



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

MCPB No. 16-061  
Preliminary Plan No. 120160220  
8015 Old Georgetown Road  
Date of Hearing: November 3, 2016

DEC 12 2016

**RESOLUTION**

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

WHEREAS, on March 9, 2016, Bush at 8015 Old Georgetown Road Associates, LLLP ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 2.0 acres of land in the PD-44 zone, located at the north corner of Old Georgetown Road and Glenbrook Road ("Subject Property"), in the Bethesda-Chevy Chase Policy Area and *Woodmont Triangle Amendment to the Bethesda CBD Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120160220, 8015 Old Georgetown Road ("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 October 21, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on November 3, 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, on November 3, 2016, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Wells-Harley, with a vote of 5-0; Commissioners Anderson, Cichy, Dreyfuss, Fani-Gonzalez, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120160220 to create one lot on the Subject Property, subject to

Approved as to  
Legal Sufficiency: 

8787 Georgia Avenue, NCRPC Legal Department 0 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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the following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to one lot for a maximum of 145,863 square feet of multi-family residential use consisting of up to 107 multi-family dwelling units, including 15% Moderately Priced Dwelling Units (MPDUs) on-site, and 53,000 square feet of church/community center uses.
2. The proposed development must comply with the binding elements of the Development Plan G-864.
3. Prior to recordation of any plat, the County Council must abandon the portions of public rights-of-way subject to Right-of-Way Abandonment Cases # AB751 and AB752, "Rugby Avenue and Twenty-Foot Alley," within Samuel T. Robertson's Addition to Bethesda.
4. The Applicant must comply with the following conditions of the Preliminary Forest Conservation Plan, unless modified by the Final Forest Conservation Plan:
  - a. Prior to record plat, the Applicant must execute and record in the Montgomery County Land Records a covenant with the Planning Board for the perpetual maintenance and replacement, if necessary, of the afforestation trees, in accordance with the Final Forest Conservation Plan. The covenant must be in a form approved by the M-NCPPC Office of the General Counsel and must be noted on the record plat.
  - b. All credited plantings must be clearly specified to meet the latest version of the American Standard for Nursery Stock specifications (ANSI Z60.1).
  - c. All of the plantings beds and tree locations must be designed/detailed to readily accommodate the root balls of the required plantings without severing or deforming the root balls or encroaching in to neighboring residential property.
  - d. The credited plantings must consist of only native trees and their associated credit as listed in pages 86-88 of the 1992 *Trees Technical Manual*. Alternates in the manual may also be specified provided that the overall credit meets or exceed the required amounts.
  - e. The soil volume within the courtyard in areas associated with credited trees over structure (over the parking structure, subject to Staff approval), to be shown on the Certified Site Plan, to ensure proper tree survivability and any revisions to proposed planting as a result of the required planting volumes must be incorporated into the Final Forest Conservation Plan. Soil volumes must be a minimum of five (5) feet in depth.

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<sup>1</sup> For these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

5. Include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
6. Vehicular access from Rugby Avenue is prohibited except for emergency vehicles.
7. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated July 29, 2016, and 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.
8. The Planning Board accepts the recommendations of the Maryland State Highway Administration (MSHA) in its letter dated April 13, 2016, and does hereby incorporate 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 MSHA, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
10. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MSHA.
11. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) – Water Resources Section in its stormwater management concept letter dated March 7, 2016, and 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.
12. The Applicant must dedicate and show on the record plat(s) the following dedications:
  - a. Old Georgetown Road: dedication necessary to provide 50 feet between the property line and right-of-way centerline to support a master-planned future right-of-way of 100 feet.
  - b. Glenbrook Road: dedication necessary to provide 40 feet between the property line and right-of-way centerline to support a master-planned future right-of-way of 80 feet.
13. 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 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.

14. The record plat must show necessary easements.
15. Prior to submission of any plat, Site Plan No. 820160090 must be certified by Staff.
16. No demolition, clearing or grading of the site, or recording of plats prior to Certified Site Plan approval.
17. Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan.
18. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of this Planning Board Resolution.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The subject property is located within the *Woodmont Triangle Amendment to the Bethesda CBD Sector Plan* area.

