



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

**JUL 14 2015**

**MCPB No. 15-65**  
**Preliminary Plan No. 120150150**  
**Grosvenor Place**  
**Date of Hearing: June 25, 2015**

**RESOLUTION**

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

WHEREAS, on January 26, 2015, Community Three Development ("Applicant") filed an application for approval of a preliminary plan of subdivision that, by resubdividing a part of an existing lot would create a maximum of 46 townhouse lots on 4.13 acres of land in the R-30 Zone, located in the northeast quadrant of the intersection of I-270 and Grosvenor Lane ("Subject Property"), in the North Bethesda/Garrett Park Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120150150, Grosvenor Place ("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 15, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 25, 2015, 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, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below;

Approved as to  
Legal Sufficiency:

  
M-NCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120150150 to create 46 townhouse lots on the Subject Property, subject to the following conditions:<sup>1</sup>

1. This approval is limited to a maximum of 46 lots for townhouse units, and various private road, open space, and stormwater management parcels.
2. All forest retention areas must be placed in a Category I Conservation Easement.
3. No clearing and grading of the site, or recording of plats is permitted prior to Certified Site Plan approval and recordation of Category I Conservation Easements in the Montgomery County Land Records by deed.
4. Prior to demolition, clearing, or grading, the Applicant must record a Category I Conservation Easement in the Montgomery County Land Records by deed. The deed must be in a form approved by the M-NCPPC Office of the General Counsel, and the Liber Folio for the easement must be referenced on the record plat.
5. Within one year after installation of improvements in the associated area, the Applicant must plant a quantity and size of trees that total at least 28 caliper-inches – as shown on the landscape plan – as mitigation for variance trees removed. Mitigation trees must be native, canopy species, and should be a minimum of 3-inch caliper each. The amount of mitigation may be reduced from 28 to 17 inches if the Applicant demonstrates that variance trees removed are being replaced under requirements imposed by the State of Maryland (for removal of trees within the I-270 right-of-way).
6. The record plat must reflect a public use and access easement over the sidewalk on the Subject Property along Grosvenor Place.
7. The record plat must reflect all areas under Homeowners Association ownership.
8. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT), except Nos. 4 and 6, in its letter dated May 12, 2015, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations, except for Nos. 4 and 6, as set forth in the letter, which may be amended by

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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.



MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

9. 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 May 29, 2015, and hereby incorporates them as conditions of this 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 approval.
10. The Subject Property is within the Walter Johnson High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the single-family attached unit rates for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
11. Final approval of the number and location of buildings, dwellings units, on-site parking, site circulation, and sidewalks will be determined at Site Plan.
12. 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 the lots. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
13. The Adequate Public Facility (APF) review for the Preliminary Plan Amendment will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
14. All necessary easements must be shown on the record plat

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.*

The proposed Grosvenor Place development is consistent with the recommendations of the Approved and Adopted 1992 North Bethesda/Garrett Park Master Plan. The Site is located in sub-area 4 (Grosvenor Park Townhouses) of the Grosvenor Sector Plan Area. The Master Plan identifies existing features of the overall site, including a stream valley and woodlands.

The proposed development will contribute to achieving the Plan's objective of developing "Grosvenor as a transit serviceable residential district" (p.62) and providing "open space within new development" and "preserving existing tree stands to the maximum possible extent" (p.132). Approximately 57% of the site is open space, including environmentally sensitive and wooded areas, and the proposed plan includes a 3,300-square foot centrally located open space/amenity area. The provision of additional Moderately Priced Dwelling Units (MPDUs) will implement the Master Plan objective to "preserve and increase the variety of housing stock, including affordable housing" (p.33).

Noise along roadways, such as I-270, is identified as a significant issue in the Plan area. The Master Plan states that "development of any undeveloped or redevelopable land adjacent to major highways should use noise-compatible land use and site design and other mitigation measures recommended in the "Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development" (p.252). The Applicant's noise analysis indicated that noise walls will be required to attenuate exterior noise levels to recommended levels. These noise walls have been incorporated into the Site Plan. The Applicant proposes to construct noise walls, and that building walls abutting I-270 be constructed without windows using materials and construction techniques that will maintain interior noise levels at or below 45 dBA Ldn. With the addition of the noise walls, building materials, and the proposed construction techniques, the noise analysis indicates that the proposed development will be in compliance with the noise guidelines. Neither the noise guidelines, the master plan, nor any other applicable law or regulation authorizes – much less requires – the Board to consider the extent to which removing trees on the subject property will reduce the noise buffer for surrounding properties from I-270 traffic. Moreover, although residents of the nearby apartment tower expressed concern about the noise impact of the tree removal associated with this development, the bulk of the evidence presented to the Board on this issue suggested that constructing townhomes and noise walls on the subject property is likely to marginally reduce the noise at neighboring buildings, and in any case will not materially increase noise to any neighbor.



