



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

MCPB No. 17-048
Preliminary Plan No. 120120010
Ridgeview
Date of Hearing: June 15, 2017

JUN 23 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 6, 2013, Victor Loun ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 19 lots on 22.64 acres of land in the RNC zone, located on the west side of Ridge Road, approximately 250 feet north of the intersection with Beall Avenue ("Subject Property"), in the Damascus Policy Area and the 2006 Damascus Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120120010, Ridgeview ("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 2, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 15, 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. 120120010 to create 19 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:

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MNCPPC Legal Department
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- 1) Approval under this Preliminary Plan is limited to 19 lots for 19 one-family detached dwelling units.
- 2) Include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
- 3) The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan No. 120120010, approved as part of this Preliminary Plan, unless modified by the Final Forest Conservation Plan or Final Forest Conservation Plan amendments:
 - a. The Applicant must have all required site inspections performed by M-NCPPC Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 - b. The Applicant must record a Category I Conservation Easement over all areas of forest retention and environmental buffers as specified on the approved Preliminary/Final Forest Conservation Plan ("FCP"). 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, and the Liber Folio for the easement must be referenced on the record plat.
 - c. The Applicant must install permanent Category I Conservation Easement signage and fencing along the perimeter of the conservation easements as specified on the approved FCP at the timing and direction of the M-NCPPC Forest Conservation Inspector ("FCI").
 - d. The Applicant must plant the tree variance mitigation plantings in the location specified by the FCP, or at the direction of the FCI within the first planting season following the initial pre-construction meeting with the FCI.
- 4) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated April 18, 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.
- 5) The Planning Board accepts the recommendations of the Maryland State Highway Administration ("MDSHA") in its letter dated January 14, 2014, 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 MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

- 6) Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
- 7) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) Fire Code Enforcement Section in its letter dated September 16, 2016, 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.
- 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 March 17, 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 MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) The Applicant must dedicate and show on the record plat 50 feet of dedication from the centerline of Ridge Road along the Subject Property’s entire frontage.
- 10) The Applicant must dedicate a 67-foot wide right-of-way, for cross-section MC-2001.03 open-section tertiary, as modified by MCDOT, for the road designated as Ridgeview Place on the Preliminary Plan.
- 11) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the design standards imposed by all applicable road codes as modified. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, “To Be Constructed By _____” are excluded from this condition.
- 12) Prior to plat recordation, the Applicant must satisfy MCDPS requirements to ensure the construction of a five-foot wide sidewalk along the east side of the new tertiary public street, identified as Ridgeview Place.
- 13) The Applicant must coordinate with MDSHA to construct a five-foot wide sidewalk along the Subject Property frontage of Ridge Road, as shown on the Preliminary Plan.
- 14) The Record Plat must show necessary easements.

- 15) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 16) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 17) The record plat must reflect serialization and liber/folio reference for all TDRs utilized by the development.
- 18) Final number of TDRs to be determined at the time of site plan.
- 19) Prior to plat recordation, the Applicant must grant to M-NCPPC a rural open space easement over no less than 69% of the net tract area of the Subject Property as shown on the Preliminary Plan and record the easement, in a form approved by the Office of General Counsel, in the Montgomery County Land Records. Reference to the recorded easement must be noted on the record plat(s).
- 20) The record plat must have the following note: "The land contained hereon is within an approved cluster development and subdivision or resubdivision is not permitted after the property is developed."
- 21) Prior to submission of any plat, Site Plan No. 820120010 must be certified by M-NCPPC Staff.
- 22) 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.
- 23) 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 approval. 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."

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 Preliminary Plan is in substantial conformance with the 2006 Damascus Master Plan ("Master Plan").

Land Use

The Subject Property is identified in the Master Plan as part of the Stanley/Leisher-Day properties, which is located in the transition area of the land use plan. The Master Plan recommends the RNC Zone, at a density of 0.2 units per acre for standard method development projects, up to 0.4 units per acre for optional method development projects using community sewer, and a density of up to 1 unit per acre, if using TDRs. The Preliminary Plan provides for a density of approximately 0.84 units per acre, utilizing nine TDRs to achieve that density.

There are additional specific recommendations made for the Stanley/Leisher-Day property:

- *Comply with the guidance for cluster development in this chapter and the recommendations for community water and sewer service in the Implementation Chapter (list on page 25 of the Master Plan).*

- *Minimize impervious surfaces through environmentally sensitive site design techniques...*

The Preliminary Plan minimizes impervious surfaces through the use of small lots and by clustering, which minimizes the length of the access road and private driveways. In addition, the Preliminary Plan uses a design modification from MCDOT for the new street to allow sidewalks only on one side of the street, where the majority of the lots are located.

