

R E S O L U T I O N

WHEREAS, MAA LCC is the owner of a 9.15-acre parcel of land known as 301 Commercial Center, Tax Map 154 in Grid F-4, known as Parcel B, Parcel 57 and Parcel 58, said property being in the 11th Election District of Prince George's County, Maryland, and being zoned C-S-C & C-M; and

WHEREAS, on December 26, 2006, 301 Commercial Center filed an application for approval of a Preliminary Subdivision Plan (Staff Exhibit #1) for 7 parcels; and

WHEREAS, the application for approval of the aforesaid Preliminary Subdivision Plan, also known as Preliminary Plan 4-06142 for 301 Commercial Center was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on May 10, 2007, for its review and action in accordance with Article 28, Section 7-116, Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application with conditions; and

WHEREAS, on May 10, 2007, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board APPROVED the Type I Tree Conservation Plan (TCP I/00107), and further APPROVED Preliminary Plan of Subdivision 4-06142, 301 Commercial, including a Variation from Section 24-130 for Parcels H through N with the following conditions:

1. At time of final plat, a conservation easement shall be described by bearings and distances. The conservation easement shall contain the expanded stream buffers, excluding those areas where variation requests have been approved, and be reviewed by the Environmental Planning Section prior to approval. The following note shall be placed on the plat:

"Conservation easements described on this plat are areas where the installation of structures and roads and the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed."

2. Prior to the issuance of any permits which impact jurisdictional wetlands, wetland buffers, streams or Waters of the US, the applicant shall submit copies of all federal and state wetland permits, evidence that approval conditions have been complied with, and associated mitigation plans.

3. The following note shall be placed on the Final Plat of Subdivision:

“Development is subject to restrictions shown on the approved Type I Tree Conservation Plan (TCPI/001/07), or as modified by the Type II Tree Conservation Plan, and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved Tree Conservation Plan and will make the owner subject to mitigation under the Woodland Conservation Ordinance. This property is subject to the notification provisions of CB-60-2005. Copies of all approved Tree Conservation Plans for the subject property are available in the offices of the Maryland-National Capital Park and Planning Commission, Prince George’s County Planning Department.”

4. Any residential development of the subject property, other than one single-family dwelling, shall require the approval of a new preliminary plan of subdivision prior to the approval of any building permits.
5. At the time of final plat the applicant, his heirs, successors and/or assignees shall convey to M-NCPPC 1.4+ acres of open space (floodplain) as shown on the Department of Parks and Recreation (DPR) Exhibit A. Land to be conveyed shall be subject the following:
- a. An original, special warranty deed for the property to be conveyed, (signed by the WSSC Assessment Supervisor) shall be submitted to the Subdivision Section of the Development Review Division, The Maryland-National Capital Park and Planning Commission (M-NCPPC), along with the Final Plat.
  - b. The M-NCPPC shall be held harmless for the cost of public improvements associated with land to be conveyed, including but not limited to, sewer extensions, adjacent road improvements, drains, sidewalks, curbs and gutters, and front-foot benefit charges prior to and subsequent to Final Plat.
  - c. The boundaries and acreage of land to be conveyed to the M-NCPPC shall be indicated on all development plans and permits, which include such property.
  - d. The land to be conveyed shall not be disturbed or filled in any way without the prior written consent of the Department of Parks and Recreation (DPR). If the land is to be disturbed, the DPR shall require that a performance bond be posted to warrant restoration, repair or improvements made necessary or required by The M-NCPPC development approval process. The bond, or other suitable financial guarantee (suitability to be judged by the General Counsel’s Office, The M-NCPPC), shall be submitted to the DPR within two weeks prior to applying for grading permits.
  - e. Storm drain outfalls shall be designed to avoid adverse impacts on land to be conveyed to or owned by The M-NCPPC. If the outfalls require drainage improvements on adjacent

land to be conveyed to or owned by The M-NCPPC, the DPR shall review and approve the location and design of these facilities. The DPR may require a performance bond and easement agreement prior to issuance of grading permits.

