Plan") – Application to Amend Approved Preliminary Plan/Extension of Adequate Public Facilities Approval Validity Period (the "Application")

Dear Mr. Davis:

Thank you for meeting with representatives of Boston Properties ("Boston") and us on March 6, 2002 to discuss the referenced Application. Further to our discussion at the meeting, we have provided below additional information in support of the Application.

As you are aware, Boston Properties is the owner and developer of a 44-acre office park known as "Decoverly Hall," located at the intersection of Key West Avenue and Omega Drive (the "Property"). The referenced Preliminary Plan for the Property was approved by Opinion dated December 10, 1986 for 832,100 square feet of office uses (Attachment 1). Subsequent Site Plans have been approved for the development of 7 office buildings with shared parking and common amenities to create a well-integrated office park for high-end corporate users (the "Project"). Most recently, Site Plan No. 8-88015A was approved on December 14, 1998 for the construction of a 260,000 square foot office building for the National Association of Securities Dealers, which was completed in 2000. To date, approximately 620,000 square feet of office space have been constructed in 5 buildings and approximately 211,000 square feet remain to be developed on Lots "KK" and "MM."

In this Application, Boston seeks an extension of the Adequate Public Facilities ("APF") approval validity period pursuant to Section 50-20(c)(3)(iv)(A-C) of the Subdivision Regulations, which provides:

Mr. Joseph Davis

March 8, 2002

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The determination of adequate public facilities for a preliminary plan of subdivision that allows non-residential development may be extended by the Planning Board if:

(A) At least forty percent (40%) of the approved development has been built, is under construction, or building permits have been issued, such that the cumulative amount of development will meet or exceed the percentage requirement of this paragraph;

(B) All of the infrastructure required by the conditions of the original preliminary plan approval has been constructed or payments for construction have been made; and

(C) The development is an "active" project as demonstrated by at least 10 percent of the project having been completed within the last four years before an extension request is made, or least 5 percent of the project having been completed within the last 4 years before an extension request is made, if 60 percent of the project has been built or is under construction.

We note that the Project qualifies for an extension under this Section because (1) approximately 75% of the approved development (620,000 square feet of the approved 831,100 square feet) has been built; (2) all of the infrastructure required by the conditions of the Preliminary Plan has been constructed; and (3) the development is "active" with the 260,000 square foot NASD building (which is approximately 30% of the approved development on the Property) having been completed in 2000.

In particular, all of the infrastructure required to support the development approved in the Preliminary Plan has been constructed. Conditions 2 and 3 of the Preliminary Plan required the following improvements:

2) Pro-Rata participation in intersection improvements at Shady Grove Road and Research Boulevard as described in a Transportation Division Memo, dated September 29, 1986.

3) Pro-Rata participation in widening of Key West Avenue to 4 lanes between Shady Grove Road and Great Seneca Highway as described in the September 29, 1986 Transportation

Mr. Joseph Davis

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Division Memo, as corrected. No participation in this road improvement shall be required for the recordation of lots containing existing buildings or buildings under construction as of October 2, 1986, or for those lots which are recorded after the execution by the County of a contract for the construction of this road improvement.

Boston has satisfied Condition 2 by payment of its required pro-rata share of the cost of improvements to the Shady Grove Road/Research Boulevard intersection and these improvements have been constructed. With regard to Condition 3, the improvement to Key West Avenue was constructed pursuant to County contract. Finally, although not required for APF purposes, Boston has constructed all intersection improvements on Diamondback Drive, and sidewalk and streetscape improvements required pursuant to the approval of Site Plan No. 8-88015A for the NASD building.

In addition to meeting the technical requirements for an extension, the Application, if granted, would further the planning and development strategies of the County to concentrate large employment centers in areas well served by transportation infrastructure and to promote the development of high-end office space to attract significant employers. As you may remember, the extension provisions were added to the Subdivision Regulations in 1999 to address the economic climate that slowed development in the mid-1990s. The intent of the extension provision was to allow large non-residential projects that were moving toward full build out a reasonable amount of time to be properly marketed and comprehensively developed. To date the thoughtful and deliberate development of the Project has resulted in a well-integrated office park that has attracted several quality employers including the NASD. The final stages of the Project will share common design elements and amenities with the existing development that are the hallmarks of an attractive employment center. The remaining development is especially significant because it offers the potential for a large block of office space in the I-270 Corridor that is highly sought after by major employers. Accordingly, both Boston and the County would benefit from allowing the remaining development to proceed to full build out as planned and approved.

In that regard, and while market conditions will ultimately dictate the schedule for the remaining development, Boston hopes to begin construction of a sixth building in the next one to three years, and the last building in the next four to six years. Accordingly, we request an extension of the APF approval validity period for 6 years, or until July 25, 2007 as allowed by Section 50-20(c)(3)(vii) of the Subdivision Regulations.


Mr. Joseph Davis
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In addition to the extension request, Boston also seeks in this Application a waiver of the requirement of Section 50-20(c)(3)(vi)(E) of the Subdivision Regulations that APF extension requests be filed before the expiration of the validity period. As we discussed, The APF validity period for the Property expired on July 25, 2001. Boston mistakenly believed that the provisions of Section 50-20(c)(3)(iv)(A-C) provided for an automatic extension for the Project and thus did not request an extension prior to the July 25, 2001, expiration. But for this oversight by Boston, an APF extension application would have been timely filed, and, we believe, granted for the reasons stated above. Further, as confirmed by Staff, there are no projects in the "queue" for the Research and Development Village policy area and therefore, the grant of this waiver and APF extension will not adversely affect the orderly application of the pipeline expiration provisions in the Subdivision Regulations. In summary, the waiver request (1) is the minimum necessary to provide Boston relief from the application of Section 50-20(c)(3)(vi)(E); (2) would not be inconsistent with the applicable Subdivision Regulations; and (3) would promote the public interest by allowing the completion of the final stages of a comprehensively designed office park as contemplated by the approved Preliminary and Site Plans.

