

LAW OFFICES
GIBBS AND HALLER
1300 CARAWAY COURT, SUITE 102
LARGO, MARYLAND 20774

EDWARD C. GIBBS, JR.
THOMAS H. HALLER
JUSTIN S. KORENBLATT

(301) 306-0033
FAX (301) 306-0037
gibbshaller.com



September 20, 2023

Ms. Donna J. Brown
Clerk of the County Council
Wayne K. Curry
County Administration Building
1301 McCormick Drive
Largo, Maryland 20774

In Re: DSP-22032, DDS-22002, AC-23001 and TCP 2-053-07-06
Response and Opposition to Written Exceptions Filed by
Protestants and Request for Oral Argument

Dear Ms. Brown:

INTRODUCTION

I represent WS Woodmore LLC. WS Woodmore LLC is the Applicant in the referenced application. It is controlled and owned by Wood Partners ("Wood"). Wood is a national residential multifamily developer, builder and owner. Please accept this correspondence as our Response and Opposition to Exceptions filed by certain protestants in this case and our request for oral argument before the Prince George's County Council, sitting as the District Council ("District Council"). The protestants include the City of Glenarden, seven individual members of the City Council of the City of Glenarden and the City Manager of the City of Glenarden

(the "Protestants"). The Protestants oppose the approval of Detailed Site Plan DSP-22034 as well as related but separate applications designated DDS-22002, AC-23001 and TCP 2-053-07-06. The Detailed Site Plan (DSP-20034) will allow the development of 284 multifamily dwelling units on property designated as Outlot A (the "Property"). The project is known as Alta Woodmore. Outlot A has frontage and direct access onto Ruby Lockhart Boulevard. Outlot A is part of a much larger development known as Woodmore Towne Centre at Glenarden. Woodmore Towne Centre received all of its prior entitlement approvals pursuant to the provisions of the M-X-T (Mixed Use Transportation Oriented) Zone. Pursuant to the adoption of the Countywide Map Amendment, Outlot A was placed in the TAC-e (Town Activity Center-Edge) Zone. Because all of the prior entitlements for Woodmore Towne Centre have been obtained via the M-X-T Zone standards and regulations, the Applicant has exercised its right under Section 27-1704 of the new Zoning Ordinance to proceed with the approval of DSP-22034 utilizing the provisions of the M-X-T Zone as set forth in the prior Zoning Ordinance.

WOODMORE TOWNE CENTRE DEVELOPMENT HISTORY

It is important to note that Woodmore Towne Centre has a long development history. The project consists of 244.67 acres of land

Ms. Donna J. Brown
September 20, 2023
Page 3

situated generally in the northeast quadrant of the intersection of the Capital Beltway (I-95) and Landover Road (MD 202). The property was rezoned to the M-X-T Zone in 1988 pursuant to the approval of Zoning Map Amendment Application A-9613-C. (Applicant's Statement of Justification, p. 3, See Backup at 299-306). The property remained undeveloped for many years until a joint development effort was commenced by Petrie-Richardson Ventures LLC and KHovnanian Homes. (Applicant's Statement of Justification, p. 4).

On October 6, 2005, the original Conceptual Site Plan for Woodmore Towne Centre (CSP-03006) was approved by the Prince George's County Planning Board ("Planning Board") (See Backup at 322-365). CSP-03006 was reviewed and ultimately approved by the District Council pursuant to its Order of January 23, 2006 (Applicant's Statement of Justification, p. 5, See Backup at 321). The Conceptual Site Plan approved 900 to 1,100 residential units (which included up to 450 multifamily residential units), 400,000 to 1,000,000 square feet of commercial retail development, 550,000 to 1,000,000 square feet of commercial office development, hotel uses consisting of 360 units and a conference center of between 6,000 and 45,000 square feet. (Applicant's Statement of Justification, p. 5, See Backup at 322).

Ms. Donna J. Brown
September 20, 2023
Page 4

In 2006, a Preliminary Subdivision Plan for the entirety of Woodmore Towne Centre was approved by the Planning Board. The Preliminary Subdivision Plan (4-06016) was approved pursuant to the adoption of Planning Board Resolution PGCPB No. 06-212 on September 21, 2006 (Applicant's Statement of Justification, p. 6, See Backup at 462). The Preliminary Subdivision Plan approved and authorized the construction of 1,079 residential dwelling units, up to 750,000 square feet of retail commercial development, up to 1,000,000 square feet of commercial office development and 360 hotel rooms. The residential units included the approval to construct 450 residential multifamily dwelling units. (Applicant's Statement of Justification, p. 6, Planning Board Resolution PGCPB No. 86-2012, page 10, See Backup at 472). The Preliminary Subdivision Plan also included 40 conditions. The review and approval of the plan included an adequate public facilities transportation analysis and conditions requiring payment of fees into a road club and/or construction of actual roadway improvements.

Subsequent to the approval of the Preliminary Subdivision Plan, a Detailed Site Plan for Infrastructure (DSP-07011) was approved on July 19, 2007 pursuant to Planning Board Resolution PGCPB No. 07-144. The District Council reviewed and approved this

Ms. Donna J. Brown
September 20, 2023
Page 5

Detailed Site Plan for Infrastructure evidenced by its Final Decision dated September 24, 2007. (Applicant's Statement of Justification, p.7, See Backup at 513-558).

The overall Detailed Site Plan for the commercial component of Woodmore Towne Centre (DSP-07011-01) was approved by the Planning Board pursuant to the adoption of Resolution PGCPB No. 09-03 on January 29, 2009. That Detailed Site Plan was also reviewed and approved by the District Council pursuant to its Final Decision entered on April 21, 2009. (Applicant's Statement of Justification p. 7, See Backup at 559-625). DSP-07011-01 included the approval of 450 multifamily units. (See Backup at 591).

There have been a number of Detailed Site Plans for Woodmore Towne Centre approved subsequent to DSP-07011-01. All of these Resolutions have been submitted by the Applicant as part of the record in this case.

In 2015, a revision to the Conceptual Site Plan was filed and reviewed (CSP-03006-02). This Conceptual Site Plan revision had as its sole subject matter, a request to move up to 320 of the multifamily residential units from Pod D within Woodmore Towne Centre to Pod B (where the Property is located). This Conceptual Site Plan was reviewed and approved by the Planning Board pursuant to its Resolution PGCPB No. 15-68 approved on July 30, 2015.

Thereafter, this Conceptual Site Plan revision was reviewed and approved by the District Council pursuant to its Decision dated October 18, 2015. (Applicant's Statement of Justification, p. 9-11, Backup at 372-461).

It is important to note that multifamily residential units have been approved to be developed within Woodmore Towne Centre since the time of the original approval of the first Conceptual Site Plan. It is also important to note that the Conceptual Site Plan revision of 2015 expressly authorized the construction of up to 320 of these multifamily units on the Property. This Detailed Site Plan (DSP-22034) seeks nothing more than to obtain the final entitlement approval which will allow construction of 284 multifamily residential units on the Property.

RESPONSE TO QUESTIONS PRESENTED BY PROTESTANTS

I. The Planning Board Was Not Required to Conduct a New Traffic Impact Study At the Time of Approving Detailed Site Plan DSP-22034.

In their Exceptions, the Protestants allege that the Planning Board should have required a new traffic impact study prior to approving the instant Detailed Site Plan. They make several arguments in support of this assertion. All of the arguments are without merit. The Applicant submits the following response to

those arguments:

1. The Protestants note that under the new Subdivision Ordinance, at Section 24-4503(a)(1) and Section 24-1704, a Certificate of Adequacy will automatically be issued for a project if its prior determination of adequacy was valid on April 1, 2022. The Protestants next argue that the determination of transportation adequacy for Woodmore Towne Centre was not valid on April 1, 2022. That assertion is false.

In support of their accusations, the Protestants attempt to rely on the provisions of Section 27-546(b)(10) of the prior Zoning Ordinance. That section provides as follows:

(10) On the Detailed Site Plan, if more than six (6) years have elapsed since a finding of adequacy was made at the time of rezoning through a Zoning Map Amendment, Conceptual Site Plan approval, or preliminary plat approval, whichever occurred last, the development will be adequately served within a reasonable period of time with existing or programmed public facilities shown in the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or to be provided by the applicant (either wholly or, where authorized pursuant to Section 24-124(a)(8) of the County Subdivision Regulations, through participation in a road club).

The Protestants attempt to apply an interpretation to the above cited provision which is unsupported by its plain language. Essentially, the Protestants argue that if more than six (6) years have elapsed since a finding of adequacy was made at the time of

Ms. Donna J. Brown
September 20, 2023
Page 8

the approval of a Zoning Map Amendment, Conceptual Site Plan or Preliminary Subdivision Plan (whichever occurred last), the Planning Board is charged with the responsibility to make an entirely new determination of the adequacy of public facilities. That is not what the provision requires. Further, the provision has never been interpreted in that manner when applied by staff of the Maryland-National Capital Park and Planning Commission ("M-NCPPC"), the Planning Board or the District Council. The provision does not require a new adequate public facilities test, but rather requires a determination that "the development will be adequately served within a reasonable period of time with existing or programmed public facilities". This clearly refers back to the adequacy of transportation facilities determination made at the time of the approval of the last plan.

In the case of Woodmore Towne Centre, the Preliminary Subdivision Plan was approved by the Planning Board on October 26, 2006 pursuant to the approval of Preliminary Subdivision Plan 4-06016 (Resolution PGCPB No. 06-212). From a transportation perspective, the Woodmore Towne Centre Preliminary Subdivision Plan was supported by a traffic impact study prepared in March of 2006 in accordance with the methodology set forth in the "Guidelines for the Analysis of Traffic Impact of Development

Proposals". (Resolution PGCPB No. 06-212, p. 28). The Preliminary Subdivision Plan approval for Woodmore Towne Centre included a finding of adequacy of transportation facilities premised upon providing certain required transportation improvements identified based upon a review of the traffic study and upon application of provisions contained within a Road Club. The Woodmore Towne Centre property was within an area governed by the MD 202 Corridor Study. It was the finding of the Planning Board that the applicant in Preliminary Plan 4-06016 should make certain road improvements. The required improvements included the following:

- a. Improvements to the intersection of MD 202 and Brightseat Road including the provision of additional turn lanes in all directions
- b. Improvements to MD 202 and I-95 SB Ramps by providing a third lane along eastbound MD 202 or other improvements as required by Transportation Planning Section and the State Highway Administration.
- c. Improvements to MD 202/I-95 NB Ramps by providing a third lane along westbound MD 202 through the intersection with the Beltway and allowing an exclusive right turn, shared thru right turn and two thru lanes at that interchange.
- d. Improvements to MD/McCormick Drive/St. Joseph's Drive intersection by providing additional thru lanes, turn lanes and signalization and providing an exclusive right turn and thru lanes, two exclusive left turn lanes and a shared thru left turn lane on St. Joseph's Drive.

- e. Improvements to MD/202/Lottsford Road including a fourth thru lane along MD 202 westbound.

In addition, the developer was required to construct Campus Way as a major collector through the site to I-95 and construct an overpass over the Capital Beltway connecting Campus Way to Evarts Street. (Resolution PGCPB No. 06-212, p. 1 and 2).

