



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

MCPB No. 18-130  
 Preliminary Plan No.120180080  
**Poplar Pointe**  
 Date of Hearing: November 29, 2018

JAN 15 2019

**CORRECTED RESOLUTION**

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

WHEREAS, on March 8, 2018, Oxbridge Development at Alderton, LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 12 lots on 6.28 acres of land in the R-200 zone, located at 13710 Alderton Road, 150 feet north of Night Sky Drive, Silver Spring, MD, 20906 ("Subject Property"), in the Kensington/Wheaton Policy Area and the 1989 *Communities of Kensington-Wheaton Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No.120180080, Poplar Pointe ("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 November 19, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on November 29, 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 November 29, 2018, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Commissioner Patterson, with a vote of 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. 120180080 to create 12 lots on the Subject Property, subject to

Approved as to  
 Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
 M-NCPPC Legal Department  
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the following conditions:<sup>1</sup>

- 1) This Preliminary Plan is limited to twelve single-family detached lots, open space and HOA parcels.
- 2) The Applicant must dedicate and show on the record plat(s) sixty (60) feet from the opposite right-of-way line along the Property frontage for Alderton Road, as shown on the Certified Preliminary Plan.
- 3) In lieu of dedication of a seventy (70)-foot-wide right-of-way for Alderton Road, the Applicant must provide a seven (7)-foot-wide Public Improvement Easement, on both sides of Alderton Road along the Property frontage, as shown on the Certified Preliminary Plan.
- 4) The Applicant must provide a ten (10)-foot-wide Public Utility Easement, opposite the right-of-way and Public Improvement Easement, on each side of Alderton Road along the Property frontage, as shown on the Certified Preliminary Plan.
- 5) The Applicant must construct the unbuilt segment of Alderton Road through the Property and extend the unbuilt segment of Alderton Road approximately 140 feet south to connect to Night Sky Drive, as shown on the Certified Preliminary Plan.
- 6) Prior to recordation of the plat(s) the Applicant must satisfy the Montgomery County Department of Permitting Services (MCDPS) – Right-of-Way Permitting Section requirements to ensure the construction of five (5)-foot-wide ADA-complaint sidewalks along both sides of Alderton Road within the seven (7)-foot-wide Public Improvement Easement, as shown on the Certified Preliminary Plan.
- 7) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 8) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.

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<sup>1</sup> For the purpose of these conditions, the term “Applicant” shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

- 9) The record plat must have the following note: "The land contained hereon is within an approved cluster development and subdivision or resubdivision is not permitted after the property is developed."
- 10) The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). The Applicant must provide verification to Staff prior to release of the final building permit that the Applicant's recorded HOA Documents incorporate the Covenant by reference.
- 11) The Applicant must provide a five (5)-foot-wide trail through the open space areas which will connect to Alderton Road at two points, as shown on the Certified Preliminary Plan, with final details and materials to be determined at Site Plan.
- 12) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated October 24, 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.
- 13) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 14) The Planning Board accepts the recommendations of the MCDPS – Water Resources Section in its stormwater management concept letter dated October 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 MCDPS may amend if the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 15) The Planning Board accepts the recommendations of the MCDPS – Fire Department Access and Water Supply Section in its letter dated August 16, 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.

16)The Applicant must comply with the conditions of approval of the Preliminary Forest Conservation Plan No. 120180080.

- a. The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Preliminary Forest Conservation Plan. The Category I Conservation Easement must be approved by the M-NCPPC Office of the General Counsel and recorded among the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property, and the Book/Page for the easement must be referenced on the record plat.
- b. At the time of Site Plan submittal, the Applicant must submit a Final Forest Conservation Plan (FFCP), consistent with the approved Preliminary Forest Conservation Plan (PFCP).
- c. The FFCP must include detailed and specific tree protection measures for on and off-site trees affected by the Limits of Disturbance (LOD).
- d. The FFCP must include mitigation plantings for the removal of eight (8) trees located outside of existing forest stands and subject to the variance provision. Native canopy trees must be planted totaling 79 caliper inches, with a minimum planting stock size of three (3) caliper inches. The trees must be planted on the Property, in locations to be shown on the Final Forest Conservation Plan, outside of any rights-of-way, or utility easements, including stormwater management easements. All other trees subject to the variance provision are within existing forest stands and will be mitigated per Chapter 22A.
- e. The FFCP must include a planting plan and details of any recreation facilities within the Category I Conservation Easement.

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 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.”*

18)Prior to submission of any plat, the Applicant must obtain approval of a Certified Site Plan for the Property.

- 19) No clearing or grading of the site or recording of plats may occur prior to Certified Site Plan approval.
- 20) All necessary easements must be shown on the record plat.
- 21) 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.
- 22) Before approval of the Certified Preliminary Plan the following revisions must be made and/or information provided subject to Staff review and approval:
  - a. The house on Lot 4 needs to show a minimum twelve-foot setback from adjoining Lot 24.

