



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

MCPB No. 20-090  
Site Plan No. 820200120  
Radwick Lane Property  
Date of Hearing: September 10, 2020

**SEP 23 2020**

**RESOLUTION**

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on January 7, 2020, Marcello Nucci ("Applicant") filed an application for approval of a site plan for ten (10) single-family detached dwelling units on ten (10) lots on 5.81 acres of R-200 zoned-land, located on Radwick Lane, 1,500 feet south of the intersection of Radwick Lane and Norbeck Road, Aspen Hill ("Subject Property"), in the Aspen Hill Policy Area and 1994 *Aspen Hill Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820200120, Radwick Lane Property ("Site 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 August 31, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 10, 2020, the Planning Board held a public hearing at which it heard testimony and received evidence 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 Site Plan No. 820200120 for ten (10) single-family detached dwelling units on ten (10) lots, the Subject Property, subject to the following conditions:<sup>1</sup>

### **Density, Height & Housing**

1. Density

The Site Plan is limited to a maximum ten (10) single-family units and various stormwater management facilities and open spaces on the Subject Property.

2. Height

The development is limited to a maximum height of 40 feet, as measured from the building height measuring point, as illustrated on the Certified Site Plan.

### **Open Space, Facilities and Amenities**

3. Common Open Space, Facilities, and Amenities

- a. The Applicant must provide a minimum of 50,530 square feet of common open space (20% of net lot area) on-site.
- b. Prior to final inspection for the first single-family unit, the Applicant must construct the streetscape improvements, including the 5-foot sidewalk along Radwick Lane consistent with the streetscape standards determined by MCDOT.
- c. Before the performance of the first final inspection for a single-family unit for the residential development, all public use and amenity space areas on the Subject Property must be completed.

4. Common Open Space Covenant

The record plat must reference the Common Open Space Covenant recorded at Book 28045 Page 578 (Covenant).

5. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to common use spaces.

### **Site Plan**

6. Architectural Character

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

- a) The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Sheet 8-10 of the submitted architectural drawings, as determined by M-NCPPC Staff.

## **Environment**

### **7. Forest Conservation**

The development must comply with the Final Forest Conservation Plan.

- 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 Final Forest Conservation Plan. The Category I Conservation Easement must be approved by the M-NCPPC Office of the General Counsel and 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 Liber Folio 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 FFCP.
- d) 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.
- e) The Applicant must plant 16 three-inch caliper native shade trees within one year of construction completion.

### **8. Fire and Rescue**

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated June 17, 2020 and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Site Plan approval.

### **9. Site Plan Surety and Maintenance Agreement**

Prior to issuance of any building permit, sediment control permit, or Use and Occupancy Certificate, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of

surety in accordance with Section 59.7.3.4.K.4 of the Montgomery County Zoning Ordinance, with the following provisions:

- a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b) The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, site furniture, fences, and associated infrastructure (sidewalks, private utilities, storm drainage facilities, and street trees). The surety must be posted before issuance of any building permit of development and will be tied to the development program.
- c) The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by a site plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.

**10. Development Program**

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to the approval of the Certified Site Plan.

**11. Certified Site Plan**

Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a) Include the stormwater management concept approval letter, development program, and Site Plan resolution and other applicable resolutions on the approval or cover sheet(s).
- b) Add a note to the Site Plan stating that "M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading."
- c) Add a note stating that "Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services."
- d) Modify data table to reflect development standards approved by the Planning Board.
- e) Ensure consistency of all details and layout between Site and Landscape plans.
- f) Principle building placement on the plans must reflect the 25-foot minimum setback requirement as specified in Chapter 59.4.4.7.C.
- g) Proposed Street A must be a closed-section road, per the MCDOT and MCDPS Right-of-Way Permitting approvals and as shown on the Certified Site Plan.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of the Radwick Lane Property, 820200120, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

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 development satisfies any previous approval that applies to the site.*

This section is not applicable. There are no previous approvals for the subject property.

2. *The development satisfies the binding elements of any development plan or schematic development plan in effect on October 29, 2014.*

This section is not applicable.

3. *The development satisfies any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment.*

This section is not applicable.

4. *The development satisfies applicable use standards, development standards, and general requirements under the Zoning Ordinance.*

a. Development Standards

The Subject Property includes approximately 5.81 acres zoned R-200. The proposed development is consistent with the requirements of the R-200 Zone, utilizing the Optional Method Cluster Development Standards of Section 59.4.4.7.C. of the Zoning Ordinance, as shown in the following data table:

	Required	Approved
Minimum usable area	5 acres	5.81 acres
Maximum density permitted	2 DUs/acre	1.72 DUs/acre
Common Open space required (%)	20%	40%



Common Open space required (acres)	1.16 acres	2.32 acres
Minimum lot area	9,000 sf	9,000 sf
Minimum setback from public street	25 feet	25 feet*
Minimum setback from private street	10 feet	N/A
Minimum rear setback	40 feet	40 feet
Maximum height	40 feet	40 feet
Maximum lot coverage	25%	25%

5. *The development satisfies the applicable requirements of Chapters 19 and 22A of the Montgomery County Code.*

a. Chapter 19, Erosion, Sediment Control, and Stormwater Management

A Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services on July 13, 2020. The plan will meet stormwater management requirements through the use of drywells and micro-bioretenment areas.

b. Chapter 22A, Forest Conservation

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

The Property has 4.53 acres of existing forest according to what is shown on the approved Natural Resources Inventory/Forest Stand Delineation Plan 420191420. All forest conservation requirements will be met on site. The Property falls under the High-Density Residential Land Use Category and requires a 20% conservation threshold. The Forest Conservation Plans show that 1.93 acres of existing forest will be retained, thereby meeting forest conservation requirements on-site, as is required when utilizing the cluster option. There are a number of large trees that are proposed to be removed. Saving all of the on-site large specimen trees is unavoidable. The applicant has applied for a variance to allow for the removal of these trees with the Final Forest Conservation Plan.

