



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

FEB 29 2010

MCPB No. 10-14
Preliminary Plan No. 120090120
Project Name: Alpha House
Date of Hearing: February 18, 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 December 22, 2008, Metropolitan Washington Orthodox Senior Housing, Inc. ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 8.16 acres of land in the RE-2 and Rural Village Center Overlay zones, located on the east side of Seneca Road (MD 112), 500 feet south of the intersection of Darnestown Road (MD 28) ("Property" or "Subject Property"), in the Potomac Subregion Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090120, Alpha House ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated February 5, 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 February 18, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

Approved as to
 Legal Sufficiency:

M-NCPPCC Legal Department

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

WHEREAS, on February 18, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Wells-Harley; with a vote of 4-0, Commissioners Alfandre, Hanson, Presley, and Wells-Harley voting in favor, with one seat being vacant.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board APPROVES Preliminary Plan No. 120090120 to create one lot on 8.16 acres of land in the RE-2 and Rural Village Center Overlay zones, located on the east side of Seneca Road (MD 112), 500 feet south of the intersection of Darnestown Road (MD 28) ("Property" or "Subject Property"), in the Potomac Subregion Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to one lot for a 24,725 square-foot assisted living facility for senior citizens, containing not more than 35 one-room living units.
- 2) The Applicant must comply with the conditions of approval of Special Exception S-2648.
- 3) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 4) The Applicant must dedicate and the record plat must show dedication of 40 feet of right-of-way, measured from the centerline, along the Property frontage for Seneca Road.
- 5) The Applicant must satisfy MCDPS requirements prior to recordation of the plat to ensure the construction of a five-foot-wide sidewalk along the Property frontage on Seneca Road, as part of the development, unless construction is waived by the MCDPS.
- 6) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated June 30, 2008. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 7) The Applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated August 17, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 8) The Applicant must comply with the conditions of the Maryland State Highway Administration (MDSHA) letter dated February 20, 2009. These conditions

- may be amended by MDSHA, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) The Applicant must satisfy provisions for access and improvements as required by MDSHA prior to issuance of access permits.
 - 10) No clearing, grading or recording of plats prior to certified site plan approval.
 - 11) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan.
 - 12) 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 site plan process. Please 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."
 - 13) The record plat must show necessary easements.
 - 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 Master Plan.

The Potomac Subregion Master Plan recommends that the Subject Property be zoned RE-2, which has since been implemented. The RE-2 zone allows senior housing facilities with the approval of a special exception, which, as noted above, was approved in 2005 and modified in 2008. The special exception application was found by the Planning Board to be in conformance with the Master Plan because the proposed assisted living facility will be compatible with the Darnestown village center and because the application advances the goal of facilitating commercial development in the village center by providing space for off-site septic areas for adjacent small properties. The proposed Preliminary Plan continues to designate space near the northern property line for a septic field that can be used by an adjacent property within the Darnestown Village Center Overlay zone. Therefore, the Planning Board finds that the proposed subdivision substantially conforms with the Potomac Subregion Master Plan.

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

Roads and Transportation Facilities

Access to the proposed lot will be provided by a driveway from Seneca Road. A sidewalk on the Seneca Road frontage will provide pedestrian access. Proposed vehicle and pedestrian access for the site will be safe and adequate.

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. In addition, the proposed subdivision does not generate more than three new vehicle trips in the morning or evening peak hours. Therefore, the Application is also not subject to Policy Area Mobility Review.

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 a private septic system. The Application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as 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. Electrical, gas, and telecommunications services are also available to serve the Property. Although the local high school cluster is over capacity, a school facilities payment is not required because the subdivision is for age-restricted housing.

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 lot was reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The lot 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 whom 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 Subject Property does not contain any existing forest, but the forest conservation plan requires afforestation. The Subject Property is located in the RE-2 zone, with a land use category of Medium Density Residential (MDR) for forest conservation purposes. The MDR land use category has a 20 percent afforestation threshold. This Property generates a 1.63-acre planting requirement under the afforestation threshold. The Applicant will meet this requirement by using an off-site forest conservation bank. The Planning Board supports the Applicant's proposal to meet the planting requirement off-site because the majority of the Property will be encumbered by septic easements for both this Property and the adjoining parcel to the east. The remaining portions of the Property, which are not in a septic easement and not being built upon, are not large enough to be planted as forest.

Newly enacted provisions of Natural Resources, Title 5, Section 5-1607 of the Maryland Code require the Applicant to file an application for a variance to remove trees that are 30" DBH and greater or trees that are 75 percent the diameter of the county champion for that species, if a project did not receive approval of a Preliminary Forest Conservation Plan prior to October 1, 2009. The Applicant is proposing to remove five trees that are greater than 30 inches DBH, and a variance is required.

Variations to the Forest Conservation Law are granted under the provisions of Section 22A-21. These provisions require the Planning Board to refer a copy of each variance request to the County Arborist in the Montgomery County Department of Environmental Protection (MCDEP) for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. If the County Arborist does not provide a recommendation within 30 days, the recommendation is presumed to be favorable. In this case, the variance request was referred to the Montgomery County Arborist within MCDEP on November 24, 2009. The County Arborist has elected not to review the variance request. The County Arborist's recommendations for the variance request are, therefore, presumed to be favorable.

The Planning Board must make four findings before granting a variance. Sect. 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

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

With respect to the forest conservation variance, the Planning Board finds as follows:

- a. The requested variance will not confer on the Applicant any special privileges that would be denied to other Applicants. The five specimen trees to be removed are on-site but are along the property boundary parallel to the right of way. Because of transportation improvements being required by the Maryland State Highway Administration, these trees cannot be saved. The Planning Board does not envision that this circumstance will be unique. Variances for other projects will be necessary in some cases to realize master planned densities and in other cases to remove a potentially hazardous tree and still others to obtain other planning goals. Therefore, this variance request is not a special privilege that would be denied to other applicants.

Furthermore, the Subject Property is within the Town of Darnestown and is adjacent to commercial properties as well as a private school. The proposed development is in substantial conformance with the recommendations of the Master Plan. The inability to remove the subject trees would limit the development of the Property and create a significant disadvantage for the Applicant that would deprive the Applicant of the rights enjoyed by neighboring properties not subject to this approval process.

- b. The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based on transportation improvements being required by the Maryland State Highway Administration as part of this overall project.
- c. The requested variance is a result of transportation improvements being required by the Maryland State Highway Administration, and not a result of land or building use on a neighboring property.

- d. The requested variance will not violate State water quality standards or cause measurable degradation in water quality. A Stormwater Management Concept was submitted for the Property and approved by the Department of Permitting Services on June 30, 2008. This approval confirms that the goals and objectives of the current state water quality standards have been met for the proposed improvements to the site.

In consideration of the above findings, the Planning Board approves the Forest Conservation Plan and the Applicant's request for a variance from the Forest Conservation Law to remove the five specimen trees.

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 June 30, 2008. The stormwater management concept includes water quality control via a sand filter and recharge via drywells. Channel protection is not required because the one-year post-development peak discharge is less than 2 cubic feet per second.

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 MAR 29 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 Vice Chair Wells-Harley, seconded by Commissioner Alfandre, with Chairman Hanson, Vice Chair Wells-Harley, and Commissioner Alfandre present and voting in favor of the motion, and Commissioners Presley and Dreyfuss absent at its regular meeting held on Thursday, March 25, 2010, in Silver Spring, Maryland.

A handwritten signature in cursive script, reading "Royce Hanson", written in black ink. The signature is positioned above a horizontal line.

Royce Hanson, Chairman
Montgomery County Planning Board

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