



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

MCPB No. 18-058
Site Plan No. 820150140
Offutt Estates
Date of Hearing: June 28, 2018

JUL 17 2018

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, under Section 59-7.7.1.B.3, the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014, including the zoning then in effect; and

WHEREAS, on May 3, 2016, Miry and Alexander Livnat ("Applicant") filed an application for approval of a site plan for construction of four one-family semidetached (duplex) units, one one-family detached unit, a private road, and HOA parcel(s) on 0.5 acres of RT-12.5 zoned-land, 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, Applicant's site plan application was designated Site Plan No. 820150140, Offutt Estates ("Site Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated June 18, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

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.

Approved as to
Legal Sufficiency:


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NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820150140 for construction of four one-family semidetached (duplex) units, one one-family detached unit, a private road, and HOA parcel(s), the Subject Property, subject to the following conditions:¹

1. Preliminary Plan Conformance

The development must comply with the conditions of approval for Preliminary Plan No. 120150040.

2. Forest Conservation

The Applicant must comply with the conditions of the approved Final Forest Conservation Plan No. 820150140.

- a) Prior to the start of any clearing, grading, or demolition occurring on the Subject Property, the Applicant must receive approval from the M-NCPPC Office of the General Counsel of a Certificate of Compliance to use an off-site forest mitigation bank for .15 acres of mitigation credit.
- b) The Certificate of Compliance must be recorded in the Montgomery County Land Records prior to any clearing, grading, or demolition occurring on the Subject Property.
- c) Mitigation for the removal of seven (7) trees subject to the variance provision must be provided in the form of planting native canopy trees totaling 66 caliper inches, with a minimum planting stock size of three (3) caliper inches. The trees must be planted on the Subject Property, as shown on the Final Forest Conservation Plan, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC forest conservation inspector. The trees must be planted within six months of forest conservation inspector approval of tree protection fencing.
- d) The limits of disturbance ("LOD") on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
- e) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree protection measures not specified on the approved Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
- f) The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved Final Forest Conservation Plan.

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.

3. Green Area, Facilities, and Amenities

- a) The Applicant must provide a minimum of 10,890 square feet of green area (50% of net lot area) on-site.
- b) Prior to Final Inspection for the final residential unit, the Applicant must construct all streetscape improvements on Hillery Way, including the undergrounding of utilities, and on-site amenities including, but not limited to, pedestrian pathways and public-use space amenities.
- c) Within one growing season after the final building inspection for the final residential unit, street trees must be planted along Hillery Way and all onsite landscaping must be installed.

4. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to pedestrian pathways, landscaping, hardscaping and green areas.

5. Transportation

The Applicant must construct the private internal alley to applicable Montgomery County Residential Alley MC-200.01 standards, as modified in the Site Plan, and must construct all sidewalks, both on and off the Subject Property, to applicable ADA standards. Before the release of bond or surety, the Applicant must provide MCDPS- Zoning and Site Plan Enforcement Section (Z&SPE) Staff with certification from a licensed civil engineer that all streets and sidewalks have been built to the above standards.

6. Pedestrian & Bicycle Circulation

Prior to final building inspection of the final residential unit, the Applicant must provide a five-foot wide sidewalk with a tree panel along Hillery Way, a five-foot wide sidewalk along the west side of proposed private alley, and a three-foot wide sidewalk from the proposed private alley to the front of the townhouses.

7. Site Design

- a) The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Sheet 09-ARCH-820150140-006, 09-ARCH-820150140-007, 09-ARCH-820150140-011, 09-ARCH-820150140-012 of the submitted architectural drawings, as determined by Staff.

8. Lighting

- a) Prior to Certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011,

or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).

