MCPB
Item No.
Date: 6/27/19

Adequate Public Facilities Validity Extension Request, Preliminary Plan No. 11998091D Rock Spring Park

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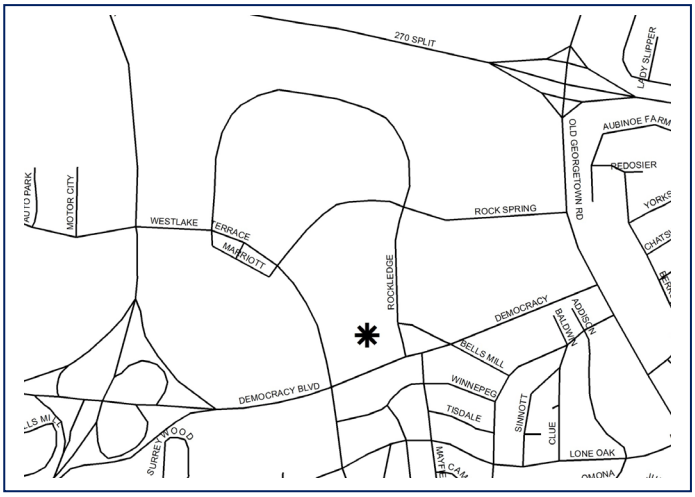
Completed: 6/17/19

Description

Request to extend the Adequate Public Facilities (APF) validity period by five (5) years for 117,175 square feet of approved but unbuilt office space (known as the Lincoln Building).

Location: North side of Democracy Boulevard, between Fernwood Road and Rockledge Drive.
Master Plan: 2017 *Rock Spring Sector Plan* area.
Zone: CR-1.5, C-1.0, R-0.75, H-100.
Property Size: 12.52 acres.
Applicant: Elizabethan Court Associates I & II, LP.
Application Accepted: March 4, 2019.
Review Basis: Chapter 50, Subdivision Regulations.



Summary

- Staff recommends approval of the Adequate Public Facilities (APF) validity period extension request with conditions for five (5) years.
- An APF validity period requires that all building permits for buildings on the recorded lots must be issued within the APF validity period established in the Resolution.
- The Applicant made a timely request to extend the APF validity period for the development.
- The Applicant has indicated that the extension will allow the necessary time to secure an adequate user and the completion of the final building in the Rock Spring Park project. Per the Applicant's statement of justification, a specific tenant is needed that finds the existing site layout conducive to their business needs and will complement the existing office use.
- The required findings to grant a five-year extension of the APF validity period from Section 50.4.3.J.7.d. are satisfied.

SECTION 1 – RECOMMENDATIONS AND CONDITIONS

PRELIMINARY PLAN NO. 11998091D

Staff Recommendation: Approval subject to the conditions below. All other conditions and findings of Preliminary Plan No. 119980910 as contained in the Planning Board's Opinion dated September 7, 1999, and subsequent Preliminary Plan amendments, that were not modified herein, remain in full force and effect.

1. The Adequate Public Facilities validity period be extended by five (5) years from the date of mailing of the Planning Board Resolution of this application.

SECTION 2 – SITE LOCATION AND DESCRIPTION

Site Location and Vicinity

The portion of Rock Spring Park ("Property" or "Subject Property") that is included in the Preliminary Plan is a platted parcel consisting of four (4) ownership lots (Lot 2AA, 2AB, 5AA, and 5AB) totaling 12.52 acres of land located between Fernwood Road and Rockledge Drive, approximately 500 feet north of Democracy Boulevard in North Bethesda. The soon-to-be-vacated Marriott International Headquarters confronts the site across Fernwood Avenue. Walter Johnson High School confronts the site across Rockledge Drive. The Property is currently zoned Commercial Residential (CR); however, the Project was approved under the prior Technology and Business Park (I-3) Zone under the Zoning Ordinance that was in effect prior to October 30, 2014. The Property is located within the Rock Spring Central District of the 2017 *Rock Spring Sector Plan* area.

