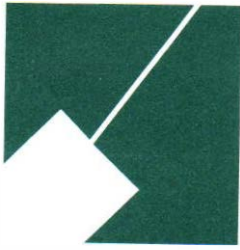


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

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

Date Mailed: MAR 22 2005

Action: Approved Staff
Recommendation

Motion of Commissioner Bryant,
seconded by Commissioner Perdue,
with a vote of 5-0;
Chairman Berlage and Commissioners.
Perdue, Bryant, Wellington, and
Robinson voting in favor.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-04049

NAME OF PLAN: North Bethesda Town Center (LCOR White Flint)

The date of this written opinion is MAR 22 2005 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State).

INTRODUCTION

On January 13, 2004, LCOR White Flint, LLC submitted an application for the approval of a preliminary plan of subdivision of property in the TS-M and I-1 zones. The application proposed to create 9 lots on 32.42 acres of land located at on the east side of Rockville Pike (MD 355) between Marinelli Road and Old Georgetown Road (MD 187), in the North Bethesda/Garrett Park master plan area. The application was designated Preliminary Plan 1-04049. On September 30, 2004, Preliminary Plan 1-04049 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application;

all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

SITE DESCRIPTION

The subject property consists of approximately 32 acres and is located on the east side of Rockville Pike (MD 355) approximately 2,000 feet south of its intersection with Montrose Road. The property is bounded on four sides by roads: Rockville Pike on the west, Old Georgetown Road on the north, Nebel Street on the east and Marinelli Road on the south. The site is currently developed with the White Flint Metro Rail Station, a surface parking lot for Metro patrons, a golf driving range and miniature golf course, and stormwater management facilities. The majority of the property is zoned Transit Station Mixed with a small area of I-1 Light Industrial.

PRIOR PLAN APPROVALS

The TS-M zoned portion of the property was rezoned from the R-90 zone in April 2003 per County Council Resolution No. 15-151. The specifications and requirements of this rezoning have been incorporated into the approval of the Preliminary Plan per proposed condition #2.

A Pre-application Submission Application, including a Concept Plan, was submitted for Planning Board approval, pursuant to the provisions of Section 50-33A of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) in September, 2003 (Pre-Preliminary Plan No. 7-04001). The application requested a decision by the Planning Board on the adequacy of school facilities for the proposed subdivision under the Ceiling Element for the FY 2004 Annual Growth Policy (July 2003), and the adequacy of road and public transportation facilities of the proposed subdivision under the Alternative Review Procedures for Metro Station Policy Areas in the FY 2002 Annual Growth Policy – Policy Element (November 2001). The Pre-Preliminary Plan was approved by the Planning Board, with conditions on October 16, 2003. The approval conditions have been incorporated into the approval of the Preliminary Plan per proposed condition #13.

In July 2004 the Planning Board reviewed a Mandatory Referral for the Washington Metropolitan Area Transit Authority's (WMATA) Metro parking garage at White Flint, which is located on proposed Lot "D" of the subject Preliminary Plan. The Board approved the mandatory referral and transmitted comments to WMATA.

PROJECT DESCRIPTION

The preliminary plan consists of nine lots and 2 parcels. Each lot may contain up to a 20-story building with structured parking. The two parcels contain community open space and stormwater management facilities. The proposed development will contain mixed uses including: approximately 1,350 apartment units, twelve and one-half percent of these units, or 169 units will be Moderately Priced Dwelling Units; 1,148,000 square feet of Commercial Office; 202,037 square feet of General Retail; and up to an 80,000 square foot Theater. The plan preserves approximately one acre of trees, which are part of the original 4.7-acre forest and rock outcroppings of the "White Flint" in the Urban Amenity Open Space area. Site plan review pursuant to §59-D-3 is required for this project.

STAFF RECOMMENDATION

Staff recommended approval of this preliminary plan with conditions in its memorandum dated September 23, 2004 ("Staff Report"). Staff's review indicated that the preliminary plan complies with the requirements of Chapter 50, the Subdivision Regulations. Staff found that the preliminary plan will provide safe and adequate access for vehicles and pedestrians, and satisfies the APF requirements.

