



Burtonsville Town Square, Preliminary Plan Amendment No. 12004109D

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Completed: 03/07/19

Description

**Burtonsville Town Square, Preliminary Plan
Amendment No. 12004109D**

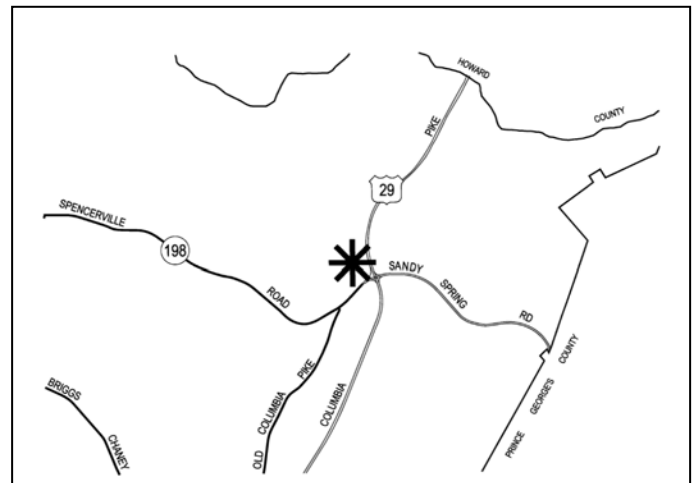
Request to extend the validity period by 2.5 years for a determination of adequate public facilities for a 27-acre shopping center; CRT-1.5 C-1.0 R-1.25 H-70 Zone; located on the northwest quadrant of the intersection of Old Columbia Pike (MD-198), Columbia Pike (US-29), and Sandy Spring Road; 1997 Fairland Master Plan and 2012 Burtonsville Commercial Crossroads Neighborhood Plan.

Recommendation – Approval with conditions

Applicant: Burtonsville Center LLC

Acceptance Date: December 12, 2018

Review Basis: Chapter 50



Summary

- Staff recommends **Approval with Conditions** to amend Preliminary Plan No. 120041090 to extend the validity period of the Adequate Public Facilities finding for a period of 2.5 years.
- The Application meets the findings required for APF extension under Section 50-4.3.J.7.

SECTION 1 – RECOMMENDATIONS AND CONDITIONS

Preliminary Plan Amendment No. 12004109D: Staff recommends approval of the Preliminary Plan Amendment subject to the following conditions. Unless modified in the conditions below, the previous conditions set forth by Preliminary Plan No. 120041090 (and as amended) remain in full force and effect:

Staff recommends striking condition 17 for the adequate public facility validity period and hereby replaces it with the following:

- 17) The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for 2.5 years (30 months) from the date of mailing of this Planning Board Resolution for Preliminary Plan Amendment No. 12004109D.

SECTION 2 – SITE LOCATION & DESCRIPTION

Site Location and Vicinity

The 27-acre Subject Property, identified as the Burtonsville Town Square Shopping Center (“Subject Property”) is located on the northwest quadrant of the intersection of Old Columbia Pike (Route-198) and Old Columbia Pike¹. It is identified in the 1997 *Fairland Master Plan* and 2012 *Burtonsville Commercial Crossroads Neighborhood Plan* (“Master Plans”), with the Shopping Center split zoned-CRT-1.5 C-1.0 R-1.25 H-70 and RC as shown in Figure 1.

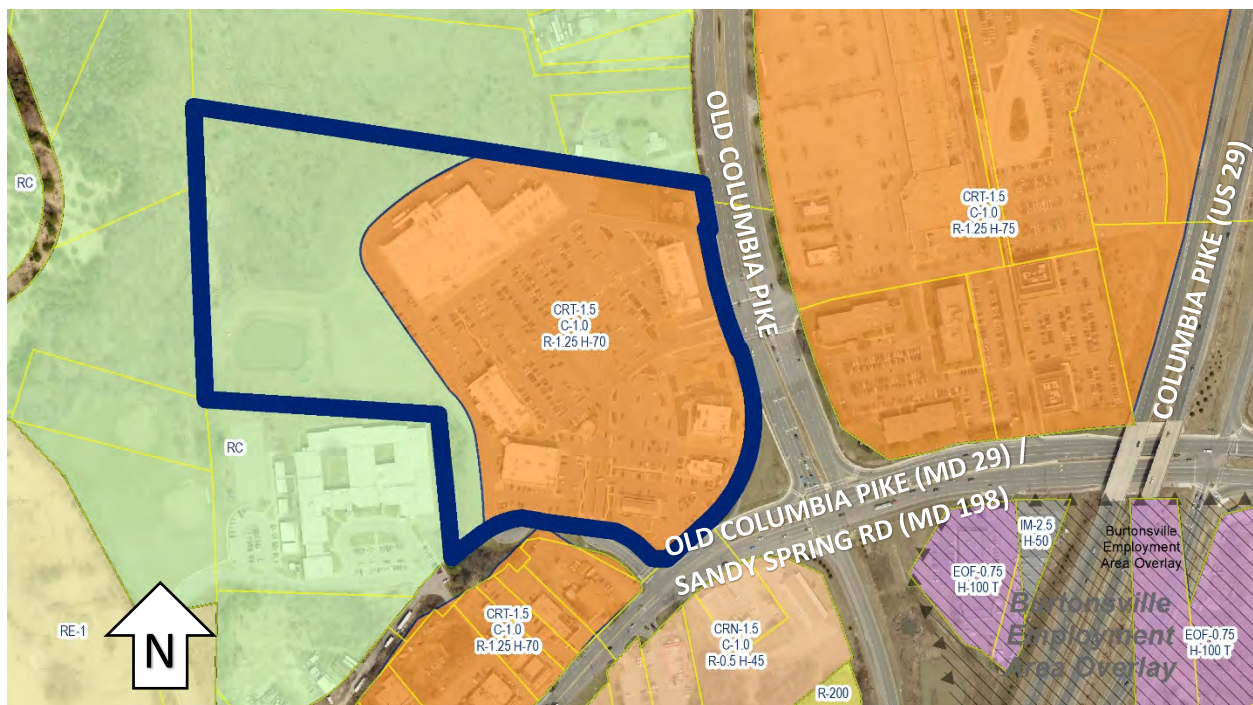


Figure 1 – Aerial Map with Zoning Districts

¹ For the purposes of this Staff Report, Old Columbia Pike along the east of the Shopping Center will be identified as MD-198 and Old Columbia Pike along the south of the Shopping Center will be identified as Old Columbia Pike.

To the north, outside of the Shopping Center, land uses consist of single-family detached homes, vacant land, and open space in the RC zone. To the east, the Burtonsville Crossing office park consists of restaurants, a financial institution, and office development in the CRT-1.5 C-1.0 R-1.25 H-75 zone. Land uses to the south consist of retail uses, a gas station with a convenience store, and restaurants in the CRT-1.5 C-1.0 R-1.25 H-70 and CRN-1.5 C-1.0 R-0.5 H-45 zones. To the west, land uses include the Burtonsville Elementary School, vacant land, and open space in the RC zone.



Figure 2 – Aerial View and Surrounding Uses

Site Analysis

The Subject Property is zoned CRT-1.5 C-1.0 R-1.25 H-70. Vehicular access to the Subject Property is provided from two existing access points, one signalized entrance on the east side of the Subject Property to Old Columbia Pike and one unsignalized intersection to the south to MD-198.

SECTION 3 – APPLICATION AND PROPOSAL

Previous Regulatory Approvals

Preliminary Plans

On March 26, 2006, the Planning Board approved Preliminary Plan No. 120041090 for the development of the property under C-2 zone for up to 250,000 square feet of retail space and 10,000 square feet of commercial office space on 27.21 acres of land (Attachment 2). Of the 260,000 square feet of development approved by Preliminary Plan No. 120041090, approximately 52%, or 136,040 square feet, has been constructed. The original determination for APF was granted for 61 months, with an original expiration date of April 21, 2011. The Montgomery County Council adopted legislation granting four separate 2-year extensions, for a total of eight years, for all APF validity periods as of March 31, 2009. This extended the APF validity period to April 21, 2019.