There are two stream buffers that are located on the site. The buffers are from streams that are located off-site. Except for a small area for the stormwater management facilities outfalls, this plan proposes to leave the on-site stream buffers as forested.

Environmental Guidelines

Staff approved a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD No. 420191420) on June 10, 2019. The Property lies in the

Northwest Branch watershed and contains 4.53 acres of high priority forest. There are two areas of forested stream valley buffer in the northeast and southeast corners of the Property. The two areas total 0.66 acres and protect off-site streams. The stream valley buffer will remain forested and protected by Category I Conservation Easements.

#### Forest Conservation

The Property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and Final Forest Conservation Plan was submitted for approval. There are 4.53 acres of existing forest and the Plan proposes to clear 2.60 acres of forest and to retain 1.93 acres of forest. The retained forest will be on homeowner's association property and will be covered by a Category I Conservation Easement.

#### *Minimum Retention*

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

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

The Property is subject to the minimum retention provision because R-200 is a single-family zone and the Applicant is proposing to use the cluster development optional method of development. The conservation threshold for this property is 20%, or 1.25 acres. The Applicant is retaining 1.93 acres, which meets the minimum retention requirement for this Property.

#### *Forest Conservation Variance*

Section 22A-12(b)(3) of the Montgomery County 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 33 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has 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 requested variance is necessary due to the site constraints

of the existing development on all sides and the need to minimize forest and stream valley buffer impacts. The development is clustered to minimize disturbance and maximize forest retention. The Property could not be redeveloped without impacting the requested trees.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting this variance will not confer a special privilege on the Applicant as disturbance of the specific trees is a result of the need to avoid disturbance within the stream valley buffers and the need to maximize forest retention. The development is clustered to minimize disturbance, while meeting all relevant zoning requirements. Granting the variance will not confer a special privilege on the Applicant.

2. *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 not based on conditions or circumstances that are the result of actions by the Applicant. The variance is necessary due to the constraints of the two locations of stream valley buffer and the need to retain existing forest.

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

The requested variance is a result of the location of trees and the proposed development and not 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 Applicant will plant 48" caliper inches of native shade trees to replace the form and function of the variance trees proposed for removal. In addition, the Property will be developed in accordance with the Maryland Department of the Environment criteria for stormwater management and the stream valley buffer planted.

*Mitigation for Trees Subject to the Variance Provisions*



The Applicant is requesting a variance to remove 30 trees and will mitigate for the six (6) trees located outside of forest that are being removed and accounted for on the worksheet. The six (6) trees will be mitigated at a rate of 1" caliper per 4" DBH removed, using a minimum 3-inch caliper native shade tree. The Applicant will provide 16 native shade trees, at a minimum 3-inch caliper size.

*County Arborist's Recommendation of the Variance*

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The variance request was sent to the arborist on September 3, 2019, and a response has not been provided as of the date of this report.

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" caliper per 4" DBH removed, using a minimum 3-inch caliper native shade tree. The Applicant will provide 16 native shade trees, at a minimum 3-inch caliper size. No mitigation is required for Protected Trees impacted but retained.

The Board hereby grants the requested variance.

6. *The development provides safe, well-integrated parking, circulation patterns, building massing and, where required, open spaces and site amenities.*

Building Massing

The proposed homes are single family detached units with a maximum height of 40 feet. The building massing is consistent with other residential homes in the area.

Open Spaces and Site Amenities

The area inside the elongated cul-de-sac serves as a proposed open space area, which provides a central useable area for future residents and surrounding residential neighborhoods. The Project will provide a total of 40% open space (2.32 acres), which is double the required 20% per Chapter 59. This includes 2 open space parcels.

7. *The development substantially conforms to the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan.*

The Property is located within the limits of the 1994 *Aspen Hill Master Plan* and is in an area which is zoned R-200. The Master Plan does not make specific recommendations for the Subject Property, other than to confirm the existing land use and zoning of the area. The Master Plan also states that the Vision for the residential areas is to "Encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles and physical capabilities at appropriate densities and locations." The Master Plan also lists "Protection of the existing residential communities is a main objective of the Plan, which is in accordance with the General Plan objective to maintain and enhance the quality of housing and neighborhoods." The proposed Site Plan is in conformance with the Master Plan.

8. *The development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.*

As determined by the Preliminary Plan approval, adequate public facilities exist to support the proposed development.

9. *The development is compatible with the character of the residential neighborhood.*

The single family lots and houses proposed under the R-200 Zone Optional Method Cluster Development are compatible with the adjacent properties. The lots and detached houses are compatible with the existing R-200 single family lots to the existing townhome lots to the west. In addition, the forest conservation areas and the community open space serve as a buffer from the undeveloped R-200 lots to the east and south.

10. *The development is compatible with existing and approved or pending adjacent development.*

Not applicable to this submission.

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED that this Site Plan shall remain valid as provided in Montgomery County Code § 59-7.3.4.H; 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 SEP 23 2020 (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 Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, September 10, 2020, in Silver Spring, Maryland.



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Casey Anderson, Chair  
Montgomery County Planning Board