



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

APR - 6 2016

MCPB No. 16-037
Site Plan No. 820160050
Creekside
Date of Hearing: March 31, 2016

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on December 3, 2015, Nova-Habitat Inc. ("Applicant") filed an application for approval of a site plan for 16 townhouses on 1.41 acres of TF-12 zoned-land, 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 site plan application was designated Site Plan No. 820160050, Creekside ("Site 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 21, 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 at which it heard testimony and received evidence on the Application; and

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

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820160050 for 16 townhouses on the Subject Property, subject to the following conditions:¹

1. Floating Zone Plan Conformance

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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The Applicant must comply with the conditions of the County Council Resolution No. 18-216, approving Local Map Amendment H-101.

2. Preliminary Plan Conformance

The Applicant must comply with the conditions of approval for Preliminary Plan No. 120160130 and any subsequent amendments.

3. Environment

The Applicant must comply with the following conditions of approval for the Final Forest Conservation Plan No. 820160050.

1. 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 Final 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.
 2. Prior to the start of any demolition, clearing, grading, or any land disturbing activity on the Subject Property, the Applicant must provide financial surety to the M-NCPPC Planning Department for the 0.12 acres of new forest planting.
 3. Prior to the start of any demolition, clearing or grading occurring on the Subject Property, the Applicant must submit a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel.
 4. The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved Final Forest Conservation Plan.
 5. The Applicant must construct a split rail fence along the Category I Forest Conservation Easement, as shown on the Final Forest Conservation Plan.
4. The Applicant must provide a minimum of 6,530 square feet of Common Open Space as shown on the submitted Site Plan.
5. The record plat must reference Open Space Covenant recorded at Liber 28045 Folio 578 (Covenant).

6. Noise

- a. Prior to Certified Site Plan, the Applicant must submit a new noise analysis to assess the noise impact of the SHA's proposed salt dome on the State's property across Kensington Parkway, and must provide Staff with certification from an engineer specializing in acoustical treatments that: 1) either no outdoor private areas on the Subject Property will experience outdoor noise level of more than 65 dBA Ldn; or 2) that design measures are being used to ensure that any adverse noise impacts on the private outdoor areas will be attenuated to a level no greater than 65 dBA Ldn. As part of the Certified Site Plan Approval, the approved Site Plan and Final Forest Conservation Plan can be updated to reflect the new noise mitigation measures, subject to Staff review and approval, if these measures do not conflict with any other conditions of Approval for Preliminary Plan, Site Plan and the Final Forest Conservation Plan.
 - b. Prior to Certified Site Plan, the Applicant must certify that the units will be constructed in accordance with the recommendations of an engineer specializing in acoustical treatment.
 - c. Prior to issuance of the first building permit, the Applicant must provide Staff with certification from an engineer specializing in acoustical treatment that:
 - i. the building shell has been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn; and
 - ii. the location of the noise mitigation techniques will attenuate current and/or proposed noise levels to no more than 65 dBA Ldn for areas of outdoor activity on Lot 11.
 - d. The Applicant must disclose in writing to all prospective purchasers that the units are impacted by transportation noise.
 - e. Prior to completion of the Lot 11 townhouse, a 6-foot high noise barrier as shown on the site plan must be constructed along the rear yard of Lot 11.
7. 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 stormwater management easement area or modification to the type of stormwater management facilities that may be required by DPS prior to the time of installation/construction will require a Preliminary Plan and Site Plan Amendment.

8. Landscaping and Amenities

Prior to completion of each row of townhouses, all adjacent open space areas and associated landscaping and amenities such as sidewalks, bike shelter, benches, trellis, and trash receptacles must be installed. Street tree planting may wait until the next planting season.

9. Lighting

The maximum height of any light pole onsite must not exceed 12 feet including the mounting base.

10. Transportation

- a. The Applicant must upgrade the existing sidewalk along Kensington Parkway frontage, as shown on the Certified Site Plan.
- b. The Applicant must provide lead-in sidewalks from Kensington Parkway, as shown on the Certified Site Plan.
- c. The Applicant must construct the Private Street A to applicable Montgomery County structural standards and must construct all sidewalks, both on and off the Subject Property, to applicable ADA standards.

11. Fire and Rescue

The Planning Board accepts the recommendations of the Montgomery County Fire and Rescue Service (MCFRS) Fire Code Enforcement Section in its letter dated February 18, 2016 and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCFRS may amend if the amendments do not conflict with other conditions of Site Plan approval.

