



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

MCPB
ITEM #
7/10/08



MEMORANDUM

DATE: June 25, 2008

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

Catherine Conlon, Supervisor *CC*
Development Review Division

FROM: Richard A. Weaver, Coordinator (301) 495-4544 *RW*
Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision, Consent Item

APPLYING FOR: Request to revise condition No. 6 pertaining to construction of an off-site shared use bike path.

PROJECT NAME: Burtonsville Shopping Center

CASE NO. 1-04109A

REVIEW BASIS: Pursuant to Chapter 50, the Subdivision Regulations and Chapter 59, the Zoning Ordinance

ZONE: C-2

LOCATION: In the Northwest Quadrant of the intersection of Columbia Pike (US 29) aka Burtonsville Boulevard and Spencerville Road (MD 198)

MASTER PLAN: Fairland

APPLICANT: BMC Property Group

ENGINEER: LSA

HEARING DATE: July 10, 2008

Staff Recommendation: Approval to revise condition No. 6 of Corrected Opinion dated March 21, 2006 for Burtonsville Shopping Center, as follows:

- 6) Construct an eight-foot-wide shared-use path and an eight-foot-wide tree panel on US 29A* (Burtonsville Boulevard) along the entire property frontage. ~~Extend this shared-use path and tree panel further north from the property line to the PEPCO power line right-of-way (or to the Patuxent Trail [PB-41]).~~ The shared-use path shall be offset two feet from the property line.

* Note that the letter "A" has been added to this portion of US 29 since the opening of the Burtonsville bypass

SITE DESCRIPTION

The 27.15-acre property is located in the northwest quadrant of the intersection of Columbia Pike (US 29A) and Spencerville Road (MD 198). The majority of the site is unrecorded; the portion in the immediate corner of the US 29A/MD 198 intersection is recorded by plat. The eastern portion of the site is occupied by the various retail uses of the Burtonsville Shopping Center including an expansive surface parking lot. The property is within the Patuxent River watershed (Use I waters), and approximately 14.37 acres is in forest cover. A small stream traverses the northwestern portion of the property. A severely eroded gully lies along part of the property line that is adjacent to the existing elementary school. The gully connects into a stream immediately offsite.

PREVIOUS PLANNING BOARD ACTION

The preliminary plan for this application (120041090) was approved by the Planning Board at a public hearing on July 28, 2005; the Corrected Opinion was mailed on March 21, 2006. The property is zoned C-2 and is not required to undergo Site Plan review. At the July 28, 2005 hearing, the Planning Board considered the staff report with revised conditions and heard testimony from the applicant and interested citizens. The Board approved the preliminary plan application based on a finding that the application substantially conformed to the Fairland Master Plan, complied with Chapter 50 of the County Code (Subdivision Regulations) and complied with Chapter 59 of the County Code (Zoning Ordinance). The application met all applicable requirements of the Forest Conservation Law, Chapter 22A, and the Planning Board also made the necessary findings for Adequate Public Facilities.

A condition of that approval (Corrected Opinion Condition #6) required the applicant to extend an eight-foot bike path along the property's frontage on the west side of US 29A and to the north, off-site, to the existing PEPCO right-of-way, where it could connect to a trail accessing the Patuxent River system (PB-14). The off-site length of this path, shown in the aerial photograph below, would be approximately 1,200 feet and was anticipated to be located along the side of the pavement in the SHA right-of-way for US 29A.



DISCUSSION OF THE REQUESTED AMENDMENT

By letter dated May 14, 2008 from the applicant's legal counsel (Attachment A), the applicant requests elimination of the requirement for the off-site extension of the shared use path as conditioned in the Planning Board Opinion. The reason for this request is that the applicant is not able to obtain the necessary permits to construct the path from the State Highway Administration (SHA). In a letter dated April 29, 2008, SHA states that they will only support construction of the bike path adjacent to US 29A within the applicant's property. SHA does not support location of the off-site bike path in the right-of-way for US 29A north of the site as required by the condition of approval. The lack of support is because there is not adequate right-of-way to accommodate the necessary grading for the path and the path itself along the side of the pavement. The applicant has demonstrated to SHA that to keep the grading in the right-of-way, and portions of the path off private properties, the 8ft. bike path would need to be located, for the most part, within the pavement of US 29A.¹ The applicant asked for approval of the concept for such an on-street path, however, SHA denied that request.