In addition to all of the above improvements, a trip cap was placed on the overall development of the project. The trip cap provided that the overall development within Woodmore Towne Centre would generate no more than 3,112 AM and 3,789 PM peak hour vehicle trips. (Resolution PGCPB No. 06-212, p.3). Based upon these improvements, the Planning Board found that adequate transportation facilities would exist to support the entire development of Woodmore Towne Centre consisting of 1,079 dwelling units (including 450 multifamily units), 750,000 square feet of retail commercial, 1 million square feet of office commercial and 360 hotel rooms. (Resolution PGCPB No. 06-212, p.10).

Chris Duffy, who was affiliated with the original developer of the commercial component of Woodmore Towne Centre (Petrie/Richardson Ventures) and is now the President of the successor to that entity (Heritage Partners), testified before the Planning Board when it considered the instant Detailed Site Plan

Ms. Donna J. Brown
September 20, 2023
Page 11

on July 6, 2023. Mr. Duffy testified that in lieu of making a Road Club payment of approximately \$8.5 million attributable to the project, the developer chose to make actual road improvements in the amount of approximately \$17 million. (DSP-22034, Transcript of testimony T. 65-66). All of the identified road improvements as required in the approval of the Preliminary Subdivision Plan for Woodmore Towne Centre (4-06016) have been made with the exception of the Evarts Street overpass.

Pursuant to a request to reconsider the original Preliminary Subdivision Plan approval filed by the original developer in April of 2012, the Planning Board had again analyzed the adequacy of transportation facilities and concluded that the Evarts Street overpass should be deferred until construction of the last 103,000 square feet of commercial office space. That finding is set forth in the Planning Board Resolution PGCPB No. 06-212(A) approving the Reconsideration of Preliminary Subdivision Plan 4-06016 on July 12, 2012. In approving the Reconsideration, the Planning Board once again affirmed the adequacy of transportation facilities for the entire build out of the approved uses and densities for Woodmore Towne Centre. (See Resolution No. PGCPB No. 06-212(A), p. 2-3 and p. 40-43).

Therefore, express findings have been made by the Planning Board confirming that adequate public facilities, as required per the analysis of adequacy in accordance with the Guidelines for the Analysis of Traffic Impact of Development Proposals, exists and that all required improvements to ensure the existence of those facilities have been or will be made. In fact, improvements in excess of that required were actually made as per Mr. Duffy's testimony.

The Protestants now simply allege, without any citation of authority, that Section 27-546(d)(10) would require the Planning Board to essentially make another Preliminary Subdivision Plan analysis of adequacy of transportation facilities within the context of a Detailed Site Plan if the Detailed Site Plan comes before the Planning Board more than six (6) years since the last transportation adequacy analysis. That is clearly not what is required by the provision in question. Indeed, such an interpretation would turn the statutory scheme for the analysis of adequacy of transportation facilities on its head. Clearly, for purposes of Woodmore Towne Centre, adequacy of transportation facilities is a subdivision analysis and approval event. Adopting an interpretation as urged by the Protestants would lead to absurd and illogical results. For example, since the Preliminary

Ms. Donna J. Brown
September 20, 2023
Page 13

Subdivision Plan for Woodmore Towne Centre remains valid today, any new transportation adequacy study required as part of this Detailed Site Plan would by necessity include the prior approval of all of the improvements for Woodmore Towne Centre within background development. Essentially, such an adequacy study as urged by Protestants would require the applicant to double count its own project. Such a result was never intended by the provision in question. Rather, as the precise wording of the provision suggests, if more than six (6) years has passed since the finding of transportation adequacy, the Planning Board is required to determine if in fact those required improvements will be provided "within a reasonable period of time". In this instance, all of the required facilities have in fact been provided with the exception of the Evarts Street overpass which has been deferred by express finding of the Planning Board. The staff, in its Staff Report analyzing DSP-20034 at pages 24-25, made this exact finding in analyzing conformance with this provision. (Section 27-546(d)(10). There, the staff made a positive finding with regard to this provision by noting that all required transportation facilities deemed necessary for adequacy by the Preliminary Plan of Subdivision have been constructed and are open for traffic with the exception of the Evarts Street overpass. Both the

Ms. Donna J. Brown
September 20, 2023
Page 14

Transportation Planning Section and the Subdivision Section of M-NCPPC made similar findings in their referrals which were provided in support of the instant Detailed Site Plan. (See Backup at 631 and 643). Further, the Transportation Planning Section also found that total development which has occurred within Woodmore Towne Centre and which will occur as a result of the approval of this Detailed Site Plan will still be well under the approved trip cap which was established in the approval of Preliminary Subdivision Plan 4-06016. (See Backup at 633). Finally, the Planning Board in its approval of DSP-22034 made identical findings. (Planning Board Resolution PGCPB No. 2023-81, page 22-23).

It must also be noted that the correct interpretation of the provision in question is not one of first impression in the instant Detailed Site Plan case. Both the Planning Board and the District Council have continuously in prior Detailed Site Plan analyses for projects at Woodmore Towne Centre addressed and interpreted the provision in the same manner discussed above. It was expressly addressed in DSP-07011-04 (24-Hour Fitness, Resolution PGCPB No. 13-13 page 11-12), DSP-14027 (Hampton Inn Hotel, Resolution PGCPB No. 15-22, p. 10-11); DSP-16011 (Nordstrom Rack, Resolution PGCPB No. 16-88, page 13) and DSP-17031 (Children's Hospital Medical Office, Resolution PGCPB No. 18-22, p. 11-12). In each of these

cases, the Planning Board and the District Council found that Section 27-546(b)(10) only requires that if more than six (6) years have elapsed since a finding of adequacy of transportation facilities, at the time of the next Detailed Site Plan, a determination is merely required relevant to assessing whether or not needed and previously identified transportation facilities have been provided. In each case noted above, the Planning Board and the District Council found that all required transportation facilities identified in the Preliminary Subdivision Plan (4-06016) had been constructed (with the exception of the Evarts Street overpass) and that therefore all transportation facilities needed to adequately serve the proposed development existed or would be provided within a reasonable period of time.

After conceding that the Planning Board might not be required to conduct a new adequacy of transportation facilities test, the Protestants next argue that the Planning Board should at least have been required to review a new traffic impact study. They then allege this was required "for several reasons" (Protestants Exceptions, p. 13). In actuality, the Protestants never advanced several reasons but rather make only two allegations as to why a traffic impact study should have been required. Both of these allegations are, at best, factually inaccurate.

The first argument advanced by the Protestants is their assertion that "the transportation facilities approved when the Planning Board made the prior determinations of adequacy for the Woodmore Towne Centre," were made based upon access to the Property being provided pursuant to right and left turns. In support of this allegation, they include two snapshots of a drawing which they represent shows a full turning movement access into the Property from Ruby Lockhart Boulevard. (See Protestants Exceptions p. 13-15). The Protestants' reliance on the drawing they have included in their Exceptions is at a minimum, grossly in error. The drawing which they excerpt also appears as Exhibit "D" in the Applicant's Statement of Justification. (See Backup at 64). Exhibit "D" is an Illustrative Plan submitted with the Applicant's revision to Conceptual Site Plan CSP-03006-02 which was approved in 2015. It is significant to also note that the Protestants allege that the drawing which they have excerpted was considered at the time of the last adequate public facilities analysis. They have previously alleged in their papers that that last analysis occurred in 2012. In actuality, the excerpt from the Illustrative Plan which the Applicant had supplied was prepared in 2015, three years after the 2012 determination of adequacy. To make matters worse, the drawing which was excerpted was not the

Conceptual Site Plan that was approved in 2015, but again just the Illustrative Plan. The Illustrative Plan is just that. It is an illustration of how development might occur. In fact, while the Protestants excerpted the Applicant's Illustrative Plan, they neglected to include the quite important note appearing in the lower right hand corner of that Illustrative Plan. A screenshot of that note appears herein below:

NOTE:

The ILLUSTRATIVE PLAN is intended to designate general locations of improvements, parking and internal circulation. Future development is to be in substantial conformance with this ILLUSTRATIVE PLAN; however, it is not intended to function as a final design drawing and is subject to change. Final design and location of improvements will occur at detailed site plan.

The ILLUSTRATIVE PLAN was revised on May 8, 2015 by AB Consultants, Inc. per M-NCPPC Review Comments.

Ms. Donna J. Brown
September 20, 2023
Page 18

As can be seen from a review of that note, it is clear that the Illustrative Plan "... is not intended to function as a final design drawing and is subject to change. Final design and location of improvements will occur at detailed site plan".

To make matters worse for the Protestants, there is no legend on the Illustrative Plan to indicate what the white open area they refer to on Ruby Lockhart Boulevard actually means. However, there is certainly no evidence that it represents a full turning movement of left and right turns. This is clear because in 2015, a driveway apron providing right-in and right-out only turns had already been constructed onto the property from Ruby Lockhart Boulevard. The area of the white space shown on the Illustrative Plan does not match with the location of the driveway as shown on the 2014 PGAtlas aerial imagery depicted below:

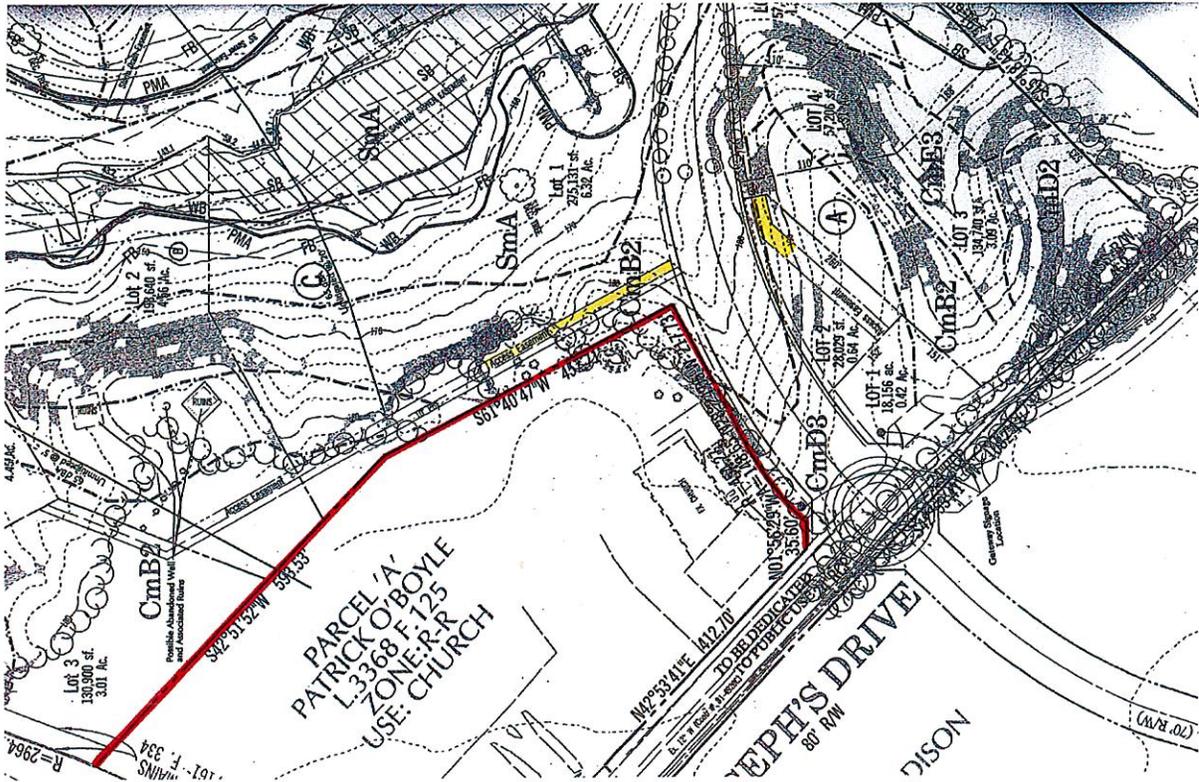


It is difficult to understand how the Protestants could possibly hope to rely upon an Illustrative Plan which is not binding and which contains no legend and worse yet, was approved after the time that they allege the last adequate public facilities finding was made. Simply put, this argument is devoid of merit.

