



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

MCPB
ITEM #
6/25/09



MEMORANDUM

DATE: June 12, 2009

TO: Montgomery County Planning Board

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

Catherine Conlon, Supervisor *CAK*
Development Review Division

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

REVIEW TYPE: Preliminary Plan of Subdivision, Consent Item

APPLYING FOR: Request to revise condition No. 4 pertaining to construction of road improvements and an off-site shared use bike path.

PROJECT NAME: Burtonsville Shopping Center

CASE NO. 1-04109B

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) and Spencerville Road (MD 198)

MASTER PLAN: Fairland

APPLICANT: BMC Property Group

ENGINEER: LSA

HEARING DATE: June 25, 2009

Staff Recommendation: Approval to revise condition No. 4 of Corrected Opinion dated March 21, 2006 for Burtonsville Shopping Center, as follows:

- 4) Satisfy all preliminary plan conditions included in the State Highway Administration (SHA) letter dated June 7, 2005. ~~All roadway/intersection improvements required by SHA shall be installed/constructed and in place prior to the release of any building permit associated with this preliminary plan.~~ All roadway/intersection improvements required by SHA shall be installed/constructed as required by SHA in coordination with MCDOT. The required 8-foot bikepath along the US 29A frontage which must be constructed by the Applicant must be installed and open for use prior to issuance of a building permit for any square footage exceeding 122,000 square feet.

SITE DESCRIPTION

The 27.15-acre property (shown below) 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.

On July 29, 2009, the Planning Board recommended approval of a Consent Agenda - Limited Plan Amendment (12004109A) that eliminated a requirement to construct an off-site bikepath from the northern boundary of the Subject Property along US 29A to the PEPCO right-of-way, a distance of approximately 1,200 feet. SHA stated at that time that they would only support construction of the bikepath adjacent to US 29A within the applicant's property and no longer supported the off-site extension. The applicant was, therefore, unable to obtain the necessary permits from the State Highway Administration (SHA) to construct the path.



DISCUSSION OF THE REQUESTED CURRENT AMENDMENT

By letter dated May 18, 2009, the Applicant is requesting a modification to Condition #4 of the Corrected Opinion dated March 21, 2006 which reads as follows:

- 4) Satisfy all preliminary plan conditions included in the State Highway Administration (SHA) letter dated June 7, 2005, (Attachment B). All roadway/intersection improvements required by SHA shall be installed/constructed and in place prior to the release of any building permit associated with this preliminary plan.

The Applicant contends that the timing element (second sentence) for construction of the SHA improvements within Condition #4 have created a practical difficulty as a result of events that have occurred since the approval. While the BMC Property Group has been working with SHA, they argue that determining the exact improvements on MD 198/ US 29A, and receiving the approvals from SHA to initiate those improvements, has taken more time than they anticipated. This unanticipated delay is now jeopardizing the Applicant's contractual obligations with future tenants of certain structures if construction does not commence in June, 2009. The Applicant suggests that it may take up to a year for SHA to determine what improvements will be necessary. The Applicant is therefore concerned that no buildings on the Property can be built until the road improvements are constructed.

ANALYSIS

The improvements covered by Condition #4 include any pavement widening, storm drainage improvements, lane reconfiguration, and signalization that SHA determines are needed for MD 198 and US 29A along the property frontage or at the intersection of the two roads to accommodate the proposed development. They also include the bikepath that is required to be constructed along the US 29A road frontage by the approval of the preliminary plan. It is important that these improvements be provided in a timely manner as the development occurs, however, the language of Condition #4 is not typical in that local road and frontage improvements are usually not required to be underway prior to issuance of any building permit. In hindsight, it is staff's opinion that development of the Burtonsville Shopping Center project does not warrant the more stringent requirements in the existing condition. In fact, it seems imprudent to require complete construction of roads and sidewalks prior to the introduction of heavy construction equipment on the site which may only damage existing pavement and sidewalks.

Staff therefore supports a modification of Condition #4 to allow development of the project to commence while the Applicant works with SHA to permit and bond the construction of the road improvements that are under SHA's authority. As for the bikepath construction, it is SHA's opinion that the bikepath is not under their authority because it will be constructed within the boundaries of the Subject Property, not in the road right-of-way. Therefore, staff is further modifying Condition #4 to include a separate timing mechanism for the bikepath construction.

Conclusion

Staff recommends revision to Condition #4 as stated in this report and the addition of the condition tying completion of the bikepath to issuance of building permits. All other conditions of approval remain in full force and effect.