- f. All waste matter of any kind shall be removed from the property to be conveyed. All wells shall be filled and underground structures shall be removed. The DPR shall inspect the site and verify that land is in acceptable condition for conveyance, prior to dedication.
  - g. All existing structures shall be removed from the property to be conveyed, unless the applicant obtains the written consent of the DPR.
  - h. The applicant shall terminate any leasehold interests on property to be conveyed to the Commission.
  - i. No stormwater management facilities, or tree conservation or utility easements shall be proposed on land owned by or to be conveyed to The M-NCPPC without the prior written consent of the DPR. The DPR shall review and approve the location and/or design of these features. If such proposals are approved by the DPR, a performance bond, maintenance and easement agreements shall be required prior to the issuance of grading permits.
6. The applicant shall provide a standard sidewalk along the subject site's entire road frontage of Clymer Drive, unless modified by DPW&T.
7. Development shall be in conformance with the approved Stormwater Management Concept Plan, 50400-2006-00 and any subsequent revisions. Prior to signature approval of the preliminary plan, the concept number and approval date shall be added to the plan.
8. Direct vehicular access to US 301/MD 5 shall be prohibited from all lots.
9. The applicant and/or the applicant's heirs, successors, or assignees shall contribute toward and participate in the construction of certain additional off-site transportation improvements as identified hereinafter. These improvements shall be funded and constructed through the formation of a road club that will include the applicant, the Montgomery Wards Brandywine Distribution Center, the Brandywine Commerce Center, the Mattawoman-Brandywine Commerce Center, the Brandywine Business Park, the Brandywine/301 Industrial Park, the Hampton CDZ, and other property owners in the area designated as Employment Area "C" in the Subregion V master plan, as well as any properties along US 301/MD 5 between T.B. (the intersection of US 301 and MD 5 in Prince George's County) and Mattawoman Creek, and any other properties for which participation is deemed necessary by the Planning Board. For development on the subject property, the applicant's sole funding responsibility toward the construction of these off-site transportation improvements shall be the payment of the following:
  - A fee calculated as \$1.24 per gross square foot of space X (Engineering News-Record Highway Construction Cost index at time of payment) / (Engineering News-Record

Highway Construction Cost Index for first quarter, 1993).

Payment is to be made in trust to the road club escrow agent and shall be due, on a pro rata basis, at the time of issuance of building permits. Prior to issuance of any building permit(s), the applicant shall provide written evidence to M-NCPPC that the required payment has been made.

The off-site transportation improvements to be constructed are set forth below. Construction of these improvements shall occur in the numerical sequence in which they appear. Each improvement shall be constructed if and only if sufficient funds for engineering, full design, and construction have been deposited into the road club escrow account by road club members or said funds have been provided by public agencies. The off-site transportation improvements shall include:

- a. Widen US 301/MD 5 from a four-lane road to a six-lane road beginning at Timothy Branch (north of Cedarville Road) and extending northerly to the US 301/MD 5 interchange (at T.B.). The construction shall be in accordance with presently approved SHA plans.
- b. Install a traffic signal at the A-63/Cedarville Road intersection, provided said signal is deemed warranted by DPW&T.
- c. Make minor widening/striping improvements to the US 301/MD 5 interchange ramps.
- d. Widen US 301 from a four-lane road to a six-lane road beginning at the T.B. interchange (US 301/MD 5) and extending northerly to a point approximately 2,500 feet north of MD 381.
- e. Reconstruct the traffic signal at US 301/MD 381.
- f. Install a traffic signal at the MD 381/A-63 intersection, provided said signal is deemed warranted by DPW&T and SHA.
- g. Provide a grade separation at the point the spine road crosses US 301 northeast of T.B.
- h. Reconstruct the traffic signal at MD 5/Brandywine Road.
- i. Construction of an interchange in the area of US 301/MD 5 and Cedarville/McKendree Roads.
- j. Construction of an interchange in the area of MD 5 and A-63 north of T.B.
- k. Construction of A-63 as a six-lane arterial roadway (where off site) between the US 301/MD 5/Cedarville Rd./McKendree Rd. intersection and MD 5 north of T.B.
- l. Widen US 301/MD 5 from a six-lane road to an eight-lane road beginning at the T.B.

interchange (US 301/MD 5) and extending southerly to Mattawoman Creek.

