

R E S O L U T I O N

WHEREAS, SJM Partners are the owners of a 3.15-acre parcel of land known as Parcel A, located on Tax Map 33 in Grid D-1, said property being in the 21st Election District of Prince George's County, Maryland, and being zoned M-U-I/DDOZ; and

WHEREAS, on August 28, 2008, SJM Partners filed an application for approval of a Preliminary Plan of Subdivision (Staff Exhibit #1) for 2 parcels; and

WHEREAS, the application for approval of the aforesaid Preliminary Plan of Subdivision, also known as Preliminary Plan 4-08033 for University View (Overlook) was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on November 13, 2008, for its review and action in accordance with Article 28, Section 7-116, Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application with conditions; and

WHEREAS, on November 13, 2008, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board APPROVED Preliminary Plan of Subdivision 4-08033, University View (Overlook), including a Variation from Section 24-129 for Parcels B and C with the following conditions:

1. Prior to signature approval of the Preliminary Plan of Subdivision 4-08033, the following technical corrections shall be made:
 - a. Remove general note 20.
 - b. Provide note that access to US 1 from Parcel C is authorized pursuant to Section 24-128(b)(9) of the Subdivision Regulation, across Parcel B.
2. Development of this subdivision should be in conformance with the approved Type I Tree Conservation Plan (TCPI/025/02) and the approved Type II Tree Conservation Plan (TCPII/66/02).
3. Development of this site shall be in conformance with the Stormwater Management Concept Plan, #11736-2002-01 and any subsequent revisions.

4. Any residential development of the subject property above that approved herein may require the approval of a new preliminary plan of subdivision prior to the approval of building permits for the residential additions.
5. The final plat shall reflect a Public Hiker-biker trail easement along the north property line consistent with the previously approved record plat (REP 198@85).
6. Development of this property shall conform to the approved Detailed Site Plan DSP-02027/03 and any subsequent revisions.
7. Prior to signature approval of the preliminary plan, the applicant and the applicant's heirs, successors, and/or assignees shall provide an indemnification agreement to DPR for both parcels, holding M-NCPPC harmless from any damages or losses caused by the stream erosion on adjacent parkland or movement of the stream overtime to the subject property.
8. In accordance with Section 27-548.43(b)(2) of the Zoning Ordinance and as modified herein, prior to final plat approval, a disclosure clause shall be approved for placement on the final plats, and for inclusion in the deeds, and rental agreements signed subsequent to the approval of this preliminary plan of subdivision for all properties that notifies prospective purchasers and/or tenants that the property has been identified as within approximately one mile of a general aviation airport. The disclosure clause shall include the cautionary language from the General Aviation Airport Environment Disclosure Notice.
9. The applicant and the applicant's heirs, successors, and/or assignees, shall provide adequate, private recreational facilities in accordance with the standards outlined in the *Park and Recreation Facilities Guidelines*.
10. The final plat shall carry a note that Parcels B and C are subject to a cross access and parking easement. The access easement for Parcel C is authorized pursuant to Section 24-128(b)(9) of the Subdivision Regulations.
11. The total development within the subject property (Parcel B and C) shall be limited to 506 multifamily student housing residential units, and 11,600 square feet of commercial retail space, or different uses generating no more than 77 AM and 211 PM peak-hour trips, respectively.
12. The final plat shall provide a note that direct access to Parcel C is denied and that access to Parcel C is authorized over Parcel B pursuant to Section 24-128(b)(9) of the Subdivision Regulations.
13. Prior to the issuance of any building permits for Parcel C the following improvements shall (a) have full financial assurance, (b) has been permitted for construction by the SHA's access permit process, and (c) have an agreed-upon timetable for construction with the City and SHA:
 - a. Reconstruction of the northern access driveway and realignment of Berwyn House Road to and from a new four-legged intersection with US 1.

- b. Provision of a traffic signal and cross walks across US 1 when warranted by SHA at the Berwyn House Road/the realigned northern driveway intersection with US 1 along with any other improvements required by SHA.
 - c. Removal of existing traffic signal at the intersection of US 1 with Navahoe Street, if deemed necessary by the SHA, and conversion of this access roadway to right-in/right-out only.
14. Prior to the approval of the final plat the applicant shall supplement the detailed site plan file (DSP-02027/03) with a revised site plan which reflects Parcels B and C. This submittal is for informational purposes and is not required as a formal revision to the DSP. Any subsequent revisions to the DSP shall reflect the new parcel descriptions.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

- 1. The subdivision, as modified, meets the legal requirements of Subtitles 24 and 27 of the Prince George's County Code and of Article 28, Annotated Code of Maryland.
- 2. The property is located on the west side of Baltimore Avenue (US 1), across from Berwyn House Road and Navahoe Street.
- 3. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development.

