



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

MCPB No. 10-163
Preliminary Plan No. 120070560
Falkland North
Date of Hearing: November 18, 2010

DEC 14 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 January 12, 2007, Home Properties Falkland Chase, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property and submitted a revised application on June 16, 2010, that would create one lot on 9.77 acres of land in the CBD-R1 zone, located in the northeast quadrant of the intersection of 16th Street and East-West Highway (MD 410) ("Property" or "Subject Property"), in the Silver Spring Sector Plan area ("Sector Plan"); and

WHEREAS, Applicant's preliminary plan application, together with the revised application was designated Preliminary Plan No. 120070560, Falkland North (formerly Falkland Chase) ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated November 8, 2010, which was revised on November 10, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions (together, the "Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on November 18, 2010, 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 18, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Wells-Harley; with a vote of 4-0, Commissioners Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor, Commissioner Alfandre absent.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120070560 to create one lot on 9.77 acres of land in the CBD-R1 zone, located in the northeast quadrant of the intersection of 16th Street and East-West Highway (MD 410), in the Silver Spring CBD Sector Plan area, subject to the following conditions:

1. Approval under this Preliminary Plan is limited to 1 lot for a maximum of 70,000 square-feet of retail uses and a maximum of 1,250 multi-family residential units. A minimum of 12.5% of the residential units must be Moderately Priced Dwelling Units (MPDUs). A minimum of 4.72% of the residential units must be Workforce Housing Units (WFHs).
2. The proposed development must comply with the conditions of the preliminary Forest Conservation Plan. The Applicant must satisfy all conditions prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits. Conditions include:
 - a. The final forest conservation plan must include detailed and specific tree protection measures, prepared by an certified arborist for all impacted trees.
3. Prior to approval of any site plan, the Applicant must prepare and submit a noise analysis that considers all transportation sources immediately adjacent to the subject site. The noise analysis must identify the existing 60, 65, and 70 dba Ldn noise contours, 20 year projected 60, 65, and 70 dba Ldn noise contours, and methods to treat the exterior and interior noise to acceptable levels.
4. The Applicant must comply with the conditions of approval for Project Plan 920070080.
5. The final number of dwelling units and MPDUs and WFHs will be determined at Site Plan.
6. The Applicant must dedicate and the record plat must show dedication for the following rights-of-way along the Property frontage consistent with the *Silver Spring CBD Sector Plan*:
 - a. East-West Highway – a minimum of 59 feet from the roadway right-of-way centerline for a distance of 300 feet east of 16th Street centerline and a minimum of 55 feet from the roadway right-of-way centerline for the remainder of site frontage.
 - b. 16th Street – a minimum of 60 feet from the roadway right-of-way centerline.

7. Prior to recordation of the plat, the Applicant must record a covenant stating that, at the Maryland Transit Administration's (MTA) request, the Applicant will dedicate to MTA for public use for the Purple Line Locally Preferred Alternative (LPA), at no cost, the area designated on the certified Preliminary Plan as "Future Dedication" or any such lesser area within the designated area as is determined by MTA to be necessary. The covenant may specify that such dedication shall be made when the County or State has incorporated the Purple Line improvements in an adopted County Capital Improvements Program ("CIP") or State Consolidated Transportation Program ("SCTP") which provides for appropriation of funds equal to the estimated costs of designing and constructing any portion of the Purple Line improvements. The covenant will remain in effect for 15 years from the date of the mailing of the Planning Board resolution. The record plat must include a reference to the recorded covenant.
8. The Applicant must grant and the record plat must show an access easement on the Property to the Maryland Transit Administration (MTA), as referenced in a letter dated November 3, 2010, from MTA, between 16th Street and the proposed Purple Line Locally Preferred Alternative alignment. The access easement must be shown on the certified Preliminary Plan.
9. The Applicant must submit an updated traffic study and an updated signal warrant analysis for the proposed development as part of any future site plan to support the final approval of the proposed configurations of the East-West Highway and 16th Street site access driveways, and the proposed traffic signal at the shared East-West Highway driveway. These documents must be provided to Maryland State Highway Administration (SHA) and Transportation Planning Division staff as part of the site plan review.
10. The Applicant must coordinate with SHA and provide necessary pedestrian safety improvements at the East-West Highway/16th Street intersection (specifically to the southeast corner of the intersection). The Applicant must satisfy all design requirements related to this pedestrian safety improvement at least 30 days prior to any Planning Board hearing on the site plan for the development.
11. The Applicant must submit to Transportation Planning Division staff an implementation schedule that is tied to the development construction schedule for all required site frontage, site access, and access control improvements at least 30 days prior to any Planning Board hearing on the site plan for the development. The required public roadway improvements must be open to traffic prior to the issuance of any building occupancy permit for the development.
12. The Applicant must enter into a Traffic Mitigation Agreement ("Agreement") with the Planning Board and the Montgomery County Department of Transportation (DOT) to participate in the Silver Spring Transportation Management District (TMD). The final Agreement must be executed prior to the release of any building permit for the proposed development.

