



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

2012 JUN 13 10:01 AM

MCPB No. 12-63
Preliminary Plan No. 120120140
Hoyt Property
Date of Hearing: June 7, 2012

RESOLUTION

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

WHEREAS, on January 19, 2012, EYA Development, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property to create 30 lots on 1.81 acres of land in the RT-15 zone, located 5400 Butler Road, Bethesda ("Subject Property"), near River Road and Little Falls Parkway in the Westbard Sector Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 1201120140, Hoyt 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 June 7, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 7, 2012, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, by motion of Commissioner Norman Dreyfuss, seconded by Commissioner Anderson, and by a vote of 4-0 with Commissioners Anderson, Carrier, Dreyfuss, and Presley voting in favor, the Planning Board voted to approve the Application, subject to certain conditions;

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120120140 to create 30 lots on the Subject Property, subject to the following conditions:¹

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.

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Suite 200, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4600 Fax: 301.495.1320

MNCPPC Legal Department
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

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1. Total development is limited to thirty (30) lots for thirty (30) townhouses with five (5) MPDUs as shown on the preliminary plan.
2. Prior to the release of any building permit for the proposed development, the Applicant must pay \$70,200.00 to Montgomery County Department of Transportation ("MCDOT") to satisfy the Policy Area Mobility Review ("PAMR") requirement of the APF test (to mitigate six net "new" weekday site-generated peak-hour trips at \$11,700.00 per peak-hour trip).
3. The Applicant will restrict commercial traffic to the entrance from Butler Road as no commercial vehicles are allowed on Little Falls Parkway.
4. The Applicant must provide the liber/folio reference for the recorded access easement agreement regarding the use of Butler Road on the record plat, certified preliminary plan and certified site plan.
5. The Applicant must provide an effective access control to and from the development through design features at the Butler Road connection to ensure that the connection will only serve its intended purpose (i.e., exclusive in/out access for commercial vehicles serving the development and residents of the development).
6. Applicant must submit a revised final forest conservation plan and obtain staff approval prior to certified site plan and the commencement of any clearing, grading, demolition, or construction activity within the project boundary. The revised plan shall address the following items:
 - a. Revise plan notes, LOD, and associated reforestation and tree save items as applicable, to reflect the actual extent of park access and restoration work (to be determined by Parks staff). If applicable, a new/revised forest conservation variance must also be obtained.
 - b. Revise all plan figures notes and tables to correctly show how the forest conservation requirements will be met and use consistent/correct references for all associated figures.
 - c. Expand the proposed Category I conservation easement five feet toward Lot 1A.
 - d. Provide plantings for the proposed Category I conservation easement which meets the recommendations of the Westward Sector Plan.
 - e. Revise the floodplain notes to reference *conditional* approval from DPS.
 - f. Clearly show an "X" over trees 9V & 10V.
 - g. Revise the new note 16 to reference trees 9V & 10V.
 - h. Provide the raised sidewalk/aeration details on the FFOP.
 - i. The Final Forest Conservation Plan must also be signed by an International Society of Arboriculture certified arborist.
7. 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 Limits of Disturbance and the associated tree/forest preservation measures.

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8. The Applicant must appropriately record the required Category I Conservation Easement. Recordation must occur prior to any clearing, grading, demolition, or construction activity within the project boundary.
9. The Applicant must obtain services of an ISA certified arborist, or a Maryland Licensed Tree Expert, to perform the required tree preservation measures and appropriately protect the saved trees.
10. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Stormwater Management Plan in its letter dated February 3, 2012, and does hereby incorporate 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 provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
11. The Applicant must comply with the conditions of the Parks Department letter May 28, 2012. These conditions may be amended by Parks, provided the amendments do not conflict with other conditions of the preliminary plan approval. (Appendix 1)
12. The Applicant must satisfy provisions for access and improvements as required by Parks prior to recordation of plat(s).
13. No plats may be recorded prior to certification of the site plan.
14. Final approval of the number and location of buildings, on-site parking, site circulation, and sidewalks will be determined at site plan.
15. The record plat must show necessary easements.
16. 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 review. 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."
17. The Applicant must provide a new parcel for Private Streets A and B to be dedicated to the Homeowner's Association. The new parcel must be contained within a public access easement and must be shown on the record plat and recorded in the land records.
18. Before any building permit is issued, the Applicant must make school facilities payments to MCDPS at the elementary, middle, and high school levels.
19. The Applicant shall install "No Parking" signs along the portion of Little Falls Parkway that confronts the development site. The location and design of the signs shall be reviewed and approved by the Department of Parks staff at the time of Park Construction Permit.

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20. The Applicant must provide a gate at the Butler Road entrance to the development. The gate will be operated by a sensor which will activate when vehicles approach the gate either from Butler Road or the Private Street A.
21. The Applicant and subsequent Homeowner's Association will maintain the pathway connection from Little Falls Parkway to the northern boundary line within the public access easement.
22. The Applicant must dedicate a public easement approximately 4,500 square feet in size along the northern and southern boundary, including the public access easement for the CCT connection from the Little Falls Parkway to the CCT, as acceptable to Parks. The purpose of the public easement is to provide a green landscape buffer between the proposed development and parkland.

