

MAR 14 2012



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

MCPB No. 12-26
Preliminary Plan No. 120120020
Mid-Pike Plaza (Pike & Rose)
Date of Hearing: February 23, 2012

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on October 10, 2011, the Planning Board approved Sketch Plan 320110010 establishing several binding elements, including a maximum density of 3,422,888 square feet of total development including a maximum of 1,716,246 square feet of no-residential development, on 24.38 acres of land split-zoned CR3 C1.5 R2.5 H200 and CR4 C3.5 R3.5 H300 property bound by Montrose Parkway on the north, Hoya Street on the west, Rockville Pike on the east, and Old Georgetown Road on the south ("Property" or "Subject Property") in the White Flint Sector Plan ("Master Plan" or "Sector Plan") area; and

WHEREAS, on August 3, 2011, Federal Realty Investment Trust ("Applicant"), filed an application for approval of a preliminary plan for up to five lots on the Property, to be platted in phases¹; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120120020, Mid-Pike Plaza (Pike & Rose) ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board, dated February 10, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report" or "Report"); and

¹ Since the Property is to be platted in phases, unless otherwise noted, each reference to a record plat in the conditions is to the record plat that includes the specified improvement.

Approved as to
Legal Sufficiency:


2/29/12

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WHEREAS, on February 23, 2012, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on February 23, 2012, the Planning Board approved the Application, subject to certain conditions, on motion of Commissioner Anderson, seconded by Commissioner Presley, with a vote of 4-0; Commissioners Anderson, Carrier, Presley, and Wells-Harley voting in favor, with Commissioner Dreyfuss absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120120020, subject to the following conditions:

1. Approval is limited to five (5) lots for a maximum density of 3.422,888 square feet of total development including a maximum of 1,716,246 square feet of commercial uses. A minimum of 12.5% of any residential units must be moderately priced dwelling units ("MPDUs").
2. The Applicant must dedicate, and the record plat must reflect, the Sector Plan-recommended 162-foot right-of-way (81 feet from centerline) for Rockville Pike (MD 355) as shown on the Preliminary Plan, subject to State Highway Administration ("SHA") and Staff approval of the ultimate location of the centerline.
3. The Applicant must dedicate, and the record plat must reflect, a 110-foot right-of-way (50 feet from centerline) and a 10-foot Public Improvement Easement along this dedicated right-of-way for Old Georgetown Road as shown on the Preliminary Plan.
4. The Applicant must dedicate, and the record plat must reflect the Sector Plan-recommended 120-foot right-of-way (60 feet from centerline) for Hoya Street as shown on the Preliminary Plan.
5. The Applicant must dedicate, and the record plat must reflect the Sector Plan-recommended 150-foot right-of-way (75 feet from centerline) for Montrose Parkway as shown on the Preliminary Plan.
6. The Applicant must dedicate, and the record plat must reflect the Sector Plan-recommended 70-foot right-of-way for business district street B-15 (Public Street A) as shown on the Preliminary Plan.

7. The Applicant must dedicate, and the record plat must reflect, the Sector Plan-recommended 80-foot right-of-way for business district street B-16 (Public Street 1) as shown on the Preliminary Plan.
8. The Applicant must provide a centralized location within the overall site for a public bike-sharing facility approximately 8-by-40 feet in size, as determined by the applicable subsequent site plan.
9. The Applicant must provide bicycle parking spaces for each site plan phase per at least the minimum number required by the Zoning Ordinance.
10. The Applicant must enter into a Traffic Mitigation Agreement with the Montgomery County Department of Transportation ("MCDOT") and the Planning Board to participate in the North Bethesda Transportation Management District ("TMD") and assist in achieving and maintaining the non-auto driver mode share goals recommended in the Sector Plan. The Traffic Mitigation Agreement must be executed prior to release of any building permits.
11. The Applicant shall comply with the White Flint Urban District requirements when it is established by Montgomery County Council.
12. All required offsite forest conservation areas must be placed in Category I Conservation Easements. Category I Conservation Easements for each phase must be platted prior to any clearing or grading occurring on site for that phase.
13. The Applicant must submit and obtain Staff approval of a revised Final Forest Conservation Plan for each of the successive phases.
14. Mitigation for removal of the 41-inch diameter willow oak along the eastern Property boundary ("variance tree V-1") must be included in the Final Forest Conservation Plan for the phase that causes the removal of the tree. The Applicant will be required to plant at least 4 native canopy trees of at least 3" DBH in mitigation for the removal of variance tree V-1.
15. Trees proposed for tree cover credit to satisfy afforestation requirements should be in the shade tree category rather than ornamental trees. Trees used for tree cover credit must appear either in the list of approved trees in the Trees Technical Manual, or on the MCDOT approved street tree list.
16. Applicant to submit and obtain approval of the forest conservation financial security instrument prior to any clearing or grading occurring on site.
17. Proof of conveyance of the portion of the Property owned by SHA must be provided to Staff prior to recordation of the plat that includes proposed Lot 1C.
18. The Applicant must comply with the conditions of approval of the Montgomery County Fire and Rescue ("MCF&R") letter dated January 6, 2012. These conditions may be amended by MCF&R, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.