The primary goals of the Sector Plan are to encourage redevelopment to provide housing opportunities, to provide opportunities to retain existing businesses and expand opportunities for new businesses, enhance the existing public arts programs in the Bethesda CBD, focus on improving the safety and character of the existing streets, and increase the flexibility in providing the public use space through the Optional Method of Development.

The Sector Plan recommends the Subject Property for the PD-44 floating zone, provided that issues of compatibility with existing single-family homes are addressed. The PD-44 zone allows for the near-term redevelopment of the

existing church property and possible longer-term redevelopment of the single-family detached homes, some of which have been renovated. The Sector Plan further states that “[a]t the time of rezoning, any application should be reviewed to determine compatibility with existing single-family homes, both north and south of Old Georgetown Road. In addition, the rezoning should not be allowed to result in multi-family development surrounding or isolating a limited number of single-family homes.”

As the Planning Board recognized in its February 19, 2010 Memorandum recommending approval of the Development Plan by the County Council, “the revised development plan ensures compatibility with adjacent single-family development by providing increased setbacks, reducing the height and mass of the proposed buildings, and providing open space within the proposed development.” Additionally, as the Council stated in Resolution No. 16-1540, “Compatibility is not just a question of the overall building context in the surrounding area; it is also, and perhaps most importantly, a question of harmony with the immediate neighbors. One of those immediate neighbors is the eleven-story building across Glenbrook Road from the subject site.” Staff, the Planning Board, and the District Council all found that the development proposed in the Development Plan associated with the rezoning of the Subject Property was consistent and compatible with the surrounding neighborhood, and this Preliminary Plan remains consistent and compatible with the surrounding neighborhood.

The Preliminary Plan conforms to the Sector Plan’s site-specific recommendations for the Subject Property. As discussed in more detail in the Staff Report and the Planning Board’s resolution approving the site plan associated with this Preliminary Plan, the heights of the buildings will follow the Sector Plan’s height recommendations for properties along Old Georgetown Road and the requirements of the approved Development Plan. The Application also incorporates the development of multi-family dwelling units, including 15% moderately priced dwelling units, advancing the Sector Plan goals of providing opportunities to increase the supply of housing in the Woodmont Triangle Area. Different unit sizes will ensure that the development serves a variety of residents at varying levels of income.

In addition, the open space at the corner of Old Georgetown Road and Glenbrook, as well as the spaces along the pedestrian path through the Subject Property further the Sector Plan’s goals of establishing a network of diverse urban spaces including open space on-site as well as providing public gathering spaces and enhancing pedestrian safety and access to transit.

The Application provides for a mixture of residential and institutional uses. The variety of these uses, coupled with the significant amount of open space, will

create opportunities for congregation and social and community interaction among not only residents of the multi-family residential building, but also the congregants of the church and members of the neighboring communities. The Preliminary Plan conforms to the applicable recommendations of the Sector Plan.

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

#### Transportation

Access to the Subject Property will be provided from Old Georgetown Road (MD 187) and Glenbrook Road. No vehicular access will be permitted from Rugby Avenue except for emergency vehicles. Pedestrian and bicycle access to the Subject Property will be maintained along the property frontage sidewalks and public roadway. Additional pedestrian access will be provided through the Subject Property from Rugby Avenue to Glenbrook Road, via a new internal sidewalk open to the public. Parking will be contained within a new structured garage internal to the proposed building.

#### *Circulation*

Vehicular access to the multi-family building parking garage will be directly off Old Georgetown Road via a new private driveway adjacent to the Bethesda Rescue Squad Driveway. Vehicular access to the expanded daycare facility and religious use will be from the new private driveway off Old Georgetown Road as well as a new private driveway off Glenbrook Road in the following configuration: the daycare use will enter the Subject Property from Old Georgetown Road via the new private driveway and will exit the Subject Property via the access point on Glenbrook Road; the religious use will have access from both the Old Georgetown Road driveway as well as a new driveway on Glenbrook Road. Pedestrian and bicycle circulation will be accommodated by the frontage sidewalk, which will be improved to business district standards as a result of the Application, as well as pathways through the open space.

