



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

MCPB No. 17-051  
Preliminary Plan No. 120170200  
Victory Haven  
Date of Hearing: June 29, 2017

**JUL 07 2017**

**RESOLUTION**

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

WHEREAS, on January 4, 2017, Nova-Habitat (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create One Lot on 3.15 acres of land in the CRT zone, located on the south side of Main Street (MD 108), approximately 500 feet east of the intersection with Woodfield Road (“Subject Property”), in the Damascus Policy Area and the 2006 Damascus Master Plan (“Master Plan”) area; and

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

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

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120170200, Victory Haven (“Preliminary Plan” or “Application”); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on January 4, 2017; 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 16, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on June 29, 2017, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120170200 to create one lot on the Subject Property, subject to the following conditions:<sup>1</sup>

- 1) This approval is limited to one lot for up to 72 units of Independent Living for Seniors, including up to 15% MPDUs.
- 2) The Applicant must comply with the following conditions for the Preliminary Forest Conservation Plan No. 120170200, approved as part of this Preliminary Plan, including:
  - a. The Applicant must record a Category II Conservation Easement over 0.34 acres of landscape planting as specified on the approved Preliminary/Final Forest Conservation Plan. The Category II 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. Prior to the start of any demolition, clearing, or grading on the Property, the Applicant must either i) record a Certificate of Compliance for an off-site forest mitigation bank for an equivalent of 1.37 acres of forest planting, or ii) provide fee-in-lieu payment to the M-NCPPC Planning Department for 1.37 acres.
- 3) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated 03/02/2017, 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.
- 4) Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by Maryland State Highway Administration.

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<sup>1</sup> 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.

- 5) 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 05/31/2017, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) The Applicant must dedicate and show on the record plat 40 feet of dedication from the centerline of Main Street (MD 108) along the Subject Property’s entire frontage.
- 7) The Applicant must construct the frontage improvement elements for an Urban Minor Arterial Road Section Standard No. MC-2004.19, as modified and shown on the Certified Preliminary Plan, including specified pavement width, shared use path width and location, and street tree type and location, subject to MDSHA final approval. The final design and location of specific improvements may be modified by MDSHA, however at a minimum, the Applicant must install the 10-foot wide shared use path, and provide for street trees.
- 8) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated June 1, 2017, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
- 9) 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.”*

- 10) Final approval of the size and location of the Independent Living building, on-site parking, site circulation, sidewalks, and open spaces will be determined at site plan.
- 11) Prior to recordation of any plat, Site Plan No. 820170040 must be certified by M-NCPPC Staff.
- 12) Record plat must show necessary easements.
- 13) 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.
- 14) Prior to certified Preliminary Plan, the Applicant must remove the reference on the Preliminary Plan drawing to the proposed access easement over the path between the church and youth center.

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 substantially conforms with the recommendations of the 2006 Damascus Master Plan ("Master Plan"). The Master Plan establishes a vision of a small town, with a Town Center of moderate intensity uses, surrounded by agricultural and rural open areas. The Subject Property is specifically identified as the Boyer Property and is designated as a future land use of mixed-use residential emphasis, and has specific recommendations to treat the Subject Property as a gateway property suitable for senior housing. The Preliminary Plan creates a lot for up to 72 senior housing units which is conforming to the aforementioned recommendations for moderate intensity residential use, and specifically senior housing.

The Master Plan also has a series of land use recommendations for development in the Town Center, located on pages 15-22 of the Master Plan. Not all of the recommendations were relevant to the Subject Property, but the Planning Board identified several that were, including: i) enhancing the Town Center identity through appropriate transitions between rural and urban areas, ii) protecting vistas and views of rural areas and the Damascus United Methodist Church, iii) enhancing Main Street through streetscape treatments, building orientation, and parking location away from the street, iv) expanding connectivity with new

sidewalks, and v) providing a variety of housing opportunities including senior housing. The Preliminary Plan meets all of these recommendations by providing an appropriate scale of senior housing that creates new housing opportunities without creating an intensity out of character for the edge of the Town Center. The Preliminary Plan layout protects views of the Methodist Church, and locates parking to the side and rear of the structure. The Applicant is required to provide a new shared-use path across the Subject Property frontage which will include new street trees to increase connectivity and street scape identity.

