



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

MCPB No.13-27
Site Plan No. 820130020
Town and Country Movers
Date of Hearing: February 28, 2013

APR 3 2013

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board" or "Board") is authorized to review site plan applications; and

WHEREAS, on August 10, 2012, Rickenbacker Associates, LLC ("Applicant"), filed an application for approval of a site plan for development of an existing lot with a new one-story, 31,820-square foot secured, gated warehouse building on 2.13-gross acres of I-4 zoned-land, located at 7591 Rickenbacker Drive (Lot 34 of Block D), Gaithersburg, Maryland, approximately 1,000 feet west of Woodfield Road ("Subject Property"), in the Gaithersburg Vicinity Master Plan ("Master Plan") area; and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820130020, Town and Country Movers ("Site Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated February 15, 2013, setting forth its analysis of and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 28, 2013, the Planning Board held a public hearing on the Application, at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the Hearing, the Planning Board voted to approve the Application subject to certain conditions, on the motion of Commissioner Dreyfuss, seconded by Commissioner Anderson, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley and Wells-Harley voting in favor.

Approved as to
Legal Sufficiency


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NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820130020 for development of an existing lot with a new one-story, 31,820-square foot, secured, gated warehouse building, on the Property, subject to the following conditions:¹

1. Preliminary Plan Conformance

The development must comply with the conditions of the approved Resolution for Preliminary Plan 119910640 approved by the Planning Board Resolution dated September 17, 1991.

2. Transportation – Pedestrian and Bicycle Facilities

- a. The Site Plan must be limited to up to 31,820 square feet of a secured, gated warehouse with only truck drop-offs and pick-ups and no employees scheduled to continuously work on the site on any one day.
- b. Any changes in use will require an amendment to this Site Plan and may require additional on-site parking, pedestrian, bicycle, or vehicular improvements in addition to the TPAR's transportation impact fee required at such time.

3. Final Forest Conservation Plan

Prior to any demolition, clearing, or grading, the Applicant must obtain Staff approval of a Certificate of Compliance Agreement for use of an M-NCPPC-approved off-site forest mitigation bank to satisfy the reforestation requirement.

4. Development Program

The Applicant must construct the development in accordance with a development program that will be reviewed and approved by Staff prior to the approval of the Certified Site Plan. The development program must include the following items in the phasing schedule:

- a. Street tree planting may wait until the next growing season.
- b. On-site amenities including, but not limited to, landscaping, lighting, and green area adjacent to the building, must be installed prior to release of any use-and-occupancy permit.
- c. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all applicable environmental protection devices.
- d. The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, and other features, as applicable.

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

5. Certified Site Plan

Prior to approval of the certified Site Plan the following revisions must be made and/or information provided, subject to staff review and approval:

- a. Include the Final Forest Conservation Plan approval, stormwater management concept approval, development program, inspection schedule, and Resolution approving this Site Plan on the approval or cover sheet.
- b. Remove unnecessary sheets.
- c. Make corrections and clarifications to details, labeling, data tables, and schedules, as required by Staff.
- d. Ensure consistency of all details and layout between architecture, site, landscape, and forest conservation plans. Adjust the truck turn-around area to show no encroachment in the 50-foot parking setback.

BE IT FURTHER RESOLVED, that all site development elements as shown on Town and Country Movers drawings stamped by the M-NCPPC on February 5, 2013 shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that, having considered the recommendations and findings of its Staff as presented at the hearing and 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 Planning Board FINDS, with the conditions of approval, that:

1. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

There is no development plan, diagrammatic plan, or schematic development plan associated with the subject property.

2. *The Site Plan meets all of the requirements of the zone in which it is located.*

Based on the following Data Table, which sets forth the development standards approved by the Planning Board and binding on the Applicant, and based on other evidence and testimony of record, the Board finds the Site Plan meets all of the applicable requirements of the Montgomery County Zoning Ordinance for the I-4 Zone, Standard Development method.

