



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Agenda Date: 11/5/2020
Agenda Item No.: 1-c Other
Consent
October 6, 2020

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Gwen Wright, Planning Director

VIA: Elza Hisel-McCoy, Chief, Down-County Planning Division *CH*
Stephanie Dickel, Supervisor, Down-County Planning Division *SD*
Matthew Folden, Planner Coordinator, Down-County Planning Division *Mat*

RE: Correction of Resolution
MCPB No. 20-041
Preliminary Plan No. 12006067A
Bannockburn Estates

Please find the attached redlined version of the Resolution for Preliminary Plan 12006067A, Bannockburn Estates. This Resolution was adopted by the Planning Board at the May 7, 2020, Planning Board Hearing, and was mailed out to all parties of record on June 11, 2020.

This Corrected Resolution updates the date of the adequate public facility extension, from March 31, 2020 to March 31, 2021, as stated in the Staff Report and reflective of the final position of the Planning Board.

cc: Matthew Mills, Associate General Counsel



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

MCPB No. 20-041
Preliminary Plan No. 12006067A
Bannockburn Estates
Date of Hearing: May 7, 2020

NOV 17 2020

CORRECTED RESOLUTION

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

WHEREAS, on July 3, 2007, the Planning Board, by Resolution MCPB No. 07-72, approved Preliminary Plan No. 120060670, creating two (2) lots on 1.15 acres of land in the R-200 zone, located in the northeast corner of the intersection of Selkirk Drive and Helmsdale Road in Bethesda ("Subject Property"), in the Bethesda-Chevy Chase Policy Area and 1990 *Bethesda-Chevy Chase Master Plan* ("Master Plan") area; and

WHEREAS, on January 30, 2020, Mr. Shafi Azimi ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to reinstate the previous approval and extend the adequate public facility validity through March 31, 2021 on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12006067A, Bannockburn Estates ("Preliminary Plan," "Amendment," 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 April 24, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 7, 2020, 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. 12006067A to reinstate the previous approval and extend the adequate public facility validity through March 31, 2021 by modifying the conditions as follows:¹

2. Prior to certification of the Preliminary Plan, the Applicant must receive approval of a revised Tree Save Plan reflecting current conditions on the Subject Property. No demolition, clearing or grading may occur prior to all required inspections set forth in the Forest Conservation Regulations.
6. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated January 12, 2006, and reconfirmed by letter, dated March 25, 2020, 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.
7. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid until March 31, 2021.
9. The Preliminary Plan will remain valid until March 31, 2021.
10. 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.
11. Prior to Certification of the Preliminary Plan, the Applicant must:
 - a. Show resolutions and approval letters on the certified set;
 - b. Update the Tree Save Plan to reflect current conditions on the Subject Property;

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.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan, and all findings not specifically addressed remain in effect.

1. *Public Facilities will be adequate to support and service the area of the subdivision*

The scope of the Subdivision, which results in a net increase of one single family dwelling unit has a *de minimis* impact on public facilities.

a. Roads and Other Transportation Facilities

Transportation access is adequate to serve the development. The existing lot has direct access onto Helmsdale Road and Selkirk Drive, both of which are classified as secondary residential roadways within 60-foot-wide public rights-of-way. There will be no changes to the adjacent public streets as a result of the subject Application.

b. Local Area Transportation Review (LATR)

The transportation impact of Preliminary Plan 120060670 was evaluated in accordance with the LATR Guidelines in place at the time of approval and transportation capacity was found to be adequate at that time. Although the Subject Property continues to have a valid transportation adequate public facility approval, through August 2020, the Application was evaluated in accordance with the 2016-2020 Subdivision Staging Policy to update this validity. Since the Application generates fewer than three new peak hour trips, the Project is considered to have a *de minimis* impact on the transportation network. As a result, adequate public facilities exist to serve the Subject Property.

c. School Capacity

With a net of one new single-family detached dwelling unit, the Application is determined to fall 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 Application's estimated impact on school enrollment under the current Annual School Test.

d. Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the development. The Property will be served by public water and sewer systems. Water, sewer, and other utilities are located within the adjacent public roadways. Connections (one or multiple connections) off one or more of these roads adjoining the Property will service the Property, the design of which will be finalized at building permit. The Application was reviewed by both Planning Staff and the predecessor of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section, as part of the original approval, and emergency vehicle access has been deemed adequate. Local health clinics, police stations and fire stations are all operating within acceptable levels as established by the Subdivision Staging Policy.

2. *All Forest Conservation Law, Chapter 22A requirements are satisfied*

This Application is subject to Chapter 22A Forest Conservation Law but was previously found to be exempt by MNCPPC Staff on September 8, 2006. At that time, the Project was found to meet the requirements of exemption, currently found in Section 22A-5(s)(1), because the development activity occurs on a tract of land less than 1.5 acres with no existing forest or existing specimen or champion trees, and will not result in afforestation requirements of more than 10,000 square feet. The Project's Forest Conservation Exemption was confirmed by MNCPPC Staff as part of the Application review.

3. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied*

The MCDPS Stormwater Management Section reconfirmed the original stormwater management concept approval, dated January 12, 2006, on March 25, 2020. Per the approval letter, the stormwater management concept meets stormwater management requirements via Environmental Site Design to the Maximum Extent Practicable ("ESD to the MEP") via the use of drywells for water quality control.

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

Under Section 50.4.2.H.2.b. of the Montgomery County Code, the Board may reinstate a Preliminary Plan and establish a new validity period if the Applicant demonstrates practical difficulty or undue hardship.

The original application was approved immediately before the start of the economic downturn, commonly referred to as the Great Recession; before a series of family emergencies that required the Applicant to divert time and financial resources toward the unforeseen support of his extended family; and issues with the contractor responsible for implementing the previous approval. The timing of the original approval, coupled with the hardship of extensive home renovations, required by Preliminary Plan Condition No. 5 (partial demolition of the existing home to satisfy minimum setbacks to the lot lines created by the original approval), and issues with the consultant responsible for completing the plat resulted in significant delay of the Project and ultimately concluded in a lapse of the Preliminary Plan validity Period.

In his Statement of Justification for the reinstatement, the Applicant explained that the partial demolition of his home and existing mortgage debt, resulting from site work associated with the previous Preliminary Plan approval, prohibit the Applicant from filing a new Preliminary Plan application, thus the request for reinstatement to finish executing the original approval. The Applicant and his family have lived on the Subject Property for over 20 years and have shown good faith efforts to comply with the original approval, including the partial demolition set forth in Condition No. 5. A summary of steps taken to execute the approval include:

- Filing a Plat application with M-NCPPC in March 2009.
- Filing a building permit application with the Department of Permitting Services (DPS) in April 2014; subsequently renewed by DPS in 2015.
- Completion of home alterations in December 2016.

A detailed summary of the steps the Applicant has taken to effectuate Preliminary Plan No. 120060670 is provided in the Applicant's Statement of Justification. Additional information about delay associated with the Applicant's consultant are also detailed in the Statement of Justification.

The Application to reinstate the Preliminary Plan and extend the Adequate Public Facilities validity through March 31, 2021 does not alter the intent of the original approval and the only changes to conditions of approval are those necessary to bring the subdivision into compliance with current practices.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is NOV 17 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

the original mailing date, or, if the appeal relates to the corrected portions of this resolution, within thirty days of the date of this Corrected 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-Gonzalez, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, November 5, 2020, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board