



Fairchild, Subdivision Regulation Waiver No. SRW202101 and Site Plan Amendment No. 82018022A

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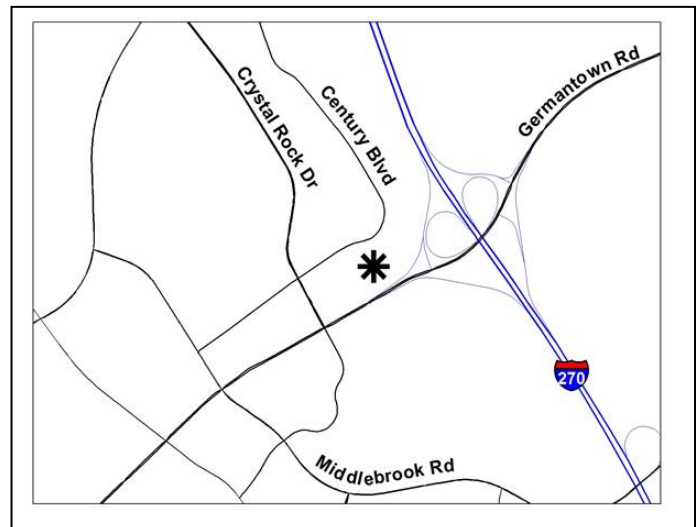
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Staff Report Date: 07/17/2020

Description

- A. Subdivision Regulation Waiver No. SRW202101 Waiver Request for limited findings of Ch. 50 for the purpose of an APF extension and
- B. Site Plan Amendment No. 82018022A request for a 2-year extension to the validity period for the finding for Adequate Public Facilities for the Site Plan, which approved one 201,720 square foot residential building with up to 212 dwelling units and 20,933 sq. ft. of existing commercial space

Location: the south side of Century Blvd., approximately 150 ft. east of the intersection with Aircraft Dr.; 5.49 acres; CR 2,0, C-1.5, R-1.5, H-145T and Germantown Transit Mixed Use Overlay Zone; Germantown Employment Area Sector Plan area.



Applicant: GTTCE Owner, LLC

Submittal Date: April 14, 2020

Summary

- Staff recommends Approval with Conditions
- The Applicant requests to amend the Site Plan to extend the APF finding validity by two years
- The Applicant requests a Waiver Request for limited findings of Ch. 50 for the purpose of an APF extension due to technical finding issues resulting from the APF being tied to a Site Plan
- Staff recommends approval of the waiver request under Chapter 50 as this application meets the intention of the findings required
- The Applicant justifies the extension as necessary due to the difficult ongoing economic conditions.
- Staff has not received any correspondence regarding this Application

SECTION 1 - EXECUTIVE SUMMARY

The Applicant requests, through Site Plan Amendment No. 82018022A (“Application”), to amend the APF finding validity by two years for Site Plan No. 820180220 for the Fairchild Apartments (“Site Plan” and “Fairchild”) and is applying through Subdivision Regulation Waiver No. SRW202101 to waive limited findings of Ch. 50 in support of the APF extension.

The approved Site Plan encompasses 5.49 acres, identified as Parcel V on Plat No. 22590, which allows for construction of 201,720 sq. ft. of new residential development with 212 units in a single multifamily building. The Site Plan geography is formerly part of the overall approved Germantown Town Center East Site Plan No. 819990010 (“GTTCE”) geography. The Fairchild Apartments were reviewed as a new Site Plan rather than an amendment to allow redevelopment under the current CR zone and the 2009 Germantown Employment Area Sector Plan, rather than the old TS Zone implemented by Local Map Amendment based on the old 1989 Germantown Master Plan.

The APF approval for Fairchild is not granted by the underlying Preliminary Plan, but instead as a partial continuation of the GTTCE Site Plan approval. This APF approval was valid for 12 years from the 2000 approval; it was then extended by an additional eight years as part of the County Council’s automatic APF extensions in reaction to the 2008 Recession to April 27, 2020. This APF allowance granted under the GTTCE Site Plan was recently split between the linked Fairchild Site Plan No. 820180220 and the GTTCE Site Plan Amendment No. 81999001H.

The Site Plan was reallocated density and a conversion of commercial trips into residential trips as part of the APF finding of the Plan approval; a commensurate amount of development and trips were reduced on the GTTCE property as amended by the linked Site Plan No. 81999001H approval. This was possible because the two Site Plans share a common Applicant, and because the APF was approved with building permits and tied to density, not to a specific Preliminary or Site Plan approval. The validity period for the amended GTTCE Site Plan has expired, leaving only the APF determination for the Fairchild Site Plan, if approved by this Application.

A separate but linked application for a Waiver Request for findings of Ch. 50 is included; approval of this request is required to approve the APF extension. As detailed below, this waiver is necessary to meet limited findings as required by Ch.50.4.3.J.7.d.i, in particular to address technical issues due to the maturity of the overall project as well as linking the APF finding to the Site Plan as opposed to the Preliminary Plan, as is more commonly found for similar mixed-use developments. As explained in the findings, this waiver would preserve the intent of 50.4.3.J.7.d.i and there would be no adverse effect; Staff recommends approval of this waiver request.

SECTION 2 – RECOMMENDATIONS AND CONDITIONS

A. Subdivision Regulation Waiver No. SRW202101

Staff recommends approval of Subdivision Regulation Waiver No. SRW202101 to waiver limited requirements under 50.4.3.J.7.d.i.

B. Site Plan Amendment No. 82018022A

Staff recommends approval with conditions of the Site Plan amendment for a 2-year APF validity extension. All previous conditions of approval for the Site Plan remain in full force and effect except for the following modifications:

Staff recommends striking condition 14 for the Adequate Public Facility validity period and hereby replacing it with the following:

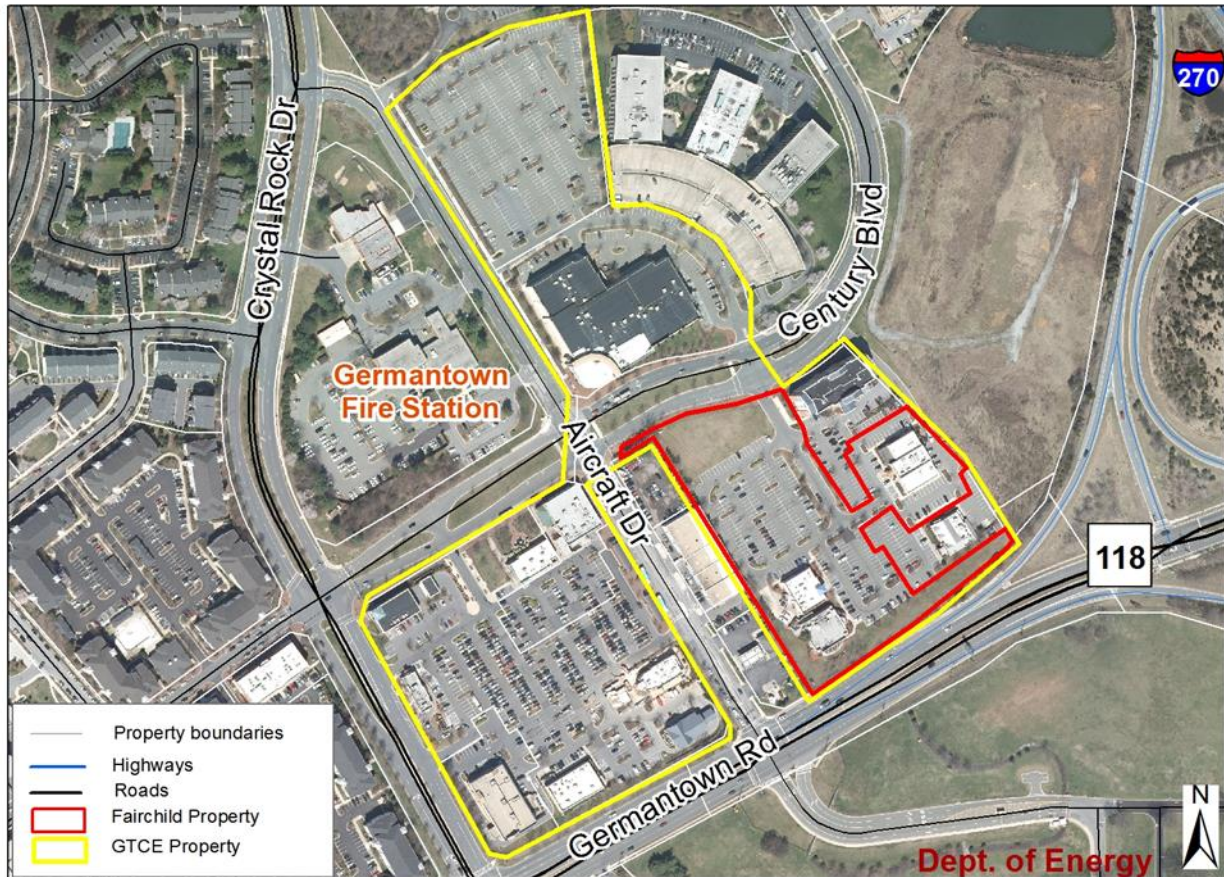
~~14. Validity~~

~~The Adequate Public Facility Review (APF) will remain valid until April 27, 2020, consistent with the current APF validity period initiated at building permit for the density associated with the Germantown Town Center East Site Plan No. 819990010, which this Site Plan is utilizing.~~

14. Validity

The Adequate Public Facility Review (APF) will remain valid until April 27, 2022.

SECTION 3 – SITE LOCATION AND DESCRIPTION



Vicinity Map

Vicinity

The Subject Property is located on the south side of Century Boulevard and the north side of Germantown Road (MD 118), approximately 150 feet east of the intersection with Aircraft Drive. The site is 5.49 acres in size and is identified as Parcel V on Plat No. 22590 ("Fairchild Property"). The Property is located on the eastern edge of the Germantown Town Center, and is within the 2009 Germantown Employment Area Sector Plan ("Sector Plan"). The current zoning of the Property is CR 2.0, C-1.5 R-1.5 H-145T, and is also located within the Germantown Transit Mixed Use Overlay Zone. The Subject Property is part of the larger Germantown Town Center area, which is comprised of a mix of mostly commercial, office, retail, hotel and entertainment venues immediately along Century Boulevard, with multi-family as well as one-family attached dwelling communities one block off Century Boulevard.

Site Analysis - Fairchild Property

Currently, the Fairchild Property is comprised of Parcel V, on Block U, V, W, and is mostly developed with one-story pad-site restaurant uses (IHOP, Red Robin, Señor Tequilas), surface parking lots, and one cleared and graded grass 'pad' that has yet to be developed. Parcel V shares the block with two other recorded parcels which are part of the GTTCE Property, including Parcel W with a Fairfield Marriot Hotel, and Parcel U with a Lonestar Steakhouse restaurant. The entire block is developed as one interconnected network of pedestrian and vehicle circulation and parking, including shared use and access agreements. There is currently one direct point of access to Century Boulevard centered on the block, and there is a second shared access location on the Top Golf site located east of the hotel. Other than trees and grass in parking lot islands, there is little existing vegetation and no identifiable environmental resources on the Fairchild Property.

SECTION 4 – PROJECT DESCRIPTION

Previous Approvals

Preliminary Plan No. 119783190

Preliminary Plan No. 119783190, 270 Executive Park, was approved on January 11, 1979, to create 11 lots and the initial right-of-way to allow for the construction of Century Boulevard. The total project size was approximately 40 acres and allowed for up to 538,000 square feet of office space. This Preliminary Plan led to subsequent plats, including Plat No. 13750, which first recorded Parcels E and F. Together, these two parcels were approximately the same size as block as Parcels U, V, and W.

Local Map Amendment G-742 – Germantown Town Center East

Local Map Amendment ("LMA") No. G-742 rezoned approximately 24 acres of land to the Town Sector Zone including the Subject Property. This was the last section of Germantown to come into the Town Sector Zone and was approved as 100% commercial retail development in phase one, with the option to add residential uses to a portion of the project area in phase two.

Site Plan No. 819990010 (as amended)

Site Plan No. 819990010 was first approved by Opinion dated March 15, 1999 for up to 181,900 square feet of commercial uses and 98,559 square feet of hotel use on 24.74 acres. This site plan implemented LMA G-742's Town Sector Zone and conditions. The site plan covers three megablocks centered around the intersection of Century Boulevard and Aircraft Drive. As part of this Site Plan, the applicant was required to substantially reconstruct Century Boulevard from a four-lane undivided roadway into a four-lane divided highway with a 50-foot wide median capable of accommodating the future Corridor Cities Transitway ("CCT"). Several plats have been recorded creating lots and parcels as a result of this site plan, including the Fairchild Property Parcel V.

The following Table 1 summarizes the A – F amendments to Site Plan 819990010. Many of these amendments are administrative and only apply to portions of the GTTCE Property.

Table 1 – Previous Site Plan History

Amendment Number	Approval Type and Date	Description
81999001A – Fairfield Marriott	Admin approval, April 10, 2003	Design changes for Fairfield Marriott
81999001B – Baileys Pub	Admin approval, December 12, 2004	Design changes specific to the restaurant user
81999001C - IHOP	Admin approval, December 1, 2005	Modification for a 5,500 sq. ft IHOP
81999001D – Commerce Bank	MCPB No. 06-012, November 13, 2006	Change building from 2 story – 10,100 sq. ft. to 1 story 4,100 sq. ft bank building
81999001E – Commerce Bank	MCPB No. 07-28, April 5, 2007	Increase building from 4,100 sq. ft to 5,100 sq. ft.
81999001F – Panera	MCPB No. 11-67, August 9, 2011	Approve a 5,097 sq. ft. Panera
81999001G – Chick Fil A	MCPB No. 16-045, April 26, 2016	Add 344 sq. ft. of kitchen area and supplement landscaping along the drive-through aisle
81999001H - GTTCE	MCPB No. 18-135, December 13, 2018	Transfer of land, development and APF allowance from GTTCE to Fairchild Site Plan

APF at Building Permit

On April 27, 2000, the Planning Board held a hearing to transmit comments to the Department of Permitting Services recommending approval of an adequate public facility (“APF”) review at the time of building permit for the Germantown Town Center (Site Plan No. 819990010; “GTTC Site Plan”). The APF was for 127,026 square feet of restaurant uses, 67,880 square feet of movie theater and an 89-room hotel (Attachment D). The approval of the APF was conditioned on making transportation improvements including finishing Century Boulevard between Aircraft Drive and Crystal Rock Drive, widening Aircraft Drive between Century Boulevard and Crystal Rock Drive, and participating in intersection reconstruction at Crystal Rock Drive and Father Hurley Boulevard. The APF approval was originally valid for 12 years and has been extended as part of the County Council automatic APF extensions an additional eight years, extending validity to April 27, 2020.

Sketch Plan No. 320180130

Sketch Plan No. 320180130 was approved by Resolution No. 18-078 dated July 31, 2018, to allow up to 206,102 square feet of new construction including up to 206,102 square feet of residential uses and up to 5,900 square feet of commercial use, and to retain up to 29,915 square feet of commercial use on the 5.49 acre Parcel V Fairchild Property. The Sketch Plan set the general massing and location of the new building, the general location of the Public Open Spaces and the Public Benefit Point categories for achieving optional method incentive density, to be refined with future site plans.

Site Plan No. 820180220

Site Plan No. 820180220 ("Site Plan") was approved by MCPB No. 18-136 (Attachment A) dated January 8, 2019 for up to 201,720 square feet in residential GFA or 212 multi-family dwelling units in one building, and to retain 20,933 square feet of existing commercial restaurant uses in three one-story buildings on 5.49 acres of land.

Proposal

The Applicant requests a two-year extension to the validity period for APF finding (Attachment B) for the Site Plan. The existing APF validity was set to expire just over a year after the approval of the Site Plan, a duration that was believed to be adequate to complete the project. However, due to difficult market conditions that have arisen in the time since, the Applicant requests additional time to implement the approved plan. The Applicant is currently finalizing an application for building permit and is awaiting approval of this Application for APF extension to submit to DPS for review.

