



MCPB No. 17-022
Preliminary Plan No. 120160120
Orchard View
Date of Hearing: April 6, 2017

APR 21 2017

RESOLUTION

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

WHEREAS, on January 5, 2016, Rumman Khan (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create two lots on 1.03 acres of land in the R-200/TDR zone, located on the east side of Quince Orchard Road, approximately 160 feet south of Fellowship Lane (“Property” or “Subject Property”), in the North Potomac Policy Area and 2002 Potomac Subregion Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120160120, Orchard View, (“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 March 24, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on April 6, 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. 120160120 to create two lots on the Subject Property, subject to the following conditions:¹

¹ 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.

Approved as to
Legal Sufficiency:

1. This Preliminary Plan is limited to two lots for two one-family detached dwelling units.
2. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. 120160120, approved as part of this Preliminary Plan, except as modified by an approved Final Forest Conservation Plan:
 - a. A Final Forest Conservation Plan (“FFCP”) 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.
 - b. Mitigation for the removal of three trees subject to the variance provision must be provided in the form of planting seven native canopy trees with a minimum planting stock size of four caliper inches. The trees must be planted within one year or two growing seasons after the development project is complete. The trees must be planted on the Property, in locations to be shown on the FFCP, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of 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.
 - d. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the approved FFCP may be required by the M-NCPPC forest conservation inspector.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated February 2, 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 MCDOT provided the amendments do not conflict with other conditions of the Preliminary Plan approval.

4. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") Fire Code Enforcement Section in its letter dated July 14, 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 may be amended by MCDPS – Fire Code Enforcement Section provided the amendments do not conflict with other conditions of Preliminary Plan approval.
6. The Planning Board accepts the recommendations of the MCDPS - Water Resources Section in its stormwater management concept letter (reconfirmation) dated January 14, 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 dedicate and show on the record plat a dedication of 40-feet of right-of-way from the centerline of Quince Orchard Road as shown on the Preliminary Plan.
8. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
9. 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.”
10. The record plat must show necessary easements.
11. The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for sixty (60) 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 Subject Property is located in the 2002 Potomac Subregion Master Plan (“Master Plan”) area, within the North Potomac community area as defined by the Master Plan. North Potomac includes part of the Travilah and Darnestown planning areas and is the most densely populated of the Master Plan’s four community areas. North Potomac is described as “an emerging community... striving to create a clear identity.” The Subject Property is located within the proposed sewer envelope, and the Master Plan confirmed the R-200/TDR zoning at three units per acre. The Master Plan does not make any site-specific recommendations for the Subject Property.

The Application proposes development under the R-200 standard method of development. While the Master Plan recommends a TDR-3 density for properties in the general area, the Subject Property is too small to utilize the optional TDR method of development. Development using the R-200 standard method is therefore consistent with the Potomac Subregion Master Plan. The Preliminary Plan substantially conforms to the recommendations adopted in the Potomac Subregion Master Plan.

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

Adequate Public Facilities Review (APF)

The Application was submitted before January 1, 2017, and is reviewed under the 2012-2016 Subdivision Staging Policy rules in effect on December 31, 2016.

Roads and Transportation Facilities

Each lot has frontage on Quince Orchard Road, which is a master planned arterial road with a total right-of-way width of 80-foot. Quince Orchard Road is currently improved with 31 feet of pavement consisting of two travel lanes and a center turning lane. A 5-foot wide concrete sidewalk along the Subject Property frontage and an 8-foot wide separated shared use path (SP-58) on the opposite side of Quince Orchard Road provide adequate pedestrian access to Quince Orchard High School and the surrounding area. The west side of the road is improved with curb and gutter. The east side of the road is open section with a

grass shoulder. As part of this Application, the Applicant is dedicating sufficient land to achieve 40-feet of total right-of-way from the centerline of Quince Orchard Road to meet the master planned right-of-way width along the Subject Property frontage. Vehicle parking is provided on-site on driveways and/or in garages. Vehicle and pedestrian access for the subdivision will be adequate with the existing public improvements.

