



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

MCPB No. 19-053
Preliminary Plan No. 120150210
Akbari Residence
Date of Hearing: March 16, 2019

MAY 30 2019

RESOLUTION

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

WHEREAS, on August 12, 2015, Shafiq Akbari ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 2.0 acres of land in the RE-2 zone, located on the south side of Old Baltimore Road, approximately 775 feet east of Georgia Avenue (MD 97) ("Subject Property"), in the Olney Policy Area and 2005 Olney 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. 120150210, Akbari Residence ("Preliminary Plan" or "Application"); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on August 12, 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, dated May 3, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency:

Matt Mills /cs

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

WHEREAS, on May 16, 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. 120150210 to create one lot on the Subject Property, subject to the following conditions:¹

General Approval

1. This Preliminary Plan is limited to one lot for a one-family detached dwelling unit.

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 28, 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 March 11, 2019 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

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.

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, Fire Department Access and Water Supply Section in its letter dated March 15, 2019 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 the approved Final Forest Conservation Plan (FFCP) No. 120150210.
 - 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 Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property, and the Book and Page for the easement must be referenced on the record plat.
 - b) The Applicant must install permanent Category I Conservation Easement signage along the perimeter of the conservation easements.
 - c) The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved Final Forest Conservation Plan.
 - d) 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 at the pre-construction meeting.

Transportation

Frontage Improvements

8. As shown on the Certified Preliminary Plan, where right-of-way dedication for Old Baltimore Road has been waived by the Planning Board, the record plat shall reflect a public improvement easement (PIE) and a Maintenance and Liability Agreement, or other instrument as determined by Montgomery County, for the entire area that would otherwise be dedicated as public right-of-way. The PIE and Maintenance and Liability Agreement must be approved or

executed by Montgomery County, as appropriate, unless Montgomery County determines that no instrument is necessary.

Record Plats

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

Easements

10. The record plat must show necessary easements.

Certified Preliminary Plan

11. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
12. The Certified Preliminary Plan must contain the following note:

Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage 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 Preliminary Plan substantially conforms to the Master Plan.*

The Preliminary Plan is consistent with recommendations in the 2005 *Olney Master Plan*. This Property is located in the Master Plan area designated the Southeast Quadrant area of Olney. There are no specific land use recommendations for the Subject Property. The focus of this Master Plan area is on environmentally appropriate cluster development of remaining undeveloped properties in the quadrant. In general, the Master Plan supports infill residential development of the type proposed.

The Master Plan also makes recommendations for providing public sewer service, creating a mapped sewer envelope to show areas recommended for service. The Akbari Property is outside the envelope, consistent with the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan's policy discouraging service to large lot zones. The Planning Board unanimously recommended maintaining this Property in the existing S-6 sewer category, when it reviewed category change request 16-OLN-2A in 2017. The County Council determined that category S-3 could be considered if the Applicant could demonstrate that the Property could accommodate a septic system and if the Department of Permitting Services was assured by the Washington Suburban Sanitary Commission that public service could be provided by connecting to an existing 8-inch gravity sewer main where it currently terminated on Parcel P561 (17141 Old Baltimore Road) north of Norbrook Drive. The Department of Environmental Protection has determined that both criteria have been met. While providing public sewer service to this Property is inconsistent with the Master Plan, the County Council, which sets final service policy, has provided a clear set of conditions that can allow approval of service to the Property. Since those conditions have been met, the proposed development can be allowed to go forward.

Given that the Property is largely forested, and adjacent to an off-site stream, a conscious effort was made by Staff and the Applicant to minimize the environmental impacts on site.

As shown, the Preliminary Plan includes 1.0 acre of existing high-priority forest retention on-site and still provides a reasonable building envelope on the lot that can accommodate a house and a sufficient rear yard or room for future improvements.

While the Preliminary Plan does not specifically bind the Applicant to the house location shown on the Preliminary Plan, the Applicant is bound to the building envelope shown based on the elevation needed to connect to the gravity sewer line, setbacks and the location of the proposed Category I Conservation Easement. In this case utilizing public sewer service is beneficial because an ample amount of on-site forest that would be cleared if on-site septic was utilized is being retained in a contiguous Category I Conservation Easement.