When prior findings of adequacy were made, there was no determination that there would be right turns and left turns into and out of the Property. In fact, the exact opposite is true. As

Ms. Donna J. Brown
September 20, 2023
Page 20

the Planning Board notes in its Resolution approving this Detailed Site Plan (DSP-20034), the Planning Board memorialized certain comments and findings made in the course of the Planning Board hearing. The Planning Board, in its Resolution, notes that a primary question posed by the Planning Board to staff and the Applicant concerned why access was to be right-in/right-out. In response, the staff of M-NCPPC noted that "... the access point was evaluated during the prior PPS approval and that right-in/right-out access on Ruby Lockhart Boulevard was the best option available." (See Resolution PGCPB No. 2023-81, p. 47-48). The staff observation is correct. An excerpt from page 4 of the certified Preliminary Subdivision Plan for Woodmore Towne Centre appears below. The boundary line between St. Joseph's Church and the Property is outlined in red. As can be clearly seen from the screenshot, no median break on Ruby Lockhart Boulevard is proposed. Rather, the access into the Property is shown to be clearly only right-in/right-out. Significantly, the access into the LA Fitness site directly across Ruby Lockhart Boulevard is also shown as only a right-in/right-out. There is no median break proposed. The PGAtlas aerial photograph appearing hereinabove, confirms that the actual access driveways were constructed in conformance with the Preliminary Subdivision Plan.



Further, the entirety of the Woodmore Towne Centre development was annexed into the municipal limits of the City of Glenarden in 1988 contingent upon approval of a rezoning of the Woodmore Towne Centre property to the M-X-T Zone. On March 12, 2007, the original developers of Woodmore Towne Centre entered into an Amendment to Annexation Agreement and Agreement with the City of Glenarden. This document amended certain provisions of the original Annexation Agreement. A copy of this document, which

Ms. Donna J. Brown
September 20, 2023
Page 22

is recorded among the Land Records of Prince George's County, Maryland in Book 28208, Page 678 is attached hereto as Exhibit "A". Attention is directed to paragraph 5 found on page 6 of the Amendment. Therein, it is stated as follows:

5. Paragraph 2(e) of the Annexation Agreement and the Agreement are hereby repealed in their entirety and shall be replaced with the following language:

Traffic access shall be developed consistent with the Preliminary Subdivision Plan.

The City of Glenarden, by its written Annexation Agreement, has bound itself and the developer to provide traffic access consistent with the Preliminary Subdivision Plan. The Preliminary Subdivision Plan as described above requires right-in/right-out access to the subject property. The City of Glenarden, a Protestant in this appeal, must be bound by its own Agreement and should not be allowed to advance an argument which violates this recorded Agreement.¹

The second justification advanced by the Protestants to support the need for a further traffic impact study is premised upon their assertion that the traffic impact study was conducted in 2006, "before significant construction was completed in the

¹ The Applicant requests that the District Council take administrative notice of the Amendment to Annexation Agreement and Agreement recorded among the Land Records as it is relevant to arguments being advanced by the Protestants in this case.

Ms. Donna J. Brown
September 20, 2023
Page 23

Woodmore Towne Centre and before construction of any residential units began". (Protestants Exceptions, p. 16). The Applicant is incredulous that the Protestants would advance such an argument. Every adequate public facilities examination in every preliminary subdivision plan which is approved for development of unimproved property is prospective in nature. When virtually all preliminary subdivision plans are approved, no development has occurred. The very purpose of the traffic impact study is to determine at that time whether the development improvements as proposed can be constructed with adequate transportation facilities. This argument advanced by the Protestants must also fail.

Preliminary Subdivision Plan 4-06016 for Woodmore Towne Centre remains valid today. The Protestants criticize the fact that it has been seventeen years since it was approved. However, that is no different than dozens of other subdivisions in Prince George's County. When the 2008 recession occurred, the District Council commenced a process of enacting a series of consecutive bills which extended the life of valid preliminary subdivision plans in Prince George's County. Woodmore Towne Centre is no different than any other project for which a preliminary subdivision plan was valid at the time the first extension bill was adopted. These extension bills continued until 2022. They

Ms. Donna J. Brown
September 20, 2023
Page 24

are CB-8-2009, CB-7-2010, CB-8-2011, CB-70-2013, CB-80-2015, CB-98-2017, CB-60-2018 and CB-74-2020. These bills extended the validity of all preliminary subdivision plans which were in a valid status at the time each subsequent bill was enacted. Pursuant thereto, the Preliminary Subdivision Plan for Woodmore Towne Centre remains valid today.

Given the fact that the Preliminary Subdivision Plan for Woodmore Towne Centre remains valid today, the Protestants' additional allegation that no certificate of adequacy could be issued as there was no valid preliminary subdivision plan approval on April 1, 2022 containing an adequacy finding, must also fail.

Finally, much has been made of the fact that access to the Property will occur pursuant to a right-in/right-out only turning movement. During the review and consideration of DSP-22034, access was reviewed by both the Applicant and by Staff in exacting detail. During the course of the hearing before the Planning Board, the M-NCPPC transportation planner, Ben Ryan, was questioned concerning why the property has access only from Ruby Lockhart Boulevard and why that access is limited to right-in/right-out turning movements. Mr. Ryan responded that he had examined the location of the right-in/right-out entrance and found that it was located at a sufficient sight distance (approximately

330 feet) from the signalized intersection of St. Joseph's Drive and Ruby Lockhart Boulevard. He further opined that upon his review, encouraging a left turn into the site or a left turn out of the site was not a "workable idea at this location". He further opined that such a turning movement would have "increased the traffic and the stacking immensely". (Planning Board Transcript, T. 67-68). He concluded by stating "... but again, we wanted to maintain the median to not have further traffic implications, which now if we were to allow full left turns into the site or out of the site, that could cause longer turn delays". (Planning Board Transcript, T. 68)².

Mr. Michael Lenhart of Lenhart Traffic Consulting served as the Applicant's transportation engineer. Mr. Lenhart was qualified as an expert in transportation planning by the Planning Board (Planning Board Transcript, T. 42). Mr. Lenhart explained that the right-in/right-out turning movement could be made safely. He further stated that when leaving the property, if a resident or visitor desired to go into the Woodmore Towne Centre retail commercial area, a vehicle would turn right and proceed east on Ruby Lockhart Drive to the traffic signal at St. Joseph's Drive

² References to the Planning Board Transcript, T. _____ shall refer to the Transcript of the Planning Board public hearing on DSP-20034 which occurred on July 6, 2023.

and Ruby Lockhart Boulevard. At that point, he noted that the signal is split phased so that a driver can make a U turn at that intersection when no other car in the intersection is moving. He therefore concluded that this was a safe and functional turning movement (Planning Board Transcript T. 43).

Mr. Lenhart was called back to testify a second time after testimony by residents concerning traffic operations. He noted that the trips being generated by the proposed multifamily development would be relatively low from a trip generation standpoint and would not amount to more than one turning movement per minute during the peak hour. He noted that the Department of Permitting, Inspections and Enforcement ("DPIE") had recommended the review of acceleration and deceleration lanes providing ingress and egress to and from the Property. Mr. Lenhart opined that in his view such acceleration and deceleration lanes would not be necessary but if determined to be required by DPIE, the Applicant would certainly provide those lanes. He also explained why roundabouts, which are used prevalently in Woodmore Towne Centre, operate with fewer safety hazards than signal controlled intersections (Planning Board Transcript, T. 82-84). Finally, Mr. Lenhart had prepared an ingress and egress study for the property which had previously been submitted into the record in advance of

the Planning Board hearing. This study confirmed the comments he made during his testimony.

In summary, the transportation planner, Mr. Ben Ryan, and the Applicant's transportation planner, who is recognized as an expert in his field by the Planning Board, both provided testimony that the right-in/right-out turning movement, being the only site access for development of the Property as proposed, would operate safely and would meet all sight distance standards published by the State Highway Administration. In particular, Mr. Ryan concluded that allowing full turning movements including left-in and left-out would actually create a negative transportation impact, not just for the development of the Property but for the motoring public in general utilizing Ruby Lockhart Boulevard to obtain access to Woodmore Towne Centre. The Planning Board found that the right-in/right-out turning movement was appropriate and therefore approved that turning movement as part of the approval of DSP-22034.

II. Condition 6 of A-9613-C did not Deprive the Planning Board of Authority to Approve DSP-22034.

It is first necessary to revisit the history of Condition 6. Condition 6 was previously identified as Condition 11 in the original rezoning which occurred in 1988 (ZMA A-9613-C). Condition

Ms. Donna J. Brown
September 20, 2023
Page 28

11 of ZMA A-9613-C reads as follows:

The District Council shall review for approval the Conceptual Site Plan, the Detailed Site Plan, and the preliminary plan of subdivision for the subject property. (Emphasis added).

Subsequently, the then-owner of Woodmore Towne Centre filed a request to amend several Conditions attached to ZMA A-9613-C. The District Council voted to approve these amendments on July 23, 2007 as set forth in Zoning Ordinance No. 7-2007. Significantly, the original Condition 11 was not amended. As a result of the amendments, Condition 11 became Condition 6.3

As a preliminary matter, it must be observed that the Condition refers to "the Conceptual Site Plan, the Detailed Site Plan and the preliminary plan of subdivision." (emphasis supplied). By identifying each plan in the singular rather than the plural, the District Council, when it initially approved this Condition, clearly intended to limit its "review" to the original

3 in Zoning Ordinance 7-2007, Condition 6 reads as follows:

The District Council shall review for approval the Conceptual Site Plan, the Detailed Site Plans, and the preliminary plan of subdivision for the subject property. (Emphasis added). See Backup at 305.

As can be seen, the original reference to "Detailed Site Plan" appears to have been inadvertently changed to refer to "Detailed Site Plans." Given that an amendment to the original language of Condition 11 was never requested, let alone approved by the District Council, it appears that this is a typographical error.

Ms. Donna J. Brown
September 20, 2023
Page 29

Conceptual Site Plan, Detailed Site Plan and Preliminary Subdivision Plan for Woodmore Towne Centre. Put another way, there is nothing to suggest an intent to review each subsequent development approval.

