

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this 14 day of October, 2009, by and between Montgomery Village Foundation, Inc., a Maryland non-profit corporation ("MVF"), and JDC Village Development, LLC, a Maryland limited liability company ("JDC"), and is made on the following premises:

RECITALS

R.1. WHEREAS, MVF is the owner of a parcel of real property located in Montgomery County, Maryland and referred to as Parcel P800, Tax Map FU41 ("P800") which contains a pond referred to as the "Theater Pond." The Theater Pond is an outfall point for stormwater runoff from approximately 40 acres of adjoining properties.

R.2. JDC is the applicant under a Site Plan Application No. 820090060 ("Site Plan") and Preliminary Plan Application No. 120090090 ("Preliminary Plan") for the development of approximately 3.3 acre site owned by JDC known, and referred to herein, as the "Montgomery Village Market Place."

R.3. WHEREAS, the Theater Pond is also an outfall point for the stormwater runoff for the Montgomery Village Market Place property.

R.4. WHEREAS, it is the desire of both MVF and the Montgomery County Department of Environmental Protection that the Montgomery County Department of Environmental Protection take over the structural maintenance responsibility of the Theater Pond; pursuant to that desire, certain improvements are required to be made to the Theater Pond (the "Theater Pond Improvements").

R.5. JDC has agreed to contribute to the cost of, and perform, the Theater Pond Improvements, on the terms and provisions set forth herein.

FILED
LORETTA E. KNIGHT
CLERK'S OFFICE
MONTGOMERY COUNTY, MD.

2011 APR 14 P 2:31

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RECORDING FEE 75.00
TOTAL 95.00
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LEK NVE Bk # 1235
Apr 14, 2011 02:28 PM

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MONTGOMERY COUNTY CIRCUIT COURT (Land Records) LEK 41464, p. 0045, MSA_CE63_41421. Date available 04/18/2011. Printed 09/09/2022.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein, MVF and JDC agree as follows:

1. JDC's Contribution to Theater Pond Improvements. JDC agrees as follows:

(a) JDC will pay an engineering firm of its choice for the cost of surveying, the design of survey and design services for the Theater Pond Improvements;

(b) JDC will pay for the cost of the Montgomery County Department of Permitting Service's review of, and the permit fees for, the Theater Pond Improvements;

(c) Following review and approval by the Montgomery County Department of Permitting Services of the design plans for the Theater Pond Improvements, JDC will obtain a quote from a qualified contractor acceptable to MVF for the performance of Theater Pond Improvements. JDC will be responsible for the payment of the costs thereof. Upon approval of the contractor's proposal estimate by JDC and MVF, JDC will enter into a contract for the performance of the Theater Pond Improvements (the "TPI Contract"). JDC will provide MVF 30 days advanced written notice of the anticipated date of commencement of construction under the TPI Contract. Not later than 15 days prior to the date of the anticipated construction commencement date, MVF will deliver to JDC, any easements, rights-of-way, or right of entry agreements needed for the contractor to gain access to Parcel P800, or otherwise required to perform, the Theater Pond Improvements.

2. MVF Covenants. As a material inducement to JDC to enter into this Agreement, and as consideration for the agreement of JDC set forth in Section 1, above, MVF agrees as follows:

04/18/2011

(a) MVF will have the opportunity to review and approve ~~and~~ preliminary and final plans for the Theater Pond work.

(b) MVF will cooperate with JDC in the performance of the surveying and design services for the Theater Pond Improvements and the submission of the design plans to the Montgomery County Department of Permitting Services and application for permits in connection therewith.

(c) MVF will cooperate with JDC in connection with the selection of a contractor to perform the Theater Pond Improvements and the performance of the TPI Contract, including without limitation, execution and timely delivery of any easements, rights-of-way, right of entry agreements reasonably requested by JDC or otherwise required for the contractor to gain access to Parcel P800 and/or perform the Theater Pond Improvements.

(d) MVF will make every attempt to convince other property owners whose storm drainage flows to the Theater Pond to fairly participate in the costs described described in Paragraph 1 related to design, permitting and construction of the retrofitted Theater Pond. This does not construe any commitment by MVF to provide funds from other entities for this project.

3. Condition Precedent to JDC's Obligation. JDC's obligations to construct the Theater Pond Improvements, and make the JDC Contribution under Section 1, above, are conditioned upon (a) the timely satisfaction and performance by MVF of its obligations pursuant to Section 2, above, (b) final approval of the JDC Stormwater Management Concept Plan, and (c) the implementation and commencement of construction by JDC of the improvements proposed to be constructed for the Montgomery Village Market Place pursuant to a final,

approved Site Plan and Preliminary Plan (the "Conditions Precedent"). Notwithstanding that the Conditions Precedent may have been satisfied, the parties acknowledge that the State of Maryland restricts the time when work is to be performed in environmentally sensitive areas and the timing of construction of the Theater Pond Improvements may be performed independent of the construction of improvements on the Montgomery Village Market Place due to permitting procedures through Montgomery County and additional requirements for working in environmentally sensitive areas. JDC must provide the County with a bond to ensure that the Theater Pond work is completed in a timely fashion, but said Theater Pond work will be completed prior to issuance of the final use and occupancy for the final building within the proposed "Montgomery Village Market Place."

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding to evidence their intention and understanding regarding the matters set forth herein.

ATTEST:

MONTGOMERY VILLAGE FOUNDATION,
INC., a Maryland non-profit corporation

Roslyn Price

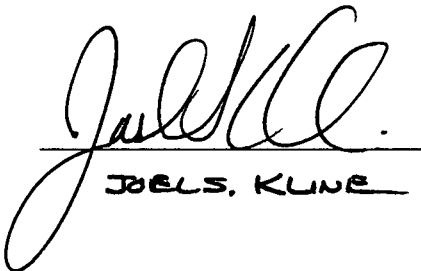
By: 

Name: David B. Humpton

Title: EVF, MVF, Inc.

ATTEST:

JDC VILLAGE DEVELOPMENT, LLC, a
Maryland limited liability company


JOELS. KLINE

By: 

Name: John H. Donagan

Title: Member

Return Address:

Montgomery Village Foundation, Inc.
10120 Apple Ridge Road
Montgomery Village, MD 20886

ATTN: DAVID B. HUMPTON



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OCT 14 2009

MCPB No. 09-125
Preliminary Plan No. 120090090
Montgomery Village Marketplace
Date of Hearing: September 17, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on October 29, 2008, ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 2 lots on 3.32 acres of land located on Stedwick Road approximately 410 feet west of Montgomery Village Avenue ("Property" or "Subject Property"), in the Gaithersburg Vicinity master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090090, Montgomery Village Marketplace ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated September 4, 2009, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on September 17, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

Approved as to
Legal Sufficiency: *Shirley Larson*
M-NCPPC Legal Department

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) LEK 41464, p. 0049, MSA_CE63_41421. Date available 04/18/2011. Printed 09/09/2022.

