



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

SEP 21 2016

MCPB No. 16-086
Preliminary Plan No. 120160100
Goshen Estates
Date of Hearing: September 8, 2016

RESOLUTION

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

WHEREAS, on January 20, 2016, Seth Warfield/Warfield Family Partnership ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create five lots on 15.3 acres of land in the RE-2 zone, Located on Woodfield Road, 100 feet northwest of Cutty Sark Way ("Subject Property"), in the Rural East Policy Area and Preservation of Agriculture and Rural Open Space Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120160100, Goshen Estates ("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 August 26, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 8, 2016, the Planning Board held a public hearing on the Application at which it 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 certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120160100 to create five lots 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:

8787 Georgia Avenue, Silver Spring, Maryland 20910

M-NCPPC Legal Department
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1. This Preliminary Plan is limited to five lots for five, single-family detached dwelling units.
2. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the Certified Preliminary Plan approval or cover sheet(s).
3. The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan No. 120160100, approved as part of this Preliminary Plan:
 - a. A Final Forest Conservation Plan must be approved by M-NCPPC Staff prior to recordation of the plat and address the following conditions:
 - i. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
 - ii. Tree protection measures must be shown on the plan for existing trees to remain.
 - b. Prior to the start of any clearing, grading, or demolition on the Subject Property, the Applicant must record a Category I conservation easement over all areas of forest retention as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Office of Land Records by deed, and the Liber Folio for the easement must be referenced on the record plat.
 - c. Prior to the start of any clearing, grading, or demolition on the Subject Property, the Applicant must satisfy the offsite planting requirement as specified on the approved Final Forest Conservation Plan.
 - d. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the approved Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
 - e. The Applicant must install permanent fencing with conservation easement signage along the perimeter of the Category I conservation easements as specified on the approved Final Forest Conservation Plan or as determined by the M-NCPPC forest conservation inspector.
 - f. The Final Sediment Control Plan must be consistent with the final limits of disturbance as shown on the approved Final Forest Conservation Plan.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated February 11, 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.

5. The Planning Board accepts the recommendations of the Maryland State Highway Administration ("MDSHA") in its letter dated April 13, 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 MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
7. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated April 26, 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 MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. The Planning Board accepts the recommendations of MCDPS – Well and Septic Section in its letter dated March 7, 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 MCDPS – Well and Septic Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. The Applicant must dedicate and show on the record plat(s) all road rights-of-way to the full width mandated by the Master Plan as designated on the Preliminary Plan.
10. Commensurate with construction of the driveway aprons as per MDSHA Access, the Applicant must replace and reconstruct the Montgomery County Ride-On bus stop identified on the Preliminary Plan.
11. 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) approval. 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."

13. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
14. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for 85 months from the date of mailing of this Planning Board Resolution.
15. The Subject Property is within the Gaithersburg School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the elementary school, middle school and high school levels at the single-family detached unit rates 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.

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.*

1980 Preservation of Agriculture and Rural Open Space Functional Master Plan (AROS)

The Application substantially conforms with the recommendations of the Preservation of Agricultural and Rural Open Space Master Plan in that the Application proposes to develop the Subject Property under the RE-2 standards of development which is consistent with the zoning recommended by the AROS Master Plan.

The Master Plan confirmed an existing 7,689 acres of RE-2 zoning in this area, and acknowledged an abundance of subdivisions that have already occurred in the RE-2 zoned areas between Gaithersburg and Damascus (p. 53). The five lots as proposed are consistent with the RE-2 zoning recommended by the Master Plan and the subdivision is a continuation of the residential densities found throughout the Goshen Woodfield, Cedar Grove and Vicinity area.

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 adequate, safe and efficient. Each lot has frontage on Woodfield Road, identified in the AROS Master Plan and Master Plan of Highways as an arterial road (A-12) requiring an 80-foot wide right-of-way. The Applicant is dedicating right-of-way along their frontage of Woodfield Road to meet the right-of-way requirement, which is approximately 40 feet from the centerline of the road.

