

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

October 11, 2024

MCPB No. 24-090
Preliminary Plan Amendment No. 12023012A
Tregoning Property
Date of Hearing: September 26, 2024

RESOLUTION

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

WHEREAS, on December 27, 2023, the Planning Board, by Resolution MCPB No. 23-118, approved Preliminary Plan No. 120230120, creating forty-four (44) lots for single-family dwelling units, composed of thirty-eight (38) lots for single-family detached dwelling units and six (6) lots for townhouse dwelling units with associated public streets, open spaces, and recreational amenities on 37.85 acres of land in the RE-1 zone, located on Kings Valley Road, west of Preakness Drive (“Subject Property”), in the Rural East Policy Area and 1994 *Clarksburg Master Plan & Hyattstown Special Study Area* (“Master Plan”) area; and

WHEREAS, on April 3, 2024, Elm Street Development (“Applicant”) filed an application for approval of an amendment to the previously approved preliminary plan to amend Preliminary Plan Conditions 1 and 16 regarding density and Private Alleys; and

WHEREAS, Applicant’s application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12023012A, Tregoning Property (“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 September 13, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 26, 2024, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Commissioner Linden, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick, and Linden voting in favor.

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Approved as to
Legal Sufficiency: /s/ Matthew T. Mills
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12023012A to amend Preliminary Plan Conditions 1 and 16 regarding density and Private Alleys by modifying the following conditions:¹

Modified Conditions

1. This Preliminary Plan is limited to 38 lots for 38 single-family detached dwelling units and 6 lots for 6 townhouse dwelling units, including a minimum of 13% MPDUs on 17.81 acres (Parcel 104) out of a total of 37.85 acres, and two development rights retained on the remaining 20.04 acres (Parcel 617).

16. The Applicant must provide Private Alleys A and B, including any sidewalks, bikeways, storm drainage facilities, street trees, streetlights, private utility systems and other necessary improvements as required by either the Preliminary Plan or the subsequent Site Plan within the delineated private road area (collectively, the “Private Road”), subject to the following conditions:
 - a) Record plat must clearly delineate the Private Alleys and include a metes and bounds description of the boundaries of the respective Private Alleys. The Private Alleys will be subject to all conditions below referencing Private Roads.
 - b) The Private Road must be subjected by reference on the plat to the Declaration of Restrictive Covenant for Private Roads recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338, and the terms and conditions in the Montgomery County Code § 50.4.3.E, et seq regarding private roads. The Covenant includes, but is not limited to the following requirements/conditions:
 - i. The Applicant, at its sole cost and expense, shall design, construct, and maintain the Private Road.
 - ii. The Applicant, at its sole cost and expense, shall properly and continually maintain (including ordinary and capital maintenance and removal of snow, ice, litter, and other obstructions and hazards as soon as conditions reasonably allow), repair, and replace any portion of the Private Road and all improvements located within the Private Road, in good condition and repair for safe use and operation of the Private Road. The Applicant must maintain a commercially reasonable budget (operating and capital, as applicable) to address both short-term and long-term maintenance, and reserves for capital repairs. The Applicant must provide certification of the reserves to the Planning Board or its Staff every two (2) years (or every five (5) years in the event there are no below-ground parking structures in the Private Road). The reserves must be adequate to cover the costs of needed repairs.

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.

- iii. The Applicant must post and retain signage to notify the public that the Private Road is not publicly maintained and to provide contact information to handle complaints, concerns, or questions regarding the Private Road.
- c) Before issuance of the first building permit, the Applicant must deliver to the Planning Department, with a copy to the Montgomery County Department of Permitting Services (“MCDPS”), certification by a professional engineer licensed in the State of Maryland that the Private Road has been designed and the applicable building permits will provide for construction in accordance with the paving detail and cross-section specifications required by the Montgomery County Code, as may be modified on this Preliminary Plan or a subsequent Site Plan, and that the road has been designed for safe use, including but not limited to horizontal and vertical alignments for the intended target speed, adequate typical section(s) for vehicles/pedestrians/bicyclists, ADA compliance, drainage facilities, sight distances, points of access and parking, and all necessary requirements for emergency access, egress, and apparatus as required by the Montgomery County Fire Marshal.
- d) Before final inspection of the last residential unit, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a professional engineer licensed in the State of Maryland that the Private Road has been constructed in accordance with the approved drawings, paving detail, and cross-section specifications required by the Montgomery County Code, as may be modified on this Preliminary Plan or a subsequent Site Plan.