During Staff's review, a letter was received from the Garrett Park Estates – White Flint Park Citizens' Association ("Citizens' Association"), which expressed concern with the traffic impact from the Bethesda Town Center, in particular on Rockville Pike, and noted that the Preliminary Plan did not show the on-site daycare facility or the on-site indoor community activity space. Staff also received a letter from V3 Properties, LLC ("V3 Properties"), the owner of an adjacent property on Nebel Street. V3 Properties noted that it and its neighbors should be provided access to and through the proposed development, at a minimum pedestrian access.

PUBLIC HEARING

At the public hearing, Staff presented revised conditions of approval to the Board. Staff explained that one of these revisions included the requirement that the Planning Board grant a waiver of a section of the Subdivision Regulations requiring business district streets have an 80' right-of-way to permit rights-of way of 70 feet, which is the width required in the Road Code, Montgomery County Code Chapter 49. Staff also noted that Condition 13 restates the binding conditions of approval of the pre-preliminary plan and that the preliminary plan proposed condition reflected the correction of a mistake in the pre-preliminary plan conditions by referencing the correct fiscal year Annual Growth Policy. Other revised conditions concerned the roadways, including obtaining certain approvals from SHA and WMATA at site plan review.

Transportation Planning Staff advised the Planning Board that adequate public facilities had been addressed at the pre-preliminary plan stage and has been approved by the Board. As such, Staff testified, the primary transportation issue for the Board's consideration at the preliminary plan hearing involved the road network. Staff advised the Board that, through negotiations, the applicant, DPWT and M-NCPPC Staff had arrived at a consensus position that the streets serving the commercial area will all be public. Streets serving the residential area of the project, however, will be private. Staff noted that DPWT has agreed to maintain Bridge Street as a public street, and that traffic control at the intersection of Bridge and Station streets is being given careful consideration to ensure that there will be no backup of traffic on Rockville Pike. Staff noted the importance of that access point to the site because nearly all of the retail will be located along Main Street and that M-NCPPC, DPWT, and the applicant feel strongly that the proposed connection to Rockville Pike at Bridge Road be provided.

The applicant, through its counsel, testified that applicant agrees with Staff's recommendation and conditions of approval, including the revisions. Responding to the comments in the Citizens' Association letter, applicant's counsel advised the Board that issues related to the daycare center and recreational amenities are not properly addressed at the preliminary plan stage and will be addressed at the site plan stage. Applicant also responded to the letter submitted by V3 Properties, which requested pedestrian and/or vehicular access directly into the site at the middle of the block. Noting that the neighboring property is in an I-1 Zone, Applicant pointed out that pedestrian access exists along Nebel Street into the site. Applicant commented that it did not desire to have I-1 traffic coming through the residential component of the proposed development and, furthermore, that a significant change in grade existed between those neighboring properties and the site, which would make such a connection impractical. Moreover, the applicant argued, the proposed road/ sidewalk grid network provides adequate vehicular and pedestrian connections from virtually any direction.

A representative of the Citizens' Association read and submitted into the record a written statement. The representative pointed out what she believed was an error in excluding from the list of intersections that exceed the CLV congestion standard and requested that the information be updated. She stated that it is in the interest of the community to discourage use of Rockville Pike in favor of alternate routes such as Nebel Street. The representative advised the Board that the Citizens' Association took issue with two aspect of the Preliminary Plan: the construction of new vehicular access from Rockville Pike and the proposal to provide only private road access to Nebel Street.

In its rebuttal time, the applicant clarified that the classification of certain roads as being "private," simply relates to the party who will be charged with maintaining the road. He noted that the private roads would be built to public road standards and the public would have access to those roads. Concerning Bridge Street, the applicant noted that

Transportation Planning Staff had determined during the zoning case that the access to Rockville Pike would relieve some of the traffic congestion at the intersection with Old Georgetown Road. He also advised the Board that deceleration and acceleration lanes would be provided on Rockville Pike at the new access point.