A separate but linked application for a Waiver Request for findings of Ch. 50 is included; approval of this request is required to approve the APF extension. As detailed below, this waiver is necessary to meet limited findings as required by Ch.50.4.3.J, in particular to address technical issues due to the maturity of the overall project as well as the linking the APF finding to the Site Plan as opposed to the Preliminary Plan, as is more commonly found for similar mixed-use developments. As explained in the findings, this waiver would preserve the intent of 50.4.3.J.7.d.i and there would be no adverse effect.

SECTION 5 – CITIZEN CORRESPONDENCE AND ISSUES

The Applicant has met all proper signage, noticing and pre-submission meeting requirements for the submitted Application. To date, Staff has not received any correspondence regarding this Application. Correspondence received after posting of the Staff Report will be forwarded to the Planning Board for discussion at the Hearing.

SECTION 6 – ANALYSIS AND FINDINGS – SUBDIVISION REGULATION WAIVER SRW202101

Waiver of 50.4.3.J.7.d.i – Extension of APF for Nonresidential or Mixed-use Subdivisions

The Applicant, as expressed in the Statement of Justification for the Subdivision Regulation Waiver Application (Attachment C), is requesting a waiver from the Board from the findings delineated under 50.4.3.J.7.d.i. The Site Plan for Fairchild was approved with less than two years remaining for underlying APF validity, a limited amount of time to construct the multistory residential building but a duration that at the time of approval seemed achievable, with the understanding that an extension of the existing APF would be required if the construction timeframe exceeded that window. However, as the Site Plan is an outgrowth of the mature and

nearly fully realized GTTCE development, Staff acknowledges the difficulty of the Plan to strictly meet the specified findings for a nonresidential or mixed-use subdivision under 50.4.3.J.7.d.i, findings which are written to more properly address issues arising from applications which have shown inadequate progress towards development. These findings are:

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.

The Board may modify any portion of Chapter 50 through a waiver request if the following findings specified under Ch.50.9.3 can be satisfied:

1. *Due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*

This project's severance from the overall GTTCE development so well into the maturity of the overall GTTCE development has created an unusual circumstance where the APF is attached to this project's site plan and puts the project in the position where most of the development tied to the APF has been completed, but attached to a separate site plan. With a development history of the GTTCE properties dating back to the 1970's, most of the buildable project has been completed over the intervening decades. The Fairchild Site Plan excised a comparatively small portion of the overall GTTCE development and one of the last areas remaining undeveloped; the majority of built commercial area was placed separately in the amended GTTCE Site Plan area. Additionally, given the maturity of the overall GTTCE development, most of it built well prior to the 4-year window required under Subsection C, it is impossible for this application to strictly meet the requirement. However, these findings are not necessary to ensure public health, safety and general welfare; instead, these requirements act as a trigger to ensure an approved Plan is undergoing active development and not merely holding an unnecessary reservation on valuable public facilities. Through the

long history of consistent development of the Fairchild and GTTCE properties, it is clear that the Applicant is continuing to actively implement the Site Plan approval.

2. The intent of the requirement is still met;

The intent of section 50.4.3.J.7.d.i is still being met; as detailed below, the section intends to serve as a check to ensure approved development is proceeding as planned and that approved APF findings allocating valuable public infrastructure is not being reserved without a plan and intention for its use. Additionally, as explained in the SOJ, most of the related overall GTTCE development as approved has been constructed to its full potential, with the notable exception of the unbuilt residential building approved by the Site Plan. Therefore, there is a demonstrable intent by the Applicant to implement the development as approved.

50.4.3.J.7.d.i.a: Approximately 90% of approved GFA of the Site Plan is tied to the approved multifamily building; this makes it impossible to strictly meet the required threshold of 40% to have been built to satisfy the subsection. This is the result of a technical quirk of the APF approval being tied to the Site Plan approval and not an underlying Preliminary Plan, as is the typical case for similar large, mixed use developments. When the APF was split between the two now distinct Site Plans (Fairchild and GTTCE), the Fairchild Site Plan can no longer take clear credit for the bulk of the GTTCE development that has occurred. Nevertheless, as stated in the SOJ, this finding would otherwise be met if the Site Plan could take credit for the significant development that has occurred on the larger GTTCE property as would be possible if the APF were tied to a Preliminary Plan. To this point, 44% of development has been constructed as approved under the combined 2018 Site Plan Amendments (Fairchild Apartments and GTTCE), above the aforementioned 40% threshold (Table 2). With this in mind, the general intent to demonstrate that this Site Plan is actively pursuing development is met as the Applicant has demonstrated a lengthy history of implementing a large portion approved development and would fully comply with the requirement if the APF history is to be viewed in totality.

Table 2: Built and Approved GFA

Building ID	User	Use	Built GFA (Sq. Ft.)
1B	Regal Cinema	Commercial/Retail	58,782
1D	Greene Turtle	Commercial/Retail	11,610
2D	Panera	Commercial/Retail	5,097
3D	TD Bank	Commercial/Retail	5,118
5D	Rite Aid	Commercial/Retail	12,469
6D	Carrabbas	Commercial/Retail	8,421
7D	BB&T	Commercial/Retail	3,500
8D	CFA	Commercial/Retail	4,009
9D	Taco Bell	Commercial/Retail	2,637
3E	Baileys/Sr Teq	Commercial/Retail	9,000
4E	Red Robbin	Commercial/Retail	6,957
5E	IHOP	Commercial/Retail	4,976
6E	Fairfield Hotel	Hotel	53,915
7E	Longhorn Steakhouse	Commercial/Retail	5,072
		Total Approved, combined GTTCE and Fairchild Apartments	430,868
		Total Built:	191,563

50.4.3.J.7.d.i.b: All of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, particularly the required section of Century Boulevard. The approval of the APF was conditioned on making additional transportation improvements including finishing Century Boulevard between Aircraft Drive and Crystal Rock Drive, widening Aircraft Drive between Century Boulevard and Crystal Rock Drive, and participating in intersection reconstruction at Crystal Rock Drive and Father Hurley Boulevard. The Applicant was later required by an amendment to the GTTCE Site Plan to reconstruct Century Boulevard from a four-lane undivided roadway into a four-lane divided highway with a 50-foot wide median capable of accommodating the future Corridor Cities Transitway ("CCT"). All improvements have been constructed. This section is fully satisfied.

50.4.3.J.7.d.i.c: As with subsection 'a', these requirements act as a trigger with an intent to ensure a Plan is undergoing active development and that it is not merely holding an unnecessary reservation on valuable public facilities. Through the long history of consistent development of the Fairchild and GTTCE properties as previously discussed, it is clear that the Applicant is continuing to actively implement the Site Plan approval. The intent of this finding is met.

3. *The waiver is:*

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

Waiving the requirements under 50.4.3.J.7.d.i is the minimum necessary to ensure the Application remains in compliance with Chapter 50.

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

Granting this waiver would still allow the Site Plan to remain consistent with the General Plan. This waiver does not pose a major safety risk and meets all intents of 50.4.3.J.7.d.i. Approval of the waiver enhances the County's vision for Germantown in creating an urban, mixed-used, transit-oriented community.

All required findings to meet the standards to grant a waiver request under Ch.50.9.3 are satisfied. Staff recommends approval of the waiver request.

SECTION 7 – ANALYSIS AND FINDINGS – SITE PLAN AMENDMENT 82018022A

The proposed Amendment does not alter the original intent of Site Plan 820180220 as enumerated in Planning Board Resolution No. 18-136 dated January 8, 2019 and all findings of the Plan remain in full force and effect, except as modified by the findings below. To approve this Site Plan Amendment, a waiver request from the findings under 50.4.3.J.7.d.i. is required as discussed previously in the separate Subdivision Regulation Waiver No. SRW202101.

Chapter 22A, Forest Conservation.

The Site Plan Amendment meets the requirements of Chapter 22A. The land that in part includes the Fairchild Property had previously satisfied Chapter 22A, Forest Conservation Law as part of the review and approval of the GTTCE Site Plan 819990010; however, the subsequent rezoning of the Property to the CR zone negated all previous forest conservation approvals. On May 1, 2018, a Forest Conservation Plan Exemption No. 4018017E was granted under Chapter 22A-5(t) for the Fairchild Property (Attachment E), located on Parcel V, Block UVW. The Fairchild Property is located within the Little Seneca Creek watershed, classified by the State of Maryland as Use I-P waters. The Fairchild Property is not located within a Special Protection Area or the Patuxent River Primary Management Area, and does not contain any forest, streams, wetlands, 100-floodplain, stream buffer, or trees greater than 24 inches in diameter at breast height. Staff finds that the Application is in compliance with the Environmental Guidelines and all applicable requirements of Chapter 22A of the Montgomery County Forest Conservation Law.

Adequate Public Facilities Validity – Section 50.4.3.J

This Application meets all required findings specified under Ch.59.7.3.4.E for Site Plan. Ch.59.7.3.4.E.H requires that the Site Plan “*will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities*”. In turn, the findings necessary to determine adequate public facilities are to be found under Ch.50.4.3.J, specifically for this application, the findings

required for an extension under Ch.50.4.3.J.7. The Planning Board must consider the following findings:

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.

The Applicant submitted an application for extension on April 14, 2020, which is prior to the expiration date of April 27, 2020. This finding is met.

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

The Site Plan approval allows only a single building to be constructed in one phase; construction is planned to occur imminently and will be completed within the two-year window as requested.

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.

While additional development has occurred within the project vicinity, notably Top Golf adjacent to the Subject Property, all nearby intersections within the project vicinity remain comfortably within acceptable CLV levels. A new traffic study does not appear warranted; the approved Site Plan would not be adverse to the public interest.

- (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.*

This finding is not applicable as the APF determination had been reapplied to this Site Plan area as part of the previous Site Plan approval; this Application was severed from the APF tied to the larger subdivision, with that APF now expired.

- b. *The Board may approve an amendment to the new development schedule approved under paragraph 7.a.ii if the applicant shows that financing has been secured for either:*

This finding and all sub-findings are not applicable as there is no development schedule.

- c. *Exclusively residential subdivisions.*

This Site Plan is a mixed-used plan; this finding and all sub-findings are not applicable.

- d. *Nonresidential or mixed-use subdivisions.*

This section, in particular subsection i, cannot be strictly met and requires a waiver from the Board, which is addressed in the previously discussed Subdivision Regulation Waiver No. SRW202101. Staff recommends approval of the waiver, which must be approved prior to approval of this Amendment.

- e. *The Board may extend a determination of adequate public facilities once for up to 12 more years beyond the otherwise applicable validity period*

The application requests only a 2-year extension. This section and sub sections is not applicable.

- f. *The validity period of a finding of adequate public facilities is not automatically extended under any circumstance*

The application requests a 2-year extension; the request was made in a timely manner.

- g. *If a new adequate public facilities determination is required under this Subsection, the procedures in Chapter 8, Section 8-32 apply.*

A new adequate public facilities determination is not required as part of this Application.

SECTION 8 - RECOMMENDATION AND CONCLUSION

All required findings to meet the standards to grant a waiver request under Ch.50.9.3 are satisfied. Staff recommends approval of the waiver request No. SRW202101. Contingent on approval of the waiver request, Site Plan Amendment No. 82018022A meets all requirements established under Sections 50.4.3.J for the Subdivision of Land and Section 59.7.3.4.E of the

Zoning Ordinance. Based on this analysis, the Applicant has qualified for an extension of the APF validity period. Staff recommends approval of Site Plan Amendment No. 82018022A , with the conditions as enumerated in the Staff Report.

ATTACHMENTS

Attachment A – Resolution for Site Plan No. 820180220

Attachment B – Applicant’s Statement of Justification for Site Plan No. 82018022A

Attachment C – Applicant’s Statement of Justification for Subdivision Regulation Waiver

Attachment D – Opinion for APF at Building Permit

Attachment E – Forest Conservation Plan Exemption No. 4018017E



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

MCPB No. 18-136
Site Plan No. 820180220
Fairchild Apartments
Date of Hearing: December 20, 2018

JAN 08 2019

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on August 2, 2018, Matthew Walters ("Applicant") filed an application for approval of a site plan for a new multi-family residential building 201,720 square feet in size with 212 multi-family dwelling units, and to retain 20,933 square feet of existing commercial restaurant uses in three one-story buildings on 5.49 acres of CR 2.0, C-1.5 R-1.5 H-145T, AND Germantown Transit Mixed Use Overlay zoned-land, located on the south side of Century Boulevard, approximately 150 feet east of the intersection with Aircraft Drive ("Subject Property"), in the Germantown Town Center Policy Area and the 2009 Germantown Employment Area Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820180220, Fairchild Apartments ("Site Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated December 7, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 20, 2018, the Planning Board held a public hearing at which it heard testimony and received evidence on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820180220 for a new multi-family residential building 201,720 square feet in size with 212 multi-family dwelling units, and to retain 20,933 square feet of existing

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
MNCPPC Legal Department
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

commercial restaurant uses in three one-story buildings on the Subject Property, subject to the following conditions:¹

Density, Height & Housing

1. Density

The Site Plan is limited to a maximum of 222,653 square feet of total development on the Subject Property, including 201,720 square feet of new residential uses, for up to 212 dwelling units including 12.5% MPDUs, and 20,933 square feet of existing commercial uses.

2. Height

The development is limited to a maximum height of 80 feet, as measured from the building height measuring point, as illustrated on the Certified Site Plan.

3. Building Lot Terminations (BLTs)

Before issuance of any building permit, the Applicant must provide proof of purchase and/or payment of 1.4132 BLTs to the Department of Permitting Services (DPS).

4. Moderately Priced Dwelling Units (MPDUs)

The Planning Board accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (DHCA) in its letter dated October 22, 2018 and incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend provided that the amendments do not conflict with other conditions of the Site Plan approval.

- a) The development must provide 12.5 percent MPDUs or DHCA -approved equivalent on-site consistent with Chapter 25A and the applicable Master Plan.
- b) Before issuance of any building permit for any residential unit(s), the MPDU agreement to build between the Applicant and the DHCA must be executed.

Open Space, Facilities and Amenities

5. Public Open Space, Facilities, and Amenities

- a. The Applicant must provide a minimum of 23,955 square feet of Public Open Space (10% of net lot area) on-site.

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

- b. The Applicant must coordinate with MCDPS right-of-way permitting to ensure replacement of any dead or missing trees in the existing streetscape along the Subject Property frontage on Century Boulevard.
- c. Before the issuance of any use and occupancy certificates for the residential development, all Public Open Space areas on the Subject Property must be completed.

6. Public Benefits

The Applicant must provide the following public benefits and meet the applicable criteria and requirements of the Zoning Ordinance and the CR Zone Incentive Density Implementation Guidelines for each one.

- a) Major Public Facilities – Before issuance of the first above-grade building permit for the multi-family building, the Applicant must provide MCDPS verification that the Applicant reconstructed the portion of Century Boulevard adjacent to the Fairchild Property.
- b) Transit Proximity
- c) Diversity of Uses and Activities
 - i. Adaptive Buildings – The Applicant must provide, at a minimum, floor-to-floor heights of at least 15 feet on the first floor facing Century Boulevard, and at least 12 feet on the upper level of the parking structure.
 - ii. Enhanced Accessibility for the Disabled – The Applicant must construct 15 dwelling units that satisfy American National Standards Institute A117.1 Residential Type A standards or an equivalent County standard.
- d) Quality Building and Site Design
 - i. Structured Parking – The Applicant must provide a minimum of 166 parking spaces within an above grade structure and 73 spaces within a below grade structure.
- e) Protection and Enhancement of the Natural Environment
 - i. Building Lot Terminations (BLTs) – Before issuance of any building permit, the Applicant must provide proof of purchase and/or payment of 1.4132 BLTs to the MCDPS.
 - ii. Cool Roof – The Applicant must provide a minimum solar reflectance index (SRI) of 75 for roofs with a slope at or below a ratio of 2:12, and a minimum SRI of 25 for slopes above 2:12 as shown on the Certified Site Plan.

7. Recreation Facilities

- a) Before Certified Site Plan approval, the Applicant must meet the square footage requirements for all of the applicable recreational elements and demonstrate to Staff that each element meets M-NCPPC Recreation Guidelines.

