



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

MCPB No. 14-57
Preliminary Plan No. 11998093B
Rock Spring Park
Date of Hearing: July 17, 2014

JUL 29 2014

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on November 12, 1998, the Planning Board, by Opinion dated March 17, 1999, approved Preliminary Plan No. 119980930, creating one lot on 44.16 acres of land in the I-3 Zone, located on Fernwood Road between Rockledge and Rock Spring Drives ("Subject Property") in the North Bethesda Policy Area, North Bethesda/Garett Park Master Plan ("Master Plan") area; and

WHEREAS, on July 24, 2008, the Planning Board approved an amendment to Preliminary Plan No. 11998093A Rock Spring Park (MCPB No. 08-91) to convert 18,000 square feet of office to a daycare facility on the Property; and

WHEREAS, on December 19, 2013, RS Associates LLC ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan to create 168 one-family attached lots, of which 12.5% (21 units) must be moderately priced dwelling units (MPDUs), and associated Homeowners Association ("HOA"), private street, and alley parcels on the Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 11998093B, Rock Spring Park ("Preliminary 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 July 3, 2014, setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on July 17, 2014, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence regarding the Application; and

Approved as to
Legal Sufficiency

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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 Preliminary Plan No. 11998093B to create 168 one-family attached lots, and associated Homeowners Association ("HOA"), private street, and alley parcels, subject to the following conditions:¹

1. Approval is limited to a maximum of 168 one-family attached lots of which 12.5% must be moderately priced dwelling units (MPDUs), associated Homeowners Association (HOA), private street, and alley parcels; 1,554,983 square feet of general office use; and 18,000 square feet of a child day care facility with a maximum of 30 employees.
2. Prior to the release of any building permit, the Applicant must enter into a new Traffic Mitigation Agreement with the Planning Board and MCDOT to participate in the North Bethesda Transportation Management District (TMD). The Applicant will assist in achieving and maintaining a non-auto driver mode share goal of at least 30% for residents per the North Bethesda/Garrett Park Master Plan.
3. Prior to approval of the final Record Plat, the Applicant must submit language to Staff that will be included in the Homeowners' Association documents disclosing that the 32 on-site street parking spaces are restricted to visitor parking only. The Applicant must provide this disclosure to all prospective purchasers in the Purchase Agreement. The 32 on-site street parking spaces must be signed for visitor parking.
4. The Applicant must dedicate a 55-foot wide right-of-way along Fernwood Road and Rock Spring Drive comprising a 40-foot wide future transitway plus an additional 15 feet for accommodation of a transit station(s) and the pedestrian promenade. The 10 feet closest to the townhomes will consist of sidewalk and tree panel.
5. The private street network must be located within its own parcel(s), separate from the development, and the record plat must reflect a public use and access easement over the private streets, alleys, and adjacent parallel sidewalks.
6. The Planning Board has accepted the recommendation of the MCDOT in its letter dated June 6, 2014 and the amendment dated June 13, 2014, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letters, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - a. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.

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.

7. The Planning Board has accepted the recommendations of the County Department of Permitting Services (MCDPS) stormwater management concept letter dated June 30, 2014, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. The Applicant must comply with the Amended Final Forest Conservation Plan (FFCP) as approved with Site Plan No. 89189049I.
9. The Subject Property is located in the Walter Johnson High School Cluster. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the "single-family attached" unit rate for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code and is determined by MCDPS.
10. In the event that a subsequent Site Plan approval substantially modifies the subdivision shown on the Preliminary Plan with respect to lot configuration or right-of-way location, width, or alignment (except the modifications required by these conditions), the Applicant must obtain approval of a Preliminary Plan amendment prior to certification of the Site Plan.
11. The Certified Preliminary Plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of Site Plan review. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for this lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
12. All necessary easements must be shown on the Record Plat.
13. No clearing or grading of the Subject Property or recording of plats must occur prior to approval of the Certified Site Plan.
14. The Preliminary Plan approval will remain valid for 60 months from the date of mailing of the Planning Board Resolution for this Planning Board action.
15. The Adequate Public Facilities Review (APF) will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution for the Preliminary Plan.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect; 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. *Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan as revised by the previous amendment, and all findings not specifically addressed remain in effect.*
2. *The Preliminary Plan substantially conforms to the Master Plan.*

The Master Plan identifies the Property as IBM parcel (No. 9) of the Rock Spring Park district. The Master Plan's objectives for the parcels in district including the following:

