



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

MCPB No. 12-12
 Site Plan No. 820120050
 Project Name: Falkland North
 Date of Hearing: January 19, 2012

JUN 28 2012

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-11-3, the Montgomery County Planning Board (“Planning Board”) is authorized to review site plan applications; and

WHEREAS, on December 13, 2010, the Planning Board approved Project Plan No. 920070080 (MCPB Resolution 10-162), and on December 14, 2010, the Planning Board approved Preliminary Plan No. 120070560 (MCPB Resolution 10-163), which together allow for a multi-building mixed-use development with a total of 1,276,329 sf., including 70,000 sf. of retail and 1,250 multi-family and townhouse dwelling units (including 12.5% moderately priced dwelling units (“MPDUs”) and 4.72% Workforce Housing Units) on one lot on 9.77 acres of CBD-R1-zoned land, located on the northeast corner of the intersection of 16th Street and East-West Highway in the Silver Spring CBD (“Property” or “Subject Property”) in the Silver Spring Central Business District (“CBD”) master plan (“Master Plan”) area; and

WHEREAS, on October 10, 2011, Home Properties Falkland Chase, LLC, (“Applicant”), filed an application for approval of a Site Plan and an expanded forest conservation variance¹ on the Property; and

WHEREAS, Applicant’s site plan application was designated Site Plan No. 820120050, Falkland North (“Application” or “Site Plan”); and

WHEREAS, following review and analysis of the Application by Staff and other governmental agencies, Staff issued a memorandum to the Planning Board, dated January 9, 2012, setting forth its analysis of and recommendation for approval of the Application subject to certain conditions (“Staff Report”); and

WHEREAS, on January 19, 2012, the Planning Board held a public hearing on the Application, and at the hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

¹ A variance under Section 22A-12(b)(3) of the Forest Conservation Law to remove 25 trees was granted as part of the preliminary plan approval.

Approved as to
 Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4005 Fax: 301.495.1320

M-NCPPC Legal Department
 www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, on January 19, 2012, the Planning Board voted to approve the Application subject to conditions, on the motion of Commissioner Anderson seconded by Commissioner Presley, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board APPROVES Site Plan No. 820120050 for a multi-building mixed-use development on one lot with a total of 1,276,329 sf., including 70,000 sf. of retail and 1,250 multi-family and townhouse dwelling units (including 12.5% MPDUs and 4.72% Workforce Housing Units), and an expanded forest conservation variance, on the Property, subject to the following conditions:²

1. Project Plan Conformance

The development must comply with the conditions of approval for Project Plan 920070080 as listed in Planning Board Resolution 10-162 dated December 13, 2010, unless amended.

2. Preliminary Plan Conformance

The development must comply with the conditions of approval for Preliminary Plan 120070560 as listed in Planning Board Resolution 10-163 dated December 14, 2010, unless amended. This includes but is not limited to all references to density, rights-of-way, dedications, easements, transportation conditions, Department of Transportation conditions, and Montgomery County Department of Permitting Services' ("MCDPS") stormwater conditions.

3. Forest Conservation & Tree Save

The development must comply with the conditions of the approved preliminary forest conservation plan or tree save plan. The Applicant must satisfy all conditions prior to the recording of a plat(s) or to the issuance of sediment and erosion control permits by MCDPS.

- a. An approved final forest conservation plan which addresses the conditions of approval must be obtained prior to any clearing, grading or demolition within the project area.
- b. Revise the final forest conservation plan to include detailed and specific tree protection measures (to be prepared by a certified arborist) for all impacted trees to remain. The recommendations are especially needed for trees #3, C & D as identified on the forest conservation plan.

² For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

- c. The fee-in-lieu payment or certificate of compliance which satisfies the 1.38 acre afforestation requirements must be submitted by the Applicant and be approved by Staff prior to land disturbing activities occurring onsite.
 - d. Remove the landscape and lighting sheets L-100, L-701, L-703, L-780, and L-781 from the current Application or add bold notes to the sheets stating "future phase under separate application" or similar.
 - e. Applicant to obtain services of a Maryland licensed tree expert to perform the required tree preservation measures and appropriately protect the trees to be saved.
 - f. Inspections must occur consistent with Section 22A.01.10 of the Forest Conservation Regulations.
4. Noise Attenuation
The Applicant's acoustical engineer must certify, after construction is complete and before final occupancy, that interior noise levels will not exceed 45 dBA Ldn. The builder commits to construct the units in accord with these design specifications, with any changes that may affect acoustical performance approved by the acoustical engineer in advance of installation.
5. LEED Certification
As stipulated in the Declaration of Restrictive Covenant by and between Applicant and The Maryland-National Park and Planning Commission dated August 2, 2010 ("Declaration of Restrictive Covenant"), for each building the Applicant must achieve a LEED (Leadership in Energy and Environmental Design) Silver Rating Certification at a minimum. The Applicant must make good faith efforts to achieve a LEED Gold rating. Before the issuance of any use and occupancy certificate of each building, the Applicant must inform Staff of the LEED certification level for which they are applying. If this level is less than a Gold 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-Gold rating, to include an affidavit from a LEED-Accredited Professional identifying the minimum additional improvements required to achieve the LEED Gold rating, including their associated extra cost. Submission of this report constitutes compliance with this condition.