- b) The Applicant must provide the minimum required recreation facilities as shown on the Certified Site Plan.

8. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly-accessible amenities including, but not limited to bike racks, trash receptacles, benches, seating walls, interpretative signage, sculptures and artwork, and outdoor musical play instruments.

Site Plan

9. Site Design

The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on the submitted architectural drawings, as determined by Staff. The design must also include at a minimum the following elements:

- a) The ground floor façade facing Century Boulevard shall include architectural elements distinct from the remainder of the building that provide a commercial appearance, as shown on the Certified Site Plan.
- b) The Applicant shall use murals, tiles, decorative screens or other decorative treatments approved by Staff to cover the ground floor blank walls, ventilation covers, and garage doors located across the southern facade of the building.

10. Lighting

- a) Prior to Certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
- b) All onsite down-lights must have full cut-off fixtures or Backlight Uplight and Glare equivalent.
- c) Deflectors will be installed on the proposed fixtures along the western façade of the building to prevent excess illumination and glare.
- d) Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at any property line except for those located within the shared parking area or along the western Property boundary.
- e) Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.
- f) On the rooftop of the building, the light pole height must not exceed the height illustrated on the Certified Site Plan.

Environment

11. Noise Attenuation

- a) Before issuance of any building permit, the Applicant must provide certification to Staff from an engineer who specializes in acoustical treatment that the building shell for residential dwelling units affected by exterior noise levels projected above 60 dBA Ldn will attenuate the projected exterior noise levels to an interior level not to exceed 45 dBA Ldn.
- b) If the Site Plan changes in any manner that affects the validity of the noise analysis dated December 19, 2017 for acoustical certifications and noise attenuation features, the Applicant must conduct a new noise analysis to reflect the revised plans, and new noise attenuation features may be required.
- c) Before issuance of any Use and Occupancy Certificate, the Applicant must certify to Staff that the noise impacted units have been constructed in accordance with the certification of an engineer that specializes in acoustical treatments.

12. Stormwater Management

The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) Water Resources Section in its stormwater management concept letter dated December 6, 2018 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which the MCDPS Water Resources Section may amend if the amendments do not conflict with other conditions of Site Plan approval. The MCDPS Water Resources Section will review, approve, and inspect all landscaping within the Storm Water Management easements and facilities.

Transportation & Circulation/ Adequate Public Facilities (APF)

13. Pedestrian & Bicycle Circulation

- a) The Applicant must provide 95 long-term and 6 short-term bicycle parking spaces.
- b) The long-term spaces must be in a secured, well-lit bicycle room adjacent to the covered parking area, and the short-term spaces must be inverted-U racks (or staff approved equivalent) installed within the Public Open Space along Century Boulevard. The specific location(s) of the short-term bicycle rack(s) must be identified on the Certified Site Plan.
- c) The Applicant must provide a minimum five-foot wide sidewalk connection along the internal drive aisle creating a continuous pedestrian connection between Century Boulevard and MD 118, as shown on the Certified Site Plan.

- d) The Applicant must provide a one-foot wide public improvement easement along Century Boulevard to accommodate its share of the recommended 136-foot wide cross-section for Century Boulevard, which will accommodate the CCT and two way separated bike lanes on both sides of the road.

14. Validity

The Adequate Public Facility Review (APF) will remain valid until April 27, 2020, consistent with the current APF validity period initiated at building permit for the density associated with the Germantown Town Center East Site Plan No. 819990010, which this Site Plan is utilizing.

15. Fire and Rescue

The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated October 22, 2018, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.

16. Site Plan Surety and Maintenance Agreement

Prior to issuance of any building permit, sediment control permit, or Use and Occupancy Certificate, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 59.7.3.4.K.4 of the Montgomery County Zoning Ordinance, with the following provisions:

- a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b) The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, on-site lighting, indoor and outdoor recreational facilities, site furniture, mailbox pad sites, trash enclosures, retaining walls, fences, railings, private roads and sidewalks, private utilities, paths and associated improvements of development, including sidewalks, bikeways, storm drainage facilities, street trees and street lights. The surety must be posted before issuance of any building permit of development and will be tied to the development program.
- c) The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by a site plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.

17. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to the approval of the Certified Site Plan.

18. Certified Site Plan

Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a) Include the stormwater management concept approval letter, Fire Department Access and Water Supply approval letter, DHCA approval letter, development program, and Site Plan resolution on the approval or cover sheet(s).
- b) Add a note to the Site Plan stating that "M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading."
- c) Add a note stating that "Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services."
- d) Modify data table to reflect development standards approved by the Planning Board.
- e) Ensure consistency of all details and layout between Site and Landscape plans.
- f) Ensure a total of 10 motorcycle spaces spread across the site and three electric vehicle charging stations in the parking garage or in the surface parking lot immediately south of the multi-family building.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Site Plan No. 820180220, Fairchild Apartments, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The development satisfies any previous approval that applies to the site.*

The Site Plan conforms to all conditions of Sketch Plan No. 320180130 which was approved by Resolution No. 18-078 dated July 31, 2018, in terms of density, massing, public open spaces and Public Benefit Point categories, and requested design and amenity details.

2. *The development satisfies the binding elements of any development plan or schematic development plan in effect on October 29, 2014.*

There are no binding elements of an associated development plan or schematic development plan in effect on October 29, 2014.

3. *The development satisfies any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment.*

The Property's zoning classification on October 29, 2014 did not have a green area requirement.

4. *The development satisfies applicable use standards, development standards, and general requirements under the Zoning Ordinance.*

a. Development Standards

The Subject Property includes approximately 5.49 acres of net tract zoned CR 2.0, C-1.5 R-1.5 H-145T and Germantown Transit Mixed Use Overlay. The Application satisfies the applicable development standards as shown in the following data table:

Data Table

4.5 Zoning Data Table: CR 2.0, C-1.5 R-1.5 H-145T		
<u>Development Standard</u>	<u>Required/Allowed</u>	<u>Approved</u>
Site		
Public Open Space, Site >10,000 sq. ft.	10% (23,914 sq. ft.)	10% (23,955 sq. ft.)
Lot and Density		
Gross Tract Area	N/A	6.14 acres (267,248 sq ft)
Net Tract (Parcel V) Area	N/A	5.49 acres (239,198 sq. ft.)
CRT Density Max	CR 2.0 (534,496)	0.83 FAR (222,653 sq. ft.)
Commercial	C-1.5 (400,872 sq ft.)	C - 0.078 (20,933 sq. ft.)
Residential	R-1.5 (400,872 sq ft.)	R - 0.75 (201,720 sq. ft.)
MPDUs	12.5% min (27 units)	27 units
Placement		
Front Setback Century Blvd	Determined By Site Plan	11 ft min., 13 ft avg.
Setback from MD 118	Determined By Site Plan	390 ft. min.

4.5 Zoning Data Table: CR 2.0, C-1.5 R-1.5 H-145T		
<u>Development Standard</u>	<u>Required/Allowed</u>	<u>Approved</u>
Side Setback, western boundary	Determined By Site Plan	10 ft min.
Side setback, eastern boundary	Determined By Site Plan.	50 ft. min.
Height		
Principal Building	145 ft.	80 ft.
Form		
Entrance facing street or open space	required	provided
Transparency, Ground story, front	Determined By Site Plan	37% Min. along access drive, 42% Min. along Century Blvd.
Transparency, Ground story, side/rear	Determined By Site Plan	16% min. south facade, 8% min. west facade
Transparency, Upper story	Determined By Site Plan	31% min.
Blank Wall, front	Determined By Site Plan	8 ft. max
Blank Wall, side/rear	Determined By Site Plan	27 ft. max south façade, 170 ft max west facade ²
Section 6.2 Parking		
Vehicle Spaces Total	296 - 635	465
Commercial (4 – 12/1,000 sq.ft.)	84 - 359	204
Residential ³ (min – max)	212 – 276	261
Bicycle Spaces (95% long term)	100 (95 L.T., 5 S.T.)	101 (95 L.T. 6 S.T.)
Motorcycle spaces	10	10
Electric Vehicle spaces	13	13

The Subject Property is approved under the optional method of development. The Zoning Ordinance requires optional method development projects in the CR zone achieve Public Benefit points. Based on the Subject Property's zone and size, it is required to achieve a minimum of 100 incentive density points in a minimum of four categories. The following data table demonstrates the five categories and 130.71 points the Planning Board approved the Site Plan for.

² The western façade of the building is designed with a long blank wall because the interior is parking and it is adjacent to an existing industrial building.

³ Residential minimum parking is 1 space/unit regardless of number of bedrooms. The maximum residential parking is 1 space/unit for a studio, 1.25/ unit for a 1br, 1.5 space/unit for a 2 bedroom and the number of parking spaces shown for the max are based on the proposed unit mix.

Public Benefits Calculations			
Public Benefit	Incentive Density Points		
	Max Allowed	Requested	Approved
59.4.7.3A: Major Public Facilities			
Major Public Facility	70	51.28	51.28
59.4.7.3C: Transit Proximity			
Transit Proximity	25	25	25
59.4.7.3C: Connectivity and Mobility			
Wayfiding	10	0	0
59.4.7.3D: Diversity of Uses and Activities			
Adaptive Buildings	15	10	10
Enhanced Accessibility for the Disabled	20	20	20
59.4.7.3E: Quality of Building and Site Design			
Structured Parking	20	6.71	6.71
59.4.7.3F: Protection and Enhancement of the Natural Environment			
Cool Roof	10	5	5
BLTs	30	12.72	12.72
TOTAL		130.71	130.71

Major Public Facility

Major Public Facility: The Applicant requests 51.28 points for providing a major public facility. The Board approves 51.28 points for the Applicant's previous reconstruction of Century Boulevard across the Property frontage, including the 50-foot wide median for the Corridor Cities Transitway, that was completed as part of the GTTCE Site Plan No. 819990010 which was concurrently amended with this Application. The Board awarded points for this category because the Site Plan is being reviewed as part of an existing valid adequate public facility test which required the reconstruction of Century Boulevard. The area of dedication and construction used in the formula for calculating points is proportional to the percent of vehicle trips this Site Plan uses from the total adequate public facility allocation (73%). Following the formula found in the Zoning Ordinance results in 51.28 points.

Transit Proximity

Transit Proximity: The Board awarded 25 points for the category of transit proximity, based on the Subject Property being within ¼ mile of a planned level 2 transit facility (future Corridor City Transitway).

Connectivity and Mobility

Wayfinding: The previous sketch plan had allowed points to be awarded for wayfinding, but the Board opted to not award wayfinding points.

Diversity of Uses and Activities

Adaptive Buildings: The Board awarded 10 points for providing an adaptive building with a 15-foot floor-to-floor height at the ground floor along Century Boulevard where future conversion from residential to retail is desired, and for providing 12-foot floor heights within the above ground portions of the parking garage. The first 7.5 points were for meeting the code requirements of the 15-foot ground floor, and the additional 2.5 points were for the parking garage design with 12-foot ceilings being able to accommodate additional density in the future.

Enhanced Accessibility for the Disabled: The Board awarded 20 points because the Applicant is providing 7.5% of the Project's units in accordance with ANSI A117.1 Residential Type A standards for the disabled.

Quality of Building and Site Design

Structured Parking: The Board approved 6.71 points for providing structured parking. The Zoning Ordinance sets a formula for calculating available points based on total parking, parking above grade in a garage and below grade in a garage. The formula for the Site Plan results in 6.71 points.

Protection and Enhancement of the Natural Environment

Building Lot Termination (BLT): The Board awarded 12.72 points for the purchase of 1.4132 BLT easements or equivalent payment. BLTs are required for every 31,500 square feet of gross floor area comprising 50% incentive density floor area in the Germantown Transit Mixed Use Overlay. The formula in the Zoning Ordinance produces 1.4132 required BLTs which corresponds to 12.72 incentive points.

Cool Roof: The Board awarded five points for providing a cool roof that is not vegetated and has a minimum solar reflectance index of 75 on roof slopes below a ratio of 2:12.

b. General Requirements

i. *Site Access*

Access to all of the uses on the Subject Property is adequate. The existing drive aisle and intersection with Century Boulevard will remain unchanged, providing vehicles access onto the Fairchild Property. Additional vehicle access to Century Boulevard is also available with existing access easements on the adjacent properties. Sidewalks will be upgraded along the main drive aisle improving pedestrian access by providing connections to sidewalks along Century Boulevard and MD 118.

ii. *Parking, Queuing, and Loading*

The Site Plan provides adequate vehicle and bicycle parking to serve the approved development. The new multi-family building will include a parking structure that holds up to 261 vehicles, which is within the range of parking allowed by the CR zone for the number of units. Additionally, there will be 204 spaces remaining in the surface parking lots for the existing retail uses, which is also within the range of parking required for restaurants. In addition to vehicle parking, the Site Plan provides 10 motorcycle, and 13 electric vehicle parking spaces consistent with requirements. The Site Plan also provides 101 new bicycle parking spaces, six of which are in outdoor bike racks, and the remaining 95 in a long-term bike parking room integrated within the parking garage of the multi-family building.

iii. *Open Space and Recreation*

The Site Plan provides adequate Public Open Space on the Subject Property. The requirement for Public Open Space for tracts larger than 10,000 sq. ft. with general building type is 10% of the net tract, which is a minimum of 23,914 sq. ft. The Site Plan provides 23,995 sq. ft. of Public Open Space divided into two areas. One space is approximately 3,000 square feet and is located adjacent to the new multi-family building along Century Boulevard. This area of Public Open Space includes landscaping, sitting, interpretive signage on the history of Fairchild Aviation and Germantown, areas for art/sculptures and a bike rack. The design will help activate the sidewalk and will provide an amenity to pedestrians along Century Boulevard. The other area of Public Open Space makes up the balance of the open space requirement and is along the southern Subject Property boundary adjacent to the existing restaurant uses and MD 118. This space is designed for the visitors of the restaurants and includes outdoor waiting areas, landscaping, and

amenities for people to enjoy before or after eating. This southern Public Open Space also includes a new pedestrian connection up to MD 118 and a sidewalk connection to an adjacent off-site restaurant improving public access to the open space and the Subject Property.

The Fairchild Site Plan also meets the requirements of the 2017 Recreation Guidelines. The Applicant is meeting the required supply of recreation through off-site facilities, and by providing 11 different on-site facilities including an outdoor courtyard with a pool and grilling area, and indoor spaces such as the gym, yoga room and community room. The Board found these amenities adequate to satisfy the necessary recreation amenities.

iv. *General Landscaping and Outdoor Lighting*

The Fairchild Site Plan provides adequate landscaping on the Subject Property. The two Public Open Space areas utilize shrubs and flowering perennials to create defined spaces for seating and to attract native birds and insects and use trees to provide shade. Trees and shrubs are also used to buffer the new multi-family building and the existing industrial uses to the west. The existing surface parking lot has trees already located within landscape islands which will be augmented in places to provide adequate canopy cover. Some of these trees are being removed to accommodate new sidewalks and stormwater management but new plantings will replace them, maintaining canopy coverage of the parking lot.

