



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

MCPB No. 17-016  
 Preliminary Plan No. 120160250  
 Schoo Residence  
 Date of Hearing: March 23, 2017

APR 4 2017

**RESOLUTION**

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

WHEREAS, on April 8, 2016, Ms. Sara Schoo ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create two lots on 1.49 acres of land in the R-200 zone, located 9927 Carmelita Drive, west of Seven Locks Road and south of Democracy Boulevard ("Subject Property"), in the 2002 Potomac Subregion Master Plan ("Master Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120160250, Schoo Residence ("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 10, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 23, 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. 120160250 to create two lots on the Subject Property, subject to the following conditions:<sup>1</sup>

- 1) This Preliminary Plan is limited to two lots for two, single-family detached dwelling units.

<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:  3/6/17  
 8787 Georgia Avenue, Suite 100, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320  
 www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

- 2) The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the Certified Preliminary Plan approval or cover sheet(s).
- 3) The Applicant must comply with the following conditions of approval for the Final/Preliminary Forest Conservation Plan No. 120160250 ("FFCP"), approved as part of this Preliminary Plan:
  - a. Applicant must install the five (5) 3" caliper variance mitigation trees during the first planting season following the issuance of the sediment and erosion control permit.
  - b. Applicant must have all required site inspections performed by M-NCPPC Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
  - c. Prior to any clearing, grading or construction on the project site the Applicant must submit the required Forest Conservation Fund fee-in-lieu payment to the M-NCPPC Development Application and Regulatory Coordination Division.
  - d. 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.
  - e. 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.
- 4) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 7, 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.
- 5) The Applicant must satisfy the provisions for access and improvements as required by MCDOT prior to the issuance of access permits.
- 6) The Applicant must satisfy MCDOT requirements to ensure the construction of a five (5) foot wide sidewalk along the property frontage unless construction is waived by MCDPS prior to the recordation of the plat(s).
- 7) The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated March 11, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 8) The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services (MCDPS) Fire Code Enforcement Section in its letter

dated January 9, 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.

- 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) 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.”*

- 10) The Subject Property is within the Winston Churchill High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the single-family detached unit rate for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code and any amendments to this Chapter.
- 11) The Applicant must make a Transportation Policy Area Review (“TPAR”) Mitigation Payment for Transit, equal to 25% of the applicable transportation impact tax to the MCDPS. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code and any amendments to this Chapter
- 12) The record plat must show necessary easements.
- 13) The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for 85 months from the date of mailing of this Planning Board Resolution.

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 Property is located in the 2002 Potomac Subregion Master Plan which recognizes the largely developed nature of this area and recommends “infill development of the remaining vacant properties with residential development essentially similar to what is now there...” (p 41). The specific land use recommendations for this

part of the Master Plan focus on properties that were undeveloped at the time the plan was prepared and on the planning area's commercial centers.

The Preliminary Plan includes two lots for two single-family detached dwellings on public water and sewer systems. The land use and density approved for this Property is consistent with the R-200 zoning in place and the recommendations of the Master Plan. As approved the Application substantially conforms with the recommendations adopted in the *2002 Potomac Subregion Master Plan*.

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

### Roads and Transportation Facilities

The Subject Property is located on the east side of Carmelita Drive in Potomac. The two approved lots will have their own driveways on Carmelita Drive. Vehicle parking is provided on-site on driveways and/or in garages.

Carmelita Drive is unclassified in either the 1980 or the 2002 Potomac Subregion Master Plans. Because Carmelita Drive has not been classified MCDOT will treat it as a secondary residential roadway and a sidewalk is required along the frontage of these two lots even though there are no corresponding sidewalks within this neighborhood. This requirement cannot be waived by the Planning Board under Chapter 49-33. However, MCDPS may waive this requirement at the time of building permit release for the proposed residential structure.

### Local Area Transportation Review (LATR)

A traffic study is not required to satisfy the LATR test because the development of one new single-family detached unit will generate fewer than 30 trips during the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak-hour.

