



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

MCPB No. 19-131
Preliminary Plan No. 120190230
Old Georgetown Estates
Date of Hearing: December 5, 2019

DEC 23 2019

RESOLUTION

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

WHEREAS, on June 21, 2019 Encore Development Corporation, LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 4 lots and 2 parcels on 5.87 acres of land in the R-200 Zone, located at the western terminus of Tall Tree Terrace ("Subject Property"), in the North Bethesda Policy Area and 1992 North Bethesda-Garrett Park Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120190230, Old Georgetown Estates ("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 25, 2019 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 5, 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, on December 5, 2019, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Verma, with a vote of 5-0; Commissioners Anderson, Cichy, Fani-Gonzalez, Patterson, and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120190230 to create 4 lots on the Subject Property, subject to the

Approved as to

Legal Sufficiency

1877 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

following conditions:¹

1. This Preliminary Plan is limited to four lots for four detached, single-family dwelling units and two parcels (Parcel A for stormwater management and Parcel B to be dedicated to the Parks Department).
2. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty months from the date of mailing of this Planning Board Resolution.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated October 4, 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 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 October 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 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 August 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.

Forest Conservation/Environment

7. A Final Forest Conservation Plan must be submitted for Staff approval concurrently with the Certified Preliminary Plan. Conditions for approval of the Final Forest Conservation Plan must include the following requirements:

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.

- a. The existing WSSC sewer easement just south of the existing driveway entrance must be excluded from the Category I Forest Conservation Easement.
- b. The existing shed within the area proposed for the Category I Forest Conservation must be removed prior to release of the first building permit on the site.
- c. The existing utility wires must be removed from the utility poles along the existing gravel driveway prior to release of the first building permit on the site.
- d. The existing gravel driveway entrance must be blocked off to prevent continued use.
- e. The Final Forest Conservation Plan must include recommendations to accelerate the naturalization of the existing gravel driveway and hasten regeneration. Recommendations may include some combination of: vacuuming off the top layer of gravel, aerating the soil along the drive, auguring several holes in the drive to be filled with topsoil and planted with native trees, and/or topsoiling or mulching the existing driveway surface, or other methods proposed by the Applicant and approved by Staff. Wood chips from removal of existing trees for construction of the site could be used as a source of mulch. Techniques used to accelerate regeneration should be designed to minimize disturbance of the existing roots of mature trees growing along the drive. This work should be performed under the supervision of an ISA Certified Arborist who is also a Maryland Licensed Tree Care Professional.
- f. The Final Forest Conservation Plan must include variance tree number 291 on the list of variance trees to be removed.
- g. Prior to release of the first building permit, the two dead/dying ash trees growing just to the south of the existing gravel driveway entrance must be removed.
- h. Prior to release of the first building permit, the Applicant must plant 3 native shade trees of at least 3 inches caliper, each, to mitigate for the removal of variance tree number 1. Staff recommends that these trees be American sycamore trees, and that they should be planted where the two ash trees will be removed as required in condition 7.g. The mitigation trees must be shown on the Final Forest Conservation Plan.
- i. The Applicant must schedule the required site inspections by M-NCPPC Staff per Section 22A.00.01.10 of the Forest Conservation Regulations. Prior to any clearing, grading, or demolition, the applicant must conduct a pre-construction meeting with the Forest Conservation inspector.
- j. 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.

- k. Except for the demolition of existing structures, prior to record plat or the start of any clearing or grading on the property, whichever comes first, the applicant must record a Category I Conservation Easement over all areas of forest retention and environmental buffers that lie outside of Park dedication areas, as specified on the approved Final 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 and the Liber Folio for the easement must be referenced on the record plat.
- l. At the direction of the M-NCPPC forest conservation inspector, the applicant must install permanent conservation easement signage along the perimeter of the conservation easements. Exact locations of the signs will be determined by the M-NCPPC forest conservation inspector to best define the limits of the conservation easement.
- m. The Limits of Disturbance on the Final Sediment Control Plan must be consistent with the final limits of disturbance as shown on the approved FFCP.

Record Plats

- 8. Except for demolition of existing structures, there shall be no clearing or grading of the site prior to the approval of the concurrently reviewed Certified Preliminary Plan and Final Forest Conservation Plan.
- 9. The record plat must show necessary easements.
- 10. The record plat must reflect all areas under common ownership.

Dedications

- 11. The Applicant must dedicate to Maryland-National Capital Park & Planning Commission ("Commission") the 1.58-acre portion of the Subject Property identified as "Parcel B" on the approved Preliminary Plan for use as an extension of Tilden Woods Stream Valley Park. The land must be dedicated to the Commission through notation on the plat and by conveyance at the time of record plat in a form of deed approved by the Commission's Office of General Counsel. At the time of conveyance, the land to be dedicated must be free of any trash and unnatural debris.
- 12. The Applicant must dedicate the extent of the proposed cul-de-sac to public right of way as shown on the Preliminary Plan.

