

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

**ZONING MAP AMENDMENT
A-9956-C**

DECISION

Application:	Amendment of Conditions
Applicants:	The Revenue Authority of Prince George's County/DR Horton, Inc./Balk Hill Village
Opposition:	Fox Lake Homeowner's Association, et. al.
Hearing Dates:	June 14, 2017 and July 21, 2017
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval with Revised Conditions

NATURE OF PROCEEDINGS

(1) A-9956-C is before the District Council upon a request for the amendment of Conditions 5 and 10, imposed by the District Council upon its adoption of Zoning Ordinance 16-2002 which rezoned approximately 123.2 acres of land located 1,460 feet northwest of the intersection of Campus Way North and Lottsford Road in Largo, Maryland, from the I-3 to the M-X-T (Mixed Use Transit) Zone. Conditions 5 and 10 concern part of Parcel 1 and Parcel 2, ("the subject property") described more fully below, which are comprised of slightly less than 20 acres within the 123.2 acre site, and owned by the Revenue Authority.¹

(2) On July 23, 2002, the District Council gave final approval to A-9956-C subject to the following conditions:

1. The following improvements shall be funded by the Applicant, with the timing to be determined at the time of preliminary plan of subdivision:
 - a. The construction of Campus Way as an arterial facility within the limits of the subject property.
 - b. The construction of St. Joseph's Drive as a collector facility within the limits of the subject property.

¹ Petrie Richardson Ventures, LLC., is the contract purchaser of the property owned by the Revenue Authority.
(T.4)

2. The Applicant shall provide an additional eastbound through lane along MD 202 through the I-95 interchange, and additional eastbound and westbound through lanes along MD 202 between the I-95 interchange and Lottsford Road. Additionally, the Applicant shall provide a second eastbound left turn lane along MD 202 at the McCormick Drive/St. Joseph's Drive intersection. These improvements shall be either directly provided by the Applicant, or shall be funded by the Applicant by payment of a fee, not to exceed \$1.24 million (in 2002 dollars) to be paid on a pro-rata basis to be determined at the time of preliminary plan of subdivision.
3. Future submitted plans shall demonstrate provision of adequate right-of-way for the following facilities:
 - a. Campus Way, an arterial facility with a right-of-way of 120 feet.
 - b. St. Joseph's Drive, a collector facility with a right-of-way of 80 feet.
 - c. A concept for future ramps to and from the west via Ruby Lockhart Boulevard between MD 202 and St. Joseph's Drive.
4. The Applicant shall study the planned Campus Way/St. Joseph's Drive intersection and the possible need for traffic controls at that location at the time of preliminary plan of subdivision.
5. The development of the subject property shall be limited to 20,000 square feet of retail space, 328,480 square feet of general office space, and 393 residences, or other permitted uses which generate no more than 1,013 AM and 1,058 PM peak hour vehicle trips.
6. No more than 119 of the single-family dwelling units shall be attached units.
7. The Conceptual Site Plan shall include a tree stand delineation plan. Where possible, major stands of trees shall be preserved, especially along streams and where they serve as a buffer between the subject property and adjacent land.
8. At the time of Conceptual Site Plan, TCPI/05/97 shall be revised as required if areas along St. Joseph's Drive and Campus Way North are not proposed for woodland reforestation or preservation.

9. All public sidewalks shall comply with applicable ADA standards and be free of above ground utilities and street trees.
10. An Advisory Planning Committee, consisting of the Applicant and representatives from St. Joseph's Parish and the Lake Arbor, Fox Lake, Largo, and Kettering Civic Associations, shall be established to advise the Revenue Authority, a community development corporation, or another nonprofit entity about the development, use, and disposition of the 20-acre employment parcel.
11. The Applicant shall work with the Fox Lake and Ridgewood communities in restoring the entranceway hardscape and landscape at a cost not to exceed \$35,000.
12. The open area designated on the Basic Plan as the Balk Hill Circle shall include an amphitheater or other suitable facility that may be used for outdoor cultural activities.
13. The community building shall be designed with an area suitable for community theatrical productions.
14. No building permits shall be issued for Balk Hill Village until the percent of capacity at all affected school clusters is less than or equal to 105 percent or three years have elapsed since the time of the approval of the preliminary plan of subdivision; or pursuant to the terms of an executed school facilities agreement where the subdivision applicant, to avoid a waiting period, agrees with the County Executive and County Council (if required) to construct or secure funding for construction of all or part of a school to advance capacity.

