



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

APR 26 2010

MCPB No. 10-38
Preliminary Plan No. 120100090
Pilgrim Springs
Date of Hearing: April 1, 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 preliminary plan applications; and

WHEREAS, on September 25, 2009, Pilgrim United Church of Christ ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create six lots and one outlot on 4.9 acres of land in the R-90 zone, located in the southwest quadrant of the intersection of Briggs Road and Layhill Road (MD 182) ("Property" or "Subject Property"), in the Glenmont Sector Plan area ("Sector Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100090, Pilgrim Springs ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated March 19, 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 1, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

Approved as to
Legal Sufficiency:

M-NCPPC Legal Department

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on April 1, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Wells-Harley; seconded by Commissioner Dreyfuss; with a vote of 5-0, Commissioners Alfandre, Dreyfuss, Hanson, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120100090 to create six lots and one outlot on 4.9 acres of land in the R-90 zone, located in the southwest quadrant of the intersection of Briggs Road and Layhill Road (MD 182) ("Property" or "Subject Property"), in the Glenmont Sector Plan area ("Sector Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to five lots for five one-family detached dwelling units, one lot for a 12,763-square-foot-church, including two building additions comprising 5,610-square-feet collectively, and an outlot for dedication to the Montgomery County Department of Parks. The building additions are not approved for any new seating capacity. The church building is not approved for any weekday uses, such as, but not limited to, daycare or school uses.
- 2) The applicant must comply with the conditions of approval for the final forest conservation plan. The applicant must satisfy all conditions prior to recording of the respective plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of the respective sediment and erosion control permits, as applicable. Specific conditions include the following:
 - a. With respect to the record plat or sedimentation and erosion control permit involving proposed Lot 1, provide detailed recommendations from a certified arborist for protection of Trees 2, 5, and 6. If the arborist determines that Tree 5 or 6 cannot be protected, the final forest conservation plan must be revised to show the applicable trees as being removed.
 - b. With respect to the record plat or sedimentation and erosion control permit involving proposed Lots 2 - 6, provide detailed recommendations from a certified arborist for protection of Trees 67 and 69. If Trees 67 or 69 cannot be protected, the applicant must notify the owners of the property on which these trees are located and provide the arborist's evaluation and recommendations, and offer to remove the affected trees at the applicant's expense.
 - c. The applicant must revise the final forest conservation plan to include a supplemental planting plan for the southwestern portion of the forest conservation area, south of Lot 6.

- d. The applicant must revise the final forest conservation plan to include root pruning along the sections of the limits of disturbance that are within forest or are adjacent to trees to be protected.
 - e. Prior to issuance of any occupancy permit for Lots 2 - 6, the applicant must provide permanent signs along the boundaries of the forest conservation retention area, as shown on the final forest conservation plan.
- 3) The applicant must dedicate and the record plat must show dedication of 60 feet of right-of-way, as measured from the opposite right-of-way line, along the Property frontage for Briggs Road.
 - 4) The applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the master plan and to the design standards imposed by all applicable road codes, as modified by the Montgomery County Department of Transportation (MCDOT) letter dated March 30, 2010.
 - 5) The applicant must satisfy MCDPS requirements prior to recordation of the plat to ensure the construction of an eight-foot-wide shared-use path along the Property frontage on Briggs Road, unless construction is waived by MCDPS.
 - 6) The applicant must satisfy MCDPS requirements prior to recordation of the plat to ensure the construction of an eight-foot-wide shared-use path along the frontage of Briggs Road for approximately 125 feet west from the western Property boundary on Briggs Road to Acorn Hollow Lane, to satisfy Policy Area Mobility Review (PAMR) requirements.
 - 7) The record plat must reflect common ingress/egress and utility easements over the shared driveway.
 - 8) The applicant must comply with the conditions of the MCDPS stormwater management approval dated September 4, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 9) The applicant must dedicate to M-NCPPC the approximately 1.66-acre portion of the Subject Property that is identified as "Outlot A" for use as a park. The land must be dedicated to the Commission through notation on the plat and by conveyance at the time of record plat in a form of deed approved by the Office of General Counsel. At time of conveyance, the property must be free of any trash and unnatural debris.
 - 10) The applicant must comply with the conditions of the MCDOT letters dated February 26, 2010, and March 30, 2010. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 11) The applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
 - 12) The record plat must show necessary easements.

- 13) The certified Preliminary Plan must contain the following note: “Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined during the building permit process. Refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”
- 14) 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.