	EXISTING	PROPOSED
Zone	M-U-I/D-D-O-Z	M-U-I/D-D-O-Z
Use(s)	Mixed Use	Mixed Use
Acreage	3.15	3.15
Parcels	1	2
Multifamily Dwelling Units:	352	506 total (addition of 154 units)
Commercial/retail:	0	11,600 GFA
Public Safety Mitigation Fee		No

- 4. **Environmental**—The Environmental Planning Section has reviewed Preliminary Plan of Subdivision, 4-08033, for University View, Parcels A and B, stamped as received on October 2, 2008. Environmental Planning Section recommends approval of Preliminary of Subdivision 4-08033 subject to a condition.

Background

The Environmental Planning Section has previously reviewed this site with Preliminary Plan of Subdivision, 4-02031, Type I Tree Conservation Plan, TCPI/025/02, Detailed Site Plan DSP-02027, and Type II Tree Conservation Plan, TCPII/66/02. A variation to Section 24-130 was approved with Preliminary Plan 4-02031 to disturb the 100-year floodplain on site. The adjustment to the 100-year floodplain has occurred on the site in accordance with that approved variation. Also approved with the previous preliminary plan was a variation to construct two buildings on site within 25 feet of the 100-year floodplain. However, the second structure on proposed Parcel C has not been constructed. Therefore, the applicant filed a variation to Section 24-129 for the required 25-foot building setback from the 100-year floodplain, as discussed further.

Site Description

The 3.15-acre property is located on the west side of Baltimore Avenue (US 1) across from Berwyn House Road and Navahoe Street. The site is currently developed with a multifamily residential building, and drains directly into Paint Branch in the Anacostia River watershed. The entire site is located within the 100-year floodplain of Paint Branch. The predominant soil types found to occur on this property according to the *Prince George's County Soil Survey* are Hatboro and Woodstown. These soil series generally exhibit moderate limitations to development due to seasonally high water tables, impeded drainage, poor stability, and flood hazard. No Marlboro clay has been identified on this site. There are streams, non-tidal wetlands, floodplain, and Waters of the U.S. associated with the site. Baltimore Avenue is currently a major collector roadway generally not regulated for noise. According to information obtained from the Maryland Department of Natural Resources Natural Heritage Program, there are no rare, threatened, or endangered species found to occur in the vicinity of this property. There are no designated scenic and historic roads adjacent to this property. This property is located in the Developed Tier as delineated on the adopted General Plan.

Master Plan Conformance

The subject site is located in Area 3A of the College Park US 1 Corridor Sector Plan. The environmental issues related to master plan conformance were addressed in previous applications for this site. No further information regarding master plan conformance is necessary with this application.

Countywide Green Infrastructure Plan Conformance

The site is within the designated network of the *Approved Countywide Green Infrastructure Plan* and contains a large area designated as a Regulated Area. The Regulated Area is associated with Paint Branch. The site is currently developed with student housing units on the rear of the property. The proposed development associated with this application is located outside the limits of the designated green infrastructure network.

Environmental Review

The site has a signed Natural Resources Inventory (NRI/050/05). The NRI shows all of the required information. The information is correctly shown on the submitted preliminary plan and approved Type I tree conservation plan. No further revisions are required with regard to the existing conditions of the site.

The site is subject to the Prince George's County Woodland Conservation and Tree Preservation Ordinance because the site has an approved Type I and Type II Tree Conservation Plans (TCPI/025/02 and TCPII/066/02). The proposed subdivision was compared with the approved TCPI and TCPII and found to be in conformance with those plans. No additional disturbance outside the currently approved limits of disturbance is proposed. Development of this subdivision should be in conformance with the approved Type I Tree Conservation Plan (TCPI/025/02).

