

July 30, 2009

MEMORANDUM

TO: Prince George's County Planning Board

VIA: Steve Adams, Urban Design Supervisor

FROM: Susan Lareuse, Urban Design Coordinator

SUBJECT: Reconsideration of Condition 2 of PGCPB Res. No. 94-88
Comprehensive Design Plan, CDP-8510/01
Konterra Business Campus

FINDINGS

1. In letter dated February 17, 2000, Vernell B. Arrington, of O'Mally, Miles, Nylan & Gilmore, P.A., on behalf of the applicant, Konterra Realty, LLC, requested the Planning Board reconsider Condition 2 of Planning Board Resolution No. 94-88 approved on April 14, 1994. The applicant requested modification of requirements associated with transportation improvements. The Planning Board at the March 9, 2000 hearing granted the request to reconsider their decision on Comprehensive Design Plan CDP-8510/01.
2. All previous parties of record were notified of the public hearing. Signs were posted on the property a minimum of 15 days prior to the Planning Board hearing.
3. Condition 8 of the original Comprehensive Design Plan CDP-8510 approval provided that development beyond the total maximum for Phases I and II (641,000 square feet) is prohibited until such time as the Intercounty Connector is constructed. In 1994, the Prince George's County Planning Board approved a revision to the Comprehensive Design Plan (CDP-8510/01) for the purpose of modifying Condition 8, which stated the following:
 - Development beyond the total maximum of Phases I and II is prohibited until such time as the Inter County Connector is constructed.

The revision to the Comprehensive Design Plan CDP-8510/01 modified the condition above and substituted the following conditions of PGCPB No. 94-88:

2. Prior to the issuance of any building permits for development beyond the total maximum of Phases I and II, one of the following shall occur:

- a. The Intercounty Connector (Master Plan alignment A-44) between I-95 and US 1 has received its "notice to proceed" approval for construction.
 - b. Ammendale-Virginia Manor Road (between I-95 and US 1) has been "advertised" for construction.
 - c. Other transportation or travel demand management projects agreed to by the Department of Public Works and Transportation (DPW&T), the State Highway Administration (SHA) and the Planning Board (or its designee) that have been "advertised" for construction or have been financially secured and permitted by the applicant, his heirs, successors and/or assigns in a manner acceptable to DPW&T and/or SHA.
3. Prior to the issuance of any building permits for Phase III or IV, and if the Intercounty Connector has not received its notice to proceed for construction, the applicant, his heirs, successors and/or assigns shall provide full financial assurances, received a permit to construct and reached an agreement with SHA on a timetable to construct a double left-turn lane from northbound US 1 to Muirkirk Meadows Drive and exclusive double left-turn lanes from Muirkirk Meadows Drive to northbound US 1.
 4. Upon receiving reasonable notice from DPW&T at an appropriate time prior to the construction of Ammendale-Virginia Manor Road, all property indicated in DPW&T Right-of-Way Plats 1500, 1501, 1502 and 1503 and identified as Parcels 26 and 191 of Tax Map No. 13 (Liber 5548, folio 921) shall be conveyed to Prince George's County by the applicant, his heirs, successors and/or assigns, in the manner prescribed by DPW&T.●

Comment: Condition 2 is the subject of the request for reconsideration. Conditions 3 and 4 were also adopted in the approval of revised CDP, but are not the subject of this request for reconsideration. These conditions are provided for information purposes only.

4. The applicant provides the following justification for the modification of Condition 2 above, in a letter dated February 17, 2000, Vernell B. Arrington to Elizabeth M. Hewlett:

■However, since the time of this approval, the State of Maryland has deleted the Inter-County Connector (ICC) as a proposed transportation improvement for the region. The deletion means that it is impossible to comply with any condition related to the ICC. In addition, Condition 2(b) contains language that improvements to Ammendale-Virginia Manor Road be "advertised" for construction. Another project, Ammendale Business Campus, approved subsequent to the approval of CDP-8510/01, requires this same improvement for adequacy. However, because of the wording of the condition stated below, this project is permitted to move forward when such improvement:

