

DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND

OFFICE OF ZONING HEARING EXAMINER

AMENDMENT OF BASIC PLAN

A-9903/02-C

A-9280-C and A-9281/07-C

REMAND

DECISION

Application: Amendment of Basic Plan & Conditions
Applicant: Commons at Largo, LLC /Parcel D
Opposition: Charles Renninger, et. al.
Hearing Date: February 20, 2013 and February 27, 2013
Hearing Examiner: Maurene Epps Webb
Recommendation: Approval with Conditions

NATURE OF REQUEST

(1) Applicant requested an amendment of the Basic Plan for the Largo Town Center to add a residential component of 350 multifamily condominiums on Parcels 1A and 1B, Block D (also referred to as "Parcel D"), in addition to previously approved office and commercial uses. The total area governed by this portion of the Basic Plan is 19.9 acres of M-A-C (Major Activity Center) zoned land. The subject property is located at the northwest quadrant of the intersection of Lottsford Road and Harry S. Truman Drive.

(2) The Technical Staff and Planning Board reviewed the Application and recommended denial. Charles Renninger and Richard Day appeared in opposition at the original hearing held by this Examiner. This Examiner issued a decision on October 18, 2006, approving the request with conditions. The District Council approved the request with conditions. Applicant appealed that approval to the Circuit Court due to its concerns with the conditions.

(3) On November 19, 2012, the District Council remanded the request to the Zoning Hearing Examiner with the following directions:

Having reviewed the record, the District Council has determined that there has been, among other issues, a lack of appropriate consideration given to the 2002 General Plan's vision for Metropolitan Centers and principles of Transit Oriented Design (TOD) programs. On remand, the Zoning Hearing Examiner shall conduct a public hearing or hearings to reopen the record to receive additional testimony and evidence as follows:

1. Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C, to modify the basic plan and conditions attached thereto, is in conformance with the General Plan vision of Transit and Pedestrian-Oriented Development at Largo Town Center.
2. Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C to modify the basic plan and conditions attached thereto are in conformance with the Approved Subregion 4 Master Plan and proposed Largo-Lottsford Sector Plan land use policies.
3. Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C to modify the basic plan and conditions attached thereto are in conformance with the purposes of the M-A-C Zone.
4. Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C to modify the basic plan and conditions attached thereto adequately address public benefit features, including recreation facilities, and related density/intensity increment factors.
5. Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C to modify the basic plan and conditions attached thereto conform with the overall residential density and vehicle trip cap for Largo Town Center.
6. Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C to modify the basic plan and conditions attached thereto are compatible with existing land use, zoning and facilities in the immediate surroundings approved subsequent to this approval.
7. Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C to modify the basic plan and conditions attached thereto conforms with the environmental relationships between the proposed general land use types, or if identified, the specific land use types, and surrounding land uses, so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District.
8. In light of the above evidence taken on remand, determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C to modify the basic plan and conditions attached thereto, requires a revision of the development phasing plan.

(Exhibit 2(b))

(4) At the remand hearing, Charles Renninger appeared in opposition on his own behalf, and on behalf of the Largo Civic Association. (Exhibit 26) At the conclusion of the hearing the record was left open for receipt of additional information from Applicant and the opposition. The last of these items was received on March 12, 2013. Subsequent to that the Largo Town Center Preliminary Sector Plan and Proposed Sectional Map Amendment was released. I placed this Plan in the record upon its release on June 6, 2013, and the record was closed at that time.

(5) Much of the evidence admitted in the prior record remains germane to the remand. Accordingly, the prior record is adopted and incorporated herein.¹

1 Any reference to Exhibits or testimony generated in the remand record will be preceded by "Rem.".

FINDINGS OF FACT

(1) The subject property is triangularly shaped and surrounds the Largo Town Center Metro Station on the east and south sides. It has full frontage along Harry S. Truman Drive and Lottsford Road. Pursuant to the original Basic Plan (A-9280/81) and Comprehensive Design Plan (CDP-8804), the subject property is designated for commercial/office use.

(2) There are no streams, 100-year floodplain, severe slopes, or steep slopes with highly erodible soils on the site. There are no scenic or historic roads located in the area. The site does not contain any elements of the Countywide Green Infrastructure Plan.

Surrounding Uses

(3) The subject property is surrounded by the following uses:

- North – An access drive to the Largo Town Center Metro Station parking garage separates the site from Parcel I fronting on Arena Drive, in the M-A-C Zone
- South - Across Harry S. Truman Drive are commercial offices and warehouse storage in the E-I-A Zone, and land to be developed as the Mid-Town Largo Station Condominiums in the M-A-C Zone
- East - Across Lottsford Road, townhouses and senior housing apartments in the M-A-C Zone
- West - The Largo Town Center Metro Station and parking garage in the C-O Zone

Master Plan/Zoning

(4) The 1978 Sectional Map Amendment for Largo-Lottsford approved the original Largo Town Center Basic Plan and placed the subject property and the surrounding acreage (a total of approximately 175.1 acres) in the M-A-C Zone.² Currently, the District Council has placed a cap of 2.3 million square feet of commercial, office and employment use (to include 300,000 square feet of retail) on the Largo Town Center and a residential cap of 1,950 dwelling units.

(5) The 2004 Sector Plan and Sectional Map Amendment for the Morgan Boulevard and Largo Town Center Metro Areas identified the property as part of a designated “Metropolitan Center”. Parcel D lies within the “Core Area” since it is within one-third of

² The Technical Staff Report provides a detailed history of the zoning of the property since the original approval of the Basic Plan and actual approvals were submitted in the record. (Exhibits 14 and 15) Applicant marked the various parcels of Largo Town Center on the aerial photo submitted into the record. (Exhibit 36)

a mile from the Metro Station. The Sector Plan provided the following comment on the Largo Town Center Metro Core Area:

The 1990 Largo-Lottsford master plan placed the Largo Town Center Metro core area in a larger urban center with mixed-use development. The master plan described the urban center as possibly the most visible aspect of the central portion of the county because of its proximity to major roads.... Today, the urban center is a horizontal mix of uses without a focal point or an orientation to the Metro Station. Existing development lacks the unique design envisioned by the 1990 Largo-Lottsford master plan, the center's streets and roadways create super blocks with only indirect pedestrian routes to the Metro station site, and the streetscape does not evoke or create a sense of place or town center. Urban design in the center has not achieved the vision of the 1990 master plan or the county's 2002 General Plan which emphasizes the importance of good design to achieve quality development for the designated centers such as Largo Town Center. The extension of the Blue Line to its terminus at Largo Town Center presents a renewed opportunity for high-quality, mixed-use, transit-oriented development within one-third mile of the Metro station....The urban design issues are as follows:

- Creating a town center and promoting a sense of place through new development (and possible redevelopment of some parcels in the future) while recognizing the suburban character of much of the existing development.
- Encouraging new infill development that is compact and urban (vertical) in nature, rather than spread out and suburban (horizontal).
- Promoting new, attractive buildings that are compatible with appropriate elements of the existing development in terms of building materials, color and architecture and set a high standard of design, architecture and materiality.
- Providing for a pedestrian-friendly street environment that encourages use by residents, commuters, office workers, and shoppers, with special attention given to accessibility to the Metro station.

