

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

**July 26, 2024**

MCPB No. 24-059  
Pre-Preliminary Plan No. 720240010  
Olney Acres  
Date of Hearing: June 20, 2024

## **RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, Section 50.5.1, the Montgomery County Planning Board is authorized to review pre-preliminary plan applications; and

WHEREAS, on September 21, 2022, the Planning Board approved Preliminary Plan No. 120220070 (MCPB No. 22-092) to create one 0.98 acre lot for an existing residential care facility (Alfred House) and one outlot of 3.98 acres, for a total of 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, the lot and outlot approved by Preliminary Plan No. 120220070 have not been platted; and

WHEREAS, on March 20, 2024, AlfredHouse Elder Care, Inc. (“Applicant”) filed a pre-preliminary plan application requesting a binding decision by the Planning Board on the application of the flag lot provisions to the Subject Property in anticipation of filing an amendment to the Preliminary Plan; and

WHEREAS, Applicant’s pre-preliminary plan application was designated Pre-Preliminary Plan No. 720240010, Olney Acres (“Pre-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 June 7, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions and binding elements (“Staff Report”); and

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Approved as to  
Legal Sufficiency:           /s/Allison Myers            
M-NCPPC Legal Department

WHEREAS, on June 20, 2024, the Planning Board held a public hearing on the Application and voted to approve the Application subject to certain conditions and binding elements, on the motion of Commissioner Hedrick, seconded by Vice Chair Pedoeem, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick, and Linden voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Pre-Preliminary Plan No. 720240010 and supports the submission of a preliminary plan amendment application that applies the flag lot provisions to the Subject Property for the creation of flag lots for Lots 2, 3, and 4 under the provisions of Section 50.4.3.C.1.b, and a standard Lot 1 to retain the existing Alfred House residential care facility. The Applicant will submit a preliminary plan amendment subject to the following binding elements:<sup>1</sup>

1. At the time of Preliminary Plan Amendment, the Applicant must provide building restriction lines that provide a minimum of 80 feet of separation between the building envelope of the proposed flag lot and the building envelope of all lots adjacent to the rear lot line of the proposed flag lot and all lots that are between the proposed flag lot and road on which it fronts. All building restriction lines must be shown on the record plat.
2. The Preliminary Plan Amendment must reflect the following minimum building restriction lines (“BRL”) as shown on Figure 5 in the Staff Report, Composite Pre-Preliminary Plan drawing:
  - a. Lot 2: A 35-foot rear BRL from proposed Lot 3, a 45-foot side BRL from proposed Lot 1 and remaining side BRLs satisfying standard side setback requirements in the RE-1 zone.
  - b. Lot 3: A 63-foot rear BRL from existing Lot 21, a 45-foot side BRL from proposed Lot 2 and remaining side BRLs satisfying standard side setback requirements in the RE-1 zone.
  - c. Lot 4: A 63-foot rear BRL from existing Lot 21, a 45-foot side BRL from existing Lot 44 and remaining side BRLs satisfying standard side setback requirements in the RE-1 zone.
3. The Applicant must file an amendment to the previous Preliminary Plan within 90 days of the date of the mailing of the Resolution approving this Pre-Preliminary Plan, otherwise this approval will expire.
4. The Applicant must comply with the filing requirements of Division 50.5 of the County Code regarding the Amendment to the Preliminary Plan.

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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.

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 and binding elements, that:

1. *Flag lots. The Board must not approve flag lots, except where unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way permit no other feasible way to subdivide and the Board determines that appropriate separation between building envelopes can be achieved.*

The creation of flag lots is acceptable, considering the shape of the Property, the location of the existing Alfred House care facility, and the position of the tract in relation to the surrounding properties. The Subject Property is irregularly shaped with over 50% of the buildable area located to the rear half of the Property. Of the 323 feet of frontage on Cashell Road, 236 feet is used for the existing Alfred House residential care facility and driveway. The existing facility is being retained, which leaves only a maximum of 87 feet, measured at the curvature of the property line, along Cashell Road, making it infeasible to avoid the creation of flag lots (or lots without frontage). The flag lots meet the 25-foot minimum frontage for creation of a lot within the RE-1 zone. Taking into consideration the shape of the Property, the existing conditions, and the RE-1 zone development standards, the creation of flag lots is the only feasible manner in which to subdivide the Subject Property. In addition, with the required building restriction lines (“BRLs”), appropriate separation between building envelopes can be achieved as conditioned.

2. *In residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed flag lot and: (a) the building envelopes of all lots that are adjacent to the rear lot line of the proposed flag lot; and (b) the building envelopes of all lots that are between the proposed flag lot and the road on which it fronts.*

Consistent with the flag lot requirements, the Applicant has demonstrated that the potential lots can accommodate the minimum of 80 feet of separation between the building envelope of the proposed flags lots and the building envelopes of the lots that are adjacent to the rear lot line of the proposed flag lot. In addition, the building envelopes of all lots that are between the proposed flag lot and the road on which it fronts will also accommodate the 80-foot separation. Taking into consideration the standard RE-1 setbacks (35-foot rear setback and 17 foot / 35 foot combined side setback) of the adjacent lots, additional setbacks are provided on the Subject Property to provide a cumulative minimum setback of 80 feet between building envelopes. All other setbacks are the minimum required within the RE-1 zone. As conditioned and shown on Figure 5 of the Staff Report, the appropriate BRLs will be provided.

- 3. The Board may require additional building restriction lines to ensure appropriate separation between building envelopes and to provide appropriate location of the building envelope within the lot.*

The BRLs as shown on Figure 5 of the Staff Report will provide appropriate separation.

- 4. All building restriction lines must be shown on the plat.*

As conditioned, the BRLs will be shown on the plat.

BE IT FURTHER RESOLVED that this Pre-Preliminary Plan will remain valid for 90 days from the date of mailing of the Board resolution for this Pre-Preliminary Plan. The Applicant must file a Preliminary Plan Amendment application within this time period in order for the approval not to expire under Section 50.5.2.C.3.a; and

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

**July 26, 2024**

(which is the date that this Resolution is mailed to all parties of record).

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal consistent with the Maryland Rules for the judicial review of administrative agency decisions.

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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 Linden, seconded by Commissioner Bartley, with a vote of **3-0**; Chair Harris, and Commissioners Bartley, and Linden, voting in favor of the motion, Vice Chair Pedoeem and Commissioner Hedrick necessarily absent, at its regular meeting held on Thursday, July 25, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair  
Montgomery County Planning Board