



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

MCPB No. 17-103
 Preliminary Plan No. 12012008D
Shady Grove Station
 Date of Hearing: November 30, 2017

DEC 05 2017

RESOLUTION

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

WHEREAS, on September 11, 2012, the Planning Board, by Resolution MCPB No. 12-89, approved Preliminary Plan No. 120120080, creating 752 townhouse lots, 1,458 multi-family residential units, 41,828 square feet of retail and 131,422 square feet of office development on 90.34 acres of land in the TOMX-2/TDR zone, located along Crabbs Branch Way, south of Shady Grove Road ("Subject Property"), in the Area 2 Policy Area and, in the 2006 Shady Grove Sector Plan ("*Sector Plan*") area; and

WHEREAS, on April 23, 2014, the Planning Board approved an amendment to Preliminary Plan No. 12012008A (MCPB No. 14-22) which permitted execution of the required Traffic Mitigation Agreement ("TMAG") at building permit and allow modifications to the cross-sections of certain roads as part of the development of the Subject Property; and

WHEREAS, on November 3, 2014, the Planning Board approved an amendment to Preliminary Plan No. 12012008B (MCPB No. 14-96) which permitted the modification to alley pavement widths from 20 feet to 18 feet; landscaping in alleys and deeper decks for residential units with a deck option; adjustments to lot lines; and modifications to the location of Moderately Priced Housing Units and Workforce Housing units on the Subject Property; and

WHEREAS, on May 7, 2015, the Planning Board approved an amendment to Preliminary Plan No. 12012008C (MCPB No. 15-48) to permit separate Traffic Mitigation Agreement ("TMAG") applicable to the phase covered within a specific site plan for the various phases of the approved Shady Grove Station development on the Subject Property; and

Approved as to
 Legal Sufficiency:

[Handwritten Signature] 11/22/17

WHEREAS, on June 26, 2017 EYA/CSP Associates and Montgomery County (“Applicant”) filed an application for approval of an amendment to the previously approved preliminary plan(s) to replace the unbuilt 131,422 square feet of office use with up to 43,000 square feet of general retail space on the Subject Property; and

WHEREAS, Applicant’s application to amend the preliminary plan was designated Preliminary Plan No. 12012008D, Shady Grove Station (“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 November 15, 2017 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on November 30, 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. 12012008D to replace the unbuilt 131,422 square feet of office use with up to 43,000 square feet of general retail space subject to modified Condition Nos. 1,3 and 25 and two new conditions 36 and 37 as follows:¹

1. This Preliminary Plan is limited to a maximum of 752 townhouse units on up to 752 lots, a maximum of 1,458 multi-family units on up to 95 lots (includes 84 lots for 2 over 2 units and 11 lots for multi-family buildings), 41,828 square feet of retail space on up to 3 lots shared with multi-family units, and a maximum of 43,000 square feet of general retail development on 1 lot. Additional lots are permitted for common areas, clubhouses, park and school sites, and other County facilities. Ten percent of the total number of residential units excluding MPDUs or resulting MPDU bonus density units must be Workforce Housing units, and 15% of the total number of residential units excluding workforce units must be Moderately Priced Dwelling Units (MPDUs).

3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letters dated June 13, 2012, July 20,

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.

2012, and August 4, 2017, and hereby incorporates them as conditions of the Preliminary Plan approval, except that any performance guarantees necessary to ensure that the trip reduction goals under Condition #4 are maintained will be determined by subsequent site plans. The Applicant must comply with each of the recommendations 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.

25. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid until October 11, 2024 (144 months from the date of the mailing of the Planning Board Resolution MCPB No. 12-89), according to the phases outlined below. Because the validity period is longer than the typical seven years, a phasing schedule for the APF and preliminary plan validity period, in accordance with Sections 50-20(c)3(B), 50-34(g), and 50-35(h)(2)(B) of the Subdivision Regulations, is required. Plats must be recorded and building permits issued as follows:

- a) Phase I – 375 residential units, including MPDUs and workforce housing units, within 60 months from the 30th day after the Resolution is mailed;
- b) Phase II – 125 residential units, including MPDUs and workforce housing units, within 36 months of the expiration of the Phase I validity period;
- c) Phase III – 250 residential units, including MPDUs and workforce housing units, 41,828 square feet of retail space, and the library within 36 months of the expiration of the Phase II validity period; and
- d) Phase IV – 1,460 residential units, including MPDUs and workforce housing units, and 43,000 square feet of general retail space within 12 months of the expiration of Phase III validity period.

36. Prior to issuance of the building permit for the retail building approved by this amendment, the Applicant must update the current Traffic Mitigation Agreement (TMAg), dated August 18, 2015, with the Planning Board and the Montgomery County Department of Transportation (MCDOT) to reflect the change in use approved by this amendment.

37. The Applicant must submit a site plan application when details for the future retailer are confirmed.

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

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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan and as revised by previous amendments, and all findings not specifically addressed remain in effect.

1. *The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

In the original approved Preliminary Plan No. 120120080 and respective amendments, the layout of the subdivision, including size, width, shape, orientation and density of lots and location meets all the requirements of the TOMX-2/TDR Zone. This Amendment changes the use of the office space to retail. This change of use has been reviewed against the dimensional requirements of the TOMX-2/TDR zone and it meets the requirements for the zone because the new use and design shows that the building location, size, width, shape, orientation and density of lot does not change from what was approved for the 131,422 square feet of office use.