- b) All onsite down-lights must have full cut-off fixtures.
- c) Deflectors will be installed on all fixtures to prevent excess illumination and glare.
- d) Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at any property line abutting public roads and residentially-developed properties.
- e) Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

9. Site Plan Surety and Maintenance Agreement

Prior to issuance of any building permit, sediment control permit, or Use and Occupancy Permit, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance, with the following provisions:

- a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b) The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, on-site lighting, indoor and outdoor recreational facilities, site furniture, mailbox pad sites, trash enclosures, retaining walls, fences, railings, private roads or alleys and sidewalks, private utilities, paths and associated improvements of development, including sidewalks, bikeways, storm drainage facilities, street trees and street lights. The surety must be posted before issuance of any building permit and will be tied to the development program.
- c) The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by a site plan completion inspection. The surety may be reduced based upon inspector recommendation, provided that the remaining surety is sufficient to cover completion of the remaining work.

10. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to the approval of the Certified Site Plan.

11. Certified Site Plan

Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a) Include the stormwater management concept approval letter and other applicable agency letters, development program, and Site Plan and Preliminary Plan resolutions on the approval or cover sheet(s).
- b) Add a note to the Site Plan stating that "M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading."
- c) Add a note stating that "Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services."
- d) Modify data table to reflect development standards approved by the Planning Board.
- e) Ensure consistency of all details and layout between Site and Landscape plans.
- f) Prior to Certified Site Plan, the Applicant must work with Staff to:
 - i. Improve the architectural elevations based on the precedents Staff provided to the Applicant;
 - ii. Enhance the landscaping in the open space between Lots 5/6 and Lot 4 and add at least one bench or picnic table; and
 - iii. Diversify the foundation plantings in front of all the residential units.
- g) Ensure consistency of the Mitigation Tree Landscape Schedule on the Landscape Plan with the Mitigation Tree Schedule on the Forest Conservation Plan.
- h) Provide a sidewalk connection between the sidewalk on Lot 6 and the lead walk to Lot 4.
- i) Clarify the extent of the proposed fencing on the west side of the Property and the location of the fence posts.
- j) Include the required and proposed parking on Sheet 1.
- k) Revise the note on the Site Plan sheets stating that the existing HPSV light will be replaced with an LED light as required by MCDOT.

12. Prior to issuance of a building permit for any residential unit, the Applicant must relocate or replace the metal fence within the right-of-way of Hillery Way onto Lot 5, with either a metal fence or board-on-board fence to be determined by Staff in consultation with the owner of Lot 5.

13. The placement of the sidewalk, stormwater management, and parking for Hank Dietle's Tavern within the Hillery Way right-of-way is subject to approval by Staff prior to Certified Site Plan in consultation with MCDPS, MCDOT and neighbors with property fronting on Hillery Way.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Offutt Estates 820150140 submitted via ePlans to the M-NCPPC as of the date of the Staff Report June 18, 2018 are required, except as modified by the above conditions of approval; and

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 Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

This section is not applicable as there is not a development plan, diagrammatic plan, schematic development plan, or project plan that applies to this Property.

2. *The Site Plan meets all of the requirements of the zone in which it is located and where applicable conforms to an urban renewal plan approved under Chapter 56.*

Based on the following data table, which sets forth the development standards approved by the Planning Board and binding on the Applicant, and based on other evidence and testimony of record, the Application meets all of the applicable requirements of the RT-12.5 Zone and the R-60 Zone.

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 and RT-12.5 zoning. Further, the Applicant reduced the total number of units from the 2014 proposal, which has created additional open space on the site.

Table 1: Applicable Development Standards, RT-12.5 for Duplexes Section 59-C-1.73 Standard Method Development		
	Required / Allowed	Approved
Track Area and Density		
Minimum tract area (sq. ft.)	20,000 SF	21,780 SF
Maximum density of development	12.5x0.5 = 6 D.U.	5 D.U.
Building Setbacks (Minimum, in Feet)		
From any detached dwelling lot or land classified in a one-family, detached, residential zone	30' ¹	20'
From any public street	25'	25'
From an adjoining lot – Side (end unit)	10'	N/A (no adjoining lot)
From an adjoining lot – Rear	20'	N/A (no adjoining lot)
Maximum Building Height (in feet)		
For a main building	35'	35'
For an accessory building	25'	N/A
Coverage and Green Area		
Maximum percentage of track that may be covered by buildings	35%	25.6%
Minimum percentage of tract that must be devoted to green area	50%	50%
Parking		
Off-Street parking	8 (2 per unit)	10 (2 per unit in garage and two in alley)
¹ 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.		

