



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

MCPB
Item: 8
Date: 6/16/2011

June 9, 2011

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mary R. Bradford, Parks Director *M.R.B.*
 Mike F. Riley, Deputy Parks Director *M.F.R.*
 Mitra Pedoeem, Chief, Park Development Division *Mitra*

FROM: Michael Ma, Park Development Division *MM*

SUBJECT: Draft Agreement with developer EYA for granting an access road easement
 Little Falls Stream Valley Park

The purpose of this item is for the Planning Board to receive public comments on the draft agreement (Attachment A) to grant an access road easement, approximately 4,500 square feet, over Little Falls Stream Valley Park to EYA for a townhouse development on Hoyt Property in Westbard.

BACKGROUND

EYA requested an easement in Little Falls Park to build an access road, approximately 95 feet in length, from Little Falls Parkway to the proposed townhouse development on Hoyt Property.

Hoyt Property is currently occupied by an industrial use. Access to the property is currently from Butler Road through an easement on adjacent industrial properties. The approved 1982 Westbard Sector Plan encourages a townhouse development on the property and indicates a possible access road off Little Falls Parkway to serve the development.

Planning Board Approval

At a public meeting on January 20, 2011, the Planning Board, agreed with the recommendation of the Parks Department and recommended for approval by the full Commission the granting of the requested access easement to EYA subject to certain terms and conditions. The Board also

directed the staff to work with EYA to draft an agreement for granting the easement and to bring the agreement to the Board for review and approval.

Full Commission Approval

On February 16, 2011, the full Commission agreed to grant the requested access easement on the same terms as recommended by the Planning Board (Attachment B).



DRAFT AGREEMENT

The draft agreement reflects the terms imposed by the Commission’s approval of the easement with additional provisions to:

- specify long term maintenance responsibilities,
- address community groups’ concerns, and
- clarify the Commission’s role in granting the requested access easement.

Community Groups' Concerns

In response to community groups' concerns raised by their representative Norman Knopf at the January 20 Planning Board meeting, the agreement incorporated the following provisions that require EYA to provide:

- a public access easement for pedestrians and bicycles to traverse the Development Site for access from the Little Falls Parkway Easement to and from the Capital Crescent Trail; and
- a green landscape easement granted to the Commission as an aesthetic green space that can be viewed by users of the park and/or trail. The green space easement areas shall be at least equal in gross area to the access road easement.

Planning Board's Role

The agreement includes the following provisions to clarify that the Commission acts in its capacity as the owner of the land and is not bound in any regulatory capacity regarding the easement:

- Nothing in this Agreement shall be deemed to waive any obligation of Grantee to appear before the Montgomery County Planning Board in its regulatory capacity. Any improvements to the Easement area shall be subject to applicable law, rules, and regulations, including governmental approvals and permits.
- Grantee acknowledges and agrees that the Grantor is acting as an owner of land under this Agreement and any and all approvals and/or consents required from Grantor under this Agreement do not substitute for regulatory approvals required under applicable law, rules, and regulations and shall not impair, restrict, hinder, or in any way affect the Grantor from acting in its regulatory capacity.

RECORDATION OF EASEMENT

If the Board approves the terms of the draft agreement, staff will finalize the agreement and execute it upon submission of the first \$100,000 financial contribution by EYA. The easement, however, will not be recorded by the Commission until EYA fulfills the remaining obligations, \$400,000 payment or completion of equivalent park improvement projects.

ATTACHMENTS

- A. Draft Agreement
- B. Commission Resolution 10-32

ATTACHMENT A

DRAFT AGREEMENT

THIS AGREEMENT (this "Agreement"), is made and entered into as of _____, 2011 by and between The Maryland-National Capital Park and Planning Commission ("Commission" also referred to herein as "Grantor") and EYA, LLC ("Grantee").

