



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

MCPB No. 18-140
Preliminary Plan No. 120160170
Nucci Subdivision
Date of Hearing: December 20, 2018

FEB 01 2019

RESOLUTION

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

WHEREAS, on December 15, 2015, Marcello Nucci ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create five lots on 1.5 acres of land in the R-60 zone, located on the north side of the intersection of Ethan Allen Avenue and Prince George's Avenue ("Subject Property"), in the Takoma Park Policy Area and the Takoma Park Master Plan ("Master Plan") area; and

WHEREAS, Subdivision Regulation Amendment 16-01, adopted by the Montgomery County Council on November 15, 2016 as Ordinance No. 18-19, replaced Chapter 50, Subdivision of Land in its entirety, effective February 13, 2017 ("Subdivision Regulations"); and

WHEREAS, Ordinance 18-19 provided that any preliminary plan application filed and certified as complete before the effective date of the Subdivision Regulations may, at the applicant's option, be reviewed under the Subdivision Regulations in effect when the application was submitted; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120160170, Nucci Subdivision ("Preliminary Plan" or "Application"); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on December 15, 2015; 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, 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. 120160170 to create five lots on the Subject Property, subject to the following conditions:¹

1. This Preliminary Plan is limited to 5 lots for 1 single-family dwelling unit on each.
2. The Planning Board accepts the City of Takoma Park Council Resolution Number 2018-58 dated November 29, 2018, including the associated approved tree save plan.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated January 8, 2016 and incorporates the findings 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 MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
4. Prior to the issuance of any access permits, the Applicant must address the following:
 - a. Satisfy the MDSHA requirements for access and improvements.
 - b. Provide street tree plantings along the Ethan Allen Avenue frontage subject to approval by MDSHA.
5. The Applicant must provide and show on the record plat a right-of-way dedication of five (5) feet along Ethan Allen Avenue (MD 410). As a result of this dedication, the right-of-way between the existing pavement centerline and Subject Property frontage will be 25 feet wide.
6. The Applicant must provide sidewalks along the property frontage on Ethan Allen Avenue and extend sidewalks to the existing bus stop on the adjacent property to

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.

the east, with a minimum width of five feet as illustrated on the Certified Preliminary Plan, subject to approval by MDSHA.

7. The record plat must show all necessary easements, including common ingress/egress and utility easements over all shared driveways.
8. The Planning Board accepts the recommendations of the City of Takoma Park Department of Public Works in its stormwater management concept letter dated January 19, 2017, 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 City of Takoma Park Department of Public Works provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
10. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of this Planning Board Resolution.
11. 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.
13. Prior to certification of the Preliminary/Final Forest Conservation Plan 120160170, approved as part of this Preliminary Plan, the Applicant must:
 - a. Include provisions for an ISA Certified Arborist who is also a Maryland Licensed Tree Care Expert to perform or directly supervise the driveway demolition and other work outside of the LOD; and
 - b. Expand the invasive control program to address the invasive vines and plants throughout the subject property.
14. Before demolition, clearing, or grading on the Subject Property, the Applicant must record a Certificate of Compliance to use an off-site forest mitigation bank easement in the Montgomery County Land Records. The certificate of compliance must be in a form approved by the M-NCPPC Office of the General Counsel.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

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

The Preliminary Plan substantially conforms to the recommendations within the December 2000 Takoma Park Master Plan ("Master Plan"). The Master Plan does not include site specific recommendations for the Subject property, however there are a number of general recommendations which relate to the site. The Master Plan recommends preserving the Urban Ring neighborhoods by retaining the existing single-family detached character throughout most of Takoma Park, while acknowledging rights to develop existing properties and the need to improve the infrastructure of older neighborhoods by provision of sidewalks, curbs lighting, landscaping and other improvements.

The development will maintain the residential character of the neighborhood by providing only three new single-family homes, for a total of five on the existing property, which is large enough to theoretically yield 10 lots. The average lot size is over twice the minimum, and the relatively moderate density of development is in keeping with the character of the surrounding neighborhood.

Also, as conditioned, the development will improve the existing pedestrian infrastructure by providing a new sidewalk with street trees along the entire frontage and further eastward to connect with a nearby bus stop.

The Master Plan further recommends that new development provide enhanced landscaping and greenspaces, larger green areas, and stormwater management, and focuses on the implementation of urban forestry practices including the reduction of alien invasive plants.