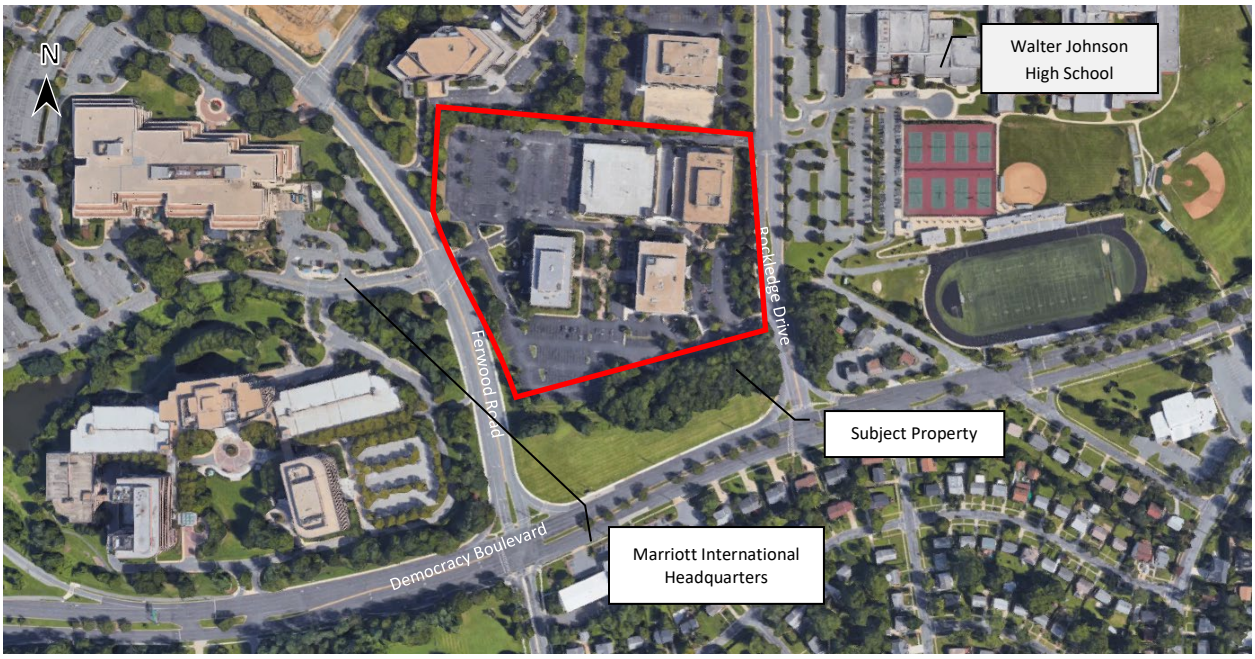


Figure 1 – Vicinity

Site Analysis

Per the *Rock Spring Sector Plan*, the Subject Property is located within the Rock Spring Central/Mixed-Use Business Campus which includes the properties between Rockledge Drive/Democracy Boulevard on the east and the I-270 spur on the west. The Rock Spring Central/ Mixed-Use Business Campus has 30 buildings with more than 5 million square feet of office space. The area is a traditional suburban office campus with stand-alone, single purpose buildings set back from the street, surrounded by both surface parking lots and above-grade structured parking garages.

As shown in Figure 2 below, the Property is currently developed with three (3) buildings of general office and medical uses which is 346,477 square feet of the total 463,651 square feet of approved office use. The existing office building located on Lot 5AA was designed to share an above-grade structured parking garage with the unbuilt Lot 2AA (Lincoln Building).