Moreover, and perhaps of even greater significance, use of the phrase "review for approval" within Condition 6 indicates a clear intent to exercise appellate rather than original jurisdiction. Had the District Council intended to require its initial approval of each plan, it could have said so. It did not. To be sure, Black's Law Dictionary defines "review" as follows:

To re-examine judicially. A reconsideration; second view or examination; revision; consideration for purposes of correction. Used especially of the examination of a cause by an appellate court; . . . (Emphasis added).

This definition is clear and unequivocal. It expressly contemplates matters that are revisited, typically on appeal. In the context of this case, that would necessarily involve an appeal of the Planning Board's action on a particular plan to the District Council. There is nothing in this definition to suggest that the word "review" confers original jurisdiction.

The Protestants essentially raise three arguments regarding Condition 6:

- *That Dutcher invalidated Condition 6, and by implication, that the underlying rezoning (ZMA A-9613-C) is also invalid.*
- *Even though the District Council could not approve the Preliminary Plan of Subdivision, Condition 6 required the District Council to 'review' and 'provide comments' on the Preliminary Subdivision Plan. Because the District Council did not review the Preliminary Plan of Subdivision 'to provide comments,' the Planning Board's approval of the instant Detailed Site Plan 'is predicated on a Preliminary Plan of Subdivision that has not been properly approved.'*
- *The Planning Board had no authority to approve DSP-22034 because the District Council, through Condition 6, reserved unto itself original jurisdiction over DSP-22034.*

As explained below, these arguments must fail.

a. Neither Dutcher Nor Section 22-214(f) of the Land Use Article Serve to Invalidate ZMA A-9613-C.

In Prince George's County v. Dutcher, the Supreme Court of Maryland held that the District Council lacks the authority to review or approve Preliminary Plans of Subdivision. See Prince George's County v. Dutcher, 365 Md. 399 (2001). As applied to this case, Dutcher, by operation of law, removed the District Council's authority in Condition 6 to review the Preliminary Plan of Subdivision for Woodmore Towne Centre. It did not, as the Protestants claim, invalidate the entirety of Condition 6. See Protestants' Exceptions, p. 4. Nor did it invalidate the underlying rezoning approval in ZMA A-9613-C. Because they claim Condition 6 is invalidated, the Protestants also contend that ZMA A-9613-C

(which rezoned Woodmore Towne Centre to the M-X-T Zone) is also invalid under Section 22-214(f) of the Land Use Article. See id. Taken to its illogical conclusion, this reasoning would produce absurd results. To accept the Protestants' position would necessarily render the entirety of Woodmore Towne Centre nonconforming. Further, any development approval anywhere else in the County where the District Council had reviewed a preliminary subdivision plan would be deemed illegal.⁴ And any physical development, constructed pursuant to such approved plans would be a nonconforming use. The absurdity of this argument, and the havoc that would ensue should the District Council agree with it, cannot be overstated.

In this case, the District Council did not review or approve the Preliminary Plan of Subdivision for Woodmore Towne Centre. In fact, Preliminary Plan 4-16016 was approved in 2006, approximately five years after Dutcher was decided. See Backup at 462-512. Thus, the District Council did not violate Dutcher. Moreover, it is important to emphasize what Section 22-214(f) actually says:

(f) Effect of invalidity. - If any resolution, or any part or condition of any resolution, passed by the district council in accordance with this section is declared invalid by any court of competent jurisdiction:

⁴ Until Dutcher, the District Council, pursuant to authority conferred by the Zoning Ordinance had accorded itself the right to review cluster preliminary subdivision plans.

- (1) *The zoning category applicable to the property rezoned by the resolution shall revert to the category applicable before the passage of the resolution; and*
- (2) *The resolution shall be null and void and of no effect. (Emphasis added).*

The provision in question deals with conditional zoning of property pursuant to a Zoning Map Amendment application. The Applicant submits a logical reading of the cited provision would apply to a challenge to the actual rezoning. Critically, this case involves the review of a Detailed Site Plan, not a rezoning. The Protestants' challenge represents a collateral attack on a rezoning that was approved 35 years ago. Even so, Condition 6 in ZMA A-9613-C has never been "declared invalid by any court of competent jurisdiction." Therefore, Section 22-214(f) is simply not applicable in this instance and the Protestants certainly cannot raise this collateral issue to attack a Detailed Site Plan 35 years after the condition was imposed. Consequently, the Protestants' reliance on Section 22-214(f), and their arguments related thereto, must fail.

b. Dutcher Prohibited the District Council from "Providing Comments" on Preliminary Plan 4-06016.

The Protestants argue in the alternative that, even though Dutcher prohibits the District Council from approving the

preliminary plans of subdivision, Condition 6 still required the District Council to "review" Preliminary Plan 4-06016 to "provide comments." See Protestants' Exceptions, p. 5. Because the District Council did not do so, the Protestants further argue that Preliminary Plan 4-06016 was not properly approved, and therefore the Planning Board lacked authority to approve DSP-22034. See id. First, Preliminary Plan 4-06016 was approved in 2006. The time to challenge that approval has long since passed. Moreover, the Protestants are essentially arguing that the Planning Board's approval of DSP-22034 should be reversed because the District Council failed to violate Dutcher. Again, Dutcher held that "an administrative appeal is not authorized from the Planning Board's action on preliminary plans of subdivision." Dutcher at 427. In other words, the District Council has no jurisdiction - original, appellate or otherwise - on any preliminary plan of subdivision. This would preclude the District Council from, as the Protestants encourage, reviewing or providing comment on PPS 4-06016.

c. Condition 6 does not Represent a Reservation of Original Jurisdiction on the Part of the District Council.

The Protestants concede that "[t]he Court[s] have never determined conclusively whether the District Council has the authority to review a Detailed Site Plan with original

Ms. Donna J. Brown
September 20, 2023
Page 34

jurisdiction." Protestants' Exceptions, p. 8. This concession alone ought to be dispositive of the issue. An administrative hearing is an improper forum to determine a question of first impression.

Despite the Protestants' concession, they ask the District Council to characterize Condition 6 as conferring upon itself original jurisdiction to consider DSP-22034. The Protestants allege that Rochow v. Maryland National Capital Park and Planning Commission is on point. See Protestants' Exceptions, p. 10. Not so. Rochow dealt with the approval of a Preliminary Subdivision Plan for National Harbor. At the outset, it must be emphasized that the facts of Rochow have no relevance to this case. Given that the Court summarized the case in the first two sentences of its Opinion, there can be no doubt as to its subject matter:

We are asked to vacate the approval of a preliminary subdivision plan for "National Harbor," an ambitious proposal to build an "urban destination resort" along the shores of the Potomac River. We shall do so because (1) the plan generates traffic that exceeds a limit on development that the Prince George's County District Council imposed as conditions on the zoning map amendment and the conceptual site plan for this unique site, and (2) the developer did not submit required data regarding the noise impact of the project on neighboring residential communities. Rochow at 564.

It is uncertain how the Protestants view Rochow as relating in any way to this case. However, given their reliance on Rochow, further

analysis is necessary.

Rochow involved the National Harbor property which was rezoned in 1983 subject to conditions. Condition 3 of that rezoning stated, “[a]s a condition to its final approval of the comprehensive concept plan, the Planning Board shall require review and approval of that plan by the District Council.” Id. at 574.5 In 1998, a Conceptual Site Plan⁶ was approved by the Planning Board subject to conditions. Of relevance is Condition 1, which set forth a trip cap, and Condition 35, which stated, “[t]he District Council shall review and approve a Conceptual Site Plan for National Harbor.” Id. at 576. The District Council did in fact review and approve the Conceptual Site Plan subject to conditions. Of relevance to the District Council’s approval is Condition 1, which established a limit on square footage and a trip cap, as well as Condition 35, which required compliance with noise regulations. Id. at 576-77.

Following approval of the Conceptual Site Plan, the applicant filed a Preliminary Subdivision Plan application. Significantly,

5 In 1988, the District Council approved a request to modify certain amendments in the 1983 rezoning. The condition requiring the District Council to review and approve the comprehensive concept plan was retained. See id. at 565.

6 The Court notes that the Conceptual Site Plan was treated as the required “comprehensive concept plan.” See id. at 567.

the Preliminary Subdivision Plan proposed development that exceeded the maximum permitted square footage and the trip cap set forth in Condition 1. The Preliminary Plan of Subdivision also did not include a noise study as required by Condition 35. Notwithstanding, the Planning Board approved the Preliminary Plan of Subdivision, finding that the development was in "substantial conformance" with the Conditions of the Conceptual Site Plan approval. See id. at 565-569.

Because the Planning Board approved a Preliminary Subdivision Plan that was not in conformance with the conditions imposed by the District Council on the Conceptual Site Plan, the Appellate Court of Maryland reversed. See id. at 579-84.

In this case, the Protestants offer Rochow for the proposition that the District Council reserved unto itself original jurisdiction via Condition 6 to review DSP-22034. See Protestants' Exceptions, p. 11 ("Just like in Rochow, the District Council here, 'reserved the right to review and approve' DSP-22034 when it imposed Condition 6 on Zoning Map Amendment A-9613-C. As a result, the Planning Board here did not have the authority to give final approval of the Detailed Site Plan until **after** the Detailed Site Plan was reviewed and approved by the District Council. In other words, the Planning Board did not have exclusive original

jurisdiction over the Detailed Site Plan - the District Council did.") (citations omitted) (emphasis in original). Significantly, not once does the Court in Rochow discuss, let alone mention, "original jurisdiction." Moreover, the Protestants fail to observe that the District Council is reviewing DSP-22034 for approval. Thus, it is of no consequence whether the District Council has original or appellate jurisdiction. Even assuming that this was relevant, DSP-22034 was scheduled for Mandatory Review by the District Council. A copy of the District Council Notice of Mandatory Review, dated August 9, 2023, is marked Exhibit "B" and attached hereto. In other words, DSP-22034 would have been reviewed by the District Council whether or not Protestants had appealed. As a result, the Planning Board Resolution will not represent the final act in this case. Thus, the Protestants are incorrect to suggest that the Planning Board "did not have the authority to give final approval of the Detailed Site Plan . . ." Protestants' Exceptions, p. 11.

III. The Record Evidence Unequivocally Supports Approval of Off-Site Mitigation as Proposed in the TCP2.

The Protestants request that the District Council overturn the approval of DSP-22034 on the grounds that the TCP2 was improperly approved. In particular, the Protestants argue that:

(1) the Planning Board failed to articulate whether on-site conservation techniques had been exhausted before approving off-site conservation techniques; and (2) the record is devoid of any evidence demonstrating whether on-site conservation techniques had been exhausted. See Protestants' Exceptions, p. 21.

Type 2 Tree Conservation Plans may demonstrate conformance with the woodland conservation requirements through several techniques set forth in Section 25-122(c)(1) of the Woodland Conservation Ordinance. The items contained in Section 25-122(c) are listed in order of priority. The woodland conservation threshold for this project is approximately 1.93 acres. Given the site constraints which burden the Property, the Applicant proposed to pay a fee-in-lieu. The Planning Board rejected this proposal and instead required "the use of off-site mitigation credits, or other suitable methods." PGCPB Resolution No. 2023-81 at 42.