The urban design concept for the Largo Town Center Metro core area is a walkable town center with compact, mixed-use, transit-oriented development. ... A mix of uses, including residential, office, retail and open space are located close to each other and in many instances in the same structure, creating a 24-hour environment....

(2004 Sector Plan and Sectional Map Amendment for the Morgan Boulevard and Largo Town Center Metro Areas, p.61)

(6) The Sector Plan also expressly noted the subject property and the proper zoning thereof:

- Subarea 4 – North and east of the Metro Station: Mixed-use (office proposal) development *in recognition of a previously approved plan (Comprehensive Design Plan, CDP-9002-04)* is recommended for the subarea.³

³ CDP-9902/04 did note that development within Largo Town Center is limited to 2.3 million square feet of commercial space, but it also recognized that “the ‘vested development rights’ for Parcel D are defined ... [to include] any additional transfer of development to Parcel D by the Planning Board and/or District Council.” (Exhibit 14)

High-density office development adjacent to the Metro station will provide the opportunity for large numbers of office workers to use Metro. This transit-oriented development will provide for over one million square feet of the office development at the town center. The existing M-A-C (Major Activity Center) Zone is retained. [Emphasis added]

(2004 Sector Plan and Sectional Map Amendment for the Morgan Boulevard and Largo Town Center Metro Areas, p. 29)

(7) The District Council adopted Council Resolution 25 - 2012 to initiate the process for a revised Sector Plan and Sectional Map Amendment for the Largo Town Center. (Rem. Exhibit 16) The preliminary goals, concepts and guidelines for the new Sector Plan and Sectional Map Amendment ("SMA") were attached thereto. The preliminary goals statement noted that the Sector pPlan and SMA "will implement the recommendations of the 2004 *Approved Sector Plan and Sectional Map Amendment for the Morgan Boulevard and Largo Town Center Metro Areas* and the 1990 *Approved Largo-Lottsford Master Plan Amendment and Adopted Sectional Map Amendment* (Planning Area 73) to ensure that future development is consistent with county policies." (Rem. Exhibit 16, Attachment B, p.2) The Planning Board released the Preliminary Sector Plan and SMA in June, 2013 and a joint hearing with the District Council is scheduled for July 16, 2013.

(8) The 2002 General Plan provided the following guidance on development within such centers:

The General Plan identifies 26 Centers in the county as existing or possible future priorities for concentrations of medium to high intensity, mixed-use and pedestrian-oriented development. The majority of the Centers have rail transit facilities, either Metrorail or MARC lines, as the key feature. . . . [M]ixed-use and transit-oriented development concepts are equally important for future planning and development of these areas. . . .

Metropolitan Centers have a high concentration of land uses and economic activities that attract employers, workers and customers from other parts of the metropolitan Washington area, such as large government service or major employment centers, major educational complexes, or high-intensity commercial uses. High-density residential development may also be located in or very near Metropolitan Centers.

(2002 General Plan, p. 47)

(9) The General Plan also touted the importance of Transit-Oriented Development (“TOD”) at Metrorail-oriented Centers:

Metrorail-oriented Centers, in particular, are the product of large public investments in the transit system, yielding significant opportunities for residents and employees to use transit, thereby reducing reliance on automobile trips. Capitalizing on the combined transportation and development advantages of these stations is a central theme and a high priority of this General Plan. Future planning to maximize the return on the massive public investments required to build mass transit systems is crucial.

Concepts that focus appropriate development at these locations, such as transit-oriented development (TOD), are strongly advocated by this General Plan. TOD seeks to increase transit use and reduce automobile dependency:

- Locating homes, jobs and shopping closer to transit services.
- Locating the mix of critical land uses (live/work/shop) in closer proximity to one another.
- Establishing land use/transit linkages that make it easier to use transit (rail and bus).

(2002 General Plan, p. 44)

(10) The General Plan expressly noted that “[a]ll of the Metrorail-oriented Centers are suitable for TOD concepts ranging from moderate to high intensities ... [and] [t]he characteristics of each type of Center will vary from location to location based on physical and market conditions.” (2002 General Plan, p. 48) It also stressed that “Metropolitan Centers will have greater proportions of employment development than other types of Centers.” (2002 General Plan, p. 48)

(11) Finally, the General Plan establishes development intensity targets in Metropolitan Centers. The Core area of such Centers (defined as the area between one-quarter and one-third of a mile walking distance from a transit station or stop) should have a minimum residential density of 30 dwelling units per acre, and a minimum floor area ratio (FAR) for nonresidential intensity of 2.0. (2002 General Plan, p. 49)

(12) The District Council directed that I determine whether the instant request is in conformance with the proposed land use policies within the proposed Largo-Lottsford Sector Plan. The Largo Town Center Preliminary Sector Plan and Sectional Map Amendment was recently released (June, 2013) but has not been adopted nor approved. Section 27-140 of the Zoning Ordinance precludes me from using this preliminary plan as the basis for approval/disapproval of the instant request. I may, however, consider any factual or empirical evidence therein. I reviewed the Preliminary Sector Plan and included a copy of it in this record. (Rem. Exhibit 30)

(13) The Preliminary Sector Plan noted there may be an oversupply of “retail competition to the north (Woodmore Town Center), east (Annapolis Town Center), and the south (National Harbor).” (Rem. Exhibit 30, p. 29) Office vacancies in the area have increased from 9% in 2002 to 22.5% in 2012. (Rem. Exhibit 30, p. 29) It found

that the residential market “is ripe for new development.” (Rem. Exhibit 30, p. 23) The Plan offered the following insights:

Given the importance of visibility from the Capital Beltway and having retail amenities (e.g., places for lunch) in the location of office tenants, properties in closer proximity to the Metro station may be viable after the overhang of existing commercial space is absorbed.... Although the conclusions for residential, retail, commercial office, and hospitality real estate sector indicate limited, near-term demand for Largo Town Center, a number of significant, catalytic opportunities could ‘change the game’ in terms of the area’s market potential. These potential catalysts include:

- Introduction of a large-scale institutional user with the ability to drive localized demand to other market sectors, principally commercial office and retail.
- Encouragement of dense residential construction within a quarter mile of the Largo Town Center Metro Station to create an identifiable neighborhood, establish a ‘sense of place’, and generate demand for nearby retail uses.
- Reconfiguration of The Boulevard at the Capital Centre to consolidate Largo Town Center’s retail demand at a focal point. Doing so will maximize this demand, and rethinking the physical structure of this critical, central, and accessible retail site creates the opportunity to improve the quality of retail tenants and establish a desirable town center environment for the Prince George’s County residents and workforce.

