

# **Montgomery County Planning Board**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-091

Site Plan Amendment No. 81994029G

MD - Germantown #2560

Date of Hearing: July 28, 2022

**AUG 11 2022**

## **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, under Section 59-7.7.1.B.3, the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014, including the zoning then in effect; and

WHEREAS, on August 18, 1994, the Planning Board approved Site Plan No. 819940290<sup>1</sup> for 713,060 square feet of commercial/retail space and 191 dwelling units (which included 115 single-family attached, 76 multi-family, and 18 MPDUs) on 127.2 acres of RMX-1/RMX-3 zoned land, located in the southwest quadrant of the intersections of MD-355 (Frederick Road) and MD-27 (Ridge Road);

WHEREAS, on July 20, 1995, by Opinion mailed August 7, 1995, the Planning Board approved Site Plan Amendment No. 81994029A; which increased the overall density to 800,000 square feet and total acreage to 133.3 acres; this amendment also clarified that 24 MPDUs should be provided instead of 18 and increased the amount of parking provided for the entire shopping center;

WHEREAS, on November 16, 1995, by Opinion mailed November 28, 1995, the Planning Board approved Site Plan Amendment No. 81994029B; which allowed 6 of the 24 MPDUs to be provided elsewhere within the Milestone development;

WHEREAS, on January 16, 2006, the Applicant withdrew Site Plan Amendment No. 81994029C; and

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<sup>1</sup> No copy of the Planning Board Opinion for the Subject Site Plan can be located for reference.

WHEREAS, on January 19, 2012 the Planning Board approved Site Plan Amendment No. 81994029D (MCPB No. 12-11); for modifications to the Walmart site for the expansion of the existing building by 15,863 square feet, adjustments to the parking facilities, modifications to the stormwater management facilities, and revisions to the Landscape and Lighting plans; and

WHEREAS, on September 13, 2018, the Planning Board approved Site Plan Amendment No. 81994029E (MCPB No. 18-092); to convert an existing building in the Milestone Shopping Center from a restaurant to a medical clinic facility, expand that building by 1,468 square feet, relocate the handicap parking stalls, modify the architectural façade, and revise the Landscape and Lighting plans associated with that site; and

WHEREAS, on November 4, 2021, the Planning Board approved an amendment to the previously approved site plan, designated Milestone Center Walmart, Site Plan No. 81994029F (MCPB No. 21-122), to expand the existing Walmart building by 1,964 square feet (for a total of 167,262 square feet) in order to accommodate a pick-up service for online grocery orders, including ten (10) new short-term parking spaces on the Subject Property; and

WHEREAS, on December 29, 2021, HD Development of MD, Inc. ("Applicant") filed an application for approval of an amendment to the previously approved site plan(s) to expand the existing Home Depot by 2,232 square feet for a Tool Rental Center and unenclosed material storage corral<sup>2</sup>, and modify circulation and landscaping on 133.3 acres<sup>3</sup> of CRT-0.75 C-0.5 R-0.25 H-65 T and TDR 1.29 zone-land<sup>4</sup>, located at 21010 Frederick Road, Germantown, in the southwest quadrant of the intersection of MD 355 and Ridge Road, and identified as Lot 27, Block C, of the "Milestone Center", on Record Plat 20444 ("Subject Property"), in the Germantown Center Policy Area and 2009 *Germantown Employment Area Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's application to amend the site plan was designated Site Plan Amendment No. 81994029G, MD - Germantown #2560 ("Site 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

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<sup>2</sup> The material storage corral is excluded from the Gross Floor Area calculation because it is unenclosed storage space.

<sup>3</sup> The overall Milestone Shopping Center approval encompasses 133.3 acres, however, the Amendment is limited to the 11.62 acres Home Depot property.

<sup>4</sup> The Subject Property is currently zoned CRT, but reviewed under the former RMX-3/TDR zone.

