



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

MCPB No. 19-034  
Preliminary Plan No. 12004109D  
Burtonsville Town Center  
Date of Hearing: March 21, 2019

**MAR 29 2019**

**RESOLUTION**

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

WHEREAS, on July 28, 2005, the Planning Board approved Preliminary Plan No. 120041090, creating one lot for 250,000 square feet of retail space and 10,000 square feet of office space on 27 acres of land in the C-2 zone, located in the northwest quadrant of the intersection of Spencerville Road (MD-198) and Old Columbia Road ("Subject Property"), in the Burtonsville Policy Area and Fairland Master Plan ("Master Plan") area; and

WHEREAS, on June 12, 2009, the Planning Board approved Preliminary Plan Amendment No. 12004109A (MCPB No. 09-50) to revise Condition #6 of the corrected opinion dated March 21, 2006 on the Subject Property; and

WHEREAS, on June 26, 2009, the Planning Board approved Preliminary Plan Amendment No. 12004109B (MCPB No. 09-67) to revise Condition #4 of the corrected opinion dated March 21, 2006 on the Subject Property; and

WHEREAS, on February 19, 2014, the Planning Director approved Preliminary Plan Amendment No. 12004109C to amend the final forest conservation plan for the Subject Property; and

WHEREAS, on December 17, 2018, Burtonsville Center, LLC ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to extend the validity period for the APFO finding by 2.5 years for the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12004109D, Burtonsville Town Center, "Amendment" and

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Approved as to  
Legal Sufficiency:

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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 March 21, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on March 21, 2019, 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 motion of Commissioner Cichy, seconded by Commissioner Fani-Gonzalez, a vote of [4-0]; Commissioners Anderson, Cichy, Fani-Gonzalez and Patterson voting in favor with Commissioner Dreyfuss being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 12004109D to extend the validity period for the APFO finding by 2.5 years by modifying the following conditions:<sup>1</sup>

17) The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for 2.5 years (30 months) from the date of mailing of this Planning Board Resolution for Preliminary Plan Amendment No. 12004109D.

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

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

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

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

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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.

Preliminary Plan 120041090 analyzed the Subject Property for adequacy of public facilities. The Subject Property does not contain residential uses; therefore, the original determination was limited to transportation adequacy. As part of the original application, the Preliminary Plan submitted a traffic study. No modifications to the study were made by this amendment and the analysis contained within remains valid.

This amendment was reviewed under § 50.4.3.J.7 of the County Code which sets forth the procedures to extend the validity period for an APF finding. The Planning Board found:

- a. *Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.*
  - i. *The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period expires.*

The application was filed on December 12, 2018. This is prior to the expiration date of April 21, 2019.

- ii. *The applicant must submit a new development schedule or phasing plan for completion of the project for approval.*

The application includes a development schedule, included as Table 1 below:

<b>Description</b>	<b>Anticipated Time Period (Months) to Building Permit After April 21, 2019</b>	<b>Square Feet</b>
Total Development Originally Allowed		260,000
Existing Built Square Feet	N/A	136,040
Restaurant with Drive Thru Site Plan No. 820180200	12 Months	2,250
Subtotal Existing and Site Plan No. 820180200 Approved	N/A	138,290

Development		
Remaining Unbuilt Development	30 Months	121,710

*Table 1*

*iii. For each extension of an adequate public facilities determination:*

*(a) the applicant must not propose any additional development above the amount approved in the original determination;*

The Applicant will not provide development beyond that approved in the original determination.

*(b) The Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;*

No additional public improvements are being required.

*(c) The Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest*

A full review of the Property's transportation adequacy was conducted by a 2004 traffic study for Preliminary Plan No. 120041090. The Subject Property has built 136 thousand square feet, or approximately 52%, of the total limit of 260 thousand square feet of development. Recent traffic counts in the immediate vicinity of the Subject Property (Old Columbia Pike/ US 29 SB Ramp / MD 198 and Old Columbia Pike/ North Shopping Center Entrance) remain significantly lower than the full build projection (Table 2). Moreover, these counts have shown a reduction of overall traffic as compared to the original 2004 counts, likely due to the opening of MD 200 and the rerouting of US 29 away from central Burtonsville. The Subject Property is therefore found to be in line with the original expectations of the existing APF determination with no need for an additional study to be conducted at this time.