(Rem. Exhibit 30, pp. 29-30)

Applicant’s Request on Remand

(14) The Applicant seeks to amend one of the conditions of the District Council’s Order of Approval. The request does not increase the land area (approximately 175.1 acres) or the densities/intensities (1,935 dwelling units and a maximum of 2.3 million square feet of office/retail space) for the overall area of the approved Basic Plan.

(15) In its approval of the prior Amendment Application, the District Council imposed several conditions. Applicant is requesting a refinement of Condition 2, which states as follows:

2. Residential construction and use shall be limited as follows:
 - a. All residential units shall be marketed and sold as condominium units, and all shall be subject to a single condominium regime.
 - b. No permit may be issued for the construction or use of any residential unit until the applicant has completed the construction of a minimum of 500,000 square feet of the proposed gross floor area of the commercial office use north of Grand Boulevard.
 - c. Prior to issuance of the 281st NRC (new residential condominium) permit for the residential unit construction, the applicant shall commence construction of the

remaining 500,000 or more square feet of the proposed gross floor area of the commercial office use north of Grand Boulevard.

(Exhibit 6(o))

(16) Applicant wishes to insert the following language in its stead:

Residential Construction and Use shall be limited as follows:

- a. No building permits shall be issued for any residential uses on the property prior to the issuance of building permits for a minimum of 500,000 square feet of office and any supporting retail uses south of or along Grand Boulevard.

Notwithstanding the foregoing, building permits may be issued for residential multifamily uses on the property north of Grand Boulevard, and such uses constructed, prior to the issuance of building permits for the 500,000 square feet of office and any supporting retail uses located south of Grand Boulevard provided that the applicant first submits to the Prince George's County Planning Board the following: (a) a statement or report from a licensed commercial real estate broker active in commercial leasing in Prince George's County stating that the office component has been professionally marketed to potential tenants; and (b) a statement from the applicant that the result of such effort has been insufficient to produce a level of pre-leasing required to finance the construction of the office component under standard commercial terms and conditions.

No more than 350 residential units are approved to be constructed on the property with this Basic Plan approval. The portion of the property shown on the south side of the grand Boulevard on this Basic Plan labeled "office/commercial" shall be precluded from any residential development under this particular Basic Plan approval.

- b. The applicant, its successors and assigns, hereby irrevocably and in perpetuity authorizes and empowers the Office of People's Zoning Counsel, in accordance with Section 27-139.01(b) & (d) of the Prince George's County Zoning Ordinance, to appear in any court having jurisdiction, and on behalf of the applicant, its successors and assigns, to confess judgment against the applicant, its successors and/or assigns to temporarily and permanently enjoin and prohibit the construction of any residential dwellings on the portion of the property designated for "office" under this particular Basic Plan.

The applicant, its successors and assigns hereby consents to such permanent injunction and (a) agrees to the entry of a Consent Judgment to enforce the injunction, (b) agrees to pay all costs of any such action for injunctive relief, including attorneys fees incurred by the County in its enforcement of this restriction on residential development, and (c) expressly waives any and all legal defenses to the entry of an injunction and/or Consent Judgment that precludes residential construction on the portion of the property under this particular Basic Plan designated for "office".

The applicant shall execute a Consent Judgment prior to the Planning Board's consideration of any Specific Designs (sic) Plans concerning the residential uses. The Office of People's Zoning Counsel shall retain the signed consent Judgment in escrow. A copy shall be provided to the M-NCPPC. The Office of People's Zoning Counsel shall file the Consent Judgment in a court of law only if the applicant, its successors and/or assigns, attempts to violate the conditions in this specifically approved Basic Plan against residential uses on the south side of the Grand Boulevard.

- c. This condition shall modify the previous Condition 2(a), (b) and (c) of the conditional zoning approval of A-9903/02-C and A-9281/07-C Largo Town Center "Parcel D" commons at Largo, LLC, and shall be carried forward on any Comprehensive Design Plans, Preliminary Plans and Specific Design Plans associated with this particular Basic plan, unless modified by the District Council.

(Rem. Exhibit 29)

(17) Petey Green testified that he has an ownership interest in the subject property. (February 20, 2013, Rem T. 26) He noted that Applicant has aggressively marketed the property, pursuing the U.S. Department of Health and Human Services ("HHS"), the U.S. Department of Homeland Security, and the State Department of Housing and Community Development ("HCD") to no avail. (February 20, 2013, Rem T. 26-29, 44) The subject property is also being considered for the relocation of Prince George's Hospital. (February 20, 2013, Rem. T. 38-39)

(18) Over a period of five years, more than five million dollars has been expended on marketing, planning and legal costs related thereto. (February 20, 2013, Rem. T. 40, 54) Applicant has also sought a builder for the residential portion of the site, and believes it could move forward on construction. However, Applicant believes it cannot be successful developing condominium residences based on the experience of the building adjacent to the subject property (the "Mosaic") which had to offer the units as rentals due to the market. The witness opined that he doesn't "think that you can put the kind of constraints on the project that we have and expect us to do anything with it." (February 20, 2013, Rem T.34) Upon cross-examination the witness did note that Applicant has only marketed the property to the State of Maryland and the federal government. (February 20, 2013, Rem T. 35)

(19) Tobias Washington testified on behalf of the Peter Schwarz Management Company (the majority owner of the site). He has worked on the commercial marketing of the site, submitting RFPs to lure federal or state agencies to the site. He noted that Applicant had just received notification of non-selection for relocation of both HHS and HCD just prior to the February hearing held by this Examiner. (February 20, 2013, Rem. T. 47) Mr. Peter Schwartz handled the marketing of the residential portion of the property. (February 20, 2013, Rem. T. 52) The witness also noted that Applicant focused on securing a federal or state tenant for the commercial space at the subject

property because tenants in the private sector generally do not require the large amount of floor area (required by the District Council in its conditions of approval) and it is believed that a public sector tenant would better spur development in the area. (February 20, 2013, Rem. T. 57-58)

(20) Applicant's witness, accepted as an expert in the area of land use planning, addressed the seven (7) issues that the District Council set forth in its Order of Remand, with the following analysis:

Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C, to modify the basic plan and conditions attached thereto, are in conformance with the General Plan vision of Transit and Pedestrian-Oriented Development at Largo Town Center.