6. Public Use Space and Amenities

- a. The Applicant must provide a minimum of 20% of the net lot area for on-site public use space and a minimum of 21.7% of the net lot area for on and off-site public amenity space.
- b. The public use space and amenities must be easily and readily accessible to the general public and available for public enjoyment.

7. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities, except as assumed by another entity.

8. Coordination with State Highway Administration

Before issuance of the first building permit, the Applicant must satisfy all State Highway Administration design requirements related to pedestrian safety improvements at the East-West Hwy/16th St. intersection.

9. Bike Share

The Applicant must identify an 8 feet x 40 feet area on the site (as a public access easement) to accommodate a future bike-share station on the site.

10. Affordable Housing

- a. The development must include 12.5 percent MPDUs.
- b. The MPDU agreement to build shall be executed prior to the release of any building permits.
- c. The development must include Workforce Housing in accordance with the Declaration of Restrictive Covenant.

11. Architecture

The exterior architectural character, proportion, materials, and articulation for each building must be substantially similar to the schematic elevations shown in the certified Site Plan set, as determined by Staff.

12. Lighting

- a. The lighting distribution and photometric plan with summary report and tabulations must conform to the Illuminating Engineering Society of North America (IESNA) standards for residential/commercial 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.

13. Landscape Surety

The Applicant shall provide a performance bond or other surety permitted 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 phase of development and shall be tied to the development program.
- b. Provide a cost estimate of the materials and facilities, which, upon Staff approval, will establish the initial surety amount.
- c. Completion of plantings by phase, 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 Site Plan Surety & Maintenance Agreement that outlines the responsibilities of the Applicant and incorporates the cost estimate. Agreement to be executed prior to issuance of the first building permit.

14. Development Program

The Applicant must construct the 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 associated with each phase must be installed within six months after street construction within that phase is completed. Street tree planting may wait until the next growing season.
- b. On-site amenities associated with each phase including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any building occupancy permit for that phase.
- c. Clearing and grading associated with each phase 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. Landscaping, lighting, pedestrian pathways, and seating areas associated with each phase must be completed as construction of the phase is completed.
- e. The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.
- f. The off-site stream area improvements located on the Falkland South Parcel must be completed before issuance of the building permit for the last building on Falkland North. The Development Program should also

include timing of all required reviews and permits for this off-site improvement, including, but not limited to, historic area work permit, forest conservation plan, and stormwater management concept.

15. 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. Modify the data table to reflect the development standards enumerated in the Staff Report.
- d. Ensure consistency of all details and layout between Site Plan and landscape plan.
- e. Final details for the south parcel stream valley renovation.
- f. For exterior public use space, provide for Staff approval the details of noise mitigation techniques to attenuate projected noise levels in excess of 65 dBA Ldn.
- g. Provide architectural elevations for each building
- h. Include calculations for compliance with the Montgomery County Recreation Guidelines.
- i. Show final curb radii for all of the site driveways and other internal roads.
- j. Demonstrate compliance with the "Proposed Development Commitments" contained within the *Declaration of Restrictive Covenant*, including, but not limited to:
 - a. Minimum bedroom distribution;
 - b. Workforce housing on the south and west parcels;
 - c. Woodleaf Apartments accommodations;
 - d. North parcel tenant relocation program
- k. Execute access easement agreements with adjacent properties for shared vehicular access. Provide a copy of the agreements for the file and include relevant notes on the certified Site Plan.

BE IT FURTHER RESOLVED, that all site development elements as shown on Falkland North drawings stamped by the M-NCPPC on January 10, 2012, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that having considered the recommendations and findings of its Staff as presented at the hearing and 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 Planning Board FINDS, with the conditions of approval, that:

1. *The Site Plan is consistent with the approved project plan for the optional method of development, unless the Planning Board expressly modifies any element of the project plan.*

The Site Plan is consistent with the approved Project Plan No. 920070080 in every respect, including scope and design.

2. *The Site Plan meets all of the requirements of the CBD-R1 zone.*

The approved uses are allowed in the CBD-R1 Zone, and the Site Plan fulfills the purposes of the zone by providing predominantly residential development compatible with adjacent residential uses in the Silver Spring Central Business District.

Based on the following project data table, which sets forth the development standards approved by the Planning Board and binding on the Applicant, and based on other evidence and testimony of record, the Site Plan meets all of the development standards of the CBD-R1 zone.

