



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

MCPB No. 19-013  
Preliminary Plan No. 120170290  
Old Angler's Cove  
Date of Hearing: February 7, 2019

FEB 21 2019

**RESOLUTION**

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

WHEREAS, on September 21, 2017, Benjamin B. Wisler ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create three (3) lots on 1.87 acres of land in the R-200 zone, located 2,500 feet west of Brickyard Road ("Subject Property"), in the Potomac Policy Area and 2002 *Potomac Subregion Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120170290, Old Angler's Cove ("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 January 25, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 7, 2019, 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, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120170290 to create three (3) lots 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

*Christina Soud* 1/31/18

6787 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

### General Approval

1. This Preliminary Plan is limited to three (3) lots for three (3) one-family detached dwelling units.

### Adequate Public Facilities and Outside Agencies

2. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of this Planning Board Resolution.

### Outside Agencies

3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated December 24, 2018 and 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 MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
4. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated August 31, 2018 and 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 if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
6. 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 December 7, 2018 and 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 amendment does not conflict with other conditions of Preliminary Plan approval.

### Environment

### Forest Conservation

7. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan (PFCP), No. 120170290, approved as part of this Preliminary Plan.
  - a. Prior to Certified Preliminary Plan, the Applicant must submit for review and approval a Final Forest Conservation Plan (FFCP) consistent with the approved Preliminary Forest Conservation Plan (PFCP) and Section 22A.00.01.09.B of the Forest Conservation Regulations.
  - b. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record a Category I Conservation Easement over the 0.29 acres as specified on the approved FFCP. The Category I Forest Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed and the Book/Page for the easement must be referenced on the record plat.
  - c. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must provide financial surety to the M-NCPPC Planning Department for the 0.29 acres of new afforestation planting.
  - d. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must submit a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel. The maintenance and management agreement is required for all forest planting areas credited toward meeting the requirements of the FFCP, including the afforestation/reforestation of environmental buffers.
  - e. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must install permanent Category I Conservation Easement signage along the perimeter of the conservation easements.
  - f. The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved FFCP.
  - g. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
  - h. The Applicant must plant 0.29 acres of forest on the Subject Property outside of any right-of-way, or utility easements, including stormwater management easements within one year of construction completion as shown on the approved Forest Conservation Plan.

Transportation

Existing Frontage Improvements

8. The Applicant must provide the following dedication and show them on the record plat(s) for the following existing road:
  - a) No less than forty-two feet from the existing pavement centerline along the Subject Property frontage for MacArthur Boulevard.
9. Prior to filing a record plat, the Applicant must pay into MacArthur Bikeway Improvement Project – Segment 1, Capital Improvement Project No. 509337 based on an engineer's cost estimate for a required 10-foot shared use path along the Property's frontage as referred to in MCDOT's letter dated December 24, 2018.

#### Record Plats

10. There shall be no clearing or grading of the site prior to recordation of plat(s).

#### Easements

11. The record plat must show necessary easements.
12. The record plat must reflect common ingress/egress and utility easements over all shared driveways.

#### Certified Preliminary Plan

13. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
14. 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.*

15. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following change:
  - a. Modify the data table to accurately reflect the correct building heights based on lot size required by the Zoning Ordinance and the correct maximum heights allowed for each lot.

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 Preliminary Plan meets all applicable sections of the Subdivision Regulations. The lot sizes, widths, shapes and orientations are appropriate for the location of the subdivision, taking into account the design recommendations included in the Master Plan, and for the building type (single family homes) contemplated for the Property.

The lots comply with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

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

The Application is in substantial conformance with the objectives and recommendations of the 2002 *Potomac Subregion Master Plan*.

The Property is located in the "Potomac" community area of the Master Plan. The Master Plan does not specifically address the Subject Property. However, the Master Plan recognizes this part of the Subregion as more developed than the other three community areas identified in the Master Plan (Page 41). Because residential development is dispersed throughout the area, the Master Plan "recommends infill development of remaining vacant properties with residential development essentially similar to what is now there, unless specifically stated otherwise in this Plan." (Page 41)

This Application is in conformance with the Master Plan recommendations for residential infill in this part of the Subregion.