Attachments:

Attachment A - Applicant's Written Amendment Request
Attachment B – Draft Resolution

**SHULMAN
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ECKER, P.A.**

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* Virginia also
* Maryland only
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May 18, 2009

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: Consent Agenda Plan Number 12004109B
Burtonsville Shopping Center
To Amend Preliminary Plan No. 1-04109A
Amend Preliminary Plan Condition No. 4

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. Your completed form is attached as Exhibit 1. We respectfully request to be scheduled for the Planning Board's Consent Agenda so that the Planning Board may approve an amendment to Preliminary Plan Condition No. 4, as follows:

Existing Condition No. 4

Satisfy all preliminary plan conditions included in the State Highway Administration (SHA) letter dated June 7, 2005. (Attachment B) All roadway/intersection improvements required by SHA shall be installed/constructed and in place prior to the release of any building permit associated with this preliminary plan.

Suggested Amendment to Condition No. 4:

Satisfy all preliminary plan conditions included in the State Highway Administration (SHA) letter dated June 7, 2005. (Attachment B) **[Delete second sentence.] [Add the following sentence.] If any are required, the timing for the installation of any SHA roadway/intersection improvements shall be coordinated as required by SHA and MCDOT.**

We face practical difficulties with Condition No. 4 as the result of events that occurred after the preliminary plan approval of July of 2005. The State Highway Administration has been working with BMC to determine the appropriate roadway/intersection improvements for the intersection at MD 198 and the Burtonsville Access Road and for the access point along US 29A. The necessary time to determine the appropriate improvements has taken more time than originally anticipated, at the time of the original preliminary plan approval. As for the US 29A access point, we only recently learned that SHA will allow BMC to install a traffic signal. For the intersection at MD 198 and the Burtonsville Access Road, SHA is still in the process of working with BMC to determine the particular appropriate roadway/intersection improvements. BMC is ready to begin its on site construction. BMC must commence construction of its on site retail buildings in June of 2009 or jeopardize its contracts with its tenants. As for both MD 198 and US 29A roadway/improvements, the process of: (1) designing the improvements; (2) having the designs reviewed by SHA; (3) having the designs re-reviewed by SHA; and (4) having them finally approved for construction; may require up to a year's time after SHA finally determines the particular improvement(s). The design and review processes may occur contemporaneously with the on site construction of buildings, rather than having the on site construction needlessly delayed. Constructing the roadway/intersection improvements will be coordinated with other construction as required by SHA and MCDOT. It will occur after some of the building permits for on site construction have been issued. The timing will still provide the adequate public facilities on time, because no buildings are allowed to be occupied until the roadway/intersection improvements are constructed. Finally, of course, performance bonds are provided for the roadway/intersection improvements.

The shared use pathway and tree panel, to be constructed within the Property, not in the right of way, are sometimes considered part of the roadway/intersection improvements. Assuming that such work is included in the term "roadway/intersection improvements," we wish to clarify that such work is to be completed in coordination with other construction, as required by SHA and MCDOT, as well.

We understand that the M-NCPPC Staff supports amending Condition No. 4. We also informed Mr. Stuart Rochester, who is the Chair of the Fairland Master Plan Citizens Advisory Committee and a Party. He does not oppose the amendment. We expect that the amendment will not be opposed.

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

Very truly yours,



Timothy Dugan

Enclosure: Checklist for Plan Submittal Requirements For Minor, Consent Agenda and Limited Plan Amendments

cc: Mr. Richard Weaver
Mr. Christopher Jones
Mr. Stephen Tawes



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: 12004109B
 APPLICANT: BMC Property Group – Chris Jones, 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 plan elements: Amend condition #4 to permit bonding for the proposed bikeway/sidewalk construction instead of construction prior to building permit.

