

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-026
Site Plan No. 81982008A
Seneca Place
Date of Hearing: March 23, 2023

APR 11 2023

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 June 1 1982, the Planning Board, by Planning Board Opinion, approved Site Plan No. 819820080 for the construction of 468 multi-family dwelling units on 40.05 acres of R-H/PD-9 zoned-land, located west of the intersection of Wisteria Drive and Great Seneca Highway (MD 119) ("Overall Property"), in the Germantown West Policy Area and 2019 *MARC Communities Sector Plan* ("Sector Plan") area; and

WHEREAS, on December 28, 2023, UDR ("Applicant") filed an application for approval of an amendment to the previously approved site plan to construct a 1,980 square footage maintenance building to serve the existing residential use utilizing 0.24 acres on the Overall Property (the "Subject Property"); and

WHEREAS, Applicant's application to amend the site plan was designated Site Plan No. 81982008A, Seneca Place ("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 Planning Board, dated March 9, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

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Approved as to
Legal Sufficiency: /s/ Emily Vaias
M-NCPPC Legal Department

WHEREAS, on March 23, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Commissioner Bartley, with a vote of 3-0; Chair Zyontz, Commissioners Bartley and Hedrick voting in favor with Vice Chair Piñero and Commissioner Pedoeem being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 81982008A for construction of a 1,980 square footage maintenance building to serve the existing residential use by adding the following conditions:¹

Density, Height & Housing

8. Density

The Site Plan Amendment is limited to a maximum of 1,980 square feet of Accessory Miscellaneous Use for a maintenance building to serve the existing residential use per Section 59.3.4.7.B of the current Zoning Code, on 0.24 acres.

9. Height

The maintenance building is limited to a maximum height of 21 feet, as measured from the building height measuring point, as illustrated on the Certified Site Plan.

County Agency Approvals

10. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated February 23, 2023 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDPS, Fire Department Access and Water Supply Section may amend if the amendment does not conflict with other conditions of Site Plan approval.

11. The Planning Board has reviewed and accepts the recommendations of the MCDPS – Water Resources Section in its stormwater management concept letter dated December 23, 2022 and incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Site Plan approval.

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.

12. The Planning Board has reviewed and accepts the recommendations of the MCDPS - Right-of-Way Section (DPS-ROW) in its memo dated January 9, 2023 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in their memo, which DPS-ROW may amend if the amendments do not conflict with other conditions of Site Plan approval.

Green Space, Facilities and Amenities

13. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities within the Subject Property including, but not limited to, landscaping, retaining walls, walkways and other hardscapes.

Site Plan

14. 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.

15. Development Program

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

16. 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, approved Fire Department Access Plan, DPS Right-of-Way approval letter, development program, Planning Board Opinion dated June 1, 1982 for Site Plan No. 819820080, and current approval Resolution, on the approval or cover sheet(s).
- b. 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 and/or the Maryland State Highway Administration.”

- iii. “The Applicant must schedule a preconstruction meeting (pre-con), preferably on-site, with staff from the MCDPS 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.”
- c. Ensure consistency of all details and layout between Site, Lighting, and Landscape plans.
- d. Add “Existing” to Data Table within the FAR portion to indicate the Leasing Office and Clubhouse are existing and not part of this Application.
- e. Include a line item in the Data Table for Green Space, and fill in both existing and proposed amounts.

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 Seneca Place, Site Plan No. 81982008A, 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 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 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 Planning Board opinion dated June 1, 1982 alludes to the approval of a development plan by the County Council in 1974. However, a search of all M-NCPPC records, including archives, by Staff and the Applicant did not yield any documents or a plan number. Given the minimal scope of this Application and the

purpose of development plans to set parameters such as maximum density and building massing, it is unlikely that the addition of a 1,980 square foot accessory structure would conflict or have any impacts on the development plan and the County Council opinion if it exists. As a result, this Application conforms to the development plan simply due to minimal scope of the Application versus broad propose of development plans.

