



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

MCPB No. 16-057

Preliminary Plan No. 120150160

NOV - 2 2016

Washington Episcopal Day School

Date of Hearing: September 29, 2016

**RESOLUTION**

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

WHEREAS, on April 29, 2008, by Resolution No. 16-525, the Montgomery County Council, sitting as the District Council approved a Development Plan with Local Map Amendment G-873, that rezoned the Subject Property (as hereinafter defined) to the PD-28 zone; and

WHEREAS, on May 22, 2015, Sheridan Development, LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create two (2) lots on 11.21 acres of land in the PD-28 zone, located on the northwest quadrant of the River Road/ Little Falls Parkway intersection ("Subject Property"), in the Bethesda Chevy Chase Policy Area and Westbard Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120150160, Washington Episcopal Day School ("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 September 16, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 29, 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 September 29, 2016, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-González, seconded by Commissioner Cichy, with a vote of 4-0; Commissioners Anderson, Cichy

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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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and Fani-González and Wells-Harley all voting in favor. Commissioner Dreyfuss abstained because he was absent during the beginning portion of the hearing.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120150160 to create two (2) lots on the Subject Property, subject to the following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to two lots for a maximum of 121 age-restricted multi-family dwelling units, including 12.5% Moderately Priced Dwelling Units (MPDUs), and a private educational institution (grades nursery – 8<sup>th</sup> grade) with up to 600 students and 110 staff.
2. The development must comply with the Binding Elements of the Development Plan G-873, approved by the District Council on April 29, 2008.
3. The Final Forest Conservation Plan must conform with the Preliminary Forest Conservation Plan approved during the Planning Board review of Development Plan G-873.
4. The Applicant must comply with the following conditions of the Preliminary Forest Conservation Plan, unless modified by the Final Forest Conservation Plan:
  - a) The variance mitigation plan for subject removals under Phase 1 must be planted as part of the Phase 1 work. However, the planting may occur within the Phase 2 footprint.
  - b) The prorated FCP credit associated with Phase 1 must be implemented as part of Phase 1, consisting of new landscape plantings and/or protection of forest area to be recorded.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated August 30, 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 MCDOT, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. The Planning Board accepts the recommendations of the Maryland State Highway Administration (MSHA) in their letters dated April 13, 2016 and August 26, 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

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<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.

letter, which may be amended by MSHA, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

7. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS)– Fire Department Access and Water Supply Section, in its letter dated August 18, 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 Site Plan approval.
8. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT and MSHA.
9. The Applicant must dedicate and construct the extension of Landy Lane to applicable Montgomery County Secondary Street structural standards (Modified to include a reduced width (50') right-of-way and sidewalk on only one side) and must construct all sidewalks, both on and off the Subject Property, to applicable ADA standards, as illustrated on the Certified Preliminary Plan.
10. Prior to recordation of any plat(s), The Washington Episcopal Day School must enter into a binding agreement with the Planning Board to perform in perpetuity a Transportation Management Plan (TMP). This Plan must demonstrate compliance with the G-873 Binding Elements and must include annual reporting in the fall of each year to summarize current and projected enrollment for the year, transportation benefits offered to staff and students, on-site queuing trends, and any transportation issues observed on-site in the previous 12 months. Should the Planning Board find, after a public hearing that the Applicant is not in compliance with the TMP, the Planning Board may modify the conditions of Site Plan approval, including the permitted enrollment.
11. The Planning Board accepts the recommendations of MCDPS – Water Resources Section in its stormwater management concept letter dated September 8, 2016, and hereby incorporates those recommendations 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) approximately 15,391 square feet on Landy Lane, as shown on the Certified Preliminary Plan, to support a right-of-way of 50-feet.
13. The record plat must show necessary easements, including shared access.