2. *The Preliminary Plan substantially conforms to the Master Plan.*

The 2006 *Shady Grove Sector Plan* refers to the western segment of the Property as Metro North-CSP and the eastern segment as Jeremiah Park. The location of the proposed retail is within the Metro North-CSP neighborhood. The Sector Plan envisions these "Metro Neighborhoods", "*as an urban village, a place that provides vitality, convenience, and a human scale of development. A residential mixed-use area with some office and community-serving retail uses, and recreational areas providing a focus for community life and services. Functionally integrated with the Metro station, the proposed street pattern will create an interconnected network of streets and sidewalks that ensure good vehicular and pedestrian access to Metro*" (page 33). The Sector Plan recommends "*Permitting up to 40,000 square feet of retail and 133,250 square feet of office uses*" on the CSP property (page 35 and 44).

The western segment of the Property already has approval for 41,828 square feet of retail use under Site Plan No. 820130220, an insignificant increase from the 40,000 anticipated. The proposed additional 43,000 square feet of retail will bring the total number of retail square feet to 84,828 square feet. Although, the retail square footage will exceed the specific master plan recommendation, by

removing and replacing the 131,422 square feet of approved office use, the total non-residential development will be significantly less than what was recommended in the master plan, with no adverse impact to the surrounding community with regard to traffic since the retail use will not exceed the trips generation associated with the approved office use, or school enrollment because the change in use will not generate students.

Allowing this retail to be constructed now, will help complete the vision of the Metro North-CSP neighborhood rather than leaving an undeveloped site at its northern entrance. The increase in the retail floorspace will help to promote the vitality and attractiveness of the area, much more so than would a vacant parcel. The Property will also continue to meet the Sector Plan recommendations including providing a mix of residential townhouses and multifamily residential units with MPDUs and Workforce Housing units as approved. And maintains the network of streets and sidewalks that provide good access to the Metro.

3. Public Facilities will be adequate to support and service the area of the subdivision.

Transportation infrastructure and other public facilities are adequate to support the approved development and the proposed change from office to retail space. The Property is located within half a mile from the Shady Grove Metro Station entrance. The vehicular access to the Property is from six proposed curb cuts on the west side of Crabbs Branch Way and Sector-Planned Road "F" (approved as Road "P" in the original Preliminary Plan). All other public facilities will be adequate as determined in the original approvals. The change from office space to retail use will not alter or have any impact on the availability of services.

Master-Planned Transportation Demand Management

The Property is located within the boundary of the Greater Shady Grove Transportation Management District (TMD). The Applicant has entered into a Traffic Mitigation Agreement dated August 18, 2015, with the Planning Board and the Montgomery County Department of Transportation (MCDOT) for the Shady Grove Station-Westside development. The Agreement requires the Applicant to participate in the TMD to assist in achieving its non-auto-driver mode share goals of the Sector Plan. Traffic mitigation actions include, at least, one on-site bike sharing facility and operating a shuttle bus as required by MCDOT. As conditioned, the 2015 Agreement must be amended to reflect the

change from 131,422 square feet of general office space to 43,000 square feet of general retail space.

Adequate Public Facilities (APF) Tests

The original APF tests (Local Area Transportation Review and Transportation Policy Area Review) for Preliminary Plan No. 120120080 was conducted under the 2009-2011 Growth Policy. This amendment is reviewed under the 2016-2020 Subdivision Staging Policy because this application was submitted after January 1, 2017.

Local Area Transportation Review (LATR)

The proposed change from 131,422 square feet of office space to 43,000 square feet of general retail will result in a net decrease in the peak-hour trips during the weekday morning (6:30 to 9:30 a.m.) and the evening (4:00 to 7:00 p.m.) peak period. Both the retail and office trips were reduced by: a) the internal trips within the overall mixed-use development; and b) transit trips due to the Property's proximity to the Shady Grove Metrorail Station.

In conclusion, the proposed 43,000 square feet of general retail use will not exceed the trip generation associated with the approved 131,422 square feet of general office space, and therefore, a traffic study was not required.

Transportation Policy Area Review (TPAR)

The policy area review test for the original Preliminary Plan was called Policy Area Mobility Review (PAMR) under the 2009-2011 Growth Policy. To satisfy the PAMR test, the Applicant was required to contribute to MCDOT \$292,500 for transportation infrastructure improvements within the Shady Grove Policy Area prior to issuance of any building permit. In December 2012, PAMR was replaced by the Transportation Policy Area Review (TPAR). In November 2016, the TPAR was replaced by the current General District Transportation Impact Tax under the 2016-2020 Subdivision Staging Policy (new SSP). However, for any building permits issued after March 1, 2017, the Applicant will be required to pay Impact Tax in lieu of the remaining PAMR mitigation payment in accordance with the "new" SSP. The timing and amount of the payment will be in accordance with that in Chapter 52 of the Montgomery County Code as amended.

Other Public Facilities and Services

As determined by the original Preliminary Plan and Site Plan findings, the Property is served by existing public water and public sewer. This amendment has been reviewed by the Montgomery County Fire and Rescue Service (MCFRS), who have determined that the proposed amendment will not impact

the previous approval from MCFRS, and the Property will continue to have appropriate access to fire and rescue vehicles. Other public facilities and services, such as police stations, and health services are currently in effect and will be adequate to serve the Property. Electrical, telecommunications, and gas services are also available and adequate to serve the Property.

4. All Forest Conservation Law, Chapter 22A requirements are satisfied

This Property is covered by approved Final Forest Conservation Plan (FFCP) No. 820130220. The Amendment does not require any changes to FFCP 820130220; therefore, the approved FFCP remains valid.

5. All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied; and

The Amendment does not affect the approved stormwater management concept plan (MCDPS on June 13, 2012). The Property will continue to meet stormwater management requirements through the variety of Environmental Site Design techniques and structural stormwater management facilities identified in the approved concept plan.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 05 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 Cichy, seconded by Commissioner Patterson, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Cichy and Patterson voting in favor, and Commissioner Fani-González absent at its regular meeting held on Thursday, November 30, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board