**MEMORANDUM**

DATE: October 2, 2006
 TO: Montgomery County Planning Board
 VIA: Rose Krasnow, Chief
 Development Review Division
 FROM: Michael Ma, Supervisor *Ma*
 Development Review Division
 (301) 495-4523



REVIEW TYPE: **Site Plan Amendment**
 CASE #: **82003036B** (formerly 8-03036B)
 PROJECT NAME: **Rock Spring Center Apartment Tower I**
 APPLYING FOR: Approval of a 351-unit residential high-rise building, including 32 MPDUs, a clubhouse and associated underground parking

ZONE: MXPB (Mixed Use Planned Development)
 LOCATION: On the south side of Rock Forest Drive, approximately 690 feet east of Rockledge Drive
 MASTER PLAN: North Bethesda & Garrett Park
 APPLICANT: Penrose Development Company, LLC
 FILING DATE: August 28, 2006
 HEARING DATE: October 12, 2006

BACKGROUND

Site Plan 8-03036 for Rock Spring Center Apartment Tower I was approved by the Planning Board with conditions for a 19-story residential building containing 351 apartments, including 32 MPDUs, and a clubhouse on November 20, 2003. The applicant filed a site plan amendment application 8-03036A in November 2004 to change the development from 351 apartments to 217 condominium units and to modify the footprint and ceiling height of the building. The amended site plan was approved administratively on March 3, 2005. The site has been cleared and graded. Part of the building foundation has been constructed.

The main purpose of the subject site plan amendment application is to change the development program back to 351 apartments as approved originally in November 2003 under Site Plan 8-03036. Also included in the amendment are minor modifications to the building, air shafts, sidewalks, and landscaping design.

PROPOSED AMENDMENT

The subject site plan amendment proposes the following revisions to the approved site plan:

1. The building footprint was modified to accommodate the revised architectural design.
2. The proposed air shafts/vents and hardscape have been revised as a result of adjustments in the architecture.
3. The number of parking spaces provided was decreased from 544 to 508.
4. The walkway on the east side of Tower One extends around the back of the building to provide a sidewalk from garage exits, and the grading has been revised for the sidewalk and a retaining wall added. The retaining wall extends from the east side of the building to approximately 75 feet along the back of the building. The drainage structures have been modified for the sidewalk and retaining wall.
5. The building setback is shown to the face of the tower at 50 feet from Rock Forest Drive, and 30 feet to the face of the garage.
6. The square footage for the clubhouse has been adjusted from 14,131 sf to 13,429 sf.
7. The measurement control point for building height has been added.

STAFF RECOMMENDATION: Approval of 351 multiple-family dwelling units, including 32 moderately priced dwelling units (MPDUs), and a clubhouse on 3.09 acres. All site development elements as shown on the site and landscape plans stamped by the M-NCPPC on October 2, 2006 shall be required except as modified by the following conditions:

1. Transportation
Provide bike racks conveniently located on the site to support use of the Class I bikeway within close proximity of the site and to assist in achieving and maintaining the Trip Reduction Goals of North Bethesda Transportation Management District (TMD).
2. Environmental Planning
The proposed development shall comply with all conditions for final forest conservation plan approval.
3. Department of Permitting Services
The proposed development is subject to Stormwater Management Concept approval conditions dated May 22, 2003, unless amended and approved by the Department of Permitting Services.
4. Moderately Priced Dwelling Units (MPDUs)
The proposed development shall provide 32 MPDUs on site in accordance with the Alternative Agreements between the applicant and the Montgomery County Department of Housing and Community Affairs dated May 25, 2004, and January 11, 2005.
5. Pedestrian Circulation
 - a. Provide a minimum 5-foot clearance for the internal pedestrian pathway system to ensure safe and convenient pedestrian circulation.

- b. Extend the proposed sidewalk along the east boundary of the site southwards and connect the sidewalk with the proposed future pathway near the southeastern corner of the site.

6. Site Plan Enforcement Agreement

Submit a revised Site Plan Enforcement Agreement including a Development Program for review and approval prior to approval of the signature set as follows:

Development Program to include a phasing schedule as follows:

- a. Street tree planting shall progress as street improvement is completed, but no later than six months after completion of the proposed building.
- b. All sidewalks, pathways, landscaping, outdoor lighting, and recreation facilities shall be completed prior to issuance of any occupancy permit for the proposed building.
- c. Clearing and grading to correspond to the construction phasing, to minimize soil erosion and forest loss.
- d. Coordination of each section of the development and roads.
- e. Phasing of stormwater management, sediment/erosion control, recreation, forestation, community paths, or other features.

7. Signature Set

Prior to signature set approval of site and landscape/lighting plans the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Limits of disturbance.
- b. Methods and locations of tree protection per recommendations of an ISA certified arborist.
- c. Forest Conservation easement areas.
- d. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading.
- e. The development program, inspection schedule, and Site Plan resolution.
- f. Show bus stop location(s) and provide bus shelter(s).
- g. Provide sidewalk lighting along the east side of the proposed high-rise building.
- h. Bike racks location and details.

PROJECT DESCRIPTION: Site Vicinity

The subject 3.09-acre site is part of a larger 53.4-acre tract known as Rock Spring Center. The Center is bounded by the I-270 east spur to the north, Rockledge Drive to the west, Rock Spring Drive to the south, and Old Georgetown Road to the east. Immediately to the west and southwest of the Center is Rock Spring Office Park, which is developed with corporate offices. The Walter Johnson High School is located to the south of the Center. Across Old Georgetown Road to the east are one-family detached homes. The northern portion of the Center along the I-270 east spur is developed with a 390-unit apartment complex in six, four-story buildings.

The subject site is located on the south side of Rock Forest Drive, approximately 690 feet east of Rockledge Drive. It is surrounded by the undeveloped portions of the Center to the east, south, and west. Across Rock Forest Drive from the site is the existing apartment complex.



