



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OCT 14 2009

MCPB No. 09-125
Preliminary Plan No. 120090090
Montgomery Village Marketplace
Date of Hearing: September 17, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

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 October 29, 2008, ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 2 lots on 3.32 acres of land located on Stedwick Road approximately 410 feet west of Montgomery Village Avenue ("Property" or "Subject Property"), in the Gaithersburg Vicinity master plan area ("Master Plan"); and

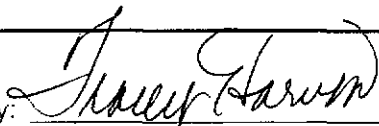
WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090090, Montgomery Village Marketplace ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated September 4, 2009, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on September 17, 2009, 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

Approved as to
Legal Sufficiency:


M-NCPPC Legal Department

WHEREAS, on September 17, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Alfandre, Hanson and Wells-Harley voting in favor; Commissioners Cryor and Presley being absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120090090 to create 2 lots on 3.32 acres of land located on Stedwick Road approximately 410 feet west of Montgomery Village Avenue ("Property" or "Subject Property"), in the Gaithersburg Vicinity master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this preliminary plan is limited to two lots for a maximum of 26,000 square feet of general retail uses or a combination of uses that generate an equivalent number of weekday peak-hour trips. The uses approved with this preliminary plan are a 3,172 square foot bank with three drive thru-lanes, and 21,696 square feet of general retail and restaurant uses, excluding fast-food restaurants. Any increase in square footages or changes to these uses will require site plan amendment/approval and further adequate public facilities (APF) review and approval.
- 2) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated April 14, 2008. These conditions may be amended by MCDPS; provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 3) Prior to issuance of final use and occupancy permit for the third building, the Applicant must complete improvements to the Theater Pond. These improvements must be approved by Maryland Department of the Environment and/or MCDPS with input from the Department of Environmental Protection.
- 4) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated August 28, 2009, except the request for the Applicant to construct, maintain, and grant uninterrupted access to an on-site, two stall restroom and storage facility. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 5) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to issuance of access permits.
- 6) Verizon must be accommodated in easements running through the property that will serve the new uses in a form acceptable to Verizon. Prior to recordation of plat(s), all replacement easements must be recorded.

- 7) The Applicant must construct an eight-foot-wide sidewalk along the Stedwick Road frontage.
- 8) The Applicant must satisfy Local Area Transportation Review (LATR) by providing a second right-turn lane on the eastbound Stedwick Road approaching its intersection with Montgomery Village Avenue. This additional lane will be provided by restriping and widening the eastbound approach at the intersection by approximately 6.5 feet on the north side and approximately 2.5 feet on the south side with an approximate 120 foot long taper to the west. The intersection improvement plan must be approved by the Montgomery County Department of Transportation (MCDOT). The permits and bonds must be approved by the Montgomery County Department of Permitting Services (DPS) prior to site plan certification
- 9) The Applicant must close the pedestrian tunnel under Stedwick Road pursuant to final approval of Abandonment Case AB-724 and provide an alternative mid-block pedestrian crossing across Stedwick Road between Mills Choice Road and the eastern driveway into the Montgomery Village Center. Associated with this pedestrian crossing, the Applicant must provide the necessary handicapped ramps, signage, and pavement treatments/markings. On the opposite side of Stedwick Road on the property controlled by the two condominium associations (i.e., Center Court and Heron's Cove), the tunnel opening must be re-graded, and an ADA-compliant pedestrian connection leading to the crossing must be provided, subject to final consent by the condominium associations. Prior to site plan certification, the tunnel closure final plan must be reviewed and approved by MCDOT and the permits and bonds must be approved by DPS.
- 10) The Applicant must provide inverted-U bike racks for 10 bicycle parking spaces located near the main entrances to the commercial businesses. Transportation Planning Staff must review and approve the ultimate location of the bike racks prior to certification of the site plan.
- 11) A Certified Site Plan must be approved prior to the approval of the record plat.
- 12) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
- 13) All other necessary easements must be shown on the record plat.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein) and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the master plan.*

The 1985 Gaithersburg Vicinity Master Plan focused on three areas (the Shady Grove West Study Area, the Airpark Study Area, and the Smokey Glen Study Area), and states that "This Plan continues the recommendations of the 1971 Gaithersburg Master Plan for most of the land outside these study areas" (p. 5). Therefore, to generally conform to the 1971 Master Plan, the plan should show:

- A "central place," a center of activity and attraction;
- An architectural focal point with opportunities for shopping, recreational and social activities;
- A connected pedestrian circulation system; and
- Appropriate uses.