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

#### Master-Planned Roadways and Bikeways

In accordance with the 1992 *North Bethesda/Garrett Park Master Plan* and the 2005 *Countywide Bikeways Functional Master Plan*, the master-planned designated roadways and bikeways are as follows:

1. Dwight D. Eisenhower Highway (I-270) East Spur is designated as a 6-lane divided freeway, F-1a, with a recommended 300-foot-wide right-of-way.
2. Grosvenor Lane is designated as a two-lane primary residential street, P-5, with a recommended 70-foot-wide right-of-way and a Class 3 bikeway. The Countywide Bikeways Functional Master Plan recommends a signed shared roadway, SR-36 for Grosvenor Lane.

Grosvenor Place is a private road with a 36-foot wide road and four-foot wide sidewalk with green panel on the east side; it is not a Master Plan designated street.

In accordance with the Montgomery County Council Resolution No. 17-952 for the *Countywide Transit Corridors Functional Master Plan* adopted in November 2013, the Montgomery County Department of Transportation (MCDOT) no longer proposes that the North Bethesda Transitway run along the east side of the I-270 East Spur. The "Rapid Transit ROW (L. 3480 F.539)" plat that "Grant(s) of Right of Way" dated 1981, expired because construction had not commenced in 15 years (by 1996).

#### Transportation Demand Management

The site is located within the North Bethesda Transportation Management District (TMD), and MCDOT initially requested a TMAG in their letter dated May 12, 2015, (comment No. 4). However, upon further review of the project information, both MCDOT and M-NCPPC concur that the Applicant is not required to enter into a Traffic Mitigation Agreement. This is because non-auto driver mode share goals pertain to traffic generated by multi-unit residential, not single-family dwelling units such as those proposed for the Grosvenor Place project.

#### Pedestrian and Bicycle Facilities

The Applicant proposes to construct a five-foot wide sidewalk with a green panel and handicapped ramps along the Grosvenor Place frontage of the development. Lead-in sidewalks from Grosvenor Place are provided to the front of each group of townhouses. The Applicant must provide two inverted-U bike racks to store four bicycles located at the common open space.



#### Public Transit Service

Transit service is available to the Site. Ride On route 6 operates along Grosvenor Place with 30-minute headways between the Montgomery Mall Transit Center and the Grosvenor Metrorail Station on weekdays only. Ride On route 46 and Metrobus route J5 operate along Rockville Pike; the bus stop is. Ride On route 46 operates with 30-minute headways between the Medical Center Metrorail Station and the Shady Grove Metrorail Station on weekdays and weekends; and Metrobus route J5 operates with 30-minute headways between the Silver Spring Metrorail Station and the Twinbrook Metrorail Station on weekday peak hours only. Transit riders can walk to the bus stops at the Grosvenor Lane/Rockville Pike intersection, approximately 1,100 feet away, via the existing sidewalks on the opposite side of Grosvenor Place and along Grosvenor Lane.

#### Traffic Signal Warrant at the Intersection of Grosvenor Lane and Grosvenor Place

MCDOT has recommended in its letter dated May 12, 2015, comment No. 6, that the Applicant should conduct a traffic signal warrant study at the intersection of Grosvenor Place and Grosvenor Lane. Staff does not support this recommendation for the following reasons:

1. The relatively small site-generated traffic (only 2.6% of the total existing vehicles per the weekday peak-hour through the intersection) will not negatively impact, or exacerbate, any existing operational conditions;
2. Another traffic signal exists approximately 530 feet to the east at the Grosvenor Lane intersection with Rockville Pike, which controls the traffic flow on Grosvenor Lane to provide adequate gaps to allow traffic from Grosvenor Place to access Grosvenor Lane;
3. The topography at this intersection is flat with good sight distance; and
4. The commuter traffic uses Grosvenor Lane as a connector between Rockville Pike and Old Georgetown Road (MD 187). This through traffic on Grosvenor Lane occurs during the weekday peak periods and may trigger the traffic signal warrants for only the 1-hour and 4-hour traffic volumes, but is not likely not trigger the 8-hour traffic volumes--interruption of continuous traffic, and delay.

#### Local Area Transportation Review (LATR)

The proposed 46 townhouses will generate 22 peak-hour trips during the weekday morning peak period (6:30 to 9:30 a.m.) and 38 peak-hour trips during the evening peak period (4:00 to 7:00 p.m.) The Applicant submitted a traffic study and supplemental analysis, which shows that the proposed project meets the LATR test since the Critical



Lane Volume (CLV) values at the six intersections are less than the 1,800-CLV standard for the Grosvenor Metro Station Policy Area.

