



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

MCPB No. 13-16  
 Preliminary Plan No. 120110060  
 Takoma Park Overlook  
 Date of Hearing: February 7, 2013

FEB 13 2013

**RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is authorized to review preliminary plan applications; and

WHEREAS, on December 17, 2010, 103 Geneva, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create four lots on 0.85 acres of land in the R-60 zone, located at 119 Geneva Avenue ("Subject Property"), in the Takoma Park Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110060, Takoma Park Overlook ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated January 25, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 7, 2013, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120110060 to create four lots on the Subject Property, subject to the following conditions:<sup>1</sup>

<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Approved as to  
 Legal Sufficiency:

*Christina Smith* 1/30/13

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- 1) This Preliminary Plan is limited to four lots for one one-family detached dwelling unit on each lot.
  - 2) 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 at the time of issuance of building permit(s). 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.
  - 3) The Applicant must comply with the conditions of approval for the final forest conservation plan approved as part of this Preliminary Plan, subject to the following:
    - a. The Applicant must submit a revised final forest conservation plan and obtain approval from Staff prior to any land disturbing activity occurring on site. The revised final forest conservation plan must include the five-year tree management plan for Tree J.
    - b. The Applicant must submit the fee-in-lieu or certificate of compliance for the off-site forest mitigation and obtain approval by Staff prior to land disturbing activities occurring onsite.
    - c. The Applicant must enter into a contract with an appropriate tree care professional to implement the required five-year tree management plan for Tree J, prior to any land disturbing activity occurring on site.
  - 4) The Applicant must grant to the City of Takoma Park and the record plat must show a ten-foot-wide public improvement easement along the Subject Property frontage of Geneva Avenue, between the front property line and the required ten-foot-wide public utility easement.
  - 5) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by the City of Takoma Park.
  - 6) The Planning Board has accepted the recommendations of the City of Takoma Park – Department of Public Works in its stormwater management concept letter dated November 3, 2011, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by the City of Takoma Park – Department of Public Works provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
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- 7) The Subject Property is within the Blair School cluster area. The Applicant must make a School Facilities Payment to Montgomery County Department of Permitting Services ("MCDPS") at the middle school level at the single-family detached unit rate for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
- 8) The record plat must show necessary easements.
- 9) 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 considered the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The Master Plan recommends retention of existing zoning throughout the Master Plan area in the absence of a specific recommendation for change on a particular property. The Master Plan does not specifically address the Subject Property, but does call for retention of the existing R-60 zoning. In the Master Plan, the Subject Property and surrounding development are identified as suitable for one-family detached housing. The Application substantially conforms to the Master Plan because the Application provides one-family detached housing consistent with the current density of the neighborhood and the current zoning designation. The lots are similar to surrounding existing lots with respect to dimensions, orientation, and shape, and future residences will have a similar relationship to the public street and surrounding residences as do existing residences in the area. The Application will not alter the existing pattern of development or land use, which is in substantial conformance with the Master Plan recommendation to maintain the existing residential land use.

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

#### Roads and Transportation Facilities

Access to the lots will be via individual driveways from Geneva Avenue. The City of Takoma Park has indicated that a sidewalk is to be provided on the opposite side of Geneva Avenue and not directly along the Subject Property

frontage. The roadway of Geneva Avenue will provide safe pedestrian access to the lots until a future project provides a sidewalk on the opposite side of the street, because Geneva Avenue is a residential street with low traffic. In regard to the adequacy of access to the lots, the Planning Board also relied on testimony from the Applicant's engineer stating that the driveways will be placed in approximately the same place as pre-existing driveways, which meet the sight distancing requirements. Staff also opined that the driveway on the easternmost lot was placed in the best location in the curved roadway for a driveway.

The Application 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 Application generates four new vehicle trips in the morning or evening peak hours, and the Policy Area Mobility Review requires mitigation of 10% of the new vehicle trips. Therefore, the Policy Area Mobility Review generates a requirement to mitigate less than one trip, and the Application satisfies this requirement without additional mitigation.

The vehicle and pedestrian access for the subdivision will be safe and adequate.

#### Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the development. The Subject Property will be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Subject Property will have 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 Subdivision Staging Policy resolution currently in effect and will be adequate to serve the Subject Property. The Subject Property is within the Blair High School cluster area, which is currently operating between 105-120% of capacity at the middle school level, and a school facilities payment is required. Electrical, telecommunications, and gas services are also available to serve the Subject Property.

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

The Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections, including the requirements for resubdivision as discussed below. The lots meet all the dimensional requirements for area, frontage, width, and setbacks in the R-60 zone as specified in the Zoning Ordinance. The size,

width, shape, and orientation of the lots are appropriate for the location of the subdivision.