13. The Applicant must comply with the conditions of the MCDPS stormwater management approval dated September 13, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
14. The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated July 30, 2010. 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 Maryland State Highway Administration (MDSHA) letter dated November 1, 2010. These conditions may be amended by MDSHA, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
16. The Applicant must satisfy provisions for access and improvements as required by MDSHA prior to issuance of access permits.
17. No clearing, grading or recording of plat prior to certified site plan approval.
18. The record plat must show all necessary easements.
19. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid according to the following schedule:
 - Phase I: issuance of building permits for at least 700 dwelling units, including MPDUs, and 70,000 square feet of retail uses – the APF review for this phase will remain valid 85 months from the date of mailing of the Planning Board Resolution.
 - Phase II: issuance of building permits for at least 300 additional dwelling units, including MPDUs – the APF review for this phase will remain valid for 109 months from the date of mailing of the Planning Board Resolution.
 - Phase III: issuance of building permits for the remaining 250 dwelling units, including MPDUs – the APF review for this phase will remain valid for 145 months from the date of mailing of the Planning Board Resolution.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, 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 Sector Plan.*

The Preliminary Plan is consistent with the Silver Spring CBD Sector Plan. The Sector Plan provides for the development of downtown Silver Spring under the following themes: transit-oriented, commercial, residential, civic, green and pedestrian friendly. The Falkland North project is in line with these themes as it provides for mixed-use development (commercial and residential) with significant public amenities in close proximity to the Silver Spring Transit Center. It furthers

the Plan's goals of creating a mix of housing choices supported by parks, retail, civic uses and employment opportunities adjacent to transit and with convenient access to the greater region.

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

A traffic study dated July 27, 2010, was submitted for the subject Preliminary Plan for Adequate Public Facilities (APF) review purposes because the development proposed on the Property – 70,000 square-feet of retail and 1,250 high-rise residential units in place of existing 182 garden style apartment units – is expected to generate 30 or more total peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods.

Using Silver Spring CBD trip generation rate for retail uses and discounted CBD trip rates for the residential uses, and after accounting for existing residential uses on the Property, the study estimated that the proposed Falkland North development will generate 299 net new peak-hour trips during the morning peak period and 446 net new peak-hour trips during the evening peak period.

For comparison purposes, the study also determined that if non-Silver Spring CBD trip generation rates were used, the development would generate 467 net new peak-hour trips during the morning peak period and 753 net new peak-hour trips during the evening peak period. The development, therefore, generates a lower number of trips during the morning (467 vs. 299 peak-hour trips) and evening (753 vs. 446 peak-hour trips) peak periods as a result of being located within the Silver Spring CBD.

- Local Area Transportation Review (LATR)

As shown in the traffic study, the capacity analysis demonstrates that under total traffic conditions, CLV at intersections included in the traffic study would be below the applicable congestion standard for Silver Spring CBD Policy Area (1,800 CLV). The Preliminary Plan, therefore, satisfies the LATR requirements of the APF test.

- Policy Area Mobility Review (PAMR)

To satisfy the PAMR requirements of the APF test, the Silver Spring CBD Policy Area requires mitigation of ten percent of new peak-hour trips generated by a development.