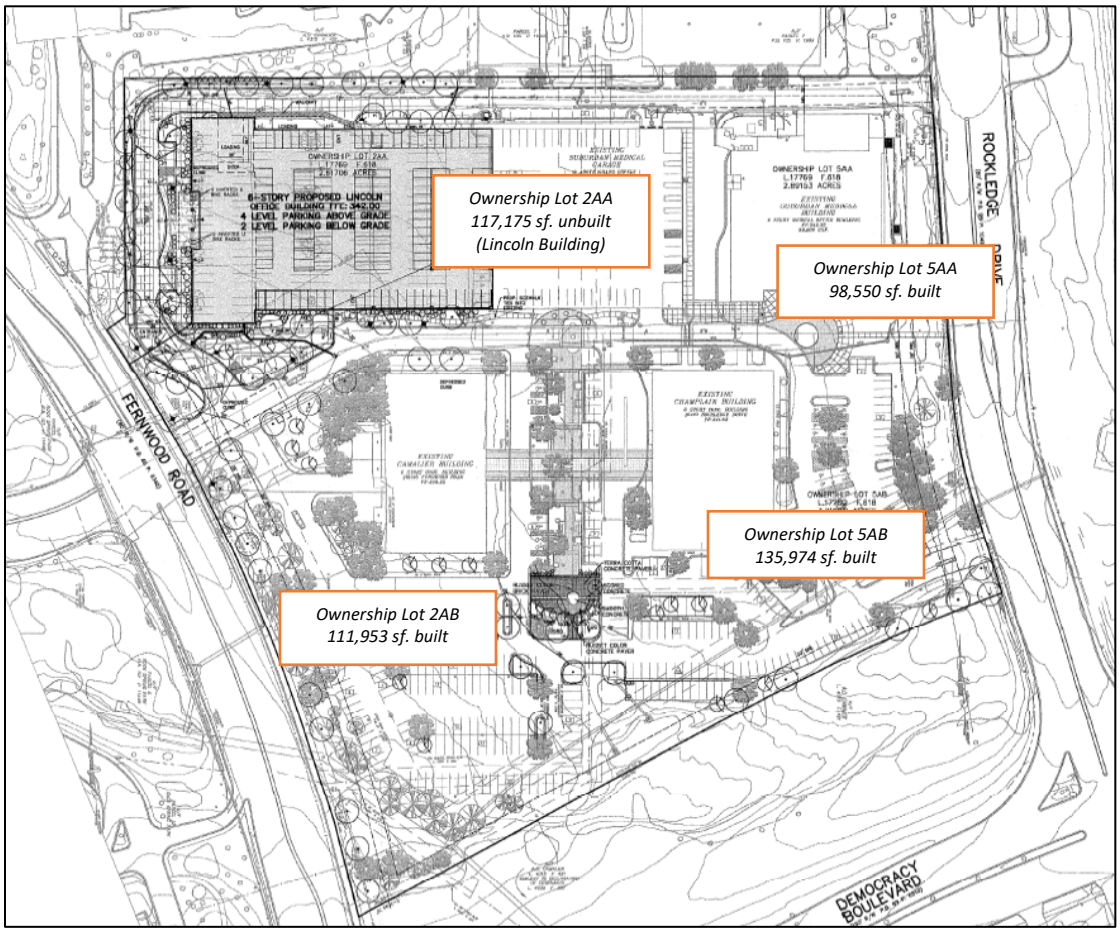


Figure 2 – Site Plan

SECTION 3 – APPLICATIONS AND PROPOSAL

Previous Approvals

119980910

Preliminary Plan 119980910, approved the creation of two lots on 1.5 acres of land, which are in addition to two previously approved office buildings. In accordance with the FY2000 Annual Growth Policy (AGP) Alternative Review Procedures for Expedited Development Approval, the approval was subject to the Applicant submitting an Adequate Public Facilities (APF) agreement with the Planning Board limiting additional development to a maximum of 117,175 square feet of general office (Parcel 2AA) and 98,500 square feet of medical office uses (Parcel 5AA), with a maximum on-site development density of 463,651 square feet of general and medical office uses. The Planning Board Resolution (Attachment 1) for this application was mailed on September 7, 1999. That Opinion provided roughly a two-year plan validity period (October 7, 2001 or 25 months from the date of mailing), and the APF validity period was to expire within two years of the expiration of the Preliminary Plan validity period, or October 7, 2003.

81990027A

In September 1999, the Planning Board approved Site Plan No. 81990027A for the proposed new development for the general and medical office uses, previously approved by Preliminary Plan 119980910. In 2000, the Department of Permitting Services (DPS) issued a permit for the approved 98,550 square feet of office; however, no permit has been issued for the last 117,175-square foot office building.

11998091B

The "B" Amendment was withdrawn for 117,175 square feet of commercial retail.

11998091C

The "C" Amendment established a new five (5)-year APF validity period to allow the construction of the remaining 117,175 square feet of office use (the Lincoln Building on Lot 5AA). Pursuant to the Planning Board Resolution dated February 9, 2006, the APF validity period was set to expire on March 9, 2011 (Attachment 2).

81990027B

Subsequent to approval of the Preliminary Plan 11998091C, the Planning Board approved Site Plan No. 81990027B on March 17, 2011, for building design and layout to improve the marketability of the 117,175-square foot Lincoln Building. Since the approval, the Lincoln Building has not been constructed.

Subsequently, the Montgomery County Council granted four consecutive automatic two (2)-year extensions of APF approvals for all valid plans. Therefore, the validity periods for this plan were granted an additional eight (8) years of validity, which extended the APF validity period until March 9, 2019.

Current Application and Proposal

On February 8, 2019, the Applicant, Elizabethan Court Associates I & II, LP ("Applicant") submitted an application requesting extension of the APF validity period for twelve (12) years for Preliminary Plan No. 11998091D, Rock Spring Park. After meeting with Planning Staff and discussing the project, the Applicant requests an extension of five (5) years for the APF validity period.

