



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

MCPB No. 18-139  
 Preliminary Plan No. 120180200  
 Pooks Hill (AKA Potter Property)  
 Date of Hearing: December 20, 2018

**JAN 23 2019**

**RESOLUTION**

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

WHEREAS, on April 27, 2018, Beech Avenue, LLC, (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create 17 lots and four parcels on 5.64 acres of land in the R-60 zone, located at 5415 Beech Avenue (“Subject Property”), in the Bethesda-Chevy Chase Policy Area and the Bethesda-Chevy Chase Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120180200, Pooks Hill (AKA Potter Property) (“Preliminary 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 December 10, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on December 20, 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 December 20, 2018, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Commissioner Fani-Gonzalez, 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. 120180200 to create 17 lots and four parcels on the Subject Property, subject to the following conditions:<sup>1</sup>

<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.

Approved as to  
 Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
 MNCPPC Legal Department  
 www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

1. This Preliminary Plan is limited to 17 one-family residential lots and four (4) parcels.
  2. The Applicant must complete construction of Nelson Road between Street A and Page Avenue not later than Montgomery County Department of Transportation (MCDOT) acceptance of Street A.
  3. All sidewalks located on private property along Street A and Nelson Road extended must be placed into a Public Improvement Easement (PIE).
  4. The Applicant must dedicate and show on the record plat(s) a minimum of 10 feet of right-of-way as measured from the existing right-of-way centerline on Beech Avenue to achieve a 70-foot wide right-of-way along the site frontage.
  5. The Applicant must dedicate the rights-of-way and ensure all construction of all necessary road improvements for the following public streets, as shown on the Preliminary Plan, to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By \_\_\_\_\_" are excluded from this condition.
    - a. Street A: sixty feet of right-of-way, between Beech Avenue and Nelson Road; fifty feet of right-of-way between Nelson Road and the northern terminus of Street A; and
    - b. Nelson Road: sixty feet of right-of-way, between Street A and the site's western property line.
  6. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated November 9, 2018 and hereby incorporates them as conditions of approval of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
  7. 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 August 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 MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
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8. The Planning Board accepts the recommendations of MCDPS – Water Resources Section in its stormwater management concept letter dated October 8, 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. The MCDPS Water Resources Section will review, approve, and inspect all landscaping within the Storm Water Management easements and facilities.
9. The record plat must reflect any areas under Homeowners' Association ownership.
10. Prior to any clearing, grading or demolition necessary to construct the project, the Applicant must obtain approval of a Final Forest Conservation Plan from M-NCPPC staff.
11. The Applicant must comply with the following conditions of the Final Forest Conservation Plan as part of this Preliminary Plan:
  - a. Before demolition, clearing or grading on the Subject Property, the Applicant must record the Category I and Category II Conservation Easements in the Montgomery County Land Records by deed. The deed must be in a form approved by the M-NCPPC Office of the General Counsel and the Book and Page for the easements must be referenced on the record plat. The final boundaries of the Category I and Category II Easements will be determined by Staff prior to certification of the Final Forest Conservation Plan.
  - b. The Applicant must obtain approval from MNCPPC Staff and incorporate into the Certified Final Forest Conservation Plan an invasive species control plan and the plantings of supplemental native species within the Category 1 and 2 Forest Conservation Easement Areas as part of the Final Forest Conservation Plan.
  - c. Mitigation for the loss or potential loss of specimen trees 2, 4, 7, 8, and 48 requires a minimum planting of (15) 3-inch caliper canopy trees to be shown on the Final Forest Conservation Plan and undertaken at the same time as the on-site forest planting.
  - d. The Applicant must provide supplemental planting in both Category II Conservation Easements, to be undertaken at the same time as the on-site forest planting. Plantings must include a minimum tree caliper of 2-inches in diameter.