Although the Planning Board rejected the Applicant's proposal in favor of a more burdensome woodland conservation technique, the Protestants contend that the Planning Board's action was improper. At the outset, it is critical to emphasize that the Protestants do not cite any authority for the proposition that the Planning Board must specifically articulate and analyze each on-site conservation technique before moving to the next item on the list of priorities

in Section 25-122(c). Simply put, no such authority exists.

Moreover, the record contains substantial evidentiary support for the approval of off-site mitigation. As noted above, the Property is burdened by significant site constraints which impacted this development proposal. These constraints include but are not limited to: (1) the irregular shape of the Property; (2) the presence of primary management areas and other pervasive environmentally sensitive features; (3) stormwater management facility requirements; and (4) parking requirements. As has been exhaustively explained above, these constraints reduced the density yield to 284 multifamily units despite the District Council's approval for up to 320 multifamily units to be developed on the Property. These site constraints also led to the need for Alternative Compliance from certain requirements of the Landscape Manual. In preparing the TCP2 the Applicant's civil engineer had to deal with these constraints which substantially reduced the available development footprint.

Given that these site constraints presented challenges with other areas in this proposal, it strains credulity that they would have been disregarded for purposes of reviewing the TCP2. But that is exactly what the Protestants suggest. Had staff believed that higher priority conservation techniques were feasible, they would

have required those techniques to be met when reviewing the TCP2. There is nothing to suggest that staff haphazardly neglected those higher priority techniques. This is again evidenced by the fact that staff and the Planning Board rejected the Applicant's fee-in-lieu proposal, and instead required a higher priority technique - off-site mitigation credits.

For these reasons, the Applicant submits that the Protestants' challenge to the TCP2 is without merit. The M-NCPPC staff and the Planning Board were not required to record an analysis of each priority contained in Section 25-122(c) and the record evidence unequivocally establishes that existing constraints prevented full satisfaction with on-site preservation.

IV. Planning Staff and the Planning Board Clearly Articulated the Justification for Approving the Alternative Compliance Plan.

The Protestants ask the District Council to vacate the Applicant's Alternative Compliance Plan for two reasons. Initially, the Protestants allege that the Planning Board Resolution "fails to articulate" how the Plan complies with the Landscape Manual requirements of Section 1.3(5), which requires a showing that the proposal is equal to or better than the criteria listed in Section 3. See Protestants' Exceptions, p. 24. The Protestants further allege that "there is no evidence in the record

to support [approval of the Alternative Compliance request].” Id.

It is disingenuous for the Protestants to make this claim. The expert analysis of staff and the Planning Director, as outlined in the approval Resolution, demonstrates there was ample evidence to support approval of the Alternative Compliance request. This analysis appears on pages 40-41 of PGCPB Resolution No. 2023-81 approving DSP-22034 and pages 42-44 of the Staff Report. As the Planning Board observed, the Landscape Plan demonstrates conformance with all required schedules apart from those in Section 4.3 of which Alternative Compliance is sought. See PGCPB Resolution No. 2023-81 at 40.

First, the Planning Board notes that the requirements of Section 4.2-1 are inapplicable because only residential development is proposed herein. See id. The Planning Board further imposed a condition to enhance screening along MD 202 given that the proposed fence for the Section 4.6-1 buffer will not extend along MD 202. See id.

The specific analysis of Section 4.3 is found on page 41 of the Planning Board Resolution. In particular, there are two tables which show the required interior planting schedule versus that which is provided. Section 4.3-2 requires an interior landscape area of 15% of the parking lot area, and further requires 1 shade

Ms. Donna J. Brown
September 20, 2023
Page 42

tree for every 300 square feet of landscape area. With a total parking lot area of 212,375 square feet, this translates to a required interior landscape area of 31,856 square feet, and a requirement of 107 shade trees. As can be seen, the Applicant is providing more interior landscape area than is required (34,288 square feet or 16% of the total parking area). With this proposed interior landscape area, 115 shade trees would have been required. However, 49 shade trees were proposed by the Applicant's civil engineer.

Below the tables on page 41 is the Planning Board's "Justification of Recommendation." As the Planning Board notes, "[d]ue to the unusual shape of the property, primary management area on the site, stormwater management facilities, and parking needed to support the 284 dwelling units, the space for trees within the interior of the parking lot is limited. As a result, the applicant provides only 49 shade trees within the interior of the parking lot." Id. at 41. It must also be noted that 284 units does not represent an overdevelopment of the Property. The revision to CSP-03006-02 approved by the Planning Board and District Council in 2015 expressly authorized up to 320 multifamily units to be developed on the Property.

The Planning Board further observes that, "to mitigate the

lack of interior shade trees," the Applicant is providing 16% interior landscape area as opposed to the required 15%. This results in a 2,432 square foot increase in site landscaped area. Moreover, the Applicant is providing an additional 70 shade trees around the perimeter of the parking lot. The Planning Board also identified additional areas within the interior landscape area that could host 9 additional shade trees. This brings the total to 58 interior shade trees and 70 shade trees around the perimeter of the parking lot, for a combined total of 128 shade trees. This exceeds the 115 shade trees that would have been required under Section 4.3-2. Finally, the Planning Director recommended, and the Planning Board required, that "all internal shade trees be planted at a minimum of 3- to 3.5-inch caliper to provide more immediate shade and visual relief." By requiring larger diameter trees, it is anticipated that these trees will provide more shade in less time. Given all the above, "the Planning Board believes that the provided alternative design will be equally effective as normal compliance with Section 4.3-2 of the Landscape Manual, due to the increased landscape area, increased tree size, and perimeter shade trees." Id.

Contrary to the Protestants' contentions, the above represents substantial evidence in the record to support approval

of the Alternative Compliance request. However, the above does not represent all the evidence that was considered by the Planning Board. At the Planning Board hearing on DSP-22034, Andrew Shelly, the staff reviewer for DSP-22034, stated:

Mr. Shelly:

* * *

The Applicant requests alternative compliance from the requirements of Section 4.3-2 of the Landscape Manual. For Section 4.3-2, An Applicant shall provide one shade tree per 300 square feet of interior landscape area provided. The Applicant in his proposed 34,288 square feet of landscape area, of interior landscape - of interior landscape area which provides - requires a total of 115 shade trees. Due to the unusual shape of the property, primary and management area of the site, stormwater management facilities and parking needed, so there's - to support the 284 dwelling units, the space for trees within the interior of the lot is limited. As a result, the Applicant proposes only 49 shade trees within the interior of the parking lot.

Next slide, trees, please.

To mitigate the lack of interior shade trees, the Applicant has proposed 16 percent landscape area instead of the required 15 percent, which increases the amount by 2,432 square feet. In addition, the Applicant proposes an additional 70 shade trees along the perimeter of the parking lot which is - which are shown in pink. However, this does not adequately address the lack of interior shade trees as there is additional that has not been utilized internally to the parking lot. Therefore, the Planning Director recommends that at least nine additional shade trees be provided to reach half of the requirement internally, bringing the total to

58 shade trees.

In addition, the Planning Director recommends that all internal shade trees be planted at a minimum of three to three-and-a-half inch caliper to provide more immediate shade and visual relief. These revisions should be provided prior to approval of the DSP. With these revisions, the Planning Director believes that the proposed alternative design will be equally effective as normal compliance with Section 4.3-2 of the Landscape Manual due to the increased landscape area, increased tree size, and perimeter shade trees.

Next slide, please.

This slide demonstrates the areas of the project where landscape plantings will be located. Staff note that the provided fence for the Section 4.6-1 is [in]adequate. The fence runs parallel to the place of worship's property line to the south, but does not screen the property boundary that faces MD-202. Therefore, a condition has been provided for the Applicant to revise the Section 4.6-1 schedule to provide the necessary plant material to conform with Section 4.6 of the Landscape Manual. Emphasis shall be placed on providing the plant material behind the garages fronting MD-202 to enhance their screening from the roadway.

The analysis of Staff's findings regarding the Landscape Plan is provided on pages 42 through 44 of the Technical Staff Report. Technical corrections for the Landscape Plan are provided on pages 49 and 50 of the Technical Staff Report.⁷

* * *

Given the breadth of evidence, it is disingenuous for the Protestants to claim, not only that the Planning Board failed to

⁷ T. at 10-12.

analyze the issue, but also to claim that "there is no evidence in the record to support the conclusion." (Emphasis added).

The Protestants cite Bucktail, LLC v. Cty. Council of Talbot Cty. for the proposition that the Planning Board's final decision must do more than "simply repeat statutory criteria, broad conclusory statements or boilerplate resolutions." See Protestants' Exceptions, p. 24; Bucktail, LLC v. Cty. Council of Talbot Cty., 352 Md. 539, 553 (1999). While this is an accurate statement of law, it does not support the Protestants' position. Specifically, the Protestant's characterize as conclusory the Planning Board's finding that "the provided alternative design will be equally as effective as normal compliance" Protestants' Exceptions, p. 24. However, the Protestants mislead the District Council by omitting the entirety of that quote, which reads in full: "These revisions should be provided, prior to signature approval of the DSP. With these revisions, the Planning Board believes that the provided alternative design will be equally effective as normal compliance with Section 4.3-2 of the Landscape Manual, due to the increased landscape area, increased tree size, and perimeter shade trees." (Emphasis added). The Protestants further mislead the District Council by omitting the lengthy analysis performed by staff and the Planning Board. As noted above,

staff and the Planning Board analyzed the various site constraints, the increase in the proposed interior landscape area, the proposal for shade trees around the perimeter of the parking lot, the increase in the number of interior shade trees and the increase in shade tree caliper size. The Applicant submits that this analysis goes far beyond "simply repeat[ing] statutory criteria, broad conclusory statements or boilerplate resolutions."

Finally, the Protestants raise certain other arguments which cannot go unnoticed. First, the Protestants allege that more shade trees are needed because "the Applicant proposes to provide 141 fewer parking spaces than would ordinarily be required." Protestants' Exceptions, p. 26. This argument is flatly erroneous and without being rebutted could mislead the District Council. As the Planning Board notes in its Resolution, "[a] standard development with 284 mid-rise multifamily dwelling units would require 634 parking spaces, per the requirements of section 27-568 of the Zoning Ordinance." PGCPB Resolution No. 2023-81 at 12. Critically, this is not a standard development. The Planning Board correctly observed that, "[i]n accordance with Section 27-574 of the prior Zoning Ordinance, the number of parking spaces required in the M-X-T Zone is to be calculated by the applicant and submitted for Planning Board approval, at the time of DSP." Id.

Simply put, in the M-X-T Zone there is no required number of parking spaces. Rather, the Zoning Ordinance requires an applicant to prepare a parking analysis based upon a procedure contained in the Ordinance. The staff and Planning Board then review the analysis and determine the number of spaces which should be provided.

Pursuant to Section 27-574(b), the Applicant submitted, and the Planning Board approved, a parking analysis based on the criteria listed in Section 27-574(b)(4)(B):

(4) The base requirement may be reduced in the following manner:

(A) Conservatively determine the number of trips which are multipurpose. A multipurpose trip is one where a person parks his car and uses a number of facilities (i.e.; an office, eating or drinking establishment, and store) without moving the car. The number of spaces required for a multi-purpose trip shall be the greatest number of parking spaces required by Section 27-568 for any one (1) use within the multipurpose trip. The base requirement may be reduced by the number of parking spaces for the other uses involved in the multipurpose trip.

