



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

MCPB No. 21-033
Preliminary Plan No. 12013028A
Lake Potomac
Date of Hearing: April 8, 2021

MAY 13 2021

RESOLUTION

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

WHEREAS, on May 14, 2015, the Planning Board, by Resolution MCPB No. 15-51, approved Preliminary Plan No. 120130280, creating four (4) lots on 11.11 acres of land in the RE-2 zone, located in the southeast quadrant of the intersection of Stoney Creek Road and Stoney Creek Way ("Subject Property"), in the Rural West Policy Area, Potomac Subregion master plan ("Master Plan") area; and

WHEREAS, on October 27, 2020, Lowell Baier ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to reinstate the previous approval, and establish a new Preliminary Plan validity period and adequate public facility validity period on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12013028A, Lake Potomac ("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 March 25, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 8, 2021, 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 April 8, 2021, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded

by Commissioner Verma, with a vote of 5-0; with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Verma, and Patterson voting in favor.

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. 12013028A to reinstate the previous approval through June 19, 2022 and extend the adequate public facility validity through June 19, 2024 by modifying the conditions as follows:¹

Revised Condition:

12. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid until June 19, 2024.

New Condition:

14. The Preliminary Plan will remain valid until June 19, 2022.

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.

The Planning Board found that Preliminary Plan No. 120130280 met the requirements of the RE-2 zone; satisfied Forest Conservation requirements and complied with other applicable regulatory requirements. Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the Preliminary Plan and all findings not specifically addressed remain in full force and effect.

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.

The elements of Preliminary Plan Amendment No. 12013028A remain consistent with the original findings, as modified, to reinstate the Preliminary Plan.

Preliminary Plan Reinstatement

Section 50.4.2.H.2.a of the Montgomery County Code states that failure to submit an extension request in a timely fashion voids all non-validated portions of the preliminary plan. However, Section 50.4.2.H.2.b. states that the Board may reinstate a Preliminary Plan and establish a new validity period, with or without a new APF review, if the Applicant demonstrates practical difficulty or undue hardship.

The Planning Board approved the Applicant's request to reinstate the Preliminary Plan approval, including the original Adequate Public Facilities validity period, and establish a new Preliminary Plan validity period through June 19, 2022 and a new APF validity period through June 19, 2024. Reinstatement and a brief extension of the Preliminary Plan will afford the Applicant the necessary time to record the Record Plat. This reinstatement is in accordance with Section 50.4.2.H.2.b. of the Montgomery County Code, which permits the Board to reinstate a Preliminary Plan if an Applicant has suffered a practical difficulty or undue hardship.

Because the Preliminary Plan expired before July 28, 2020, the Application is not eligible for the recent two-year extension granted by Montgomery County Council Ordinance No. 19-12 (Subdivision Regulation Amendment No. 20-01) due to COVID-19. For the same reason and with the new APF review, included below, Staff supported the Applicant's request to establish a new APF validity period until June 2024.

In the Statement of Justification for the reinstatement, the Applicant's representative explained that Mr. Baier satisfied all requirements of the approval prior to the expiration of the Preliminary Plan validity and the Record Plat was ready for recordation to vest the approval. However, in December 2018, as explained in his letter and doctor's statement, the Applicant was diagnosed with radiation cystitis (a complication from his cancer treatment) discovered after an emergency surgery. In March of 2019, the Applicant underwent a second surgery for the same issue. After the initial surgery and throughout 2019 and 2020, the Applicant was frequently hospitalized and was disabled to the point that he was unable to attend to his business affairs. It was during that time the Preliminary Plan validity expired.

To compound the issue, the Applicant's business affairs were further disrupted with the spread of COVID-19. Given his aforementioned health issues, the Applicant was limited in what he could physically do and when he was able to continue with his business, and regular communication and day-to-day coordination was restricted by

the COVID-19 Pandemic. In short, the Applicant had no choice but to prioritize his health once he became ill, suffering an undue hardship, and was not aware the Record Plat had not been filed until after the validity period had expired.

To reassure the Board that the Preliminary Plan is still viable and moving forward, the Applicant provided a letter from a local builder, Mitchell & Best, expressing their interest in purchasing the lots predicated on approval of this Application.

The Application to reinstate the Preliminary Plan through June 19, 2022 does not alter the intent of the original approval and the only changes to conditions of approval are those necessary to complete the record plat process and establish a new APF validity period, as detailed below.

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

Local Area Transportation Review (LATR)

The Preliminary Plan was approved for four lots for four new single-family detached units. The existing dwelling unit on the Property will be removed prior to construction of any new dwelling, which results in three net new units. A traffic study is not required to satisfy the Application's Adequate Public Facilities LATR test because three net new single-family detached units generate fewer than 50 person trips in the peak hour, which occurs within the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods.

Schools Adequacy Test

Overview and Applicable School Test

The Application was submitted in 2020 and came before the Planning Board before April 2021. Therefore, the rules of the 2016 Subdivision Staging Policy (SSP) and FY21 Annual School Test, approved by the Planning Board on June 25, 2020 and effective July 1, 2020, are applicable. The Application reinstates the original Preliminary Plan approved for 4 single-family detached lots on 11.11 acres. The Applicant is removing an existing dwelling unit, so the net unit increase is 3, which means it 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 application property.

Cluster Adequacy Test

The Property is located in the Winston Churchill High School Cluster. The student enrollment and capacity projections from the FY21 Annual School Test under the 2016 SSP for the cluster are noted in the following table:

School Level	Projected Cluster Totals, September 2025			Moratorium Threshold	Estimated Application Impact
	Enrollment	Program Capacity	% Utilization		
Elementary	2,505	2,866	87.4%	935	0
Middle	1,564	1,731	90.4%	513	0
High	2,327	1,986	117.2%	56	0

Individual School Adequacy Test

The applicable elementary and middle schools for this Application are Potomac ES and Herbert Hoover MS, respectively. Based on the FY21 Annual School Test results under the 2016 SSP, the student enrollment and capacity projections for these schools are noted in the following table:

School	Projected School Totals, September 2025			
	Enrollment	Program Capacity	% Utilization	Seat Deficit
Potomac ES	356	479	74.3%	+123
Herbert Hoover MS	964	1,139	84.6%	+175

Other Public Facilities and Services

The Application does not modify the approval lot configuration in a manner that alters fire department access, configuration of utilities or any other public services, therefore, all original approvals remain valid. The Application can be adequately served by all other public facilities and services according to the 2016 Subdivision Staging Policy.

As approved, the Amendment 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 MAY 13 2021 (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 Vice Chair Fani-González, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor of the motion at its regular meeting held on Thursday, April 29, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board