- i. Parcel C (0.06 acres): If specimen tree #8 is removed due to mortality or significant impacts, the planting rate on Parcel C must include a total of 6 trees and shrubs: three (3) canopy trees, and three (3) shrubs. If specimen tree #8 survives, planting rates may be reduced with approval from the M-NCPPC tree inspector.
  - ii. Parcel D (0.14 acres): If specimen trees #2 and #4 are removed due to mortality or significant impacts, the planting rate on Parcel D must include a total of 14 trees and shrubs: Eight (8) canopy trees, and six (6) shrubs. If specimen trees #2 and #4 survive, planting rates may be reduced with approval from the M-NCPPC tree inspector.
12. Before demolition clearing or grading on the Subject Property, the Applicant must submit a Certificate of Compliance which satisfies the offsite 0.55-acre afforestation credit requirements or as approved in the certified Final Forest Conservation Plan. If a Certificate of Compliance is utilized it must be in a form approved by the M-NCPPC Office of General Counsel and recorded in the Land Records of Montgomery County.
13. Prior to any demolition, clearing, or grading on site, the Applicant must submit a forest conservation maintenance and management agreement and a financial surety in a form acceptable to both Staff and the Commission's Office of the General Counsel.
14. The Limits of Disturbance shown on the Final Sediment Control Plan must be consistent with the Limits of Disturbance shown on the Final Forest Conservation Plan.
15. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspector.
16. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty (61) months from the date of mailing of this Planning Board Resolution.
17. 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). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*

18. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s) and correct square footage on the Certified Preliminary Plan and Data Table for Lots 1, 2, 3, 4, 5, 6, and Parcels C and D.
19. Prior to certification of the Preliminary Forest Conservation and Final Forest Conservation Plan, the Applicant must coordinate with Staff on minor corrections or clarifications as required.

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 Application has been reviewed for compliance with Section 50.4.3.B of the Montgomery County Code. The subdivision abuts existing residential neighborhoods to the east, south and west that are developed with one-family detached dwelling units. The block design for this development is similar to the block design of nearby neighborhoods and is appropriate for the uses contemplated under this Preliminary Plan.

The design including size, width and shape and orientation of these lots is consistent with Section 50.4.3.C of the Montgomery County Code. The Preliminary Plan includes 17 one-family residential lots. These lots accommodate the anticipated uses and will conform to the standards set forth in Section 59.4.4.9 of the Zoning Ordinance. All lots will front on either Nelson Road or the new public right-of-way Street A and will be appropriately aligned with them.

The 1990 *Bethesda-Chevy Chase Master Plan* provides no specific recommendations for this site. However, the 2001 *Legacy Open Space (LOS) Functional Master Plan*, on page 77, designate this property as a LOS Master Planned site. Subsequent to this designation, The Parks Department evaluated the property and determined it not to be appropriate for a public park through fee-simple acquisition due to limited public-use potential, management concerns relative to numerous improved adjacent properties, limited public frontage, proximity to other parks and public open space, and cost relative to higher priority

projects. Based on this analysis, required open space or public sites are not required under this Preliminary Plan.

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

Land Use

The 1990 *Bethesda-Chevy Chase Master Plan* identifies this property as located in the Mid-Bethesda-Northern B-CC, area and offers the following analysis:

- *the Mid-Bethesda is a stable mature area, predominately zoned R-60 and R-90 (p. 51)*
- *Single family detached houses are pervasive, except for multi-family housing of varying density and townhouses at Pooks Hill. The area is largely built-out and there is little potential for development although there are several vacant and potentially re-developable parcels greater than three acres in size.... (p.51)*

The *Master Plan* on page 53, recommends the site for single-family residential uses trees to be preserved on the site. The Preliminary Plan includes 17 one-family houses for the 5.64-acre site and the FCP preserves many of the on-site trees. The *Master Plan* recommends providing new housing in close proximity to the Bethesda Central Business District (CBD) and National Institutes of Health (NIH) that conforms to the nearby housing types, which are one-family detached units. Another recommendation is to preserve on-site trees, which has been accomplished through the submitted FCP, including tree protection and mitigation measures. This Preliminary Plan substantially conforms to the *Master Plan* recommendations for the provision of one-family housing near the Bethesda CBD and NIH and preserving many of the on-site trees.

Environmental

The *Master Plan* recommends preserving trees on the subject site. (page 53). The Applicant has retained portions of forest stands 2 and 3 containing specimen trees and efforts will be taken to protect and retain many trees located along the property boundaries. To save and protect these trees, the limits of disturbance have been tightened, additional plantings will be added and two small, but beneficial Category II Conservation Easements will be placed on Parcel C (0.06 acres) and Parcel D (0.14 acres). Through these measures, this Preliminary Plan will substantially conform to the tree preservation recommendations of the *Master Plan*.