On July 10, 2008, the Planning Board approved Preliminary Plan Amendment No. 12004109A which revised condition No. 6 that required the extension of an eight-foot-wide shared-use path along US 29 from the northern property line to the PEPCO power line right of way to the north. The amended condition required the construction of a shared use path along the frontage of the Subject Property only.

On June 25, 2009, the Planning Board approved Preliminary Plan Amendment No. 12004109B to revise condition No. 4 of Corrected Opinion dated March 21, 2006 for the Shopping Center tying completion of the bike path to issuance of building permits.

On February 19, 2014, the Forest Conservation Plan No. 12004109C was administratively approved by Staff for minor revisions.

In 2014, the property was rezoned from the C-2 zone to the CRT zone under the comprehensive rezoning of Montgomery County.

Site Plan

On November 15, 2018, the Planning Board approved Site Plan No. 820180200 which approved a 2,250 square foot restaurant with a drive-thru on an existing surface parking lot within the shopping center.

Current Application

Proposal

This Preliminary Plan Amendment application requests to modify the APF condition to allow a 2.5-year extension to the validity period for a determination of APF for the Subject Property under 50.4.3.J.7. Preliminary Plan No. 120041090, mailed on March 21, 2006, provided a 61-month validity period for APF, originally set to expire on April 21, 2011. County statute subsequently extended all active APF validity periods for a total of 8 years during the recession, setting a new expiration date of April 21st, 2019. This application was received on December 12, 2018.

SECTION 4 – ANALYSIS AND FINDINGS

All previous findings of Preliminary Plan 120041090 (as amended) remain in full force and effect except as modified in the analysis below.

Findings – Chapter 50

3. Public Facilities will be adequate to support and service the area of the subdivision

Preliminary Plan 120041090 analyzed the Subject Property for adequacy of public facilities. The Subject Property does not contain residential uses; therefore, the original determination was limited to transportation adequacy. As part of the original application, the Preliminary Plan submitted a traffic study. No modifications to the study are being made by this application and the analysis contained within remains valid.

This application is being reviewed under 50.4.3.J.7 which sets the procedures to extend the validity period for an APF finding. The Planning Board must consider the following findings:

- a. *Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.*
 - i. *The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period expires.*

The application was filed on December 12, 2018. This is prior to the expiration date of April 21, 2019.

- ii. *The applicant must submit a new development schedule or phasing plan for completion of the project for approval.*

The application includes a development schedule, included as Table 1 below:

Description	Anticipated Time Period (Months) to Building Permit After April 21, 2019	Square Feet
Total Development Originally Allowed		260,000
Existing Built Square Feet	N/A	136,040
Restaurant with Drive Thru Site Plan No. 820180200	12 Months	2,250
Subtotal Existing and Site Plan No. 820180200 Approved Development	N/A	138,290
Remaining Unbuilt Development	30 Months	121,710

Table 1

- iii. *For each extension of an adequate public facilities determination:*

- (a) *the applicant must not propose any additional development above the amount approved in the original determination;*

The Applicant does not propose any development beyond that approved in the original determination.

- (b) *The Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;*

No additional public improvements are being required.

(c) The Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest

A full review of the Property's transportation adequacy was conducted by a 2004 traffic study for Preliminary Plan No. 120041090. The Subject Property has built 136 thousand square feet, or approximately 52%, of the total limit of 260 thousand square feet of development. Recent traffic counts in the immediate vicinity of the Subject Property (Old Columbia Pike/ US 29 SB Ramp / MD 198 and Old Columbia Pike/ North Shopping Center Entrance) remain significantly lower than the full build projection (Table 2). Moreover, these counts have shown a reduction of overall traffic as compared to the original 2004 counts, likely due to the opening of MD 200 and the rerouting of US 29 away from central Burtonsville. The Subject Property is therefore found to be in line with the original expectations of the existing APF determination with no need for an additional study to be conducted at this time.

	Traffic Conditions – Peak Hour CLV								
	<i>2004 Count (Original Study)</i>		<i>2004 Background (Original Study)</i>		<i>Full Build Projection (Original Study)</i>		<i>Recent Counts (SHA)</i>		
	AM	PM	AM	PM	AM	PM	AM	PM	Year of Count
US 29 / MD 198 (Former alignment)	1,913	1,990	--	--	--	--	--	--	--
Old Columbia Pike/ US 29 SB Ramp/ MD 198 (Current Alignment)	--	--	1,364	1,257	1,379	1,314	1,090	981	2014
Old Columbia Pike/ North Shopping Center Entrance	1,628	1,310	629	675	639	706	464	578	2015

Sources: Burtonsville Shopping Center Traffic Study. Kimley Horn and Associates, Inc. July 23, 2004 ; Maryland State Highway Administration

Table 2

(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot.

Not Applicable.

b. The Board may approve an amendment to the new development schedule approved under paragraph 7.a.ii

Preliminary Plan No. 120041090 and subsequent plans did not require a development schedule for this project. This finding and its sub-findings are not applicable.

c. *Exclusively residential subdivisions.*

This Application is not a residential subdivision. This finding and its sub-findings are not applicable.

d. *Nonresidential or mixed-use subdivisions.*

- i. *The Board may extend a determination of adequate public facilities for a preliminary plan for non-residential or mixed-use development beyond the otherwise applicable validity period if:*

(a) *The Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area for the project;*

The development was approved for 260,000 square feet of gross floor area. The necessary threshold of 40% of built gross area amounts to 104,000 square feet. The Applicant has received permits for and constructed a total of 136,040 square feet of built area for a total of 52% of the original approved development, exceeding the required threshold.

(b) *all of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, or payments for its construction have been made; and*

All infrastructure required of the Preliminary Plan conditions of approval has been constructed as found by the aforementioned Preliminary Plan amendments and Site Plan. This included: Right-of-Way dedication along the property frontage, the construction of a 5-foot-wide sidewalk and 8-foot-wide shared use path along the property frontage, and the installation of traffic signals at the two access points to the Subject Property with Maryland State Highway Administration approval. In a September 23, 2008 letter from SHA (Attachment 3), a traffic signal was found to be undesired at the southern access point due to its proximity to other signals, which continues to be unsignalized. The letter requested a left turn lane to be added to eastbound MD-198 at the access point, which has been constructed.

(c) *the Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:*

- (1) *structures that comprise at least 10 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed; or*

A total of 26,149 square feet of gross floor area has been permitted and built within the 4 years prior to the extension request, as detailed in Table 3:

Store / Restaurant / Project	Square Footage (Sq. Ft.)	U&O Issuance Date
Green Turtle	6,664	4/15/2015
Starbucks	2,520	4/12/2018
2019 Retail Expansion (NE Quadrant of Subject Property)	16,965	2/1/2019
Total Gross Square Footage Added, Last 4 years	26,149	
Total Approved Development	260,000	
Total Built Sq. Ft.	136,040	
Percent of Approved Development Built in Last 4 Years	10.057%	

Source: Department of Permitting Services

Table 3

(2) structures that comprise at least 5 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed, if structures that comprise at least 60 percent of the total gross floor area approved for the project have been built or are under construction.

The Applicant satisfies the previous finding as detailed above.

- ii. For any development that consists of more than one preliminary plan, the requirements of 7.d.i apply to the combined project. A project consists of more than one preliminary plan if the properties covered by the preliminary plans of subdivision are contiguous and were approved at the same time.*

This finding is not applicable.

- iii. The length of any extension of the validity period granted under 7.d.i must be based on the approved new development schedule under 7.a.ii, but must not exceed:*

(a) 2.5 years for a subdivision with an original validity period of 7 years or less; or

Preliminary Plan No. 120041090 set a validity period of 61 months (or 5 years) for the APF determination, below the 7-year validity required for a longer extension period. This Application requests the full allowed 2.5 years.

(b) 6 years for a subdivision with an original validity period longer than 7 years.

This finding is not applicable.

- iv. The extension expires if the applicant has not timely requested an extension and the development is not proceeding in accordance with the phasing plan, unless the Board or the Director has approved a revision to the schedule or phasing plan.*

This finding and subsequent sub-finding are not applicable.

- v. *In addition to the extension permitted under 7.d.iii, the Board may approve one or more additional extensions of a determination of adequate public facilities, not to exceed a total of 2.5 or 6 years, as applicable*

This finding is not applicable.

The findings for 50.4.3.J.7 e, f, and g as well as their subsections are not applicable.