If you have any questions regarding this matter, please do not hesitate to call. Thank you for your assistance.

Very truly yours,

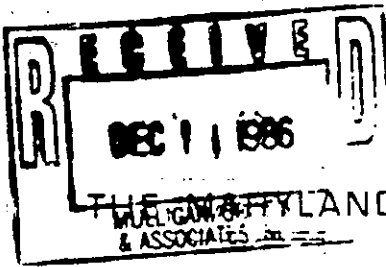
LINOWES AND BLOCHER LLP


John J. Delaney


Scott C. Wallace

Attachment

cc: Mr. Karl Moritz
Mr. Malcolm Shaneman
Mr. John Wood Bolton, Jr., Boston Properties
Mr. Andrew Greene, Boston Properties



Date of Mailing: Dec. 10, 1986

THE MONTGOMERY COUNTY PLANNING BOARD AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20907

MONTGOMERY COUNTY PLANNING BOARD
OPINION

Preliminary Plan No. 1-85245
Project: Decoverly Hall, Parcel "S"

Action: Approval with Conditions (Motion of Comm. Krahnke, Seconded by Chm. Christeller, with a vote of 2-1. Comm. Keeney in favor; Comm. Floreen and Comm. Heiman absent.)

On November 19, 1985, Decoverly Corporation submitted an application for the approval of a preliminary plan of subdivision of property in the O-M Zone. The application was designated Preliminary Plan No. 1-85245. The application proposes to create 7 lots and 1 outlet on 44.27 acres of land.

The property which is the subject of this application is an existing single recorded lot. Development of the property is limited by a previously approved site plan (Site Plan Review No. 8-85034) to 832,069 sq. ft. of development.

The purpose of this application is to resubdivide the property into 7 fee simple lots and one outlet which will be used for stormwater management. The plan also proposes the abandonment of Diamondback Drive to the north of the property.

On October 2, 1986, Preliminary Plan No. 1-85245 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, the Planning Board finds Preliminary Plan No. 1-85245 to be in accord with the purposes and requirements of the Subdivision Regulations and approves Preliminary Plan No. 1-85245 subject to the following conditions:

- 1) Agreement with Planning Board limiting development to 832,100 sq. ft. of office space with reference on the plat. Such Agreement shall be incorporated into the Site Plan Enforcement Agreement.
- 2) Pro-Rata participation in intersection improvements at Shady Grove Road and Research Boulevard as described in a

Transportation Division Memo, dated September 29, 1986. No participation in this road improvement shall be required for the recordation of those lots containing buildings completed or under construction as of October 2, 1986.

- 3) Pro-Rata participation in widening of Key West Avenue to 4 lanes between Shady Grove Road and Great Seneca Highway as described in the September 29, 1986 Transportation Division Memo, as corrected. No participation in this road improvement shall be required for the recordation of lots containing existing buildings or buildings under construction as of October 2, 1986, or for those lots which are recorded after the execution by the County of a contract for the construction of this road improvement. Pro-rata participation shall be calculated on a per lot basis, based on the ratio of the square footage of the lot to the total square footage of all lots approved herein except those containing existing buildings or buildings under construction as of October 2, 1986.
- 4) Revision of approved site plan prior to recording, if necessary.
- 5) Planning Board approval of Abandonment Resolution.
- 6) Necessary Easements.
- 7) Dedication of Right-of-Way for A-284 as shown on the preliminary plan.

The only issue raised at the public hearing on the application was whether the Plan meets the requirements of the Adequate Public Facilities Ordinance that the proposed subdivision is adequately served by roads and public facilities. Based upon the testimony and evidence submitted, the Planning Board finds that with the conditions imposed as a part of this Opinion, Preliminary Plan No.1-85245 meets the requirements of the Adequate Public Facilities Ordinance.

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At the time of the public hearing, the applicant urged the Planning Board to find that no review of the adequacy of public facilities was required for the application since it does not propose any increase in development over the existing approved site plan, but only involves "the drawing of individual lot lines for seven (7) lots on the record plat." The Planning Board rejects that contention. Preliminary Plan No. 1-85245 proposes to resubdivide the subject property and therefore the Planning Board is required, pursuant to Section 50-35(k) of the Subdivision Regulations, to make a determination that the public facilities are adequate to service the proposed subdivision.

The 832,069 sq. ft. of development previously approved has been considered "in the pipeline" and has been counted in the threshold calculations. The current plan proposes no increase in development. Therefore, the traffic impact analysis of the proposed resubdivision is focused on the Local Area Transportation Review.

Based upon the Transportation Division memo dated September 29, 1986, and Staff testimony, the Montgomery County Planning Board finds that if the road improvements set out in Conditions 2 and 3 of this Opinion are implemented, the public road facilities would be adequate to service the proposed development.

The Board accepts the Staff's conclusion that the staging element of the master plan was not an issue in this case since the project had already been counted in the threshold calculations.