Planning Board, dated July 15, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 28, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan Amendment No. 81994029G to:

1. Construct a 2,232 square foot building addition (tool rental center) and 562 square foot covered material storage area.
2. Reconfigure a drive aisle, curb & gutter system and storm drain elements.
3. Remove approved landscaping and add supplemental landscaping.
4. Restripe certain standard parking spots to include compact spaces and electric vehicle charging spaces (pedestals).

by adding the following conditions:<sup>5</sup>

1. Site Plan  
All site development elements shown on the latest electronic version submitted via ePlans to M-NCPPC as of the date of this Staff Report are required.
2. Density  
The total expansion of the Home Depot building under the Subject Site Plan application is limited to 2,232 square feet of commercial uses, as shown on the Certified Site Plan, for a maximum of 116,637 square feet of total development on the Subject Property.
3. Height  
The development approved as part of this Site Plan Amendment is limited to a maximum height of 25 feet, as measured from the building height measuring point, as illustrated on the Certified Site Plan.
4. Stormwater Management  
The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Service (MCDPS) Water Resources Section in its stormwater management concept letter dated June 13, 2022, and incorporates them as conditions of approval. The Applicant must

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<sup>5</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.

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.

5. Transportation

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services Right-of-Way Section (DPS-ROW) in its memo dated March 15, 2022 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the memo, which DPS-ROW may amend if the amendments do not conflict with other conditions of Site Plan approval.

26. Site Design

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

27. Site Plan Surety and Maintenance Agreement

Prior to issuance of any above grade building permit, sediment control permit, or Use and Occupancy Certificate, whichever comes first, 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-D-3.5(d) 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, sidewalks, private utilities (electrical vehicle charging stations) and associated improvements of development, including but not limited to curb and gutter, paving, and storm drainage facilities. 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.



**28. Development Program**

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to the approval of the Certified Site Plan.

**29. Certified Site Plan**

- a. Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:
- b. Include the stormwater management concept approval letter, development program, and Site Plan resolution on the approval or cover sheet(s).
- c. Add the following notes:
  - i. "M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading."
  - ii. "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."
  - iii. "The Applicant must schedule a preconstruction meeting (pre-con), preferably on-site, with staff from the Department of Permitting Services (DPS) responsible for Certified Site Plan conformance and compliance, upon approval of the Certified Site Plan (CSP). The pre-con must occur prior to any site development work commencement and prior to any work that is covered by the site plan surety and maintenance agreement. The Applicant, along with their representatives, must attend the pre-con with DPS CSP Staff. A copy of the approved Certified Site Plan along with any subsequent amendments is required to be on-site at all times."
- d. Modify data table to reflect development standards approved by the Planning Board.
- e. Ensure consistency of all details and layout between Site and Landscape plans.
- f. Provide a black and white version of Site Plan, Sheet C-2.

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

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of MD – Germantown #2560, Site Plan Amendment No. 81994029G, 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 of its Staff as presented at the hearing and/or 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. *Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan as revised by previous amendments, and all findings not specifically addressed remain in effect.*
2. *The site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.*

The additional 2,232 square feet gross floor area proposed with this Amendment brings the total amount of development to 779,495 square feet on 133.3 acres, which is within the commercial/retail density limit approved by the amended Project, Preliminary, and Site Plans. Furthermore, the proposed modifications are minor in nature; thus, the development remains in conformance with all binding elements and is consistent with previously approved plans.

The Subject Property was originally approved as part of the larger Milestone Shopping Center development covered by Project Plan No. 919900060, as amended by Project Plan No. 919930030 concurrently with the approval of Preliminary Plan No. 119901710 to allow 750,000 square feet of retail development and 313 multi-family residential units. Original Site Plan No. 819940290 was then approved for 713,060 square feet of retail and 191 dwelling units (115 single-family attached and 76 multi-family units). The Project Plan was then amended as Project Plan No. 919950010 concurrently with revised Preliminary Plan No. 119901710 and Site Plan Amendment No. 81994029A in 1995 for 800,000 square feet of retail uses, 115 single-family attached units, and 76 multi-family units on 133.3 acres.