Table 2: Applicable Development Standards, R-60 for dwelling unit, one-family detached Section 59-C-1.32 Standard Method Development		
	Required / Allowed	Approved
Lot Area and Width		
Minimum net lot area- For one-family detached dwelling	6,000 SF	6,000 SF
Minimum lot width – For one-family detached dwelling	60'	60'
Minimum lot width at existing or	25'	25'

Building Setbacks (Minimum, in Feet)		
Minimum setback from street	25'	25'
Setback from adjoining lot – One Side	8'	8'
Setback from adjoining lot – Sum of both	18'	18'
Setback from an adjoining lot – Rear	20'	24'
Maximum Building Height (in feet)		
For a main building	35'	35'
Coverage		
Maximum percentage of net lot area that may be covered by buildings.	30%	30%
Parking		
Off-Street parking	2	2

Since less than 20 units are proposed in this project, Moderately Priced Dwelling Units (MPDUs) are not required. There is not an urban renewal plan that applies to this Property.

3. *The locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

Buildings and Structures

As conditioned, the location of the buildings allows for safe, adequate, and efficient vehicular, pedestrian and fire access to each lot. The orientation of the dwelling units, with the side of the units facing the abutting existing detached houses, is the ideal orientation for compatibility because the duplex decks will not face directly onto existing back yards. Also, the duplex facing Hillery Way will look similar in character to the nearby-single family detached homes

Open Spaces, Landscaping, Lighting, and Recreation Facilities

The open space area between the duplexes and the detached house provides space where members of this small community can congregate outdoors since the duplexes do not have any yard space and the detached house has minimal yard space. The Applicant is required to enhance this open space area with additional landscaping and a bench or picnic table. The adjacent single family residential property in the R-90 Zone is well buffered from the new development by a six-foot board on board fence and a landscape screen consisting of trees and shrubs. The residential property to the east is in the RT-12.5 Zone, and is likely to redevelop in the future, so no landscape buffer is provided. The photometric plan demonstrates that the illumination will be 0.5 footcandles or less at the Property line. As the proposed development is less than 20 units, recreation facilities are not required.

line. As the proposed development is less than 20 units, recreation facilities are not required.

Vehicular and Pedestrian Circulation

The circulation system in and around the development is safe, adequate and efficient. The Applicant will provide the following roads and pedestrian circulation systems on the Property:

- A private alley off Hillery Way, which will provide vehicular access to the duplexes, the detached house at the rear of the Subject Property, and adjoining properties for potential future redevelopment. The location of the private alley allows for efficient vehicular and fire/safety access and can be shared with the abutting property to the east, should that property owner choose to redevelop.
 - A hammerhead turnaround at the end of Hillery Way in accordance with ADA requirements.
 - A total of 10 parking spaces within 2-car garages for the five units and two visitor parking spaces along the private alley.
 - An off-site sidewalk along Hillery Way to connect with the sidewalk along Rockville Pike (MD 355).
 - New pedestrian paths as follows:
 - Five-foot-wide sidewalk with a tree-panel along Hillery Way;
 - Five-foot-wide sidewalk along the west side of the private alley; and
 - Three-foot-wide lead-in sidewalks from the proposed internal 5-foot-wide sidewalks and driveway to the front of the townhouses.
4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The single-family duplex units and detached house are inherently compatible with the character of the adjacent single-family detached houses. Further, the orientation of the proposed houses, with the side of the units facing the abutting existing detached houses, is the ideal orientation for compatibility because the duplex decks will not face directly onto existing back yards. Also, the duplexes facing Hillery Way will look similar in character to the nearby single-family detached homes.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation and Chapter 19 regarding water resource protection.

Forest Conservation

The Property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and the Applicant has submitted 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 Final 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 (listed in the removal table above) 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.

Stormwater Management

The 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-bioretenion facilities.

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; 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