



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Item #

10

03-13-03

MEMORANDUM

DATE: March 5, 2003

TO: Montgomery County Planning Board

VIA: Joseph R. Davis, Chief, Development
Review Division

FROM: A. Malcolm Shaneman, Supervisor, Development Review Division



REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: 117, 875 Square Feet of Warehouse Use

PROJECT NAME: Burgundy Park

CASE NO. 1-03009

REVIEW BASIS: Chapter 50 Montgomery County Subdivision Regulations

ZONE: I-2 and I-4

LOCATION: East Side of Southlawn Lane, Approximately 1,000 Feet North of Gude Drive

VICINITY: Derwood

APPLICANT: F.D.R. Sour Partnership

ATTORNEY: DuFour and Kohloss

SUBMITTED: September 9, 2002

HEARING DATE: March 13, 2003

STAFF RECOMMENDATION: Approval Subject to the Following Conditions:

Conditions of Approval for Preliminary Plan No. 1-03009 - Burgundy Park

- 1) Limit the preliminary plan for up to 117,875 square feet of warehouse space at the size shown on the latest plan dated November 9, 2002 and for the land use analyzed in the traffic study
- 2) In lieu of satisfying the original APF improvements required for the Preliminary Plan No. 1-88333, Srour Property, pay a pro-rata share towards:

Construction of an exclusive right-turn lane from southbound Southlawn Lane to westbound East Gude Drive (i.e., towards Frederick Road (MD 355) with modifications to the traffic signal at the intersection of Southlawn Drive and East Gude Drive.

The required improvement is part of the following:

- The required intersection improvement of the City of Rockville's Special Exception Case No. SPX 99-0279, Shannon Allcock, applicant (Louis Fanaroff, owner) for an automobile filling station (i.e., Chevron) with a convenience store. The applicant was also required to dedicate the right-of-way for the right-turn lane along their Southlawn Lane frontage. The proposed Chevron station was Annexation Case No. ANX97-00124 and is now a pending Use Permit No. 2000-00622.
 - The Montgomery County Department of Public Works and Transportation's (DPWT) Capital Improvements Program (CIP) Project No. 507017, Intersection and Spot Improvements, subproject - East Gude Drive and Southlawn Lane
- 3) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to MCDPS issuance of sediment and erosion control permits. Conditions include submission and approval of a final forest conservation plan which includes forest restoration/ enhancement measures within the designated stream valley buffer
 - 4) Prior to Montgomery County Planning Board release of building permit applicant shall pay to the Department of Park and Planning the sum of \$30,000, as required by the Contribution Agreement dated, April 30, 1990, between Farid Srour and the M-NCPPC. Applicant may deduct from the \$30,000 the cost of forest enhancement on the subject property implemented in that portion of the stream valley buffer within 75 feet of the stream bank

- 5) Compliance with the conditions of approval of the MCDPS stormwater management approval
- 6) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be filed
- 7) Other necessary easements

PROJECT DESCRIPTION: Location

The subject property is located on the east side of Southlawn Lane approximately 1,000 feet north of East Gude Drive in the Burgundy Park subdivision. The property is identified as lot 24 Block B and is split zoned between I-2 and the I-4 zones. The front six (6) acres of the property is zoned I-2 and the rear portion, approximately four (4) acres I-4. The property abuts industrial zoning on three sides and backs up the property under the corporate limits of the City of Rockville. A portion of the property located at the extreme eastern edge of the site is within a stream valley.

PRIOR PLANNING BOARD ACTION

The subject property was previously reviewed and approved by the Planning Board on April 12, 1990. At that time the Planning Board approved development on the subject property for 172,800 square feet of warehouse space. As part of that approval several conditions were imposed requiring, among other things, an Adequate Public Facilities review for transportation related improvements and execution of a contribution agreement concerning reforestation. The property was recoded by record plat in April 1993. (The prior Planning Board opinion is attached to this memorandum.)

As part of the review of the original preliminary plan application, the applicant offered to enter into an agreement to fund a reforestation plan to mitigate the on and off-site impact of clearing and grading on the subject property. Staff considered this to be an acceptable mitigation project for the damage caused by the destruction of the forested stream buffer on the property. The Planning Board in its action on the preliminary plan, incorporated a condition requiring the applicant to provide the reforestation per a March 21, 1990 contribution agreement, as agreed to by the applicant. Attached to this memorandum are documents that discuss the prior environmental review and current recommendations regarding the mitigation of tree loss through off-site reforestation.

PROJECT DESCRIPTION: Current Proposal

The applicant has submitted a new preliminary plan application for the subject property proposing 117,875 square feet of warehouse use. This is a reduction of approximately 55,000 square feet from the previously approved plan. The applicant submitted a new application for preliminary plan approval based on a misunderstanding that the prior application had expired. Staff had discussed the status of the application with representatives of the applicant some time ago and had noted that the Adequate Public Facilities approval associated with the approval had in fact expired. The original preliminary plan had been validated by the recordation of the property through the recording of the plat. The applicant could have applied to amend the previously approved Preliminary Plan No. 1-88333. However, the mere fact that a new Preliminary Plan application has been submitted does not operate to relieve the applicant of its obligations under the validated Preliminary Plan No. 1-88333 with the exception of any conditions that may have expired by operation of law, such as the Adequate Public Facilities approval.

The plan has been reviewed under all current regulations including the Adequate Public facilities Ordinance, Forest Conservation Law and other applicable regulations and is recommended for approval with the conditions listed above.

ISSUES TO DATE

The applicant and their representatives disagree with staff's position that the applicant honors the 1990 contribution agreement, stating "there is no evidence that M-NCPPC in fact imposed a penalty in 1990 under any law, regulation, adopted guideline or procedures then applicable." The applicant also states that all the clearing activities that occurred on the subject property were pursuant to a valid permit issued by the Soil Conservation District and the willingness of the applicant to make a voluntary payment was specifically dependant on a the prior preliminary plan approval. The applicant's argument is based on a presumption that the preliminary plan is no longer valid.

Staff believes that the prior preliminary plan was in fact validated by the timely recordation of the plat in 1993 and the only aspect of the preliminary plan that expired was the Adequate Public Facilities review. Staff also believes that the applicant should honor the terms of the agreement dated April 30, 1990, as entered into by the applicant, and abide by the applicable conditions of approval of Preliminary plan No. 1-88333 and the current recommended conditions of approval under Preliminary Plan No. 1-03009.

Attachments

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