



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

MCPB No. 18-064
Preliminary Plan No.12010003A
Brooke Park, Parcel A
Date of Hearing: July 19, 2018

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RESOLUTION

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

WHEREAS, on May 3, 2011, the Planning Board, by Resolution MCPB No. 10-64, approved Preliminary Plan No. 120100030, creating one platted parcel on 1.18 acres of land in the R-30 zone, for 10 condominiums located at the intersection of Brookes Lane/Sagamore Road and MacArthur Boulevard ("Subject Property"), in the Bethesda-Chevy Chase Policy Area and Bethesda-Chevy Chase Master Plan Area (Master Plan"); and

WHEREAS, on January 29, 2018, the Housing Opportunities Commission of Montgomery County ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan to create one platted parcel consisting of 1.07 acres zoned R-30 to allow for a maximum of 17 units in the existing multi-family building on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12010003A, Brooke Park Parcel A, ("Preliminary Plan," "Amendment," 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 July 9, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 19, 2018, the Planning Board held a public hearing on the Amendment 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 Amendment subject to certain conditions, by the vote certified below.

Approved as to
Legal Sufficiency

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Preliminary Plan Amendment No. 12010003A, Brooke Park, Parcel A, Property, for one (1) lot subject to the following conditions, which supersede the previously approved conditions for Preliminary Plan No. 120100030.¹

1. Approval is limited to one residential parcel for one-multi-family building and a maximum of 17 units.
2. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) – Water Resources Section in its stormwater management concept letter of April 18, 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 may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
3. 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 April 30, 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.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated May 4, 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 may be amended by MCDOT, provided that the amendments do not conflict with other conditions of the Preliminary Plan.
5. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
6. 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.
7. 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.

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.

8. The Applicant must comply with the Final Forest Conservation Plan, including the following:
 - a. Prior to record plat, the Applicant must record a Category II Conservation Easement as shown on the Certified Final Forest Conservation Plan by deed in a form approved by the M-NCPPC Office of General Counsel.
 - b. Prior to any clearing, grading or demolition within the project area, the Applicant must submit a fee-in-lieu payment or certificate of compliance which satisfies the offsite 0.03-acre afforestation credit requirements or as shown on the certified Final Forest Conservation Plan. If a certificate of compliance is used, the M-NCPPC approved document must be recorded in the Land Records of Montgomery County prior to any clearing, grading, or demolition.
 - c. Prior to clearing grading or demolition within the project area, the Applicant must install a split-rail fence along the entire length of the Category II Easement along the northern property line.
 - d. Prior to Staff certification of the Final Forest Conservation Plan, the Applicant must address the following:
 - i. Minor corrections and clarifications of details, notes, tables specifications, formatting etc.
 - ii. Show all of the credited tree canopies drawn to scale, so Staff can more readily confirm that the appropriate credit is correct and accurate.
 - iii. Integrate the Soil Profile Rebuilding specifications into the plans.
 - iv. Final locations of the soil restoration areas. Provide an inset or other graphics to map the extent of the soil restoration work.
 - v. Provide at least one more tree in the proposed Category II at the southwest tip of the Subject Property.
 - vi. Provide supplemental plantings along the northern property line to comply with Section 59.6.5.3.C.5, Option A of the Zoning Ordinance, subject to staff approval.
 - vii. An ISA certified arborist must sign and certify the final Tree Save Plan (in addition to the Qualified Professional and/or or Landscape Architect).
 - e. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan, as certified by Staff. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation

Inspector. The Applicant must provide mitigation for the loss of trees requiring a variance in the form of seven (7) native canopy trees with a minimum size of three (3) caliper inches. The trees must be planted on the Subject Property outside of the conservation easement areas and be at least five feet outside of any right-of-way, or utility easements, including stormwater management easements, installation must occur within 6 months of construction completion.

- f. The Applicant must ensure that the Limits of Disturbance shown on the final Sediment Control Plan are consistent with the Limits of Disturbance shown on the Final Forest Conservation Plan.
9. Prior to the certification of the Preliminary Plan and Final Forest Conservation Plan the Applicant must provide a revised noise analysis addressing all applicable noise sources/roadways and be based on on-site field recordings, made during representative time periods. The analysis must also show the existing and 20-year projected noise contours and also address the proposed mitigation techniques.
10. Prior to issuance of a building permit for any residential dwelling unit(s) 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.
11. Before issuance of use and occupancy permit for residential units, the Applicant must obtain certification that the noise impacted units have been constructed in accordance with the recommendations of an engineer that specializes in acoustical treatments. The certification must be based on the testing of at least two representative residential units.
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 permit(s) or 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.
13. Prior to Staff certification of the Preliminary Plan Amendment, the Applicant must include: the stormwater management concept approval letter, MCDOT

recommendation letter, and Preliminary Plan resolution in the plan set or on the cover sheet(s).