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

Adequate Public Facilities Review (APF)

The Preliminary Plan application was submitted prior to January 1, 2017 and is therefore being reviewed under the 2012-2016 Subdivision Staging Policy that was in effect on December 31, 2016.

Roads and Transportation Facilities

The Property is located in the Olney Policy Area fronting Old Baltimore Road, accessing the road via a “pipe stem” driveway. Old Baltimore Road between Georgia Avenue and Olney Sandy Spring Road is classified as an Arterial Road (A-312) with 70 feet of right-of-way and 2 travel lanes by the 2018 *Master Plan of Highways and Transitways*. Approximately 52.7 feet of right-of-way currently exists along the Property frontage.

In order to accommodate the full Master Planned 70-foot-wide right-of-way for Old Baltimore Road, the Applicant would need to dedicate an additional 435 square feet along the 25-foot-long Property frontage (an area measuring approximately 17.3 feet deep), which would reduce the lot size below the RE-2 Zone 2.0 acre minimum. The Applicant is requesting a waiver of right-of-way dedication and instead proposes a 17.3-foot-wide Public Improvement Easement (PIE) along the frontage in lieu of right-of-way dedication. The PIE will encumber an area equivalent in size to what would otherwise be right-of-way dedication along Baltimore Road and maintain the minimum lot size required for the zone. Staff and MCDOT support the Applicant’s request because the Subject Property has minimal frontage on a public roadway and the PIE would permit future public improvements within the right-of-way with no adverse impacts to the public interest.

The 2018 Bicycle Master Plan recommends a 10-foot wide shared use path along the West side of Old Baltimore Road, opposite the frontage of the Subject Property. Although the Application does not propose building the off-site shared use path, its approval would not preclude its future implementation.

The proposed access to the Subject Property, as shown on the Preliminary Plan, is adequate to serve the development.

Local Area Transportation Review (LATR)

A traffic study is not required to satisfy the Local Area Transportation Review because a net of one new single-family detached unit generates fewer than the 30 peak-hour vehicle trip threshold set by the 2012-2016 Subdivision Staging Policy.

School Adequacy

The Application proposes one single-family detached residential dwelling unit. The project 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.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lot. The lot will be served by public water and sewer which the Applicant will be extending. The Subject Property is located in the W-1 and S-3 (restricted to single sewer hookup) service category, respectively, which is consistent with use of community water and sewer. The Application has been reviewed by the Washington Suburban Sanitary Commission, which determined that there is an existing 12-inch water line in the right-of-way for Old Baltimore Road, and an 8-inch gravity main on 17141 Old Baltimore Road (P561). The Applicant has secured a 15-foot-wide easement (Book 41434 Page 407) extending approximately 450 feet between the Subject Property and the existing sewer manhole to install a new 8-inch sewer line. The Washington Suburban Sanitary Commission determined that the existing water and sewer lines are adequately sized and can be extended to serve the proposed lot.

The Application has been reviewed by the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply Section, which determined that the Property has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan dated March 15, 2019.

Other public facilities and services, police stations, and health services are currently operating within the standards set by the 2012-2016 Subdivision Staging Policy Resolution. The Preliminary Plan has been evaluated by Staff and the Montgomery County Department of Transportation, who support the waiver and all other transportation elements of the Preliminary Plan.

- 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.*

Compliance with the Subdivision Regulations and Zoning Ordinance

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations included in the *Olney Master Plan*. A summary of zoning conformance for the 2.0-acre lot is included in the table below.

The lot was reviewed for compliance with the dimensional requirements for area, frontage, width, and setbacks of the RE-2 zone and additional regulations as specified in the Zoning Ordinance. The lot can comply with the dimensional requirements of the RE-2 zone, but a waiver of dedication is necessary so that the lot may stay above the 2.0-acre (87,120 sf) minimum lot size required in the zone. The waiver request is discussed below. The Application has been reviewed by other applicable county agencies, all of which have recommended approval of the Preliminary Plan.

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.

A Final Forest Conservation Plan (FFCP) No. 120150210 for the Application was submitted as part of the Preliminary Plan Application.

This Property is zoned RE-2 which is assigned a Land Use Category of Medium Density Residential (MDR) in the Land Use Table of the Environmental Guidelines. This gives the Property an afforestation requirement of 20% of the net tract and a conservation threshold of 25%.

