



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

MCPB No. 17-050
Preliminary Plan No. 120170070
8912 Liberty Lane
Date of Hearing: June 29, 2017

JUL 07 2017

RESOLUTION

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

WHEREAS, on September 28, 2016, David L. Hight Trust ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create two (2) lots on 1.16 acres of land in the R-90 zone, located 8912 Liberty Lane ("Subject Property"), in the Potomac Policy Area and 2002 Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, Subdivision Regulation 16-01 adopted by the Montgomery County Council on November 15, 2016 as Ordinance No. 18-19 replaced Chapter 50, Subdivision of Land in its entirety, effective February 13, 2017 ("Subdivision Regulations"); and

WHEREAS, Ordinance 18-19 provided that any preliminary plan application filed and certified as complete before the effective date of the Subdivision Regulations may, at the applicant's option, be reviewed under the Subdivision Regulations in effect when the application was submitted; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120170070, 8912 Liberty Lane ("Preliminary Plan" or "Application"); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on September 28, 2016; 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 9, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency:

WHEREAS, on June 29, 2017, 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. 120170070 to create two (2) lots on the Subject Property, subject to the following conditions:¹

1. This Application is limited to two (2) lots for two (2) single family detached homes.
2. The Applicant must comply with the conditions of approval for the Preliminary Conservation Plan No. 120170070, approved as part of this Preliminary Plan:
 - a. The Applicant must submit for review and approval a Final Forest Conservation Plan ("FFCP") in accordance with Section 22A-11(b)(2)(A) of the Forest Conservation Law.
 - b. The Applicant must obtain M-NCPPC approval of the FFCP prior to the issuance of the Sediment and Erosion Control Permit or approval of a record plant, whichever is first.
 - c. The submitted FFCP must be consistent with the approved PFCP.
 - d. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC forest conservation inspector.
 - e. The limits of disturbance (LOD) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved FFCP.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated May 5, 2017, 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 MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

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.

4. 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 May 9, 2017, 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.
5. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
6. Prior to recordation of the plat(s), the Applicant must satisfy MCDOT requirements to ensure the construction of a five (5) foot wide sidewalk along the Subject Property frontage along Liberty Lane, unless construction is waived by MCDPS.
7. Prior to the recording of a record plat, the existing house on the Subject Property must be razed.
8. The Planning Board accepts the recommendations of the MCDPS – Water Resources Section in its Stormwater Management Concept letter dated April 20, 2017, 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.
9. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
10. 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 permits. 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.”

11. Record plat must show all necessary easements.
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 Preliminary Plan substantially conforms to the Master Plan.*

The Application is in substantial conformance with the objectives and recommendations of the *2002 Potomac Subregion Master Plan*.

The Subject Property is located in the "Potomac" community area of the Master Plan. The Master Plan does not specifically address the Subject Property. However, the Master Plan recognizes this part of the Subregion as more developed than the other three community areas identified in the Master Plan (Page 41). Because residential development is dispersed throughout the area, the Master Plan "recommends infill development of remaining vacant properties with residential development essentially similar to what is now there, unless specifically stated otherwise in this Plan." The Master Plan also reconfirms the R-90 zoning of the Subject Property, and this Application is in compliance with this zone.

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

Adequate Public Facilities

The transportation Adequate Public Facilities (APF) test is satisfied under the 2012-2016 Subdivision Staging Policy since the application was submitted prior to January 1, 2017. The Subject Property is located in the Potomac Policy Area, which is exempt from the APF's Transportation Policy Area Review (TPAR) test for roadways, but not the transit test.

The Potomac Subregion Master Plan recommends a total of 60 feet of right-of-way on Liberty Lane. Plat No. 1595 granted 60 feet of right-of-way for the full width of Liberty Lane. Therefore, no additional right-of-way dedication is required.

Local Area Transportation Review

A traffic study is not required to satisfy the APF's Local Area Transportation Review (LATR) test because one new single-family detached unit (one unit exists already) does not generate 30 or more peak-hour trips within the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods.

Transportation Policy Area Review

The Subject Property is located within the Potomac Policy Area for the Transportation Policy Area Review ("TPAR") test and is subject to the 2012-2016 Subdivision Staging Policy. This Application would be exempt from TPAR because it generates three or fewer weekday peak hour trips. As of March 1, 2017, the MCDPS stopped collecting TPAR payments. Instead, MCDPS now collects impact fees for all building permits, as adopted by the County Council under the current Subdivision Staging Policy. Because the Applicant will receive a building permit for these two lots after March 1st, 2017, the Applicant will pay the impact fees based on the Subdivision Staging Policy currently in effect rather than the Subdivision Staging Policy in effect at the time of Application submission.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lots. The Subject Property is in the W-1 and S-1 water and sewer service categories, respectively, and will utilize public water and sewer. The Application was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Access Plan was approved on May 9, 2017. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy in effect at that time that the Application was submitted.