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 lots will be appropriate for the location. The Preliminary Plan will accommodate development on the Property at an appropriate and efficient location, with generous building setbacks from Alderton Road and the adjoining properties. A significant forest conservation easement area and common open space area will occupy the southeastern section of the Property and will screen views of the single-family detached dwellings from the east and south of the Property.

The lots were reviewed for compliance with the dimensional requirements for the R-200 Zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in the zone and accommodate the use.

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

The Preliminary Plan is located within the 1989 *Communities of Kensington-Wheaton Master Plan*. The Master Plan focused on the maintenance of the well-established low-to-medium-density residential character and encouraged the protection, stabilization and continuation of existing land use patterns. The Master Plan evaluated vacant or underutilized sites and provided land use and zoning recommendations to allow infill development consistent with its goals and objectives to protect and maintain the existing residential character. These vacant or underutilized sites were considered "*Critical Parcels and Areas*."

The Master Plan identified the subject parcels as Critical Area #4 – Alderton Road near Atwood Road - and recommended the continuation of the existing R-200 Zone and designated the parcels as suitable for the cluster option, "*with such development assuring compatibility with the surrounding neighborhood*."

The Preliminary Plan is consistent with the land use goals and objectives of the Master Plan as it proposes the Cluster Optional Method Development to create lots consistent with the surrounding residential character. Further, the subdivision allows for the preservation and planting of an environmentally-sensitive area. The paths within the Forest Conservation Easement area and Common Open Space areas provide a connected trail for recreational use and enjoyment. The placement of the lots provides an opportunity for additional functional open space and landscaping through the shared-driveway configuration. Therefore, with the conditions above, the Planning Board finds the Preliminary Plan is in substantial conformance with the Master Plan.

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

#### Transportation

##### *Adequate Public Facilities Test*

The proposal generates 19 morning and 19 evening peak-hour person trips, two morning and two evening transit trips, one morning and one evening bicycle trip, and three morning and three evening pedestrian trips during the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.). Under the 2016-2020 Subdivision Staging Policy, a traffic study is not required because the Project generates fewer than 50 peak hour person trips.

The Applicant will be required to pay the updated General District Transportation Impact Tax (for building permit requests after March 31, 2017). The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code, as amended.

*Master Planned Roadway*

Alderton Road, along the Property frontage, is a secondary residential street within a 60-foot-wide public right-of-way. This street is not listed in the 1989 *Communities of Kensington-Wheaton Master Plan*; however, the segment of Alderton Road, located approximately 1,500 feet to the north, is designated as a 70-foot-wide right-of-way, primary residential street, P-15, in the 1994 *Aspen Hill Master Plan*. This northern (primary residential) portion of Alderton Road terminates on the north side of the Matthew Henson State Park. The 2018 *Planning Board Draft Master Plan of Highways and Transitways* recommends that the segment of Alderton Road south of the Matthew Henson State Park be upgraded from a secondary (60-foot-wide) road to a primary (70-foot-wide) residential street. However, only 60 feet of right-of-way is being dedicated along this Property frontage with a seven (7)-foot Public Improvement Easement (PIE) on both sides of Alderton Road, because the Applicant is utilizing the Cluster Optional Method of Development to its full potential by making the lots as small and compact as possible, thus preserving more area and functionality for Common Open Space and the Category I Conservation Easement.

Furthermore, to cluster the lots and units around a shared driveway concept instead of a cul-de-sac while situating the lots and units in a logical location, considering preservation of open space and safety with respect to public road access, it became more difficult for the Applicant to meet the required front and rear setbacks of the zone. The shape of the Property combined with the natural curvature of the public road connection create pinch points on the west and northeast sides of the Property. Thus, the Applicant will provide a seven (7)-foot-wide PIE to include the sidewalk and shared-use path in lieu of the dedication, which allows superior design in terms of cluster development, preservation of open space, and safe and logical placement of the lots and units, while allowing the Applicant to meet the minimum setbacks of the zone. Therefore, the Planning Board approves a PIE in lieu of dedication.

*Master Planned Bikeway*

The 2018 *Bicycle Master Plan* recommends a sidepath on the east side of Alderton Road, which terminates at the Matthew Henson State Park, which is located approximately one-third (1/3) of a mile north of the Property. There is no recommended facility along the Property frontage and no other facility to connect to in the vicinity. Thus, no bike facilities are required.

*Transit*

There is no transit service along Alderton Road, with the nearest service approximately one mile away as follows:

- Ride On Routes 26, 39, and 49 to the west along Layhill Road (MD 182), via Wagon Way and Middlevale Lane; and
- Ride On Route 39 to the north along Bonifant Road, via Alderton Road.