The FFCP shows a total of 1.74 acres of forest on the Property. The FFCP proposes to remove 0.74 acres and retain 1.0 acre of forest. When the numbers of the total tract area, land use category, total amount of forest, forest removed, and forest retained are entered into the Forest Conservation Worksheet, it results in no afforestation/reforestation requirement. All the retained forest will be protected by 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 17 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 nine trees is due to the location of the trees and necessary site design requirements. Therefore, Staff believes 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 requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this project.

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 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 will 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, wetland or special protection area. Therefore, Staff concurs that 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. No additional mitigation beyond

the migration already provided by the forest conservation worksheet is required for the removal of the Protected Trees. No mitigation is required for Protected Trees impacted but retained.

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.*

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS Water Resources Section on March 11, 2019. The Application will meet stormwater management goals via the installation of drywells and a micro infiltration trench.

6. SUBDIVISION WAIVER 50-38

In the Planning Board's review of a preliminary plan and record plat, Subdivision Regulation Section 50-30 - *Public sites and adequate open spaces* specifies the circumstances by which adequate areas for parks, playgrounds, schools, recreation and roads are determined and acquired. Section 50-30(c)(1) instructs the Board to require dedication to public use of roads, whether existing or planned, in order to locate such roads within the public domain. Section 50-30(c)(1) states:

(c) *Adequate open space for traffic, coordination of roads, utilities and storm drainage.*

(1) **Roads.** In its consideration of the approval of a proposed subdivision, resubdivision or of a preliminary plan of subdivision, or resubdivision, the board shall require the dedication to public use of adequate open spaces for traffic and the coordination of roads within the subdivision with other existing, planned or platted roads, or with other features of the district, or with the commission's general plan or with any road plan adopted or approved by the commission as a part of the commission's general plan. Such dedication to public use shall be to the full extent of any and all rights-of-way for all roads, street and highways, including widening of any existing street, determined to be necessary and proper and such as would be required by reason of the maximum utilization and development of the subject property in its present zone classification or that higher use shown on any adopted or approved master plan of the applicable jurisdiction.

The Planning Board's authority to grant a waiver is found in Section 50-38(a)(1) of the Subdivision Regulations. A waiver may be granted provided certain findings can be made. The section states:

"The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is:

- 1) the minimum necessary to provide relief from the requirements;
- 2) not inconsistent with the purposes and objectives of the General Plan; and
- 3) not adverse to the public interest."

As justified in the Applicant's waiver letter dated April 11, 2019, the Subject Property is exactly 2 acres (87,120 square feet), the minimum area needed to record a Property as a buildable lot in the RE-2 zone. Additional dedication was not anticipated when it was created and dedication of additional right-of-way to meet the full master planned 70-foot-wide right-of-way as recommended in the Master Plan of Highways Functional Master Plan would reduce the Property by 435 square feet below the minimum lot size requirement for the zone. Therefore, the Applicant requests a waiver from dedication, and proposes a Public Improvement Easement in lieu of dedication.

The Applicant will record a Public Improvement Easement, granted to the County, over the 435 square foot area that would have been dedicated under normal circumstances. The concept of the PIE has been reviewed and approved by MCDOT. The PIE affords the County the same level of access and maintenance capabilities that would be provided by dedication. The area of the Property within the PIE remains with the resulting recorded lot and the lot remains at the 2.0-acre threshold. The *Olney Master Plan* recommends Old Baltimore Road in this location with a 70-foot-wide right-of-way, however; the Master Plan also specifically recommends that the road remain two lanes. There is sufficient right-of-way currently existing along the Property frontage (52 feet), and with the agreed-upon PIE the road can be maintained in its current configuration, consistent with the Master Plan.

For the foregoing reasons, the Applicant has made a reasonable case that practical difficulties exist that prevent full compliance with the Subdivision Regulations. As explained, the waiver is the minimum necessary to provide relief from the requirements of Chapter 50 to allow this lot to be platted and the waiver is not inconsistent with the objectives of the General Plan and is not adverse to the public interest because the PIE provides the same function as would full dedication.

Furthermore, the Planning Board does not object to the Applicant providing a PIE instead of dedication due to the unusual circumstances and because the Applicant is requesting to record a single parcel, not subdividing to create more than one lot.

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 MAY 30 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 Chair Anderson and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, May 16, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board