

# **Montgomery County Planning Board**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-092

Preliminary Plan No. 120220070

Olney Acres

Date of Hearing: September 8, 2022

## **RESOLUTION**

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

WHEREAS, on March 9, 2022, Alfred House Elder Care, Inc. ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one 0.98 acre lot for an existing residential care facility (Alfred House) and one outlot of approximately 3.98 acres on 4.96 acres of land in the RE-1 zone, located at 18100 Cashell Road, approximately 75 feet southwest of Archwood Way ("Subject Property"), in the Olney Policy Area and 2005 *Approved and Adopted Olney Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120220070, Olney Acres ("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 August 26, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 8, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Rubin, seconded by Commissioner Patterson, with a vote of 5-0; Chair Anderson, Commissioners Cichy, Patterson, Rubin and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120220070 to create one 0.98-acre lot for an existing residential care facility (Alfred House) and one outlot of approximately 3.98 acres on the Subject Property, subject to the following conditions:<sup>1</sup>

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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.

### **General Approval**

1. This Preliminary Plan is limited to one (1) lot for one (1) residential care facility with up to 8 persons and one (1) outlot.

### **Adequate Public Facilities and Outside Agencies**

2. 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).

### **Plan Validity Period**

3. 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.

### **Outside Agencies**

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated July 8, 2022, 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. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
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 June 7, 2022, 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 Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated January 28, 2022, 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.

## **Other Approvals**

### **Clearing/ Grading/ Demo**

8. Before approval of a record plat or any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of this Preliminary Plan.
9. Except for clearing and grading associated with the demolition of the existing two-story office building, swimming pool, and two small outbuildings and paving, there shall be no clearing or grading of the site prior to recordation of plat(s).

## **Environment**

### **Forest Conservation**

10. The Applicant must comply with the following conditions of approval for the Final Forest Conservation Plan No. 120220070, approved as part of this Plan:
  - 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 Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
  - c) Prior to the start of any clearing, grading or construction for this development Application, whichever comes first, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Upper Rock Creek watershed to satisfy the afforestation requirement for a total of 1.00 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 Upper Rock Creek watershed, or by making a fee-in-lieu payment to M-NCPPC if mitigation credits are not available at any bank.
  - d) The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.

## **Transportation**

### **Existing Frontage Improvements**

11. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
  - a) Any land necessary to accommodate eighty (80) feet from the opposite right-of-way line along the Subject Property frontage for Cashell Road.

## **Record Plats**

### **Easements**

12. The record plat must show necessary easements.

### **Notes and Labels**

13. The record plat must reflect all areas under common ownership.

## **Certified Preliminary Plan**

14. The certified Preliminary Plan must contain the following notes:
  - a) *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.*
  - b) *The Applicant must schedule an on-site preconstruction meeting with M-NCPPC inspection staff before any demolition, clearing, or grading occurs on-site. The Applicant and the general contractor must attend the pre-construction meeting with the M-NCPPC inspector. A copy of the approved Certified Preliminary Plan is required to be on-site at all times.*
15. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
  - a) Show resolutions and approval letters on the certified set.
  - b) Modify the data table to reflect development standards approved by the Planning Board.
  - c) Update the Cashell Road street section on Sheet PP0.02 to be consistent with the Preliminary Plan drawing.



BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or 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 approved lot size, width, shape, and orientation are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, and for the existing use (Residential Care Facility) to be maintained on the Subject Property. There are no new roads proposed with this Preliminary Plan and the existing roads are appropriate.

The approved lot was reviewed for compliance with the dimensional requirements for the RE-1 Zone as specified in the Zoning Ordinance. Approved Lot 1 of 0.98 acres, will meet all the dimensional requirements for area and frontage and can accommodate the existing Residential Care Facility use, which can reasonably meet the width and setback requirements in that zone. A summary of this review is included in Table 1. The remaining 3.98 acres will be a platted outlot, with no development. Any future development of the outlot will require subsequent regulatory approval. The Preliminary Plan has been reviewed by other applicable County agencies, all of whom have recommended approval.

**Table 1 - Development Review Table**

<b>RE-1 Zone</b>	<b>Required</b>	<b>Approved Lot 1</b>	<b>Approved Outlot<sup>2</sup></b>
Min. Lot Area	40,000 sq. ft.	42,510 sq. ft. (+/-) (0.98 acres)	173,595 sq. ft. (+/-) (3.98 acres)
Min. Lot Frontage	25 ft.	25 ft. or greater	N/A
Min. Lot Width at B.R.L.	125 ft.	125 ft. or greater	N/A
Max. Lot Coverage	15%	15% or less	N/A
Min. Setbacks (for all lots)			
Front	50 ft.	50 ft. or greater	N/A
Side Street Setback	20 ft.	20 ft. or greater	N/A

<sup>2</sup> No improvements or development will occur on the approved outlot. The outlot will be available for future development, subject to review and approval under Chapter 50.