- m. Widen MD 5 from a four-lane road to a six-lane road beginning at the T.B. interchange (US 301/MD 5) and extending northerly to a point approximately 2,500 feet north of the planned intersection with A-63.
10. Prior to the issuance of any building permits within the subject property, the following road improvements shall have full financial assurances, have been permitted for construction, and have an agreed-upon timetable for construction with SHA:
- a. Along US 301/MD 5 at Clymer Drive, provide dual northbound left-turn lanes.
  - b. Along the Clymer Drive approach (eastbound) to US 301/MD 5, widen to provide a three-lane approach, including a right-turn lane, a shared through/left-turn lane, and an exclusive left-turn lane. The westbound roadway shall be widened to receive two left-turn lanes.
  - c. Along the Chadds Ford Drive approach (eastbound) to US 301/MD 5, widen to provide a four-lane approach, including a right-turn lane, a through lane, and dual exclusive left-turn lanes.
11. Access at the US 301/MD 5 and Albert Drive intersection shall be limited to right-in right-out movements.
12. At the time of final plat approval, the applicant shall indicate dedication of right-of-way of 140 feet from the existing baseline of US 301/MD 5.
13. Total development of the subject property shall be limited to uses that would generate no more than 61 AM and 436 PM peak-hour vehicle trips. Any development generating an impact greater than that identified herein above shall require a new preliminary plan of subdivision with a new determination of the adequacy of transportation facilities.
14. An automatic fire suppression system shall be provided in all proposed buildings proposed in this subdivision, unless the Prince George's County Fire/EMS Department determines that an alternative method of fire suppression is appropriate.
15. Prior to signature approval of the preliminary plan, the septic system serving the existing motel, Maryland Motor Court, at 16001 Crain Highway South must be pumped out by a licensed scavenger on an interim basis. The disposal system shall be abandoned and either removed or backfilled in place at a later date.
16. Prior to signature approval, the location of the septic system shall be located on the preliminary plan. Once the structures are razed, the abandoned shallow well (behind 301 Liquors) and deep well (behind the vacant two-story stone house) shall be backfilled and sealed in accordance with COMAR 26.04.04 by a licensed well driller or witnessed by a representative from the Health

Department at a later date.

17. Any abandoned septic tanks associated with 301 Liquors (once vacated) or the vacant two-story stone house must be pumped out by a licensed scavenger and either removed or backfilled in place as part of the grading permit. The location of the septic systems shall be located on the preliminary plan prior to signature approval.
18. A raze permit is required prior to the removal of any existing structures and any hazardous materials located in any of the structures must be properly removed, stored or discarded prior to the structures being razed. A raze permit can be obtained through the Department of Environmental Resources, Office of Licenses and Permits.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

1. The subdivision, as modified, meets the legal requirements of Subtitles 24 and 27 of the Prince George's County Code and of Article 28, Annotated Code of Maryland.
2. The subject property is situated on the west side of southbound US 301 (MD 5) and south of its intersection with Clymer Drive.
3. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development.

Zone	EXISTING C-M / C-S-C 7.15 / 2.0	PROPOSED C-M/C-S-C 7.15/2.0
Use(s)	Commercial	Commercial / Retail 91,000 square feet
Acreage	9.15	9.15
Lots	0	0
Outparcel	0	0
Parcels	3	7
Public Safety Mitigation Fee		No

4. **Subdivision**—The subject property is zoned C-M and C-S-C. The subject application is not proposing any residential development; however, because it is adjacent to residentially zoned property and because different adequate public facility tests exist, and there are considerations for recreational components for residential subdivision, any future consideration for residential development beyond one single-family dwelling should require the approval of a new preliminary plan of subdivision.
5. **Environmental**—The current air photo indicates that approximately 50 percent of the site is wooded. This site contains a stream and 100-year floodplain. The site is located in the Mattawoman Creek watershed in the Potomac River Basin. According to information obtained

from the Maryland Department of Natural Resources Natural Heritage Program, there are no rare, threatened, or endangered species found to occur in the vicinity of this property. US 301 is an adjacent source of traffic-generated noise. The proposal is not expected to be a noise generator. According to the Prince George's County Soil Survey the principal soils on the site are in the Beltsville, Bibb, Croom and Sassafras series. No Marlboro clay has been identified on this site. The site is in the Developing Tier according to the General Plan. The site contains Regulated Area and Evaluation Area within the network of the Countywide Green Infrastructure Plan.

### **Master Plan Conformance**

The property is located in Planning Area 85A within the Brandywine Community, and is within the limits of the 1993 "Approved Master Plan and Sectional Map Amendment for Subregion V, Planning Areas 81A, 81B, 83, 84, 85A, and 85B". The Master Plan indicates that the western portion of this property should become part of a stream valley park.

### **Countywide Green Infrastructure Plan**

The site contains Regulated Area and Evaluation Area within the network of the Countywide Green Infrastructure Plan. The Regulated Area and contiguous Evaluation Area should be preserved to complete the preservation of the stream valley as accomplished during the review of projects upstream and downstream of the subject property.

A signed Natural Resources Inventory (NRI), NRI/159/06, has been submitted with the application. This site contains a stream and 100-year floodplain. The expanded stream buffers are correctly shown on the NRI, Preliminary Plan and Type I Tree Conservation Plan. The NRI contains a Forest Stand Delineation. The FSD indicates that the woodland on the subject property is of very low quality. The only woodlands on-site that are a priority for preservation are located within the 100-year floodplain.