The currently proposed retail uses are expected to attract activity, and there are two important spaces for gathering—the first is the bosque of trees in the northeast corner of the site and the second is in front of proposed Building C in the southeast portion of the site. The area in front of Building C is an important space that was carefully considered. This gathering area will help create the "central place" on this site for the community, as envisioned by the master plan. The Planning Board finds a central place is adequately provided for in the preliminary plan.

The proposal includes shopping opportunities, but more limited recreational and social opportunities. The Planning Board finds a significant improvement to the area under the bosque of trees will provide the needed social opportunities.

The Planning Board considered the importance of a pedestrian circulation system, throughout the Village and within individual sites. The sidewalks along the property frontage are to be rebuilt and upgraded from 6 feet to 8 feet in width connecting to an 8 foot sidewalk along proposed Building C. A sidewalk along the private drive on the western portion of the site will provide access to the Subject Property and retail destinations to the north. A sidewalk in front of proposed Building B, which is located along the northern property line, will connect to the sidewalk system within the property directly to uses east of the site. An at-grade mid-block crossing will connect the project to confronting properties along Stedwick Road. Specialty pavers are used throughout the pedestrian areas to define spaces and unit pavers are utilized at various crossing locations to serve as a traffic calming measure. The Planning Board finds the proposed pedestrian improvements will provide the necessary pedestrian connections within the site and to adjacent properties.

The Planning Board also finds the proposed bank use, general retail and restaurant uses are appropriate for the location of this site. The abutting properties that contain a post office, grocery store and various retail uses as well as the residential

communities across Stedwick Road will contribute to accomplishing the Applicant's activity, focal point and pedestrian circulation goals for the site. All proposed uses must also comply with the County's Noise Ordinance, which will further ensure a harmonious relationship.

- 2. Public facilities will be adequate to support and service the area of the proposed subdivision.*

Roads and Transportation Facilities

Pedestrian and Vehicular Facilities

The existing sidewalks along Stedwick Road are proposed to be reconstructed. As an alternative to and a condition of the closure of the pedestrian tunnel, a mid-block pedestrian crossing is proposed and recommended for approval. In addition to frontage improvements, the Applicant has been working with the Heron's Cove and Center Court condominium associations to provide pedestrian connections leading to the mid-block crossing on the opposite side of Stedwick Road.

The final design and improvements within the public right-of-way, including the final location of a mid-block crossing, striping, bump-outs and any bus layover areas, will be determined by MCDOT after the record has been closed for the hearing regarding the abandonment of the pedestrian underpass/tunnel under Stedwick Road (case AB 724). The Applicant and Planning Board voiced their concern for the location of the bus layover areas in front of the site, specifically as they may block views into the site, obstruct the proposed outdoor uses and create potential conflicts with pedestrians.

Transportation Demand Management Requirements

The site is located outside the Greater Shady Grove Transportation Management District (TMD), therefore, the Applicant is not required to enter into a Traffic Mitigation Agreement with the Planning Board and MCDOT or assist in achieving and maintaining its trip mitigation goal.

Local Area Transportation Review and Policy Area Mobility Review

In accordance with the applicable guidelines, a traffic study was submitted to satisfy Local Area Transportation Review (LATR) because the proposed land use generates 30 or more peak-hour trips within the weekday morning and evening peak periods.