SECTION 7: CONCLUSION

Preliminary Plan Amendment No. 12004109D meets all requirements established in 50-4.3. Public facilities will continue to be adequate. Based on this analysis, the Applicant has qualified for an extension of the Adequate Public Facilities validity period. Staff recommends approval of this Application, with the conditions as enumerated in the Staff Report.

ATTACHMENTS

Attachment 1 – Statement of Justification

Attachment 2 – MCPB Resolution No. 09-67 for Preliminary Plan No. 120041090

Attachment 3 – September 23, 2008 Letter from Maryland State Highway Administration

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February 4, 2019

Montgomery County Planning Board
The Maryland-National Capital Park and Planning Commission ("MNCPPC")
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Burtonsville Town Center (the "Center")
Request for APFO Validity Period Extension Under Chapter 50
Section 4.3.J.7. of the Subdivision Regulations
Preliminary Plan No. 120041090, as amended
Owner: Burtonsville Center LLC (the "Owner" or "Applicant")
Letter of Justification Requesting a 2.5 years/30 months Extension

Dear Members of the Montgomery County Planning Board:

This letter of justification amends and replaces the Applicant's December 12, 2018 Letter of Justification. The Applicant acquired the Center about two years ago, in the first quarter of 2017.¹ The Applicant requests that the Planning Board grant an extension of the APFO Validity Period, for 2.5 years/30 months,² to begin running on April 22, 2019, the first day after the expiration of the current April 21, 2019 APFO Validity Period, to allow adequate time to:

- obtain the issuance of the building permit for the November 2018 approved Site Plan Application for a 2,250SF restaurant and drive-thru, which we expect to be issued within 12 months after the current April 21, 2019 APFO Validity Period;³ and
- during the same 2.5 years period running after the current April 21, 2019 APFO Validity Period, explore development of additional square footage for other new restaurants and

¹ The deed is dated January 18, 2017 and recorded on February 17, 2017 at Liber 53862 folio 381.

² The Applicant is requesting a 2.5 year extension under Sections 4.3.J.7.d.iii.

³ On November 8, 2018, the Planning Board approved Site Plan No. 820180200 for a 2,250 SF restaurant and drive thru to be added to the existing Burtonsville Town Center, consisting of approx. 136,040 SF of retail and restaurants. The Site Plan Resolution was mailed on November 27, 2018. The Certified Site Plan, with all signatures, was delivered to MNCPPC on January 24, 2019.

retail buildings, and/or reconfiguration of existing buildings,
and to otherwise respond to changing market conditions to
keep the Center attractive and vibrant.

The pace of the project's development satisfies Sections 4.3.4.7d.i.(a), (b), and (c)(1) of the APFO extension provisions of Chapter 50. Over 40% of the approved development of 260,000SF has been constructed. (Construction of the Center began in 2009-2010, only about 10 years ago.) The project has installed all required infrastructure. The project obtained, within the past four years, Use and Occupancy permits for more than 10% of the approved development. Please see the attached Exhibit 1 that documents the restaurant and retail square footage use and occupancy permits that exceed 10% of the approved development within four years of the extension request. Please also see the attached Exhibit 2 that documents the new development schedule, which is being provided pursuant Section 4.3.J.7.a.ii.

The letter of justification is organized as follows:

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1. The Current APFO Validity Period Expiration Date Is April 21, 2019

The original Preliminary Plan Resolution was mailed on March 21, 2006. The APFO Validity Period commenced thirty days later, on April 21, 2006.

Preliminary Plan Condition of Approval No. 17 reads, "The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution/Opinion." The original APFO Validity Period expiration date was April 21, 2011.

The above condition is consistent with the Chapter 50 provision that was in effect before February 13, 2017. Section 50-20(c)(3)(A)(ii) addresses the initial relevant APFO Validity Period deadline, and reads as follows:

A determination of adequate public facilities made under this Chapter is timely and remains valid:

(ii) for no less than 5 and no more than 12 years after the preliminary plan is approved, as determined by the Planning Board at the time of approval, for any plan approved on or after October 19, 1999, but before April 1, 2007.

The provision was recodified in Section 4.3.5.a.i. of the Subdivision Regulations in effect as of February 13, 2017. The initial APFO Validity Period expiration date was April 21, 2011. It was automatically extended for another 8 years by County statute. Please see Subdivision Regulation Amendment 15-01, Ordinance No. 18-04. As of the date of this letter, the Preliminary Plan's current APFO Validity Period expiration date is April 21, 2019.

2. Meeting The Threshold Conditions For An APFO Validity Period Extension

The project's APFO Validity Period, which currently will expire after April 21, 2019, must be extended in order to be valid when the Director of the Department of Permitting Services ("DPS") issues the building permit for the November 2018 Site Plan approved 2,250SF restaurant and drive thru.

Further, the APFO Validity Period must be extended for the Applicant to explore development of other new restaurants and retail buildings, and/or reconfigurations of existing buildings.

As for the DPS Director's authority to issue building permits only for projects with current APFO Validity Periods, Chapter 8, Section 8-31, "Requirement for timely adequate public facilities; applicability" reads in pertinent part as follows:

(a) . . . the Director may issue a building permit only if the Planning Board has made a timely determination that public facilities will be adequate to serve the proposed development encompassed by the permit application

We provide below the threshold extension provisions of Chapter 50, Section 4.3.J.7.d.i. and explain why the project meets the threshold tests. We first provide the full citation. Then, we repeat each statutory subparagraph and provide an explanation about how the provision is satisfied.

Full citation. Chapter 50, Section 4.3.J.7.d.i.:

- d. Nonresidential or mixed-use subdivisions.
 - i. The Board may extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed-use development beyond the otherwise applicable validity period if:

- (a) the Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area for the project;
- (b) all of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, or payments for its construction have been made; and
- (c) the Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:
 - (1) structures that comprise at least 10 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed;
 - or
 - (2) structures that comprise at least 5 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed, if structures that comprise at least 60 percent of the total gross floor area approved for the project have been built or are under construction.

Section 4.3.J.7.d.i.(a):

- (a) the Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area for the project;

Explanation:

The Burtonsville Town Center's approved development is 260,000 SF. A total of 136,040 SF has been built already, which exceeds 40% of the total approved development, which would be only 126,000 SF. Thus, the project satisfies Section 4.3.J.7.d.i.(a).

Section 4.3.J.7.d.i.(b):

(b) all of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, or payments for its construction have been made;

Explanation:

All of the infrastructure required by the preliminary plan conditions of approval has been constructed, as evidenced by the recordation of Record Plat No. 23959, the release of the bonds, the physical existence of the improvements, and the government having issued numerous building permits. Thus, the project satisfies Section 4.3.J.7.d.i.(b).

Section 4.3.J.7.d.i.(c):

(c) the Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:

(1) structures that comprise at least 10 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed;

....

Explanation:

Please consider the attached Exhibit 1 which evidences that occupancy permits have been issued for at least 10 percent of the approved project of 260,000SF within the past 4 years. Exhibit 1 includes evidence of occupancy permits having been issued for the Green Turtle, Starbucks, and the 16,965 SF of new retail expansion. Thus, the project satisfies Section 4.3.J.7.d.i.(c)(1).

The existence of the above three circumstances is evidence that the Center meets the conditions under Section 4.3.J.7.d.i.

3. **Satisfaction of the Other Extension Application Requirements**

As noted above, because the Applicant meets the threshold tests, the Applicant is entitled to apply for an extension of the APFO Validity Period.

The pertinent provisions of Section 4.3.J.7. concerning the application for an extension, "Extensions," read as follows:

7. Extensions.

a. Application. Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.

i. The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period phase expires.

ii. The applicant must submit a new development schedule or phasing plan for completion of the project for approval.

iii. For each extension of an adequate public facilities determination:

(a) the applicant must not propose any additional development above the amount approved in the original determination;

(b) the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;

(c) the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest;

The Application has been filed before the April 21, 2019 APFO Validity Period expiration date. As explained below, the Applicant is submitting a new development schedule. The Applicant is not proposing any additional development.

