



The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530

Note: Staff reports can be accessed at <http://mncppc.igm2.com/Citizens/Default.aspx>

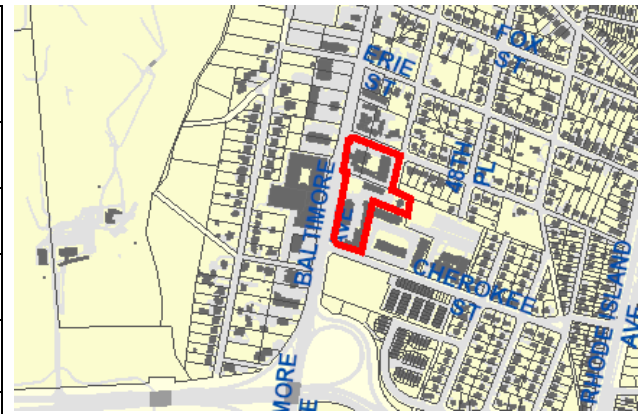
Preliminary Plan of Subdivision 4-22007

Waiver of the Rules of Procedure and Reconsideration Request

9113 Baltimore Avenue

REQUEST	STAFF RECOMMENDATION
Waiver of the Rules of Procedure and Reconsideration Request	Discussion

Location: On the east side of US 1 (Baltimore Avenue), between Cherokee Street and Delaware Street.	
Gross Acreage:	3.82
Zone:	LTO-E
Zone Prior:	M-U-I/D-D-O
Reviewed per prior Subdivision Regulations:	Section 24-1900
Gross Floor Area:	3,937 sq. ft.
Dwelling Units:	331
Lots:	0
Parcels:	1
Planning Area:	66
Council District:	03
Municipality:	College Park
Applicant/Address: RST Development c/o Scott Copeland 6110 Executive Boulevard Rockville, MD 20852	
Staff Reviewer: Eddie Diaz-Campbell Phone Number: 301-952-3665 Email: Eddie.Diaz-Campbell@ppd.mncppc.org	



Planning Board Date:	02/23/2023
Planning Board Action Limit:	02/23/2023
Mandatory Action Timeframe:	30 days
Staff Report Date:	02/15/2023
Date Received:	01/24/2023
Previous Parties of Record: (Applicant)	01/24/2023
Previous Parties of Record: (M-NCPPC)	02/07/2023

The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at http://www.mncppcapps.org/planning/Person_of_Record/.
Please call 301-952-3530 for additional information.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org

February 15, 2023

MEMORANDUM

TO: The Prince George's County Planning Board

FROM: Eddie Diaz-Campbell, Planner II, Subdivision Section *EDC*
Development Review Division

VIA: Sherri Conner, Planning Supervisor, Subdivision Section *SC*
Development Review Division

SUBJECT: **Preliminary Plan of Subdivision 4-22007**
Waiver of the Rules of Procedure and Reconsideration Request
9113 Baltimore Avenue

By letter dated January 23, 2023, Thomas H. Haller, representing RST Development, LLC, requested a waiver of the Prince George's County Planning Board's Rules of Procedure (Section 12(a)), which requires that a reconsideration request be submitted no less than 14 calendar days after the date of notice of the final decision (Section 10(a)). In this case, the resolution of approval (PGCPB Resolution No. 2022-95) was adopted by the Planning Board on September 29, 2022. If the Planning Board grants the requested waiver, the applicant specifically requests reconsideration of Conditions 4(a) and 4(c) of the resolution. Per Section 10(e) of the Rules of Procedure, reconsideration may only be granted if, in furtherance of substantial public interest, the Planning Board finds that an error in reaching the original decision was caused by fraud, surprise, mistake, inadvertence, or other good cause. The Maryland Supreme Court has interpreted good cause to include subsequent new or different factual information that would justify a different conclusion, but not a mere change of mind.

Conditions 4(a) and 4(c) pertain to requirements for site access to US 1 (Baltimore Avenue), as follows:

4. **At the time of detailed site plan, the applicant and the applicant's heirs, successors, and/or assignees shall provide the following:**

- a. **Signage and design features to facilitate a limited right-out only access driveway from the site along US 1 (Baltimore Avenue), including the driveway design and exact details/profiles of the signage.**
- c. **A note indicating that a vehicular access point along US 1 (Baltimore Avenue), is limited to a right-out only access.**

The purpose of this request is to allow a right-out garage exit approved with the preliminary plan of subdivision (PPS) to be converted to a right-in-right-out entrance and exit. The approved exit is located along US 1, on the west side of the site. When the PPS was first submitted for review, it showed a right-in-right-out access in this location; however, the PPS was approved with a right-out exit only due to a finding made that the right-in-right-out would be in conflict with the standards of the 2010 *Approved Central US 1 Corridor Sector Plan and Sectional Map Amendment* (sector plan), as discussed further below. At the time of the detailed site plan review (DSP-22015, approved by the Planning Board on January 19, 2023), the City of College Park (City) raised concerns that providing the US 1 access as an exit only would increase traffic turning right from US 1 onto Cherokee Street, the street just south of the site where the primary site entrance is located, and so they asked that the original proposed configuration of a right-in-right-out access be provided instead. It was determined that this change could only be accommodated with a reconsideration of PPS 4-22007. The applicant agreed with the City to request a reconsideration, on the basis that improved traffic circulation at the intersection would also benefit the development. Condition 1.n. of DSP-22015 was imposed at the time of its approval stating that if the applicant obtained subdivision approval allowing for right-in access from US 1, the DSP would be revised to allow for right-in access, prior to certification of the DSP.