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, 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 Sector Plan.

The Glenmont Sector Plan does not specifically address the Subject Property. The Sector Plan recommends retention of existing zoning throughout the Sector Plan area in the absence of a specific recommendation for change on a particular property. Thus, in the case of the Subject Property, the Sector Plan calls for retention of the existing R-90 zoning. The proposed subdivision complies with the recommendations adopted in the Sector Plan in that it proposes one-family residential development consistent with surrounding development patterns and the current zoning designation and expansion of the existing church, a use that is permitted by right in the zone. The proposed residential lots will be similar to surrounding lots with respect to dimensions, orientation, and shape. The proposed subdivision will not alter the existing pattern of development or land use and is in substantial conformance with the Sector Plan recommendation to maintain the existing land use.

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

Roads and Transportation Facilities

Access to the residential lots will be via a shared driveway from Briggs Road for the group of four lots located between the church and the outlot, and access to the lot located on the west side of the outlot will be via an individual

driveway from Briggs Road. Access to the church will be via existing driveways from Briggs Road. No vehicular access is proposed from Layhill Road (MD 182). Pedestrian access is proposed via a shared-use path along the Property frontage on Briggs Road and an existing sidewalk on Layhill Road.

The Adequate Public Facilities (APF) test for the proposed subdivision considers only weekday peak-hour traffic associated with the residential lots because the proposed addition to the existing church is exempt from APF requirements per Section 50-35(k)(6) of the Subdivision Regulations. Thus, the subdivision was estimated to generate five new peak-hour trips during the weekday morning peak period and six new peak-hour trips during the weekday evening peak period, based on trip generation rates contained in the Local Area Traffic Review/Policy Area Mobility Review Guidelines.

The proposed subdivision does not generate 30 or more vehicle trips during the morning or evening peak hours. Therefore, the Application is not subject to Local Area Transportation Review. The Preliminary Plan is, however, required to satisfy the Policy Area Mobility Review (PAMR) test required under the current Growth Policy, and as a development located within the Kensington/Wheaton Policy Area, is required to mitigate 10% of new peak-hour trips generated by the development. With a total of five morning and six evening new peak-hour trips associated with the five one-family residential lots, the development is required to mitigate one peak-hour trip. The applicant is proposing to satisfy the PAMR requirement by constructing a 125-foot long, eight-foot wide, off-site shared-use path along the south side of Briggs Road, beyond the west end of the Property frontage. The applicant is also constructing an additional 975 feet of shared-use path as part of required frontage improvements along Briggs road.

The Planning Board finds that proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. 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 has 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, and a

school facilities payment is not required. Electrical, gas, and telecommunications services are also available to serve the Property.

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

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the R-90 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of which have recommended approval of the plan.

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

The Property contains approximately 3.32 acres of forest. The final forest conservation plan proposes to retain 1.61 acres and clear 1.71 acres of forest. The proposed forest retention area lies within and adjacent to the environmental buffer area. The approval includes a condition that requires the forest retention area to be dedicated to M-NCPPC as parkland to be incorporated into the adjacent Glenfield Local Park. The forest retention area exceeds the break-even point of 1.50 acres. Therefore, there is no reforestation requirement.

Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, Md. Ann. Code identifies certain individual trees as high priority for retention and protection. If a forest conservation plan cannot be altered to protect these trees, the applicant is required to demonstrate that it qualifies for a variance in accordance with Section 22A-21 of the Montgomery County Code to remove them. In general, the law requires the retention and protection of all trees that measure 30 inches DBH and greater; trees that are 75% the diameter of the county champion for that species; and rare, threatened, and endangered species. Since this subdivision will require 12 trees that are greater than 30 inches DBH to be removed, a variance is required.

In accordance with Montgomery County Code Section 22A-21(c), staff referred a copy of the variance request to the County Arborist in the Montgomery

County Department of Environmental Protection for a written recommendation prior to acting on the request. The County Arborist has elected not to review the variance request, and the County Arborist's recommendation for the variance request is, therefore, presumed to be favorable.

Section 22A-21(e) of the County Code states that the Planning Board must make findings that the applicant has met all requirements of this section before granting a variance. Section 22A-21(d) of the County code states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

The Planning Board finds as follows with respect to the forest conservation variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

The requested variance will not confer on the applicant any special privileges that would be denied to other applicants. The 30-inch and greater (specimen) trees are scattered throughout the site within the existing forest, and as individual trees.

