



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

MCPB No. 17-122
Preliminary Plan No. 120170280
Westbard Self-Storage
Date of Hearing: December 14, 2017

JAN 12 2018

RESOLUTION

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

WHEREAS, on April 26, 2017, Bethesda Self-Storage Partners, LLC, ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot for a new self-storage building with a maximum total density of 195,527 square feet of self-storage uses, including 107,030 square feet of Gross Floor Area (GFA) derived from the tract area, and 88,497 square feet of "cellar" area excluded from the definition of GFA under Section 59.1.4.2., as well as one new dedication parcel for future implementation of the Willett Branch Greenway, on 1.37 acres of land in the IM-2.5 H-50 and R-10 zones, located at 5204 River Road ("Subject Property," "Property," or "Site"), in the Westbard Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120170280, Westbard Self-Storage ("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 December 4, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 14, 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, on December 14, 2017, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Commissioner Fani-Gonzalez, with a vote of 4-0; Commissioners Anderson, Dreyfuss, Fani-Gonzalez, and Patterson voting in favor, with Commissioner Cichy being absent.

Approved as to
Legal Sufficiency

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NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120170280, subject to the following conditions:¹

1. This Preliminary Plan is limited to one lot for a maximum total density of 195,527 square feet of self-storage uses, including 107,030 square feet of Gross Floor Area (GFA) derived from the tract area, and 88,497 square feet of “cellar” area that is excluded from the definition of GFA under Section 59.1.4.2., as well as one new dedication parcel for future implementation of the Willett Branch Greenway Park.
2. The Applicant must comply with the conditions of approval for the preliminary forest conservation Plan as modified by the Final Forest Conservation Plan.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated December 5, 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. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (MCDPS) – Water Resources Section in its storm water management concept letter dated November 9, 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 MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Fire and Rescue (MCFRS) in its letter dated November 3, 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 MCFRS, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. 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. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
8. The record plat must show necessary easements.
9. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of this Planning Board Resolution.
10. 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.
11. No recording of plats prior to Certified Site Plan approval. The Applicant may obtain permits for demolition, below-grade sheeting and shoring, and associated sediment control, prior to Certified Site Plan approval, but only after certification of the Final Forest Conservation Plan.
12. No release of any above grade building permit for new development on the Site will be permitted prior to recordation of plat(s) for the portion of the Property associated with the applicable building permit.
13. The Applicant must satisfy the provisions for access and improvements which are associated with each plat, as required by MCDOT.
14. The Applicant must provide and show on the applicable final record plat(s) the following right-of-way dedication consistent with the Westbard Sector Plan and Montgomery County Code Chapter 50 Subdivision Regulation requirements:
 - a. ten (10) feet from the existing pavement centerline along the Property frontage for New Connector Road (B-2) for an ultimate right-of-way width of 54-feet.
15. Not later than the final use and occupancy permit, the Applicant must provide the sector-planned minimum 12-foot-wide Outlet Road shared-use bicycle/pedestrian path, between Street B-2 and the northern Property line, with associated landscaping and lighting as illustrated on the Certified Site Plan.

16. Prior to final use and occupancy permit, the Applicant must grant an easement to the M-NCPPC for the Outlet Road shared-use path. The terms and form of the dedication must be approved by the Montgomery County Department of Parks and the M-NCPPC General Counsel's Office prior to certification of the Preliminary Plan, and it must be recorded in the Montgomery County Land Records. At a minimum, the easement must address the following:
 - a. Entitlement for open and unobstructed public use of the easement for all customary pedestrian, bicycle, general public, and emergency access. The easement granted to the public is a public access easement;
 - b. Obligation for the Applicant to design and construct the shared use path as shown on the Certified Site Plan at the Applicant's expense;
 - c. Obligation for the Applicant to maintain and repair the shared use path, as shown on the Certified Site Plan, at the Applicant's expense, unless such obligation has been assumed by another entity as part of the overall trail maintenance;
 - d. Obligation for the Applicant to keep the shared use path free of snow, litter and other obstructions and hazards at all reasonable times, at its expense, unless such obligation has been assumed by another entity as part of the overall trail maintenance;
 - e. Entitlement for the Applicant or its designee to close the shared use path for normal maintenance and repair at reasonable times and upon reasonable prior notice to the public.
 - f. This pathway corridor should be formally referred to as Outlet Road on all plans per the Westbard Sector Plan.

17. If the Applicant is unable, after good faith efforts, to obtain permission to conduct the work or record the necessary easements from the owner of the off-Site portion of the path specified in Condition 15, within a reasonable time period in advance of the final use and occupancy permit, the Applicant must provide only the on-Site portions of Conditions 15 and 16, as illustrated on the Certified Site Plan, and is deemed to have otherwise met conditions 15 and 16.

