THE HOWARD HUGHES CORPORATION, * BEFORE THE

PETITIONER * PLANNING BOARD OF

PLANNING BOARD CASE NO. 422 * HOWARD COUNTY, MD

DECISION AND ORDER

On September 15, 2016, the Planning Board of Howard County, Maryland, in accordance with Section 125.0.E.4 of the Howard County Zoning Regulations, held a public hearing to consider the petition of The Howard Hughes Corporation to approve an Amendment to a Final Development Plan for Downtown Revitalization, FDP-DC-Crescent-1A, Crescent Neighborhood Phase 1. The Plan accommodates mixed-use development consisting of 2,300 residential units, 250 hotel rooms, 1,475,000 sf of office, 313,500 sf of retail (including restaurant use), and 225,000 sf of civic and cultural uses. Development is proposed in four areas on 68.83 acres in the Fifth Election District of Howard County, Maryland; identified as Tax Map 36, Grid 1, Parcel 527 (including Parcels A-1 through A-3), and Tax Map 36, Grid 1, Parcels 452 (Lot 23) & 399 (Lots 11C-11G). The property is currently zoned New Town (NT) and designated Downtown Mixed Use Area in the Downtown Columbia Plan. The property consists of parcels south of Little Patuxent Parkway, between Broken Land Parkway, Route 29, and Symphony Woods Drive/South Entrance. They surround the Merriweather Post Pavilion and Symphony Woods on the west, south, and east.

The Crescent Neighborhood Concept Plan, the Crescent Neighborhood Design Guidelines, and the Crescent Neighborhood Implementation Plan were previously approved and recorded in the Land Records of Howard County and are not amended by this Petition.

persuasive and, therefore, adopts DPZ's report as its own in making the findings of fact and conclusions contained in this decision.

- 2. Todd Brown testified that the documents submitted with this amendment show the location of public roads, adjust the development chart, reorient public spaces, and adjust the environmental restoration area. Mr. Brown stated that the Petitioner agrees with changing Road E from a public to a private road as recommended by staff. Mr. Brown requested that the Certifications of Posting (Exhibits 1 and 2) be entered into the record. Mr. Brown then entered the qualifications of professional expert witnesses representing the Petitioner as Exhibit 3 and a copy of the Petitioner's PowerPoint presentation as Exhibit 4. Mr. Brown requested that in addition to the petition that the entire DPZ file for FDP-DC-Crescent-1A, including all comments and correspondence, be incorporated by reference into the record.
- 3. Greg Fitchett, Vice President of Development for the Howard Hughes Corporation testified that this petition represented the next step of Downtown Redevelopment and indicated many questions that the Board has on specific design details of the development will be answered with the upcoming Site Development Plan.

Mr. Santos asked Mr. Fitchett about Councilmember Terrasa's proposed alternative to the Administration's legislation for affordable housing that is being considered by the County Council. He replied that Howard Hughes is not in favor of Ms. Terrasa's proposal. Consequently, Mr. Lazdins proposed alternative language for the plan note dealing with affordable housing. The change would avoid identifying a specific legislative proposal, since the Council has yet to vote. Mr. Brown indicated that the Petitioner would comply with all applicable laws.

Todd Brown, Esq., represented the Petitioner, the Howard Hughes Corporation. Two individuals testified in opposition and one person requested that a note regarding affordable housing on the Final Development Plan be revised. After evaluating all the evidence accepted into the record, the Planning Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Ms. Manion-Farrar summarized DPZ's Technical Staff Report, stating the Amended Final Development Plan (FDP) provides additional information regarding the street and block structure in Area 3. The land area covered by the FDP is not being expanded and with the exception of a few minor adjustments, no changes to the boundaries of the development areas are proposed. The land use designations on the FDP include 53.34 acres of Downtown Mixed Use Area, 15.49 acres of Downtown Parkland (areas outside the designated development areas), and 3.44 acres of Downtown Community Commons (amenity areas) for a total of 68.83 acres. The Development Chart on the Final Development Plan has reallocated the proposed uses, reflecting the latest development concept for the neighborhood. However, the cumulative amount for each land use remains unchanged; reflecting the originally approved 2,300 residences, 250 hotel rooms, 1,475,000 sf of office, 313,500 sf of retail (including restaurant use), and 225,000 sf of civic and cultural uses proposed in four development areas.

