

MAR 30 2011



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB No. 11-15**  
**Preliminary Plan No. 11998092B**  
**Rock Spring Centre**  
**Date of Hearing: February 17, 2011**

## 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 July 24, 2008, Davis Brothers Montgomery Farm LP, Camalier LP, and DRI Development Services ("Applicant"), filed an application for approval of an amendment to its preliminary plan of subdivision of 50.54 acres of land in the MXPB zone, located in the northeast quadrant of the intersection of Rockledge Drive and Rock Spring Drive ("Property" or "Subject Property"), in the North Bethesda Garrett Park Master Plan area ("Master Plan"); and

WHEREAS, this preliminary plan application is to amend preliminary plan no. 119980920 approved on October 25, 1999, for 670,000 sf. of office space, 220,000 sf of retail space, 90,000 sf of entertainment uses, a 30,000 sf community center, and 1,250 multi-family dwelling units, previously amended by preliminary plan no. 1199809A approved on September 23, 2004, that added a 200-room hotel and reduced the general office space to 539,000 sf; and

WHEREAS, Applicant's preliminary plan amendment application was designated Preliminary Plan No. 11998092B, Rock Spring Centre ("Preliminary Plan" or "Application") to, once again amend the previously approved preliminary plan by reconfiguring internal parcel lines within the unplatted existing parcel, creating 21 parcels, and amending the approved land uses by i) increasing the office space by 10,000 sf to 549,000 sf, ii) reducing the retail space by 10,000 sf to 210,000 sf; and

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Approved as to  
Legal Sufficiency:

*[Handwritten signature]* 3/22/11

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WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated February 4, 2011, 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 February 17, 2011, 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 February 17, 2011, 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, and Commission 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. 11998092B, subject to the following conditions

- 1) Approval under this Preliminary Plan Amendment is limited to 1,250 multi-family dwelling units, 549,900 square feet of office uses, 210,000 square feet of retail uses, 200,000 square feet of hotel uses with up to 200 guest rooms, 90,000 square feet of entertainment uses, and a 30,000-square-foot community center. This condition modifies the first listed Condition of Approval, but identified as Condition of Approval #5 of the Planning Board Opinion dated November 9, 2004.
- 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. Conditions include:
  - a. Provide detail for the invasive species management plan in terms of species and treatment methods, and specify the necessary supplemental plantings.
  - b. Revise the worksheet to account for clearing which occurred in the staging area fronting Old Georgetown Road. Adjust notes, tables and legend accordingly.
  - c. Identify the off-site forest mitigation bank and the appropriate amount of credits needed.
  - d. Clarify and correct all plan references to the phase II encroachments within the boundaries of the current phase, by providing a general note to restore and/or reforest the disturbed areas prior to final release of the final forest conservation plan bond associated with the current phase.



- e. Revise the legend symbols with the plan graphics for all items so they match, including but not limited to the existing/proposed forest lines and the individual tree symbols.
  - f. Adjust legend, worksheet and any other plan reference to exclude large landscape areas from phase III (maximum landscape credit has been already been credited in a previous phase).
  - g. Provide permanent boundary monuments at each corner of the forest conservation easements. Include additional posts along boundary lines as needed so that the spacing does not exceed approximately 150'.
  - h. Delete the cultivar reference from the reforestation list. Specify only standard native plant materials for reforestation.
- 3) The Category I Easement areas as shown on the Final Forest Conservation Plan (FFCP) must be recorded by plat prior to land disturbing activities occurring onsite.
  - 4) The Applicant must submit financial security for the planting requirements and invasive management work specified on the FFCP prior to any land disturbing activities occurring onsite.
  - 5) The certificate of compliance for the off-site forest mitigation bank must be submitted by Applicant and approved by M-NCPPC Associate General Counsel Office prior to land disturbing activities occurring onsite.
  - 6) The Applicant must perform the initial invasive species control work following the preconstruction meeting, and prior to the release of building permits (to be performed along with the pre-construction measures such as tree protection). The supplemental native plantings must occur as soon as possible but no later than two growing seasons after the pre-construction meeting date.
  - 7) The Applicant must dedicate all public road rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan, unless otherwise designated on the Preliminary Plan.
  - 8) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan and to the design standards imposed by all applicable road codes.
  - 9) The Applicant must dedicate to Montgomery County the approximately 0.57-acre portion of the Subject Property that is identified as proposed "Parcel M", for public recreation use per County Council Resolution 13-865. The land must be dedicated to Montgomery County through notation on the plat and by conveyance prior to recordation of the plat in the form of a deed approved by Montgomery County. At time of conveyance, the Property must be free of any trash and unnatural debris.
  - 10) The record plat must reflect a public use and access easement over all private streets and adjacent parallel sidewalks.
  - 11) The record plat must reflect an easement for future dedication for the North Bethesda Transitway along the Rock Spring Drive Property frontage. The easement will be valid for so long as the North Bethesda Transitway is shown on



the official Montgomery County Master Plan of Highways. Prior to recordation of the plat, an easement document must be recorded in the land records of Montgomery County that sets forth the terms of the easement for future dedication. The easement document must state that, at any time that the county makes a request for such dedication, the Applicant will dedicate to Montgomery County for use as right-of-way for the North Bethesda Transitway the area shown in easement on the record plat. The record plat must note the liber and folio of the easement document.