- Provide for reasonable expansion of existing office uses.
- Add residential and retail uses.
- Preserve publicly accessible open space.
- Provide pedestrian and bicycle paths linking the open space with others areas in the office parks, with public facilities, and with adjacent residential neighborhoods.
- Integrate transitway stations and right-of-way into future development. (p.94)

The Preliminary Plan:

- Introduces residential use into a suburban office park;
- Preserves over forty percent of green area and adds a central, recreational space for residents and office workers;
- Adds a central green space along with a wide pedestrian promenade as additional amenities for the office park. The central green, approximately $\frac{2}{3}$ acre, will include a multi-age playground and area for open play; and
- Provides a fifty-five foot wide easement for future dedication along the periphery of the site for the North Bethesda Transitway as called for in the Countywide Transit Corridors Functional Master Plan.

The Master Plan recommends support for the expansion of "office development on the IBM parcel that includes a retail component; a public park; an easement for transitway station/right-of-way, and bicycle path; pedestrian paths, and street scape improvements."

The Master Plan, adopted in 1992, reflected the approved Preliminary and Site Plans of office and retail for the 44-acre site. To date, 1.55 million of the approved 1.63 million square feet of commercial development has been constructed. Although the Master Plan does not specifically recommend residential development on this site, it encourages mixed use development in the Rock Spring district. Therefore, the Preliminary Plan substantially conforms to the Master Plan.

The Master Plan also provided Development Guidelines for the IBM Parcel that is applicable at the time of Site Plan review.

The Master Plan recommended the reconfiguration of the Fernwood Road/Rock Spring Drive intersection. The recommendation draws from a 1992 North Bethesda Transitway Feasibility Study for a monorail system between Westfield Montgomery Mall and Grosvenor Metrorail Station. The monorail system would have necessitated a wider turning radius at the Fernwood Road/Rock Spring Drive intersection than the present configuration. The recommended intersection reconfiguration was intended to follow the alignment of the monorail system. The 2013 Countywide Transit Corridors Functional Master Plan recommends implementing a 102-mile bus rapid transit network that includes the North Bethesda Transitway Corridor. Bus travel way does not require the planned, large turning radius. Therefore, the Planning Board concludes that the reconfiguration of the Fernwood Road/Rock Spring Drive intersection is no longer appropriate.

The Preliminary Plan achieves the recommendations of the Countywide Bikeways Functional Master Plan (2005) including Rockledge Drive: signed shared roadway SR-60; Rock Spring Drive: signed shared roadway SR-59; and Fernwood Road with bike lanes, BL-4. The Preliminary Plan also identifies a potential location for a bikesharing station along the pedestrian promenade fronting Fernwood Road.

The Master Plan's main environmental objective is to "protect and enhance the environmental resources of North Bethesda-Garrett Park." The Plan also makes specific recommendations for tree preservation, air quality, stormwater management and water and sewer including the following:

- Retain the maximum number of specimen trees on sites where they occur.
- Provide additional trees along existing streets, in median strips, and in parking lots whenever feasible.
- Require that every new road recommended by this Plan have a streetscape plan with an emphasis on tree planting.
- Require commercial and residential developers to plant more trees, particularly native shade trees, consistent with County tree legislation.
- Support retention of much of the existing open space resources of North Bethesda-Garrett Park, both public and private.
- Endorse corrective measures to reduce flooding and to improve stream quality by retrofitting developed sites.

The Preliminary Plan achieves the following for the entire 44.16-acre parcel:

- Retention of existing trees including 234 canopy trees, 34 ornamental trees and 110 evergreen trees.

- Addition of 168 canopy trees, 13 ornamental trees and 15 evergreen trees along existing streets, proposed private streets, central open space and promenade.
 - Retention of 42.6 of the existing 44 percent green area that serves as an open space resource for Rock Spring Park.
 - Incorporation of micro-bio facilities in open spaces and along private streets and pervious pavement in the alleys for stormwater management quantity control and quality improvement.
3. *Public facilities will be adequate to support and service the area of the approved subdivision.*

Transportation

The vehicle and pedestrian access for the Subject Property will be adequate. In accordance with the 1992 North Bethesda/Garrett Park Master Plan, Rock Spring Drive and Fernwood Road are designated as four-lane arterials, A-81 and A-85, respectively. Rockledge Drive, while not designated in the Master Plan, has obtained the status of a Business District Street with four-lanes. All roadways currently provide the minimum right-of-way requirement of 80 feet. No additional dedication is required for master-planned roadways.

