



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

AUG - 4 2008

MCPB No. 08-93
Preliminary Plan No. 120080070
Ashton Meeting Place
Date of Hearing: May 15, 2008

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

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 September 9, 2007, Ashton Meeting, L.L.C. ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create eight lots, seven residential lots on land zoned R-60 and one commercial lot on land zoned C-1, on 8.12 acres of land located in the southeast quadrant of the intersection of New Hampshire Avenue (MD 650) and Sandy Spring-Ashton Road (MD 108) ("Property" or "Subject Property"), in the Sandy Spring-Ashton master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No.120080070, Ashton Meeting Place, ("Preliminary Plan" or "Application"); and

WHEREAS, the Planning Board staff ("Staff") issued a memorandum to the Planning Board, May 5, 2008, 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 staffs of other governmental agencies, on May 15, 2008, 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

Kathleen H. Pugh

M-NCPPC LEGAL DEPARTMENT

DATE: 7/23/08

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

WHEREAS, on May 15, 2008 the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Bryant; seconded by Commissioner Robinson; with a vote of 4-0, Commissioners Bryant, Cryor, Hanson and Robinson voting in favor .

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board APPROVES Preliminary Plan No. 120080070 to create eight lots on 8.12 acres of land located the southeast quadrant of the intersection of New Hampshire Avenue (MD 650) and Sandy Spring-Ashton Road (MD 108) ("Property" or "Subject Property"), in the Sandy Spring-Ashton master plan area ("Master Plan"), subject to the following conditions:

1. Approval under this Preliminary Plan is limited to 31,690 square-feet of retail including a 18,000 square foot grocery store, 9,800 square feet of restaurant, 32,510 square-feet of office, and 7 single-family dwelling units.
2. The proposed development shall comply with the conditions of the Preliminary Forest Conservation Plan. The Applicant shall satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits. Conditions include, but are not limited to, the following:
 - a. Approval of the Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan prior to any clearing, grading or demolition on the site.
 - b. Worksheets on Preliminary Forest Conservation Plan must be revised to include corrected acreages for tract areas.
 - c. Specific protection measures for the Siberian Elm as identified in the arborist's report must be incorporated into the Final Forest Conservation Plan, including, but not limited to, the installation of utility lines within the Public Utility Easement (PUE) near the tree by directional boring and installation of a "root friendly paving section" for any sidewalk or walkway within the tree's critical root zone, and specific stress reduction measures before, during, and up to 5 years after completion of construction. If, as determined by M-NCPPC, the tree dies or its health severely declines during construction or within 5 years after the completion of construction, the Applicant must replace the tree with a native canopy tree of at least 4 to 5 inches in diameter at breast height (dbh). The replacement tree species and size must be approved by Staff. The Applicant must provide maintenance for the replacement tree for a minimum of 2 years.
 - d. A certified arborist must be present at the pre-construction meeting, during construction, and after construction to implement specific tree protection measures for the Siberian Elm at the corner of Ashton Road and New Hampshire Avenue.

- e. Add 0.043 acre (1880 square feet) of forest planting and Category I conservation easement at the eastern corner of the open space area, adjacent to the environmental buffer.
 - f. Estimate for forest planting bond must be revised to include additional forest planting recommended in condition 2(e), above. Bond estimate must be based on \$0.90 per square foot of total forest planting area or a detailed estimate from a forest planting contractor.
 - g. Specific location of tree protection fencing may be adjusted in the field by the M-NCPPC inspector, in coordination with the certified arborist, at the pre-construction meeting
3. The Certified Preliminary and Site Plans and the Final Forest Conservation Plan must reflect imperviousness associated with the portion of the adjacent property that is zoned RC that does not exceed 10 percent. This will require the relocation of the currently proposed access road for the proposed stormwater management facility.
 4. Prior to any clearing or grading on the site, the Applicant must submit a geotechnical study, prepared by a qualified geotechnical engineer, to evaluate how the proposed on-site stormwater management facility may need to be modified to prevent the flow of surface and groundwater from the adjacent natural wetlands into the stormwater management facility. Geotechnical study must be submitted to M-NCPPC Environmental Planning Staff and MCDPS staff for review
 5. The Applicant must either construct the stormwater management facility with modifications as recommended in the geotechnical study to prevent water flows from the wetlands into the stormwater management facility, or provide funding to the State Highway Administration (SHA) to construct the modifications if SHA is to construct the facility.
 6. The Applicant must show on the building permit, and construct, a six-foot high noise barrier for Lot 1, as recommended by the "Phase I Traffic Noise Analysis, Ashton Meeting Place, Report #071220", by Scott Harvey and Josh Curley, Phoenix Noise and Vibration, LLC, December 20, 2007.
 7. The Applicant must provide necessary acoustical treatment to attenuate noise affecting the houses on lot Nos. 2, 3, 4, 5, 6, 7, and 8.
 8. Prior to issuance of building permit for any residential structure, an acoustical engineer must certify through building shell analysis that interior noise levels will not exceed 45 dBA, Ldn. The certification and builder acceptance letter must be provided to M-NCPPC Environmental Planning Staff before building permits for each lot are issued. The builder must construct the buildings in accord with these acoustical recommendations, with any changes affecting acoustical performance approved by the acoustical engineer, with a copy to Staff.

