



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

MCPB No. 19-004
Site Plan No. 820180210
Checkers Restaurant
Date of Hearing: January 10, 2018

FEB 25 2019

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on August 9, 2018, HR Foods Maryland, LLC ("Applicant") filed an application for approval of a site plan for a 952-square-foot fast-food drive-thru restaurant on 2 acres of land in the IL-1.0, H-50 Zone, located at 8019 Snouffer School Road in Gaithersburg ("Subject Property"), in the Montgomery Village Airpark Policy Area and the 1996 Gaithersburg Vicinity Master Plan ("Master Plan") area; and

WHEREAS, the site plan application for the Subject Property was designated Site Plan No. 820180210, Checkers Restaurant ("Site 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 31, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 10, 2019, the Planning Board held a public hearing at which it heard testimony and received evidence on the Application; and

WHEREAS, on January 10, 2019, the Planning Board voted to approve the Application subject to conditions, on the motion of Commissioner Cichy, seconded by Commissioner Patterson, with a vote of 3-0; Commissioners Cichy, Fani-Gonzalez and Patterson voting in favor, and Commissioners Anderson and Dreyfuss absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820180210 for 952-square-foot fast-food restaurant with one drive-thru

Approved as to

Legal Sufficiency:

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M-NCPPC Legal Department
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window and a sidepath in addition to the existing 12,390-square-foot shopping center, the Subject Property, subject to the following conditions:¹

1. Density

The Site Plan is limited to a 952-square-foot fast-food restaurant with one drive-thru window and a sidepath in addition to the existing 12,390-square-foot shopping center on the Subject Property.

2. Height

The development is limited to a maximum height of 17 feet, as measured from the building height measuring point, as illustrated on the Certified Site Plan.

3. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to the sidepath along Snouffer School Road.

4. Site Design

The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Sheet A5.1-2 of the submitted architectural drawings, as determined by M-NCPPC Staff.

5. Lighting

- a) Prior to certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
- b) All onsite down-lights must have full cut-off fixtures.
- c) Deflectors will be installed on all proposed fixtures to prevent excess illumination and glare.
- d) Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at any property line abutting public roads and residentially developed properties.
- e) Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

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.

6. Stormwater Management

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 September 7, 2018 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which the MCDPS Water Resources Section may amend if the amendments do not conflict with other conditions of Site Plan approval. The MCDPS Water Resources Section will review, approve, and inspect all landscaping within the Storm Water Management easements and facilities.

7. Open Space

The Applicant must provide the required minimum 10% of Amenity Open Space. The Amenity Open Space must be provided as shown in the Site Plan.

8. Pedestrian and Bicycle Circulation

- a) The Applicant must provide one (1) short-term bicycle parking space.
- b) The short-term space must be an inverted-U rack (or approved equal) installed in a location convenient to the main entrance. The specific location of the short-term bicycle rack must be identified on the Certified Site Plan.
- c) Prior to issuance of any Use and Occupancy Certificate, the Applicant must construct a minimum 8.5-foot-wide sidepath along the frontage of Snouffer School Road, as shown on the Certified Site Plan, with the exact location, design and construction to be determined by the Montgomery County Department of Transportation, Division of Traffic Engineering and Operations. The sidepath must be privately maintained and located within a public access easement for the portion on the Subject Property.

9. Validity

The APF will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution for the Site Plan.

10. Fire and Rescue

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 December 10, 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.

11. Department of Permitting Services-Right-of-Way

The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Right-of-Way Permitting Section in its

letter dated December 4, 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 Site Plan approval.

12. Site Plan Surety and Maintenance Agreement

Prior to issuance of any building permit, sediment control permit, or Use and Occupancy Certificate, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 59.7.3.4.K.4 of the Montgomery County Zoning Ordinance, with the following provisions:

- a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b) The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, on-site lighting, indoor and outdoor recreational facilities, site furniture, mailbox pad sites, trash enclosures, retaining walls, fences, railings, private roads and sidewalks, private utilities, paths and associated improvements of development, including sidewalks, bikeways, storm drainage facilities, street trees and street lights. The surety must be posted before issuance of any building permit of development and will be tied to the development program.
- c) The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by a site plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.

