



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

MCPB No. 18-090  
Preliminary Plan No. 120180050  
Cypress Avenue Property  
Date of Hearing: September 13, 2018

SEP 21 2018

**RESOLUTION**

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

WHEREAS, on January 30, 2018, The Foundation for Advanced Education in the Sciences ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create seven (7) lots and an outlot on 2.09 acres of land in the R-60 zone, located Cypress Avenue, 280 feet north of West Cedar Lane ("Subject Property"), in the Bethesda/Chevy Chase Policy Area Policy Area and 1990 *Bethesda-Chevy Chase Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120180050, Cypress Avenue Property ("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 August 31, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 13, 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. 120180050 to create seven (7) lots and an outlot on the Subject Property, subject to the following conditions:<sup>1</sup>

<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.

1. Approval is limited to seven one-family residential lots and an outlet.
2. The Applicant must comply with the following conditions for Preliminary/Final Forest Conservation Plan No. 120180050, approved as part of this Preliminary Plan, including:
  - a. The Applicant must plant the onsite mitigation trees, prior to issuance of Use and Occupancy Certificate for each associated lot.
  - b. The Applicant must replace the existing street trees identified for removal along the property frontage with a minimum 4" caliper canopy tree(s), subject to approval by MCDOT/MCDPS.
  - c. All trees credited towards variance mitigation must be at least five (5) feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements, as shown on the certified Final Forest Conservation Plan. In addition, the mitigation trees must be also planted at least 10 feet offset from the overhead wires along Acacia Avenue.
  - d. Include native shrubs in forest enhancement plantings, in the Category I Conservation Easement, to be approved by M-NCPPC Staff, to be shown on the Final Forest Conservation Plan.
  - e. Include a maintenance and monitoring program for tree 55, for a minimum of two years after the initial impact to the critical root zone (CRZ) of tree 55, on the Final Forest Conservation Plan, subject to M-NCPPC Staff approval, if permission is granted by the neighboring property owner.
  - f. The Applicant will provide for the on-site control of invasive species and maintenance of the supplemental native species plantings for a minimum of five years.
  - g. An ISA certified arborist must sign the Final Forest Conservation Plan (in addition to the Qualified Professional and/or or Landscape Architect). Additional notes and specifications to be added as needed.
  - h. The Applicant will remove tree 39, located outside of the Limits of Disturbance (LOD) and provide plan notes specifying techniques to minimize impacts to the surrounding area, including, but not limited to flush cutting the tree (rather than digging the stump out) and excluding the use of heavy equipment beyond the LOD.
  - i. Prior to certification of the plans, coordinate with M-NCPPC Staff on minor corrections and clarifications as required.
3. 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 April 26, 2018, 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.

4. The Planning Board accepts the recommendations of MCDPS – Water Resources Section in its stormwater management concept letter dated July 27, 2018, 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 that the amendments do not conflict with other conditions of the Preliminary Plan approval. The MCDPS Water Resources Section will review, approve, and inspect all landscaping within the Storm Water Management easements and facilities.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in their letter dated July 19, 2018 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. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements which are associated with each plat, as required by MCDOT.
7. Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of a five-foot wide sidewalk along the property frontage on Cypress Avenue and Acacia Avenue, including the offsite portion extending to West Cedar Lane.
8. 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 building permit. 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.
9. The record plat must show necessary easements.
10. The record plat must reflect any areas under Homeowner's Association ownership and specifically identify stormwater management parcels.

11. Include all applicable agency letters and the Preliminary Plan resolution on the approval or cover sheet(s) of the Certified Preliminary Plan.
12. 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 layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

- a. *The block design is appropriate for the development or use contemplated*

The length, width, and shape of the block are consistent with Section 50.4.3.B of the Subdivision Code. The proposed subdivision is within an existing residential neighborhood with an established street grid. The Application is not proposing to create any new residential blocks.