18. Prior to final use and occupancy permit, the Applicant must dedicate Parcel 1 to the Maryland-National Capital Park & Planning Commission ("M-NCPPC") for use as public parkland. The final boundary of Parcel 1 must be determined by M-NCPPC Staff and the Applicant prior to Certified Preliminary Plan. The terms and form of the dedication must be approved by the Montgomery County Department of Parks and the M-NCPPC General Counsel's Office prior to certification of the Preliminary Plan, and it must be recorded in the Montgomery County Land Records. Prior to dedication, the Applicant must remove all existing infrastructure, pavement, debris, etc. from the parcel, as well as remove invasive species, and scarify and amend topsoil to provide a vegetated base with native seed mix.

19. Prior to final use and occupancy permit, the Applicant must grant an easement to the M-NCPPC from the eastern boundary of Parcel 1 to the building on Lot 1. The easement must grant the Montgomery County Department of Parks the right to plant, maintain, and program the easement area. The terms and form of the easement must be approved by the Montgomery County Department of Parks and the M-NCPPC General Counsel's Office prior to certification of the Preliminary Plan, and it must be recorded in the Montgomery County Land Records.
20. Parcel 177:
 - a. The Applicant must convey to M-NCPPC in fee-simple at no cost to M-NCPPC Parcel 177, to take place not later than the first above-grade building permit.
 - b. Prior to release of the final use-and-occupancy permit for the Project, the Applicant must contribute \$45,000 to the Montgomery County Department of Parks for an archeological assessment, other testing as required, and associated stewardship of Parcel 177.
 - c. The Applicant must not perform any ground-disturbing work of any kind (e.g., clearing, grading, construction staging, storage of materials, etc.) on Parcel 177 prior to conveyance to the Maryland-National Capital Park and Planning Commission.
21. If human remains or funerary objects are encountered at any time on any properties subject to Preliminary Plan 120170280 (Parcels 242, 191, 217, and 177, on Tax Map #HM13, Bethesda, Maryland), then the Historic Preservation Section of the Montgomery County Planning Department must be notified immediately to allow documentation for the Montgomery County Planning Board Burial Sites Inventory. This Condition applies to owners, their successors, and owners' agents of land retained, dedicated, or sold by the Applicant pursuant to Preliminary Plan #120170280, and to all entities that hold easements on these properties (Parcels 242, 191, 217, and 177, Tax Map #HM13, Bethesda, Maryland).

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 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.*

The Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. Having considered the technical review requirements of Section 50.4.3, the Planning Board finds that the Application meets all applicable sections. The size, width, shape, and orientation of the lot and parcels are appropriate for the location of the subdivision, considering the recommendations included in the Sector Plan, described in more detail below, and for the type of development or use contemplated.

As evidenced by the Preliminary Plan, the Subject Property is sufficiently large to accommodate the approved uses. The Planning Board received testimony questioning the appropriateness of the Application's inclusion of 88,497 square feet of "cellar" area that is not part of the project's gross floor area. As described in more detail in the Staff Report, the Zoning Ordinance is clear that cellars, defined as "[t]he portion of a building below the first floor joists of which at least half of the clear ceiling height is below the average elevation of the finished grade along the perimeter of the building," are expressly excluded from the definition of "gross floor area." During building permit review, MCDPS will evaluate the Applicant's construction documents and ensure that the Applicant is permitted to build only the GFA and cellar area that meets the Zoning Ordinance definition up to the maximum approved by the Planning Board.

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

The Property is within the boundaries of the 2016 Westbard Sector Plan. The general goals of the Sector Plan are to provide land use, zoning, and urban design recommendations that will incentivize property owners to make investments and improve the quality of life in Westbard. Among these goals is the retention of light industrial uses, the naturalization of the Willett Branch stream into a major amenity that will become a unifying feature of the community, and a shared-use path between Westbard Avenue on the west and River Road and the Capital Crescent Trail on the east.

The Preliminary Plan meets these goals. The Application's self-storage use is permitted in the zone and the development will replace other industrial uses on the Subject Property. The Preliminary Plan contributes to the naturalization of the Willett Branch and realization of the Greenway Park in several ways: through conveyance of ownership of Parcel 177, over one-third of an acre, to M-NCPPC; through a combination of dedication and easements to M-NCPPC along the Willett Branch side of the Subject Property; and through a financial contribution toward archeological assessment and stewardship of Parcel 177.

Also, the Preliminary Plan will provide the recommended Outlet Road shared-use path connecting the Capital Crescent Trail to the Greenway along the northern edge of the Subject Property. As conditioned, the Preliminary Plan

requires the Applicant to make good faith efforts to work with its neighbor to provide the full, Sector Plan recommended width of the Outlet Road shared-use path. In the event the Applicant is unable to secure necessary approvals from its neighbor to do so, the Applicant will still make improvements and provide the necessary easement on its property to realize the Sector Plan goal of encouraging public access through this portion of the Subject Property. In either case, the shared-use path will present a safe and inviting route for the public.