13. Development Program

The Applicant must construct the development in accordance with the development program table, subject to review and approval by Staff before Certified Site Plan.

14. Certified Site Plan

Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a) Include the stormwater management concept approval letter, development program, and Site Plan resolution on the approval or cover sheet(s).
- b) Add a note to the Site Plan stating that, "M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading."
- c) Add a note stating that, "Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections

may be done during the review of the right-of-way permit drawings by the Department of Permitting Services.”

- d) Add the bike rack design to the landscape plans.
- e) Prior to approval of the Certified Site Plan, the *Nandina domestica* and *Vinca minor* must be replaced on the landscape plans with non-invasive species.
- f) Modify data table to reflect development standards approved by the Planning Board. Ensure consistency of all details and layout between Site and Landscape plans.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Checkers Restaurant 820180210, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

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 development satisfies applicable use standards, development standards, and general requirements under the Zoning Ordinance.*

a. Use Standards

The Site Plan meets all the general requirements and development standards of Divisions 59-4.4 and 59-4.5 of the Zoning Ordinance, and the general development requirements of Article 59-6 of the Zoning Ordinance.

b. Development Standards

The Subject Property includes approximately 2 acres of land in the IL-1.0, H-50 Zone. The Application satisfies the applicable development standards as shown in the following data table:

<u>Section 59</u>	<u>Development Standard</u>	<u>Permitted/ Required</u>	<u>Proposed</u>
	Gross Tract Area (sf)		
	IL- 1.0, H-50		87,320
4.8.3.1	Open Space Amenity	10%	29.30%
4.8.3.2	Lot Density	1	0.15
4.8.3.3	Placement		
	Minimum Building Front Setback (from street R/W)	10 ft	> 10 ft
	Minimum Building Side Setback (Checkers)	10 ft	16 ft
	Minimum Building Rear Setback	0 ft	98 ft
4.8.3.4	Height (max)	50 ft	17 ft

<u>VEHICLE PARKING PROVIDED BREAKDOWN</u>	
Parking (Regular)	50
Parking (Compact) (Not permitted)	0
Parking (VHC)	1
Parking	2
TOTAL AUTOMOBILE PARKING	53
PARKING REQUIRED	31
Motorcycle / Scooter Parking Provided	2

c. General Requirements

i. *Parking, Queuing, and Loading*

The Site Plan provides six (6) queuing spaces meeting the minimum of five (5) spaces for a drive-thru lane. The drive-thru lane is a minimum of ten (10) feet and is clearly marked and separated from the driveway aisle, parking spaces and pedestrian walkways.

2. *The development satisfies the applicable requirements of Chapters 19 and 22A of the Montgomery County Code.*

a. Chapter 19, Erosion, Sediment Control, and Stormwater Management

A Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services on September 7, 2018. The plan will meet stormwater management requirements through the use of drywells and a request for full stormwater management waiver.

b. Chapter 22A, Forest Conservation

The Application is exempt from submitting a forest conservation plan. An Exemption (No. 42018196E) was approved on March 25, 2018. The Exemption plan documented that the Subject Property contains no streams or their buffers, wetlands or wetland buffers, steep slopes, 100-year floodplains, or known occurrences of rare, threatened or endangered species. There are no forests or specimen trees on the Subject Property. The plan as submitted is in conformance with the Environmental Guidelines and complies with Chapter 22A, the Forest Conservation Law.

Two of the species proposed on the Landscape plans, *Nandina domestica* and *Vinca minor*, are listed as invasive species in the Invasive Plant Atlas of the United States. These species must be replaced.

3. *The development provides safe, well-integrated parking, circulation patterns, building massing and, where required, open spaces and site amenities.*

The Site Plan provides adequate, safe, and efficient parking and circulation patterns. The Application provides well-integrated onsite surface parking with multiple access points, including sidewalk and frontage upgrades to the Subject Property. These enhancements will facilitate improved pedestrian connections from nearby neighborhoods by offering access to existing and planned bikeways, side paths, and retail uses. The Applicant has oriented its building to take advantage of existing drive lanes and circulation patterns that already exist abutting the east side of the Subject Property and in a drive lane paralleling Snouffer School Road, thus integrating parking and circulation features into an efficient and attractive site layout.

