



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

**JUL 23 2013**

MCPB No. 12-80  
Preliminary Plan No. 120110200  
8701 Burning Tree Road  
Hearing Dates: September 13, 2012 and June 20, 2013

**RESOLUTION**

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

WHEREAS, on April 13, 2011, Keith Burgess ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 1.45 acres of land in the R-200 zone, located at 8701 Burning Tree Road ("Subject Property"), in the Bethesda-Chevy Chase Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110200, 8701 Burning Tree Road ("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, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions; and

WHEREAS, on September 13, 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, on June 6, 2013, the Planning Board voted to reconsider the Preliminary Plan approval because certain findings were based on incorrect information; and

WHEREAS, Staff issued a memorandum to the Planning Board, dated June 7, 2013, recommending approval of the Preliminary Plan subject to certain conditions; and

WHEREAS, at the June 20, 2013 hearing, based on the prior approval and the corrected information contained in the June 7, 2013 staff report, the Planning Board voted to approve the Application, subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, by a vote of 5-0,

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Approved as to  
Legal Sufficiency

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with Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor;

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120110200 to create one lot on the Subject Property, subject to the following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to one lot for one dwelling unit.
2. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated December 29, 2011 and hereby incorporates them as conditions of 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.
3. Prior to plat recordation, the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
4. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated April 4, 2011, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Stormwater Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
5. Prior to plat recordation the Applicant must satisfy MCDPS requirements to ensure the construction of a five-foot wide sidewalk along the property frontage on Burning Tree Road, unless construction is waived by MCDPS.
6. The record plat must show necessary easements.
7. 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

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<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

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."

8. The Adequate Public Facility review for the Preliminary Plan will remain valid for 85 months from the date of mailing of this resolution.
9. The Applicant must submit a final forest conservation plan and have that plan approved by staff prior to any land disturbing activity occurring on site.
10. All retained and planted forests must be protected by a category I conservation easement. All conservation easements must be shown on the record plat. Recordation must occur prior to any land disturbing activity occurring on site other than demolition of existing structures and removal of invasive species.
11. The Applicant must comply with the conditions of approval of the Forest Conservation Exemption letter dated December 16, 2011.
  - a. Areas of stream valley buffer (SVB) outside of the stream channel and the proposed dedications associated with Burning Tree Road which are not protected by the conservation easement require offsite compensation. The mitigation will occur by the use of 2:1 offsite mitigation plantings to be protected by a category I easement approved by the Planning Board, prior to any land disturbing activity occurring on site.
  - b. Adjust the proposed conservation easement boundary per the following:
    - a) Shift the proposed conservation easement line northward to remain at least 15 feet from the existing storm drainage R/W.
    - b) Delete the portion of the conservation easement which overlaps the proposed PUE.
  - c. Refinement of the proposed easement plantings is required to meet reforestation criteria for spacing and species distribution, at the time of final forest conservation plan submission (subject to staff approval).

BE IT FURTHER RESOLVED that, having considered the recommendations and findings of its Staff as presented at the hearings in this matter and as set forth in the staff reports, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

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

The Subject Property is located in Bethesda, which is a mature, stable community, predominantly zoned R-60 and R-90. The western most portions are zoned R-200. The area is largely built out, does not contain any commercial properties and there is little opportunity for redevelopment.

The Bethesda-Chevy Chase Master Plan (the Plan) does not specifically address this site but does make a general recommendation (p.51) reconfirming the existing zoning throughout the Plan area. This Application consolidates property specifically for a one-family detached use, which preserves the existing residential character and land use patterns described in the Plan area. Additionally, the Plan aims to "protect the high quality residential communities throughout the Planning area, as well as the services and the environmental qualities that enhance the area." The Applicant has agreed to relocate the new one-family residence and swimming pool outside of the stream valley buffer, which will provide protection for Booze Creek.

This proposal substantially conforms to the master plan recommendations since it is compatible with the existing neighborhood in terms of building type, and meets the requirements and development standards of the R-200 zone. Additionally, the proposal furthers the Plan's general guidance and is consistent with the Bethesda Chevy Chase Master Plan.

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

Roads and Transportation Facilities

The Application 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. Additionally, the Applicant is not proposing any new roads, drainage structures or pavement widening. Existing conditions will be maintained as much as possible, resulting in very little impact on the capacity and/or operation of roads, intersections and drainage systems at/near the Subject Property. The

Applicant will be required to construct a five-foot sidewalk along the Subject Property frontage, connecting to the existing sidewalk along Burning Tree and provide for safe and adequate pedestrian mobility. Approved vehicle and pedestrian access for the subdivision will be safe and adequate with the approved public improvements.

Other Public Facilities and Services

The Application has been reviewed by all public utilities including: Washington Gas, PEPCO, Verizon and WSSC. All agencies recommend approval of the plan, having found that their respective utilities are adequate to serve the approved development. The Department of Fire and Rescue Services has approved a Fire Access Plan that assures emergency vehicles can access the site. Other public facilities and services, such as police stations, firehouses and health services, are currently operating within the standards set by the Subdivision Staging Resolution currently in effect.