In response to resident concerns about the potential for increased non-residential traffic on Glenbrook Road east of the Subject Property, this Resolution includes a condition of approval requiring the Applicant to reconfigure the Glenbrook Road access point so that it is oriented west toward Old Georgetown Road. This orientation will limit non-residential traffic on Glenbrook Road east of the Subject Property and is anticipated to mitigate potential negative impacts of non-residential traffic on the single-family homes east of the Subject Property.

Some concerned citizens further suggested that a traffic signal be required at the intersection of Old Georgetown Road and Glenbrook Road. Based on the recommendations of its Staff and the Maryland State Highway Administration,

the Board concludes that the intersection is too close to the nearest signalized intersection for an additional signal to be practical.

*Right-of-Way Abandonment*

The Subject Property contains two improved public rights-of-way that are the subject of an in-progress abandonment application (AB751) to the Montgomery County Council. Those rights-of-way include the terminus of Rugby Avenue, located along the northeastern portion of the Subject Property, and a twenty-foot wide alley, located along the eastern portion of the Subject Property. Both rights-of-way were previously abandoned through Montgomery County Council Resolution 16-835; however, the abandonment expired in accordance with Section 49-65(d) because the Applicant did not record it within five years of the Council action. At the request of the Applicant, the Planning Board has agreed to allow this subdivision to proceed conditionally upon future approval of the abandonment by the District Council. The Planning Board notes that were the Council to abandon any portion less than the full extent described in that case, the Applicant must seek an amendment to this Preliminary Plan.

*Sector-Planned Transportation Demand Management*

Because the Application is for a mixed-use project with 25 or more employees or more than 100 dwelling units within the Bethesda Transportation Management District (TMD), the Applicant is required to enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and the Montgomery County Department of Transportation (MCDOT) to participate in the Bethesda TMD.

*Adequate Public Facilities*

A traffic study (April 2016) was submitted for the Application per the *LATR/TPAR Guidelines* since the proposed development was estimated to generate more than 30 peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods.

A trip generation summary for the development, provided in Staff Report, shows that the Application will generate 93 new peak-hour trips during the weekday morning peak period and 100 new peak-hour trips during the weekday evening peak period. This trip generation estimate is based on the addition of up to 107 high rise dwelling units and an increase of up to 25 caregivers at the daycare facility. The estimate does not include the religious use because that use is being replaced in kind on the Subject Property and is therefore accounted for in the background traffic data.

Based on the critical lane volume (“CLV”) analysis for the weekday morning and evening peak-hour periods included in the Staff Report, traffic will remain within the applicable policy area congestion standard of 1,800 CLV for intersections within the Bethesda CBD policy area and 1,600 CLV for

intersections within the Bethesda-Chevy Chase policy area. Accordingly, the Application satisfies the LATR requirements of the APF test.

Since the development associated with this Preliminary Plan is within the Bethesda CBD Policy Area, the Application is exempt from both the roadway and transit tests set forth in the 2012-2016 *Subdivision Staging Policy*. As a result, the proposed development is not required to pay the transportation impact tax to satisfy the TPAR requirement.

#### Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the development associated with the Preliminary Plan. The Subject Property will be served by public water and sewer. The Application has been reviewed by the Montgomery County Department of Permitting Services - Fire Code Enforcement Section, which has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, schools, and health services are operating according to the *Subdivision Staging Policy* resolution currently in effect and will be adequate to serve the Subject Property. Electrical, telecommunications, and gas services are also available to serve the Subject Property.

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 size, width, shape, and orientation of the lot are appropriate for the location of the subdivision taking into account the recommendations included in the applicable Sector Plan, and for the type of development or use contemplated. The Application substantially conforms to the 2000 *Silver Spring CBD Sector Plan*. The Application complies with the specific density recommendations for the Subject Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. As evidenced by the Preliminary Plan, the Subject Property is sufficiently large to efficiently accommodate the mix of uses.

The lot was reviewed for compliance with the dimensional requirements for the PD-44 zone as specified in the Zoning Ordinance. The lot as approved will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The application has been reviewed by other applicable county agencies, all of which have recommended approval of the plan.

As described in the Staff Report and in the Planning Board resolution approving Site Plan No. 820160090, associated with this Preliminary Plan, the Application also complies with all applicable binding elements of County Council Resolution No. 16-1540 approving Local Map Amendment G-864.