WHEREAS, on September 17, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Alfandre, Hanson and Wells-Harley voting in favor; Commisioners Cryor and Presley being absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120090090 to create 2 lots on 3.32 acres of land located on Stedwick Road approximately 410 feet west of Montgomery Village Avenue ("Property" or "Subject Property"), in the Gaithersburg Vicinity master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this preliminary plan is limited to two lots for a maximum of 26,000 square feet of general retail uses or a combination of uses that generate an equivalent number of weekday peak-hour trips. The uses approved with this preliminary plan are a 3,172 square foot bank with three drive thru-lanes, and 21,696 square feet of general retail and restaurant uses, excluding fast-food restaurants. Any increase in square footages or changes to these uses will require site plan amendment/approval and further adequate public facilities (APF) review and approval.
- 2) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated April 14, 2008. These conditions may be amended by MCDPS; provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 3) Prior to issuance of final use and occupancy permit for the third building, the Applicant must complete improvements to the Theater Pond. These improvements must be approved by Maryland Department of the Environment and/or MCDPS with input from the Department of Environmental Protection.
- 4) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated August 28, 2009, except the request for the Applicant to construct, maintain, and grant uninterrupted access to an on-site, two stall restroom and storage facility. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 5) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to issuance of access permits.
- 6) Verizon must be accommodated in easements running through the property that will serve the new uses in a form acceptable to Verizon. Prior to recordation of plat(s), all replacement easements must be recorded.

- 7) The Applicant must construct an eight-foot-wide sidewalk along the Stedwick Road frontage.
- 8) The Applicant must satisfy Local Area Transportation Review (LATR) by providing a second right-turn lane on the eastbound Stedwick Road approaching its intersection with Montgomery Village Avenue. This additional lane will be provided by restriping and widening the eastbound approach at the intersection by approximately 6.5 feet on the north side and approximately 2.5 feet on the south side with an approximate 120 foot long taper to the west. The intersection improvement plan must be approved by the Montgomery County Department of Transportation (MCDOT). The permits and bonds must be approved by the Montgomery County Department of Permitting Services (DPS) prior to site plan certification
- 9) The Applicant must close the pedestrian tunnel under Stedwick Road pursuant to final approval of Abandonment Case AB-724 and provide an alternative mid-block pedestrian crossing across Stedwick Road between Mills Choice Road and the eastern driveway into the Montgomery Village Center. Associated with this pedestrian crossing, the Applicant must provide the necessary handicapped ramps, signage, and pavement treatments/markings. On the opposite side of Stedwick Road on the property controlled by the two condominium associations (i.e., Center Court and Heron's Cove), the tunnel opening must be re-graded, and an ADA-compliant pedestrian connection leading to the crossing must be provided, subject to final consent by the condominium associations. Prior to site plan certification, the tunnel closure final plan must be reviewed and approved by MCDOT and the permits and bonds must be approved by DPS.
- 10) The Applicant must provide inverted-U bike racks for 10 bicycle parking spaces located near the main entrances to the commercial businesses. Transportation Planning Staff must review and approve the ultimate location of the bike racks prior to certification of the site plan.
- 11) A Certified Site Plan must be approved prior to the approval of the record plat.
- 12) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
- 13) All other necessary easements must be shown on the record plat.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff 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 Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the master plan.*

The 1985 Gaithersburg Vicinity Master Plan focused on three areas (the Shady Grove West Study Area, the Airpark Study Area, and the Smokey Glen Study Area), and states that "This Plan continues the recommendations of the 1971 Gaithersburg Master Plan for most of the land outside these study areas" (p. 5). Therefore, to generally conform to the 1971 Master Plan, the plan should show:

- A "central place," a center of activity and attraction;
- An architectural focal point with opportunities for shopping, recreational and social activities;
- A connected pedestrian circulation system; and
- Appropriate uses.

The currently proposed retail uses are expected to attract activity, and there are two important spaces for gathering—the first is the bosque of trees in the northeast corner of the site and the second is in front of proposed Building C in the southeast portion of the site. The area in front of Building C is an important space that was carefully considered. This gathering area will help create the "central place" on this site for the community, as envisioned by the master plan. The Planning Board finds a central place is adequately provided for in the preliminary plan.

The proposal includes shopping opportunities, but more limited recreational and social opportunities. The Planning Board finds a significant improvement to the area under the bosque of trees will provide the needed social opportunities.

The Planning Board considered the importance of a pedestrian circulation system, throughout the Village and within individual sites. The sidewalks along the property frontage are to be rebuilt and upgraded from 6 feet to 8 feet in width connecting to an 8 foot sidewalk along proposed Building C. A sidewalk along the private drive on the western portion of the site will provide access to the Subject Property and retail destinations to the north. A sidewalk in front of proposed Building B, which is located along the northern property line, will connect to the sidewalk system within the property directly to uses east of the site. An at-grade mid-block crossing will connect the project to confronting properties along Stedwick Road. Specialty pavers are used throughout the pedestrian areas to define spaces and unit pavers are utilized at various crossing locations to serve as a traffic calming measure. The Planning Board finds the proposed pedestrian improvements will provide the necessary pedestrian connections within the site and to adjacent properties.

The Planning Board also finds the proposed bank use, general retail and restaurant uses are appropriate for the location of this site. The abutting properties that contain a post office, grocery store and various retail uses as well as the residential

communities across Stedwick Road will contribute to accomplishing the Applicant's activity, focal point and pedestrian circulation goals for the site. All proposed uses must also comply with the County's Noise Ordinance, which will further ensure a harmonious relationship.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*

Roads and Transportation Facilities

Pedestrian and Vehicular Facilities

The existing sidewalks along Stedwick Road are proposed to be reconstructed. As an alternative to and a condition of the closure of the pedestrian tunnel, a mid-block pedestrian crossing is proposed and recommended for approval. In addition to frontage improvements, the Applicant has been working with the Heron's Cove and Center Court condominium associations to provide pedestrian connections leading to the mid-block crossing on the opposite side of Stedwick Road.

The final design and improvements within the public right-of-way, including the final location of a mid-block crossing, striping, bump-outs and any bus layover areas, will be determined by MCDOT after the record has been closed for the hearing regarding the abandonment of the pedestrian underpass/tunnel under Stedwick Road (case AB 724). The Applicant and Planning Board voiced their concern for the location of the bus layover areas in front of the site, specifically as they may block views into the site, obstruct the proposed outdoor uses and create potential conflicts with pedestrians.

Transportation Demand Management Requirements

The site is located outside the Greater Shady Grove Transportation Management District (TMD), therefore, the Applicant is not required to enter into a Traffic Mitigation Agreement with the Planning Board and MCDOT or assist in achieving and maintaining its trip mitigation goal.

Local Area Transportation Review and Policy Area Mobility Review

In accordance with the applicable guidelines, a traffic study was submitted to satisfy Local Area Transportation Review (LATR) because the proposed land use generates 30 or more peak-hour trips within the weekday morning and evening peak periods.

At the intersection of Montgomery Village Avenue and Stedwick Road, the CLV values within the weekday morning peak hours exceed the congestion standard of 1,425. The evening CLV value for the total improved traffic condition continues to exceed the congestion standard, however, the extra capacity provided by the

recommended intersection improvement of a second right turn lane at the intersection of Stedwick Road and Montgomery Village Avenue has reduced the CLV value by more than 150% of the 3 CLV (i.e., 1,670 minus 1,667) impact attributable to the proposed development. At the other three studied intersections, the CLV values are less than the congestion standard of 1,425 CLV for the Montgomery Village/Airpark Policy Area. The Planning Board finds the LATR test is satisfied by the proposed intersection improvements.

