



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JUL 17 2010

**MCPB No. 10-35**  
**Preliminary Plan No. 120070650**  
**Century XXI**  
**Date of Hearing: March 11, 2010**

## 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 March 2, 2007, Matan Development, LLP ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 1 lot on 11.53 acres of land located on Century Boulevard 1000 feet east of Aircraft Drive, ("Property" or "Subject Property"), in the Germantown master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070650, ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 31, 2008, 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 November 13, 2008, 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

WHEREAS, on November 13, 2008, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Cryor; with a vote of 5-0, Commissioners Alfandre, Cryor, Hanson, Presley and Robinson voting in favor; and

Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, N.C. 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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WHEREAS, MCPB Resolution No. 08-146 was adopted by the Planning Board and mailed on December 4, 2008; and

WHEREAS, on February 9, 2010, Applicant filed a request for reconsideration of MCPB Resolution No. 08-146<sup>1</sup>, specifically to be excused from Condition No. 4 thereof<sup>2</sup>; and

WHEREAS, on February 25, 2010, Commissioners Alfandre, Hanson and Presley, being the only current Board members present at the Hearing on the Application, voted unanimously to reconsider the Preliminary Plan to determine whether Applicant should be required to enter into a new TMA (modify Condition No. 4) or be excused from Condition No. 4 altogether; and

WHEREAS, on March 1, 2010, Staff issued a memorandum to the Planning Board setting forth its analysis, and recommendation for approval of the Application as a result of Applicant's request for reconsideration, subject to amended conditions (the "Amended Staff Report"); and

WHEREAS, on March 11, 2010, the Planning Board held a new public hearing on the Application, solely with regard to Condition No. 4, considered testimony and received evidence submitted for the record therefor, and on motion of Commissioner Wells-Harley; seconded by Commissioner Presley; with a vote of 4-0, Commissioners Dreyfuss, Hanson, Presley, and Wells-Harley voting in favor, Commissioner Alfandre absent, approved the amendment to the Application subject to certain conditions.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120070650 to create 1 lot on 11.53 acres of land located on Century Boulevard 1000 feet of Aircraft Drive ("Property" or "Subject Property"), in the Germantown master plan area ("Master Plan"), subject to the following conditions<sup>3</sup>:

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<sup>1</sup> In accordance with Rule 4.12.1 of the Planning Board's Rules of Procedure, Chairman Hanson waived the 10 day filing deadline for the Request for Reconsideration based on the finding of a mistake in Condition No. 4 that warranted such Reconsideration.

<sup>2</sup> Condition No. 4 of MCPB Resolution No. 08-146 states: "Prior to certified site plan, the Applicant must modify the existing I-3 Traffic Mitigation Agreement with Montgomery County Department of Transportation (MCDOT) and the Planning Board to satisfy the requirements for development located on an I-3 zoned property." It was later determined that no such Agreement existed, and Staff requested that Applicant enter into a new Agreement.

<sup>3</sup> In accordance with the Rules of Procedure of the Planning Board adopted March 2007, if the Board votes to reconsider a matter, the reconsidered Resolution is void (Rule 4.12.2). Therefore, this Resolution must restate all the findings and conditions of MCPB Resolution No. 08-146, whether or not part of the reconsideration.

1. Approval under this Preliminary Plan is limited to 1 lot for a maximum of 235,000 square feet of general office use.
2. The Applicant must comply with the conditions of approval for 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, as applicable.
3. The Applicant must dedicate 50 feet along and adjacent to the Property frontage on Century Boulevard - thereby providing a total of 130 feet of right-of-way (80 feet of existing roadway and 50 feet of additional dedication).
4. Prior to certified site plan, the Applicant must enter into a Traffic Mitigation Agreement with the Montgomery County Department of Transportation (MCDOT) and the Planning Board to reduce ten (10) percent of site generated trips as required in the Zoning Ordinance and the I-3 Trip Reduction Guidelines for sites located in the I-3 zone.
5. The Applicant must comply with the conditions of approval of the MCDOT letter dated October 17, 2008.
6. The Applicant must comply with the conditions of MCDPS stormwater management concept approval letter dated February 8, 2007.
7. The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s), as applicable.
8. The Applicant must satisfy provisions for access and improvements as required by the Maryland State Highway Administration (SHA) prior to recordation of plat(s), as applicable.
9. No clearing, grading or recording of plats prior to certified site plan approval.
10. Final approval of the number and location of buildings, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
11. The record plat must reflect denial of access along the I-270 Property frontage.
12. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution.
13. All necessary easements must be shown on the Record Plat.
14. For the length of the APF validity period for this Application, the Applicant is responsible for a pro-rata share with other background developments of any improvements identified by the Supplemental Traffic Impact Study (STIS) if any funding for the Corridor Cities Transitway is allocated.