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.*

For this property, the Sector Plan recommends townhouse development on this property, noise reduction, improved stormwater management on-site, and minimizing the extent of impervious cover, all of which the Application achieves through the transition from an industrial to residential townhouse development and through the design features of the project.

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

The Applicant's traffic consultants prepared a mobility study which determined that the proposed development was estimated to generate fewer than 30 peak-hour trips during the typical weekday morning and evening peak periods whereas it was determined that this satisfies the LATR requirements of the Adequate Public Facility test.

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

The 1.81-acre site is generally rectangular in shape with steep slopes to the east and west of the property. The property is approximately 1,200 feet long and 319 feet wide with abutting parkland on three sides. Although seemingly narrow in

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width, the proposed development layout will create a community suitable for its location, and sensitive to the surrounding area.

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

A. Forest Conservation

The Board finds the Forest Conservation Plan complies with the requirements of the Forest Conservation Law subject to the following conditions:

- I. The Applicant must submit a revised final forest conservation plan and obtain staff approval prior to the commencement of any clearing, grading, demolition, or construction activity within the project boundary. The revised plan shall address the following items
 - a. Revise plan notes, LOD, and associated reforestation and tree save items as applicable, to reflect the actual extent of park access and restoration work (to be determined by Parks staff). If applicable, a new/revised forest conservation variance must also be obtained.
 - b. Revise all plan figures notes and tables to correctly show how the forest conservation requirements will be met and use consistent/correct references for all associated figures.
 - c. Expand the proposed Category I conservation easement five feet toward Lot 1A.
 - d. Provide plantings for the proposed Category I conservation easement which meets the recommendations of the Westward Sector Plan.
 - e. Revise the floodplain notes to reference conditional approval from DPS.
 - f. Clearly show an "X" over trees 9V & 10V.
 - g. Revise the new note 16 to reference trees 9V & 10V.
 - h. Provide the raised sidewalk/aeration details on the FFCP.
 - i. The Final Forest Conservation Plan must also be signed by an International Society of Arboriculture certified arborist.
- II. 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 Limits of Disturbances and the associated tree/forest preservation measures.

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- III. Applicant must appropriately record the required Category I Conservation Easement. Recordation must occur prior to any clearing, grading demolition, or construction activity within the project boundary.
- IV. Applicant to obtain services of an ISA certified arborist, or a Maryland Licensed Tree Expert, to perform the required tree preservation measures and appropriately protect the saved trees.

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 five Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

With respect to the required Variance, the Board finds:

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

The Westbard Sector Plan specifically recommends removal of encroachments and dumped debris. The restoration of the parkland could have been performed by the existing owner, or by the Parks department independent of the redevelopment activity. Therefore, the variance request would be granted to any Applicant in a similar situation.

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

The encroaching structures and dumped debris within the adjacent parkland were placed long before the Applicant became involved with the property. The proposed trail connection is not based on results of actions by the Applicant. Furthermore, measures have been taken to avoid and minimize impacts as much as possible, and replanting to reduce the effects of the impacts/removals of subject trees has been included.

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III. 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.

Since the park property containing the encroaching structures, dumped debris, and trail connection area is part of the subject application, the requested variance is a result of the proposed restoration work and trail connection on the subject property, and not a result of land or building use on a neighboring property.

IV. Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.

Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. Conversely, when completed the project should provide an improvement to water quality over the existing conditions due to the reduction of impervious surfaces, installation of storm water management and treatment facilities (the current site has none), by the installation of buffer strip on the parkland and by remediation of contaminated soils which possibly leach pollutants into the stream. Furthermore, the work will proceed under the direction of the Maryland Department of the Environment and the Department of Permitting Services to ensure appropriate standards will be implemented related to the soil remediation, sediment control and storm water management. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance will be at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio approved of by the Montgomery County Parks Department. No mitigation is required for Protected Trees impacted but retained.

5. The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The proposed stormwater management concept approved on February 3, 2012, meets the required stormwater management goals by the use of environmentally sensitive design measures to the maximum extent practicable. Treatment is provided by a biofilter stormwater management facility.

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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)), 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

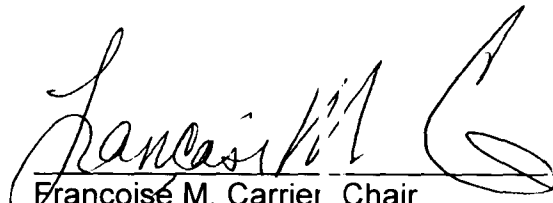
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is Jul 31 2012 (which is the date that this Resolution is mailed to all parties of record); and

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).

* * * * *

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 Presley, seconded by Vice Chair 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, July 26, 2012, in Silver Spring, Maryland.


Françoise M. Carrier Chair
Montgomery County Planning Board