Other revisions include the Primary Downtown Community Commons and the proposed location of a signature building at the northeast corner of Area 3. The layout of public streets proposed for Area 3 consist of one north-south street terminating in a cul-de-sac on the west side of the development area (Road E) and two streets on the east side that extend from Merriweather Drive to the North-South Connector and that intersect as an L within the

development (Road F and Road G). DPZ has proposed a change that would designate Road E as a private street, allowing a future, central plaza, located on the east side of Road E, to better connect with a new public library. This would be accomplished by a raised crosswalk, special pavers, and other design features that are not typical of public roads and that require a higher standard of maintenance. Other private roads include a portion of Road F. It will be similarly designed, allowing a temporary expansion of the central plaza to the south for public events. Alleys and service roads may be proposed at the Site Development Plan stage.

The Technical Staff Report finds the proposed Amended Final Development Plan conforms to the Downtown Columbia Plan and the Downtown-Wide Design Guidelines. It also recommends approval of the proposed Amended Final Development Plan, FDP-DC-Crescent-1A, as submitted; subject to complying with any remaining Subdivision Review Committee (SRC) comments and designating Road E as a private street.

Ms. Manion-Farrar responded to Planning Board Chair Bill Santos who asked if the proposed residential units accounted for all or part of the additional units proposed in the Affordable Housing legislation currently before the Howard County Council. She indicated that the affordable units proposed in Phase One of the Crescent Neighborhood are included in the proposed 2,300 units and are, therefore, reflected on the Development Chart.

In response to a question from Mr. Santos regarding the flexibility note footnoted on the Development Chart, Ms. Manion-Farrar confirmed that the note, which is also footnoted on the existing approved Final Development Plan (FDP-DC-Crescent-1), allows uses to shift between development areas, provided the maximum for each use is not exceeded. Ms. Manion-Farrar responded to a follow-up question from Mr. Santos regarding public notice of the changes.

She indicated the changes would be reflected and identified during the Site Development Plan process.

Ms. Manion-Farrar and Planning Director Valdis Lazdins responded to a question from Board member Tudy Adler, who asked why Road E is recommended as a private road, since the County generally requires public roads. They responded that Road E is an internal street that serves only this development area and making it private allows greater design flexibility and use of special pavers. Ms. Manion-Farrar further responded that the private road would be maintained by the property owners and that special pavers will require more maintenance, beyond what the County normally provides. In response to a question from Board member Phil Engelke regarding public access and use of the roads, Mr. Lazdins responded that access by the public can be addressed through a developer's agreement. In response to a question from Board Member Jacqueline Easley regarding pedestrian safety features associated with the street, Mr. Lazdins indicated that the applicant will likely discuss those. Staff anticipates design features to include a speed table, on-street parking, bollards, and other traffic calming features.

Ms. Manion-Farrar responded to a question from Mr. Santos regarding the location of a future library. She stated that the Preliminary Equivalent Sketch Plan under review shows it on the west side of Road E on Parcel D-1, opposite the plaza, and that its only access would be from the private road. Mr. Lazdins further clarified that ownership of the library building has not been settled; it could either be owned by the County or under a long-term lease. Mr. Santos asked if the County Council is aware that the library building may not necessarily be owned by the County, Mr. Lazdins stated that he did not know.

In response to a question from Board member Erica Roberts, Ms. Manion-Farrar clarified that new uses are not proposed for this FDP and the flexibility provision allows uses to be moved across development areas; however, a use may not exceed the amount permitted within this neighborhood phase. In response to a question from Mr. Santos regarding how use changes would be tracked, Ms. Manion-Farrar responded that they would be tracked with SDPs and that the FDP could be amended at build-out to reflect the final configuration. She also stated that the flexibility note requires at least two uses for each development area in the Crescent Neighborhood. This is specifically tied to the development chart, but that open space lots are not reflected on that chart.