The Policy Area Mobility Review (PAMR) test was adopted under the 2007-2009 *Annual Growth Policy* for new developments in certain policy areas. Since the filing date of the preliminary plan was considered to be before July 1, 2008, the PAMR mitigation requirement was 0% of new site-generated peak-hour trips within the weekday morning and evening peak-hours. Thus, the Planning Board finds no mitigation is required to satisfy PAMR for the subject development.

Other Public Facilities

The Planning Board finds that public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and sewer systems. The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Electrical, gas, and telecommunications services are also available to serve the Property

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations and Chapter 59, the Zoning Ordinance. The Planning Board finds the application meets all applicable sections.

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

There is no forest onsite. A Forest Conservation Plan Exemption application (#42008123E) was submitted and later approved on February 7, 2008. The site qualified for an exemption under Chapter 22A-5(1) of the Montgomery County Code, which states that a site is exempt from Article II of the forest conservation law if "any planned unit development for which a project plan was approved by the Planning Board before January 1, 1992 and which received site plan approval before July 1, 1992 for the tract." Under the same exemption, "a development plan or project plan amendment approved after January 1, 1992, is not exempt if it results in the cutting of more than 5,000 additional square feet of forest." Parcel 387 was part of development plan E848; Lot 15 was covered under site plan 819860270; and Lot 19

part of site plan 819810150. Forest removal is not being pursued because there is no forest existing on the site. As a result, the Planning Board finds the entire Property qualifies for a forest conservation plan exemption.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The stormwater management concept for the Montgomery Village Marketplace project was approved by the Department of Permitting Services on April 14, 2008 and reconfirmed on June 26, 2009. Approval is contingent upon the Applicant establishing an agreement with the Montgomery Village Foundation to use an existing stormwater management pond facility south of the Property. The concept consists of on-site channel protection measures via this existing pond and water quality control via the use of aqua filters and hydrodynamic pretreatment structures. Recharge is not required for this redevelopment.

6. *Issues raised at the public hearing have been appropriately addressed.*

Speakers at the hearing raised the following issues for the Board's consideration:

- a) a wider mix of uses, including residential dwelling units, is more appropriate for the Subject Property;
- b) the pedestrian tunnel under Stedwick Road should be closed but a safe alternative for crossing Stedwick Road must be provided for;
- c) a bus layover facility should not be located along the Property frontage but elsewhere within Montgomery Village.

With respect to issue (a) above, the Planning Board found merit in this suggestion but finds that all proposed uses included in the preliminary plan application are permitted in the TS zone and appropriate for this location.

With respect to issue (b) above, the Planning Board concurred with statements in support of the tunnel closure and reaffirmed the recommendation made by the Board on July 23, 2009 in support of the tunnel abandonment/closure.

With respect to issue (c) above, the Planning Board found that a bus layover facility along the Property frontage would hinder site goals for greater pedestrian activity and enhanced pedestrian safety. The Planning Board supports further investigation into alternative sites more suitable for a bus layover facility and associated restrooms.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) 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 among the Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

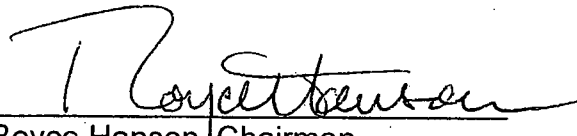
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is OCT 14 2009 (which is the date that this Resolution is mailed to all parties of record); and

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 Wells-Harley, seconded by Commissioner Alfandre, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, October 1, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 09-124
Site Plan No. 820090060
Project Name: Montgomery Village Marketplace
Date of Hearing: September 17, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review site plan applications; and

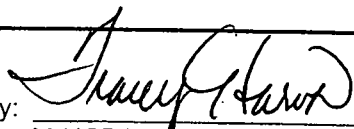
WHEREAS, on October 28, 2008, JDC Village Development, LLC ("Applicant"), filed an application for approval of a site plan for a 3,172 square foot bank with three drive thru lanes, 21,696 square feet of retail and restaurant uses in two buildings and a parking waiver of approximately 8 percent ("Site Plan" or "Plan") on 3.32 acres of Town-Sector-zoned land, located on Stedwick Road approximately 410 feet west of Montgomery Village Avenue ("Property" or "Subject Property"); and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820090060, Montgomery Village Marketplace (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated September 4, 2009, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on September 17, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

Approved as to
Legal Sufficiency:



M-NCPPC Legal Department

MCPB No. 09-124
Site Plan No. 820090060
Montgomery Village Marketplace
Page 2

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on September 17, 2009 the Planning Board approved the Application subject to conditions on the motion of Commissioner Alfandre; seconded by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Alfandre, Hanson and Wells-Harley voting in favor, and Commissioners Cryor and Presley being absent.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 820090060 for a 3,172 square foot bank with three drive thru lanes, a 12,896 square foot retail/restaurant building, an 8,800 square foot retail/restaurant building, and a parking waiver of approximately 8 percent, on 3.32 gross acres in the Town-Sector zone, subject to the following conditions:

1. Development Plan Conformance

The proposed development must comply with the binding elements of the Development Plan Amendment DPA 02-2 as approved by the District Council on July 1, 2003, and later corrected on April 7, 2006.

2. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for Preliminary Plan No. 120090090.

3. Site Plan

Approval of this plan voids approval of Site Plan No. 819810150 and Site Plan No. 819860270.

4. Abandonment AB-724

The proposed development must comply with the conditions of approval for the Abandonment Case AB-724 in reference to the closure of the pedestrian tunnel under Stedwick Road.

5. LEED Certification

The Applicant must achieve a LEED (Leadership in Energy and Environmental Design) Certified Rating Certification at a minimum. The Applicant must make good faith efforts to achieve a LEED Silver rating. Before the issuance of any use and occupancy certificate, the Applicant must inform M-NCPPC Staff of the LEED Certification Level for which they are applying. If this level is less than a Silver rating, before the issuance of the final use and occupancy certificate the Applicant must provide to Staff a written report, for public record purposes only, from the Applicant's LEED consultant analyzing the feasibility of achieving a LEED-Silver rating and a report from a LEED-Accredited Professional identifying the minimum

additional improvements required to achieve the LEED Silver rating, including their associated extra cost.

6. Architecture

The final design of the building façade must substantially conform to the architectural renderings received by MNCPPC on August 10, 2009, including fenestration, rooflines and materials labeled.

7. Pedestrian Circulation

- a. Provide an at-grade pedestrian crosswalk on Stedwick Road, subject to the final approval of the Montgomery County Department of Transportation.
- b. Provide pedestrian access from the south side of Stedwick Road to the future crosswalk on Stedwick Road, subject to the final approval of the Heron's Cove Condominium Association, the Center Court Condominium Association, and the Montgomery Village Foundation.

8. Landscaping

- a. The Applicant must hire a certified arborist to assess the condition of the existing trees at northeast corner of the site, and make recommendations on whether they should be saved or removed. These recommendations would be the basis for any future action regarding the existing grove of trees, including the re-design of the plaza area and replacement of trees.
- b. Replace street tree species (Chinese elm) with willow oaks, subject to final approval by the Commercial Architecture Review Committee (CARC) of the Montgomery Village Foundation.
- c. If any of the five mature pin oaks on the Stedwick Road right-of-way, at the intersection with Montgomery Village Avenue, are damaged or lost during the addition of the second right turn lane, the Applicant must replace them in number with 2 ½-3" caliper Willow oaks within the Stedwick Road right-of-way, subject to MC-DPS and/or MCDOT approval.

