

APR 19 2012



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

MCPB No. 12-25
Preliminary Plan No. 120110100
Kefauver Tract Bradley Hills
Date of Hearing: February 23, 2012

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on December 22, 2010, Salmaan Siddiqui ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 40,151 square feet of land in the R-200 zone, located on the north side of Bradley Boulevard, 400 feet east of Redwood Avenue ("Property" or "Subject Property"), in the Bethesda/Chevy Chase Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110100, Kefauver Tract Bradley Hills ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board, dated February 10, 2012, setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on February 23, 2012, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on February 23, 2012, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Anderson, seconded by

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320


MNCPPC Legal Department
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Commissioner Presley, with a vote of 4-0; Commissioners Anderson, Carrier, Presley, and Wells-Harley voting in favor, and Commissioner Dreyfuss absent.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 50 the Planning Board approves Preliminary Plan No. 120110100 to create one lot on the Subject Property, subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to one lot for one one-family detached dwelling unit.
- 2) The Applicant must comply with the conditions of approval for the final forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 3) The Applicant must obtain Staff approval of a revised final forest conservation plan prior to any clearing, grading, or construction on the Subject Property, to include planting specifications.
- 4) The sediment and erosion control plan and stormwater management plan must be submitted with the revised Final Forest Conservation Plan to ensure consistency with the Limit of Disturbance (LOD) and the associated tree/forest preservation measures.
- 5) The certificate of compliance which satisfies the 0.57-acre reforestation requirement must be submitted by the Applicant and approved by Staff prior to any clearing, grading, or construction activity within the project area.
- 6) The Applicant must obtain the services of a Maryland Licensed Tree Expert to perform and/or supervise the required tree preservation measures and appropriately protect the saved trees.
- 7) Prior to issuance of a building permit, the Applicant must construct an eight-foot-wide shared-use path along the Property frontage on Bradley Boulevard, unless construction is waived by the appropriate authority.
- 8) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated December 9, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated March 8, 2011. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 10) The Applicant must satisfy provisions for access and improvements as required by the Maryland State Highway Administration (MDSHA) prior to issuance of access permits.
- 11) Before any building permit is issued, the Applicant must make school facilities payments to MCDPS at the elementary and middle school levels.

- 12) The record plat must show necessary easements.
- 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 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."
- 14) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.

BE IT FURTHER RESOLVED, that having given full consideration to 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, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

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

The Bethesda/Chevy Chase Master Plan does not specifically address the Subject Property. The Master Plan recommends retention of existing zoning throughout the Master Plan area in the absence of a specific recommendation for change on a particular property. Thus, in the case of the Subject Property, the Master Plan calls for retention of the existing R-200 zoning. In the Land Use and Zoning section of the plan, the Property and surrounding development is identified as suitable for one-family detached housing. The proposed subdivision complies with the recommendations adopted in the Bethesda/Chevy Chase Master Plan in that it proposes one-family detached housing consistent with the current density of the neighborhood and the current zoning designation. The proposed lot will be similar to surrounding lots with respect to dimensions, orientation, and shape, and the proposed residence will have a similar relationship to the public street and surrounding residences as do existing residences in the area. The proposed subdivision will not alter the existing pattern of development or land use, which is in substantial conformance with the Master Plan recommendation to maintain the existing land use.

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

Roads and Transportation Facilities

Access to the lot is via a driveway from Bradley Boulevard. Pedestrian access will be via a proposed shared-use path along the Subject Property's frontage on Bradley Boulevard.

The proposed subdivision does not generate 30 or more vehicle trips during the morning or evening peak hours. Therefore, the Application is not subject to Local Area Transportation Review. In addition, the proposed subdivision does not generate more than three new vehicle trips in the morning or evening peak hours. Therefore, the Application is also not subject to Policy Area Mobility Review.