12. Architectural Design

The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on the submitted architectural drawings, as determined by M-NCPPC Staff.

13. Site Plan Surety and Maintenance Agreement

Prior to issuance of any building or sediment control permit, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 7.3.4.K of the Montgomery County Zoning Ordinance, with the following provisions:

- a. A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.

- b. The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, lighting, recreational facilities, site furniture, sidewalk, noise wall, retaining walls, fences, private roads, paths and associated improvements.
- c. The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by inspection and potential reduction of the surety.

14. Development Program

The Applicant must construct the development in accordance with a development program that will be reviewed and approved by the Staff prior to the approval of the Certified Site Plan.

15. Certified Site Plan

Certified Site Plan must provide the following information:

- a) Final Forest Conservation Plan, stormwater management concept approval letter, development program, Site Plan Resolution, and Preliminary Plan Resolution.
- b) A note stating that "M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading."
- c) A note stating that "Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services."
- d) Data table to reflect development standards approved by the Planning Board.
- e) Ensure consistency of all details and layout between Site Plans, Landscape Plans, and Forest Conservation Plans.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Creekside, Site Plan No. 820160050 submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

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 development satisfies any previous approval that applies to the site.*

The development complies with Local Map Amendment H-101.

2. *The development satisfies the binding elements of any development plan or schematic development plan in effect on October 29, 2014.*

Not applicable. The Subject Property does not have a development plan or a schematic development plan but it does have a Floating Zone Plan approved on July 14, 2015. No binding elements were included.

3. *The development satisfies any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment.*

Not applicable, The Subject Property's R-90 zoning in effect on October 29, 2014, was not the result of a Local Map Amendment.

4. *The development satisfies applicable use standards, development standards, and general requirements under the Zoning Ordinance.*

- a. Development Standards

The Application satisfies the applicable development standards of TF-12 Zone as shown in the following data table:

Development Standards	Required	Approved Floating Zone Plan	Approved Site Plan
Residential Density (59.5.2.5.A.1.b)	16.07 (12 du/ac)		16 DUs (11.4 du/ac)
Maximum Height (59.5.2.5.B.2)	Set by Floating Zone Plan	50 ft.	50 ft.
Minimum setback from any public street (59.5.2.5.B.2)	Set by Floating Zone Plan	10 ft.	16 ft.
Minimum setback from any detached dwelling lot or land classified in a one family detached residential zone (59.5.2.5.B.2)	Set by Floating Zone Plan	2 ft.	12 ft.
Minimum setback from any adjoining side lot (end unit) (59.5.2.5.B.2)	Set by Floating Zone Plan	2 ft.	2 ft.
Minimum setback from any adjoining rear lot (59.5.2.5.B.2)	Set by Floating Zone Plan	4 ft.	8 ft.
Minimum Lot Size (59.5.2.5.C)	Set by Floating Zone Plan	1,000 sq. ft.	1,600 sq. ft.
Minimum Open Space Coverage (59.5.2.5.D)	10% (6,135 sq.ft.)	20% (12,270 sq.ft)	10.6% (6,530 sq.ft.)
Parking (59.6.2.4.B)	2 sp/d.u.= 32	2 sp/d.u.= 32	4 sp/ d.u.=64
Minimum Permeable Area in Common Open Space (59.6.3.8)	80%	None	90%
Minimum Tree Canopy in Common Open Space (59.6.3.8)	20%	None	39%

Required Common Open Space

The Site Plan provides a total of 6,530 square feet (10.6%) of the Subject Property as required Common Open Space (COS), divided into two parts: the area along the Kensington Parkway frontage, approximately 4,430 square feet, is bisected into two triangular-shaped areas by the private road into the site; and the area along the southeastern edge of the site at the end of the internal road is approximately 2,100 square feet.

The Board agrees with the Staff's analysis that there are several features of the Subject Property that prevent it from fully addressing the design criteria of the required COS. These are: the triangular shape of its frontage along Kensington Parkway; its location next to the I-495/Connecticut Avenue ramp; its topography; the northern edge of the site affected by the 100-yr flood plain; and the area subject to Forest Conservation Easement.

