



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

Agenda Date: October 29, 2009

Agenda Item No. **3**

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Rollin Stanley, Planning Director *RS*

VIA: Rose Krasnow, Chief *RKX*
Cathy Conlon, Subdivision Supervisor *CC*
Neil Braunstein, Planner Coordinator (301) 495-4561 *MB*
Development Review Division

Re: Correction of Resolution for Preliminary Plan No. 12007020A,
MCPB No. 09-45, Woodmont East

Attached, please find a redlined version of the Resolution for Preliminary Plan No. 12007020A, Woodmont East. The Resolution was adopted by the Planning Board at the May 21, 2009, Planning Board Hearing, and was mailed out to all parties of record on May 29, 2009. This Corrected Resolution addresses one error on page 7 of the original Resolution.

The correction is to address a typographical error on page 7 of the Resolution. Per Section 50-35(h)(2)(A) of the Subdivision Regulations, the preliminary plan validity period (i.e., the time during which a plat must be recorded) is actually 60 months, not 36 months as shown in the resolution. The validity period had been 36 months until a Subdivision Regulations Amendment (Ordinance 16-35) earlier this year increased the duration of the validity period to 60 months for any single-phase preliminary plan approved between April 1, 2009 and April 1, 2011. This preliminary plan was approved on April 30, 2009, but the Resolution incorrectly stated the 36-month validity period. The correction of this mistake will ensure consistency with the subdivision regulations.

cc: Carol Rubin, Associate General Counsel



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 09-45
Preliminary Plan Amendment No. 12007020A
Woodmont East
Date of Hearing: April 30, 2009

MONTGOMERY COUNTY PLANNING BOARD

CORRECTED RESOLUTION¹

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 December 10, 2008, JBG Associates, LLC ("Applicant"), filed an application for approval of an amendment to a previously approved preliminary plan of subdivision of property that would amend the approved uses from 78,300 square feet of office, 40,350 square feet of retail, a 225-room hotel, and 250 dwelling units to 286,879 square feet of office, 37,136 square feet of retail, and 210 dwelling units on one lot on 2.48 acres of land located on the east side of Woodmont Avenue between Bethesda Avenue and Elm Street ("Property" or "Subject Property"), in the Bethesda CBD Sector Plan area ("Sector Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan Amendment No. 12007020A, Woodmont East ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated April 24, 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 staffs of other governmental agencies, on April 30, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

Approved as to
Legal Sufficiency:

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

WHEREAS, on April 30, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Alfandre, Cryor, Hanson, Presley, and Robinson voting in favor.

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. 12007020A to amend the approved uses from 78,300 square feet of office, 40,350 square feet of retail, a 225-room hotel, and 250 dwelling units to 286,879 square feet of office, 37,136 square feet of retail, and 210 dwelling units on one lot on 2.48 acres located on the east side of Woodmont Avenue between Bethesda Avenue and Elm Street ("Property" or "Subject Property"), in the Bethesda CBD Sector Plan area ("Sector Plan"), subject to the following conditions:

1. All conditions imposed by the approval of Preliminary Plan No. 120070200 are hereby superseded by the conditions contained herein.
2. The Applicant must comply with the conditions of approval for Project Plan Amendment No. 92007007A.
3. The development is limited to a maximum of 210 multi-family dwelling units (including a minimum of 12.5% MPDUs), 37,136 square feet of general retail use, and 286,879 square feet of general office use.
4. Prior to release of any building permit, the Applicant must satisfy Local Area Transportation Review (LATR) by constructing an exclusive left-turn lane and a shared through/right-turn lane on the westbound approach of Elm Street at the intersection of Woodmont Avenue in accordance with MCDOT requirements.
5. The Applicant must satisfy Policy Area Mobility Review (PAMR) by mitigating 30% of the new peak-hour trips during the weekday morning (7:30 to 9:30 a.m.) peak period and evening (4:00 to 6:00 p.m.) peak period as described below:
 - a. For Phase 2 or the first 36 PAMR trips, the Applicant must contribute \$11,000 per new peak hour trip for a total of \$400,000 towards construction of MCDOT and the MDSHA project for pedestrian safety improvements at the intersection of Wisconsin Avenue and Montgomery Lane/Montgomery Avenue. The contribution must be made prior to issuance of any use and occupancy permit for Phase 2.
 - b. For Phase 3, the Applicant must identify non-automobile transportation improvements equivalent to 35 new peak-hour vehicular trips prior to the public hearing for the Phase 3 site plan.
6. The Applicant must construct the frontage improvements along Elm Street, Woodmont Avenue, and Bethesda Avenue, in coordination with MCDOT. These

improvements must be complete and open to traffic prior to release of the initial use and occupancy permit.

