

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-099
Preliminary Plan No. 120230050
Arora Estates
Date of Hearing: September 21, 2023

OCT 05 2023

RESOLUTION

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

WHEREAS, on December 2, 2022, Design Engineering, Inc. ("Applicant") filed an application for approval of a preliminary plan of subdivision, including a forest conservation plan, of property that would create four (4) lots on 9.3 acres of land in the Residential Estate-2 (RE-2) zone, located at the southwest quadrant of Boswell Lane and Glen Mill Road, commonly known as 10400 Boswell Lane and 12900 Glen Mill 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. 120230050, Arora Estates ("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 8, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 21, 2023, 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 Vice Chair Pedoeem, with a vote of 5-0; with Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden voting in favor. The Planning Board also voted to approve the accompanying Preliminary/Final Forest Conservation Plan Number 120230050 subject to conditions, on the motion of Commissioner Hedrick, seconded by Commissioner Linden, with a vote of 5-0, with Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden voting in favor.

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Approved as to

Legal Sufficiency: /s/ Emily Vaigas
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120230050, including Preliminary/Final Forest Conservation Plan No. 120230050, to create four (4) lots on the Subject Property, subject to the following conditions:¹

GENERAL APPROVAL

1. This Preliminary Plan is limited to four (4) lots for four (4) detached single-family houses.

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 before 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 March 28, 2023 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations 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 May 9, 2023 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations 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.

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.

7. The Planning Board has reviewed and accepts the recommendations of the MCDPS – Well and Septic Section in its letter dated April 25, 2023, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations in the letter, which may be amended by MCDPS – Well and Septic Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
8. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated June 14, 2023, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.
9. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Rustic Road Advisory Committee (“RRAC”) in its letter dated February 27, 2023, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDOT may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

ENVIRONMENT

10. The Applicant must schedule the required site inspections by the M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
11. 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 FFCP may be required by the M-NCPPC Forest Conservation Inspection Staff.
12. 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.
13. Within the first planting season following the release of the first Sediment and Erosion Control Permit from MCDPS for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings on the Subject Property as shown on the approved FFCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 59.75 caliper inches, as shown on the approved FFCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

14. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must:

- a. Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Lower Potomac River watershed or Priority Area to satisfy the reforestation requirement for a total of 2.63 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 Lower Potomac River watershed or Priority Area or by making a fee-in-lieu payment to M-NCPPC if mitigation credits are not available at any bank.
- b. Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
- c. Execute a five-year Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FFCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.

TRANSPORTATION

15. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:

- a. All land necessary to accommodate seventy (70) feet from the opposite right-of-way line along the Subject Property frontage for Glen Mill Road.
- b. All land necessary to accommodate seventy (70) feet from the opposite right-of-way line along the Subject Property frontage for Boswell Lane Road.

RECORD PLATS

16. There shall be no clearing or grading of the site before recordation of plat(s).

17. Before record plat approval, the Applicant must remove all existing structures that cross proposed or existing lot lines.

18. The record plat must show necessary easements.
19. The record plat must reflect common ingress/egress and utility easements over all shared driveways.

CERTIFIED PRELIMINARY PLAN

20. 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, along with their representatives, 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.
21. Before submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
 - a. Show resolutions and approval letters on the certified set.
 - b. Include the approved Fire and Rescue Access plan in the certified set.

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 Project does not propose any new blocks. The proposed subdivision is within an existing residential community with an established street grid and block design.

The Project meets all applicable sections of the Subdivision Code, including lot design. The proposed lots are appropriate in size, shape, width, and orientation, taking into account the recommendations of the 2002 *Potomac Subregion Master Plan*, the existing lot pattern of surrounding properties, and the building types (single-family detached dwelling units) contemplated for the Property.

The Property was reviewed for compliance with Section 50.4.3.D (Public Sites and Adequate Public Facilities) of the Subdivision Code. There are no Master Plan recommendations for public sites or open areas for the Property.

The proposed lots were reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The proposed lots will meet all the dimensional requirements for area, frontage, and width. A summary of this review is included below in Table 1.