14. Prior to issuance of building permits and any clearing, grading, or demolition on the Subject Property, the Applicant must record a new record plat reflecting the new Category II Conservation Easements and removing the common access easement on the Subject Property.

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 layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

The size, width, shape and orientation of the lot is appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of redevelopment or use contemplated. Right-of-way dedication for the Subject Property occurred under the previous record plat, no additional dedication is needed. No required public sites or open areas are recommended in the Master Plan for the Subject Property.

The Parcel was reviewed for compliance with the dimensional requirements for the R-30 Zone as required by the Zoning Ordinance. The unique triangular shape of the Subject Property creates a property with frontage on three roadways. The Montgomery County Department of Permitting Service (MCDPS), determined that the front yard is MacArthur Boulevard, the side yards are both Sangamore and Brooke Lane and the property has no rear yard. Parcel A will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone as shown in Table 1 in the Staff Report.

2. *The Preliminary Plan substantially conforms to the Master Plan*

The Preliminary Plan Amendment substantially conforms with the recommendations of the Sector Plan. The Subject Property is located within the Palisades area of the 1990 *Bethesda-Chevy Chase Master Plan*, which reconfirmed the R-30 Zone. The Sector Plan does not specifically address the Subject Property, but offers the following goals and objectives for land use and zoning in the Plan area and for the Palisades area:

Master Plan Area

- *Provide for a balanced housing supply so that persons of varying income levels, age, backgrounds and household characteristics may find suitable housing appropriate to their needs.*
- *Retain and expand the supply of affordable housing.*
- *Maintain and enhance residential communities along major highways and arterials.*
- *Design new projects to limit the impacts of roadway traffic noise.*

Palisades

- *Protect the environment, character and cultural resources of the Palisades.*

This Amendment satisfies the Plan's housing goals by providing housing that can accommodate persons of varying incomes levels, age, and household characteristics through the expansion of the county's affordable housing supply.

The residential character along MacArthur Boulevard, a major arterial, will be maintained and enhanced with the renovated building and additional on-site landscaping which will comply with recommendations adopted in the Master Plan.

Noise impacts for this one multi-family residential building will occur along two major roadways, MacArthur Boulevard and Sangamore Road and is therefore subject to the Noise Guidelines for residential development.

The preliminary noise study showed that most of the residential building currently experiences noise impacts at the 65 dBA Ldn level and will experience increased noise levels within the 20-year projected forecast. The analysis stated that the interior noise levels of the affected units can be mitigated to the required levels (below 45 dBA Ldn) by appropriate building shell construction. The noise analysis included field measurements along MacArthur Boulevard for the current DNL and the projected DNL in 2030. Onsite field measurements along Sangamore Road will be performed with the appropriate analysis.

The Master Plan emphasizes protection of the Palisades' environmental features such as mature trees. The Category II Conservation Easements in the southeast and southwest corners of the Subject Property along MacArthur Boulevard serve to protect these environmental features. The trees and plantings elsewhere on-site ensure that this project will continue to substantially conform to the Master Plan recommendations for retaining and protecting environmental features of the Palisades.

3. *Public Facilities will be adequate to support and service the area of the subdivision*

Transportation, Infrastructure and Other Public Facilities

Transportation infrastructure and other public facilities are adequate to serve the Subject Property. The Application includes frontage improvements that will control site access on Brooke Lane by two specific points. The northern driveway will operate as a right-in/left-in (inbound only) and the southern access point will accommodate full movement maneuvers for both inbound and outbound vehicles. These turning restrictions are necessary on the northern driveway due to limited sight distance on Brookes Lane. This access is preferable to the existing condition because it consolidates access and reduces conflict points between the site and adjacent public roadway, resulting in safer and more efficient site operations.

In addition to the vehicular improvements along the Subject Property's frontage, the Preliminary Plan will also improve the pedestrian experience by reconstructing the existing sidewalk, located adjacent to the back of curb along Sangamore Road. The reconstructed sidewalk will measure 5 feet wide and will be separated from the vehicular travel-way by a 7-foot-wide grass buffer.

Public Transit Service

An existing transit stop is located along the site's Sangamore Road frontage which includes both Ride-On Route 23 and WMATA Metrobus D5. Ride-On Route 23 provides Monday – Saturday service between the Friendship Heights Metrorail Station and Sibley Hospital while the WMATA Route D5 provides Monday – Saturday service between Massachusetts Avenue and the Foggy Bottom Metrorail Station.

