



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

MCPB No. 22-009
Preliminary Plan No. 120210160
11801 Seven Locks Road, Willerburn Acres, Section 2
Date of Hearing: January 20, 2022

JAN 27 2022

RESOLUTION

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

WHEREAS, on February 8, 2021, 11801 Seven Locks Road LLC, Zion Avissar (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create four (4) lots on 1.01 acres of land in the R-90 zone, located at 11801 Seven Locks Road (“Subject Property”), in the Potomac Policy Area and 2002 *Potomac Subregion Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120210160, 11801 Seven Locks Road, Willerburn Acres, Section 2 (“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 January 7, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on January 20, 2022, 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. 120210160 to create four (4) lots on the Subject Property, subject to the following conditions:¹

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.

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Approved as to
Legal Sufficiency: /s/ Emily Vaias
M-NCPPC Legal Department

1. This Application is limited to four (4) lots for four Detached Houses as defined by Section 4.1.3.A of the Zoning Ordinance.
 2. The Applicant must comply with the conditions of approval for the Preliminary/Final Forest Conservation Plan No. 120210160, approved as part of this Preliminary Plan, as follows:
 - a. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 - b. The Applicant must comply with all tree protection and tree save measures shown on the approved Preliminary/Final Forest Conservation Plan ("FFCP"). Tree save measures not specified on the Preliminary/Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
 - c. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Cabin John Creek watershed to satisfy the afforestation requirement for a total of 0.18 acres of mitigation credit. The off-site requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available for purchase within the Cabin John Creek watershed or by making a fee-in-lieu payment if mitigation credits are not available at any bank.
 - d. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the twenty-three (23) variance mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
 - e. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a five-year Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all variance mitigation tree plantings credited toward meeting the requirements of the FFCP. The MMA includes invasive species management control measures.
 - f. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 4 caliper inches totaling 92 caliper inches as shown on the approved FFCP. Adjustments to the planting
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- locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
- g. The Applicant must plant the variance mitigation trees in the first planting season following stabilization of the applicable disturbed areas or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - h. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved FFCP.
3. 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 September 29, 2021 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.
 4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated December 9, 2021 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.
 5. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated December 9, 2021, 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 Preliminary Plan approval.
 6. The Applicant must dedicate the rights-of-way and ensure construction of all necessary road improvements for the following public streets, as shown on the Preliminary Plan, to the design standards imposed by all applicable road codes:
 - a. Replace culvert under Fontaine Street with a MCDOT approved culvert as shown on the Certified Preliminary Plan.
 - b. Convert existing shoulder to a 6-foot wide bikeable shoulder along the frontage on Seven Locks Road.
 - c. Construct a 6-foot-wide sidewalk along the frontage on Fontaine Street, subject to DPS review pursuant to Sections 49-33(e) and 49-40.b.1.C.
 7. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:

- a. The truncated corner of right-of-way consistent with MCDOT standards at the intersection of Seven Locks Road and Fontaine Street as shown on the Certified Preliminary Plan.
8. Record plat must show all necessary easements.
9. The Adequate Public Facilities (APF) review for the preliminary plan will remain valid for five (5) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5).
10. The Preliminary Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date 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 filed.
11. The Certified Preliminary Plan must contain the following note:

“Unless specifically noted on this plan set 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 building permit approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”

BE IT FURTHER RESOLVED that having considered the recommendations 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 Preliminary Plan meets all applicable sections of the Subdivision Regulations. The size, width, shape and orientation of the lots are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, and for the building type (single-family detached structures) and use contemplated for the Property.

The lots were reviewed for compliance with the dimensional requirements for the R-90 zone as specified in the Zoning Ordinance. The lots will meet the dimensional requirements for area and frontage and can accommodate the single-family detached structures which can reasonably meet the width and setback requirements in that zone.

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

The Preliminary Plan substantially conforms to the recommendations included in the *2002 Potomac Subregion Master Plan*. The Property is located within the Potomac area of the Master Plan. The Master Plan does not specifically identify or provide any specific recommendations for the Subject Property.