Large Stormwater Management areas in the required COS

A large part of the COS in the front is taken up by stormwater management facilities. Under **Section 6.3.3. Allowed and Prohibited Features in Open Space**, *Non-structural, natural, and ESD stormwater management facility* (#8 in the list above) may be included in COS. But the main purpose of COS is recreation and the stormwater management facilities may not be well-integrated into the design of the COS (they may appear to be a separate entity within the COS) and may become the dominant feature of the COS. It is also likely that these facilities would expand and their design may change as the project goes through the next phase of engineering and final design approval by MCDPS, which will be after the Site Plan review and action by the Board. This could negatively impact the usability of the COS. The Montgomery County DPS, in its letter of approval for the Concept Development Plan dated February 9, 2016, has stated that if a seasonal variation of the groundwater or any other situation makes the construction of the Enhanced Micro-Bioretenion Facilities not practicable, the Stormwater Management Concept approval would be invalidated. This may require an amendment of the Preliminary Plan and the Site Plan, as stated in the conditions of approval for this Application.

Design Criteria of Section 6.3.5B.

1. Location of the COS

Section 6.3.5.B. states that the required COS must be located "*in a central position or central positions in the neighborhood bordered by streets or building lots.*" If this is not feasible, the Ordinance allows the COS to be located "*in a location taking advantage of an important adjacent natural feature or open space.*" The configuration and other constraints of the Subject Property

combined with the layout of the site prevent it from providing 10% of the required COS in the center of the site without reducing the number of units approved under the LMA. Also, the center of this site is needed for stormwater management purposes. Even if this central area could be expanded to accommodate the required COS, one side of COS would face a private street dominated by garage openings and two sides would face side walls of the townhouses. This is not the best place for the COS.

The Subject Property's frontage along Kensington Parkway is the best location for the required COS as it will be farthest from the I-495 ramp and buffered from the Beltway noise by the proposed townhouses. And the adjacent Rock Creek Park can provide an enhanced setting and a green edge to the required COS in this location.

2. Minimum 50-foot width of COS

All three areas of the COS (two triangles in the front and the open space in the back) do not meet this criterion. Only the northern edge of the northern triangle along the Kensington Parkway, and a small portion along the northern edge of the open space in the back, meet the minimum 50-foot width requirement.

3. 50% of the required common open space must be in one contiguous area.

The COS meets this criterion. The triangular areas in the front have a combined area of more than 50% of the required COS, and the COS area in the back is 2,100 square feet.

Alternative Compliance

Although the Board could grant exceptions to the design criteria of Section 6.3.5.B, the Board agrees with Staff that this would set a wrong precedent for other infill properties in the future. Other applications which do not have the benefit of being next to a major facility like Rock Creek Park, would attempt to use the Subject Property as an example to justify less than desirable open spaces. This approach also does not address the issue of excessively large stormwater management areas within the required COS, which is not consistent with the purpose and definition of COS.

The Alternative Compliance provision provides a more comprehensive way to address the Project's non-compliance with the Design Criteria of Section 6.3.5.B. Section 6.8.1. Alternative Method of Compliance allows the Board to approve an alternative method of compliance with any requirement of Division 6.1 and Division 6.3 through 6.6 if it determines that *"there is a unique site, a use*

characteristic, or a development constraint, such as grade, visibility, an existing building or structure, an easement, or a utility line.” The Board has determined that the unique features of the site and its development constraints--the triangular shape of its frontage along Kensington Parkway; its location next to the I-495/Connecticut Avenue ramp; its topography; the northern edge of the site affected by the 100-yr flood plain; and the area subject to Forest Conservation Easement—preclude the site from being developed in accordance with section 6.3.5.B in a safe and efficient manner. Per Section 6.8.1, the Board has determined that the alternative design:

- A. Satisfies the intent of the applicable division as it provides adequate light, air, circulation, and recreation (bike/pedestrian shelter, seating areas), and encourages preservation and enhancement of natural resources by placing the northern edge of the site in a Category I conservation easement;
- B. needs minimal modification to the applicable standards necessary to accommodate the constraints. The design needs modification of the 50-foot width criteria. The triangular shape of the Subject Property's frontage along Kensington Parkway, which is the most desirable location for COS on the Subject Property, makes it impossible to have a consistent minimum width of 50 feet for the COS without severely impacting the layout and unit yield of the project. This modification is justified because of the triangular shape of the site's frontage and its adjacency to the park.

In addition, the Subject Property's frontage along Kensington Parkway is the best location for the required COS as it will be farthest from the I-495 ramp and buffered from the Beltway noise by the townhouses. And the adjacent Rock Creek Park can provide an enhanced setting and a green edge to the required COS in this location;

- C. does not need to provide any mitigation since the COS does not create any adverse impacts that should be mitigated; and
- D. Is in the public interest as it serves the residents and the visitors; includes a bike shelter in the COS; and creates an attractive frontage along the street.