WITNESSETH:

WHEREAS, the Commission is authorized by Article 28, Section 5-111 of the Annotated Code of Maryland to sell, convey, transfer, lease, or exchange any land held by it and deemed by the Commission not to be needed for park purposes or other authorized purposes; and

WHEREAS, Grantee, a developer that specializes in urban-infill townhome development, desires to develop a townhouse subdivision in Westbard located near Little Falls Stream Valley Park Unit 1 on a 1.81-acre development site, known as the Hoyt Property (the "Development Site") located between Little Falls Parkway and the Capital Crescent Trail, approximately 1,000 feet south of River Road; and

WHEREAS, Grantee submitted a request to the Montgomery County Department of Parks (the "Parks Department") for the Commission to grant an easement that is approximately 4,500 square feet in size (approximately 45 feet by 100 feet) over existing parkland directly off Little Falls Parkway (the "Easement") to provide access to the Development Site as a result of the Development Site lacking any direct vehicular access to a public street; and

WHEREAS, the Development Site is currently zoned 1-1 and is occupied by a distribution center for the Bethesda Cinder Block Manufacturing Company and the approved 1982 Westbard Sector Plan (the "Sector Plan") encourages a townhouse development on the Development Site and indicates a possible access road off Little Falls Parkway to serve the encouraged development; and

WHEREAS, in addition to realizing the Sector Plan's vision, the replacement of the existing industrial use with a residential development will bring positive changes to the natural environment of adjacent parkland and communities; and

WHEREAS, at a public hearing on January 20, 2011, the Montgomery County Planning Board agreed with the recommendation of the Parks Department and recommended for approval by The Maryland – National Capital Park and Planning Commission the granting of the requested access easement to Grantee subject to the terms and conditions set forth herein on the basis that the requested access easement is consistent with the Sector Plan and is not going to adversely impact the surrounding park area; and

WHEREAS, the Parks Department presented this matter to The Maryland-National Capital Park and Planning Commission on February 16, 2011, and the full Commission agreed to grant the requested access easement on the same terms as recommended by the Montgomery County Planning Board.

NOW, THEREFORE, BE IT RESOLVED, for good and valuable consideration, Grantor and Grantee agree as follows:

1. Grantor will convey to Grantee a non-exclusive easement for passenger vehicle, bicycle and pedestrian access to and from the Development Site, through a narrow strip of parkland, connecting the Development Site to Little Falls Parkway, approximately as reflected in the sketch and description attached hereto as Exhibit 1, being approximately 4,500 square feet, (the "Easement Area").
2. In exchange for the Easement, Grantee shall implement, or make financial contributions to implement, certain public amenity projects as requested by Commission staff to enhance the surrounding community and parkland. The public amenity projects may include, but are not limited to:
 - a. A stream restoration project to naturalize the existing concrete channel along the eastern frontage of the property; and
 - b. A non-native invasive species management program for designated areas within Little Falls Stream Valley Park and the Capital Crescent Trail as part of natural habitat restoration efforts for the parks; and
 - c. A trail renovation/maintenance project to refurbish the four-foot-wide shoulder of the Capital Crescent Trail; and
 - d. Purchase of radar speed display signs for use as traffic calming measures along Little Falls Parkway, the Little Falls Trail, the Capital Crescent Trail, and roadways which impact Commission owned, managed or maintained trails.

Some of the above referenced public amenity projects may be modified or replaced with other suitable projects depending on the timing of development approvals of the proposed residential development and the schedule of individual amenity projects.

3. Grantee shall contribute \$500,000 as consideration for the Easement which sum is to be used to implement the amenity projects referenced above or will constitute the financial contribution mentioned above, according to the following schedule:
 - a. Twenty percent, or \$100,000, at the time of execution of this Agreement which amounts shall be non-refundable; and
 - b. Eighty percent, or \$400,000, prior to either the issuance of a Park Construction Permit for the proposed development's construction activities within parkland or the recording of the Easement, whichever is first to occur.
4. Vehicular use of the Easement will not include use by trucks or vehicles that are prohibited from using Little Falls Parkway as provided under Section 4 of Chapter IV of Commission Rules and Regulations. Vehicular access also will be limited to passenger vehicles, bicycles and pedestrians traveling to or from the residential

development planned for the Development Site and pedestrians and bicycles traversing the Development Site for access to and from the Capital Crescent Trail.