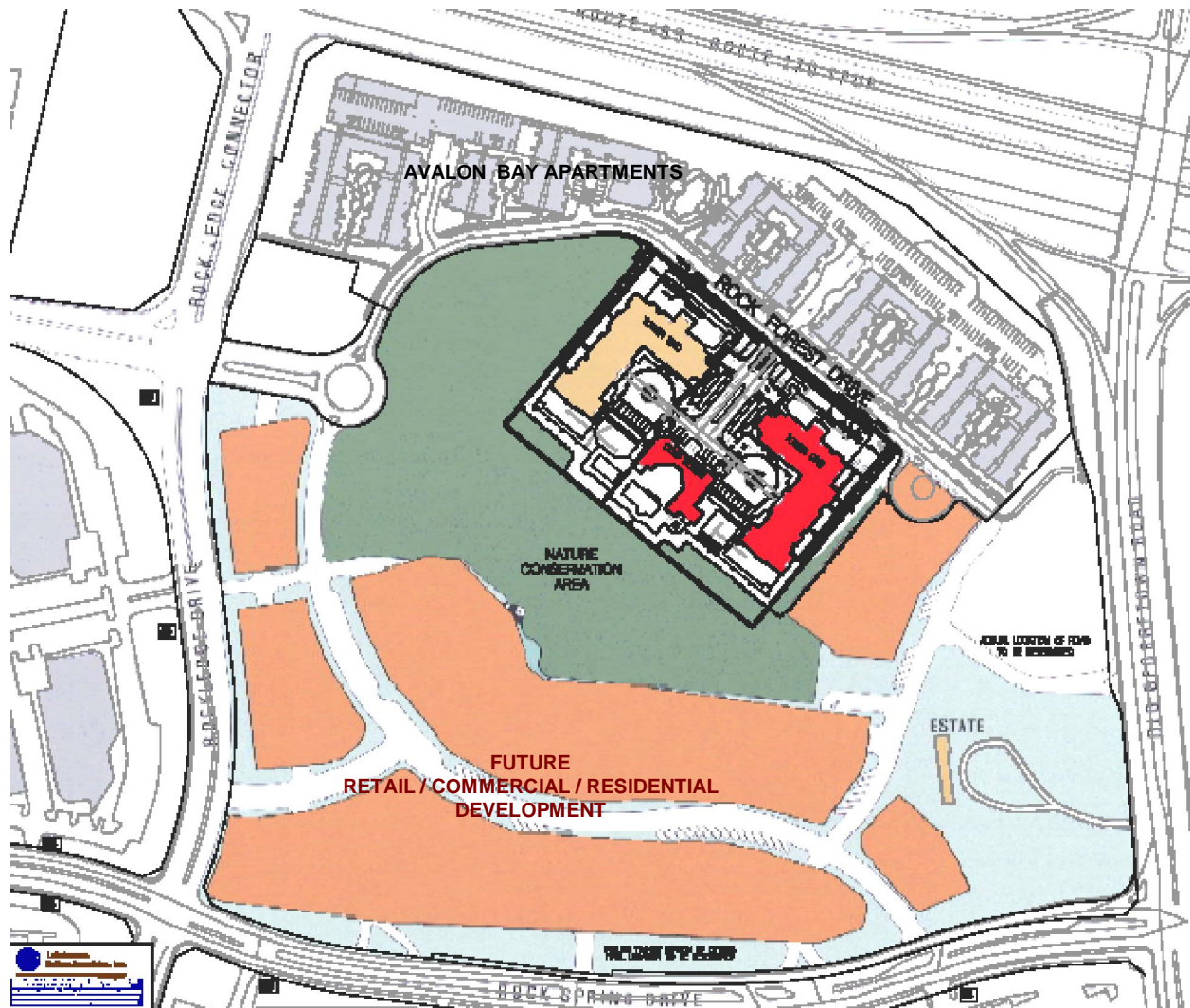
PROJECT DESCRIPTION: Site Description

The subject site consists of 3.09 acres of MXPZ zoned land. The topography of the site slopes down gently from northeast to southwest approximately 20 feet. The site was vegetated generally with mixed hardwood forest and associated understory. An intermittent stream and stream valley corridor runs diagonally through the center portion of the 53-acre Center and borders the subject site to the southwest. The site has been cleared and part of the foundation of the proposed building has been constructed.



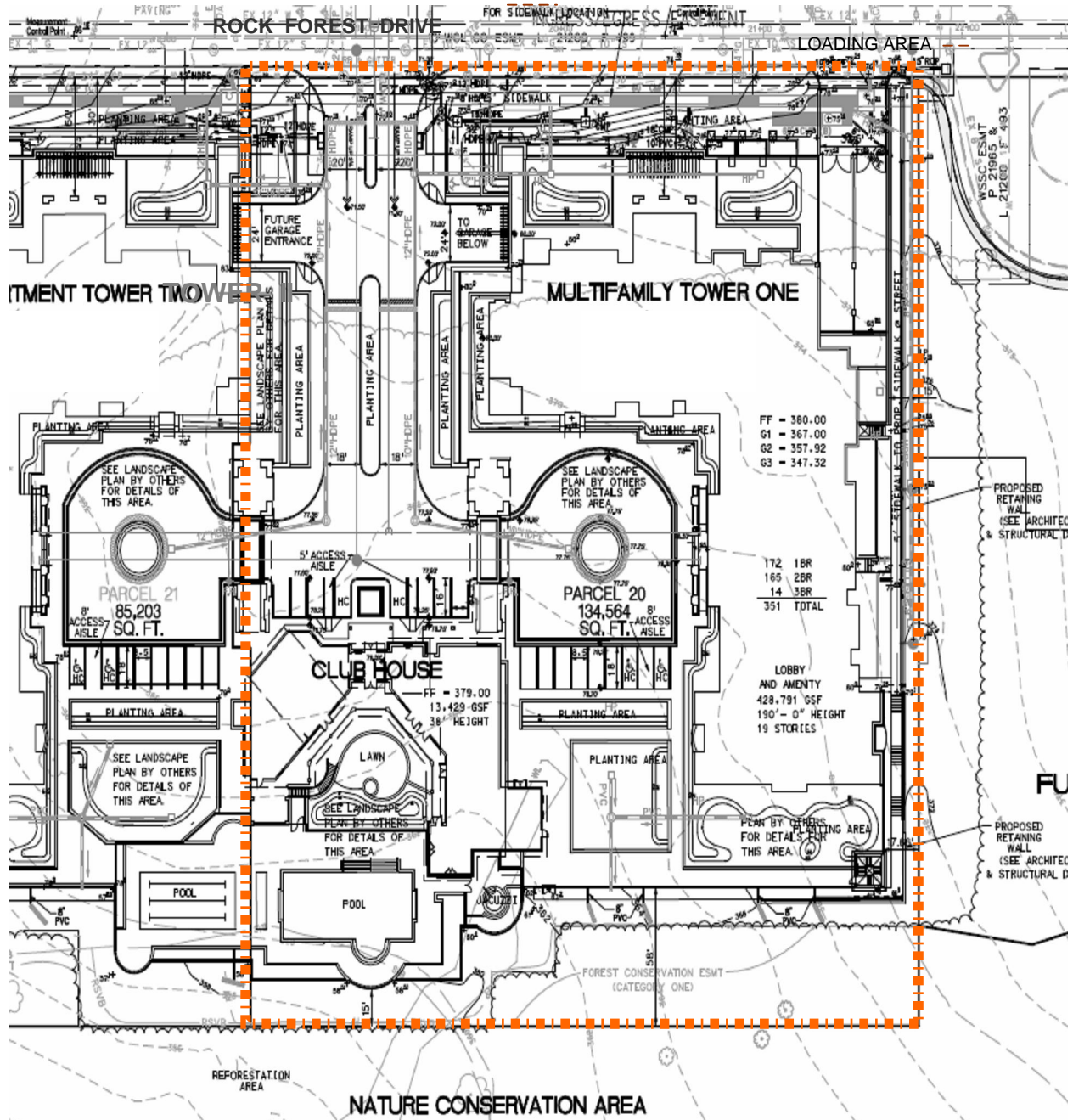
PROJECT DESCRIPTION: Proposal

Rock Spring Center is planned as a 53.4-acre, mixed-use development containing residential, retail, office, entertainment, institutional, and community center uses. The northern portion of the Center along the I-270 east spur, which contains approximately 10 acres, is developed with a 390-unit apartment complex in six, four-story buildings by Avalon Bay Communities. The remaining portions of the Center will be developed by Penrose Development Company, the applicant of the subject application.