(B) Determine the number of parking spaces which will not be needed because of the provision of some form of mass transit, such as rapid rail, bus, forced carpool, van pool, and developer provided services. The base requirement may be reduced by this number.

Having analyzed the impact of "non-auto mode reduction," the analysis deemed suitable a 23% reduction in parking, which translates to 488 spaces. The Applicant is ultimately providing

493 total spaces, including 35 garage rental spaces and 18 ADA (Americans with Disabilities Act) spaces. Having fully considered this analysis, the Planning Board found the parking proposal to be suitable. Thus, it is misleading for the Protestants to omit from the District Council the context around which the parking figure was determined.

Equally misleading is the Protestants' attempt to support their position by arguing facts not in the record. As proposed in DSP-22034, a reduction in parking creates a more walkable environment. On the one hand, the Protestants decry the alleged health hazards that residents (and pets) will face when taking advantage of this walkable environment, while on the other hand arguing that the parking lot will contribute to climate change. See Protestants' Exceptions, p. 26. First, these considerations were not raised before the Planning Board and therefore are outside the record of this case. Second, these arguments are inherently in conflict. If climate change was the Protestants' true concern, then it would be expected that they would welcome a parking reduction. Yet, the reduction in parking, which would alleviate these alleged climate concerns, is used to facilitate another attack on the approved Alternative Compliance. Simply put, these frivolous arguments fail to establish that the Alternative

Compliance request was improperly approved.

For the foregoing reasons, the District Council should deny the Protestants' challenge to the approved Alternative Compliance request.

V. The Proposed Access Easement Will Provide Access to St. Joseph's Church, not the Subject Property.

The Protestants' argument regarding the proposed access easement represents a fundamental misunderstanding of the facts in this case. Specifically, the Protestants challenge a lack of evidence "that the Applicant has obtained permission to cross the St. Joseph's Catholic Church to access the Subject Property." Protestants' Exceptions, p. 27; see id. p. 27-28 ("Therefore, the Planning Board cannot approve the Detailed Site Plan on the assumption that there will be a secondary access point to the Subject Property through the Church property without any evidence demonstrating that the Applicant is permitted to use the Church property to access the Subject Property.").

The proposed access easement will provide the Church, and not the Subject Property, with a secondary means of ingress and egress. There is no proposal in this Detailed Site Plan to provide secondary access for the Property. Counsel for the Applicant explained this in detail at the Planning Board hearing on DSP-

Ms. Donna J. Brown
September 20, 2023
Page 51

22034:

Mr. Gibbs:

* * *

For years, Saint Joseph's Church has been asking for the developers of Woodmore Towne Centre to somehow provide a second point of ingress and egress for them so that their sole point of ingress and egress is not on Saint Joseph's Drive.

So Wood Partners has stepped up to the plate and has met with and committed to Saint Joseph's Church to provide an easement and to construct a driveway connection from Saint Joseph's Church property into what will be lot 28 after out lot A is replatted so that the church will have a point of access onto Ruby Lockhart Boulevard. That's significant simply because it will allow patrons at Saint Joseph's Church, particularly during Sunday services, to be able to come out, take a right on Ruby Lockhart Boulevard, and go directly across Saint Joseph's Drive. And to take Ruby Lockhart Boulevard down past the Woodmore Overlook project where a new public road has been constructed and is open to provide a second point of access onto Maryland 202, which has a free right-in, right-out turning movement associated with it as well. Or in the alternative, they can continue down Ruby Lockhart Boulevard to hit Lottsford Road and take a right or a left turn at that point in time. So basically, there are three different routes that can be taken for the church now for their worshippers to leave the Saint Joseph's Church property after their services.

I can tell you from my personal conversations with the church, they are absolutely delighted that this is happening. They are also delighted that we are putting a 6-foot high site type fence above, on top of, mounted on the retaining walls which run along our common property boundary with Saint Joseph's Church. That is going to provide, you know, a visual screen from the multi-family residential from the

*church property. They're very happy with that change as well.*⁸

* * *

As this commentary demonstrates, the easement is not intended, in any way, to provide access for the proposed 284 units across the St. Joseph's Church property. The sole purpose of the easement is to provide secondary access for the Church from Ruby Lockhart Boulevard. Once again, the Protestants argument misleads the District Council as to the purpose of the easement. Because the easement does not provide access to the Property, the District Council should reject the Protestants' challenge on this point.

VI. The City of Glenarden Had Actual Notice of the Pendency of DSP-22034 and Acted Upon This Notice

The Protestants allege that M-NCPPC failed to comply with the requirements of Section 27-284 of the prior Zoning Ordinance which requires the Planning Board to refer a Detailed Site Plan to "all agencies which the Planning Board deems appropriate for review and comment" before taking action on said plan. The Protestants allege that the Planning Board failed to adequately satisfy this requirement because it sent e-mails regarding the pending case to "individuals who no longer work for the City of Glenarden" (Petitioners Exceptions, p. 28). The Applicant would argue that

⁸ T. at 33-34.

Ms. Donna J. Brown
September 20, 2023
Page 53

the Protestants' allegation is without merit for several reasons. Initially, the Applicant would note that the referral requirement in Section 27-284 relates to "agencies". The City of Glenarden is a municipality and not an agency. Notwithstanding that fact, the Applicant agrees that in general, notice of the pendency of a detailed site plan should be sent to the City of Glenarden. It is undisputed that notice of the pendency of the instant Detailed Site Plan submittal was sent to the City of Glenarden. James Hunt, the Supervisor of the Development Review Division of M-NCPPC testified to this fact during the course of the hearing before the Planning Board on July 6, 2023. Mr. Hunt informed the Planning Board that notice was sent to two individuals on file with M-NCPPC to receive notice for the City. Unfortunately, the City had not updated their contact information to advise that the two individuals notice was sent to no longer held their positions within the City. (Planning Board Transcript, T. 71). In addition, information was placed in the record confirming that the Applicant had, through its counsel, contacted the City of Glenarden City Manager on April 26, 2023 requesting an opportunity to meet with the Mayor and Council to explain the application. At that time, the Application, Statement of Justification, Site Plan and elevations were all e-mailed to the City Manager. Further contact

Ms. Donna J. Brown
September 20, 2023
Page 54

occurred from the Applicant's counsel on May 16, 2023 in a call to Mayor Cross of the City. Finally, a call was received by the Applicant's attorney with a request to brief the Mayor and City Council. That meeting occurred on June 21, 2023. (Planning Board Transcript of Testimony, p. 77-80).

Additionally, the record of DSP-22034 confirms that the informational mailing was sent to Mayor Cross, and to "Mayor - City of Glenarden". The record also confirms that the acceptance mailing was sent to the Mayor of Glenarden and all seven current City Council members. Finally, the record confirms that the notice of the hearing date was sent to all parties of record on June 6, 2023. All seven current City Council members received that mailing. (Planning Board Resolution PGCPB No. 2023-81 approving DSP-22034 at p. 46 and 47). This information confirms that both the City and members of the City Council had actual notice of the pendency of DSP-22034. Further, two of the current City Council members actually testified before the Planning Board in this case on July 6, 2023. (See Testimony of Councilmember Erika Fareed at T. 54-56 and Councilmember Derek Curtis at T. 60-62).

The record reflects that the City of Glenarden and all of the City Council members had an abundance of notice of the pendency of

DSP-22034. In addition, the record clearly reflects that the City Council was briefed by the Applicant and received copies of the Site Plan and supporting documents. Further, some of its Councilmembers acted upon the actual notice and participated in the Planning Board hearing when the Detailed Site Plan was considered. The Supreme Court of Maryland has held that "... the requirement of notification purposed to inform may be satisfied by actual knowledge, especially when it is acted upon." (*McLay v. Maryland Assemblies, Inc.*, 269 Md. 465, 477, 306 A.2d 524 (1973)) (internal citations omitted) Clearly, the City of Glenarden and its individual Councilmembers had more than adequate notice of DSP-22034.

CONCLUSION

The record of DSP-22034, as well as the discussion hereinabove makes it abundantly clear that multifamily residential units have been approved for development within Woodmore Towne Centre since the time of the original Conceptual Site Plan approval. This approval continued at the time of the approval of the Preliminary Subdivision Plan. In addition, the location of up to 320 multifamily residential units was expressly approved by the Planning Board and the District Council when it approved a revision to the Conceptual Site Plan (CSP-03006-02) in 2015. Further, the

Ms. Donna J. Brown
September 20, 2023
Page 56

City of Glenarden was a party to all of these entitlement applications and approvals. Today, the Applicant is doing nothing more than pursuing approval of a Detailed Site Plan to implement a multifamily component which has been expressly approved numerous times in the past and which has always been considered to be an integral part of the development of Woodmore Towne Centre.

The Applicant respectfully submits there is no credible evidence in this record which would warrant anything other than the approval of Detailed Site Plan DSP-22034.

Very truly yours,

GIBBS AND HALLER



Edward C. Gibbs, Jr.



Justin S. Korenblatt

Ms. Donna J. Brown
September 20, 2023
Page 57

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 2023, a copy of the foregoing Response to Exceptions and Request for Oral Argument was served by electronic transmission to the following individuals:

G. Macy Nelson, Esquire
Alex Votar, Esquire
Raj Kumar, Esquire
Stan D. Brown, Esquire
Donna J. Brown, Clerk of the County Council
David Warner, Esquire

In addition, a copy of the foregoing was also mailed by U.S. Mail, postage prepaid, to all persons of record as set forth in the attached list.



Edward C. Gibbs, Jr.

