



MCPB No. 17-007
Preliminary Plan No. 120160300
Laurel Hill
Date of Hearing: February 16, 2017

MAR 10 2017

RESOLUTION

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

WHEREAS, on February 16, 2017, Bill Hartwig (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create (3) three lots on 1.9 acres of land in the R-200 zone, located 9220 Seven Locks Road (“Subject Property”), in the Potomac Policy Area and 2002 Potomac Subregion Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120160300, Laurel Hill (“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 February 3, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on February 16, 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, on February 16, 2017, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, with a vote of 4-0; Commissioners Anderson, Dreyfuss, Fani-Gonzalez, and Wells-Harley voting in favor, and Commissioner Cichy absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120160300 to create (3) three 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:

1. This Application is limited to three (3) lots for three (3) single family detached homes.
 2. The Applicant must comply with the conditions of approval for the Preliminary and Final Forest Conservation Plan No. 120160300, approved as part of this Preliminary Plan:
 - a. At the direction of the M-NCPPC forest conservation inspector, mitigation must be provided for the removal of six variance trees. Mitigation must be provided in the form of planting native canopy trees totaling 57 caliper-inches, with a minimum planting stock size of three caliper inches. Larger planting stock may be used as long as the planting totals at least 57 caliper-inches of tree planting. The trees must be planted onsite, outside of any rights-of-way, or utility easements, including stormwater management easements. The planting locations of these trees is subject to the approval of the M-NCPPC forest conservation inspector.
 - b. Prior to demolition or any land disturbing activities occurring on the Property, the Applicant must receive approval from the M-NCPPC Office of the General Counsel of a Certificate of Compliance for an off-site forest mitigation bank for an equivalent of 0.32 acres or as determined by the Certified Final Forest Conservation Plan.
 - c. The limits of disturbance (LOD) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
 - d. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the approved Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
 - e. Prior to submittal of the Certified Preliminary Plan, the Applicant must revise the Final Forest Conservation Plan to provide additional evergreen tree screening on the western property line in addition to the trees provided as mitigation as part of the approved tree variance. These trees must be planted as specified on the Final Forest Conservation Plan under the direction of the M-NCPPC forest conservation inspector.
 3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated September 15,
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2016, 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.

4. The existing house on the Subject Property must be razed prior to the recording of a record plat.
5. The Applicant must construct a five (5) foot wide sidewalk along the property frontage.
6. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
7. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
8. 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 October 17, 2016, and hereby incorporates 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 – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. The Applicant must construct the shared driveway in conformance with the horizontal cross-section of the DFRS Modified Residential Driveway Guideline utilizing the structural standards of a tertiary street.
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, 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 eighty-five (85) months from the date of mailing of the Planning Board resolution.
13. The Subject Property is within the Winston Churchill School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the single-family detached 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, and any amendments to this chapter.

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 2002 Potomac Subregion Master Plan recognizes the largely developed nature of the area and recommends, "infill development of the remaining vacant properties with residential development essentially similar to what is now there." The specific land use recommendations for this part of the Master Plan area focus on properties that were undeveloped at the time the Master Plan was prepared and on the planning area's commercial centers.

This Application creates three lots from an existing single recorded lot and a portion of a previously platted lot. The resulting lots will be similarly configured to those in the existing neighborhood on the west side of Seven Locks Road. This arrangement meets the resubdivision criteria and ensures that this infill development maintains the neighborhood's existing character.

The Application is consistent with the Master Plan's recommendations for infill development in this part of Potomac.

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

Roads and Transportation Facilities

The transportation Adequate Public Facilities (APF) test is satisfied under the current 2012-2016 Subdivision Staging Policy. The Subject Property is located in the Rural West Policy Area which is exempt from the APF's Transportation Policy Area Review (TPAR) test; thus, the Application does not require a transportation/development impact tax payment.

A traffic study is not required to satisfy the APF's Local Area Transportation Review (LATR) test because the two new single-family detached units do 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.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lots. The Subject Property has W-3 and S-3 water and sewer service categories, respectively, and will utilize public water and sewer.

The Application was reviewed by the Department of Permitting Services' Fire Department Access and Water Supply office, and a Fire Access Plan was approved on August 8, 2016. 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 Resolution currently in effect. The Application is in the Winston Churchill School cluster, which is identified as inadequate at the high school level and is subject to a School Facilities Payment under the 2012-2016 Subdivision Staging Policy.