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 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:

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.

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.*
- d) *The Lot(s) and Use comply with the basic requirements of Chapter 59*

The lots were reviewed for compliance with the dimensional requirements for the RE-1 zone under the MPDU optional method of development as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area and frontage,

and can accommodate the single-family attached and townhouse dwelling units which can reasonably meet the width and setbacks requirements in that zone. As an MPDU optional method of development project, the Application proposes to provide 44 dwelling units, with 13% MPDUs on 17.81 acres (Parcel 104) out of a total of 37.85 acres. Two development rights will be retained on the remaining 20.04 acres (Parcel 617). The 44 residential dwelling units consist of 38 single-family detached dwelling units and six townhouse dwelling units (MPDUs), which are a permitted use within the RE-1 Zone under the MPDU optional method of development.

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

a) *Roads and other Transportation Facilities*

iii. *Proposed private transportation infrastructure*

The Preliminary Plan Amendment modifies Preliminary Plan Condition No. 16.a to allow Alleys A and B to be located within designated easement areas, rather than being placed within individual parcels. The Applicant requests a corresponding waiver of Section 50.4.3.E.6.b of the Subdivision Regulations.

SUBDIVISION WAIVER 50.9

In the Planning Board's review of a preliminary plan and record plat, Subdivision Regulation Section 50.4.3.E.6 - *Platting roads* specifies that "The area for roads, when shown on a record plat, must be shown on a record plat to the full width of the required right-of-way." Section 50.4.3.E.6.b of the Subdivision Regulations states:

6. *"Platting roads.*

b. A private road must be platted as a road parcel, except as allowed by Subsection c, and remain open and unobstructed for use at all times as part of the project's common area."

The Planning Board's authority to grant a waiver is found in Section 50.9.1 of the Subdivision Regulations, which states "The Board may grant a waiver from a requirement of this Chapter after making the required findings." The required findings are described in Section 50.9.3 which states:

A. "To grant a waiver, the Board must find that:

1. due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;
2. the intent of the requirement is still met; and
3. the waiver is:

- a. the minimum necessary to provide relief from the requirements; and
- b. consistent with the purposes and objectives of the General Plan.”

As explained in the Applicant’s Statement of Justification, which is incorporated herein by reference, the Applicant proposes to amend Condition No. 16.a of Preliminary Plan No. 120230120 and is seeking a waiver of Section 50.4.3.E.6.b., which is cited above. As approved, the Subject Property is providing a greater density within the RE-1 zone than what is generally seen with large lot development. In addition, the buildable areas on the Subject Property are reduced in part due to a stream valley buffer, steep slopes, forest protection, open space requirements, and minimized grading to maintain reduced site disturbance and provide a more natural appearance. Alleys A and B are needed to provide access to MPDUs and rear-loaded single-family detached dwelling units. If Alleys A and B were to be placed within individual road parcels, there would be a conflict with the RE-1 zone minimum lot size requirements, and this would lead to a reduction in the number of dwelling units. Therefore, the Applicant requests a waiver from placing Alleys A and B within separate parcels in order to place them within designated easement areas.