CASE NO: DSP-22034 & DDS-22002
CASE NAME: ALTA WOODMORE
PARTY OF RECORD: 35
PB DATE: 7-27-2023

MARIBEL WONG
1149 NORTHWEST CONNECTICUT AVENUE
WASHINGTON DC 20036
(CASE NUMBER: DSP-22034 & DDS-22002)

MICHAEL LENHART
LENHART TRAFFIC CONSULTING, INC.
645 B& BOULEVARD SUITE 214
SEVERNA PARK MD 21146
(CASE NUMBER: DSP-22034 & DDS-22002)

EDWARD GIBBS
1300 CARAWAY COURT/S SUITE 102
UPPER MARLBORO MD 20774
(CASE NUMBER: DSP-22034 & DDS-22002)

MR.GREGORY HANNA JR.
BALK HILL HOA
2607 SOMERTON COURT/S
BOWIE MD 20721
(CASE NUMBER: DSP-22034 & DDS-22002)

EILEEN T MATTHEWS
EFM EDUCATIONAL CONS
1212 SOUTH 1212 GOLF COURSE DRIVE DRIVE
1212 GOLF COURSE DRIVE
MITCHELLVILLE MD 20721
(CASE NUMBER: DSP-22034 & DDS-22002)

KAGAME LI-A-PING
11021 SPYGLASS HILL
BOWIE MD 20721
(CASE NUMBER: DSP-22034 & DDS-22002)

RUTH GROVER
5727 RIDGE VIEW DRIVE
ALEXANDRIA VA 22310
(CASE NUMBER: DSP-22034 & DDS-22002)

REGIS L BRYANT
CHIEF OF POLICE - ACTING CITY MANAGER
8600 GLENARDEN PARKWAY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

MISS.ZINNIE JONES
1819 SPANISH OAK LANE
BOWIE MD 20721
(CASE NUMBER: DSP-22034 & DDS-22002)

ROBIN L JONES
CITY COUNCIL - CITY OF GLENARDEN
8600 GLENARDEN PARKWAY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

ANGELA D FERGUSON
CITY COUNCIL - CITY OF GLENARDEN
8600 GLENARDEN PARKWAY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

JAMES A HERRING
CITY COUNCIL - CITY OF GLENARDEN
8600 GLENARDEN PARKWAY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

MAURICE A HAIRSTON
CITY COUNCIL - CITY OF GLENARDEN
8600 GLENARDEN PARKWAY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

DEREK CURTIS II
9112 GLENARDEN PARKWAY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

KATHLEEN J GUILLAUME
CITY COUNCIL - CITY OF GLENARDEN
8600 GLENARDEN PARKWAY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

MS.KATHLEEN J GUILLAUME
CITY COUNCIL - CITY OF GLENARDEN
8600 GLENARDEN PARKWAY 8600 GLENARDEN
PKWY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

MR.MAURICE A HAIRSTON
CITY COUNCIL - CITY OF GLENARDEN
8600 GLENARDEN PARKWAY 8600 GLENARDEN
PKWY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

MRS.ANGELA D FERGUSON
CITY COUNCIL - CITY OF GLENARDEN
8600 GLENARDEN PARKWAY 8600 GLENARDEN
PKWY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

MS.ERICA L FAREED
CITY COUNCIL - CITY OF GLENARDEN
8600 GLENARDEN PARKWAY
20706 MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

MR.JERRY HINTON
9705 SMITHVIEW PLACE
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

MS.BEVERLY HABADA
CITY MANAGER - CITY OF GLENARDEN
8600 GLENARDEN PARKWAY 8600 GLENARDEN
PKWY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

TERRY RICHARDSON
HERITAGE PARTNERS
2568 RIVA ROAD SUITE SUITE 2568A, SUITE 200
ANNAPOLIS MD 21401
(CASE NUMBER: DSP-22034 & DDS-22002)

MS.ROBIN V JONES
CITY COUNCIL - CITY OF GLENARDEN
8600 GLENARDEN PARKWAY 8600 GLENARDEN
PKWY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

WOODMORE APARTMENTS OWNER, LLC
11 NORTH WASHINGTON STREET SUITE 320
ROCKVILLE MD 20850
(CASE NUMBER: DSP-22034 & DDS-22002)

DEREK D CURTIS II
CITY COUNCIL - CITY OF GLENARDEN
8600 GLENARDEN PARKWAY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

ZACHARY ALBERT
11 NORTH WASHINGTON STREET SUITE 320
ROCKVILLE MD 20850
(CASE NUMBER: DSP-22034 & DDS-22002)

JASON BURRELL
91 HARTWELL PLACE
LEXINGTON MA 2421
(CASE NUMBER: DSP-22034 & DDS-22002)

MATT ANSLEY
510 SOUTH WILMINGTON STREET
RALEIGH NC 27601
(CASE NUMBER: DSP-22034 & DDS-22002)

DR. YONETTE F THOMAS
WINGATE HOMEOWNERS ASSOCIATION INC.
8111 FELBRIGG HALL ROAD
GLENN DALE MD 20769
(CASE NUMBER: DSP-22034 & DDS-22002)

JESSE VAN WICK
200 SOUTH PEYTON STREET
ALEXANDRIA VA 22314
(CASE NUMBER: DSP-22034 & DDS-22002)

SCOTT ZIMMERLY
11 NORTH WASHINGTON STREET SUITE 320
ROCKVILLE MD 20850
(CASE NUMBER: DSP-22034 & DDS-22002)

MR. ANTHONY C FOSTER
WOODMORE TOWN CENTER CONDO
ASSOCIATION
2641 NORTH CAMPUS WAY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

MR. CORY THOMPSON
URBAN EDGE PROPERTIES
301 CUMBERLAND STREET SUITE D1
BROOKLYN NY 11238
(CASE NUMBER: DSP-22034 & DDS-22002)

SHANNON BABSKI
519 SOUTH WILMINGTON STREET
RALEIGH NC 27601
(CASE NUMBER: DSP-22034 & DDS-22002)

CYNTHIA GRAY
PG RESIDENT
2551 NORTH CAMPUS WAY
GLENARDEN MD 20706
(CASE NUMBER: DSP-22034 & DDS-22002)

AMENDMENT TO ANNEXATION AGREEMENT AND AGREEMENT

THIS AMENDMENT TO ANNEXATION AGREEMENT AND AGREEMENT ("Amendment") is entered into this 12th day of March, 2007, by and between WTC Ventures, LLC, a Maryland limited liability company ("WTC"), Petrie/ELG Inglewood, LLC, a Maryland limited liability company ("Petrie/ELG") and the City of Glenarden, municipal corporation of the State of Maryland (the City).

RECITALS

WHEREAS, WTC and Petrie/ELG are the owners of certain unimproved real property comprising approximately 245 acres which is located in the northeast quadrant of the intersection of the Capital Beltway (I-495) and Landover Road (Maryland Route 202) in Prince George's County, Maryland (the "Property"). A legal description of the Property is marked Exhibit "1" and attached hereto and incorporated herein by reference. The Property is zoned M-X-T (Mixed Use Transportation Oriented) pursuant to Rezoning of Zoning Map Amendment Application A-9613-C by the Prince Georges County Council sitting as the District Council (the "District Council"), on March 14, 1988, pursuant to the enactment of Zoning Ordinance No. 13-1988; and

WHEREAS, the said rezoning application of the Property was supported by a written Justification Statement which was filed in the record of Zoning Map Amendment Application A-9613-C. Said Justification Statement described in detail the proposed

CLERK OF THE
CIRCUIT COURT

07 JUL -6 AM 10:16

IMP FD SURE \$ 0.00
RECORDING FEE 0.00
TOTAL 0.00
RESERVED FOR 199933
PM ANK BIR#1992
JUL 06 2005 10:16

development of the Property, including the uses to be established on the Property. The Justification Statement proposed limited commercial uses on the Property and did not propose any residential uses for the Property; and

WHEREAS, at the time of the said rezoning, the Property was owned by Hunt Valley Title Holding Corporation, a Maryland corporation, and a subsidiary of McCormick Properties, Inc; and

WHEREAS, the City supported the rezoning of the Property to the M-X-T Zone pursuant to Zoning Map Amendment Application A-9613-C subject to the commitment of Hunt Valley to annex the Property into the corporate municipal boundaries of the City; and

WHEREAS, Hunt Valley and the City did enter into an Annexation Agreement dated May 2, 1988 (the "Annexation Agreement"). The Annexation Agreement set forth various terms and conditions which would apply to the annexation and the ultimate development of the Property; and

WHEREAS, McCormick Properties, Inc., did enter into an Agreement with the City dated January 11, 1988 (the "Agreement") which also set forth various terms and conditions which would apply to the annexation and the ultimate development of the Property; and

WHEREAS, Hunt Valley Title Holding Corporation conveyed title to the Property to Rouse Teachers Land Holding, Inc., a Maryland corporation; and

WHEREAS, Rouse Teachers Land Holding, Inc. did convey title to the Property to Inglewood North, LLC, a Maryland limited liability

company; and

WHEREAS, Inglewood North, LLC did convey title to the Property to WTC and Petrie/ELG; and

WHEREAS, WTC and Petrie/ELG, as successors in interest through the chain of title to the Property are bound by the said Annexation Agreement and Agreement; and

WHEREAS, the Property was annexed into the corporate municipal boundaries of the City pursuant to the enactment by the City of Resolution No. R-14-88 on June 27, 1988 (the "Annexation Resolution"). A copy of the Annexation Resolution is marked Exhibit "2" and is attached hereto and incorporated herein by reference. Pursuant to its terms, the Annexation Resolution provided that the annexation of the Property into the corporate municipal boundaries of the City was subject to the terms, conditions, provisions and circumstances contained in the Annexation Agreement and the Agreement; and

WHEREAS, Inglewood North LLC obtained approval of a conceptual site plan (designated application CSP-03006) for the Property (the "Conceptual Site Plan"). The Conceptual Site Plan, titled Woodmore Towne Centre at Glenarden, was reviewed and approved by the District Council, on January 23, 2006, as evidenced by its written Order Affirming Planning Board Decision, With Modified Conditions (the "Order"), a copy of which is marked Exhibit "3" and attached hereto and incorporated herein by reference. The Order approved with certain conditions a mixed-use development project with

varying types of residential uses and commercial office, commercial retail and hotel/ conference center uses and the public roadway connection of the Property to Glenarden Parkway; and

WHEREAS, Inglewood North obtained approval of a preliminary subdivision plan (designated as application 4-06016) for the Property, (the "Preliminary Subdivision Plan"). The Preliminary Subdivision Plan, titled "Woodmore Towne Centre at Glenarden" was reviewed and approved by the Prince George's County Planning Board of the Maryland-National Capital Park and Planning Commission on September 21, 2006, as evidenced by its written resolution approving the Preliminary Subdivision Plan and bearing the number PGCPB No. 06-212 (the "Resolution"), a copy of which is marked Exhibit "4" and attached hereto and incorporated herein by reference. The Resolution approves varying types of residential uses and commercial office, commercial retail, hotel and conference center uses and the connection of Glenarden Parkway to the Property; and

WHEREAS, WTC, Petrie/ELG and the City wish to clarify and amend the Annexation Agreement and the Agreement in certain limited respects as set forth in this Amendment, and to preserve all remaining provisions of the said Annexation Agreement and Agreement.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual promises, undertakings and considerations of WTC, Petrie/ELG and the City as set forth herein, and for other good and valuable

28208 682.

consideration, the receipt and sufficiency of all of which is hereby acknowledged, WTC, Petrie/ELG and the City do hereby agree as follows:

1. The Recitals set forth hereinabove are incorporated into this Amendment as if more fully set forth hereinafter.

2. Paragraph 2(a) of the Annexation Agreement and the Agreement are hereby repealed in their entirety and shall each be replaced with the following language:

2(a) The Property, as described in Attachment 1, will be developed in accordance with Zoning Map Amendment ZMA A-9613-C as amended, the Conceptual Site Plan, the Preliminary Subdivision Plan and any detailed site plans approved for the Property. WTC, Petrie/ELG and the City hereby agree that all uses, as well as quantities of uses, contained in the Order and the Resolution, will be permitted on the Property. These include a maximum of 1,079 residential units including single family detached dwellings, residential townhomes, stacked townhomes (two over two units) and multi-family residential units (The parties agree that while the Resolution references 208 single family detached dwellings, in no event shall there be fewer than 187 single family detached dwellings. Further, there shall be no more than 98 stacked townhomes.), 400,000 to 1,000,000 square feet of retail commercial uses, 550,000 to 1,000,00 square feet of commercial office uses, two hotels containing a total of 360 rooms, and a conference center comprising between 6,000 and 45,000 square feet. WTC, Petrie/ELG

and the City also agree and commit that all retail commercial uses permitted of right or by special exception in the M-X-T Zone may be developed and constructed on the Property with the exception of those prohibited retail commercial uses which are set forth on a document titled Woodmore Towne Centre at Glenarden Prohibited Uses, a copy of which is attached hereto as Exhibit "5" and incorporated herein by reference."

