



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JAN 16 2009

**MCPB No. 09-03**  
**Preliminary Plan Amendment No. 12004018B**  
**Centerpark**  
**Date of Hearing: December 4, 2008**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION<sup>1</sup>**

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS on March 12, 2008, Centerpark East, L.L.C. ("Applicant"), filed an application for approval of amendment to a preliminary plan of subdivision of property that requested an abandonment of two previously recorded/platted rights-of-way (Turkey Thicket Drive and Hubble Court) to be replaced by two private street parcels, and reconfiguration of the boundaries of the abutting lots on 134 acres of land located on the east side of Snouffer School Road opposite the intersection with Alliston Hollow Way ("Property" or "Subject Property"), in the Gaithersburg and Vicinity master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan amendment application was designated Preliminary Plan Amendment No. 12004018B, Centerpark ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated November 22, 2008, setting forth its analysis, and recommendation for approval of the Application ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on December 4, 2008, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

<sup>1</sup> This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

Approved as to  
Legal Sufficiency: *Christina Sorrento* 12/30/08  
8787 Georgia Avenue, N.S.P.R.C. Legal Department 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320  
[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

WHEREAS, on December 4, 2008, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Alfandre; with a vote of 5-0 Commissioners Alfandre, Cryor, Hansen, Presley and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 12004018B on 134 acres of land located on the east side of Snouffer School Road opposite the intersection with Alliston Hollow Way in the Gaithersburg and Vicinity Master Plan area, including the abandonment of the previously dedicated rights of way for Turkey Thicket Drive and Hubble Court pursuant to Section 50-15 of the Montgomery County Code, and subject to the following conditions:

- 1) The Applicant must construct Hubble Court and Turkey Thicket Drive as private streets in conformance with the "Typical Section" as shown on submitted preliminary plan drawings dated October 24, 2008. The sidewalk must be offset by a minimum of 5 feet from the pavement edge.
- 2) The Applicant (builder) must certify to the Montgomery County Department of Permitting Services (DPS), MNCPPC Staff, and the future lot tenants by means of a covenant in the land records that all private streets in the development have been designed and constructed to the structural standards of a County tertiary road.
- 3) Prior to recordation of plat(s), the Applicant must provide proposed access easement language and the funding mechanism and road maintenance agreements to the Department of Parks staff for review and approval. Construction and perpetual maintenance shall be at no cost to M-NCPPC or the Izaak Walton League.
- 4) All other previous conditions of approval for Preliminary Plan No. 120040180 as contained in the Planning Board Opinion dated July 26, 2004, and as amended by Resolution dated October 18, 2007, remain in full force and effect.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The previously dedicated rights of way for Turkey Thicket Drive and Hubble Court have not been in public use and qualify for abandonment pursuant to Sections 50-15(c) and 49-68 of the Montgomery County Code.*

The long standing use of the existing Turkey Thicket Drive right-of-way as a private road by the Applicant, M-NCPPC and the Izaak Walton League does not constitute public use. The right-of-way plat was recorded on August 9, 2007. However, the right-of-way was never improved and therefore was not accepted by the Montgomery County Department of Transportation. As the Board indicated, because there are no official demarcations of the entrance for public access or any indication that such facilities exist on this road, occasional use by M-NCPPC employees or the caretaker of the Izaak Walton League facility does not constitute "public use". In addition, Hubble Court has no previous public use established within it and is unimproved. M-NCPPC, the Izaak Walton League, and the Applicant all support the abandonment of the rights-of-way and the privatization of Turkey Thicket Drive.

Pursuant to its authority under Sec. 50-15(c) the Planning Board finds that there is no documented public use within the rights-of-way for either Turkey Thicket Drive or Hubble Court, and that the Plan was appropriately forwarded to all affected property owners and agencies and that there is no opposition to the abandonment as evidenced by testimony received and presented to the Board.

2. *The Preliminary Plan substantially conforms to the Gaithersburg Master Plan.*

The Board finds that the Preliminary Plan remains substantially unchanged by this amendment and continues to conform to the Gaithersburg Master Plan.

3. *Public facilities remain adequate to support and service the area of the proposed subdivision.*

The Board finds that because the Preliminary Plan generates no additional development, the previous findings for adequate public facilities remain valid, including adequate access and safety for pedestrians and vehicles.

4. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

The Board finds that the size, width, shape, and orientation of the proposed lots as amended continue to be appropriate for the location of the subdivision.

5. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

The previous preliminary forest conservation plan remains valid for this Preliminary Plan; therefore, the Planning Board finds that the Preliminary Plan continues to satisfy all requirements of Chapter 22A, the Forest Conservation law.

6. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The approved stormwater concept remains valid since no additional development is approved as part of this Application.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 months from the Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) of the original approval and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that the date of this Resolution is JAN 16 2009 (which is the date that this Resolution is mailed to all parties of record); and

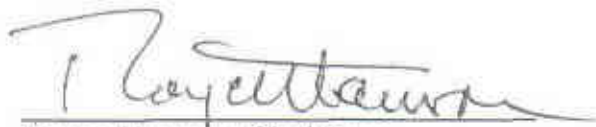
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Robinson, seconded by Commis-

sioner Cryor, with Commissioners Hanson, Robinson, Alfandre, and Cryor voting in favor of the motion, and Commissioner Presley absent, at its regular meeting held on Thursday, January 8, 2009, in Silver Spring, Maryland.

A handwritten signature in black ink, appearing to read "Royce Hanson", written over a horizontal line.

Royce Hanson, Chairman  
Montgomery County Planning Board