2. *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.*

Since Site Plan No. 819820080 was approved by the Planning Board by Opinion dated June 1, 1982, under the 2004 Zoning Ordinance, this Application qualifies for the legacy provisions contained within Section 59.7.7.1.B.3 of the Zoning Ordinance currently in effect, which state:

B. Application Approved or Filed for Approval before October 30, 2014

3. Amendment of an Approved Plan or Modification of an Application Pending before October 30, 2014

- a. *Until October 30, 2039, an applicant may apply to amend any previously approved plan or modify an application pending before October 30, 2014 (listed in Section 7.7.1.B.1 or Section 7.7.1.B.2) under the development standards and procedures of the property's zoning on October 29, 2014, if the amendment:*
 - i. *does not increase the approved density or building height, unless allowed under Section 7.7.1.C; and*
 - ii. *either:*
 - (a) *retains at least the approved setback from property in a Residential Detached zone that is vacant or improved with a Single-Unit Living use; or*
 - (b) *satisfies the setback required by its zoning on the date the amendment or the permit is submitted; and*
 - iii. *does not increase the tract area.*

These legacy provisions in the Zoning Ordinance allow this Application to be reviewed under the development standards in effect on October 29, 2014 because the original Site Plan 819820080 was approved in June of 1982 and is still valid. Because the Application is for an accessory use which directly serves the primary use, it is not considered an increase in density.

However, Section 59.7.7.1.A states:

A. *Existing Structure, Site Design, or Use on October 30, 2014*

1. *Structure and Site Design*

A legal structure or site design existing on October 30, 2014 that does not meet the zoning standards on or after October 30, 2014 is conforming and may be continued, renovated, repaired, or reconstructed if the floor area, height, and footprint of the structure are not increased, except as provided for in Section 7.7.1.C for structures in Commercial/Residential, Employment, or Industrial zones, or Section 7.7.1.D.5 for structures in Residential Detached zones.

2. *Use*

- a. *Except for a Registered Living Unit, any use that was conforming or not nonconforming on October 29, 2014 and that would otherwise be made nonconforming by the application of zoning on October 30, 2014 is conforming, but may not expand.*
- b. *Any allowed use, up to the density limits established by the current zoning, may be located in a building or structure deemed conforming under Section 7.7.1.A.1.*

This section of the Zoning Ordinance allows the site design to be reviewed under the Zoning Ordinance in place on October 29, 2014. However, new uses must meet the current standards in the use table under Section 59.3.1.6 in terms of permitted, non-permitted, limited or conditional use for a particular zone.

a. **Use Standards**

CR Zone – Accessory Miscellaneous Uses

Under Section 59.3.1.6 of the current Zoning Ordinance (in effect after October 30, 2014), Accessory Miscellaneous Uses is a permitted use in the CR zone (which is the current zone of the Subject Property). Section 59.3.7.4.B regulates Accessory Miscellaneous Uses in the CR zone. There are no specific use standards for a permitted Accessory Miscellaneous Use.

b. **Development Standards**

As permitted, the Applicant has requested that the Application be reviewed under the development standards of the 2004 Zoning Ordinance in effect on October 29, 2014 under the zoning on that date, which was the RMX-1 zone. The Subject Property includes approximately 0.24 acres currently zoned CR-1.0, C-0.25, R-0.75, H-90 but reviewed under the standards of the RMX-1 zone from the previous Zoning Ordinance. The Application satisfies the applicable development standards as shown in the following data table:

Table 1 – Development Data Table

Development Data	
Zoning	RMX-1 Zone (Approved under the 2004 Zoning Ordinance in effect on 10/29/2014)
Site Area	0.24 acres is Subject Property (Overall Property is 40.05 acres)

Use	Permitted (as allowed by Zoning Ordinance in effect on October 29, 2014)	Approved with Site Plan Amendment 81982008A
Accessory Miscellaneous Use	N/A	1,980 sq. ft.
Max. Building Height	35 feet (Accessory Structure)	21 feet
Lot Area (min)		
Accessory Miscellaneous Use	N/A	N/A
Green Area	10%	66.4% for Overall Property
Accessory Building Setback (min.)		
From one-family residential	100 feet	184 feet
From Residential zoning other than two-family	50 feet	935 feet
From any street	25 feet	92 feet
From abutting Commercial or Industrial Zoning	25 feet	1,257 feet

Parking Requirements for Overall Property (min)			
	Metric Rate	Required	Provided
2 Bedroom Dwelling Unit (410 units)	1.5 spaces/DU	615 spaces	615 spaces
3+ Bedroom Dwelling Unit (58 units)	2.00 Spaces/DU	116 spaces	116 spaces
Leasing Office	0 spaces	0 Spaces	5 spaces
Maintenance Bldg.	0 spaces	0 spaces	3 spaces

Other Visitor Spaces	N/A	N/A	70 spaces
Total Required			731 spaces
Total Provided			809 spaces

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

LOCATION OF BUILDINGS AND STRUCTURES

As conditioned, the location of buildings and structures is adequate, safe, and efficient. The new maintenance building is located in an efficient location for ease of access and safety for the operation and maintenance of the surrounding multi-family residential development.