The Master Plan's vision for the Potomac area emphasizes specific parcels or areas recommended for a change in use or density. The Master Plan "supports the retention and reconfirmation of existing zoning for all developed, underdeveloped, and undeveloped land in the Subregion except for those sites recommended for change" (Page 40). The Subject Property is not one of the properties focused on by the Master Plan for a change. As such, the Master Plan supports development which conforms to the zoning implemented at the time of adoption of the Master Plan and associated sectional map amendment such as the proposal in this Application.

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

Roads and Transportation Facilities

Seven Locks Road is an arterial street with a recommended right-of-way width of 80 feet with two travel lanes in the Master Plan. The existing right-of-way along Seven Locks Road exceeds the Master Plan recommendation with 100 feet of right-of-way. As a result, no additional right-of-way dedication is necessary. The Master Plan does not specifically identify Fontaine Street, but it functions as a secondary street. Per Section 49-32(d)(4) of the County Code, a secondary residential street must have a minimum right-of-way of 60 feet. The 60 feet of existing right-of-way granted by Plat No. 8311 is adequate given Fontaine Street's function and design. Therefore, no additional right-of-way dedication on Fontaine Street is necessary. The only right-of-way dedication necessary as part of this Application is a dedication to truncate the corner of Seven Locks Road and Fontaine Street per MCDOT standards in order to provide adequate room for utilities and pedestrians to navigate the corner.

The Subject Property consists of approximately 270 feet of frontage along Seven Locks Road and 172 feet of frontage on Fontaine Street. The Subject Property is located in the Potomac Policy Area. The *2018 Bicycle Master Plan* recommends bikeable shoulders for the east side of Seven Locks Road between Montrose Road and Tuckerman Lane (Page 162) and no improvements along Fontaine Street. As conditioned, the Applicant will construct a bikeable shoulder along Seven Locks Road and preserve the existing sidewalk. The Fontaine Street frontage requires a 6-foot-wide sidewalk. The neighborhood to the northwest of the Subject Property has no existing sidewalks. As a result, the Fontaine Street sidewalk will be reviewed by the Department of Permitting Services ("MCDPS") at the time of permitting in accordance with Sections 49-33(e) and 49-40.b.1.C of the Montgomery County Code.

Local Area Transportation Review (LATR)

The estimated impact of the four (4) (net of three additional units) single-family detached houses are one (1) AM and one (1) PM peak-hour person trips per unit. As a result, this Application is exempted from additional Local Area Transportation Review (LATR), because the land use generates fewer than 50 peak-hour person trips. The Applicant included a Transportation Exemption Statement as part of this Application.

Transportation access is safe and adequate for the use. This Application is consistent with the *2018 Bicycle Master Plan*, the *2002 Potomac Subregion Master Plan* and satisfies the Adequate Public Facilities (APF) test under the *Growth and Instructure Policy (GIP)*.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lots. The Subject Property is in the W-1 and S-1 water and sewer service categories, respectively, and will utilize public water and sewer.

The Application was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Access Plan was approved on December 9, 2021. The Fire Department Access Plan indicates that fire access will be provided by Seven Locks Road and/or Fontaine Street. Fire equipment does not need to enter the Subject Property to provide adequate fire protection. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the *Growth and Instructure Policy (GIP)* in effect at the time that the Application was accepted.

Overview and Applicable School Test

The FY22 Annual School Test, approved by the Planning Board on June 17, 2021 and effective July 1, 2021 is applicable to this Application. This Application proposes four single-family detached units, replacing one single-family unit to be razed.

School Adequacy Test

The Subject Property is served by Beverly Farms ES, Herbert Hoover MS and Winston Churchill HS. Based on the FY22 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 1 - Applicable FY2022 School Adequacy.

