



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

MCPB No. 18-037
Preliminary Plan No. 120180010
Montgomery Village Center
Date of Hearing: April 26, 2018

JUN 04 2018

RESOLUTION

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

WHEREAS, on September 28, 2017, *W-ARC MV Owner VII, LLC* (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create 55 lots and various storm water management, public/common open space, private road, and HOA parcels on 18.78 acres of land in the CRT-1.5, C-0.75, R-1.0, H-75 Zone, located west of the intersection of Montgomery Village Avenue and Centerway Road in Gaithersburg, MD (“Subject Property”) in the 2016 *Montgomery Village Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120180010, Montgomery Village Center, (“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 April 16, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on April 26, 2018, 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 April 26, 2018, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Commissioner Patterson, with a vote of 5-0; Commissioners Anderson, Cichy, Dreyfuss, Fani-Gonzalez, and Patterson voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120180010 to create 55 lots on the Subject Property, subject to

Approved as to
Legal Sufficiency:

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the following conditions:¹

1. This Preliminary Plan is limited to 55 lots for 115 dwelling units (49 townhouses, 34 two-over-two condos, 32 multi-family condos) including 12.5% MPDUs, up to 165,000 square feet of retail/service uses, and various stormwater management, public/common open space, private road, and homeowners association (HOA) parcels. The Applicant must amend the Preliminary Plan for Phase 2.
2. The Applicant must comply with the binding elements and conditions of approval for Sketch Plan No. 32017002A and any subsequent amendments.
3. Include the stormwater management concept approval letter and Preliminary Plan Resolution on the approvals sheet(s).
4. This Preliminary Plan includes the Preliminary Forest Conservation Plan, which is subject to the following conditions:
 - a. A Final Forest Conservation Plan (FFCP) that substantially conforms to the PFCP must be approved as part of the Site Plan approval process.
 - b. Mitigation must be provided for specimen trees removed at the rate of one inch replaced for every four inches (d.b.h.) removed, using planting stock no smaller than three inches caliper.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 22, 2018, 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.
6. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
7. 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 April 16, 2018, 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

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.

amendments do not conflict with other conditions of the Preliminary Plan approval.

8. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated January 18, 2018, 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 Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the master plan and/or to the design standards imposed by all applicable road codes.
10. The Applicant must provide Private Road(s) in parcel(s), including any sidewalks, bikeways, storm drainage facilities, street trees, street lights, private utility systems and other necessary improvements as required by either the Preliminary Plan or the subsequent Site Plan within the delineated private road area (collectively, the "Private Road"), subject to the following conditions:
 - a. The record plat must show the Private Road in a separate parcel.
 - b. The Private Road must be subjected by reference on the plat to the Declaration of Restrictive Covenant for Private Roads recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338, and the terms and conditions as required by the Montgomery County Code with regard to private roads set forth at § 50-4.3.E et seq.
 - c. Prior to issuance of building permit, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a professional engineer licensed in the State of Maryland that the Private Road has been designed and the applicable building permits will provide for construction in accordance with the paving detail and cross-section specifications required by the Montgomery County Road Code, as may be modified on this Preliminary Plan or a subsequent Site Plan, and that the road has been designed for safe use including horizontal and vertical alignments for the intended target speed, adequate typical section(s) for vehicles/pedestrians/bicyclists, ADA compliance, drainage facilities, sight distances, points of access and parking, and all necessary requirements for emergency access, egress, and apparatus as required by the Montgomery County Fire Marshal.
11. Prior to submission of any plat application, Site Plan No. 820180020 must be certified by MNCPPC Staff.
12. No clearing or grading of the site, or recording of plats prior to Certified Site Plan approval.

13. Final approval of the number and location of (buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths) will be determined at Site Plan(s).
14. Subject to MCDOT review and approval, the Applicant must provide one bikeshare station. The final location of the bikeshare station must be shown on the Certified Preliminary Plan and easements for public access must be provided if it is located on private property.
15. The Applicant must provide two handicap parking spaces near the new public open space and retail uses.
16. The Applicant must include road cross sections for each type of private road and alley, including modifications, paving detail and design data on the Certified Preliminary Plan and Certified Site Plan.
17. The Certified Preliminary Plan must contain the following notes:
 - a. 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 issuance of building permit(s) [or] 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.
18. The record plat must show necessary easements.
19. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
20. The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
21. The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). The Applicant must provide verification to Staff prior to release of the final building permit that the Applicant's recorded HOA Documents incorporate the Covenant by reference.
22. All Public Open Space must be recorded in a separate lot or parcel with a protective easement or covenant in the land records, in a form approved by the Planning Board, unless the parcel is exempted from recordation under Chapter 50.