4. *The development substantially conforms to the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan.*

While the Master Plan does not contain specific recommendations for the Subject Property or the larger retail center, the design and orientation of the proposed convenience restaurant with drive-thru window is consistent with the Master Plan's concept for development that provides services without causing transportation conflicts due to multiple points of access to Snouffer School Road.

The Gaithersburg Vicinity Master Plan recommends that Snouffer School Road is designated as an Arterial, A-16, with a recommended 80-foot right-of-way and bike lanes, BL-18. The existing Snouffer School Road right-of-way is 85 feet that is five (5) feet more than recommended in the Master Plan right-of-way. The 2018 Bicycle

Master Plan recommends a sidepath on the north/property side on Snouffer School Road, and the Applicant will provide it on the Subject Property.

- 5. The development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.*

Adequate Public Facilities exist to serve the development. The Application is part of a previously approved Preliminary Plan No. 19821570, Montgomery County Airpark Industrial Park that created nine lots including the subject Lot 21 (Record Plat No. 15185 or 556-78 in 1985). The development is projected to generate 22 peak-hour morning person trips and 28 peak-hour evening person trips and is not required to submit a traffic study to satisfy the Local Area Transportation Review (LATR) adequacy test. Furthermore, the net change in trips from the existing bank to the proposed fast food restaurant generates six (6) additional morning (6:30-9:30 a.m.) person trips and six (6) fewer evening (4:00-7:00 p.m.) person trips. The person trips are new trips that are reduced by the pass-by and diverted trips. The active businesses on Lot 21 have operated for more than twelve (12) years and their site-generated trips are excluded from this analysis.

The area surrounding the Subject Property is developed, and public services such as water, sewer and storm drainage are readily available to serve the proposed restaurant. The parcel is already platted, and the proposed drive-thru restaurant will provide an additional service without significant impacts to the surrounding transportation network. The Department of Permitting Services Fire and Emergency Services Access Section has approved the proposal for appropriate access for 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 Subject Property. Electrical, telecommunications, and gas services are also available and adequate to serve the Subject Property.

- 6. The development is compatible with existing and approved or pending adjacent development.*

The Application is compatible with existing and approved or pending adjacent development. The restaurant with a drive-thru replaces a former bank and drive-thru. All properties abutting the Subject Property are zoned in the IL-I (Light Industrial) classification and contain commercial uses and/or supporting parking. The approved use is compatible with surrounding existing or potential development both in terms of design and function.

- 7. There is a need for the approved use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the*

approved location will not result in a multiplicity or saturation of similar uses in the same general neighborhood.

The Applicant has conducted an analysis that considers a) surrounding population density, b) accessibility from heavily traveled roads, c) area income, d) market area dining and spending habits, e) the "competitive environment" and f) differentiation in product services. The Applicant notes that a 2016 consumer survey found that most people are willing to travel by car approximately 8 minutes for fast food purchases. There was a resident population of approximately 75,958 in 2010 within the market area. This population represents approximately 8% of the total population of Montgomery County. There are around 27,290 housing units. The main employment for the population is professional and service careers.

The Applicant asserts that a "need" exists at the Property for a drive-thru restaurant in light of:

- Needs of the current population in the Montgomery County Airpark area of Montgomery County; and
- Supply of similar restaurants in the neighborhood.

There are ten (10) quick service restaurants within the eight (8)-minute travel time market area that have drive-thru services. Within the market area, the majority of the burger restaurants with drive-thru restaurants are McDonald's. These restaurants are located at retail destinations in and around Gaithersburg, such as the Montgomery Village shopping center and the Lakeforest Mall and around Derwood at the Grove and Redland shopping centers. There is also a Wendy's and Roy Rogers located near the Lakeforest Mall.

Allowing the proposed Checkers restaurant will add to the variety of choice within the eight (8)-minute travel time market area. Thus, there is a demonstrable "need" for a drive-thru restaurant or restaurants within this Montgomery County Airpark area.

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED that this Site Plan shall remain valid as provided in Montgomery County Code § 59-7.3.4.H; 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

FEB 25 2019 (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, and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, February 21, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board