According to the *Prince George's County Soil Survey*, the soils found to occur on the site are in the Hatboro and Woodstown series. These soil series generally exhibit moderate limitations to development due to seasonally high water table, impeded drainage, poor stability, and flood hazard. This information is provided for the applicant's benefit. No further action is needed as it relates to this preliminary plan review. A soils report may be required by the county during the permit review process. If basements are proposed then a soils report will be required by the county pursuant to CB-94-2004.

A Stormwater Management Concept Approval letter and plan (11736-2002-01), were included in the submittal package. Stormwater management is being provided through underground storage and bioretention. As part of a previous application for this site, stream restoration and enhancement of the adjacent Paint Branch were provided, in addition to fees for a federally funded stream restoration project.

Water and Sewer Categories

The 2001 Water and Sewer Plan, as amended, designates this property in Water and Sewer service Category 3 as of July 28 2008, and the site will therefore be served by public systems.

5. **Community Planning**—This application is not inconsistent with the 2002 General Plan Development Pattern policies for Corridors in the Developed Tier. This application conforms to the land-use recommendations of the 2002 Approved College Park US 1 Corridor Sector Plan and Sectional Map Amendment. This application is located under the traffic pattern for a small general aviation airport (College Park Airport) and is subject to Aviation Policy Area regulations of the Zoning Ordinance. In particular, the applicant is subject to height and purchaser notification requirements as discussed further in the Aviation Policy Area section of this report.

General Plan, Master Plan and SMA

The 2002 General Plan locates this property in the Developed Tier, and is in a designated

Corridor (Baltimore Avenue US 1). The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use pedestrian-oriented, medium-to high-density neighborhoods. The vision for Corridors is mixed residential and nonresidential uses at moderate-to high densities and intensities, with a strong emphasis on transit-oriented development. This development should occur at local centers and other appropriate nodes within one-quarter mile of major intersections or transit stops along the corridor.

This property is located within the 2002 *Approved College Park US 1 Corridor Sector Plan and Sectional Map Amendment*, in Planning Area 66, in Subarea 3a (Main Street). The subject property is located in Subarea 3a. The vision for Subarea 3a “is for redevelopment to emphasize office development in proximity to the university. Pedestrian bridges will provide connections to the university over Paint Branch. A rear service road will improve access and circulation throughout this area.” However, due to the close proximity of the approved development to the Paint Branch a service road can not be accommodated.

For Subarea 3 (in general), the sector plan recommends “a neighborhood main street district featuring a compact mix of retail shopping, restaurants, and offices. There are opportunities for retail infill development to meet the demand for office and high-tech uses in close proximity to the research and engineering facilities of the university.” The primary building entrance should be provided on the street to facilitate pedestrian connections. Vertical mixed-use buildings are encouraged. Amenities such as public plazas and urban open spaces should be integrated. Parking should be located in lots sited to the side or rear of properties. (pp. 39 and 160) These recommendations were addressed in the approval of Detailed Site Plan DSP-02027/03. Development should be in conformance with that approved plan and any subsequent revisions.

The approved land use map (p. 33) reflects retail/commercial, office, and multifamily land uses on the subject property, which is included in the Development District Overlay Zone. The approved development conforms to the master plan land use recommendations.

The 2002 *Approved College Park US 1 Corridor Sector Plan and Sectional Map Amendment* rezoned the property from the C-S-C Zone to the M-U-I Zone. The SMA also placed the property in the Development District Overlay Zone (DDOZ), which requires site plan review.

6. **Parks and Recreation**—The review of the Preliminary Plan of Subdivision 4-08033 is in consideration of the recommendations of the previously approved Preliminary Plan of Subdivision 4-02031 and Detailed Site Plan DSP-02027/03, the Sector Plan and Sectional Map Amendment for College Park, US 1 Corridor, the Land Preservation and Recreational Program for Prince George’s County, current subdivision regulations and existing conditions in the vicinity of the proposed development.

Parcel B contains an existing residential building which is exempt from mandatory dedication requirements. Parcel C is subject to Mandatory Dedication (24-134) and is proposed with a residential/retail building including 153 units of student housing and 11,600 square feet of retail. Using current occupancy statistics for multifamily dwelling units, the development will provide

approximately 444 new residents, for the 153 additional dwelling units.

