



MCPB No. 17-033
Preliminary Plan No. 120160020
ESFCU Germantown
Date of Hearing: May 25, 2017

JUN 02 2017

RESOLUTION

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

WHEREAS, on November 15, 2016, Educational Systems Federal Credit Union (ESFCU) (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 1.81 acres of land in the Neighborhood Retail (NR) zone, located at 19215 Frederick Road, approximately 367 feet southeast of the intersection of Plummer Drive and Frederick Road (“Subject Property”), in the Germantown East Policy Area and 2009 *Germantown Employment Area Sector Plan* (“Sector Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120160020, ESFCU Germantown (“Preliminary 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 May 12, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on May 25, 2017, 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, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120160020 to create one lot on the Subject Property, subject to the following conditions:¹

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.

Approved as to
Legal Sufficiency: 
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- 1) Approval under this Preliminary Plan is limited to one lot with up to 5,990 square feet of office and 4,000 square feet of bank use with no more than two drive-thru automated teller machines (ATMs).
 - 2) The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. 120160020, approved as part of this Preliminary Plan, except as modified by an approved Final Forest Conservation Plan ("FFCP"):
 - a. A Final Forest Conservation Plan must be approved by M-NCPPC Staff prior to recordation of the plat and address the following conditions:
 - i. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan ("PFCP").
 - b. Mitigation for the removal of the tree subject to the variance provision must be provided in the form of planting five native canopy trees with a minimum planting stock size of three caliper inches. The trees must be planted within one year or two growing seasons following the completion of the parking lot and stormwater management facilities #1, #3, and #4. The trees must be planted on the Property, in locations to be shown on the Final Forest Conservation Plan, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC forest conservation inspector.
 - c. The limits of disturbance ("LOD") on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
 - d. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the approved Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
 - 3) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 20, 2017 and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 4) Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
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- 5) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated May 2, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) The Applicant must dedicate a total of 125 feet of right-of-way (ROW) from the centerline of Frederick Road along the Property frontage.
- 7) Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the reconstruction of a five-foot wide sidewalk along the property frontage on Frederick Road.
- 8) The Planning Board accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated May 10, 2017 and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
- 9) The Record Plat must show necessary easements.
- 10) Final approval of the number and location of buildings, on-site parking, site circulation, sidewalks, and open spaces will be determined at Site Plan.
- 11) 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 resolution.
- 12) 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 approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”

- 13) No clearing, grading or recording of plats prior to Certified Site Plan approval.

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 Preliminary Plan substantially conforms to the Master Plan.*

Land Use

The Preliminary Plan substantially conforms to the *2009 Germantown Forward Area Sector Plan*, and the specific recommendations for the Fox Chapel District, which is described as a “commercial hub at the intersection of MD 355 and Middlebrook Road.” This District is anchored by a neighborhood shopping center on MD 355, which serves the surrounding residential districts.

Although the Sector Plan does not make specific recommendation for this Property, there are general recommendations for development of properties that front on MD 355. The relevant recommendations include:

- If non-assembled properties redevelop, sites along MD 355 should have street-oriented commercial development and place parking and service areas towards the rear of the Property, screened from adjacent residential areas;
- Building heights should not exceed 60 feet along MD 355, stepping down to 50 feet along the eastern edge near residential properties, and;
- Establish a consistent building setback along MD 355 and provide an eight-foot wide sidewalk along commercial development.

The proposed building height, setback, and orientation are consistent with the Sector Plan recommendations. Although the building is not shown as oriented directly towards MD 355 because of constraints created by the irregular shape of the lot, the main building entrance (located on the southern elevation) is highly visible from the street. Street-oriented development is also hampered by the Sector Plan’s recommended 250-foot-wide right-of-way for MD 355, which creates an expanse of unbuildable land between the current curb line and the building location. Parking and service areas are required to be located behind the front building line in the eastern half of the lot. The maximum building height of the building is 45 feet, less than the maximum height of 50 to 60 feet recommended in the Sector Plan.

