

# **Montgomery County Planning Board**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JUL 27 2023

MCPB No. 23-079  
Site Plan No. 82020019A  
**Rock Creek Village Shopping Center**  
Date of Hearing: July 13, 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, on July 27, 2021, the Planning Board, by Resolution MCPB No. 21-066, approved Site Plan No. 820200190 for approval of a site plan for conversion of approximately 1,782 square feet of commercial space in an existing shopping center to a veterinary office/hospital use with an outdoor animal relief area on 9.39 acres of NR-0.75, H-45 zoned-land, located within the Rock Creek Village Shopping Center on the south side of Norbeck Road (MD-28), between Baltimore Road and Bauer Drive ("Subject Property"), in the Aspen Hill Policy Area and the 1994 Aspen Hill Master Plan ("Master Plan") area; and the applicant was required to submit a site plan application because the property confronts a residential detached zone, R-90, improved with a residential use across Bauer Drive, per Zoning Ordinance Section 59.3.5.1.C.2.a.iii.

WHEREAS, on February 24, 2023, Rock Creek Village, LLC ("Applicant") filed an application for approval of an amendment to the previously approved site plan(s) to Request conversion of an existing 2,425-square foot bank into a 2,470-square foot restaurant with a drive-thru on the Subject Property; and

WHEREAS Applicant's application to amend the site plan was designated Site Plan No. 82020019A, Rock Creek Village Shopping Center ("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 June 29, 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/ Matthew T. Mills

M-NCPPC Legal Department

WHEREAS, on July 13, 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 Vice Chair Pedoeem, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick, and Linden voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 82020019A to convert an existing 2,425-square foot bank with three drive-thru lanes to a 2,470-square foot drive-thru restaurant by adding the following conditions:<sup>1</sup>

5. Density

The Site Plan Amendment is limited to a maximum of 2,470 square feet of drive-thru restaurant use for the total development on the Subject Property.

6. Height

The development is limited to a maximum height of 20 feet, as measured from the building height measuring point, as illustrated on the Certified Site Plan.

7. 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 February 27, 2023 and incorporates the recommendations as conditions of approval. The Applicant must comply with each of the recommendations in the memo, which DPS-ROW may amend if the amendments do not conflict with other conditions of Site Plan approval.

8. Site Design

a) The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Sheet Perspective 1-5 of the submitted architectural drawings, as determined by M-NCPPC Staff.

9. Lighting

a) Before certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15,

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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.

2011, or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).

- b) All onsite down-lights must have full cut-off or BUG-equivalent fixtures.
- c) Deflectors will be installed on fixtures to prevent excess illumination and glare.
- d) Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at the lot line, excluding areas impacted by street lights within the right-of-way.
- e) Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

**10. Site Plan Surety and Maintenance Agreement**

Before issuance of any 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 59.7.3.4.K.4 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, on-site lighting, site furniture, trash enclosures, fences, railings, private sidewalks, private utilities, storm drainage facilities, street trees, and street lights. 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.

**11. Development Program**

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

## **12. 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, development program, and Site Plan 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."
  - 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 before any site development work commencement and before 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) Modify data table to reflect development standards approved by the Planning Board.
- d) Ensure consistency of all details and layout between Site and Landscape plans.
- e) Provide approved schematic elevations shown on Sheets "Perspective 1-5".
- f) Add Site Plan Limits to plan area for the drive-thru restaurant use.
- g) Add Open Space plan to plan set.

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 Rock Creek Village Shopping Center and Site Plan Amendment No. 82020019A, submitted via ePlans to the M-NCPPC as of the date of the Staff Report June 29, 2023, 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 provided 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, and the findings listed are limited to the scope of the improvements associated with the drive-thru restaurant use.*
- 1. The development satisfies any previous approval that applies to the site.*

The Subject Property is covered by Preliminary Plan 119990550 (approval conditions do not conflict with this site plan proposal). Site Plan No. 820200190 only governs the area associated with 1,782 square feet Veterinary Clinic and outdoor animal relief area. This application does not conflict nor supersede the original approval and is in addition to the original approval.

- 2. The development satisfies the binding elements of any development plan or schematic development plan in effect on October 29, 2014.*

This section is not applicable as there are no binding elements of an associated development plan or schematic development plan in effect on October 29, 2014.

- 3. The development satisfies any green area requirement in effect on October 29, 2014, for a property where the zoning classification on October 29, 2014, was the result of a Local Map Amendment.*

This section is not applicable as the Subject Property's zoning classification on October 29, 2014, was not the result of a Local Map Amendment.

- 4. The development satisfies applicable use standards, development standards, and general requirements under the Zoning Ordinance.*

a. Use Standards

**Section 59.3.5.14.E.2.a (Drive-Thru: Use Standards)** lists the following standards that must be satisfied in a site plan amendment application when the Drive-Thru is allowed as a limited use:

*a. Where a Drive-Thru is allowed as a limited use, it must satisfy the following standards:*

*i. A Drive-Thru, including the queuing area, must be located a minimum of 100 feet from any property that is vacant or improved with a residential use in the Agricultural, Rural Residential, or Residential Detached zones.*

The drive-thru is more than 100 feet from an improved residential use property in the Agricultural, Rural Residential, or Residential Detached zones. The closest property is more than 200 feet away located across Norbeck Road to the north.