Transportation Policy Area Review (TPAR)

A payment of the transportation impact tax is not applicable because the proposed project is located in the Grosvenor Metro Station Policy Area.

Other Public Facilities

Other public facilities and services are available and will be adequate to serve the proposed Project. The application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicular access. Public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy currently in effect. Electrical and telecommunications services are also available to serve the Property. The Property is within the Walter Johnson High School cluster, which is subject to a School Facilities Payment at the high school level. Therefore, the proposed development is subject to a school facilities payment related to the Subdivision Staging Policy.

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

The Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The size, width, shape, and orientation of the approved lots allow the development to meet the Master Plan goals to provide a more urban and walkable grid network of sidewalks, streets, and blocks. The lots are designed in such a way that they meet all applicable sections of the Subdivision Regulations, including access, frontage, dedication for public uses, adequacy of public facilities and conformance to Master Plan recommendations. The lot size, width, shape and orientation are appropriate for the location of the subdivision.

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

Staff approved a Natural Resources Inventory/Forest Stand Delineation (No. 420140380) on November 25, 2013. The site is almost entirely forested, and contains approximately 200 linear feet of stream--a tributary of Rock Creek, which is a Use Class I stream. The southern portion of the property includes a large stormwater drainage swale that drains the adjacent portion of I-270. There is a high point near the middle of the property with drainage flowing primarily north and south from this point. The site includes 0.78 acres of 100-year floodplain, and 1.19 acres of environmental buffers (stream buffer plus 100-year floodplain). There are no known occurrences or habitats of rare, threatened, or endangered species on the property.



#### Environmental Guidelines

The proposed development respects the environmental buffers. There are minor encroachments for the connection of utilities and to extend sidewalks along Grosvenor Place. The *Environmental Guidelines* state that "No buildings, structures, impervious surfaces, or activities requiring clearing and grading will be permitted in stream buffers, except for infrastructure uses, bikeways, and trails found to be necessary, unavoidable, and minimized by the Park and Planning Department environmental staff working closely with the utility or lead agency" (*Environmental Guidelines*, Section V.A.1.b). Staff finds that the minimal encroachments are for infrastructure uses that meet the criteria in the *Guidelines*. The project as proposed is therefore in compliance with the *Environmental Guidelines*.

#### Preliminary Forest Conservation Plan

The Applicant has submitted a Preliminary Forest Conservation Plan and a Final Forest Conservation Plan concurrently, to accompany the Preliminary Plan and Site Plan submissions, respectively. A Preliminary Forest Conservation Plan establishes the buildable area and any Forest Conservation Easements needed to protect areas of planted and retained forest, and provides an initial assessment of Forest Conservation mitigation requirements. A variance, when needed, accompanies the Preliminary Forest Conservation Plan. For purposes of the Forest Conservation Plan, the Net Tract Area of the site is 4.10 acres, of which 3.50 acres are forested. The plan proposes clearing 1.95 acres of forest, with 1.55 acres of forest retained, which will be placed in Category I Forest Conservation Easements on the northern and southern portions of the property. The requirements of Chapter 22A permit clearing of up to 2.05 acres without incurring forest mitigation planting. The law also requires preserving high priority forest to the greatest extent possible. High priority forest includes forest within the environmental buffers. Of the 0.95 acres of forest in high priority preservation areas, this plan retains 0.89 acres, with 0.06 acres disturbed for infrastructure uses. This application is subject to 22A-12(f) of the County code which requires any site developed as a cluster or other optional method of development in a one-family residential zone to include a minimum amount of forest on site as part of meeting the total forest conservation requirement. This application does meet the requirements of 22A-12(f) on-site.

#### Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Code 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. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater, diameter at breast height (DBH); are part of a historic site or designated with a historic structure; are designated as national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion



tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The Applicant submitted a variance request on April 8, 2015 to impact 6 trees that are considered high priority for retention under Section 22A-12(b) (3) of the County Code. The variance seeks permission to remove three variance trees, and to impact the Critical Root Zone (CRZ) of three additional variance trees. The amount of critical root zone impact for each tree was included in the Applicant's variance request.

The proposed development is in accordance with both the intent and recommendations of the Sector Plan and the R-30 zoning, both of which indicate that this property is appropriate for townhouse development. The site is constrained by its narrow configuration; its topography, which includes some significant slopes; the stream valley to the north; and the drainage area to the south. This leaves a very restricted building envelope for development. The variance trees being removed are located in or very near the only developable area on the site. Denying the variance request would impinge upon the Applicant's ability to develop the site as envisioned by the Sector Plan and zoning recommendations. For these reasons, the Planning Board agrees that the Applicant has a sufficient unwarranted hardship to consider a variance request.