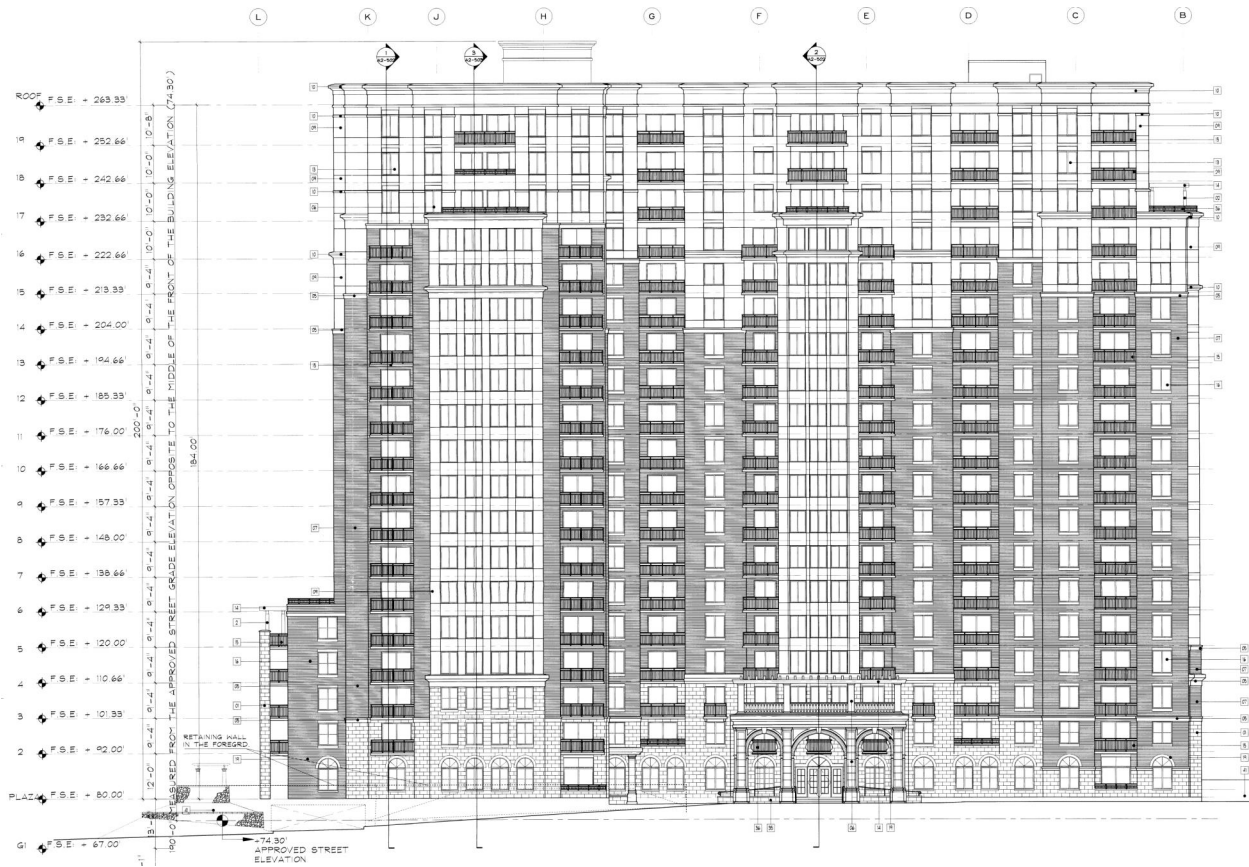


The subject application (colored in red) is for the first phase of the high-rise residential component of the Center. The entire high-rise development will consist of 702 units in two 19-story buildings, a two-story clubhouse and a 3-level underground parking garage. The subject site plan covers one 19-story building (351 units), the 2-story clubhouse and part of the 3-level underground parking garage. The second building (351 units) and its associated open space and parking will be built in the second phase of the project. The remaining portions of the center (colored in orange) will be developed with office, retail, residential, entertainment, institutional, and community center uses.

Access to the development will be via a divided monumental entrance driveway consisting of two ingress and two egress lanes off Rock Forest Drive. The ramp leading to the underground parking garage will be located approximately 60 feet from the street off of the entrance driveway. The driveway slopes up approximately 6 feet toward the clubhouse and turns eastwards into a drop-off court, which is formed by the clubhouse and the L-shaped high-rise building and will be paved with special pavers. A fountain will be located at the center of the court as a focal point. Landscaped green space and lawn areas are proposed between the court and the southern boundary of the development. A separate driveway to the loading area is proposed at the northeastern corner of the site.



The high-rise portion of the proposed building is set back 50 feet from the street. The above-ground portion of the proposed garage is set back 30 feet from the street. The elevation difference between the building's ground floor and the street varies from 3.5 feet to near 8 feet. Landscaped berms will be provided between the sidewalk and the retaining walls. Shade trees are proposed along the street frontage and the entrance driveway. Recreation facilities will include landscaped green space, pathways, outdoor sitting and picnic areas, swimming pools, exercise rooms, media room, library, party room and meeting room. The leasing office will be located on the upper level of the clubhouse.



VIEW FROM THE INTERNAL COURTYARD

PROJECT DESCRIPTION: Prior Approvals

Zoning Application G-713

The subject property was rezoned from the R-H zone to the MXPDP zone by the District Council on April 29, 1997. As part of the zoning application G-713, a Development Plan for the proposed development was approved with a number of binding elements.

Development Plan Amendment DPA 99-1

The approved Development Plan as part of zoning application G-713 was amended by DPA 99-1 and approved on September 29, 1998. DPA 99-1 did not change the amount of development or the phasing plan as a binding element of the approved plan. It merely clarified the phasing plan by adding additional language. All the required road improvements or traffic mitigation measurements remain.

Preliminary Plan

Preliminary Plan 1-98092 for Rock Spring Center was approved by the Planning Board with conditions on May 27, 1999. Preliminary Plan 1-98092 satisfied the Adequate Public Facilities test for the following land uses (given the remaining capacity of more than 1,250 housing units and only 3,667 jobs available at that time):

- a. 1,250 housing units (apartments)
- b. First stage non-residential uses of 977,200 square feet consisting of the following land uses:
 - 1) 637,200 (of the buildout total of 830,000) square feet of general office use
 - 2) 220,000 square feet of general retail use
 - 3) 90,000 square feet for a movie theater (retail use)
 - 4) 30,000 square feet for a community center

The total build out in the future for non-residential uses was proposed to be a total of 1,355,000 square feet. The remaining non-residential development below had to undergo a revised Local Area Transportation Review when the 1,268 jobs become available to satisfy Policy Area Review:

- a. 185,300 square feet of general office use
- b. 185,000 square feet of institutional uses

Site Plan 8-00034

Site Plan 8-00034 for Avalon Bay at Rock Spring Centre was approved by the Planning Board for 390 garden apartments in the northern portion of Rock Spring Center on August 3, 2000.

Site Plans 8-03036 and 8-03036A

Site Plan 8-03036 for Rock Spring Center Apartment Tower I was approved by the Planning Board with conditions for a 19-story residential building containing 351 apartments, including 32 MPDUs, and a clubhouse on November 20, 2003. A copy of the Planning Board opinion is attached. The applicant filed a site plan amendment application 8-03036A in November 2004 to change the development from 351 apartments to 217 condominium units and to modify the

footprint and ceiling height of the building. The amended site plan was approved administratively on March 3, 2005.

ANALYSIS: Conformance to Development Standards

PROJECT DATA TABLE (MXP Zone)

Development Standard	Permitted/ Required	Approved Site Plan A	Proposed for Approval
Min. Tract Area (ac.):		3.09	3.09
Max. Residential Density (d.u./ac.)	44 ¹	70	114
Number of Dwelling Unit			
1-bedroom			172
2-bedroom			165
3-bedroom			<u>14</u>
Total	--	217	351
MPDU	64 ²	0 ³	32 ⁴
Total Gross Floor Area (s.f.)	--	448,701	442,220
Building Setbacks (ft.)			
from detached homes	100	550	550
from street (the tower portion)	--	50	50
from street (the garage portion)	--	30	30
Green Area (%)	50	56	59
Max. Building Height (story):	22	20 (217'-4")	19 (190 feet)
Parking Spaces			
172 1-bedroom @ 1.25 sp	215		
165 2-bedroom @ 1.5 sp	248		
14 3-bedroom @ 2.0 sp	<u>28</u>		
Total	491		508 ⁵
Motorcycle	10	20	29
Bike	10	20	20

1. the overall density for the residential areas within the Center; a total of 1,250 units was approved for the entire Rock Spring Center.
2. the number of MPDUs allocated to this 351-unit development is based on a total of 226 MPDUs required for 1,250 residential units proposed for the entire Center.
3. Per Alternative Agreement between the applicant and the Montgomery County Department of Housing and Community Affairs dated January 11, 2005.
4. Per Alternative Agreements between the applicant and the Montgomery County Department of Housing and Community Affairs dated May 25, 2004 and January 11, 2005.
5. 492 spaces in garage and 16 spaces at plaza.