The Application also provides for a building setback and sidewalk consistent with the prevailing development patterns along MD 355. Although the Sector Plan recommends an eight-foot wide sidewalk along commercial development, the lot has limited frontage that is primarily being used to provide the commercial access, therefore continuing the existing sidewalk alignment, as an upgraded five-foot wide section is reasonable and adequate to provide pedestrian connectivity. The space is available to widen the sidewalk to an eight-foot sidewalk in its ultimate location as part of a larger project when the proposed Bus Rapid Transit (BRT) is designed and developed.

Master-Planned Roadways, Bikeways, and Transitway

In accordance with the Sector Plan, Frederick Road between Great Seneca Creek and Little Seneca Creek is designated as a six-lane controlled major highway, CM-6, with a recommended 250-foot wide ROW and a Class I shared use path, SP-72. The 2013 adopted *Countywide Transit Corridor Function Plan* recommends the BRT Corridor No. 3, MD 355 North Corridor, between the Rockville Metrorail Station and the Clarksburg Town Center/Frederick Road-Redgrave Place intersection. The MD 355 North Corridor segment between Game Preserve Road and Middlebrook Road is recommended to operate buses in dedicated lanes within the master-planned 250-foot wide right-of-way with a maximum of one additional dedicated transit lane. The 2005 *Countywide Bikeways Functional Master Plan* also recommends a shared use path, SP-72, however internal records note that the shared use path is planned on the west/opposite side. Therefore, this Applicant is not required to provide a shared use path.

Frederick Road is an existing six-lane road with median has a ROW width that varies between 105 and 140 feet, depending on the referenced documents. As conditioned, the Applicant must dedicate a total of 125 feet of ROW from the centerline of Frederick Road along the Property frontage to provide the room to make future improvements in accordance with the 2009 *Germantown Employment Area Sector Plan* and the 2013 *Countywide Transit Corridors Functional Master Plan*.

The proposed project would be located between the BRT stops at Middlebrook Road to the north and Game Preserve Road to the south. The Applicant must work with MCDOT regarding the BRT corridor along Frederick Road.

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

Roads and Transportation Facilities

Vehicle, Pedestrian, and Bicycle Access

The Applicant proposes a single right-in/right-out vehicular access point from Frederick Road. The existing four-foot-wide sidewalk along Frederick Road will be upgraded to five feet as part of this development, consistent with the Montgomery County Standard No. 2008.09 for suburban controlled major highways. The frontage will ultimately be upgraded to include an eight-foot wide sidewalk when BRT improvements are implemented. A lead-in sidewalk will be provided along the north side of the vehicular access drive connecting the bank building to Frederick Road.

Adequate Public Facilities (APF) Review

The transportation Adequate Public Facilities test is satisfied under the 2012-2016 Subdivision Staging Policy since the Application was submitted prior to January 1, 2017. The Property is in the Germantown East Policy Area. The Preliminary Plan for the 5,990 SF of office space and 4,000 SF of bank space with drive-thru satisfies the Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR) requirements of the APF review as discussed below.

Local Area Transportation Review, including Trip Generation

The peak-hour trip generation estimated for the development was based on trip generation rates included in the *Institute of Transportation Engineers (ITE) Trip Generation Manual, 9th edition* and the *Local Area Transportation Review and Transportation Policy Area Review Guidelines*. A site trip generation summary is presented in the Staff Report, which shows that the development would generate a total of 42 peak-hour trips during the weekday morning peak hour (within the 6:30 to 9:30 am period) and 76 peak-hour trips during the weekday evening peak hour (within the 4:00 to 7:00 pm period) after the pass-by trip reduction is considered. A pass-by trip reduction is assumed for the drive-in bank because its traffic is already using the adjacent roadway and enters the site as an intermediate stop on the way to, or from, another destination.

Nearby Intersection Congestion Levels

A traffic study was submitted to satisfy the LATR test and determine the impact of the development traffic on the nearby local area transportation system because the total number of site-generated peak-hour trips would be 30 or more. Four local intersections were identified for analysis to determine whether they meet the applicable congestion standard. All four signalized intersections are located within the Germantown East Policy Area where the capacity/Critical Lane Volume (CLV) standard is 1,425.

