



OCT 15 2009

MCPB No. 09-123
Site Plan No. 820090140
Project Name: Ourisman Ford at Montgomery Mall
Date of Hearing: September 17, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review site plan applications; and

WHEREAS, on March 18, 2009, Withro Holdings, LLP/FP Westlake, LLC, ("Applicant") filed an application for approval of a site plan for a mixed-use development with 340 dwelling units, including 43 MPDUs (12.5%), 42,000 gross square feet of retail use, and 12,000 gross square feet of restaurant space, and a parking waiver for 118 parking spaces ("Site Plan" or "Plan") on 4.08 acres of C-2-zoned land, located in the northwest quadrant of the intersection of Motor City Drive and Westlake Terrace ("Property" or "Subject Property"); and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820090140, Ourisman Ford at Montgomery Mall (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated September 7, 2009, setting forth its analysis of, 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 September 17, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

Approved as to
Legal Sufficiency:


M-NCPPC Legal Department

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

WHEREAS, on September 17, 2009, the Planning Board approved the Application subject to conditions on the motion of Commissioner Wells-Harley; seconded by Commissioner Alfandre; with a vote of 3-0, Commissioners Alfandre, Hanson, and Wells-Harley voting in favor, and Commissioners Cryor and Presley being absent.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 820090140 for a mixed-use development with 340 dwelling units, including 43 MPDUs (12.5%), 42,000 gross square feet of retail use, and 12,000 gross square feet of restaurant space, and a parking waiver for 118 parking spaces, on 4.08 gross acres in the C-2 zone, subject to the following conditions:

Environment

1. Forest Conservation

- a. The applicant must satisfy all conditions of the final forest conservation plan prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit(s), as appropriate.
- b. Submission of the final forest conservation plan consistent with Section 109.B. of the forest conservation regulations. Worksheet must be revised to include only native trees, and trees outside public rights of way for credits towards meeting forest conservation requirements.

2. Noise Mitigation

- a. The applicant must investigate design options and propose noise mitigation measures that are consistent with the intent of the performance criteria identified in the "Conclusions" section of the Polysonics Corp. technical noise study entitled "Traffic Noise Testing - Ourisman Site - Montgomery Mall" dated June 11, 2009. Details showing noise appropriate site design and mitigation must be submitted for Environmental Planning and Development Review staff review and approval prior to certified site plan approval.
- b. Certification from an acoustical engineer that the building shell for residential dwelling units to be constructed within the projected 65 dBA Ldn noise contour is designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. The certification shall be provided to M-NCPPC Environmental Planning staff for concurrence prior to issuance of building permits.
- c. The builder shall provide a signed commitment to construct the impacted units in accord with the acoustical design specifications. Any changes to the

building shell construction that may affect acoustical performance after issuance of building permit shall be approved by an acoustical engineer and M-NCPPC Environmental Planning staff prior to their implementation.

3. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated January 26, 2009, unless amended and approved by the Montgomery County Department of Permitting Services.

4. LEED Certification

The Applicant must achieve a LEED (Leadership in Energy and Environmental Design) Certified Rating Certification at a minimum. The Applicant must make good faith efforts to achieve a LEED Silver rating. Before the issuance of any use and occupancy certificate, the Applicant must inform M-NCPPC staff of the LEED Certification Level for which they are applying. If this level is less than a Silver rating, before the issuance of the final use and occupancy certificate the Applicant must provide to staff a written report, for public record purposes only, from the Applicant's LEED consultant analyzing the feasibility of achieving a LEED-Silver rating and identifying the minimum additional improvements required to achieve the LEED Silver rating, including their associated extra cost.

Transportation & Circulation

5. Maximum Development

The Applicant must limit the proposed mixed-use development to a maximum of 340 mid-rise apartments and 50,869 leasable square feet of general retail uses.

6. PAMR

The Applicant must satisfy Policy Area Mobility Review (PAMR) by providing pedestrian safety ADA-compliant improvements at the signalized intersections of Rockledge Drive/Rock Spring Drive, Rock Spring Drive-Marriott's driveway/Fernwood Road, and Rockledge Drive-Marriott's driveway/ Fernwood Road. The three intersections are along the walking route that connects the Westfield Montgomery Mall and its Transit Center with the office buildings in the adjacent Rock Spring Park. At each corner of the three intersections, ADA-compliant dual handicapped ramps and accessible pedestrian signals must be installed. At Rockledge Drive-Marriott's driveway/Fernwood Road only, the pedestrian crosswalks and stop bars need to be upgraded at each intersection approach. In addition, a countdown pedestrian signal head is needed at the southeast corner. The pedestrian safety improvements must be permitted and bonded by the Montgomery County Department of Permitting Services (DPS) prior to release of any building permit.