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 Plan is subject to the special trip reduction guidelines of Section 59-C-5.436 of the Montgomery County Code and must include appropriate measures to reduce ten (10) percent of the trips generated by the proposed development.*

The requirement for trip reduction in the I-3 zone is based on zoning ordinance requirements. In March of 1989, a Zoning Text Amendment (ZTA) was created to allow additional density and land uses such as office buildings and R&D developments in the I-3 zone. The discussion and rationale behind the requirement of a ten percent trip reduction for developments in the properties located on the I-3 zone was considered carefully. It was argued by the Planning Board and agreed to by the County Council that:

- a) As originally adopted in the 1950's, the I-3 zone was intended for low density, office park industrial use that would generate low levels of traffic and pollution compared to development in other industrially zoned areas. However, a zoning text amendment was introduced and adopted in March of 1989 to encourage high tech companies to relocate their offices and R&D facilities within I-3 zoned areas. The newly allowed developments were expected to generate more traffic than was originally intended for the land use in this zone. Therefore, a trip reduction mechanism had to be in place to offset the transportation impact of new and higher density uses in I-3 zoned areas.
- b) Most of the I-3 zoned areas of the county are located along or near the I-270 corridor and in Shady Grove where transportation capacity is constrained. It would be poor public policy to increase the development in areas where the transportation capacity is constrained without ensuring that at least part of the traffic from new developments is mitigated.
- c) Other provisions were also needed to provide for "transit serviceability" and easy use of walking and biking to reduce the impact of higher density in the I-3 zone.

Based on these factors, special trip reduction guidelines were included in Section 59-C-5.436 of the County Code. This section states:

"It is the intent of the special trip reduction guidelines to achieve as a goal a reduction in auto trips for I-3 projects of 10 percent below the peak hour trip generation rates adopted by the Planning Board for the administration of the Adequate Public Facilities Ordinance. To help achieve the trip reduction goal, design measures should be incorporated in the project to meet trip reduction objectives established in this section, as well as non-design measures for the purpose of reducing dependence on single-occupant automobiles. The

Planning Board may establish a schedule for achieving the goal and time periods during which the trip reduction measures will be in effect.”

Specific design and non-design guidelines are applied on a case-by-case basis to achieve the trip reduction goal. Where necessary, the Planning Board may require an applicant to enter into an agreement to ensure the necessary terms of the trip reduction program. As part of the original Preliminary Plan approval, such an agreement was to be provided for the proposed development by amending an agreement that both Staff and the Applicant erroneously thought had been previously executed for an earlier development plan that included this site's acreage.

After discovering that there was no previous agreement to amend, Staff suggested to the Applicant that the condition could be satisfied by a new agreement. The Applicant, however, believed that the lack of an existing agreement was an indication that the requirement was made a condition of the original approval in error. Further, the Applicant contended that the agreement was not required or warranted. Based on this contention, the Applicant requested that the Planning Board reconsider this requirement.

The Board finds that the zoning ordinance and Trip Reduction Guidelines make it clear that any I-3 zoned property must provide for ten percent reduction of vehicle trips, and there is nothing special about the design of the proposed office building or its use (single use as office) that will facilitate this reduction. Simply being located where a future transitway is planned, with no funding or certainty for its implementation does not eliminate the need for a traffic mitigation agreement. The Board finds that the design elements that the Applicant contends will result in reduction of vehicle trips, such as, sidewalks, bikeways, bike facilities and a pedestrian oriented pattern of development may contribute toward encouraging the use of a future CCT, but will not specifically reduce vehicle trips in the interim. In fact, there is limited transit service available in this area (Ride-On Route Number 83 with 20-minute peak period headways) that can be utilized now, and the site plan includes 160 more parking spaces than required in the I-3 zone.

