

JUN 15 2010

MCPB No.10-41
Preliminary Plan No. 12006054A
Ripley Street North (aka Midtown Silver Spring)
Date of Hearing: April 8, 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 amendments to approved preliminary plan applications; and

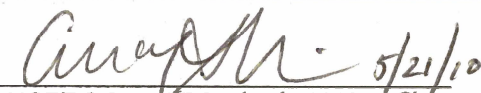
WHEREAS, on January 4, 2010, Home Properties Ripley Street, L.L.C. ("Applicant"), filed an application for approval of a preliminary plan amendment that would amend the previous conditions of approval for preliminary plan No. 120060540, Midtown Silver Spring, to allow a total of 385 multi-family dwelling units and a maximum of 5,541 square feet of retail uses on two lots totaling 1.6 acres of land in the CBD-2 zone located on the north side of Ripley street opposite the intersection with Colonial Lane ("Property" or "Subject Property"), in the Silver Spring Central Business District sector plan ("Sector Plan"); and

WHEREAS, Applicant's preliminary plan amendment application was designated Preliminary Plan No. 12006054A, Ripley Street North, ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated March 26, 2010, 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 April 8, 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

Approved as to
Legal Sufficiency:  5/21/10

WHEREAS, on April 8, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Alfandre; with a vote of 4-0; Commissioners Alfandre, Dreyfuss, Hanson and Wells-Harley voting in favor with Commissioner Presley 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. 12006054A for a maximum of 385 multi-family dwelling units and a maximum of 5,541 square feet of retail uses on two lots totaling 1.6 acres in the CBD-2 Zone, located on the north side of Ripley Street opposite the intersection with Colonial Lane in the Silver Spring Central Business District Sector Plan, subject to the following conditions, which supersede the conditions of approval for preliminary plan No. 120060540 in their entirety:

- 1) Approval under this Preliminary Plan is limited to a maximum of 385 high-rise, multi-family residential units, including a minimum of 12.5% moderately priced dwelling units (MPDUs), and a maximum of 5,541 square feet of retail.
- 2) The Applicant must comply with conditions of the final Forest Conservation Plan prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment control permits, or as specified in the Environmental Staff memo dated March 12, 2010.
- 3) The applicant must comply with the conditions of the MCDOT letter dated March 4, 2010. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 4) The applicant must comply with the conditions of the MCDPS stormwater management approval dated December 19, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 5) The Applicant must dedicate and show on the record plat the following rights-of-way along the property frontage (consistent with the 2000 Approved and Adopted *Silver Spring CBD Sector Plan*). Truncation at the northwest and northeast corners of Ripley Street/Dixon Avenue intersection is not necessary:
 - a. Dixon Avenue – full dedication of 80 feet.
 - b. Ripley Street – minimum of 35 feet from the roadway right-of-way centerline.
- 6) The Applicant must construct all roads shown on the approved preliminary plan to the road standards dictated by the Montgomery County Department Transportation (MCDOT) in their approval letter dated March 4, 2010.
- 7) The Applicant must enter into a Traffic Mitigation Agreement (“Agreement”) with the Planning Board and MCDOT 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.

- 8) At site plan review, the applicant must submit a noise analysis that addresses the following:
 - Specifications from an acoustical engineer for the design of the building shells for all residential dwelling units being constructed within the projected 65 dBA Ldn noise contour to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn.
 - The builder must provide a signed commitment at site plan 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 must be approved by an acoustical engineer and M-NCPPC Environmental Planning staff prior to their implementation.
- 9) No clearing, grading or recording of plats prior to certified site plan approval.
- 10) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
- 11) Final number of MPDU's as per condition #1 above to be determined at the time of site plan.
- 12) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
- 13) The record plat must show necessary easements.

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 Board hereby adopts and incorporates by reference (except as modified herein) 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 Silver Spring Sector Plan does not have specific recommendations for the Subject Property, but it does have recommendations for the Ripley District and general recommendations for the Central Business District (CBD) area. The Plan supports redevelopment of outdated buildings and improving the Ripley District's image compared to other parts of the CBD. The Plan also encourages the creation of pedestrian connections in the Ripley District. Housing is a desired goal for South Silver Spring, and the Plan proposes a mix of housing types. It also supports new retail development in downtown Silver Spring. Therefore, the Board finds the proposed development is consistent with the Silver Spring CBD Sector Plan.