Mr. Santos asked how the allocation phasing chart relates to the development chart on Sheet 1 of the Plan. Ms. Manion-Farrar said that they are not directly related as the development chart reflects ultimate development and the allocation chart represents the permitted pace of residential development due to schools being at about 100% capacity in this planning area. Ms. Manion-Farrar explained the 300 unit per year maximum currently applies because schools are above 100% capacity. Legislation before County Council may adjust or eliminate the cap to facilitate the construction of large apartment buildings.

In response to a question from Mr. Santos regarding the traffic study, Ms. Manion-Farrar explained that it was updated to reflect the shift in uses between development areas and that DPZ and DPW found that it complied with APFO. Ms. Manion-Farrar also explained that the study separated the required improvements into three phases, triggered by specific traffic counts, which will be determined at Site Development Plan.

Based on the evaluations, findings, and conclusions provided by the Department of Planning and Zoning, the Planning Board finds that the Petitioner has met the criteria for

persuasive and, therefore, adopts DPZ's report as its own in making the findings of fact and conclusions contained in this decision.

- 2. Todd Brown testified that the documents submitted with this amendment show the location of public roads, adjust the development chart, reorient public spaces, and adjust the environmental restoration area. Mr. Brown stated that the Petitioner agrees with changing Road E from a public to a private road as recommended by staff. Mr. Brown requested that the Certifications of Posting (Exhibits 1 and 2) be entered into the record. Mr. Brown then entered the qualifications of professional expert witnesses representing the Petitioner as Exhibit 3 and a copy of the Petitioner's PowerPoint presentation as Exhibit 4. Mr. Brown requested that in addition to the petition that the entire DPZ file for FDP-DC-Crescent-1A, including all comments and correspondence, be incorporated by reference into the record.
- 3. Greg Fitchett, Vice President of Development for the Howard Hughes Corporation testified that this petition represented the next step of Downtown Redevelopment and indicated many questions that the Board has on specific design details of the development will be answered with the upcoming Site Development Plan.

Mr. Santos asked Mr. Fitchett about Councilmember Terrasa's proposed alternative to the Administration's legislation for affordable housing that is being considered by the County Council. He replied that Howard Hughes is not in favor of Ms. Terrasa's proposal. Consequently, Mr. Lazdins proposed alternative language for the plan note dealing with affordable housing. The change would avoid identifying a specific legislative proposal, since the Council has yet to vote. Mr. Brown indicated that the Petitioner would comply with all applicable laws.

- Mr. Stuart Kohn testified in opposition to the petition. He asked Mr. Fitchett if the DAP recommendations from the previous night (regarding a future SDP) should be part of hearing. Mr. Fitchett, as well as Mr. Santos and Mr. Lazdins, said that they should not since the DAP recommendations dealt with an SDP and are not applicable to an FDP.
- 4. Mr. Mike Trappen, P.E., an Associate at Gutschick, Little and Weber, testified that a pre-submission community meeting was held on March 3, 2016. He further stated that there are no changes to any of the other neighborhood documents. Mr. Trappen said the amendment shows the location of public streets, refines the location and amount of development by area, adjusts the location of the Downtown Community Commons, and refines the location of environmental restoration improvements.
- 5. Mike Workosky, Professional Transportation Planner and Vice President at Wells & Associates, testified that the updated traffic study was based on the approved traffic study associated with the original FDP. Mr. Workosky stated the updated report accounted for shifts in the location of land uses and that traffic levels did not change. In response to a question from Mr. Santos about failing intersections in Downtown Columbia, Mr. Workosky responded that proposed improvements allow all intersections to meet APFO requirements and that the traffic study would be further evaluated at Site Development Plan.
- Mr. Kohn asked where a copy of the traffic study could be obtained. Mr. Workosky said that it was submitted to DPZ and is available for review, which Ms. Manion-Farrar confirmed.
- 6. James Pett, Principal at JP2 Architects, testified about public spaces in Area 3. He stated that the reoriented public park better conforms to the goals of the Downtown Columbia Plan and the Crescent Neighborhood Design Guidelines. It better connects open spaces and is more centrally located. Mr. Santos asked about tree clearing in Open Space Lot 10. Mr. Pett