	Traffic Conditions - Peak Hour CLV								
	2004 Count (Original Study)		2004 Background (Original Study)		Full Build Projection (Original Study)		Recent Counts (SHA)		
	AM	PM	AM	PM	AM	PM	AM	PM	Year of Count
US 29 / MD 198 (Former alignment)	1,913	1,990	--	--	--	--	--	--	--
Old Columbia Pike/ US 29 SB Ramp/ MD 198 (Current Alignment)	--	--	1,364	1,257	1,379	1,314	1,090	981	2014
Old Columbia Pike/ North Shopping Center Entrance	1,628	1,310	629	675	639	706	464	578	2015

Sources: Burtonsville Shopping Center Traffic Study. Kimley Horn and Associates, Inc. July 23, 2004 ; Maryland State Highway Administration

Table 2

*(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot.*

Not Applicable.

*b. The Board may approve an amendment to the new development schedule approved under paragraph 7.a.ii*

Preliminary Plan No. 120041090 and subsequent plans did not require a development schedule for this project. This finding and its sub-findings are not applicable.

*c. Exclusively residential subdivisions.*

This Application is not a residential subdivision. This finding and its sub-findings are not applicable.

*d. Nonresidential or mixed-use subdivisions.*

*i. The Board may extend a determination of adequate public facilities for a preliminary plan for non-residential or mixed-use development beyond the otherwise applicable validity period if:*

- (a) The Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area for the project;*

The development was approved for 260,000 square feet of gross floor area. The necessary threshold of 40% of built gross area amounts to 104,000 square feet. The Applicant has received permits for and constructed a total of 136,040 square feet of built area for a total of 52% of the original approved development, exceeding the required threshold.

- (b) all of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, or payments for its construction have been made; and*

All infrastructure required of the Preliminary Plan conditions of approval has been constructed as found by the aforementioned Preliminary Plan amendments and Site Plan. This included: Right-of-Way dedication along the property frontage, the construction of a 5-foot-wide sidewalk and 8-foot-wide shared use path along the property frontage, and the installation of traffic signals at the two access points to the Subject Property with Maryland State Highway Administration approval. In a September 23, 2008 letter from SHA, a traffic signal was found to be undesired at the southern access point due to its proximity to other signals, which continues to be unsignalized. The letter requested a left turn lane be added to eastbound MD-198 at the access point, which has been constructed.

- (c) the Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:*

- (1) structures that comprise at least 10 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed; or*

A total of 26,149 square feet of gross floor area has been granted usage and occupancy permits and built within the 4 years prior to the extension request, as detailed in Table 3:

<b>Store / Restaurant / Project</b>	<b>Square Footage (Sq. Ft.)</b>	<b>U&amp;O Issuance Date</b>
Green Turtle	6,664	4/15/2015
Starbucks	2,520	4/12/2018
2019 Retail Expansion (NE Quadrant of Subject Property)	16,965	2/1/2019
<b>Total Gross Square Footage Added, Last 4 years</b>	<b>26,149</b>	
<b>Total Approved Development</b>	<b>260,000</b>	
<b>Total Built Sq. Ft.</b>	<b>136,040</b>	
<b>Percent of Approved Development Built in Last 4 Years</b>	<b>10.057%</b>	

Source: Department of Permitting Services

*Table 3*

*(2) structures that comprise at least 5 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed, if structures that comprise at least 60 percent of the total gross floor area approved for the project have been built or are under construction.*

The Applicant satisfies the previous finding as detailed above in Table 3.

*ii. For any development that consists of more than one preliminary plan, the requirements of 7.d.i apply to the combined project. A project consists of more than one preliminary plan if the properties covered by the preliminary plans of subdivision are contiguous and were approved at the same time.*

This finding is not applicable.

*iii. The length of any extension of the validity period granted under 7.d.i must be based on the approved new development schedule under 7.a.ii, but must not exceed:*

*(a) 2.5 years for a subdivision with an original validity period of 7 years or less; or*

Preliminary Plan No. 120041090 set a validity period of 61 months (or 5 years) for the APF determination, below the 7-year validity required for a longer extension period. This Application requests the full allowed 2.5 years.

*(b) 6 years for a subdivision with an original validity period longer than 7 years.*

This finding is not applicable.

*iv. The extension expires if the applicant has not timely requested an extension and the development is not proceeding in accordance with the phasing plan, unless the Board or the Director has approved a revision to the schedule or phasing plan.*

This finding and subsequent sub-finding are not applicable.

*v. In addition to the extension permitted under 7.d.iii, the Board may approve one or more additional extensions of a determination of adequate public facilities, not to exceed a total of 2.5 or 6 years, as applicable*

This finding is not applicable.

The findings for 50.4.3.J.7 e, f, and g as well as their subsections are not applicable.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAR 29 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).

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**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Commissioner Patterson, with Chair Anderson and Commissioners Cichy and Patterson voting in favor, and Vice Chair Dreyfuss and Commissioner Fani-González absent at its regular meeting held on Thursday, March 28, 2019, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board