



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

MCPB No. 17-092  
Preliminary Plan No. 120170180  
Hayes  
Hearing Dates: November 2, 2017 & January 11, 2018

**JAN 31 2018**

**RESOLUTION**

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

WHEREAS, on January 6, 2017, Leonard and Donna Wartofsky (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create five lots on 2.16 acres of land in the R-90 zone, located on the south side of Jones Bridge Road, 400 feet west of the Platt Ridge Drive intersection (“Subject Property”), in the Bethesda/ Chevy Chase Policy Area and 2013 Chevy Chase Lake Sector Plan (“Sector Plan”) area; and

WHEREAS, Subdivision Regulation Amendment 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. 120170180, Hayes (“Preliminary Plan” or “Application”); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on January 6, 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, originally dated October 19, 2017 and revised on December 19, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

Approved as to  
Legal Sufficiency

approved certificate of compliance demonstrating satisfaction of the 0.34-acre total afforestation requirement (or as determined by the Certified Final Forest Conservation Plans).

- c. The Applicant shall coordinate with Staff to address any necessary corrections and clarifications (such as resolving conflicting notes/figures) prior to certification of the preliminary plan of subdivision and the FFCP.
  - d. Adjust plans and field conditions as applicable so that all the credited mitigation plantings are at least 5 feet away from any structures, SWM facilities, utility lines, and/or their associated easements.
  - e. The Applicant must plant at least 35 (quantity) 3" caliper native canopy trees on the Subject Property to mitigate the loss of existing specimen trees and satisfy the Sector Plan goals regarding canopy expansion.
  - f. The tree save plan addressing impacted trees (including those on neighboring properties 6" DBH and greater) must be prepared by a MD licensed tree care expert who is also an ISA certified arborist. The tree save plans must also provide details and specifications for the demolition work beyond the LOD.
  - g. Address any numbering discrepancies for the trees appearing on the plans.
- 4) Noise Attenuation:
- a. Prior to the certification of the FFCP, the Applicant must provide a revised noise analysis which is based on field measurements of the existing noise levels occurring on the subject property. The analysis must also show the existing and 20-year projected noise contours.
  - b. Prior to issuance of a building permit for any residential dwelling unit(s) to be constructed within the projected 65 dBA Ldn noise contour, the Applicant must provide Staff with certification from an engineer specializing in acoustics that the building shell has been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn.
  - c. The Applicant must provide a signed commitment to construct the unit(s) in accord with the noise mitigation design specifications, with any changes that may affect acoustical performance approved by the engineer and Staff in advance of installation.
  - d. If the plan changes in any manner that affects the validity of the noise analysis for acoustical certifications and noise attenuation features, the Applicant must conduct a new noise analysis to reflect the revised plans, and new noise attenuation features may be required.
  - e. Before issuance of final inspection for residential units, the Applicant must certify that the noise impacted unit(s) have been constructed in accordance with the certification of the engineer that specializes in acoustical treatments.
- 5) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated May 19, 2017

WHEREAS, on November 2, 2017, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on November 2, 2017, the Planning Board voted to continue the public hearing on the Application, on motion of Commissioner Patterson, seconded by Commissioner Cichy, with a vote of 5-0; Commissioners Anderson, Cichy, Dreyfuss, Fani-Gonzalez, and Patterson voting in favor; and

WHEREAS, on January 11, 2018, the Planning Board held the continued public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on January 11, 2018, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Commissioner Patterson, with a vote of 4-0; Commissioners Anderson, Cichy, Fani-Gonzalez, and Patterson voting in favor and Commissioner Dreyfuss absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120170180 to create five lots on the Subject Property, subject to the following conditions:<sup>1</sup>

- 1) This Preliminary Plan is limited to five lots for one one-family dwelling unit on each lot.
- 2) The Applicant must 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 conditions of the Final Forest Conservation Plan (FFCP), including but not limited to:
  - a. The final scope, locations and details for the offsite planting and invasive control work must be shown on the Final Forest Conservation Plan and approved by M-NCPPC Staff prior to certification of the FFCP. The FFCP must include a copy of an agreement with the Montgomery County Department of Parks to fund and/or implement the following parkland improvements, or the Staff approved alternative:
    - i. Lynbrook Local Park: control invasive species and plant ten 3"-caliper native canopy trees, and
    - ii. North Chevy Chase Local Park: control invasive species and plant twenty-seven 3"-caliper native canopy trees
  - b. Prior to any clearing, grading, or demolition within the project area, the Applicant must record in the Land Records of Montgomery County a staff

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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.

and as amended via e-mail on November 17, 2017, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letters, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

- 6) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 7) Prior to recordation of the plat(s) the Applicant must satisfy MCDOT requirements to ensure the construction of a 5-foot wide sidewalk along the property frontage on Jones Bridge Road.
- 8) Access to the Platt Ridge Drive easement is limited to Lot E.
- 9) 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 April 6, 2017, and 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.
- 10) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Fire Code Enforcement Section in its letter dated November 21, 2017, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations, which may be amended by MCDPS – Fire Code Enforcement Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 11) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the design standards imposed by all applicable road codes.
- 12) 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. 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.
- 13) The Certified Preliminary Plan must show:
  - a. The right-of-way centerline for Jones Bridge Road with a dimension of at least 40-feet between the right-of-way centerline and proposed property line.

- 14) The record plat must show necessary easements, including the 10-foot-wide public improvement easement, as shown on the Certified Preliminary Plan.
- 15) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 16) 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.