7. Traffic Mitigation Agreement

The Applicant must enter into a Traffic Mitigation Agreement with the Planning Board and the Montgomery County Department of Transportation (MCDOT) to participate in the North Bethesda Transportation Management District (TMD) and assist in achieving and maintaining its non-auto driver mode share goals. By Certified Site Plan, the Applicant must submit for staff review a draft Traffic Mitigation Agreement. The Traffic Mitigation Agreement must be fully executed prior to release of any building permit.

8. Pedestrian Improvements

The Applicant must provide ADA-compliant dual handicapped ramps and accessible pedestrian signals at each corner of the two signalized intersections of Westlake Terrace with Motor City Drive. The pedestrian safety improvements must be permitted and bonded by DPS prior to release of any building permit.

9. Bicycle Storage

The Applicant must provide twenty (20) inverted-U bike racks along the site's frontage and ten (10) bike lockers in the garage within 50 feet of the elevator to serve the residents and visitors of the apartment building. Transportation Planning staff will determine the ultimate locations of the bike racks and lockers prior to site plan certification.

Site Plan

10. Site Design

The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Sheet A3.2-3.5A of the submitted architectural drawings, as determined by M-NCPPC Development Review and Urban Design staff.

11. Lighting

- a. The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for mixed-use development.
- b. All onsite down- light fixtures must be full cut-off fixtures.
- c. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
- d. The height of the light poles shall not exceed the height specified in the certified site plan, including the mounting base.

12. Landscape Surety

The Applicant shall provide a surety (letter of credit, performance bond) in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a. The amount of the surety shall include plant material, on-site lighting, recreational facilities, and site furniture within the relevant block of development. Surety to be posted prior to issuance of first building permit within each relevant block of development and shall be tied to the development program.
- b. Provide a cost estimate of the materials and facilities, which will establish the initial bond amount.
- c. Completion of plantings by block, to be followed by inspection and bond reduction. Inspection approval starts the 1 year maintenance period and bond release occurs at the expiration of the one year maintenance period.
- d. Provide a screening/landscape amenities agreement that outlines the responsibilities of the respective parties and incorporates the cost estimate. Agreement to be executed prior to issuance of the first building permit.

13. Development Program

The Applicant must construct the proposed development in accordance with a development program that will be reviewed and approved prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a. Street lamps and sidewalks must be installed as construction is completed. Street tree planting may wait until the next growing season.
- b. On-site amenities including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any residential building occupancy permit.
- c. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- d. The development program must provide phasing of stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.

14. Certified Site Plan

Prior to approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Include the final forest conservation approval, stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.

- b. Add a note to the site plan stating that "M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading".
- c. Add a note that "All plant substitutions must be approved by M-NCPPC" and provide a list of alternative species.
- d. Modify data table to reflect development standards enumerated in the staff report.
- e. Ensure consistency off all details and layout between site plan and landscape plan.
- f. Minor changes to landscape, lighting, and recreation facilities.
- g. Final location, design, and details of any noise walls on-site.
- h. Provide a drawing elevation for the surface adjoining the recreational putting green on the east; show landscaping and planting.
- i. Show noise attenuation for the exterior recreational spaces, including the pool area.
- j. Provide façade design for roof top mechanical equipment and/or mechanical penthouse(s).
- k. Provide a drawing showing line-of-sight visibility of roof top equipment and lighting standards, & signage (from public streets and I-270 and ramps).
- l. Demonstrate compliance with MCFRS requirements.

BE IT FURTHER RESOLVED, that all site development elements as shown on Ourisman Ford at Montgomery Mall drawings stamped by the M-NCPPC on August 20, 2009, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Planning 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 Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

Neither a development plan, diagrammatic plan, schematic development plan, nor a project plan were required for the subject site.

2. *The Site Plan meets all of the requirements of the C-2 zone and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The proposed use is allowed in the C-2 Zone and the site plan fulfills the purposes of the zone by providing a mix of residential and commercial uses convenient to a Metro Bus Station to be developed on the adjacent Montgomery Mall site.