3. Paragraph 2(b) of the Annexation Agreement and the Agreement are hereby repealed in their entirety.

4. Paragraph 2(d) of the Annexation Agreement and the Agreement are hereby repealed in their entirety and shall each be amended to provide as follows:

"A proposal will be made to County and State officials that they refrain from proposing or constructing access roads to the Property where the Property currently adjoins the City at its northern border, with the exception of Glenarden Parkway where a connection to the Property shall be made for vehicular and pedestrian access."

5. Paragraph 2(e) of the Annexation Agreement and the Agreement are hereby repealed in their entirety and shall be replaced with the following language:

Traffic access shall be developed consistent with the Preliminary Subdivision Plan".

6. Paragraph 2(f) of the Annexation Agreement and the Agreement are hereby repealed in their entirety and each shall be amended to provide as follows:

"The quality and integrity of the development of the

28208 684

Property will be maintained by only permitting those uses as described in this Amendment unless WTC and/or Petrie/ELG receive written permission from the City, which will not be unreasonably withheld, to deviate from the agreed upon uses, or upon the addition of specific uses through approval thereof by the District Council;"

7. Except as expressly modified pursuant to the terms of this Amendment, all other terms and provisions of the Annexation Agreement and the Agreement shall remain in full force and effect.

8. The City agrees and commits that it will initiate the required process to amend the Annexation Resolution in order to clarify that the Annexation Resolution will be subject to the terms and provisions of this Amendment and that no other provisions of the Annexation Agreement, or the Agreement, or the annexation itself, shall be amended, modified or impacted in any manner by this Amendment.

In any part of the Annexation Agreement or the Agreement wherein the phrase "McCormick Properties, Inc." or Hunt Valley Title Holding Corporation do appear, they shall be interpreted to include WTC and Petrie/ELG, their successors and assigns.

9. WTC and Petrie/ELG agree, for themselves, their agents, servants, employees, successors and assigns commit and warrant that they will not take any action or fail to act in an effort to overturn, reverse, modify or challenge the underlying annexation of the Property into the corporate municipal boundaries of the City, or support any such action, unless such action is mutually agreed to by the City, WTC and Petrie/ELG, their successors or assigns.

28208 685

It is the sole intention of this Amendment to modify the development terms and provisions relating to the Property as expressly set forth herein. WTC and Petrie/ELG agree, commit and warrant for themselves, their agents, servants, employees, successors and assigns that this Amendment shall run with the land and that if they, or either of them individually, were to attempt to challenge or overturn the underlying annexation of the Property, the City would not have an adequate remedy of law and would be entitled to bring an action in equity for specific performance of the terms of this Amendment against the defaulting party, including WTC's and Petrie/ELG's agreement and commitment on behalf of themselves, their agents, servants, employees, successors and assigns not to attempt in any manner to overturn or challenge the annexation of the Property.

10. If at any time the City is required to bring an action against WTC and/or Petrie/ELG, or any of it's agents, servants, employees, successors and/or assigns, in order to ensure that the Property remains annexed into and a part of the corporate municipal boundaries of the City, the City shall be entitled to collect from the defaulting party, its successors and/or assigns, all costs associated with such judicial enforcement actions, including attorneys fees.

11. This Amendment shall be binding upon and inure to the benefit of the successors, assigns and beneficiaries of the parties hereto.

12. In this Amendment, the Annexation Agreement and the Agreement, the words "City" and "Town" are intended to refer to the same entity and may be used interchangeably.

13. Modification of Annexation Agreement and Agreement.

a. This Amendment, and the Annexation Agreement and Agreement, shall be modified, amended, supplemented or rescinded only in the manner set forth in this Paragraph 13, unless other requirements are expressly provided by law.

b. A modification, amendment, supplementation or rescission of this Amendment, the Annexation Agreement and the Agreement shall be effective only if it is made in writing, is executed with the same formality as this Amendment, refers to the date of the public hearing referred to in subparagraph 13.c., and is recorded among the Land Records of Prince George's County, Maryland.

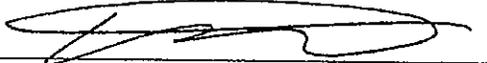
c. A modification, amendment, supplementation or rescission of this Amendment, the Annexation Agreement, and Agreement, shall not be effective unless approved by the Glenarden Council after a public hearing first has been held before the Council, notice of which public hearing has been given by publication at least once a week for two successive weeks in a newspaper of general circulation in the City, the last such publication being not less than five days before the public hearing. The notice shall advise the date, time, place and

purpose of the public hearing, sufficient to advise the public of the nature of the proposed modification, amendment, supplementation or rescission.

14. If any portion of this Amendment shall be held invalid or unenforceable to any extent, the remainder of this Amendment shall not be affected thereby, and each term and provision of this Amendment shall be enforced to the fullest extent permitted by law and the Annexation Agreement and Agreement provisions not validly and enforceably amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed and delivered as of the effective date set forth above.

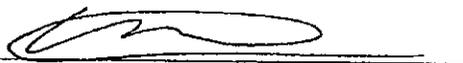
WITNESS/ATTEST:
WTC Ventures, LLC



By: David R. O'Hara
Title: Vice President

WITNESS/ATTEST:

And by:
Petrie/ELG Inglewood, LLC



By: [Signature]
Title: _____

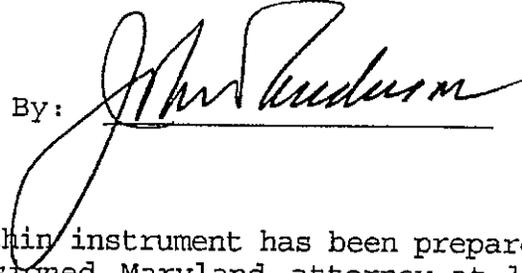
28208 688

WITNESS/ATTEST:

CITY OF GLENARDEN

Natasha Wandridge

By:



THIS IS TO CERTIFY that the within instrument has been prepared under the supervision of the undersigned Maryland attorney-at-law duly admitted to practice before the Court of Appeals.



Return to:

Suellen M. Ferguson Esq.

Council, Barabie, Kosmerl & Nolan

125 West Street 4th Floor

Annapolis, MD 21404

28208 689

STATE OF MARYLAND)
COUNTY OF Prince Georges) ss.:

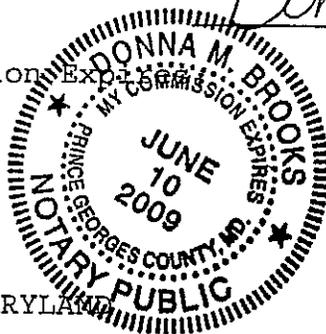
I hereby certify that before me, the subscriber, a Notary Public in and for the State aforesaid, personally appeared David E. DeMarco, the _____ of WTC Ventures, LLC, who acknowledged that he/she is authorized to execute the above Amendment to Annexation Agreement and Agreement for the reasons and purposes stated therein.

Witness, my hand and official seal this 11th day of May, 2007.

Donna M. Brooks

Notary Public, Maryland

My Commission Expires:



STATE OF MARYLAND)
COUNTY OF) ss.:

I hereby certify that before me, the subscriber, a Notary Public in and for the State aforesaid, personally appeared _____, the _____ of Petrie/ELG Inglewood, LLC, who acknowledged that he/she is authorized to execute the above Amendment to Annexation Agreement and Agreement for the reasons and purposes stated therein.

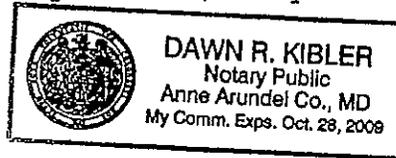
Witness, my hand and official seal this 11th day of May, 2007.

Dawn R. Kibler

Notary Public, Maryland

My Commission Expires:

October 28, 2009



28208 690:

STATE OF MARYLAND
COUNTY OF

)
) ss.:

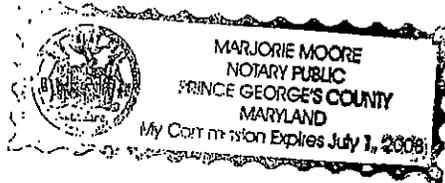
I hereby certify that before me, the subscriber, a Notary Public in and for the State aforesaid, personally appeared John Anderson, the Mayor of City of Glenarden, who acknowledged that he/she is authorized to execute the above Amendment to Annexation Agreement and Agreement for the reasons and purposes stated therein.

Witness, my hand and official seal this 24th day of May, 2007.

Marjorie Moore

Notary Public, Maryland

My Commission Expires:





THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of the Clerk of the Council
301-952-3600

August 9, 2023

DISTRICT COUNCIL
NOTICE OF MANDATORY REVIEW
(Using Oral Argument Procedures)

TO: ALL PERSONS OF RECORD

RE: DSP-22034 Atla Woodmore
(Companion Case: DDS-22002)
WS Woodmore, LLC, Applicant

The above referenced case specifically requires District Council review required by Zoning Map Amendment A-9613-C. The hearing has been scheduled for:

MONDAY, SEPTEMBER 25, 2023 – 11:30 A.M.
COUNTY COUNCIL HEARING ROOM – FIRST FLOOR
Wayne K. Curry Administration Building
1301 McCormick Dr Largo, MD 20774
VIEW USING THE LINK PROVIDED AT: <https://pgccouncil.us/LIVE>

Testimony at the hearing will be limited to the facts and evidence contained within the record made at the hearing before the *Maryland-National Capital Park and Planning Commission*. Argument will be limited to thirty (30) minutes for each side, unless extended by the Chairman of the Council. There will also be a five (5) minute rebuttal for each side.

Requests to speak by Persons of Record will be accepted in electronic format and should be submitted electronically by email to: clerkofthecouncil@co.pg.md.us or faxed to (301) 952-5178 no later than 3:00 p.m. on September 24, 2023. Any document required to be filed in accordance with oral argument procedures shall be submitted no later than five (5) business days before the scheduled oral argument hearing. Correspondence will not be accepted via U.S. mail. Public access to case information is available on the Council's Legislative/Zoning Information System: <https://pgccouncil.us/LZIS>. These policies are in effect until otherwise changed and, any future changes to them, will be communicated on the County Council website, County Council social media channels, via Alert Prince George's, and will be shared with the press via a press release. Additionally, case information can be requested by email.



Donna J. Brown
Clerk of the Council

cc: Thomas E. Dernoga, Council Chair
Wala Blegay, Vice Chair
Calvins S. Hawkins, II, Council Member, At-Large
Mel Franklin, Council Member, At-Large
Jolene Ivey, Council Member, District 5
James Hunt, Division Chief, M-NCPPC

Wayne K. Curry Administration Building
1301 McCormick Dr Largo, MD 20774

“Exhibit “B”