Alternative Compliance Division 6.8 – On-site lighting

The provided lighting is adequate to illuminate the outdoor parking areas, pedestrian walkways and all entrances to the proposed multi-family building. The Site Plan however provides lighting considered to be excessive illumination, as defined by Section 59.6.4.4.D of the zoning code, because it creates illumination exceeding 0.5 footcandles at a lot line. Alternative Compliance allows the Planning Board to approve an alternative method of compliance for lighting in Division 6.4 if it determines that there is a unique site, a use characteristic, or a development constraint that precludes safe or efficient development under the requirements. In this instance, the Subject Property is an irregularly shaped parcel, where the parcel boundaries cut through the middle of a parking facility shared with two other parcels on the same block. Additionally, there is adjacent industrial development immediately to the west which

presents a blank façade toward the Fairchild Property, between which the Applicant is showing a pedestrian walkway for emergency building egress. In ultimately approving an alternative compliance method, the Board must find that the design will:

a. Satisfy the intent of the applicable Division;

The intent of Division 6.4 is to preserve property values, preserve and strengthen the character of communities, and improve water and air quality. Modifying the compliance of Section 59.6.4.4.D to allow illumination over 0.5 footcandles at the lot line within the shared parking lot, and along the western façade of the building, maintains and strengthens the intent because the illumination in both instances is for pedestrian and vehicular safety. The areas on adjacent properties are either other parking facilities that are not residential in use and are also illuminated, and the adjacent industrial building provides a blank wall toward the light. Therefore, there is no detriment to the community in allowing this modification.

b. Modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;

The amount of modification of the excessive illumination provision necessary to accommodate the constraints is to allow for illumination in excess of 0.5 footcandles at the lot line within the shared parking lot, shared access drive isle, and along the western façade of the multi-family building where a pedestrian exit and walkway are located.

c. Provide necessary mitigation alleviating any adverse impacts;

The Planning Board does not find that any mitigation is necessary because there are no identified adverse impacts to allowing this alternative compliance measure.

d. And be in the public interest

Allowing the modification to the excessive illumination provision is within the public interest because the illumination is being provided for the public's safety within the parking lot, and in the event of an emergency evacuation of the new multi-family building.

The Board finds, with the granting of an alternative method of compliance for Division 59.6.4.4.D Excessive Illumination, that the outdoor lighting is adequate and satisfies the intent of the zoning ordinance.

5. *The development satisfies the applicable requirements of Chapters 19 and 22A of the Montgomery County Code.*

a. Chapter 19, Erosion, Sediment Control, and Stormwater Management

A Stormwater Concept Plan and Site Development Stormwater Management Plan was conditionally approved by the Montgomery County Department of Permitting Services on December 6, 2018. The plan will meet as much ESD stormwater goals as practical utilizing micro-bioretenention and green roofs. The remainder of the stormwater volume will be approved with a waiver of on-site treatment and a fee to DPS. The waiver fee is refundable once an adjacent off-site stormwater facility is complete which the Applicant has a private covenant to utilize.

b. Chapter 22A, Forest Conservation

The Board finds that the Subject Property complies with the requirements of the Forest Conservation Law. The Subject Property received a Forest Conservation Plan Exemption No. 42018017E, finding an exemption under Chapter 22A-5(t). There are no forests, streams, wetlands, 100-year floodplains, environmental buffers, trees greater than 24 inches diameter at breast height or other environmental features that would merit protection on the Subject Property.

6. *The development provides safe, well-integrated parking, circulation patterns, building massing and, where required, open spaces and site amenities.*

i. Parking and circulation

The Site Plan provides for safe and well-integrated parking and circulation patterns on the Subject Property. The existing vehicle access points and on-site circulation already exist on the Subject Property. The new multi-family buildings remove two aisles of parking but otherwise fully integrate into the existing conditions. The pedestrian access from Century Boulevard will be upgraded along the frontage of the new multi-family building and enhanced on the Subject Property by creating a new pedestrian connection between Century Boulevard and MD 118.

ii. Building massing

The Site Plan has safe and well-integrated building massing. The new multi-family building will be located on an empty development pad which will create a new building wall along Century Boulevard. The new building is also similar in height to the existing hotel located off-site to the east. The Sector Plan envisions and encourages the development of taller urban form buildings which this building achieves. The existing restaurant buildings are one story

tall, similar to the existing predominantly one to two story tall development in much of Germantown.

iii. Open space, and site amenities

The Site Plan provides for safe and well-integrated open spaces and site amenities. The Site Plan provides Public Open Spaces which satisfies a requirement of the CR zone and are located in places accessible to the public that enhance the public realm. The Site Plan also has private open spaces available to residents in the new multi-family building which are located interior to the new building or within the building's courtyard.

7. *The development substantially conforms to the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan.*

Germantown Employment Area Sector Plan

The Site Plan substantially conforms to the recommendations of the 2009 Germantown Employment Area Sector Plan ("Sector Plan"). The Sector Plan has a vision statement, multiple goals and recommendations that all seek to transform the Sector Plan area into a vibrant mixed-use town center serving as an economic center in this portion of Montgomery County. The Sector Plan recommends a mix of commercial, institutional and residential uses creating nodes of activity especially around future transit. Design recommendations also emphasize urban form by creating building edges near the streets and creating Century Boulevard as a new promenade.

The Site Plan conforms to the Sector Plan goals and recommendations. The Subject Property is in a part of the Town Center predominantly commercial and adding residential development is essential for creating a mixed-use district, a complete economic core, and for providing housing close to a future Corridor City Transitway station and existing jobs. The ground floor of the multi-family building is designed with 15-foot floor-to-floor heights, and an interior configuration that would allow the dwelling units proposed along Century Boulevard to convert to retail space once the surrounding properties also redevelop. The design of the ground floor has also been treated with design and materials providing a commercial character, furthering the activation of Century Boulevard and the Town Center. The reconstruction of Century Boulevard to accommodate the future transitway was already completed by the Applicant during previous development of the Subject Property and needs no further upgrade at this time. The building placement establishes a building edge similar to that of adjacent buildings. An existing public utility easement runs adjacent to Century Boulevard, but this Site Plan is programming the space with plants, art,

benches and signage which also help activate and utilize the public utility easement which would otherwise be left as open lawn.

Noise Analysis

The Environmental section of the 1993 General Plan Refinement for Montgomery County directs development applications to protect future county residents from the negative impacts of noise. The Subject Property follows the 1983 Staff Guidelines for the Consideration of Transportation Noise ("Noise Guidelines") because it is within 1,000 feet of a freeway (I-270), 600 feet of a major highway with an average daily trip (ADT) over 20,000 (MD 118) and within 300 feet of a road with an ADT of over 5,000 (Century Blvd). A Phase I Noise Analysis was provided by the Applicant that indicates that noise levels will meet or exceed 60 dBA on most exterior portions of the proposed multi-family building except for the facades facing interior to the courtyard. Standard building materials may exceed Montgomery County's recommendations of 45 dBA Ldn for interior noise levels for many of the proposed units that face outward. The Applicant is responsible for using exterior building components with a higher sound transmission class rating to ensure the interior noise levels remain at or below recommendations. The remaining outdoor amenity space on the Subject Property is Public Use Space, and the desired accessibility of these spaces to the public make mitigation of noise not desirable because the intent of Public Use Space is to be open and accessible to the public and installing measures such as berms or sound walls would diminish visibility and access to the spaces.

8. *The development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.*

There are adequate public facilities (APF) to support the Site Plan. The Site Plan is modifying an existing APF approval that was done at building permit to support the previous development on the Subject Property and adjacent properties. This APF expires in April 2020 and that date is not extended as part of this amended analysis.

Schools

Site plan application #820180220 for Fairchild Apartments came before the Planning Board for review in FY19, therefore it was reviewed under the FY19 Annual School Test, approved by the Planning Board on June 21, 2018 and effective July 1, 2018. The application creates 212 multifamily high-rise dwelling units on land with no dwelling units currently. The Subject Property is within the Seneca Valley High School Cluster and within the Waters Landing Elementary and MLK Jr. Middle School attendance areas. Based on

the school analysis performed in the Staff Report, there is adequate school capacity at all levels for the amount and type of development approved by this Site Plan.

Police and Fire

According to the Subdivision Staging Policy, Police and Fire services are adequate in the area to service the Subject Property. The MCDPS Fire Department Access and Water Supply division has issued a memorandum dated October 22, 2018 finding that the design of the proposed new building is satisfactory for access by fire personnel and equipment under a performance-based design standard.

Water and Sewer

The Fairchild Property is located in the W1 and S1 public water and sewer categories. There are existing public utilities on the Subject Property and there is adequate capacity in the adjacent main lines to accommodate the multi-family dwellings.

Roads

Transportation infrastructure and capacity is adequate for the new residential density approved by the Site Plan. The Site Plan is amending an existing APF approval for transportation capacity that was approved for the Germantown Town Center Site Plan at the time of building permit, on April 27, 2000, which remains valid through April of 2020. To satisfy the LATR guidelines, the Applicant submitted a traffic statement outlining the relationship between the existing APF approval, the amount of approved but undeveloped commercial density under that approval, and the impacts of the proposed multi-family development. Based on this statement, there is adequate peak-hour trip capacity to support the 212 new multi-family dwellings, and an additional 42,500 sq. ft. of retail uses. The Germantown Town Center East Site Plan is concurrently modified to reduce the allowed amount of commercial development to account for the trips utilized by the 212 multi-family units.

9. *The development is compatible with existing and approved or pending adjacent development.*

The approved development on the Subject Property is compatible with existing, approved, and pending adjacent development. The Subject Property is surrounded by existing commercial development including a mix of retail, hospitality and office uses and the proposed multi-family building will enhance these uses by establishing the start of a mixed-use area. While the new building will be taller than existing buildings, it is similar in height to the adjacent hotel use, and the Sector Plan fully supports the incremental increases in density. It is anticipated

that adjacent properties will also re-develop in the future to a scale similar to that in the Site Plan.

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED that this Site Plan shall remain valid as provided in Montgomery County Code § 59-7.3.4.H; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JAN 08 2019 (which is the date that this resolution is mailed to all parties of record); and

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

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Patterson, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, December 20, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

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Matthew Walters
HIP Projects, LLC
230 Spectrum Avenue
Gaithersburg, MD 20879

Attachment B

April 13, 2020

VIA 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: Request for Extension of Adequate Public Facilities Determination for Fairchild
Apartments – Site Plan No. 820180220 (the "Site Plan")

Dear Chairman Anderson and Members of the Board:

Our firm represents GTTCE Owner LLC ("GTTCE", or the "Applicant"), an affiliate of Henry Investment Partners, LLC and the developer of the multi-family residential project that is subject to the above-referenced Site Plan (the "Fairchild Apartments", or the "Project"). On behalf of the Applicant, we respectfully submit this request to extend the validity period of the Adequate Public Facilities ("APF") determination for the Project for an additional 24 months, or until April 27, 2022 (the "Extension").

The Montgomery County Planning Board ("Planning Board") approved the Site Plan for the Project on December 20, 2018, and the Montgomery County Planning Department ("Planning Department") approved the associated Certified Site Plan on June 5, 2019. Since that time, the Applicant and its consultants have continued to refine the technical plans for the Project and are now in the process of completing the materials that will be required for building permit applications. However, as explained herein, the APF determination for the Project is scheduled to expire on April 27, 2020. Because the Applicant still requires additional time to complete and submit the necessary building permit application materials, and because the present public health crisis has introduced certain logistical challenges with respect to those efforts, it will not be possible for the Applicant to submit building permit applications to the Montgomery County Department of Permitting Services ("MCDPS") for a timely approval.

The Applicant is requesting this Extension under Sections 50.4.3.J.7.d.i-iii and 50.9.1-3 of the Montgomery County Subdivision Regulations ("Subdivision Regulations"). This letter addresses the criteria of these Sections in detail, and otherwise serves to satisfy the various requirements of the Planning Department's Development Review Procedures Manual for the submission of a validity period extension request and a Subdivision Regulations waiver request.

I. Site Description and Prior Approvals

The Site Plan applies to an approximate 5.49 acre parcel known as "Parcel V", which is located in Germantown immediately adjacent to the newly constructed TopGolf recreation facility (the "Property"). The Property is generally located to the east of the intersection of Century Boulevard and Aircraft Drive, to the north of Maryland Route 118 ("MD 118"), and to the west of Interstate 270 ("I-270").

The Property was formerly part of the broader approved Germantown Town Center East Site Plan (Site Plan No. 819990010) (the "GTTCE Site Plan"), which extends to two adjacent large blocks (to the north across Century Boulevard and to the west across Aircraft Drive) and includes approximately 19.25 acres of land (not including Parcel V). The GTTCE Site Plan properties and the existing development on Parcel V have been constructed in phases over the past twenty years under the standards and procedures of the formerly applicable Town Sector ("TS") zone. The existing development is predominantly commercial and includes a variety of restaurant uses, a hotel, a convenience store, a movie theater, and a park-and-ride parking lot that is subject to an agreement with the Montgomery County Department of Transportation ("MCDOT").

In 2018, the Planning Board approved a Sketch Plan for the Project (Sketch Plan No. 320180130) (the "Sketch Plan"), followed by the Site Plan and a simultaneous amendment to the GTTCE Site Plan, Site Plan Amendment No. 81999001A (the "GTTCE Site Plan Amendment") (collectively, the "Approvals").¹ Together, the Approvals allow the Applicant to extract Parcel V from the broader GTTCE Site Plan, and to develop a new multi-family residential building on the Property under the standards and procedures of the currently applicable Commercial/Residential ("CR") zone (*i.e.*, the Project). The Approvals allow for a maximum of 222,653 square feet of total development on Parcel V, including 201,720 square feet for the new multi-family residential building (with up to 212 dwelling units, of which 12.5 percent will be Moderately Priced Dwelling Units ("MPDUs")) and up to 20,933 square feet for existing commercial uses.

Importantly, the Site Plan utilizes and amends the APF determination for the GTTCE Site Plan properties – including Parcel V – to convert previously approved, but unbuilt, commercial space to space for residential use.² This initial APF determination was approved by the Planning Board on April 27, 2000, at the time of building permit review for the GTTCE Site Plan. The APF determination was originally valid for 12 years, and was conditioned upon making certain transportation improvements that have since been completed.³ However, the APF determination

¹ The Planning Board approved the Sketch Plan on July 26, 2018, as indicated by the Resolution dated July 31, 2018.

² As noted in the Planning Department Staff Report for the Site Plan and the Site Plan Amendment dated December 7, 2018, the Applicant was able to amend the APF determination "because the two Site Plans share a common Applicant, and because the APF was approved with building permits and tied to density, not to a specific Preliminary or Site Plan approval."

³ More specifically, the Planning Board required the developers of the GTTCE Site Plan properties (including the developers of Parcel V) to complete the following: (i) for Century Boulevard between Aircraft Drive and Crystal Rock Drive, to dedicate and construct a new four lane road with median for the Corridor Cities Transitway ("CCT"); (ii) for Century Boulevard west of Aircraft Drive travelling to the east on Century Boulevard, to dedicate and construct the expanded Century Boulevard past its easternmost boundary including a median for the CCT; (iii) to widen Aircraft Drive north and south of Century Boulevard for regional transportation improvements; and (iv) to complete the intersection reconstruction at Century Boulevard and Aircraft Drive, Aircraft Drive and Crystal Rock Drive, and Crystal Rock Drive and Father Hurley Boulevard.

was subsequently extended pursuant to a series of Montgomery County Council legislative enactments that together provided for an automatic, cumulative extension of eight years.⁴ Thus, the APF determination is currently scheduled to expire on April 27, 2020.

II. Basis for Approval – APF Extension for Nonresidential and Mixed-Use Development and Subdivision Regulations Waiver

The Subdivision Regulations authorize the Planning Board to extend the validity period of any APF determination for a nonresidential or mixed-use development that was originally longer than seven years by a maximum of six years, provided that the Applicant does not propose any additional development above the amount approved in the original APF determination. In addition, the Applicant must demonstrate that the request satisfies the following criteria set forth in Section 50.4.3.J.7.d.i of the Subdivision Regulations:

- 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 3 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.*

The requested Extension satisfies the substantial majority of these requirements, as described below. However, the development of the commercial buildings on Parcel V and within the GTTCE Site Plan area has occurred incrementally over time, with the last commercial buildings completed several years before the Planning Board approved the Site Plan for the residential component.

⁴ More specifically, the eight-year extension was granted by the Montgomery County Council action in legislatively extending all currently valid approvals, pursuant to the Subdivision Regulation Amendments ("SRAs") approved as SRA No. 09-01 (effective April 1, 2009), SRA No. 11-01 (effective April 1, 2011), SRA No. 13-01 (effective April 1, 2013), and SRA No. 15-01 (effective March 31, 2015).

Consequently, MCDPS has neither issued occupancy permits nor completed final building permit inspections for a sufficient amount of structural floor area within the timeframes that Section 50.4.3.J.7.d.i.c prescribes. For this reason, the Applicant requests a waiver under Section 50.9.1 of the Subdivision Regulations with respect to the above-stated requirements of Section 50.4.3.J.7.d.i.c. The Extension's compliance with each of these required findings, as well as with the criteria for a waiver from the Subdivision Regulations, is described below:

- a. The Applicant proposes no additional development, satisfying the requirements of Section 50.4.3.J.7.a.iii.(a).