"...shall be in place, bonded for construction or programmed in either the current Prince George's County Capital Improvement Program (CIP) or the current Maryland State Comprehensive Transportation Program (CTP).●

■The Ammendale Road-Virginia Manor Road project is fully funded in the current CIP and is in the final design stage. Thus the Ammendale Business Campus can move forward since

the project is fully funded while Konterra Business Campus is delayed until the project is advertised for construction. It was a mistake to approve CDP-8510/01 without the flexibility accorded to other projects in the same region that require the same road improvements. These projects are permitted to move forward while the development of the Konterra Business Campus is unreasonably delayed. In addition, typical transportation conditions allow developments to move forward when planned transportation improvements are fully funded in the CIP or CTP.

■We therefore request a waiver of the rules and reconsideration of Condition 2 of the approval of Comprehensive Design Plan 8510/01 on the basis of mistake and for other good cause so that my client will be permitted to move forward with development on the same basis as other projects. We recommend that Condition 2 be modified as follows:

•Prior to the issuance of any building permits for development beyond the total maximum of Phases I and II, one of the following shall occur:

- a. Ammendale-Virginia (between I-95 and US 1) shall be in place, bonded for construction or programmed with 100% construction funding in the next five years in the current Prince George's County Capital Improvement Program.
- b. Other transportation or travel demand management projects agreed to by the Department of Public Works and Transportation (DPW&T), the State Highway Administration (SHA), and the Planning Board (or its designee) are in place, bonded for construction, or programmed with 100% construction funding in the CIP or CTP.♦

5. In the review of the applicant's proposal above, the Development Review Division sent a referral to the Transportation Planning Section. That office provided the following analysis:

The reconsideration involves Condition 2 of Planning Board resolution 94-88, which establishes a phasing of the development with respect to transportation facilities. Phases I and II of the project are capped at 641,000 square feet, and construction beyond Phases I and II cannot currently occur until ONE of the following occurs:

- a. The Intercounty Connector between I-95 and US 1 has received a notice to proceed with construction;
- b. The Ammendale-Virginia Manor Road Capital Improvement Program (CIP) project has been advertised for construction; or
- c. Other equivalent transportation projects have been advertised for construction or other financially secured and permitted.

The letter from Arrington to Hewlett dated February 17, 2000 (which prompted the current reconsideration) requests a modification of this condition which would allow the applicant to move forward with the development of the subject property.

In reviewing the justification provided in the letter, the transportation staff takes strong issue with the representation that the State of Maryland has deleted the Inter-County Connector (ICC) as a proposed transportation improvement, particularly as it relates to the subject condition. In order to ensure that the record is clear regarding A-44 in this area, the transportation staff provides the following observations:

- The statement that the State of Maryland has deleted the Intercounty Connector is misleading. The Governor does support further study and potential implementation of a multi-lane facility between US 1 and US 29. A project planning study is included in the State Consolidated Transportation Program which would study east-west link improvements within the A-44 study area, including the US 1/US 29 connector facility.
- No action has been taken that renders future construction of the roadway to be impossible. As the most objectionable impacts of the Intercounty Connector appeared to be woodland and stream impacts in Montgomery County, with very little evidence of significant environmental concerns in Prince George's County, there is no evidence that precludes A-44 from being built between US 1 and I-95.
- The Intercounty Connector has not been deleted from local plans, as suggested by the applicant. Neither County has taken the roadway off their Master Plans, or otherwise developed Master Plans that do not include it. The State of Maryland cannot delete a facility from the Master Plans of either County.

Notwithstanding the transportation staff's disagreement with the precise language in the applicant's letter, recent traffic analyses have indicated that tying the buildout of the subject property to the actual construction of the Intercounty Connector is not essential as long as area roadway improvements are made consistent with the Ammendale-Virginia Manor Road CIP project. However, even though there is considerable certainty at this time that the Ammendale-Virginia Manor Road project is advancing, the applicant should retain the flexibility of the reference to the Intercounty Connector, just in case unforeseen hurdles arise to the implementation of the CIP project. The transportation staff proposes retaining this portion of Condition 2 with revised language.