- *Provide stormwater management controls utilizing environmentally sensitive design techniques...*

The Preliminary Plan has an approved stormwater concept plan which proposes using dry wells and bio-infiltration to meet stormwater goals.

- *Design to allow views of protected open space and vistas of surrounding rural areas.*

The Application layout provides multiple opportunities to view the Rural Open Space on the property, including as you enter the site from Ridge Road, from the common open space, and around the west side of the cul-de-sac.

- *Protect sensitive environmental features, minimizing development impacts.*

The location of the street and lots keeps development out of the stream valley areas and minimizes grading and forest clearing.

- *Create a defined "edge" clearly separating the developed neighborhood from the rural open space that is preserved.*

The Application has a clear edge between the developed portion of the Subject Property and the Rural Open Space by placing most of the lots on the east side of the new street, with the exception of one cluster of lots on an upland area in the middle of the Subject Property.

- *Provide internal and external connections for easy non-vehicular access using trails, sidewalks and bicycle paths*

The Preliminary Plan provides a sidewalk as part of the frontage of Ridge Road. Off-site connections of that sidewalk are not possible at this time because of limited existing off-site right-of-way. The design of the site does not prohibit future natural surface trails from extending off-site into adjacent park or developed lands.

- *Replicate the scale, design and pattern of historic small town residential neighborhoods.*

The design of Preliminary Plan maintains a traditional neighborhood character of lining homes up that are oriented toward the street, and creating formal green gathering areas near the center of the property.

- *Locate a minimum of three-fourths of the lots in the clustered small lot portion of the development...*

All of the proposed lots are in a continuous developed area, concentrated on only the eastern 31% of the site.

- *Single-family housing should be the primary development typed used...*

The only development type permitted in this Preliminary Plan is single-family detached housing.

- *Establish and designate open space area to include in the Legacy Open Space program either through conservation easements or dedication...*

The Preliminary Plan creates approximately 15.23 acres of Rural Open Space, much of which is protected by Category I Conservation Easement, consistent with the areas not included in the water and sewerable area.

Environment

The Preliminary Plan is in substantial conformance with the various environmental recommendations found within the Master Plan. The Environmental chapter of the Master Plan places a strong emphasis on protecting existing hydrology and forest resources on properties with stream headwaters including prioritizing forest protection and development clustering on these properties. The Subject Property is in the Bennett Creek watershed which has additional recommendations for protecting upland forest resources including possible inclusion with the Legacy Open Space program and the protection of forest resources through conservation easements. In addition, there are specific recommendations for the Stanley/Leishear-Day properties to use cluster development to minimize imperviousness and protect the identified Legacy Open Space forest resource. The Preliminary Plan meets these environmental goals by proposing a cluster development that protects approximately 15.23 acres as rural open space (69% of the total tract), including 11.65 acres of forest saved and placed in a Category I Conservation Easement.

There is also a specific recommendation on page 34 of the Master Plan for a pump station to be located on the Subject Property to both serve the planned on-site cluster development, and to potentially serve an area of failing septic systems located north of the Subject Property. The Applicant performed detailed engineering studies that deemed the pump station to be both unnecessary and financial infeasible for a 19-lot subdivision. The Master Plan had anticipated that as many as 32 dwelling units could be built as part of the Stanley/Leisher-Day Properties, however environmental constraints on the Subject Property and the park acquisition of the companion Day property has greatly reduced that total to only 19. The approved dwellings, as well as any future failing septic systems, can all use individual grinder pumps and pressure sewer to pump into the existing gravity main located under Ridge Road. The Montgomery County Department of Environment concur that the pressure sewer option is acceptable to both agencies. The Preliminary Plan therefore serves all 19 lots share a new pressure sewer line that will connect to the existing sewer infrastructure under Ridge Road, and the

Planning Board finds this solution acceptable considering the physical, financial and practical hardships, and the correspondence from the County.

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

Public facilities are adequate to support and service the Preliminary Plan.

Transportation

The Preliminary Plan has access to MD 27, Ridge Road and will be providing frontage improvements to the street, consistent with the Master Plan recommendations, for a 100-foot-wide right-of-way, two travel lanes and ultimately a bikeway (opposite side of the road). The Applicant is also installing a sidewalk along Ridge Road's frontage.