Plans for the building on Parcel C, residential/retail building, were approved by the Planning Board as part of Detailed Site Plan DSP-02027/03. At the time of the approval it was determined that the Mandatory Dedication requirements for parkland were met through the provision of on-site private recreation facilities. The recreation package for this building consists of a fitness center, study lounges and meeting areas for the residents. Findings from Detailed Site Plan DSP-02027/03 (page 6, number 7) state: "The proposed recreational facility package is above the minimum requirements for private on-site facilities. The applicant's proposal for on-site private recreational facilities fulfills the requirement for Section 24-134 of the Subdivision Regulations.

Paint Branch Stream Valley

This property is located entirely in the 100-year floodplain that is between US 1 and the Paint Branch Stream Valley. M-NCPPC is the property owner for most of the Paint Branch including parcels directly north and south of this subdivision. Due to the rapid and extensive development of this portion of US 1, DPR staff is concerned about further degradation of the already fragile stream valley and liability for any damages to the subject property resulting from its movement and/or erosion.

DPR has recommended that the Planning Board require indemnification agreements holding M-NCPPC harmless for any movement or erosion of the Paint Branch for several projects along the US-1 Corridor. These projects include detail site plans for Northgate (DSP-05026), Starview (DSP-08010), and Raymond Towers (DSP-06037). The original Preliminary Plan of Subdivision for University View 4-02031, preceded these cases and there was no indemnification required at that time. At this time that an indemnification agreement is appropriate and is required as a condition of this preliminary plan for both parcels.

College Park Airport

In addition, M-NCPPC operates and maintains the College Park Airport both as an operating airport and as an historic site. The College Park Airport is listed in the National Register of Historic Places and is the world's oldest continuously operating airport, founded by the Wright Brothers in 1909. This site is located in proximity to the air traffic/flight pattern for the College Park Airport, approximately 4,000 feet from the end of runway. The applicant should make future residents of the building aware of their location near the airport, as is currently required by the APA legislation. Legislation that was not enacted at the time of approval of the original Preliminary Plan of Subdivision (4-02031).

7. **Trails**—This review is primarily to enhance the project in terms of bicycle and pedestrian connections. The site has been improved with streetscape amenities such as street trees and sidewalks. The site is adjacent to the Paint Branch Stream Valley Park, which is an important amenity and transportation connection between US 1 and the University of Maryland. There is a public use easement on the property for access to the bridge and trail in the stream-valley park

along the northern property line. Sidewalks in the vicinity of the site are inadequate, narrow, and often interrupted by poles, signs and other obstructions. The subject site's sidewalks have been improved, and the building that is proposed will fit into the existing infrastructure. Additional connections to the sidewalk along US 1 will enhance this proposal. One sidewalk currently dead-ends on the circle drop off area.

8. **Transportation**—The proposed preliminary plan is to subdivide the property into two parcels and acknowledge changes to the development levels approved for the site with Detail Site Plan DSP-02027/03. The findings outlined below are with regard to the approved overall development levels, maximum allowable AM and PM trip caps and site access configuration with US 1.

The sector plan identifies the area in which the subject property is located as Subarea 3b. The property is located at the northwest quadrant of the intersection of Baltimore Avenue, US 1 and Navahoe Street. Parcel B is improved with an existing multifamily residential building with 352-apartment units (159 one-bedroom and 193 two-bedrooms) and a multilevel parking garage with 438 parking spaces (DSP-02027). The development on Parcel C will be limited to the construction of 154 multifamily residential units, and 11,600 Gross Square Feet (GSF) of commercial retail space. The proposed 154 multifamily residential units (44 one-bedroom and 110 two-bedrooms) replaced once approved 171,494 square feet of commercial retail/office space, as part of the original Preliminary Plan of Subdivision (4-02031), and the companion application Detailed Site Plan (DSP-02027) in July 2002.

The proposed preliminary plan of subdivision does not propose any changes to the approved site's access configuration limiting the site access to a main access roadway to be constructed opposite of the realigned Berwyn Road, and the existing southern access driveway located opposite of Navahoe Street. As part of the planned realignment of Berwyn Road and northern access driveway, the southern access will be converted to a right-in/right-out driveway. With no recommended changes to the approved access for the subject site, access to the proposed Parcel C is limited to the existing two access points, currently serving the existing development, on the proposed Parcel B. Access to Parcel C will be via an access easement authorized pursuant to Section 24-128(b)(9) of the Subdivision Regulation to address a potentially hazardous situation if additional access were granted to US 1 from Parcel C. Finally, the submitted plan correctly shows the existing dedication of 48.8 feet measured from the existing US 1 centerline along the properties frontage, which is deemed adequate by the State Highway Administration (SHA) and previously dedicated pursuant to record plat REP 198@85 (4-02031).