The Approved and Adopted 2013 Countywide Transit Corridors Functional Master Plan calls for a 40-foot easement along Fernwood Road and Rock Spring Drive to be used for the North Bethesda Transitway. The Applicant will provide an additional 15 feet continuous, parallel dedication to flexibly accommodate the transitway along with a station(s) and stormwater management features. The total area of the 55-foot wide dedication to MCDOT will be approximately 1.45-acres.

A Traffic Mitigation Agreement (TMAg) for the entire 44-acre Site as part of the North Bethesda Transportation Management District (TMD) was established in 1990. This agreement had a 20-year life and is no longer valid. However, a Site Plan Enforcement Agreement, which was established for the entire site in 1991 to achieve the 10% trip reduction requirement in the I-3 Zone, remains valid. The Applicant is required to execute a new Agreement for the proposed residential land use. The new TMAg does not modify the existing Site Plan Enforcement Agreement except to the extent that there is a direct conflict between the two, in which case the new TMAg supersedes only the conflicting portion of the Site Plan Enforcement Agreement.

The Subject Property has an existing approval for office uses of which 439,063 square feet is unbuilt. On March 19, 2013, County Council approved Subdivision Regulation Amendment (SRA) 13-01 that extended the Adequate Public Facilities Ordinance (APFO) validity period for a Preliminary Plan valid on March 31, 2009, for a total of six years from its original expiration date. As a result, the APFO approval for the unbuilt

439,063 square feet of office development previously set to expire July 30, 2011 is now valid through July 30, 2017.

The Preliminary Plan Amendment satisfies the LATR test with the traffic statement dated January 8, 2014, showing that traffic produced by 168 townhomes is equivalent to 80,000 square feet of office space using the appropriate trip generation rate conversion. Thus, the Preliminary Plan is well within the approved traffic/transportation capacity for the entire site and the roads will continue to operate at an acceptable level.

Other Public Facilities and Services

The Preliminary Plan will be served by public water and sewer systems. The Montgomery County Fire and Rescue Service has reviewed the application and determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services including police station, firehouse and health care are currently operating in accordance with the Subdivision Staging Policy and will continue to be sufficient following the construction of the project. Electric, gas, and telecommunications services will also be available and adequate. The project is located in the Walter Johnson Cluster, which requires a School Facilities Payment at the high school level. MCDPS will determine the amount of the payment.

4. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

The Preliminary Plan has been reviewed for compliance with Montgomery County Code, Chapter 50: Subdivision Regulations. The size, shape, width and orientation of the lots are appropriate for the location taking into account the recommendations in the Master Plan, and for the type of development and use contemplated. The lots are designed to meet all requirements established in the Subdivision Regulations, including access, frontage, dedication for public uses, adequacy of public facilities and conformance to Master Plan recommendations. This Preliminary Plan has been reviewed by other applicable county agencies, all of which have recommended approval of the plan.

Section 50-29(a)(2) of the Subdivision Regulations states, "except as otherwise noted in the zoning ordinance, every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road." The I-3 Zone does not have minimum frontage requirements. As specifically stated above, the I-3 has no frontage requirements. Twenty four townhouse lots are proposed to front common greens with alleys that provide vehicular access to the rear of the lots and 86 townhouse lots are proposed to front onto private streets.

The private roads are proposed to be constructed to the minimum public road structural standards, to have a minimum 20-foot pavement width with adequate turning radii at intersections where needed for emergency access, appropriate paving cross-sections elsewhere for private vehicles, and an appropriate circulation and turnaround pattern. Further, the private roads will be placed within an easement that ensures they remain fully accessible to the public.

The proposed private roads will be fully accessible to the public; accessible to fire and rescue vehicles, as needed, and designed to the minimum public road standards, except for right-of-way and pavement widths. Therefore, the Planning Board finds that the private road has acquired the status of a public road. For townhouse lots fronting common green, fire and rescue accessibility will be provided by the 20-foot promenade. Following precedent set in other similar cases approved, the Planning Board finds the Preliminary Plan complies with Section 50-29(a)(2).

Typically, in order to approve an application for resubdivision of residential lots, the Planning Board must find that each of the proposed lots complies with all seven of the resubdivision criteria, set forth in Section 50-29(b)(2). This provision of the Subdivision Regulations only applies to residentially zoned properties, and thus not to this I-3-zoned development.

