



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

MCPB No. 18-054  
Preliminary Plan No. 120170020  
Rickman Property  
Date of Hearing: June 28, 2018

JUL 16 2018

**RESOLUTION**

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

WHEREAS, on January 5, 2017, Rickman Construction Co., LLC (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 6.15 acres of land in the IL-1.0/H-50 zone and Upper Rock Creek Overlay zone, located on the east side of Woodfield Road (MD Route 124) approximately 310 feet south of intersection of Lindbergh Road (“Property” or “Subject Property”), in the Rural East Policy Area and 2004 Upper Rock Creek Area Master Plan (“Master Plan”) area; and

WHEREAS, Subdivision Regulation Amendment 16-01, adopted by the Montgomery County Council on November 15, 2016 as Ordinance No. 18-19, replaced Chapter 50, Subdivision of Land in its entirety, effective February 13, 2017 (“Subdivision Regulations”); and

WHEREAS, Ordinance 18-19 provided that any preliminary plan application filed and certified as complete before the effective date of the Subdivision Regulations may, at the applicant’s option, be reviewed under the Subdivision Regulations in effect when the application was submitted; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120170020, Rickman Property (“Preliminary Plan” or “Application”); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on January 5, 2017; 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 June 15, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

Approved as to  
Legal Sufficiency:

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WHEREAS, on June 28, 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, 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. 120170020 to create one lot on the Subject Property, subject to the following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to one lot for up to 69,300 square feet of warehouse space, 22,000 square feet of general office space, and 6,400 square feet of retail or restaurant uses (4,800 square feet of patron area) without drive-thru's.
2. The Certified Preliminary Plan must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
3. The Applicant must comply with the conditions of approval for the Preliminary/Final Forest Conservation Plan (FFCP), plan number 120170020, approved as part of this Preliminary Plan, including:
  - a. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record in the Montgomery County Land Records a Certificate of Compliance to use a M-NCPPC approved off-site forest bank to satisfy the reforestation/afforestation requirement of 0.99 acres as shown on the approved FFCP.
  - b. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC Forest Conservation Inspector.
  - c. The Applicant must have all required site inspections performed by Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
  - d. The limits of disturbance (LOD) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved FFCP.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 7, 2018, and hereby incorporates them as conditions of the Preliminary Plan approval. The

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<sup>1</sup> 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.

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.

5. The Planning Board accepts the recommendations of the Maryland Department of Transportation State Highway Administration (“MDSHA”) in its correspondence dated June 1, 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 MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
7. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Water Resources Section in its revised Preliminary/Final Water Quality Plan and stormwater management concept letter dated March 1, 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 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, Fire Department Access and Water Supply Section in its letter dated June 15, 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 record plat must show necessary easements.
10. Prior to Certified Preliminary Plan, the Applicant must revise the landscape and lighting plan to include a detailed landscape schedule, planting details, and lighting specifications for review and approval by M-NCPPC staff (“Staff”).
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 this 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 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.

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.*

a. Land Use

The Preliminary Plan substantially conforms to the recommendations in the 2004 *Upper Rock Creek Area Master Plan*. The Master Plan does not make specific recommendations for the Subject Property, but as noted below, makes general land use and zoning recommendations for the area in which the Property is located. The Master Plan references the light industrial businesses found east of the Montgomery County Airpark along Warfield Road and recommends retaining existing industrial zoning classifications. The IL-1.0 zone is intended for low-intensity light industrial uses and as a transitional industrial zone between residentially zoned areas and land classified in the I-M and I-H zones. The Preliminary Plan proposes light industrial warehouse use and office space, which are in conformance with the Master Plan. The area is within the Upper Rock Creek Special Protection Area and the accompanying Environmental Overlay Zone but is exempt from the 8% imperviousness limit included in development standards of the overlay zone, as explained in the Water Quality Section below.

b. Transportation

Woodfield Road is classified as a Major Highway (M-21) with a minimum master planned right-of-way of 120 to 150 feet. The Master Plan notes that the "current design plans for these roadways call for six lanes within a 120-foot-right-of-way. These plans should be implemented. Future subdivisions should require 150-foot rights-of-way for long-term planning purposes." Woodfield Road currently has a 130-foot right-of-way with 48 feet of pavement along the frontage of the Property. Approximately 32,887 square feet of right-of-way was previously dedicated to MDSHA to provide the current existing 65 feet of right-of-way from the centerline along the Property frontage for Woodfield Road.