9. Lighting

- a. On-site street and parking lot down lighting fixtures must be full cut-off fixtures;
- b. Deflectors must be installed on all up-lighting fixtures causing potential glare or excess illumination;
- c. Illumination levels, excluding streetscape light fixtures, must not exceed 0.5 footcandles (fc) at any property line abutting county roads.
- d. The height of the light poles shall not exceed 20 feet excluding the mounting base.

10. Performance Bond and Agreement

The Applicant is subject to the following provisions for surety as described in Section 59-D-3.5 of the Montgomery County Zoning Ordinance and Site Plan approval:

- a. The Applicant must provide a cost estimate from the landscape architect or landscape contractor indicating the installed costs of site plan elements such as but not limited to landscaping, lighting, recreation facilities, special paving, art work and site furnishings. The cost estimate should include a 10% inflation factor for the site plan elements to account for changes in price and materials and modifications to the approved plans.
- b. The Applicant must submit a Performance Bond or other satisfactory form of surety as approved by M-NCPPC to cover the installed costs of site plan elements such as but not limited to landscaping, lighting, recreation facilities, special paving, art work and site furnishings as shown and described in the cost estimate.
- c. The Applicant must execute an agreement for site plan elements in conjunction with the performance bond indicating the Applicant's agreement to install, construct and maintain the site plan elements.
- d. The Bond must be submitted along with the agreement prior to the release of the first building permit.

11. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated April 14, 2008, and later reconfirmed on June 26, 2009, unless otherwise amended and approved by the Montgomery County Department of Permitting Services.

12. Development Program

The Applicant must construct the proposed development in accordance with the Development Program. A Development Program shall be reviewed and approved by M-NCPPC Staff prior to approval of the Certified Site Plan. The Development Program must include a phasing schedule as follows:

- a. Street lamps and sidewalks must be installed within six months after street construction is completed. Street tree planting may wait until the next growing season.
- b. On-site amenities including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any building occupancy permit.
- c. The development program must provide phasing for installation of on-site landscaping, lighting, plaza area in front of Building C, and open space in the northeast corner ("grove area").
- d. Community-wide pedestrian pathways, including the offsite improvements on the south side of Stedwick Road, must be completed prior to issuance of the 2nd building permit.
- e. Landscaping associated with each parking lot and building shall be completed as construction of each facility is completed.

- f. Pedestrian pathways and seating areas associated with each facility must be completed as construction of each facility is completed.
- g. The development program must provide phasing of pre-construction meetings, dedications, stormwater management, sediment and erosion control, trip mitigation, and other features.

13. Clearing and Grading

The Applicant is allowed to grade the subject site and relocate utilities prior to Certified Site Plan approval. The arborist's report regarding the grove of trees must be submitted by the Applicant and approved by M-NCPPC prior to any clearing and grading.

14. Certified Site Plan

Prior to Certified Site Plan approval the following revisions must be included and/or information provided, subject to Staff review and approval:

- a. Include the stormwater management concept approval, Development Program, Inspection Schedule, and Site Plan Resolution on the approval or cover sheet.
- b. Add a note to the site plan stating that "M-NCPPC Staff must inspect all tree-save areas and protection devices prior to clearing and grading".
- c. Provide a list of equivalent trees to be approved by Site Plan Review Staff, and add the note "In the event that any of the species listed in the plant schedule are not available, select species from the alternative plant list. Contractor to ensure that the replacements are of equivalent sizes."
- d. Show at-grade pedestrian crosswalk on Stedwick Road to reflect final approval from Montgomery County Department of Transportation.
- e. Modify data table to reflect all development standards enumerated in the Staff report.
- f. Provide details of all light fixtures proposed showing full cut-off devices.
- g. Provide details of new design for the open space in the northeast corner ("grove area") including selection of hardscape materials, if applicable.
- h. Show zone of influence for each building on the plans.
- i. Provide detail of railings proposed on top of the retaining wall.
- j. Label materials of retaining wall to match materials used on building facades.
- k. Minor revisions to landscape and paving details.

BE IT FURTHER RESOLVED, that all site development elements as shown on Montgomery Village Marketplace drawings stamped by the M-NCPPC on August 14, 2009 shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference, and upon consideration

of the entire record, the Montgomery County 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 proposed development conforms to all non-illustrative elements of the Development Plan DPA 02-2 for Montgomery Village, which was originally signed August 14, 2003, and corrected on April 7, 2006. DPA 02-2 shows a total acreage of 2,434.8 acres, of which 100.7 acres are designated as commercial. Under the provisions of the Town Sector zone, a maximum of ten percent commercial acreage is permitted and the development plan indicates that about 4.1 percent is now commercial. The development plan also indicates acreages and percentages for open space and industrial uses, which are unaffected by this proposal.

The three existing properties fall within area II-A of the development plan, called the Village Center. It is possible, and perhaps even likely, that the former Visitor's Center and the vacant parcel were not originally included in the 43.1 acres of commercial property in the Village Center, but these details do not appear on the approved plan. Calculations show that the total commercial acreage including this project falls well below the 43.1 acres approved on the development plan.

The binding elements included on the DPA pertained specifically to the application referred to as Rothbury Square (DPA 02-2) with 203 multi-family dwelling units in three, 3-story apartment buildings; and the CSAAC application (DPA 01-4).

2. *The Site Plan meets all of the requirements of the Town Sector zone and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets all of the requirements of the Town Sector (TS) zone as demonstrated in the project Data Table. This zone does not have specific restrictions on various development standards in order to provide for more flexibility in development. Standards for setbacks, building coverage, and building height are established with this site plan approval and binding on the Applicant.

The Applicant plans to provide 175 parking spaces but is requesting a waiver of 16 spaces (8.4 percent) in order to achieve various site design goals

MCPB No. 09-124
 Site Plan No. 820090060
 Montgomery Village Marketplace
 Page 7

including providing larger open spaces, preserving the grove of existing trees, creating a more pedestrian friendly environment, maximizing building frontage on Stedwick Road, and providing an inter-parcel vehicular connection. In addition, the subject site is located in the retail core of Montgomery Village, which being the first "walkable community" in Montgomery County encourages pedestrian access and circulation. Because of its proximity to other retail uses, it is likely that retail patrons will combine trips while parked at a single location and walk to various establishments. These reasons lessen the need for providing the full quantity of parking and justify a parking waiver of 16 spaces.