The purpose of the off-site path was to connect the intersection of US 29A and Spencerville Road (MD 198) to a logical point north of the subject property, i.e., the PEPCO right-of-way (Patuxent Trail PB-14). The off-site trail was not required to meet on-site pedestrian circulation and was, therefore, not a requirement for adequate public facilities. Rather, it was deemed to be a reasonable request for an off-site extension that would connect to the existing bike path in the PEPCO right-of-way. The applicant accepted the condition, but is not able to secure the necessary permit to construct the path from SHA because of the lack of right-of-way to accommodate the necessary grading and alignment.

CONCLUSION:

While this would be a desirable bikeway connection, staff acknowledges that the applicant is in a difficult position. Intervening properties that would be required for the path alignment are in private ownership and the applicant cannot be compelled to acquire additional right-of-way. SHA will not support use of the pavement for the bike path. Therefore, staff supports amending the condition of approval to strike the requirement for off-site construction. The applicant will continue to be required to construct the bike path along their frontage as outlined in the revised condition above.

Attachments:

Attachment A - Applicant's Written Amendment Request

¹ Pursuant to Sec. 50-29(n), the Planning Board cannot require applicants to obtain right-of-way for off-site sidewalk improvements

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Maryland and D.C. except as noted:
⁺ Virginia also [†] D.C. only
^{*} Maryland only [‡] VA only
[•] D.C. and VA only
[†] MD and VA only

Writer's Direct Dial Number:

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tdugan@srgpe.com

May 14, 2008

Ms. Catherine Conlon
Development Review Division
Montgomery County Planning
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Burtonsville Shopping Center
Preliminary Plan No. 1-04109 (Corrected Opinion Issued March 21, 2006)
Amend Preliminary Plan Condition No. 7, As Recommended By SHA

Dear Ms. Conlon:

We represent BMC Property Group, the developer of the Burtonsville Shopping Center. Thank you for sending a completed form "Plan Submittal Requirements For Minor, Consent Agenda and Limited Plan Amendments" which indicates that the following request qualifies for a consent agenda amendment under Section 8.D. Exhibit 1. We confirm our earlier explanation below.

We respectfully requested to be scheduled for the Planning Board's Consent Agenda so that the Planning Board may approve an amendment to Preliminary Plan Condition No. 7. The amendment is suitable for the Board's Consent Agenda. Preliminary Plan Condition No. 7 should be amended, and approved through the Board's Consent Agenda process,¹ as follows:

Original Condition:

Construct an eight-foot-wide shared-use path and an eight-foot-wide tree panel on US 29 (Burtonsville Boulevard) along the entire property frontage. *Extend this shared-use path and tree panel*

¹ Board of Appeals Rules of Procedure 4.13; Manual of Development Review Procedures for Montgomery County, Section 8.D.

further north from the property line to the PEPCO power line right-of-way (or to the Patuxent Trail [PB-41]). The shared use path shall be offset two feet from the property line.

(Emphasis added.)

Amended Condition:

Construct an eight-foot-wide shared-use path and an eight-foot-wide tree panel on US 29A (Burtonsville Boulevard) along the entire property frontage. The shared use path shall be offset two feet from the property line.

The amendment would eliminate the Condition's second sentence and add the letter "A" to "US 29" to properly reflect SHA's current designation for the roadway.

SHA recommends amending Condition No. 7, as evidenced by its April 29, 2008 letter, attached as Exhibit 2, which reads in part as follows:

SHA would like to reiterate its review and position on the proposed joint-use (bicycle and pedestrian) path that is a part of the planned Burtonsville Shopping Center development. As a result of the field meeting and subsequent correspondence, we would like to clarify comments we provided in the April 8, 2008 letter [Attached as Exhibit 3]:

- SHA will ask that the proposed joint use pathway be built along the applicant's property frontage only. It would begin on the west side of US 29A (Old Columbia Pike) at the applicant's southern property line and run along US 29A. The change in the limits of the bike path would constitute a change from the Montgomery County Planning Board Opinion for approval of the project. We apologize for the mistaken reference to the east side of US 29A in our previous letter.