The 19 lots will have access to a new tertiary residential street, generally following road section MC-2001.03, with a reduced width of right-of-way to 67 feet, including 20 feet of paving, side ditches, and sidewalk on one side. MCDOT has approved the design exception for sidewalk on one side, and the Planning Board has also found this adequate because of the limited expected traffic volumes, the concentration of lots on only one side of the roads, and the environmental benefit of limiting impervious surfaces.

The Preliminary Plan was reviewed using the 2012-2016 Subdivision Staging Policy guidelines for Local Area Transportation Review ("LATR") and Transportation Area Policy Review ("TPAR") because the Application was submitted prior to January 1, 2017. 19 new one-family detached dwelling generate fewer than 30 peak hour during the peak period trips, therefore a traffic statement satisfied the LATR. The Subject Property is in the Damascus Policy Area for TPAR, which was adequate for both roadway and transit tests, therefore no additional payments would have been required as mitigation.

Other Public Facilities

Other public facilities and services are available and will be adequate to serve the Preliminary Plan. The Subject Property was approved for the W3 and S3 categories for water and sewer by MCDEP administrative action AD 20142 on February 17, 2015. The Application has also been reviewed by the Montgomery County Fire and Rescue Services who have determined that the Application provides adequate access for fire and emergency vehicles. Other public services such as police and health services are currently operating within the standards set by the Subdivision Staging Policy currently in effect. Other telecommunications and utility companies reviewed the Preliminary Plan and found that the Application can be adequately served.

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 Application was reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The lot sizes, widths, shapes and orientations are appropriate for the location of the subdivision taking into account the zoning, environmental and cluster recommendations included in the Master Plan and the surrounding development and topography.

Over-length cul-de-sac

Section 50-26(b) of the Subdivision Regulations gives the Planning Board the ability to approve a cul-de-sac where it would improve the street layout because of a properties unusual shape, size or topography. The section however states *A cul-de-sac or a street that would end in a turnaround must not be longer than 500 feet, measured on its centerline, unless, because of property shape, size, topography, large lot size, or improved street alignment, the Board approves a greater length.* The new public street is slightly over 1,000 feet in length. The Planning Board finds that this is justifiable because the developable portion of the site is highly constrained into a long narrow shape by topography and Master Plan recommendations, and access to existing public roads is limited to the southeastern corner of the property. A cul-de-sac of this length is the only practical way to provide access to these lots without negatively impacting the open space, environmentally sensitive resources, or greatly reducing the total number of lots.

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 ("FCL"). The Forest Conservation Plan ("FCP") contains a 22.66 net tract area, including a total of 15.8 acres of existing forest. This site is zoned RNC which is assigned a Land Use Category of Medium Density Residential Development in the Land Use Table of the Environmental Guidelines. This results in an afforestation threshold of 20% and a conservation threshold of 25% for the net tract area of the project site.

This project is using the optional method of development, and under the Montgomery County FCL, Section 22A-12(f) of the FCL states there are special provisions for minimum retention, reforestation and afforestation on any site developed under a cluster or other optional method of development in a one-family residential zone. Such developments must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement. Forest retention should be maximized where possible. This site is being developed under an optional method and is located within a one-family residential zone, RNC. As such, 22A-12(f) would be applicable to this development site. The FCL requires that forest retention must equal the applicable conservation threshold for the development, which is 25% of the net tract area (5.66 acres). The Application retains 11.58 acres, which is in excess of the conservation threshold, therefore the Application complies with the FCL. All areas of retained forest will be located within a Category I Conservation Easement.

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 16 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 will not confer a special privilege on the Applicant as the removal of the 12 trees is due to Zoning requirements and Master Plan recommendations for clustering development in the same location as the Variance trees, and necessary site design requirements due to topography.

- 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 not based on conditions or circumstances which are the result of the action by the Applicant, but rather on the existing site conditions and the Master Plan recommendations. There are no feasible options to eliminate impacts to the Protected Trees based upon the limited development area in the Master Plan.

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 not related in any way to a condition on an adjacent, 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. The specimen trees being removed are not located within a stream buffer. The Application proposes mitigation for the removal of the two specimen trees located outside of the existing forest by planting five 3" caliper trees on-site.

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 one caliper inch of planting for every four caliper inches removed. 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.*

Stormwater Management requirements will be met. MCDPS Water Resources section approved a stormwater management concept dated March 17, 2016. The Preliminary Plan will meet stormwater management goals through the use of bio-swales and dry-wells.

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 JUN 23 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).

* * * * *

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 Dreyfuss, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Fani-González, and Cichy voting in favor at its regular meeting held on Thursday, June 15, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board