

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

APR 11 2022

MCPB No. 22-039
Preliminary Plan No. 12016024A
Montgomery College Germantown
Date of Hearing: April 7, 2022

RESOLUTION

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

WHEREAS, on December 12, 2016, the Planning Board, by Resolution MCPB No. 16-132, approved Preliminary Plan No. 120160240, to create one (1) lot on 5.75 acres of land in the LSC (Life Sciences Center) 2.0, H-100T zone, located northwest quadrant of the intersection of Observation Drive and Exploration Lane ("Subject Property"), in the Germantown East Policy Area and 2009 *Approved and Adopted Germantown Employment Area Sector Plan* ("Sector Plan") area and 2010 *Germantown Urban Design Guidelines*; and

WHEREAS, on February 8, 2021, Observation Drive, LLC ("Applicant") filed an application for approval of an amendment to the Preliminary Plan to change the use from Office to Research and Development, and increase the building footprint; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan Amendment No. 12016024A, Montgomery College Germantown ("Preliminary 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 March 28, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 7, 2022, the Planning Board held a public hearing 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 Preliminary Plan Amendment No. 12016024A to create one (1) lot on the Subject Property, change the use from Office to Research and Development, and increase the

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Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

building footprint, subject to the following conditions:¹

CONDITIONS MODIFIED FROM PRELIMINARY PLAN NO. 120160240

1. This approval is limited to one (1) lot for up to 150,000 square feet of Research and Development uses as defined in Section 59.3.5.8².
4. 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 February 9, 2022, 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
5. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) Fire Code Enforcement Section in its letter dated January 28, 2022, 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.
6. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated January 21, 2022, 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 MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. Prior to recordation of plat(s), the Applicant must satisfy MCDPS requirements to ensure construction of the following:
 - a. An 11-foot wide shared use path along the Subject Property's frontage of Observation Drive located within a Public Improvement Easement ("PIE").
 - b. A six-foot-wide sidewalk across the Subject Property's frontage along Exploration Lane, within the right-of-way.

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.

² The Research & Development use can be changed to other commercial uses, if allowed by zoning, if there is no adverse impact on the Preliminary Plan and APF findings and it is approved by Staff.

11. The Adequate Public Facilities (APF) review for the Preliminary Plan will remain valid for seven (7) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5).
13. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
 - a. Show resolutions for Preliminary Plan 120160240 and Preliminary Plan 12016024A and approval letters on the certified set.
 - b. Provide documentation on the certified set from all utilities with rights to use the Public Utility Easement ("PUE") that the shared use path location within the PUE and Public Improvement Easement ("PIE") is acceptable.
 - c. Include the approved Fire and Rescue Access plan in the certified set which the Montgomery Department of Permitting Services ("MCDPS") may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
 - d. Include a copy of the signed and executed shared parking and access easement agreement on the certified set, together with a letter confirming the underlying Subject Property owner's consent to such agreement.
 - e. Correct footnote #4 to match the number of provided parking spaces shown in the data table.

CONDITIONS DELETED FROM PRELIMINARY PLAN NO. 120160240

- ~~2. Offices or companies that are not principally engaged in health services, research and development, or high technology industrial activities are limited to 40% of the gross floor area on the Subject Property.~~
- ~~12. The Applicant must make a Transportation Policy Area Review ("TPAR") Mitigation Payment for Transit, equal to 25% of the applicable transportation impact tax to the Montgomery County Department of Permitting Services ("MCPDS"). The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.~~
- ~~15. Any above ground building permits that are issued must show that the structures satisfy the build-to-area requirements for Exploration Lane and Observation Drive. If the proposed building does not meet the build to area requirements, Site Plan approval by the Planning Board is required.~~

NEW CONDITIONS ADDED AS PART OF PRELIMINARY PLAN NO. 12016024A

17. The Preliminary Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date 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 filed.
18. Prior to release of the first Use and Occupancy permit, the Applicant must file in the Land Records an off-site shared parking and access agreement meeting the requirements of Section 59-6.2.3.G of the Zoning Ordinance which provides access to the necessary amount of parking spaces required by the Zoning Ordinance on the adjacent property. Such agreement may be amended by the parties as long as the minimum parking requirements in the Zoning Ordinance are maintained.
19. The Applicant must dedicate fragments of right-of-way located in the southeast corner of the Subject Property and identified on the Certified Preliminary Plan.
20. Before approval of a record plat or any demolition, clearing or grading for the Subject Property, whichever comes first, the Applicant must receive Staff certification of this Preliminary Plan.

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 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. *The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The size, width, shape, and orientation of the lot is appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, and for the building type and use contemplated for the Subject Property.

This Application utilizes an off-site shared parking agreement to provide approximately 280-290 of the 328 required parking spaces on the adjacent

property subject to Site Plan No. 81978031B, Hughes Network Systems. The off-site shared parking agreement and Subject Property are subject to the requirements in Section 59.6.2.3.G of the Zoning Ordinance which states:

“G. Off-Site Parking by Agreement

1. An applicant may satisfy the required number of vehicular parking spaces through off-site parking on property located within ¼ mile of the subject property if the off-site property is plat-restricted, deed-restricted, or is under a joint use agreement. The plat or deed restrictions must specify that the property provides the required number of parking spaces for a use on another property. The plat or deed restrictions may be lifted if substitute off-site parking is provided or if the use requiring the parking ceases to exist. A joint use agreement must:
 - a. be for a property under the control of the involved parties;
 - b. be approved by the deciding body;
 - c. have a minimum term of 5 years; and
 - d. require the parties to notify DPS within 3 days after any changes to the joint use arrangement and provide DPS with a minimum of one month notice of any pending termination of the agreement.
 - e. If the parking available under a joint use agreement is reduced, the use-and-occupancy permit for the development that was approved in reliance on the joint use agreement must be amended or revoked, as appropriate, due to the reduced parking unless a parking waiver under Section 6.2.10 is approved.
 - f. A property owner must obtain a new use-and-occupancy permit, including proof of sufficient parking, if there is a change in use of the property or in the joint use agreement.
2. An applicant may satisfy the required number of vehicular parking spaces if the property is within the boundary of a duly established Municipal Shared Parking Program and the municipality confirms that the property will participate in that Program.”