Response: Since the approval of A-9903/02-C, A-9280-C, and A-9281/07-C there has been no update to the General Plan or to the goals of the General Plan's vision of Metropolitan Center and principles of TOD programs. The purpose of this application is to modify development phasing requirements established by Condition 2(a-c). This application will not amend the approved uses for Parcel D, nor will this application amend the approved residential and commercial densities. It was determined by M-NCPPC Staff in their 2006 Technical Staff Report that the request to amend the basic plan to include residential was consistent with the 2002 General Plan.

This application to amend Condition 2(a-c) of the District Council resolution will not conflict with the 2002 General Plan's vision of Metropolitan Centers and principles of Transit Oriented Design (TOD) programs. Because this application is to modify a phasing condition[,] the specific testimony relating to the general plan goals and basic plan amendments [October 18, 2006, ZHE Transcript Pages 100-104] remains valid today.

Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C, to modify the basic plan and conditions attached thereto, are in conformance with the Approved Morgan Boulevard and Largo Town Center Metro Areas Sector Plan.

Response: The ZHE found conformance with the requirements of the 2004 Sector Plan for Morgan Boulevard and Largo Town Center Metro Areas (MORLAR). There are no requirements in the MORLAR plan that relate to development phasing, type of occupancy, or ownership regime. Since the applicant is not proposing to modify the approved land uses or densities [,] the testimony previously prepared for this application [ZHE Transcript Pages 114-118] remains in effect today.

Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C, to modify the basic plan and conditions attached thereto, are in conformance with the M-A-C Zone.

Response: The ZHE found that the proposal should not violate the District Council's prior finding that the use meets the purposes of the M-A-C Zone. Testimony previously prepared for this application [ZHE Transcript Pages 97-99] remains valid and in effect. The modification of Condition 2(a-c) will have no [e]ffect on the purposes of the M-A-C Zone. Additionally the MORLAR plan recommends mixed-use development, including office, multifamily and retail, with an emphasis on office; however, there is no language in the sector plan or zoning ordinance

strictly prohibiting residential on Parcel D. All of these uses comport with the purposes of the M-A-C Zone that was retained by the MORLAR's sectional map amendment.

Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C, to modify the basic plan and conditions attached thereto adequately address public benefits features, including recreation facilities, and related density/intensity increment factors.

Response: During review of the Basic Plan Amendment Urban Design Staff opined that a residential component "is critical ... to the success of the proposed development and is consistent with Transit Oriented Development practice." (Exhibit 25)

Staff believed certain conditions were necessary to ensure the best development occurred. The Urban Design Section (April 6, 2006, memorandum) indicates that: *"... in order to achieve the proposed number of dwelling units, the applicant has to provide additional amenities that are above and beyond minimum required to qualify as a density increment factor. In addition to the factors as shown in Section 27-491(b), the applicant should consider upgraded structural forms. This could include steel frame structures and quality exterior finishes like clay brick masonry facades for the residential buildings as a condition of approval. Other aspects of the residential development that should be carefully reviewed are as follows:*

- *Recreational facilities – both outdoor and indoor (including a pool) serving residents of all ages.*
- *Streetscape/architectural elevations of the residential building along Lottsford Road.*
- *Proper buffer between the subject site and the existing Metro Station.*
- *Noise Mitigation*
- *Signage design guidelines are essential to ensure that the three sections of the site are developed harmoniously. At CDP guidelines regarding basic style/design, finishing material, and color for buildings and signage should be established for review and approval of specific design plan. Also, the residential units generate certain concerns regarding buffering and screening dwellings from the adjacent Metro Station and retail uses to the south. Standards should be established at the time of CDP review to address buffering, screening and landscaping.*

The applicant believes that the issues related to public benefit features, including recreation facilities and related density/intensity increment factors have already been discussed and resolved. The proposed modification of Condition 2(a-c) will have no impact on public benefit features or recreation amenities provided.

Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C, to modify the basic plan and conditions attached thereto, conform with the overall residential density and vehicle trip cap for Largo Town Center.

Response: The density and trip cap conformance has previously been demonstrated. This application will not increase the approved 350 dwelling units or 1 million square feet of office space. The M-NCPPC Transportation Planning Section Staff (per PGCPB Resolution No. 06-154) concluded: *"that the proposed basic plan amendment would not change the transportation*

level of service anticipated by the master plan on any transportation link within the study area of this site.” The Maryland State Highway Administration (SHA) offered no objections during their review of the prior application (ZHE Exhibit 17). ZHE finding (18) states: “Applicant’s traffic study notes that prior approvals imposed a vehicle trip cap on the entire Largo Town Center of 1,920 AM peak hour trips and 1,819 PM peak hour trips. The instant request should reduce the number of trips generated at the site by 162 AM and 168 PM peak hour trips.” (ZHE Exhibit 10(a))

Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C, to modify the basic plan and conditions attached thereto, are compatible with existing land uses, zoning and facilities in the immediate surroundings approved subsequent to this approval.