At the intersection of Montgomery Village Avenue and Stedwick Road, the CLV values within the weekday morning peak hours exceed the congestion standard of 1,425. The evening CLV value for the total improved traffic condition continues to exceed the congestion standard, however, the extra capacity provided by the

recommended intersection improvement of a second right turn lane at the intersection of Stedwick Road and Montgomery Village Avenue has reduced the CLV value by more than 150% of the 3 CLV (i.e., 1,670 minus 1,667) impact attributable to the proposed development. At the other three studied intersections, the CLV values are less than the congestion standard of 1,425 CLV for the Montgomery Village/Airpark Policy Area. The Planning Board finds the LATR test is satisfied by the proposed intersection improvements.

The Policy Area Mobility Review (PAMR) test was adopted under the 2007-2009 *Annual Growth Policy* for new developments in certain policy areas. Since the filing date of the preliminary plan was considered to be before July 1, 2008, the PAMR mitigation requirement was 0% of new site-generated peak-hour trips within the weekday morning and evening peak-hours. Thus, the Planning Board finds no mitigation is required to satisfy PAMR for the subject development.

Other Public Facilities

The Planning Board finds that public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and sewer systems. The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Electrical, gas, and telecommunications services are also available to serve the Property

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

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations and Chapter 59, the Zoning Ordinance. The Planning Board finds the application meets all applicable sections.

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

There is no forest onsite. A Forest Conservation Plan Exemption application (#42008123E) was submitted and later approved on February 7, 2008. The site qualified for an exemption under Chapter 22A-5(1) of the Montgomery County Code, which states that a site is exempt from Article II of the forest conservation law if "any planned unit development for which a project plan was approved by the Planning Board before January 1, 1992 and which received site plan approval before July 1, 1992 for the tract." Under the same exemption, "a development plan or project plan amendment approved after January 1, 1992, is not exempt if it results in the cutting of more than 5,000 additional square feet of forest." Parcel 387 was part of development plan E848; Lot 15 was covered under site plan 819860270; and Lot 19

part of site plan 819810150. Forest removal is not being pursued because there is no forest existing on the site. As a result, the Planning Board finds the entire Property qualifies for a forest conservation plan exemption.

5. *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 stormwater management concept for the Montgomery Village Marketplace project was approved by the Department of Permitting Services on April 14, 2008 and reconfirmed on June 26, 2009. Approval is contingent upon the Applicant establishing an agreement with the Montgomery Village Foundation to use an existing stormwater management pond facility south of the Property. The concept consists of on-site channel protection measures via this existing pond and water quality control via the use of aqua filters and hydrodynamic pretreatment structures. Recharge is not required for this redevelopment.

6. *Issues raised at the public hearing have been appropriately addressed.*

Speakers at the hearing raised the following issues for the Board's consideration:

- a) a wider mix of uses, including residential dwelling units, is more appropriate for the Subject Property;
- b) the pedestrian tunnel under Stedwick Road should be closed but a safe alternative for crossing Stedwick Road must be provided for;
- c) a bus layover facility should not be located along the Property frontage but elsewhere within Montgomery Village.

With respect to issue (a) above, the Planning Board found merit in this suggestion but finds that all proposed uses included in the preliminary plan application are permitted in the TS zone and appropriate for this location.

With respect to issue (b) above, the Planning Board concurred with statements in support of the tunnel closure and reaffirmed the recommendation made by the Board on July 23, 2009 in support of the tunnel abandonment/closure.

With respect to issue (c) above, the Planning Board found that a bus layover facility along the Property frontage would hinder site goals for greater pedestrian activity and enhanced pedestrian safety. The Planning Board supports further investigation into alternative sites more suitable for a bus layover facility and associated restrooms.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) 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 Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

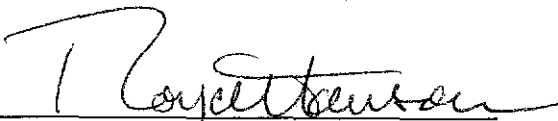
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is OCT 14 2009 (which is the date that this Resolution is mailed to all parties of record); and

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).

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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 Wells-Harley, seconded by Commissioner Alfandre, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, October 1, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board