

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-666-A

PETITION OF WHITE FLINT ASSOCIATES

OPINION OF THE BOARD
(Hearing held July 11, 2001)
(Effective Date of Opinion: October 3, 2001)

Case No. S-666-A is a petition filed pursuant to Section 59-G-1.3(c)(2) of the Montgomery County Zoning Ordinance requesting modification of the existing special exception to permit an adjustment of certain restrictions relating to the use of 227 off-street parking spaces located adjacent to White Flint Mall, with an address of 11301 Rockville Pike, Kensington, Maryland, in the R-90 zone.

Pursuant to Section 59-A-4.41 of the Zoning Ordinance, the Board of Appeals ("Board") held a hearing at 1:30 p.m. on July 11, 2000. Cobey R. Kuff (Lerner Corporation) and Robert G. Brewer, Jr. (Lerch, Early and Brewer) testified on behalf of the petitioner. There was no testimony presented in opposition to the subject modification request.

Decision of the Board: Special Exception Modification **GRANTED**,
subject to conditions enumerated below.

EVIDENCE PRESENTED TO THE BOARD:

1. The subject property is Parcel P081 in the White Flint Park Subdivision in the R-90 zone.
2. The subject property is covered by the North Bethesda–Garrett Park Master Plan.
3. The subject property is located immediately east of the White Flint Mall on the outside of the ring road serving the mall. The property is rectangular in shape and comprised of 2.57 acres. The site is improved by a surface parking facility that extends eastward from the ring road for approximately 300 feet. A steep and heavily wooded

buffer extends another 100 feet to the eastern property line. The facility was built to accommodate 227 off-street parking spaces with a single driveway entrance from the ring road. The pavement surface is presently gravel and individual parking spaces are not delineated. Planting islands at the end of each parking aisle help to define the internal area of the facility. Pole-mounted lighting fixtures are located at regular intervals along these aisles. Security fencing is located along the perimeter of the parking facility.

4. The surrounding neighborhood contains a mixture of commercial and residential land uses. Adjoining the subject property to the north is White Flint Plaza, a separate shopping center not affiliated with White Flint Mall. Adjoining to the east and south is White Flint Neighborhood Park located in the R-90 Zone. Further to the east and southeast is the White Flint Park residential subdivision containing single-family detached homes in the R-90 Zone. Adjoining to the west is White Flint Mall located in the C-2 Zone.

5. The intent of the modification is to remove two limited use restrictions, which were placed on the parking facility when it was approved in February, 1979. The two use restrictions limit the facility to:

- A. Use only by employees of businesses located in the White Flint Mall.
- B. Use only during the following periods: from 9:00 a.m. through 10:30 p.m. every Saturday throughout the year and, in addition, from the day after Thanksgiving through December 31st (the holiday shopping season); during the week prior to Easter Sunday; on the day of Washington's Birthday Sales and on four other specified major shopping sale days during the year; and in the first ten days of September, for the back-to-school period.

The Petitioner proposes to replace these conditions with the following:

Off-street parking will be limited to patrons and employees of White Flint Mall.

6. The petitioner has requested removal of the use restrictions to allow greater flexibility in providing for parking during all periods when parking is at a premium. The peak periods of parking at White Flint occur far more frequently than what is currently allowed. No other changes are proposed by this modification. There will be no increase in the size of the parking facility, no change in lighting, and no change in landscaping.

7. Minor improvements are proposed to facilitate better pedestrian access and improve safety at the entrance. These include the widening of nearby crosswalks

across the ring road to a minimum width of 10 feet; the repair or replacement of existing steps leading to the parking facility; and improved pedestrian signage.

8. The parking facility is well screened from surrounding properties, particularly the residential subdivision to the east. The closest homes in this subdivision are at least 220 feet away, beyond an undeveloped portion of the local park. These residences are located at a lower elevation than the facility and are screened by mature trees within the subject property and the park. Evergreen trees supplemented by wooden fencing along the perimeter of the facility provide additional screening from nearby uses. There is existing landscaping along the frontage with the ring road.

9. Removal of the restrictions allowing expanded use of the existing parking facility will not have any impact on public roads or the internal traffic circulation of White Flint Mall. The request will not add additional gross floor area or employees to the Mall; therefore, no additional trips will be generated from the site.

10. There are no environmental issues associated with this application. The subject property has been granted an exemption from the Montgomery County Forest Conservation requirements.

11. The proposed modification will have no impact on the inherent characteristics of the existing use nor will there be any non-inherent adverse effects that warrant denial.

12. The Maryland-National Capital Park & Planning Commission staff reviewed the application and issued a Memorandum on June 27, 2001, recommending approval, with conditions.

13. The Board received two letters of opposition to the proposal.

14. No one testified in opposition to White Flint's proposed modification.

FINDINGS OF THE BOARD:

Section 59-G-1.3(c)(4) of the Montgomery County Zoning Ordinance provides that the public hearing on a modification "shall be limited to consideration of the proposed modifications noted in the Board's notice of public hearing and to discussion of those aspects of the special exception use that are directly related to those proposals."