ANALYSIS:

Conformance to Master Plan

Rock Spring Park is located in the *North Bethesda/Garrett Park Master Plan* (1992). The proposed residential project is located on Parcel 20 in the northeast quadrant of Rock Spring Park on the Davis parcel zoned MXPDP. A residential tower and a clubhouse are proposed on the site.

Transportation Planning

This site is within the boundary of the North Bethesda TMD. The applicant was required as a condition of preliminary plan approval to participate with the North Bethesda TMO to assist the North Bethesda TMD in achieving and maintaining its 39% non-driver traffic mitigation goal for Stage II of the Master Plan development. The applicant is required to participate in the North Bethesda TMO.

Forest Conservation

The original 53.4-acre Davis-Camaliere tract was reviewed for forest conservation as part of the MXPDP zoning application G-713 and the overall Preliminary Plan 1-98092. Refinements to these original approvals are being made as each portion of the site comes in for site plan review. It is at this phase that detailed forest/tree protection plans and planting decisions are approved within the context of the final forest conservation plan requirement for each site plan. The subject site plan covers 3.09 acres of overall 53.4-acre site.

FINDINGS: For Site Plan Review

1. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.*

If amended in accordance with recommended conditions, the proposed development is consistent with the approved Development Plan (DPA 99-1) in land use, density, location, building height and development guidelines.

2. *The Site Plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

If amended in accordance with recommended conditions, the Site Plan meets all of the requirements of the MXPDP zone as demonstrated in the project Data Table above.

3. *The location of the building and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe and efficient.*

a. Buildings

The subject site plan proposes a 19-story, 351-unit residential building, a 2-story clubhouse and a 3-level underground parking garage. The high-rise portion of the building will be set back 50 feet from the street and at least 550 feet from any detached homes. The underground garage will provide adequate and convenient parking for future residents and their visitors. The proposed clubhouse and the tower form a drop-off court.

b. Open Spaces

The plan proposed 1.73 acres of green space throughout the site, including paved courtyard, landscaped green space, lawn areas, pool, and forest conservation areas.

The stormwater management concept for the proposed development consists of (1) on-site channel protection measures via the use of the dry pond located in the southwest quadrant of the interchange of I-270 and Rockledge Drive, and (2) on-site water quality control via underground storm filter near Rock Forest Drive. A recharge weir is proposed along the back edge of the permanent construction.

The plan proposes to save 0.33 acre of forest and remove approximately 15 specimen trees. Reforestation will be required for the overall Rock Spring Center, which includes this site, with first preference given to onsite reforestation.

c. Landscaping and Lighting

The proposed landscaping on the site consists of a mix of shade, evergreen and flowering trees along the street frontage, internal driveways, and around the proposed drop-off court and green space areas. A portion of the existing vegetation, about 0.33 acres, will be saved along the south boundary of the site. Additional plant materials are needed along the southern edge of the structure to provide adequate screening along the retaining walls.

The plan proposes various lights along the street and throughout the site, including streetlights on 13-foot-high poles, internal sidewalk lights on 11-foot-high poles, wall-mounted lights, and uplighting for landscaping. Additional lighting should be provided along the proposed sidewalk on the east side of the high-rise building.

d. Recreation

Recreation demand is satisfied as shown in the recreation calculations table above. The proposed recreation facilities, including landscaped green space, lawn areas, pathways, outdoor sitting and picnic areas, swimming pools, exercise room, media room, library, party room and meeting room, will provide future residents with a variety of passive and active recreation opportunities.

e. Vehicular and Pedestrian Circulation

Access to the development will be via a divided monumental entrance driveway consisting of two ingress and two egress lanes off Rock Forest Drive. The ramp leading to the underground parking garage will be located approximately 60 feet from the street off of the entrance driveway. The driveway slopes up approximately 6 feet toward the clubhouse and turns eastwards into a drop-off court, which is formed by the clubhouse and the L-shaped high-rise building and will be paved with special pavers. A separate driveway to the loading area is proposed at the northeastern corner of the site.

The plan proposes a sidewalk along the Rock Forest Drive frontage and an internal pathway system connecting building entrances with outdoor facilities and the public sidewalk. The plan also shows a 5-foot-wide sidewalk along the east boundary of the site between Rock Forest Drive and the building's lobby exit doors on the its east side. This sidewalk will be connected with the future pathway system leading to the retail section of Rock Spring Center through the central green space. In addition, a minimum 5-foot clearance (ADA requirements) should be maintained throughout the project's internal pedestrian pathway system to ensure safe and convenient pedestrian circulation.

4. *Each structure and use is compatible with other uses and other Site Plans and with existing and proposed adjacent development.*

The proposed high-rise residential building and associated clubhouse and underground parking structure are part of Rock Spring Center, which is planned as a 53.4-acre, mixed-use development containing residential, retail, office, entertainment, institutional, and community center uses. The subject development, the high-rise component of the Center, will be bounded by the existing garden apartment complex to the north, stream buffers to the west and south, and a residential use to the east. It is an integral part of the overall mixed-use development and will be compatible with existing and proposed adjacent development.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The final forest conservation plan proposes to remove nearly all the forest on the site, including approximately 11 significant trees (larger than 24" cal. trees), and saving approximately 0.2 acre of forest at the southern corner. As it now stands, clearing over the entire Rock Spring property of 53.4 acres totals 20.8 acres of the pre-development 26.6 acres of forest, resulting in a current reforestation requirement of 12.9 acres. First preference will be given to onsite reforestation as area allows.

APPENDIX

- A. Planning Board opinion for Site Plan 8-03036.
- B. Alternative MPDU Agreements between the applicant and the Montgomery County Department of Housing and Community Affairs dated , 2004 and January 11, 2005.



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

MONTGOMERY COUNTY PLANNING BOARD

CORRECTED OPINION

JANUARY 8, 2004

DATE MAILED: January 5, 2004
SITE PLAN REVIEW #: 8-03036
PROJECT NAME: Rock Spring Center –Residential Tower I

Action: Approval subject to conditions. Motion was made by Commissioner Robinson, seconded by Commissioner Berlage, with a vote of 3-0, Commissioners Robinson, Berlage, and Wellington voting for, Commissioner Bryant voting against. Commissioner Perdue was necessarily absent.

The date of this written opinion is January 5, 2004, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before ~~March 2, 2004~~ February 4, 2004 (which is thirty days from the date of this written opinion. If no administrative appeal is timely filed, this Site Plan shall remain valid for as long as Preliminary Plan #1-98092 is valid, as provided in Section 59-D-3.8.

On November 20, 2003, Site Plan Review #8-03036 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. *The Site Plan is consistent with approved development plan DPA 99-1;*
2. *The Site Plan meets all of the requirement of the MXPB zone;*
3. *The location of the buildings and structures, the open spaces, the landscaping, and the pedestrians and vehicular circulation systems are adequate, safe, and efficient;*
4. *Each structure and use is compatible with other uses and other Site Plans and with existing and proposed adjacent development;*
5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation;*

Therefore, the Montgomery County Planning Board **APPROVES** Site Plan #8-03036, which consists of 351 multi-family dwelling units including 63 moderately priced dwelling units (MPDUs) with the following conditions:

1. Transportation

Provide bike racks conveniently located on the site to support use of the Class I bikeway within close proximity of the site and to assist in achieving and maintaining the Trip Reduction Goals of North Bethesda Transportation Management District (TMD).

2. Environmental Planning

The proposed development shall comply with all conditions for final forest conservation plan approval. The applicant shall satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (DPS) issuance of sediment and erosion control permits.