Master Plan environmental recommendations for the Patuxent Watershed include protecting water quality by protecting stream headwaters, forested buffers and limiting forest fragmentation. The Subject Property does not contain any stream headwaters and the existing forest is already fragmented and of low quality, therefore the approved development does not conflict with the environmental recommendations.

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

The Preliminary Plan has adequate public facilities (“APF”) to support and service the approved use. The APF portion of the Preliminary Plan was accepted as complete by Staff in 2016, prior to the full acceptance of the Preliminary Plan Application, therefore the APF review was done under the 2012 – 2016 Subdivision Staging Policy in effect through the end of 2016.

#### Transportation Infrastructure

Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements. The Subject Property has one access for vehicles along MD 108 and two points of access for pedestrians; one located adjacent to the vehicle access, and a second pedestrian access between the Subject Property and the church property to the south. MD 108 is a Master Plan designated Arterial (A-26) roadway with 80 feet of necessary right-of-way to include two travel lanes and an on-road class II or Class III bikeway (SR-44). There is also a specific Master Plan recommendation for a shared-use path along the south side of MD 108 connecting the town center with a future Seneca Springs Local Park. The Applicant is providing the necessary dedication to meet the recommended 40 feet from centerline. Within the right-of-way the Applicant will be increasing the paving width to accommodate an 11-foot wide travel lane and a 3.5-foot wide bikeable shoulder, and installing a new 10-foot wide shared use path.

#### Local Area Transportation Review (“LATR”)

The Applicant submitted a traffic statement with the Preliminary Plan showing that 72 new units of Independent Living for seniors generates 14 AM peak hour trips in the AM peak period and 18 PM peak hour trips in the PM peak period.

Because the Application generates fewer than 30 vehicle trips during a peak hour during the peak period, a traffic statement is all that is necessary to satisfy the LATR test.

Transportation Policy Area Review

The Subject Property is located in the Damascus Policy Area, which according to the 2012-2016 Subdivision Staging Policy is adequate under the roadway test and transit test; therefore, no TPAR payment is required.

Other APF and Services

Other public facilities and services are available and adequate to serve the use on the Subject Property. The Subject Property is located in the W-1 and S-1 water and sewer categories for service and the development plans for use of public water and sewer. Other telecommunications and utility companies reviewed the Preliminary Plan and found that the development can be adequately served. The Preliminary Plan 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 in effect at the end of 2016. Because there are age restrictions on Independent Living for Seniors the Planning Board did not perform a test for school adequacy.

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 lot size, shape and orientation is appropriate for the location of the subdivision taking into account the design recommendations included in the Master Plan, and for the apartment building type proposed by the Application. The lot can accommodate placing the structure in a position that provides the needed open space, places parking to the side and rear, and maintains the transition experience envisioned along MD 108.

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. The Preliminary Plan has a net tract area of 3.76 acres for Forest Conservation purposes

when including off-site disturbances for stormwater conveyance. There is an existing 1.56 acres of forest, all of which is to be cleared, generating a 1.71-acre reforestation requirement. The Applicant will provide 0.34 acres of on-site mitigation as landscaping placed in a Category II Conservation Easement, and will obtain 1.37 acres of offsite credit either purchased from an approved forest bank or by paying the required fee-in-lieu.

#### 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 of two Protected Trees and CRZ impact to two 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 due to the relatively small size of the Subject Property, the existing conditions, and the zoning and development requirements.

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 preferred development of the Property as specified in the Master Plan. The Protected Trees are in or adjacent to the limited developable area of the Property, and a development of this size is recommended by the Master Plan. Development of this type on this Property would be an issue for any applicant, not just the current 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 requested variance is based upon existing Subject Property conditions, the location of the Protected Trees within the developable

area of the Subject Property, recommendations of the Master Plan, and the requirements of the 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, the Master Plan recommendations for the use and preferred design of the Subject Property, and it is 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.*

No Protected Trees located within a stream buffer, wetland, or Special Protection Area will be impacted or removed as part of this Application. No mitigation is required for the Variance because the two removed Protected Trees are located within the existing forest and their removal is counted in the reforestation requirements. In addition, the Montgomery County Department of Permitting Services (MCDPS) has found the stormwater management concept for the proposed project to be acceptable.

- 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 May 31, 2017. The Application will meet stormwater management goals using micro-bioretenion, including the use of enhanced filters.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 07 2017 (which is the date that this Resolution is mailed to all parties of record); and



BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, June 29, 2017, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board