- b. *The lot design is appropriate for the development or use contemplated*

The lot design, including size, width, shape, and orientation, is consistent with Section 50.4.3.C of the Subdivision Code. This Preliminary Plan proposes seven single-family residential lots. The proposed lots accommodate the anticipated uses and conform to the standards set forth in Section 59.4.4.7 of the Zoning Ordinance. All lots will front on public streets (Cypress and Acacia Avenues) and will be appropriately aligned with them.

- c. *The Preliminary Plan provides for required public sites and adequate open areas*

The Site was reviewed for compliance with Section 50.4.3.D, "Public Sites and Adequate Public Facilities," of the Subdivision Code. There are no Master Plan recommendations for public facilities or local recreation requirements for the Subject Property.

- d. *The Lot(s) and Use comply with the basic requirements of Chapter 59*

The lots were reviewed for compliance with the dimensional requirements for the R-60 zone as specified in the Zoning Ordinance. The lots meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in the following table. The size, width, shape and orientation of the proposed lot is 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.

**Development Standards in the R-60 Zone**

<b>R-60</b>	<b>Required by the Zone</b>	<b>Approved</b>
Minimum Lot Area	6,000 sq. ft.	6,000 sq. ft.
Minimum Lot Width at B.R.L.	60 feet	60 feet
Minimum Lot Width at Front Lot Line	25 feet	25 feet
Maximum Lot Coverage	35%	35%
Front Setbacks (min.)	25 feet or Established Building Line	25 feet or Established Building Line
Side Setbacks, abutting Residential (min.)	8 feet min./ 18 feet total	8 feet min./ 18 feet total
Rear Setbacks, abutting Residential (min.)	20 feet	20 feet
Maximum Building Height	30' Mean / 35' Peak	30' Mean / 35' Peak
Parking (on-site)	2 spaces per dwelling unit	2 spaces per dwelling unit (min)
Site Plan Required	No	No

*2. The Preliminary Plan substantially conforms to the Master Plan.*

a. Land Use

The Property is located within the “Mid-Bethesda – Northern B-CC” section of the 1990 *Bethesda – Chevy Chase Master Plan* area. The Preliminary Plan substantially conforms with its objectives. The Subject Property is identified as M2 on page 52 of the Master Plan and has specific land use and zoning recommendations for the Property. The Master Plan provides that the Property, zoned R-60, has the development potential for up to eight single-family units. The Master Plan calls for providing housing near NIH and the Bethesda CBD and that single-family homes would conform to the nearby housing type. The Preliminary Plan achieves these objectives by creating seven lots for single-family detached homes in close proximity to NIH. The addition of single-family homes to this Property is consistent with the established residential character of the neighborhood.

b. Environment

Development of the site, according to the Master Plan, should seek to preserve trees around the perimeter. The Forest Conservation Plan provides for a total of 0.85 acres of forest retention within a perpetual Category I Easement along the rear perimeter of each proposed lot. The Applicant will provide for the control of invasive species and the plantings of supplemental native species within the conservation easement area. In keeping with the Master Plan's recommendation to preserve perimeter trees, the Applicant has agreed to provide a maintenance and monitoring program for tree 55, assuming permission is granted by the neighboring property owner. Tree 55 is an approximately 27" DBH Tulip tree which is located just west of the property line and will be impacted by the proposed development activity. The recommended condition of approval to provide and implement the maintenance and monitoring program will help ensure that the tree perimeter is appropriately preserved. The Applicant has also pledged to preserve street trees along Cypress and Acacia Avenues where possible, in coordination with Planning Staff and MCDOT. New street trees will be provided in place of any street trees that are not able to be saved. Additionally, as shown on the plans, large caliper trees (4") and soil profile rebuilding will be specified in the street tree landscape panels (subject to MCDOT/MCDPS approval) which will help to effectively reestablish the perimeter tree canopy along the site frontage. Furthermore, the variance mitigation plantings and other trees will be planted in the front yards of the new lots (within the Subject Property) in a manner that will complement the street trees, which will further strengthen the perimeter tree canopy.

c. Transportation

Neither Cypress Avenue nor Acacia Avenue are discussed in the 1990 *Bethesda-Chevy Chase Master Plan* because the Master Plan only discusses roadways that are classified as "primary" or higher. Vehicular access to the Property is proposed via seven new driveways, one for each of the proposed lots, directly from Cypress Avenue and Acacia Avenue. The Project will construct a new 5-foot wide concrete sidewalk, along the Site frontage, from the Chandler Street intersection to the West Cedar Lane intersection. This sidewalk will connect the proposed development with existing transit service on West Cedar Lane and will improve pedestrian safety and accessibility throughout the neighborhood. Transportation access is adequate to serve the proposed development by this Preliminary Plan.