The site trip comparison summary provided in the traffic study demonstrates that the proposed development as a result of being located within the Silver Spring CBD will generate approximately 36 percent fewer peak-hour trips during the morning peak period and 41 percent fewer peak-hour trips during the evening peak period when compared to similar land uses outside the Silver Spring CBD. Since the trip mitigation being provided by virtue of the CBD-area project site is more than the PAMR trip mitigation requirement for the Silver Spring CBD Policy Area, the Preliminary Plan satisfies the PAMR requirements of the APF test.

Vehicular and pedestrian access will be safe and adequate with the proposed improvements. Vehicular improvements include using existing curb cuts to consolidate site entrances for adjacent sites off 16th Street and East-West Highway. The project will provide pedestrian improvements along the primary site frontages and through the project via a new internal private street.

The Subject Property is adjacent to the proposed Purple Line light rail route, and a portion of the Property will be needed for the proposed right-of-way. The Applicant is willing to convey the necessary area of the Property to the MTA at no cost. The approval includes a condition that reflects this through recordation of a covenant.

Public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and public sewer. The Application is currently under review by the Montgomery County Fire and Rescue Service who must determine as part of future site plan approval that the Property has appropriate access for fire and rescue vehicles. A final fire access approval has not been issued as part of this Preliminary Plan because more detail is needed about the design of buildings along the existing and proposed WMATA property to determine how the rear of the buildings will be adequately served. Providing adequate fire access and/or protection may include provision of interior fire suppression systems and/or changes to the location and configuration of buildings, which will be depicted on the site plan. Other public facilities and services, such as police stations, firehouses, schools, and health services, are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. The Application is not within a school moratorium area, and a school facilities payment is not required. Electrical, telecommunications, and natural gas services are also available to serve the Subject Property.

Although the adequate public facilities (APF) review validity period for typical preliminary plans is seven years, Section 50-20 of the Subdivision Regulations authorizes a validity period of up to 12 years. The Planning Board

approves a phased 12-year APF validity period for this Preliminary Plan because the complex nature and size of this project creates the need for a lengthy construction period. The Applicant is proposing to construct in three phases, the last of which would begin within 12 years after approval of the Application. Therefore, a phased 12-year APF validity period is appropriate, and a condition reflecting that is included in the approval.

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

The proposed lot size is appropriate, because it accommodates a mixed-use development with internal private access driveways. The width of the lot is suitable given the multiple points of access that are necessary to accommodate the commercial and residential parking garages. The shape is appropriate because a rectangular lot remains in its current configuration, which is appropriate for the corner orientation of the Property.

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

A preliminary forest conservation plan was approved with the Preliminary Plan. There is a planting requirement of 1.19 acres of forest. This requirement will be met off-site, as there are no priority planting areas on-site. There are 21 specimen trees (≥ 30 " DBH), 21 large trees (≥ 24 " DBH), and one County champion tree on-site. Thirty-nine of these 43 trees are proposed for removal as part of this development. In addition, two off-site specimen trees are proposed for removal. Four of those trees are proposed for retention on the site. However, when detailed plans are developed, retaining these trees may not be possible given the extent of disturbance on-site.

Forest Conservation Variance

Section 1607(c) of the Natural Resources Article, Maryland Annotated Code, identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Code. The law requires no impact to and the retention and protection to the greatest extent possible of all trees that measure 30" diameter at DBH or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; and rare, threatened and endangered species. Since this project did not obtain approval of a

preliminary forest conservation plan prior to October 1, 2009 and the Applicant is proposing to remove 21 trees greater than 30 inches DBH onsite, 3 trees greater than 30 inches DBH offsite, and 1 County champion, a variance is required.

