



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

APR - 6 2016

MCPB No. 16-040
Preliminary Plan No. 120160130
Creekside
Date of Hearing: March 31, 2016

RESOLUTION

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

WHEREAS, on December 3, 2015, Nova-Habitat, Inc. ("Applicant") filed an application for approval of a preliminary plan of subdivision to create sixteen lots for the construction of sixteen townhouses, and a private road parcel and HOA parcel(s) on approximately 1.41 acres of land in the TF-12 Zone, located at 9213 Kensington Parkway and 3619 & 3623 Glenmoor Drive ("Subject Property"), in the 1989 Master Plan for the Communities of Kensington-Wheaton ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120160130, Creekside ("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 March 18, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 31, 2016, 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. 120160130 to create sixteen lots for the construction of sixteen townhouses, and a private road parcel and HOA parcel(s), 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

Christa Davis 3/24/16
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- 1) This approval is limited to 16 townhouse lots and the associated private road parcel and HOA parcel(s).
- 2) Private Street A must be located within its own parcel, separate from any other lot or parcel, and the record plat must reflect a common use and access easement over the private street and adjacent parallel sidewalks.
- 3) Private Street A must be constructed to the applicable public road structural standards, and have a 20-foot pavement width with adequate turning radii at intersections where needed for emergency access.
- 4) The Applicant must comply with the conditions of County Council Resolution No. 18-216 approving Local Map Amendment Application No. H-101.
- 5) The Applicant must comply with the conditions of approval of the Preliminary Forest Conservation Plan and variance request:
 - a. Prior to the start of any demolition, clearing, or grading on the Subject Property, the Applicant must record Category I Conservation Easements over all areas of forest retention, forest planting and environmental buffers as specified on the Preliminary Forest Conservation Plan. The Category I Conservation Easements must be approved by the M-NCPPC Office of the General Counsel and recorded in the Montgomery County Land Records by deed, and the Liber Folio for the easements must be referenced on the record plat.
 - b. All areas of unforested stream valley buffer must be planted with forest, except stormwater management outfall and WSSC Right-of-Way, as shown on the Preliminary Forest Conservation Plan.
 - c. All existing structures within the stream valley buffer must be removed prior to forest planting.
 - d. The Applicant must plant 26 3-inch caliper native shade trees and two 4-inch caliper native shade trees as mitigation for the removal of protected specimen trees. All mitigation trees must be located at least 5 feet outside of any stormwater management easements.
 - e. The Applicant must construct a split rail fence along the Category I Forest Conservation Easement, as shown on the Preliminary Forest Conservation Plan.
- 6) The record plat must reflect all areas under Homeowners Association ownership.
- 7) No clearing, grading, or demolition of existing structures on the site, or recording of plats, is permitted prior to Certified Site Plan approval and recordation of Category I Conservation Easements.

- 8) No clearing, grading, or demolition of existing structure on the site is permitted until the Applicant obtains a Floodplain District permit from the Department of Permitting Services (DPS) for development within the 25-foot Building Restriction Line (BRL) associated with the floodplain.
- 9) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated February 22, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. 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.
- 10) Prior to the certification of the preliminary plan, the Applicant must make the changes required by MCDOT to the storm drain study dated February 12, 2016 as contained in their February 22, 2016 letter.
- 11) The Applicant must make a Transportation Policy Area Review (TPAR) Mitigation Payment, equal to 25% of the applicable transportation impact tax to the Montgomery County Department of Permitting Services (MCDPS). The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
- 12) The Planning Board accepts the recommendations of the MCDPS – Water Resources Section – in its stormwater management concept letter dated February 9, 2016, and hereby incorporates them as conditions of this Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter. Any enlargement of the proposed stormwater management easement area or any modification to the type of stormwater management facilities that may be required by DPS prior to installation/construction will require a Preliminary Plan and Site Plan Amendment.
- 13) Final approval of the number and location of buildings, dwellings units, on-site parking, site circulation, and sidewalks will be determined by the Site Plan approval.
- 14) 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 Site Plan review. Please refer to the zoning

data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for the lots. Other limitations for site development may also be included in the conditions of the Planning Board's approval.

15) The Adequate Public Facility (APF) review for the Preliminary Plan Amendment will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.

16) All necessary easements must be shown on the record plat.

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 does not contain any specific recommendations for the Subject Property, but does include general guidance about encouraging housing diversity within the Master Plan area (p. 50). The sixteen townhouses provide additional housing choices in the area, and the use and development are consistent with the Master Plan. Therefore, the Preliminary Plan is in substantial conformance with the Master Plan.