In their revised justification letter dated May 23, 2019 (Attachment 3), the Applicant has indicated that to date three (Lot 5AA, Lot 5AB, and Lot 2AB) out of the four ownership parcels were developed. More specifically, 346,477 square feet of the total 463,651-square feet approved has been constructed, being approximately 74% of the overall development approved on the Subject Property. The construction of the third building was completed in December 2000. Additionally, all needed infrastructure for the Rock Spring subdivision has been implemented. Again, the only remaining lot to be developed is Ownership Lot 2AA for the 117,175 square foot Lincoln Building. The Applicant has indicated that the extension will allow the necessary time to secure an adequate user and the completion of the final building in the Rock Spring Park Project. Per the Applicant's statement of justification, a specific tenant is needed that finds the existing site layout conducive to their business needs and will complement the existing office use.

SECTION 4 – ANALYSIS AND FINDINGS

This Application is being reviewed under 50.4.3.J.7 which allows the Planning Board to extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed-use development beyond the applicable validity period, pursuant to a series of findings. The extension is generally limited to 2.5 years for any subdivision with an original validity period of seven years or less.

To grant an extension of the APF validity period, the Planning Board must consider the following findings of Sections 50.4.3.J.7.a. and 50.4.3.J.7.d.:

Section 50.4.3.J.7.a., Applications.

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 current APF validity period was set to expire on March 9, 2019. This application was received by the Planning Department on February 8, 2019.

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

Under the approval of Site Plan No. 819900270, the Applicant included a phasing schedule within their overall Development Program. Per the applicant, the remaining development is expected in a single phase and includes applying for building permits approximately two years following the securing of a tenant and prior to the expiration of this extension under current consideration.

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 what was 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 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.*

The original Preliminary Plan (No. 119980910) associated with the Subject Property analyzed the property for adequacy of public facilities based on general office uses through a traffic impact study. However, the proposed use did not contain residential uses; therefore, the original determination was limited to transportation adequacy for office uses. Staff has not required the Applicant to submit a revised traffic study, as no changes are proposed for the development.

(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.

Section 50.4.3.J.7.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 (GFA) for the project;*

The Applicant has received permits for and constructed a total of 346,476 square feet of the total 463,651 square feet of approved GFA, for a total of approximately 74% of the original approved development, which exceeds 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 by the Preliminary Plan conditions of approval has been constructed, which includes transportation improvements, storm water management, water and sewer mains, and utilities.

(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% 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% 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% of the total gross floor area approved for the project have been built or are under construction.

Approximately 74% of the project has been built, and the Applicant has demonstrated that occupancy permits for 153,215 square feet of the total 463,651 square feet were secured for executed leases within the last four years prior to requesting the APF extension.

ii. For any development that consists of more than one preliminary plan, the requirements for 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.

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

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

Preliminary Plan No. 119980910 set a plan validity period of 25 months, or roughly two years, and an APF validity two years beyond the plan validity, for a total of 49 months, or four years, which is below the seven-year validity required for a longer extension period. Thus, the Applicant is entitled to a 2.5-year extension of the APF validity period.

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 is 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, if:

(a) Development that comprises 30% or less of the total approved gross floor area for the project remains to be built of either the entire approved development or the share of the development to be built by that applicant; or

(b) The applicant will commit to reduce the amount of unbuilt development by at least 10%, and the validity period for the amount to be reduced will expire as scheduled.

Since less than 30% of the total approved project remains to be built, the Applicant qualifies for an additional 2.5-year extension of the APF validity period, for a total of five (5) years.

SECTION 5: CONCLUSION

Based on the analysis above and conditions at the beginning of this report, Staff recommends approval of a five (5)-year extension of the APF validity period. The minimum timeframe requested should be sufficient considering the scope of the project within a single phase and that the Applicant has all infrastructure implemented that is necessary to support construction of one building.

Unless specially set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan as revised by previous amendments, and all findings not specifically addressed remain in effect.

ATTACHMENTS

1. 119980910 Opinion
2. 11998091C Opinion
3. Applicant's Revised Justification and Application

ATTACHMENT 1

Date Mailed: September 7, 1999

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

Action: Approved Staff Recommendation
Motion of Comm. Perdue, seconded by Comm. Wellington with a vote of 3-0; Comms. Perdue, Wellington and Hussman, voting in favor. Comms. Holmes and Bryant absent.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-98091
NAME OF PLAN: ROCK SPRING PARK

On 05-07-98, ELIZABETHAN COURT ASSOCIATES II LP submitted an application for the approval of a preliminary plan of subdivision of property in the I-3 zone. The application proposed to create 2 lots on 1.5 acres of land. The application was designated Preliminary Plan 1-98091. On 08-05-99, Preliminary Plan 1-98091 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-98091 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-98091.

