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Preliminary Plan 4-05080

Reconsideration Hearing

Application	General Data	
Project Name: Smith Home Farm Location: East of the intersection of Pennsylvania Avenue (MD 4) and Presidential Parkway. Applicant/Address: SHF Project Owner, LLC c/o Marva Jo Camp, Esq. 10003 Derekwood Lane, Suite 150 Lanham, MD 20706 Property Owner: SHF Project Owner, LLC	Planning Board Hearing Date:	05/24/12
	Memorandum Date:	05/16/12
	Date Accepted:	03/23/12
	Planning Board Action Limit:	N/A
	Mandatory Action Timeframe:	N/A
	Plan Acreage:	757
	Zone:	R-M & L-A-C
	Gross Floor Area:	N/A
	Lots/Dwelling Units:	1176/3,628
	Parcels:	355
	Planning Area:	78
	Tier:	Developing
	Council District:	06
	Election District	15
	Municipality:	N/A
	200-Scale Base Map:	205SE08

Purpose of Application	Notice Dates	
RECONSIDERATION HEARING: On April 19, 2012, the Planning Board APPROVED the applicant's request for a waiver and reconsideration on of Condition 42 and Finding 9 (PGCPB Resolution No. 06-64(A)) for Preliminary Plan of Subdivision 4-05080 relating to the MD 4/Westphalia Road interchange.	Previous Parties of Record (Applicant):	03/26/12
	Previous Parties of Record (M-NCPPC):	05/14/12

Staff Recommendation		Staff Reviewer: Whitney Chellis Phone Number: 301-952-4325 E-mail: Whitney.Chellis@ppd.mncppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
	X		

May 16, 2012

MEMORANDUM

TO: Prince George's County Planning Board

FROM: Whitney Chellis, Subdivision Section Supervisor, Development Review Division

SUBJECT: Preliminary Plan of Subdivision 4-05080
Smith Home Farm
Reconsideration Hearing

The preliminary plan was approved by the Planning Board on July 27, 2006 and the resolution of approval (PGCPB Resolution No. 06-64(A)) was adopted on September 7, 2006 and mailed out on September 12, 2006. Marva Jo Camp, Esq., by letter dated March 21, 2012, requested a waiver of the Planning Board's Rules of Procedures and a reconsideration of Condition 42 and Finding 9 relating solely to the construction of the Pennsylvania Avenue (MD 4)/ Westphalia Road interchange. The Planning Board granted the waiver and request for reconsideration for good cause in furtherance of substantial public interest (Rules of Procedure, Section 10(e)) on April 19, 2012.

Originally, this preliminary plan of subdivision was disapproved by the Planning Board on March 9, 2006. A reconsideration of that disapproval was granted on April 6, 2006 and then on July 27, 2006, the Planning Board approved the reconsideration for the preliminary plan with all new findings and conditions (PGCPB Resolution No. 06-64(A)).

The Subdivision Regulations require that the Planning Board find adequate transportation facilities pursuant to Section 24-124 prior to approval of the preliminary plan. The Planning Board, in Transportation Finding 9 (PGCPB Resolution No. 06-64(A), pg. 84), found (in part) that, under total traffic conditions, the critical intersection of MD 4 and Westphalia Road failed to meet the adequate level of service required in accordance with the Planning Board's "Guidelines for the Analysis of the Traffic Impact of Development Proposals." The Planning Board placed the following condition for the construction of the MD 4/Westphalia Road interchange on this project:

- 42. The applicant shall be required to build the MD 4/Westphalia Road interchange with the development of the subject property, subject to the following requirements:**

- a. **Prior the issuance of the first building permit, the above improvement shall have full financial assurances through either private money and/or full funding in the CIP.**
- b. **Prior to the issuance of building permits for the residential permit that represents the 30 percent of the residential units; the MD 4/Westphalia Road interchange shall be open to traffic.**

Subsequent to the Planning Board's approval of the preliminary plan, the District Council approved the 2007 *Westphalia Sector Plan and Sectional Map Amendment* by resolution (CR-2-2007) on February 6, 2007. The Smith Home Farm project (4-05080) is within the limits of the Westphalia Sector Plan. In order to "ensure the timely provision of adequate public facilities," the District Council adopted CR-66-2010 on October 26, 2010, establishing the Public Facilities Financing and Implementation Program (PFFIP) District for Westphalia Center.

Prior to the adoption of CR-66-2010, the Prince George's County Council amended Section 24-124 of the Subdivision Regulations, on July 23, 2008 (CB-25-2008), relating to adequate roads required in anticipation of the creation of the PFFIP as follows (emphasis added):

Section 24-124. Adequate roads required.

(a) Before any preliminary plat may be approved, the Planning Board shall find that:

- (1) There will be adequate access roads available to serve traffic which would be generated by the proposed subdivision, or there is a proposal for such roads on an adopted and approved master plan and construction scheduled with one hundred percent (100%) of the construction funds allocated within the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, and/or such roads are incorporated in a specific public facilities financing and implementation program as defined in Section 27-107.01(186.1);**

Section 27-107.01(186.1) of the Zoning Ordinance, which defines the Public Facilities Financing and Implementation Program (PFFIP), provides (in part) that "[t]his program should include provisions for financing strategies including, but not limited to, *pro-rata contributions*, sale leasebacks, funding 'clubs,' and the Surplus Capacity Reimbursement Procedures provided in Section 24-124 of the County Code, and other methods to ensure equity."