The Application is located in the Winston Churchill High School cluster, which is identified as inadequate at the High school level, and which would have been subject to a School Facilities Payment under the 2012-2016 Subdivision Staging Policy. However, as mentioned above in the transportation section, as of March 1, 2017 MCDPS stopped collecting School Facilities Payments and instead collects impacts fees for school facilities based on the current Subdivision Staging Policy for all building permits. The Applicant will pay the fees in place under the current Subdivision Staging Policy at the time of building permit application. As such, no condition for a School Facilities Payment is included in this Staff Report.

- 3. The size, width, shape, and orientation of the approved lots are 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.*

The Preliminary Plan meets all applicable sections of the Subdivision Regulations including the resubdivision analysis under Section 50-29(b)(2). As detailed in the Staff Report, the Subject Property falls within the range as to street frontage, alignment, size, shape, width, area and suitability for residential use as compared to other lots in the delineated neighborhood, and therefore the new lots are of the same character as the existing lots in the neighborhood. The lot sizes, widths, shapes and orientations are appropriate for the location of the subdivision, taking into account the recommendation of appropriate infill development of the Master Plan, the existing lot shape, and for the building type (single family homes) contemplated for the Subject Property.

The lots were reviewed for compliance with the dimensional requirements for the R-90 zone as specified in the Zoning Ordinance. The lots meet all the dimensional requirements for area and frontage. The lots can accommodate a building which can reasonably meet the width and setback requirements in that zone.

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 complies with the requirements of the Forest Conservation Law.

A Preliminary Forest Conservation Plan ("PFCP") was submitted for review as part of this Application. Based on the total tract area of this parcel and the Land Use Category on the Forest Conservation Worksheet, development of this site results in a forest planting requirement of 0.60 acres. The Applicant will meet this requirement by either a Forest Conservation Fee-in-Lieu payment or purchasing credits in an approved off-site forest bank. The exact method of meeting the PFCP requirement will be determined at the time of Final Forest Conservation Plan review.

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 six 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.*

Granting the variance does not confer a special privilege on the Applicant as impacting four trees and the removal of the two trees is due to the location of the trees and necessary site design requirements. The project site is constrained by the existing topography, the necessary grading to install a gravity sewer line and the requirements to install storm water management systems. These necessary site design requirements would require that any application to develop the Subject Property consistent with the Master Plan recommendations impact the Protected Trees.

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

The variance is based upon the existing site conditions and necessary design requirements of this application.

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 variance is a result of the existing conditions and not as 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.*

The variance does not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being removed or impacted are not located within a stream buffer, wetland or special protection area. Since the two trees being removed are within the on-site forest stand, their removal has already been mitigated through their replacement as conditioned in the FFCP thereby providing appropriate substitution for the value they provide

in water quality protection. The Protected Trees that are impacted but not removed will continue to provide the same water quality protection. Therefore, Staff concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is not required. There are two trees proposed to be removed and four trees impacted in this variance request. M-NCPPC does not require mitigation for specimen trees that are removed from within an area of recognized forest since the forest conservation worksheet calculations will dictate the amount of remediation for their removal. Additionally, M-NCPPC does not require compensation for trees that are impacted, but not removed. Since the two trees being removed are within the on-site forest stand, no mitigation for their removal is required in this case.

5. *All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on April 20, 2017. The Application will meet stormwater management goals through micro bioretention and grass swales.

6. *The approved 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 in the Staff Report.*

In performing the analysis, the Planning Board applied seven resubdivision criteria to the resubdivision neighborhood ("Neighborhood") in Section 50-29(b)(2) of the Subdivision Regulations. The results of this analysis as detailed in the Staff Report, indicate that the Subject Property falls within the range as to street frontage, alignment, size, shape, width, area and suitability for residential use as compared to other lots in the delineated neighborhood. The proposed lots are of the same character with respect to the seven resubdivision criteria as other lots within the Neighborhood. Therefore, the proposed resubdivision is of the same character with existing lots and complies with the criteria of Section 50-29(b)(2).

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 50-35(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 07 2017~~ (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 Fani-González, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, June 29, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board