- a. Submittal of financial security to M-NCPPC for afforestation prior to clearing or grading.
- b. Record plat to show Category one forest conservation easement. Any amended language from the standard easement must be approved by M-NCPPC staff prior to recording plats.
- c. Maintenance agreement to be reviewed and approved by M-NCPPC staff prior to first inspection of planted areas.

3. Department of Permitting Services

The proposed development is subject to Stormwater Management Concept approval conditions dated May 22, 2003.

4. Moderately Priced Dwelling Units (MPDUs)

The proposed development shall provide 63 MPDUs in accordance with the letter from the Department of Housing and Community Affairs to Chairman Berlage dated November 20, 2003.

5. Pedestrian Circulation

- a. Provide pedestrian crosswalks using special paving at the two proposed driveway entrances on Rock Forest Drive.
- b. Provide a minimum 5-foot clearance for the internal pedestrian pathway system to ensure safe and convenient pedestrian circulation.
- c. Extend the proposed sidewalk along the east boundary of the site southwards and connect the sidewalk with the proposed future pathway near the southeastern corner of the site.

6. Site Plan Enforcement Agreement

Submit a Site Plan Enforcement Agreement including Development Program and Homeowner Association Documents for review and approval prior to approval of the signature set as follows:

Development Program to include a phasing schedule as follows:

- a. Street tree planting shall progress as street improvement is completed, but no later than six months after completion of the proposed building.
- b. Community-wide pedestrian pathways and recreation facilities shall be completed prior to seventy percent occupancy of each phase of the development.
- c. Landscaping and outdoor lighting shall be completed as construction of the facility is completed.
- d. Clearing and grading to correspond to the construction phasing, to minimize soil erosion and forest loss.
- e. Coordination of each section of the development and roads.
- f. Phasing of stormwater management, sediment/erosion control, recreation, forestation, community paths, or other features.

7. Clearing and Grading

No clearing or grading prior to M-NCPPC approval of signature set of plans.

8. Signature Set

Prior to signature set approval of site and landscape/lighting plans the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Limits of disturbance.
- b. Methods and locations of tree protection per recommendations of an ISA certified arborist.
- c. Forest Conservation easement areas.
- a. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading.
- b. The development program inspection schedule and Site Plan Opinion.
- c. Additional plant materials between the proposed retaining walls and the southern boundary of the site to screen the view of the walls.
- d. MPDU information for the subject site and the entire Rock Spring Center development.
- e. Provide handicapped parking spaces near the proposed club house entrance.
- f. Show bus stop location(s) and provide bus shelter(s).
- g. Grading information.
- h. Coordinate the proposed streetscape, including street lights, along the Rock Forest Drive frontage with the existing streetscape on the opposite side of the street.
- i. Provide sidewalk lighting along the east side of the proposed high-rise building.
- j. Revise lighting plan to achieve average max/min ratio of 5:1.
- k. Bike racks location and details.

OCT-02-2006 12:51

LINOWES AND BLOCHER LLP

301 654 2801 P.02

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
100 Maryland Avenue, 4th Floor, Rockville, Maryland 20850

ALTERNATIVE AGREEMENT UNDER SECTION 25A

THIS AGREEMENT dated the 25th day of May, 2004, by and between CAMALIER LIMITED PARTNERSHIP, a Maryland limited partnership, DAVIS BROTHERS MONTGOMERY FARM LIMITED PARTNERSHIP, a Maryland limited partnership (herein "Applicants") and MONTGOMERY COUNTY, MARYLAND, (herein "County").

WHEREAS, Applicants plan to construct 35 or more dwelling units in the subdivision known as Rock Spring Center, located in Montgomery County, Maryland, and to be eligible to receive benefits of the optional density provision afforded by the Zoning Ordinance for Montgomery County, Maryland, Chapter 59, as amended.

WHEREAS, the provisions of Chapter 25A of the Montgomery County Code, 1994, as amended, require that a percentage of the total number of dwelling units in a residential development project be moderately priced dwelling units (MPDUs); and

WHEREAS, as a function of Rock Spring Center's original zoning approval, a total of 1,250 units, including 226 (18.08 percent) MPDUs, were approved. Pursuant to Preliminary Plan No. 1-98092, Avalon at Rock Spring has already constructed a garden apartment project containing 390 units, 71 of which are MPDUs. Therefore, 155 MPDUs are required as part of the development of the remaining 860 residential units; and

WHEREAS, pursuant to the Amended Phasing Element of Development Plan (Revised Sept. 1998) for Rock Spring, the remaining residential components will be developed in three phases: phase one to consist of a high-rise building containing 351 dwelling units ("Phase I"), phase two to consist of a second high-rise building with approximately 351 units ("Phase II"), and phase three to consist of a mixed-use building with 158 residential units ("Phase III"); and

WHEREAS, by letter dated November 20, 2003, attached hereto as Exhibit "A", the Department of Housing and Community Affairs ("DHCA"), pursuant to Section 25A-5 of the Zoning Ordinance for Montgomery County, Maryland, as amended, approved an alternative agreement ("Alternative Agreement") whereby Applicants will provide 107 MPDUs on-site (32 in each of the high-rise buildings comprising Phases I and II, and 43 in Phase III) and make an alternative payment of \$33,000 per unit ("Alternative Payment") for the remaining 48 MPDUs to the Montgomery Housing Initiative Fund ("HIF"); and

WHEREAS, the Alternative Payment for 24 of the 48 MPDUs not constructed on-site shall be paid when the occupancy permits for all Phase I units are issued, and payment for the remaining 24 Alternative Payment units when the occupancy permits for all Phase II units are issued; and

WHEREAS, as part of the Alternative Agreement, DHCA recognizes that 14 of the MPDUs required for Phases I and II (seven in each Phase) are being transferred to Phase III, to be constructed at a later date, and agrees to this transfer as long as a bond, letter of credit, guarantee, or such other security as is satisfactory to DHCA is provided by Applicants, in an amount equal to the Alternative Payment calculated for each of the units not constructed on site multiplied by 14, to ensure the provision of these MPDUs, half of such guarantee to be posted when the building permit for Phase I is issued, and the remainder when the building permit for Phase II is issued; and

WHEREAS, the County is willing to issue building permits for the construction of dwelling units under the terms stated in the Alternative Agreement, pursuant to the provisions of Chapter 25A of the Montgomery County Code, 1994, as amended, and pursuant to separate Agreements to Build Moderately Priced Dwelling Units ("Separate Agreements") to be executed by Applicants, their successors or assigns, for each of the three phases identified above.

NOW, THEREFORE, in consideration of the mutual promises, conditions, and obligations provided for herein, the parties hereto agree as follows:

1. Unless the total number of units approved is adjusted during site plan approvals for Phases I, II and III, Applicants agree to construct 860 total dwelling units in the subdivision, including 107 MPDUs on-site, consisting of 32 units in each of the high-rise buildings comprising Phases I and II, and 43 units in Phase III.

2. The Alternative Payment for 24 of the 48 MPDUs not constructed on-site shall be paid when the occupancy permits for all Phase I units are issued by Montgomery County, and payment for the remaining 24 Alternative Payment units when the occupancy permits for all Phase II units are issued by Montgomery County.

3. DHCA recognizes that 14 of the MPDUs required for Phases I and II (seven in each Phase) are being transferred to Phase III, to be constructed at a later date, and agrees to this transfer as long as a bond, letter of credit, guarantee, or such other security as is satisfactory to DHCA is provided by Applicants, in an amount equal to the Alternative Payment calculated for each of the units not constructed on site multiplied by 14, to ensure the provision of these MPDUs, half of such guarantee to be posted when the building permit for Phase I is issued, and the remainder when the building permit for Phase II is issued.

4. Prior to the release of building permits for construction of any phase, Applicants, their successors or assigns, shall execute Separate Agreements as required under Chapter 25A.

5. Default by Applicants, their successors or assigns, under the Separate Agreements shall not render the Applicants in default of any provisions of this Agreement.