The plan proposes impacts to the expanded stream buffers. Impacts to these buffers are prohibited by Section 24-130 of the Subdivision Regulations unless the Planning Board grants a variation to the Subdivision Regulations in accordance with Section 24-113.

The design should avoid any impacts to streams, wetlands or their associated buffers unless the impacts are essential for the development as a whole. Staff will not generally support impacts to sensitive environmental features that are not associated with essential development activities. Essential development includes such features as public utility lines [including sewer and stormwater outfalls], street crossings, and so forth, which are mandated for public health and safety; non-essential activities are those, such as grading for lots, stormwater management ponds, parking areas, and so forth, which do not relate directly to public health, safety or welfare.

A variation request, dated January 9, 2007, was submitted for impacts to significant environmental features to construct a stormwater outfall and connect the proposed development to an existing sanitary sewer. These impacts are the minimum necessary and sufficient to develop

the proposed subdivision. Section 24-113 of the Subdivision Regulations contains four required findings [text in bold] to be made before a variation can be granted.

**Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle; and further provided that the Planning Board shall not approve variations unless it shall make findings based upon the evidence presented to it in each specific case that:**

- (1) The granting of the variation request would not be detrimental to public safety, health or welfare and does not injure other property;**

The installation of the stormwater management outfall and sanitary sewer connection are required by Prince George's County to provide for public safety, health and welfare. All designs of these types of facilities are reviewed by the appropriate agency to ensure compliance with the regulations. These regulations require that the designs are not injurious to other property.

- (2) The conditions on which the variations are based are unique to the property for which the variation is sought and are not applicable generally to other properties;**

The specific topography of the site requires the use of the stormwater management outfall shown on the plans to adequately serve the proposed development. The only available existing sanitary sewer that can be utilized to serve this property is wholly within the expanded stream buffer.

- (3) The variation does not constitute a violation of any other applicable law, ordinance or regulation; and**

The installation of the stormwater management and connection of the sanitary sewer are required by other regulations. Because the applicant will have to obtain permits from other local, state and federal agencies as required by their regulations, the approval of this variation request would not constitute a violation of other applicable laws.

- (4) Because of the peculiar physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulation is carried out.**

The topography provides no alternative for the location of the stormwater outfall and connection to sanitary sewer that are required to serve the development. Without the required stormwater management facilities and sanitary sewer connection, the property



could not be properly developed in accordance with the C-S-C and C-M zones.

The Environmental Planning Section supports the variation requests for the reasons stated above. At time of final plat, a conservation easement should be described by bearings and distances. The conservation easement should contain the expanded stream buffers, excluding those areas where variation requests have been approved, and be reviewed by the Environmental Planning Section prior to certification. A note describing the conservation easements should be placed on the plat. Prior to the issuance of any permits which impact jurisdictional wetlands, wetland buffers, streams or Waters of the US, the applicant should submit copies of all federal and state wetland permits, evidence that approval conditions have been complied with, and associated mitigation plans.

This site is subject to the provisions of the Woodland Conservation Ordinance because the property is more than 40,000 square feet in area and contains more than 10,000 square feet of woodland. A Type I Tree Conservation Plan is required, TCPI/001/07, and has been reviewed. The plan proposes clearing 3.48 acres of the existing 3.60 acres of upland woodland; clearing 0.15 acres of the existing 1.33 acres of woodland within the 100-year floodplain and clearing 0.54 acres offsite. The woodland conservation threshold is 1.17 acres. The worksheet correctly calculates the woodland conservation requirement for this proposal as 3.52 acres. The plan proposes to meet this requirement by providing 0.09 acres of on-site preservation and 3.43 acres of off-site mitigation for a total of 3.52 acres. The proposed on-site woodland preservation area is within the Evaluation Area and contiguous with the Regulated Area depicted on the Countywide Green Infrastructure Plan. A note should be placed on the Final Plat of Subdivision citing the Tree Conservation restrictions.

US 301 is an adjacent source of traffic-generated noise. The noise model used by the Environmental Planning Section predicts that the unmitigated 65 dBA noise contour is 507 feet from the centerline of US 301. Because the property is zoned C-S-C and C-M, traffic-generated noise from US 301, based upon a predicted average daily traffic of 81,687 vehicles, will not exceed state noise standards.

According to the Prince George's County Soil Survey the principal soils on the site are in the Beltsville, Bibb, Croom and Sassafras series. Bibb soils are in hydrologic group D and have limitations of flood hazard, high water table and poor drainage. Croom soils may present an erosion problem on steep slopes. Sassafras soils pose no special problems for development.

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