Response: The Technical Staff Report (TSR, Page 22) found compatibility with surrounding uses (at the time) that the provision and application of various site and recreation amenities, architecture, landscaping and other design and development phasing guidelines during the CDP review phase will help ensure compatibility with surrounding uses. The same conclusion remains valid for the subsequent approval of mixed-use development on Parcel 2, Block D (Formerly Parcel I) in the Basic Plan (A-9280/81/08 on 9/22/08 and CDP-9002-09 on 7/13/10) to allow a minimum of 115,000 square feet and a maximum of 160,000 square feet of office and supporting commercial uses and a maximum of 300 residential units. The Urban Design Staff in an April 6, 2006 referral to the Technical Staff found (Page 2): *“That the proposed residential use shows an acceptable design relationship with the adjacent vertical mixed-use area, the existing Metro Station and Lottsford Road.”* Also recommended by Urban Design and incorporated into the TSR is the “specific phasing condition pursuant to the phasing proffer in the Statement of Justification, that no residential use can be developed until fifty (50%) of the proposed floor area of the office use, north of Grand Boulevard has been built and occupied. The TSR recognized that provisions of various site and recreation amenities, architectural (steel frame, brick), landscaping and other design and other development guidelines applied at the time of CDP approval would ensure compatibility with surrounding uses. (TSR Page 22)

Prior to the ZHE and District Council decision for the subject property, residential developments had not yet been proposed or approved for Parcel B or Parcel I (now Parcel 22, Block D). However, subsequent to the Council’s decision on the subject property, residential development has been approved on both of these parcels. Parcel B was approved in A-9280-09-C on July 21, 2008 for 600 dwellings and 32,000 to 36,000 square feet of mixed-use retail/office to be provided on the first floor of multi-family buildings (Zoning Ordinance No. 20-2008). Parcel I was approved for 300 dwelling units.

The proposed residential and commercial development proposal was previously determined by the ZHE and District Council ... [to be] compatible with the existing land use, M-A-C Zoning, and facilities in the immediate area.

Determine whether Application Nos. A-9903/02-C, A-9280-C, and A-9281/07-C, to modify the basic plan and conditions attached thereto, conforms with the environmental relationships between the proposed general land use types, or if identified, the specific land use types, and surrounding land uses, so as to promote the health, safety and welfare of the present and future inhabitants of the Regional District.

Response: The Environmental Planning Section, in a memorandum dated March 16, 2006, concluded that the basic plan amendment was “*found to generally address environmental constraints.*” As part of the environmental review, the applicant obtained a letter from the State of Maryland indicating that the subject property contains no rare, threatened, or endangered species. Staff did indicate that the property will be subject to the Woodland Conservation Ordinance, and a TCP-1 would be required for any CDP, Preliminary Plan, Special Exception, or Conceptual Site Plan application and a TCP-2 would be required for any SDP, Detailed Site Plan or grading permit. In addition to the environmental requirements necessary for grading and building permits the Conditions of Approval numbers 3-14 contained in Zoning Ordinance No. 3-2008 ensure that environmental relationships between general and specific land use types and surrounding uses will promote the health, safety and welfare of residents.

The modification of Condition 2(a-c) will have no negative impact on the environmental relationships. Prior to obtaining a grading or building permit, the applicant must still demonstrate conformance to the woodland conservation ordinance, and tree canopy ordinance

In light of the above evidence taken on remand, determine whether Application A-9903/02-C, A-9280-C and A-9281/07-C to modify the basic plan and conditions attached thereto, requires a revision of the development phasing plan.

Response: The applicant’s request to modify Condition 2(a-c) will have no negative impact on the above listed Questions 1-7. This application will not modify the approved uses or their densities, but it will alter the development phasing to allow residential development to proceed prior to the construction of office. The applicant did file a Specific Design Plan (SDP-0804, certified 11/24/09) application that included over 966,500 square feet of office space; however, an office tenant(s) has not been secured. The modification of Condition 2 will provide the applicant flexibility to construct residential units to meet current market demand, similar to Condition 11 approved with CDP-9002-09.

(Rem. Exhibit 19; February 20, 2013, Rem. T. 64, 80)

(21) The witness also clarified that the subject property does not lie within the boundaries of the Subregion 4 Master Plan and Sectional Map Amendment, although it does include a portion of the Morgan Boulevard Largo Town Center Sector Plan. (February 27, 2013, Rem. T.5)

(22) Applicant notes that at least one (1) other property within the Largo Town Center, Parcel 1, and another nearby, Parcel D2, LLC, were allowed to amend their plans in a manner that allows them to use their best efforts in attracting commercial development. (February 20, 2013, Rem. T. 72-73; February 27, 2013, Rem. T. 9-12) The District Council’s original approval for the former Parcel I stated that there would be a minimum of 114,000 square feet of office/commercial uses and that no building permits for the residential uses could be issued prior to the issuance of building permits for the minimum office/commercial uses. (Exhibit 18) Later approvals noted “that the phasing of construction of the project should be modified, to accommodate continued construction of the project under current economic conditions affecting the real estate

market in Prince George's County...." (Exhibit 21(b), p. 3) The District Council also added the following condition:

The building permit for the construction of the mixed-use building containing only commercial uses shall be issued prior to or concurrent with the first building permit for the proposed residential structure.

Notwithstanding the foregoing, building permits may be issued for residential uses on the property, and such uses constructed, prior to the issuance of building permits for the mixed-use building containing only commercial uses provided that the applicant first submits to the Prince George's County Planning Board the following: (a) a report from a licensed commercial real estate broker active in commercial leasing in Prince George's County stating that the office uses have been professionally marketed to potential tenants for at least 18 months; and (b) a statement from the applicant that the result of such effort has been insufficient to produce a level of pre-leasing required to finance the construction of the office uses under standard commercial terms and conditions....

(Rem. Exhibit 21 (b), p. 5)

(23) The Comprehensive Design Plan approval ("CDP-9002-09") for Parcel D2, LLC similarly added the less-stringent, requirement:

No building permits shall be issued for any residential uses on the property prior to the issuance of building permits for a minimum of 115,000 square feet of office and supporting retail uses and commencement of the building foundation for the main office building structure. A certification prepared by a qualified engineer shall be used to provide verification that the office building has commenced construction. It must include, at a minimum, photographs of portions of the office building foundation.

Notwithstanding the foregoing, building permits may be issued for residential uses on the property, and such uses constructed, prior to the issuance of building permits for the office and supporting retail uses provided that the applicant first submits to the Prince George's County Planning Board the following: (a) a report from a licensed commercial real estate broker active in commercial leasing in Prince George's County stating that the office uses have been professionally marketed to potential tenants for at least 18 months; and (b) a statement from the applicant that the result of such effort has been insufficient to produce a level of pre-leasing required to finance the construction of the office uses under standard commercial terms and conditions....

The applicant, its successors and assigns, hereby irrevocably and in perpetuity authorizes and empowers the Office of People's Zoning Counsel, in accordance with Section 27-139.01(b)& (d) of the Prince George's County Zoning Ordinance, to appear in any court having jurisdiction, and on behalf of the applicant, its successors and assigns, to confess judgment against the applicant, its successors and/or assigns to temporarily and permanently enjoin and prohibit the construction of any residential dwellings on the portion of the property designated for office/commercial on the approved Comprehensive Design Plan....