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

Local Area Transportation Review (LATR)

A traffic study dated February 2, 2010, was submitted for the limited preliminary plan amendment for Adequate Public Facilities (APF) review purposes since the new density proposed with this application, (385 residential units and 5,541 square feet of retail), generates 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 rates for the residential and retail uses, the study estimated that the proposed development will generate approximately 120 “new” peak-hour trips during the morning peak period and 129 “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 134 “new” peak-hour trips during the morning peak period and 186 “new” peak-hour trips during the evening peak period.

The development generates less peak-hour trips during the morning (14 trips) and evening (57 trips) peak periods as a result of its location within the Silver Spring CBD. The capacity analysis demonstrates that under Total Traffic (i.e., Build) Conditions, CLV at the study intersections would be below the applicable congestion standard for Silver Spring CBD Policy Area (1,800 CLV). Therefore, the Board finds this plan amendment 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 (10%) of “new” peak-hour trips generated by a development. The site trip comparison summary provided in the Applicant’s traffic study demonstrates that when compared to a non-CBD area, the proposed development will generate approximately 12 percent fewer peak-hour trips during the morning peak period and 44 percent fewer peak-hour trips during the evening peak period. Since these percentages are larger than the PAMR trip mitigation requirements for the Silver Spring CBD Policy Area, the Board finds the Plan satisfies the PAMR requirements of the APF test.

Other Public Facilities

The findings for APF remain the same from the previous approval (120060540). All public facilities and services continue to be available and will be adequate to serve the proposed dwelling units and retail uses including schools, police stations, firehouses, water and sewer service, utilities and health services. All schools within the Montgomery Blair cluster are operating within acceptable levels and, therefore; the project will not be subject to a School Facility Payment. The application has been reviewed by the Montgomery County Fire and Rescue Services who have determined that the Property has appropriate access for fire and rescue vehicles. The Board finds that all previous findings for APF remain valid and adopts them with the approval of this Preliminary Plan approval.

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

The application proposes two lots that remain unchanged from the previous approval (120060540). Therefore, with respect to the Subdivision Regulations, all previous findings for the appropriateness of lot size, shape, width and orientation remain valid as do the findings for conformance with the Zoning Ordinance requirements for lot configuration, and the Board adopts them with the approval of this Preliminary Plan approval.

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

The site is subject to Section 22A of the County Code. A final Forest Conservation Plan (FFCP) was approved with Project Plan No.920060040. There is no forest on-site; however, there is one specimen tree at the northeast corner of Dixon Avenue (a silver maple at 31-inch diameter at breast height). This specimen tree is proposed to be removed. Because the site has a forest conservation plan that was approved by the Planning Board before the effective date of the 2009 amendments to Section 1607(c) of the Natural Resources Article, MD Ann. Code, a variance is not required.

A revised FFCP was submitted and date stamped as received on March 4, 2010 by the Environmental Planning Division. The Subject Property has an afforestation requirement of 0.24 acres. The requirement is proposed to be met with a combination of on-site tree planting credit, all of which will be inside the public open space park, and a fee in-lieu payment. With the conditions of approval cited in this Resolution, the Board finds the application complies with Chapter 22A.

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 site has a new Stormwater Management Concept Plan approval issued on December 21, 2009 by MCDPS. This concept includes the project meeting the new stormwater management requirements for Environmental Site Design (ESD).

6. Truncation Waiver

Pursuant to Section 50-26(c)(3) of the Subdivision Regulations, a 25 foot truncation at the intersection of two streets must be shown, unless the Planning Board determines that a different amount is needed for safe site distance or traffic channelization. As part of the approval of preliminary plan no.120060540, the Planning Board granted a waiver of the required corner truncations in the northeast and northwest corner of Dixon Avenue and Ripley Street to accommodate the proposed building location. At the hearing on that application, the Applicant argued that to better bring the building up to the street line and "activate" the street frontage, a full waiver of the standard 25 foot truncation was needed. The Applicant noted that a similar truncation waiver was supported on the project across Ripley Street, known as Midtown.

The conditions proposed by this amendment are the same as proposed in the previous approval, where the buildings are proposed to be fronted close to the street line. The corners of the building would be within a standard 25 foot truncation.

MCDOT continues to support the waiver of truncation finding that no signalization or channelization will be required and that adequate site distance at this corner can be maintained without the truncation. As such, the Board finds that the waiver of truncation is re-affirmed for this amendment.

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 JUN 15 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 Dreyfuss, seconded by Wells-Harley, with Commissioners Hanson, Wells-Harley, and Dreyfuss voting in favor of the motion, and with Commissioners Alfandre and Presley absent, at its regular meeting held on Thursday, May 27, 2010, in Silver Spring, Maryland.


Royce Hanson, Chairman
Montgomery County Planning Board