



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

MCPB No. 18-007
Preliminary Plan No. 120170090
Justement Woods
Date of Hearing: January 25, 2018

FEB 13 2018

RESOLUTION

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

WHEREAS, on November 4, 2016, SER L.L.C. ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one (1) lot on 2.49 acres of land in the RE-1 zone, located at 11731 Glen Mill Road ("Subject Property"), in the Rural West Policy Area and 2002 Potomac Subregion Master Plan ("Master Plan") area; 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. 120170090, Justement Woods ("Preliminary Plan" or "Application"); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on November 4, 2016; 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 January 12, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency;

Christina Sout 2/1/18
M-NCPPC Legal Department
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WHEREAS, on January 25, 2018, 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. 120170090 to create one (1) lot on the Subject Property, subject to the following conditions:¹

1. This Application is limited to one (1) lot for one (1) one-family detached home.
2. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. 120170090, approved as part of this Preliminary Plan:
 - a. A Final Forest Conservation Plan 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.
 - ii. The Final Forest Conservation Plan must identify the location of the trees planted as mitigation for the tree variance.
 - iii. The Final Forest Conservation Plan must revise the Tree Table to indicate that Tree #6 will be retained.
 - b. Mitigation for the removal of one (1) tree subject to the variance provision must be provided in the form of planting native canopy trees totaling 10 caliper inches, with a minimum size of three (3) caliper inches. The trees must be planted on the Property, in locations to be shown on the Final Forest Conservation Plan, 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. Prior to the start of any clearing, grading, or demolition on the Property, the Applicant must provide financial surety and a Maintenance and Management Agreement to the M-NCPPC Planning Department for the 0.04-acre reforestation planting requirement.
 - d. The Applicant must record a Category I Conservation Easement over all areas of forest retention and planting, as shown on the approved Final Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be

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.

- recorded in the Montgomery County Land Records by deed prior to the start of any clearing, or grading on the Property, and the Liber Folio for the easement must be referenced on the record plat.
- e. The Applicant must install permanent conservation easement signage along the perimeter of the Category I Conservation Easement. Signs must be installed a maximum of 100 feet apart with additional signs installed where the easement changes direction, or at the discretion of the M-NCPPC forest conservation inspector.
 - f. The Final Sediment Control Plan must depict the limits of disturbance consistent with the limits of disturbance on the approved Final Forest Conservation Plan.
 - g. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the approved Final Forest Conservation Plan 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 November 9, 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 that 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 Certified Preliminary Plan and Record Plat must show a 100-foot front Building Restriction Line.
 6. Prior to submittal of a Certified Preliminary Plan, the Applicant must update the data table to reflect all the correct setbacks consistent with the Staff Report.
 7. The Applicant must dedicate and show on the record plat(s) the following dedications:
 - a) Forty (40) feet from the existing pavement centerline along the Subject Property frontage for Glen Mill Road.
 8. Prior to approval of a record plat, the Applicant must submit an updated drainage area map and study for approval by the Montgomery County Department of Permitting Services for any portion of the Property that drains to a Montgomery County facility as required by the MCDOT letter dated November 9, 2017.

9. Prior to approval of a record plat, the Applicant must submit a completed, executed, and sealed MCDOT Sight Distances Evaluation certification form for the existing driveway for MCDPS review and approval as required by the MCDOT letter dated November 9, 2017.
10. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated November 18, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, 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.
11. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Well and Septic Section in its letter dated December 6, 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 – Well and Septic Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
12. The Planning Board accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated November 20, 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 MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
13. 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 permits. 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."
14. Record plat must show all necessary easements.

15. 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.*

2002 Potomac Subregion Master Plan

The Planning Board finds the Preliminary Plan substantially conforms with the recommendations of the 2002 Master Plan.

The purpose of the Master Plan is to protect the Subregion's natural environment and unique ecosystems, strengthen communities, maintain the transportation network, expand community facilities, and utilize historic preservation to contribute to the Subregion's unique sense of community. The Subject Property is located in the Travilah planning area of the Master Plan. The Master Plan provides no specific recommendations for the Subject Property other than to recommend the RE-1 zoning which would continue the large lot residential appearance of the planning area.

Planning, Land Use and Buildings

The Master Plan reconfirms the zoning applied to the Subject Property. The Travilah planning area is a low-density area which acts as a transition from the higher densities of the Potomac and North Potomac planning areas to lower densities in Darnestown and the natural environment of the Potomac River.

Travilah is a more rural portion of the Subregion. The lack of community sewer systems has ensured low-density residential neighborhoods. The Application conforms to the general guidance of the Master Plan by providing a low-density residential development served by septic systems.