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

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

Other Public Facilities and Services

The development will connect into an existing 8-inch sewer main and 12-inch water main to serve the new lots. The Subject Property is located within the W-1 and S-1 water and sewer categories, which permit use of public water and sewer connections. The Application has been reviewed by the Washington Suburban Sanitarian Commission, which determined that the existing mains are adequately sized and can serve the lots as proposed.

The Preliminary Plan has been evaluated by MCDOT, which supports the transportation elements of the Preliminary Plan as indicated in its letter dated January 25, 2016. Access to the Subject Property and the individual lots, as shown on the Preliminary Plan, is adequate to serve the development.

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 July 16, 2016.

Since this Preliminary Plan was submitted before January 1, 2017, the 2012-2016 Subdivision Staging Policy and FY2017 Annual School Test apply. The Subject Property is in the Quince Orchard High School Cluster, which is operating at an inadequate level (more than 105 percent utilization) at the elementary school (113.2 percent) and high school (110.4 percent) level according to the current Subdivision Staging Policy. However, in accordance with Montgomery County Council Bill 37-16, the County will not be collecting any school facility payments for building permit applications filed after March 1,

2017, but will instead collect an updated development impact tax on all applicable residential units.

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 was reviewed for compliance with the version of the Montgomery County Subdivision Regulations (Montgomery County Code Chapter 50), in effect before February 13, 2017. The Application meets all applicable sections. The approved lot size, width, shape and orientation are appropriate for the location of the subdivision and the development of two single-family detached homes. Surrounding development patterns have produced a wide range of lot sizes consistent with those proposed by the Application.

The lots comply with the dimensional requirements of the R-200/TDR zone as specified in the Zoning Ordinance. The lots meet all the dimensional requirements for area and frontage, and create a reasonable buildable area when considering the necessary width at front building lines and the setbacks of the zone. The Application has been reviewed by other applicable county agencies, all of which have recommended 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

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

The Subject Property contains three specimen sized trees that are 30" diameter breast height ("DBH") or greater located in proximity to the existing house. The NRI/FSD did not identify any other environmentally sensitive features such as seeps, springs, wetlands, streams or steep slopes on erodible soils. The Subject Property is located in the Muddy Branch watershed which is classed as use I-P by the State of Maryland.

Based on the size of the Subject Property and the Land Use Category on the Forest Conservation Worksheet, development of the Subject Property results in an afforestation requirement of 0.15 acres. The Applicant proposes to meet this requirement by either purchasing the appropriate amount of forest credits in an off-site forest conservation bank or paying a

fee-in-lieu into the Forest Conservation Fund. The exact method will be determined at the time of FFCP submittal.

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 the removal or CRZ impact to three 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 removal of the Protected Trees is due to the location of the trees and site design requirements necessary to accommodate development consistent with the Zoning Ordinance.

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

The requested Variance is not based on conditions or circumstances that are the result of actions by the Applicant. The Variance is based upon the existing site conditions and necessary design requirements of this Application.

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

The Variance is a result of the conditions on the Subject Property 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. The Protected Trees to be removed are not located within a stream buffer. The Application will mitigate for the removal of these three trees by planting seven larger caliper trees on-site. The seven mitigation trees will eventually provide more shade and more groundwater uptake than the existing trees currently provide.

Mitigation for Trees Subject to the Variance Provision

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves replacement of the Protected Trees with seven 4" caliper overstory trees native to the Piedmont Region of Maryland on the Subject Property. These trees are to be planted outside of any rights-of-way or utility easements, and they are not to be counted as an element of the site screening requirements.

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 January 14, 2016. The concept plan proposes to meet required stormwater management goals via the use of drywells and non-rooftop disconnections.

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 ~~APR 21 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 Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Fani-González, and Cichy voting in favor at its regular meeting held on Thursday, April 6, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board