



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

MCPB
Item #
6/4/09

MEMORANDUM

DATE: May 22, 2009

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *PK*
Development Review Division
Catherine Conlon, Subdivision Supervisor (301) ~~495-4542~~

FROM: Patrick Butler, Planner (301) 495-4561 *P.B.*
Development Review Division

REVIEW TYPE: Limited Plan Amendment

APPLYING FOR: Relocation of access to the subject property and to the parking garage under the building from the east side of the property to the west side. This results in reducing the size of the building from 14,000 to 12,700 square feet.

PROJECT NAME: North Westland Building

CASE NO. 12004031A

REVIEW BASIS: Pursuant to Chapter 50, the Subdivision Regulations

ZONE: C2

LOCATION: North side of North Westland Drive, approximately 300 feet east of the intersection with Frederick Road (MD 355)

MASTER PLAN: Gaithersburg and Vicinity

APPLICANT: Kingfisher LLC, (Travers Daniel)

ENGINEER: Site Solutions, Inc. (Al Blumberg)

FILING DATE: November 14, 2008

HEARING DATE: June 4, 2009



Staff Recommendation: Approval of the proposed amendment to Preliminary Plan No. 12004031A, subject to the following conditions, which supersede those of the previous Opinion dated January 19, 2005:

1. Development under this Preliminary Plan is limited to a maximum of 12,700 square feet of commercial office use.
2. Compliance with the conditions of approval of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated August 22, 2003. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
3. Compliance with conditions of the Montgomery County Department of Transportation (MCDOT) letter dated February 23, 2004. These conditions may be amended by MCDOT provided the amendments do not conflict with other conditions of the preliminary plan approval.
4. The record plat must show necessary easements.
5. The Adequate Public Facility (APF) review for the preliminary plan, as previously approved, remains valid until January 19, 2010.

SITE DESCRIPTION

The Subject Property is located approximately 300 feet northeast of MD Route 355 on North Westland Road. It is zoned C-2 and is approximately 20,866 square feet (0.48 acres) in size. The site is vacant and is surrounded by active commercial properties. There is a residential neighborhood in the City of Gaithersburg to the northeast. The site contains no environmentally sensitive features.



BACKGROUND

The preliminary plan for North Westland Building 120040310 (Attachment A – Original Preliminary Plan) was presented to the Planning Board on October 28, 2004. The original preliminary plan limited the general office use to 14,000 square feet (Attachment B – Original Opinion). The access was originally shown as a shared driveway with the adjoining property to the northeast. The applicant had a preliminary agreement with the adjoining property owners to use their driveway as access, however, all negotiations and compromises failed to render an agreement that would enable the applicant to move forward with this access as originally planned. A timely request to extend the Preliminary Plan validity period was made by the applicant on January 8, 2008, and a twelve (12) month extension was granted by the Planning Board on March 20, 2008. This extended the validity period of the original approval from January 19, 2008 to January 19, 2009. The applicant submitted the proposed limited preliminary plan amendment (Attachment C) on November 14, 2008. While conducting their review, staff realized that the preliminary plan had expired, and informed the applicant and the applicant's consultant that a request for reinstatement and a second extension of the validity period would need to be submitted and approved before the Board could review the proposed amendment. Assuming the Board will decide to reinstate the preliminary plan and approve the second extension request of the validity period to January 19, 2010, staff has completed the following analysis and recommendation.

STAFF ANALYSIS AND RECOMMENDATION

Public Facilities

The proposed limited preliminary plan amendment requests relocation of the proposed driveway accessing the Subject Property and the parking garage. The proposed driveway will be relocated from the adjoining property located to the northeast of the proposed building to the southwest side of the Subject Property. The proposed amendment results in a reduction in the building's size from 14,000 to 12,700 square feet.

Due to the reduction in size, the proposed building now generates fewer trips than previously approved. Therefore, staff finds the previously approved APF is still valid until January 19, 2010. Under the current APF approval, a traffic study was not required to satisfy Local Area Transportation Review (LATR) because the proposed use generated fewer than 30 peak-hour trips within the weekday morning and evening peak periods. The Policy Area Mobility Review (PAMR) test was not required because the original Preliminary Plan was approved prior to November 13, 2007. Staff finds the proposed vehicle and pedestrian access for the subdivision will be safe and adequate.