There was considerable discussion by the Board on the amenities and open spaces to be provided and whether they would really serve the community in the manner intended. Board members told the applicant that they want assurance that the proposed amenities would be useful and appear welcoming to the public. Staff and applicant explained to the Board how, conceptually, the amenities would work. They advised the Board that the amenities and open space design will be addressed in some detail at the time of site plan review. The applicant assured the Board that it is aware of the Board's desires with respect to the amenities and open space. The Board also expressed concurrence that the intersection of Nebel and Nicholson requires improvement and asked Staff to look into the matter in order that the Board may forward a recommendation to the County to address any issues there. The Applicant noted that it was required under the alternative review procedure to perform a comprehensive intersection analysis and that such analysis had been conveyed to Staff.

FINDINGS

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

- a) The Preliminary Plan No. 1-04049 substantially conforms to the North Bethesda/Garrett Park Master Plan.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision. As noted above, the adequate public facilities finding was made at the pre-preliminary plan stage.
- c) The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.

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

- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) The Record of this application contains only the following contested issues:
- Pedestrian and/or vehicular access from adjoining properties in the southeast corner of the property directly into the proposed development: The Board finds, based on evidence of record and testimony at the hearing that providing such direct access is not feasible because of problematic grade changes and the location of proposed stormwater management facilities. The Board notes that adequate access is provided in the northeast corner of the proposed site and that additional "direct" access points are not necessary. The Board further finds that the proposed road/sidewalk grid network provides adequate vehicular and pedestrian connections from virtually any direction, including the adjoining properties.
 - Access to the proposed development directly onto Rockville Pike via Bridge Street: Based on evidence of record and testimony at the hearing, the Planning Board finds that the access point at the proposed Bridge Street and Rockville Pike is critical because nearly all of the retail will be located along Main Street, which is on axis with Bridge Street; and, therefore, it is important for optimal circulation and safety that vehicles entering from and exiting to Rockville Pike have such a convenient access point. Additionally, the Board finds that the proposed access point will facilitate efficient and safe circulation of public transit vehicles on the site. The Board further finds that the proposed connection to Rockville Pike at Bridge Street will not negatively impact traffic on Rockville Pike, because, among other things, it will relieve some of the traffic congestion at the intersection of Rockville Pike and Old Georgetown Road to the north, and deceleration and acceleration lanes will be provided on Rockville Pike to the north and south of the access point. The Board is of the opinion that, in approving a development plan that included access to Rockville Pike via proposed Bridge Street—which access point was not delineated for in the master plan—and delegating final approval of the bridge to the Planning Board as a part of the Board's regulatory review of the proposed development, the District Council, the master plan approving authority, has endorsed access onto Rockville Pike via proposed Bridge Street; and, therefore, the Board's finding of

substantial conformance with the master plan can be made notwithstanding the absence of such an access point from the master plan.

- Private Road access to Nebel Street: The Board finds, based on evidence of record and testimony at the hearing, that providing access to Nebel Street via "private roads" will not discourage drivers from using those roads to access Nebel Street because those roads, when constructed, will be indistinguishable from public roads and will be open to the public.

The Board further finds that any objection (concerning a substantive issue) that was not raised prior to the closing of the Record is waived.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-04049 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-04049, including a waiver of Section 50-26(a)(4) pursuant to Section 50-38, to permit business district streets with a right of way of 70 feet, and subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to 9 lots, 2 parcels with 1,350 Multi-Family Residential Units including 169 MPDUs, 1,148,000 square feet of Commercial Office, 202,037 square feet of General Retail with a possible supermarket, and an 80,000 square foot Theater with matinees and a 3,500-seating capacity.
- 2) Compliance with the specifications and requirements of the approved development plan for Zoning Application No. G-801, County Resolution No. 15-151.
- 3) No clearing, grading or recording of plats prior to site plan signature set.
- 4) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
- 5) A landscape and lighting plan must be submitted as part of the site plan application for review and approval by technical staff.
- 6) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.