*ii. For a Restaurant with a Drive-Thru, access to the site from a street with a residential classification is prohibited.*

The restaurant with a drive-thru will not be accessed from a residential street. It will be accessed from the existing shopping center drive lanes within the Rock Creek Village Shopping Center.

*iii. A drive-thru service window, drive aisle, or queuing area located between the street and the front main wall of the main building is prohibited.*

The drive-thru service window, drive aisle, and queuing area is located in the existing shopping center and is mostly at the rear of the existing shopping center. A portion of the drive-thru is located adjacent to Norbeck Road, but there is a large grade change from the shopping center to the road. Also, the location has parking spaces, a parking lot drive aisle, and a new green space/landscaping between the drive-thru and Norbeck Road.

*iv. A drive-thru service window, drive aisle, or stacking area may be located between the street and the side wall of the main building on a corner lot if permanently screened from any street by a minimum 3-foot-high wall or fence.*

The project is not located on a corner lot and the drive-thru service window, drive aisle, or stacking area is not located between the street and the side wall of the main building.

b. Development Standards

The Subject Property includes approximately 9.39 acres zoned NR - 0.75 H-45. The Application satisfies the applicable development standards as shown in the following data table:

*Table 1: Rock Creek Village Shopping Center Site Plan Data Table for NR - 0.75 H-45 Zone*

<b>Development Standard</b>	<b>Permitted/ Required</b>	<b>Approved 820200190</b>	<b>Approved 82020019A</b>
<b>Site Area</b>	n/a	9.39 Acres	9.39 Acres
<b>Mapped Density</b>			
<b>NR - 0.75 H-45</b>	.75 FAR	101,980 sf (.25 FAR)	102,025 sf (.25 FAR)
<b>Veterinary Office</b>		1,782 sf	1,782 sf
<b>Existing Bank</b>	2,425 sf	2,425 sf	0 sf
<b>Drive-Thru Restaurant</b>			2,470 sf
<b>Existing Commercial</b>		97,773 sf	97,773 sf
<b>Building Height (ft)</b>		n/a	20 ft
<b>Public Open Space (%)</b>	10%	11.6%	11.6%
<b>Parking (Min)</b>	510	606	593

c. General Requirements

**Division 6.1 Site Access**

Site access will remain similar to existing conditions. Vehicles will access the site via the southern and northern driveways. The existing drive-thru, which includes three lanes and an adjacent south to north running bypass lane, will be reconfigured to have one drive-thru lane and a north to south running lane separated from the drive-thru lane with a landscape buffer.

**Division 6.2 Parking, Queuing and Loading**

Parking at the rear of the Site will be reduced and reconfigured to parallel parking spaces. The number of surface parking stalls available within the shopping center remains adequate with 593 spaces. Loading will occur using the northern access, and the one-way north to south drive lane

located adjacent to the drive-thru lane will be utilized for loading/turning movements.

The counterclockwise layout of the drive-thru allows for 11 queueing spaces, which is over the required 5 queueing spaces required for a one lane drive-thru required by section 6.2.7 of the Zoning Code.

**Division 6.3 Open Space and Recreation**

There are no changes to the Public Use Spaces requirement for providing 10 percent open space. The project will maintain the 11.6 percent established within the existing shopping center by the outdoor seating area at the center of the L-shaped shopping center.

**Division 6.4 General Landscaping and Outdoor lighting**

The restaurant will provide updated landscaping associated with restaurant site improvements to include tree plantings, shrubs, and ground cover planting. New site lighting will be added and will meet the required standards as conditioned.

*5. The development satisfies the applicable requirements of Chapters 19 and 22A of the Montgomery County Code.*

a. Chapter 19, Erosion, Sediment Control, and Stormwater Management

This activity on site involves less than 5,000 square feet of disturbance and does not require any permits under Chapter 19.

b. 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 Site contains no streams or their buffers, wetlands or wetland buffers, steep slopes, 100-year floodplains, or known occurrences of rare, threatened or endangered species. There are no forests or specimen trees on the property.

Forest Conservation

The Project is exempt from submitting a forest conservation plan as a modification to an existing developed property. An Exemption, designated No. 42023094E, was approved on December 30, 2022. As submitted, the Site Plan is in conformance with the Environmental Guidelines and complies with Chapter 22A, the Forest Conservation Law.



6. *The development provides safe, well-integrated parking, circulation patterns, building massing, and where required, open spaces and site amenities.*

The Project meets the requirement for parking by providing 593 spaces. The circulation of the existing shopping center is maintained within this proposal. The building mass, open space, and site amenities are unchanged with this amendment.