This Extension does not propose any changes with respect to the amount of development that the Planning Board has already approved with the existing APF determination for the Project and for the GTTCE Site Plan, as Section 50.4.3.J.7.a.iii.(a) of the Subdivision Regulations requires for approval of an APF extension request. The current approved APF determination for the Approvals, as amended, allows for up to 201,720 square feet of residential density and up to 20,933 square feet of mixed and commercial density on Parcel V, and up to 208,215 square feet of mixed and commercial density on the remainder of the GTTCE Site Plan properties (including 176,715 square feet of existing development and up to 31,500 square feet of remaining unbuilt commercial density). The overall total density allowed for all uses on both Parcel V and the GTTCE Site Plan properties under the current APF determination is approximately 430,868 square feet.

- b. MCDPS has previously issued building permits for at least 40 percent of the total approved gross floor area, in satisfaction of Section 50.4.3.J.7.d.i.a.

The Applicant's traffic consultant provided information at the time of Site Plan confirming that MCDPS has issued building permits for at least 40 percent of the total approved gross floor area allowed under the amended APF determination. More specifically, the July 10, 2018 Traffic Impact Statement prepared by The Traffic Group (Exhibit A) includes a Germantown Town Center Chronology (the "Chronology") that identifies the amount of actual square feet that has been constructed based upon applicable building permits and Use and Occupancy Certificates ("U&O Certificates"). Based on this information, we understand that a total of 191,563 square feet of development has been constructed on Parcel V and on the GTTCE Site Plan properties, as shown in the Chronology and summarized below:

<i>Building</i>	<i>Ultimate User</i>	<i>Use (Residential, Commercial, Etc.)</i>	<i>Actual SF Built Per Building Permits and U&O Certificates</i>
1B	Regal	Commercial/Retail	58,782
1D	Greene Turtle	Commercial/Retail	11,610
2D	Panera	Commercial/Retail	5,097
3D	TD Bank	Commercial/Retail	5,118
4D	TD Bank	Commercial/Retail	0
5D	Rite Aid	Commercial/Retail	12,469
6D	Carrabbas	Commercial/Retail	8,421
7D	BB&T	Commercial/Retail	3,500
8D	CFA	Commercial/Retail	4,009

9D	Taco Bell	Commercial/Retail	2,637
1E	Fairchild Pad	Commercial/Retail	0
2E	Fairchild Pad	Commercial/Retail	0
3E	Baileys/Sr Teq	Commercial/Retail	9,000
4E	Red	Commercial/Retail	6,957
5E	IHOP	Commercial/Retail	4,976
6E	Fairfield Hotel	Hotel	53,915
7E	Longhorn	Commercial/Retail	5,072
7E	-	Commercial/Retail	0
			<hr/>
Subtotal Commercial SF Built:			137,648
Subtotal Hotel SF Built:			53,915
Subtotal Residential Built:			0
TOTAL SF BUILT:			191,563

The existing development within Parcel V and the remainder of the GTTCE Site Plan area (*i.e.*, 191,563 square feet) represents approximately 44 percent of the total approved gross floor area that is subject to the amended APF determination (*i.e.*, 430,868 square feet), as Section 50.4.3.J.7.d.i.a requires.

- c. All infrastructure required as conditions of the original APF determination has been constructed, in satisfaction of Section 50.4.3.J.7.d.i.b.

With respect to Section 50.4.3.J.7.d.i.b., all of the infrastructure improvements required by the original APF determination have been completed by the developers of the GTTCE Site Plan properties, including Parcel V. As previously stated, these improvements included, most notably, dedicating land for and constructing Century Boulevard from Crystal Rock Drive to the east of what is now the TopGolf facility (including a median for the CCT), the widening of Aircraft Drive between Route 118 to the south and Crystal Rock Drive to the north past the police and fire stations, and intersection reconstruction efforts at Century Boulevard and Aircraft Drive, as well as at Aircraft Drive and Crystal Rock Drive, and at Crystal Rock Drive and Father Hurley Boulevard.

- d. The criteria for granting a waiver from Section 50.4.3.J.7.d.i.c under Section 50.9.1 are satisfied.

The existing development on Parcel V and within the GTTCE Site Plan is largely the result of a comprehensive rezoning – Local Map Amendment No. G-742 (the "LMA") – that was approved by the Montgomery County Council, sitting as the District Council, in 1997. The rezoning applied to three large blocks in Germantown that, at the time of the Council's approval, had not yet been brought into the Town Sector Zone. Given the large size of the area that was included in the LMA and the emerging nature of the Germantown market at that time, the rezoning permitted a multi-phased development that would occur over time, with a 100 percent commercial retail development to be constructed in the first phase and an option to add residential uses to a portion of the project in a second phase. The original APF determination was approved for twelve years

in anticipation of this long-term build-out, and the objective for developing the GTTCE Site Plan properties for mixed-uses was eventually reinforced by the 2009 Approved and Adopted Germantown Employment Area Sector Plan (the "Sector Plan").

The bulk of the commercial development that was anticipated with the initial phase of development pursuant to the LMA has been constructed, with the most recent U&O Certificate for a commercial building having been issued in approximately 2012 (for Panera Bread). However, market conditions in Germantown have only recently begun to change in a manner that makes residential development viable at this location. As a result, even though the Site Plan has now been approved to allow remaining unbuilt commercial density for the GTTCE Site Plan properties to be converted for residential development on Parcel V, it has been several years since development has occurred pursuant to the approved APF determination. Consequently, it is not possible for the Applicant to demonstrate that MCDPS has issued occupancy permits or completed final building permit inspections within the 3 or 4 years preceding this request, as Section 50.4.3.J.7.d.i.c typically requires.

Nonetheless, Section 50.9.1 of the Subdivision Regulations allows the Planning Board to grant a waiver from any requirement of the Subdivisions Regulations – including Section 50.4.3.J.7.d.i.c – after making certain required findings set forth in Section 50.9.3. More specifically, the Planning Board must find:

1. *[That] due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*
2. *[That] the intent of the requirement is still met; and*
3. *[That] 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.*

The subject Extension satisfies all of these criteria for a waiver from Section 50.4.3.J.7.d.i.c. As explained above, the Site Plan was approved several years after the majority of the development subject to the APF determination had been completed. The timing of the Site Plan approval vis-à-vis the construction of the existing development under the APF makes it impossible for the Applicant to demonstrate compliance with the timing requirements of Section 50.4.3.J.7.d.i.c for the issuance of U&O Certificates and the completion of final building permit inspections, resulting in both a practical difficulty and an unusual circumstance.

Nonetheless, Section 50.4.3.J.7.d.i.c is not needed to ensure the public health, safety and general welfare, as the intent of the requirement is still met. More specifically, Section 50.4.3.J.7.d.i.c serves to ensure that development, when approved, proceeds to construction in a timely and expected manner, so as to remain compatible with the County's planning objectives for a given area and to avoid the continued allocation of development capacity to projects that may no longer be viable. In this case, the County has long planned for the future residential development to occur on Parcel V and the GTTCE Site Plan properties when the Germantown market would support it, and for the commercial density associated with these approvals to be implemented in the interim.

Approximately 44 percent of the total gross floor area allowed under the amended APF determination has now been completed, and the percentage of total gross floor area completed under the original APF determination *before* it was amended in 2018 for residential use is much higher (approximately 75 percent, based on a previously approved total gross floor area of 254,906 square feet). The requested waiver will allow the remaining unbuilt density associated with the APF determination to be constructed, and development has otherwise continued to proceed in a manner that is consistent with the long-term objectives of the LMA and the Sector Plan.

The requested waiver has been limited to only subsection (c) of Section 50.4.3.J.7.d.i., and the remainder of the requirements for the approval of the approval of an Extension are satisfied as described above. Therefore, the requested waiver is the minimum necessary to provide relief.

Finally, the requested waiver will facilitate the construction of new residential housing in Germantown and will allow for the construction of up to 212 dwelling units on the Property, of which 12.5 percent will be MPDUs. The creation of new market rate and affordable dwelling units will further important County housing priorities, as well as the priorities and objectives of the General Plan.

III. Conclusion

The Applicant respectfully requests that the Planning Board extend the validity period of the current APF Determination for the Project by an additional 24 months, so as to allow MCDPS to issue building permits no later than April 27, 2022. As described above, the requested Extension satisfies the applicable criteria of Sections 50.4.3.J.7.d.i-iii of the Montgomery County Subdivision Regulations ("Subdivision Regulations") for approval of an APF determination extension for nonresidential or mixed-use development, including the criteria for a waiver from Section 50.4.3.J.7.d.i.c under Section 50.9.1-3.

The Applicant anticipates that an additional 24 months will be sufficient to allow for the completion of a detailed review of the architectural plans that are required for building permit and for the resolution of any anomalies that are discovered in the course of such efforts, as well as for MCDPS to conduct its review of all building permit and related site permit materials. While the Applicant intends to complete these efforts as soon as possible, it is foreseeable that additional delays also could arise due to disruptions in the lending market over the next several months due to the currently ongoing public health crisis. However, the Applicant believes that an additional 24 month period would also provide sufficient time to address any such financing issues if they arise, thereby avoiding the need to return to the Planning Board to request further extensions. For these reasons, the Applicant respectfully requests the Planning Board's approval for this Extension request.

We trust that this information is helpful in your review of the Applicant's request, and we look forward to working with Planning Department Staff on this matter. Please do not hesitate to contact us if you have any questions or require additional information.

Very truly yours,



Robert G. Brewer, Jr. Esq.



Christopher M. Ruhlen, Esq.

cc: Mr. Peter Henry
Mr. Matthew Walters
Mr. Richard Weaver
Ms. Sandra Pereira
Mr. Benjamin Berbert
Mr. Jim Soltesz

EXHIBIT A

LETTER FROM THE TRAFFIC GROUP TO HIP PROJECTS, LLC DATED JULY 10, 2018



A SERVICE DISABLED
VETERAN-OWNED
SMALL BUSINESS

CORPORATE OFFICE

Baltimore, MD

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fax: 410.931.6601
1.800.583.8411

ARIZONA OFFICE

443.290.4070

DELMARVA OFFICE

443.290.4060

FIELD LOCATIONS

Arkansas
Arizona
Georgia
Maryland
New York
North Carolina
Ohio
South Carolina
Texas
Virginia
Washington State
West Virginia

July 10, 2018

Mr. Matt Walters
HIP Projects, LLC
230 Spectrum Avenue
Gaithersburg, Maryland 20879

RE: Germantown Town Center Apartments
Montgomery County, Maryland
Our Job #: 2017-0907

Dear Mr. Walters:

As we have discussed previously, The Traffic Group, Inc. has conducted an analysis at your request to determine the number of trips that would be generated by the Germantown Town Center site based on the existing Adequate Public Facilities (APF) approval. Based on our discussions, you have provided us with a detailed breakdown of the amount of development yet to be developed. A copy of this table is attached. The review of this table indicates that 45,092 square feet of surplus commercial space is yet to be developed along with Building 1E and 2E of the Fairchild pads consisting of two high turnover sit down restaurants. Building 1E would contain the 5,610 sq ft restaurant. Building 2E would contain a 6,556 sq ft high turnover sit down restaurant.

Based on this square footage, using the M-NCPPC trip rates for retail space and using the ITE (7th Edition) Trip Generation Report for the high turnover (sit down) restaurants applicable at the time of the APF approval, it would be projected that 194 AM peak hour trips and 258 PM peak hour trips are still available.

We then conducted the trip generation analysis to determine the number of trips that would be generated by the proposed 215 apartment units. This comparison is shown on Exhibit 1. The results of this analysis indicate that the apartments would generate 64 trips during the morning peak hours and 82 trips during the evening peak hour when using current ITE (10th Edition) rates and adjusted for the Policy Area.

Based on the above information, the proposed apartments would generate less traffic than the property yet to be developed and would still leave 130 trips during the morning peak hour and 176 trips during the evening peak hour.

Therefore, based on this comparison as shown in Exhibit 1, there are a sufficient number of trips which are still remaining from the original APF approval for the subject site to cover the trips that would be generated by the proposed 215 Apartment Units.

If you have any questions concerning this information or the data shown on Exhibit 1, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Cook". The signature is fluid and cursive, with the first name "Glenn" and last name "Cook" clearly distinguishable.

Glenn E. Cook
Senior Vice President

GEC:peh

(F:\2017\2017-0907_Germantown Multi-Family Project\DOCS\CORRESP\ANALYST\2REVLTR_Walters.docx)

Germanatown Town Center Chronology of approvals with Final Building SF from the Building Permits/ Use & Occupancy permits

Building	Ultimate User	Use (Residential, commercial, etc)	Actual SF built per Building Permits and U&O Certificates	<div></div>						Staff approvals for Regal Cinema, Jaspers/Green Turtle, Carrabbas, BB&T, Chick-Fil-A, Taco Bell, Rite Aid and Longhorn
				8100000710 ORIGINAL 11/12/98 PLANNING BOARD APPROVAL (See Note 1)	81000001A 4/10/2003 STAFF APPROVAL - Fairfield Hotel (See Note 2)	810000001B 12/12/2004 STAFF APPROVAL - Baileys	81000001C 12/1/2005 STAFF APPROVAL - IHOP	81000001D & E 9/21/2006 Planning Board Approval Commerce/TD Bank	81000001F 12/12/2004 Planning Board Approval Panera Breads	
				Square Feet	Square Feet	Square Feet	Square Feet	Square Feet	Square Feet	Square Feet
1B	Regal	Commerical/retail	58,782	67,880	67,880	67,880	67,880	67,880	67,880	58,782
1D	Greene Turtle	Commerical/retail	11,610	10,400	10,400	10,400	10,400	10,400	10,400	11,610
2D	Panera	Commerical/retail	5,097	5,100	5,100	5,100	5,100	5,100	5,097	5,097
3D	TD Bank	Commerical/retail	5,118	10,100	10,100	10,100	10,100	5,118	5,118	5,118
4D	TD Bank	Commerical/retail	0	9,700	9,700	9,700	9,700	0	0	0
5D	Rite aid	Commerical/retail	12,469	11,000	11,000	11,000	11,000	11,000	12,469	12,469
6D	Carrabbas	Commerical/retail	8,421	6,742	6,742	6,742	6,742	6,742	8,421	8,421
7D	BB&T	Commerical/retail	3,500	3,905	3,905	3,905	3,905	3,905	3,500	3,500
8D	CFA	Commerical/retail	4,009	3,873	3,873	3,873	3,873	3,873	3,873	4,009
9D	Taco Bell	Commerical/retail	2,637	2,800	2,800	2,800	2,800	2,800	2,637	2,637
1E	FairChild Pad	Commerical/retail	0	5,610	5,610	5,610	5,610	5,610	5,610	5,610
2E	Fairchild Pad	Commerical/retail	0	6,556	6,556	6,556	6,556	6,556	6,556	6,556
3E	Baileys/Sr Teq	Commerical/retail	9,000	5,335	5,335	9,000	9,000	9,000	9,000	9,000
4E	Red	Commerical/retail	6,957	6,465	6,465	6,465	6,465	6,465	6,957	6,957
5E	IHOP	Commerical/retail	4,976	4,836	4,836	4,836	4,976	4,976	4,976	4,976
6E	Fairfield Hotel	Hotel	53,915	98,559	60,000	60,000	60,000	60,000	60,000	60,000
7E	Longhorn	Commerical/retail	5,072						5,072	5,072
7E		Commerical/retail	0	21,598						
		Surplus SF Commercial			34,604	30,939	30,799	45,481	45,279	45,092
		Commercial/Retail SF			194,906	194,906	194,906	194,906	194,906	194,906
		Hotel SF			60,000	60,000	60,000	60,000	60,000	60,000

Note 1 - We do not have a copy of the 11/12/1998 Planning Commission approved plan - these starting figures are taken from the Planning Board Resolution dated 6/2/2011 setting forth the chronology of the project's approved buildings.