The Board further finds that the fact that the 2009 Germantown Sector Plan recommends a zone for the property that does not invoke a trip reduction requirement does not provide grounds for eliminating the requirement for the proposed development. An application filed under the proposed TMX-2 zone would be, by definition, a different project than that developed under the I-3 zone. The I-3 requirement for trip reduction would not apply to the TMX-2 zone, but all other development rights that the applicant has vested through the I-3 zone approval process would need to be reconsidered.

In response to the Applicant's contention that its dedication of right-of-way for the future CCT should justify an exemption from the trip reduction requirement based on provision I-D in the I-3 Trip Reduction Guidelines, the Board finds that the dedication for CCT for this Application was contained in the Planning Board's Resolution of their original Preliminary plan approval (MCPB No. 08-146, dated December 4, 2008) and, therefore, no credit toward the goal should be granted. The second part of Provision I-D states: "In the event that the applicant receives compensation, including the ability to transfer density, for an applicant's capital contributions or the contributions are otherwise required by operation of the Adequate Public Facilities Ordinance (APFO), a master plan, or zoning regulations, then no credits toward the goal shall accrue from such contribution." The Planning Board also took this position when it approved preliminary plan and site plan amendments for a proposed expansion of the nearby Century Technology Campus (Preliminary Plan 12002095A and Site Plan 82003007A) on December 17, 2009 with conditions which require the applicant to both dedicate CCT right-of-way along Century Boulevard and to provide a Traffic Mitigation Agreement (TMAg) to satisfy the requirements for development located on an I-3 zoned property.

Finally, the Planning Board finds that the lack of a specific condition requiring a TMAg in the site plan approval for this Application is not an indication that the agreement was not necessary because the original Preliminary Plan condition required that the TMAg be signed and executed prior to certification of site plan.

2. *The Preliminary Plan substantially conforms to the Master Plan.*

The project is located within the Employment Corridor of Germantown on a signature site along I-270 as defined in the 1989 Germantown Master Plan. Although there is a pending revision to the Master Plan, review of this Preliminary Plan falls under the approved and adopted 1989 Germantown Master Plan.

The proposed use and location of the building conforms to the 1989 Germantown Master Plan. The Master Plan calls for office and technology uses along I-270 and provides specific objectives and guidance for an urban pattern of development in a pedestrian-oriented, transit-serviceable form. The Preliminary Plan achieves this by providing ingress/egress and massing oriented towards the street, Century Boulevard. The building will be set back 125 feet from the existing curb and will be 70 feet back from the ultimate curb line of Century Boulevard when it is reconstructed for the Corridor Cities Transitway. The Preliminary Plan will enhance the current pedestrian and built environment along Century Boulevard by extending the sidewalk on the north side of Century

Boulevard from the existing commercial development to the south. The building will provide a visual termination of Century Boulevard as it extends north from the town center. The Planning Board finds the Preliminary Plan conforms to the approved and adopted 1989 Germantown Master Plan.

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

#### Site Access and Vehicular/Pedestrian Circulation

The site is located on the east side of Century Boulevard adjacent to the I-270 southbound off-ramp to MD 118. Two vehicular access points from Century Boulevard are proposed. The Planning Board finds the proposed aprons to the site and the vehicular circulation system shown on the Preliminary Plan will provide adequate vehicular access to the site.

The frontages of adjacent properties along Century Boulevard currently contain five-foot-wide sidewalks. The Applicant will provide an eight foot-wide dual sidewalk/bikeway within the right-of-way connecting to the existing sidewalks. The Planning Board finds the pedestrian facilities and circulation along the Century Boulevard property frontage will be safe and adequate to serve the site.

#### Local Area Transportation Review

Six locations were identified as critical intersections to be analyzed for effects resulting from the proposed development and were examined to determine whether they operate within the applicable congestion standard of 1,425 Critical Lane Volume (CLV) for the Germantown West Policy Area. New trips generated by the site were added to the existing traffic and the background traffic (existing traffic plus traffic to be generated by the approved but unbuilt developments in the area) to determine the total future traffic condition. The results of the CLV calculation showed that acceptable levels of traffic are projected to be maintained under the background and total development conditions.