In a prepared traffic impact study submitted for review on April 3, 2008, and for the DSP-02027/03, it was concluded that the proposed development of 154 multifamily residential units, and 11,600 GSF commercial retail plus the existing 352 multifamily residential units generate significantly less vehicles trips than the previously approved figures of 633 AM and 844 PM peak-hour vehicle trips used in determining the original adequacy findings made as part of the approval of the Preliminary Plan of Subdivision (4-02031) and application Detailed Site Plan (DSP-02027). Staff recommends that the record plat contain a plat note that will restrict the amount of development consistent with the development proposed with this application and

previously approved with DSP-02023/03.

Adequate transportation facilities will exist to serve the proposed subdivision as required under Section 24-124 of the Prince George's County Code.

9. **Schools**—The Special Projects Section has reviewed this preliminary plan for impact on school facilities in accordance with Section 24-122.02 of the Subdivision Resolutions and CR-23-2003 and concluded the following:

Impact on Affected Public School Clusters

Affected School Clusters #	Elementary School Cluster 1	Middle School Cluster 1	High School Cluster 1
Dwelling Units	506 DU	506 DU	506 DU
Pupil Yield Factor	.24	.06	.12
Subdivision Enrollment	121.44	30.36	60.72
Actual Enrollment	5,983	1,544	4,045
Completion Enrollment	64.32	16.62	33.24
Cumulative Enrollment	1,081.44	270.36	540.72
Total Enrollment	7,250.2	1,861.34	4,679.68
State Rated Capacity	5,646	1,759	4,123
Percent Capacity	128.41%	105.81%	113.5%

Source: Prince George's County Planning Department, M-NCPPC, July 2008

County Council bill CB-31-2003 established a school facilities surcharge in the amounts of: \$7,000 per dwelling if a building is located between I-495 and the District of Columbia; \$7,000 per dwelling if the building is included within a basic plan or conceptual site plan that abuts an existing or planned mass transit rail station site operated by the Washington Metropolitan Area Transit Authority (WMATA); or \$12,000 per dwelling for all other buildings. CB-31-2003 allows for these surcharges to be adjusted for inflation and the current amounts are \$7,870 and \$13,493 to be paid at the time of issuance of each building permit.

The school surcharge may be used for the construction of additional or expanded school facilities and renovations to existing school buildings or other systemic changes. The student housing proposed with the DSP application is exempt from the school surcharge.

The Special Projects Section finds that this project meets the adequate public facilities policies for

school facilities contained in Section 24-122.02, CB-31-2003 and CR-23-2003.

10. **Fire and Rescue**—The Special Projects Section has reviewed this subdivision plan for adequacy of fire and rescue services in accordance with Section 24-122.01(a)(2), Section 24-122.01(d) and Section 24-122.01(e)(1)(B)-(E) of the Subdivision Regulation.

Fire and Rescue Findings—Commercial

The Special Projects Section has reviewed this subdivision plan for adequacy of fire and rescue services in accordance with Section 24-122.01(d) and Section 24-122.01(e)(1)(B)-(E) of the Subdivision Regulation.

The existing engine service at College Park Fire/EMS Station, Company 12, located at 8115 Baltimore Avenue, has a service travel time of 1 minute, which is within the 3.25-minute travel time guideline.

The existing ambulance service at College Park Fire/EMS Station, Company 12, located at 8115 Baltimore Avenue, has a service travel time of 1 minute, which is within the 4.25-minute travel time guideline.

The existing paramedic service at College Park Fire/EMS Station, Company 12, located at 8115 Baltimore Avenue, has a service travel time of 1 minute, which is within the 7.25-minute travel time guideline.

The existing ladder truck service at College Park Fire/EMS Station, Company 12, located at 8115 Baltimore Avenue, has a service travel time of 1 minute, which is within the 4.25-minute travel time guideline.

Fire and Rescue Findings—Residential

1. Special Projects staff have determined that this preliminary plan is within the required seven-minute response time for the first due fire station **College Park Company 12**, using the *Seven Minute Travel Times and Fire Station Locations Map* provided by the Prince George's County Fire/EMS Department.
 2. Pursuant to CR-69-2006, the Prince George's County Council and the County Executive suspended the provisions of Section 24-122.01(e)(1)(A) and (B) of the Subdivision Regulation regarding sworn fire and rescue personnel staffing levels.
 3. The Fire/EMS Chief has reported that the Fire/EMS Department has adequate equipment to meet the standards stated in CB-56-2005.
11. **Police Facilities**—The proposed development is within the service area for Police District I, in Hyattsville.