Approval, pursuant to the FY2000 Annual Growth Policy (AGP) Alternative Review Procedures for Expedited Development Approval ("Pay-and- Go"), subject to the following conditions:

(1) Prior to site plan signature set approval, applicant to submit an Adequate Public Facilities (APF) agreement with the Planning Board limiting additional development to a maximum of 117,225 square feet general office and 98,500 square feet of medical office uses. Total site development is limited to a maximum of 463,561 square feet of general office and medical office use

(2) Compliance with the conditions of approval of the preliminary forest conservation plan. The applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit, as appropriate

(3) Conditions of MCDPS stormwater management approval dated 06-19-98

(4) Prior to recording of plat, applicant to submit final landscaping and lighting plan for technical staff review and approval

(5) Terms and conditions of access and improvements, as required by MCDPW&T, to be approved prior to release of building permits

(6) Necessary easements

(7) In accordance with the provisions of the expedited development approval excise tax (EDAET) of the FY99 AGP, this preliminary plan will remain valid until October 7, 2001 (25 months from the date of mailing, which is September 7, 1999). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded. In order for the approval to remain valid, all building permits must be issued within two years of the recordation of the associated plat(s).

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: Oct. 10, 2005

Date Mailed: FEB 0 9 2006

Action: Approved Staff Recommendation

Motion of Commissioner Wellington, seconded by Commissioner Robinson, with a vote of 4-0; Chairman Berlage and Commissioners Perdue, Robinson and Wellington voting in favor. Commissioner Bryant absent.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 11998091C (formerly 1-98091C)
NAME OF PLAN: Rock Spring Park

The date of this written opinion is FEB 0 9 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 6/02/05, Elizabethean Court Associates I & II ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the I-3 zone. The application proposed to create 1 lot on 12.53 acres of land located on the west side of Rockledge Drive, 500 feet north of Democracy Boulevard, in the North Bethesda/Garrett Park master plan area. The application was designated Preliminary Plan 11998091C (formerly 1-98091C). On 10/10/05, Preliminary Plan 11998091C (formerly 1-98091C) 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.

PUBLIC HEARING

Staff generally summarized the facts and recommendations in its staff report (expressly incorporated herein by reference), and submitted to the Board revised conditions of approval (reflected below). The Applicant appeared and testified in support of the staff recommendations and conditions of approval, with no changes. Nobody else testified about the project.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies[1]; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, based upon the uncontested evidence of record, the Montgomery County Planning Board finds that:

a) The Preliminary Plan No. 11998091C (formerly 1-98091C) substantially conforms to the North Bethesda/Garrett Park master plan.

b) Public facilities will be adequate to support and service the area of the proposed subdivision.

c) The size, width, shape, and orientation of the proposed lot is appropriate for the location of the subdivision.

d) 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.

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[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.

e) 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) 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 a substantive issue in this application, is waived.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 11998091C (1-98091C) in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 11998091C (formerly 1-98091C), subject to the following conditions:

1) Limit the preliminary plan amendment to a total of 463,651 square feet of general and medical office use consisting of the following:

   a. A maximum of 98,550 square feet of medical office space; and

   b. A maximum of 365,101 square feet of general office space.

2) Prior to release of building permit, applicant shall execute a revised Traffic Mitigation Agreement (TMA) with the Planning Board and the Montgomery County Department of Public Works and Transportation to satisfy the trip mitigation requirements of the master-planned North Bethesda Transportation Management District and the *I-3 Trip Reduction Guidelines*.

3) The Adequate Public Facilities (APF) review for this preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion for this amendment.

4) Section 59-D-3 site plan review is required prior to issuance of building permit for the portion of the site impacted by the development of the remaining un-built 117,175 square feet of office use.

5) All other applicable conditions of approval included in the Planning Board's opinion dated September 7, 1999, as amended, remain in full force and effect.

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). rior 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.