Plan and the Crescent Neighborhood Design Guidelines. It better connects open spaces and is more centrally located. Mr. Santos asked about tree clearing in Open Space Lot 10. Mr. Pett responded that it was done to construct roads. Mr. Jervis Dorton, of Columbia, asked how people travelling Merriweather Drive would know where the park is, since it is internal to the development. Mr. Pett responded that its location conforms to a grid of streets arranged around the park. While the park will not be visible from Merriweather Drive streets lined with shops, restaurants, and residences will lead to it — more so than vehicles just driving by on Merriweather Drive.

- 7. Jennifer Missett, Senior Engineer with BioHabitats, explained the small modifications to the environmental restoration area that accommodate a road connection to the North-South Connector. Ms. Missett testified that the change results in a net increase 0.2 acres of reforestation area. Ms. Missett also provided a status update for environmental restoration within the Crescent Neighborhood. In response to a question from Mr. Santos, Ms. Missett testified that stream or wetland restoration would not be impacted by the shift in the environmental restoration area.
- 8. Mr. Dorton testified in opposition to the petition. He stated that the reoriented Downtown Community Commons is insular and turns its back to Merriweather-Symphony Woods. This conflicts with the goals of the Downtown Columbia Plan to knit public spaces together. Mr. Dorton further testified that the Crescent Neighborhood Design Guidelines do not provide required setbacks and that streets and sidewalks are designed in a way that does not encourage public enjoyment and is not healthy for trees. He stated that the plan is more urban than the green city the Rouse Company envisioned. Mr. Dorton asked the Planning Board to require greater setbacks as a condition of approval. In response to a question from Mr.

Santos, Mr. Dorton affirmed that he had once worked for the Rouse Company. Mr. Santos then asked if the Columbia lakefront was visible from a public road, in response Mr. Dorton said that it is not, but the lake is. He stated that people are naturally drawn to the lake, so the open space does not require announcing. Mr. Santos then asked about existing setbacks on the north side of Little Patuxent Parkway. Mr. Dorton stated that not many people walk on that sidewalk and that the multi-use path on the south side of Little Patuxent Parkway is too close to the road and is not safe due to the quantity and speed of traffic.

- 9. Kate McLeod, special assistant to Councilperson Terrasa, stated that there are two proposals for affordable housing before the County Council and the note on the FDP appears to contemplate only one. She stated that Ms. Terrasa believes it is critical for the developer to comply with the proposal is finally adopted and the note should be amended accordingly.
- 10. Mr. Brown asked Mr. Lazdins to read the revised note. He stated that "Affordable Housing will be met either by making all requisite CEPPA payments or by complying with any applicable laws that address affordable housing." Mr. Brown asked if the statement referenced the DRRA, to which Mr. Lazdins responded, it did not. Mr. Brown said the revised note was acceptable to the Petitioner.
- 11. The Board finds that the Petitioner has established that its proposed Amended Final Development Plan satisfies all the criteria of Section 125.0E.4.a. through o., and the Board makes the following findings of fact on these criteria based on the evidence in the record, including the evaluations, findings and conclusions of the DPZ, as contained in its Technical Staff Report, which the Board adopts as its own, as provided below:

- a. The Crescent Neighborhood Concept Plan, the Crescent Neighborhood Design Guidelines, and the Crescent Neighborhood Implementation Plan ("the Neighborhood Documents") remain unchanged and are not part of this petition. The Amended Final Development refers to the previously approved and recorded Crescent Neighborhood Concept Plan (Plat #23397-23402), the previously approved and recorded Crescent Neighborhood Design Guidelines (Liber 16305, Folio 415-511, and Liber 16306, Folio 1-150), and the previously approved and recorded Crescent Neighborhood Implementation Plan (Liber 16306, Folio 151-192),
- b. The Crescent Neighborhood Design Guidelines remain unchanged and are not part of this petition. The Amended Final Development refers to the previously approved and recorded Crescent Neighborhood Design Guidelines (Liber 16305, Folio 415-511, and Liber 16306, Folio 1-150).
- c. The changes to the street and block layout in Area 3, as shown on the Amended Final Development Plan, conforms to the previously approved and recorded Crescent Neighborhood Concept Plan (Plat #23397-23402), the previously approved and recorded Crescent Neighborhood Design Guidelines (Liber 16305, Folio 415-511, and Liber 16306, Folio 1-150), and the previously approved and recorded Crescent Neighborhood Implementation Plan (Liber 16306, Folio 151-192); all previously approved and recorded with FDP-DC-Crescent-1, which provide a context for evaluation but that are only binding on properties within the boundaries of the Amended Final Development Plan, FDP-DC-Crescent-1A. Further, the proposed street layout meets the requirement listed as Note 6 on Sheet 1 of the existing recorded FDP-DC-Crescent-1, which requires at least one public street connecting Road D (Merriweather Drive) with the future North-South Connector

within Parcel D. The Amended Final Development Plan conforms to the Revitalization Phasing Plan, the Downtown Community Enhancements Programs, and the Public Amenities (CEPPA) Implementation Chart. The Board makes these findings based on the testimony of Mr. Fitchett, as summarized in Finding of Fact 3, the testimony of Mr. Trappen, as summarized in Finding of Fact 4, Petitioner's Exhibits, and DPZ's Technical Staff Report; all of which the Board finds convincing.

- d. The Amended Final Development Plan, in context with the surrounding planned and existing development, provides a balanced mix of housing, employment, commercial, arts, and cultural uses throughout each phase, based on the testimony of Mr. Trappen as summarized in Finding of Fact 4, Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.
- e. The Amended Final Development Plan will satisfy the affordable housing requirement by amending the subject note on the plan to state "Affordable Housing will be met either by making all requisite CEPPA payments or by complying with any applicable laws that address affordable housing" based on the testimony of Mr. Fitchett, as summarized in Finding of Fact 3, the testimony of Mr. Brown, as summarized in Finding of Fact 10, the Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing,
- f. The Amended Final Development Plan's proposed bicycle and pedestrian network creates convenient connections throughout the subject area and to the existing network; in particular to the Downtown Multi-use Pathway, to the Merriweather Symphony Woods Neighborhood, and the future Patuxent Branch Trail based on the Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.

- g. The Amended Final Development Plan protects lakes, streams or rivers, floodplains, and steep slopes on the subject property where possible, with the only disturbances for the road network layout, as coordinated with the Maryland State Highway Administration and which disturbances must be reviewed and permitted by the Maryland Department of the Environment; identical to what was approved and recorded with FDP-DC-Crescent-1. In addition, the Final Development Plan proposes multiple connections to existing and planned open space within the neighborhood based on the testimony of Mr. Pett, as summarized in Finding of Fact 6, Petitioner's exhibits, and DPZ's Technical Staff Report, all of which the Board finds convincing.
- h. The Amended Final Development Plan, FDP-DC-Crescent-1A, project area is approximately 68.83 acres. The area of the proposed 3.44 acres of Downtown Community Commons will be met in part with at least 36,300 sf of Primary Amenity Area, including the South Crescent Park (minimum of 25,300 sf), and the Crescent Promenade (minimum of 11,000 sf) in conformance with the Downtown Columbia Plan. The remaining land area required to meet the 5% area requirement was outlined with the approximate amount of land area per development area to be developed as Downtown Community Commons, as well as trails and multi-use pathways that may be Downtown Community Commons area to be proposed with each Site Development Plan, based on the testimony of Ms. Pett outlined in Finding of Fact 6, and DPZ's Technical Staff Report, all of which the Board finds convincing.
- i. The Amended Final Development Plan is in harmony with existing and planned vicinal land uses, based on the Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing. The Amended Final Development Plan (FDP) proposes mixed-

use development on Development Areas 1-4 all situated on Tax Map 36, Parcel 527, and that this development will require the elimination and replacement of parking for Merriweather Post Pavilion. A note has been added to Sheet 2 to reflect a permanent parking solution for the Merriweather Post Pavilion that will ensure a minimum of 5,000 parking spaces will be made available for the Merriweather Post Pavilion in the Crescent Neighborhood at build-out of the Neighborhood, which will be accomplished with a shared parking arrangement. In the interim, this note specifies the procedures under which eliminated parking spaces are temporarily recovered in several locations, as will be identified over multiple Site Development Plans during the period of construction.