Transportation

There are no specific transportation Master Plan recommendations for the subject property or Beech Avenue, the main access point into the project. However, the Master Plan, (p.99), Table 10, lists *Master Plan Strategies for Improved Transportation in Bethesda-Chevy Chase travel components through, to, from, and within Bethesda-Chevy Chase*. For trips within the Bethesda- Chevy Chase area, “more local streets for circulation” are recommended for automobile travel. Street A and Nelson Road extended provide new local streets that will further circulation in the development and with abutting residential areas to the west.

Additionally, the Master Plan recommends “expansion of the system of pedestrian paths and bikeways to link residential areas with public facilities, commercial areas and transit services.” (p. 97) New 5-foot wide sidewalks on lots along both sides of Street A and along the south side of Nelson Road extended will be installed. These sidewalks will create new pedestrian connections from the subdivision to existing transit service on nearby Beech Avenue and to the nearby Bethesda Trolley Trail bikeway, west of the subject property. This Preliminary Plan substantially conforms to the Master Plan recommendations.

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

Based on the traffic analysis provided in accordance with the *2016-2020 Subdivision Staging Policy*, sufficient capacity exists to serve the development on the Site. Further, 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. 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 schools, electrical, telecommunications, gas, police stations, firehouses, and health services are operating according to the *Subdivision Staging Policy* resolution currently in effect and will be adequate to serve the Property.

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

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. The property contains 3.85 acres of forest. The Preliminary Forest Conservation Plan identifies removal of 72 percent (2.77 acres) of the forest and preservation of 28-percent (1.08 acres). There is a 0.84-acre afforestation requirement which the Applicant will meet through replanting of 0.29 acres onsite and 0.55 acres in an offsite forest bank. Onsite mitigation will predominantly

be planted in Parcel A and will connect forest stands 2 and 3. Presently, Parcel A is a field of invasive species that has dominated the understory preventing natural forest regeneration. Parcel A will be put into a Category I Conservation Easement.

#### B. Forest Conservation Variance

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

This Application will require the removal or CRZ impact to 41 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.

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.*

The 1990 Bethesda-Chevy Chase Master Plan recommends the preservation of trees while also recommending development of this site. Efforts were made by the Applicant to tighten the Limits of Disturbance (LOD) to save additional trees, however, the LOD was not reduced even with fewer lots. Therefore, due to the location and existing zoning, granting of the variance will not confer a special privilege that would be denied to other applicants.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is based on development allowed under the existing zoning and recommended by the applicable Master Plan along with the need to provide the associated infrastructure and utility connections and is not based on conditions or circumstances which are the result of the actions by the Applicant.



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 site design and layout on the subject property and the impacts are not related to land or a 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 variance will not violate State water quality standards or cause measurable degradation in water quality. On-site mitigation for removal of trees subject to the variance request and replanting will ultimately replace the functions currently provided by the trees to be removed. Additionally, the Montgomery County Department of Permitting Services (MCDPS) approved the stormwater management plans on October 8, 2018 to include the construction of bioretention systems in the right-of-way and drywells on each individual lot.

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 one-inch caliper for every four inches DBH of removal. No mitigation is required for Protected Trees impacted but retained.

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

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards. The Montgomery County Department of Permitting Services (MCDPS) Stormwater Management Section approved a stormwater management concept plan on October 8, 2018. This concept plan meets the stormwater management goals through the use of environmental site design for each residential lot via drywells and/or compensation in micro-bioretention located in the right of way and for the roads in seven micro-bioretention facilities located in a modified public right-of-way typical section. There are no applicable water quality plan or flood plain requirements.

**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 50.4.2.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 JAN 23 2019 (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 Fani-González, seconded by Commissioner Cichy, with Chair Anderson and Commissioners Fani-González and Cichy voting in favor, and Vice Chair Dreyfuss and Commissioner Patterson absent at its regular meeting held on Thursday, January 17, 2019, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board