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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

MR 1/6/06

Approved for legal sufficiency
M-NCPPC Office of General Counsel

CERTIFICATION OF BOARD VOTE ADOPTING OPINON

At its regular meeting, held on **Thursday, February 2, 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. 1998091C, Rock Spring Park.**

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

ATTACHMENT 3

Steven A. Robins
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Elizabeth C. Rogers
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May 23, 2019

By Electronic Mail

The Honorable Casey Anderson, Chair
and Members of the Montgomery County Planning Board
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: **REVISED** Request for Extension of Adequate Public Facilities Determination
Rock Spring Park – Preliminary Plan No. 11998091C

Dear Chairman Anderson and Members of the Board:

Our firm represents Elizabethan Court Associates I & II, LP ("Applicant"), an affiliate of Camalier Limited Partnership, the owner and developer of a project better known as Rock Spring Park. In accordance with the requirements of Chapter 50 of the Montgomery County Code ("Subdivision Regulations"), we submitted a request for an extension of the Adequate Public Facilities Approval (the "APF Approval") for the above-referenced Preliminary Plan on February 8, 2019, prior to the expiration of such approval. Pursuant to the approvals granted by the Planning Board (*see* Condition No. 3 of Preliminary Plan No. 11998091C), together with the automatic extensions approved by the Montgomery County Council, the APF Approval will have expired on March 9, 2019, if the requested extension is not granted. Thus, our request for an APF Extension was timely submitted. We are now submitting this revised letter, to address and respond to comments received from Planning Department Staff on April 12, 2019.

In order to allow for completion of the Project, the Applicant is requesting the Planning Board's approval of an extension to the APF Approval. Granting this extension will not, in any way, cause harm to others. Rather, this extension will facilitate desired, additional office/

commercial development and help promote and boost the success of the office market in Rock Spring.

A. Site Description and Approvals

The portion of Rock Spring Park that is included in the Preliminary Plan is a platted parcel and consists of four Ownership Lots (Lot 2AA, 2AB, 5AA, and 5AB) on a total of 12.52 acres of land located between Fernwood Road and Rockledge Drive, approximately 500 feet north of Democracy Boulevard (the "Property").[1] The Property currently is developed with three buildings (and associated structured and surface parking), containing approximately 346,476 square feet of office use. The Property is zoned CR 1.5, C-1.0, R-0.75, H-100 but was developed under the prior I-3 zone. The Property is located within the boundaries of in the 2017 Approved and Adopted Rock Spring Sector Plan, and more specifically in the Rock Spring Central District of the Sector Plan.

The Property is limited to 463,651 square feet of office use. The original Preliminary Plan (No. 119980910) approved two office buildings plus the new construction of two office buildings containing 117,225 square feet and 98,500 square feet respectively, for a total on-site development density of 463,651 square feet. Subsequently, the Montgomery County Planning Board approved Site Plan No. 81990027A for the proposed new development. In accordance with Section 50-20(c)(2) of the Montgomery County Code (in effect at the time), all building permits for the proposed new development were required to be issued before the Preliminary Plan's APF validity period expired on October 7, 2003. On December 12, 2000, the Department of Permitting Services ("DPS") issued a building permit (#220207) for 98,550 square feet of office. However, DPS did not issue a building permit for the approved 117,225 square feet of office use before October 7, 2003.

Accordingly, the Applicant filed a Preliminary Plan Amendment (No. 11998091C) ("Preliminary Plan Amendment") to establish a new APF validity period to permit construction of the remaining office use.[2] The Montgomery County Planning Board approved Preliminary Plan Amendment No. 11998091C for an additional 117,175 square feet of office use on the Property (the "Lincoln Building"), with the overall site not to exceed 463,651 square feet of office use. Condition No. 3 of the Amendment established a new APF Approval of 61 months from the date of mailing of the Planning Board opinion (61 months from February 9, 2006 or March 9, 2011). Subsequently, the Applicant sought approval of a Site Plan Amendment (81990027B) to allow for modifications to the building design and layout to improve

[1] The Property in its entirety has been recorded, thus validating the Preliminary Plan (*see* Plat No. 24183).

[2] Note that the building permit issued on December 12, 2000 appeared to be issued for 50 square feet more of office use than stated in the original Preliminary Plan approval. To correct this, in connection with Preliminary Plan No. 11998091C, the remaining office component was reduced by 50 square feet.

marketability of the Lincoln Building. The Planning Board approved Site Plan Amendment No. 81990027B on March 17, 2011.

The Lincoln Building has not yet been constructed and, as previously stated, with the automatic extensions, its APF Approval is set to expire on March 9, 2019, if the requested extension is not granted.

To date, the following portions of the project have been constructed:

1. Ownership Lot 5AA – improved with an approximately 98,550 square foot office building and portion of a structured parking garage, which is designed to be shared with the Lincoln Building proposed on Lot 2AA.
2. Ownership Lot 5AB – improved with an approximately 135,974 square foot office building.
3. Ownership Lot 2AB – improved with an approximately 111,953 square foot office building.

As a result, the only remaining lot to be developed is Ownership Lot 2AA.