CHECKLIST

<u>ITEM</u>	<u>QTY.</u>
<input checked="" type="checkbox"/> COMPLETE FULL APPLICATION _____	1
<input checked="" type="checkbox"/> FEE SCHEDULE & FEE \$ <u>500.00</u> _____	1
<input type="checkbox"/> PRE-APPLICATION MEETING WITH DRD INTAKE	
SECTION REQUIRED _____	1
<input checked="" type="checkbox"/> ORIGINAL CERTIFIED PLAN(S) WITH OPINION / RESOLUTION _____	1
<input checked="" type="checkbox"/> LETTER OF EXPLANATION DETAILING CHANGES BEING REQUESTED _____	5
<input checked="" type="checkbox"/> APPLICATION NOTICE BY APPLICANT <u>(Draft Copy)</u> _____	1
<input checked="" type="checkbox"/> HEARING NOTICE BY DRD STAFF _____	1
<input checked="" type="checkbox"/> ADJACENT PROPERTY OWNER LIST + HOA, CIVICS, SCHOOL CLUSTER PAPER COPY _____	1
SETS OF LABELS _____	2
<input checked="" type="checkbox"/> SETS OF AMENDED PLANS (REDLINED) _____	3
<input checked="" type="checkbox"/> SETS OF AMENDMENT PLANS (BLACK & WHITE) WITH NEW TITLE INFORMATION, & LIST OF AMENDMENT ITEMS ON PLAN-(ENTIRE SET)	3
<input checked="" type="checkbox"/> ALL PLANS SIGNED, SEALED & DATED (DEVELOPERS CERTIFICATE & PROFESSIONAL SEAL & MNCPPC SIGNATURE BLOCK)	
<input type="checkbox"/> CERTIFICATE OF COMPLIANCE (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	
<input type="checkbox"/> SIGNAGE INFORMATION: (PICTURE(S), AFFIDAVIT, & LOCATION PLAN)	1

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
- THIS AMENDMENT CHECKLIST IS ONLY VALID FOR 90 DAYS FROM THE SIGNATURE & DATE BELOW. EXPIRATION REQUIRES A NEW MEETING WITH THE SUPERVISOR AND A NEW CHECKLIST
- NOTICE IS NOT TO BE MAILED UNTIL THE AMENDMENT IS OFFICIALLY ACCEPTED!

 5/5/09

Supervisor

Date



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

MCPB No. 09-67
Preliminary Plan No. 12004109B
Burtonsville Shopping Center
Date of Hearing: June 25, 2009

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 May 28, 2009, BMC Property Group ("Applicant"), filed an application to revise the previous conditions of approval to a previously approved preliminary plan located on 27.15 acres of land in the northwest quadrant of the intersection of Columbia Pike (US 29) and Spencerville Road (MD 198) ("Property" or "Subject Property"), in the Fairland Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan amendment application was designated Preliminary Plan No. 12004109B, Burtonsville Shopping Center ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board, dated June 12, 2009, setting forth its analysis and recommendations for approval of the Application ("Staff Report"); and

WHEREAS, on June 25, 2009, Staff presented the Application to the Planning Board as a consent item for its review and action ("Hearing").

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan Amendment No. 12004109B to revise Condition #4 of the corrected opinion dated March 21, 2006, as follows:

1) Previous condition #4, shall be amended as follows:

4) Satisfy all preliminary plan conditions included in the State

APPROVED AS TO LEGAL SUFFICIENCY
Christina Sorensen
M-NCPPC LEGAL DEPARTMENT

Highway Administration (SHA) letter dated June 7, 2005. ~~All roadway/intersection improvements required by SHA shall be installed/constructed and in place prior to the release of any building permit associated with this preliminary plan.~~ All roadway/intersection improvements required by SHA shall be installed/constructed as required by SHA in coordination with MCDOT. The required 8-foot bikepath along the US 29A frontage, which must be constructed by the Applicant, must be installed and open for use prior to issuance of a building permit for the last 122,000 square feet of approved commercial use.

- 2) All other previous conditions of approval as contained in the Planning Board corrected Opinion dated March 21, 2006 remain in full force and effect.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the 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 Preliminary Plan substantially conforms to the master plan.*

The revision does not substantially change the plan. As determined by the Planning Board at the initial hearing for this project, the plan is in substantial conformance with the land use recommendations of the Fairland Master Plan.

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

By virtue of a thorough review and recommendations of approval from all agencies including the Montgomery County Department of Public Works and Transportation, the Montgomery County Department of Permitting Services, the Maryland State Highway Administration and the Montgomery County Department of Fire and Rescue Services, this Preliminary Plan will be adequately served by public facilities.

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

The configuration of the lots was not changed as part of this Preliminary Plan revision. Lot shape, size, width and orientation remain in

compliance with Chapter 50.

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

At the initial hearing, the Preliminary Plan was reviewed for compliance with Chapter 22A of the Montgomery County Code and found to comply with all requirements of that Chapter by the Planning Board. The revision required no changes to the forest conservation plan.

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 Montgomery County Department of Permitting Services reviewed and approved a stormwater management concept for the entire project at the initial review. The concept was not changed as part of this revision and remains valid.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board, and that the date of this Resolution is _____ (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).