LOCATION OF OPEN SPACES AND LANDSCAPING

Green Area

Green Area as required by the Zoning Ordinance will remain in compliance with this Application. The green area requirement was 10%. The green area approved in this Application will be 66.4% of the Overall Property.

Landscaping and Lighting

The location and quantity of the landscaping is adequate, safe, and efficient on the Subject Property. The Site Plan is proposing landscaping to beautify the area in front of the maintenance building to allow it to blend in better amongst the other residential structures. The additional trees to the side and rear of the maintenance building will provide some additional screening for the residential structure on top of the hill above the maintenance building.

No additional lighting is included as part of this Application. All existing site lighting will remain.

RECREATION FACILITIES

The requirements of the Recreation Guidelines do not apply since no residential units were proposed on the Subject Property as part of the Application .

PEDESTRIAN, BIKE AND VEHICULAR CIRCULATION

Vehicle Circulation

All access drives for the development within the Subject Property are private. The construction of this maintenance building will have no effect on vehicular circulation. Vehicular circulation remains safe for the approved use and the existing residential use as confirmed by the approved Fire Access plan and letter dated February 23, 2023.

Bike and Pedestrian Circulation

The residential community is served by a network of internal sidewalks within the residential development.

The Application improves pedestrian circulation by providing sidewalk connections from the existing sidewalk network to the new building access points. The existing parking lot will remain unchanged except for converting two parking spaces into one van accessible parking space to serve the maintenance building. The existing parking lot and minimal modifications will continue to be safe, adequate, and efficient.

Adequate Public Facilities

Transportation will remain adequate for the approved accessory use. No modified finding for Adequate Public Facilities is necessary for this Application because it does not generate any additional person trips during the peak hour and is a private building which only serves existing residents. The Application has been reviewed by the Montgomery County Department of Permitting Services, Fire Department Access, and Water Supply office. The Application has received an approved Fire Access Plan based in the letter dated February 23, 2023. The Fire Access Plan provides adequate accessibility for fire protection using the existing drive aisle with modified curb radii.

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

The approved uses and structures for the Subject Property are compatible with other uses, site plans, existing, and proposed development on adjacent properties. The maintenance building is compatible with other uses by using a residential style building form and massing. Furthermore, the driveway which serves the two garage doors in the front of the building is as narrow as the garage doors themselves similar to how a residential driveway would be designed. Finally, the landscaping enhances the residential style and feel of this maintenance building within residential development.

Compatibility with other existing site plans and adjacent development is achieved with the physical separation between this maintenance building and other residential buildings both within the Overall Property boundaries and other development.

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

- a. Chapter 22A, Forest Conservation

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

Environmental Guidelines

The Subject Property is located in the Great Seneca Creek watershed. The existing development predates current Environmental Guidelines for the protection of this watershed.

Forest Conservation

The existing development predates the Forest Conservation Law so there is no existing Forest Conservation Plan for this Property.

On November 21, 2022, Forest Conservation Exemption No. 42023065E was confirmed. The Application qualifies for an exemption from the requirement to submit a Forest Conservation Plan in Article II of the Montgomery County Code, Chapter 22A (Forest Conservation Law) under Section 22A-5(a), as it is for an activity conducted on an existing single lot of any size that is required to construct a dwelling house or accessory structure (Such as a pool, tennis court, or shed) intended for the use of the owners. Additionally, the construction activity adheres to the following criteria for the exemption: (1) does not require a special exception; (2) the modification does not result in the cutting, clearing, or grading of more than a total of 20,000 square feet of forest, forest in a stream buffer, any forest on located in a special protection area which must submit a water quality plan, any specimen or champion tree, or any trees or forest that are subject to a previously approved forest conservation plan or tree save plan; and (3) is subject to a declaration of intent filed with the Planning Director stating that the lot will not be the subject of additional regulated activities

under this Chapter within 5 years of the cutting, clearing, or grading of forest.

- b. Chapter 19. Erosion, Sediment Control, and Stormwater Management
The Application received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on December 23, 2022. The Application will meet stormwater management goals through the use of dry wells and landscape infiltration.

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-D-3.8; 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 11 2023 (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 Bartley, seconded by Commissioner Hedrick, with a vote of 3-0-2, with Chair Zyontz and Commissioners Bartley and Hedrick voting in favor, Vice Chair Piñero and Commissioner Pedoeem abstained, at its regular meeting held on Thursday, March 30, 2023, in Wheaton, Maryland.



Jeffrey Zyontz, Chair
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