B. Basis for Adequate Public Facilities Approval Extension

The Planning Board has the authority to extend the validity period for a determination of adequate public facilities. For the approval of an extension, the Applicant must not propose any additional development above the amount approved in the original determination. The Applicant is not proposing any new development above that approved by the Preliminary Plan Amendment (*i.e.* 463,651 square feet of which 117,175 square feet remains unbuilt).

The Subdivision Regulations set forth certain criteria for granting an extension. The Applicant qualifies for an extension under several of the enumerated criteria, as illustrated below.

1. Section 50.4.3.J.7.d.i -iii of the Subdivision Regulations states that 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 of the project (***Satisfied – three of the four buildings are constructed***);

(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 (***Satisfied***); 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 5% 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% of the total gross floor area approved for the project have been built or are under construction ***(Satisfied – In the past four years, 153,215 square feet requiring occupancy permits has been occupied pursuant to executed leases which is far greater than 5% of the total gross floor area of the project (not including Hopkins)).***

To date, approximately 346,477 square feet, or 74 percent, of the overall development has been constructed on the Property. Furthermore, the entire infrastructure required for the Rock Spring Park subdivision has been constructed. Although construction of the last building was completed in the early 2000's, as referenced above, use and occupancy certificates have been issued within the past four years to satisfy the above referenced requirement.

Under Section 50.4.3.J.7.d.iii of the Subdivision Regulations, if the original validity period was less than 7 years, the Board is authorized to grant an extension of 2.5 years. Section 50.4.3.J.7.d.v, authorizes the Board to grant one or more *additional* extensions of a determination of adequate public facilities (in addition to the extension granted under Section 50.4.3.J.7.d.iii), if development, that comprises 30% or less of the total approved gross floor area for the project, remains to be built. The remaining 117,175 square feet of development density comprises only 26% of the overall approval (*i.e.* 463,651 square feet). Thus, the Planning Board is authorized to grant a five (5) year extension.

2. Section 50.4.3.J.7.e of the Subdivision Regulations also provides the Planning Board has the authority to extend a determination of adequate public facilities once *for up to 12 more years* beyond the otherwise applicable validity period if the Board finds that:

i. The preliminary plan for the development required a significant commitment of funds by the applicant, amounting to at least $3 million as adjusted annually by the consumer price index, to comply with specified infrastructure conditions (***See Waiver Request***).

ii. The applicant has met or exceeded the required infrastructure conditions during the original validity period (***Satisfied***); and

iii. The applicant's satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable master plan (***Satisfied)***

The Applicant had made significant investment and infrastructure improvement in the Rock Spring area of North Bethesda. The Applicant completed all required infrastructure conditions during the original validity period, as required by the underlying development approvals. The Project was approved under the previous system of "pay and go." Accordingly,

among other things, the Applicant made a payment to the County, which was recommended to be used for certain transportation improvements in the area.

Additionally, the Applicant made the following infrastructure improvements on and around the Property:

1. Public water and sewer mains, and building service connections;
2. All private and public storm drain has been installed for all constructed buildings and parking facilities;
3. All utilities serving constructed buildings are complete;
4. Final grading completed for lots, except possibly Ownership Lot 2AA;
5. MCDPS approved on-site SWM requirements; and
6. Forest conservation obligations.

This is a unique situation, as the Applicant has significant holdings and interests in the larger Rock Spring area, together with other related entities. In addition to the infrastructure improvements implemented in conformance with the development approvals for the Property (as outlined above), the Applicant, together with other ownership entities, also has provided a significant amount of infrastructure improvements for the larger Rock Spring area (mostly for Rock Spring Centre), well in excess of $3 Million. These improvements, together with other non-transportation related improvements in the area which in total exceed $11 million, include:

1. Construction of west-bound left turn lane on Tuckerman Lane at its intersection with Old Georgetown Road.
2. Dedication of land and contribution of $1,500,000 toward the construction of the Rockledge Connector Interchange with I-270 & dedication of SWM area for SHA improvements.
3. Dedication of land and construction of the realignment of Rockledge Drive to connect with the Rockledge Connector Interchange.
4. Dedication of land and construction of widening of Old Georgetown Road to remove northbound "trap lane" and add northbound left turn lanes at Democracy Blvd and Rock Spring Drive.
5. Dedication of land and construction of Fernwood Road, Rockledge Drive, and Rock Spring Drive.
6. Major financial contributions for construction of Fernwood Road/Westlake Terrace Bridge over I-270.