The applicant, in the February 17, 2000 letter, goes on to discuss the condition regarding the Ammendale-Virginia Manor Road CIP project versus the condition placed on another nearby development. The transportation staff notes that Condition 2.b. is unusual in that it allows phasing to proceed once the subject improvement has been advertised for construction. As the applicant notes, at least one other development in the area has been allowed to move forward with a condition that the subject improvement is in place, bonded for construction or programmed with 100 percent construction funding; in fact, this wording is much more typical of the transportation staff's normal requirement. The applicant's current request seeks to utilize wording that would allow the development to proceed once the improvement is programmed rather than waiting until it is advertised. The staff notes that the following has occurred:

- a. The Planning Board approved CDP-8510 on July 17, 1986 with a staging condition requiring development beyond Phases I and II to be preceded by a traffic study determining the facilities needed for the additional development.
- b. On March 23, 1987, the District Council approved a Council Order for CDP-8510 with a staging condition requiring the construction of the Intercounty Connector prior to development beyond Phases I and II.
- c. In a letter from Agnolutto to Rhoads dated November 16, 1993, the applicant requested an amendment to CDP-8510. Specifically, the applicant desired to revise the staging condition to allow some flexibility in the precise nature of the transportation improvements which were required. That letter referenced the Ammendale-Virginia Manor Road CIP project, and suggested that later phases of the development could proceed at the time that 100 percent construction funding was provided in the first three program years of the CIP.
- d. On March 17, 1994, the Planning Board approved CDP-8510/01 with all conditions as they are currently written, including a provision that the development could proceed beyond Phases I and II upon the Ammendale-Virginia Manor Road project being advertised for construction.
- e. In 1997, 1998 and 1999 the Planning Board approved Preliminary Plats of Subdivision for Ammendale Business Campus South with findings that the Ammendale-Virginia Manor Road project was programmed with 100 percent construction funding. These approvals followed a CDP approved in 1994 that contained a similar requirement.

While the applicant makes an excellent point in raising a fairness argument vis-a-vis Ammendale Business Campus South, it is clear that the District Council was very concerned about the impact of Konterra's later phases of development upon local roadways. In 1987, the Council replaced a very flexible condition with a very specific one. In 1994, the Board added some flexibility but retained the intent of the condition - that a safe and quick connection between Konterra and I-95 would have construction underway coincident with development of Phases III and IV of Konterra. Though the transportation staff reviewed the Ammendale Business Campus South CDP at the same time the amendment to the subject CDP was under review, it appears that there was a perceived need to hold to the intent of the District Council's previous action regarding the subject case. Looking back on the actions in 1994, however, it would seem that the staff recommendations should have either leveled the playing field for both applicants or more strongly distinguished the rationale for treating them differently.

Considering the interests of users of the local roadway network, the transportation staff is aware that construction of the improvements to Ammendale-Virginia Manor Roads is long overdue. The staff has addressed the status of the CIP project with every SDP within Ammendale Business Campus South, and has continually noted that the project's estimated completion date has not been delayed since full construction funding was shown in 1997. The FY2000 CIP, as approved, shows that the Ammendale/Virginia Manor project would be

completed in 06/2003. The design plans have gone to a public forum and a public hearing. It is our understanding that design will be completed in Spring 2001 (which is now the likely time that the project would be advertised for construction), and that a completion date of 06/2003 remains achievable.