The Applicant has requested a variance to remove the following trees:

	Tree Removal Descriptions			
	DBH	TYPE	COND.	
	A	30	WHITE PINE	Fair
	B	30	WHITE PINE	Fair
	C	30	RED OAK	Fair
	D	40	TULIP POPLAR	Good
	E	42	TULIP POPLAR	Fair
	F	32	RED OAK	Fair
	H	38	TULIP POPLAR	Fair
	J	31	TULIP POPLAR	Fair
	K	33	BOX ELDER	Fair
	L	35	BOX ELDER	Poor
	M	32	TULIP POPLAR	Fair
	N	40	TULIP POPLAR	Fair
	O	30	BLACK LOCUST	Fair
	P	38	PIN OAK	Fair
	Q	34	PIN OAK	Fair
	R	38	WHITE PINE	Fair
	S	32	WHITE PINE	Poor
	T	30	WHITE PINE	Fair
	U	36	WHITE PINE	Poor
Offsite	V	42	ELM	Poor
Offsite	W	44	BLACK OAK	Poor
	X	32	TULIP POPLAR	Fair
Offsite	Y	33	TULIP POPLAR	Fair
	CC	31	YELLOWWOOD	Poor
	ZZ	11	HAWTHORNE	Poor

While trees C, D, E, and F may be retained, the ability to do this will be dependent on final design details. Therefore, the Applicant is requesting a variance to remove these trees but will continue to work towards saving these trees with the submission of the site plan.

In accordance with Section 22A-21(e), the Applicant has met all of the following criteria required for the Board to grant the variance:

1. Will not confer on the Applicant a special privilege that would be denied to other applicants.

Granting the variance will not confer a special privilege as the removal and/or disturbance of the specimen trees noted above are the minimum

necessary in order to develop the Property. Furthermore, the variance is necessary and unavoidable in order to develop Property according to the Sector Plan. Any redevelopment of this site would require similar levels of disturbance and tree loss. The same criteria have been applied to other projects where the impacts and removals are unavoidable.

2. Is not based on conditions or circumstances which are the result of the actions by the Applicant.

The variance is not based on conditions or circumstances which are the result of actions of the Applicant. The Property is located in the Silver Spring Central Business District and is zoned CBD-R1. The distribution of trees throughout the site and next to existing buildings increases the difficulty of retaining the trees. In specific, the County champion 11" DBH hawthorn tree (tree ZZ) is essentially a foundation planting of one of the existing buildings.

3. Is not based on a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

The variance is not the result of a condition, either permitted or non-conforming, on a neighboring property. The neighboring properties are developed residential or commercial properties, or public rights-of-way.

4. Will not violate State water quality standards or cause measurable degradation in water quality.

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. The development will actually improve the water quality generated from the site because the new development will introduce stormwater management onto a location that currently has none. Three environmental site design measures are proposed to be implemented to the maximum extent practicable within the development on the site. These measures are green roofs, rainwater harvesting, and micro bioretention. Approximately 40% of the proposed rooftops are planned to be green roofs. Two cisterns are proposed within the underground garage to collect approximately 2 inches of runoff from remaining rooftops and green space. Seven micro bioretention facilities are proposed throughout the site to address the water quality volume requirement for the development. These micro bioretention facilities more than provide treatment for the water quality volume required on-site. The micro bioretention facilities not located above structure are proposed to have a stone reservoir below to allow infiltration in order to meet the recharge volume requirements.

Although the County Arborist recommended mitigation for the impact to critical root zones of the specimen trees, the Planning Board does not find that any additional mitigation is necessary to offset the impact of critical root zones for the following reasons:

1. Removal and impact to the trees greater than 30 inches are internal to the site and unavoidable to achieve the Sector Plan densities.
2. The Applicant is planting 217 new canopy trees either internal to the site or along 16th Street and East West Highway as part of the landscape plan.
3. The forest conservation plan generates a 1.19 acre forest planting requirement for a property that currently has no forest.

As a result of the above findings, the Planning Board approves the Applicant's request for a variance from individual tree retention requirements of the Forest Conservation Law to remove the 25 trees. The variance approval is assumed into the Planning Board's approval of 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 MCDPS Stormwater Management Section approved the stormwater management concept for the project on September 13, 2010. The stormwater management concept includes on-site channel protection and water quality control via the use of environmental site design techniques and off site stream restoration.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 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 this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 14 2010 (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).

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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 Alfandre, with Vice Chair Wells-Harley and Commissioners Alfandre and Presley voting in favor of the motion, and with Chair Carrier and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, December 9, 2010, in Silver Spring, Maryland.



Marye Wells-Harley, Vice Chair
Montgomery County Planning Board