



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

MCPB No. 13-21
 Preliminary Plan No. 120120300
 Alfred House
 Date of Hearing: February 21, 2013

MAR 15 2013

RESOLUTION

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

WHEREAS, on June 21, 2012, Veena J. Alfred, Trustee ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 2.48 acres of land in the RE-1 zone, located at 6020 Needwood Road, at the southwest corner of its intersection with Muncaster Mill Road, Derwood ("Subject Property"), in the Rural East Policy Area, in the Upper Rock Creek master plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120120300, Alfred House ("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 February 8, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 21, 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. 120120300 to create one lot on the Subject Property, subject to the following conditions:¹

¹ 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:

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 MNCPPC Legal Department
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- 1) Approval under this Preliminary Plan is limited to one lot for an assisted living facility and a group home not to exceed 39 beds (34 in the assisted living facility and 5 in the existing group home) with 12 employees on site.
- 2) The Applicant must comply with conditions of the Montgomery County Board of Appeals approval for Special Exception S-2815.
- 3) The Applicant must comply with the conditions of approval for the final forest conservation plan approved as part of this Preliminary Plan, including the following:
 - a) The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved final forest conservation plan.
 - b) The Applicant must comply with all tree protection and tree save measures shown on the approved final forest conservation plan, including recommendations specified in the arborist's report dated December 3, 2012. Tree save measures not specified on the final forest conservation plan may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
 - c) The Applicant must plant a quantity and size of trees that total ninety-five caliper inches for mitigation of the Protected Tree Variance within the later of i) one year, or ii) two growing seasons after issuance of the Use and Occupancy Permit for the new building. Trees must be native, canopy species and should be a minimum of 3-inch diameter at breast height ("DBH"). Size, species and specific location of trees planted must be approved by M-NCPPC forest conservation inspector prior to planting.
 - d) Prior to recordation of the plat, the Applicant must obtain Staff approval of a Certificate of Compliance Agreement for use of an approved M-NCPPC offsite forest mitigation bank to satisfy the forest planting requirements.
- 4) Prior to issuance of building permits, a revised landscape plan that comports with the certified Preliminary Plan and with a landscape plan approved by the Board of Appeals, must be submitted for review and approved by Staff.
- 5) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated November 30, 2012, 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 MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.

- 7) The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated November 30, 2012, 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 MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 8) The Planning Board has accepted the recommendations of the Maryland State Highway Administration ("MDSHA") in its letter dated August 8, 2012, 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 MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
- 10) The Applicant must dedicate and show on the record plat(s) the following dedication:
 - a) 35 feet from the existing pavement centerline along the Subject Property frontage with Needwood Road.
 - b) 40 feet from the existing pavement centerline along the Subject Property frontage with Muncaster Mill Road.
- 11) 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/or to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By _____" are excluded from this condition.
- 12) The Applicant must construct and complete an 8-foot wide shared use path along the Needwood Road frontage prior to issuance of Use and Occupancy permits for the new structure.
- 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 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 and the Countywide Bikeways Functional Master Plan ("Bikeways Plan").*

As part of the Planning Board's review of Special Exception S-2815, the Board made the necessary findings that the use of the Subject Property for an assisted living facility is in substantial conformance with the Master Plan goal of providing adequate housing for the elderly. The Housing chapter of the Master Plan balances countywide policies for encouraging the broadest possible range of housing choices for the full range of residents' ages and incomes with equally important policies for preservation of a low-density housing resource and protection of sensitive resources. The Housing chapter recognizes that adequate housing for the elderly is an important element of the overall goal. As such, the use of the Subject Property will contribute to increased housing choices in this part of Montgomery County and will further both county policies for the provision of housing and overall land use goals of the Master Plan to protect sensitive resources. The Preliminary Plan creates a single, record lot so that the structures required to operate the approved special exception use may secure building permits. The Preliminary Plan is in substantial conformance with both the approval granted by the Board of Appeals under S-2815 and the Master Plan.

Needwood Road is identified as a primary residential street with a 70-foot-wide right-of-way and Muncaster Mill Road (MD 115) is identified as an arterial highway with an 80-foot-wide right-of-way. The Preliminary Plan provides the necessary dedication for the future widening of Needwood Road and Muncaster Mill Road in accordance with the Master Plan.

The Bikeways Plan recommends two bikeway facilities that abut the Subject Property. The first is on Muncaster Mill Road which is projected to have on-road bike lanes from Georgia Avenue to Woodfield Road (BL-35). The Bikeways Plan identifies BL-35 as an important cross-county connection to be implemented as part of future roadway improvements to Muncaster Mill Road by MDSHA. The Applicant is required to dedicate land along Muncaster Mill Road to allow for the eventual MDSHA improvements once a design has been approved. The Bikeways Plan also recommends a dual bikeway to include a shared use path and bike lanes along Needwood Road between Redland and Muncaster Mill Roads (DB-14). The Applicant will dedicate the necessary right-of-way to provide for these improvements but cannot build the bike lanes because the design of Needwood Road is tied to the MDSHA capital project for Muncaster Mill Road which has yet to be designed. However, the Preliminary Plan provides an eight-foot shared use path that will be constructed by the Applicant along the Subject Property's frontage in a manner recommended by the Bikeways Plan and in accordance with MCDOT standards. The shared use path is designed in such a

way at the edge of the right-of-way, so that it will not need to be replaced or relocated when any future intersection improvements are constructed.