RE-1 Zone	Required	Approved Lot 1	Approved Outlot <sup>2</sup>
Side	17 ft. (Sum of side setbacks is 35 ft.)	17 ft. or greater (Sum of side setbacks 35 ft. or greater)	N/A
Rear	35 ft.	35 ft. or greater	N/A
Max. Building Height	50 ft.	50 ft. or less	N/A
Site Plan Required	No	No	N/A
Min. Parking Req.	3 spaces <sup>3</sup>	3 spaces <sup>3</sup>	N/A
Min. Bicycle Spaces	0 spaces <sup>4</sup>	0 spaces <sup>4</sup>	N/A

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

The Property is located within the “Southern Olney” plan neighborhood of the 2005 *Olney Master Plan*. The Preliminary Plan does not include any new land uses. Only a new driveway has been included at this time, and other buildings and an old pool are being removed as part of the Application.

The Master Plan does not have any property-specific recommendations for the Property, and there are only general recommendations for this part of the Southern Olney plan neighborhood, mostly related to maintaining or enhancing environmental protections. There are no streams, wetlands, or forests on the Property in need of protection, but any future development should include reforestation and the minimization of impervious surfaces.

The *Olney Master Plan* places strong emphasis on the protection and enhancement of environmental resources such as sensitive areas, important watersheds, forests and green infrastructure and greenways. The Subject Property is located on a ridge between two sub watersheds and away from sensitive areas. It contains no forest and includes a minimum amount of impervious surface, in conformance with the Master Plan.

Other Master Plan recommendations broadly apply to the Application. The Master Plan “reinforces the concept of Olney as a housing resource in one of the residential wedge areas of the County” (p. 59). It also “support[s] elderly housing projects of appropriate densities at appropriate locations” (p. 75).

<sup>3</sup> The parking count remains unchanged as the same number of spaces will be provided on the new driveway for Lot 1. Parking was calculated as:  $(8 \text{ beds} \times 0.25) + (1 \text{ employee} \times 0.5) = 2.5$ , rounded up to 3 parking spaces.

<sup>4</sup> There are no bicycle spaces required because the existing residential care facility only includes 8 dwelling units, which is well below 20 dwelling units.

The existing use, an eight-bed residential care facility, is a residential use located in an area that the Master Plan reinforces for such uses. Given that the Applicant has not included any new uses on the Property, the Application is in substantial conformance with the recommendations of the Master Plan.

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

#### Roads and other Transportation Facilities

The Application will maintain the existing 80 ft. ROW width of Cashell Road in line with the 2018 *Master Plan of Highways and Transitways*. Per the Planning Board's March 3, 2022 *De Minimis Criteria for Very Small Residential and Commercial Development Projects* policy, this Application is exempt from construction of frontage improvements as it falls below the minimum threshold for improvement; and, it will not result in a net increase in square footage, dwellings, or trips that would trigger improvements. Any future development of Outlot 1 may require frontage improvements, which will be reviewed as part of any future application. This Application includes an additional driveway on Cashell Road at Archwood Way to serve Lot 1. The existing driveway located just to the south will be maintained on Cashell Road for the outlot, as will the existing driveway to Bowie Mill Road.

#### Local Area Transportation Review (LATR)

The Application is exempt from LATR review as it will not result in a net increase in trips. The Application will have a negligible impact on the surrounding transportation facilities and decrease trip generation due to the demolition of an existing office building. The site's current and continuing use as a residential care facility generates less than 50 peak-hour trips, thereby rendering a transportation study not necessary based on 2020-2024 Growth and Infrastructure Policy guidelines.

#### Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the approved lot. The lot will be served by public water and sewer.

The Application has been reviewed by the MCDPS, Fire Department Access and Water Supply Section, who determined in their letter, dated January 28, 2022, that the Subject Property does not require a Fire Department Access Plan as there is no new construction for the Property and the existing configuration has adequate access for emergency vehicles.

Electric and telecommunications services are available and adequate to serve the Subject Property. Other public facilities and services, such as police stations, firehouses, and health services are currently operating within the standards set by the 2020-2024 Growth and Infrastructure Policy. The Application can be

adequately served by all applicable public facilities and services. Because this Application was approved to create a new lot for an existing residential care facility (Alfred House) and an outlot for the remaining acreage, it does not have an impact on schools.

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

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. Included with the Forest Conservation Plan is a request for a tree variance for impacts to five trees. The Preliminary Plan complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as described below.

#### Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") 420220400 for this Property was approved on October 5, 2021. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The NRI/FSD identifies the Subject Property within the Upper Rock Creek watershed, but not within the Special Protection Area. The Subject Property contains no forest but does have nine onsite trees with a diameter breast height ("DBH") of 30 inches or more. The Subject Property does not contain any streams, wetlands or other sensitive environmental features.

#### Forest Conservation

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

The Applicant has submitted a Preliminary/Final Forest Conservation Plan ("FCP") with the current development plan application for Preliminary Plan 120220070. 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 approved Environmental Guidelines.

The Subject Property is zoned RE-1 and is assigned a Land Use Category of Medium Density Residential ("MDR") as defined in Section 22A-3 of the Montgomery County Forest Conservation Law ("FCL") and in the Land Use Table of the Trees Technical Manual. This results in an afforestation threshold of 20% of the Net Tract Area.

The tract area for forest conservation purposes includes the 4.96-acre Subject Property plus 0.02 acres of offsite disturbance associated with this Application, for

a total net tract area of 4.98 acres. There is no existing forest on the Subject Property. There is an afforestation requirement of 1.0 acre equal to the afforestation threshold. The Applicant will meet the planting requirement off-site with an in-lieu fee payment or at a Forest Mitigation Bank if available.

#### 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 ("Protected Trees"). Any impact to these trees, including removal of the subject tree or disturbance within the 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. 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 an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; 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.

#### Variance Request

The Applicant submitted a variance request in a letter dated August 22, 2022. The Applicant proposes to impact five (5) Protected Trees that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law (Table 2).

**Table 2 – Protected Trees to be Impacted**

Tree Number	Species	DBH Inches	% CRZ Impacts	Status and Notes
4	Northern Red Oak ( <i>Quercus rubrum</i> )	42"	30%	Fair condition
7	White Oak ( <i>Quercus alba</i> )	32"	44%	Fair condition
10	Tulip Poplar ( <i>Liriodendron tulipifera</i> )	45"	12%	Good condition
11	Red Maple ( <i>Acer rubrum</i> )	34"	19%	Good condition
13	Red Maple ( <i>Acer rubrum</i> )	37"	29%	Fair condition

#### Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. The five Protected Trees are being impacted as a result of the need to provide safe access to the existing residential care facility (Alfred House) and the removal of existing structures to meet development standards. The creation

of this lot requires a new driveway location that aligns with existing Archwood Way and the requirement for direct Fire Department access to the structure. The approved driveway alignment results in the least amount of impact to the existing front yard variance trees. Trees 4 and 7 are being impacted because of a requirement to modify the existing driveway apron on Cashell Road. Trees 10, 11, and 13 are impacted due to the requirement to remove the existing structures on the Property in order to meet setback requirements in the Zoning Ordinance. Therefore, there is a sufficient unwarranted hardship to justify a variance request because the Applicant would otherwise be denied the ability to use the Property for the creation of a single residential lot in the RE-1 zone, which is a reasonable and significant use of the Property.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. The Planning Board makes the following findings in the review of the variance request and the approved Forest Conservation Plan:

Variance Findings

- i. *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 disturbance to the specified trees is due to the need to provide safe access to the existing residential care facility (Alfred House) opposite to existing Archwood Way and the removal of existing structures to meet development standard requirements associated with the development of the Subject Property. Granting a variance to allow disturbance meets the objectives of the Master Plan, the development standards of the RE-1 zone, and is not unique to this Applicant. Granting of this variance is not a special privilege that would be denied to other applicants.

- ii. *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, development standards of the zone, and necessary design requirements of this Application.

- iii. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions, the need for a new driveway and the need to meet development standards of the RE-1 zone, and not as a result of land or building use on a neighboring property.

- iv. *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. No specimen trees will be removed, and impacted trees are not within a stream buffer, wetland or Special Protection Area. The Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision

No mitigation is included since no specimen trees will be removed.

Variance Recommendation

Staff recommends approval of the variance request.

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

The Preliminary Plan Application is exempted from the requirement of providing stormwater management and a stormwater concept submittal. The exemption was granted on the basis that the Application does not propose any new construction, other than a new driveway for Lot 1 and the reduction of the apron width of the existing driveway on the outlot. The Applicant received approval for the exemption from MCDPS on June 20, 2022.

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

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.*

No other provisions apply to the Subdivision.



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 21 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).

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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 Rubin, seconded by Vice Chair Verma, with a vote of 5-0; Chair Anderson, Vice Chair Verma, and Commissioners Cichy, Patterson, and Rubin, voting in favor of the motion, at its regular meeting held on Thursday, September 15, 2022, in Wheaton, Maryland and via video conference.



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September 8 2022