(Rec. Exhibit 6)

(3) Several individuals, including representatives from the Fox Lake Civic Association and St. Joseph's Church, appeared in opposition to the request.

(4) The record of the original Application A-9956-C has been made a part of the record in the instant Application. The Final Conditional Zoning Approval indicating Applicant's acceptance of the above-referenced conditions is included in this record as well. (Rec. Exhibit 7). This Examiner takes administrative notice of all site plan approvals for the subject property. (The Planning Board's 2013 resolution approving the DSP-04067/03 for the approximately 123.02 acre site includes an excellent recitation of all prior approvals for the property including the ZMA, Subdivision, CSP and DSPs. (Exhibit 38))

FINDINGS OF FACT

Instant Request

(1) The Revenue Authority acquired the subject property from D. R. Horton, Inc., by deed dated June 20, 2012 and recorded among the land records for Prince George's County, Maryland at Liber 33975 at Folio 099. (Rec. Exhibits 23 and 25) In September 2016 it entered into a purchase and sale agreement to "sell, transfer and convey" Parcel 1 and Parcel 2 (20.5 acres) to Petrie Richardson Ventures, LLC. (Rec. Exhibit 47)

(2) The Revenue Authority submitted evidence that Petrie Richardson Ventures, LLC, was the "lone respondent" to its Request for Qualifications ("RFQ") to purchase the site. (Rec. Exhibits 53 and 54)

(3) Applicant requests that Conditions 5 and 10, above, be revised as follows:

- Proposed Condition 5 – "The development of the subject property shall be limited to the prior approved 393 residences plus additional permitted uses under the M-X-T Zone which generate no more than 1,013 AM and 1,058 PM peak hour vehicle trips."
- Proposed Condition 10 – "Prior to acceptance of a detailed site plan for development of the 20 acre parcel (Parcels 1 and 2), the Applicant shall provide written confirmation that it has held [a] community meeting with stakeholders which shall include an invitation to at least representatives from St. Joseph's Parish and the Lake Arbor, Fox Lake, Largo, and Kettering Civic Associations."

(Rec. Exhibit 24)

(4) Condition 5 is applicable to the entire 123.2-acre site. In requesting the revision Applicant does not seek to impair the approved residential development that already has conceptual and detailed site plan approval as well as an approved record plat of subdivision. (T. 16-17)

(5) In support of its request Applicant proffered the following analysis from its expert land use planner, Mark Ferguson:

COMPLIANCE WITH CRITERIA OF SECTION 27-135(c):

Condition 5:

Condition 5 provides for a trip cap on the property. In keeping with the style that was in use at the time of the approval of A-9956-C, the wording of Condition 5 includes a listing of the uses that were contemplated at the time of the initial approval, even though the text of the condition is clearly permissive in allowing

“other permitted uses which generate no more than 1,013 AM and 1,058 PM peak hour vehicle trips.”

Despite the permissive wording, the qualification of the previously-contemplated uses in Condition 5 could provide an appearance that uses at the development could be restricted to the enumerated list; given the dearth of demand for new general office development, the contract purchaser is unwilling to be required to provide that use.

To provide clarity to their contract purchaser, the Revenue Authority has requested that Condition 5 be modified from its original form to delete the references to specific land uses, but to retain the cap on vehicle trips that is specifically provided for. In addition to providing clarity of the lack of use restrictions (beyond those provided for in the provisions of the M-X-T Zone), this amendment would bring the wording closer to current practice, which would be in the form of: “The total development shall be limited to uses which generate no more than 1,013 AM and 1,058 PM peak-hour trips. Any development generating a traffic impact greater than that identified herein above shall require a new preliminary plan of subdivision with a new determination of the adequacy of public facilities.”