3. *The site plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Subject Property is currently zoned CRT-0.75 C-0.5 R-0.25 H-65 T/TDR 1.29, but is being reviewed under the RMX-3/TDR zone, which was the zoning in effect prior to October 30, 2014, consistent with the grandfathering provisions of Section 7.7.1.B.3 of the Montgomery County Zoning Ordinance.

The Amendment does not propose a change in use. The development continues to meet the purpose and requirements of the zone as detailed in the Findings section of this report.

### Development Standards

The following data table indicates the development's compliance with the Zoning Ordinance. Only the standards that are affected by the proposed amendment are listed; a comprehensive modified data table is included on the Certified Site Plan. The Amendment removes 2,000 square feet of greenspace (turf). The total required greenspace for the retail portion of the Milestone development is 20%, or 14.4 acres of the 72-acre shopping center, whereas 15.4 acres, or 21%, of greenspace was provided per amendment 81994029A. No building setbacks have been established from the internal lot lines. As demonstrated in Table 1 below, the Amendment satisfies the applicable standards of the RMX -1, RMX-3/TDR zone, Optional Method.

*Table 1: Overall Development – Milestone Shopping Center Site Plan Data Table for CRT-0.75 C-0.5 R-0.25 H-65 T/TDR 1.29, Reviewed under the RMX -1, RMX-3/TDR zone, Optional Method Standards*

Development Standard	Zoning Ordinance Allowed/Required	Approved Site Plan for Milestone Shopping Center (81994029A & 919950010)	Previously Approved Amendment (81994029F)	Proposed Amendment (81994029G)
<b>Total Property Area</b>	N/A	133.3 acres	133.3 acres	133.3 acres
<b>Retail Center</b>		77.0 acres	77.0 acres	77.0 acres
<b>RMX-1</b>		5.0 acres	5.0 acres	5.0 acres
<b>RMX-3</b>		72.0 acres	72.0 acres	72.0 acres
<b>Gross Leasable Area (RMX-1 &amp; RMX-3 combined)</b>	1,300,000 SF	757,878 SF 800,000 SF (allowed) <sup>6</sup>	777,173 SF 800,000 SF (Allowed)	779,495 SF (Total)  116,637 SF <sup>7</sup>

<sup>6</sup> Site Plan Amendment No. 81994029A was approved for up to 800,000 square feet.

<sup>7</sup> The Amendment proposed a 2,232 square foot addition to the existing 114,405 square foot Home Depot

Home Depot Site				
<b>Min. Green Area per Zone (Retail Center) RMX-3 (20% of Zone)</b>	14.4 ac min.	15.4 ac	15.4 ac	15.45 ac
<b>Automobile Parking Spaces (min.)</b>	4,275 spaces (based on 5.5 spaces per 1,000 SF for regional shopping center) <sup>8</sup>  572 sp. require on-site	4,376 spaces	4,343 spaces	4,353 sp. total <sup>9</sup>  584 sp. required on-site

4. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

The amendment provides minimal changes to the location of the building, open space, landscaping and circulation patterns, and does so in a way that maintains their adequacy, safety and efficiency. The Tool Rental Center ("TRC") is being added to the existing structure in the most adequate location, given the existing site conditions. By slightly reducing the depth of the landscape island, safe and adequate vehicular and pedestrian connectivity is maintained along the south side of the TRC. Existing striping on the front of the Home Depot building delineates pedestrian space, and the Amendment continues the pavement striping along the front and side of the TRC center to clearly delineate the pedestrian realm from the vehicular drive-aisles.