The Applicant does not propose to dedicate additional right-of-way for conformance with the ultimate right-of-way. Although 150 feet of right-of-way is preferred, the Board finds that the existing 65 feet of dedication from centerline for a total of 130 feet total right-of-way (if mirrored on the other side) will be sufficient for future right-of-way needs over the next twenty years for the following reasons:

- Woodfield Road from Midcounty Highway to Airpark Road, adjacent to the Subject Property, is currently included as Phase II in a 3-phase MDSHA corridor project to widen and increase capacity along Woodfield Road along a four-mile section. Although the proposed improvements of this phase consist of widening the currently four-lane road to three through lanes in each direction with a raised median and on-street accommodations for bicycles, recently collected traffic data and traffic projections suggest vehicle travel patterns have changed since the opening of the Intercounty Connector. The traffic analysis conducted by MDSHA concludes that with geometric improvements and signal optimization, the reduced four-lane typical section would operate efficiently through 2040. Therefore, MDSHA has put this project on hold. The Planning Department's Functional Policy and Planning Group has analyzed and verified that based on recent traffic volumes and projected volumes through 2040, the additional lanes are not warranted.
- A total of 130 feet of right-of-way (65 feet on each side) could still accommodate the ultimate three through lanes in each direction with a raised median and a shared use path on one side of the street. Although this section has not been designed with stormwater management taken into account, which would require a facility plan and further engineering design, the road is typically a closed section road where stormwater is not treated in swales that would require additional right-of-way.

The 2005 *Countywide Bikeways Functional Master Plan* designated Woodfield Road as a dual bikeway, which includes a signed shared roadway and a shared use path on the opposite (west) side of the road. The 2018 *Bicycle Master Plan Public Hearing Draft* reconfirms the need for a shared use path on the west side of Woodfield Road, but based on high traffic volumes on the road, removes the recommendation for a signed shared roadway. Since the recommended bicycle facilities are on the opposite side of the street from the Subject Property, no bicycle facility frontage improvements are incorporated in the project.

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

The Preliminary Plan was reviewed using the 2012–2016 Subdivision Staging Policy in effect through December 31, 2016. Although the official acceptance

date for the Preliminary Plan was not until January 5, 2017, other elements of the submission including the transportation and other APF review documents were scoped by Staff in 2016 and the Application was granted an exception by the Planning Director to be reviewed under the old Subdivision Staging Policy. The changes in the Subdivision Staging Policy between 2016 and 2017 have minimal effect on the review of the Application, because the development size would have still required a traffic study for review; the congestion thresholds in the impacted Policy Areas remained the same; and the project will not generate enough pedestrian, bicycle, or transit trips to require further mode analysis required within the 2016-2020 Subdivision Staging Policy and subsequent *Local Area Transportation Review (LATR) Guidelines*.

#### Trip Generation

A site trip generation summary included in the Staff Report shows that the project is estimated to generate 405 peak-hour person trips during the weekday morning peak period and 183 peak-hour trips during the weekday evening peak period.

Because the Application is subject to the 2012–2016 Subdivision Staging Policy and is estimated to generate more than 30 peak-hour vehicle trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) or evening (4:00 p.m. – 7:00 p.m.) peak periods, the Applicant submitted a traffic study.

#### Local Area Transportation Review

A summary of the capacity analysis/Critical Lane Volume (CLV) analysis for the weekday morning and evening peak-hour periods, presented in the Staff Report, shows that the total future condition will remain within the Rural East Policy Area congestion standard of 1350 CLV. Based on the analysis presented in the traffic study, the Application satisfies the LATR requirements of the APF Review.

The Preliminary Plan has been evaluated by Staff and MDSHA, which supports the transportation elements of the Preliminary Plan as indicated in correspondence dated June 1, 2018. The access to the Subject Property, as shown on the Preliminary Plan, is adequate to serve the development.

#### Other Public Facilities and Services

The Subject Property is in sewer category S-3 and water category W-1 which is consistent with the Applicant's proposal to connect to public water and sewer, which are available and adequate to serve the development. A new 8-inch water line will tie into the existing 16" water main in MD 124 and an 8-inch sewer line will be extended pipe behind an adjacent building on the west side of Woodfield Road. The existing electrical service provided by PEPCO will be upgraded to serve the new uses.

The Application has been reviewed by the MCDPS Fire Department Access and Water Supply Section, which determined that the Property has adequate access for fire and rescue vehicles by transmittal dated June 15, 2018.

Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the 2016-2020 Subdivision Staging Policy.