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

Roads and Access

The Local Area Transportation Review ("LATR") guidelines exempt projects generating fewer than 30 peak-hour trips. The project will generate a maximum of 11 peak-hour trips during the weekday peak periods and is therefore, exempt from LATR. The Subject Property is located in the Rural East Policy Area where there is no Policy Area Mobility Review ("PAMR") trip mitigation requirement according to the current Subdivision Staging Policy.²

The existing single vehicular access point on Needwood Road will be widened to commercial driveway standards to accommodate the additional vehicular traffic and circulation. The Applicant must construct the eight-foot wide shared use path along the Needwood Road frontage, interim curb and gutter to direct runoff into a new enclosed storm drain system and a four-foot wide grass lawn panel.

The Planning Board finds that the access point and on-site vehicular and pedestrian circulation system shown on the Preliminary Plan are adequate. The internal parking lot has been accepted for access by the Montgomery County Fire and Rescue Services. The Applicant will be required to construct certain frontage improvements that are reasonable to support the lot and use.

Other Public Facilities

Public facilities and services are available and will be adequate to serve the proposed development. The Subject Property is in water category W-1 and sewer category S-1 and will be served by public water and sewer.

Other public facilities and services, such as police stations, firehouses, and health services, are operating according to the Subdivision Staging Policy currently in effect and will be adequate to serve the Subject Property. Electrical, gas, and telecommunications services are also available to serve the Subject Property. No School Facility Payment is required since the use does not generate any students.

² Under AP2 Transition of the Subdivision Staging Policy in effect, the Applicant is meeting its Transportation Policy Area Review ("TPAR"), through PAMR.

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

This Application has been reviewed for compliance with Chapter 50, the Subdivision Regulations. The lot size, width, shape and orientation is appropriate for the location of the subdivision. The approved use of the Subject Property for an assisted living facility, which includes two buildings and parking, requires a lot larger in size and width than the minimum dimensions established by the RE-1 zone. The rectangular shape provides ample area in which to construct the facility and maintain the existing group home.

The lot complies with the dimensional requirements for the RE-1 zone as specified in the Zoning Ordinance. The lot meets the dimensional requirements for area, frontage, width, and the buildings as shown on the Preliminary Plan can meet the setbacks in that zone.

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

As part of a Special Exception Application S-2815, the Planning Board approved a preliminary forest conservation plan (MCPB No. 12-06 dated May 11, 2012). This Application includes some revisions thereto with the approval of a final forest conservation plan.

A. Forest Conservation

The amount of forest clearing has not changed on the final forest conservation plan, however, the net tract area for the project increased from 2.34 acres to 2.52 acres. The increase is due to updated calculations of the area of dedication required by the Preliminary Plan (less area deducted from net tract area) and the inclusion of additional offsite area that will be disturbed for the construction of the shared use path along Needwood Road. The increase in net tract area results in an increase in the planting requirement from 1.06 acres to 1.12 acres. The forest planting requirement will be satisfied at an approved off site forest mitigation bank.

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.

The Planning Board approved a Variance for the removal of nine (9) Protected Trees, and impacts to the CRZs of seven (7) Protected Trees as part of the preliminary forest conservation plan. The final forest conservation plan includes revisions to the approved Variance due to the addition of the shared use path along Needwood Road (additional tree removal), relocation of the proposed sewer connection (reduction in number of trees impacted), and recommendations by a certified arborist (additional tree removal).

In addition to the nine trees approved for removal as part of the Variance granted with the preliminary forest conservation plan, the final forest conservation plan includes a request for a Variance for the removal of two additional Protected Trees that were previously approved for impact to their respective CRZs but not for removal. Due to the proposed construction of the shared use path along Needwood Road, tree #2 (as identified in the Staff Report) is requested to be removed as part of this Application. A certified arborist evaluated the condition of tree #30 (as identified in the Staff Report) and recommended removal based on its declining condition. The Variance granted with the preliminary forest conservation plan had included impacts to tree #14 as identified in the Staff Report, but this tree will no longer be disturbed due to the redesign of the water and sewer line connections.

The Applicant has requested a revision to the 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 amendment.

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.*

The development of the Subject Property is dictated by the existing entrance driveway, building and storm drain outfall, and the need to provide utility connections out to Muncaster Mill Road. Staff believes that the granting of this Variance is not a special privilege that would be denied to other applicants.

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, including the existing driveway and building.

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 need for the Variance is a result of the existing conditions and the 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.*

The specimen trees being removed or disturbed are not located within a stream buffer, wetland, or special protection area. Mitigation for the removal of the trees will replace the functions currently provided by the subject trees.

5. ***All storm water 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 MCDPS that the stormwater management concept plan meets applicable standards.

The Montgomery County Department of Permitting Services has approved a stormwater management concept for the proposed subdivision in a letter dated November 30, 2011. The concept consists of Environmentally Sensitive Design by the use of micro-bioretenion facilities.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 61 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

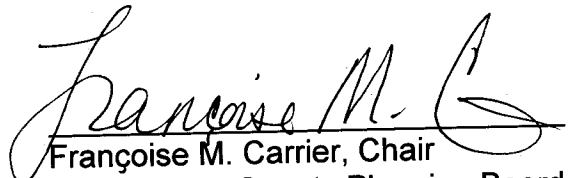
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAR 15 2013 (which is the date that this Resolution is mailed to all parties of record); and

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).

* * * * *

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 21, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board