Local Area Transportation Review (LATR)

Based on the *2016-2020 Subdivision Staging Policy* transportation impact criteria, the Application will generate fewer than 50 peak-hour person trips, therefore, the Application is not subject to a Local Area Transportation Review analysis. Because the Application generates fewer than 50-person trips and there is no increase in density there is no transportation impact.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the development. The Subject Property will be served by public

water and sewer systems. The application has been reviewed by Montgomery County Fire and Rescue Services, which determined that the Subject Property will have appropriate access for fire and rescue vehicles. As described in the Staff Report, based on the school cluster and individual school capacity analysis performed, there is adequate school capacity for the amount and type of development proposed by this application. Additional public facilities and services such as police stations and health services are currently operating within the standards set by Subdivision Staging Policy resolution currently in effect and will be adequate to serve the Subject Property. Electrical and telecommunications services are also available to serve the subject property.

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

Environmental Guidelines

The Subject Property is located in the Little Falls Watershed, a use I-P watershed. There are no forested areas, wetlands, streams or associated buffers affecting the site. There are no highly erodible soils on or near the site and the closest occurrences are approximately 600 feet away. A pocket of steep slopes exists near the western end of the site and band of steep slopes also runs parallel to the north of the building. The steep slope north of the building is below the parking area and was created as part of the original site grading. Given that the steep slope north of the building is manmade and not associated with any other environmentally sensitive features (such as forest, mature trees, highly erodible soils, wetlands, streams or associated buffers) it is not a significant concern for protection.

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) # 420091790 was originally approved for the Subject Property on May 21, 2009; therefore, a new NRI/FSD is not required.

A. Forest Conservation

As conditioned, the Forest Conservation Plan Amendment complies with the requirements of the Forest Conservation Law. The Forest Conservation Plan Amendment will revise the limits of disturbance and the associated tree save plan to provide new stormwater management and address an existing erosive condition. The increased tree clearing over the previous approval is offset by the inclusion of Category II Conservation Easements, which will provide long-term protection of existing and

supplemental trees. The Category II Easements will contain existing and planted trees.

The easements qualify for credit under the Forest Conservation Regulations 22A.00.01.08 G.(5)(a)(i). The variance mitigation trees need to be over and above the Forest Conservation Plan worksheet requirements. The plantings in the easement areas cannot also be applied toward variance mitigation credit. The space between the building and MacArthur Boulevard should be planted with the mitigation trees, which would help recreate the existing screening that would otherwise be diminished by the storm drain pipework. The Board has conditioned this approval on the Applicant adding new mitigation plantings outside of easement footprints, without reducing the plantings proposed within the easements.

B. Tree Variance

Forest Conservation Variance Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to three 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, as described in the Staff Report, the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes the following findings necessary to grant the Variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

The Subject Property improvements include providing stormwater management on a site that currently has no formal stormwater management and addressing existing erosive conditions. CRZs of the subject trees occupy key portions of the Subject Property where the drainage and stormwater management modifications will occur. Allowing this work to be implemented would result in an improved condition relative to stormwater management and water quality since the redevelopment will have approximately the same amount of

imperviousness as the existing conditions but with the benefit of enhanced stormwater management features. The redevelopment retains a similar amount of green space that exists today, providing adequate areas for tree retention and replanting. The Planning Board finds the variance request would be granted to any applicant in a similar situation.

- 2. Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is based on the development allowed under the existing zoning and the need to achieve adequate drainage and stormwater management modifications and upgrades. The Board finds the variance can be granted under this condition if the impacts are avoided or minimized and that any necessary mitigation is provided.

- 3. Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the site design and layout of the Subject Property and the impacts are not the result of land or building use on a neighboring property.

- 4. Will not violate State water quality standards or cause measurable degradation in water quality.*

As conditioned, the project will also provide soil profile rebuilding within most of the areas of the Limits of Disturbance (LOD) that are not paved. This soil restoration work will enhance the soil's ability to infiltrate rainfall and thereby further reduce runoff. The Category II Easement, along with the supplemental landscape and mitigation plantings, will help provide water quality enhancements associated with shading and water retention/uptake. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

- 4. All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied*

A Stormwater Management Concept Plan was approved by the Montgomery County Department of Permitting Services on April 18, 2018. The plan will meet stormwater management requirements via the use of a micro bioretention area.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for thirty-six (36) months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G, 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 ~~July 31, 2018~~ July 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 and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, July 19, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board