General Conditions: Section 59-G-1.21

(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone .

The use is so allowed under Section 59-C-1.31 of the Zoning Ordinance.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

As noted below, the use will continue to be in compliance with these requirements.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The subject property is covered by the North Bethesda–Garrett Park Master Plan. The Master Plan supports the existing R-90 zone for the subject property and off-street parking facilities in connection with commercial uses are allowed by special exception in that zone.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The use will continue to be in harmony with the neighborhood considering these criteria.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The current use does not have a detrimental effect for any of these reasons, and the proposed modification will not alter this conclusion.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The current use does not cause any adverse effects with respect to any of these criteria, and the proposed modification will not alter this conclusion.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The modification is to an existing use that has co-existed with the neighboring one-family residential area since 1979.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective on any adverse effects the use might have if established elsewhere in the zone.

The existing special exception has operated for many years without causing these effects. The modification will improve the safety of pedestrian access for White Flint Mall, thereby benefiting nearby residents, patrons, and employees.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

The subject property was recorded by plat prior to 1982. As such, the plat is subject to "Loophole" legislation and Chapter 8 of the Montgomery County Code. The modification will not be subject to preliminary plan approval.

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner or the District Council, as the case may be, must

further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

The modification will have not have any impact on public roads or the internal traffic circulation of White Flint Mall. The proposal will improve pedestrian safety.

Specific Conditions:

Sec. 59-G-2.39 "Parking of automobiles, off-street, in connection with commercial uses"

A special exception may be granted for off-street parking of motor vehicles in connection with commercial uses, subject to the following findings and requirements:

- (a) Off-street parking at this location will not constitute a nuisance because of traffic, noise, or physical activity;

The modification will not result in the use constituting a nuisance because of traffic, noise, or physical activity.

- (b) The commercial uses to be served by the facility are not in the C-T or the C-1 zone, unless the land in the C-1 zone complies with the exceptions to this provision stated in either subparagraph (h) or subparagraph (i), below;

The commercial use served by the off-street parking facility is not located in the C-T or C-1 Zone.

- (c) The land on which the facility is to be located is not reserved for street or highway purposes;

The land is not reserved for street or highway purposes.

- (d) The facility is in compliance with the applicable provisions of article 59-E, particularly the parking area screening provisions of section 59-E-2.9

The facility is in compliance with the applicable provisions of article 59-E including the landscaping and screening provisions.

- (e) No charge is to be made for the first hour of parking unless the facility is located within the boundary of a parking lot district as defined in chapter 60 of this Code;

No charge will be made at any time for use of the parking facility.

- (f) No service of any kind is to be provided to persons occupying vehicles parked in such a facility; and

No service of any kind will be provided to persons occupying vehicles parked in the facility.

- (g) No spaces in the facility are to be used for automobile service, repair or storage, other than the storage of new cars by a new car dealer at a location adjacent to or separated only by a street from land in the C-2 zone. The Board may limit the number of new cars to be stored at the facility.

There is no proposal to utilize any spaces in the facility for automobile service, repair or storage.

- (h) If off-street parking is required to accommodate additional development on property zoned C-1 and substantially developed in accordance with those uses permitted in the C-1 zone prior to March 16, 1971, a special exception for parking of automobile as may be granted subject to the following conditions:

- (1) There is insufficient land in the C-1 zone to accommodate the amount of parking required by the additional development;
- (2) The applicable approved and adopted master plan anticipated the provision of parking on residentially zoned land in connection with commercial uses in the C-1 zone;
- (3) This special exception will be an addition to a previously granted special exception for off-street parking at the same general location; and
- (4) The total of the area in the C-1 zone together with the area used for parking in the residential zone (exclusive of areas devoted to landscaping and driveways) will not exceed 15 acres.

Not applicable.

- (i) If the land in the one-family residential zone is specifically designated as suitable for special exception uses on a master plan approved and adopted on or before January 25, 1967, a special exception may be granted for parking of automobiles in connection with commercial uses in the C-1 zone, subject to the following conditions:

- (1) The land is part of a single parcel which is divided into 2 or more different zoning categories, and the portions that are not in the C-1 zone do not have direct and usable frontage on a public street; and
- (2) The adjacent land in the C-1 zone was not substantially developed in retail commercial uses prior to January 1, 1968.

Not applicable.

Based upon the foregoing, the Board finds that modification of the existing Special Exception can be granted, subject to the following conditions:

1. Petitioner shall be bound by all of its submitted plans, written statements, as modified, exhibits of record and the testimony of its witnesses, to the extent that such testimony and representations are identified in the Board's opinion granting the special exception modification.
2. All terms and conditions of previously approved Special Exceptions and modifications for the subject development shall remain in full force and effect.
3. The off-street parking will be limited to patrons and employees of White Flint Mall.

On motion by Louise L. Mayer, seconded by Donna L. Barron, with Donald H. Spence, Jr., Chairman, Angelo M. Caputo, and Mindy Pittell Hurwitz in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-titled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of October, 2001.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four month period within which the special exception granted by the Board must be exercised.