5. This Easement is granted solely to EYA, LLC to construct a townhouse development per a Site Plan approved by the Montgomery County Planning Board. The Grantee may not assign its interest in the Easement to another party other than other parties owned by or affiliated with EYA, LLC and to the individual homeowners and/or the homeowners' association for the townhomes to be built on the Development Site unless written approval is obtained from Grantor subject to such terms and conditions Grantor may require.
6. The cost of constructing, maintaining, repairing, and, to the extent necessary, replacing the access roadway, sidewalk, bridge, and other improvements associated the proposed townhouse development within the Easement area shall be the responsibility of EYA, LLC or the assignees described in paragraph 5 of this Agreement. All of the improvements within the Easement shall be constructed and maintained in accordance with the Commission's standards and specifications. The Commission may revoke the easement if this requirement is not met to the Commission's satisfaction.
7. The Easement will be established after the Development Site has been rezoned from industrial use to the RT-15 zone and the Site Plan for the Development Site approved as proposed by Grantee, but will not be open to vehicular use until one or more townhouse units on the Development Site is available for sale.
8. In addition to the commitments/payment recited above, as part of the Site Plan approval process, Grantee will provide: (1) a public access easement for pedestrians and bicycles to traverse the Development Site for access from the Little Falls Parkway Easement to and from the Capital Crescent Trail and (2) a green landscape easement granted to the Maryland-National Capital Park and Planning Commission, primarily along the edge of the property adjoining the Capital Crescent Trail and possibly elsewhere on the Development Site, as an aesthetic green space that can be viewed by users of the park and/or trail. Such easement areas shall be at least equal in gross area to the gross area of the easement identified in Paragraph 1 above.
9. Nothing in this Agreement shall be deemed to waive any obligation of Grantee to appear before the Montgomery County Planning Board in its regulatory capacity. Any improvements to the Easement area shall be subject to applicable law, rules, and regulations, including governmental approvals and permits.
10. Grantee acknowledges and agrees that the Grantor is acting as an owner of land under this Agreement and any and all approvals and/or consents required from Grantor under this Agreement do not substitute for regulatory approvals required under applicable law, rules, and regulations and shall not impair, restrict, hinder, or in any way affect the Grantor from acting in its regulatory capacity.

11. Within three years from the execution of this Agreement, Grantee shall either obtain a park construction permit or record the Easement, and make the payments described in paragraph 3 above. This agreement expires at the end of the third year. Notwithstanding these provisions, should delays in the project approval process or changes in market conditions prevent this project from proceeding within this time frame, this Agreement will be extended for an additional two years under the same terms and conditions.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each party hereto, has executed this Agreement under seal on its own behalf by its duly authorized representatives.

ATTEST:

Joseph Zimmerman
Secretary-Treasurer

WITNESS:

GRANTOR:

The Maryland-National Capital Park and
Planning Commission

By: _____ (SEAL)
Patricia Colihan Barney
Executive Director

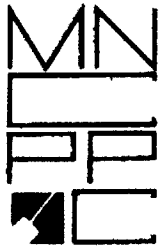
GRANTEE

EYA, LLC

By: _____ (SEAL)

Name: _____

Title: _____



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

6611 Kenilworth Avenue • Riverdale, Maryland 20737

M-NCPPC 10-32

RESOLUTION

WHEREAS, the Maryland-National Capital Park and Planning Commission ("Commission") is authorized by Article 28, Section 5-111 of the Annotated Code of Maryland to sell, convey, transfer, lease, or exchange any land held by it and deemed by the Commission not to be needed for park purposes or other authorized purposes; and

WHEREAS, EYA, a developer who specializes in urban-infill townhome development, desires to develop a townhouse subdivision in Westbard located near Little Falls Stream Valley Park Unit 1 on a 1.81-acre development site, known as Hoyt Property (the "Development Site") located between Little Falls Parkway and the Capital Crescent Trail, approximately 1,000 feet south of River Road in Montgomery County, Maryland; and

WHEREAS, EYA submitted a request to the Montgomery County Department of Parks (the "Parks Department") for the Commission to grant an easement that is approximately 95 feet in length over existing parkland directly off Little Falls Parkway (the "Easement") to provide access to the Development Site as a result of the Development Site lacking any direct vehicular access to a public street; and

