



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

MCPB No. 17-008
Preliminary Plan No. 120160280
Shi Property
Date of Hearing: February 16, 2017

MAR - 1 2017

RESOLUTION

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

WHEREAS, on May 10, 2016, Jianmin Shi ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create (2) two lots on 3.0 acres of land in the RE-1 zone, located at 14616 Peach Orchard Road ("Property" or "Subject Property"), in the Cloverly Policy Area and 1997 Cloverly Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120160280, Shi Property ("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, 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. 120160280 to create (2) two 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:

8787 Georgia Avenue, Suite 100, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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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 and Final Forest Conservation Plan No. 120160280, approved as part of this Preliminary Plan:
 - a. The Applicant must record a Category I conservation easement over all areas of forest retention, as specified on the approved Forest Conservation Plan. 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 clearing, or grading on the Property, and the Liber Folio for the easement must be referenced on the record plat.
 - b. The Applicant must install permanent conservation easement signage along the perimeter of the Category I Conservation Easement. Signs must be installed a maximum of 100 feet apart with additional signs installed where the easement changes direction.
 - c. The Final Sediment Control Plan must depict the limits of disturbance (LOD) identical to the LOD on the approved Forest Conservation Plan.
 - d. The Applicant must comply with all tree protection and tree save measures shown on the approved Forest Conservation Plan. Tree save measures not specified on the approved Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
3. The Applicant must comply with the conditions of approval for the Preliminary/Final Water Quality Plan including:
 - a. Prior to the release of any building permits for the Property, the Applicant must remove existing impervious surfaces on the Property as shown on the approved Impervious Surface Exhibit. Areas to be restored to a pervious, natural condition, including deconsolidation of the soils, as detailed on the approved Forest Conservation Plan.
 - b. Prior to recordation of the plat, the Applicant must enter into an agreement with the Planning Board to limit impervious surfaces to no more than 10,862 square feet for the 135,472 square foot net tract area.
 - c. Prior to release of building permits, the Applicant must demonstrate conformance to the impervious surface limit.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated May 25, 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.

5. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
6. The Planning Board accepts the recommendations of the MCDPS – Water Resources Section in its Preliminary/Final Water Quality letter dated September 16, 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.
7. The Applicant must make a Transportation Policy Area Review (“TPAR”) Mitigation Payment for Transit, equal to 25% of the applicable transportation impact tax to the Montgomery County Department of Permitting Services (“MCPDS”). 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.
8. 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 but improvements are not to create impervious surfaces in excess of 8 percent. 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.”
9. Record plat must show all necessary easements.
10. 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.

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 Subject Property is covered by the 1997 Cloverly Master Plan, which generally divides the planning area into three communities: 1) the Agricultural Wedge, in the northern part of the area north of Spencerville Road, 2) a Residential Wedge, in the central part of the area, between Briggs Chaney and Spencerville roads, and 3) the Suburban Communities, between Briggs Chaney Road and the Intercounty Connector.

The Subject Property is part of the Residential Wedge. The Master Plan's objective for Cloverly is to "maintain the mix of suburban and rural communities resulting from watershed protection and rural development patterns to reinforce the strength of residential areas and to enhance the quality of life." The Master Plan recommends that existing low-density zones be retained to reinforce existing neighborhood or rural character. It recommends cluster development for larger undeveloped properties to protect natural resources and provide additional open space.

The Application reinforces the objectives of the Residential Wedge in the Master Plan. It maintains the existing low density residential character through the use of RE-1 zoning standards on the Subject Property. The impervious surface limitations implemented by the Upper Paint Branch Special Protection Area is the mechanism through which the watershed protection objectives of the Master Plan are achieved. The Application does not exceed the 8 percent impervious limit of the SPA as demonstrated in the Application.

Based on this information, the Planning Board finds that the Application is in substantial conformance with the objectives and recommendations of the Cloverly Master Plan.

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

Roads and Transportation Facilities

This Subject Property was reviewed using the Transportation Policy Area Review (TPAR) as part of the 2012-2016 Subdivision Staging Policy. Under the TPAR test for the Cloverly Policy Area, the roadway test is adequate, but the transit test is inadequate. As a new residential development located in the Cloverly Policy Area, the Applicant must make the TPAR payment equal to 25% of the transportation/development impact tax to Montgomery County Department of Permitting Services (MCDPS) at the time of building permit. The

TPAR payment should be based on one additional single-family detached unit because the Subject Property already has one existing unit. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code and is subject to changes adopted by the County Council. With the required payment, the Application satisfies the Policy Area Review.

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.