This condition shall modify Condition 3 of the Basic Plan A-9280/08 and shall be carried forward to all subsequent Comprehensive Design Plans, Preliminary Plans and Specific Design Plans for the subject property.

(Rem. Exhibit 21(a), pp. 5-6)⁴ This approval also contained the following language: “The District Council hereby restates, for clarity and emphasis, condition 24 of the Basic Plan, applicable to this and all other comprehensive and specific design plans for the properties covered by the Basic plan: The applicant has proffered and the District Council requires, the establishment of a condominium regime, with condominium quality in all structures, for the multifamily buildings.” (Rem. Exhibit 21(a), p. 7)

(24) Applicant believes that conditions 4 and 5 of the District Council’s Order of Remand are matters to be addressed at the time of Comprehensive Design Plan (“CDP”) review. It, therefore, did not submit evidence on that issue.

Opposition’s Concerns

(25) The opposition’s primary argument was that the remand required Applicant to address all applicable issues, as if Applicant was back to square one in requesting the Basic Plan Amendment. (February 20, 2013, Rem. T.6; February 27, 2013 Rem. T. 25-27) The opposition was also opposed to the consideration of any proposed legislation or pending sector plan introduced into evidence by Applicant. (Rem Ex. 9, 10, 11, 12, 13, 14); (February 20, 2013, Rem T.7, 48)

(26) The primary area of contention is the lack of commercial development:

This particular property, the Largo Town Center, ... should be a comprehensive mixed-use development – urban development with retail, employment, and residential components. The interrelations between these various uses make the town center more than its parts.

As we have indicated over and over as various applications have been presented concerning the Town Center, without the commercial developments this is basically nothing more than a residential development because we haven’t seen any commercial development coming out of the ground. And the MAC properties subdivided had a number of parcels that were identified for commercial use. Parcel D was one of those parcels. There were other parcels that were identified that subsequently the density for the commercial development was transferred to Parcel D. This is the only piece left where the commercial development can go due to prior approvals, and they are all primarily residential uses with very limited retail at two of the other sites....

[T]he only development that is current at the Largo Town Center is residential development. We have not seen one square foot of any of the commercial development that was a part of the original approvals for these parcels.

The recommendations for land use ranges in the Largo sector plan ... are very appropriate and applicable for your review under metropolitan centers. It does say residential can have 15-60

4 Similar language was included in later approvals for the site and for former Parcel I. (Rem. Exhibits 21(b) and (c))

percent land use, but it also goes on and says employment should be 20-60 percent. And, again, we don't have any, it's zero. So, our position is that when you look at intent and what the general plan was attempting to accomplish that we should be looking at creating more opportunities for the employment and preserving the land so that we have those opportunities....

[T]he Largo Civic Association would submit that the application does not conform to the various plans as I've stated, and we would argue for denial of the application. If the application is granted, we would have no objection to including the language similar to [that] use[d] on the parcels near this facility or near this parcel....

(February 27, 2013 Rem T. 27-28, 33-34,38)

(27) Mr. Renninger also requested that no incremental density increases should be allowed until public benefit features are provided, noting that "not one, not one additional public benefit feature has been constructed." (February 27, 2013, Rem. T. 39-42)

Agency Comment

(28) A representative from the Technical Staff testified that staff is "still working" on the proposed Largo-Lottsford Sector Plan and had not yet presented it to the Planning Board. (February 20, 2013 Rem T.13) The witness clarified that the subject property is not within the boundaries of the Subregion 4 Master Plan. (February 20, 2013 Rem. T. 88) She did note, however, that the Central Avenue Metro Blue Line Corridor study which does mention the Largo Town Center area (never approved by the Planning Board or the District Council) has often been referred to as "the Subregion 4 plan for short." (February 20, 2013, Rem. T.84, 89)

APPLICABLE LAW

(1) The instant request does not increase land area or the densities/intensities for the overall area of the approved Basic Plan since the density cap is 1,935 dwellings and a maximum of 2.3 million square feet of office/retail space. However, since the District Council remanded the matter back to the Zoning Hearing Examiner it must be reviewed under the provisions of Section 27-195 (b) of the Zoning Ordinance governing an initial amendment of a basic plan. Section 27-195 (b) provides, in pertinent part, as follows:

(b) Criteria for approval.

(1) Prior to the approval of the application and the Basic Plan, the applicant shall demonstrate, to the satisfaction of the District Council, that the entire development meets the following criteria:

(A) The proposed Basic Plan shall either conform to:

(i) The specific recommendation of a General Plan map, Area Master Plan map; or urban renewal plan map; or the principles and guidelines of the plan text which address the design and physical development of the property, the public facilities necessary to serve the proposed development, and the impact which the development may have on the environment and surrounding properties; or

(ii) The principles and guidelines described in the Plan (including the text) with respect to land use, the number of dwelling units, intensity of nonresidential buildings, and the location of land uses.

(B) The economic analysis submitted for a proposed retail commercial area adequately justifies an area of the size and scope shown on the Basic Plan;

(C) Transportation facilities (including streets and public transit) (i) which are existing, (ii) which are under construction, or (iii) for which one hundred percent (100%) of the construction funds are allocated within the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or will be provided by the applicant, will be adequate to carry the anticipated traffic generated by the development based on the maximum proposed density. The uses proposed will not generate traffic which would lower the level of service anticipated by the land use and circulation systems shown on the approved General or Area Master Plans, or urban renewal plans;

(D) Other existing or planned private and public facilities which are existing, under construction, or for which construction funds are contained in the first six (6) years of the adopted County Capital Improvement Program (such as schools, recreation areas, water and sewerage systems, libraries, and fire stations) will be adequate for the uses proposed;

(E) Environmental relationships reflect compatibility between the proposed general land use types, or if identified, the specific land use types, and surrounding land uses, so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District.

(2) Notwithstanding subparagraphs (C) and (D), above, where the application anticipates a construction schedule of more than six (6) years (Section 27-179), public facilities (existing or scheduled for construction within the first six (6) years) will be adequate to serve the development proposed to occur within the first six (6) years. The Council shall also find that public facilities probably will be adequately supplied for the remainder of the project. In considering the probability of future public facilities construction, the Council may consider such things as existing plans for construction, budgetary constraints on providing public facilities, the public interest and public need for the particular development, the relationship of the development to public transportation, or any other matter that indicates that public or private funds will likely be expended for the necessary facilities.