6. A waiver by the County of a specific default must be in writing from the County, and shall not be a waiver of any other subsequent default of similar or different nature.

7. No failure on the part of the County to exercise, and no delay in exercising, any right to remedy permitted by law or pursuant to this Agreement will operate as a waiver thereof.

8. Any notices sent pursuant to this Agreement must be delivered in writing to:

Montgomery County:

Department of Housing and Community Affairs
100 Maryland Avenue, 4th Floor
Rockville, Maryland 20850

Applicants:

Camalier Limited Partnership
6500 Rock Spring Drive
Suite 600
Bethesda, MD 20814

Davis Brothers Montgomery Farm Limited Partnership
Floyd E. Davis Company
1629 K Street, N.W.
Suite 900
Washington, D.C. 20006
Attn: John Davis and Floyd E. Davis III

with copies to:

Charles A. Camalier III
c/o Wilkes Artis, Chartered
1150 - 18th Street, N.W.
Suite 400
Washington, D.C. 20003

and

Barbara A. Sears, Esquire
Linowes and Blocher LLP
7200 Wisconsin Avenue
Suite 800
Bethesda, MD 20814

9. No member, officer, or employee of the County, and no other public official of the County will either exercise any function or responsibility with respect to the subject matter of this Agreement during his or her tenure, or for one year thereafter have any interest, direct or indirect, in the subject matter of this Agreement.

10. This Agreement is assignable in whole or in part without the consent of DHCA.

11. This Agreement is binding upon the agents, successors, heirs, and assigns of the Applicants.

12. The terms of this Agreement will survive the execution and delivery of any deeds or leases, and shall not merge therein.

13. Applicants agree to abide by and comply with all applicable laws and regulations regarding the subject matter of this Agreement, whether or not such laws or regulations are herein specifically enumerated or referred to, including those amendments described in Montgomery County Council Bill No. 25-88, if applicable, and Applicants agrees to sign such documents as may be required to effectuate the intent and purpose of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Applicants have caused these presents to be executed by their general partners and their corporate seal to be affixed, and do hereby appoint Charles Camalier and Floyd Davis their true and lawful attorney-in-fact to acknowledge and deliver these presents, and Montgomery County, Maryland has, on the day and year hereinabove written, caused these presents to be signed by Elizabeth B. Davison representing the Department of Housing and Community Affairs, and does hereby appoint the said Elizabeth B. Davison its true and lawful attorney-in-fact to acknowledge and deliver these presents.

WITNESS:

APPLICANTS:

CAMALIER LIMITED PARTNERSHIP, a Maryland liability partnership

By: [Signature]
Name: _____
Title: _____

DAVIS BROTHERS MONTGOMERY FARM LIMITED PARTNERSHIP, a Maryland limited partnership

by: DBMF, Inc., General Partner
By: [Signature]
Name: Floyd E. DAVIS III
Title: President

WITNESS

MONTGOMERY COUNTY, MARYLAND

[Signature]

BY: [Signature]
Elizabeth B. Davison, Director
Department of Housing and
Community Affairs

STAFF REVIEW BY [Signature]

~~STATE OF MARYLAND~~ District of Columbia
~~COUNTY OF MONTGOMERY~~

I HEREBY CERTIFY that before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared Charles A. Camalier III, attorney-in-fact for Applicant, who is personally well known to me as the person named as attorney-in-fact in the foregoing instrument, and as attorney-in-fact, as aforesaid executed and acknowledged the foregoing instrument in the name and on behalf of Applicant, for the uses and purposes herein contained.

WITNESS my hand and seal this 5th day of May, 2004.

OCT-02-2006 12:52

LINOWES AND BLOCHER LLP

301 654 2801 P.06

My Comm. Exp: Luisa E. Alvarez
Notary Public, District of Columbia
My Commission Expires: September 30, 2008

Luisa E. Alvarez
NOTARY PUBLIC

STATE OF MARYLAND District of Columbia
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared Floyd E. Davis, III, attorney-in-fact for Applicant, who is personally well known to me as the person named as attorney-in-fact in the foregoing instrument, and as attorney-in-fact, as aforesaid executed and acknowledged the foregoing instrument in the name and on behalf of Applicant, for the uses and purposes herein contained.

WITNESS my hand and seal this 5th day of May, 2004.

My Comm. Exp: Luisa E. Alvarez
Notary Public, District of Columbia
My Commission Expires: September 30, 2008

Luisa E. Alvarez
NOTARY PUBLIC

STATE OF MARYLAND
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared Elizabeth B. Davis, attorney-in-fact for Montgomery County, Maryland, who is personally well known to me, and as attorney-in-fact as aforesaid, and by virtue of the power vested in him, executed and acknowledged the foregoing instrument to be the act and deed of Montgomery County, Maryland for the uses and purposes herein contained.

WITNESS my hand and seal this 18th day of May, 2004.

My Comm. Exp: 8/1/05

[Signature]
NOTARY PUBLIC

OCT-02-2006 12:52

LINOUES AND BLOCHER LLP

301 654 2801 P.07



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Douglas M. Duncan
County Executive

November 20, 2003

Elizabeth B. Davison
Director

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Mr. Berlage:

Recently, Mr. Eric Larsen, Manager, MPDU Section, and I, met with representatives of Penrose Development Company, LLC ("Penrose"), developer of two high-rise residential buildings, containing 351 units each, and a mixed-use retail/residential building, containing 158 residential units (the "Project"), to discuss the Project's provision of Moderately Priced Dwelling Units ("MPDUs"). Penrose has submitted Site Plan 8-03036 for site plan approval for the first high-rise building and plans to submit site plan applications for the second high-rise building and the mixed-use building by next summer. These three buildings will constitute the remaining residential component of the Rock Spring Centre. As a function of Rock Spring Centre's original zoning approval, a total of 1,250 units, including 226 (18.08 percent) MPDUs, were approved. Avalon, at Rock Spring has already constructed a garden apartment project containing 390 units, 71 of which are MPDUs, at Rock Spring Centre. Therefore, 155 MPDUs are required as part of Penrose's development of the remaining 860 units.

After a careful review and analysis of the financial projections for the Project at the 18 percent requirement, we have determined that the provision of required MPDUs on-site would constitute a hardship for Penrose. In this regard, the Project has a number of high costs and development expenses, including ground rents, product type, and extensive structured parking. Therefore, pursuant to Section 25A-5(e)(1)(c) of the Montgomery County Code, I have approved an alternative arrangement to allow a contribution of a fee in lieu of 48 MPDUs that cannot be accommodated on-site to the Montgomery County Housing Initiative Fund (HIF).

Therefore, pursuant to the Department of Housing and Community Affairs' ("DHCA") approval, 107 MPDUs will be provided on-site, 32 in each of the high-rise buildings and 43 in the mixed-use building. A contribution to the Housing Initiative Fund for the remaining 48 units will be made by Penrose. The fee paid for the remaining 48 units will provide for the construction of significantly more MPDUs in the same or in an adjoining planning area. Additionally, even with this contribution, 12.5 percent of the residential units being developed as part of Penrose's project will be MPDUs, and 14.24 percent of all the residential units at Rock Spring Centre will be MPDUs, well above the typical 12.5 percent.



Office of the Director

100 Maryland Avenue, 4th Floor • Rockville, Maryland 20850 • 240/777-3600, TDD 240/777-3679, FAX 240/777-3677

Exhibit "A"

OCT-02-2006 12:53

LINOWES AND BLOCHER LLP

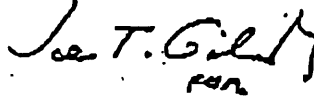
301 654 2801 P.08

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
November 20, 2003
Page 2

Finally, DHCA recognizes that 14 of the required MPDUs are being transferred to the mixed-use portion of the development to be constructed at a later date. Penrose has committed to work with DHCA to develop a method acceptable to the County to ensure the timely provision of these MPDUs.