As background, the Balk Hill Village development was initially proposed in the early 2000's for a mix of uses which met the requirement of the M-X-T Zone, including single-family dwellings, multi-family dwellings, a limited amount of retail, and a significant quantity of office space. Even at the time of the initial zoning application, there were significant questions as to the feasibility of office development at the Balk Hill Village site: The applicant, Rocky Gorge Homes did not desire to retain the office component for development; instead conveyance of the two parcels to the Revenue Authority was specifically intended to “jump start” employment development in the area.”

In the fifteen intervening years, no meaningful interest in office development at the Balk Hill Village development ever manifested. Similarly, none of the (significantly larger amount of) office development provided for in the approvals of the adjacent Woodmore Towne Centre at Glenarden development is manifest, either.

A study of historic aerial photographs of the surrounding Largo neighborhood since the time of the initial zoning approval reveals only two new office buildings as having been constructed since 2002; ~100,000 SF building on Mercantile Lane constructed in 2006, and a small (~25,000 SF) building on Caraway Court constructed in 2009. Furthermore, the owner's website for the building on Mercantile Lane indicates availability of space in that

building as of this writing that would correspond to a vacancy rate of 37%.

The provisions of §27-135(c) provide that conditions may be amended for good cause, if the amendment does not constitute an enlargement or extension. Given (1) the contract purchaser's need for clarity that all uses allowed by the Table of Uses for the M-X-T Zone and consistent with the mixed use requirement of § 27-547(d) are permissible at the two parcels owned by the Revenue Authority; (2) a change in the style of wording of trip caps in development approvals in Prince George's County to remove grounds for misapprehensions of prescriptiveness in the enumeration of proposed uses; and (3) hardships associated with a reading of Condition 5 as specifically seeking the development general office space when viewed against the persistent dearth of market demand for additional general office use in the neighborhood surrounding the Balk Hill Village development, this planner believes that the facts exist that would support a finding of good cause to amend Condition 5.

Furthermore, no land area is being added to the development in connection with this request, and no intensification of use is proposed, in that the vehicle trip limitations in Condition 5 will remain in force. As such, the subject request would not constitute an enlargement or extension.

Condition 10:

Condition 10 provides for the establishment of an advisory planning committee to provide advice about the development use and disposition of the parcels owned by the Revenue Authority. The requested modification concerns matters of process and not of planning substance. As such, no opinion is offered as to this modification.

(Rec. Exhibit 46, pp. 3-4)

(6) Mr. Christian Duffy, a principal with the contract purchaser of the subject property, oversees "acquisition, development, construction, and entitlement" for the contract purchases. (T. 24-25) Mr. Duffy has served in that capacity for several developments, including the Inglewood Business Park, Forestville Mall, Woodmore Town Center (Prince George's County), and the Ellsworth Place Mall (Montgomery County). He noted that the site plan approvals for Woodmore Town Center (a development in close proximity to the subject property) "allows for 900 to 1,100 residential units, between 400,000 and 1 million feet of commercial retail, between 550,000 and 1 million feet of commercial office, up to 320 hotel rooms [and] a conference center up to 40,000 square feet." (T.30) To date, nearly 700,000 feet of commercial retail development and one hotel has been constructed, but "zero office construction." (T. 33-34) Moreover, there is approximately a 20% vacancy in offices

available at the Inglewood Business Park, located across MD 202 on both sides of McCormick Drive and both sides of Apollo Drive. (Exhibit 27, T. 34-36) As a result of this glut of office space ... the contract purchaser urged the Revenue Authority to seek a revision of Condition 5.

(7) Mr. Duffy also explained the contract purchaser's concern with Condition 10:

We have several concerns, the most part being that it's ambiguous and lacks clarity. We believe that some of the people involved at that time may or may not currently be involved. We believe it's unclear as to exactly what the role would be, where does it end, does it stop with the Revenue Authority, would it carry on to us, is the community ultimately involved in decisions that a community typically wouldn't as far as users, and leasing and marketing of it? We've got very high concerns over the ability to finance the property with the condition as it reads. One of the most important things for us when financing a property when we go to our leaders and investors is clarity and the ability to show them a finish line, you know, are entitlements approved, how solid is everything that we have, and we believe this condition very much hinders that.... We've spoken to lenders about this property, and they have all asked the question about the process and how solid is getting there....