23. The Subject Property is within the Watkins Mill School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the Stedwick Elementary, Montgomery Village Middle, and Watkins Mill High school level at the single-family attached and multi-family garden apt. unit rates 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 any amendments to this chapter.
24. 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.

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 lot size, width, shape and orientation are appropriate for the location of the subdivision considering the recommendations in the Montgomery Village Master Plan and the type of development and use contemplated. The lots were reviewed for compliance with the dimensional requirements for the CRT zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in the CRT Zone.

Private Roads - Section 50-4.3.E.4

All roads within the project are designated as private. Thus, a total of 53 of the 55 lots will front onto a private street or open space. Per Section 50.4.3.4.c., in requesting private roads, the Applicant agrees, per the conditions of approval, that the private roads must be built to the construction specifications of the corresponding public road standards (MC 2005.02 Modified and MC 201.01 Modified) including paving detail and design data, and surface depth and structural design. The private roads must 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.

For this subdivision, the private internal streets and alleys, which provide frontage to 53 lots, meet the minimum standards necessary for their approval. The private roads will be constructed to the minimum public road structural standards, will have a minimum 20-foot pavement width and adequate turning radii where needed for emergency access, an appropriate paving cross-section elsewhere for private vehicles, and an appropriate circulation and turnaround pattern. The private roads will be located within separate private road parcels, with a covenant and easement that ensures they are adequately maintained and remain fully accessible to the public.

Private streets are intended to provide necessary flexibility in right-of-way width and road design that cannot be achieved under Chapter 49, to provide enhanced sidewalk, curb and crosswalk design features that promote pedestrian circulation. The establishment of private roads within the development is consistent with most of the roads within Montgomery Village. The private streets are modified business district streets. Most of the private roads will have a 60-foot and 50-foot right-of-way with six-foot planter boxes and five-foot sidewalks on both sides. On-street parking will be provided on some of the private roads as shown on the Preliminary Plan and Site Plan. Private alleys will be a minimum of 24-foot-wide paved alleys with no sidewalks.

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

The Subject Property is within the boundaries of the 2016 *Montgomery Village Master Plan*. The Master Plan identifies four specific areas as potential redevelopment sites, including the Village Center. (With the exception of the former golf course, all properties included on this list were envisioned as mixed-use, pedestrian-friendly environments. General design recommendations for these in the master plan are divided in to three areas of discussion – Buildings, Connectivity, and Open. Highlights from this section are:

- “Provide compact development patterns with short blocks and building frontages close to the street...” ;
- “Create complete streets that include building frontages close to the street, landscaping, bike facilities, and pedestrian areas that provide safe pedestrian crossings and include sustainable elements”; and
- New public open space should “provide alternatives for recreation and leisure in a mixed-use setting” by “creating places for community use that are framed and activated by surrounding development and uses, where the public feels welcome to gather and linger.”

Revisions to the previous approval resulted in lower residential densities than those envisioned by the Master Plan but created a better set of internal streets connected to all existing access points into the Subject Property, and

additional public open spaces along these new connections. As an example, the amended plan improves the internal connection to the access from Stedwick Rd. along the existing US Postal facility; this delivers a significantly improved connection through the new residential area linking directly to the new central open space. The subdivision substantially improves connectivity through the block, which is an important master plan goal. The subdivision delivers a mix of uses (commercial and residential), connections, and open spaces that appropriately capture the spirit of the recommendations in the master plan. Below are comments on specific master plan recommendations (*italics refer to a selected quotation from the master plan*):

- *Transform the north south drive into a pedestrian-friendly local street.*

This subdivision improves the layout of the Subject Property by placing the north/south drive into a separate road parcel. As part of Phase 1A, the Applicant will improve existing storefronts along the north-south drive, but streetscape along existing pedestrian areas will largely remain as it exists today. However, the streetscape of the north-south drive will be improved as part of future phases of development.

- *Establish an east-west local street connecting existing vehicular entrances at Montgomery Village Avenue and Watkins Mill Road. (p.60)*

The proposal creates this connection by opening east-west vehicular access through the existing retail block, connecting the entrance from Centerway Road with the entrance from Watkins Mill Road. Both the new street segment and the central open space achieve the substantial and centralized pedestrian-friendly area envisioned by the Master Plan.

