



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

MCPB No. 17-066
Preliminary Plan No. 120140050
Clarksburg Childcare Center
Date of Hearing: July 20, 2017

SEP 19 2017

RESOLUTION

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

WHEREAS, on November 13, 2013, Michael and Shirley Vesper (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 1.05 acres of land in the R-200 Zone, located on Frederick Road (MD 355), approximately 440 feet southeast of Suncrest Avenue (“Subject Property”), in the Clarksburg Policy Area and 1994 Clarksburg Master Plan & Hyattstown Special Study Area (“Master Plan”); and

WHEREAS, Subdivision Regulation Amendment 16-01, adopted by the Montgomery County Council on November 15, 2016 as Ordinance No. 18-19, replaced Chapter 50, Subdivision of Land in its entirety, effective February 13, 2017 (“Subdivision Regulations”); and

WHEREAS, Ordinance 18-19 provided that any preliminary plan application filed and certified as complete before the effective date of the Subdivision Regulations may, at the applicant’s option, be reviewed under the Subdivision Regulations in effect when the application was submitted; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120140050, Clarksburg Childcare Center (“Preliminary Plan” or “Application”); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on November 13, 2013; 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 July 7, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

Approved as to
Legal Sufficiency:

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WHEREAS, on July 20, 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, on July 20, 2017, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Wells-Harley, seconded by Commissioner Fani-Gonzalez, with a vote of 4-0; Commissioners Anderson, Cichy, Fani-Gonzalez, and Wells-Harley voting in favor and Commissioner Dreyfuss absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120140050 to create one lot on the Subject Property, subject to the following conditions:¹

1. This Preliminary Plan is limited to one lot for a childcare facility with up to 52 children and 6 staff members.
2. The Applicant must comply with conditions of approval of the Montgomery County Board of Appeals Opinion dated April 26, 2013 for Special Exception S-2850.
3. Prior to record plat, amended plans for S-2850 that are consistent with the approved Preliminary Plan must be submitted to the Board of Appeals.
4. The impervious surfaces on the Subject Property are limited to no more than 30.0 percent within the Special Protection Area ("SPA"), excluding any additional improvements within the right-of-way.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") - Water Resources Section in its Combined Preliminary/Final Water Quality Plan/Site Development Stormwater Management Plan letter dated May 25, 2017, 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.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated February 11, 2014,

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.

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.

7. The Planning Board accepts the recommendations of the State Highway Administration (SHA) in its letter dated October 12, 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 SHA, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by SHA.
9. The Planning Board accepts the recommendations of the MCDPS - Fire Department Access and Water Supply Section in its letter dated September 19, 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 MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
10. The Applicant must dedicate and show on the record plat a dedication of 60 feet from the centerline of Frederick Road (MD 355) as shown 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). 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.”
12. The record plat must show necessary easements.
13. The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of the 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 Montgomery County Board of Appeals found that Special Exception S-2850 substantially conformed with the 1994 Clarksburg Master Plan and Hyattstown Special Study Area ("Master Plan"). The Preliminary Plan does not include any substantial changes to the layout, lot configuration and statement of operations that were included in the record of the Special Exception application.

As discussed at the time of the Special Exception review, the Master Plan recognizes that as the Clarksburg Master Plan Area and Hyattstown Special Study Area grow, the demand for social services, including child care will increase. The Master Plan also states that "[h]uman services such as elderly day care, teen programs, child day care, and recreation, should be provided throughout the Clarksburg Master Plan Area and Hyattstown Special Study Area." The childcare facility will help accommodate the growing need for childcare in the Clarksburg area as envisioned by the Master Plan.

Master-Planned Roadway and Bikeway

In accordance with the 1994 Clarksburg Master Plan and the 2005 Countywide Bikeways Functional Master Plan, Frederick Road is designated as a four-lane divided arterial, A-251, with a 120-foot wide right-of-way. Frederick Road is also designated to have a shared use path, SP-72, on the opposite side of the road from the Subject Property (west side). The existing right-of-way is approximately 46 feet in front of the Subject Property, and there are no bicycle facilities on either side of the road.

The Applicant is dedicating approximately 30 feet of right-of-way (0.107 acres) along the Subject Property's frontage on Frederick Road (MD 355) to achieve the full master planned right-of-way width required for MD 355.

