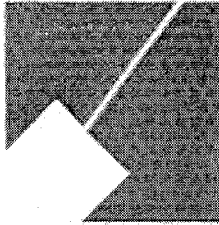


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-493-4560, www.mncppc.org

Date Mailed: **AUG 12 2005**

Public Hearing Date: April 21, 2005
Action: Approved Staff
Recommendation
Motion of Commissioner Bryant,
seconded by Commissioner Wellington,
with a vote of 4-0;
Chairman Berlage and Commissioners
Bryant, Wellington, and Robinson voting
in favor. Commissioner Perdue
necessarily absent.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-89044A

NAME OF PLAN: Seneca Highlands (Darnestown Village Center)

The date of this written opinion is **AUG 12 2005** (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State).

On 02/14/05, the applicant, Darnestown Limited Partnership ("Applicant"), submitted an application for the approval of an amendment to a preliminary plan of subdivision of property in the C-1 zone. The application proposed to revise the relevant prior conditions of approval and amend an adequate public facilities agreement, as necessary to allow the existing 33,798 square foot supermarket to expand by 9,548 square feet, for a total of 43,256 square feet, on 12.18 acres of land located in the northeastern quadrant of the intersection of Darnestown Road (MD 28) and Seneca Road, in the Potomac master plan area. The application was designated Preliminary Plan 1-89044A (the "Application"). On 04/21/05, Preliminary Plan 1-89044A was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

SITE DESCRIPTION

The subject property is located in the northeastern quadrant of the intersection of Darnestown Road (MD 28) and Seneca Road (MD 112), approximately 200 feet northeast of Eden Rock Court in Darnestown, Maryland. The site contains an existing 33,798 square foot Food Lion grocery store. The property contains 12.18 acres of land and is zoned C-1. The entire property falls within the Rural Village Overlay Zone designated in the Potomac Master Plan.

PROJECT DESCRIPTION

The amendment to the preliminary plan increases the existing grocery use on the subject property from 33,798 square feet to 43,256 square feet and clarifies condition No. 1 of the previously approved preliminary plan to reflect that the previously approved 43,256 square feet of retail use includes grocery use. The Adequate Public Facilities Agreement will also be modified to reflect the change.

BACKGROUND

Preliminary Plan #1-89044 ("Preliminary Plan") was approved by the Planning Board on November 12, 1989 for a total of 43,256 square feet of grocery store. Subsequently, in 1998, the Planning Board and Applicant executed an amendment to the adequate public facilities agreement that the parties had entered into in 1990 in satisfaction of a condition of approval of the Preliminary Plan ("APF Amendment"). The APF Amendment expressly limited development on the subject property to a "33,798 square foot supermarket and 9,458 square feet of general retail use."

The Board considered Site Plan No. 8-05027 concurrently with its review of the instant Preliminary Plan Amendment. The Site Plan application involved the Board's review and approval of an addition to the existing structure and the consideration of a waiver request to permit fewer than the minimum required number of parking spaces.

The area is covered by the approved and adopted Potomac Subregion Master Plan of 2002, which recommended that the Subject Property be included in an overlay zone, which was crafted to allow compatible uses in a rural village pattern. The original preliminary plan was approved prior to completion of the Master Plan.

The purpose of the overlay zone, which was implemented by Sectional Map Amendment, was to retain and enhance the commercial crossroads character through compatible scale, massing, siting, and setbacks for new and expanded uses; to encourage a variety of uses that serve the needs of the local community; to provide opportunities for new and existing business expansion, while keeping the commercial area compact and of low density; and to create a pedestrian-friendly commercial area through streetscape design.

SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

Development Review Staff ("Staff") recommended approval of the Application in its memorandum dated April 15, 2005 ("Staff Report"). Staff presented its findings consistent with the Staff Report at the Hearing.

The Applicant appeared at the hearing represented by legal counsel. The Applicant testified that, while it agreed with most of Staff's recommendations, it disagreed with Staff on a few points, including: Applicant's desire that the conditions of approval be amended to clarify that the development ceiling of 43,256 square feet would permit both grocery store and retail uses, where the Staff recommendation would have limited any development solely to grocery use; and, the inclusion of language in the second sentence of proposed Condition No. 3, which requires the construction of certain roadway improvements that the Applicant claims to have completed.

Staff testified that, under the provisions of the Zoning Ordinance, general retail sales and personal services uses are not permitted uses in the C-1 Zone, but certain specific retail uses such as, among several others, grocery stores and flower shops are permitted in the C-1 Zone. The Applicant informed the Board that it only sought to include those retail uses that are permitted in the C-1 Zone. Following consideration of the matter, the Board concluded that the development ceiling should apply to both grocery and those retail uses permitted in the C-1 Zone.

The Applicant advised the Board that it withdrew its objection to the inclusion of the language related to roadway improvements in Condition No. 3, following clarification by Staff that the purpose for including the language was to make clear that the completed roadway improvement cannot be changed by the Applicant during redevelopment of the site.