We believe this alternative arrangement is fair and reasonable in light of the particular circumstances of this case and meets all of the criteria outlined in Section 25A-5(e) of the Code. If you have any questions or require any additional information, please do not hesitate to contact me at 240-777-3600.

Sincerely,



Elizabeth B. Davison
Director

EBD:tl

cc: Olav B. Kollevoll, Jr., Esq.
The Penrose Group

Barbara A. Sears, Esq.
Linowes & Blocher

R:\Housing\MPDU\rockspring.doc

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
100 Maryland Avenue, 4th Floor, Rockville, Maryland 20850

AMENDED ALTERNATIVE AGREEMENT UNDER SECTION 25A

THIS AMENDED ALTERNATIVE AGREEMENT dated the 17th day of January, 2005, by and between CAMALIER LIMITED PARTNERSHIP, a Maryland limited partnership, DAVIS BROTHERS MONTGOMERY FARM LIMITED PARTNERSHIP, a Maryland limited partnership (herein "Applicants"), and MONTGOMERY COUNTY, MARYLAND (herein "County").

WHEREAS, Applicants plan to construct 35 or more dwelling units in the subdivision known as Rock Spring Center, located in Montgomery County, Maryland, and to be eligible to receive benefits of the optional density provision afforded by the Zoning Ordinance for Montgomery County, Maryland, Chapter 59, as amended.

WHEREAS, the provisions of Chapter 25A of the Montgomery County Code, 1994, as amended (the "Code"), require that a percentage of the total number of dwelling units in a residential development project be moderately priced dwelling units (MPDUs); and

WHEREAS, as a function of Rock Spring Center's original zoning approval, a total of 1,250 units, including 226 (18.08 percent) MPDUs, were approved. Pursuant to Preliminary Plan No. 1-98092, Avalon at Rock Spring has already constructed a garden apartment project containing 390 units, 71 of which are MPDUs. Therefore, 155 MPDUs are required as part of the development of the remaining 860 residential units; and

WHEREAS, the initial phasing plan for the development called for the remaining residential components to be developed in three phases: phase one to consist of a high-rise building containing approximately 351 dwelling units ("Phase I"), phase two to consist of a second high-rise building with approximately 351 units ("Phase II"), and phase three to consist of a mixed-use building with approximately 158 residential units ("Phase III") (collectively, the "Original Project"); and

WHEREAS, the Department of Housing and Community Affairs ("DHCA"), pursuant to Section 25A-5 of the Zoning Ordinance for Montgomery County, Maryland, as amended, entered into an alternative agreement with Applicants dated May 25, 2004 ("Original Alternative Agreement") for the Original Project whereby Applicants were required to provide 107 MPDUs on-site (32 in each of the high-rise buildings comprising Phases I and II, and 43 in Phase III) and to make an alternative payment of \$33,000 per unit ("Alternative Payment") for the remaining 48 MPDUs to the Montgomery Housing Initiative Fund ("HIF"). As part of the Original Alternative Agreement, the County determined that the Alternative Payment for the 48 MPDUs would provide for the construction of significantly more MPDUs in the same or in an adjoining planning area;

WHEREAS, Applicants' revised phasing plan calls for Phase I to contain approximately 217 highrise condominium units ("Tower I") ("Revised Phase I"), Phase II to contain approximately 217 high-rise condominium units ("Tower II") ("Revised Phase II"), and the mixed-use buildings in Phase III to contain approximately 426 residential units ("Revised Phase III") (collectively, the "Revised Project"); and

WHEREAS, based on the determination of the high costs and expenses for the project as previously determined by DHCD and hereby reconfirmed as part of the Amended Alternative Agreement and a finding by DHCA that an indivisible package of services and facilities available to all residents of the Revised Project would cost the MPDU buyers so much as to make the MPDUs unaffordable to eligible buyers or tenants, the Applicants and the County have agreed that all of the required 107 on-site MPDUs shall be constructed in two locations in Revised Phase III as generally shown on the plan attached hereto as Exhibit "A", as rental units in accordance with Chapter 25A as it exists on the date of this Amended Alternative Agreement provided, however, the control period for 64 of the 107 on-site MPDUs (32 units previously determined to be attributable to Tower I and 32 units to Tower II) shall be 30 years pursuant to Section 25A-9 of the Code; and

WHEREAS, the time at which Alternative Payment for the 48 MPDUs not constructed on-site shall be paid to the HIF, the form of security satisfactory to DHCA to ensure the provisions of these 107 on-site MPDUs and that timing of the posting of this security shall be addressed in separate Agreements to Build Moderately Priced Dwelling Units ("Separate Agreement(s)") to be executed by Applicants, their successors or assigns, for each of the three revised phases identified above; and

WHEREAS, the County is willing to issue building permits for the construction of dwelling units under the terms stated in the Amended Alternative Agreement, pursuant to the provisions of Chapter 25A of the Code, and pursuant to the Separate Agreements to be executed by Applicants, their successors or assigns, for each of the three phases identified above.

NOW, THEREFORE, in consideration of the foregoing Recitals, each of which shall be considered a substantive part of this Amended Alternative Agreement, and the mutual promises, conditions, and obligations provided for herein, the parties hereto agree as follows:

1. Unless the total number of units approved is adjusted during the approvals process for Revised Phases I, II and III, Applicants agree to construct 860 total dwelling units in the subdivision, including 107 on-site rental MPDUs in Revised Phase III in the two (2) locations as generally shown on Exhibit "A", and to make the Alternative Payment for the remaining 48 MPDUs to the HIF. Sixty-four (64) of the 107 on-site MPDUs shall have a 30-year control period pursuant to Section 25A-9 of the Code.

2. Prior to the release of building permits for construction of any phase, Applicants, their successors or assigns, shall execute a Separate Agreement.

3. The time at which the Alternative Payment for the 48 MPDUs not constructed on-site shall be paid, the form of security satisfactory to the County to ensure the construction of the 107 on-site MPDUs, and the timing and posting of such security shall be addressed in the Separate Agreements.

4. Default by Applicants, their successors or assigns, under the Separate Agreements shall not render the Applicants in default of any provisions of this Amended Alternative Agreement.

5. A waiver by the County of a specific default must be in writing from the County, and shall not be a waiver of any other subsequent default of similar or different nature.

6. No failure on the part of the County to exercise, and no delay in exercising, any right or remedy permitted by law or pursuant to this Amended Alternative Agreement will operate as a waiver thereof.

7. Any notices sent pursuant to this Amended Alternative Agreement must be delivered in writing to:

Montgomery County:

Department of Housing and Community Affairs
100 Maryland Avenue, 4th Floor
Rockville, MD 20850

Applicants:

Camalier Limited Partnership
6500 Rock Spring Drive
Suite 600
Bethesda, MD 20814

Davis Brothers Montgomery Farm Limited Partnership
Floyd E. Davis Company
1629 K Street, N.W.
Suite 900
Washington, DC 20006
Attn: John Davis and Floyd E. Davis III

with copies to:

Charles A. Camalier III
c/o Wilkes Artis, Chartered
1150 - 18th Street, N.W.
Suite 400
Washington, DC 20003

and

Barbara A. Sears, Esquire
Linowes and Blocher LLP
7200 Wisconsin Avenue
Suite 800
Bethesda, MD 20814

8. No member, officer, or employee of the County, and no other public official of the County will either exercise any function or responsibility with respect to the subject matter of this Amended Alternative Agreement during his or her tenure, or for one year thereafter have any interest, direct or indirect, in the subject matter of this Agreement.