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 Application substantially conforms to the *Chevy Chase Lake Sector Plan*. The Sector Plan recommends retention of existing R-90 zoning on the Subject Property and the Land Use and Zoning section of the Sector Plan identifies the Subject Property as suitable for one-family detached housing. The subdivision complies with the recommendations adopted in the Sector Plan in that it contains one-family detached housing consistent with the current density of the neighborhood and the current zoning designation. The subdivision will not alter the existing pattern of development or land use, which is in substantial conformance with the Sector Plan recommendation to maintain the existing residential land use.

The Sector Plan also recommends that future development in the area preserve and restore environmental features while minimizing environmental impacts. Specific recommendations include restoration of the Coquelin Run stream valley, expansion of the existing tree canopy, and promotion of sustainable site design. The Application addresses the recommendations in the following ways:

- 1) Stream/Forest Restoration

Similar to other recent projects in the Sector Plan area, the Preliminary Plan includes environmental enhancements proportional to the scope and impact of the project. In this case, two offsite areas in the local watersheds were identified in coordination with Staff.

- a. The first enhancement is located at Lynbrook Local Park (Coquelin Run Watershed), approximately 3,250 feet from the Subject Property. The Applicant will control an area of invasive species and plant approximately ten 3" caliper native canopy trees.

- b. The second enhancement will occur at North Chevy Chase Local Park, located directly across Jones Bridge Road from the Subject Property and within the same watershed as the Subject Property. The work includes the removal of invasive species (such as kudzu vines which are impacting the forest edge) and the planting of approximately twenty-seven 3" caliper native canopy trees.
- c. The location and scope of the enhancement project(s) may be revised in coordination with Staff.

2) Expand the Existing Canopy

The Subject Property has approximately 37% tree canopy coverage. Through a combination of new canopy tree plantings and retention of some existing trees on-site, the Preliminary Plan will expand the projected 20-year (per the Planning Board Approved Trees Technical Manual) tree canopy coverage to 38% of the total site. This meets the goal of expanding tree canopy in the Sector Plan area. As conditioned, the Application must comply with the Final Forest Conservation plan and will therefore satisfy the Sector Plan canopy coverage goal.

3) Sustainable Sites

The Sector Plan recommends sustainable site and building design to mitigate negative environmental impacts. In response to this recommendation, the Applicant will install pervious pavement in specific areas of the driveways and sidewalk. The pervious pavement provided within the Lot E driveway and on-site stormwater management will support the Sector Plan recommendations.

4) Reduce Direct Stormwater Discharge into Coquelin Run

After development occurs on the Subject Property consistent with this Application, stormwater runoff will be less than that occurring presently, which satisfies the recommendations of the Sector Plan.

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

Transportation

Based on the *2016-2020 Subdivision Staging Policy* transportation impact criteria, the Application generates fewer than 50 peak-hour person trips; therefore, the Application is not subject to a Local Area Transportation Review analysis. As a result of the Jones Bridge Road frontage improvements and site access, vehicular and pedestrian access for the subdivision will be safe and adequate.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the development. The Subject Property is served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, schools, and health services are operating according to the *Subdivision Staging Policy* resolution currently in effect and will be adequate to serve the Subject Property. The Subject Property is located in the Bethesda-Chevy Chase (BCC) School Cluster and the applicable elementary and middle schools that serve the Subject Property are operating within acceptable capacity limits. Electrical, telecommunications, and gas services are also available to serve the Subject Property.

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.*

This Application has been reviewed for compliance with Chapter 50 of the Montgomery County Code, the "Subdivision Regulations," in effect prior to February 13, 2017. The Application meets all applicable sections. The size, width, shape, and orientation of the lots are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the R-90 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of which have recommended approval of the plan.

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.

There is no forest on the Subject Property; however, there is an afforestation requirement of 0.34 acres. The Applicant will address the requirements by a fee-in-lieu payment or a certificate of compliance for an offsite forest conservation bank. There is no opportunity for onsite

landscape credited towards forest conservation as the onsite planting areas are designated for mitigation tree plantings to address the removal of the specimen trees subject to a variance as discussed below.

#### 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 requires the removal or CRZ impact to fourteen 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. Any new development on the Subject Property would trigger relocation of the public sidewalk along the Subject Property’s frontage along Jones Bridge Road, which would impact the root zones of Protected 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 conditioned, the impacts are avoided or minimized to the greatest extent possible while addressing the fire and rescue concerns along with stormwater management requirements. Furthermore, the Subject Property is largely interspersed with the root zones of the Protected Trees and almost any level of redevelopment activity on the Subject Property would require impacts to specimen trees. 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 variance is based on development allowed under the existing zoning and in conformance with the Sector Plan recommendations, along with the need to provide the associated infrastructure and utility connections.



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 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.*

The Department of Permitting Services (DPS) staff approved the storm water management (SWM) concept for the project on April 6, 2017. The SWM concept meets required storm water management goals using drywells, bio-swales, and non-structural practices. The Subject Property is not located within a stream valley buffer (SVB), and furthermore, the Application includes mitigation enhancements, such as pervious pavement, numerous canopy tree plantings, and a reduction in the overall stormwater runoff. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1-inch for every 4-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.*

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Department of Permitting Services (DPS) staff approved the storm water management (SWM) concept for the project on April 6, 2017. The SWM concept meets required storm water management goals using drywells, bio-swales, and non-structural practices. The Subject Property is not located within a stream valley buffer, and furthermore, the subdivision includes mitigation enhancements, such as pervious pavement, numerous canopy tree plantings, and a reduction in the overall stormwater runoff. Therefore, the Application

will not violate State water quality standards or cause measurable degradation in water quality.

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 JAN 31 2018 (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 Commissioner Patterson, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Cichy and Patterson voting in favor, and Commissioner Fani-González absent at its regular meeting held on Thursday, January 25, 2018, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board