j. The development proposed by the Amended Final Development Plan will be served by Adequate Public Facilities for schools and roads. There are no additional allocations proposed with this amended FDP and the plan continues to reflect tentative allocations for 2,300 units over eight phases from Allocation Year 2018 through Allocation Year 2025, based on the testimony of Mr. Trappen, as summarized in Finding of Fact 4; the testimony of Mr. Workosky, as summarized in Finding of Fact 5, and DPZ's Technical Staff Report, all of which the Board finds convincing. The road network for the neighborhood and any other required mitigation of the existing Downtown road network is planned to be developed over three phases, which will be further evaluated and approved in association with the planned development levels of associated Site Development Plans for the Crescent Neighborhood and in conjunction with other approved development within Downtown Columbia. No changes are made to the proposed road network, except for the addition of a public road in Area 3. These findings are made based on the testimony of Mr. Workosky, as summarized in Finding of Fact 5, and DPZ's Technical Staff Report, all of which the Board finds convincing.

- k. The majority of environmental features within the project area will be adequately protected within lots designated as Downtown Parkland, except for areas to be disturbed to construct a road network in accordance with and in coordination with the Maryland State Highway Administration and ultimately reviewed and permitted by the Maryland Department of the Environment. Some streams and wetlands and their associated buffers and floodplains will be impacted by constructing the road network. Any disturbances will require approval from Maryland Department of the Environment. All areas under environmental protection (Lots 1-5 and portions of Lots 7-8) will be subject to Environmental Restoration, as outlined in the revised 2014/2015 Environmental Phasing Plan, based on the testimony of Ms. Missett, as summarized in Finding of Fact 7, Petitioner's exhibits, and DPZ's Technical Staff Report, all of which the Board finds convincing.
- I. The development proposed by the Final Development Plan does not impact any historic or culturally significant existing sites, buildings or structures, or public art, based on Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.
- m. The Petitioner will either incorporate art into the community equivalent in value to 1% of the building construction costs, or will pay a fee-in-lieu as required in Section 125.0.A.9.f.2 of the Zoning Regulations, as noted on Sheet 4 of the Plan, and this will be further determined at the Site Development Plan stage of the process, based on the Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.
- n. The Final Development Plan provides a plan to hold, own, and maintain in perpetuity land by indicating on a note on Sheet 1 of the plan that such property within the FDP area

intended for common, quasi-public amenity use will be held, owned, and maintained by the property owner; subject to such maintenance responsibilities potentially being shared among property owners or assumed by a maintenance organization, the County, or other organization, based Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.

o. The note which has been added to the FDP regarding Downtown Partnership membership according to the formula for calculating the payment of annual charges will better ensure conformance with the Community Enhancements, Programs, and Public Amenities provisions, and will provide a consistent means of calculating and providing the required annual charges, based on Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.

CONCLUSIONS OF LAW

 The Petitioner must adequately address all remaining technical comments provided by the Subdivision Review Committee in the letter dated August 24, 2016.

Attachment 1

PB-422 (FDP-DC-Crescent-1A), Downtown Columbia, Crescent Neighborhood, Phase 1

LIST OF PETITIONER'S EXHIBITS

- 1. Certification of Newspaper Advertisements
- 2. Certification of Posting Letter
- 3. Professional Qualifications of Expert Witnesses
- 4. Copy of Petitioner's PowerPoint Presentation

- 2. Road E shall be a private road.
- 3. The note regarding affordable housing shall be amended to state: "Affordable Housing will be met either by making all requisite CEPPA payments or by complying with any applicable laws that address affordable housing."

HOWARD COUNTY PLANNING BOARD

ATTEST:

Valdis Lazdina Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY: HOWARD COUNTY OFFICE OF LAW GARY KUC, COUNTY SOLICITOR

Deputy County Solicitor