4. A New Traffic Study Is Unnecessary

Although the Planning Board may require the submission of a traffic study to demonstrate how the extension would not be adverse to the public interest, such a

requirement is unnecessary for the Planning Board to make an informed decision to extend the APFO Validity Period. The Applicant has already constructed all of the public infrastructure required to accommodate the traffic for an approved development of 260,000SF. Considering that, to date, the Center has been developed to less than one-half of its approved density, and considering that the Center is a new but traditional suburban shopping center, with surface parking, the likelihood is remote that the Center would be developed to a density even approaching 260,000SF within the next 2.5 years. The traffic impact will be well less than a 260,000SF shopping center. Thus, the Planning Board does not need a traffic study to determine that the extension would not be adverse to the public interest. Finally, the unnecessary new traffic study may not be the premise for additional infrastructure or new conditions. As provided in Section 4.3.J.7.a.ii.(b), "the [Planning] Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan."

5. The Planning Board's Authority to Grant the 2.5 Years/30 months Extension

The extension request is for 2.5 years or 30 months, to begin running on April 22, 2019, the first day after the expiration of the current APFO Validity Period. The Planning Board may grant the 2.5 years extension through Section 4.3.J.7.d.iii. Section 4.3.J.7.d.iii. provides that the Planning Board may grant an extension for up to 2.5 years for a project whose original APFO validity period was less than 7 years. The project's initial APFO Validity Period was 5 years, and thus was less than 7 years. The maximum extension allowed under Section 4.3.J.7.d.iii. is 2.5 years/30 months.

6. The Facts Supporting the Extension Request

The Preliminary Plan for up to 260,000SF was approved in 2006 and certified in 2009. The Applicant acquired the Center only recently, in the first quarter of 2017, about two years ago. The total existing approved development, the November 2018 Site Plan approved development, the remaining approved development, and the total approved development are as follows:

Description	SF
Existing development	136,040
November 2018 Site Plan approved restaurant and drive-thru	2,250
Subtotal	138,290
Remaining approved development	121,710
Total Approved Development	260,000

The Center continues to be an active development and is developing in a manner consistent with the Preliminary Plan, as evidenced by the recent issuance of Use and Occupancy permits, over the past four years, as shown on the attached Exhibit 1. In November of 2018, the Planning Board approved a Site Plan application for a restaurant and drive-thru of an additional 2,250 SF.

The Applicant requests the 2.5 years/30 months extension so that it may have adequate time to obtain the building permit for construction of the November 2018 Site Plan approved restaurant and drive-thru and so that it may explore other expansion and reconfiguration opportunities.

The entitlement timing for the November 2018 approved Site Plan for the new restaurant and drive thru, plus its construction and operation, and consideration of its interaction, and that of the other new retail expansion, relative to the operations of the other restaurants and retail, support the Applicant's need for 2.5 years/30 months after April 21, 2019, to consider and to implement additional development.

The Applicant anticipates that the November 2018 Site Plan approved restaurant and drive-thru will have its building permit issued *after* the existing April 21, 2019 APFO Validity Period, but within twelve months thereafter, in other words, before April 21, 2020. As noted below also, barring unforeseen delays, the building permit for the restaurant and drive-thru is expected to be issued no sooner than the end of the second quarter of 2019.

Thus, an extension is necessary to obtain the building permit to construct the November 2018 Site Plan approved restaurant and drive-thru. The new development schedule, Exhibit 2, reflects that the building permit for the restaurant and drive thru is anticipated to be obtained within 12 months after April 21, 2019, but that it is required to be obtained only within the entire 2.5 years/30 months requested.

The search process for a suitable addition to the Center, which culminated in the identification of the restaurant and drive thru, began shortly after the Applicant acquired the Center in January 2017. The official Site Plan process for the restaurant and drive thru did not begin until April 2018 with the pre filing public meeting. The subsequent steps moved smoothly. The Planning Board Resolution was mailed on November 27, 2018. As noted earlier, the Certified Site Plan, with all signatures, was delivered to MNCPPC on January 24, 2019. The Applicant will continue with the other review and approval processes, with not only MNCPPC but also with Montgomery County, the public utilities, etc., that lead up to the issuance of the building permit.

Again, barring unforeseen delays, the building permit for the restaurant and drive-thru is expected to be issued no sooner than the end of the second quarter of 2019. Thus, it appears that the entitlement process, to reach the issuance of such building permit, will have a duration of about 12-14 months. The construction phase will follow for many months. Overall, to reach the point where the restaurant and drive-thru will open for customers, the timing is expected to be nearly 2 years from the pre filing public meeting until the opening. The 2 years does not include the time to search for a suitable addition to the Center, as noted earlier.

It will be necessary for the Applicant to use the requested 2.5 years/30 months to: (1) obtain the building permit for the restaurant and drive thru; (2) construct the restaurant and drive thru; (3) observe the interaction of the new restaurant and drive thru and the new retail expansion operations with the existing Center's businesses; and (4) if it is determined that additional or reconfigured businesses are appropriate, to pursue any necessary entitlements such as Site Plan approval, all of which steps are estimated to take about 2.5 years/30 months, the maximum time period allowed under the extension provision.

Description	Estimated Incremental Additional Months after April 21, 2019
Obtain the building permit for the restaurant and drive thru (minimum)	2
Construct the restaurant and drive thru	6
Observe the interaction of the new 16,965 SF retail expansion and restaurant and the drive thru operations with the other businesses in the Center. Consider how to proceed with additional development and/or reconfiguration of existing buildings. Identify suitable new restaurants and/or retail tenants.	8
Pursue MNCPPC and other entitlements, such as a Site Plan, and apply for and obtain building permit(s).	14
Total estimated time	2.5 years/30 months

As the chart indicates, observing the Center's operations with the restaurant and drive thru and the 16,965SF of the new retail expansion, considering what type of restaurant or business would be the proper fit for the Center, and identifying a suitable tenant requires many months before a decision may be made whether other uses can tap the remaining approved density and be added to the Center in new space. If a decision were made to proceed, time would be needed to obtain the entitlements, and to obtain the building permits to build the improvements. The steps take years to implement.

An explanation follows about the types of market conditions that may drive the need for more and different space, and thus the need for the time to provide such space.

The business plans of existing tenants are subject to dynamic and changing market conditions. Existing tenants might well require the Applicant to make changes to facilitate their continued success and require the reconfiguration of their spaces.

Other external factors might affect the Center's market position as an attractive and highly sought after restaurant and retail venue, which factors may drive the Applicant's need to respond to changing market conditions. On October 25, 2018, the County announced the ground breaking of "Flash," Maryland's first bus rapid transit line. The first line is planned to run along U.S. 29 with a terminus near the Burtonsville Town Center, and to be operational perhaps as early as 2021. The shopping, commercial and eating needs of the future transit riders might affect the types of retail and restaurants offered, which might affect the size and layout of the Center's existing buildings, and which might drive the need for additional retail and restaurants.

The total amount of additional development is not yet known for the reasons described earlier. Making such a determination depends upon the threshold question about whether or not the Planning Board will grant an APFO Validity Period extension that would be adequate to plan for changes with existing and new tenants, to accommodate new customer demands, and to otherwise respond to changing market conditions. For the reasons explained earlier, it is reasonable to have a 2.5 years/30 months extension, for as yet undetermined development. Please see Exhibit 2 which is the New Development Schedule. The New Development Schedule shows an anticipated twelve month period ending on April 21, 2020 for the Applicant to obtain the building permit for the restaurant and drive thru. We note that the building permit for the restaurant and drive thru is anticipated to be obtained within 12 months after April 21, 2019, but that it is required to be obtained only within the entire 2.5 years/30 months requested. Similarly, the New Development Schedule shows that for the remainder of the

approved square footage, 121,710 SF, the Applicant would be entitled to the 2.5 years/30 months from April 21, 2019.

As for the location of future development on the Center, the surface parking area presents the most immediate opportunity for adding more restaurants and retail, especially in light of changing perspectives about the experience in suburban centers, as the Applicant has observed through its experience with many commercial centers throughout the Washington Metropolitan Area. Shoppers have become more accustomed to restaurants and retail being located closer together. Closer proximity enhances the shopping, commercial and dining experience. Further, the presence of surplus surface parking areas is no longer considered essential to provide "convenience " for the suburban shopping, commercial and dining experience. At the Center, reconfigured existing and/or additional establishments would break up some of the Center's parking field. Future site-interior restaurants and retail would be integrated with the other interior restaurants and retail, and with the perimeter establishments, through the pedestrian network, more public open space amenities, and efficient vehicular circulation.

