



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

MCPB No. 16-100
 Preliminary Plan No. 11991105B
 Little Falls Swim Club
 Date of Hearing: October 20, 2016

OCT 31 2016

RESOLUTION

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

WHEREAS, the Planning Board, by Resolution dated November 25, 1992, approved Preliminary Plan No. 119911050, creating one lot on 2.78 acres of land in the R-60 zone, located on Little Falls Drive, 100 ft. west of Greenway Drive ("Subject Property"), in the *Bethesda-Chevy Chase Master Plan* ("Master Plan") area; and

WHEREAS, on May 10, 2016, the Planning Department accepted, and Little Falls Swim Club ("Applicant") subsequently withdrew, an application for an Administrative Forest Conservation Plan Amendment No. 11991105A for the expansion of the pool area on the Subject Property; and

WHEREAS, on August 5, 2016, the Applicant filed an application for approval of an amendment to the previously approved preliminary plan(s) to reconfirm a Subdivision Regulation Waiver and amend the Final Forest Conservation Plan for a pool expansion within a 100-year floodplain and stream valley buffer on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 11991105B, Little Falls Swim Club ("Preliminary Plan," "Amendment," 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 October 10, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 20, 2016, 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

Approved as to
 Legal Sufficiency:

8787 Georgia Avenue, Suite 500, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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Preliminary Plan No. 11991105B to to reconfirm a Subdivision Regulation Waiver and amend the Final Forest Conservation Plan for a pool expansion within a 100-year floodplain and stream valley buffer by adding the following conditions:¹

1. The Applicant must comply with the conditions of the approved Final Forest Conservation Plan No. 11991105B.
 - a) The Applicant must submit and obtain Staff approval of a revised Final Forest Conservation Plan as described below.
 - i. Coordinate with Staff on plan revisions to include additional onsite plantings.
 - ii. Shift Category I Conservation Easement locations to 1 foot behind pool perimeter fence, except where associated with retaining walls which require additional space for maintenance and repair.
 - iii. Provide 20 caliper inches of replacement trees at the location of the temporary bridge to mitigate for the removal of existing trees (additional Forest Conservation landscape credit shall be applied to the plantings).
 - iv. Provide notes and details for a maintenance program to control invasive species.
 - v. Extend pathway along fence line of northernmost tennis court by pruning branches of the trees/shrubs to allow access. Provide plan notes to cease mowing and maintenance along the nearby portion of the stream.
 - vi. Make good faith efforts to coordinate with DOT for approval of plantings within a 5'-wide (minimum) no-mow strip along the east side of the concrete stream channel. The no-mow strip and/or plantings shall be reflected on the plans as applicable.
 - b) The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Forest Conservation Plan (and outside of PUE). The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property.
 - c) The Applicant must provide financial surety to the M-NCPPC Planning Department for the credited plantings prior to the start of any demolition, clearing, or grading on the Property.
 - d) The Applicant must submit a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel prior to the start of any demolition, clearing or grading on the Property. The maintenance and management agreement is required for all forest planting areas credited toward meeting the requirements of the Forest Conservation Plan, including the forestation of environmental buffers.

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.

toward meeting the requirements of the Forest Conservation Plan, including the forestation of environmental buffers.

- e) The Applicant must install permanent Category I Conservation Easement signage along the perimeter of the conservation easements as determined on the FFCP and/or as approved by the Planning Department Forest Conservation Inspector.
 - f) Plantings that are located outside the limits of disturbance must occur within the first planting season following the start of construction. Plantings within the areas of LOD must occur no later than the first planting season following the stabilization of the applicable disturbed areas.
 - g) The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved Final Forest Conservation Plan.
 - h) 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 Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
2. The Applicant must correct the type, location, size of the trees appearing on FFCP.
 3. The Applicant must obtain approval from DPS for a revised floodplain delineation study based on the certified FFCP, unless DPS determines that a revised floodplain delineation is not necessary.
 4. The Applicant may not expand the built area beyond the area approved in this amendment.
 5. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated October 13, 2016, and hereby incorporates them as conditions of this 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 this approval.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

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 1990 *Bethesda-Chevy Chase Master Plan* does not contain recommendations specific to the site, but includes general recommendations for land use and the environment that pertain to this project.