Five of the large trees are within the proposed area of dedication for the Briggs Road right-of-way, or within the standard 10-foot wide public utility easement (PUE) adjacent to the road right-of-way. A public shared-use path is required to be constructed within the right-of-way, and the PUE will contain various utility lines. These elements of required infrastructure are unavoidable, and will require the clearing of the five trees.

Tree #2 is located at the front of the Property adjacent to the existing parking lot. It is near the proposed location of the sediment trap and the on-site stormwater management facility for the church and parking lot. These facilities cannot be relocated. Less than two-thirds of the tree's critical root zone can be preserved with the construction of the proposed trap and stormwater

management facility. The Planning Board does not believe that the tree can be adequately protected. A certified arborist should evaluate the proposed grading for the stormwater management facility to determine if there are additional measures that could be applied to save the tree.

Six of the 30-inch and greater trees will be removed because of the proposed residential lots. Five of these six trees are within the upland area outside the environmental buffer. If these trees were required to be protected, the church would not be able to expand, and only one of the five proposed residential lots could be developed. Tree #55 is located along the portion of the environmental buffer that the applicant proposes to encroach into to create proposed Lot 6. The Planning Board finds that the loss of Tree #55 is acceptable because the encroachment into the environmental buffer is small and because of the applicant's proposal to preserve an adjacent forested, upland area of equal or better quality that is almost five times as large as the encroachment area.

In summary, the proposed loss of trees that are 30-inches and greater DBH is due mainly to the location of these trees within areas that are typically determined to be developable, and the proposed development cannot be reasonably altered to avoid them. The Planning Board finds that this is not a special privilege that would be denied to other applicants.

2. Is not based on conditions or circumstances which are the result of the actions by the applicant.

The requested variance is not based on conditions or circumstances that are the result of specific actions by the applicant outside the norm of a development application allowed under the applicable zoning and associated regulations. The requested variance is based on the proposed site layout, which is designed to achieve a reasonable subdivision given an existing church that is to remain while avoiding as many trees as possible. The design also provides preservation of the majority of the site's forested environmental buffer which is contiguous to adjoining protected forest within M-NCPPC parkland.

3. Does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

The requested variance is a result of the proposed site design and layout on the Subject Property in accord with zoning and subdivision requirements and not as a result of land or building use on a neighboring property.

4. Will not violate State water quality standards or cause measurable degradation in water quality.

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. MCDPS has approved the stormwater management concept.

The site is constrained by an existing church that is to remain and an environmental buffer. The proposed subdivision would allow the church to expand its building and retain its existing parking lot. In addition, the majority of the 1.63-acre environmental buffer and an adjoining upland forested area would be preserved. The preservation of forest that lies in the buffer and adjoining upland area would allow the most environmentally sensitive forest on the site to be preserved as part of the proposed subdivision. This retention would require that six trees that are 30-inch and greater, DBH, be lost to create residential lots on the upland portion of the site. The Planning Board finds that the preservation of the majority of the forest in an environmental buffer provides water quality benefits that outweigh the loss of five large trees in the upland area and one large tree on the edge of the environmental buffer.

In addition, under section 22A-16(d) of the County code, "The Board or Director may treat any forest clearing in a stream buffer, wetland or special protection area as creating a rebuttable presumption that the clearing had an adverse impact on water quality." In this case, one 34-inch tulip poplar is proposed to be removed within the environmental buffer. The tree is located at the edge of a small section (1,640 square feet) of environmental buffer that is proposed for encroachment. However, the applicant proposes to offset the encroachment by preserving an upland forested area (8,100 square feet), which is almost five times the area of encroachment, adjacent to another section of the environmental buffer.

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 MCDPS Stormwater Management Section approved the stormwater management concept on September 4, 2009. The stormwater management concept includes water quality control for the church addition via construction of a biofilter. On-site recharge for the church addition is not required because that project is a redevelopment. Stormwater management for the residential lots will be provided through environmental site design practices, which include biofiltration, dry wells, and sheet flow to buffer credits.

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 APR 26 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).

* * * * *

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 Vice Chair Wells-Harley, with Chairman Hanson, Vice Chair Wells-Harley, and Commissioners Alfandre and Dreyfuss present and voting in favor of the motion, and Commissioner Presley absent, at its regular meeting held on Thursday, April 15, 2010, in Silver Spring, Maryland.



Royce Hanson, Chairman
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