The Master Plan designated Glen Mill Road as an Exceptional Rustic Road. It identifies this road as having made significant contributions to natural, agricultural, or historic characteristics as well as unusual features which would be negatively affected by modifications. No improvements, including the existing driveway apron in the right-of-way, are proposed on this road. In addition, as recommended by the Rustic Road Advisory Board in their letter, dated February 24, 2017, the building area has been setback from the road so the new construction does not affect the character of the road. The Planning Board has

included the condition of approval to implement a 100-foot Building Restriction Line on the Certified Preliminary Plan and Record Plat in order to implement the recommendation of the Rustic Road Advisory Board. With this condition of approval, the Application will not negatively affect this Exceptional Rustic Road as recommended by the Master Plan.

The environmental recommendations in the Master Plan focus on water quality protection for the watersheds in the Subregion and protecting forests as well as wetlands. The Subject Property is located in the Watts Branch watershed. The Preliminary Plan provides the required stormwater and water quality features to protect the watershed and preserve existing forest under Montgomery County Code. Low density residential uses in the RE-1 Zone can help maintain good water quality standards.

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

Roads and Transportation Facilities

The transportation Adequate Public Facilities (APF) test is satisfied under the 2012-2016 Subdivision Staging Policy. The Property is located in the Rural West Policy Area which is exempt from the APF's Transportation Policy Area Review (TPAR) test.

A traffic study is not required to satisfy the APF's Local Area Transportation Review (LATR) test because the replacement of the existing single-family detached house with a new single-family detached house will not generate any additional trips during weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods.

Glen Mill Road is classified as an Exceptional Rustic Road with 80 feet of right-of-way. The Application proposes granting 40 feet of right-of-way from the centerline which satisfies the requirements of the Master Plan.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lot. The Subject Property has W-6 and S-6 water and sewer service categories, respectively, and will utilize on-site septic systems and water wells.

The Application was reviewed by the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply office. A Fire Access Plan was approved in their letter dated November 20, 2017. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

The Subject Property is located in the Winston Churchill School cluster. However, because the Application proposes no additional dwelling units resulting in no additional student generation, the School Cluster Adequacy Test and Individual School Adequacy Test has been satisfied under the Subdivision Staging Policy currently in effect.

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.*

The Planning Board finds that the Preliminary Plan meets all applicable sections of the Subdivision Regulations. The proposed lot size, width, shape and orientation is appropriate for the location of the subdivision, taking into account the recommendations included in the Master Plan, the Rustic Roads Master Plan in relation to the 100-foot Building Restriction Line, and for the building type (single family home) contemplated for the Property.

The lot was reviewed for compliance with the dimensional requirements for the RE-1 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

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 Planning Board finds 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 Preliminary Forest Conservation Plan (FCP) for the project was submitted with the Preliminary Plan. The net tract area for forest conservation is 2.28 acres, which consists of the 2.49-acre Property, excluding the 0.21-acre portion to be dedicated along Glen Mill Road and will not be disturbed as part of this Application. The Application proposes to remove approximately 0.10 acres of existing forest, and protect the remaining 0.56 acres of forest in a Category I conservation easement. The Application results in a 0.04-acre forest planting requirement, which will be met on-site by planting forest adjacent to the existing forest. The Application results in a 0.60-acre Category I conservation easement that

is contiguous with forest on the adjacent M-NCPPC park land located to the east.

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 six 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 disturbance to the Protected Trees is due to the reasonable development of the Property. The Protected Trees are located outside of the forest, in the developable area of the Property. Any redevelopment or modifications considered for this Property would be faced with the same considerations of providing adequate septic system and stormwater management for the development. Granting a variance to allow land disturbance within the developable portion of the Property and providing required septic and stormwater management facilities is not unique to this Applicant. Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

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

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing Property conditions, including the location of the Protected Trees surrounding the existing house and driveway, within the developable area of the Property, and the

requirement that the septic system and stormwater management features be installed.

- 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 need for a variance is a result of the existing conditions and the design and layout of the development, 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. No trees located within a stream buffer, wetland, or Special Protection Area will be impacted or removed as part of this Application. One tree is proposed to be removed and five trees will be impacted. The tree that will be removed will be mitigated for by planting trees on the site to replace the function lost by the removal of this tree. The five trees that will be impacted, but not removed will continue to provide their existing functions. In addition, the Montgomery County Department of Permitting Services (MCDPS) has found the stormwater management concept for the proposed project to be acceptable as stated in a letter dated November 18, 2016. The stormwater management concept incorporates Environmental Site Design (ESD) standards.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Tree removed. The Board approved replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed, using trees that are a minimum of 3 caliper inches in size. 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.

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources

Section on November 18, 2016. The Application will meet stormwater management goals for each new lot via the use of drywells.

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 FEB 13 2018 (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 Patterson, with Chair Anderson and Commissioners Fani-González and Patterson voting in favor, and Vice Chair Dreyfuss and Commissioner Cichy absent at its regular meeting held on Thursday, February 8, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board