As is evident by the lists above, the infrastructure provided by the Applicant for this project and for others provides a significant and necessary public benefit to the County to justify the 12 year extension of the APF approval as referenced in the Subdivision Regulations. Much of the infrastructure was specifically called for in the Approved and Adopted 1992 North Bethesda/Garrett Park Sector Plan and is necessary for the functionality of the Rock Spring area in North Bethesda, as well as to provide an efficient transportation network for the County as a whole. Because the precise language contained in the Subdivision Regulations requires that the infrastructure improvements associated with the subject Preliminary Plan must have amounted to at least $3 million, we are seeking a waiver from this section of the Subdivision Regulations (*i.e.* Section 4.3.J.7.e.i) to allow for inclusion of the other associated infrastructure improvements made by the Applicant within the larger Rock Spring area.

i. Subdivision Waiver

The Board has the authority to grant a waiver from any requirement of the Subdivision Regulations (*see* Section 50.9.1). Pursuant to section 50.9.3, to grant a waiver, the Board must find that:

(1) Due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Subdivision Regulations is not needed to ensure the public health, safety, and general welfare;

(2) The intent of the requirement is still met; and

(3) The waiver is:

a. The minimum necessary to provide relief from the requirements; and

b. Consistent with the purposes and objectives of the General Plan.

As mentioned above, this is a unique situation. Rock Spring Park is part of a much larger development within the Rock Spring area of North Bethesda. The Applicant has numerous holdings and has played an integral role in the development of the Rock Spring area. The Applicant made significant and substantial investment in this area of the County, as illustrated in Section B.2 above. We believe that it is reasonable to judge compliance with Section 50.4.3.J.7.e based on the improvements made within the larger Rock Spring area in North Bethesda, and not just those that pertain to this Property, as these improvements have provided substantial public benefit.

The Property itself also is unique. The delay in constructing the Lincoln Building is due, in part, to the configuration of the Project. The existing office building located on Ownership Lot 5AA is currently occupied by Johns Hopkins (formerly Suburban Hospital). This office building was designed and built to share an above-grade structured parking garage with the unbuilt Lincoln Building. Given this physical and spatial connection, the Applicant is not

looking for just any tenant. Rather, the Applicant is seeking an appropriate user that will complement the existing office use. The Applicant is committed to ensuring the success of Rock Spring and believes the Lincoln Building, with the right tenant, will help to lift up the office market in Rock Spring, which has been struggling in recent years.

Importantly, the requested extension satisfies the intent of the Subdivision Regulations. The extension criteria is intended to ensure, in part, that capacity is not tied up indefinitely by applicants, who have not shown a good faith effort to move projects forward. On the contrary, the Applicant has made substantial improvements on the Property – including construction of approximately 74% of the approved floor area and significant infrastructure improvements (both on the site and within the larger Rock Spring area). The Applicant also spent time and effort to amend the Site Plan (in 2011) and establish Ownership Lots to accommodate development in this location by different end users.

The waiver is the minimum necessary to provide relief, as the Applicant has met the intent of all conditions for granting an extension. Importantly, the additional office use that will be developed if this extension request is granted, is consistent with the purposes and objectives of the General Plan. The Property is located in a designated concentrated growth center in the General Plan. As such, the development of additional office use at this location, given its close proximity to residential uses and various transportation networks/services (including I-270, I-495 and various bus routes) will promote the concept of smart growth advocated by the County.

C. Development Schedule

There is only one building remaining to be development on-site – The Lincoln Building. As such, the Project's remaining density will constructed in one phase, within the time allowed by this APF extension.

D. Conclusion

For all of the reasons set forth herein, the Applicant respectfully requests an additional APF Approval validity determination of twelve years, but in no event less than five, based on the reasoning set forth in this correspondence.

We thank the Planning Board for its consideration of this extension request. We believe this Project satisfies the intent and provisions of the Subdivision Regulations for extensions. The existing and planned office uses in Rock Spring Park are important to the long term success and attractiveness of the County, to businesses and residents alike. This extension will allow the Applicant to complete and deliver this additional office space, in an effort to reinvigorate the Rock Spring office market, in a reasonable period of time. If this extension request is granted by the Board, the Applicant will continue its diligent search for an appropriate user. Once a long-term user has been secured, the Applicant will apply for building permit(s) (likely within two

years following the securing of a tenant), and thereafter begin construction (prior to the expiration of this extension).

For all of the reasons articulated herein, we respectfully request the Planning Board approve this extension request.

Sincerely,

Steven A. Robins

Elizabeth C. Rogers

Cc: Ms. Carrie Sanders
Mr. Patrick Butler
Ms. Tamika Graham
Mr. Chris Camalier
Ms. Jody Rice