- 7) Record plat to reflect a Category II easement over the tree save area which is part of the Urban Amenity Open Space.
- 8) Record plat to reflect all areas under Homeowners Association ownership and stormwater management areas.
- 9) Compliance with the conditions of approval of the MCDPS stormwater management approval dated May 26, 2004.
- 10) Final access and improvements, as required to be approved by MDSHA prior to issuance of building permit.
- 11) All road right-of-way shown on the approved preliminary plan shall be dedicated by the applicant, to the full width mandated by the North Bethesda/Garrett Park Master Plan, unless otherwise designated on the Preliminary Plan.
- 12) All road right-of ways shown on the approved preliminary plan shall be constructed, by the applicant, to the full width mandated by the Bethesda/Garrett Park Master Plan, and to the design standards imposed by all applicable road codes, unless otherwise amended. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By _____" are excluded from this condition.
- 13) Compliance with the following transportation-related conditions:

Per the Planning Board's approval of Pre-Preliminary Plan No. 7-04001:

- A. The Applicant to enter into an agreement with the Planning Board and the County Department of Public Works and Transportation to:
 1. meet trip reduction goals established by the Planning Board as a conditions of approving the LCOR Subdivision, which require the Applicant to reduce 50% of the number of weekly peak hour trips attributable to the LCOR Subdivision, either by reducing trips from the subdivision itself or from other occupants of the White Flint Metro Policy Area;
 2. participate in programs operated by, and take actions specified by the North Bethesda Transportation Management District ("TMD") established by County law fro the White Flint Metro Policy Area (or a group of policy areas including that policy area) in order to meet the TMD's mode share goals;
 3. pay an ongoing annual contribution or tax to fund the TMD's operation expenses, including minor capital items such as buses, as established by County law; and

4. pay the applicable transportation development impact tax without claiming any credits for transportation improvements.
 5. Conduct a Local Area Transportation Review ("LATR") traffic study and specify for inclusion in the County's Capital Improvements Program ("CIP") any transportation improvements needed to support the subdivision.
- B. Preliminary plan application shall conform to all other requirements set forth in Chapter 59, Zoning Ordinance, Chapter 50, Subdivision Regulations and other applicable codes.
- C. Planning Board approval of the Pre-Preliminary Plan including the alternative review procedures under Section TA1 of the FY02 Annual Growth Policy does not preclude further consideration by the Board of other trip reduction measures associated with preliminary plan or site plan review, as appropriate, e.g. location of transit stops, provision/location of Kiss-and-Ride and bus circulation areas; on-site and off-site pedestrian and vehicular circulation; on-site parking requirements; phase-in of day care facilities, and other trip reduction measures as appropriate.

Per Transportation Planning review of the Preliminary Plan:

- D. Designate the following internal streets as public commercial/industrial roads with modified cross-sections:
1. The entire length of the north-south streets between Marinelli Road and Old Georgetown Road:
 - a) Station Street
 - i) To be the main bus loading/unloading area, in lieu on Rockville Pike (MD 355) and the current on-site location.
 - ii) To possibly be one-way southward between Main Street/Bridge Street to Marinelli Road that would be determined at site plan.
 - b) LCOR's (not the master-planned business district street) Chapman Avenue
 - c) Citadel Avenue
 2. Bridge Street that is an east-west street between Rockville Pike and Station Street.
 3. Main Street that is an east-west street between Station Street and Citadel Avenue.

The remaining internal streets east of Citadel Avenue within the residential area of the proposed development would be designated as private streets – Main Street Circle and Park Avenue.