WHEREAS, the Development Site is currently zoned I-1 and is occupied by a distribution center for the Bethesda Cinder Block Manufacturing Company. The approved 1982 Westbard Sector Plan encourages a townhouse development on the Development Site and indicates a possible access road off Little Falls Parkway to serve the encouraged development; and

WHEREAS, in addition to realizing the Sector Plan's vision, the replacement of the existing industrial use with a residential development will bring positive changes to the natural environment of adjacent parkland and communities; and

WHEREAS, the Montgomery County Planning Board received and considered a recommendation from staff of the Parks Department at its closed session meeting held on Thursday, December 16, 2010, to grant the requested easement subject to certain conditions including EYA implementing, or making financial contributions to, certain public amenity projects as requested by the Parks Department to enhance the surrounding community and parkland and to offset any impact of the access road; and

WHEREAS, at a public meeting held on Thursday, January 20, 2011, the Montgomery County Planning Board agreed with the staff recommendation and recommended to the Maryland-National Capital Park and Planning Commission the granting of the requested access easement to EYA subject to the terms and conditions set forth herein since the subject parkland required for the Easement is no longer needed for park purposes or other authorized purposes.

NOW THEREFORE BE IT RESOLVED, that The Maryland-National Capital Park and Planning Commission hereby approves the granting of the Easement to EYA subject to the following terms and conditions since the subject parkland that is required for the Easement is no longer needed for park purposes or other authorized purposes:

1. In exchange for the Easement, EYA shall implement, or make financial contributions to, certain public amenity projects as requested by Parks staff to enhance the surrounding community and parkland. The public amenity projects may include, but not be limited to:
 - a. A stream restoration project to naturalize the existing concrete channel along the eastern frontage of the property; and
 - b. A non-native invasive species management program for designated areas within Little Falls Stream Valley Park and the Capital Crescent Trail as part of natural habitat restoration efforts for the parks; and
 - c. A trail renovation/maintenance project to refurbish the four-foot-wide shoulder of the Capital Crescent Trail; and
 - d. Installation of radar speed display signs along Little Falls Parkway as a traffic calming measure.

Some of the above-referenced public amenity projects may be modified or replaced with other suitable projects depending on the timing of development approvals of the proposed residential development and the schedule of individual amenity projects.

2. EYA shall contribute \$500,000 as consideration for the Easement which sums are to be used to implement the amenity projects referenced above according to the following schedule:
 - a. Twenty percent or \$100,000 prior to execution of the contract for the Easement;
 - b. Eighty percent or \$400,000, prior to either the issuance of a Park Construction Permit for the proposed residential development or the recording of the Easement, whichever is first to occur.
3. EYA shall enter into a contract with the Commission (the "Easement Contract") to establish terms of the easement and an implementation plan of the required public amenity projects prior to filing a Preliminary Plan of Subdivision application for the proposed residential development. The Easement Contract shall be subject to further review and approval by the Montgomery County Planning Board prior to becoming effective. The Easement shall not be effective prior to such review and approval by the Montgomery County Planning Board.
4. Approval of the Easement by the National Capital Planning Commission prior to execution of the contract for the Easement;

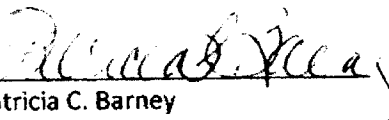
BE IT FURTHER RESOLVED, that in connection with the transactions contemplated herein, the Executive Director is authorized to execute and deliver, on behalf of the Commission, any and all such certificates, documents, and/or instruments, and to do or cause to be done, any and all such acts, as the Executive Director deems necessary or appropriate to make effective or to implement the intended

purposes of the foregoing resolutions, without limitation, and the taking of such actions shall be deemed conclusively to be authorized hereby.

* * * * *

Certification

This is to certify the foregoing is a true and correct copy of a resolution adopted by the Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, with Commissioners Parker, Carrier, Cavitt, and Vaughns voting in favor of the motion, Commissioners Clark, Squire, Presley, and Alfandre being absent at its regular meeting held on February 16, 2011, in Silver Spring, Maryland.



Patricia C. Barney
Executive Director