19. The Applicant must comply with the conditions of approval of the MCDOT letter dated January 25, 2012 (as amended by the letter dated January 27, 2012). These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
20. The Applicant must comply with the conditions of approval of the SHA letter dated January 24, 2012. These conditions may be amended by SHA, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
21. The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services ("MCDPS") stormwater management concept approval letter dated January 20, 2012. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
22. The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s), as applicable.
23. The Applicant must satisfy provisions for access permits as required by SHA.
24. The Applicant must provide the 10-foot-wide Public Improvement Easement ("PIE") along the north side of the right-of-way for Old Georgetown Road, as shown on the Preliminary Plan. This PIE must be recorded by deed in the Land Records of Montgomery County and referenced on the record plat. The PIE is to be conveyed to the SHA with the Liber and Folio information shown on the plat. The SHA will require Montgomery County to enter into a Memorandum of Understanding ("MOU") with the SHA under which the County will assume maintenance and liability for the non-standard improvements to be constructed within the PIE. The MOU will also indicate that the County may transfer those maintenance and liability responsibilities to a third party – such as the Applicant. The County will require a Declaration of Covenants (for maintenance and liability) for the non-standard improvements within the PIE to be executed between Montgomery County and the Applicant prior to recordation of the plat (and properly referenced on the record plat).
25. No clearing, grading, or recording of any plats prior to certified site plan approval.
26. Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
27. In the event that a subsequent site plan approval substantially modifies the approved Preliminary Plan with respect to lot configuration or right-of-way location, width, or alignment, the Applicant must obtain approval of a preliminary plan amendment prior to certification of the site plan.

28. The Certified Preliminary Plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan review. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for this lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
29. Prior to the issuance of any residential building permit covered by this Preliminary Plan, the Applicant must make a School Facilities Payment at the elementary and middle school levels MCDPS. With this Preliminary Plan, the Applicant is proposing high/low rise w/parking residential units as defined by the Annual School Test effective July 1, 2011. This amounts to \$319.59 per residential unit at the elementary school level, and \$991.03 per residential unit at the middle school level. If the type of residential units changes, the applicable school facilities payment (per the Annual School Test effective July 1, 2011) will apply.
30. Phased Validity Periods
- a. The validity period for the non-transportation elements of the Adequate Public Facilities ("APF") approval for the residential uses is subject to the following phasing schedule:
 - Phase I – Issuance of building permits for 174 residential units, including a minimum of 12.5 % MPDUs, within 36 months from the 30th day after the Resolution is mailed;
 - Phase II – Issuance of building permits for the next 319 residential units, including a cumulative minimum of 12.5% MPDUs, within 48 months from the expiration date of the Phase I validity period; and
 - Phase III – Issuance of building permits for the balance of the residential units, including a minimum of 12.5% MPDUs, to be built in the project within 60 months from the expiration date of the Phase II validity period.
 - b. The validity period of the Preliminary Plan is subject to the following phasing schedule; by which time the record plat(s) for the land area that will be needed to construct the units in each APF phase must be recorded:
 - Phase I – 36 months from the 30th day after the Resolution is mailed;
 - Phase II – 48 months from the expiration date of the Phase I validity period; and

Phase III – 60 months from the expiration date of the Phase II validity period.

31. All necessary easements must be shown on the record plat.
32. The Applicant must prepare and submit traffic signal warrant studies for the Rockville Pike/Street 1 and Old Georgetown Road/Street A intersections.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The Property is in the Mid-Pike Plaza District within the *Sector Plan*. The Sector Plan rezoned the property to commercial residential (“CR”) zones, specifically CR4, C3.5, R3.5, H300 and CR3, C1.5, R2.5, H200. The area at the northwest intersection of Old Georgetown Road (MD 187) and Rockville Pike (MD 355) is in the CR4 zone, while the remainder of the property is in the CR3 zone.