- *Along both local streets, create a main street environment with street-oriented buildings, streetscapes, and comfortable pedestrian walking areas connecting to adjacent streets and existing and future transit options.*

The main street environment is achieved along the portion the new street connected to existing retail uses. Beyond that area, new residential uses and open spaces for public use are located along new connections, introducing variety of uses along the new pedestrian areas that transition appropriately to existing uses beyond the redeveloping property.

- *Enhance existing open spaces and provide linkages to the proposed local streets.*

The Application relies on a combination of existing and proposed connections and open spaces to achieve this goal. The Application delivers several public open spaces along most new connections. Some existing pedestrian areas will remain unchanged, but consideration should be given to improving these areas in future improvement phases, to provide a network of truly enhanced linkages.

- *Consider strategies to integrate existing uses that are likely to remain with emerging pedestrian environments, such as streetscape enhancements or public use spaces to link new and existing development.*

The Applicant will utilize a combination of new construction and refurbished existing storefronts to achieve this master plan goal. In addition, the new street segment and central open space, and pedestrian improvements to the front parking area will link the property to existing access points, and bus stops.

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

Local Area Transportation Review (LATR)

The Use and Occupancy Certificates for the existing shopping center were issued more than 12 years ago for at least 75 percent of the originally approved development. Thus, these current commercial trips are considered existing traffic on the road network in accordance with the SSP, and the Application meets LATR requirements.

Schools

The 2016-2020 Subdivision Staging Policy school test for FY2018 indicates that there is adequate capacity within the Watkins Mill School cluster for the service areas of Stedwick Elementary, Montgomery Village Middle, and Watkins Mill High School. The Applicant will be required to pay the School Impact Tax on all applicable residential units. MCDPS will determine the amount and timing of the payment.

Other Public Facilities

The development will be served by public water and sewer systems. Fire and Rescue has reviewed the application and has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services including police stations, firehouses 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.

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

Environmental Guidelines

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) was approved for the Subject Property on Sept 1, 2018 (NRI/FSD No. 420170040). The Subject Property contains no streams or stream buffers, wetlands or wetland buffers, hydraulically adjacent steep slopes, 100-year floodplains, known occurrences of Rare, Threatened or Endangered species, or forest. The Subject is within the Great Seneca Creek watershed, which is a Maryland State Use Class I-P stream. This plan is in compliance with the *Environmental Guidelines*.

Preliminary Forest Conservation Plan

The Net Tract Area used in the Forest Conservation calculations is 18.37 acres. Based on the afforestation threshold of 15% of the Net Tract Area, the afforestation requirement is 2.76 acres. The Applicant proposes to fulfill the planting requirement by retaining 0.52 acres of on-site tree canopy, planting additional landscape trees totaling 1.47 acres of tree canopy and obtaining off-site banking credit equal to 0.77 acres of forest planted or 1.54 acres of existing forest protected. A Final Forest Conservation Plan is being submitted for approval concurrently with the Site Plan for this site.

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 five Protected Trees 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 Planning Board finds that in granting the variance, the variance:

1. *Will not confer on the Applicant a special privilege that would be denied to other applicants.*

Impacts to specimen trees are a result of the position of the trees in the middle of existing developed areas that must be disturbed for Master Plan-recommended redevelopment to be achieved, and from the requirements for infrastructure needed to support the development. The development is consistent with the zoning for the site. The impacts to the trees subject to the variance requirement cannot be avoided. Therefore, the granting of this variance is not a special privilege that would be denied to other applicants.

2. *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, but on engineering and site constraints and Master Plan-recommended redevelopment.

3. *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 not 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.*

The three specimen trees being removed will be replaced by planting one inch (caliper) of new trees for each four inches diameter removed, using planting stock of no less than 3 inches caliper. In a few years, the replacement trees should attain sufficient size to replace the lost water quality treatment benefits of the trees removed. In this case, the applicant must plant at least 23.5 caliper inches of new trees to replace the specimen trees being removed. The Preliminary Forest Conservation Plan shows that eight willow oak (*Quercus phellos*) trees, each at least three inches caliper, are being planted in mitigation for the specimen trees removed, for a minimum of 24 caliper inches of replacement. Therefore, the removal of the specimen trees will not violate State water quality standards or cause a measurable degradation in water quality.

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

The Montgomery County Department of Permitting Services (DPS) Stormwater Management Section issued a letter accepting the stormwater management concept approval on April 16, 2018. Stormwater treatment will be accomplished through the use of micro bioretention, drywells, green roof and structural practices.

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 JUN 04 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).

* * * * *

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, Vice Chair Dreyfuss, and Commissioners Fani-González, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, May 24, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board