9. A Category I conservation easement must be shown on the record plat over forest retention areas, forest planting areas, and that portion of the environmental buffer that does not include the pedestrian path.
10. The portion of pedestrian path that lies within the environmental buffer must be designed, constructed, and maintained with porous concrete or similar porous material.
11. The Applicant must dedicate and show on the final record plat the following rights-of-way (consistent with the 1998 Approved and Adopted *Sandy Spring/Ashton Master Plan*):
 - a. Ashton Road (MD 108) - minimum of 40 feet from the roadway right-of-way centerline.
 - b. New Hampshire Avenue (MD 650) - minimum of 60 feet from the roadway right-of-way centerline.The final record plat must also reflect dedication of necessary truncation at public street intersection corners.
12. The Applicant must submit to Staff a Department of Public Works and Transportation (DPWT) approved Policy Area Mobility Review (PAMR) required trip mitigation plan to reduce seven (7) peak-hour trips prior to the submission of the Site Plan for certification. The Applicant must fully implement the DPWT approved PAMR requirement(s) prior to the release of building occupancy permits for the proposed development.
13. The Applicant must meet all DPWT requirements for the development enumerated in its letter dated October 23, 2007, unless otherwise amended.
14. Prior to the release of building permits for the proposed development, the Applicant must construct or participate on a pro-rata share in providing, with approval from SHA, required frontage and site access improvements along MD 108 and MD 650, as well as capacity improvements at the MD 108 intersection with MD 650. If any of the road improvements identified in this condition either are now, or become, obligations of other development projects, applicants of other development projects may participate on a pro-rata basis in the joint funding of such improvements. Basis of participation on a pro-rata share is the sum of total peak-hour trips generated by the subject development relevant to the particular improvement over the sum of total peak-hour trips generated by all developments required by the Planning Board to participate in the construction of the particular improvement. The improvements must be consistent with currently unfunded improvements or future SHA design for the above intersection and its approaches under design Contract No. MO3175187, and must include:
 - a. Widening of the west leg of MD 108 to provide separate eastbound left, through, and right turn lanes, including a center left-turn lane along MD 108 between MD 650 and Porter Road.
 - b. Widening of the east leg of MD 108 to provide separate westbound left, through, and right turn lanes.
 - c. Lengthening of the northbound MD 650 left and right turn lanes.

- d. Construction of a five-foot wide sidewalk along the south side of MD 108 (between MD 650 and 150 feet west of Porter Road) and along the east side of MD 650 (along the entire Ashton Meeting Place [Parcel H and Lots 1, 2, and 3] and Derrick's Addition to Ashton site frontages).
 - e. Construction of an eight-foot wide shared-use path along the north side of MD 108 (along Derrick's Addition to Ashton site frontage to just west of Ashton Club Way) and along the west side of MD 650 between MD 108 and Crystal Spring Drive, subject to SHA's acquisition of right-of-way from private property owners.
15. Before any building permit is issued, the Applicant must make the applicable school facilities payment required by the 2007-2009 Growth Policy to DPS.
 16. The Applicant must record a stormwater management easement on adjacent Parcel 462 as shown on the Preliminary Plan. Record Plat(s) for the Preliminary Plan must reference this stormwater management easement.
 17. Applicant to comply with the conditions of DPS stormwater management approval letter dated August 23, 2007.
 18. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
 19. No clearing, grading or recording of plats prior to Certified Site Plan approval.
 20. 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.
 21. Site Plan No. 820080040 must be approved by the Board and signed by the Development Review Staff prior to the approval of the record plat.
 22. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution.
 23. The record plat must show all necessary easements.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, 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 proposed Preliminary Plan complies with the land use vision of the Master Plan and is consistent with the goals, recommendations, and guidelines as contained therein. The goal of the Master Plan for the Ashton village center is to "[m]aintain the existing scale and encourage improvements to its character." However, there is no specific guidance in the Master Plan on how to improve the "character" of the village center. The Board finds that the proposed Application

will improve the character of the Ashton village center by providing active street fronts, parking in the rear, and the detached residential lots at either end of the center that will revitalize the area and provide a sense of place. Therefore, the Board finds that the Application substantially conforms to the Master Plan.

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

The Application was reviewed for compliance with the Local Area Transportation Review (LATR) and the Policy Area Mobility Review (PAMR). Roads and other transportation facilities will be safe and adequate with the required improvements, and appropriate trip mitigation will be provided by the Applicant as part of the required traffic mitigation plan.