The Sector Plan’s general recommendations for the Property states that “redevelopment in the district should retain its regional marketplace function and include residential and civic uses. Building heights of 300 feet should frame the corner of Rockville Pike and Old Georgetown Road. Public use space, such as an urban plaza or neighborhood green or a civic or cultural attraction, will provide reasons to gather and encourage all day activity”. Regarding public use space, the Plan recommends the following: “provide a minimum one-acre public use that can be divided into smaller areas, such as urban plazas or neighborhood greens, on the Mid-Pike Plaza property”.

The Preliminary Plan both enhances the regional marketplace function, and includes a wide range of uses including residential and civic uses. The public use spaces have been carefully planned to be consistent with the recommendations of the Sector Plan and dispersed throughout the development.

Street Network

The public and private streets shown on the Preliminary Plan are consistent with the Sector Plan recommendations. The Sector Plan established a new network of public and private streets on the Mid-Pike Plaza property, including a new east-west business district street, Street 1, between Rockville Pike (MD 355) and Hoya Street with a minimum right-of-way of 80 feet and 2 travel lanes. The Sector Plan referenced Montgomery County Road Code standard 2005.02 modified with regard to this street. The Plan notes that modification to the Road

Code indicates “that some modification is needed to the referenced design standard to reflect planned elements such as transit priority, bike lanes, or turn lanes”. The right-of-way for this street is larger than the north-south public street, Street A, since the forecast traffic at buildout and turning movements from Montrose Parkway is significant. Street A is also classified as a business district street with a minimum right-of-way of 70 feet. The Road Code reference standard is 2005.02 for this street. The Preliminary Plan shows the correct dedications for these streets.

Rockville Pike

Rockville Pike is classified as a major highway with a minimum right-of-way at 150-162 feet. The larger right-of-way for MD 355 is associated with the proposed Bus Rapid Transit (BRT) system. Transforming Rockville Pike into an urban boulevard is a main recommendation in the Sector Plan. The Plan recommends “reconstructing the ‘Pike’ as an urban boulevard, placing utilities underground, and adding a median wide enough to accommodate turn lanes and street trees. Street tree panels and wider sidewalks will promote walking. Bus priority lanes will be provided, located either in the median or along the curb”. The Sector Plan further states that “the design analysis for Rockville Pike should be undertaken during the first phase of the Plan as a priority study with the support of the County Executive and Council. During that time, there may be requests for development approval for projects fronting Rockville Pike. The recommended right-of-way is 150 feet, but additional right-of-way up to 162 feet should be reserved during the development process to accommodate the conclusion of the design analysis”.

The Preliminary Plan shows 81 feet of dedication from a relocated centerline of Rockville Pike. There is an existing easement indicated on Montgomery County Plat #6897 (Parcel “A” Corvette Shopping Center) and SRC Plat No. 17933 for the area along MD 355 for Mid-Pike Plaza. The Preliminary Plan shows the correct dedication for Rockville Pike.

Old Georgetown Road

Old Georgetown Road (MD 187), between Executive Boulevard and Rockville Pike, is classified as a major highway with a 120-foot right-of-way. Although Old Georgetown Road is recommended for a 120-foot right-of-way, this section of the road has several conditions limiting the ability to provide full dedication while maintaining the urban design objectives of the Sector Plan.

Sector Plan & Design Guideline Goals:

- Provide a street-wall along sidewalks;
- Provide activating uses, retail entrances, and outdoor café areas;
- Provide structure parking; and

- Provide proper sidewalk widths.

Site & Building Constraints:

- Grade drops 8 feet from Street B to Street A;
- Grade drops 14 feet from Street A to Hoya Street; and
- Parking is structured below grade requiring level slabs; for each floor not allowing the floors along the road to step with grade.

The Planning Board has weighed the goals of the Sector Plan and Design Guidelines against the site and building constraints, as well as the policy to require full dedication. If full dedication was granted, and the retail entrances and activating uses remained, a number of site elements, including steps, ramps, and walls are required within the right-of-way to deal with the grade changes. These elements do not meet the typical road standards, and create maintenance and liability issues for the SHA and the County. Further, if the elements were pushed to the outside of the right-of-way, the buildings would have to be set back further from the sidewalk, ultimately to 38 feet away from the curb. This would be anathema to the urban patterns the Sector Plan envisions. Alternatively, the retail entrances, café seating, and activating uses would have to be removed from the façade to allow the building wall itself to act as a retaining wall along the street.