Requirements of the Town Sector zone

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the developments standards proposed for approval. The Board finds, based on the aforementioned data table, and other uncontested evidence and testimony of record, that the Application meets all of the applicable requirements of the Town Sector Zone. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

Data Table

Development Standard	Development Standards Approved by the Board and Binding on the Applicant
Gross Tract Area	144,736 SF/ 3.32 acres
- Total TS Tract Area (acres)	2,434.8
- Max. Commercial area ^(a)	3.8% (92.8 acres)
- Max. Industrial area ^(a)	0%
- Min. Open Space ^(a)	28.7% (696.8 acres)
Total Building Area (square feet)	<u>24,868</u>
- Building A (Office/Bank)	3,172
- Building B (Retail/Restaurant)	12,896
- Building C (Retail/Restaurant)	8,800
Max. Building Coverage	17.2%
Min. Green Area (% of lot)	33.7%
	(48,724 SF/ 1.12 acres)
Parking Facility Internal Landscaping (%) (Section 59-E-2.73)	8.5%
	(5,345 SF)

Max. Building Height (feet) (Section 59-C-7.26)	
- Building A (Office/Bank)	40
- Building B (Retail/Restaurant)	40
- Building C (Retail/Restaurant)	40
Min. Building Setbacks from Building Envelope (feet)	
- Side/ Rear	5
Min. Building Setbacks (feet)	
- Public street	10
Total Parking Spaces	175 ^(c)
- Office/Bank (3,172 SF)	
- Retail (10,848 SF)	
- Restaurant (10,848 SF)	
Handicap Spaces	6
Bicycle spaces (59-E-2.3(a)) (@ 1 bike space/20 vehicle spaces)	10
Motorcycle spaces (59-E-2.3(d)) (@2% x total vehicle spaces)	4

^(a) Subject to the Development Plan Amendment (DPA) 02-2

Per Section 59-E-3.1, this application qualifies for a mixed-use parking credit schedule as calculated in the table below:

Land use (min. pkg. Required)	Weekday				Weekend				Nighttime	
	Daytime (6am-6pm)		Evening (6pm-midnight)		Daytime (6am-6pm)		Evening (6pm-midnight)		(midnight-6am)	
Office (9.2)	(100%)	9.2	10%	0.9	10%	0.9	5%	0.5	5%	0.5
General Retail (54.2)	(60%)	32.5	90%	48.8	100%	54.2	70%	37.9	5%	2.7
Restaurant (135.6)	(50%)	67.8	100%	135.6	100%	135.6	100%	135.6	10%	13.6
All other uses (0)										
Total (200)		110		185		*191		174		17

^(c) The Applicant has submitted a Parking Waiver Request of 8.4 percent of the required number of spaces.

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

a. Buildings and Structures

The location of the proposed buildings relate well to the adjacent streets and the surrounding development in Montgomery Village by having frontage on the streets and providing uses that complement existing retail and restaurant uses in the Village Center. Building A (Bank) and Building C (retail/restaurant uses) are

oriented towards Stedwick Road which will help to activate this street and create a visual edge to the road. The buildings could not be moved closer to the road because of various utility easements positioned in an unusual curved configuration that accommodates the pedestrian tunnel underneath the road. Assuming that the tunnel will be closed per the abandonment case AB 724, the existing utility easements will still need to remain in the current configuration. Building A holds the corner of the site at Stedwick Road and the private drive leading to the core shopping area of Montgomery Village. Building B is located in the rear of the site at the Northwest corner. This building with its associated head-in parking fronts onto an internal road connecting to the adjacent parcel to the east.

The main structures proposed are a drive-thru in the rear of Building A, which minimizes its visibility from Stedwick Road, and a retaining wall that will be built as an extension of Building B. The wall has varying heights ranging from 6 and 13 feet and will accommodate the grade change between the subject site and the areas to the north. The locations of all buildings and structures are safe, adequate, and efficient.

b. Open Spaces

The application proposes three distinct open spaces, two of which are associated with Buildings A and C respectively, and the third, located in the northeast corner of the site, where an existing grove of trees is currently located. The landscaped plaza between Building C and Stedwick Road is the main gathering space with benches, tables and chairs, and will function as a transition area between the uses within Building C and the pedestrian traffic along Stedwick Road. This space will be activated by the retail/restaurant uses within Building C, and will draw pedestrians into the site from Stedwick Road.

The open space between the bank and Stedwick Road is mostly landscaped and has a small paved area with two benches at the corner. This area will function mostly as a visual amenity that will complement other landscaped areas on site.

The third open space retrofits an existing, although degraded, open space with a grove of mature trees. Because the health of these trees is questionable, the Applicant is required to consult with a certified arborist to assess the condition of the trees and make recommendations on whether they should be saved or removed. If these recommendations include removal of less than half of the existing trees then the Applicant would be required to replace them in kind with the same species. If the recommendations include removal of more than half of the existing trees then the Applicant would be required to replace them with

Yoshino cherries or Golden Rain trees, and potentially redesign the space. The open spaces provided are safe, adequate, and efficient.

c. Landscaping and Lighting

The landscape plan meets the internal landscaping requirements for parking facilities, enhances the Stedwick Road frontage, and beautifies the open spaces proposed. The plan consists of street trees along the perimeter of the property, shade trees in the parking lot islands, flowering trees in the open spaces, and a variety of evergreen and deciduous shrubs around the perimeter of the parking areas. The proposed landscaping helps to screen views of the parking areas from Stedwick Road and provides an edge for open spaces especially around the seating areas. The landscaping is adequate, safe and efficient.

The lighting plan consists of pole mounted light fixtures with a 20-foot height located on the perimeter of the parking lot and on some parking lot islands, and along the private driveway leading to the northern shopping areas. The plan also includes 10-foot tall light fixtures to add pedestrian scale, especially in the plaza and main walkways. The proposed lighting provides safe, adequate and efficient illumination for the retail, restaurant, and bank patrons.

d. Recreation Facilities

The application is not subject to the Recreation Guidelines as this is not a residential project.

e. Vehicular and Pedestrian Circulation

The pedestrian circulation system consists of sidewalks and crossing areas connected to open spaces, which integrate this site well with the adjoining retail areas and surrounding communities. Pedestrians can access this site through the sidewalks along the southern and western frontages of the site. The pedestrian tunnel under Stedwick Road is being recommended for abandonment and, if granted, will be permanently closed. As a condition of the abandonment, the Applicant proposes an at-grade mid-block crossing to provide a safe location for pedestrians to cross. The final design and improvements within the public right-of-way, including final location of the mid-block crossing, striping, bump outs and any bus layover areas, will be determined by DOT after the record has been closed for the hearing regarding the abandonment of the pedestrian underpass/tunnel beneath Stedwick Road (Case AB727). The Applicant and Planning Board voiced their concern for the location of bus layover areas in front of the site, specifically as they may block views into the site, obstruct proposed outdoor uses, and create potential conflicts with pedestrians. Internally, east-west

pedestrian circulation is accommodated in front of retail Building B, extending and connecting to the sidewalk system on the adjoining property to the east. North-south pedestrian circulation is accommodated on either side of Building C via two connector sidewalks. Specialty pavers are used throughout the pedestrian areas to define spaces, to add interest and to complement materials used in the architecture of the buildings. Additionally, unit pavers are utilized at various crossing locations, which act as a traffic calming measure.

Two-way vehicular access to the site is limited to one entrance from the private drive, which then extends through the site and connects to the adjoining property to the east. This inter-parcel connector reduces the number of access points from Stedwick Road and promotes a more pedestrian friendly environment. Various parking areas, with a total of 175 spaces, are provided to the north and south of this inter-parcel connector.

In addition, the bank drive-thru has a separate one-way access point to the private drive, which allows vehicles to quickly exit the site thus minimizing potential vehicular conflicts within the parking lot. The pedestrian and vehicular circulation systems are safe, adequate, and efficient.