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

Master Plan Roadways and Bikeways

In accordance with the Master Plan and 2005 Countywide Bikeways Functional Master Plan, the master-planned roadways and bikeways are listed below:

1. The 1989 Master Plan for the Communities of Kensington–Wheaton designates:

a. Kensington Parkway between Beach Drive and the Capital Beltway (the segment fronting the Subject Property) as a “park” road.

Note: The “revised Street Dedication Plat” No. 1584 was approved in 1944 to realign and dedicate 100 feet of right-of-way for the site’s Kensington Parkway frontage. Subdivision Record Plat No. 3013 for Rolling Hills (Part of Block A & D) Rolling Hills was created in 1951. Under the 2007 Agreement to Transfer Ownership and Share Maintenance of Certain M-NCPPC Roads and Bridges between MCDOT and M-NCPPC, MCDOT assumed the maintenance of Kensington Parkway. The Applicant worked

with M-NCPPC's Parks Department regarding the relocated curb cut for the private road.

- b. North of Beach Drive, Kensington Parkway as a Primary Residential Street, P-4, with a 60-foot-wide right-of-way.
 - c. Beach Drive as a "park" road.
 - d. The Capital Beltway, I-495, as an 8-lane divided Freeway, F-8.
2. *The Countywide Bikeways Functional Master Plan* recommends a Signed Shared Roadway, SR-29, along Kensington Parkway between Howard Avenue in the Town of Kensington and Jones Bridge Road in Chevy Chase.

The 2013 *Countywide Transit Corridors Functional Master Plan* does not include a Bus Rapid Transit (BRT) transit corridor along nearby Connecticut Avenue (MD 185).

Available Transit Service

Ride-On route 33 operates along Kensington Parkway. Metrobus route L8 operates along nearby Connecticut Avenue to the west of the Subject Property.

Pedestrian and Bicycle Facilities

The Preliminary Plan includes the following:

- 1. Upgrade of the existing sidewalk along the Kensington Parkway frontage of the Subject Property.
- 2. Lead-in sidewalks from Kensington Parkway.
- 3. ADA-compliant crossing of Private Road A.
- 4. A combined bus stop and bicycle shelter along the Subject Property frontage of Kensington Parkway.

Local Area Transportation Review

The Applicant is not required to submit a traffic study because the use generates fewer than 30 total peak-hour trips within the weekday morning and evening peak periods. Therefore, the LATR test is satisfied.

Policy Area Review (PAR)

The Applicant must satisfy the Policy Area Review test by making the applicable Transportation Policy Area Review (TPAR) payment equal to 25% of DPS's transportation/development impact tax for the Subject Property located in the Kensington/Wheaton Policy Area. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the Application. The Application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicular access. Public facilities and services, such as police stations, firehouses, and health services are currently operating within the standards set by the Subdivision Staging Policy currently in effect. Electrical and telecommunications services are also available to serve the Subject Property. The Subject Property is located in the Bethesda-Chevy Chase high school cluster. Utilization levels are acceptable; thus a school facilities payment is not required.

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

The Preliminary Plan has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations in the Master Plan, and for the type of development and use contemplated. As conditioned, the lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance (with Alternative Compliance approved for required Common Open Space) and substantially conform to the recommendations of the Master Plan. Access and public facilities will be adequate to serve the lots. The Application has been reviewed by other applicable County agencies, all of whom have recommended approval of the Preliminary Plan.

Lot Frontage on a Private Street

Section 50-29(a)(2) of the Subdivision Regulations requires "...that individually recorded lots shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road." All sixteen lots will front onto a private road (Private Street A). Therefore, if the Planning Board approves the Preliminary Plan, it must also find that the private road has acquired the status of a public road. As reflected in other similar cases approved by the Board, this finding must be based upon the road being fully accessible to the public; accessible to fire and rescue vehicles, as needed; and designed to the minimum public road standards, except for right-of-way and pavement widths.

In the case of this subdivision, Private Street A meets the minimum standards necessary to make the finding that it has attained the status of a public road. Private Street A will be constructed to the minimum public road structural standards, will have a 20-foot pavement width with adequate turning radii at intersections where needed for emergency access, will have an appropriate paving cross-section for private vehicles, and have an appropriate circulation and turnaround pattern. Private Street A will be placed within its own separate parcel and access easement, which will ensure it will remain fully accessible to the public.