To provide an order of magnitude of the surplus surface parking spaces, it is notable that the November 27, 2018 Site Plan Resolution No. 820180200 for the restaurant and drive-thru, at page 6, reads that the number of required parking spaces for the 138,290 SF is 587, but the Center will have 749 parking spaces, after the development of the new restaurant and drive-thru. Thus, the current parking surplus provides a surface area for potential expansion and/or reconfiguration.

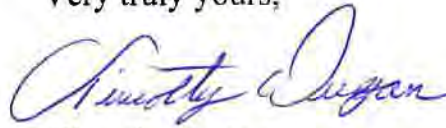
Because any more expansion will also be served by surface parking, the Applicant does not expect that it will use a large amount of the as yet unbuilt approved square footage.

7. Conclusion. An Extension for 2.5 Years/30 months Is Suitable

For all of the above reasons, we respectfully request an extension of the APFO Validity Period of 30 months or 2.5 years, to begin running on April 22, 2019, the first day after the expiration of the current APFO Validity Period.

Thank you for your consideration.

Very truly yours,



Timothy Dugan

cc:

Mr. Brian Downie
Ms. Keely Lauretti

Mr. Vincent Burke
Mr. Phil Isaja

Exhibits List	
Exhibit	Description
1	Restaurant and new retail expansion square footage use and occupancy permits that exceed 10% of the approved development within four years of the extension request
2	New Development Schedule

Exhibit 1
Burtonsville Town Center
Restaurant and Retail SF
U & O's in the Past 4 Years

	A	B	C	D
				Supporting Documents From DPS Web Page
1	Store/Restaurant	SF	U&O Issuance Dates	Page(s) Attached as Circle #
2	Green Turtle	6,664	4/15/2015	Page 1
3	Starbucks	2,520	4/12/2018	Page 2
4	New Retail Expansion = Shops Expansion (Northeasterly Corner of the Center)	16,965	2/1/2019	Page 3
5				
6	Total SF of U&O's Within the Past 4 Years	26,149		
7				
8	Approved Development	260,000		
9				
10	Percentage of Approved Development	10.057%		

Burtonsville Town Center
The Greene Turtle
Use and Occupancy Information from DPS Website
Use and Occupancy Permit No. 311688

Please select one of the Search By methods below and define your search criteria first. Then, click the Search button to display the results. Fields with * are required items.

Search By: Property Address ▼

Search Criteria

Details

Application

Permit Number	311688	Type	Use & Occupancy Permit
Application Date	03/25/2014	Issue Date	04/15/2015
Final Date	04/15/2015	Status	Finaled
Work Type	Commercial Change Of Use	Site Address	15660 OLD COLUMBIA PIKE BURTONSVILLE, MD 20866
Square Footage	6,664	Value	\$0.00
Subdivision	Colesville Outside	Lot/Block	NA/NA

Reviews

Inspections

Burtonsville Town Center
Starbucks
Use and Occupancy Information from DPS Website
Use and Occupancy Permit No. 360366

Please select one of the Search By methods below and define your search criteria first. Then, click the Search button to display the results. Fields with * are required items.

Search By: Property Address ▼

Search Criteria

Details

Application				
Permit Number	360366	Type	Use & Occupancy Permit	
Application Date	10/12/2017	Issue Date	04/12/2018	
Final Date	04/12/2018	Status	Finaled	
Work Type	Occupy	Site Address	15658 OLD COLUMBIA PIKE BURTONSVILLE, MD 20866	
Square Footage	2,520	Value	\$0.00	
Subdivision	Colesville Outside	Lot/Block	-/-	
Reviews				
Inspections				

Burtonsville Town Center
New Retail Expansion
Use and Occupancy Information from DPS Website
Use and Occupancy Permit No. 366332

Please select one of the Search By methods below and define your search criteria first. Then, click the Search button to display the results. Fields with * are required items.

Search By:

Search Criteria

Details

Application

Permit Number	366332	Type	Use & Occupancy Permit
Application Date	12/07/2018	Issue Date	02/01/2019
Final Date	02/01/2019	Status	Finaled
Work Type	Occupy	Site Address	15650 OLD COLUMBIA PIKE BURTONSVILLE, MD 20866
Square Footage	16,000	Value	\$0.00
Subdivision	Colesville Outside	Lot/Block	-/-

Reviews

Inspections

	A	B	C
1	Description	Anticipated Time Period (Months) to Building Permit After April 21, 2019	Square Feet
2			
3	Existing built SF	N/A	136,040
4			
5	Restaurant and Drive Thru Site Plan approved November 2018	12 months (See Note 1 below.)	2,250
6			
7	Subtotal Existing and November 2018 Site Plan Approved Development	N/A	138,290
8			
9	Remaining Original Allowed Development Before Adjustment	30 months	121,710
10			
11	Total Original Allowed Development		260,000
12			
13			
14	Note 1. The building permit for the restaurant and drive thru is anticipated to be obtained within 12 months after April 21, 2019, but that it is required to be obtained only within the entire 2.5 years/30 months requested.		

Attachment 2

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Board Approval Date: July 28, 2005

Date Mailed: MAR 21 2006

Action:

Approved Staff Recommendation

Motion of Commissioner Bryant,
seconded by Commissioner Perdue,
with a vote of 4-0.

Chairman Berlage and Commissioners
Perdue, Bryant and Wellington voting in
favor. Commissioner Robinson was
absent.

MONTGOMERY COUNTY PLANNING BOARD

CORRECTED OPINION

Preliminary Plan 1-04109

NAME OF PLAN: Burtonsville Shopping Center

I. Introduction

The date of this written opinion is MAR 21 2006 (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 within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court - State).

On 6/30/04, BMC Property Group ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the C-2 zone. The application proposed to create 1 lot on 27.55 acres of land located at the Northwest Quadrant of the intersection of Columbia Pike (US 29) (aka Burtonsville Boulevard) and Spencerville Road (MD 198), in the Fairland master plan area. The application was designated Preliminary Plan 1-04109. On 7/28/05, Preliminary Plan 1-04109 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the

Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the Applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

II. Site and Project Descriptions

The 27.15-acre property is located in the northwest quadrant of the intersection of Columbia Pike (US 29) and Spencerville Road (MD 198). The majority of the site is unrecorded; the portion in the immediate corner of the 29/198 intersection is recorded by plat. It is within the Patuxent River watershed (Use I waters). The eastern portion of the site is an existing shopping center. About 14.37 acres of the property is in forest cover. A small stream traverses the northwestern portion of the property. A severely eroded gully lies along part of the property line that is adjacent to the elementary school. The gully connects into the stream immediately offsite. The gully was most likely created from uncontrolled stormwater runoff from the existing shopping center and the adjacent elementary school site.

This application is a request to redevelop the existing Burtonsville Shopping Center. The property is zoned C-2 and under the proposed development scenario, will not be required to undergo Site Plan review. The Fairland Master Plan makes specific recommendations regarding the redevelopment of the site as detailed in the Community Based Planning memorandum. One overriding theme of the master plan guidance is the need for a pedestrian friendly design. While recognizing that the project will not be subject to Site Plan review, staff did request and receive an Illustrative Circulation Plan to show the general concepts of internal street cross-sections, sidewalk widths, setbacks, amenities and crosswalks. Sidewalks with associated lead walks along the U.S. 29 and MD 198 frontages are also provided.

Access to the property is to be accommodated at two locations: one on U.S. 29 and the other on MD 198 (loop road). The layout of the buildings on the property is conceptual and is shown as a number of building pads within the parking lots to provide flexibility for future tenants. The plan proposes 809 underground parking spaces and 521 surface parking spaces. The Montgomery County Department of Permitting

Services will need to review and approve a Parking Facilities Plan as part of the building permit review for this site. The plan as shown will require a waiver of the required setback for parking facilities from the adjacent residential (RC) zone. The decision on the waiver will be made by DPS. Staff's recommended conditions require the Applicant to:

- 1) Obtain approval of a waiver from the Director of MCDPS prior to issuance of building permits and as part of the Parking Facilities Plan review, or
- 2) Meet the minimum setback requirements as required under 59-E-2.81.