A 5-foot sidewalk would normally be constructed along the frontage as part of the Applicant's required frontage improvements. In this case, the Montgomery County Department of Transportation (MCDOT), in their letter dated May 25, 2016, is requiring the Applicant to enter into a covenant with MCDOT to contribute to the cost of the sidewalk when a Capital Improvement Project takes place along Peach Orchard Road. Because Peach Orchard Road is classified as a primary residential street, pedestrian infrastructure cannot be waived. However, the Planning Board is supportive of MCDOT's approach because of the lack of sidewalks in this general area. A larger, more comprehensive approach to pedestrian infrastructure via the Capital Improvement Program, with the Applicant paying its fair share later, is acceptable to the Planning Board.

Additional right-of-way dedication is not required to meet the Cloverly Master Plan's recommendation of 70 feet of right-of-way for Peach Orchard Road.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lots. The Subject Property has 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 office, and a Fire Access Plan was approved on September 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 2012-2016 Subdivision Staging Policy. The Application is located in the James Hubert Blake cluster, which is not identified as a school moratorium area, and is not subject to a School Facilities Payment on 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. The approved lot sizes, widths, shapes, and orientations are appropriate for the location of the subdivision, taking into account the shape and orientation of surrounding lots and for the building type (single family homes) contemplated for the Subject Property. Because of the depth of the Subject Property and other properties along Peach Orchard Road as well as the unlikelihood of future road development to improve access to the rear of these properties, the proposal in this Application is the only realistic way to resubdivide these lots.

The lots were reviewed for compliance with the dimensional requirements for the RE-1 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.

The Application meets the requirements of Chapter 22A of the Montgomery County 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) for the Application was submitted with the Preliminary Plan. The net tract area for forest conservation is 3.07 acres, which includes the 3.0-acre site and 0.07 acres of offsite disturbance for the construction of two driveway aprons and utility connections. The Application proposes to clear approximately 0.13 acres of forest for the construction of a house on Lot 102 as shown of the Certified Preliminary Plan. The existing bamboo will be removed as part of the grading and construction for the two lots. The Application does not result in a forest planting requirement, and the 1.07 acres of retained forest will be protected in 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 (4) four 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, the existing forest located in the rear of the Subject Property, along with the existing shape of the Subject Property create an unwarranted hardship. If the variance were not considered, the development anticipated on this RE- 1 zoned property would 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, including the removal of existing impervious surfaces. The Protected Trees are located in the developable area of the Subject Property and adjacent to an existing shed and driveway to be removed. 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 Peach Orchard Road in a way that minimizes impacts to existing forest. The removal of existing impervious surfaces, resulting in impacts to Protected Trees, is necessary to comply with the development standards of the SPA and Environmental Overlay Zone. Granting a variance to allow land disturbance within the developable portion of the Subject Property and removal of existing impervious surfaces is not unique to this Applicant.

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 adjacent to existing impervious

features proposed for removal to comply with the requirements of the Upper Paint Branch Environmental Overlay Zone.

- 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 or wetland will be impacted or removed as part of this Application. One tree in poor condition is to be removed during the construction, and three trees will be impacted during the removal of existing impervious surfaces. The conditions immediately surrounding these three trees will likely be improved. In addition, MCDPS has found the stormwater management concept for the Application to be acceptable as stated in a letter dated September 16, 2016. The stormwater management concept incorporates Environmental Site Design (ESD) standards.

The Protected Tree to be removed which is subject to the variance provision is located within the existing forest to be cleared. The removal of this tree is included in the forest clearing calculations and no additional mitigation is required.

- 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 Preliminary/Final Water Quality Plan from the Montgomery County Department of Permitting Services, Water Resources Section on September 16, 2016. The Application will meet stormwater management goals for each new lot via drywells and a micro infiltration trench.

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 of similar character as existing lots in the Neighborhood with respect to lot frontage. The approved lots have frontages of 170.0 feet and 30 feet for Lots 101 and 102, respectively. In the Neighborhood, the range of lot frontages is between 25 and 564 feet.

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 are 45,688 square feet and 85,032 square feet for Lots 101 and 102, respectively. The range of lot sizes in the Neighborhood is between 37,645 square feet and 137,503 square feet.

Shape: The shapes of the approved lots are in character with shapes of the existing lots in the Neighborhood. The two lots are rectangular and pipestem. The Neighborhood contains three pipestem lots, eight irregular lots, and seventeen rectangular lots.

Width: The approved lots are similar in character to existing lots in the Neighborhood with respect to width. The width of lots are 136 feet and 153 feet for Lots 101 and 102, respectively. The range of lot widths within the Neighborhood is between 128 feet and 287 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 25,349 square feet and 50,497 square feet. The range of buildable areas within the Neighborhood is between 14,145 square feet and 100,513 square feet.

Suitability for Residential Use: The existing and new lots within the identified Neighborhood are all zoned RE-1 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 - 1 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 Fani-González, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Fani-González voting in favor, and Commissioner Cichy absent at its regular meeting held on Thursday, February 16, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board