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

Access and Parking

The Subject Property currently has one access point on Frederick Road. Because the Subject Property has inadequate site distance according the Maryland State

Highway Administration (SHA) standards, the Applicant has worked with SHA to design a right-in, right-out controlled access point on Frederick Road. At the public hearing on this Application, a neighboring property owner raised the concern that individuals seeking to access the Subject Property from the north would turn around in his driveway to make the required right turn into the Subject Property. The Planning Board typically defers to SHA regarding the appropriateness of access points on state roads, and the Board also noted at the public hearing that, based on the location of the Subject Property and Staff testimony, there are safer and more viable options to access the Subject Property from the north than by making a left turn into the neighbor's driveway.² The access to the Subject Property, as shown on the Preliminary Plan, is adequate to serve the development.

The Applicant proposes a total of 15 parking spaces on the Subject Property, including 1 van accessible handicap space. This provision meets the zoning requirement of 15 parking spaces (1 per non-resident employee and 1 per six students), consistent with the special exception approval.

A sidewalk is not included along the frontage of the Subject Property pursuant to coordination between MCDOT and SHA staff during the review of the special exception in 2013. MCDOT deferred the decision to locate a sidewalk to SHA since MD 355 is a state highway. A sidewalk would be in the proposed state right-of-way and SHA's initial review of the project did not include a requirement for a sidewalk along the frontage of the Subject Property.

Local Area Transportation Review (LATR)

The transportation Adequate Public Facilities-Policy Area Review test is under the old 2012-2016 Subdivision Staging Policy because the Preliminary Plan was filed before January 1, 2017. The Applicant submitted a traffic statement to show that a traffic study is not required to satisfy the LATR under the 2012-2016 Subdivision Staging Policy because the land use generates fewer than 30 total vehicular peak-hour trips within the weekday morning and evening peak periods, as described in the Staff Report.

Transportation Impact Tax and Transportation Policy Area Review (TPAR)

The Subject Property is located in the Clarksburg Policy Area, which, according to the 2012-2016 Subdivision Staging Policy, is adequate under the roadway test

² Neighboring property owners raised several other concerns at the Planning Board's hearing. These concerns generally related to issues that were addressed during the Special Exception review for the Subject Property and that are beyond the scope of the Board's preliminary plan review.

but inadequate under the transit test; therefore, a 25% TPAR payment would have been required. However, as of March 1, 2017, MCDPS no longer collects TPAR payments and instead collects a new increased general impact tax for all building permit applications. Therefore, the Applicant will be required to pay the updated General District Transportation Impact Tax to MCDPS in lieu of the TPAR payment.

The Preliminary Plan has been evaluated by M-NCPPC Staff ("Staff") and the Montgomery County Department of Transportation, which supports the transportation elements of the Preliminary Plan as indicated in a letter dated February 11, 2014.

Other Public Facilities and Services

The Subject Property is currently served by public water and an on-site septic system. The Subject Property is located within the W-1 and S-3 water and sewer categories, which permit use of public water and sewer connections. While public sewer is not available at this time, the Applicant will connect to sewer when it becomes available, consistent with the S-3 designation. For the time being, the Department of Environmental Protection's Water and Wastewater Policy Group has granted an exception for the use of an interim permit septic system. MCDPS Well & Septic Section has also reviewed and approved the proposed septic system. The house is currently connected to a 16-inch water main in Frederick Road via a ¾ inch copper water line. The Applicant proposes to replace the existing water line with a 2-inch waterline that will support the childcare center. The application has been reviewed by the Washington Suburban Sanitarian Commission, which determined that the existing water main is adequately sized and can serve the Subject Property as approved.

The Application has been reviewed by the MCDPS Fire Code Enforcement Section, which determined that the Subject Property has adequate access for fire and rescue vehicles by transmittal dated September 19, 2016.

Other public facilities and services, 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 that were in effect prior to

February 13, 2017. As part of the Special Exception review, the Hearing Examiner granted an 18-foot side setbacks waiver for the parking facility, reducing the required setback from the property to the north from 24 feet to 6 feet. The lot size, width, shape and orientation are appropriate for the location of the subdivision, considering the approved parking setback waiver. The approved use of the lot as a childcare center with up to 52 children and 6 staff including a modest addition, parking lot with 15 parking spaces, outdoor play area, and septic field requires a larger lot size than the minimum required for the R-200 zone. The lot size and dimension are consistent with other lots in the area that also require large areas for septic fields. The rectangular shape and width of the lot can accommodate the approved lot layout and other site elements of the approved childcare facility when considering the necessary width at front building line, the setbacks of the zone and the approved setback waiver. The Application also meets all other applicable requirements of the Subdivision Regulations including conformance with the Master Plan.