#### Transportation

The 2018 Bicycle Master Plan recommends a 10-foot wide shared use path along the frontage of the Subject Property. The Application pays into the MacArthur Bikeway Improvement Project – Segment 1, Capital Improvement Project (CIP) No. 509337 based on an engineer's cost estimate for the construction of a 10-foot

wide asphalt shared use path along the frontage of the Subject Property. This existing CIP project is a larger scope than just the Subject Property. For efficiency and engineering purposes, it makes more sense for the Applicant to pay for their share of the frontage improvement rather than construct the improvement at this time. The payment in lieu of construction will satisfy the 2018 Bicycle Master Plan.

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

#### Roads and Transportation Facilities

The transportation Adequate Public Facilities (APF) test is satisfied under the 2016-2020 Subdivision Staging Policy. The Property is located in the Rural West Policy Area.

MacArthur Boulevard is an arterial street requiring 80 feet of right-of-way in accordance with the *2002 Potomac Subregion Master Plan*. The Application provides a variable width right-of-way dedication ranging between approximately 42.4 feet and 45.4 feet, as measured from the centerline of MacArthur Boulevard. This amount of right-of-way dedication satisfies and exceeds the minimum Master Plan requirements in order to accommodate the Master Plan recommended shared use path. The Application would be required to install a 10-foot wide shared use path, based on the 2018 Bicycle Master Plan, along the shoulder of MacArthur Boulevard. As discussed above, the Applicant will instead contribute to the MacArthur Boulevard Bikeway Improvement Project – Segment 1 (Capital Improvement Project (CIP) No. 509337).

#### Local Area Transportation Review (LATR)

A traffic study is not required to satisfy the Local Area Transportation Review because a net of two new single-family detached units generate fewer than 50 peak hour person trips.

#### Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lots. The Subject Property has W-1 and S-1 water and sewer service categories, respectively, and will utilize public water and sewer.

The Application was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Access Plan was approved on December 7, 2018. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy in effect at the time the Application was submitted.

A request for comments was sent to the National Park Service due to the Chesapeake & Ohio Canal National Historic Park boundary abutting the Subject Property. However, the National Park Service provided no response.

The United States Army Corp of Engineers was contacted due to the proximity of the Subject Property to the Washington Aqueduct. The Army Corp of Engineer's responded with no concerns regarding the Application but did provide the following comments:

- MacArthur Boulevard has a 6-ton gross vehicle weight (GVW) limit. Therefore, any vehicle exceeding this GVW, must call the Washington Aqueduct at 202-764-2776 or 202-587-9135 for approval and permission to travel on MacArthur Blvd. Permission will only be granted to overweight vehicles with a GVW of up to 15 tons.
- The concrete ramp leading to these properties off MacArthur Blvd. will be constructed directly over our "New Conduit", which is a 9' diameter unreinforced concrete structure. The clearance to the top of the conduit is only 24". Therefore, the contractor must hand dig when working in this area.
- The stairs that are shown to be removed are also directly over our "New Conduit" with a 24" clearance. Hence, the contractor will have to hand dig when working in this area.
- Please have the developer provide the Washington Aqueduct with one weeks' notice prior to starting work on this subdivision.

#### Applicable School Test

With a net of two new dwelling units, Preliminary Plan #120170290 for Old Angler's Cove falls within the *de minimis* (three units or less) exemption. Therefore, the Application is exempt from any applicable residential development moratoria and it is unnecessary to test the project's estimated impact on school enrollment. Nevertheless, below is additional information about the schools and school cluster that serve the Subject Property.

#### **Cluster Information**

The Application is located in the Walt Whitman High School Cluster.

The Moratorium Enrollment Threshold is the enrollment at which the 120% utilization threshold is exceeded, resulting in a cluster-wide residential development moratorium. Based on the FY19 Annual School Test results, current projections for the cluster fall well within the threshold at each level, therefore the cluster service area remains open to new residential development.