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

A. Forest Conservation

As conditioned, the Preliminary Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The application is subject to the Montgomery County Forest Conservation Law and in particular Section 22A-12(f)(2)(D) of the Forest Conservation Law, which requires afforestation requirements to be met onsite.

The latest version of the Forest Conservation Plan was submitted through ePlans on July 26, 2016. Although no forest exists onsite, the Application is subject to an afforestation requirement of 0.33 acres. As originally shown in the Preliminary Forest Conservation Plan considered by the Planning Board as part of the Local Map Amendment No. G-864 ("2009 PFCP"), the Forest Conservation requirements will be satisfied with onsite credited landscape plantings consisting of native trees, some of which will be located over underground parking.

It is important to note that the Planning Board allows forest conservation credit for plantings over structures in only very limited cases. To ensure the long-term viability of such plantings in this case, the Board approves a condition of approval that a covenant be recorded for the perpetual maintenance and replacement, if necessary, of the afforestation trees in accordance with the Forest Conservation Plan.

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.

During its review of Local Map Amendment No. G-864, the Planning Board reviewed and approved an initial variance request for this development through its approval of the 2009 PFCP. The 2009 PFCP showed the removal of five Protected Trees. The Applicant's current Forest Conservation Plan shows removal of the same five Protected Trees, and a slight increase to the projected impacts to one additional tree. As part of its review of the FFCP, the Planning Board has considered the proposed impacts/removals to all six Protected Trees.

In accordance with Section 22A-21(a) of the Forest Conservation Law, 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.*

This Application minimizes impacts to Protected Trees to the greatest extent possible while still permitting the Applicant to develop its property in a manner consistent with applicable regulatory requirements. Granting the Variance is also consistent with the Planning Board's previous decision to grant the 2009 PFCP, except for a *de minimis* additional impact to a sixth Protected Tree. Therefore, the variance request would be granted to any Applicant in a similar situation.

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 based on the proposal to develop the Subject Property as allowed under the existing zoning and as necessary to achieve adequate site access. Impacts have been minimized to the extent practicable, and necessary mitigation will be provided.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The need for the variance is based on the proposal to develop the Subject Property and all improvements within the net tract area in

accordance with applicable regulatory requirements, not 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.*

Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. The Department of Permitting Services staff approved the stormwater management ("SWM") concept for the project on March 7, 2016. The SWM concept proposes to meet required stormwater management goals using micro-bioretenion planter boxes, with the remaining volume to be treated using an underground filter. Additionally, the Subject Property is not directly associated with any streams, wetlands or related buffers, and the Applicant is required to mitigate for all Protected Trees approved for removal.

*Mitigation for Trees Subject to the Variance*

Planting mitigation for the five Protected Trees approved for removal must be at a rate that approximates the form and function of the trees removed, at a ratio of approximately 1" diameter at breast height ("DBH") for every 4" DBH removed, using trees that are a minimum of 3" caliper. This means that for the 188 diameter inches of tree to be removed, the Applicant must provide replacement trees totaling at least 47 inches DBH. Therefore, the mitigation requirements will be more than satisfied by the Applicant's planting supplement of 50 caliper inches of onsite trees. The Applicant will accomplish this mitigation by planting larger-caliper trees on the Subject Property than would otherwise be required. This practice is appropriate given the unique history of this case and the fact that on other projects with limited space and planting opportunities, the Board has allowed applicants to upsize their mitigation plantings and provide fewer but larger trees.

The Planning Board does not recommend mitigation plantings for variance trees that are retained and not overly impacted.

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.*

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The MCDPS Stormwater Management Section approved the stormwater management concept on March 7, 2016. According to the approval letter, the stormwater management concept meets stormwater management requirements via environmental site design to the maximum extent practicable through the use of micro-bioretenion boxes, with the remaining volume to be treated using an underground filter.

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

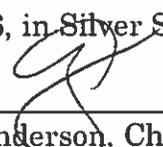
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 12 2016 (which is the date that this Resolution is mailed to all parties of record); and

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 Vice Chair Wells-Harley, seconded by Commissioner Fani-González, 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, December 8, 2016, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board