Two speakers, both representing the Darnestown Civic Association, testified at the hearing. These speakers spoke solely to issues related to the concurrent Site Plan

application. No speakers testified in opposition to the Application and the record contains no correspondence opposing the Application.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies¹; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that:

- a) The previously approved development ceiling of 43,256 square feet, which was set through Condition No. 1 of the Board's approval of Preliminary Plan No. 1-89044, applies to both grocery use and those specific retail uses permitted in the C-1 Zone.
- b) The Preliminary Plan No. 1-89044A substantially conforms to the approved and adopted Potomac Subregion Master Plan of 2002 ("Potomac Master Plan"). The uses permitted by this amendment are permitted under the C-1 Zone and the Rural Village Overlay Zone, which latter zone was implemented by Sectional Map Amendment following a recommendation in the Potomac Master Plan; and, as such, the Board finds that the amendment substantially conforms to the Potomac Master Plan.
- c) Public facilities will be adequate to support and service the area of the proposed subdivision. The record of the Application includes a statement by Transportation Planning Staff confirming its review of a traffic statement submitted by the Applicant and concluding that the proposed addition will not generate additional trips from the originally approved 43,256 square feet of retail center.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- e) 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.

¹ The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

- f) As is set forth above, the Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-89044A in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-89044A, subject to the following conditions:

1. Amend previous Condition No. 1 for Preliminary Plan No. 1-89044 per opinion dated November 22, 1989 to limit development to a total of 43,256 square feet of grocery store use and those specific retail uses permitted in the C-1 zone.
2. All applicable previous conditions of approval as per preliminary plan opinion dated November 22, 1989 remain in full force and effect.
3. Applicant and the Planning Board shall execute an amendment to the July 3, 1990 Adequate Public Facilities Ordinance Agreement (as amended by the June 2, 1998 Amended Adequate Public Facilities Agreement) to reflect the change in use resulting from the approval of Preliminary Plan No. 1-89044A. All other applicable terms of the 1990 Adequate Public Facilities Ordinance Agreement, as modified by the 1998 amendment, including the previous requirement for the construction of a left-turn lane on westbound MD Route 28, shall remain in effect.
4. Prior to issuance of building permit for the grocery addition, Applicant shall record a written covenant, per MCDPS-Well and Septic specifications, and a plat of correction for adjacent Lots 30 and 31, Block A in the Seneca Highlands subdivision, placing them in permanent easement as a septic reserve area for the proposed grocery use.

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

APPROVED AS TO LEGAL SUFFICIENCY
1 AB
M-NCPPC LEGAL DEPARTMENT
DATE 7/25/05

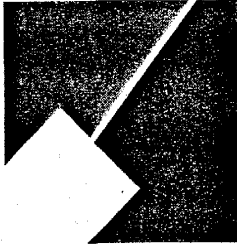
CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on Thursday July 28, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of Commissioner Bryant, seconded by Commissioner Robinson, with Chairman Berlage and Commissioners Bryant, Robinson, and Wellington voting in favor of the motion, ADOPTED the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Seneca Highlands, Preliminary Plan No. 1-89044A. Commissioner Perdue abstained.



Certification As To Vote of Adoption
Technical Writer

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Date Mailed: **AUG 12 2005**

Public Hearing Date: April 21, 2005
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seconded by Commissioner Wellington,
with a vote of 4-0;
Chairman Berlage and Commissioners
Bryant, Wellington, and Robinson voting
in favor. Commissioner Perdue
necessarily absent.

RECEIVED

AUG 15 2005

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-89044A

NAME OF PLAN: Seneca Highlands (Darnestown Village Center)

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The Applicant advised the Board that it withdrew its objection to the inclusion of the language related to roadway improvements in Condition No. 3, following clarification by Staff that the purpose for including the language was to make clear that the completed roadway improvement cannot be changed by the Applicant during redevelopment of the site.

Two speakers, both representing the Darnestown Civic Association, testified at the hearing. These speakers spoke solely to issues related to the concurrent Site Plan

application. No speakers testified in opposition to the Application and the record contains no correspondence opposing the Application.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies¹; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that:

- a) The previously approved development ceiling of 43,256 square feet, which was set through Condition No. 1 of the Board's approval of Preliminary Plan No. 1-89044, applies to both grocery use and those specific retail uses permitted in the C-1 Zone.
- b) The Preliminary Plan No. 1-89044A substantially conforms to the approved and adopted Potomac Subregion Master Plan of 2002 ("Potomac Master Plan"). The uses permitted by this amendment are permitted under the C-1 Zone and the Rural Village Overlay Zone, which latter zone was implemented by Sectional Map Amendment following a recommendation in the Potomac Master Plan; and, as such, the Board finds that the amendment substantially conforms to the Potomac Master Plan.
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- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- e) 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.

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- f) As is set forth above, the Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-89044A in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-89044A, subject to the following conditions:

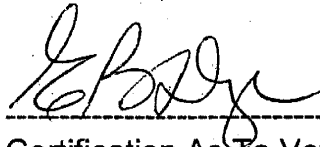
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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

APPROVED AS TO LEGAL SUFFICIENCY
1 AB
M-NCPPC LEGAL DEPARTMENT
DATE 7/25/05

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on Thursday July 28, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of Commissioner Bryant, seconded by Commissioner Robinson, with Chairman Berlage and Commissioners Bryant, Robinson, and Wellington voting in favor of the motion, ADOPTED the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Seneca Highlands, Preliminary Plan No. 1-89044A. Commissioner Perdue abstained.



Certification As To Vote of Adoption
Technical Writer