In recommending added flexibility to Condition 2 of CDP-8510/01, the transportation staff makes the following observations:

- a. The applicant has taken no action which would delay completion of the Ammendale/Virginia Manor Road CIP project, and has been diligent in meeting other transportation-related conditions which have been imposed.
- b. If transportation adequacy for a CDP were subjected to a new review today, the programming of full construction funding, as we have in the current CIP, would be sufficient without need for a condition.
- c. If transportation adequacy for a SDP were to be evaluated today, the transportation staff believes that, based on our discussions with DPW&T that design of the CIP project is progressing and that the project's completion date of 06/2003 is achievable, we would find that the development would be adequately served within a reasonable period of time.
- d. The subject development should be treated similarly to the nearby Ammendale Business Campus South development. Given that the subject property has developed as research & development space (as opposed to the truck-intensive warehouse space which has been developed at Ammendale Business Campus South), there may be a rationale for treating the subject property more leniently than its nearby neighbor, rather than more stringently.
- e. The other options within Condition 2 should have a similar standard for determining their applicability. Although the Ammendale/Virginia Manor Road improvements appear to be the most likely to occur within the near term, the other options should be applicable if they are (a) existing, (b) bonded for construction, or (c) programmed with 100% construction funding in an official document.

Notwithstanding the added flexibility, the transportation staff would be more aggressive in reviewing upcoming SDPs for the Konterra Business Campus as they relate to the CIP improvements being constructed within a reasonable period of time if the CDP language is modified. Significant delays of more than six months in completing the project will hamper staff's ability to make the required SDP findings - even for SDP revisions.

Based on the preceding discussion, the Transportation Planning Section concludes that Condition 2 of PGCPB No. 94-88 may be modified as recommended below without altering the previous finding of adequate transportation facilities in accordance with Section 27-521 of the Prince George's County Code:

Prior to the issuance of any building permits for development beyond the total maximum of Phases I and II, one of the following shall occur:

- a. The arterial facility within the A-44 alignment between I-95 and US 1 shall be in place, bonded for construction or programmed with 100% construction funding in the next five years in either the current Prince George's County Capital Improvement Program (CIP) or the current State Consolidated Transportation Program (CTP).
- b. Ammendale-Virginia Manor Road (between I-95 and US 1) shall be in place, bonded for construction or programmed with 100% construction funding in the next five years in the current CIP.
- c. Other transportation or travel demand management projects agreed to by the Department of Public Works and Transportation (DPW&T), the State Highway Administration (SHA) and the Planning Board (or its designee) are in place, bonded for construction, or programmed with 100% construction funding in the CIP or the CTP.

The applicant proposes no changes to the other conditions of the same resolution, and they should remain unchanged.

6. The staff recommends that the Planning Board approve the applicant's request to modify Condition 2 because the original decision by the Planning Board was in error due to change and mistake. The Transportation Section reports that a change has occurred since the decision on revision to the Comprehensive Design Plan was rendered in 1994 because recent traffic analyses have indicated that tying the buildout of the subject property to the actual construction of the Intercounty Connector is not essential as long as the area roadway improvements are made consistent with the Ammendale-Virginia Manor Road CIP project. A mistake was made in the 1994 decision as reason in granting the condition because it appears that the Konterra Business Campus and the Ammendale Business Campus South projects were treated differently, even though they are located within close proximity and depend upon the same road systems to serve the projects. The modification of Condition No. 2 is in the best public interest to correct the error in reaching the 1994 decision.

RECOMMENDATION

The Development Review Division recommends that the Planning Board APPROVE the applicant's proposal to modify Condition 2 as follows:

2. Prior to the issuance of any building permits for development beyond the total maximum of Phases I and II (641,000 square feet), one of the following shall occur:
 - a. The arterial facility within the A-44 alignment between I-95 and US 1 shall be in place, bonded for construction or programmed with 100% construction funding in the next five years in either the current Prince George's County Capital Improvement Program (CIP) or the current State Consolidated Transportation Program (CTP).

- b. Ammendale-Virginia Manor Road (between I-95 and US 1) shall be in place, bonded for construction or programmed with 100% construction funding in the next five years in the current CIP.
- c. Other transportation or travel demand management projects agreed to by the Department of Public Works and Transportation (DPW&T), the State Highway Administration (SHA) and the Planning Board (or its designee) are in place, bonded for construction, or programmed with 100% construction funding in the CIP or the CTP.