These three Ride On routes serve the following destinations:

- Ride On Route 26 operates between the Glenmont Metrorail Station and the Montgomery Mall Transit Center with 30-minute headways on weekdays and weekends;
- Ride On Route 39 operates between the Glenmont Metrorail Station and the Briggs Chaney Road Park & Ride Lot with 30-minute headways on weekdays only; and
- Ride On Route 49 operates between the Glenmont Metrorail Station and the Rockville Metrorail Station with 30-minute headways on weekdays and weekends.

#### School Capacity

This Preliminary Plan is subject to the FY19 Annual School Test. The Application proposes 11 new single-family detached dwelling units and retains one existing single-family detached dwelling unit. Based on the school cluster and individual school capacity analysis, there is adequate school capacity to serve the development.

#### Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the development.

The current houses on the Property are served by well and septic, which will be abandoned in favor of public water and sewer service for all 12 lots. This application has been reviewed by the Montgomery County Department of Permitting Services Fire Department Access and Water Supply Comments, 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 currently 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.



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

Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #420180880) on January 29, 2018. The Property lies in the Upper Northwest Branch watershed and contains 1.15 acres of high priority forest. There is a spring-fed farm pond within the forest and 0.45 acres of partially-forested stream buffer. The stream valley buffer will be planted and protected by a Category I Conservation Easement.

A. Forest Conservation

The Planning 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. There are 1.15 acres of existing isolated forest on the Property. The Applicant proposes to clear 0.25 acres of forest, retain 0.90 acres of forest and plant 0.50 acres of forest on the Property. The retained and planted forest will be on homeowner's association property and will be covered by a 1.76-acre Category I Conservation Easement. The Category I Conservation Easement will protect existing and planted forest while allowing for natural surface paths and low-impact recreational facilities. The Final Forest Conservation Plan will have full details on the recreation facilities.

*Minimum Retention*

As per Sec. 22A-12(f)(2)(B) of Forest Conservation Law,

*"In a planned development or a site developed using a cluster or other optional method in a one-family residential zone, on-site forest retention must be equal the applicable conservation threshold in subsection (a).*

The Property is subject to the minimum retention provision because R-200 is a single-family zone and the Applicant is proposing to use the cluster development optional method of development. The conservation threshold for this property is 20%, or 1.40 acres. The Applicant is retaining 0.90 acres, 0.50 acres below the requirement.

However, Sec. 22A-12(f)(3) allows flexibility in meeting this requirement.

*“If the Planning Board or Planning Director, as appropriate, finds that forest retention required in this subsection is not possible, the applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping.”*

In this case, the Property is constrained by the spring-fed pond and associated environmental buffer and the alignment of and need to connect Alderton Road. There is no way to connect Alderton Road while retaining the existing house, except through the current alignment. These requirements shape the form of the development by limiting the development area.

Given the constraints associated with developing the Property, the Applicant is clearing 0.25 acres of forest but planting 0.50 acres of forest. When all the site constraints are considered, it is not possible for the Applicant to develop the property without clearing 0.25 acres of forest.

#### 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 of eight trees and to impact, but not remove, six trees that are considered high priority for retention under Section 22A-12(b)(3) of the Forest Conservation Law. In accordance with Section 22A-21(a), the Applicant requested a Variance.

##### *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 construct a segment of public road between two existing roads and the infill nature of this development. The site is constrained by existing development on all sides, which limits flexibility in grading. In addition, the development has been designed to minimize forest impacts.

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 connect two segments of existing road and build housing at the density recommended in the Master Plan. Disturbance has been minimized to retain the existing forest. The size and configuration of the Property 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 Property size, the two existing segments of road that will connect, and the need to retain existing forest.

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 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 connect the two road segments and build clustered housing.

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

The Applicant will plant 79" caliper inches of native shade trees to replace the form and function of the variance trees that will be removed. In addition, the Property 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 eight trees. The eight 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 79" caliper inches of native shade trees, which will be shown on the Final Forest Conservation Plan.

*County Arborist's Recommendation of the Variance*

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The variance request was sent to the arborist on March 28, 2018, and no response has been received to date.

*Variance Disposition*

Based on the analysis above, the Planning Board approves the variance.

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 Applicant received approval of its stormwater management concept from the Montgomery County Department of Permitting Services, Water Resources Section on October 18, 2018. The concept proposes to meet required stormwater management goals using walled microbioretention in the road right-of-way and drywells on residential lots. The requirements of Chapter 19 for stormwater management are satisfied.

6. *Any other applicable provision specific to the property and necessary for approval of the subdivision is satisfied.*

There are no other applicable provisions to the Property.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for ~~36~~ 60 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 15 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 Cichy, seconded by Commissioner Patterson, with Acting Chair Fani-González and Commissioners Cichy and Patterson voting in favor at its regular meeting held on Thursday, January 10, 2019, in Silver Spring, Maryland.



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Natali Fani-González, Acting Chair  
Montgomery County Planning Board