7. The Applicant must grant a 32-foot-wide perpetual easement to Montgomery County within the Georgetown Branch right-of-way from the western property line to the eastern property line as delineated on the Bi-County Transitway Easement exhibit prepared by MHG on February 18, 2009, which must be incorporated into the certified Preliminary Plan. The perpetual easement must be shown on the record plat and the easement agreement must be recorded in the land records of Montgomery County, Maryland prior to recordation of the plat and must be referenced on the plat. Within this area, the Applicant must comply with following restrictions:

- a. The foundation of the office building must be set 1 foot back from the south side of the easement.
- b. Permanent, non-removable facilities must not be constructed and/or installed within the easement if they might interfere with access to the tunnel by MTA or County emergency, construction, and maintenance equipment.

MTA must review and approve the site plan as submitted for the references herein to reflect that the easement and other construction constraints are reflected on the certified site plan. This easement is for the Purple Line or public use, as needed.

8. The Applicant must enter into an agreement with the Maryland Transit Administration (MTA) and Montgomery County to provide the following easements to Montgomery County:

- a. A perpetual easement that increases the width of the far eastern portion of the 32-foot-wide easement required by Condition 7, up to a maximum of 38 feet wide to accommodate the turning radius of the Purple Line, as delineated on the Bi-County Transitway Easement exhibit prepared by MHG on February 18, 2009, which must be incorporated into the certified Preliminary Plan. Within this area, the Applicant must comply with following restrictions:

- i. The foundation of the office building must be set 1 foot back from the south side of the easement.
- ii. Permanent, non-removable facilities must not be constructed and/or installed within the easement if they might interfere with access to the tunnel by MTA or County emergency, construction, and maintenance equipment.

MTA must review and approve the site plan as submitted for the references herein to reflect that the easement and other construction constraints are reflected on the certified site plan. This easement is for the Purple Line or public use, as needed.

- b. A perpetual easement – as indicated on the site plan to accommodate a future switch-back ramp for the Georgetown Branch Trail and that is publicly accessible – must be noted on the record plat. This easement must be a

minimum of 1,960 square feet along the Subject Property's eastern edge adjoining the tunnel and shall be limited to a width of 28 feet. The record plat notes regarding this easement must include language that:

- i. Grants access to the future switch-back ramp easement by the State and/or County to construct the switchback ramp and the connecting Trail segments; and
- ii. Grants perpetual public access within this easement by the County to maintain the switchback ramp and connecting Trail segments; and
- iii. Grants perpetual public access by Trail users.

The ultimate size and delineation for this easement must be finalized at the time of certification of the site plan and delineated on the Record Plat.

- c. A perpetual easement that satisfies the American Association of State Highway and Transportation Officials (AASHTO) standards of a minimum 10-foot wide paved shared use path with a 2-foot lateral clearance on each side from the western property line to the eastern property line parallel to the easement for the Purple Line except on the future switch-back ramp. On the switch-back ramp, future design considerations by MTA may limit the 2-foot lateral clearance on each side.

All of these easement areas must be shown on the record plat. The agreement must be recorded in the land records of Montgomery County, Maryland prior to recordation of the plat and must be referenced on the plat.

9. The Applicant must provide the minimum vertical clearances for the 32-foot-wide Georgetown Branch perpetual easement as follows:
 - a. Four feet below the top of the rail for the Purple Line (at an elevation to be identified by the MTA) along any segment of any Purple Line track.
 - b. Twenty-three (23) feet above the top of the rail for the westbound Purple Line track, not to exceed elevation 346 feet, based on the Maryland state datum.
10. The Applicant must enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and MCDOT to participate in the Bethesda Transportation Management Organization (TMO). The TMAg must be signed and executed by all parties prior to certification of the Site Plan.
11. The proposed development must comply with the conditions of the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits. Conditions include the following:
 - a. Approval of Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan prior to any clearing, grading or demolition on the site.
12. The Applicant must prepare in connection with the residential development an analysis of future transportation noise levels prior to Site Plan submittal. The analysis must be conducted by an acoustical professional.