Alley A

When Preliminary Plan No. 120230120 was approved, the Planning Board concluded that Alley A should be extended to connect to Public Road B, provided it would not result in a reduction in the number of dwelling units.² The Applicant thereafter provided for the extension of Alley A while not reducing the number of dwelling units. The approved layout for the Amendment and Site Plan Application incorporates the extension of Alley A and does not reduce the number of dwelling units. The extension of Alley A will provide a continuous one-way connection from Public Road B to Public Road A, while providing improved, direct access to the rear-loaded dwelling units within Block A. While the extension of Alley A will reduce the amount of usable area within Block A and require the reconfiguration of the stormwater management facilities, the urban form of Block A will be significantly improved and ultimately provide better access for future residents. By providing rear-loaded dwelling units within Block A, sidewalks will be continuous and uninterrupted with driveways, as well as reduce interactions between pedestrians and vehicles. Additionally, on Block A retaining the number of dwelling units and providing the required 9,000 square

² Condition No. 28 on MCPB No. 23-118 stated “The Applicant shall make all commercially reasonable efforts in collaboration with Staff to review and effectuate the extension of Alley A from Public Street C to Public Street A in Block A, unless said extension were to result in a reduction in the number of dwelling units. All dwelling units, with the exception of Units 1 and 2, in Block A must be rear-loaded or side loaded and served by the potential through alley with frontage along Kings Valley Road and Public Street C. The revised layout must be reviewed and approved by Planning Staff, MCDOT, and DPS Water Resources Section.”

foot minimum lot size for the RE-1 zone, there is not enough developable area to fully place Alley A on its own separate parcel. Alley A will be built to the standards of a public street and managed and maintained by the community HOA.

Alley B

Alley B is located within Block B and intersects with Public Roads A and B. The alley provides access to the rear-loaded single-family detached dwelling units (36-39, 40, and 44) and rear-loaded townhouse units (MPDUs 41-43). As discussed above for Alley A, the Amendment proposes to allow Alley B to be located within designated easement areas rather than being placed within an individual parcel. The Applicant team minimized the impacts to lot sizes and layout within Block B by reducing the width of the Alley from 20 feet to 16 feet and shifting the alley north, while still accommodating the minimum 9,000 square foot lot requirement for the RE-1 zone. Additionally, the curb radii for the alley intersections were revised to accommodate emergency vehicle access and the stormwater management facilities were reconfigured based on the revised layout. The centralized common open space, located to the north on Block B, and Lots 40 and 41 were reconfigured to accommodate the shifting north of Alley B. The common open space is also distributed along the paved trail connection from Public Road B to Kings Valley Road, behind Lots 33-35. Like Alley A, Alley B will be built to the standards of a public street and managed and maintained by the community HOA. The same issue, as above, pertains to this portion of Block B regarding the minimum lot size for the RE-1 zone, density, and no reduction in the number of dwelling units.

Practical difficulties exist that prevent full compliance with the Subdivision Regulations due to the limited buildable area on the Subject Property resulting from protected environmentally sensitive areas, land to remain in agricultural use, open space requirements, and efforts to minimize grading to maintain reduced site disturbance and provide a more natural appearance. The waiver is the minimum necessary to provide relief from the requirements of Chapter 50 by allowing Private Alleys A and B to be located within designated easement areas, rather than placed within individual parcels, and reducing the width of the alleys to the minimum necessary to accommodate one-way circulation. The waiver is not inconsistent with the objectives of *Thrive 2050* ("General Plan") and is not averse to the public interest because the alleys will be built to Code-required public street standards while ensuring the public health, safety, and general welfare. While the General Plan does not have any specific recommendations for alleys and parcels, it does strongly advocate for the construction of new housing and promoting connectivity, especially pedestrian oriented connectivity. Granting the waiver allows the Application to maximize the number of dwelling units allowed on the Property, while providing improved access and connectivity with Alleys A and B.

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

October 11, 2024

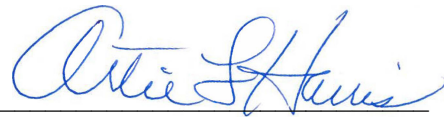
(which is the date that this Resolution is mailed to all parties of record); and

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

* * * * *

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 Hedrick, seconded by Commissioner Linden, with a vote of **5-0**; Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, at its regular meeting held on Thursday, October 10, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board