- 12) Prior to approval of any site plan for development on proposed Parcel M or proposed Parcel O, the Applicant must obtain approval of a preliminary plan amendment that establishes an easement for future dedication for right-of-way for the North Bethesda Transitway along the Property frontage of Old Georgetown Road on the same terms and conditions as set forth in Condition 11.
- 13) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated January 4, 2011. 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 December 22, 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 satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 16) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan.
- 17) Site Plan #820090030 must be approved by the Board and the certified site plan must be signed by Montgomery County Planning Department Staff prior to approval of the record plat.
- 18) The certified Preliminary Plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the preliminary plan are illustrative. The final locations of buildings, structures and hardscape will be determined during the site plan process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
- 19) The Preliminary Plan will remain valid until November 25, 2013. 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. This

condition modifies Condition of Approval 13 of the Planning Board Opinion dated October 25, 1999.

- 20) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid until November 25, 2013.
- 21) All remaining applicable previous conditions stated in the Planning Board Opinion of October 25, 1999, and the Planning Board Opinion of November 9, 2004, remain in full force and effect, unless specifically amended by this Preliminary Plan.

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 subject to revision as presented at the Hearing, 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 Master Plan.*

The Planning Board found the original preliminary plan (119980920) and the previous amendment (11998092A) in substantial conformance with the North Bethesda Garrett Park Master Plan. The current amendment does not affect the Application's conformance with the Master Plan, and the Planning Board's prior findings remain valid.

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

#### Local Area Transportation Review (LATR)

The 10,000-square-foot increase in office use and the 10,000-square-foot decrease in retail use will cause an overall reduction in morning and evening peak hour trips, as compared to previous approvals. Therefore, this Preliminary Plan Amendment satisfies the LATR requirements of the APF test.

#### Policy Area Mobility Review

This Preliminary Plan Amendment does not generate more than three new vehicle trips in the morning or evening peak hours. Therefore, the Application is not subject to Policy Area Mobility Review.

#### Other Public Facilities and Services



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 has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services, are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. With respect to public schools, The Planning Board found the original preliminary plan (119980920) and the previous amendment (11998092A) to be adequately served. The current amendment does not add any additional dwelling units and is still under a valid APF approval, and, therefore, does not affect the adequacy of public schools. The Planning Board's prior findings remain valid. Electrical, telecommunications, and natural gas services are also available to serve the Subject Property.

- 3. 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 proposed size, width, shape and orientation of the parcels that will be recorded are appropriate for the location of the subdivision.

The parcels were reviewed for compliance with the dimensional requirements for the MXPB zone as specified in the Zoning Ordinance, and will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

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

The Subject Property contains existing recorded Category I Conservation Easements areas related to earlier phases of the project. Below is a brief outline of plans associated with the Rock Spring Centre:

Natural Resources Inventory / Forest Stand Delineation (NRI/FSD):  
419941990 Original approval 8/9/1994  
Re-approval 1/28/1998  
Revised on 6/25/1999

Final Forest Conservation Plan (FFCP):  
820040170 (820030360) approved on 5/17/2004.



820000340/820000350 approved on 7/13/2006. Later revised for parcel 23 storm water management encroachments and forest conservation easement abandonment on 5/13/2009.

The approved FFCP for the Rock Spring Centre, Residential Towers (the site containing a large abandoned foundation) shows temporary construction access within the footprint area of the current phase. The overlapping area presently contains electric utilities such as poles, lines and conduits, and also has portions of the tower crane foundation, a steeply graded slope, and security fencing within areas of the current phase. The phase II work was intended to be finished prior to start of the current phase. However, under the present conditions, there would be difficulty in completing all of the currently proposed work (such as at the north end of East Street and the nearby reforestation) unless the Phase II work is completed first (due to the severe limitations of working near a deep foundation wall and steeply graded slope above it). A plan note will clarify that a portion of the reforestation work is delayed until phase II is further underway. Therefore, portions of the forest conservation bond covering the current phase will have to be retained until the required restoration and plantings can be appropriately completed and accepted.