- a. At time of building permit, an acoustical engineer must certify through building shell analysis that interior noise levels will not exceed 45 dBA Ldn.
 - b. The builder must construct the buildings in accord with these acoustical recommendations, with any changes affecting acoustical performance approved by the acoustical engineer, with copy to M-NCPPC staff.
 - c. The certification and builder acceptance letter must be provided to M-NCPPC Environmental Planning staff before building permits are approved.
13. The final number of dwelling units and MPDUs per condition #3 above will be determined at the time of Site Plan.
 14. The Applicant must comply with the conditions of the Montgomery County Department of Public Works and Transportation (now MCDOT) letter dated August 27, 2007, or as amended. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
 15. The Applicant must comply with the conditions of the MCDPS stormwater management approval dated February 27, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
 16. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for one-hundred and nine (109) months from the date of mailing of the Planning Board resolution.
 17. Other necessary easements must be shown on the record plat.
 18. The Applicant must dedicate all road rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Sector Plan unless otherwise designated on the Preliminary Plan.
 19. The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of the plat.
 20. No clearing, grading or recording of plats prior to certified Site Plan approval.
 21. Final approval of the number and location of buildings, dwelling units, office density, on-site parking, site circulation, sidewalks, and bike paths will be determined at Site Plan.
 22. The Applicant must submit a copy of the Montgomery County Resolution for the Abandonment of Reed Street prior to recordation of the plat.

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

Roads and Transportation Facilities

Local Area Transportation Review

In accordance with the Local Area Transportation Review and Policy Area Mobility Review Guidelines, the Applicant submitted a traffic study to analyze the impact of this proposed development. Based on the results of the traffic study, the calculated Critical Lane Volume (CLV) values at ten studied intersections are less than the congestion standard of 1,800 CLV for the Bethesda Central Business District Policy Area and, thus, the LATR test is satisfied.

Policy Area Mobility Review

Policy Area Mobility Review (PAMR) was not required for the previously approved Preliminary Plan No. 120070200 under the FY 2007-2009 Growth Policy because that preliminary plan was filed with the Montgomery County Planning Department before January 1, 2008. However, PAMR is required under the current Growth Policy for the additional new peak-hour trips generated by the proposed amendment that are beyond the originally approved number of peak-hour trips. The Applicant must mitigate a total of 71 peak-hour trips for both the proposed Phase 2 office and the Phase 3 apartments as calculated below:

The Applicant is proposing to provide the following non-automobile mode transportation improvements in the Bethesda CBD, or Bethesda/Chevy Chase Policy Areas:

1. Phase 2: The Applicant must mitigate 36 new peak-hour trips generated by the Phase 2 commercial uses. MCDOT has agreed that the Applicant shall contribute \$400,000 towards construction of MCDOT and MDSHA projects for pedestrian safety improvements planned at the intersection of Wisconsin Avenue and Montgomery Lane/Montgomery Avenue. The \$400,000 contribution is based on \$11,000 per PAMR trip multiplied by the 36 new peak-hour trips to be mitigated.
2. Phase 3: The Applicant is using the trip credit from the previously approved 250 apartments and, thus, must satisfy PAMR for the proposed 210 apartments in Phase 3. To satisfy PAMR, the Applicant must identify non-automobile transportation improvements equivalent to 35 new peak-hour vehicular trips prior to certification of the future Phase 3 site plan.

Other Public Facilities and Services

Public facilities and services are available and will be safe and adequate to serve the proposed development. The Property will be served by public water and public sewer. The Application has been reviewed by the Montgomery

County Fire and Rescue Service, which has determined that the Property has appropriate access for fire and rescue vehicles. MTA has also reviewed and accepted the access to the tail tracks through the proposed easement from Woodmont Avenue.

Other public facilities and services, such as schools, police stations, firehouses, and health services are operating according to the Growth Policy resolution currently in effect and will be safe and adequate to serve the Property. Electrical, gas, and telecommunications services are also available to serve the Property. Because the application for the original subdivision was filed prior to December 2006, the current amendment Application is not subject to work force housing requirements. Because the application for the original subdivision was filed before January 2007, the current amendment Application is not subject to the 2007-2009 Growth Policy and is, therefore, not subject to a school facilities payment.

2. *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 MCDPS Stormwater Management Section approved the stormwater management concept for the site on February 27, 2009. The stormwater management concept consists of on-site water quality control via a green roof and a flow-through filter device. On-site recharge is not required for redevelopment applications. Channel protection for 0.25 acres of the Subject Property is not required because the one-year post-development peak discharge is less than or equal to two cubic feet per second. A waiver of on-site channel protection for 0.7 acres of the Subject Property and a waiver of water quality for 0.43 acres of the Subject Property were granted due to the existing shallow storm drain.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 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 the date of this Resolution is May 29, 2009 (which is the date that the original Resolution was 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 _____, seconded by Commissioner _____, with Commissioners _____, _____, _____, _____, and _____ voting in favor of the motion, ***[modify vote as applicable if PB member absent, abstains, etc.]*** at its regular meeting held on Thursday, _____, in Silver Spring, Maryland.

Royce Hanson, Chairman
Montgomery County Planning Board