Certified Preliminary Plan

13. The Applicant must include the stormwater management concept approval letter, other applicable agency letters, and Preliminary Plan Resolution on the approval or cover sheet(s) of the certified Preliminary Plan.
14. The Applicant must show the following prior to certified preliminary plan.
 - a. A 5-foot sidewalk along the frontage of the property;
 - b. A sidewalk extending to the intersection of Tall Tree Terrace and Danville Drive, on either the north or south side of Tall Tree Terrace; and
 - c. An alternate safe and adequate pedestrian connection from the proposed cul-de-sac, through the Property, to Danville Drive.
15. Prior to issuance of the first residential building permit, the Applicant must construct the improvements in condition 14.a, and the improvements in either condition 14.b or 14.c.
16. 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 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 proposed lots were reviewed for compliance with the dimensional requirements for the R-200 Zone, as specified in the Zoning Ordinance. The proposed lot dimensions, size, width, shape and orientation are appropriate for the location of the subdivision and this type of development and will meet all dimensional requirements for area, frontage, width, and setbacks in the zone. The application represents infill development in a well-established, residential

neighborhood. The proposal is consistent with the intent of the R-200 Zone, which states:

“to provide designated areas of the County for residential uses with a minimum lot size of 20,000 square feet. The predominant use is residential in a detached house.”

Pursuant to Section 59.4.4.7 of the Zoning Ordinance, development standards for a Standard Method development in the R-200 Zone are as follows:

R-200 Minimum/Required*		Provided			
Lot Area	20,000sf	Lot 6	Lot 7	Lot 8	Lot 9
		60,804sf	67,004sf	26,436sf	20,131sf
Principal Building Placement					
Lot Width at Front Lot Line / Front Building Line	25' / 100'	25' / 100'	25' / 100'	25' / 100'	25' / 100'
Front Setback (Minimum)	40'	40' or more	40' or more	40' or more	40' or more
Side Setback	Sides: 12' min. 25' total	12' or more each side	12' or more each side	12' or more each side	12' or more each side
		25' or more total	25' or more total	25' or more total	25' or more total
Rear Setback	30'	30' or more	30' or more	30' or more	30' or more
Building Height	Up to 50', depending on lot size	50' or less	50' or less	45' or less	40' or less
Lot Coverage	25% (max)	25% or less	25% or less	25% or less	25% or less

* Portions of the west side of the Property fall within the R-90 Zone. These areas are undevelopable due to environmental buffers and are part of the portion of the Site that will be dedicated to the Parks Department.

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

The Property is located in the 1992 North Bethesda Garrett Park Master Plan (Master Plan) area. The Master Plan does not have specific recommendations for the Subject Property; however, the Master Plan supports the type of development proposed in this Application. Land use objectives of the Master Plan include “Protect and reinforce the integrity of existing residential neighborhoods.” This objective is accomplished with the development of four additional single-family residences, continuing the existing development pattern in this well-established residential neighborhood.

Another Master Plan objective is to “preserve and expand green areas and greenways, including institutional open space, for environmental protection, wildlife sanctuary, recreation and visual relief,” as well as to “preserve existing woodland and encourage reforestation throughout the Planning Area.” These objectives are accomplished by preserving the wooded area at the rear of the

Property, which will be dedicated to Montgomery Parks through the creation of Parcel B. The dedicated parkland will connect with other parcels that make up the Tilden Woods Stream Valley Park.

Thus, this Application substantially conforms with the Master Plan.

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

Schools

With a net increase of three new dwelling units, the Project falls within the de minimis (three units or less) exemption. Therefore, the Project is exempt from any applicable residential development moratoria and it is unnecessary to test the Project's estimated impact on school enrollment.

Transportation

With a net increase of three new dwelling units, the Project falls within the de minimis (three units or less) exemption of the Local Area Transportation Review (LATR). Therefore, it is unnecessary to test the Project's estimated impact on the transportation network.

Vehicular Access Points

The Property lies at the western terminus of Tall Tree Terrace, which will be improved through the Subject Application with a cul-de-sac. Four access points, one driveway for each single-family home, will be located directly off the proposed cul-de-sac.

Bicycle and Pedestrian Facilities

There are no existing or proposed bicycle facilities recommended on the Subject Property.

As conditioned, the Project will provide a 5-foot wide sidewalk along the Site frontage on Tall Tree Terrace, as well as a sidewalk connection to Danville Drive, either along one side of Tall Tree Terrace, or through the property along the existing gravel driveway.

Other Public Facilities

The proposed development will be served by public water and sewer systems. The Montgomery County Department of Permitting Services Fire Department Access and Water Supply Section has reviewed the application and has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services including police stations, firehouses and health care are currently operating in accordance with the Subdivision Staging

Policy and will continue to be sufficient following construction of the project. Electric, gas and telecommunications services are available and adequate.