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(2) The Application must also satisfy the purposes of the M-A-C Zone found in Section 27-489 of the Zoning Ordinance:

The purposes of the M-A-C Zone, are to be found in Section 27-489 of the Zoning Ordinances.

(1) Establish (in the public Interest) a plan implementation zone, in which (among other things):

(A) Permissible residential density and building intensity are dependent on providing public benefit features and related density/intensity increment factors; and

(B) The location of the zone must be in accordance with the adopted and approved General Plan, Master Plan, Sector Plan, public urban renewal plan, or Sectional Map Amendment Zoning Change;

(2) Establish regulations through which adopted and approved public plans and policies (such as the General Plan, Master Plans, Sector Plans, public urban renewal plans, and Sectional Map Amendment Zoning Changes for Major Metro Centers, New Town Centers, and Corridor City Centers) can serve as the criteria for judging individuals physical development proposals;

(3) Assure the compatibility of proposed land uses with existing and proposed surrounding land uses, and existing and proposed public facilities and services, so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District; and

(4) Encourage and stimulate balanced land development.

CONCLUSIONS OF LAW

(1) This request to amend the Basic Plan for Largo Town Center must be found to comport with the above referenced requirements of the Zoning Ordinance. The Zoning Hearing Examiner and the District Council previously found that the Application satisfied all applicable provisions of the Zoning Ordinance as well as the relevant plans. If there were no additional facts presented at remand to counter the earlier findings it would be tantamount to an “impermissible change of mind” for me to now find otherwise. (See, Gerachis v. Montgomery County Board of Appeals, 261 Md. 153, 156 (1971) – “We have said in the past that an ‘about face’ by an administrative board, without any material change in facts and conditions upon which the earlier decisions were based ... would constitute an impermissible change of mind demonstrating ‘arbitrary, unreasonable and capricious conduct amounting to a denial of due process of law.’ (Citations omitted))

(2) Assuming, arguendo, that the request should be reviewed without reference to these prior approvals the record reveals that the Application will meet the applicable requirements of the Zoning Ordinance once the conditions addressed below are met. The proposal meets the 2002 General Plan’s vision for Metropolitan Centers and principles of Transit Oriented Design (“TOD”) programs since it includes mixed uses and will be developed in accordance with TOD guidelines. The Applicant will also satisfy the requirements of the 2004 Sector Plan for the Morgan Boulevard and Largo Town Center Metro Areas in that it *will* construct the anticipated commercial/office square footage. However, it requests leeway in constructing the residential portion at an earlier stage, and permission to lease the residential dwellings. This request, again, furthers recognized TOD principles. All public facilities will remain adequate to serve the requested use. While the Sector Plan did note that development on Parcel D should be in accord with the approved CDP, the CDP approval included language that recognized that there could be a transfer of additional development to Parcel D at some future time. While the Preliminary Largo Town Center Sector Plan is not binding at this point, it is interesting to note that some of its discussion supports the instant request

since the Plan recognizes that retail and office use is stagnant in the area, and residential use is needed. Accordingly, Applicant has demonstrated conformance with the requirements for amending the Basic Plan as contained in Section 27-197(c) and 27-195(b) of the Zoning Ordinance.

(3) As noted *supra*, the request should not vitiate the District Council's prior finding that the use meets the purposes of the M-A-C Zone. Assuming, arguendo, that the requested amendment requires a review for compliance with the purposes it is clear that the instant Application satisfies the purposes of the M-A-C Zone since:

- The residential density and building intensity will depend upon Applicant providing public benefit features and related density/intensity increment factors, as noted in Section 27-491 of the Zoning Ordinance. Moreover staff has also opined that the requested 350 dwelling units "on Block D will not exceed the overall approved [Largo Town Center] dwelling unit capital of 1,935 dwellings." (Ex. 15)
- The 1978 Sectional Map Amendment for the Largo-Lottsford area placed the property within the M-A-C Zone. (Ex. 15, p. 3) It is presumed, therefore, that the purposes of said Zone have been met.
- The requested development will remain compatible with the surrounding Metro station, multifamily dwellings, townhouses and offices (existing and proposed).
- The request will still require a mix of residential, employment, and commercial development. Accordingly, balanced land development will be achieved.

(4) Applicant has requested that Condition 2 in the original approval be revised, arguing that it is beyond the District Council's purview in Section 27-195 of the Zoning Ordinance to require a condominium regime for the residential portion of the Application, and for it to require a percentage of residential units to be built before the commercial portion is constructed. I do not believe the condition needs to be revised on these grounds since Section 27-132 of the Zoning Ordinance expressly provides that "[f]or any appeal or review of a decision made by the Zoning Hearing Examiner or the Planning Board, the Council may, based on the record, approve, approve with conditions, remand or deny the application." Thus, conditions may be imposed as long as they are reasonable. It is reasonable to presume that those who purchase in an area are more likely to invest in the area. It is also reasonable to tie the residential permits to the commercial permits since this will more likely result in a "mixed use" environment.

(5) I nonetheless recommend that the Council revise portions of the former Condition 2 because it has amended a similar condition imposed on another site within the Largo Town Center and failure to treat similar parcels similarly would be arbitrary and capricious on the Council's part. See, Aspen Hill Venture v. Montgomery County Council, 265 Md. 303, 289 A.2d 303 (1972) I believe that Applicant's proposed

language in 2(c) is unnecessary surplusage. Clearly if the District Council determines to approve the request upon remand its decision will modify the prior approval. Similarly, any conditions of approval will be carried forward to the Comprehensive Design Plan, etc., unless modified by the District Council. I also believe that the deletion of the former Condition 2(a) concerning the condominium regime is premature. The District Council did not delete this language when it considered the former Parcel I (the other site within the Largo Town Center referenced above); indeed, it specifically noted that the condominium regime should continue. Moreover, Applicant has not shown that a condominium regime will not work at the site, other than to note that other property nearby had to resort to leasing its units.

RECOMMENDATION

It is recommended that this request be Approved, subject to the following conditions:

1. The basic plan shall be revised and submitted to the Zoning Hearing Examiner for approval, prior to Comprehensive Design Plan review, to include the following:
 - a. The original parcels and approved land uses; and
 - b. Land use quantities and densities that reflect what was allowed in the most recently approved amendments.
2. Residential construction and use shall be limited as follows:
 - a. To the greatest extent possible, all residential units shall be marketed and sold as condominium units, and all shall be subject to a single condominium regime.
 - b. No building permits shall be issued for any residential uses on the property prior to the issuance of building permits for a minimum of 500,000 square feet of office and any supporting retail uses south of or along Grand Boulevard.

