



MCPB No. 17-012  
Preliminary Plan No. 120170010  
Bradley Farms  
Date of Hearing: March 2, 2017

MAR 24 2017

**RESOLUTION**

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

WHEREAS, on September 27, 2016, David Niroo (NV Development LLC) ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create two lots on 6.33 acres of land in the RE-2 zone, located in the southeast corner of Durham Drive and River Road (MD 190), approximately 2,000 feet northwest of Bradley Boulevard (MD 191) ("Subject Property"), in the Potomac Policy Area and 2002 Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120170010, Bradley Farms ("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 February 17, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 2, 2017, 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. 120170010 to create two lots on the Subject Property, subject to the following conditions:<sup>1</sup>

<sup>1</sup> 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.

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Approved as to  
Legal Sufficiency: *Christina Jovet* 2/23/17  
8787 Georgia Avenue, Suite 200, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320  
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1. This Preliminary Plan is limited to two lots for two single-family detached dwelling units.
  2. The Applicant must comply with the conditions of approval for the Preliminary and Final Forest Conservation Plan No. 120170010, approved as part of this Preliminary Plan, including the following:
    - a. Prior to any land disturbing activities on the Subject Property, the Applicant must obtain Staff approval of a Certificate of Compliance Agreement to provide for 1.28 acres of offsite forest planting requirement, and purchase the necessary credits in an approved forest conservation bank, as specified on the approved Final Forest Conservation Plan.
    - b. The Applicant must comply with all tree protection and tree save measures shown on the approved FCP. Tree save measures not specified on the FCP may be required by the M-NCPPC forest conservation inspector.
    - c. The limits of disturbance (“LOD”) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
  3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated November 1, 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 the amendments do not conflict with other conditions of the Preliminary Plan approval.
  4. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by Maryland State Highway Administration (“MDSHA”).
  5. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) Fire Code Enforcement Section in its letter dated January 26, 2017, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Fire Code Enforcement Section provided the amendments do not conflict with other conditions of Preliminary Plan approval.
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6. The Planning Board accepts the recommendations of the MCDPS - Water Resources Section in its stormwater management concept letter (reconfirmation) dated August 9, 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 the amendments do not conflict with other conditions of the Preliminary Plan approval.
7. The Applicant must construct all road improvements within the rights-of-way shown on the Certified Preliminary Plan to the full width mandated by the master plan and/or to the design standards imposed by all applicable road codes.
8. 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). 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.”
9. The record plat must show necessary easements.
10. The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
11. Prior to use and occupancy permit, the Applicant must plant landscape screening of a mix of evergreen trees along the eastern property line.

**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 in the “Potomac” community area, identified on page 5 of the 2002 Potomac Subregion Master Plan. The Master Plan is silent on this specific Property, but describes the area as follows:

“The “Potomac” area is the easternmost part of the Subregion and is more developed than the other three community areas. Since residential development is dispersed through the area, this Master Plan recommends infill development of the remaining vacant properties with residential development essentially similar to what is now there, unless specifically stated otherwise in this Plan” (p. 41).

The Master Plan does not make specific recommendations for the Subject Property but recommends the retention and reconfirmation of the existing RE-2 Zone as a low-density residential wedge. The environmental section of the Master Plan allows for the limited provision of community sewer service for areas zoned RE-2 within and at the periphery of the proposed sewer envelope. The Subject Property is within the recommended sewer service envelope.

The Preliminary Plan substantially conforms to the Master Plan by resubdividing an existing lot to create two lots for two single-family detached dwellings that are similar and characteristic of the existing low-density development. The residential land use and density proposed for this Property is consistent with the RE-2 zoning in place and the recommendations of the 2002 Potomac Subregion Master Plan.

Master Plan Transportation Facilities

The 2002 Approved and Adopted Potomac Subregion Master Plan and the 2005 Approved and Adopted Countywide Bikeways Functional Master Plan make several recommendations regarding road and bikeway facilities that affect the Subject Property. The 2002 Master Plan classifies River Road as a Major Highway (M-2) with a minimum right-of-way width of 150 feet (75 feet from the centerline) with two travel lanes between River Oaks Lane and Seven Locks Road. The two-lane road policy in the Master Plan strives to limit expansion of the pavement width of River Road beyond two lanes. No additional dedication is necessary for these roads since the Master Plan recommended right-of-way was previously dedicated to public use by record plat.