Subsequent to the amendment of Section 24-124(a)(1), which provided for the PFFIP, the County Council adopted CR-66-2010, as mentioned above, which established the Public Facilities Financing and Implementation Program (PFFIP) District for Westphalia Center. Council Resolution CR-66-2010 includes three exhibits, in general, the exhibits are:

- **Exhibit A** is a map which generally sets forth the Westphalia PFFIP District and "shall consist of the property described in Attached Exhibit A of this Resolution and any additional owner/developer, its heirs, successors and/or assigns that are required to construct the MD 4/Westphalia Road Interchange and Interim Improvements" This exhibit includes the Smith Home Farm project.
- **Exhibit B** sets forth the planning, engineering, construction, and administrative cost of the interchange at MD 4/Westphalia. The fee (\$79,990,000) will be paid into the Westphalia PFFIP

District Fund (Fund) at the time of issuance of each building permit for the projects which are conditioned on building the interchange to meet the adequate transportation facilities at the time of preliminary plan of subdivision. The Fund “shall be established prior to the collection of any fees and all revenue collected for the Fund shall only be used for the cost of the improvements listed on Exhibit B and for customary administrative cost associated with the planning, engineering and construction of the MD 4 at Westphalia Road Interchange and Interim Improvements.” The fee is based on the average daily trips (ADT) for each project as a proportional share. In addition, Exhibit B includes a schedule and milestones.

- **Exhibit C** is a draft Memorandum of Understanding (MOU) that is required to be executed by the owner/developer with the county (substantially in this form), which sets forth the terms and conditions for the payment of fees. Council Resolution CR-66-2010 requires that the MOU be executed and recorded in Land Records and the liber/folio reflected on the record plats for the project. The MOU contains the fee to be paid with each permit. A provision does exist in CR-66-2010 for the county to establish a Tax Increment Financing District (Westphalia TIF District), excluding the Moore Property. The TIF funds will be used to offset costs related to the interchange construction associated with the commercial development within the Westphalia Town Center. The TIF fund has not yet been established and, therefore, the mechanics of how it would be operated are not understood.

This legislation provided the specific financing strategy under which owners/developers in the Westphalia Center would meet the adequate public facilities (APF) requirement when conditioned on the construction of the MD 4/Westphalia Road interchange. As adopted, the PFFIP District consists of all current and future projects, which are required to construct the MD 4/Westphalia Road interchange and interim improvements in order to “[m]eet a finding of adequacy of transportation facilities for an approved preliminary plan of subdivision pursuant to Section 24-124 of the Regulations.” The adoption of CR-66-2010 specifically provided for a pay-as-you-go financing mechanism to fund the Westphalia interchange and interim improvements.

Council Resolution CR-66-2010, Section 7, provides that “[a]ny Owner/Developer, their heirs, successors and/or assigns that have approved plans of subdivision that include a requirement for the construction of MD 4 at Westphalia Road Interchange and Interim Improvements to meet a finding of adequacy of transportation facilities shall be subject to the provisions of the Resolution.”

Condition 42 of the resolution of approval (PGCPB Resolution No. 06-64(A)) for Smith Home Farm was approved prior to the adoption of Council Resolution CR-66-2010 and, therefore, did not provide for the use of the PFFIP. Condition 42(a) requires that the applicant provide full financial assurances that the interchange at MD 4/Westphalia would be constructed prior to building permits beyond those ADTs grandfathered with this project. The reconsideration is necessary to amend Condition 42 to provide for the participation in the PFFIP, which is not a full financial assurance, and to establish conditions consistent with the requirements of CR-66-2010.

RECOMMENDATION

APPROVAL subject to revised findings consistent with this memorandum and the Transportation Planning Section memorandum dated May 16, 2012 (Burton to Chellis) and the following deleted and additional conditions:

Delete Existing Condition:

42. ~~The applicant shall be required to build the MD 4/Westphalia Road interchange with the development of the subject property, subject to the following requirements:~~
- ~~a. Prior the issuance of the first building permit, the above improvement shall have full financial assurances through either private money and/or full funding in the CIP.~~
 - ~~b. Prior to the issuance of building permits for the residential permit that represents the 30 percent of the residential units; the MD 4/Westphalia Road interchange shall be open to traffic.~~

Replace with:

42. Prior to issuance of the first building permit for the **residential** component of the Smith Home Farm project (4-05080), the applicant and the applicant's heirs, successors, and/or assignees shall, pursuant to the provisions of CR-66-2010 and the MD 4/Westphalia Road Public Facilities Financing and Implementation Program (PFFIP), pay to Prince George's County (or its designee) a fee based on 11.30 percent of the cost estimate as determined by the Federal IAPA review. This fee shall be divided by 3,628 to determine the unit cost.

New Conditions:

78. Prior to issuance of the first building permit for the **commercial** component of the Smith Home Farm project (4-05080), the applicant and the applicant's heirs, successors, and/or assignees shall, pursuant to the provisions of CR-66-2010 and the MD 4/Westphalia Road Public Facilities Financing and Implementation Program (PFFIP), pay to Prince George's County (or its designee) a fee based on 1.22 percent of the cost estimate as determined by Federal IAPA review. This fee shall be divided by 170,000 to determine the cost on a per square foot basis.
79. Prior to approval of final plats for the Smith Home Farm project (4-05080), the applicant and the applicant's heirs, successors, and/or assignees shall, pursuant to the provisions of CR-66-2010 (Exhibit C) and the MD 4/Westphalia Road Public Facilities Financing and Implementation Program (PFFIP), provide a copy of the recorded Memorandum of Understanding (MOU) and reflect the liber/folio on each record plat for the project.