7. *The development substantially conforms to the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan.*

The 1994 *Aspen Hill Master Plan* ("Master Plan") identifies the location and purpose of the Rock Creek Village Shopping Center but makes no recommendations that are inconsistent with this subject application. The Master Plan designates the Rock Creek Village Shopping Center as a "significant parcel". Page 81 reads:

*"New uses could be incorporated into shopping center locations that would make them community serving as well as commercial centers. Some of the new or additional uses could be branch post offices, community meeting facilities, and a mix of housing, medical and family services in addition to shopping."*

Rock Creek Village Shopping Center conforms to this recommendation by adding new use to a retail space that is currently vacant and keeping shopping as an asset to the community. This application is consistent with an overall goal of the Master Plan to protect and preserve locally oriented retail centers that efficiently provide goods and services needed by the surrounding residential neighborhoods.

8. *The development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.*

The development will be served by public water and sewer systems. There is no change to the existing Fire and Rescue access with this application. Other public facilities and services including police stations and health care will continue to be sufficient following the construction of the project. Electric, gas and telecommunications services will also be available.

Adequate Public Facilities

The Site Plan amendment converts the existing 2,428-square foot drive-thru bank land use to a 2,485-<sup>2</sup>square foot drive-thru restaurant land use. Based on the ITE Trip Generation Manual, 11th Edition, and LATR guidelines for the Aspen Hill Transportation Policy Area, this increase generates less than 50 person trips during peak hours, as shown in Table 2. Therefore, LATR adequacy testing and a transportation impact study are not required.

*Table 2: Trip Generation Comparison*

Land Use	Quantity	PM Peak Hour Person Trips <sup>1</sup>
Drive-in Bank (ITE Code 912)	2,428 SF	70
Fast-Food Restaurant with Drive-Through (ITE Code 934)	2,485 SF	113
Net Trip Difference		+43

<sup>1</sup>Only evening peak trips were analyzed because the land use would not operate during the AM peak period.

Source: Applicant's Traffic Statement dated November 28, 2002, prepared by Kimley-Horn; Revised by M-NCPPC Staff 3/8/2023.

9. *The development is compatible with existing and approved or pending adjacent development.*

The Rock Creek Village Shopping Center has been in existence for many years and has been a valuable and attractive community resource in the Bauer Drive area. The conversion of a former bank to a restaurant will not compromise the compatibility of the Center with its residential surroundings and is a permitted use within the NR zone.

10. *There is a need for the approved use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the approved location will not result in a multiplicity or saturation of similar uses in the same general neighborhood.*

While there are several drive-thru restaurants to the west along the Rockville Pike corridor and to the southeast at the intersection of Connecticut Avenue and Georgia Avenue, they are all at least 2 miles and at least 6 minutes driving time

<sup>2</sup> The Traffic Statement was assessed at large square feet (2,485 sf) than what the applicant is requesting for the Site Plan Amendment (2,470 sf)

away from the subject property. There are no other drive-thru restaurants within the existing shopping center.

To the east, there is only one competitive restaurant within the defined market area<sup>3</sup> and that is a Burger King drive-thru restaurant located in the Leisure World Plaza Shopping Center on the east side of Georgia Avenue (MD 97) south of the intersection of Norbeck Road (MD 28) and Georgia Avenue (2.6 miles, 6 minutes driving time from the Subject Property.) To the southeast, around the intersection of Georgia Avenue and Connecticut Avenue (Aspen Hill), there are four drive-thru restaurants that are at the outer limits of the preferred driving range for fast food customers.

Competitive restaurants with drive-thru functions are quite distant from the subject property, are located in different transportation corridors, and do not provide the unique service and efficiency for this Chipotle restaurant.

There is substantial local residential population in close proximity to the Subject Project and the Chipotle restaurant can conveniently satisfy those residents' need for fast food service.

Similarly, the high volume of pass by vehicle traffic can be efficiently served by the restaurant and there is no other drive-thru restaurant in the east-west MD 28 extended corridor (12 miles, 20 minutes driving time).

There are no other restaurants with drive-thru windows within 2 miles and 6 minutes of driving time from the Rock Creek Village Shopping Center. While clustered along Rockville Pike and the intersection of Georgia Avenue and Connecticut Avenue, there are several drive-thru restaurants, but they are well distant from the Subject Property, so the Chipotle restaurant does not contribute to a "multiplicity or saturation of similar uses in the same general neighborhood."

In conclusion, the Chipotle restaurant to be located in the Rock Creek Village Shopping Center complies with Section 59.7.3.4.E.3 of the Montgomery County Zoning Ordinance.

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<sup>3</sup> The defined market area has been established by the needs study provided by the applicant and accepted by Planning Staff within Attachment E.

11. *The decrease in gross floor area devoted to Retail/Service Establishment uses will not have an adverse impact on the surrounding area.*

The Subject Property was zoned C-1 on October 29, 2014 but does not include less gross floor area for Retail/Service Establishment uses than the existing development This application maintains the Retail/Service Establishment and replaces a vacant bank with new drive-thru restaurant.

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 JUL 27 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 consistent with the Maryland rules for the judicial review of administrative agency decisions.

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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 Bartley, seconded by Vice Chair Pedoeem, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, and Commissioners, Bartley, Hedrick, and Linden, voting in favor of the motion, at its regular meeting held on Thursday, July 20, 2023, in Wheaton, Maryland and via video conference.

  
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Item 12 – Rock Creek Village Shopping Center  
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