Thus, in this particular case, the importance of achieving the built realm that satisfies the Sector Plan goals but will implement the sidewalks, planting, paths, and travel lanes to the agreed-upon street cross-section can best be achieved by a reduced dedication along Old-Georgetown Road with the remaining 10 feet placed in a PIE recorded on the record plat, and established as public use space enforced through the certified site plan. The Applicant is required to dedicate 50 feet from centerline of Old Georgetown Road, and place the additional 10 feet of what would otherwise be required as dedication in a PIE.

Bikeway Network

The Preliminary and site plans will begin to implement the bikeway recommendations for Old Georgetown Road and Hoya Street. The Sector Plan recommends a shared use path (LB-1) for the entire length of Hoya Street, and a dual bikeway (a shared use path and bike lane) (LB-2) for Old Georgetown Road, between the Hoya Street/Executive Boulevard intersection and Rockville Pike. This Preliminary Plan will implement the shared use paths for Hoya Street and Old Georgetown Road but the on-road bike lane for Old Georgetown will occur in the future.

Recreation Loop Extensions

Street A is part of the loop extension identified in the Sector Plan. The Plan establishes a recreation loop that is envisioned as a “signed pathway that is to be

incorporated into the street right-of-way as part of the sidewalk”; loop extensions “consist of short segments that link major public use spaces in the districts to the main loop”. The White Flint Urban Design Guidelines further recommend that “signage along [Street A’s] sidewalk (either side) indicate connections to the Loop in the south, and the various public use spaces within the district”. The Placemaking and Phase I Amenity Plan will help achieve the Sector Plan recommendation to identify public use spaces and facilities in the vicinity.

Environmental

Environmental site design techniques, increasing the tree canopy of the Sector Plan area to 20 percent, and minimization of carbon emissions are some of the recommendations in the Sector Plan. The development as approved will utilize partial green roofs for Buildings 11 and 12. Further, Street A has street trees that are 30 feet-on-center, with additional streetscape on Old Georgetown Road. Street A and Street 1 will utilize Silva Cells, a stormwater management system that is designed to accommodate street trees and stormwater. These measures will further implement the Sector Plan’s environmental recommendations.

Therefore, based on the analysis above and with the conditions of approval, the Planning Board finds the Preliminary Plan substantially conforms with the Approved and Adopted 2010 White Flint Sector Plan.

- 2. Public facilities will be adequate to support and service the area of the subdivision.*

Design Exceptions

MCDOT, SHA, and the Planning Board reviewed and approved the following nine design exceptions aimed at enhancing the pedestrian experience in what is envisioned as a high density, mixed-use, transit-oriented development:

1. Pavement of parking bays on Street A and Street 1 slope towards edge of travel lanes;
2. Reduction in standard intersection radii;
3. Reduction to standard right-of-way truncations at street intersections;
4. Walls and stairs in public right-of-ways per the landscape plan;
5. Stormwater management devices in the public right-of-way;
6. Trench drain at back of curb within the public right-of-way;
7. Building canopies within the public right-of-way;
8. Applicant will manage operations of the area, from building to building within public right-of-way for Street A and Street 1;
9. Reduction of loading spaces from guidelines.

Site Location and Vehicular Site Access Points

The Property is located on the north side of Old Georgetown Road between Rockville Pike (MD 355) and Hoya Street, with Montrose Parkway along the northern property line. The vehicular access points will be from Old Georgetown Road, Rockville Pike, and Hoya Street.

Transportation Demand Management

The Property is within the boundary of the North Bethesda Transportation Management District ("TMD"). The Applicant must enter into a traffic mitigation agreement to participate in the North Bethesda TMD. The Sector Plan recommends that the TMD achieve a 39% non-auto driver mode share (NADMS) goal for employees that consists of a 26% transit mode share, 5% ridesharing, and 8% other commuting modes of transportation.

Public Transit Service

Ride-On routes 5, 26, 38, 46, and 81 operate along the site's adjacent roadways. The Property is located between ¼ and ½ miles from the White Flint Metrorail Station.