The landscape modifications are limited to the green panel between the TRC drive aisle and Drive-Aisle A from Frederick Road. The Applicant is removing minimal landscaping on-site, and replanting additional landscaping which will improve the site aesthetically and environmentally. The Applicant is removing one Japanese Zelkova tree (Figure 8) and a small section of the Viburnum hedge that parallels

<sup>8</sup> This is a general calculation for the overall site; individual uses within the Milestone Center may have reduced parking rates.

<sup>9</sup> The Amendment proposed restriping to provide compact vehicle parking and reserved electrical vehicle charging space.

the existing sidewalk. The Applicant is retaining the majority of the viburnum hedge and replacing the Zelkova tree by planting a row of six sweetgum trees (Figure 5 – above) parallel between the viburnum and new curb line, which will screen the building addition, greatly improving the current conditions. The hedge and additional trees will also provide separation between the existing sidewalk and TRC drive-aisle.

The Applicant is also amending the landscape plan to reflect the existing site conditions. The group of flowering crabapple trees that was approved as an entrance feature (westside) at the southern entrance died at some point and was subsequently replaced with a curved planting including three Crape Myrtles, Hydrangeas and Boxwoods. Overall, the design and aesthetic of the current entrance feature is a significant improvement from the original approval. As part of this Application, an additional Sweetgum tree will be planted behind the entry feature, adjacent to the new electrical vehicle charging spaces. The placement of the new street trees is also consistent with the existing street tree pattern along the road. The open spaces, landscaping, and site details adequately and efficiently address the needs of the use and the recommendations of the Master Plan, while providing a safe and comfortable environment.

The Application will result in a net increase of 4 am and 5 pm peak hour person trips as detailed in the application Transportation Exemption Letter. As the proposal will result in fewer than the 50 net new peak hour person trip threshold set by the 2021 LATR Guidelines, the Application is exempt from additional area-wide review.

The pedestrian and vehicular circulation pattern on-site will remain the same as it is currently. The vehicular drive-aisle will shift slightly south and additional striping is being provided along the periphery of the new addition to provide safe pedestrian movement between the interior rental space and new exterior storage area. The sidewalk apron on the east side of the Home Depot entrance is being reconstructed, consistent with current ADA standards. The Applicant is also restriping the crosswalk across the Home Depot Entrance. With the proposed improvements, the pedestrian and vehicular circulation will continue to be safe, adequate and efficient.

The Applicant is restriping four areas of the existing parking lot to accommodate the parking required based on the existing and proposed building square footage. Currently, 574 spaces are required and with the amendment 584 spaces are required. The additional parking spaces are being provided by converting 10% of the standard spaces to compact spaces and by adding four employee parking spaces adjacent to the garden center. Additionally, ten electrical vehicle parking spaces will replace existing standard parking spaces.



5. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The proposed TRC addition is compatible with the adjacent and confronting uses. Given the small scope of the addition and its location on the southwest corner of the building, the addition will not adversely impact the surrounding properties. As proposed the addition will look like a part of the original building, with the same architectural finishes and a final height of 25 feet, slightly below the existing building parapet. Considering the proposed design, location and finish of the addition, the Amendment will continue to be compatible with the existing confronting and adjacent developments.

6. *The site plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

On November 2, 2021, a Forest Conservation Plan Exemption 42022052E under Chapter 22A-5(t)(1) was granted for the Application. The Application is in compliance with the Environmental Guidelines and all applicable requirements of Chapter 22A of the Montgomery County Forest Conservation Law.

The Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS Water Resources Section on June 13, 2022. The Application will meet stormwater management goals using permeable pavement.

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 AUG 11 2022 (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 Rubin, seconded by Vice Chair Verma, with a vote of 5-0; Chair Anderson, Vice Chair Verma, and Commissioners Cichy, Patterson, and Rubin, voting in favor of the motion, at its regular meeting held on Thursday, July 28, 2022, in Wheaton, Maryland and via video conference.



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Casey Anderson, Chair  
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