- perpetuate and enhance the high quality of life to which exists in the Bethesda-Chevy Planning Area;
- protect the high quality residential communities throughout the Planning Area as well as the services and environmental qualities that enhance the area;
- protect the natural resources and environmental quality of the Planning Area.

The objectives of the Plan's Environmental Resource recommendations include to protect wetlands, steep slopes, and wooded areas and to endorse corrective measures to reduce flooding and to improve stream quality, and to support the preservation of environmentally sensitive areas that are not already within parkland, including the Palisades, where this project is located. (p. 137)

In the Palisades area, "the Plan endorses protection of the environment, character, and cultural resources of the area" (p. 3) and "supports actions to correct flooding problems...[including through]...prevention of new developments within the ultimate 100-year floodplain" (P. 139)

The project substantially conforms with the Master Plan by allowing for an expansion necessary for the pool to remain a vital community resource, protecting quality of life for area residents, while at the same time also enhancing environmental protection of forested, floodplain, and stream buffer areas. The plan minimizes environmental impacts, calling for no significant impact to forest areas and no removal of variance trees. It also calls for significant environmental improvements, including numerous native plantings (along with protective easements), which will help to offset any negative impacts of expanding the built area within the floodplain.

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

Roads and Transportation Facilities

Vehicular access to the site will continue to be primarily from Little Falls Drive, with secondary access from a public alley along the southeast property line to Greenway Drive. The amendment does not increase the previously approved membership cap, and so will not increase traffic above current approvals.

Proposed vehicle and pedestrian access for the subdivision remains safe and adequate.

Other Public Facilities and Services

Other public facilities, utilities, and services are available and will be adequate to serve the project.

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.*

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 Amendment does not alter the Board's previous findings in this respect. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

A. Forest Conservation

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. The existing tree canopy credit on the previous approval has almost entire been accounted for on the current plans. Additional plantings will be added to the plans (as conditioned) that will meet or exceed the original requirements. Furthermore, portions of the credits will be formally protected in recorded Category I Conservation Easement (which were not part of the of the previous approval).

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 CRZ impact to nine 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 Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship because the access points to the site (from either the main entry bridge or the gravel drive within the alley) are encompassed by the critical root zones of trees measuring 30 inches DBH or greater and any significant redevelopment activity (or in-kind replacement) on the property would require impacts of subject trees.

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.*

As currently proposed, the impacts are avoided/minimized to the greatest extent possible and no removal of subject trees will occur. Furthermore,

the impacts are mostly associated with modification of areas that are already within the footprint of existing development. Therefore, the variance request 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 proposed upgrade of an aging facility that is needed to continue the existing use. Staff finds the variance can be granted under this condition since the impacts are avoided and minimized and that any necessary mitigation is provided.

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 current application on the subject property and is not related to 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.*

Although the Department of Permitting Services (DPS) review determined a waiver of stormwater management is needed for the project (due to site constraints) the ultimate approval of the sediment and erosion control plans will help ensure that appropriate standards are met. Additionally, the Applicant is providing supplemental SWM (rain barrels) over and above the DPS requirements to help further enhance water quality. Furthermore, Staff notes that the redevelopment activity mostly overlaps areas of existing development. The expansion of impervious areas associated with new pool platforms/decking is offset by a number of environmental enhancements associated with project. The enhancements include ending the practice of maintaining manicured turf grass adjacent to portions of the stream channel, along with numerous native planting installations (focusing on areas adjacent to stream that will be planted rather than mowed). A Category I Conservation Easement will be placed to protect the existing and expanded forest settings which will provide shade and buffering for the streams thereby enhancing water quality. Therefore, as conditioned the project will not violate State water quality standards or cause measurable degradation in water quality.

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 MCDPS Stormwater Management Section granted approval of a Stormwater Management Concept/Site Development Stormwater Management Plan for the project on January 28, 2016. Due to site constraints of high groundwater levels, there are limitations in the effectiveness of stormwater management features on the property. Therefore, DPS determined a waiver of stormwater management is needed for the project and payment of a stormwater management contribution is required as part of the waiver. Furthermore, the DPS approval requires that a Floodplain delineation study be approved by FEMA and MC DPS to prove the pool redevelopment will not have a negative effect on the Floodplain or endanger neighboring persons or property.

6. *Compliance with the Subdivision Regulations and Zoning Ordinance*

This amendment does not include any changes to the development standards approved with the original Preliminary Plan.