Based on the analysis of the COS design criteria, the intent of the zoning ordinance, and the alternative approach described above, the Board approves

the Alternative Compliance for meeting the requirements of Division 6.3 of the Zoning Ordinance.

5. *The development satisfies the applicable requirements of Chapters 19 and 22A of the Montgomery County Code.*

On February 9, 2016, Montgomery County Department of Permitting Services approved a Stormwater Concept Plan. The Application will meet stormwater management requirements through the use of enhanced micro-bioretenention facilities. Any modification to either the area or the type of stormwater management facilities at the time of installation/construction will require a Preliminary Plan and Site Plan Amendment.

The Board finds that, as conditioned, the Final Forest Conservation Plan complies with the requirements of the Forest Conservation Law. The Final Forest Conservation Plan is consistent with the Preliminary Forest Conservation Plan. The requirements of Chapter 22A are satisfied by planting 0.12 acres of forest onsite and 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 Final Forest Conservation Plan.

Forest Conservation Variance

Section 22A-12(b)(3) of the Montgomery County 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 the removal of 9 trees and CRZ impact to 12 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. This variance is necessary due to the location of the existing trees on and around the Subject Property, the need to demolish four single family residences prior to constructing the 16 townhomes, and the

need to provide stormwater management on the Site. The Subject Property is too small to allow for changes in the site design and still allow for development at this density. It is also constrained by the presence of a floodplain with an associated BRL along its northern edge.

The Board makes 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.*

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

The 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 Site.

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

The Final Forest Conservation Plan includes planting 26 3" caliper and two 4" caliper native shade trees to replace the form and function of the variance trees that will be removed. The Forest Conservation Plan also allows for the reforestation of 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 variance is for removing nine trees. The 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.

6. *The development provides safe, well-integrated parking, circulation patterns, building massing and, where required, open spaces and site amenities.*

Parking

Parking is safe and well-integrated. The Site Plan provides four parking spaces for every townhouse: two garage spaces and two driveway spaces.

Circulation Pattern

Circulation is safe and well-integrated. A private street provides access from Kensington Parkway. Sidewalks accompany both the internal private road and Kensington Parkway.

Building Massing

The massing of the townhouses is appropriate for the Subject Property and well-integrated into the topography of the site with I-495 ramp as the main structure closest to the Subject Property. The orientation of the row of townhouses along the I-495 ramp provides noise mitigation from the Beltway noise for the two rows of townhouses along the Park. The surrounding area does not have any other buildings nearby as the Subject Property is surrounded by a Park and the I-495 ramp on three sides and Kensington Parkway on its frontage. Across Kensington Parkway is the SHA site for access to the WSSC's Bi-County Tunnel.

Open Spaces and Amenities

The Site Plan includes slightly more than the required 10 percent Common Open Space. The northern triangular area along Kensington Parkway frontage provides a bike shelter and seating area with maps and historical information for Rock Creek Park. The southern triangle will contain mostly landscaping and plantings

for stormwater management. The common open space area in the back will provide a small lawn and seating area where residents can congregate.

7. *The development substantially conforms to the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan.*

The Master Plan provides no specific recommendations for the Subject Property, but it includes general guidance about stabilizing existing residential uses (p. 28) and encouraging housing diversity (p. 50). The townhouse community will increase housing choices in the area. The Site Plan is in substantial conformance with the recommendations of the Master Plan.

8. *The development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.*

The Planning Board's determination of adequate public facilities is part of the Preliminary Plan. There are adequate public facilities to serve the Subject Property.

9. *The development is compatible with the character of the residential neighborhood.*

The Subject Property is zoned TF-12 and the surrounding area is zoned R-90. The adjacent land to the north and east is occupied by parkland, and the I-495 right-of-way to the southeast and south. The closest residential communities are about a quarter mile south of the Subject Property. The development is compatible with the adjacent land uses and will have little, if any, impact on the residential character of the surrounding communities.

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 Site Plan shall remain valid as provided in Montgomery County Code § 59-7.3.4.H; and

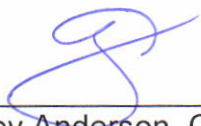
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is APR - 6 2016 (which is the date that this Resolution is mailed to all parties of record), and

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