III. **FAIRLAND MASTER PLAN - Conformance**

Staff concluded that the proposed plan complies with the recommendations of the Fairland Master Plan, as discussed in detail in the staff report prepared by the Community Based Planning Staff Report.

IV. **TRANSPORTATION**

The site is located within the northwest quadrant of the local lanes of Columbia Pike U.S. 29 (Burtonsville Boulevard)/MD 198 intersection (just west of the new U.S. 29 Relocated/MD 198 interchange currently under construction). Access to the site is proposed from both Burtonsville Boulevard and MD 198 (through the future Burtonsville Access Road). Currently, several bus routes (Metrobus routes Z3, Z5, Z8, Z9, Z29, and MTA Routes 915 and 929) provide service along US 29 and MD 198 in the area. The Burtonsville Park and Ride Lot is located within the northeast quadrant of US 29 (Burtonsville Boulevard)/MD 198 intersection next to the Burtonsville Crossing Shopping Center.

The Approved and Adopted 1997 *Fairland/Cloverly Master Plans* include the following nearby master-planned roadway, bikeway, pedestrian, and trail facilities:

1. US 29 local lanes or Burtonsville Boulevard, to the east of the property, as a six-lane divided Major Highway (M-10a) from south of MD 198 to Dustin Road (to the north). A minimum right-of-way width of 100 to 200 feet is recommended for this section of the roadway. A Class I bikeway is also recommended in the master plan for this section of local US 29.
2. Sandy Spring Road/Spencerville Road (MD 198), as a four-lane divided major highway (M-76) with a minimum right-of-way width of 120 feet, and with a Class I bikeway (PB-34) to the south side of the roadway between Old Columbia Pike/US 29 and the Prince George's County line. The 2005 Countywide Bikeways Functional Master Plan recommends a Shared-Use Path for MD 198 between Layhill Road to the west in Cloverly and the Prince George's County line to the east (SP-20 and SP-21).

3. Old Columbia Pike, as a two-lane Primary Road (P-25c) with a minimum right-of-way width of 70 feet between MD 198 to the north and Briggs Chaney Road to the south, and with sidewalks. As recommended in the Master Plan, four-foot wide sidewalks are provided along both sides of Old Columbia Pike. The roadway is also a Class II bikeway facility (EB-13; BL-12 in the 2005 Countywide Bikeways Functional Master Plan).
4. Burtonsville Access Road, to the north of MD 198 between MD 198 and the access road to Burtonsville Elementary School, as a two-lane Business District Street (B-7), with a minimum right-of-way of 60 feet.
5. Riding Stable Road, as a two-lane Primary Road (P-47) with a minimum right-of-way width of 70 feet, and with a rural open-section to the north of MD 198 and a Class III bikeway (PB-61) between MD 198 to the south to the Prince George's County line/Brooklyn Bridge Road to the north.
6. McKnew Road, as a two-lane primary road (P-26) with a minimum right-of-way width of 70 feet, and with sidewalks between MD 198 and Sugar Pine Court on both sides. The portion of McKnew Road to the south of Sugar Pine Court is currently built to master plan recommendations with sidewalks on both sides.
7. Cedar Tree Drive, as a two-lane primary road (P-45) with a minimum right-of-way width of 70 feet, and with a Class III/I bikeway (PB-46) between MD 198 and the Fairland Recreational Park/Prince George's County Line. A Class I bikeway (PB-47 - Cedar Tree Drive Connector) that connects Cedar Tree Drive through Fairland Recreational Park with Robey Road is also recommended in the master plan. The existing portion of Cedar Tree Drive (between MD 198 and Islewood Terrace) is built as a two-lane Primary Road to master plan recommendations with sidewalks on both sides and a Class III bikeway.
8. Blackburn Road to the east of US 29, as a two-lane Primary Road (P-44) with a minimum right-of-way 70 feet, and with sidewalks.
9. Greencastle Road, between US 29 to the northwest and Prince George's County Line to the southeast, as a four-lane Arterial (A-110) with a minimum right-of-way width of 80 feet. The master plan also recommends sidewalks and a Class I bikeway (PB-52) along Greencastle Road between Old Columbia Pike (to the west of US 29) and Prince George's County Line. The 2005 Countywide Bikeways Functional Master Plan recommends a Dual Bikeway for the section of Greencastle Road between US 29 and Robey Road (DB-11), and a Shared-Use Path for the section of Greencastle Road between Robey Road and Prince George's County line (SP-23).

10. Peach Orchard Road (to the west of the site in Cloverly) as a two-lane Primary (P-10) between MD 198 to the north and Briggs Chaney Road to the south with a minimum right-of-way width of 70 feet, and with a Class III bikeway (PB-37).
11. Patuxent Trail, as an unpaved trail (PB-41) within the PEPCO right-of-way to the north of the site.

On-going Transportation Projects

The SHA Consolidated Transportation Program, and the DPWT Capital Improvement Program includes the following nearby projects:

1. The US 29/MD 198-interchange project, from north of Dustin Road to south of MD 198. Construction of this project started in June 2002 and is near completion and open to traffic. The project is scheduled for completion in Fall 2005.
2. The MD 28/MD 198 Corridor Improvement Planning Study is ongoing. SHA anticipates release of the draft environmental document for the project in Fall 2005. The study is funded for project planning only.
3. The Burtonsville Access Road project, to the north of MD 198 between MD 198 and the access road to the Burtonsville Elementary School is fully funded, and is scheduled to start construction in Spring 2007.

Local Area Transportation Review

Peak-hour trips associated with the proposed new shopping center consisting of 250,000 square feet of retail uses and 10,000 square feet of commercial office space were estimated for the weekday morning peak-period (6:30 a.m. to 9:30 a.m.) and the evening peak-period (4:00 p.m. to 7:00 p.m.), and (summarized in Table 1 of the Transportation Division's staff report). The net increase in trips generated by the proposed development reflect trip credits for the existing shopping center on the property that include a 50,000 square-foot retail center and a 6,000 square-foot nursery retail/outdoor furniture sales center.

Transportation Division staff concluded that the proposed retail/office density on the property was estimated to generate a total of 285 and 1,168 peak hour trips during the respective weekday morning and evening peak periods. With applicable credit for retail uses currently on the property, the proposed uses on the property were estimated to generate a total of 154 and 683 net new-peak hour trips during the respective weekday morning and evening peak periods.

- Congestion Levels at Nearby Intersections

A summary of the Critical Lane Volume (CLV) analysis results for the study intersections for the weekday morning and evening peak hours during the respective peak periods based on the analysis presented in the traffic study is provided in Table 2 of the Transportation Unit Staff analysis ("Table 2").

As shown in Table 2, the weekday morning and evening peak-hour capacity analysis presented in the traffic study indicated that under Total traffic conditions (with Applicant funded intersection operational/physical improvements [potential installation of signal/turn lanes at the MD 198/Burtonsville Access Road and US 29/Site Driveway intersections] subsequent to further SHA/DPWT review), CLV at the study intersections were below the FY 2004 congestion standard for the respective policy areas. Therefore the application satisfies the LATR requirements of the APF test.

Rural policy areas such as the Patuxent Policy Area are not assigned any transportation staging ceilings. Therefore, the proposed development is not required to meet the PATR test.

V. ENVIRONMENTAL

A. Patuxent Primary Management Area

The Patuxent River Primary Management Area (PMA) is a water quality protection area defined in the Environmental Guidelines for land in the Patuxent River watershed. It is a set area adjacent to any stream within the Patuxent River watershed where the Guidelines recommend certain land use activities and measures as part of a development project to protect and enhance water quality conditions of the stream system. One of these measures is a 10 percent imperviousness guideline limit for lower-density land development projects within the part of the PMA that is outside any environmental buffer. Development in zones that create high impervious uses, such as commercial zones, are considered to be in "nonconformance". There is no imperviousness guideline limit in the Environmental Guidelines for development in high-density zones. However, best management practices to reduce and minimize water quality impacts are recommended

Approximately 11.1 acres of the subject site lies within the PMA. Most (8.8 acres) of the PMA is zoned RC. About 2.3 acres of the PMA is zoned C-2. The C-2 portion of the PMA is not subject to the 10 percent imperviousness guideline limit because it is considered to be a non-conforming zone.