As the project data table on page 12 indicates, the site plan meets all of the development standards of the zone. With respect to building height, setbacks, green space, and density the proposed development is under all the maximum standards allowed.

Sections of the C-2 zone (59-C-4.35), including the purpose clause, allowed uses (e.g. dwelling units), and building height provisions, were invalidated by a recent court case but were not formally removed from the code by the County Council. There remains some ambiguity as to which standards apply, particularly to building height (i.e., 65' for 75'). Staff is prepared to recommend a maximum building height for this project of 75', but subsequent action by the County Council, or possibly other body, may be incompatible with this approach. Staff is pursuing corrective/clarifying action parallel to this review.

The requested partial waiver of the total number of parking spaces required by the Zone, reducing the on-site parking from 763 spaces to 645 spaces, is consistent with the intent of providing transit-oriented housing and commercial uses.

Requirements of the C-2 zone

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the developments standards proposed for approval. The Board finds, based on the aforementioned data table, and other [uncontested] evidence and testimony of record, that the Application meets all of the applicable requirements of the C-2 Zone. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

Data Table

Development Standards Approved by
the Board and Binding on the Applicant

Gross Tract Area (acres)	4.08
Gross Tract Area (square feet)	177,911
Building Height (feet)	75

Building Setbacks (feet)	
Motor City Drive	12
Westlake Terrace	42
North side	13
East side	60
Green Area (% of lot)	31.6
Floor Area Ratio (FAR)	2.36
Building Area (square feet)	420,500
Max. Commercial Density (FAR)	0.45
Max. Commercial Density (square feet) – total	54,000
Max. Retail Density (square feet)	42,000
Max. Restaurant Density (square feet)	12,000
Dwelling units	340
MPDUs (%)	12.5 (43 du)
Parking Spaces	645

3. *The locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

a. Buildings and Structures

The buildings and structures of the proposed development are located along the street, setting the correct standard for definition and activation of the public street as this area redevelops. The location provides easy access to the building from adjoining sidewalks and parking. Staff finds the locations of the buildings and structures to be adequate and efficient, while meeting the aesthetic concerns of the area, and not to pose safety concerns on the site.

b. Open Spaces, Landscaping, and Recreation Facilities

The central open space, the internal retail street accessible to the public, provides a well-designed pedestrian environment with opportunities for multiple activities. This area provides attractive streetscape, landscape,

and lighting. A secondary open space sequence, accessible only to residents, provides a variety of recreational facilities, including an outdoor pool, to complement indoor exercise and meeting spaces. The plan further includes and maintains a landscaped buffer along the busy adjacent roads, Interstate 270 and the Westlake Terrace overpass, to improve screening for residents. The open spaces, landscaping, and recreation facilities are adequate, safe, and efficient.

c. Vehicular and Pedestrian Circulation

Pedestrian access from adjacent sidewalks adequately and efficiently integrates this site into the surrounding area. The vehicular circulation design efficiently directs traffic into the site with minimal impacts to pedestrian circulation. The pedestrian and vehicular circulation systems are adequate, safe, and efficient.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The proposed development sets a high standard for urban design in the redevelopment of this area. It faces the streets, opens to the sidewalks, and provides activating uses. This area is currently dominated by automobile-oriented uses and the proposed development is a strong beginning for its reorientation to transit-oriented pedestrian-friendly development. The structure itself is in scale with nearby redevelopment and is located such that it will not adversely impact existing or proposed adjacent uses. The proposed structure and uses are compatible with the surrounding existing, proposed, and planned uses and development.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

A final forest conservation plan (FFCP) date stamped received by the Environmental Planning Division on March 18, 2009, has been submitted for approval. The plan shows no existing forest and/or specimen and champion trees on-site. The FFCP shows the site's forest conservation requirement of 0.67 acres to be met partially with afforestation tree planting credit of 0.29 acres and the remaining 0.38 acres by in-lieu payment.

County DPS has issued concept stormwater management plan approval on January 26, 2009. The proposed method includes on-site detention and required

review of the landscape plan as part of the Sediment Control/Stormwater Management Plan.

BE IT FURTHER RESOLVED, that this resolution constitutes the written opinion of the Planning Board in this matter and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED, that the date of this resolution is OCT 15 2009 (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).

* * * * *

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 Wells-Harley, seconded by Commissioner Hanson, with Commissioners Hanson, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Alfandre recused and Commissioner Cryor absent, at its regular meeting held on Thursday, October 1, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board