As conditioned, the project meets these recommendations by minimizing impacts to the larger trees on and near the site (no removal of variance trees was proposed), and by implementing special construction techniques and careful coordination with a contracted tree care professional to ensure that trees are appropriately protected throughout the construction. Furthermore, per the requirements of the City's tree save plan, the Applicant will plant approximately four dozen new trees on site. An invasive species management program will also be implemented to address the considerable population of invasive plants and vines occurring in the project area.

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

The subject application generates fewer than 50 peak hour person trips and is therefore not subject to the Local Area Transportation Review (LATR). The access concept and minimal increase in site-generated trips results in a development that is safe, adequate, and efficient. The *2000 Takoma Park Master Plan* designates Ethan Allen Avenue (MD 410) an arterial roadway (A-20) between Carroll Avenue and New Hampshire Avenue (MD 650) with a minimum right-of-way of 50 feet and identifies the roadway as “a main connection between major regional bikeways.” The development is dedicating the necessary frontage to achieve this recommendation.

A pair of bus stops is located along the frontage of the abutting property at 500 Ethan Allen Avenue (westbound service) and on the opposite side of the street at the intersection of Ethan Allen Avenue/ Prince George’s Avenue (eastbound service). Transit service to these stops includes:

- Ride On 16 (Silver Spring/ Takoma Park)
- Metrobus F4 (New Carrollton – Silver Spring Line)

The three new residences will be served by the existing sewer, water and other utilities which exist along the property. Fire and rescue services has found the site access to be adequate per the DPS approval stamped May 7, 2018. The additional trips generated by the new development are minimal and the bus stop is located adjacent to the project area frontage.

With a net of three new single family detached dwelling units, preliminary plan application #120160170 for Nucci Property falls within the de minimis (three units or less) exemption. Therefore, the project is exempt from the current residential development moratoria in the Montgomery Blair cluster and it is unnecessary to test the project’s estimated impact on school enrollment.

- 3. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

The lots were reviewed for compliance with the dimensional requirements for the R-60 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

- 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. For Forest Conservation purposes the project has a 1.60-acre net tract area, which includes 1.50 acres of onsite area, plus 0.10 acres of offsite limits of disturbance (LOD) for utility and sidewalk connections. There is no forest onsite or immediately adjacent to the property, however there is an afforestation requirement of 0.24 acres. The Applicant will meet all of the forest conservation requirements offsite and the Board has approved a related condition of approval for the use of a certificate of compliance for an offsite bank. The Board has also a recommended condition of approval for the offsite requirements to be appropriately satisfied and recorded prior to any clearing, grading or demolition within the project area.

The forest conservation plan includes a tree save plan component that has also been coordinated through the City of Takoma Park. Per the requirements of the City's tree save plan, the Applicant will plant approximately four dozen new trees on site.

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 five 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.*

Granting the variance will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to the reasonable development of the Property which is supported by the

existing zoning and Master Plan. The disturbance is strategically located in a manner that avoids removal of any subject trees and minimizes impacts which will be appropriately addressed with tree preservation and stress reduction measures. Furthermore tree 106 which is the most impacted tree, will likely be in an improved condition after the development as the invasive vines which are now adversely affecting the tree will be addressed as part of the plan implementation.

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

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based on development allowed under the existing zoning and Master Plan.

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 current application on the subject property and is not related to land or 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. The City of Takoma Park approved the storm water management (SWM) concept for the project on January 19, 2017. The SWM concept will meet required storm water management goals using drywells and a bio-swale. The application does not propose the removal of any subject trees and includes the plantings of approximately 44 new onsite trees as required by the city of Takoma Park. In addition to the retained tree, the new plantings will help with water quality by reducing runoff, providing shading/cooling and providing evapotranspiration and infiltration. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. Each of the trees is modestly impacted (most of the impacts are 5-11 % with one tree at 20% impact)

and appropriate retention of the trees is anticipated, therefore, no mitigation plantings are required.

5. *All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

This finding is based in part upon the determination by The City of Takoma Park that the Stormwater Management Concept Plan meets applicable standards. The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from The City of Takoma Park Department of Public Works on January 19, 2017. The Application will meet stormwater management goals through a variety of techniques including drywells and a bio-swale.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is FEB 01 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, Vice Chair Dreyfuss, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Patterson absent at its regular meeting held on Thursday, January 24, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board