



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

MCPB No. 20-087  
Preliminary Plan No. 11984196A  
Fulks Property  
Date of Hearing: September 10, 2020

**SEP 23 2020**

**RESOLUTION**

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

WHEREAS, on June 11, 1987, the Planning Board, by MCPB Opinion, approved Preliminary Plan No. 119841960, creating nine (9) lots on 13.80 acres of land in the I-4 zone, located along Woodfield Road/MD 124 immediately to the south of its intersection with Airpark Road ("Subject Property"), in the Rural East Policy Area and 1968 *Master Plan for the Rock Creek Planning Area* ("Master Plan") area; and

WHEREAS, on April 20, 2020, Casey Holdings, LLC ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to change the allowable square footage and land use, establish new Adequate Public Facilities, confirm exemptions to Forest Conservation requirements under Chapter 22A and Water Quality Plan requirements under Chapter 19 of the County Code on the Subject Property, and dissolve the Floor Area Ratio (FAR) Allocation Agreement associated with Preliminary Plan No. 119841960, Preliminary Plan No. 11984196R, and Preliminary Plan No. 119861260; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 11984196A, Fulks Property ("Preliminary Plan," "Amendment," 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 August 28, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 10, 2020, 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. 11984196A to change the allowable square footage and land use, establish new Adequate Public Facilities, and confirm exemptions to Forest Conservation requirements under Chapter 22A and Water Quality Plan requirements under Chapter 19 of the County Code by adding the following conditions:<sup>1</sup>

1. Approval is limited to 30,000 square feet of warehouse uses for the 1.24-acre Subject Property only.
2. The Floor Area Ratio Agreement dated February 24, 1989 is dissolved by the Planning Board for all properties covered under the agreement because all public facilities improvements cited in the Planning Board Opinion dated January 17, 1985 have been completed.
3. The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of the Planning Board Resolution.

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, and all findings not specifically addressed remain in effect.*

- 1.) *Public Facilities will be adequate to support and service the area of the subdivision*

## **Transportation**

### Access

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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.

Current improvements on Lindbergh Drive include two travel lanes with sidewalks on both sides along the full length of the Subject Property's frontage. The 2004 Upper Rock Creek Master Plan ("Master Plan") "does not make any specific recommendations for secondary or tertiary roads" (Page 67) which is the classification of Lindbergh Drive due to its omission from the table of streets and highway classifications in the Master Plan. Lindbergh Drive is a closed section, two-lane roadway with 5-foot sidewalks on both sides within an 80-foot right-of-way dedicated by Plat #16078. The existing road cross section and right-of-way is adequate for a road with a secondary or tertiary classification such as Lindbergh Drive.

Vehicular access to the Property is provided directly from Lindbergh Drive. Currently, there is one full movement vehicular access point. No changes to the access will occur from this Application.

#### Adequate Public Facilities

As conditioned, the Preliminary Plan Amendment for an additional 20,640 square feet (30,000 square feet total) of warehouse uses satisfies the Local Area Transportation Review (LATR) requirements of the Adequate Public Facilities (APF) review because it does not generate more than 50 person trips during the AM and PM peak hour.

#### **Local Area Transportation Review**

##### Trip Generation

The peak-hour trip generation estimated for this Preliminary Plan Amendment is based on trip generation rates for the ITE Trip Generation Manual, 10th Edition and adjusted for the Rural East Policy Area for a warehouse use. The Subject Property currently has approval for 16,204 square feet of warehouse use as a tool rental facility under the FAR Allocation Agreement. The Applicant is requesting to amend their current APF based on the uses indicated in the Traffic Impact Study Exemption Statement. The Preliminary Plan Amendment proposes to add 20,640 square feet of warehouse uses that generate a net increase of 3 person trips in the AM peak hour and 3 additional person trips in the PM peak hour.

The Applicant is not required to submit a traffic study to satisfy the LATR test because the land use generates fewer than 50 peak-hour person trips within the weekday morning and evening peak periods.

##### Floor Area Allocation (FAR) Agreement

The FAR Agreement was approved in conjunction with Preliminary Plan No. 119841960 (and subsequently revised 11984196R) and Preliminary Plan No. 119861260 because these preliminary plans, encompassing 60.60 acres, could not

meet adequate public facilities at the time without substantial improvements, some of which are outlined in the County's Capital Improvement Program (CIP).

These improvements may have taken years, possibly decades, to complete. In order to allow the project to move forward, the Planning Board and the Leonard Kapiloff Family Limited Partnership entered into this FAR Allocation Agreement to artificially limit the square footage, and as a result the vehicle trips of each lot covered by the FAR agreement. The FAR agreement includes a table distributing specific square footages to each lot ultimately limiting the subdivision to a total of 397,000 square feet.

Thirty-five years later, the Planning Board confirms that all of the public facilities improvements, including those in the County's CIP program, have been completed. This fulfills the premise of the FAR Agreement and renders it unnecessary. Unfortunately, the FAR Agreement does not contain a "sunset" provision or specific timeframe of validity.

In addition, Condition #10 states:

"Upon request of the Kapiloffs, the Planning Board shall release the Property from these restrictions if it finds that public facilities are adequate pursuant to Section 50-35(k) of the Montgomery County Code for additional development of the Property"

Finally, Condition #12 allows for:

"This Agreement may only be modified in a written agreement approved by the Planning Board and the Kapiloffs or their heirs, successors or assigns"

Based on the conditions quoted above, the Planning Board has the right to provide relief from this FAR Allocation Agreement. The FAR Allocation Agreement can be modified at the request of the Kapiloffs or their heirs, successors or assigns. Under the FAR Allocation Agreement, the Applicant is an heir, successor, or assign with a right to request modification. Finally, the Planning Board has the authority to release the property/properties covered by the FAR Allocation Agreement if it finds public facilities to be adequate. Since all the conditioned improvements outlined in the Planning Board Opinion for Preliminary Plan No. 119841960 have been completed and the basis to justify the execution of the FAR Allocation Agreement has been satisfied, adequate public facilities are adequate in the context of Preliminary Plan No. 119841960 and Preliminary Plan No. 119861260 and the FAR Allocation Agreement. Therefore, the Planning Board hereby dissolves the FAR Allocation Agreement, in its entirety, for all properties associated with Preliminary



Plan No. 119841960, Preliminary Plan No. 11984196R, and Preliminary Plan No. 119861260.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the existing lot. The Property is located in the W-1/S-1 water and sewer service categories and utilizes existing water and sewer infrastructure. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy in effect at the time that the Preliminary Plan Amendment was submitted.

*1 The Preliminary Plan Amendment satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A and Chapter 19. Erosion, Sediment Control and Stormwater Management.*

An exemption from submitting a Forest Conservation Plan (#42021012E) was confirmed for this Property on August 12, 2020. This plan identifies the environmental features and resources on the Property. The Property does not contain any forest. There are no streams, wetlands, 100-year floodplain, stream buffers, highly erodible soils, or slopes greater than 25 percent located on or immediately adjacent to the Property.

Based on Section 19-62(b) of the Montgomery County Code, the Property was confirmed to be exempt from the requirements of the Upper Rock Creek Special Protection Area in an email, dated July 2, 2020 from the Montgomery County Department of Permitting Services, due to the industrial zoning of the Subject Property.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 23 2020 (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 Vice Chair Fani-González, seconded by Commissioner Patterson, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, September 10, 2020, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board