Commercial

The police facilities test is done on a countywide basis in accordance with the policies of the Planning Board. There is 267,660 square feet of space in all of the facilities used by the Prince George’s County Police Department and the latest population estimate is 825,520. Using the 141 square feet per 1000 residents, it calculates to 116,398 square feet of space for police. The current amount of space, 267,660 square feet is above the guideline.

Residential

- a. The response time standard is 10 minutes for emergency calls and 25 minutes for non-emergency calls. The times are based on a rolling average for the proceeding 12 months. The preliminary plan was accepted for processing by the Planning Department on May 16, 2008.

Reporting Cycle	Previous 12 Month Cycle	Emergency Calls	Nonemergency Calls
Acceptance Date August 28, 2008	May 2007–May 2008	9 minutes	1 1 minutes
Cycle 1			
Cycle 2			
Cycle 3			

- b. The response time standards of 10 minutes for emergency calls and 25 minutes for non-emergency calls were met May 31, 2008.
 - c. The Police Chief has reported that the Police Department has adequate equipment to meet the standards stated in CB-56-2005.
 - d. Pursuant to CR-69-2006, the Prince George’s County Council and the County Executive suspended the provisions of Section 24-122.01(e)(1)(A) and (B) regarding sworn police personnel staffing levels.
12. **Health Department**—The Health Department has no comment.
13. **Stormwater Management**—The Department of Public Works and Transportation (DPW&T), Office of Engineering, has determined that on-site stormwater management is required. A Stormwater Management Concept Plan, #11736-2002-01, has been approved with conditions to ensure that development of this site does not result in on-site or downstream flooding. Development must be in accordance with this approved plan.

14. **Historic**—Phase I archeological survey is not recommended on the 3.15-acre University View property located at 8204 Baltimore Avenue on the west side of Baltimore Avenue between Berwyn House Road and Navahoe Street in College Park, Maryland. A search of current and historic photographs, topographic and historic maps, and locations of currently known archeological sites indicates the probability of archeological sites within the subject property is low. Aerial photographs and topographic data indicate that the property was recently graded and has already been developed. However, the applicant should be aware that there are 15 Historic Sites, three Historic resources, and one County Historic District (Old Town College Park (66-021) located within a one-mile radius of the subject property. In addition, there are nine prehistoric, six historic, and two multicomponent archeological sites located within a one-mile radius of the subject property.

Moreover, Section 106 review may require archeological survey for state or federal agencies. Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of their undertakings on historic properties, to include archeological sites. This review is required when state or federal funds, or federal permits are required for a project.

15. **Additional Residential Conversion**—The subject property is zoned M-U-I/D-D-O-Z. While the subject application proposes a mixed-use development any additional residential development above that approved with this application could require a new preliminary plan of subdivision because there are different adequate public facility tests for residential development. There are considerations for recreational components and different impacts on the public facilities which should be evaluated.
16. **Variation to Section 24-129 of the Subdivision Regulation**—The floodplain regulations in Section 24-129(a)(5) require a 25-foot setback for residential uses from the 100-year floodplain. The project proposes residential uses. A variation request was received and evaluated for conformance with the requirements of Section 24-113. The building on proposed Parcel B has been constructed. However, the building on Parcel C has not been constructed, but does have DSP approval. The general footprint of the building on Parcel C was previously evaluated for a variation to 24-129 in conjunction with Preliminary Plan of Subdivision 4-02031 and approved. However, staff did request a variation as part of this application, and again recommends approval.

Section 24-113 of the Subdivision Regulations sets forth the required findings for approval of variation requests. Staff supports the variation request based on the following findings.

Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle; and further provided that the Planning Board shall not approve variations

unless it shall make findings based upon evidence presented to it in each specific case that:

The approval of the applicant's request does not have the effect of nullifying the intent and purpose of the Subdivision Regulations. In fact, strict compliance with the requirements of Section 24-130 could result in practical difficulties to the applicant that could result in the applicant not being able to develop this property.

a. The granting of the variation will not be detrimental to the public safety, health, welfare, or injurious to other property.