Section 22A-21 of the County Code 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 made the following determinations and findings based on the required findings that granting of the requested variance:

1. Will not confer on the applicant a special privilege that would be denied to other applicants.

As noted above, the proposed design responds to the multiple site constraints and is consistent with both the zoning and Sector Plan recommendations. It is the Planning Board's opinion that granting the variance will not confer a special privilege to the Applicant.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The Planning Board concurs that the requested variance is based on the constraints of the site and the intensity of the proposed use, rather than on conditions or circumstances which are the result of actions by the Applicant.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*



The Planning Board concurs that the requested variance is a result of the proposed site design and constraints on the subject property and not as a result of land or building use on a neighboring property.

1. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The variance trees removed will be mitigated with the planting of new canopy trees to replace the lost water quality benefit functions of the trees being removed. These trees will be planted in the stream buffer. The variance trees being preserved will continue to provide water quality benefits as before. In addition, the Montgomery County Department of Permitting Services (MCDPS) has approved a stormwater management concept, dated May 29, 2015. Therefore, the Planning Board concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.

#### *Mitigation for Trees Subject to the Variance Provisions*

Removal of the three variance trees will result in the loss of 112 caliper inches of mature trees. Planning Department policy requires replacement of variance trees at a rate of 1" replaced for every 4" removed, using replacement trees of no less than 3" caliper, to replace lost environmental functions performed by the trees removed. Based on this formula, the Applicant is required to plant 28 caliper inches of variance mitigation trees. One of the trees is within the I-270 right-of-way. The amount of mitigation may be reduced from 28 to 17 inches if the Applicant demonstrates that variance trees removed are being replaced under requirements imposed by the State of Maryland (for removal of trees within the I-270 right-of-way).

#### *County Arborist's Recommendation on the Variance*

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. Staff forwarded the request to the County Arborist on May 7, 2015. On May 18, 2015, the County Arborist issued her recommendations on the variance request and recommended the variance be approved with mitigation.

#### *Variance Recommendation*

The Planning Board recommends that the variance be granted.

#### Conclusion

The Planning Board finds that the proposed Preliminary Forest Conservation Plan meets the requirements of Chapter 22A Forest Conservation Law. Therefore the Planning Board approves the Preliminary Forest Conservation Plan and the associated variance, with the conditions cited at the beginning of this report.



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

The MCDPS Stormwater Management Section issued a letter accepting the stormwater management concept for the Grosvenor Place site on May 29, 2015. The stormwater management concept proposes to meet required stormwater management goals via Environmentally Sensitive Design through the use of micro-bioretenion and micro-bioretenion planter boxes.

6. *Subdivision Regulations Waiver, 50-38*

The Application is a resubdivision of a part of a previously platted lot. Resubdivision of residential lots are subject to review criteria specified in Section 50-29(b)(2) of the Subdivision Regulations, which requires the comparison of new lots with existing lots in a delineated neighborhood to ensure that the new lots are of the same character as the existing lots in the neighborhood with respect to street frontage, alignment, size, shape, width, area, and suitability for residential use. The Site is to be developed under the optional method development standards of the R-30 zone for single-family attached townhouses, but the surrounding neighborhood has been developed as a townhouse condominium lot, multi-family high-rise, and garden apartment lots.

Because of these differences between the unit and lot types, a meaningful comparison between the new lots and the existing lots in the neighborhood cannot be made. Therefore, the Applicant has requested a waiver of the resubdivision analysis required by Section 50-29(b)(2). The Planning Board has the authority to grant such a waiver pursuant to Section 50-38(a)(1) of the Subdivision Regulations, provided that it can make certain findings:

*"The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest."*

The fact that the required analysis cannot be made presents a practical difficulty for the Applicant. Granting a waiver of the requirements of Section 50-29(b)(2) is the minimum waiver necessary to provide relief from the requirements. The waiver is not inconsistent with the purposes and objectives of the General Plan (as amended by the applicable master Plan) and is not adverse to the public interest because the proposal will be developed in accordance with the Zoning Ordinance (townhouse development is



permitted in the R-30 Zone), and the proposed development is in Substantial Conformance with the Master Plan. Therefore, the Planning Board, grants a waiver to the requirements of Section 50-29(b)(2).

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 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 14 2015 (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 Presley, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor of the motion, at its regular meeting held on Thursday, June 25, 2015, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board