



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

MCPB No. 18-057
Preliminary Plan No. 120150040
Offutt Estates
Date of Hearing: June 28, 2018

JUL 17 2018

RESOLUTION

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

WHEREAS, on October 20, 2014, Miry and Alexander Livnat ("Applicant") filed an application for approval of a preliminary plan of subdivision to create five lots on 0.5 acres of land in the RT-12.5 zone, located at 5421 Hillery Way, on the north side of Hillery Way, approximately 1/8 mile west of Rockville Pike, in Rockville, Maryland ("Property" or "Subject Property"), in the 2010 *White Flint 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. 120150040, Offutt Estates ("Preliminary Plan" or "Application"); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on October 20, 2014; 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 18, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency:


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WHEREAS, on June 28, 2018, 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 June 28, 2018, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Cichy, with a vote of 5-0; Commissioners Anderson, Cichy, Dreyfuss, Fani-Gonzalez, and Patterson voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120150040 to create 5 lots on the Subject Property, subject to the following conditions:¹

1. This Preliminary Plan is limited to five residential lots (four one-family semidetached (duplex) lots and one single-family detached lot), and the associated private road and HOA parcel(s).
2. The Applicant must provide a five-foot-wide sidewalk with a tree panel along Hillery Way.
3. Building permits may only be issued after staging allocation is granted under the Staging Allocation Request Regulations (COMCOR 50.35.02.01A) in the Planning Board approved White Flint Sector Plan Implementation Guidelines (2011).
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated April 16, 2018, 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 MCDOT may amend if 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 stormwater management concept letter dated April 17, 2018, 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 MCDPS – Water Resources Section may amend if the amendments do not conflict with other conditions of the Preliminary Plan approval.

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.

7. The Planning Board accepts the recommendations of the MCDPS – Fire Department Access and Water Supply Section in its letter dated April 3, 2018, 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. Prior to submission of any plat, Site Plan No. 820150140 must be certified by M-NCPPC Staff.
9. No clearing or grading of the site, or recording of plats may occur prior to Certified Site Plan approval.
10. All necessary easements must be shown on the record plat.
11. 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.
12. The Applicant must comply with the conditions of the approved Preliminary Forest Conservation Plan No. 120150040, including the variance request provisions.
13. Prior to approval of the Certified Site Plan, the Applicant must ensure consistency of all details and layout between the Preliminary Plan and the Site Plan, subject to M-NCPPC Staff review and approval.
14. 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.”
15. Prior to the final building inspection for the final residential unit, the Applicant must construct all road improvements within the right-of-way shown on the approved Preliminary Plan to the full width mandated by the master plan and/or to the design standards imposed by all applicable road codes.

16. The Applicant must provide Private Road "Private Alley," including any sidewalks, bikeways, storm drainage facilities, street trees, street lights, private utility systems and other necessary improvements as required by either the Preliminary Plan or the subsequent Site Plan within the delineated private road area (collectively, the "Private Road"), subject to the following conditions:

- a. The record plat must show the Private Road in a separate parcel.
- b. The Private Road must be subjected by reference on the plat to the Declaration of Restrictive Covenant for Private Roads recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338, and the terms and conditions as required by the Montgomery County Code with regard to private roads set forth at § 50-4.3.E et seq.
- c. Prior to issuance of building permit, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a professional engineer licensed in the State of Maryland that the Private Road has been designed and the applicable building permits will provide for construction in accordance with the paving detail and cross-section specifications required by the Montgomery County Road Code, as may be modified on this Preliminary Plan, or a subsequent Site Plan, and that the road has been designed for safe use including horizontal and vertical alignments for the intended target speed, adequate typical section(s) for vehicles/pedestrians/bicyclists, ADA compliance, drainage facilities, sight distances, points of access and parking, and all necessary requirements for emergency access, egress, and apparatus as required by the Montgomery County Fire Marshal.
- d. Prior to record plat, the Applicant must record in the Land Records of Montgomery County an access easement for the benefit of the adjacent property owners to allow vehicular access from the private alley to connect to the adjacent properties for potential future redevelopment.

17. The record plat must contain the following note:

"This preliminary plan does not preclude access between Hillary Way and Waycroft Way or the future extension of Hillery Way to connect to Waycroft Way."

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 Property is located within the 2010 *White Flint Sector Plan*. The Sector Plan's vision is to establish policies for "transforming an auto-orientated suburban

development pattern into an urban center of residences and businesses where people walk to work, shops and transit”.

The Property is identified in Block 5: Hillery Way in the NoBe (North Bethesda) District of the Sector Plan. The Sector Plan recommends the properties along Hillery Way, including the Subject Property and adjacent parcels, to be rezoned to the RT 12.5 Zone in order for the new residential uses to provide a “transition between the existing residential communities and the commercial uses along Rockville Pike.” The Application, with townhouses and a single-family dwelling, is consistent with the Sector Plan since it recommends that “townhouse development will allow a transition to the existing community.”