Note 2 - The Hotel's building permit SF is actual 53,915 (as opposed to 60,000 sf), but was not adjusted here to the lower figure to retain consistency with the 6/2/2011 Planning Board Resolution.

TRIP GENERATION FOR FAIRCHILD APARTMENTS

Trip Rates / Formulae	In/Out %
Multifamily Housing, Mid-Rise General Urban/Suburban (ITE-221, Units)	
$\text{Ln}(\text{Morning Trips}) = 0.98 \times \text{Ln}(\text{Units}) - 0.98$	26/74
$\text{Ln}(\text{Evening Trips}) = 0.96 \times \text{Ln}(\text{Units}) - 0.63$	61/39
High Turnover (Sit-Down) Rest. (ksf, ITE-932)	
Morning Trips = $11.52 \times \text{ksf}$	52/48
Evening Trips = $10.92 \times \text{ksf}$	61/39
Retail, No Major Food Chain (Montgomery County, <50 ksf)	
Morning Trips = $25\% \times \text{Evening Trips}$	52/48
Evening Trips = $((12.36 \times \text{KSF}) \times (1 - .05 + .002(200 - \text{KSF})))$	52/48

TRIP TOTALS	MORNING PEAK HOUR			EVENING PEAK HOUR		
	IN	OUT	TOTAL	IN	OUT	TOTAL

Proposed

Multifamily Housing, Mid-Rise General Urban/Suburban (ITE 10th Edition, ITE-221, Units)

215 units	19	53	72	56	36	92
Adjusted Trips (89%)	17	47	64	50	32	82

Approved

Retail, No Major Food Chain (Montgomery County, <50 ksf)

45,092 sq.ft.	46	43	89	186	171	357
Pass-by Trips(am 39%, pm 49%)	-18	-17	-35	-91	-84	-175
New Trips	28	26	54	95	87	182

High Turnover (Sit-Down) Rest. (ITE 7th Edition, ksf, ITE-932)

12,166 sq.ft.	73	67	140	81	52	133
Pass-by Trips(am 0%, pm 43%)	0	0	0	-35	-22	-57
New Trips	73	67	140	46	30	76
Total Approved New Trips	101	93	194	141	117	258

Trip Comparison

Proposed - Approved	-84	-46	-130	-91	-85	-176
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EXHIBIT 1 TRIP GENERATION FOR FAIRCHILD APARTMENTS

Attachment C

July 14, 2020

VIA 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: Request for Subdivision Regulations Waiver in connection with Extension of
Adequate Public Facilities Determination for Fairchild Apartments – Site Plan
Amendment No. 82018022A (the "Site Plan Amendment")

Dear Chairman Anderson and Members of the Board:

Our firm represents GTTCE Owner LLC ("GTTCE", or the "Applicant"), an affiliate of Henry Investment Partners, LLC and the developer of the multi-family residential project that is subject to the above-referenced Site Plan Amendment (the "Fairchild Apartments", or the "Project").¹

As you may be aware, the Applicant has requested a waiver ("Waiver") from 50.4.3.J.7.d.i.c of the Montgomery County Subdivision Regulations ("Subdivision Regulations") in connection with its pending request to extend the validity period of the Adequate Public Facilities ("APF") determination for the Project for an additional 24 months, or until April 27, 2022 (the "Extension"). The Extension and the Waiver are both described in our April 13, 2020 letter to the Montgomery County Planning Board ("Planning Board"), a copy of which is attached for reference ("Letter").

In the course of reviewing the Extension and Waiver application, Staff of the Montgomery County Planning Department ("Planning Department") have determined that a separate waiver application is needed to facilitate the review of this request pursuant to Section 50.9.1-3 of the Subdivision Regulations. Staff have also determined that the Applicant should broaden the scope of the Waiver to generally address Section 50.4.3.J.7.d.i of the Subdivision Regulations, given certain potential interpretations of the Extension and Site Plan Amendment described in Section II herein. For these reasons, we respectfully submit this letter on behalf of the Applicant to supplement and amend our previous Waiver request, and to facilitate the processing of a separate application in accordance with applicable requirements of the Planning Department's Development Review Procedures Manual.

¹ The Project involves the development of a new multi-family residential building on the subject property with a maximum of 222,653 square feet of total development, including 201,720 square feet for the new multi-family residential building (with up to 212 dwelling units, of which 12.5 percent will be Moderately Priced Dwelling Units ("MPDUs")) and up to 20,933 square feet for existing commercial uses.

I. Background

The Extension seeks to extend the APF determination for the Project by an additional 24 months in accordance with Section 50.4.3.J.7.d.i of the Subdivision Regulations. Please refer to the attached Letter for more detailed information about the approved APF determination, the requested Extension and Waiver, and the Project.

Section 50.4.3.J.7.d.i applies to APF determinations for nonresidential or mixed-use development that were originally longer than seven years, and requires an Applicant to demonstrate that the request satisfies the following criteria:

- 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 3 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.*

As the Letter explains, the requested Extension satisfies the substantial majority of these requirements, with the exception of Section 50.4.3.J.7.d.i.c.² With respect to that subsection, the development of the other commercial buildings on the approximate 5.49 acre parcel on which the Project is located – known as "Parcel V" (the "Property") – has occurred incrementally over time in accordance with the broader approved Germantown Town Center East Site Plan (Site Plan No. 819990010) (the "GTTCE Site Plan").³ The last commercial buildings under the overall "project" that is subject to the approved APF determination were constructed several years before the Planning Board approved the Site Plan for the subject Project, Site Plan No. 820180220 (the "Site Plan"). Consequently, MCDPS has neither issued occupancy permits nor completed final building permit inspections for a sufficient amount of structural floor area within the timeframes that

² The Letter describes the Extension's compliance with each of the required findings of Section 50.4.3.J.7.d.i in detail.

³ The GTTCE Site Plan extends to two adjacent large blocks (to the north across Century Boulevard and to the west across Aircraft Drive) and includes approximately 19.25 acres of land (not including Parcel V).

Section 50.4.3.J.7.d.i.c prescribes. Thus, the Applicant has requested the Waiver from the above-stated requirements of Section 50.4.3.J.7.d.i.c in connection with the Extension.

Nonetheless, at the request of Planning Department Staff, the Applicant submitted the Extension and Waiver as an amendment to the approved Site Plan for purposes of administrative convenience, so that these requests are able to be processed via the Montgomery County Planning Department's ePlans System. (We understand that this method of application is necessary because ePlans is otherwise unable to accept such requests as independent applications, even though the applicable APF determination was made at the time of prior building permits for the GTTCE Site Plan and neither the Extension nor the Waiver propose any changes to the approved Site Plan or its associated conditions of approval other than the duration of the APF validity period.) After the submission of the Extension and Waiver, Staff determined that processing these requests in connection with a Site Plan Amendment could be construed to narrow the APF determination to only to the amount of building floor area that is permitted under the Site Plan for the Project, rather than to the full scope of development permitted under the GTTCE Site Plan and the approved APF determination. Under this interpretation, the Applicant would still be unable to demonstrate compliance with Section 50.4.3.J.7.d.i.c, as none of the building floor area that is subject to the Site Plan has been constructed given the recent date of Site Plan approval (*i.e.*, July 26, 2018). However, an additional Waiver from Section 50.4.3.J.7.d.i.a would also be required, because none of the total approved gross floor area of the Site Plan "project" has yet been constructed to meet the 40 percent threshold that Section 50.4.3.J.7.d.i.a requires.⁴

To address the foregoing potential interpretations, the Applicant has restated and amended the justifications for the Extension and the Waiver set forth in its previous Letter, as described in Section III below.

III. Basis for Approval – APF Extension for Nonresidential and Mixed-Use Development and Subdivision Regulations Waiver

- a. The Applicant proposes no additional development, satisfying the requirements of Section 50.4.3.J.7.a.iii.(a).

The Extension does not propose any changes with respect to the amount of development that the Planning Board has already approved with the existing APF determination for the Project and for the GTTCE Site Plan, as Section 50.4.3.J.7.a.iii.(a) of the Subdivision Regulations requires for approval of an APF extension request. The current approved APF determination for the applicable approvals for the Project – Sketch Plan No. 320180130, the Site Plan, and a simultaneous amendment to the GTTCE Site Plan, Site Plan Amendment No. 81999001A (the "GTTCE Site Plan Amendment") (collectively, the "Approvals") – allows for up to 201,720 square feet of residential density and up to 20,933 square feet of mixed and commercial density on Parcel V, and up to 208,215 square feet of mixed and commercial density on the remainder of the GTTCE Site Plan properties (including 176,715 square feet of existing development and up to 31,500 square feet of remaining unbuilt commercial density). The overall total density allowed for all uses on

⁴ Under this interpretation of the approved floor area for the project, approximately 90 percent of total approved building floor area that is subject to the Site Plan would be tied to the approved multifamily building. This makes it impossible to meet the required threshold of 40 percent to have been built to satisfy the subsection.

both Parcel V and the GTTCE Site Plan properties under the current APF determination is approximately 430,868 square feet.

- b. MCDPS has previously issued building permits for at least 40 percent of the total approved gross floor area for the improvements that are subject to the approved APF determination, in satisfaction of Section 50.4.3.J.7.d.i.a.

The Applicant's traffic consultant provided information at the time of Site Plan confirming that MCDPS has issued building permits for at least 40 percent of the total approved gross floor area allowed under the amended APF determination for the Approvals. More specifically, the July 10, 2018 Traffic Impact Statement prepared by The Traffic Group (Exhibit A) includes a Germantown Town Center Chronology (the "Chronology") that identifies the amount of actual square feet that has been constructed based upon applicable building permits and Use and Occupancy Certificates ("U&O Certificates"). Based on this information, we understand that a total of 191,563 square feet of development has been constructed on Parcel V and on the GTTCE Site Plan properties, as shown in the Chronology and summarized below:

<i>Building</i>	<i>Ultimate User</i>	<i>Use (Residential, Commercial, Etc.)</i>	<i>Actual SF Built Per Building Permits and U&O Certificates</i>
1B	Regal	Commercial/Retail	58,782
1D	Greene Turtle	Commercial/Retail	11,610
2D	Panera	Commercial/Retail	5,097
3D	TD Bank	Commercial/Retail	5,118
4D	TD Bank	Commercial/Retail	0
5D	Rite Aid	Commercial/Retail	12,469
6D	Carrabbas	Commercial/Retail	8,421
7D	BB&T	Commercial/Retail	3,500
8D	CFA	Commercial/Retail	4,009
9D	Taco Bell	Commercial/Retail	2,637
1E	Fairchild Pad	Commercial/Retail	0
2E	Fairchild Pad	Commercial/Retail	0
3E	Baileys/Sr Teq	Commercial/Retail	9,000
4E	Red	Commercial/Retail	6,957
5E	IHOP	Commercial/Retail	4,976
6E	Fairfield Hotel	Hotel	53,915
7E	Longhorn	Commercial/Retail	5,072
7E	-	Commercial/Retail	0
Subtotal Commercial SF Built:			137,648
Subtotal Hotel SF Built:			53,915
Subtotal Residential Built:			0
TOTAL SF BUILT:			191,563

The existing development within Parcel V and the remainder of the GTTCE Site Plan area (*i.e.*, 191,563 square feet) represents approximately 44 percent of the total approved gross floor area that is subject to the amended APF determination (*i.e.*, 430,868 square feet), as Section 50.4.3.J.7.d.i.a requires.

As noted above, Planning Department Staff have observed that it is possible to interpret the subject Site Plan Amendment for the Extension as addressing only to the amount of building floor area that is permitted under the Site Plan for the Project, rather than to the full scope of development permitted under the GTTCE Site Plan and the approved APF determination for the collective Approvals. In this case, the Applicant would be unable to demonstrate that MCDPS has issued building permits for at least 40 percent of the total approved gross floor area allowed under the amended APF determination for the Project's Sketch Plan and Site Plan. Nonetheless, the criteria for granting a waiver from Section 50.4.3.J.7.d.i.a would be satisfied, as described in Section III-d below.

- c. All infrastructure required as conditions of the original APF determination has been constructed, in satisfaction of Section 50.4.3.J.7.d.i.b.

With respect to Section 50.4.3.J.7.d.i.b., all of the infrastructure improvements required by the original APF determination have been completed by the developers of the GTTCE Site Plan properties, including Parcel V. As previously stated, these improvements included, most notably, dedicating land for and constructing Century Boulevard from Crystal Rock Drive to the east of what is now the TopGolf facility (including a median for the CCT), the widening of Aircraft Drive between Route 118 to the south and Crystal Rock Drive to the north past the police and fire stations, and intersection reconstruction efforts at Century Boulevard and Aircraft Drive, as well as at Aircraft Drive and Crystal Rock Drive, and at Crystal Rock Drive and Father Hurley Boulevard.

- d. The criteria for granting a waiver under Section 50.9.1 for Section 50.4.3.J.7.d.i – including Sections 50.4.3.J.7.d.i.c. and 50.4.3.J.7.d.i.a – are satisfied.

The existing development on Parcel V and within the GTTCE Site Plan is largely the result of a comprehensive rezoning – Local Map Amendment No. G-742 (the "LMA") – that was approved by the Montgomery County Council, sitting as the District Council, in 1997. The rezoning applied to three large blocks in Germantown that, at the time of the Council's approval, had not yet been brought into the Town Sector Zone. Given the large size of the area that was included in the LMA and the emerging nature of the Germantown market at that time, the rezoning permitted a multi-phased development that would occur over time, with a 100 percent commercial retail development to be constructed in the first phase and an option to add residential uses to a portion of the project in a second phase. The original APF determination was approved for twelve years in anticipation of this long-term build-out, and the objective for developing the GTTCE Site Plan properties for mixed-uses was eventually reinforced by the 2009 Approved and Adopted Germantown Employment Area Sector Plan (the "Sector Plan").

The bulk of the commercial development that was anticipated with the initial phase of development pursuant to the LMA has been constructed, with the most recent U&O Certificate for a commercial building having been issued in approximately 2012 (for Panera Bread). However, market conditions in Germantown have only recently begun to change in a manner that makes residential

development viable at this location. As a result, even though the Site Plan has now been approved to allow remaining unbuilt commercial density for the GTTCE Site Plan properties to be converted for residential development on Parcel V, it has been several years since development has occurred pursuant to the approved APF determination. Consequently, it is not possible for the Applicant to demonstrate that MCDPS has issued occupancy permits or completed final building permit inspections within the 3 or 4 years preceding this request, as Section 50.4.3.J.7.d.i.c typically requires. Furthermore, as described above, Planning Department Staff have determined that if the Site Plan Amendment is interpreted to address only the amount of building floor area allowed for the Project under the amended APF determination, it would not be possible for the Applicant to demonstrate that MCDPS has issued permits for at least 40 percent of the total approved gross floor area in accordance with Section 50.4.3.J.7.d.i.a.

Nonetheless, Section 50.9.1 of the Subdivision Regulations allows the Planning Board to grant a waiver from any requirement of the Subdivisions Regulations – including Section 50.4.3.J.7.d.i.c and, to the extent necessary, Section 50.4.3.J.7.d.i.a – after making certain required findings set forth in Section 50.9.3. The requested Waiver satisfies the criteria of Section 50.9.1 as follows:

1. *[That] due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*

As explained above, the Site Plan was approved several years after the majority of the development subject to the APF determination had been completed. The timing of the Site Plan approval vis-à-vis the construction of the existing development under the APF makes it impossible for the Applicant to demonstrate compliance with the timing requirements of Section 50.4.3.J.7.d.i.c for the issuance of U&O Certificates and the completion of final building permit inspections and, potentially, with the project completion threshold of Section 50.4.3.J.7.d.i.a to the extent of the floor area to be constructed under the Site Plan (which has not yet commenced). This results in both a practical difficulty and an unusual circumstance.