- E. Dedicate 70 feet of right-of-way for the five public business district streets with modified cross-sections. Locate PUEs outside the public right-of-way, unless DPWT agrees to relocation of PUEs at Site Plan.
- F. Coordinate with the Montgomery County Department of Public Works and Transportation (DPWT) regarding the unique cross-section design details of the five public streets and the other private streets (i.e., Main Street Circle and Park Avenue) to optimize the vehicular circulation while providing for pedestrians, bicycles, and environmental considerations.
- G. At the site plan review for safe and efficient traffic circulation to, on, and from Bridge Street between Rockville Pike (MD 355) and Station Street and as an alternative access point via the intersections with Marinelli Road and Old Georgetown Road, coordinate the design and resolve the following:
 - 1. Obtain Maryland State Highway Administration (SHA) approval of the proposed access point from Rockville Pike to Bridge Street, including right-turn-in and right-turn-out traffic control measures and associated deceleration/acceleration lanes;
 - 2. Obtain WMATA approval for deceleration/bus activity lane between Marinelli Road and proposed Bridge Street;
 - 3. Prohibit lefts-in and lefts-out at the intersections of Station Street with Marinelli Road and with Old Georgetown Road and only permit rights-in and rights-out; and
 - 4. Coordinate with DPWT regarding the installation of adequate traffic control at the intersection of Bridge Street/Main Street and Station Street to prevent excessive queuing along Bridge Street between Rockville Pike and Station Street.
- H. Coordinate with DPWT regarding their Capital Improvements Program (CIP) project for the extension of Citadel Avenue south of Marinelli Road and their Facility Planning Study for Chapman Avenue north of Old Georgetown Road.
- I. Prior to Site Plan review, coordinate with WMATA and DPWT to relocate the surface kiss & ride, handicapped parking, bus bays, taxi stands, and other parking facilities for the White Flint Metrorail Station on the subject site.
- J. At site plan review, provide the specific details regarding pedestrian and bicycle connections to all residential and non-residential development including the following amenities:

1. Provide 160 bicycle spaces based on 20 spaces per garage for 8 garages with a mixture of bike lockers and bike racks. Coordinate with Transportation Planning staff on appropriate locations and types of bike parking facilities throughout the site.
 2. Provide an 8-foot bikeway along Rockville Pike (MD 355).
- 14) Compliance with the conditions of the MCDPWT letter dated July 15, 2004 as amended September 21, 2004, and as may be further amended.
- 15) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to that date a final record plat must be recorded for all the property delineated on the approved preliminary plan, or a request for an extension must be filed.
- 16) Other necessary easements.

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APPROVED AS TO LEGAL SUFFICIENCY

TAB
M-NCPPC LEGAL DEPARTMENT

DATE

3/11/05

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

CERTIFICATION OF BOARD VOTE ADOPTING OPINON

At its regular meeting, held on **Thursday March 17, 2005**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of **Commissioner Bryant, seconded by Commissioner Robinson, with Chairman Berlage, and Commissioners Perdue, Bryant and Robinson** voting in favor of the motion, **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Preliminary Plan 1-04049, North Bethesda Town Center.**

A handwritten signature in blue ink, appearing to read "M. Clara Moise", is written over a horizontal line.

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

GARRETT PARK ESTATES~WHITE FLINT PARK CITIZENS' ASSOCIATION

March 15, 2004



Mr. Malcolm Shaneman
Development Review Division
Montgomery County Department of Park & Planning
8787 Georgia Avenue
Silver Spring Maryland 20910-3760

Re: Preliminary Plan, North Bethesda Town Center, 1-04049

Dear Mr. Shaneman:

Garrett Park Estates-White Flint Park Citizens' Association is extremely concerned with the traffic impact from the North Bethesda Town Center, especially on Rockville Pike, and especially during mid-week and weekend non-rush hours.

At the time the Pre-Preliminary Plan was being considered, we expressed our concerns. It is our understanding that those concerns need to be retransmitted in order to be considered as part of the Preliminary Plan issues. We are, therefore, attaching our letter dated August 22, 2003 and ask that our concerns be considered.

Additionally, we note that the Preliminary Plan does not show either the on-site day care facility or the on-site indoor community activity space specified in the binding elements of the development plan. We hope these amenities are being included.

Thank you for your consideration.

Sincerely,

A handwritten signature in red ink, appearing to read "Natalie Goldberg".

Natalie Goldberg, Vice-President
Garrett Park Estates-White Flint Park Citizens' Association
11111 Jolly Way, Kensington, Maryland 20895

Attachment: Ltr. dated 8/22/2003 Pre-Preliminary Plan