The Sector’s Plan’s vision, like the 2003 Ten-Year Transportation Policy Report, also “supports land use policies that promote new opportunities for living closer to work, especially near Metrorail stations.” The Property is approximately 0.7 miles from the White Flint Metro Station with bus services to the Metro station along Rockville Pike. Since the Property is located within the White Flint Metro Station Policy Area, it must adhere to the density allocation procedures established in the Planning Board approved White Flint Implementation Guidelines (2011).

The Preliminary Plan is in substantial conformance with the applicable recommendations of the Sector Plan.

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

Transportation

Sector-Planned Roadways, Bikeway, and Transitway

In accordance with the 2010 *White Flint Sector Plan*, 2005 *Countywide Bikeways Functional Master Plan*, draft *Bikeways Master Plan*, and 2013 *Countywide Transit Corridor Function Plan*, the master-planned transportation facilities are as follows:

1. Hillery Way is not listed in the 2010 *White Flint Sector Plan* but is designated in the Road Code as a tertiary residential street with a 50-foot wide right-of-way. The Applicant will construct a turnaround at the western terminus of Hillery Way.
2. Nearby Rockville Pike (MD 355) is designated in the Master Plan as a six-lane divided major highway, M-6, with a recommended 150-foot wide right-of-way which can be expanded to 162-foot wide right-of-way via future reservations.
3. The 2010 *White Flint Sector Plan* recommends a shared-use path, LB-5, along Rockville Pike. The Planning Board approved draft *Bikeways Master Plan* shows a sidepath along the west side of Rockville Pike.
4. The 2013 *Countywide Transit Corridors Functional Master Plan* recommends Bus Rapid Transit service along Corridor No. 4, MD 355 South, between the

Friendship Heights Metrorail Station and the Rockville Metrorail Station. The MD 355 South Corridor segment at Hillery Way recommends that buses operate in two dedicated Bus Rapid Transit (BRT) lanes within the master-planned right-of-way as follows:

1. Along the 150-foot-wide right-of-way from Hillery Way to Grosvenor Lane; and
2. Along the 150-foot-wide (162 via future reservations) right-of-way from Hillery Way to Edson Lane.

The 2013 *Countywide Transit Corridors Functional Master Plan* also recommends two BRT stations at the MD355 intersections of Security Lane and the Grosvenor Metrorail Station. Hillery Way is located half-way between these two proposed BRT stations. MCDOT has identified several conceptual alternatives for bus rapid transit on MD 355 and is now moving toward a recommended alternative.

The Applicant will construct a private alley with an associated easement off Hillery Way, which will provide vehicular access to the semi-detached (duplex) units, the detached house at the rear of the site, and adjoining properties.

Public Transit Service

Two Ride On bus routes operate along Rockville Pike and provide service to Hillery Way:

- Ride On Route 5 operates on half-hour headways between the Silver Spring Metrorail Station and the Twinbrook Metrorail Station on weekdays and weekends.
- Ride On Route 46 operates on half-hour headways between the NIH/Medical Center Metrorail Station and the Shady Grove Metrorail Station on weekdays and weekends.

Pedestrian Facilities

There are currently no sidewalks along Hillery Way, however, the Applicant will provide the pedestrian facilities listed below:

- Five-foot-wide sidewalk with a tree panel along Hillery Way, with the placement to be determined prior to Certified Preliminary Plan;
- Five-foot-wide sidewalk along the west side of the private alley; and
- Three-foot-wide lead-in sidewalks from the internal 5-foot-wide sidewalks and driveway to the front of the townhouses.

Transportation Adequate Public Facilities Review

For the transportation test, this Application was reviewed under the previous 2012-2016 Subdivision Staging Policy (SSP) (i.e., adopted under Montgomery County

Council Resolution No. 17-601) because the Preliminary Plan application was filed prior to January 1, 2017 (and before the current 2016-2020 SSP was adopted by the County Council in November 2016).

Local Area Transportation Review (LATR)

Under the previous 2012-2016 SSP, the LATR test analyzed peak-hour “vehicle” trips rather than “person” trips.

The Applicant is not required to submit a traffic study to satisfy the LATR test because the Property generates fewer than 30 total vehicular peak-hour trips within the weekday morning and evening peak periods under the previous standard (rather than 50 peak-hour person trips under the current standard). Therefore, a traffic study is not required, and the LATR test is satisfied.

Transportation Policy Area Review (TPAR) and Transportation Impact Tax

Under the previous 2012-2016 SSP, the Application is subject to the Transportation Policy Area Review (TPAR) mitigation payment. However, under the current 2016-2020 SSP, the building permit will be filed after March 1, 2017; thus, the Applicant will be required to pay the updated General District Transportation Impact Tax. The timing and amount of the payment will be in accordance with that in Chapter 52 of the Montgomery County Code as amended.

Schools

Schools Test

The Property is located within the service area boundaries of the Walter Johnson High School Cluster, Tilden Middle School and Garrett Park Elementary School. Based on the school cluster and individual school capacity analysis performed, using the FY2018 Annual School Test, there is adequate school capacity for the amount and type of development on the Property. The development includes one single-family detached and four single-family attached dwelling units on a site with one existing single-family detached unit. With a net of four new single-family attached units, the Property is estimated to generate zero new elementary school students, middle school students, and high school students. The full school analysis is set out in the Staff Report.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the Property. The Property will be served by public water and public sewer. The Preliminary Plan application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses and health services are operating within the standards set by the Subdivision Staging Policy resolution currently in effect and will be adequate to

serve the Property. Electrical, telecommunications, and gas services are also available to serve the Property.

3. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and the Applicant has submitted a Preliminary Forest Conservation Plan in conjunction with the Preliminary Plan and a Final Forest Conservation Plan in conjunction with the Site Plan. There is no forest onsite but the project generates a 0.15-acre afforestation requirement. The afforestation requirement will be met at an offsite Forest Mitigation Bank.

Forest Conservation Variance

Section 22A-12(b) (3) of the Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires a variance to impact trees that: measure 30 inches or greater diameter at breast height (DBH); are part of a historic site or designated with a historic structure; are designated as national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The Applicant submitted a variance request to remove seven trees and to impact, but not remove, three trees that are considered high-priority for retention under Section 22A-12 (b) (3) of the County Forest Conservation Law.

Unwarranted Hardship for Variance Tree Impacts

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state will result in unwarranted hardship. The requested variance is necessary due to the need to demolish the existing house, construct a public road, and the infill nature of this development. The site is constrained by existing development on all sides, which limits flexibility in

grading. Leaving the requested trees in an undisturbed state would result in an unwarranted hardship in this case.

Based on the review of the variance request and the proposed Preliminary Forest Conservation Plan, 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 this variance will not confer a special privilege on the Applicant as disturbance of the specified trees is a result of the need to demolish the existing single-family home and build housing at the density recommended in the master plan. Disturbance has been minimized to retain trees where possible. The size and configuration of the site preclude alternative site designs that would allow the variance trees to remain undisturbed.

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 not based on conditions or circumstances that are the result of actions by the Applicant. The variance is necessary due to the constraints of size, the requirements to demolish existing facilities, and the location of the existing trees on and around the site.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the location of trees and the proposed development and not a result of land or building use on a neighboring property. The impact to the trees is the minimum disturbance necessary to demolish the existing single-family home and build five homes, with associated infrastructure.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Applicant will plant twelve, 3" caliper and six, 5" caliper native shade trees to replace the form and function of the variance trees proposed for removal. In addition, the site will be developed in accordance with the Maryland Department of the Environment criteria for stormwater management.

Mitigation for Trees Subject to the Variance Provisions

The Applicant is requesting a variance to remove nine trees. The seven trees will be mitigated at a rate of 1" caliper per 4" DBH removed, using a minimum 3" caliper

native shade tree. The Applicant will plant twelve, 3-inch caliper trees and six, 5-inch caliper trees, which are to be shown on the Final Forest Conservation Plan.

4. *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 Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS - Water Resources Division on April 17, 2018. Stormwater treatment will be accomplished using porous pavement, proprietary filtration structures, and micro-bioretenment facilities.

5. *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 Property has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Code. The Zoning Ordinance requires that the detached house satisfy the standards of the R-60 zone, while duplexes are subject to the standards of the RT-12.5 Zone. The layout of the subdivision, including size, width, shape, orientation and density and location of the lots, meets all the requirements of the RT-12.5 Zone for the duplexes, and the R-60 zone for the detached house.

For a townhouse or duplex in the RT-12.5 Zone, a 30-foot building setback is required from a lot with a detached dwelling unit or a lot in a one-family detached residential zone, *"unless a more desirable form of development can be demonstrated by the applicant to the satisfaction of the planning board using the street, side and rear lot line setbacks as provided in this section."* The Planning Board supports the 20' setback from the detached residential zone because it is the best layout for the Property considering its size, shape and RT-12.5 zoning. Further, the Applicant reduced the total number of units from the 2014 proposal, reconfigured the orientation of the lots and units to maximize setbacks and preserve privacy in rear yards on adjoining lots, while creating additional open space onsite.

Adequate public facilities exist to serve the lots, and the Application has been reviewed by other applicable County agencies, all of whom have recommended approval of the Preliminary Plan.

Lot Frontage on a Private Street

Section 50-29 (a) (2) of the Subdivision Regulations requires that individually recorded lots *"...shall abut on a street or road which has been dedicated to public*

use or which has acquired the status of a public road". As reflected in other similar cases approved by the Planning Board, this finding must be based upon the proposed road being fully accessible to the public; accessible to fire and rescue vehicles, as needed; and designed to the minimum public road standards, except for right-of-way and pavement widths.

The four duplex units and one one-family detached unit have been arranged so that their lots front onto a green area and all units will be served by the private alley off Hillery Way. The private alley will be constructed to the corresponding Montgomery County Road Code Standard for residential alleys MC-200.01 as modified. The alley will be fully accessible to the public, provide the minimum pavement width and turning radii for emergency vehicles access, and will meet the minimum corresponding public road code standards.

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 17 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 and Commissioners Cichy and Patterson voting in favor, and Vice Chair Dreyfuss and Commissioner Fani-González absent at its regular meeting held on Thursday, July 12, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board