The Application has been reviewed by the MDSHA which determined that the proposed driveway locations on Woodfield Road are adequate, by transmittal letter dated April 13, 2016.

There is limited pedestrian connectivity in the area surrounding the Subject Property. According to the County Road Code, the Subject Property is within the rural area which does not require sidewalks for Properties fronting on a County Road. However, the Subject Property fronts on MD-124, a State road. In MDSHA's letter they concurred that because existing infrastructure is limited the Applicant will not be required to construct a sidewalk along the Subject Property frontage.

There is a County Ride-On bus stop (Route 90) at the intersection of Woodfield Road and Cutty Sark Way. Route 90 provides service between Damascus to the Shady Grove Metrorail Station. As part of the Application, the southbound bus stop is being upgraded because the existing concrete pad is deteriorating and overgrown.

The Countywide Bikeway Functional Master Plan designated Woodfield Road as a signed shared roadway (SR-61) for bicycles between Warfield Road to Woodfield Elementary School. The necessary right-of-way for Woodfield Road is being dedicated in order to achieve the full master planned width.

Local Area Transportation Review (LATR)

The proposed development will generate fewer than thirty trips during the morning and evening peak-hour. As a result, this project is exempt from the Local Area Transportation Policy Review (LATR).

Transportation Policy Area Review (TPAR)

The Subject Property is located in the Rural East Policy Area. According to the 2012-2016 Subdivision Staging Policy (SSP), the Rural East Policy Area is exempt from the roadway test and transit test; therefore, no TPAR General District Transportation Impact Tax is required.

The proposed development satisfies Adequate Public Facilities (APF) requirements and does not necessitate further traffic analysis. As conditioned, and in consideration of the *de minimis* traffic impact, the vehicle access will be adequate to serve the proposed subdivision. The Preliminary Plan has been evaluated by Staff and the MDSHA, who support the transportation elements of the Plan. The proposed access to the Subject Property and the individual lots, as shown on the Preliminary Plan, is adequate to serve the proposed development.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lots. On-site well and septic systems are proposed to serve each dwelling unit. The use of individual, on-site well water service and septic systems is consistent with the existing W-6 and S-6 services categories designated for the Subject Property. The Application has been review by MCDPS – Well and Septic Section, which determined the proposed well and septic locations are acceptable as shown on the approve well and septic plan dated March 7, 2016.

The Application has been reviewed by the Montgomery County Department of Fire and Rescue Service which determined that the Subject Property has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan dated March 3, 2016.

The Application is in the Gaithersburg High School Cluster which is operating at an inadequate level (more than 105 percent utilization) at the elementary school (112.14 percent), middle school (107.5 percent) and high school (107.6percent) level according to the current Subdivision Staging Policy. Therefore, the Applicant must make a School Facilities Payment to MCDPS at the elementary, middle, and high school levels at the single-family detached unit rates for all units for which a building permit is issued. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code. Other public facilities and services, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

- 3. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations included in the AROS Master Plan, and for development of single-family detached homes. The lots are consistent with the large lot rural pattern envisioned by the Master Plan.

The Subject Property consists of two unplatted parcels, Parcel 890 (10.0 acres/435,600 SF) and Parcel 920 (5.296 acres /230,693.7 SF) totally approximately 15.3-acres (666,285 Sq. Ft.) in size in the RE-2 zone. The Applicant is dedicating 58,311 Sq. Ft. along the Subject Property frontage leaving a net tract area of 607,974 Sq. Ft. Based on the RE-2 zone development standards, the Subject Property could be developed into six lots. The Application proposes to subdivide the Subject Property into five lots.

The lots were reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in Table 3 of the staff report. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

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

A. Forest Conservation

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

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420151710 for the Subject Property was approved on May 28, 2015. The NRI/FSD identified all of the required environmental features on and adjacent to the Subject Property, as further described in the Environmental Guidelines for Environmental Management of Development in Montgomery County (Environmental Guidelines).