The proposal includes a Waiver to Section 59-E-3 of the Montgomery County Zoning Ordinance for required industrial/warehouse uses to provide off-street parking at a rate of one and one-half (1.5) spaces per 1,000 square feet of proposed building total floor area. The parking ratio yields 48 parking spaces for the proposed 31,820 square feet of floor area. The Applicant's Waiver request of 41 of the required 48 spaces is due to the unique nature of the proposed long and short-term warehouse activity described in the Parking Waiver Justification Statement dated August 7, 2012 and a revised Traffic Statement dated January 30, 2013. The Justification Statement highlights that the proposed warehouse operations will require only 7 off-street parking spaces at this time for this owner. The Applicant has reserved sufficient area on-site to allow future owners/tenants to expand and meet the off-street parking requirements, if necessary.

Table 1: Development Standards Data Table - I-4 Zone

PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Site Plan
Maximum Height (in feet)	42 ft.	42 ft.
Minimum Setbacks:		
Abutting residential [Sec. 59-C-5.35(a)] at the rear	100 ft. Min.	101 ft.
At the side	10 ft. Min.	10 ft.
From the road	25 ft.	77 ft.
Maximum Density [Sec. 59-C-5.44(c)]	1.0 FAR or 92,624sf	0.34 or 31,820sf
Minimum Green Area [Sec. 59-C-5.32] % of gross tract acres	20%	45%
Parking [Sec. 59-E 3.7 1.5 spaces/1,000sf GFA]	48	7
Off-Street Parking Setback [Sec. C-59-5.44(d)(1) from any residential zone	50	50 ^[1]

3. *The locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

^[1] As conditioned.

The Board finds the proposed warehouse building is compatible with the other existing industrial warehouse buildings on the three adjoining properties in relation to the subject property. The Applicant has stipulated the warehouse is for long and short-term storage in a secured, gated warehouse with 2 to 3 employees using the facility on an as needed pick-up and drop-off basis. No employees will be working at this location on a daily basis. Furthermore, the warehouse will be located in compliance with required building setbacks (i.e., the rear building setback is 100 feet, 101 feet is proposed).

a. Landscaping and Lighting

The Planning Board finds the Landscape Plan will provide a mix of shade trees and shrubs, mostly along the north and west sides of the site. The additional landscaping will screen the residential uses to the north. The proposed landscaping will mostly be located at the site's north and west property lines. Additional landscaping at the north property line will enhance the existing vegetation in Parcels C and D of the Edinburgh site, an area that functions as a vegetative buffer. The Lighting Plan includes four pole-mounted metal luminaires located on the west side of the site. Eleven wall-mounted light fixtures are proposed on all four sides of the warehouse, similar to lighting as currently provided by the existing adjacent industrial uses.

b. Vehicular Circulation

The Board finds the proposed vehicular circulation system is adequate, safe, and efficient, subject to the recommended conditions of approval. In the event there is a change in the warehouse use, the Applicants or any successor must amend the Site Plan to satisfy County Code Section 59-D-3.4(c)(3) and demonstrate that the on-site parking, pedestrian and vehicular circulation are adequate, safe, and efficient. A Site Plan amendment may require additional on-site parking, pedestrian, bicycle, or vehicular improvements in addition to payment of the TPAR transportation impact fee.

c. Adequate Public Facilities Review

The site's Adequate Public Facilities (APF) validity expired on October 12, 2003. The Applicant is required to address the APF "policy area review" test as a new development located in the Montgomery Village/Airpark Policy Area under the 2012-2016 Subdivision Staging Policy. Because the subject plan is not a subdivision plan, the Applicant is required to satisfy the recently-enacted Transportation Policy Area Review (TPAR) test and did not have a choice between the Policy Area Mobility Review (PAMR) or TPAR test. Under the TPAR