As recommended by SHA, Condition No. 7 would no longer include, "Extend this shared-use path and tree panel further north from the property line to the PEPCO power line right-of-way (or to the Patuxent Trail [PB-41])."

The amendment is suitable for the Consent Agenda. Under the Planning Board's Rules of Procedure, at Section 4.13.1, "Consent Agenda," "Scope of Rule," it reads as follows:

4.13.1 Scope of Rule. The Planning Board may, without holding a public hearing, take any of the following actions in a Consent Agenda:

- a. approve, with or without conditions, an Amendment to a previously approved plan if the proposed Amendment and any conditions are supported by Planning Staff and not opposed by any Party;

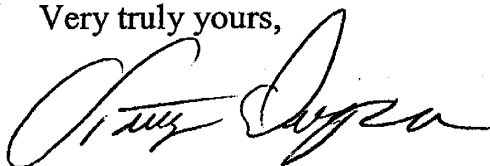
...

4.13.2 Notice of Consent Agenda. The Planning Staff must provide written notice of any item on a Consent Agenda, except Resolutions, by website or other publication readily available to the public at least 10 days before the Board meeting during which the Consent Agenda is scheduled.

We understand that the M-NCPPC Staff supports amending the Planning Board Resolution. We also informed Mr. Stuart Rochester, who is the Chair of the Fairland Master Plan Citizens Advisory Committee and a Party, and understand that he does not oppose the amendment. Thus, we expect that the item would be unopposed; however, that conclusion will be resolved through the process.

Please call with any comments, questions and instructions. Thank you.

Very truly yours,



Timothy Dugan

Enclosures

cc: Mr. Christopher Jones
Mr. Stephen Tawes

Exhibits	Description
1.	Copy of Signed Checklist for Plan Submittal Requirements For Minor, Consent Agenda and Limited Plan Amendments
2.	SHA's April 29, 2008 letter recommending amending Condition No. 7
3.	SHA's April 8, 2008 letter, superseded by SHA's April 29, 2008 letter

EXHIBIT 1

**Copy of Signed Checklist for Plan Submittal Requirements For Minor, Consent Agenda
and Limited Plan Amendments**



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**PLAN SUBMITTAL REQUIREMENTS FOR
MINOR, CONSENT AGENDA AND LIMITED PLAN AMENDMENTS¹**

PLAN NAME: Burtonsville Shopping Center PLAN NUMBER: 120041090
APPLICANT: BMC Property Group - represented by Tim Dugan

The following determination has been made concerning the Applicant's request to amend of the above-referenced plan for the following site plan elements:

amend condition #7 to eliminate an off-site bikeway requirement

CHECKLIST

<u>ITEM</u>	<u>QTY.</u>
<input checked="" type="checkbox"/> COMPLETE APPLICATION	1
<input checked="" type="checkbox"/> FEE SCHEDULE & FEE \$ <u>500.00</u>	1
<input type="checkbox"/> PREAPPLICATION MEETING WITH DRD INTAKE	
SECTION REQUIRED	1
<input checked="" type="checkbox"/> ORIGINAL CERTIFIED PLAN WITH OPINION/RESOLUTION	1
<input checked="" type="checkbox"/> LETTERS OF EXPLANATION DETAILING CHANGES BEING REQUESTED	5
<input checked="" type="checkbox"/> APPLICATION NOTICE BY APPLICANT	1
<input checked="" type="checkbox"/> HEARING NOTICE BY DRD STAFF	1
<input checked="" type="checkbox"/> ADJACENT PROPERTY OWNER LIST + HOA & Civics PAPER COPY	1
SETS OF LABELS	2
<input checked="" type="checkbox"/> SETS OF AMENDED PLANS (REDLINED)	53
<input checked="" type="checkbox"/> SETS OF AMENDMENT (BLACK & WHITE) WITH NEW TITLE INFORMATION, LIST OF AMENDMENT ITEMS ON PLAN-ENTIRE SET	53
<input checked="" type="checkbox"/> ALL PLANS SIGNED & SEALED (DEVELOPERS CERTIFICATE & PROFESSIONAL SEAL)	
<input type="checkbox"/> CERTIFICATION (COMPLETED BY APPLICANT OR REPRESENTATIVE CERTIFYING THAT APPLICATION IS COMPLETE, ACCURATE AND READY FOR PROCESSING)	
<input checked="" type="checkbox"/> CD WITH PDF OF NEW AMENDED PLANS	1
<input type="checkbox"/> DEVELOPMENT REVIEW COMMITTEE (DRC) MEETING REQUIRED	