The lot was reviewed for compliance with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. The Application has been reviewed by other applicable county agencies, all of which have recommend approval of the plan.

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

A. Forest Conservation

Forest Conservation Plan

The Subject Property was granted a forest conservation plan exemption (#42011129E) on March 17, 2011, under 22A-5(s)(1) the small property exemption. Therefore, a forest conservation plan for the Subject Property is not required.

Water Quality Plan

This Application is required to obtain approval of a water quality plan under Section 19-62 of the Montgomery County Code. The Applicant received Planning Board approval of a Preliminary Water Quality Plan on November 29, 2012. The Applicant submitted a Final Water Quality Plan for review in conjunction with this Preliminary Plan.

Review for Conformance to the Special Protection Area Requirements

The Montgomery County Department of Permitting Services and the Planning Board have different responsibilities in the review of a water quality plan. MCDPS has reviewed and conditionally approved the elements of the Final Water Quality Plan under its purview. The Planning Board's responsibility is to determine conformity with all policies in the Planning Board's Environmental Guidelines that apply to special protection areas; conformity with any policy or requirement for special protection areas, including limits on impervious area; and any other element of the plan for which the Board has primary lead agency review responsibility, such as forest conservation.

Planning Board Special Protection Area Review Elements

Environmental Guidelines

The Subject Property is located within the Clarksburg Special Protection Area and the Little Seneca Creek watershed, a Use Class IV-P watershed. The Countywide Stream Protection Strategy rates streams in this watershed as good. There are no streams, floodplains, wetlands, or environmental buffers on or affecting the Subject Property. The Application complies with the environmental guidelines.

Imperviousness

A main goal for new development in all SPAs is to reduce the amount of impervious surface. The Clarksburg SPA, which was created following approval of the Clarksburg Master Plan and subsequently amended, specifies no maximum imperviousness cap in this portion of the SPA.

The Subject Property is zoned R-200. Impervious surface rates across the county for the R-200 zone are generally between 15.4% and 19.0%. There is no imperviousness cap within this portion of the Clarksburg SPA so Staff uses the general county average for the zone as a goal. At 29.2% the proposed project is higher than the upper goal of 19.0%. The Applicant had minimized usage of all impervious surfaces to the greatest extent possible while achieving the goals of the use and meeting all other county regulations (parking and ADA compliance).

At time of the Special Exception, the PWQP proposed a project with a post development condition of 10,300 square feet, or 22.6% impervious surface area on the 45,665-square foot Subject Property and was included as a condition of approval of the PWQP.

The PWQP was submitted in conjunction with the Special Exception application, while the Final Water Quality Plan (FWQP) is submitted in conjunction with the Preliminary Plan. The FWQP shows an increase in impervious surface. The Applicant, in response to agency comments, has increased the impervious surface on the site by 4,925 square feet and increased the gross tract area by 6,556 square feet; this would bring the overall project imperviousness to 29.2%.

The Applicant, in a Water Quality Plan Statement of Justification dated March 30, 2017, describes the impervious surface increases and provides some explanations to why the impervious surface area has increased from the Preliminary Water Quality Plan. For the most part, the increase is due to refinement of the plan and additional requirements by various agencies.

The current plan shows increases in impervious surfaces in several areas, including State Highway Administration required roadway improvements, storm drain improvements, and Fire and Rescue Access Improvements. Some of these improvements include a widened driveway to meet SHA standards, which increased the driveway width from 20 feet to 22 feet, design and construction of a new partial deceleration lane, impervious surface hardscape to make the entrance a right-in right-out only access point, replacement of the culvert under MD 355 and associated outfall improvements. These required elements were addressed by the Applicant with the intent of minimizing the amount of imperviousness needed to achieve the goals.

The regulatory design change elements fit within the “*minimize impervious*” requirement of the Clarksburg SPA.

The Applicant has reduced imperviousness while accommodating the program requirements and meets the impervious requirements of the Clarksburg SPA.

Accordingly, the Planning Board approves an impervious surface level of 30% (29.2% as shown on the Final Water Quality Plan plus a margin of error for final design).

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 November 13, 2012, and reconfirmed on July 12, 2016. The approved concept proposes to meet the required stormwater management goals via micro biofiltration.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 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 19 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).

* * * * *

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 Fani-González, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Patterson abstaining at its regular meeting held on Thursday, September 7, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board