Proposed vehicle and pedestrian access for the subdivision will be safe and adequate.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The Property is proposed to be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. The Application is within the Bethesda Chevy Chase School cluster area, which is currently operating between 105-120% of capacity at the elementary and middle school levels, and a school facilities payment is required. Electrical, telecommunications, and gas services are also available to serve the Property.

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections, including the requirements for resubdivision as discussed

below. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lot was reviewed for compliance with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom 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

There are no streams, floodplains, wetlands or other sensitive environmental features on the Subject Property. However, the Property is entirely forested. Many trees are of significant or specimen size. The forest groundcover is dominated by invasive species such as English ivy and vinca, but populations of native species such as sensitive fern, Christmas fern, bloodroot, Mayapple, jack-in-the-pulpit, holly, ash, and spicebush have persisted. The forest stand is rated as high priority for retention due to presence of the large trees.

The limit of disturbance (LOD) indicates that the majority of the site will be cleared. Four large trees at the rear of the Property are preserved by the plan. The LOD near the retained onsite trees is located 20 to 50 feet from the property line. The onsite tree save area is not proposed to be included within a forest conservation easement. However, the trees preserved in the area by the LOD and the forest conservation variance, along with the supplemental plantings of native evergreens, will help maintain a buffer for the adjacent property. Since no forest conservation easement will be placed on the Subject Property, the entire site is considered to be cleared.

The Planning Board did not require a forest conservation easement for the Property due to the lack of any overlapping environmentally sensitive features such as steep slopes, erodible soils, wetlands, streams, or associated buffers. The reforestation planting requirement of 0.57 acres will be met offsite by purchasing the equivalent credits at the Lorax Forest Conservation Bank. Ideally, the selection of an available forest conservation bank occurs within the same watershed as the Subject Property. Since no banks are available within the same watershed, the next preference is to select the geographically closest bank. The Lorax Forest bank is in the down-county area. It is located four miles from the site and currently has the necessary credits available.

No disturbance is currently proposed to the two large tulip trees on the opposite side of Bradley Boulevard. The proposed gas house connection has been located as far as possible from the respective critical root zones of these two trees, but it is conceivable that Washington Gas may choose to install the line elsewhere, resulting in minimal disturbance of less than 1% of the critical root zone to either tree. No protective measures are being proposed for these two trees. The minor impact to these two specimen trees by possible construction activities is listed in the variance section below.

B. Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code 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) of the County Code. Otherwise such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will require four Protected Trees, 30 inches and greater DBH to be removed. Further, the project will impact five Protected Trees. Therefore, a variance is required. Although the Applicant proposed tree preservation measures to help ensure the Protected Trees with anticipated impacts survive construction, the variance is required simply due to the impact.

The Board makes the following findings necessary to grant the Tree Variance:

- i. Granting the Tree Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The impacts to the trees on the opposite side of Bradley Boulevard are associated with utility tie-ins within the right-of-way where such impacts are anticipated. The impacts and removals towards the center of the site are within the buildable area established by the setbacks. Therefore, the variance request would be granted to any applicant in a similar situation.

- ii. The need for the Tree 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 the need to achieve adequate stormwater

management. The variance can be granted under this condition if the impacts are avoided or minimized and that any necessary mitigation is provided. Design changes were incorporated to reduce tree disturbance and removals and mitigation is provided for the resources disturbed.

- iii. The need for the Tree Variance 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 proposed site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.

- iv. Granting the Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Department of Permitting Services (MCDPS) approved the stormwater management (SWM) concept for the project on December 9, 2010. The MCDPS review and ultimate approval of the sediment and erosion control and storm water management plans will ensure that appropriate standards are met. The Property is not directly associated with any steams, wetlands or related buffers. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