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

The structures and uses proposed are compatible with other uses and site plans, and with existing adjacent development. The uses proposed include retail, restaurant and bank, which are fully compatible with the adjoining commercial uses in Montgomery Village, and contribute to the notion of a self-sufficient town as required by the zone. These uses add convenience and amenity to the surrounding residential communities by providing services and goods within close proximity. The three buildings proposed are generally compatible with the surrounding commercial buildings in terms of height and setbacks, but they will be better integrated in the site given the proposed landscaping and the various open spaces provided. The building facades, with various materials and architectural treatments, combined with varying building rooflines, add interest, distinctiveness and character to this 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 Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved by Environmental Planning Staff on December 17, 2007. There are no streams, wetlands, forests or associated buffers onsite. A Forest Conservation

Plan Exemption (#42008123E) was approved on February 7, 2008. The subject site qualified for a forest conservation exemption because it received development plan and site plan approvals prior to July 1, 1992, and the current proposal is not removing any additional square feet of forest.

The proposed storm water management concept approved on April 14, 2008, and reconfirmed on June 26, 2009, consists of on-site channel protection measures via the existing pond. Water quality control will be provided via the use of Aqua Filters and hydrodynamic pretreatment structures. Recharge is not required with this redevelopment site. As previously stated in this report, approval is contingent upon the Applicant establishing an agreement with the Montgomery Village Foundation to use an existing stormwater management pond facility south of the Property.

Protection of on-site trees in the northeast corner of the site will be evaluated by the Applicants' arborist with recommendations for preservation during construction activities or possible replacement.

BE IT FURTHER RESOLVED, that this resolution constitutes the written opinion of the Board and 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 the date of this resolution is OCT 21 2009 (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 Wells-Harley, seconded by

41464 068 A

MCPB No. 09-124
Site Plan No. 820090060
Montgomery Village Marketplace
Page 13

Commissioner Presley, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, October 8, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) LEK 41464, p. 0068a, MSA_CE63_41421. Date available 04/18/2011. Printed 09/09/2022.



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 09-124
Site Plan No. 820090060
Project Name: Montgomery Village Marketplace
Date of Hearing: September 17, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review site plan applications; and

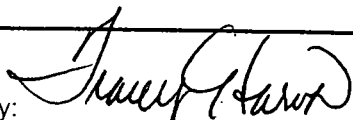
WHEREAS, on October 28, 2008, JDC Village Development, LLC ("Applicant"), filed an application for approval of a site plan for a 3,172 square foot bank with three drive thru lanes, 21,696 square feet of retail and restaurant uses in two buildings and a parking waiver of approximately 8 percent ("Site Plan" or "Plan") on 3.32 acres of Town-Sector-zoned land, located on Stedwick Road approximately 410 feet west of Montgomery Village Avenue ("Property" or "Subject Property"); and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820090060, Montgomery Village Marketplace (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated September 4, 2009, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on September 17, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

Approved as to
Legal Sufficiency:



M-NCPPC Legal Department

MCPB No. 09-124
Site Plan No. 820090060
Montgomery Village Marketplace
Page 2

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on September 17, 2009 the Planning Board approved the Application subject to conditions on the motion of Commissioner Alfandre; seconded by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Alfandre, Hanson and Wells-Harley voting in favor, and Commissioners Cryor and Presley being absent.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 820090060 for a 3,172 square foot bank with three drive thru lanes, a 12,896 square foot retail/restaurant building, an 8,800 square foot retail/restaurant building, and a parking waiver of approximately 8 percent, on 3.32 gross acres in the Town-Sector zone, subject to the following conditions:

1. Development Plan Conformance

The proposed development must comply with the binding elements of the Development Plan Amendment DPA 02-2 as approved by the District Council on July 1, 2003, and later corrected on April 7, 2006.

2. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for Preliminary Plan No. 120090090.

3. Site Plan

Approval of this plan voids approval of Site Plan No. 819810150 and Site Plan No. 819860270.

4. Abandonment AB-724

The proposed development must comply with the conditions of approval for the Abandonment Case AB-724 in reference to the closure of the pedestrian tunnel under Stedwick Road.

5. LEED Certification

The Applicant must achieve a LEED (Leadership in Energy and Environmental Design) Certified Rating Certification at a minimum. The Applicant must make good faith efforts to achieve a LEED Silver rating. Before the issuance of any use and occupancy certificate, the Applicant must inform M-NCPPC Staff of the LEED Certification Level for which they are applying. If this level is less than a Silver rating, before the issuance of the final use and occupancy certificate the Applicant must provide to Staff a written report, for public record purposes only, from the Applicant's LEED consultant analyzing the feasibility of achieving a LEED-Silver rating and a report from a LEED-Accredited Professional identifying the minimum

additional improvements required to achieve the LEED Silver rating, including their associated extra cost.

6. Architecture

The final design of the building façade must substantially conform to the architectural renderings received by MNCPPC on August 10, 2009, including fenestration, rooflines and materials labeled.

7. Pedestrian Circulation

- a. Provide an at-grade pedestrian crosswalk on Stedwick Road, subject to the final approval of the Montgomery County Department of Transportation.
- b. Provide pedestrian access from the south side of Stedwick Road to the future crosswalk on Stedwick Road, subject to the final approval of the Heron's Cove Condominium Association, the Center Court Condominium Association, and the Montgomery Village Foundation.

8. Landscaping

- a. The Applicant must hire a certified arborist to assess the condition of the existing trees at northeast corner of the site, and make recommendations on whether they should be saved or removed. These recommendations would be the basis for any future action regarding the existing grove of trees, including the re-design of the plaza area and replacement of trees.
- b. Replace street tree species (Chinese elm) with willow oaks, subject to final approval by the Commercial Architecture Review Committee (CARC) of the Montgomery Village Foundation.
- c. If any of the five mature pin oaks on the Stedwick Road right-of-way, at the intersection with Montgomery Village Avenue, are damaged or lost during the addition of the second right turn lane, the Applicant must replace them in number with 2 ½-3" caliper Willow oaks within the Stedwick Road right-of-way, subject to MC-DPS and/or MCDOT approval.

9. Lighting

- a. On-site street and parking lot down lighting fixtures must be full cut-off fixtures;
- b. Deflectors must be installed on all up-lighting fixtures causing potential glare or excess illumination;
- c. Illumination levels, excluding streetscape light fixtures, must not exceed 0.5 footcandles (fc) at any property line abutting county roads.
- d. The height of the light poles shall not exceed 20 feet excluding the mounting base.

10. Performance Bond and Agreement

The Applicant is subject to the following provisions for surety as described in Section 59-D-3.5 of the Montgomery County Zoning Ordinance and Site Plan approval:

- a. The Applicant must provide a cost estimate from the landscape architect or landscape contractor indicating the installed costs of site plan elements such as but not limited to landscaping, lighting, recreation facilities, special paving, art work and site furnishings. The cost estimate should include a 10% inflation factor for the site plan elements to account for changes in price and materials and modifications to the approved plans.
- b. The Applicant must submit a Performance Bond or other satisfactory form of surety as approved by M-NCPPC to cover the installed costs of site plan elements such as but not limited to landscaping, lighting, recreation facilities, special paving, art work and site furnishings as shown and described in the cost estimate.
- c. The Applicant must execute an agreement for site plan elements in conjunction with the performance bond indicating the Applicant's agreement to install, construct and maintain the site plan elements.
- d. The Bond must be submitted along with the agreement prior to the release of the first building permit.

11. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated April 14, 2008, and later reconfirmed on June 26, 2009, unless otherwise amended and approved by the Montgomery County Department of Permitting Services.

12. Development Program

The Applicant must construct the proposed development in accordance with the Development Program. A Development Program shall be reviewed and approved by M-NCPPC Staff prior to approval of the Certified Site Plan. The Development Program must include a phasing schedule as follows:

- a. Street lamps and sidewalks must be installed within six months after street construction is completed. Street tree planting may wait until the next growing season.
- b. On-site amenities including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any building occupancy permit.
- c. The development program must provide phasing for installation of on-site landscaping, lighting, plaza area in front of Building C, and open space in the northeast corner ("grove area").
- d. Community-wide pedestrian pathways, including the offsite improvements on the south side of Stedwick Road, must be completed prior to issuance of the 2nd building permit.
- e. Landscaping associated with each parking lot and building shall be completed as construction of each facility is completed.

- f. Pedestrian pathways and seating areas associated with each facility must be completed as construction of each facility is completed.
- g. The development program must provide phasing of pre-construction meetings, dedications, stormwater management, sediment and erosion control, trip mitigation, and other features.

13. Clearing and Grading

The Applicant is allowed to grade the subject site and relocate utilities prior to Certified Site Plan approval. The arborist's report regarding the grove of trees must be submitted by the Applicant and approved by M-NCPPC prior to any clearing and grading.

14. Certified Site Plan

Prior to Certified Site Plan approval the following revisions must be included and/or information provided, subject to Staff review and approval:

- a. Include the stormwater management concept approval, Development Program, Inspection Schedule, and Site Plan Resolution on the approval or cover sheet.
- b. Add a note to the site plan stating that "M-NCPPC Staff must inspect all tree-save areas and protection devices prior to clearing and grading".
- c. Provide a list of equivalent trees to be approved by Site Plan Review Staff, and add the note "In the event that any of the species listed in the plant schedule are not available, select species from the alternative plant list. Contractor to ensure that the replacements are of equivalent sizes."
- d. Show at-grade pedestrian crosswalk on Stedwick Road to reflect final approval from Montgomery County Department of Transportation.
- e. Modify data table to reflect all development standards enumerated in the Staff report.
- f. Provide details of all light fixtures proposed showing full cut-off devices.
- g. Provide details of new design for the open space in the northeast corner ("grove area") including selection of hardscape materials, if applicable.
- h. Show zone of influence for each building on the plans.
- i. Provide detail of railings proposed on top of the retaining wall.
- j. Label materials of retaining wall to match materials used on building facades.
- k. Minor revisions to landscape and paving details.

BE IT FURTHER RESOLVED, that all site development elements as shown on Montgomery Village Marketplace drawings stamped by the M-NCPPC on August 14, 2009 shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference, and upon consideration

of the entire record, the Montgomery County 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 proposed development conforms to all non-illustrative elements of the Development Plan DPA 02-2 for Montgomery Village, which was originally signed August 14, 2003, and corrected on April 7, 2006. DPA 02-2 shows a total acreage of 2,434.8 acres, of which 100.7 acres are designated as commercial. Under the provisions of the Town Sector zone, a maximum of ten percent commercial acreage is permitted and the development plan indicates that about 4.1 percent is now commercial. The development plan also indicates acreages and percentages for open space and industrial uses, which are unaffected by this proposal.

The three existing properties fall within area II-A of the development plan, called the Village Center. It is possible, and perhaps even likely, that the former Visitor's Center and the vacant parcel were not originally included in the 43.1 acres of commercial property in the Village Center, but these details do not appear on the approved plan. Calculations show that the total commercial acreage including this project falls well below the 43.1 acres approved on the development plan.

The binding elements included on the DPA pertained specifically to the application referred to as Rothbury Square (DPA 02-2) with 203 multi-family dwelling units in three, 3-story apartment buildings; and the CSAAC application (DPA 01-4).

2. *The Site Plan meets all of the requirements of the Town Sector zone and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets all of the requirements of the Town Sector (TS) zone as demonstrated in the project Data Table. This zone does not have specific restrictions on various development standards in order to provide for more flexibility in development. Standards for setbacks, building coverage, and building height are established with this site plan approval and binding on the Applicant.

The Applicant plans to provide 175 parking spaces but is requesting a waiver of 16 spaces (8.4 percent) in order to achieve various site design goals

MCPB No. 09-124
 Site Plan No. 820090060
 Montgomery Village Marketplace
 Page 7

including providing larger open spaces, preserving the grove of existing trees, creating a more pedestrian friendly environment, maximizing building frontage on Stedwick Road, and providing an inter-parcel vehicular connection. In addition, the subject site is located in the retail core of Montgomery Village, which being the first "walkable community" in Montgomery County encourages pedestrian access and circulation. Because of its proximity to other retail uses, it is likely that retail patrons will combine trips while parked at a single location and walk to various establishments. These reasons lessen the need for providing the full quantity of parking and justify a parking waiver of 16 spaces.

Requirements of the Town Sector zone

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the developments standards proposed for approval. The Board finds, based on the aforementioned data table, and other uncontested evidence and testimony of record, that the Application meets all of the applicable requirements of the Town Sector Zone. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

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- Min. Open Space ^(a)	28.7% (696.8 acres)
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- Building C (Retail/Restaurant)	8,800
Max. Building Coverage	17.2%
Min. Green Area (% of lot)	33.7%
	(48,724 SF/ 1.12 acres)
Parking Facility Internal Landscaping (%) (Section 59-E-2.73)	8.5%
	(5,345 SF)

Max. Building Height (feet) (Section 59-C-7.26)	
- Building A (Office/Bank)	40
- Building B (Retail/Restaurant)	40
- Building C (Retail/Restaurant)	40
Min. Building Setbacks from Building Envelope (feet)	
- Side/ Rear	5
Min. Building Setbacks (feet)	
- Public street	10
Total Parking Spaces	175 ^(c)
- Office/Bank (3,172 SF)	
- Retail (10,848 SF)	
- Restaurant (10,848 SF)	
Handicap Spaces	6
Bicycle spaces (59-E-2.3(a)) (@ 1 bike space/20 vehicle spaces)	10
Motorcycle spaces (59-E-2.3(d)) (@2% x total vehicle spaces)	4

^(a) Subject to the Development Plan Amendment (DPA) 02-2

Per Section 59-E-3.1, this application qualifies for a mixed-use parking credit schedule as calculated in the table below:

Land use (min. pkg. Required)	Weekday				Weekend				Nighttime	
	Daytime (6am-6pm)		Evening (6pm-midnight)		Daytime (6am-6pm)		Evening (6pm-midnight)		(midnight-6am)	
Office (9.2)	(100%)	9.2	10%	0.9	10%	0.9	5%	0.5	5%	0.5
General Retail (54.2)	(60%)	32.5	90%	48.8	100%	54.2	70%	37.9	5%	2.7
Restaurant (135.6)	(50%)	67.8	100%	135.6	100%	135.6	100%	135.6	10%	13.6
All other uses (0)										
Total (200)		110		185		*191		174		17

^(c) The Applicant has submitted a Parking Waiver Request of 8.4 percent of the required number of spaces.