The Sector Plan also has a several recommendations regarding the use of green roofs, meeting stormwater management onsite, and avoiding the use of stormwater management waivers. The Application readily meets the Sector Plan recommendation on green roofs/and stormwater management volume treatment. Although several citizens expressed a desire for changes to the stormwater management concept plan to allow greater groundwater infiltration into Willett Branch, an employee of the MCDPS testified authoritatively at the hearing that, among other factors considered by MCDPS in its review of the stormwater management concept plan, groundwater infiltration would be unlikely on the Subject Property given its highly compacted soil conditions. Because MCDPS is the agency with both the technical expertise and the legal mandate to review and approve the details of stormwater management concept plans, the Board routinely defers to MCDPS on these issues. Further, Condition #8 of the stormwater management concept plan requires revision of the plans to provide some treatment of the paving surfaces, which will further enhance the stormwater management for the development envisioned by the Preliminary Plan.

- 3. Public facilities will be adequate to support and service the area of the subdivision.*

Local Area Transportation Review

Based on the *2016-2020 Subdivision Staging Policy* transportation impact criteria, the Preliminary Plan generates fewer than 50 net new peak-hour person trips; therefore, the Application is not subject to a Local Area Transportation Review analysis. Because of the provided pedestrian and bicycle improvements, internal circulation and Site access point, the Preliminary Plan can accommodate development that will be safe, adequate, and efficient.

Other Public Facilities

Other public facilities and services are available and will be adequate to serve the development. The Subject Property will be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Additional public facilities and services, such as police stations, firehouses, and health services are operating

according to the Subdivision Staging Policy resolution currently in effect and will be adequate to serve the Subject Property. Electrical, telecommunications, and gas services are also available to serve the Subject Property.

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

A. Forest Conservation

As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Site contains substantial areas of environmentally sensitive resources and high priority settings associated with stream valley buffers. This Application will result in an enhancement of these settings as the building and associated infrastructure are designed to remain outside of the existing stream valley buffer. Additionally, the impervious areas on Lot 1 will be reduced and a considerable green roof area and storm water management features will be provided as part of the new building. Parcel 177, the R-10 portion of the Site (where the stream is located), will be conveyed to the Maryland-National Capital Park and Planning Commission per the Sector Plan recommendations.

The afforestation/reforestation requirements triggered by the Preliminary Plan are approximately 0.20 acres. The afforestation/reforestation requirements will be met offsite by a fee-in-lieu payment.

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 or CRZ impact to a 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. An existing gravel parking pad overlaps the CRZ of the tree to be impacted. Any modification or careful demolition of the parking area, even for

stream valley buffer enhancement purposes, would cause an impact to the Protected Tree and trigger Variance requirements.

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.*

The trail connection that results in impacts to the subject tree is specifically recommended in the Sector Plan. Furthermore, the plans and variance request propose only minor impacts to the subject tree rather than removal. Applicants are typically expected to comply with Sector Plan recommendations, and a variance request for a minor impact such as the one proposed in this Application would be granted to any Applicant in a similar situation.

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 based on implementation of a specific trail connection recommendation the Sector Plan. The Variance can be granted under this condition if, as in this case, the impacts are avoided or minimized and any necessary mitigation is provided.

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 Sector Plan recommendations for the Subject Property and not because 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 Site currently has a high level of impervious surfaces and very little or no stormwater management. The overall plans will provide considerable stormwater management features and green space enhancements where none exist today. MCDPS Staff approved the stormwater management concept for the Application on November 9, 2017. The stormwater management concept proposes to meet required stormwater management goals with the use of green roofs and micro-bio retention planter boxes. The full treatment is provided and no stormwater management waivers are associated with the Preliminary

Plan. Furthermore, as conditioned, demolishing the dilapidated pavement and compacted gravel pad currently existing within the stream valley buffer and replacing with green space will significantly enhance the stream valley corridor, further improving the associated water quality. Therefore, the Application, even with the Variance, will enhance water quality and not violate State water quality standards or cause measurable degradation in water quality.

No mitigation is required for Protected Trees impacted but retained.

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

This finding is based upon the determination by MCDPS that the stormwater management concept plan meets applicable standards. The MCDPS Stormwater Management Section approved the stormwater management concept on November 9, 2017. According to the approval letter, the stormwater management concept meets stormwater management requirements via environmental site design to the maximum extent practicable using green roofs.

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 50.4.2.G, 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 JAN 12 2018 (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 Commissioner Cichy, with Chair Anderson and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, January 11, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board