Nonetheless, Sections 50.4.3.J.7.d.i.c and 50.4.3.J.7.d.i.a are not needed to ensure the public health, safety and general welfare, as the intent of the requirement is still met. More specifically, Sections 50.4.3.J.7.d.i.c and 50.4.3.J.7.d.i.a serve to ensure that development, when approved, proceeds to construction in a timely and expected manner, so as to remain compatible with the County's planning objectives for a given area and to avoid the continued allocation of development capacity to projects that may no longer be viable. In this case, the County has long planned for the future residential development to occur on Parcel V and the GTCCE Site Plan properties when the Germantown market would support it, and for the commercial density associated with these approvals to be implemented in the interim. Approximately 44 percent of the total gross floor area allowed under the amended APF determination has now been completed, and the percentage of total gross floor area completed under the original APF determination *before* it was amended in 2018 for residential use is much higher (approximately 75 percent, based on a previously approved total gross floor area of 254,906 square feet). Furthermore, development under the APF determination has remained active and ongoing. The Applicant obtained the necessary Approvals for the Project from the Planning Board in 2018, and is currently in the process of preparing building permit applications for submission to MCPDS and processing. The requested waiver will allow the remaining unbuilt density associated with the APF determination to be constructed,

consistent with the long-term objectives of the LMA and the Sector Plan, and will not serve as an undue reservation on valuable public facilities.

2. *[That] the intent of the requirement is still met; and*

As stated above, Sections 50.4.3.J.7.d.i.c and 50.4.3.J.7.d.i.a are both intended to ensure that development proceeds to construction as planned and that approved APF findings are not being reserved without plans for implementation. In this case, the County has not only long planned for future residential development on Parcel V and the GTCCE Site Plan properties, but the Applicant and the Planning Board have taken affirmative recent steps towards this outcome with the recent Approvals for the Project. The requested waiver will ensure that the Applicant is able to complete its efforts to obtain building permits from MCDPS and to construct the Project in the near future.

Furthermore, the requested waiver will facilitate the construction of new residential housing in Germantown and will allow for the construction of up to 212 dwelling units on the Property, of which 12.5 percent will be MPDUs. The creation of new market rate and affordable dwelling units will further important County housing priorities, as well as the priorities and objectives of the General Plan.

3. *[That] 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.*

The requested Waiver applies only to subsections (c) and, potentially, (a) of Section 50.4.3.J.7.d.i. The remainder of the requirements for the approval of the approval of an Extension are satisfied as described above. Therefore, the requested waiver is the minimum necessary to provide relief.

III. Conclusion

The Applicant respectfully requests that the Planning Board approve the Waiver and the associated Extension for the reasons described herein and in the Letter, so that the validity period of the current APF Determination for the Project can remain valid for an additional 24 months, until April 27, 2022. As required, the requested Extension satisfies the applicable criteria of Sections 50.4.3.J.7.d.i-iii of the Subdivision Regulations for approval of an APF determination extension for nonresidential or mixed-use development, including the criteria for a waiver from certain specific requirements of Section 50.4.3.J.7.d.i under Section 50.9.1-3.

* * * *

We trust that this supplemental information is helpful in your review of the Applicant's request, and that you will not hesitate to contact us if you have any questions or require additional information.

Very truly yours,



Robert G. Brewer, Jr. Esq.



Christopher M. Ruhlen, Esq.

cc: Mr. Peter Henry
 Mr. Matthew Walters
 Mr. Richard Weaver
 Ms. Sandra Pereira
 Mr. Benjamin Berbert
 Mr. Jim Soltesz

ATTACHMENT

LETTER TO PLANNING BOARD FROM LERCH, EARLY & BREWER, CHTD.
DATED APRIL 13, 2020

April 13, 2020

VIA 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: Request for Extension of Adequate Public Facilities Determination for Fairchild
Apartments – Site Plan No. 820180220 (the "Site Plan")

Dear Chairman Anderson and Members of the Board:

Our firm represents GTTCE Owner LLC ("GTTCE", or the "Applicant"), an affiliate of Henry Investment Partners, LLC and the developer of the multi-family residential project that is subject to the above-referenced Site Plan (the "Fairchild Apartments", or the "Project"). On behalf of the Applicant, we respectfully submit this request to extend the validity period of the Adequate Public Facilities ("APF") determination for the Project for an additional 24 months, or until April 27, 2022 (the "Extension").

The Montgomery County Planning Board ("Planning Board") approved the Site Plan for the Project on December 20, 2018, and the Montgomery County Planning Department ("Planning Department") approved the associated Certified Site Plan on June 5, 2019. Since that time, the Applicant and its consultants have continued to refine the technical plans for the Project and are now in the process of completing the materials that will be required for building permit applications. However, as explained herein, the APF determination for the Project is scheduled to expire on April 27, 2020. Because the Applicant still requires additional time to complete and submit the necessary building permit application materials, and because the present public health crisis has introduced certain logistical challenges with respect to those efforts, it will not be possible for the Applicant to submit building permit applications to the Montgomery County Department of Permitting Services ("MCDPS") for a timely approval.

The Applicant is requesting this Extension under Sections 50.4.3.J.7.d.i-iii and 50.9.1-3 of the Montgomery County Subdivision Regulations ("Subdivision Regulations"). This letter addresses the criteria of these Sections in detail, and otherwise serves to satisfy the various requirements of the Planning Department's Development Review Procedures Manual for the submission of a validity period extension request and a Subdivision Regulations waiver request.

I. Site Description and Prior Approvals

The Site Plan applies to an approximate 5.49 acre parcel known as "Parcel V", which is located in Germantown immediately adjacent to the newly constructed TopGolf recreation facility (the "Property"). The Property is generally located to the east of the intersection of Century Boulevard and Aircraft Drive, to the north of Maryland Route 118 ("MD 118"), and to the west of Interstate 270 ("I-270").

The Property was formerly part of the broader approved Germantown Town Center East Site Plan (Site Plan No. 819990010) (the "GTTCE Site Plan"), which extends to two adjacent large blocks (to the north across Century Boulevard and to the west across Aircraft Drive) and includes approximately 19.25 acres of land (not including Parcel V). The GTTCE Site Plan properties and the existing development on Parcel V have been constructed in phases over the past twenty years under the standards and procedures of the formerly applicable Town Sector ("TS") zone. The existing development is predominantly commercial and includes a variety of restaurant uses, a hotel, a convenience store, a movie theater, and a park-and-ride parking lot that is subject to an agreement with the Montgomery County Department of Transportation ("MCDOT").

In 2018, the Planning Board approved a Sketch Plan for the Project (Sketch Plan No. 320180130) (the "Sketch Plan"), followed by the Site Plan and a simultaneous amendment to the GTTCE Site Plan, Site Plan Amendment No. 81999001A (the "GTTCE Site Plan Amendment") (collectively, the "Approvals").¹ Together, the Approvals allow the Applicant to extract Parcel V from the broader GTTCE Site Plan, and to develop a new multi-family residential building on the Property under the standards and procedures of the currently applicable Commercial/Residential ("CR") zone (*i.e.*, the Project). The Approvals allow for a maximum of 222,653 square feet of total development on Parcel V, including 201,720 square feet for the new multi-family residential building (with up to 212 dwelling units, of which 12.5 percent will be Moderately Priced Dwelling Units ("MPDUs")) and up to 20,933 square feet for existing commercial uses.

Importantly, the Site Plan utilizes and amends the APF determination for the GTTCE Site Plan properties – including Parcel V – to convert previously approved, but unbuilt, commercial space to space for residential use.² This initial APF determination was approved by the Planning Board on April 27, 2000, at the time of building permit review for the GTTCE Site Plan. The APF determination was originally valid for 12 years, and was conditioned upon making certain transportation improvements that have since been completed.³ However, the APF determination

¹ The Planning Board approved the Sketch Plan on July 26, 2018, as indicated by the Resolution dated July 31, 2018.

² As noted in the Planning Department Staff Report for the Site Plan and the Site Plan Amendment dated December 7, 2018, the Applicant was able to amend the APF determination "because the two Site Plans share a common Applicant, and because the APF was approved with building permits and tied to density, not to a specific Preliminary or Site Plan approval."

³ More specifically, the Planning Board required the developers of the GTTCE Site Plan properties (including the developers of Parcel V) to complete the following: (i) for Century Boulevard between Aircraft Drive and Crystal Rock Drive, to dedicate and construct a new four lane road with median for the Corridor Cities Transitway ("CCT"); (ii) for Century Boulevard west of Aircraft Drive travelling to the east on Century Boulevard, to dedicate and construct the expanded Century Boulevard past its easternmost boundary including a median for the CCT; (iii) to widen Aircraft Drive north and south of Century Boulevard for regional transportation improvements; and (iv) to complete the intersection reconstruction at Century Boulevard and Aircraft Drive, Aircraft Drive and Crystal Rock Drive, and Crystal Rock Drive and Father Hurley Boulevard.

was subsequently extended pursuant to a series of Montgomery County Council legislative enactments that together provided for an automatic, cumulative extension of eight years.⁴ Thus, the APF determination is currently scheduled to expire on April 27, 2020.

II. Basis for Approval – APF Extension for Nonresidential and Mixed-Use Development and Subdivision Regulations Waiver

The Subdivision Regulations authorize the Planning Board to extend the validity period of any APF determination for a nonresidential or mixed-use development that was originally longer than seven years by a maximum of six years, provided that the Applicant does not propose any additional development above the amount approved in the original APF determination. In addition, the Applicant must demonstrate that the request satisfies the following criteria set forth in Section 50.4.3.J.7.d.i of the Subdivision Regulations:

- 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 3 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.*

The requested Extension satisfies the substantial majority of these requirements, as described below. However, the development of the commercial buildings on Parcel V and within the GTTCE Site Plan area has occurred incrementally over time, with the last commercial buildings completed several years before the Planning Board approved the Site Plan for the residential component.

⁴ More specifically, the eight-year extension was granted by the Montgomery County Council action in legislatively extending all currently valid approvals, pursuant to the Subdivision Regulation Amendments ("SRAs") approved as SRA No. 09-01 (effective April 1, 2009), SRA No. 11-01 (effective April 1, 2011), SRA No. 13-01 (effective April 1, 2013), and SRA No. 15-01 (effective March 31, 2015).

Consequently, MCDPS has neither issued occupancy permits nor completed final building permit inspections for a sufficient amount of structural floor area within the timeframes that Section 50.4.3.J.7.d.i.c prescribes. For this reason, the Applicant requests a waiver under Section 50.9.1 of the Subdivision Regulations with respect to the above-stated requirements of Section 50.4.3.J.7.d.i.c. The Extension's compliance with each of these required findings, as well as with the criteria for a waiver from the Subdivision Regulations, is described below:

- a. The Applicant proposes no additional development, satisfying the requirements of Section 50.4.3.J.7.a.iii.(a).

This Extension does not propose any changes with respect to the amount of development that the Planning Board has already approved with the existing APF determination for the Project and for the GTTCE Site Plan, as Section 50.4.3.J.7.a.iii.(a) of the Subdivision Regulations requires for approval of an APF extension request. The current approved APF determination for the Approvals, as amended, allows for up to 201,720 square feet of residential density and up to 20,933 square feet of mixed and commercial density on Parcel V, and up to 208,215 square feet of mixed and commercial density on the remainder of the GTTCE Site Plan properties (including 176,715 square feet of existing development and up to 31,500 square feet of remaining unbuilt commercial density). The overall total density allowed for all uses on both Parcel V and the GTTCE Site Plan properties under the current APF determination is approximately 430,868 square feet.

- b. MCDPS has previously issued building permits for at least 40 percent of the total approved gross floor area, in satisfaction of Section 50.4.3.J.7.d.i.a.

The Applicant's traffic consultant provided information at the time of Site Plan confirming that MCDPS has issued building permits for at least 40 percent of the total approved gross floor area allowed under the amended APF determination. More specifically, the July 10, 2018 Traffic Impact Statement prepared by The Traffic Group (Exhibit A) includes a Germantown Town Center Chronology (the "Chronology") that identifies the amount of actual square feet that has been constructed based upon applicable building permits and Use and Occupancy Certificates ("U&O Certificates"). Based on this information, we understand that a total of 191,563 square feet of development has been constructed on Parcel V and on the GTTCE Site Plan properties, as shown in the Chronology and summarized below:

<i>Building</i>	<i>Ultimate User</i>	<i>Use (Residential, Commercial, Etc.)</i>	<i>Actual SF Built Per Building Permits and U&O Certificates</i>
1B	Regal	Commercial/Retail	58,782
1D	Greene Turtle	Commercial/Retail	11,610
2D	Panera	Commercial/Retail	5,097
3D	TD Bank	Commercial/Retail	5,118
4D	TD Bank	Commercial/Retail	0
5D	Rite Aid	Commercial/Retail	12,469
6D	Carrabbas	Commercial/Retail	8,421
7D	BB&T	Commercial/Retail	3,500
8D	CFA	Commercial/Retail	4,009

9D	Taco Bell	Commercial/Retail	2,637
1E	Fairchild Pad	Commercial/Retail	0
2E	Fairchild Pad	Commercial/Retail	0
3E	Baileys/Sr Teq	Commercial/Retail	9,000
4E	Red	Commercial/Retail	6,957
5E	IHOP	Commercial/Retail	4,976
6E	Fairfield Hotel	Hotel	53,915
7E	Longhorn	Commercial/Retail	5,072
7E	-	Commercial/Retail	0
			<hr/>
Subtotal Commercial SF Built:			137,648
Subtotal Hotel SF Built:			53,915
Subtotal Residential Built:			0
TOTAL SF BUILT:			191,563

The existing development within Parcel V and the remainder of the GTTCE Site Plan area (*i.e.*, 191,563 square feet) represents approximately 44 percent of the total approved gross floor area that is subject to the amended APF determination (*i.e.*, 430,868 square feet), as Section 50.4.3.J.7.d.i.a requires.

- c. All infrastructure required as conditions of the original APF determination has been constructed, in satisfaction of Section 50.4.3.J.7.d.i.b.

With respect to Section 50.4.3.J.7.d.i.b., all of the infrastructure improvements required by the original APF determination have been completed by the developers of the GTTCE Site Plan properties, including Parcel V. As previously stated, these improvements included, most notably, dedicating land for and constructing Century Boulevard from Crystal Rock Drive to the east of what is now the TopGolf facility (including a median for the CCT), the widening of Aircraft Drive between Route 118 to the south and Crystal Rock Drive to the north past the police and fire stations, and intersection reconstruction efforts at Century Boulevard and Aircraft Drive, as well as at Aircraft Drive and Crystal Rock Drive, and at Crystal Rock Drive and Father Hurley Boulevard.

- d. The criteria for granting a waiver from Section 50.4.3.J.7.d.i.c under Section 50.9.1 are satisfied.

The existing development on Parcel V and within the GTTCE Site Plan is largely the result of a comprehensive rezoning – Local Map Amendment No. G-742 (the "LMA") – that was approved by the Montgomery County Council, sitting as the District Council, in 1997. The rezoning applied to three large blocks in Germantown that, at the time of the Council's approval, had not yet been brought into the Town Sector Zone. Given the large size of the area that was included in the LMA and the emerging nature of the Germantown market at that time, the rezoning permitted a multi-phased development that would occur over time, with a 100 percent commercial retail development to be constructed in the first phase and an option to add residential uses to a portion of the project in a second phase. The original APF determination was approved for twelve years

in anticipation of this long-term build-out, and the objective for developing the GTTCE Site Plan properties for mixed-uses was eventually reinforced by the 2009 Approved and Adopted Germantown Employment Area Sector Plan (the "Sector Plan").

The bulk of the commercial development that was anticipated with the initial phase of development pursuant to the LMA has been constructed, with the most recent U&O Certificate for a commercial building having been issued in approximately 2012 (for Panera Bread). However, market conditions in Germantown have only recently begun to change in a manner that makes residential development viable at this location. As a result, even though the Site Plan has now been approved to allow remaining unbuilt commercial density for the GTTCE Site Plan properties to be converted for residential development on Parcel V, it has been several years since development has occurred pursuant to the approved APF determination. Consequently, it is not possible for the Applicant to demonstrate that MCDPS has issued occupancy permits or completed final building permit inspections within the 3 or 4 years preceding this request, as Section 50.4.3.J.7.d.i.c typically requires.