Master Plan Conformance

The Gaithersburg and Vicinity Master Plan recommends retention of existing zoning throughout the master plan area in the absence of a specific recommendation for change on a particular property. Thus, in the case of the subject property, the master plan calls for retention of the existing C-2 zoning. With the proposed amendment the plan continues to substantially conform with the recommendations adopted in the Master Plan in that it proposes commercial

office development consistent with surrounding development patterns and character, and the current zoning designation.

Environment

The site contains no environmentally sensitive areas or natural resources, and the application is exempt from the Forest Conservation Law. Stormwater management facilities were provided with development of the site based on the original preliminary plan approval, and any changes to these facilities resulting from this amendment must be approved by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval as stated in condition #2 above.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations, and Chapter 59, the Zoning Ordinance. The plan continues to meet all applicable sections of Chapters 50 and 59.

Citizen Correspondence and Issues

Because this is a limited preliminary plan amendment, no pre-submission meeting was required. Written notice was given, however, by the applicant and staff of the plan submittal and the public hearing date. As of the date of this report, no citizen letters have been received.

CONCLUSION

The proposed preliminary plan amendment meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conforms with the recommendations of the Gaithersburg and Vicinity Master Plan. Access and public facilities will be adequate to serve the proposed use, and the application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, staff recommends approval of the application with the conditions specified above.

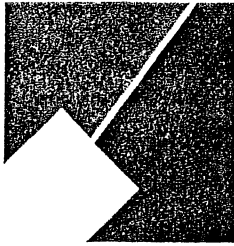
Attachments:

Attachment A – Original Preliminary Plan 120040310

Attachment B – Original Opinion Preliminary Plan 120040310

Attachment C – Proposed Amendment to the Preliminary Plan 12004031A

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PAR

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

JAN 19 2005

Date Mailed:

Action: Approved Staff Recommendation

Motion of Commissioner Bryant, seconded by Commissioner Wellington, with a vote of 5-0; Chairman Berlage and Commissioners Bryant, Perdue, Robinson, and Wellington voting in favor.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-04031

NAME OF PLAN: North Westland Building

JAN 19 2005

The date of this written opinion is (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State).

On 10/16/03, Cushing Daniel et al submitted an application for the approval of a preliminary plan of subdivision of property in the C-2 zone. The application proposed to create 1 lot on 0.479 acre of land located at north side of Westland Drive, approximately 300 feet east of Frederick Road (MD 355), in the Gaithersburg master plan area. The application was designated Preliminary Plan 1-04031. On 10/28/04, Preliminary Plan 1-04031 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the

application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

At the public hearing staff presented its recommendation of approval, and proposed conditions. The applicant appeared and testified that it agreed with the recommendation and conditions of approval. There was discussion about locating the parking to the rear, however the applicant testified that the grade of the site precluded that possibility. The record contains no testimony or evidence in opposition to staff's recommendation of approval or to the staff's recommended conditions of approval.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies¹; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that:

- a) The Preliminary Plan No. 1-04031 substantially conforms to the Gaithersburg & Vicinity master plan.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision.
- c) The size, width, shape, and orientation of the proposed lot are appropriate for the location of the subdivision.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.
- e) 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.

¹ The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

- f) The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-04031 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-04031 subject to the following conditions:

- 1) Approval under this preliminary plan is limit to general office use up to 14,000 , square feet.
- 2) Compliance with the conditions of approval of the MCDPS stormwater management approval dated August 22, 2003.
- 3) Compliance with conditions of MCDPWT letter dated, February 23, 2004 unless otherwise amended.
- 4) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
- 5) Other necessary easements.
- 6) Compliance with the conditions of approval of the City of Gaithersburg letter dated September 23, 2004.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). 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.

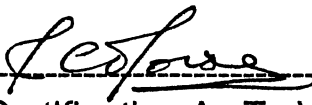
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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

MR 12/20/04
Approved for legal sufficiency
M-NCPPC Office of General Counsel

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on **Thursday January 13, 2005**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of **Commissioner Wellington, seconded by Commissioner Perdue, with Chairman Berlage and Commissioners Perdue and Wellington** voting in favor of the motion, **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Preliminary Plan 1-04031, North Westland Building**.



Certification As To Vote of Adoption
M. Clara Moise, Technical Writer