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

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Subject Property does not contain any forest, and no forest exists on adjacent properties. Since no existing forest is affected by the Application, there are no reforestation requirements triggered by the Application. However, the forest conservation worksheet establishes an afforestation requirement of 0.14 acres. Because there is no on-site priority planting area (such as stream buffers and floodplains), no onsite plantings or associated conservation easement is provided. Therefore, the afforestation credits will be satisfied offsite either by purchase of the equivalent credits from a private forest conservation bank or a payment of fee-in-lieu.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require CRZ impact to seven Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board made the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Minor impacts to the trees growing on the opposite side of Geneva Avenue are associated with utility tie-ins within the right-of-way. The tree impacts on the Subject Property are within the buildable area established by the setbacks and other site constraints. Furthermore, the Subject Property previously contained residential structures and currently contains a gravel parking area. Rebuilding of the structures, which appear in 2002 aerial photographs, or removal of the existing gravel would result in a similar footprint of impacts to those currently proposed. Therefore, the Variance request would be granted to any applicant in a similar situation.

- 2. The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested Variance is based upon existing site conditions that would necessitate impact to the protected trees to develop the Subject Property consistent with zoning and applicable regulatory controls.

- 3. The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested Variance is a result of the existing and proposed site design and layout on the Subject Property and not a result of land or building use on a neighboring property.

- 4. Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

Granting this Variance request will not violate State water quality standards or cause measurable degradation in water quality. The project does not propose the removal of any Protected Trees. In addition, the City of Takoma Park approved the Stormwater Management Concept for the project on November 3, 2011. The City review and ultimate approval of the stormwater management plans will ensure that appropriate standards are met.

Mitigation for the Variance should be at a rate that approximates the form and function of the Protected Trees removed. Because no Protected Trees will be removed, no mitigation is required.

5. *All stormwater management requirements shall be met as provided in Chapter 19, article II, title "stormwater management", Section 19-20 through 19-35.*

This finding is based in part upon the determination by the City of Takoma Park Department of Public Works that the Stormwater Management Concept Plan meets applicable standards. The City of Takoma Park Department of Public Works approved the stormwater management concept on November 3, 2011. The stormwater management concept consists of environmental site design through the use of drywells and infiltration berms.

6. *The approved lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood (as delineated in the Staff Report).*

Frontage: In the neighborhood of 17 lots, lot frontages range from 0 feet (no frontage) to 137 feet. The smallest frontage for lots that have a frontage greater than 0 feet is 25 feet. Six of the lots have frontages of less than 60 feet, eight lots have frontages between 60 and 100 feet, and three lots have frontages of over 100 feet. The new lots have frontages between 66 and 71 feet. The new lots will be of the same character as existing lots in the neighborhood with respect to lot frontage.

Alignment: Thirteen of the 17 existing lots in the neighborhood are perpendicular in alignment, two are corner lots, one has an angled alignment, and one has no street frontage. All four of the new lots are perpendicular in alignment. The new lots are of the same character as existing lots in the neighborhood with respect to the alignment criterion.

Size: The lots in the delineated neighborhood range from 5,444 square feet to 28,698 square feet. Three of the lots are smaller than 6,000 square feet, nine are between 6,000 and 20,000 square feet, and five are larger than 20,000 square feet. The new lots will be 8,475, 8,591, 9,558, and 10,252 square feet in size, respectively. The new lot sizes are in character with the size of existing lots in the neighborhood.

Shape: Eleven of the 17 existing lots in the neighborhood are rectangular, four are irregularly shaped, one has a pipestem shape, and one is triangular. The four new lots will be rectangular in shape. The shapes of the new lots will be in character with shapes of the existing lots in the neighborhood.

Width: The lots in the delineated neighborhood range from 45 feet to 140 feet in width. Five of the lots have widths between 45 and 60 feet, eight of the lots have widths between 60 and 100 feet, and the remaining four lots have

widths of more than 100 feet. The new lots will have widths between 60 and 70 feet. The new lots will be in character with existing lots in the neighborhood with respect to width.

Area: The lots in the delineated neighborhood range from 2,066 square feet to 16,383 square feet in buildable area. Seven of the lots have buildable areas smaller than 5,000 square feet, four have buildable areas between 5,000 and 10,000 square feet, and six have buildable areas larger than 10,000 square feet. The new lots will have buildable areas between 4,052 and 5,268 square feet in size, respectively. The new lots will be of the same character as other lots in the neighborhood with respect to buildable area.

Suitability for Residential Use: The existing and the new lots are zoned residential and the land is suitable for residential use.

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)), 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 in the Montgomery County Land Records, or a request for an extension must be filed; and

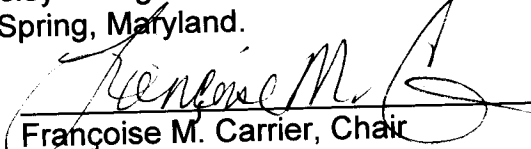
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is FEB 13 2013 (which is the date that this Resolution is mailed to all parties of record); and

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).

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**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 Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, February 7, 2013, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board