(T. 39-41)

(8) Mr. Terry Richardson, a real estate developer with Petrie Richardson Ventures, echoed Mr. Duffy's concerns with the requested revisions:

I've had conversations directly with two lenders for the project, and through an investment banker with a third lender. By mutual agreement the nature of those discussions is confidential , but ... I have a lender ... who has reviewed the budget in pro forma, is prepared to submit a term sheet to finance the project, but is aware ... of our concerns with respect to Condition 10. I have a lender based in Vienna, Virginia ... with the same concern that absent clarity on the length of the process, the role of the community groups, the purview that they have, do they get to get involved in the type of tenants that we attract, the economics of the tenant, the nature of the business that the tenant must undertake, how long the process will take, is it a meeting, is it 100 meetings....

[T]he concerns that we have have been expressed on both [conditions], the more specific conversations relate to Condition 10 because of the length of time. However, the lenders understand that there's no market for office, and that we would acquire the

property for other purposes where there is a demonstrated market need, which we have as a result of our participation and development of Woodmore Towne Centre ... [a]nd other retail properties in Prince George's County....

(T. 214-215)

(9) Mr. Steven Varga, accepted as an expert in the field of commercial and industrial real estate brokerage and mortgage, testified on Applicant's behalf about his familiarity with the commercial development in the Maryland Route 202 corridor (including the Inglewood Business community and Woodmore Towne Centre). He offered the following analysis of the dearth of demand for commercial office development in the area of the subject property:

This issue, the challenge in office space is not particular or peculiar to Prince George's County, it's a region wide phenomenon that I'm sure we've all heard ... and read about.... [T]here's basically a paradigm shift going on in the way offices [use] telemarketing, people working remotely, reduced demand for office space overall, we're seeing it throughout the country.... There are some exceptions in high barrier to entry, constrained markets that have strong demand like the Bay Area, Silicon Valley, Manhattan, ... but beyond that it's very challenging. From a macro view right now Washington has about 350 million square feet of office space, but somewhere, depending on what day it is there's around 60 million square feet vacant, whether that ever gets leased in the future is the question, so that is precipitating a lot of these jurisdictions looking at re-planning some of these suburban office parks into mixed use ... primarily for residential and retail....

In Prince George's County, ... we're about 16 percent vacant, we go to 26 to 27 million square feet of office space for four and a half million feet vacant....

So ... my opinion I think I guess Woodmore Towne Centre is probably a good representation and example of where the market is, I mean, they've had a lot of land available , prime sites, you know, for office, it's just extremely challenging right now with probably four, four and a half million vacant in the County....

(T. 97-100)

Opposition's Comment

(10) Some are opposed to the request because the revised Condition 10 negates its ability to provide meaningful comment on the development of the 20-acre parcel, and the proposed revision to Condition 5 may adversely impact traffic in the area. (Rec. Exhibit 55(b)) Changes to Condition 10 are especially worrisome because the members of the Advisory Committee believe it did not have any meaningful meetings as an advising planning committee for the Revenue Authority in its attempt to develop the subject property. For example, Mr. Charles Renninger believes the current Condition

10 allows the advisory committee to play more of a role in the disposition of the subject property:

We are particularly concerned about modifying Condition No. 10, we understand the amendment or the proposed change that the Applicant has put on the table, and although I haven't specifically been able to address it with my Association I think it basically says the same thing in a lesser degree. I would specifically note, Condition No. 10 deals with more than talking to the Revenue Authority. The advisory panel committee ... shall be established to advise, and ... note the word advise the Revenue Authority ... about the development, use, and disposition of the 20 acres....

I would also like to remind you, and point out again that the Condition No. 10 specifically says the advisory group was supposed to be consulted on the disposition of the 20 acres. The first contact we had was with MR. Gibbs saying we want to sell it. If I heard the testimony today ... there's a contract of purchase on this property.... And that contract's already been executed [yet] ... we were never consulted about the sale of this property, and you've already got a contract....