The RC portion of the PMA is subject to the 10% imperviousness guideline limit. This part of the PMA meets that guideline limit because no impervious surfaces are proposed, except for possibly a small SWM facility access path. The path

(approximately 5720 square feet) would create about 1 percent imperviousness within the PMA.

The proposed SWM concept includes a wet pond that would provide quantity and quality controls not only for the shopping center development, but for a large portion of the adjacent elementary school (including most of the school building). The concept also includes eliminating the severely eroded channel and several dry wells located throughout the commercial part of the site. Staff believes this SWM concept meets the Environmental Guidelines recommendation for using best management practices for a commercial use (*i.e.*, high-impervious use) that lies partly within the PMA.

B. Forest Conservation

The Applicant proposes to retain about 4.58 acres of the 14.4 acres of forest. The retention area includes the environmental buffer and lies entirely within the PMA. The reforestation requirement is 4.80 acres, of which 1.97 acres will be located onsite. The remaining 2.83 acres of reforestation will be met offsite or with credits from a forest bank. The forest retention area and forest planting area on the site will be placed in a Category I conservation easement. Staff believes the proposed preliminary forest conservation plan meets the Forest Conservation Law requirements and recommends conditional approval of the plan.

VI. SCHOOLS

By letter dated January 24, 2005, Montgomery County Public Schools (MCPS) requested that the Applicant provide a vegetated buffer and construct a fence along the perimeter of the school site. The Applicant has been in contact with the school system and has advised that the area around the school will be, for the most part, afforested and protected with a forest conservation easement. Landscaping, to meet the concerns of MCPS, can be accommodated within the area identified "Proposed Landscape Buffer" adjacent to the eastern border of the school property and as shown on the preliminary plan. The Applicant has acknowledged that there will be continued discussion regarding the placement of a fence and any gates requested by MCPS.

As demonstrated in the staff report this plan complies with the recommendations of the Fairland Master Plan. Further staff believes that it complies with all applicable sections of Chapter 50, the Subdivision Regulations. The plan provides safe and adequate access, and can be served by adequate public facilities. With the waiver of setbacks that will be reviewed by MCDPS, the plan will comply with Chapter 59, the Zoning Ordinance. Staff recommends approval of the plan subject to the conditions cited above.

VII. **Public Hearing**

Staff summarized its findings and recommendations in the staff report, and recommended approval of the project with conditions as revised at the time of the hearing. The Applicant appeared, represented by legal counsel, and agreed to the recommendations of staff and the proposed conditions of approval. Stuart Rochester, speaking on behalf of the Fairland Master Plan Committee, testified that there is a "wide gap" between what the Master Plan Committee envisioned for this project and what has been proposed. Mr. Rochester testified that this subject property was envisioned as part of the Fairland town center. He said that the Committee tentatively supported the waiver of the setback required for the adjoining property, zoned RC. He also said that the extension of water and sewer to the site should be granted only for the commercial portion of the site, and he supported the relocation of the stormwater management pond to allow for preservation of additional forest.

Mr. Rochester's primary concern was about the size of the proposed new buildings, and even greater concern about the possibility that the several buildings on the site could be consolidated into one, "big box" building. On the other hand, however, he noted that under the layout as proposed, the Applicant largely achieved master plan goals of a pedestrian friendly site and adequate landscaping.

Mr. Charles Peters, representing Santini Grove Property Owners Association, an adjoining residential community, testified in "vehement" opposition to the setback waiver, stating that it would allow parking on residentially zoned property. Commissioner Bryant noted on the record that commercial parking is not allowed on residentially zoned property, and this was confirmed by staff. Staff confirmed that the proposed waiver allows the new Santini Road, and parking on that road, within a 20-foot setback from the adjoining residentially-zoned property (which property is owned by the Applicant). Staff noted that where the Subject Property adjoins property not owned by the Applicant, the proposed project meets all setback requirements. Mr. Rochester confirmed that he supports the waiver only where the Subject Property adjoins land owned by the Applicant.

Cleve Brown, President of the Patuxent Watershed Protective Association, testified in opposition to the parking setback waiver. He testified that it has the effect of increasing the amount of parking, thus in effect enlarges the buildable area on the site. He said that there is an existing stormwater management problem on the site, and questioned why in the face of that fact the Board would approve additional imperviousness that would offset improvements that might be achieved with the new stormwater management facilities.

Lynn Martins, President of Seibel's Restaurant, a nearby restaurant, testified in support of the project, expressing her views that the redevelopment of this site can provide a potential boost to the business district.

During rebuttal, the Applicant noted that the Master Plan required a loop road on the adjoining property (zoned RC - Rural Cluster). By instead locating the master-planned recommended road within the Subject Property the Applicant has preserved additional green space on the adjoining property (much of which is located in a Category I conservation easement). The Applicant also noted that even with the proposed setback waiver, setbacks from the adjoining properties not owned by the Applicant are significant, being 60 feet at their narrowest and several hundred feet from existing residential properties. The Applicant also testified, in response to Planning Board questions, that if it did not get the waiver from DPS that it likely would lose density.

Commissioner Bryant asked for clarification as to whether the waiver request is typical, given the fact that the loop road is located adjacent to property under common ownership. Legal counsel testified in response to the question that it is relatively unique to have property under common ownership when this type of waiver is requested. Technical staff further advised that staff did not make an affirmative recommendation on the waiver because the Board will not grant the waiver, but instead will be reviewed by the Department of Permitting Services as part of a parking facilities plan. Technical staff also noted that the property adjoining the Subject Property never would be developed, in that it would be placed in a perpetual conservation easement. Staff further said that if the waiver is not granted by DPS, then the setback requirements must be met.

VIII. FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies¹; the Applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that:

- a) The Preliminary Plan No. 1-04109 substantially conforms to the Fairland master plan. The Board finds persuasive the analysis presented by staff that the density, vehicular and circulation patterns, and landscaping requirements as conditioned below, conform to the general recommendations of the Master Plan.
- b) The uncontested evidence of record demonstrates that public facilities will be adequate to support and service the area of the proposed subdivision, and the record confirms that the water/sewer category change is limited to the commercial portion of the site only.

¹ The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

- c) The uncontested evidence of record demonstrates that the size, width, shape, and orientation of the proposed lot are appropriate for the location of the subdivision.
- d) The uncontested evidence of record demonstrates that the application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- e) The uncontested evidence of record demonstrates that the application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) Aside from the issue of the waiver (over which the Board has no jurisdiction) and conformance to the master plan, the Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning additional substantive issue in this application, is waived.

IX. CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-04109 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-04109, subject to the following conditions:

- 1) Limit redevelopment on the property as part of this preliminary plan to a shopping center consisting of 250,000 square feet of retail space and 10,000 square feet of commercial office space.
- 2) Consistent with the 1997 Approved and Adopted *Fairland Master Plan*, dedicate and show on the final record plat, right-of-way width at the subject property's frontage along:
 - a. US 29 (Burtonsville Boulevard) to provide a minimum of ~~50-100~~100 feet from the roadway centerline or a minimum of 100-200 feet from the established opposite right-of-way line, as determined by M-NCPPC and SHA.
 - b. b. Spencerville Road to provide a minimum of 60 feet from the roadway centerline or a minimum of 120 feet from the established opposite right-of-way line, as determined by M-NCPPC and SHA.
 - c. c. Burtonsville Access Road to provide up to 60 feet of right-of-way width as determined by MNCPPC and DPWT.

The final record plat shall also reflect dedication of necessary truncation at intersection corners.

- 3) The Applicant shall resolve all outstanding issues and satisfy all conditions/comments pertaining to the Montgomery County Department of Public Works and Transportation (DPWT) approval letter dated July 21, 2005, (Attachment A) and shall provide written notification to both the Development Review Division and the Transportation Planning staff prior to the final record plat that all outstanding issues are resolved.
- 4) Satisfy all preliminary plan conditions included in the State Highway Administration (SHA) letter dated June 7, 2005. (Attachment B) All roadway/intersection improvements required by SHA shall be installed/constructed and in place prior to the release of any building permit associated with this preliminary plan.
- 5) Complete required traffic signal warrant studies. If approved by SHA, design/install a fully operational traffic signal at Applicant's expense at:
 - a. the site access driveway intersection with the local lanes of US 29
 - b. the Burtonsville Access Road intersection with MD 198.