9. This Amended Alternative Agreement is assignable in whole or in part without the consent of the County.

10. This Amended Alternative Agreement is contingent on a determination by Camalier/Davis, their successors or assigns, in their sole discretion, to proceed to construct the Revised Project pursuant to the Amended Alternative Agreement. If Camalier/Davis, their successors and assigns, determine not to proceed to construct the Revised Project pursuant to the Amended Alternative Agreement, then the Original Alternative Agreement shall remain in full force and effect without modification.

11. This Amended Alternative Agreement is binding upon and inures to the benefit of the agents, successors, heirs, and assigns of the Applicants.

12. The terms of this Amended Alternative Agreement will survive the execution and delivery of any deeds or leases, and shall not merge therein.

[SIGNATURE PAGES FOLLOW]


IN WITNESS WHEREOF, Applicants have caused these presents to be executed by their _____ and their corporate seal to be affixed, and do hereby appoint _____ their true and lawful attorney-in-fact to acknowledge and deliver these presents, and Montgomery County, Maryland has, on the day and year hereinabove written, caused these presents to be signed by Elizabeth B. Davison representing the Department of Housing and Community Affairs, and does hereby appoint the said Elizabeth B. Davison its true and lawful attorney-in-fact to acknowledge and deliver these presents.

WITNESS:

APPLICANTS:

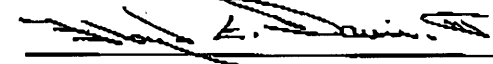
CAMALIER LIMITED PARTNERSHIP,
a Maryland limited partnership

By: Camalier Investment Corporation,
a Maryland corporation,
General Partner

By: 
Name: _____
Title: _____


DAVIS BROTHERS MONTGOMERY FARM
LIMITED PARTNERSHIP,
a Maryland limited partnership

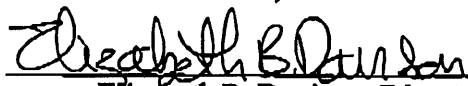
By: DBF, Inc.; General Partner

By: 
Name: _____
Title: _____

WITNESS:

MONTGOMERY COUNTY, MARYLAND



By: 
Elizabeth B. Davison, Director
Department of Housing and
Community Affairs


STAFF REVIEW BY: 

~~STATE OF MARYLAND~~ District of
~~COUNTY OF MONTGOMERY~~ Columbia

I HEREBY CERTIFY that before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared Charles A. Cavalier, III, attorney-in-fact for Applicant, who is personally well known to me as the person named as attorney-in-fact in the foregoing instrument, and as attorney-in-fact, as aforesaid executed and acknowledged the foregoing instrument in the name and on behalf of Applicant, for the uses and purposes herein contained.

WITNESS my hand and seal this 11th day of January, 2005
~~December, 2004.~~

My Comm. Exp: _____



NOTARY PUBLIC
Luisa E. Alvarez
Notary Public, District of Columbia
My Commission Expires: September 30, 2008

~~STATE OF MARYLAND~~ District of
~~COUNTY OF MONTGOMERY~~ Columbia

I HEREBY CERTIFY that before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared Hoyd E. Davis, III, attorney-in-fact for Montgomery County, Maryland, who is personally well known to me, and as attorney-in-fact as aforesaid, and by virtue of the power vested in him, executed and acknowledged the foregoing instrument to be the act and deed of Montgomery County, Maryland for the uses and purposes herein contained.

WITNESS my hand and seal this 11th day of January, 2005
~~December, 2004.~~

My Comm. Exp: _____


NOTARY PUBLIC
Luisa E. Alvarez
Notary Public, District of Columbia
My Commission Expires: September 30, 2008

STATE OF MARYLAND
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared ELIZABETH B. DAVISON, attorney-in-fact for Montgomery County, Maryland, who is personally well known to me, and as attorney-in-fact as aforesaid, and by virtue of the power vested in him, executed and acknowledged the foregoing instrument to be the act and deed of Montgomery County, Maryland for the uses and purposes herein contained.

WITNESS my hand and seal this 24th day of January, 2005.

My Comm. Exp: 2/04/08

Janice Capobianco
NOTARY PUBLIC

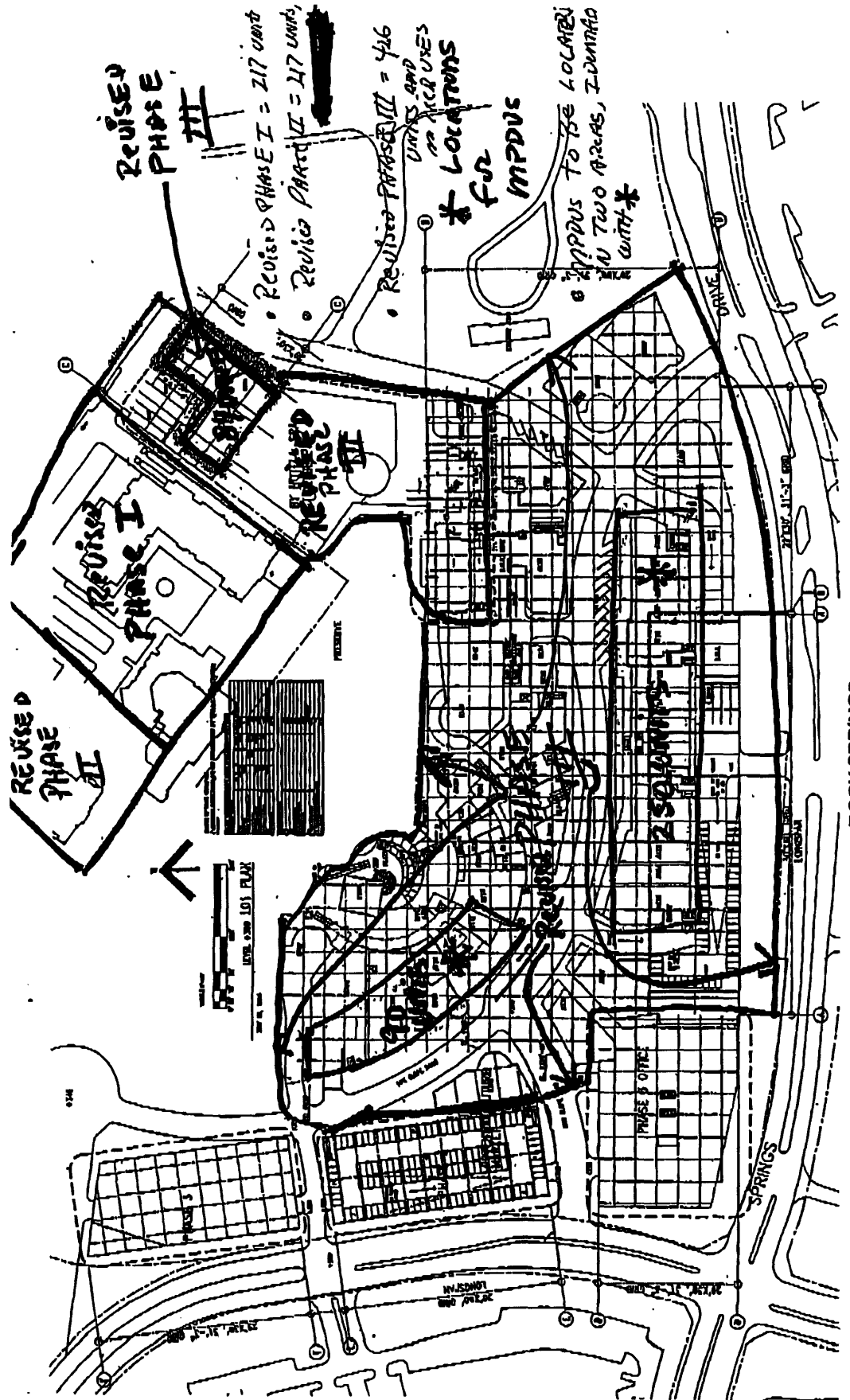


Exhibit "A"

ROCK SPRINGS