The 2002 Master Plan and the County Bikeways Functional Master Plan recommends a Class 1 (off-road) bike path (PB-6) on the north side of River Road from I-495 to Seneca Creek. Most sections of the bike path have been constructed between Seven Locks Road and Swains Lock Road, including the

section confronting the Subject Property, on the north side of River Road. In addition, the Countywide Bikeways Functional Master Plan also recommends a signed, bike travel lane on River Road from I-495 to MD 112. The segment of River Road along the Property frontage has an existing pavement width of 35 feet which is adequate to accommodate the future installation (restriping) of bike lanes by MDSHA.

As approved, the Application substantially conforms with the recommendations adopted in the 2002 Master Plan and the Countywide Bikeways Functional Master Plan.

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

The Preliminary Plan application was submitted prior to January 1, 2017 and was therefore reviewed under the 2012-2016 Subdivision Staging Policy rules which were in effect on December 31, 2016.

#### Site Access and Parking

*Durham Drive* - Durham Drive is not a master planned road and is classified as a Secondary Residential Street with a 60-foot wide right-of-way per MCDOT. The Applicant has agreed to enter into a covenant with MCDOT for future improvements to Durham Drive which was included in their initial recommendation letter, dated December 11, 2011 and is included in their revised letter dated November 1, 2016.

As stated in their revised letter, the Property's southernmost access point was not properly permitted and does not meet sight distance requirements for a secondary road. Therefore, this driveway will be eliminated at the request of MCDOT. The northernmost driveway on Durham Drive closest to MD 190 will continue to provide vehicular access to the existing house on Lot 12. No additional dedication is required on Durham Drive.

*River Road (MD190)* - The Application was reviewed by the MDSHA which determined that a district office permit will be required for the new residential driveway to River Road to serve Lot 13. A second, unused driveway apron on MD 190 will be removed.

Vehicle parking is provided on-site on driveways and/or in garages. The only non-vehicular mean of connection to the surrounding area is via the existing off-road bike path on the opposite side of River Road. Sidewalks are not required along the frontage of Durham road because the Subject Property is zoned RE-2

(large lots) and is in the rural area as defined by the County Road Code. There are no existing sidewalks on the southside of River Road within a mile of the Subject Property and MDSHA did not recommend the construction of new sidewalks along the Property frontage.

The vehicular and pedestrian access for the lots will be adequate with the approved improvements.

Local Area Transportation Review (LATR) & Transportation Policy Area Review (TPAR)

The development will generate fewer than 3 trips during the morning and evening peak hours. As a result of this *de minimis* impact, this project is exempt from the Local Area Transportation Policy Review and the Transportation Policy Area Review. The Preliminary Plan satisfies Adequate Public Facilities requirements for transportation elements and does not necessitate further traffic analysis.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the existing and proposed dwelling units. The new lots will be served by public (community) water and sewer. The use of community water and sewer is consistent with the Property's W-1 and S-3 categories. The existing house on proposed Lot 12 is currently connected to an existing 8-inch water line and 8-inch sewer line that runs along the Property's frontage on Durham Drive. There is an existing 30-foot-wide water and sewer easement to the rear of the house on proposed Lot 12 that was intended to serve future development of the lot. The Preliminary Plan proposes to abandon the existing easement and provide an alternative 30-foot easement parallel to proposed Lot 12's rear Property line. The proposed easement configuration will result in a more usable rear yard on proposed Lot 12 and provide water and sewer service to Lot 13.

The access to the Subject Property and the individual lots, as shown on the Preliminary Plan, is adequate to serve the lots. The Application has been reviewed by the MCDPS Fire Code Enforcement Section, who determined that the Property has adequate access for fire and rescue vehicles by transmittal dated January 25, 2017.

The Subject Property is within the Walt Whitman High School cluster. According to the 2012-2016 Subdivision Staging Policy (FY17 annual school test), the schools in the Walt Whitman School Cluster are operating at an adequate level to serve the dwellings. The Application is not subject to a School Facilities Payment. Electric and telecommunications services are available and

adequate to serve the lots. Other public facilities and services, such as police stations, and health services are currently operating within the standards set by the 2012-2016 Subdivision Staging Policy Resolution.

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 and meets all applicable sections. The lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations included in the Master Plan allowing infill development of new single-family detached homes. The lots are consistent in approximate size and shape as other lots within the RE-2 zone located along River Road and Durham Drive and are appropriately dimensioned to accommodate a one family residence on each with the associated infrastructure to serve the homes.