The final forest conservation plan is for the entire area covered by the previously approved preliminary plan of subdivision and preliminary forest conservation plan. The forest conservation planting requirements in the final forest conservation plan are based on the areas of forest cleared and retained shown on the preliminary forest conservation plan. Areas of forest that were previously cleared must be accounted for in the final forest conservation plan for the entire Rock Spring site as included in the Preliminary Plan of subdivision and the final forest conservation plan.

#### Forest Conservation Variance

Section 5-1607(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 under 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 inches 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.



The Planning Board notes that although this project did have a Preliminary Forest Conservation Plan approved prior to the October 1, 2009, the effective date for the variance requirements, the current proposal shows additional impacts and/or removals of subject trees, beyond the previous approvals. Applicant is proposing to remove and/or impact 14 trees greater than 30 inches DBH onsite. The newly proposed impacts to the trees that are 30 inches or greater in diameter trigger the requirement for a forest conservation variance.

According to Section 22A-21(e) of the County Code, in reaching its determination on the variance the Planning Board, must consider four factors. As the following findings demonstrate, the subject forest conservation plan and variance adequately addresses each of these factors:

- a. Will it confer on the Applicant a special privilege that would be denied to other applicants?

The general impacts of the proposed development have been shown on previously approved plans. Refinement of the approved concept is an anticipated and necessary part of the development process, rather than a unique or special consideration for the Applicant. The flexibility of the previous concept is underscored by the lack of a defined easement boundary from the previous approvals (except for minor established forest conservation easement areas not affected by the current proposal). Furthermore, the current proposal has improved the condition for other trees that are 30 inches in diameter or greater, when compared to previous approvals. Therefore, the Planning Board finds that the variance request would be granted to any Applicant in a similar situation.

- b. Is it based on conditions or circumstances which are the result of the actions by the Applicant?

The impact and removals are necessary and unavoidable to implement the plan as proposed. The Planning Board finds that the variance can be granted under this condition because mitigation for the impacts is provided above and beyond forest conservation requirements. The proposed supplemental native plantings associated with the stream valley buffer encroachments can also be counted as mitigation for the impacts/removals subject to the variance. However, the Planning Board required that additional native canopy tree plantings occur at the location of tree V-2. That large tree currently occupies a landscape bed within the traffic circle located partially within the stream valley buffer, which was credited toward forest conservation requirements. Once the declining tree



is removed the area would be completely open. The Planning Board required approximately five native canopy trees for the area in question. Locations, quantities and sizes of the plantings will be determined on the revised Final Forest Conservation Plan.

- c. Is it based on a condition relating to land or building use, either permitted or nonconforming, on a neighboring property?

The requested variance is a result of the current Application on the Subject Property and is not related to land or building use on a neighboring property.

- d. Will it violate State water quality standards or cause measurable degradation in water quality?

The one tree subject to a variance that is also associated with the stream valley buffer (tree V-2) is being removed due to its declining health rather than proposed construction impacts. Replanting of native canopy trees will occur at the same location. Furthermore, stormwater management for the Rock Spring Centre is currently provided in a wetland pond designed to serve the entire project providing both water quality and quantity controls. Under more recent stormwater management regulations, each new phase provides additional water quality measures. Phase III has an approved stormwater Management Concept Plan, and the final stormwater management plans are under review by MCDPS. Those plans include green roofs, bio-filtration facilities, and level spreaders for roof drains, which create sheet flow across grass areas as a vegetative treatment practice. Structural measures include dry wells and underground structural water quality facilities. The stormwater management plan will be ultimately approved for this project by MCDPS. The approved stormwater management plan will ensure that water quality standards will be met in accordance with State and County criteria.

In conformance with the above findings, the Planning Board approves the Applicant's request for a forest conservation variance to remove and/or impact 14 trees that are 30 inches or greater in diameter.

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 on January 4, 2011. The stormwater management concept includes consists of on-site channel protection measures via the existing Rock Creek Centre pond located northwest of the intersection of Rockledge Drive and Rock Forest Drive. On-site water quality control will be provided by green roofs, disconnects, bioretention facilities, grass swales, and permeable concrete.

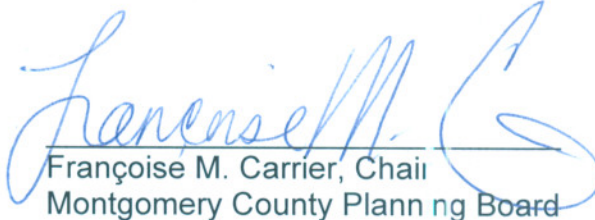
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAR 30 2011 (which is the date that this Resolution is mailed to all parties of record); and

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 Vice Chair Wells-Harley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor of the motion, and with Commissioner Alfandre absent, at its regular meeting held on Thursday, March 17, 2011, in Silver Spring, Maryland.

  
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Françoise M. Carrier, Chair  
Montgomery County Planning Board