The Property will be served by public water and sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, 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. The Application is not within a school moratorium area, but is subject to payment of a School Facilities Payment. Electrical and telecommunications services are also available to serve the Property. The Board finds that the project will be adequately served by all public facilities.

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

The one commercial and seven residential lots proposed by this Application were reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Board finds that the proposed lots are consistent with the existing lot pattern of adjacent platted properties. In consideration of these lot patterns and the recommendations of the Sandy Spring-Ashton Master Plan, the Board finds the proposed lot size, shape width and orientations are appropriate for their location within the subdivision.

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

The subject site has approximately 0.81 acre of forest, most of which lies within the environmental buffer. The Application proposes clearing of 0.07 acre of the 0.37 acre forest that lies on the adjacent property zoned RC. The forest that will be retained, 0.30 acre, is 25 percent of the RC zoned portion of the tract area.

Section 22A-12(f)(2)(A) of the Forest Conservation Law states that “[i]n an agricultural and resource area, on-site forest retention must equal 25% of the net tract area.” Land that is zoned RC is considered to be an agricultural and resource area, and is subject to this provision of the Forest Conservation Law. The proposed forest clearing and retention within the adjacent property zoned RC meets the requirements of the Forest Conservation Law.

The Applicant proposes to protect the specimen Siberian Elm (41 inch diameter at breast height, or dbh) at the northeastern edge of the property. A tree protection plan proposed by a certified arborist identifies specific protection measures that should be implemented to save the elm. The tree protection plan is incorporated into the Final Forest Conservation Plan.

The Board finds that the Forest Conservation Plan, with the proposed revisions, meets the requirements of Chapter 22A, of the Forest Conservation Law.

- 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.

- 6. The location, shape and split-zoning of the Subject Property and the specific Master Plan recommendations are exceptional circumstances that justify lots without frontage on a public road.*

Section 50-29(a)(2) of the Subdivision Regulations requires lots to abut on a street that has been dedicated to public use or that has acquired the status of a public road. However, under exceptional circumstances the Board “may approve not more than two (2) lots on a private driveway or private right-of-way; provided, that such access is adequate to serve the lots for emergency vehicles, for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands.” The Application includes a request for a total of three single family detached lots with frontage on the proposed internal private street. The request is based on the argument that there are specific circumstances, unique to this development proposal, which justify a Board finding to permit these lots without public street frontage.

The single family detached homes are located on land zoned R-60. The R-60 zone permits flexibility in housing types; however, this is an exceptional circumstance because the Master Plan limits residential on the subject property to single family detached dwellings. The R-60 zoned land on this Application is

essentially severed by the wetlands and stream buffer into two buildable areas, one with frontage on MD 108 and the other with frontage on MD 650. The internal street runs between these two buildable pods and can provide safe and adequate access as it essentially will function as a public street. The shape of the two, buildable R-60 areas is such that there is limited frontage for either of them onto the public street which they front, MD 108 or MD 650. There is also no opportunity to provide additional frontage through use of the C-1 zoned portion of the property without disrupting the hard-fought, very desirable layout and character of this area. The internal street proposed for this site is essential to achieving parking that is less visible to the local highway and fronting retail uses on MD 108 and MD 650.

The Master Plan encourages design that better integrates commercial and residential uses. It also specifically recommends limiting residential development in the southeast quadrant to single-family detached homes only, rather than townhouses. By providing one-family detached residential dwellings in close proximity to Ashton village, it promotes a walkable community and contributes to giving the internal roadway the character of a village street. These are both goals of the Master Plan that would be supported by permitting the R-60 zoned land to be fully utilized.

Based on these facts, the Board finds that there is an exceptional circumstance that justifies lots without frontage on a public street. The Board also finds that access for the lots will be safe and adequate for all vehicles including emergency and service vehicles, public utilities can be installed, and this subdivision will not preclude development of adjacent properties. Further, the Board interprets Section 50-29(a)(2) to permit approval of more than two lots without frontage, provided that the private driveway serving the lots has more than a single access point to a public street. Although the three proposed lots without frontage share access to the same proposed private driveway, the driveway functions as a through-street and has more than one access point to the local public streets serving the development (MD 108 and MD 650).

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 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 Montgomery County Land Records or a request for an extension must be filed, and

AUG - 4 2008 BE IT FURTHER RESOLVED, that the date of this Resolution is _____ (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 Robinson, seconded by Commissioner Cryor, with Commissioners Hanson, Robinson, and Cryor voting in favor of the motion, and Commissioners Alfandre and Presley abstaining, at its regular meeting held on Thursday, July 31, 2008, in Silver Spring, Maryland.


Royce Hanson, Chairman
Montgomery County Planning Board