Comment: Provisions are being made by the applicant to address the proposed impacts on the 100-year floodplain that include compensatory storage, stream restoration, and low-impact development techniques. These plans should be reviewed by staff at the detailed site plan stage.

b. The conditions on which the variation is based are unique to the property for which the variation is sought and are not applicable generally to other properties.

Comment: The uniqueness of this property is that it is entirely within the 100-year floodplain. Other sites in the area are only partially impacted by the floodplain. The applicant's proposal is also unique in that the residential units will be above the floodplain. Flood damage to these units is not expected.

c. The variation does not constitute a violation of any other applicable law, ordinance, or regulation.

Comment: The approval of this variation does not appear to constitute a violation of any other applicable law, ordinance, or regulation. During subsequent phases of development, all applicable permits will be required, at the federal, state, and local levels. The property is in a designated development subarea of the newly adopted sector plan. While only a matter of public policy and not a matter of law, the sector plan intends for this land to be developed, with residential uses backing to the floodplain.

d. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations is carried out.

Comment: If this variation is not approved, development of the property with a residential use in accordance with the recommendations of the sector plan and applicable zoning would be impossible. Therefore, the denial of this variation would impose a particular hardship on the property owner.

17. **Aviation Policy Analysis Zone**—This application is located under the traffic pattern for a small general aviation airport (College Park Airport). This area is subject to Aviation Policy Area regulations adopted by CB-51-2002 (DR-2) as Sections 27-548.32 through 27-548.48 of the Zoning Ordinance. Specifically, the subject property is located in Aviation Policy Areas (APA) 4 and 6. The APA regulations contain additional height requirements in Section 27-548.42 and purchaser notification requirements for property sales in Section 27-548.43 that are relevant to evaluation of this application. No building permit may be approved for a structure higher than 50 feet in either APA-4 or APA-6 unless the applicant demonstrates compliance with FAR Part 77.

At the time of review of the original preliminary plan for this property it was noted that while this site is located in an area underneath the air traffic/flight pattern for the College Park Airport, which is a small, public, general aviation airport approximately 4,000 feet from the end of runway, there were no county regulations that specifically address the development of this property for a mix of multifamily and office development relative to the impact of air traffic in the area.

The District Council held several work sessions on proposed airport compatibility regulations during 2002. It was noted with the review of the preliminary plan that the property's location underneath the Airport Policy Areas and airport traffic pattern, the possible overflight of low flying aircraft, increased exposure to aircraft noise, and a slightly elevated risk of exposure to small aircraft accidents. The condition of approval for the previously approved preliminary plan for Parcel A required that the final plat "shall provide a note indicating that the property is in the vicinity of the College Park Airport. Prospective tenants shall be notified as well."

In approving the sector plan, the District Council approved an amendment to the plan's corridor-wide land use and zoning recommendations which state:

Proximity to College Park Airport - Because portions of the sector plan area are proximate to the College Park Airport, strategies to develop these areas in a manner compatible with airport operations should be part of the development planning process.

At the time of approval of the Detailed Site Plan (DSP-02027/03) the Planning Board (PGCPB No. 08-57) addressed the issue of height as it relates to the College Park Airport:

"At the time of DSP-02027 approval for University View, the applicant demonstrated pursuant to the sector plan requirements that the higher building is necessary for the site and the Planning Board approved the 16-story residential building (13 stories of residential use over three levels of parking) and the ten-story office building. The subject DSP proposes a new 12-story building (plus one penthouse story) to replace the previously approved ten-story office building. Due to the different ceiling height, the proposed new building contains three stories more than the previously approved office building while maintaining the same building height. Staff agrees that as long as the new

building is the same height as the previously approved one, the proposed building height is acceptable. The College Park City Council in their resolution to approve the subject DSP requires a written determination from either the Federal Aviation Administration or the Maryland Aviation Administration that the proposed building does not provide an airway obstruction, if required. Staff believes that this requirement should be a condition of approval for this DSP. In addition, no justification statement or supporting documentation has been provided with this application to justify the increment in the number of stories. The applicant should be required to provide supporting documents for inclusion in the record of this application.”

The DSP contains the following condition:

“Provide a written determination by the Federal Aviation Administration and/or the Maryland Aviation Administration that the proposed project does not provide an airway obstruction.”