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

Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #420160290) on November 9, 2015. The Subject Property lies in the Lower Rock Creek watershed, directly adjacent to Rock Creek Park. The stream banks of Rock Creek are approximately 300' from the Subject Property; however, the floodplain from this stream is extremely active and extends onto 0.11 acres of the northern portion of the Subject Property. Per the Environmental Guidelines, a stream valley buffer encompasses the on-site floodplain area, and the floodplain has a 25-foot building restriction line (BRL), as required by Chapter 19 of the Montgomery County Code. Approximately 0.03 acres of floodplain forest extends onto the Subject Property from the adjacent parkland. This forest is a high priority for retention as it is protecting stream valley buffer and floodplain. While there are no wetlands on-site, there is a large system of wetlands in the adjacent parkland. The Application is in compliance with the Environmental Guidelines as it does not include activity within the stream valley buffer except for a stormwater management outfall. The entire stream valley buffer on the Subject Property will be protected by a Category I Conservation Easement. The Applicant will have to apply for a Floodplain District Permit from the Department of Permitting Services for development within the 25-foot BRL associated with the floodplain. The Application is in compliance with the Environmental Guidelines.

Forest Conservation

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and the Applicant has submitted a Preliminary Forest Conservation Plan in conjunction with the Preliminary Plan and a Final Forest Conservation Plan in conjunction with the associated Site Plan. There is 0.03 acres of high priority forest on site, located in the floodplain/stream valley buffer. The Applicant will clear 0.01 acres of forest for a stormwater management outfall and minor grading, which generates a 0.22-acre planting requirement. The Applicant will meet the planting requirement by planting 0.12 acres of forest onsite, and by providing the remaining 0.10 acres in off-site mitigation. All areas of stream valley buffer, except for stormwater management outfall and a WSSC easement will be planted as forest and protected by a Category I Conservation Easement. An area of invasive bamboo will be removed in conjunction with this Forest Conservation Plan.

Forest Conservation Variance

Section 22A-12(b) (3) of the Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in

support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires a variance to impact trees that: measure 30 inches or greater diameter at breast height (DBH); are part of a historic site or designated with a historic structure; are designated as national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The Applicant submitted a variance request on 12/2/2015 and revised variance requests on 1/28/2016 and 2/16/2016 for the impacts to trees. The approved layout will remove nine trees and impact, but not remove, 12 trees that are considered high priority for retention under Section 22A-12 (b) (3) of the County Forest Conservation Law.

Section 22A-21 of the County Code sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. The Planning Board has made the following determinations and findings based on the required findings that granting of the requested variance:

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

Granting this variance will not confer a special privilege on the Applicant as disturbance of the specified trees is a result of the need to replace the existing four single family homes with 16 townhouses. The size and configuration of the Subject Property preclude alternative site designs that could allow the variance trees to remain undisturbed.

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 actions by the Applicant. The variance is necessary due to the constraints of size, the requirements to demolish existing facilities, and the location of the existing trees on and around the Subject Property.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the location of trees and the development and not a result of land or building use on a neighboring property. The impact to the trees is the minimum disturbance necessary to demolish the existing four single family homes and build 16 townhomes, with associated infrastructure.

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

The Applicant will plant 26 3" caliper and two 4" caliper native shade trees to replace the form and function of the variance trees removed, and will reforest the floodplain on the northern property line. In addition, the Subject Property will be developed in accordance with the Maryland Department of the Environment criteria for stormwater management, including the provision of Environmental Site Design to protect natural resources to the maximum extent practicable.

Mitigation for Trees Subject to the Variance Provisions

The Applicant is requesting a variance to remove nine trees. These nine trees will be mitigated at a rate of 1" caliper per 4" DBH removed, using a minimum 3" caliper native shade tree. The Applicant will plant 26, 3-inch caliper trees and two 4-inch caliper trees, which are shown on the Final Forest Conservation Plan.

County Arborist's Recommendation on the Variance

The County Arborist has reviewed the variance request and recommended approval with mitigation.

Conclusion

The Planning Board finds that the Preliminary Forest Conservation Plan meets the requirements of Chapter 22A Forest Conservation Law. Therefore, the Planning Board approves the Preliminary Forest Conservation Plan and the associated variance, with the conditions cited at the beginning of this report.

Noise

The Montgomery County "Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development" regulate traffic noise impact on residential developments. In this area of the County, the Guidelines use a maximum value of 65 dBA Ldn for exterior recreation areas and 45 dBA Ldn for indoor residential spaces.

Since the Subject Property is bordered by the I-495 exit ramp for Connecticut Avenue, it has an elevated noise level at both existing and projected future transportation levels. With the exit ramp located at a higher elevation than the site, the noise levels increase with altitude. For example, Lot 11 (closest to the exit ramp) has a noise level of 65 dBA Ldn at 5' in altitude but 75 dBA Ldn at 35' in altitude.