- 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. The lot sizes, widths, shapes and orientations are appropriate for the location of the subdivision and building type because the lots maintain the rear yard to rear yard orientation with other existing lots, with the exception of one surrounding lot which is a rear yard to side yard relationship. Furthermore, the pipestem lot shapes are appropriate because they harmonize with the four other pipestem lots and one lot without frontage in the Neighborhood.

The lots were reviewed for compliance with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area and frontage and can accommodate a building which can reasonably meet the width and setbacks 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

As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

As required by the County Forest Conservation Law (Chapter 22A of the County Code), a Preliminary and Final Forest Conservation Plan (FCP) was submitted with the Preliminary Plan. The net tract area for forest conservation is 2.12 acres, which includes the 1.90-acre Subject Property and 0.22 acres of offsite disturbance for the construction of one driveway apron, utility connections, a sewer line extension, and sidewalk along a portion of Seven Locks Road where the existing driveway apron is being removed. There is no forest on the Subject Property and the resulting afforestation requirement of 0.32 acres will be satisfied at an offsite location.

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 twelve (12) 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 number and location of the Protected Trees, along with the shape of the Subject Property and development requirements create an unwarranted hardship in this case. If the variance were not considered, the development anticipated on the Subject Property could not occur.

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 will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to the reasonable development of the Subject Property. The Protected Trees are located in the developable area of the Subject Property and adjacent to existing structures proposed for removal. Any residential development considered for the Subject Property would be faced with the same considerations of locating the development on a Property with relatively narrow frontage along Seven Locks Road. Granting a variance to allow land disturbance within the developable portion of the Subject Property and providing utility and sewer connections for the homes is not unique to this Applicant. Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

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

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing conditions on the Subject Property, including the location of the Protected Trees within the developable area of the Subject Property and their adjacency to existing utilities and a sewer manhole.

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 need for a variance is a result of the existing conditions and the design and layout of 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.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. No trees located within a stream buffer, wetland, or Special Protection Area will be impacted or removed as part of this Application. In addition, the Montgomery

County Department of Permitting Services (MCDPS) has found the stormwater management concept for the Application to be acceptable as stated in a letter dated October 17, 2016. The stormwater management concept incorporates Environmental Site Design (ESD) standards.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed, using trees that are a minimum of 3 caliper inches in size. No mitigation is required for Protected Trees impacted but retained.

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.*

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on October 17, 2016. The Application will meet stormwater management goals for each new lot via drywells, grass swales, and bio-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.*

Frontage: The approved lots are similar to existing lots in the Neighborhood with respect to lot frontage. The lots have frontages of 27.5 feet, 27.5 feet, and 25.0 feet for Lots A, B, and C, respectively. In the Neighborhood, the range of lot frontages is between zero and 385 feet and includes seven existing pipestem lots with 25 feet of frontage.

Alignment: The approved lots are of the same character as existing lots in the Neighborhood with respect to alignment. The alignment of the lots is perpendicular to the street. Lots in the Neighborhood are a mix of perpendicular and corner alignments.

Size: The approved lot sizes are in character with the size of existing lots in the Neighborhood. The lot sizes in this Application are 24,811 square feet, 31,181 square feet, and 26,629 square feet for Lots A, B, and C, respectively. The range of lot sizes in the Neighborhood is between 20,557 square feet and 51,963 square feet.

Shape: The shape of the approved lots are in character with shapes of the existing lots in the Neighborhood. The three lots are pipestem shaped. The Neighborhood contains mostly rectangular lot shapes with seven pipestem shaped lots and three irregular shaped lots.

Width: The approved lots are similar in character to existing lots in the Neighborhood with respect to width. The width at the front building line of all lots is 100 feet. The range of lot widths within the Neighborhood is between 100 feet and 180 feet.

Area: The approved lots are of the same character as existing lots in the Neighborhood with respect to buildable area. The lots have a buildable area of 8,795 square feet, 12,375 square feet, and 8,436 square feet for Lot A, B, and C, respectively. The range of buildable areas within the Neighborhood is between 5,880 square feet and 41,745 square feet.

Suitability for Residential Use: The existing lots and lots identified in this Application within the identified Neighborhood are all zoned R-200 and are suitable for residential use.

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 MAR 10 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 Vice Chair Wells-Harley, seconded by Commissioner Fani-González, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Fani-González, and Cichy voting in favor at its regular meeting held on Thursday, March 2, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board