Are we skeptical about just now changing the condition completely so that oh, by the way, they got to come talk to us? For those of us that are already registered association[s] they already have to do that. So, they're not offering anything really that they're not already required to do....

(T. 156, 161-163)

(11) St. Joseph's Parish submitted a letter in opposition to the request which states, in pertinent part, as follows:

St. Joseph's does not oppose development of the neighboring property, but ... submits that any such effort should maintain an advisory role in the process for St. Joseph's and other affected stakeholders. This condition is necessary to ensure that any future development entity that may acquire the property works with St. Joseph's and other stakeholders to ensure that the needs and concerns of adjacent property owners and local communities are addressed in the development process.

The Revenue Authority is requesting that Condition 10 to A-9956-C be deleted in its entirety.... It is understood that there may no longer be a desire or market for the development of the property with employment uses, but the development of the property with commercial and residential uses will continue to impact St. Joseph's Parish and the surrounding communities.

The ownership of this property was transferred from D. R. Horton, Inc. to the Revenue Authority in 2012. Subsequent to that transfer, the Planning Committee did meet with the Revenue Authority and the Committee was informed in 2013 that the

property would not be developed with offices as planned, but with a public facility such as, a performance arts center or community building. Now, the Revenue Authority proposes to sell the property to a private developer for development with residential and commercial uses. St. Joseph's Parish does not oppose this transfer, but believes there should be some community benefit to help lessen the impact of the proposed development....

(Rec. Exhibit 30)

(12) St. Joseph's Parish recommended that Condition 10 be revised as follows:

Condition 10. Prior to the approval of a Detailed Site Plan for the property, the applicant shall work with representatives of St. Joseph's Parish and the Lake Arbor, Fox Lake, Largo and Kettering Associations for the purpose of designating the location of a community facility on the subject property. The location of that facility shall be shown on the Detailed Site Plan and shall be at least 5,000 square feet in size. The facility shall be maintained by the applicant (or its successors) in perpetuity at no cost (including, without limitation, no rent, taxes, assessments, or any other charges of any kind) to the community associations that comprise the Planning Committee.

(Rec. Exhibit 30)²

(13) St. Joseph's Parish requested an additional condition to address the access difficulties its parishioners face due to the relocation of St. Joseph's Drive:

Prior to the issuance of building permits for Parcel 1 and 2, the applicant shall construct an access driveway from Ruby Lockhart Drive to St. Joseph's Church. The applicant shall also construct an internal drive aisle on the St. Joseph's Church property to ensure that the access driveway is connected to the existing parking lot on that property. The applicant shall work with representatives of St. Joseph's Church on the location and construction of the access driveway and drive aisle.

(Rec. Exhibit 30)

Agency Comment

(14) In its approval, the Planning Board provided the following discussion concerning Condition 10:

² Applicant submitted evidence that the community building referenced in Condition 13 of the District Council's zoning approval of the entire site, discussed *supra*, has been constructed on the second floor of a retail building located at the traffic circle on St. Joseph's Drive. (Exhibits 36(a)-(c) and 37; T. 115-118) Although some in opposition would like to see a community facility on the subject property there was no condition that such a use be developed thereon. (T. 175)

An Advisory Planning Committee, consisting of the applicant and representatives from St. Joseph's Parish and the Lake Arbor, Fox Lake, Largo, and Kettering Civic Associations, shall be established to advise the Revenue Authority, a community development corporation, or another nonprofit entity about the development, use and disposition of the 20-acre employment parcel.

By letters dated July 21, 2005, and September 7, 2005, (Arrington to Wagner) the applicant has provided documentation that an Advisory Planning Committee has been established and officers have been elected to advise the Revenue Authority on the development and use of the 20-acre employment parcel. The letter indicates that the Committee will hold monthly meetings on the second Tuesday of each month for 2005 and if necessary, revise the schedule for 2006.