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

a. Buildings and Structures

The location of the proposed buildings relate well to the adjacent streets and the surrounding development in Montgomery Village by having frontage on the streets and providing uses that complement existing retail and restaurant uses in the Village Center. Building A (Bank) and Building C (retail/restaurant uses) are

oriented towards Stedwick Road which will help to activate this street and create a visual edge to the road. The buildings could not be moved closer to the road because of various utility easements positioned in an unusual curved configuration that accommodates the pedestrian tunnel underneath the road. Assuming that the tunnel will be closed per the abandonment case AB 724, the existing utility easements will still need to remain in the current configuration. Building A holds the corner of the site at Stedwick Road and the private drive leading to the core shopping area of Montgomery Village. Building B is located in the rear of the site at the Northwest corner. This building with its associated head-in parking fronts onto an internal road connecting to the adjacent parcel to the east.

The main structures proposed are a drive-thru in the rear of Building A, which minimizes its visibility from Stedwick Road, and a retaining wall that will be built as an extension of Building B. The wall has varying heights ranging from 6 and 13 feet and will accommodate the grade change between the subject site and the areas to the north. The locations of all buildings and structures are safe, adequate, and efficient.

b. Open Spaces

The application proposes three distinct open spaces, two of which are associated with Buildings A and C respectively, and the third, located in the northeast corner of the site, where an existing grove of trees is currently located. The landscaped plaza between Building C and Stedwick Road is the main gathering space with benches, tables and chairs, and will function as a transition area between the uses within Building C and the pedestrian traffic along Stedwick Road. This space will be activated by the retail/restaurant uses within Building C, and will draw pedestrians into the site from Stedwick Road.

The open space between the bank and Stedwick Road is mostly landscaped and has a small paved area with two benches at the corner. This area will function mostly as a visual amenity that will complement other landscaped areas on site.

The third open space retrofits an existing, although degraded, open space with a grove of mature trees. Because the health of these trees is questionable, the Applicant is required to consult with a certified arborist to assess the condition of the trees and make recommendations on whether they should be saved or removed. If these recommendations include removal of less than half of the existing trees then the Applicant would be required to replace them in kind with the same species. If the recommendations include removal of more than half of the existing trees then the Applicant would be required to replace them with

Yoshino cherries or Golden Rain trees, and potentially redesign the space. The open spaces provided are safe, adequate, and efficient.

c. Landscaping and Lighting

The landscape plan meets the internal landscaping requirements for parking facilities, enhances the Stedwick Road frontage, and beautifies the open spaces proposed. The plan consists of street trees along the perimeter of the property, shade trees in the parking lot islands, flowering trees in the open spaces, and a variety of evergreen and deciduous shrubs around the perimeter of the parking areas. The proposed landscaping helps to screen views of the parking areas from Stedwick Road and provides an edge for open spaces especially around the seating areas. The landscaping is adequate, safe and efficient.

The lighting plan consists of pole mounted light fixtures with a 20-foot height located on the perimeter of the parking lot and on some parking lot islands, and along the private driveway leading to the northern shopping areas. The plan also includes 10-foot tall light fixtures to add pedestrian scale, especially in the plaza and main walkways. The proposed lighting provides safe, adequate and efficient illumination for the retail, restaurant, and bank patrons.

d. Recreation Facilities

The application is not subject to the Recreation Guidelines as this is not a residential project.

e. Vehicular and Pedestrian Circulation

The pedestrian circulation system consists of sidewalks and crossing areas connected to open spaces, which integrate this site well with the adjoining retail areas and surrounding communities. Pedestrians can access this site through the sidewalks along the southern and western frontages of the site. The pedestrian tunnel under Stedwick Road is being recommended for abandonment and, if granted, will be permanently closed. As a condition of the abandonment, the Applicant proposes an at-grade mid-block crossing to provide a safe location for pedestrians to cross. The final design and improvements within the public right-of-way, including final location of the mid-block crossing, striping, bump outs and any bus layover areas, will be determined by DOT after the record has been closed for the hearing regarding the abandonment of the pedestrian underpass/tunnel beneath Stedwick Road (Case AB727). The Applicant and Planning Board voiced their concern for the location of bus layover areas in front of the site, specifically as they may block views into the site, obstruct proposed outdoor uses, and create potential conflicts with pedestrians. Internally, east-west

pedestrian circulation is accommodated in front of retail Building B, extending and connecting to the sidewalk system on the adjoining property to the east. North-south pedestrian circulation is accommodated on either side of Building C via two connector sidewalks. Specialty pavers are used throughout the pedestrian areas to define spaces, to add interest and to complement materials used in the architecture of the buildings. Additionally, unit pavers are utilized at various crossing locations, which act as a traffic calming measure.

Two-way vehicular access to the site is limited to one entrance from the private drive, which then extends through the site and connects to the adjoining property to the east. This inter-parcel connector reduces the number of access points from Stedwick Road and promotes a more pedestrian friendly environment. Various parking areas, with a total of 175 spaces, are provided to the north and south of this inter-parcel connector.

In addition, the bank drive-thru has a separate one-way access point to the private drive, which allows vehicles to quickly exit the site thus minimizing potential vehicular conflicts within the parking lot. The pedestrian and vehicular circulation systems are safe, adequate, and efficient.

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

The structures and uses proposed are compatible with other uses and site plans, and with existing adjacent development. The uses proposed include retail, restaurant and bank, which are fully compatible with the adjoining commercial uses in Montgomery Village, and contribute to the notion of a self-sufficient town as required by the zone. These uses add convenience and amenity to the surrounding residential communities by providing services and goods within close proximity. The three buildings proposed are generally compatible with the surrounding commercial buildings in terms of height and setbacks, but they will be better integrated in the site given the proposed landscaping and the various open spaces provided. The building facades, with various materials and architectural treatments, combined with varying building rooflines, add interest, distinctiveness and character to this 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 Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved by Environmental Planning Staff on December 17, 2007. There are no streams, wetlands, forests or associated buffers onsite. A Forest Conservation

Plan Exemption (#42008123E) was approved on February 7, 2008. The subject site qualified for a forest conservation exemption because it received development plan and site plan approvals prior to July 1, 1992, and the current proposal is not removing any additional square feet of forest.

The proposed storm water management concept approved on April 14, 2008, and reconfirmed on June 26, 2009, consists of on-site channel protection measures via the existing pond. Water quality control will be provided via the use of Aqua Filters and hydrodynamic pretreatment structures. Recharge is not required with this redevelopment site. As previously stated in this report, approval is contingent upon the Applicant establishing an agreement with the Montgomery Village Foundation to use an existing stormwater management pond facility south of the Property.

Protection of on-site trees in the northeast corner of the site will be evaluated by the Applicants' arborist with recommendations for preservation during construction activities or possible replacement.

BE IT FURTHER RESOLVED, that this resolution constitutes the written opinion of the Board and 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 the date of this resolution is OCT 21 2009 (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).

* * * * *

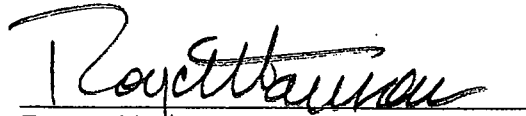
CERTIFICATION

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 Wells-Harley, seconded by

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MCPB No. 09-124
Site Plan No. 820090060
Montgomery Village Marketplace
Page 13

Commissioner Presley, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, October 8, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) LEK 41464, p. 0068a, MSA_CE63_41421. Date available 04/18/2011. Printed 09/09/2022.