The Critical Lane Volume values at the studied intersections are shown in the Staff Report for the following traffic conditions:

1. Existing: The current traffic condition.
2. Background: The existing condition plus the trips generated from approved but un-built nearby developments.
3. Total: The background condition plus the additional site-generated trips based on proposed office/bank development, including pass-by trip reduction.

As indicated in the Staff Report, all intersections analyzed would operate under all traffic conditions with acceptable CLV congestion standards of less than 1,425, the CLV congestion threshold for the Germantown East Policy Area. Therefore, the proposed site passes the APF LATR test.

Transportation Policy Area Review

Having filed the Preliminary Plan application prior to January 1, 2017, the Applicant must satisfy the TPAR test under the 2012-2016 Subdivision Staging Policy. Thus, being located within the Germantown East Policy Area, the roadway test is adequate but the transit test is inadequate. Therefore, the Applicant would be required to make a TPAR mitigation payment equal to 25 percent of the General District Transportation Impact Tax. However, any building permit filed after March 1, 2017 is no longer required to make TPAR payments and will instead be paying the updated and higher General District Transportation Impact Tax in lieu of the TPAR payment.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lot. The use of public water and sewer is consistent with the existing W-1 and S-3 service categories designated for the Property. An existing 8-inch sewer line on the east side of Frederick Road will be extended approximately 280 feet to the south to serve the proposed building. In addition, the Applicant has agreed with WSSC to extend the sewer line to provide a future connection point for the restaurant to the south. The Applicant will also install a new 8-inch water line which will tie into an existing 24-inch main that runs along the Property's frontage. Electric and telecommunications are also available and adequate to service for the proposed restaurant. The Application has been reviewed by the MCDPS, Fire Department Access and Water Supply Section, which determined that the building has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan dated May 10, 2017. The Application is not subject to a School Facilities Payment because the proposal does not include residential development. All other public facilities and services, such as, police stations, firehouses and health services are currently operating within the standards set by the 2012-2016 Subdivision Staging Policy Resolution.

3. *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 lot was reviewed for compliance with the dimensional requirements for the development of a general building type under the standard method in the NR zone. Although the development is standard method, site plan review is required because drive-thru's are a limited use in the NR zone and the Property abuts residential development in the R-90 zone. The limited use standards are addressed in detail as part of the concurrent Site Plan No. 820160170. The exact building location, setbacks and additional requirements of the zone will be determined at Site Plan.

The size, width, shape, and orientation of the proposed lot is appropriate for the proposed commercial use, and takes into account creating an established building line along Frederick Road, locating parking in the rear half of the site, and the necessary dedication for the future BRT corridor.

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

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by the County Forest Conservation Law (Chapter 22A of the County Code), a combined Preliminary/Final Forest Conservation Plan (FCP) for the project was submitted with the Preliminary Plan. The Property contains no forest, streams, wetlands, 100-year floodplain, stream buffers, highly erodible soils, or slopes greater than 25 percent. According to the PFCP, the total net tract area for forest conservation purposes is 1.94 acres, which includes 0.11 for off-site disturbance. The PFCP generated a total afforestation requirement for this site is 0.27 acres and will be satisfied by the Applicant purchasing off-site forest bank credits.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a 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.

This Application will require the removal of one Protected Tree as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance 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 the removal of the one tree is due to the location of the tree, the health of the tree and necessary site design requirements. The Applicant proposes removal of the one tree with mitigation. Therefore, Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this preliminary plan application. The request is based on the fact that the building envelope for the proposed structure and parking is constrained with little room to shift the parking area without removing a significant amount of necessary parking stalls.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring Property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen tree being removed is not located within a stream buffer. The Application proposes mitigation for the removal of this one tree by planting five larger caliper trees on-site. The five mitigation trees will eventually provide more shade and more groundwater uptake than what the existing tree currently provide. This approval is conditioned on mitigation that approximates the form and function of tree removed. Therefore, the removal will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees with five 3" caliper overstory trees native to the Piedmont Region of Maryland.

5. *All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on May 2, 2016. The Application will meet stormwater management goals using microbio retention.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), 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 in the Montgomery County Land Records, 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 JUN 02 2017 (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 Fani-González seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, May 25, 2017, in Silver Spring, Maryland.



Casey Anderson, Chairman
Montgomery County Planning Board