Sector-Planned Roadway and Bikeway

In accordance with the *Sector Plan* and *Countywide Bikeways Functional Master Plan*, the Sector Planned- roadways and bikeways are as follows:

1. Montrose Parkway is designated as an arterial, A-270, with a recommended 300-foot right-of-way and a recommended shared use path, SP-5).
2. Rockville Pike (MD 355) is designated as a major highway, M-6, with a recommended 150-foot right-of-way and reservation for 12 additional feet (i.e., for a total of 162 feet) with a shared use path, Local Bikeway LB-5.
3. Old Georgetown Road (MD 187) is designated as a major highway, M-4, with a recommended 120-foot right-of-way and a recommended Dual Bikeway, LB-2, bike path on north side.
4. Hoya Street is designated as a major highway, M-4(a), with a recommended 120-foot right-of-way and a recommended shared use path, LB-1. MCDOT's Capital Improvements Program Project No. 501116, White Flint District West Transportation, includes construction of Hoya Street between Executive Boulevard and Montrose Parkway.
5. Public Street 1 is designated as a business street, B-16, with a recommended 80-foot right-of-way.
6. Public Street A is designated as a business street, B-15, with a recommended 70-foot right-of-way and an extension of the White Flint recreation loop.

Transportation Adequate Public Facilities Review

In lieu of the typical Local Area Transportation Review and Policy Area Mobility Review tests, the transportation Adequate Public Facilities test would be satisfied for new

developments in the *White Flint Sector Plan* area by requiring the property owners to participate and pay for infrastructure improvements as part of the White Flint Special Taxing District. The revenue generated from this project will go towards funding the MCDOT Capital Improvements Program Project No. 501116; White Flint District West Transportation, which includes construction of Hoya Street between Executive Boulevard and Montrose Parkway.

Other Public Facilities and Services

Except for schools, other public facilities and services are available and will be adequate to serve the proposed development. The site is served by public water and sewer. Gas, electric, and telecommunications services are also available to serve the property. Police stations, firehouses, and health services are currently operating within the standards set by the effective Subdivision Staging Policy. Pursuant to County Council Resolution 16-1324, adopted April 27, 2010, the Property is exempt from LATR and PAMR analysis because it is subject to payments under the White Flint Special Taxing District. The Application has been reviewed and approved by the Montgomery County Fire and Rescue Service (MCFRS), which has determined that the property has adequate access for emergency vehicles.

The Property is located in the Walter Johnson High School Cluster, which requires a School Facilities Payment at the elementary and middle school levels. This amounts to \$819.59 per residential unit at the elementary school level, and \$991.03 per residential unit at the middle school level. The School Facilities Payment must be made prior to the issuance of any residential building permit covered by this Preliminary Plan.

Therefore, based on the analysis above and with the conditions of approval, the Planning Board finds public facilities are adequate to support and service the area of the Preliminary Plan.

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

The lots have been reviewed for compliance with 50-29(a) of the Subdivision Regulations. The Planning Board finds that the size, shape, width, and area of the lots were appropriate for their location within the subdivision.

- 4. The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") for the site was approved by Staff on June 23, 2010. The site contains no forest, streams or their buffers, wetlands or their buffers, 100-year floodplains, or rare, threatened or

endangered species. There is one specimen-size willow oak tree (*Quercus phellos*) on the Property, variance tree V-1, near the southern entrance/exit along Route 355.

Forest Conservation

For purposes of Forest Conservation, the net tract area is 24.99 acres, which includes the 24.38-acre site plus 1.22 acres of off-site disturbance, less 0.61 acres of dedication for roads and improvements not being constructed as part of this development. The Preliminary Forest Conservation Plan requires a combined afforestation and reforestation of 3.75 acres. This requirement is to be satisfied with a combination of off-site reforestation (2.45 acres), payment of a fee-in-lieu (0.50 acres), and credit for landscaping (0.80 acres). The Applicant will stage the Final Forest Conservation Plan with each site plan approved for the site. The amount of afforestation/reforestation credit proposed with each site plan must be commensurate with the proportion of the net tract area being developed until the total of 3.75 acres of afforestation and reforestation is accomplished. The Final Forest Conservation Plan must be revised with each new site plan to reflect the total forest mitigation completed for all previous phases, including the current phase.

The site plan for Phase I has a limit of disturbance of 9.21 acres, which represents about 36.85% of the net tract area. The proportional afforestation/reforestation required for Phase I is 1.38 acres. The Final Forest Conservation Plan for Phase I will be 0.50 acres of fee-in-lieu payment, and 0.88 acres of off-site reforestation to fulfill the forest mitigation requirement. This leaves 2.37 acres of mitigation to be fulfilled in subsequent phases of development.

Variance

The Applicant is requesting a variance for removal of one specimen tree (variance tree V-1), a 41-inch diameter willow oak (*Quercus phellos*), which stands in a storm drain easement and is in the proposed ultimate right-of-way for Route 355. It will also be impacted by the grading for Street #3. The current phase of development does not require removal of the tree; however, it is anticipated that the tree will have to be removed for road improvements in the future. Mitigation for the variance tree V-1 must be included in the Final Forest Conservation Plan for the phase that causes the removal of the tree. The Applicant will be required to plant at least 4 native canopy trees of at least 3" dbh in mitigation for the removal of variance tree V-1.

Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone ("CRZ") requires a variance. The Applicant submitted a variance request on March 17, 2011 to remove one protected tree under Section 22A-12(b) (3) of the County Forest Conservation Law.

Unwarranted Hardship Basis

The proposed development is in accordance with both the intent and recommendations of the Sector Plan and the CR zones approved for this site (CR3, C1.5, R2.5, H200, and CR4, C3.5, R3.5, H300), both of which are intended to create higher density uses in the vicinity of the White Flint Metro Station. In particular, the Sector Plan recommends that Rockville Pike be redesigned as an urban boulevard including elements to accommodate pedestrian, bicycle and bus travel. The Sector Plan specifies that additional right-of-way up to 162 feet should be reserved during the development process to accommodate the required elements. Variance tree V-1 stands at the edge of the Property within the required Rockville Pike right-of-way dedication. It will also be significantly impacted by the grading for Street #3, which provides a portion of the street grid in this area. Not allowing the removal of variance tree V-1 would require changing the roadway recommendations of the Sector Plan. The Planning Board finds that the Applicant has a sufficient unwarranted hardship to further consider a variance.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board in order for a variance to be granted. The Planning Board has made the following determinations in the review of the variance request:

Variance Findings

The Planning Board has made the following determination based on the required findings that granting of the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

The Planning Board finds that removal of variance tree V-1 is consistent with the requirements and constraints of the Sector Plan, the zone, and what is intended for the Property and road networks. Granting the variance would not confer on the Applicant a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The Planning Board finds that the variance is based on the constraints of the site and the proposed development density and road network as recommended in the Sector Plan, rather than on conditions or circumstances which are the result of actions by the Applicant.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The Planning Board finds that variance tree V-1 is impacted by the grading for the proposed Street #3 and stands in the proposed right-of-way for improvements to Rockville Pike as required by the Sector Plan. There are no

conditions relating to land or building use, either permitted or nonconforming, on a neighboring property that have played a role in the need for this variance.

- 4. Will not violate State water quality standards or cause measurable degradation in water quality.*

The Planning Board finds that granting the variance will not violate State water quality standards or cause measurable degradation in water quality. Removal of variance tree V-1 will be more than compensated for by the installation of stormwater management treatments where none currently exist, and establishment of tree cover exceeding what is currently present on the site as part of the development.

Mitigation for Trees Subject to the Variance Provisions

Mitigation will generally be required at a rate that approximates the form and function of the protected trees to be removed. Therefore, the Planning Board is requiring the replacement to occur at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" DBH. This means that for the 41 caliper inches of trees removed, the required mitigation will be 4 native canopy trees with a minimum size of 3" dbh. While these trees will not be as large as the trees lost, they will provide some immediate canopy and will help augment the canopy coverage. The Planning Board therefore requires the addition of 4 native canopy trees with a minimum size of 3" dbh to the landscape plan for the site plan phase that impacts variance tree V-1.

Therefore, based on the analysis above the Planning Board finds that Preliminary Forest Conservation Plan meets the Environmental Guidelines and Forest Conservation Law. The variance approval is incorporated into the Planning Board's approval of the Preliminary Forest Conservation Plan.

- 5. The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the Property. This finding is based on the determination by DPS that the Stormwater Management Concept Plan approval meets DPS' standards.*

A stormwater management concept plan was approved by the MCDPS on January 20, 2012, meeting stormwater management requirements through a variety of Environmental Site Design techniques, including the use of green roofs and micro-bioretenion, to be supplemented by underground filters. There is currently no stormwater management for the site.

BE IT FURTHER RESOLVED, that for the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successors in interest to the terms of this approval.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 144 months (12 years) from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed; and

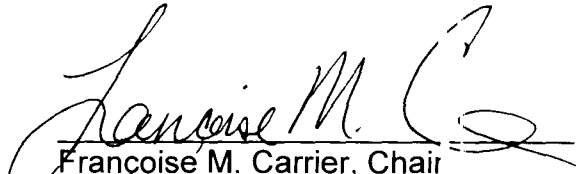
BE IT FURTHER RESOLVED, that this Resolution is the written opinion of the Planning Board, and the date of this Resolution is MAR 14 2012 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, March 8, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board