In relation to the proposed regulations, the large majority of the subject property is within an area referred to as Airport Policy Area 6 (the traffic pattern area) and APA 4. In such an area, the proposed regulations would require the applicant to submit for FAA (Part 77 airspace surfaces) approval which requires certification from the Maryland Aviation Administration that no airspace obstruction will result from the height of proposed buildings. Issues associated with the height and location of structures has been evaluated with the approved detailed site plan.

In addition, there is a requirement for 30 percent open space on properties located in APA-4. Although the proposed building footprint of the new structure does not fall within APA-4, the applicant should address the open space requirement with the revision of the detailed site plan if required. The preliminary plan should be revised to provide a note that the site is subject to regulations of APA 6 and 4.

It should be noted that both the Federal Aviation Administration and the management of the College Park Airport have become increasingly concerned about the impact of increasingly tall buildings being proposed within the Aviation Policy Area of the College Park Airport. Several recent applications in this area have come under increased scrutiny because of their proposed height. However, this preliminary plan application does not evaluate the location or height restrictions of APA 6 and 4. Those regulations are the subject of the detailed site plan review process.

Notification of prospective tenants of the airport’s location is also required. The proposed regulations would require that the height of structures conform to FAA Part 77 height standards and would require the same notification to prospective tenants.

In similar cases, the Planning Board has required a plat note notifying potential purchasers of an airport’s proximity. In this case, the dwellings will be occupied by renters who may not be privy

to the final plat. Therefore, the note should include a requirement for notice to prospective tenants.

Section 27-548.43(a) of the Zoning Ordinance requires a General Aviation Airport Environment Disclosure statement be included as an addendum to the contract for rental or sale of any residential property. In addition, Section 27-548.43(b)(2) of the Zoning Ordinance addresses developments without a homeowners association and requires that a disclosure clause be placed on final plats and deeds for all properties that notifies prospective purchasers that the property has been identified as within approximately one mile of a general aviation airport. The disclosure clause should include the cautionary language from the General Aviation Airport Environment Disclosure Notice.

In this case, perspective tenants of rental units would not be notified specifically. Staff recommends that in addition to the notice required in Section 27-548.43(b)(2) of the Zoning Ordinance to purchasers, notice also be provided in a rental agreement for prospective tenants.

18. **City of College Park**—The College Park City Council recommends approval of the preliminary plan of subdivision with two conditions. Condition 1 recommends that the preliminary plan contain notes which reiterate conditions of Detailed Site Plan DSP-02027/03 (PGCPB Resolution 08-57) or are already recommended conditions of this preliminary plan. Condition 2 recommends a note be placed on the preliminary plan which is not a requirement of Subtitle 24 or Subtitle 27 of the Prince George’s County Code and is not recommended by staff.

At the Planning Board hearing staff of the City of College Park acknowledged a concern that Section 27-546.18(B) of the Zoning Ordinance restricted a mixed use M-U-I development to one parcel or one lot. In affect, that the subdivision of Parcel A into two parcels was not permitted because each parcel would then be a separate “site” and Parcel B would not have a mixed use development theme. Notwithstanding that the approved site plan (DSP-02027) is for the land area of Parcels B and C, and has approved a mix use development.

The Planning Board finds that Section 27-546.18(B) only states that when a mixed use development is on one parcel or lot the DSP controls the regulations. It does not require that a mixed use be located on one parcel or lot. Further, the subdivision of land does not control the use of land.

A mixed use development may be made up of one or more record lots developed under a common development theme. In this case, DSP-02027 controls the development of this site, made up of Parcels B and C, as one development site.

The Planning Board finds that Section 27-546.18(B) only states that when a mixed use development is on one parcel or lot the DSP controls the regulations. It does not require that a mixed use be located on one parcel or lot. Further, the subdivision of land does not control the use of land.

A mixed use development may be made up of one or more record lots developed under a common development theme. In this case, DSP-02027 controls the development of this site, made up of Parcels B and C, as one development site.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with Circuit Court for Prince George's County, Maryland within thirty (30) days following the date of notice of the adoption of this Resolution.

* * * * *

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Squire, seconded by Commissioner Vaughns, with Commissioners Squire, Vaughns, Clark, Cavitt and Parker voting in favor of the motion at its regular meeting held on Thursday, November 13, 2008, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 20th day of November 2008.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator

OSR:FJG:WC:bjs