The Application is approved under the standard method of development in accordance with Section 4.6.3 of the Zoning Ordinance. The lot was reviewed for compliance with the dimensional requirements for the LSC zone as specified in the Zoning Ordinance. The lot will meet all the dimensional requirements for area, frontage, and can accommodate the Research & Development use, which can

reasonably meet the width and setbacks requirements in that zone. The Property does not abut Agricultural, Rural Residential, Residential Detached or Residential Townhouse zones so is not subject to those setback criteria.

2. The Preliminary Plan substantially conforms to the Master Plan.

The Subject Property is located within the limits of the 2009 Germantown Employment Area Sector Plan ("Master Plan"). This Amendment does not change this finding in a substantive way from the finding made in Preliminary Plan No. 120160240.

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

Transportation facilities, including site access, parking, and bike and pedestrian access will be adequate to serve the Subject Property.

Roads and Transportation Facilities

The Subject Property is located at the intersection of Observation Drive and Exploration Lane. Observation Drive is identified in the Master Plan of Highways and Transitways as an arterial roadway, with an 80-foot right-of-way (ROW), including four travel lanes on a non-divided highway, minimum five-foot wide sidewalks and dual bikeways. Exploration Lane is an unclassified public road with an 80-foot right-of-way; this road terminates immediately to the southwest of the Subject Property.

The Applicant will construct an 11-foot-wide shared use path along the frontage of Observation Dr., as recommended by the 2018 Bicycle Master Plan as well as a 6-foot-wide sidewalk along Exploration Lane.

Access, Parking and Circulation

The Subject Property proposes two access points: a primary access point for personal vehicles and trucks from Exploration Lane, and a secondary access to Observation Drive to serve trucks using the loading bays on the north end of the Property.

As discussed above, parking for the Subject Property will be served jointly on-site to the rear of the building as well as off-site on a shared parking lot on the adjacent property. Parking will be adequate to serve the use and meet all requirements of the Zoning Code, and subject to the Off-Site Parking Agreement.

Local Area Transportation Review (LATR)

The Application has provided a transportation statement stating that this Application will not result in any new trips. This Application is exempt from additional LATR review as it does not result in an increase of 50 or more net new person trips.

Table 1 – Trip Generation (Vehicle trips calculated using 10th Edition of ITE Guidelines. Person trips adjusted according to policy area and 2021 LATR methodology)

Development	Size	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Approved (Credit)							
Office (ITE 710)	150,000 sf	(144)	(23)	(167)	(24)	(126)	(150)
Proposed							
R&D (ITE 760)	150,000 sf	127	28	155	24	123	147
Net New Vehicle Trips		-17	5	-12	0	-3	-3
LATR Adjusted Net New Person Trips		—	—	-27	—	—	-14

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the development. The Subject Property is in the W-1 and S-1 water and sewer service categories, respectively, and will be serviced by public water and sewer.

The Application was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Access Plan was approved on January 28, 2022. Other utilities including an overlapping PUE/PIE along Observation Drive, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Growth and Instructure Policy (GIP) in effect at the time that the Application was accepted.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

Natural Resource Inventory / Forest Stand Delineation

A Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") 420062160 was approved for the entire 224-acre Montgomery College – Germantown campus in October 2006 and recertified in January 2009. The NRI/FSD identified the forest resources and environmentally sensitive features on the Property. The Property is located within the Great Seneca Creek watershed, which is classified by the State of Maryland as Use I-P waters.

Forest Conservation Plan

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code. A Final Forest Conservation Plan was approved for the entire Montgomery College – Germantown Campus under plan number MR2009720. The FFCP MR2009720 ("FFCP") approved for this Property remains valid and this Application is in conformance with the approved FFCP. The FFCP protects all sensitive environmental features on the Property, designates forest conservation easements for the entire campus, and provides areas available for development within the campus. The location of the development under this Application is in conformance with the conservation easements and the areas designated for development shown on FFCP MR2009720.

The Application satisfies the applicable requirements of the Forest Conservation Law, Chapter 22A of the Montgomery County Code, and complies with the Montgomery County Planning Department's approved Environmental Guidelines.

5. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

The Preliminary Plan meets the Stormwater Management requirements of Chapter 19 of the County Code. The Applicant received an approved stormwater concept approval from the Montgomery County Department of Permitting Services, Water Resources Section on February 9, 2022. The Application will meet the stormwater management goals through the use of microbioretention planter boxes, microbioretention, and enhanced microbioretention facilities.

6. *Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.*

There is no evidence, actual notice, or constructive notice of a burial site on the Subject Property. The Subject Property is not included in the Montgomery County Inventory for Burial Sites.

7. *Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.*

There are no other applicable provisions specific to the Property that are necessary for approval of this Application.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 3 years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), 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 APR 14 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).

* * * * *

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 Commissioner Patterson, with Commissioners Cichy, Vice Chair Verma and Chair Anderson voting in favor at its regular meeting held on Thursday, April 7, 2022 in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

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