School	Projected School Totals, 2025				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/ Deficit		Tier 1	Tier 2	Tier 3
Beverly Farms ES	689	580	84.2%	+109	No UPP	194	247	351
Herbert Hoover MS	1,139	1,060	93.1%	+79	No UPP	205	307	478
Winston Churchill HS	1,969	2,096	106.4%	-127	No UPP	53	267	563

The school adequacy test determines the extent to which an applicant is required to make a Utilization Premium Payment (UPP) based on each school’s adequacy status and ceilings, as determined in the Annual School Test. Under the FY22 Annual School Test, development projects approved within these school service areas are not automatically subject to Utilization Premium Payments as identified in Table 1.

Calculation of Student Enrollment Impacts

To calculate the number of students generated by the Application, the number of dwelling units is multiplied by the applicable School Impact Area student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low-rise multifamily unit, or high-rise multifamily unit.

With a net of three units that are not age-restricted, the Application is estimated to generate the following number of students based on the Subject Property’s location within a Turnover Impact Area:

Table 2 - Estimated Student Enrollment Impacts.

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
SF Detached	3	0.185	0.555	0.108	0.324	0.154	0.462
SF Attached	0	0.225	0.000	0.123	0.000	0.159	0.000
MF Low-rise	0	0.107	0.000	0.058	0.000	0.070	0.000
MF High-rise	0	0.051	0.000	0.024	0.000	0.030	0.000
TOTALS	3		0		0		0

As shown in Table 2, on average, this Application is estimated to generate zero elementary school students, zero middle school students and zero high school students. The number of students generated does not exceed the adequacy ceilings identified for each school in Table 3; therefore, no additional UPPs are required and neither are partial payments across multiple UPP tiers.

Based on the school capacity analysis performed, using the FY2022 Annual School Test, this Application is not subject to a Utilization Premium Payment. Therefore, no UPP condition is required.

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

A. Forest Conservation

The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the *Montgomery County Planning Department's Environmental Guidelines*.

On January 15, 2021 the Applicant submitted a Preliminary/Final Forest Conservation addressing the requirements of Chapter 22A of the Zoning Ordinance, Montgomery County Forest Conservation Law ("FCL").

The Subject Property is zoned R-90 and assigned a Land Use Category of High Density Residential as defined in Section 22A-3 of the FCL and in the Land Use Table of the Trees Technical Manual. This results in an afforestation requirement of 15% and a conservation threshold of 20% of the Net Tract Area.

The FFCP shows a total Net Tract Area of 1.21 acres. This includes the net tract of 1.03 acres plus 0.18 acres for offsite work associated with this Application. There is no forest on the Subject Property which results in an afforestation requirement of 0.18 acres. As conditioned, the Applicant meets this requirement through purchasing the necessary credits in an off-site forest bank or submitting a fee-in-lieu payment if no forest banks are available.

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 ten (10) 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 for four(4) single-family homes, 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 ten (10) trees is due to the location of the trees and necessary site design requirement. The Applicant proposes removal of the ten (10) trees with mitigation. Therefore, 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, locations of the Protected Trees 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. The Application proposes mitigation for the removal of these trees by planting larger caliper trees on-site. 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. The Board approved replacement of Protected Trees by replacing the total number of DBH removed with $\frac{1}{4}$ of the amount of inches replanted. This results in a total mitigation of 92 inches of replanted trees. In this case, the Applicant proposes to plant 23 four-inch caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements.

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

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on September 29, 2021. The Application will meet stormwater management goals through the use of Environmental Site Design ("ESD") to the Maximum Extent Practicable ("MEP") using drywells and landscape infiltration.

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.*

There is no evidence, actual notice, or constructive notice of a burial site on the Subject Property. The Subject 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.*

There are no other applicable provisions specific to the Property that are necessary for approval of this Application.


BE IT RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JAN 27 2022 (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 Commissioner Cichy, seconded by Commissioner Verma, with Chair Anderson and Commissioners Cichy, Patterson, Verma, and Rubin voting in favor of the motion at its regular meeting held on Thursday, January 20, 2022, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board