### **Individual School Information**

The applicable elementary school for this Application is Carderock Springs ES and the applicable middle school is Thomas W. Pyle MS.

The Moratorium Enrollment Thresholds are the enrollments at which the 120% utilization threshold and the seat deficit threshold are exceeded. Current projections for both Carderock Springs ES and Pyle MS fall well within the thresholds, therefore both service areas remain open to new residential development.

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 Applicant submitted a Preliminary Forest Conservation Plan (PFCP) as part of this Application as was required under the previous approved version of Chapter 22A, Section 22A-11.b.2.A at the time of initial application. Chapter 22A was updated on October 17, 2018 with no grandfathering clause for the sequencing of submittal of the PFCP and then the Final Forest Conservation Plan (FFCP). This section currently states in part:

*"...If only one approval subject to this subsection is required, an applicant must submit a preliminary forest conservation plan and a final forest conservation plan at the time of development application."*

In order to satisfy the currently approved Chapter 22A, Section 22A-11.b.2.A, the Applicant has agreed to submit the FFCP for review and approval prior to the certification of the Preliminary Plan. This FFCP will be in compliance with the approved PFCP and Section 22A.00.01.09.B of the Forest Conservation Regulations.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. The total net tract area for forest conservation purposes is 1.95 acres which includes the Subject Property of 1.87 acres and off-site work of 0.08 acres. The Property is zoned R-200 and is classified as High Density Residential as specified in the Trees Technical Manual.



The Subject Property contains no forest cover. However, based on the forest conservation calculations on the Forest Conservation Plan Worksheet, the Applicant has an afforestation requirement of 0.29 acres. The Applicant meets this requirement by afforesting a 0.29-acre area along the southern property line and placing this area in Category I Conservation Easement. This afforestation area and Category I Conservation Easement ranges from 24-foot wide up to approximately 70-foot wide and is roughly 12,632 square feet in size. Although, this Category I Conservation Easement is, in some areas, less than the minimum required 50-feet in width, it is deemed acceptable because its placement against the southern property line expands and enhances the existing off-site protected forest on the NPS property.

#### 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 six 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 removal of the three trees and impacting three others is due to the location of the trees and necessary site design requirements imposed by governmental agencies. Therefore, the Planning Board findings that the granting of this variance is not 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 variance is not based on conditions or circumstances which are the result of actions by the Applicant. The variance is based upon the existing site conditions, requirements of governmental agencies and necessary design requirements of this Preliminary Plan. Of the three specimen trees to be removed (Trees #1, #2, and #7), two are located within the active construction area of the development for the installation of the 8" water main and one is outside the LOD but being severely impacted by construction. The remaining three trees (Trees #5, #6, and #8 are located off-site, but the LOD will encroach into each tree's CRZ.

- 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 variance is a result of the existing conditions and not as a result of 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 does not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed are not located within a stream buffer.

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 1-inch caliper for every 4 inches removed using trees that are a minimum of 3 caliper inches in size, resulting in a mitigation requirement of 25.25 caliper inches of planted, native canopy trees. 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 Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on August 31, 2018. The Application will meet stormwater management goals via ESD for all three lots with the use of drywells and micro-bioretenion facilities.

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

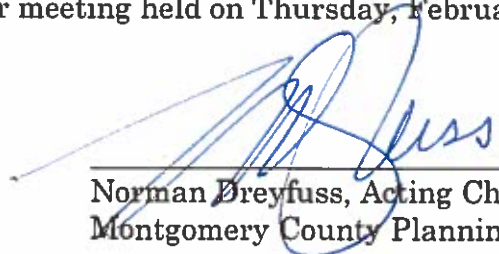
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is FEB 21 2019 (which is the date that this Resolution is mailed to all parties of record); and

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 Acting Vice Chair Dreyfuss, with Commissioner Fani-González and Acting Chair Dreyfuss voting in favor, Commissioner Patterson opposed, Chair Anderson recused, and Commissioner Cichy absent at its regular meeting held on Thursday, February 7, 2019, in Silver Spring, Maryland.

  
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Norman Dreyfuss, Acting Chair  
Montgomery County Planning Board