The Subject Property is within the Bethesda – Chevy Chase school cluster which is currently operating above capacity at the middle and high school levels; however, the approved development is not considered new construction but is in fact a replacement of an existing residence, and therefore will not increase the number of dwelling units. As such, no School Facility Payment is needed.

3. *The size, width, shape, and orientation of the approved lot 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 within the Montgomery County Code Zoning Ordinance, Chapter 50 - the Subdivision Regulations. The Application meets all applicable sections and as approved will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone and for the location of the Subject Property. 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

The Board finds that as conditioned, the Forest Conservation Plan (stamped received on July 18, 2012) complies with the requirements of the Forest Conservation Law.

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ), requires a variance.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

The Planning Board has reviewed this Application and based on the existing circumstances and conditions on the Subject Property agrees that there is an unwarranted hardship (for disturbance but not removal).

#### 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 1 subject 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.

The Board made 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 existing driveway is the only means of currently accessing the site. Any upgrade of the driveway, or even abandonment and restoration of driveway into a natural area, would require a variance. Therefore, the variance request for the approved impact would be granted to any applicant in a similar situation.

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

The requested variance is based on approved development allowed under the existing zoning and the need for site access. The Planning Board finds the variance can be granted under this condition because the impacts are avoided or minimized and this variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.

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 approved site design and layout on the Subject Property 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.*

Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. The Department of Permitting Services (DPS) staff approved the Stormwater Management (SWM) Concept for the project on April 4, 2011. The DPS review and ultimate approval of the sediment and erosion control and storm water management plans will ensure that appropriate standards are met. Additionally, the one tree subject to the variance is not located within the floodplain or stream valley buffer. Some portion of the subject trees' CRZ does overlap the Floodplain and SVB area. However, the minor grading proposed in the floodplain will be subject to the review of both the Federal Emergency Management Agency (FEMA) and DPS. FEMA has conditioned the project subject to approval of certified as-built elevations and/or a certified as-built survey to ensure the work is completed per FEMA requirements.

5. *All storm water management requirements shall be met as provided in Chapter 19, Article II, title "storm water management", Sections 19-20 through 19-35.*

The Department of Permitting Services (DPS) staff approved the Stormwater Management (SWM) Concept for the project on April 4, 2011. The DPS review and ultimate approval of the sediment and erosion control and storm water management plans will ensure that appropriate standards are met.

6. *The approved lot is 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 in the Staff Report).*

**Frontage:**

The delineated neighborhood has a range of frontages measuring from 25 feet to 328 feet. Twelve of the existing lots have frontages ranging from 25 feet to 108 feet. The remaining nine lots have frontages ranging from 135 feet to 328 feet. Of the delineated neighborhood, 18 of the 21 lots have singular frontage. There are four properties fronting on two or more rights-of-way.

The approved lot will front solely onto Burning Tree Road with an approved frontage of 274 feet and will be of the same character as existing lots in the neighborhood with respect to lot frontage.

**Alignment:**

Eighteen of the 21 existing lots in the neighborhood are perpendicular in alignment, and the remaining three are angled with the street. The approved lot is perpendicular in alignment and of the same character as existing lots with respect to the alignment criterion.

**Size:**

Including the proposed lot, the 21 lots in the delineated neighborhood range from 63,066 square feet to 11,035 square feet. Four of the lots are smaller than 20,000 square feet, nine are between 20,000 and 36,000 square feet, and eight are larger than 36,000 square feet. The approved lot will be 63,066 square feet in size.

At 63,066 square feet, the approved lot will be the largest lot in the neighborhood. Additionally, it is only 2,000 square feet larger than the next largest lot but includes more than 15,000 square feet of land that is dedicated for Forest Conservation. As such, the approved lot size is in character with the size of existing lots in the neighborhood.

**Shape:**

19 of the 21 existing lots in the neighborhood are irregular in shape with the remaining two lots being rectangular. The approved lot is irregular in shape.

**Area:**

The existing lots in the delineated neighborhood range from 7,370 square feet to 33,741 square feet in buildable area. Ten of the existing lots have a buildable area less than 16,000 square feet, six are between 16,000 and 21,000 square



feet, and five are larger than 22,000 square feet. The Applicant reported that the area for one existing lot was unavailable. The Approved lot will have a buildable area of approximately 32,061 square feet.

**Suitability for Residential Use:**

The existing lots and the approved lot are zoned residential and the land is suitable for residential use.

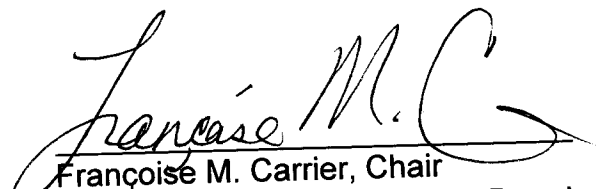
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter and supersedes Planning Board previous approval of the Preliminary Plan in its entirety, and the date of this Resolution is JUL 23 2013 (which is the date that this Resolution is mailed to all parties 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 Vice Chair Wells-Harley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, June 27, 2013, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board