Table 1 - Development Standards in the RE-2 Zone

Development Standard²	Permitted/Required	Approved Lot 1	Approved Lot 2	Approved Lot 3	Approved Lot 4
Lot Area (min.)	87,120 sq. ft.	93,862 sq. ft.	114,055 sq. ft.	90,326 sq. ft.	87,134 sq. ft.
Lot Width at Front Building Line (min.)	150 ft.	411.84 ft.	168.23 ft.	150.72 ft.	163.23 ft.
Lot Width at Front Lot Line (min.)	25 ft.	384.84 ft.	171.36 ft.	150.93 ft.	152.02 ft.
Coverage (max.)	25%	25%	25%	25%	25%
Front Setback (min.)	50 ft.	50 ft.	50 ft.	50 ft.	50 ft.
Side Setback (min.)	17 ft.	17 ft.	17 ft.	17 ft.	17 ft.
Sum of Side Setbacks (min.)	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.
Rear Setback (min.)	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.
Building Height (max.)	50 ft.	50 ft.	50 ft.	50 ft.	50 ft.

² Lots will satisfy applicable development standards for the RE-2 zone; however, the final development standard provided may be adjusted during record plat approval.

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

The Project substantially conforms to the recommendations within the 2002 *Potomac Subregion Master Plan*. The Master Plan does not make specific recommendations for the Subject Property but reconfirmed the existing single family detached residential zoning throughout the Property's vicinity. The Application demonstrates conformance to the Master Plan by proposing compatible infill housing within residential areas without impacting sensitive areas. Furthermore, the proposed subdivision will help to achieve *Thrive Montgomery's* housing development objective by increasing the number of housing units in all communities. The proposed subdivision meets the area land use guidelines of the Master Plan through the redevelopment of a property without creating significant demand or increase in public infrastructure and transportation needs.

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

As conditioned, adequate public facilities exist to support and service the Project Area in accordance with Section 50.4.2.D of the Subdivision Regulations. The Adequate Public Facilities (APF) test for existing facilities, including utilities, fire and rescue services, and transportation, is satisfied under the 2020 – 2024 *Growth and Infrastructure Policy* ("GIP").

Under Section 49-33 (1)(B) of the County Code, frontage improvements are prohibited on roads designated as Rustic or Exceptional Rustic. As such, the Applicant is exempt from providing any pedestrian or bicycle improvements along the Property's Glen Mill Road frontage because it is a Rustic Road. Although Boswell Lane is no longer a Rustic Road, Section 49-33(1)(A) further states that residential properties with a land area of 25,000 square feet or more and fronting a road with a rural road classification are also exempt from providing pedestrian and bicycle facilities. As such, the Applicant is precluded from providing such frontage improvements on both roads.

The RRAC provided a comment letter dated February 27, 2023. As conditioned, the Project will comply with the RRAC recommendations regarding the widths of two new driveways and driveway aprons.

Additionally, to avoid a new curb cut for Lot 4 and to protect existing mature trees along Glen Mill Road, the existing driveway alignment for Lot 4 will remain the same. As such, an access easement across a small portion of Lot 3 is required.

Schools are adequate to serve the Project. The Project proposes a net increase of two single-family detached units. The Project is served by Wayside Elementary School, Herbert Hoover Middle School, and Winston Churchill High School. Based on the FY23 Annual School Test results, the student enrollment and capacity projections for these schools are noted in Table 2.

Table 2 – Applicable FY 2023 School Adequacy

School	Projected School Totals, 2026				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/Deficit		Tier 1	Tier 2	Tier 3
Wayside ES	631	510	80.8%	+121	No UPP	206	248	342
Herbert Hoover MS	1,139	1,077	94.6%	+62	No UPP	188	290	461
Winston Churchill HS	1,949	2,070	106.2%	-121	No UPP	59	269	562

As shown in Table 3 below, on average, this project 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 2, therefore no additional UPPs are required, and neither are partial payments across multiple UPP tiers.