The original approval of Preliminary Plan 119911050 included a subdivision regulation waiver under Section 50-38(a) for relief from restrictions on development within a floodplain under Sections 50-32(a) and 50-32(h)(1). In granting this waiver, the Planning Board limited its effect "to be construed narrowly ... for any further development on site". Section 50-38(a)(1) allows that:

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 provisions from which the Applicant is requesting a continued waiver are Section 50-32(a), which restricts subdivisions within the 100-year floodplain or stream valley, and Section 50-32(h)(1), which prohibits issuance of building permits for development within environmentally sensitive areas covered under the Section 50-32.

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,

Practically the entirety of the site is located within both the stream buffer and floodplain for Little Falls Creek and its adjacent tributary. When the Planning Board originally approved the subdivision waiver, it noted the "existing and unique nature of the use, a pool and bathhouse, proposed for continued existence within the floodplain". As stated in the Applicant's Supplemental

Statement of Justification (Attachment C), the changes “are needed to make the Pool ADA-compliant and sufficient for competitive swimming standards.” Based on the Board’s 1992 stipulation that the original waiver not extend to “further development” on-site within the floodplain, the needed upgrades cannot proceed without a reconfirmation of the waiver. The Board noted the unusual circumstance with the original approval, and the practical difficulty would be the inability of the Swim Club to get a building permit in the floodplain, preventing their ability to make the necessary improvements.

and that the waiver is: 1) the minimum necessary to provide relief from the requirements;

Through its efforts to incorporate Staff’s recommendations into the Project, the Applicant has ensured that the waiver is the minimum necessary to accommodate the needed changes to the Pool while minimizing potential impacts. While the initial plans submitted for this Amendment were more impactful, proposing among other things an LOD that would affect an on-site forested area located on the southernmost portion of the Property, the Project has been scaled down substantially to avoid such encroachments. The proposed fence has been pulled back from the initial proposal at various distances to now be located directly adjacent to the existing sidewalk that circumscribes the Pool. Additionally, the configuration of the main pool and the training pool has been tightened to reduce the footprint of the swimming pools and decking associated with the Project. Together, these changes have resulted in an approximate 18 percent reduction in LOD from the initial proposal. Moreover, the Applicant is proposing additional mitigation measures to address any long-term impacts that may result from the changes being implemented, including significant buffer plantings. As a result, the relief being requested has been thoroughly evaluated to confirm that it is the minimum necessary to permit the needed changes to the site.

2) not inconsistent with the purposes and objectives of the General Plan; and

As described in the Master Plan conformance section above, by minimizing environmental impacts of the project, the amendment substantially conforms with the goals and recommendations adopted in the Master Plan. Given that that current version of the plan has no significant impact of forest areas, does not remove any variance trees and includes numerous native plantings (along with protective easements) the environmental qualities and associated character of the site will be perpetuated and enhanced. The project balances a facility expansion necessary for the pool to remain a vital community recreational resource with enhanced environmental protection of forested, floodplain, and stream buffer areas.

3) not adverse to the public interest.

The Project will not be adverse to the public interest will serve to maintain this valuable amenity which contributes to the high quality of life in the area. While the Applicant proposes to increase the footprint of the Pool, the Project will also include environmental mitigation measures, resulting in an improved site with minimal impacts over existing conditions. The expanded pool area will allow Little Falls Swim Club to remain a vital community recreational resource.

Thus while the expansion of the pool area is significant enough to be considered "further development," the enhanced environmental protections included in the proposal adequately offset the increased impacts. The application continues to meet the requirements of Section 50-38(a) for waiver of Sections 50-32(a) and 50-32(h)(1). As with the previously granted waiver, this waiver is to be narrowly construed for any further development onsite or as a precedent for other development. For any future expansion of the built area on the site the Applicant must reapply to amend this approval to assess conformance with the Board's original findings. The project continues to be in compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations.

BE IT FURTHER RESOLVED that this Preliminary Plan is bound by Special Exception S-298-B which caps membership and that this amendment does not alter that approval. Therefore no additional apf is required; and

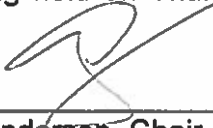
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is OCT 31 2016 (which is the date that this Resolution is mailed to all parties of record); and

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 Fani-González, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Fani-González, and Cichy voting in favor at its regular meeting held on Thursday, October 20, 2016, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board