The discussions which took place with the DSP notwithstanding, staff has reviewed the applicant's request for reconsideration and does not believe that granting a reconsideration is warranted. The applicant provides that the reconsideration request is in substantial public interest and supported by good cause. However, staff does not believe that there is good cause for a reconsideration, or that expanded automobile access along US 1 is in the public's interest. Staff also does not believe there was an error made in reaching the original decision on the PPS. With this request, the applicant has not provided any new information for review and analysis, as they state on page 7 of their statement of justification (SOJ). The only new information available are the concerns raised by the City and citizens regarding the intersection of US 1 and Cherokee Street. Staff asserts that these concerns do not constitute new or factual information and had they been mentioned with the PPS, they would not have changed the determination that only a right-out access should be allowed. The concerns do not present information of any traffic inadequacy, nor do they show that a right-in-right-out on US 1 would not constitute primary access for the site.

The intersection of Cherokee Street and US 1 was analyzed with Certificate of Adequacy ADQ-2022-039, which was approved on August 24, 2022, prior to the PPS approval. The analysis performed by staff, provided in the Transportation referral (Smith to Heath, dated August 12, 2022), found that this intersection would function adequately so long as the westbound approach of the intersection included a through-left and an exclusive right-turn lane to facilitate traffic from the site onto US 1. In reaching this conclusion, the traffic study included the partially developed Metropolitan at College Park project (DSP-03098-06), located across Cherokee Street from the site and cited as a concern by the City, in the background of the analysis. In their SOJ, the applicant compares (on page 6) the original traffic study completed for the site, dated April 6, 2022, with the one done after the US 1 direct access was changed to a right-out exit only, dated August 11, 2022. The applicant claims in their SOJ that the intersection functioned better under the

original study. However, staff did not agree with all the conclusions of the original study, which contributed to staff requesting a revised study and the recommendation for a right-out only. Ultimately, the intersection functioned adequately under the revised study, as required under the Prince George's County Subdivision Regulations. Even if the changes requested do improve the functionality of the intersection, these further improvements beyond the adequacy threshold would not be needed for the approval of a certificate of adequacy, as provided by Section 24-4505(b)(1) of the Subdivision Regulations.

While the right-in-right-out was not necessary for the intersection to function adequately, having a right-out only was found necessary for conformance to the sector plan, as was evaluated at the time of PPS. The development district standards of the sector plan require the following (page 241):

- **When alleys are not present, secondary frontage or side streets may be used as the primary source of access to off-street parking. See Figure 2.**
- **When neither alleys, secondary frontage, or side streets are present, primary frontage streets may be used as the primary source of access to off-street parking, with a driveway that either passes to the side of the building or through the building. See Figures 3 and 4. This condition should be avoided to the fullest extent possible to reduce the number of driveways.**

Alleys are not present abutting the site, therefore, primary access is appropriately provided along Cherokee Street, a side street, as shown on the approved PPS. The primary US 1 frontage could only be used for primary access if neither alleys, secondary frontage, or side streets were present, which is not the case here. The applicant and the City have contended that changing the US 1 access to be right-in-right-out would not make that access the primary access, and have cited the April 6, 2022 traffic study assigning more trips to the Cherokee Street entrance than the US 1 entrance as evidence. However, the trips assigned in the traffic study may not reflect the preferences of residents and visitors once the site is developed. It is not expected that trips already on US 1 would diverge from US 1 to enter the site if the option for direct access from US 1 were provided, and therefore, staff does not agree with the original traffic study's trip assignment. The PPS resolution states (on page 9) that "the applicant agreed to evaluate and configure the access point along US 1 as an outbound access only, *preventing* that access from being the primary source of traffic to the site" (emphasis added). This finding is appropriate as it removes any ambiguity regarding which entrance is the primary entrance.

The purpose of the above sector plan requirements is to ensure both vehicular traffic and pedestrian safety along the primary streets by reducing the number of driveways to the fullest extent possible. The driveway could not be eliminated entirely without severely impacting on-site circulation, potentially causing an unsafe situation because all vehicles would have to fully turn around within the garage to reach the single remaining exit. However, changing the driveway to be right-out only reduces its width, improving pedestrian safety. The safety of pedestrian crossings over driveways can be improved somewhat by features such as raised crosswalks, but this is not a substitute for reducing their width or eliminating them.

Based on the analysis performed with ADQ-2022-039, finding that the intersection of Cherokee Street and US 1 will function adequately, and the analysis performed with PPS 4-22007, finding that a right-out only was needed for sector plan conformance, and the lack of any new material submitted by the applicant suggesting that any of the PPS findings were in error, staff does

not believe that granting the applicant's request for reconsideration is warranted. Changing the right-out to a right-in-right-out along US 1 would be at the expense of pedestrian safety and conformance with the sector plan requirements, which is not in the public interest and not good cause for a reconsideration.

If the Planning Board nevertheless grants the applicant's request for a waiver and reconsideration, staff advises that the Board should allow staff to provide further analysis on the merits of the request at a later Planning Board hearing. The applicant has also requested a waiver of the Planning Board Rules of Procedure (Section 10(f)), to allow a hearing on the merits of the request on the same day as the granting of any request for reconsideration. Staff advises against allowing this, as it would not give staff time to provide adequate public notice that a request for reconsideration has been granted, as is typically required by Section 10(f).