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

Technical Review 50.4.3.K

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

Natural Resources Inventory

A Natural Resources Inventory/Forest Stand Delineation (No. 420191360) was approved on May 20, 2019. The Property is almost entirely forested, and a portion of Old Farm Creek flows from north to south along the western boundary of the Property. Tilden Woods Stream Valley Park is adjacent to the Property on the west side of Old Farm Creek. The high point of the Property lies on the east side, adjacent to the end of Tall Tree Terrace. From there, the Site slopes down steeply to the north, west, and south. The site includes approximately 1,200 linear feet of stream, 2.77 acres of 100-year floodplain, and 3.63 acres of environmental buffers. There are no known occurrences or habitats of rare, threatened, or endangered species on the Property.

Most of the environmental buffers will be placed either in a Category I Forest Conservation Easement or included within the area to be dedicated to becoming part of Tilden Woods Stream Valley Park. The plan proposes a very small area of buffer encroachment (1,612 square feet) to accommodate retaining walls to reduce greater grading in the buffer. The total amount of proposed Category I Easements shown on the Preliminary Forest Conservation Plan is approximately 3.78 acres, which is 0.15 acres greater than the area of environmental buffers. This would offset the proposed encroachment and is consistent with guidance provided by the Environmental Guidelines for using buffer averaging to mitigate buffer encroachment. The proposed plan is in conformance with the Environmental Guidelines. The parkland dedication will enhance protection of Old Farm Creek, the 100-year floodplain, wetlands, and associated natural resources.

Preliminary Forest Conservation Plan

The Gross Tract Area is 5.87 acres, of which 5.25 acres are forested. The plan proposes clearing 1.88 acres of forest, with 3.37 acres of forest retained. There are no forest planting requirements associated with this subdivision. A total of 1.79 acres of the 3.37 acres of retained forest will be placed in Category I Forest Conservation Easements on the southern portion of the Property. The remaining 1.58 acres of forest will be permanently protected by dedication to the Department of Parks for the expansion of Tilden Woods Stream Valley Park. For purposes of Forest Conservation, preservation of forest within dedicated parkland is considered equal in protection to preservation within a Category I Forest Conservation Easement. As submitted, and including approval of the accompanying variance request, the Preliminary Plan is in compliance with Chapter 22A, Forest Conservation.

B. Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater, DBH; are part of a historic site or designated with a historic structure; are designated as a national, State, or County champion tree; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The Applicant submitted a variance request on June 6, 2019 to impact 19 trees that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law. The submitted variance request missed one additional tree (no. 291), which is a specimen tree proposed for removal. This tree should be shown as removed on the Final Forest Conservation Plan and included in the list of variance trees removed. The correct variance request is for permission to impact 20 trees considered a high priority for retention. Eight of these trees are proposed for removal. The remaining 12 will be impacted but saved.

Unwarranted Hardship

The proposed development is in accordance with both the intent and recommendations of the North Bethesda/Garrett Park Master Plan and the R-200 zoning. The Property is constrained by its topography, which

includes some significant slopes, and by the stream valley to the north, west and south. This leaves a very restricted building envelope for development. The variance trees being removed are located in or very near the only developable area on the Property. Denying the variance request would impinge on the Applicant's ability to develop the Property as envisioned by the Master Plan and otherwise allowed by the Zoning Ordinance. Thus, the Applicant has a sufficient unwarranted hardship to consider a variance request.

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 20 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 an unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Planning 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.*

As noted above, the proposed design responds to the multiple site constraints and is consistent with both the zoning and Sector Plan recommendations. Thus, granting the variance will not confer a special privilege to the applicant.

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

The requested variance is based on the constraints of the site and the engineering challenges, rather than on conditions or circumstances which are the result of actions by the Applicant.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed site design and constraints on the subject property 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.*

Variance trees being retained will continue to provide water quality benefits as before. One variance tree being removed is not within forest being removed. Mitigation must be provided for removal of this tree by planting 3 native shade trees of at least three inches caliper, each, within the new development. Variance trees must be replaced at a rate of 1" replaced for every 4" removed, using replacement trees of no less than 3" caliper, to replace lost environmental functions performed by the trees removed. The mitigation trees must be shown on the Final Forest Conservation Plan. These mitigation plantings will eventually provide sufficient tree canopy to replace the lost water quality benefits of the variance tree being removed that is outside the existing forest. 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. Protected Trees must be replaced at a ratio of approximately 1 inch for every 4 inches removed using planting stock of no less than 3-inch caliper. 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 Applicant received approval of a stormwater management concept from the Montgomery County Department of Permitting Services, Water Resources Section on October 11, 2019 (Attachment 3). The concept proposes to meet required stormwater management goals using a combination of ESD approaches including landscape infiltration & microbioretention planter boxes. The Property is not subject to a water quality plan, and there are no floodplain requirements. The requirements of Chapter 19 for stormwater management are satisfied.

6. *Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M*

Not applicable; the Applicant is not aware of any burial sites and the Property is not included in the Montgomery County Inventory.

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

Not applicable.

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

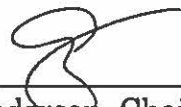
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 23 2019 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

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 Vice Chair Fani-González, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, December 19, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board