(Rec. Exhibits 25(a), 27)

(15) There is an approved Detailed Site Plan for the entire 123.2-acre property. Nonetheless, the approval included a requirement that the 20-acre parcel, which is the subject of the instant Application, undergo a separate detailed site plan review and approval, and that the Advisory Planning Committee remain:

24. Regardless of ownership, no part of the approximately 20 acres of commercial and industrial land adjacent to the subject site to be conveyed to the Prince George's County Revenue Authority, shall be eligible for permits until the Planning Board and the District Council approve the use and a detailed site plan for the property.

25. Prior to the submittal of the above-mentioned detailed site plan application, the applicant (whether public or private) shall obtain advice from the Advisory Planning Committee about the use and design of the property and reduce that advice to writing and file it with the site plan application.

(Rec. Exhibit 25(b), p. 25)

(16) These same conditions were imposed by the District Council in its approval of SP-04067 Balk Hill Village (Remand), and by the Planning Board in its 2013 approval of the third revision to the DSP. (Rec. Exhibits 38 and 60)

LAW APPLICABLE

(1) An Application for the amendment of conditions attached to a piecemeal zoning map amendment may be approved in accordance with Section 27-135 (c)(1):

- (c) The District Council may (for good cause) amend any condition imposed or site plan approved (excluding Comprehensive Design Zone Basic Plans or R-P-C Zone Official Plans) upon the request of the applicant without requiring a new application to be filed, if the amendment does not constitute an enlargement or extension.
- (1) In the case of an amendment of a condition (imposed as part of the approval of the zoning case), the request shall be directed, in writing, to the District Council, and shall state the reasons therefore. Before the Council amends a condition, the Zoning Hearing Examiner shall hold a public hearing on the request, in accordance with Section 27-129, and shall notify all parties of record (including all parties of record on the original application and any amendments thereto) in the same manner as required for an original application. The Planning Board shall post a sign on the subject property, setting forth the date, time, and place of the hearing, in the same manner as required for an original application. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's decision with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.

CONCLUSIONS OF LAW

Good Cause

- (1) Section 27-108.01(a)(7) of the Zoning Ordinance provides as follows:

[w]ords and phrases not specifically defined or interpreted in this Subtitle or the Prince George's County Code shall be construed according to the common and generally recognized usage of the language. Technical words and phrases, and others that have acquired a peculiar and appropriate meaning in the law, shall be construed according to that meaning.

- (2) "Good Cause" is not expressly defined in the Zoning Ordinance. Maryland Courts have applied the definition set forth in Black's Law Dictionary. See, In re Trevor A., 55 Md. App. 491, 496, 642 A.2d 1245 (1982). Black's Law Dictionary (7th Ed.) defines "good cause" as follows:

good cause. A legally sufficient reason. Good cause is often the burden placed on a litigant ... to show why a request should be granted or an action excused.

(3) The Court of Appeals of Maryland, in Kay Construction Company v. County Council, 227 Md. 479, 177 A.2d 694 (1962) considered the definition of "good cause" upon appeal of a Council resolution overturning a previous decision upon a reconsideration of that previous decision for "good cause shown." In Kay, the Court held that a change of mind on the basis of the evidence of record is not "good cause".

(4) More recently the Court of Appeals has held that the determination whether "good cause" exists to allow the waiver of a condition precedent is left to the discretion of the trier of fact, and will only be reversed "where no reasonable person would take

the view adopted...." Rios v. Montgomery County, 386 Md. 104, 121 (2005)(Citations omitted)

(5) The Fox Lake Homeowner's Association believes Applicant's request to change Conditions 5 and 10 appears to be based solely on economic reasons and that does not constitute "good cause." (Rec. Exhibit 55(b)) The Applicant believes it has established good cause to amend the two conditions since: it is reasonable to delete a requirement for additional office space in an area that has not been able to attract office development and has approval for up to 1 million square feet for said development; and it is reasonable to delete any wording that may bring "uncertainty" into the development process.

(6) Applicant has shown good cause to revise Condition 5 in the manner suggested, since its lay and expert witnesses provided sufficient evidence that there is an insufficient market for office use at this time and in this area. Although some in opposition are concerned that any amendment to Condition 5 could adversely impact transportation facilities adequacy, the revision will not increase the number of permitted vehicular trips. Therefore, no additional impact to transportation facilities, other than that already approved, should occur.