Notwithstanding the foregoing, building permits may be issued for residential multifamily uses on the property north of Grand Boulevard, and such uses constructed, prior to the issuance of building permits for the 500,000 square feet of office and any supporting retail uses located south of Grand Boulevard provided that the applicant first submits to the Prince George's County Planning Board the following: (a) a statement or report from a licensed commercial real estate broker

active in commercial leasing in Prince George's County stating that the office component has been professionally marketed to potential tenants; and (b) a statement from the applicant that the result of such effort has been insufficient to produce a level of pre-leasing required to finance the construction of the office component under standard commercial terms and conditions.

No more than 350 residential units are approved to be constructed on the property with this Basic Plan approval. The portion of the property shown on the south side of the grand Boulevard on this Basic Plan labeled "office/commercial" shall be precluded from any residential development under this particular Basic Plan approval.

- c. The Applicant, its successors and assigns, hereby irrevocably and in perpetuity authorizes and empowers the Office of People's Zoning Counsel, in accordance with Section 27-139.01(b) & (d) of the Prince George's County Zoning Ordinance, to appear in any court having jurisdiction, and on behalf of the applicant, its successors and assigns, to confess judgment against the applicant, its successors and/or assigns to temporarily and permanently enjoin and prohibit the construction of any residential dwellings on the portion of the property designated for "office" under this particular Basic Plan.

The Applicant, its successors and assigns hereby consents to such permanent injunction and (a) agrees to the entry of a Consent Judgment to enforce the injunction, (b) agrees to pay all costs of any such action for injunctive relief, including attorneys fees incurred by the County in its enforcement of this restriction on residential development, and (c) expressly waives any and all legal defenses to the entry of an injunction and/or Consent Judgment that precludes residential construction on the portion of the property under this particular Basic Plan designated for "office".

The Applicant shall execute a Consent Judgment prior to the Planning Board's consideration of any Specific Designs (sic) Plans concerning the residential uses. The Office of People's Zoning Counsel shall retain the signed consent Judgment in escrow. A copy shall be provided to the M-NCPPC. The Office of People's Zoning Counsel shall file the Consent Judgment in a court of law only if the applicant, its successors and/or assigns, attempts to violate the conditions in this specifically approved Basic Plan against residential uses on the south side of the Grand Boulevard.

3. At the time of Comprehensive Design Plan review, the Applicant shall:
 - a. Submit design guidelines that establish design and review parameters, including design, material, and color, for architecture, signage, and landscaping for the entire site. The design guidelines shall also address the streetscape design along both Lottsford Road and Harry S. Truman Drive and the streetscape and alignment of the proposed Grand Boulevard.
 - b. Provide a site-wide pedestrian circulation plan, including the location of a bus stop and its supporting pedestrian path network, and the location and design of pedestrian crossings and other protective measures that protect the pedestrian from vehicular traffic.
 - c. Propose buffering and screening design, specifically relating the residential development to internal and external uses, the recreational facility package, and noise mitigation measures for the proposed residential use.
 - d. Provide additional space between the proposed office building and the vertical mixed-use middle section, for improved streetscape design, including additional landscaping and service-related amenities.
 - e. State the timing of completion of the proposed recreation facilities package.
 - f. Make design of the site consistent with that described in the Concept Plan. (Exhibits 9 (a) and 9 (b)).
4. Prior to the submission of the Comprehensive Design Plan application, a revised Forest Stand Delineation text and plan shall be submitted for Parcels 1A and 1B, as part of a Natural Resources Inventory (NRI) application. A staff signed NRI shall be included in the Comprehensive Design Plan application package.
5. A Type 1 Tree Conservation Plan shall be submitted with every application for a preliminary plan of subdivision, Comprehensive Design Plan, Conceptual Site Plan, or Special Exception. A Type II Tree Conservation Plan shall be submitted with all applications for Specific Design Plan, Detailed Site Plan, or grading permits.
6. All subsequent plan submittals shall reflect the location of the unmitigated 65 dBA Ldn noise contour lines for Lottsford Road on this property, based on a phase I noise study.

7. The Preliminary Plan of subdivision submittal shall include a Phase II Noise Study that generally reflects the proposed mitigation measures, to ensure that all exterior activity areas and interior residential areas meet or exceed the State noise standards for noise impacts from Lottsford Road.
8. The Specific Design Plan shall include a Phase II Noise Study for noise impacts on Lottsford Road, and specific mitigation measures that will ensure compliance with State noise standards for exterior and interior residential areas.
9. The subject property shall have a Phase I archeological investigation conducted to identify any archeological sites that may be significant to the history of human settlement in Prince George's County, including the possible existence of slave quarters and graves, as well as archeological evidence of the presence of Native American peoples. Potential archeological sites must be considered in the review of development applications, and potential means for preservation of these resources should be considered.
10. A qualified archaeologist must conduct all investigations and follow *The Standards and Guidelines for Archeological Investigations in Maryland* (Shaffer and Cole, 1994) and the Planning Board *Guidelines for Archeological Review* (May 2005). Report preparation shall follow the Maryland Historical Trust guidelines and the *American Antiquity* or *Society of Historical Archaeology* style guide.
11. Archeological excavations shall be spaced along a regular 15-meter or 50-foot grid, and excavations should be clearly identified on a map to be submitted as part of the report. These investigations must be presented in a draft report following the same guidelines. After approval of the draft report, four copies of the final report must be submitted to Maryland National Capital Park & Planning Commission ("M-NCPPC") Historic Preservation staff. M-NCPPC must concur with the final Phase I report and recommendations, before signature approval.
12. The Phase 1 archeological field investigations should also include a pedestrian survey, to locate attributes like surface depressions, fieldstones, and vegetation common in burial/cemetery environs.
13. After filing the archeological report with M-NCPPC Historic Preservation, and before Planning Board approval of a preliminary plan of subdivision, the Applicant shall provide a plan for (i) evaluating the resource at Phase II level, or (ii) avoiding and preserving the resource in place, if it is determined that potentially significant archeological resources exist in the project area.

14. All conditions of approval and CDP considerations listed in the previously approved Basic Plan Amendments and subsequent Preliminary Plan and Comprehensive Design Plan approvals will remain in effect, unless otherwise modified herein.