### Transportation Policy Area Review (TPAR)

The transportation Adequate Public Facilities (APF) test is satisfied under the 2012-2016 Subdivision Staging Policy ("SSP") since the Application was submitted prior to January 1, 2017. The Property is located in the Potomac Policy Area which is adequate for the roadway test and inadequate under the transit test. Therefore, the Applicant must make a TPAR mitigation payment equal to 25 percent of the General District Transportation Impact Tax, pursuant to the SSP. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code, and any amendments to that Chapter.

The Application has been reviewed by the MCDOT who determined that the Property has adequate vehicular access and sight distance by transmittal letter dated August 3, 2016.

The access to the Subject Property and the individual lots, as shown on the Preliminary Plan, is adequate to serve the approved development.

#### Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lots. On-site well and septic systems are proposed to serve each dwelling unit. The Property has W-1 and S-1 water and sewer service categories, respectively, and will utilize public water and sewer.

The Application has been reviewed by the Montgomery County Department of Permitting Services Fire Code Enforcement Section who determined that the Property has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan dated January 9, 2017. Other public facilities and services, police stations, and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

The Application is in the Churchill High School Cluster which is operating at an inadequate level (more than 105 percent utilization) at the high school level (113.5 percent) according to the current Subdivision Staging Policy. Therefore, the Applicant must make a School Facilities Payment to MCDPS at the high school level at the single-family detached unit rate for all units for which a building permit is issued. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on March 11, 2016. The approved concept proposes to meet the required stormwater management goals via drywells and non-rooftop disconnects. Other public facilities and services are available and adequate to serve the approved lots.

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

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations included in the 2002 Potomac Subregion Master Plan, and for development of single-family detached homes. The lots are consistent with the density development envisioned by the Master Plan.

The Property consists of Lot 1, Block 10 and Parcel 302 on Tax Map GP122 (1.49 acres/64,904 sq. ft.) in the R-200 zone. The lots were reviewed for compliance with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. The lots meet all the dimensional requirements for area, frontage, and width, and can accommodate a reasonably sized detached home that would meet setbacks in that zone. A summary of this review is included in Table 1 of the Staff Report. The Application has been

reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

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

A. Forest Conservation

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by the County Forest Conservation Law (Chapter 22A of the County Code), a combined Preliminary/Final Forest Conservation Plan (FCP) for the project was submitted as part of the Application. The total net tract area for forest conservation purposes is 1.49 acres, which includes 0.94 acres for Lot 1, 0.55 acres for Parcel 203 and off-site disturbance. There is no forest on the Property and the resulting afforestation requirement of 0.22 acres will be satisfied by the Applicant by making a fee-in-lieu payment

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

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 one tree and impact to two others is due to the location of the trees and necessary site design requirements. The Applicant proposes removal of the one tree with

mitigation. Therefore, Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *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 which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this preliminary plan application. The request is based on the fact that the building envelope for the proposed home is very constrained by the mandated building restriction lines and drainage easement with no available space to vary its location on Lot 2.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

4. *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 specimen tree being removed is not located within a stream buffer. The Application proposes mitigation for the removal of this one tree by planting five larger caliper trees on-site. The five mitigation trees will eventually provide more shade and more groundwater uptake than what the existing tree currently provide. Therefore, Staff concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision - There are two trees to be impacted and one proposed to be removed in this variance request. M-NCPPC does not require replacement mitigation for specimen trees that are impacted. However, there is one (1) tree proposed for removal in this variance request resulting in a total of 56 inches of DBH being removed. For removal of specimen trees associated with a variance request, Staff recommends mitigation for the tree loss by replacing the total number of DBH removed with  $\frac{1}{4}$  of the amount of inches replanted. This results in a total mitigation of 14 inches of replanted trees. In this case, the Applicant proposes to plant five (5) 3" caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements.

The FCP meets all applicable requirements of Chapter 22A of the County Code. Therefore, Staff recommends that the Planning Board approve Applicant's request for a variance from Chapter 22A and approve the FCP with the conditions cited in this Staff Report.

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 March 11, 2016. The approved concept proposes to meet the required stormwater management goals via drywells and non-rooftop disconnects. Other public facilities and services are available and adequate to serve the lots.

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 4 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 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, March 23, 2017, in Silver Spring, Maryland.



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Casey Anderson, Chair  
Montgomery County Planning Board