Data Table

Development Standard	Permitted/ Required	Approved and Binding
Gross Tract Area (sf.)	18,000	425,443
Previous Dedications (sf.)		96,597
Proposed Dedications (sf.)		3,392
Net Lot Area (sf.)		325,454
Maximum Density (FAR)	3	3
Maximum Density, total (sf.)	1,276,329	1,276,329
Maximum Density, non-residential (FAR)	0.6	0.16
Maximum Density, non-residential (sf.)	255,266	70,000
Maximum Dwelling Units, total		1,250
Minimum MPDU (%)	12.5	12.5
Minimum MPDUs (du)		157*
Minimum Workforce Housing (%)	N/A	4.72**
Minimum Workforce Housing (du)		59*

Building Height, Maximum (ft.)	143	143
Building Setback, Minimum	N/A	0
Parking Spaces, Maximum	1,672	1,672
On-Site Public Use Space, Minimum (% of NLA)	20	20
On-Site Public Use Space (sf.)	65,091	65,091
Off-Site Public Amenity Space (% of NLA)		21.7
Off-Site Public Amenity Space (sf.)		70,742

* final number of MPDUs and WFHUs will depend on the final number of units

*** as required and limited by the Declaration of Restrictive Covenant

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 are located on the site so as to frame the public spaces within and along the site, including streets, the public plaza, and the public garden. The locations of the buildings and structures, while meeting the aesthetic concerns of the area, do not pose any safety concerns on the site.

b. Open Spaces, Landscaping and Lighting, and Recreation Facilities

The Site Plan provides a variety of open spaces, including private streets, private landscaped terraces, a public plaza, a public garden, and an off-site restored stream area. Street trees, streetscape paving, and lighting enhance the pedestrian environment. Interior lighting will create enough visibility to provide safety but not so much as to cause glare on the adjacent roads or properties. These spaces provide a diversity of recreational opportunities on site. The open spaces, landscaping, and site details adequately and efficiently address the needs of the proposed use and the recommendations of the Sector Plan, while providing a safe and comfortable environment.

c. Vehicular and Pedestrian Circulation

Pedestrian access from adjacent sidewalks adequately and efficiently integrates this site into the surrounding area. Safety is enhanced by streetscape improvements and activating uses located along the sidewalks. The vehicular circulation design efficiently directs traffic into and through the site with minimal impacts to pedestrian circulation. This balance of design with the site, the recommendations of the Master Plan, and the needs of the use is an efficient and adequate means to provide a safe atmosphere for pedestrians, cyclists, and vehicles.

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

This mixed-use development is compatible with the adjacent and confronting uses. The multi-family residential uses reflect the land use pattern along East-West Highway and 16th Street west of the train tracks, and the retail and commercial uses extend naturally from the existing shops and services adjacent to the metro station.

The structures themselves are in scale with the nearby buildings and are located such that they will not adversely impact existing or proposed adjacent uses. The taller buildings occupy the outer edges of the site, adjacent to the taller buildings across the rail tracks in the CBD core, as well as the taller multi-story buildings across 16th Street. Along East-West Highway, the building heights step down to be more in scale with the lower-rise garden apartments south of East-West Highway.

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.*

The project is subject to the requirements of the forest conservation law. A preliminary forest conservation plan was approved with the preliminary plan, and the Site Plan is conditioned on approval of a final forest conservation plan.

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition. A Variance to remove 25 trees was granted as part of the preliminary plan approval, and under this Application, the Applicant requested

that the Board expand the Variance to allow for impact to the CRZs of 8 additional Protected Trees. The Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the expansion of the Variance.

The Board made the following findings necessary to expand the Variance:

- a. *The Variance will not confer on the Applicant a special privilege that would be denied to other Applicants.*

The impacts are anticipated as a result of required right-of-way ("ROW") modifications. The design within the ROW and the associated disturbance were minimized and the Protected Trees will be retained.

- b. *The Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The Variance is based on the ROW modification requested by SHA and conditioned by the Planning Board.

- c. *The Variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

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

- d. *The Variance will not violate State water quality standards or cause measurable degradation in water quality.*

MCDPS approved the storm water management concept for the project on September 13, 2010. The MCDPS review and ultimate approval of the sediment and erosion control and storm water management plans will ensure that appropriate standards are met. The Property currently contains no storm water management on site, and the construction of storm water facilities as part of the redevelopment should improve the water quality.

BE IT FURTHER RESOLVED, that this Resolution 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

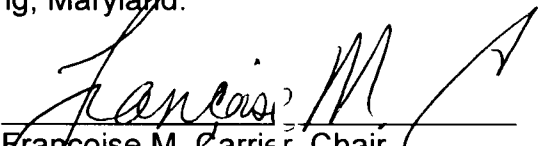
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board, and the date of this Resolution is JUN 23 2012 (which is the date that this Resolution is mailed to all parties of record); and

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 Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, June 21, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board