The lots were reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The lots will meet all of the RE-2 zoning dimensional requirements. The area, frontage, size and shape of the lots is adequate to allow for the existing and proposed single family detached dwellings to meet lot width and setback requirements.

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

A. Forest Conservation

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

The Forest Conservation Plan ("FCP") was submitted for review as part of the Application. The FCP shows the net tract area, including offsite Limits of Disturbance ("LOD"), as 6.40 acres. Development on the Subject Property generates an afforestation planting requirement of 1.28 acres. The afforestation requirement is based on the Medium Density Residential ("MDR") land use category and the net tract area. The MDR land use category has a 20 percent afforestation threshold, which means the planting requirement would be equal to 20 percent of the net tract

area. The Applicant proposes to meet the entire requirement offsite at a forest mitigation bank.

There are three Variance trees within or adjacent to the Property. The LOD does not impact any of the Variance Trees, therefore a Tree Variance is not required with this proposal.

The submitted FCP meets all applicable requirements of Chapter 22A of the County Code. Therefore, Staff recommends that the Planning Board approve the Forest Conservation Plan with the conditions cited in this Resolution.

- 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 in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The MCDPS Stormwater Management Section approved the stormwater management concept (reconfirmed previous approval from 2011) for the project on August 9, 2016 which includes using on-site dry wells, grass swales and microbio retention to meet the required stormwater management goals.

- 6. The approved lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood, as delineated in the Staff Report.*

The Subject Property includes a recorded lot (Lot 11, Block 8) on Record Plat 24443. Because the lots are shown on a previously recorded record plat, this Application requires compliance with Section 50-29(b)(2) of the Subdivision Regulations as a resubdivision.

In order to approve an application for resubdivision, the Planning Board must find that each of the proposed lots complies with all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations.

In administering of the Subdivision Regulations, the Planning Board must determine the appropriate "neighborhood" for evaluating the application. The Board concurs with the neighborhood delineation in the Staff Report.

In performing the subdivision analysis, the Section 50-29(b)(2) resubdivision criteria were applied to the Neighborhood. The approved lots are of the same



character with respect to the resubdivision criteria as other lots within the Neighborhood. Therefore, as described below, the resubdivision complies with the criteria of Section 50-29(b)(2).

Frontage:

The approved lots will be of the same character as existing lots in the neighborhood with respect to lot frontage. The approved lots have frontage of 195.11 feet and 204.89 feet. In the Neighborhood, existing lots range from 164 feet (Lot 8 - Block 8) to the widest at 270.29 feet (Lot 17 - Block 9), therefore the lots are in the range and are of similar character regarding frontage.

Alignment:

The approved lots will be of the same character as existing lots in the neighborhood with respect to the alignment criterion. The approved lots are perpendicular to the street as all but one of the lots in the Neighborhood.

Size (Lot):

The approved lot size will be in character with the size of other lots in the neighborhood. The range of lot sizes in the Neighborhood is between 116,000 square feet and 208,538 square feet. The smaller of the proposed lots, Lot 13 is 127,488 square feet and Lot 12 is 148,104 square feet, both of which fall within the range of lot sizes within the Neighborhood.

Shape:

The shapes of the approved lots will be in character with shapes of the existing lots in the neighborhood. Both lots are generally rectangular. The Neighborhood is predominately comprised of rectangular lots and a few irregular polygons.

Width at Building Restriction Line (@ BRL):

The approved lots will be in character with existing lots in the neighborhood with respect to width. The range of width at the building restriction line within the Neighborhood is between 124 and 345 feet. The approved lots have a width of 195 and 222 feet, falling within the range of lot widths within the Neighborhood.

Area (Buildable):

The approved lots will be of the same character as existing lots in the neighborhood with respect to buildable area. The lots have buildable areas of 90,127 and 90,240 square feet which fall within the range of buildable areas for lots in the Neighborhood which is between 33,000 square feet and 122,605 square feet.

Suitability for Residential Use: The approved lots and the rest of the lots in the Neighborhood are zoned RE-2 and are suitable for residential use.

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 MAR 24 2017 (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 Dreyfuss, seconded by Commissioner Fani-González, with Vice Chair Wells-Harley, and Commissioners Dreyfuss, Fani-González, and Cichy voting in favor, and Chair Anderson absent at its regular meeting held on Thursday, March 2, 2017, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board