



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

MCPB No. 16-078
 Preliminary Plan No. 12015013A
 Chevy Chase Lake
 Date of Hearing (Consent): July 28, 2016

AUG 23 2016

RESOLUTION

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

WHEREAS, on August 5, 2015, the Planning Board, by Resolution MCPB No. 15-101, approved Preliminary Plan No. 120150130 to create 63 lots to allow for a maximum density of 388,833 square feet of development of residential uses, including up to 200 multi-family units on one lot and up to 62 townhouse units on 62 lots on 5.403 acres of CRT 2.0, C 0.25, R 2.0, H 100, and CRT 1.5, C 0.25, R 1.5, H 50 zoned-land, located on Chevy Chase Lake Drive approximately 510 feet east of the intersection with Connecticut Avenue ("Subject Property"), in the *Chevy Chase Lake Sector Plan* ("Sector Plan") area; and

WHEREAS, on July 1, 2016, CC Homes Associates LLC ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan to amend Condition 26 to modify i) the timing for the execution of the deed of easement and construction and maintenance agreement for the approximately 1/2 acre public open space from prior to the recordation of any record plat to the issuance of the first use and occupancy certificate, and ii) the effective and recordation dates for these documents from prior to the issuance of a residential building permit for the multi-family building to the issuance of the first use and occupancy certificate for the multi-family building on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12015013A, Chevy Chase Lake ("Preliminary Plan," "Amendment," 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 July 18, 2016 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to
 Legal Sufficiency:

[Handwritten Signature] 7/20/16
 MNCPPC Legal Department

8787 Georgia Avenue, Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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WHEREAS, on July 28, 2016, Staff presented the Amendment to the Planning Board as a consent item for its review and action, at which time the Planning Board voted to approve the Amendment subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 12015013A to amend Condition 26 of the previously approved preliminary plan to modify i) the timing for the execution of the deed of easement and construction and maintenance agreement for the approximately ½ acre public open space from prior to the recordation of any record plat to the issuance of the first use and occupancy certificate, and ii) the effective and recordation dates for these documents from prior to the issuance of a residential building permit for the multi-family building to the issuance of the first use and occupancy certificate for the multi-family building, as follows:

26) Prior to issuance of the first Use and Occupancy certificate, the Applicant must execute a deed of easement and an associated construction and maintenance agreement with the Maryland-National Capital Park & Planning Commission to allow the Montgomery County Department of Parks to use and operate the roughly ½ acre public open space on the Subject Property, as shown on the Site Plan, exclusively as a public park in perpetuity. The foregoing documents must be in a form approved by the Department of Parks and the Commission's Office of the General Counsel. At a minimum, the deed of easement must include the following provisions:

- The easement must: (i) be perpetual and run with the land; (ii) provide the Commission the exclusive right to use and operate the open space as a public park; (iii) restrict the Applicant or any Applicant-controlled party from taking any actions that interfere or are inconsistent with the Commission's use of the easement area as a public park; and (iv) allow the Applicant subterranean and utility use rights.
- The park must be used, operated and policed as a Commission park.
- Public use of the park must be governed in accordance with the Commission's rules and regulations for the operation of its park system, as amended from time to time. Additional rules and regulations, not inconsistent with the Commission's rules and regulations, may be mutually agreed to by Applicant and the Commission.

At a minimum, the construction and maintenance agreement must include the following provisions:

- The park must be constructed and maintained by the Applicant to at least Parks Department standards for Commission parks.

- The Commission must have the right, but not the obligation, to maintain, repair, or replace park improvements and to seek compensation from the Applicant for such actions if the Applicant fails to maintain the park to applicable standards.
- The Applicant must address the issues of insurance and indemnity in a manner satisfactory to the Commission's Risk Management Division and Office of the General Counsel.
- Applicant's duties and obligation must be enforceable against any subsequent assignees and beneficiaries through a mechanism satisfactory to the Department of Parks and the Commission's Office of the General Counsel.

The record plat(s) must depict the location of the public park and include the note: "To be placed under easement for use as a public park." The deed of easement and construction and maintenance agreement must be recorded and effective prior to the issuance of the first Use and Occupancy certificate for the multi-family building.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

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, the Montgomery County Planning Board FINDS that this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan, and that all findings remain in effect; and

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 Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 23 2016 (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 Fani-González, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, July 28, 2016, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

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