The rear yard of Lot 11 is the only private outdoor recreation space that does not meet the 65 dBA Ldn at ground level. In order to meet the Noise Guidelines, a 6-foot high noise barrier must be constructed along the rear yard of Lot 11. All of the units will need enhanced wall construction and acoustically rated windows and doors in order to meet the guidelines for indoor residential spaces. Prior to issuance of the first building permit, the Applicant must provide certification to M-NCPPC Staff from an engineer that specializes in acoustical treatment that the location of the noise mitigation techniques

will attenuate current and/or future noise levels to no more than 65 dBA Ldn for areas of outdoor activity on Lot 11 and that the building shell for residential dwelling units is designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn.

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

The Department of Permitting Services (DPS) issued an approval letter for a Stormwater Management Concept/Site Development Plan on February 9, 2016. The stormwater management concept meets the required stormwater management goals via three enhanced micro-bioretention facilities. While DPS approved the concept/site development plan, it raised several concerns in its approval letter as follows:

1. While the proposed subdivision does not propose to subdivide portions of the delineated 100-year floodplain and therefore it is technically acceptable, it does propose to create residential townhouse properties that will be substantially within the 25-foot floodplain buffer. Placement of properties within the 100-year floodplain buffer as proposed will likely encourage encroachment into the floodplain and reduce the ability of those homeowners to make further improvements to those affected properties. Development of the floodplain buffer will result in environmental impacts that cannot be mitigated through application of stormwater management practices. This project will require a Floodplain District Permit for storm drain outfall into the floodplain and all other work in the floodplain buffer.
2. Should a seasonal variation of the groundwater or any other situation make the construction of the Enhanced Micro-Bioretention Facilities not practicable, this Stormwater Management Concept would be invalidated. This would require a revision to this concept, but the remaining site area not utilized by buildings or site features may not be enough to accommodate required Stormwater Management.
3. The proposed design utilizes the only remaining undeveloped space for stormwater management via Enhanced Micro-Bioretention Facilities. Design and Geotechnical Engineers' options are that facilities will provide required Stormwater Management, but will also require all facilities within 10' of proposed units to be completely surrounded by proposed structural walls designed to prevent infiltration along the facility sides and therefore protect adjacent buildings. These walls must be design to withstand overburden pressure of surrounding soils and units while the enhanced Micro Bioretention facilities are empty for maintenance.

Any changes to the approved stormwater management concept plan may result in the loss of units or reduction in the size of the proposed lots as there is no additional area available for stormwater management on the Subject Property. Therefore, the Applicant

must comply with each of the recommendations as set forth in the letter. Any enlargement of the area or modification to the type of stormwater management facilities required by DPS will require a Preliminary Plan and Site Plan Amendment.

6. Subdivision Regulations Waiver, 50-38

The Application is a resubdivision of previously platted lots. Resubdivision of residential lots are subject to review criteria specified in Section 50-29(b)(2) of the Subdivision Regulations, which requires the comparison of new lots with existing lots in a delineated neighborhood to ensure that the new lots are of the same character as the existing lots in the neighborhood with respect to street frontage, alignment, size, shape, width, area, and suitability for residential use. The Subject Property is to be developed with townhouses under the TF-12 Zone; however, it has been severed from the original Rolling Hills subdivision by I-495, and the closest lots in the remaining Rolling Hills neighborhood (south of I-495) were developed with detached houses under the development standards of the R-90 Zone.

Because of these differences between the townhouse TF-12 Zone and the R-90 Zone, and the considerable distance to the nearest residential development, a meaningful comparison between the new lots and the existing lots in the neighborhood cannot be made. Therefore, the Applicant has requested a waiver of the resubdivision analysis required by Section 50-29(b)(2). The Planning Board has the authority to grant such a waiver pursuant to Section 50-38(a)(1) of the Subdivision Regulations, provided that certain findings can be made. The section states:

“The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.”

The Planning Board finds that the Subject Property faces an unusual circumstance because it has been rezoned from its original R-90 Zone to TF-12 Zone and no other subdivisions in the nearby surrounding neighborhoods have been developed under the TF-12 zone. Granting a waiver of the requirements of Section 50-29(b)(2) is the minimum waiver necessary to provide relief from the requirements. The waiver is not inconsistent with the purposes and objectives of the General Plan (as amended by the Master Plan) and is not adverse to the public interest, because the waiver is needed to develop the Subject Property in accordance with the Local Map Amendment that changed the Subject Property's zone from R-90 to TF-12. The project will be developed in accordance with the Zoning Ordinance (townhouse development is permitted by the TF-12 Zone), and as noted above and found by the County Council in granting the LMA,

the development is in substantial conformance with the Master Plan. Therefore, the Planning Board approves the waiver request.

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

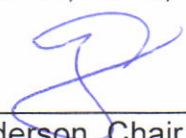
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is APR - 6 2016 (which is the date that this Resolution is mailed to all parties of record); and

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).

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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 Presley, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioner Presley voting in favor, Commissioner Fani-González opposed, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, March 31, 2016, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board