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

A. Forest Conservation Plan

The Planning Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). The Planning Board approved the original Forest Conservation Plan (#119980930) on April 25, 2002, with an afforestation requirement of 5.62 acres. Mitigation under the original plan was to be met largely through on-site landscaping and tree canopy coverage. The changes in this Preliminary Plan Amendment do not alter the net tract area of the Site; therefore, the afforestation requirement remains unchanged at 5.62 acres. Removal of some of the on-site trees and updating of the existing landscape plants reduces the amount of existing tree cover credit that can be applied to the mitigation requirement. The amended Final Forest Conservation Plan will satisfy the afforestation requirements through 4.29 acres of existing and newly planted landscaping on-site, leaving a remaining obligation of 1.33 acres of forest planting. The Applicant will satisfy this remaining requirement through off-site forest banking.

B. Forest Conservation Variance

Land disturbance associated with the proposed development will impact the Critical Root Zones (CRZ) of 14 trees with a diameter at breast height (dbh) of 30 inches or greater. Three of these trees were approved for removal in previous Forest Conservation Plans. The initial plan submission of this application proposed removing these three trees plus an additional eleven trees not previously approved for removal. Planning Staff worked with the Applicant to preserve four trees designated for removal in the first iteration of the site layout. The variance request now seeks approval to remove ten trees and to impact the CRZ of four trees that will now be saved.

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. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater, dbh; are part of a historic site or designated with a historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The Applicant submitted a variance request on May 5, 2014 to impact 14 trees that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

Unwarranted Hardship

As discussed in the previous section, the Preliminary Plan substantially conforms to the North Bethesda/Garrett Park Master Plan. Of the total 44 acres of the Site, the development area is limited to 10.62 acres on Lot 5. With the dedication of a 55-foot right-of-way for the proposed BRT alignment along Fernwood Road and Rock Spring Drive (1.45 acres), the existing Washington Suburban Sanitary Commission (WSSC) easement along Rockledge Drive (0.37 acre), and the new central open space (0.66 acre), the development area is further constrained. As a result, the Preliminary Plan calls for a compressed development in a relatively compact footprint. Further reductions in development to save additional specimen trees would not allow the Applicant to achieve a viable site layout. Thus, there is a sufficient unwarranted hardship to consider a variance request.

The Planning Board finds that the 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 to the Applicant. As noted above, the proposed design has attempted to balance all of the competing factors that constrain the development envelope. The Applicant worked with Staff to reduce impacts to specimen trees, resulting in the preservation of four specimen trees that were previously shown for removal.

2. *Is not based on conditions or circumstances that are the result of the actions by the Applicant.*

The requested variance is based on the constraints of the site and the proposed development density, and public facilities and amenities, not 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 neighboring property.*

The requested variance is a result of the site layout and constraints on the Subject Property and not as a 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.*

MCDPS has approved a stormwater management concept, dated June 30, 2014. In addition, the variance trees removed will be mitigated with the planting of new canopy trees to replace the lost water quality benefit functions of the trees being removed. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Removal of the 10 variance trees will result in the loss of 354 caliper inches of mature trees. Planning Department policy requires replacement of variance trees at a rate of 1 inch for every 4 inches removed, using replacement trees of no less than 3 inch caliper, to replace lost environmental functions performed by the trees removed. Based on this formula, the Applicant is required to plant 86.6 caliper inches of variance mitigation trees. The Applicant WILL plant 18 5-inch caliper trees in mitigation, resulting in a total replacement of 90 caliper inches.

Under Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was

forwarded to the County Arborist on May 15, 2014. On June 5, 2014, the Arborist issued a letter recommending the variance be approved with mitigation.

6. *All stormwater management requirements shall be met as provided in Chapter 19, article II, title "stormwater management," Section 19-20 through 19-35.*

MCDPS issued a letter accepting the Stormwater Management Concept for the Subject Property on June 30, 2014. The Stormwater Management Concept proposes to meet required stormwater management goals via the use of porous pavement, micro-bioretenention techniques in the tree panels and in open spaces along the streets.

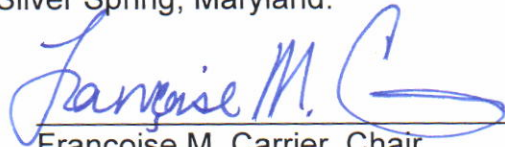
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 29 2014 (which is the date that this Resolution is mailed to all parties of record); and

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 Dreyfuss, with Vice Chair Wells-Harley and Commissioners Anderson, Dreyfuss, and Presley voting in favor, and Chair Carrier not participating, at its regular meeting held on Thursday, July 17, 2014, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board