test, the transportation impact fee of \$44,946 must be paid to satisfy the 'policy area review.'" However, the Applicant submitted a revised Traffic Statement dated January 30, 2013 that specifies the intended use of the warehouse space. The proposed warehouse will be a secured, gated warehouse with only truck drop-offs and pick-ups and no employees scheduled to continuously work on the site on any one day. Thus, the specific intended use would generate zero peak-hour trips within the weekday morning and evening peak periods on a regular basis. With the revised Traffic Statement, the transportation impact fee is not required to satisfy the TPAR test because the proposed specific land use generates three or less new peak-hour trips within the weekday morning and evening peak periods on a regular basis. Any changes in use will require an amendment to this Site Plan and may require additional on-site parking, pedestrian, bicycle, or vehicular improvements in addition to the TPAR's transportation impact fee payment required at such time.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The Board finds the proposed warehouse use is compatible with the other existing industrial warehouse uses on three sides of the subject property. The adjoining property to the north, the Edinburgh neighborhood, is developed with single-family residential units. At the common property line between the two land uses, Parcels C and D are parallel to this property line. These parcels are 20-feet wide and have existing vegetation. These vegetated parcels function as a buffer. The Montgomery County Zoning Ordinance recognizes the I-4 zone is appropriate as a transitional industrial zone.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The Planning Board finds that, as conditioned, the Site Plan is in compliance with the Environmental Guidelines, and meets all applicable requirements of Chapter 22A regarding forest conservation, including granting a variance for impacts to one off-site specimen tree, and County Stormwater Management requirements reviewed by DPS.

Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or disturbance within the Protected Tree's critical root zone ("CRZ")

requires a variance under Section 22A-12(b) (3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

Development of the site will impact 11% of the CRZ of a 36.3-inch DBH black cherry (*Prunus serotina*). Although the Applicant is saving the tree, a variance is still required in order for the Applicant to impact the tree. The Applicant is proposing the construction of a warehouse, parking, and stormwater management facilities that retain a stand of trees along the northeastern boundary of the site. This stand of trees will act as a buffer between the development and the specimen tree. Tree protection measures are proposed to ensure the survival of the specimen tree. Working within the constraints of the existing lot, the Applicant minimized the proposed impacts to 11% of the CRZ surrounding the specimen tree. The Board finds that the Applicant has demonstrated a sufficient unwarranted hardship to justify the requested variance.

More specifically, with regard to the Variance, the Planning Board finds that granting the requested Variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as this property is an industrial flag lot in the Montgomery Industrial Airpark. The property is setback 70-feet from the right-of-way for Rickenbacker Drive and an industrial warehouse is proposed for this site that is similar in use to the adjacent properties. Due to the constraints of the property, in Staff's opinion, and the Board concurs, that granting the variance will not confer a special privilege to the Applicant.

2. *Is not based on conditions or circumstances which are the result of the actions of the applicant.*

The Board finds that the requested variance is based on proposed development density and the site conditions, rather than on conditions or circumstances which are the result of actions by the Applicant.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighborhood property.*

The Board finds that the requested variance is a result of the proposed site design and layout on the subject property and not the result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

Because the proposed development will only impact 11% of the CRZ surrounding the specimen tree, the specimen tree will not be removed. The specimen tree is located adjacent to a retained tree stand that will buffer the tree from the proposed development and provide additional surface stabilization. The specimen tree is not located in an environmental buffer or within a Special Protection Area. The Staff finds and the Board concurs that the project will not violate State water quality standards or cause measurable degradation in water quality. No mitigation is recommended for trees impacted but retained.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

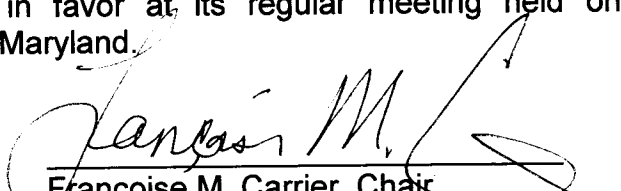
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is APR 3 2013 (which is the date that this resolution is mailed to all parties of record); and

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 Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, March 21, 2013, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board