



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

MCPB No. 13-188
Site Plan No. 82011009D
Parklawn North
Date of Hearing: January 23, 2014

JAN 28 2014

RESOLUTION

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

WHEREAS, on July 21, 2011 the Planning Board, by Resolution MCPB No. 11-70, approved Site Plan No. 820110090, for 520,000 square feet of additional office development, including up to 1,000 square feet of ancillary retail use on 12.96 acres of TMX-2 zoned-land, located on Fishers Lane approximately 1,000 feet east of Twinbrook Parkway ("Subject Property"), in the Twinbrook Sector Plan ("Master Plan") area; and

WHEREAS, on December 19, 2012 the Planning Board approved Site Plan Amendment No. 82011009A to revise the Final Forest Conservation Plan and to make minor changes to the site plan; and

WHEREAS, on July 15, 2013 an administrative modification was approved as Site Plan Amendment No. 82011009B, which added security features to the site; and

WHEREAS, on July 26, 2013 the Planning Board approved Site Plan Amendment No. 82011009C to amend Condition Nos. 10. and 11.g. of Site Plan No. 820110090; and

WHEREAS, on December 9, 2013, Parklawn North Lot, LLC, ("Applicant"), filed a site plan amendment to amend Condition Nos. 10 and 11.g. of MCPB No. 13-120., approving Site Plan No. 82011009C; and

WHEREAS, Applicant's application to amend the site plan was designated Site Plan No. 82011009D, Parklawn North ("Site Plan," "Amendment" 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 January 10, 2014 setting forth its analysis of, and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency

1/16/14
M. N. C. P. P. C. Legal Department
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WHEREAS, on January 23, 2014, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board 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, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that, the Planning Board APPROVES Site Plan No. 82011009D to modify the timing of the off-site construction of a master planned bikeway connector linking the Rock Creek Trail with the Twinbrook Metro Station (the "Trail") by amending conditions of approval 10 and 11.g as follows:¹

10. Conditions on the Hiker/Biker Trail Construction Schedule

- a. Prior to issuance of permanent Use and Occupancy Certificates for the office building, the Applicant must place \$900,000 in escrow to either be used by the Applicant for construction of the Trail or allocated to Department of Parks CIP No. 768673, as described in Conditions 10.d. and 10.e. below. This payment is inclusive of the \$621,500 required to satisfy the remaining PAMR and Adequate Public Facilities Ordinance requirements for the Project.
- b. By April 1, 2014 and at the Applicant's sole cost, the Applicant must generate design and permit plans for the full length of the Trail and submit them to the Department of Parks for approval. Should the Department of Parks make any requests for significant changes to the design of the Trail, including but not limited to alignment shifts, engineering requirements, construction material changes or other modifications, this deadline shall be extended accordingly. The Applicant must coordinate with the Department of Parks to ensure that the design and permit plans are appropriately segmented to account for the possibility that the Applicant will only construct a portion of the Trail. The construction documents and permit plans for the Trail must be assignable to the Department of Parks, and in the event that the Department of Parks takes responsibility to construct any portion of the Trail, the construction documents and permit plans shall be assigned.
- c. Within 60 days of receiving Department of Parks approval for design and permit plans for the entire Trail, the Applicant must obtain construction bids to determine the cost of constructing the Trail, both in its entirety and in parts as designated in the design and permit plans. The Applicant must promptly transmit all bids to the Department of Parks, which shall work

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.

- with the Applicant to evaluate the bids for costs and accuracy and choose acceptable design and construction options.
- d. If the cost of constructing the entire Trail is equal to or less than \$900,000, the escrow funds shall be released to the Applicant to construct the full Trail. Any excess funds after construction of the Trail shall be property of the Applicant. Should more than one bid or design option acceptable to the Department of Parks come in below the \$900,000 figure, the Applicant shall have discretion over the choice between those bids or design options.
 - e. If the cost of constructing the entire Trail is more than \$900,000, the Department of Parks shall determine construction responsibility and potential phasing for the Trail, and in its sole discretion choose to either:
 - i. Release the escrow funds to the Applicant needed to construct the designated portions of the Trail equal to or less than \$900,000 in construction costs, and the Department of Parks shall construct the remaining portions or phases of the Trail in a timely manner subject to funding availability; or
 - ii. Transfer the escrow funds to the Department of Parks CIP No. 768673 for the Department of Parks to construct the entire Trail in a timely manner subject to funding availability.
 - f. Prior to release of the escrow funds and any construction activities on parkland, if the Applicant is responsible for building portions of the Trail on parkland, the Applicant must obtain a Park Construction Permit for those portions of the Trail, including submission of an insurance certificate and a performance bond.
 - g. Prior to release of the escrow funds, whether or not the Applicant is responsible for constructing any portions of the Trail, the Applicant must obtain all of the necessary construction and maintenance easements needed for the Trail from adjacent property owners.
 - h. Beginning 30 days after the mailing date of this resolution and lasting until commencement of the construction of the Trail by the Applicant or transfer of escrow funds to the Department of Parks CIP Project No. 768673, the Applicant shall provide monthly reports on the status of the Trail to the Director of the Department of Parks and the Director of the Department of Planning, or their designees.
 - i. In the event the Applicant builds all or a portion of the Trail, the Applicant must complete construction of the Trail, and the Trail must be accepted by the Department of Parks, within 2 years of the release of the escrow funds.
 - j. Once the Applicant has completed its construction of designated portions of the Trail (per Condition 10.e.i.) or once the escrow funds have been transferred to the Department of Parks CIP for the Department of Parks to construct the Trail (per Condition 10.e.ii) and all of the construction

documents and permit plans assigned to the Department of Parks, the Applicant is released from all responsibility for any of the Trail.

- k. Any Amendment to the approved Final Forest Conservation Plan required to construct the Trail on property not owned by the Applicant will not require an amendment to the Applicant-owned portion of the Site Plan.

11.g. The Applicant shall update the Development Program to reflect the hiker/biker trail requirements in condition 10.

BE IT FURTHER RESOLVED, that all other site plan conditions of approval for this project remain valid, unchanged and in full force and effect

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the hearing and set forth in the Staff Report, which the Planning 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 change in the timing of the trail construction does not alter the intent, objectives, or requirements in the originally approved site plan as revised by previous amendments, and all findings not specifically addressed above remain in effect.*

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 JAN 28 2014 (which is the date that this resolution is mailed to all parties of record); and

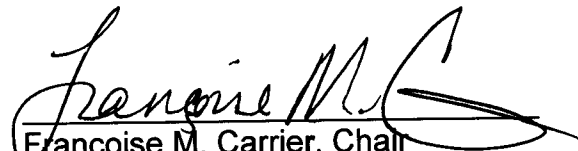
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Anderson, 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, January 23, 2014, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board