Nonetheless, Section 50.9.1 of the Subdivision Regulations allows the Planning Board to grant a waiver from any requirement of the Subdivisions Regulations – including Section 50.4.3.J.7.d.i.c – after making certain required findings set forth in Section 50.9.3. More specifically, the Planning Board must find:

1. *[That] due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*
2. *[That] the intent of the requirement is still met; and*
3. *[That] 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.*

The subject Extension satisfies all of these criteria for a waiver from Section 50.4.3.J.7.d.i.c. As explained above, the Site Plan was approved several years after the majority of the development subject to the APF determination had been completed. The timing of the Site Plan approval vis-à-vis the construction of the existing development under the APF makes it impossible for the Applicant to demonstrate compliance with the timing requirements of Section 50.4.3.J.7.d.i.c for the issuance of U&O Certificates and the completion of final building permit inspections, resulting in both a practical difficulty and an unusual circumstance.

Nonetheless, Section 50.4.3.J.7.d.i.c is not needed to ensure the public health, safety and general welfare, as the intent of the requirement is still met. More specifically, Section 50.4.3.J.7.d.i.c serves to ensure that development, when approved, proceeds to construction in a timely and expected manner, so as to remain compatible with the County's planning objectives for a given area and to avoid the continued allocation of development capacity to projects that may no longer be viable. In this case, the County has long planned for the future residential development to occur on Parcel V and the GTCCE Site Plan properties when the Germantown market would support it, and for the commercial density associated with these approvals to be implemented in the interim.

Approximately 44 percent of the total gross floor area allowed under the amended APF determination has now been completed, and the percentage of total gross floor area completed under the original APF determination *before* it was amended in 2018 for residential use is much higher (approximately 75 percent, based on a previously approved total gross floor area of 254,906 square feet). The requested waiver will allow the remaining unbuilt density associated with the APF determination to be constructed, and development has otherwise continued to proceed in a manner that is consistent with the long-term objectives of the LMA and the Sector Plan.

The requested waiver has been limited to only subsection (c) of Section 50.4.3.J.7.d.i., and the remainder of the requirements for the approval of the approval of an Extension are satisfied as described above. Therefore, the requested waiver is the minimum necessary to provide relief.

Finally, the requested waiver will facilitate the construction of new residential housing in Germantown and will allow for the construction of up to 212 dwelling units on the Property, of which 12.5 percent will be MPDUs. The creation of new market rate and affordable dwelling units will further important County housing priorities, as well as the priorities and objectives of the General Plan.

III. Conclusion

The Applicant respectfully requests that the Planning Board extend the validity period of the current APF Determination for the Project by an additional 24 months, so as to allow MCDPS to issue building permits no later than April 27, 2022. As described above, the requested Extension satisfies the applicable criteria of Sections 50.4.3.J.7.d.i-iii of the Montgomery County Subdivision Regulations ("Subdivision Regulations") for approval of an APF determination extension for nonresidential or mixed-use development, including the criteria for a waiver from Section 50.4.3.J.7.d.i.c under Section 50.9.1-3.

The Applicant anticipates that an additional 24 months will be sufficient to allow for the completion of a detailed review of the architectural plans that are required for building permit and for the resolution of any anomalies that are discovered in the course of such efforts, as well as for MCDPS to conduct its review of all building permit and related site permit materials. While the Applicant intends to complete these efforts as soon as possible, it is foreseeable that additional delays also could arise due to disruptions in the lending market over the next several months due to the currently ongoing public health crisis. However, the Applicant believes that an additional 24 month period would also provide sufficient time to address any such financing issues if they arise, thereby avoiding the need to return to the Planning Board to request further extensions. For these reasons, the Applicant respectfully requests the Planning Board's approval for this Extension request.

We trust that this information is helpful in your review of the Applicant's request, and we look forward to working with Planning Department Staff on this matter. Please do not hesitate to contact us if you have any questions or require additional information.

Very truly yours,



Robert G. Brewer, Jr. Esq.



Christopher M. Ruhlen, Esq.

cc: Mr. Peter Henry
Mr. Matthew Walters
Mr. Richard Weaver
Ms. Sandra Pereira
Mr. Benjamin Berbert
Mr. Jim Soltesz

EXHIBIT A

LETTER FROM THE TRAFFIC GROUP TO HIP PROJECTS, LLC DATED JULY 10, 2018



A SERVICE DISABLED
VETERAN-OWNED
SMALL BUSINESS

CORPORATE OFFICE
Baltimore, MD

Suite H
9900 Franklin Square Drive
Baltimore, Maryland 21236
410.931.6600
fax: 410.931.6601
1.800.583.8411

ARIZONA OFFICE
443.290.4070

DELMARVA OFFICE
443.290.4060

FIELD LOCATIONS

Arkansas
Arizona
Georgia
Maryland
New York
North Carolina
Ohio
South Carolina
Texas
Virginia
Washington State
West Virginia

July 10, 2018

Mr. Matt Walters
HIP Projects, LLC
230 Spectrum Avenue
Gaithersburg, Maryland 20879

RE: Germantown Town Center Apartments
Montgomery County, Maryland
Our Job #: 2017-0907

Dear Mr. Walters:

As we have discussed previously, The Traffic Group, Inc. has conducted an analysis at your request to determine the number of trips that would be generated by the Germantown Town Center site based on the existing Adequate Public Facilities (APF) approval. Based on our discussions, you have provided us with a detailed breakdown of the amount of development yet to be developed. A copy of this table is attached. The review of this table indicates that 45,092 square feet of surplus commercial space is yet to be developed along with Building 1E and 2E of the Fairchild pads consisting of two high turnover sit down restaurants. Building 1E would contain the 5,610 sq ft restaurant. Building 2E would contain a 6,556 sq ft high turnover sit down restaurant.

Based on this square footage, using the M-NCPPC trip rates for retail space and using the ITE (7th Edition) Trip Generation Report for the high turnover (sit down) restaurants applicable at the time of the APF approval, it would be projected that 194 AM peak hour trips and 258 PM peak hour trips are still available.

We then conducted the trip generation analysis to determine the number of trips that would be generated by the proposed 215 apartment units. This comparison is shown on Exhibit 1. The results of this analysis indicate that the apartments would generate 64 trips during the morning peak hours and 82 trips during the evening peak hour when using current ITE (10th Edition) rates and adjusted for the Policy Area.

Based on the above information, the proposed apartments would generate less traffic than the property yet to be developed and would still leave 130 trips during the morning peak hour and 176 trips during the evening peak hour.

Therefore, based on this comparison as shown in Exhibit 1, there are a sufficient number of trips which are still remaining from the original APF approval for the subject site to cover the trips that would be generated by the proposed 215 Apartment Units.

If you have any questions concerning this information or the data shown on Exhibit 1, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Cook". The signature is fluid and cursive, with the first name "Glenn" and last name "Cook" clearly distinguishable.

Glenn E. Cook
Senior Vice President

GEC:peh

(F:\2017\2017-0907_Germantown Multi-Family Project\DOCS\CORRESP\ANALYST\2REVLTR_Walters.docx)

Germanatown Town Center Chronology of approvals with Final Building SF from the Building Permits/ Use & Occupancy permits

[illegible]

Note 1 - We do not have a copy of the 11/12/1998 Planning Commission approved plan - these starting figures are taken from the Planning Board Resolution dated 6/2/2011 setting forth the chronology of the project's approved buildings.

Note 2 - The Hotel's building permit SF is actual 53,915 (as opposed to 60,000 sf), but was not adjusted here to the lower figure to retain consistency with the 6/2/2011 Planning Board Resolution.

TRIP GENERATION FOR FAIRCHILD APARTMENTS

Trip Rates / Formulae	In/Out %
Multifamily Housing, Mid-Rise General Urban/Suburban (ITE-221, Units)	
$\text{Ln}(\text{Morning Trips}) = 0.98 \times \text{Ln}(\text{Units}) - 0.98$	26/74
$\text{Ln}(\text{Evening Trips}) = 0.96 \times \text{Ln}(\text{Units}) - 0.63$	61/39
High Turnover (Sit-Down) Rest. (ksf, ITE-932)	
Morning Trips = $11.52 \times \text{ksf}$	52/48
Evening Trips = $10.92 \times \text{ksf}$	61/39
Retail, No Major Food Chain (Montgomery County, <50 ksf)	
Morning Trips = $25\% \times \text{Evening Trips}$	52/48
Evening Trips = $((12.36 \times \text{KSF}) \times (1 - .05 + .002(200 - \text{KSF})))$	52/48

TRIP TOTALS	MORNING PEAK HOUR			EVENING PEAK HOUR		
	IN	OUT	TOTAL	IN	OUT	TOTAL

Proposed

Multifamily Housing, Mid-Rise General Urban/Suburban (ITE 10th Edition, ITE-221, Units)

215 units	19	53	72	56	36	92
Adjusted Trips (89%)	17	47	64	50	32	82

Approved

Retail, No Major Food Chain (Montgomery County, <50 ksf)

45,092 sq.ft.	46	43	89	186	171	357
Pass-by Trips(am 39%, pm 49%)	-18	-17	-35	-91	-84	-175
New Trips	28	26	54	95	87	182

High Turnover (Sit-Down) Rest. (ITE 7th Edition, ksf, ITE-932)

12,166 sq.ft.	73	67	140	81	52	133
Pass-by Trips(am 0%, pm 43%)	0	0	0	-35	-22	-57
New Trips	73	67	140	46	30	76
Total Approved New Trips	101	93	194	141	117	258

Trip Comparison

Proposed - Approved	-84	-46	-130	-91	-85	-176
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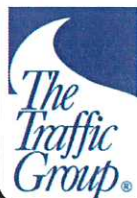


EXHIBIT 1 TRIP GENERATION FOR FAIRCHILD APARTMENTS

Attachment D

4. Germantown Town Center East

Adequate Public Facilities Building Permit Review

Staff Recommendation: Approval with conditions.

BOARD ACTION

Motion: BRYANT/PERDUE

Vote:

Yea: 4-0

Nay:

Other: HUSSMANN ABSENT

Action: APPROVED STAFF RECOMMENDATION WITH SIX CONDITIONS DELINEATED IN THE APRIL 18 TRANSPORTATION PLANNING APF (ADEQUATE PUBLIC FACILITIES) REVIEW. AS A REGISTERED LOOPHOLE PROPERTY, THE BUILDING PERMIT APPLICATION REQUIRED REVIEW.

Mr. Marty Hutt, attorney, accepted the conditions recommended in the staff report.

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760MCPB
Item No. 4
4/27/00

April 18, 2000

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Ronald C. Welke, Coordinator
Transportation Planning

FROM: Ki H. Kim, Planner
Transportation Planning

SUBJECT: Germantown Town Center East Building Permit.

This memorandum is Transportation Planning staff's adequate public facilities (APF) review of the subject building permit application as a registered loophole property. The Planning Board is required to review the proposed plans for Germantown Town Center East and the related traffic study, and to provide comments to the Director of the Department of Permitting Services (DPS) on the adequacy of the transportation system to support the additional development.

RECOMMENDATIONS

Based on our review of the submitted traffic impact study, Transportation Planning staff recommends the following conditions as part of the APF test for transportation requirements related to approval of this application.

1. Total development under this building permit application is limited to the following uses and density:
 - 127,026 square feet of retail/restaurants
 - 89-room hotel
 - 67,880-square foot theater (approximately 2,800 seats)
2. The applicant shall widen Aircraft Drive between Century Boulevard and Crystal Rock Drive as a four-lane roadway with a median at the intersection approach to Crystal Rock Drive.

3. The applicant shall extend Century Boulevard westerly from its present terminus at Aircraft Drive to Crystal Rock Drive, where the roadway will align with Main Street in the Germantown Town Center.
4. The applicant shall participate in funding the traffic signal and pavement marking modification including median relocation, pavement milling and overlay necessary to provide a second left-turn lane from southbound Crystal Rock Drive to eastbound Father Hurley Boulevard and westbound Father Hurley Boulevard to southbound Crystal Rock Drive.
5. The applicant shall participate in constructing an acceleration lane on Father Hurley Boulevard to accommodate the movement from northbound Crystal Rock Drive to eastbound Father Hurley Boulevard.
6. The applicant shall participate in constructing an acceleration lane on Crystal Rock Drive to accommodate the movement from westbound Father Hurley Boulevard to northbound Crystal Rock Drive including reconstruction/reconfiguration of the median and travel lanes on the northern leg of the intersection.

DISCUSSION

Summary of Local Area Transportation Review

A traffic study was prepared to determine the impact of Germantown Town Center East development. Staff agrees with the conclusion of that study that all impacted intersections in the area will continue to operate within the congestion standard of 1,500 Critical Lane Volume (CLV) for the Germantown Town Center Policy Area. The critical lane volume (CLV) impacts of the proposed development on critical intersections in the vicinity of the site were analyzed and are summarized in Table I.

Table I

Intersection Capacity Analysis with CLV Under Various Development Schemes During the Peak Hour						
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
MD 118/Middlebrook Drive	940	890	1235	1089	1244	1104
MD 118/Crystal Rock Drive	777	1003	1058	1141	1145	1332
Great Seneca Hgwy./ Middlebrook Road	777	1129	851	1084	854	1094
MD 118/Aircraft Drive	887	945	1007	1028	1047	1181
Father Hurley Blvd/Crystal Rock Drive						
Without Road Improvements	1048	925	2081	2325	2083	2370
With Road Improvements					1211	1484

As shown in the above table, the five intersections analyzed are currently operating at acceptable CLVs (1,500 Critical Lane Volume (CLV)) and this acceptable level will continue for the background development (developments approved but not built) conditions except at the intersection of Father Hurley Boulevard and Crystal Rock Drive. The unacceptable condition at the intersection of Father Hurley Boulevard and Crystal Rock Drive will further deteriorate for the total development conditions without the roadway improvements. However, this intersection will operate at an acceptable congestion level for the total development conditions with the roadway improvements conditioned upon approval of this building permit application.

Staging Ceiling Capacity Review

Based on the FY 00 AGP staging ceiling capacity, there is sufficient capacity available for employment development (2,975 jobs as of December 31, 1999) in the Germantown Town Center Policy Area to accommodate the proposed development.

Conclusion

Staff concludes that with the roadway conditions as recommended in this memorandum, the subject building permit application satisfies the APF review since all nearby intersections are anticipated to operate within an acceptable CLV with additional roadway improvements to be provided by the applicant and there is staging ceiling capacity available for the proposed development.

KHK:cmd

Germantown Town Center East Building Permit.wpd



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Attachment E

May 1, 2018

Matthew Walters
HIP Projects, LLC
230 Spectrum Ave
Gaithersburg, MD 20879

RE: Forest Conservation Exemption Request # 42018173E
Property Name: Fairchild Apartments
Action Taken: **Confirmed**

Dear Mr. Matthews,

On April 11, 2018 the Montgomery County Planning Department's Development Applications and Regulatory Coordination staff, received a Chapter 22A-5(t) forest conservation plan exemption request for a project at Parcel V, Block UVW, southeast quadrant of intersection of Aircraft Drive and Century Boulevard, Germantown Maryland. Based on the information provided, qualification for an exemption under 22A-5(t) is confirmed.

Chapter 22A-5(t)(1) exempts a modification to an existing:

(1) non-residential developed property if:

- (A) no more than 5,000 square feet of forest is ever cleared at one time or cumulatively after an exemption is issued;
- (B) the modification does not result in the cutting, clearing, or grading of any forest in a stream buffer or located on property in a special protection area which must submit a water quality plan;
- (C) the modification does not require approval of a preliminary or administrative subdivision plan; and
- (D) the modification does not increase the developed area by more than 50% and the existing development is maintained;

A pre-construction meeting is required after the limits of disturbance have been staked prior to clearing and grading. The property owner, construction superintendent, forest conservation inspector, and the Montgomery County Department of Permitting Services sediment control inspector shall attend this meeting. If you have any questions regarding these actions, please feel free to contact me at 301-495-4603 or at michael.sharp@montgomeryplanning.org.

Sincerely,

Michael J. Sharp

Michael J. Sharp
Senior Planner
Forest Conservation Inspector
Development Applications and Regulatory Coordination
MNCPPC- Montgomery County Planning Department