The Subject Property is located within the Seneca Creek watershed, which is classified by the State of Maryland as Use Class I-P waters. The

Subject Property is not located within a Special Protection Area or the Patuxent River Primary Management Area. There are no streams, wetlands, 100-year floodplain or environmental buffers on or adjacent to the site. There are no highly erodible soils or steep slopes on the Subject Property. The 15.3-acre Subject Property contains approximately 14.58 acres of existing forest. Forty-eight trees greater than or equal to 24 inches Diameter at Breast Height (DBH) were identified on the Subject Property, eleven of them have a DBH of 30 inches or greater, which as discussed further in this report requires a Variance for any impact.

Forest Conservation Plan

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law and Staff recommends approval of the Preliminary Forest Conservation Plan. A Preliminary FCP ("FCP") was submitted as part of the Preliminary Plan Application. The Application proposes to clear approximately 9.4 acres of forest for the construction of five residential lots. Four of the proposed lots (Lots 46, 47, 48, and 49) ranging in size between 2 – 2.5 acres, will be located in the southern part of the site and will utilize a shared driveway from Woodfield Road (MD-124). The fifth lot (Lot 50), is approximately 5.2 acres in size and is located more centrally within the site with its own driveway access from MD 124. The Applicant investigated an alternate location for Lot 50 that would allow for a more contiguous forest retention area; however, due to limitations on the number of lots permitted to obtain access from a shared driveway as well as suitable septic field locations on the Subject Property, an alternate location was not identified. The proposed homes will be served by private septic systems which require forest clearing for the primary field. Also, although not physically cleared during development of the Subject Property, the septic reserve areas must be counted as cleared for forest conservation purposes since these areas may not be protected in a conservation easement. The Application proposes to retain approximately 5.18 acres of forest on-site. This forest will be protected in a Category I conservation easement. Permanent signs will be installed along the perimeter of the conservation easement area and permanent fencing will be installed along the perimeter where it abuts existing homes to the west. The proposed conservation easement area is adjacent to an existing offsite conservation easement located northwest of the Subject Property.

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

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.*

Granting the variance will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to the reasonable development of the Subject Property. The Protected Trees are located throughout this forested Subject Property and the location of the retained forest is located adjacent to an existing offsite conservation easement. The layout of the subdivision was largely determined by successful septic testing locations and the required setbacks. Granting a variance request to allow land disturbance within the developable portion of the site is not unique to this Applicant. 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 need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing site conditions, including the extent of forest and number and location of Protected Trees on the Subject Property, and the development standards of the zone.

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 a variance is a result of the existing conditions and the proposed site design and layout on the site, 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 variance will not violate State water quality standards or cause measurable degradation in water quality. No trees located within a stream buffer, wetland or special protection area (SPA) will be impacted or removed as part of this Application. In addition, the Montgomery County Department of Permitting Services has found the stormwater management concept for the proposed project to be acceptable as stated in a letter dated April 26, 2016. The stormwater management concept incorporates Environmental Site Design standards.

All of the trees subject to the variance provision and proposed to be removed are located within the existing forest. The removal of these trees is incorporated in the "forest clearing" calculations of the Forest Conservation Plan. Staff does not recommend additional mitigation for the loss of these trees as they are accounted for in the forest conservation worksheet as "forest clearing". There is some disturbance within the critical root zones of three trees; however, they will receive adequate tree protection measures. No mitigation is required for Protected Trees impacted but retained.

5. *All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on April 26, 2016 which includes the use of drywells, micro-infiltration and landscape infiltration facilities.

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 SEP 21 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 Cichy, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioner Cichy voting in favor, and Commissioners Dreyfuss and Fani-González absent at its regular meeting held on Thursday, September 8, 2016, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board