The Checklist is required to be submitted with each application for amendment and must include the Certification by the Applicant or Applicant's Representative.

¹ Procedures for Plan Amendments are consistent with Section 8 of the approved and adopted Development Review Manual dated December, 2007.

CONSENT AGENDA AMENDMENT (SECTION 8.D)

Consent items are considered *de minimis* and uncontested by the public and can include Project Plans, Preliminary Plans and Site Plans. These modifications do not alter the intent or objectives of the approved plans. A Pre-Application meeting with the community/public/parties of record is not required. A Pre-Submittal meeting with the DRD Intake Section is also not required; however, the above checklist items are applicable. Consent Agenda Items must satisfy the noticing and posting requirements as identified in Sections 4.C and 4.D (a) (ii) of the Development Manual and must go to the Planning Board.

APPROPRIATE TO SUBMIT AS A CONSENT AGENDA AMENDMENT

LIMITED PLAN AMENDMENT (SECTION 8.E)

Limited Plan Amendments are revisions to the approved plans that alter a fundamental element of the Planning Board's approval (i.e. increase in density/FAR or height, change to setbacks), and can include Project Plans, Preliminary Plans and Site Plans. A Pre-Application meeting with the community/public/parties of record is not required. A Pre-Submittal meeting with the DRD Intake Section may be required, and the above checklist items are applicable. Limited Plan Amendments must satisfy the noticing and posting requirements as identified in Sections 4.C and 4.D (a) (i) of the Development Manual and must go to the Planning Board.

APPROPRIATE TO SUBMIT AS A LIMITED PLAN AMENDMENT

ADMINISTRATIVE AMENDMENT (SECTION 8.F)

Administrative Amendments are modifications to the approved Project Plan or Certified Site Plan that are considered minor in nature and do not alter the intent and objectives of the plan. A Pre-Application meeting with the community/public/parties of record is not required. A Pre-Submittal meeting with the DRD Intake Section is also not required; however, the above checklist items are applicable. Administrative Amendments must satisfy the noticing and posting requirements as identified in Sections 4.C and 4.D (a)(i) of the Development Manual and require approval of the Planning Director. Administrative Amendments do not apply to Preliminary Plans.

APPROPRIATE TO SUBMIT AS AN ADMINISTRATIVE AMENDMENT

NOTE: ALL PRELIMINARY AND SITE PLAN AMENDMENTS REQUIRE A CERTIFIED PLAN TO BE PROCESSED AFTER THE AMENDED PLANS ARE APPROVED

Carleen A. Cal 5/13/08

Supervisor

Date

Rcv. 1/14/08



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

FAX TRANSMITTAL

DATE: May 13, 2008

TO: Tim Dugan
FAX NO. 301-230-2891

Steve Tawes, LSA
FAX NO. 301-948-9067

FROM: Cathy Conlon

RE: Burtonsville Shopping Center - Amendment Checklist

3 pages including cover

Attached is the signed checklist for the Consent Agenda Amendment to Burtonsville Shopping Center. Please let me know if you have questions.