The Preliminary Plan substantially conforms with the recommendations of the Master Plan.

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

a. Roads and Other Transportation Facilities

Transportation access is adequate to serve the proposed development by this Preliminary Plan.

i. *Existing Facilities*

Cypress Avenue and Acacia Avenue function as secondary residential roadways based on their original right-of-way width, 50 feet, and serve less than 200 residential dwelling units. There are no master-planned bicycle facilities on either Acacia Avenue or Cypress Avenue.

Transit service within ¼ mile of the site, a walk time of approximately 5 minutes, is located at the intersection of West Cedar Lane and Zelkova Lane and the intersection of West Cedar Lane and Cedarcrest Drive:

- The bus stop located at Zelkova Lane is served by the Ride-On 70 Route (Germantown – Bethesda Metrorail Station; Monday – Friday peak hour service); and
- The bus stop located at Cedarcrest Drive is served by the WMATA Metrobus J2/ J3 Route (Westfield Montgomery Mall – Silver Spring Transit Station).

ii. *Proposed public transportation infrastructure*

Vehicular access to the Property is proposed via seven new driveways, one for each of the proposed lots, directly from Cypress Avenue and Acacia Avenue. As shown on the submitted Preliminary Plan, the Project will construct a new 5-foot wide concrete sidewalk, along the Site frontage, from the Chandler Street intersection to the West Cedar Lane intersection. This sidewalk will connect the proposed development with existing transit service on West Cedar Lane and will improve pedestrian safety and accessibility throughout the neighborhood.

b. Local Area Transportation Review (LATR)

A transportation statement, dated October 30, 2017, was submitted with the Project, indicating that the proposed development will generate 16 new morning peak-hour person trips and twelve new evening peak-hour person trips. Because the estimated transportation impact of the Project is less than 50 net new person trips, the Project satisfies the Local Area Transportation Review requirement without further analysis.

c. Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The property will be served by public water and sewer systems. Water and sewer and other utilities are located in Cypress Avenue and Acacia Avenue. Connections from these roads adjoining the Property will service the Property. Electrical and telecommunications

services are also available to serve the subject property. The application has been reviewed by MCFRS, and emergency vehicle access has been deemed adequate. Local health clinics, police stations and fire stations are all operating within acceptable levels as established by the Subdivision Staging Policy. The Project will be served by Wyngate Elementary School, North Bethesda Middle School, and Walter Johnson High School.

#### **Applicable School Test**

Preliminary Plan No. 120180050 for Cypress Avenue Property is scheduled for Planning Board review in FY19, therefore the applicable annual school test is the FY19 Annual School Test, approved by the Planning Board on June 21, 2018, and effective July 1, 2018.

#### **Calculation of Student Generation**

To calculate the number of students generated by the proposed development, the number of dwelling units is multiplied by the applicable regional student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low- to mid-rise multifamily unit, or high-rise multifamily unit. The Subject Property is located in the southwest region of the County.

This project is estimated to generate one new elementary school student, no new middle school students, and one new high school student.

#### **Cluster Adequacy Test**

The project is located in the Walter Johnson High School (WJ) Cluster. The student enrollment and capacity projections from the FY19 Annual School Test for the WJ Cluster are noted in the Staff Report.

The Moratorium Enrollment Threshold identified in the table is the enrollment at which the 120% utilization threshold is exceeded, resulting in a cluster-wide residential development moratorium. As indicated in the Staff Report, the projected enrollment plus the estimated impact of this application fall below the moratorium thresholds at all three school levels. Therefore, there is sufficient capacity at the elementary, middle and high school cluster levels to accommodate the estimated number of students generated by this project.