(7) However, Applicant has not shown good cause to revise Condition 10 in the manner suggested. Holding "a" meeting prior to acceptance of the Detailed Site Plan does not ensure that the citizens thoughts will be conveyed to the approving authority. There have been several site plan approvals discussed *supra*, that slightly revised Condition 10 to combine the requirement of detailed site plan approval and the continuation of an Advisory Planning Committee. Since this language is already a condition of the DSP and CSP it makes sense to use it in this request. I understand Applicant's concern that the word "advice" may be subject to interpretation and would recommend inserting "comment" in its stead. In this manner, the community remains involved in the process but does not unreasonably hinder future development of the property.

RECOMMENDATION

I recommend that the District Council's conditions of approval in A-9956-C be revised as follows:

1. The following improvements shall be funded by the Applicant, with the timing to be determined at the time of preliminary plan of subdivision:
 - b. The construction of Campus Way as an arterial facility within the limits of the subject property.
 - c. The construction of St. Joseph's Drive as a collector facility within the limits of the subject property.
2. The Applicant shall provide an additional eastbound through lane along MD 202 through the I-95 interchange, and additional eastbound and westbound through lanes along MD 202 between the I-95 interchange and Lottsford Road. Additionally, the Applicant shall provide a second eastbound left turn lane along MD 202 at the McCormick Drive/St. Joseph's Drive intersection. These improvements shall be either directly provided by the Applicant, or shall be funded by the Applicant by payment of a fee, not to exceed \$1.24 million (in 2002 dollars) to be paid on a pro-rata basis to be determined at the time of preliminary plan of subdivision.
3. Future submitted plans shall demonstrate provision of adequate right-of-way for the following facilities:
 - d. Campus Way, an arterial facility with a right-of-way of 120 feet.
 - e. St. Joseph's Drive, a collector facility with a right-of-way of 80 feet.
 - f. A concept for future ramps to and from the west via Ruby Lockhart Boulevard between MD 202 and St. Joseph's Drive.
4. The Applicant shall study the planned Campus Way/St. Joseph's Drive intersection and the possible need for traffic controls at that location at the time of preliminary plan of subdivision.
5. The development of the subject property shall be limited to the prior approved 393 residences plus additional permitted uses under the M-X-T Zone which generate no more than 1,013 AM and 1,058 PM peak hour vehicle trips.

6. No more than 119 of the single-family dwelling units shall be attached units.
7. The Conceptual Site Plan shall include a tree stand delineation plan. Where possible, major stands of trees shall be preserved, especially along streams and where they serve as a buffer between the subject property and adjacent land.
8. At the time of Conceptual Site Plan, TCP/05/97 shall be revised as required if areas along St. Joseph's Drive and Campus Way North are not proposed for woodland reforestation or preservation.
9. All public sidewalks shall comply with applicable ADA standards and be free of above ground utilities and street trees.
10. Prior to submittal of a Detailed Site Plan for the approximately 20 acres of land that is the subject of this application, an Advisory Planning Committee, consisting of this Applicant and representatives from St. Joseph's Parish and the Lake Arbor, Fox Lake, Largo, and Kettering Civic Associations and other stakeholders, shall be established. The Applicant (whether public or private) shall solicit comment from the Advisory Planning Committee about the use and design of the property, reduce that comment to writing and file it with the site plan application.
11. The Applicant shall work with the Fox Lake and Ridgewood communities in restoring the entranceway hardscape and landscape at a cost not to exceed \$35,000.
12. The open area designated on the Basic Plan as the Balk Hill Circle shall include an amphitheater or other suitable facility that may be used for outdoor cultural activities.
13. The community building shall be designed with an area suitable for community theatrical productions.
14. No building permits shall be issued for Balk Hill Village until the percent of capacity at all affected school clusters is less than or equal to 105 percent or three years have elapsed since the time of the approval of the preliminary plan of subdivision; or pursuant to the terms of an executed school facilities agreement where the subdivision applicant, to avoid a waiting period, agrees with the County Executive and County Council (if required) to construct or secure funding for construction of all or part of a school to advance capacity.