C. Forest Conservation Variance mitigation

Most of the subject trees removed by the plan are contained within the forest boundary. Since the forest clearing which includes the subject trees is to be mitigated by the reforestation requirements, no additional mitigation for these trees is requested. However, the proposed removal of offsite tree #55 is not accounted for under the reforestation requirements. Therefore, mitigation for its removal is required in addition to the reforestation requirements. Generally, replacement plantings for variance purposes should occur at a ratio of approximately 1-inch DBH for every 4-inch DBH removed, using tree plantings that are a minimum of 3-inch caliper. This means that for the 31 diameter inches of tree removed (offsite), the Applicant will provide, at a minimum, eight inches of caliper replacements. For this particular site, the proposed nine native holly trees are deemed to be acceptable mitigation. The Planning Board did not require larger size plantings at the proposed locations due to the increased impacts to the roots of existing saved trees which would occur during the installation of larger plant material. No mitigation is recommended for trees impacted but retained. Initially, the seven-foot tall evergreen plantings will have a limited effect; however, they will provide some immediate benefits such as screening.

The Planning Board finds that with the conditions imposed by this Resolution the Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.*

The MCDPS Stormwater Management Section approved the stormwater management concept on December 9, 2010. The stormwater management concept consists of environmental site design through the use of drywells and non-rooftop disconnect.

6. *The Application conforms with Section 50-29(b)(2) of the Subdivision Regulations pertaining to resubdivision. The proposed lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood (as delineated by Staff in the Staff Report and approved by the Board) ("Neighborhood").*

Frontage: In a neighborhood of 14 lots, lot frontages range from 0 feet (no frontage) to 234 feet. Three of the lots have no frontage, nine lots have frontages between 100 and 200 feet, and the remaining two lots have frontages of more than 200 feet. The proposed lot has a frontage of 115 feet. The proposed lot will be of the same character as existing lots in the neighborhood with respect to lot frontage.

Alignment: All of the 14 existing lots in the neighborhood are perpendicular in alignment. The proposed lot is perpendicular in alignment. The proposed lot is of the same character as existing lots with respect to the alignment criterion.

Size: The lots in the delineated neighborhood range from 21,249 square feet to 65,675 square feet. Six of the lots are smaller than 30,000 square feet, six are between 30,000 and 50,000 square feet, and two are between 50,000 and 66,000 square feet. The Proposed Lot will be 40,151 square feet in size. The proposed lot size is in character with the size of existing lots in the neighborhood.

Shape: Twelve of the existing lots in the neighborhood are rectangular, and the remaining two are irregular. The proposed lot is rectangular. The shape of the proposed lot will be in character with shapes of the existing lots.

Width: The lots in the delineated neighborhood range from 114 feet to 246 feet in width. Ten of the lots have widths of less than 150 feet, three lots have widths between 150 and 200 feet, and the one remaining lot has a width of more than 200 feet. The proposed lot has a width of 115 feet. Two lots have a smaller width measurement, at 114 feet. The proposed lot will be in character with existing lots in the neighborhood with respect to width.

Area: The lots in the delineated neighborhood range from 9,734 square feet to 29,992 square feet in buildable area. One of the lots has a buildable area less than 10,000 square feet, ten are between 10,000 and 20,000 square feet, and three are between 20,000 and 30,000 square feet. The proposed lot has a buildable area of 25,221 square feet. Three lots have buildable areas larger than the proposed lot. The proposed lot will be of the same character as other lots in the neighborhood with respect to buildable area.

Suitability for Residential Use: The existing and the proposed lots are zoned residential and the land is suitable for residential use.

BE IT FURTHER RESOLVED, that 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; and

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) 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 among the Land Records of Montgomery County, Maryland 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 19 2012 (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).

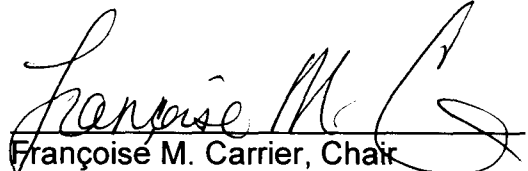
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CERTIFICATION

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 Anderson, seconded by Vice Chair

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Preliminary Plan No. 120110100
Kefauver Tract Bradley Hills
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Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion at its regular meeting held on Thursday, April 12, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board