The timing for the installation for these signals shall be coordinated as required by SHA and DPWT.

- 6) All SHA and DPWT site frontage, site access and roadway/intersection improvement design concerns related to this development shall be addressed fully to the satisfaction of the respective agencies prior to the final record plat. Any physical improvement along the proposed alignment for Burtonsville Access Road shall conform to applicable DPWT design for the roadway.
- 7) Construct an eight-foot-wide shared-use path and an eight-foot-wide tree panel on US 29 (Burtonsville Boulevard) along the entire property frontage. Extend this shared-use path and tree panel further north from the property line to the PEPCO power line right-of-way (or to the Patuxent Trail [PB-41]). The shared-use path shall be offset two feet from the property line.
- 8) Construct a five-foot wide sidewalk and an eight-foot tree panel on MD 198 along the entire property frontage. The sidewalk shall be offset two feet from the property line.

- 9) Manage all shopping center related vehicular traffic, queues and parking within the property without spillover to US 29, MD 198, and Burtonsville Access Road.
- 10) All on- and off-site sidewalk/shared-use path ramps and crosswalks shall conform to Americans with Disabilities Act (ADA) standards.
- 11) The development on the site shall have adequate lead-in sidewalks from US 29, MD 198, and Burtonsville Access Road.
- 12) The development on the site shall have a pedestrian friendly internal street network, which will be in substantial conformance with the Fairland Master Plan guidelines, and shall meet the minimum requirements for the internal streetscape/sidewalks as required by the Building Officials and Code Administrators International Code used for Montgomery County.
- 13) Compliance with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, including:
 - b. 2.83 acres of offsite reforestation or forest bank to be identified by Applicant and approved by M-NCPPC staff prior to approval of record plat.
 - c. Final forest conservation plan to include a reconfiguration of the proposed SWM pond to provide more forest retention near the northern part of the pond, if feasible *and to locate a pathway from school site to shopping center access road in coordination with MCPS*. If additional forest retention is not feasible, provide documentation to demonstrate why the additional retention is not feasible.
 - d. Applicant to provide landscaping *and fencing* in consultation with MNCPPC staff and MCPS staff for perimeter of adjacent school site.
- 14) Applicant is bound to the elements of the Illustrative Circulation Plan dated June 2004, regarding general street cross sections, sidewalks locations, sidewalk widths, sidewalk amenities, street trees and crosswalk treatment.
- 15) Obtain a waiver of the setbacks from MCDPS for parking facilities along the zoning line immediately to the west of the proposed shopping center prior to building permits. If a waiver cannot be secured, parking

facilities must comply with setbacks as per Section 59-E-2.81 of the Zoning Ordinance.

- 16) Compliance with the conditions of the MCDPS stormwater management approval dated ~~July 13~~ June 2, 2005.
- 17) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
- 18) Other necessary easements.
- 19) Record plat to reflect a Category I conservation easement on all stream valley buffers and areas of forest conservation and afforestation.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). 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.

* * * * *

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

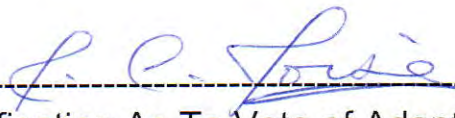
Approve
M-NCPPC C

MF 3/13/06

Sufficiency
General Counsel

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on **Thursday, March 16, 2006**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission by unanimous consent, **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Preliminary Plan No. 1-04109, Burtonsville Shopping Center.**



Certification As To Vote of Adoption
M. Clara Moise, Technical Writer



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

John D. Porcari, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

July 16, 2008

Re: Montgomery County
MD 198
Burtonsville Shopping Center

Mr. Edward Papazian, P.E.
Kimley-Horn and Associates, Inc.
13221 Woodland Park Road
Suite 400
Herndon, Virginia 20171

Dear Mr. Papazian:

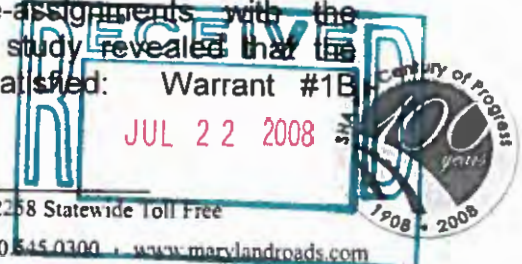
Thank you for the opportunity to review the Traffic Impact Analysis Report and Traffic Signal Warrant Study Report summary dated June 16, 2008, prepared by Kimley-Horn and Associates, Inc. (received by the EAPD on June 18, 2008) that was prepared for the proposed redevelopment of the Burtonsville Shopping Center in Montgomery County, Maryland. The major report findings and the Maryland State Highway Administration (SHA) comments and conclusions are as follows:

- Access to the 150,000 square foot redeveloped Shopping Center is currently provided from one (1) full movement site access driveway on MD 198 and one (1) right-in/left-in/right-out site access driveway on Old US 29.
- Montgomery County is proposing a Burtonsville Access Road (BAR) connecting MD 198 (at the current location for the Burtonsville Shopping Center) to Old Columbia Pike. However, funding for this project has not yet been obtained. The traffic report recommended the construction of an exclusive eastbound MD 198 left turn lane at the MD 198 at BAR intersection.
- A Traffic Signal Warrant Study was conducted at the MD 198 at BAR intersection with the proposed re-development of the Burtonsville Shopping Center and associated traffic re-assignments with the construction of the BAR. The results of this study revealed that the following traffic signal warrants would be satisfied: Warrant #1B

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone: 410.545.0300 • www.marylandroads.com



(Interruption of Continuous Traffic), Warrant #2 (Four Hour Volume), and Warrant #3 (Peak Hour Volume).

- SYNCHRO analyses were also conducted along the MD 198 corridor assuming a new signal at the MD 198 at BAR intersection. The results of the analyses revealed that traffic queues from adjacent traffic signals will extend through the MD 198 at BAR intersection during both the AM and PM peak hour. In addition, the SYNCHRO analyses revealed that the eastbound MD 198 left turn lane at the MD 198 at Old US 29 intersection that currently provides 215 feet of storage lane area will experience 95th percentile queues of 279 feet and 629 feet during the AM and PM peak hours, respectively.

Based upon the analyses presented, SHA does not support the installation of a new traffic signal at the MD 198 at BAR intersection but SHA does support the construction of an exclusive eastbound MD 198 left turn lane at the MD 198/BAR intersection. However, SHA recommends that the applicant consider the following additional actions to enhance the accessibility to/from the Burtonsville Shopping Center:

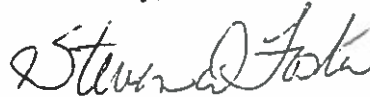
- Explore the feasibility of installing a traffic signal at the MD 198 at School Access Road or the Old US 29 at Burtonsville Shopping Center Access Drive. Both a Traffic Signal Warrant Analysis and SYNCHRO analyses should be performed to assess the traffic implications of installing a traffic signal at either of these locations.
- Explore the feasibility of constructing a second eastbound MD 198 left turn lane at the MD 198 at Old US 29 intersection to reduce the overall traffic queuing along eastbound MD 198.

Following the submission of the updated analyses, SHA will provide final comments. Unless specifically indicated in SHA's response on this report, the comments contained herewith do not supersede previous comments made on this development application. If there are any questions on any issue requiring a permit from SHA on this application, please contact Corren Giles at (410) 545-5595 or cgiles@sha.state.md.us.

Mr. Edward Papazian, P.E.
Page 3 of 3

If you have any questions or comments regarding the enclosed traffic report comments, please contact Larry Green at (410) 995-0090 x20.

Sincerely,



Steven D. Foster, Chief
Engineering Access Permits Division

cc: Mr. Cherian Eapen, M-NCPPC Montgomery County
Mr. Shahriar Etemadi, M-NCPPC Montgomery County
Mr. Robert French, SHA Office of Traffic & Safety
Ms. Corren Giles, SHA EAPD
Mr. Larry Green, Daniel Consultants, Inc.
Mr. Errol Stoute, SHA Traffic Development & Support Division
Mr. Morteza Tadayon, SHA Travel Forecasting Section
Mr. Jeff Wentz, SHA District 3 Office