Table 3 – Estimated Student Enrollment Impacts

Type of Unit	Net No. of Units	ES Generation Rate	ES Students Generated	MS Generation Rate	MS Students Generated	HS Generation Rates	HS Students Generated
SF Detached	2	0.185	0.370	0.108	0.216	0.154	0.308
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

Type of Unit	Net No. of Units	ES Generation Rate	ES Students Generated	MS Generation Rate	MS Students Generated	HS Generation Rates	HS Students Generated
MF High-rise	0	0.051	0.000	0.024	0.000	0.030	0.000
TOTALS	2	0	0	0	0	0	0

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

A. Forest Conservation

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

All Forest Conservation Law, Chapter 22A requirements are satisfied. The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. The Preliminary/Final Forest Conservation Plan ("FFCP") was reviewed under Montgomery County Code, Chapter 22A, Forest Conservation Law that was effective on February 25, 2021, because the development application was submitted and all initial plans uploaded on October 18, 2022, before updates to the Forest Conservation Law became effective on April 3, 2023. Included with the Forest Conservation Plan is a request for a tree variance for impacts and removal of subject trees. The Preliminary Plan complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned in the approval.

The Property is zoned RE-2 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 percent and a conservation threshold of 25 percent of the Net Tract Area.

The Net Tract Area for forest conservation purposes includes the 9.26-acre Total Tract Area plus 0.22 acres of offsite disturbance associated with this Application and minus 0.41 acres of land dedication for rights-of-way, for a Net Tract Area of 9.07 acres. There is a total of 0.82 acres of land classified as forest on the Property. The Applicant proposes to

remove all 0.82 acres of forest. This results in a total reforestation requirement of 2.63 acres. The Applicant proposes to meet the planting requirement by purchasing mitigation credits from an offsite forest bank within the Lower Potomac River watershed or another watershed if no credits are available within the Lower Potomac River watershed. If no forest bank credits are available in any forest bank within Montgomery County, then the Applicant will make a fee-in-lieu payment to M-NCPPC.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a 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 15 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 single-family dwelling units 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 impacts to eight (8) trees and the removal of seven (7) trees are due to the location of the trees within and adjacent to the limits-of-disturbance ("LOD") of the Property and necessary site design requirements for this Property. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, the granting of this variance is not a special privilege that would be granted only to this Applicant and 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, development standards of the zone, and necessary design requirements of this Application.

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 the proposed site design and layout of the Property, 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 Protected Trees requested for removal are not located in an environmental buffer or special protection area. This approval is conditioned on mitigation that approximates the form and function of the trees removed. Therefore, their removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being impacted will remain to provide the same level of water quality protection as they currently provide.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved the replacement of Protected Trees at a ratio of approximately one (1) inch for every four (4) inches removed. No mitigation is required for Protected Trees impacted but retained.

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

The Board finds, consistent with the determination by MCDPS, that the Stormwater Management Concept Plan meets applicable standards.

The Project satisfies the requirements of Chapter 19. The Application received an approved stormwater concept plan from the MCDPS, Water Resources Section on May 9, 2023. The Application will meet stormwater management goals through the use of Environmental Site Design (ESD) during the detailed sediment control/stormwater management plan stage.

The Project is located within the Piney Branch SPA. MCDPS, Water Resources Section determined that the Project is exempt from submitting a Water Quality Plan, but is required to submit a Water Quality Inventory as specified under Sec. 19-63.b.1 of Montgomery County Code and Sec. 4.A.1 of Executive Regulation 29-95AM to be reviewed and approved by MDCPS, Water Resources Section only before the issuance of any sediment control permit.

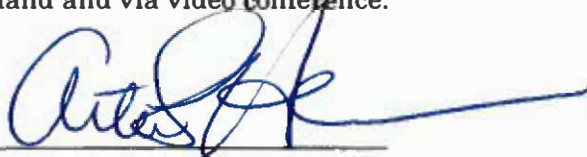
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is OCT 05 2023 (which is the date that this Resolution is mailed to all parties of record); and

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 Vice Chair Pedoeem, 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 5, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board