#### **Individual School Adequacy Test**

The applicable elementary and middle schools for this project are Wyngate ES and North Bethesda MS, respectively. Based on the FY19 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the Staff Report.



Under the individual school adequacy test, a school is deemed inadequate if the projected school utilization rate exceeds 120% and if the school seat deficit meets or exceeds 110 seats for the elementary school or 180 seats for the middle school. If a school's projected enrollment exceeds *both* thresholds, then the school service area is placed in a residential development moratorium.

The Moratorium Enrollment Thresholds identified in the table above are the enrollments at which the 120% utilization threshold and the seat deficit threshold are exceeded. As indicated in the Staff Report, the projected enrollment plus the estimated impact of this application falls below both applicable moratorium thresholds for both Wyngate ES and North Bethesda MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of students generated by this project.

#### **Analysis Conclusion**

Based on the school cluster and individual school capacity analysis performed, using the FY2019 Annual School Test, there is adequate school capacity for the amount and type of development proposed by this application.

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

#### **Technical Review 50.4.3.K**

##### **A. Forest Conservation**

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

The Forest Conservation Plan provides for a total of 0.85 acres of forest retention within a perpetual Category I Easement. In keeping with the priorities of the Forest Conservation Law and regulations, the amount of forest retention exceeds the break-even point of the forest conservation worksheet and no reforestation or offsite mitigation is required.

The clean-up of existing debris, control of invasive species and the plantings of supplemental native species will occur within the conservation easement area to enhance the forest setting. The Applicant has also pledged to preserve street trees along Cypress and Acacia Avenues where possible, in coordination with Planning Staff and MCDOT/MCDPS. New street trees will be provided in place of any street trees that are not able to be saved. Additionally, large caliper trees (4")

and soil profile rebuilding will be specified in the street tree landscape panels (subject to MCDOT/MCDPS approval) which will help to effectively reestablish the perimeter tree canopy along the site frontage. Furthermore, the variance mitigation plantings and other trees will be planted in the front yards of the new lots (within the subject property) in a manner that will complement the street trees, which will further strengthen the perimeter tree canopy.

#### 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 15 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 *Bethesda – Chevy Chase Master Plan* (on page 52) specifically acknowledges the presence of the mature trees while recommending development of the property. Therefore, the variance request would be granted to any applicant in a similar situation, assuming all other criteria are met, particularly since reasonable preservation measures and other environmental enhancements have been incorporated into the application.

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 based on proposed development allowed under the existing zoning and recommended by the applicable Master Plan, along with the need to provide the required utility and sidewalk connections. As conditioned, the application avoids or minimizes impacts to the extent practicable and provides necessary mitigation.

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 current application on the subject property and is not related to 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 Department of Permitting Services (DPS) staff approved the storm water management (SWM) concept for the project on July 27, 2018. The SWM concept proposes to meet required storm water management goals by the use of use of micro-bioretenion planter boxes and drywells. Although a waiver of stormwater requirements for the work in the right of way was granted, the soil restoration techniques and tree plantings to be implemented will help maximize the permeability of the soil, helping to further reduce runoff. The sizable forest conservation easement and the replanting of mitigation trees will also help water quality goals by providing shading and water retention and uptake. Therefore, 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 1" caliper for every 4" DBH removed, using trees that are a minimum of 3" caliper. For the 137 diameter inches of trees to be removed outside of the forest setting (trees 7, 39 & 46), the Applicant must provide mitigation of at least 34.25 caliper inches of replacements. Therefore, the mitigation requirements are addressed by the planting of 12 (quantity) 3" caliper trees for a total of 36 caliper inches of onsite mitigation trees. No mitigation is required for Protected Trees impacted but retained.

5. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

A Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services on July 27, 2018. The plan proposes to meet stormwater management goals via ESD to the MEP with the use of micro-bioretenion planter boxes and drywells. Due to site constraints, full stormwater

management treatment cannot be provided, so a partial waiver (for the work in the right of way) was also granted.

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 50.4.2.G), 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 21 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).

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

  
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Casey Anderson, Chair  
Montgomery County Planning Board