14. Prior to submission of any plat, Site Plan No. 820150080 must be certified by Staff.
15. No demolition, clearing or grading of the site, or recording of plats.
16. Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan.
17. Prior to Certification of the Preliminary Plan, the Applicant must revise the Preliminary Plan drawing to reflect the following:
  - a) General Note #11 must be revised to reflect improvements on Lot 1 as part of Phase 1, as per Binding Element #10.A.
  - b) 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.
  - c) Include the all approval letters referenced in the Preliminary Plan conditions and Preliminary Plan Resolution on the approval or cover sheet(s).
18. Prior to the first Use and Occupancy Certificate for Lot 2, the Applicant must provide a minimum 5-foot wide sidewalk along the Subject Property's frontage on Landy Lane, between River Road and the Subject Property and the extension of Landy Lane, as shown on the Site Plan.
19. The Applicant must satisfy the Adequate Public Facilities Transportation Policy Area Review (TPAR) test by making a Mitigation Payment equal to 50% of the applicable transportation impact tax to MCPDS. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
20. 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 Sector Plan specifically recommended use of PD-28 zoning for the Subject Property to support a mixture of office and multi-family dwelling units of up to eight stories in height. The Sector Plan recommended that the residential uses be limited to no more than 353 dwelling units, of which 12.5% be moderately priced dwelling units, and up to 180,000 square feet of office use. A single eight-story building, consisting of up to 121 age-restricted multi-family dwelling units, and the continuation of the private educational institutional use of up to 175,000 square feet, and the location of each were determined to be in substantial conformance with the Sector Plan by the District Council in its approval of LMA G-873.

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

Public facilities and services are available and will be adequate to serve the development. The Property will be served by public water and public sewer. The Application has been reviewed by MCDPS who has determined that the Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as roadways, 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 Property. Electrical, telecommunications, and gas services are also available to serve the 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 proposed lots are appropriate for the location of the subdivision taking into account the recommendations included in the Sector Plan, and for the type of development or use contemplated. The Application substantially conforms to the 1982 Westbard Sector Plan and subsequent Local Map Amendment G-873. The Application complies with the specific density recommendations for the site as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. The lots are sufficiently large to efficiently accommodate the proposed mix of uses.

- 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 entire Application (including both the multifamily site and the school grounds) is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). The proposed development, which is located within a PD zone, triggers the special provision of Forest Conservation Law section 22A-12(f)(2)(D)&(C) which requires that the afforestation requirements be met onsite. Furthermore, the special provisions also require that no existing forest onsite be cleared (since existing forest is less than the minimum required retention, all existing forest must be retained).

At the time of the DPA review the preliminary forest conservation plan showed the protection of the 0.10 acres of onsite forest, and afforestation requirements that generally restored the stream valley buffer (SVB) with afforestation plantings/category I easement areas and new landscape plantings of native canopy trees. The Applicant remains bound to the general layout of the DPA and the associated means of forest conservation credit, however, with this Application, the Board approved alternative means of meeting the FCP requirements such as SWM over and above the minimum DPS requirements. Although some modifications may be necessary at the time the Phase 2 school expansion is reviewed, a number of conditions of approval are included to ensure the requirements are satisfied.

**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 two (2) 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.*

The Applicant submitted a variance request for both Phase 1 and Phase 2 impacts, however, there is insufficient information at this time to make this finding for impacts associated with Phase 2 development on Lot 1 (i.e. the School campus). The Board finds that Phase 1 impacts to protected trees are avoided/minimized to the greatest extent possible and are generally associated with necessary modifications to the Site access extending from the existing right-of-way. As a result, 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.*

As conditioned per the Staff recommendations, the requested variance is largely based on proposed development allowed under the existing zoning and the need to achieve adequate site access. With the recommended conditions of approval Staff finds the variance can be granted under this condition if the impacts are avoided or minimized (as conditioned) and that any necessary mitigation is 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 requested variance is a result of the proposed site design and layout on the Subject Property and not as 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.*

MCDPS review and approval of the sediment and erosion control and storm water management plans will help ensure that appropriate standards are met. Additionally, the development triggers Park Permit requirements that will include the demolition of existing concrete swales (located near the Site entrance at Little Falls Parkway) and replacement with regenerative conveyance channels. Therefore, as conditioned the Project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately one (1) inch DBH for every four (4) inches of DBH removed. No mitigation is required for Protected Trees impacted but retained.

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.

A Storm Water Management concept for the Site was approved by DPS on September 8, 2016. The development will meet required storm water management goals with the use of green roof, mirco-bioretion structures/planter boxes and a rain garden. The remaining volume will be treated by three structural filtration practices.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 85 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 NOV - 2 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 Commissioner Fani-González, seconded by Vice Chair Wells-Harley, 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, October 20, 2016, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board