#### Policy Area Mobility Review (PAMR)

The site is located in the Germantown West Policy Area where there is no trip mitigation requirement in accordance with the Adopted 2007-2009 Growth Policy. Therefore, this Application is not subject to the PAMR test.

#### Other Public Facilities and Services

The Planning Board finds that other public facilities and services are available and will be adequate to serve the proposed office building. The site will be served by public water and sewer. Gas, electric, and telecommunications services are also available to serve the property. Police stations, firehouses and health services are currently operating within the standards set by the Growth Policy

Resolution currently in effect. The Application has been reviewed and approved by the Montgomery County Fire and Rescue Service (MCFRS) which has determined that the property has adequate access for emergency vehicles.

- 4. 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. The Application meets all applicable sections. The Planning Board finds the proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

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

The proposed forest conservation plan includes 0.56-acres of forest removal and no forest retention, generating a 2.46-acre planting requirement. The Applicant proposes to meet the planting requirements through a combination of landscape planting and offsite mitigation bank credits. The Planning Board finds the Application satisfies applicable requirements of the Forest Conservation Law.

- 6. 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 8, 2007. The stormwater management concept consists of on-site channel protection measures via an existing pond, on-site water quality control via structural underground filtration systems and on-site recharge via infiltration chambers.

- 7. Dedication of 130 feet from the opposite right-of-way line is acceptable and a waiver of the standard right-of-way for a median transit-way is granted under Section 49-32 of the Montgomery County Road Code.*

The consensus among reviewers from various county and state agencies is that the approval should be conditioned upon a dedication of 50 feet along and within the parcel boundary on Century Boulevard for the transit way, thereby providing a total of 130 feet (80 feet of existing and 50 feet of additional dedication).

Consistent with Section 49-32 of the Montgomery County Road Code, the



Planning Board can waive the 150 feet standard right-of-way for a median transit way. This section, entitled *Design standards for types of roads*, stipulates:

- (a) *The design standards adopted under this Article govern the construction or reconstruction of any County road except Rustic Roads and Exceptional Rustic Roads. If the Planning Board, in approving a subdivision or site plan, determines that a waiver from any applicable design standard is necessary to promote context-sensitive design of a specific road, the Executive or the Executive's designee must adopt the Board's recommendation unless the Executive or the designee concludes that approving the waiver would significantly impair public safety.*
- ...
- (d) *The minimum right-of-way for a road may be specified in the applicable master plan or sector plan for the area where the road is located.*

The Planning Board finds this waiver to be appropriate for this Preliminary Plan because the resulting 130 foot wide right of way is consistent with site plan approvals in the immediate area and the Master Plan vision for a more pedestrian friendly Germantown. Moreover, 130 feet of right-of-way will accommodate the Maryland Transit Administration plans for the Corridor Cities Transitway.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid until January 4, 2014, per the original approval of the Planning Board's Resolution No. 08-146 and the subsequent resolution by the County Council extending the original validity period, 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 Montgomery County Land Records 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 \_\_\_\_\_ (which is the date that this Resolution is mailed to all parties of record); and **JUL 14 2010**

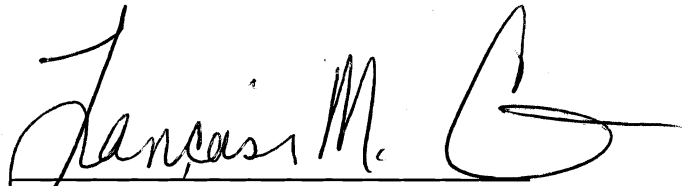
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules)<sup>4</sup>.

\* \* \* \* \*

**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 Presley, seconded by Commissioner Wells-Harley, with Commissioners Wells-Harley, Alfandre and Presley voting in favor of the motion, and with Chair Carrier abstaining and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, July 1, 2010, in Silver Spring, Maryland.



Françoise M. Carrier, Chair  
Montgomery County Planning Board

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<sup>4</sup> Whereas this Resolution is the result of reconsideration by the Planning Board of MCPB Resolution No. 08-146, specifically of Condition No. 4, it is the only issue appropriate for appeal in this matter.