

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

NOV 15 2022

MCPB No. 22-098
Preliminary Plan No. 120220170
5212 Massachusetts Avenue
Date of Hearing: September 29, 2022

RESOLUTION

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

WHEREAS, on September 29, 2022, Mr. Peter Turza (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would abandon 5,570 square feet (0.13 acres) of previously dedicated but unimproved right-of-way in Massachusetts Avenue thereby increasing the existing recorded Lot 23 to a total of 19,121 square feet or 0.44 acres of land, in the R-60 zone, located on the west side of Massachusetts Avenue, 150 feet North of Cape Cod Court (“Subject Property”), in the Bethesda/Chevy Chase Policy Area and 1990 Bethesda Chevy Chase Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120220170, 5212 Massachusetts Avenue (“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 September 16, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 29, 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 Cichy, seconded by Commissioner Rubin, 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. 120220170 to abandon unused right-of-way for Massachusetts Avenue (5,570 square feet), and incorporation of the area back into a lot on the Subject

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Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

Property (existing Lot 23) , subject to the following conditions:¹

GENERAL APPROVAL

1. This Preliminary Plan will increase the existing lot size from 13,551 square feet to 19,121 square feet.

PLAN VALIDITY PERIOD

2. 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

3. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated June 15, 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.
4. The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration (“MDOT SHA”) in its letter August 19, 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 MDOT SHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

RECORD PLAT

5. The record plat must show the abandonment of 5,570 square feet (0.13 acres) of previously dedicated but unimproved right-of-way in Massachusetts Avenue, as shown on the Certified Preliminary Plan.
6. The record plat must show the PEPCO Easement and the 10-foot Public Utility Easement (PUE) along the Site frontage on Massachusetts Avenue, as shown on the Preliminary Plan.

CERTIFIED PRELIMINARY PLAN

7. Prior to approval of the Certified Preliminary Plan, the Applicant must show resolutions and approval letters on the certified set.

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 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:

The requirements of Section 49-68(c) of the Code, Abandonment of Previously Unused Rights-of-way, are satisfied as follows:

(c) The Planning Board must solicit the comments of each notice recipient, and then promptly determine whether:

(1) the right-of-way previously was improved or used for the purposes for which it was intended or dedicated; and

(2) the right-of-way is necessary for anticipated public use.

The Board finds the right-of-way was not improved or used for the purposes for which it was intended, and it is not necessary for anticipated public use. It was originally dedicated for use as part of Massachusetts Avenue by Plat No. 5718.

The Subject portion of right-of-way along Massachusetts Avenue has existed as an unattended piece of land that has never been in public use. The area today is overgrown and unmaintained.

The *1990 Bethesda-Chevy Chase Master Plan*, and the *2018 Master Plan of Highways and Transitways* confirm that the envisioned right-of-way width for Massachusetts Avenue is 120 feet. If the Subject Application is approved, 120 feet of right-of-way along Massachusetts Avenue will remain.

All recommended transportation facilities as envisioned by the *1990 Bethesda-Chevy Chase Master Plan*, the *2018 Bicycle Master Plan* and the *2021 Complete Streets Design Guide* can be implemented within the proposed 120 feet of remaining right-of-way. The Application has also received approval letters from MCDOT and MDOT SHA. Therefore, the right-of-way is not necessary for anticipated public use.

The requirements of Section 49-68(e) of the Code, are satisfied as follows:

49-68(e): If the Planning Board finds that the right-of-way is not necessary for anticipated future public use or that an alternative alignment or location will not adversely affect the public interest, the Board may authorize the right-of-way to be abandoned by incorporating the abandoned land into an amended plat of subdivision. The amended subdivision plat must require the dedication of any land needed for rights-of-way, easements, and other public uses.

As stated above, the right-of-way is not necessary for anticipated future public use, therefore the abandoned area can be incorporated into the amended plat of subdivision and no further dedication of land is necessary.

The Board also finds that the proposed lot meets the minimum development standards of the R-60 zone, and because it is smaller than 40,000 square feet, Chapter 22A, Forest Conservation Law, is not applicable.

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 15 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 Branson, seconded by Commissioner Presley, with a vote of 4-0; Chair Zyontz, and Commissioners Branson, Hill, and Presley, voting in favor of the motion, Commissioner Piñero necessarily absent, at its regular meeting held on Thursday, November 10, 2022, in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
Montgomery County Planning Board

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