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.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision of Land. The Application meets all applicable sections. The lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations included in the *Upper Rock Creek Area Master Plan*, and for the development of a warehouse, office, retail and restaurant uses. The Application will create a single lot from two unrecorded parcels. The lot will accommodate all buildings, parking, drive aisle and other required infrastructure within any established setbacks. The lot was reviewed for compliance with the dimensional requirements for the standard method of development in the Light Industrial zone as specified in the Zoning Ordinance.

The lot as approved will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in the Staff Report. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Application.

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 Application meets the requirements of Chapter 22A of the County Code. As required by the County Code, a FFCP for the project was submitted with the Application. The total net tract area for forest conservation purposes is 6.57 acres. The Property is zoned IL-1.0 and is considered as Commercial and Industrial Use for determining any forest

planting requirements. The Subject Property contains no forest, and under Chapter 22A, unforested properties have a 15 percent afforestation requirement. The development of this Property results in an 0.99-acre afforestation requirement. The Applicant will meet this requirement by purchasing the appropriate amount of forest credits in an off-site forest bank.

#### 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 or CRZ impact to 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 site layout, the required location of the proposed Building #1, and the locations of the necessary stormwater management elements make impacts to this tree unavoidable.

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 impact to 1 off-site tree is due to the location of the tree and necessary site design requirements imposed by governmental agencies.

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 variance is based upon the existing site conditions and necessary design requirements of this Preliminary Plan application. The request is also based on the design requirements specified by DPS to mitigate impacts to the SPA.



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 on the Subject Property and is not the 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 affected specimen tree is not located within a stream buffer.

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 meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a combined Preliminary/Final Water Quality Plan and stormwater management concept (revised) approval from MCDPS Water Resources Section on March 1, 2018. The Application will meet stormwater management goals through a variety of techniques including micro bioretention and a bio swale. Additionally, a quantity storage vault is proposed to control the runoff from a post-developed 25-year storm event due to inadequate pipe sizing under Maryland Route 124, unless MDSHA eliminates this requirement and allows a pipe connection into the MDSHA system which would require the Applicant to upgrade the existing pipe in MD 124.

A) Water Quality Plan

The Application complies with the M-NCPPC Environmental Guidelines and Chapter 19 of the Montgomery County Code. The Property is partially located within the Upper Rock Creek Special Protection Area and is required to obtain approval of a water quality plan under section 19-62 of the Montgomery County Code.

As part of the requirements of the SPA law, a Water Quality Plan should be reviewed in conjunction with a Preliminary Plan. Under Section 19-65 of the Montgomery County Code, the Montgomery County Department of Permitting

Services and the Planning Board have different responsibilities in the review of a Water Quality Plan.

*MCDPS Special Protection Area Review Elements*

MCDPS established the performance goals for the project which include:

1. minimize storm flow run off increases,
2. minimize increases to ambient water temperatures,
3. minimize sediment loading,
4. minimize nutrient loading.

In a letter dated March 1, 2018, MCDPS has found the elements of the Water Quality Plan under its purview acceptable, which include site performance goals, stormwater management, sediment and erosion control, and monitoring of Best Management Practices.

*Planning Board Special Protection Area Review Elements*

The Planning Board must determine if:

1. SPA forest conservation and planting requirements are met,
2. environmental buffer protection is adequate, and
3. limits on impervious surfaces have been satisfied.

The following is an analysis of the Planning Board's responsibilities in the review of the Preliminary/Final Water Quality Plan.

*1. SPA forest conservation and planting requirements*

The Application meets the requirements of Chapter 22A of the County Code (Forest Conservation Law). The FFCP was submitted with this Application. The Subject Property contains no forest, streams or other environmentally sensitive features. As a result, there are no priority forest conservation areas to permanently protect or areas of accelerated forest plantings required.

*2. SPA Environmental Buffer Protection*

There are no environmentally sensitive features on the Subject Property or in proximity to the site, so no environmental buffer protection is required.

*3. Impervious Surfaces*

The Subject Property is zoned IL-1.0/H-50 and is also partially within the Upper Rock Creek SPA. Under normal circumstances most developments within the SPA are subject to an 8% impervious cap. However, since the Subject Property is in an industrial zone it is exempt from the any of the requirements of the SPA as stated in Chapter 59.4.9.20.B.1.f of the Upper Rock Creek Overlay Zone.

The Board approves the elements of the SPA Water Quality under its purview.

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 ~~JUL 16 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 Patterson, seconded by Vice Chair Dreyfuss, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, June 28, 2018, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board