EXHIBIT 2

SHA's April 29, 2008 letter recommending amending Condition No. 7



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

John D. Porcari, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation
April 29, 2008

Mr. Stephen P. Tawes, RLA
Loiderman Soltesz Associates, Inc.
2 Research Place, Suite 100
Rockville, MD 20850

Re: Montgomery County
Burtonsville Shopping Center
File No. I-04109
MD 198/US 29A (Old Columbia Pike)
Mile Post: 0.110

Dear Mr. Tawes:

SHA would like to reiterate its review and position on the proposed joint-use (bicycle and pedestrian) path that is a part of the planned Burtonsville Shopping Center development. As a result of the field meeting and subsequent correspondence, we would like to clarify comments we provided in the April 8, 2008 letter:

- SHA will ask that the proposed joint use pathway be built along the applicant's property frontage only. It would begin on the west side of US 29A (Old Columbia Pike) at the applicant's southern property line and run along US 29A. The change in the limits of the bike path would constitute a change from the Montgomery County Planning Board Opinion for approval of the project. We apologize for the mistaken reference to the east side of US 29A in our previous letter.
- We maintain our request that the pathway split in the vicinity of the intersection to direct pedestrian traffic to the existing 5'-wide (±) footway at the intersection with MD 198 and the bike portion to continue around on a curve as shown on the Master Plan for future continuation; provided the pedestrian traffic is given adequate accommodation in accordance with all ADA/SHA regulations. We are aware that the applicant has interest in purchasing the land at the corner of the US29A/MD 198 intersection, but at this time, no purchase has been made. If such a transaction is made in the future, the alignment of the bike path could be reevaluated.

If you have any questions or require additional information, please contact Ms. Corren Giles at 410-545-5595 or by using our toll free number in Maryland only at 1-800-876-4742.

Sincerely,

for Steven D. Foster, Chief
Engineering Access Permits Division

SDF/jab/mss

cc: Ms. Catherine Conlon / M-NCPPC
 Mr. Shahriar Etemadi / M-NCPPC
 Mr. Jeffrey Wentz *sent via email*
 Ms. Kate Mazzara *sent via email*
 Mr. Augustine Rebish *sent via email*

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street · Baltimore, Maryland 21202 · Phone: 410.545.0300 · www.marylandroads.com

EXHIBIT 3

SHA's April 8, 2008 letter, superseded by SHA's April 29, 2008 letter



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

John D. Porcari, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

April 8, 2008

Mr. Stephen P. Tawes, RLA
Loiderman Soltesz Associates, Inc.
2 Research Place, Suite 100
Rockville, MD 20850

Re: Montgomery County
Burtonsville Shopping Center
File No. 1-04109
MD 198/US 29A (Old Columbia Pike)
Mile Post: 0.110

Dear Mr. Tawes:

SHA appreciates the opportunity to meet with you at the project site to discuss the proposed joint-use (bicycle and pedestrian) path that is a part of the planned development of the Burtonsville Shopping Center. As a result of the meeting, several decisions were made and we have the following comments:

- SHA will ask that the proposed joint use pathway be built along the applicant's property frontage only. It would begin on the east side of US 29A (Old Columbia Pike) at the applicant's southern property line and run along US 29A. This would constitute a change from the Montgomery County Planning Board Opinion for approval of the project.
- We would request that the pathway split in the vicinity of the intersection to direct pedestrian traffic to the existing 5'-wide (±) footway at the intersection with MD 198 and the bike portion to continue around on a curve as shown on the Master Plan for future continuation; however, we will defer on this particular item to any other requirements set forth by M-NCPPC provided the pedestrian traffic is given adequate accommodation in accordance with all ADA/SHA regulations.

If you have any questions or require additional information, please contact Ms. Corren Giles at 410-545-5595 or by using our toll free number in Maryland only at 1-800-876-4742.

Sincerely,

for Steven D. Foster, Chief
Engineering Access Permits Division

SDF/jab/mss

cc: Ms. Catherine Conlon / M-NCPPC
 Mr. Shahriar Etemadi / M-NCPPC
 Mr. Jeffrey Wentz *sent via email*
 Ms. Kate Mazzara *sent via email*
 Mr. Augustine Rebish *sent via email*