



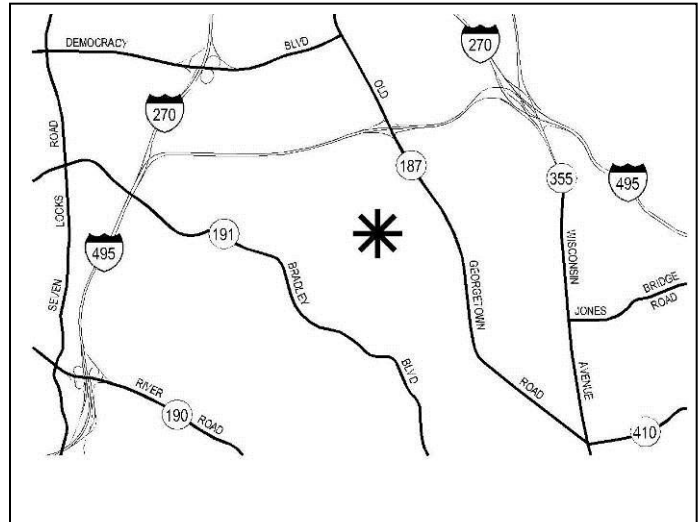
Ayrlawn, Limited Preliminary Plan Amendment 12012011A

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PAK Robert Kronenberg, Chief, Area 1, robert.kronenberg@montgomeryplanning.org (301) 495-2187

Staff Report Date: 02-28-14

Description

Amendment: Amendment to modify Condition No. 2
 Location: Located in the northwest quadrant of the intersection of Johnson Avenue and Lindale Drive
 Zone: R-60
 Master Plan: Bethesda/Chevy Chase
 Property size: 0.76 acres
 Applicant: Betty W. Sutermeister Revocable Trust
 Submitted: September 26, 2013



Summary

Staff Recommendation: Approval with conditions

- The application is an amendment to an approved preliminary plan to modify conditions relating to the required tree save plan. The applicant would like flexibility with regards to tree removal and placement of storm water management facilities. Additionally, a correction to the school facilities payment to include the middle school level was brought to Staff's attention upon the filing of the application. At the time of this staff report, Staff has received minimal correspondence from the public regarding the current application; none of concerns expressed were relevant to the scope of the proposed amendment.

SITE DESCRIPTION & BACKGROUND

The property (shown below) measures 0.76 acres (33,105 square feet) and is zoned R-60. It is located at the intersection of Johnson Avenue and Lindale Drive within the northwest quadrant. It is developed with one, single-family detached residence and is surrounded by like properties.



The property is located in the Cabin John Creek watershed and has no streams, floodplains, forests, or other sensitive environmental features on site. The project was granted an exemption from submitting a forest conservation plan under Chapter 22A-5(s)(2) for an activity on a tract of land less than 1 acre that will not result in the clearing of more than a total of 20,000 square feet of forest. Exemption 42012036E was confirmed on September 29, 2011, with a condition requiring the submission of a tree save plan.

The initially submitted tree save plan protected only a few small trees onsite at the rear property line. Staff expressed concerns over the excessive tree removals which would also alter the character of the site. Adjacent residents had also shared staff concerns. During the review process staff coordinated with the engineering consultant to protect additional trees where possible. Since the existing house is to remain there would be more opportunity to protect trees associated with the existing structure. Therefore a condition of approval was recommended by Staff and approved by the Planning Board that required the protection of two particular trees located near the existing house. The condition of approval was reflected in the Planning Board Resolution dated 10/10/2012. A corrected resolution was later issued on 11/21/2012 to address a typo of the noted filing date.

On September 26, 2013 the current amendment which included a revised tree save plan was submitted. The applicant's consultant indicated that one of the trees protected by the Planning Board condition had already been removed from the site. They reported the unnumbered 17" cedar tree was removed from the site (prior to submission of the amendment/tree save plan) in response to a hazardous condition. Staff had requested further information on the circumstances of the tree removal and hoped to receive a more conclusive explanation on the removal.

Meanwhile the submitted tree save plan reflected the fact that the tree was removed and also showed the proposed changes (which were not yet implemented). Inadvertently on 11/14/2013 Staff "approved" the submitted tree save plan rather than providing a "conditional approval" subject to final approval by the Planning Board. Ultimately, the consultants could not provide any conclusive evidence that supported immediate removal of the tree. On 12/7/2013 a photo of the stump was provided showing an apparent hollow in the core of the stump (see below) however the photo does not confirm the tree/stump was actually hollow previous to cutting. The hollow may have been formed by cutting a ring around the tree, and then the core pulled out from the stump when the tree fell. Photos of the *trunk* that had been removed would have readily confirmed whether or not a hollow was present. More recently the property owner provided a letter of justification regarding the 17" tree (see Attachment B). However, Staff is not comfortable with the letter as written, since the company hired to make the tree assessment and perform the removal does not appear to have been licensed to do so. A search of the company's website does not confirm that the company possesses any of the required qualifications.

Additionally, database searches of the Maryland Department of Natural Resources (DNR) show that there are no matches for either the company name or the listed owner. (The DNR keeps lists of Maryland Licensed tree experts who are legally authorized under the State to commercially perform assessments and tree care work (including removals). The applicant states that the tree was previously removed due to its condition and proximity to the existing house.

Staff visited the site to make an assessment of the stump and look for signs of decay or other evidence supporting the owners' claims. However the site visit revealed that the stump had already been ground out.

The applicant states that the tree was previously removed due to its condition and proximity to the existing house. Staff acknowledges that the tree should not have been removed without prior consent from the Planning Board per the conditions of approval. Although the removal is a violation of the conditions of approval, staff does not recommend enforcement action since the currently proposed conditions require appropriate mitigation plantings. The consultant has reported on behalf of the applicant that they agreeable to the additional plantings. Staff also acknowledges that the tree save plan should not have been stamped as "approved" without the ultimate approval by the Planning Board.

The tree save plan will be further revised to show the proposed mitigation plantings for the 17" tree that was removed. The plan will show 3 new replacement trees on Lot 11, with at least one tree planted near the area of the unauthorized removal.

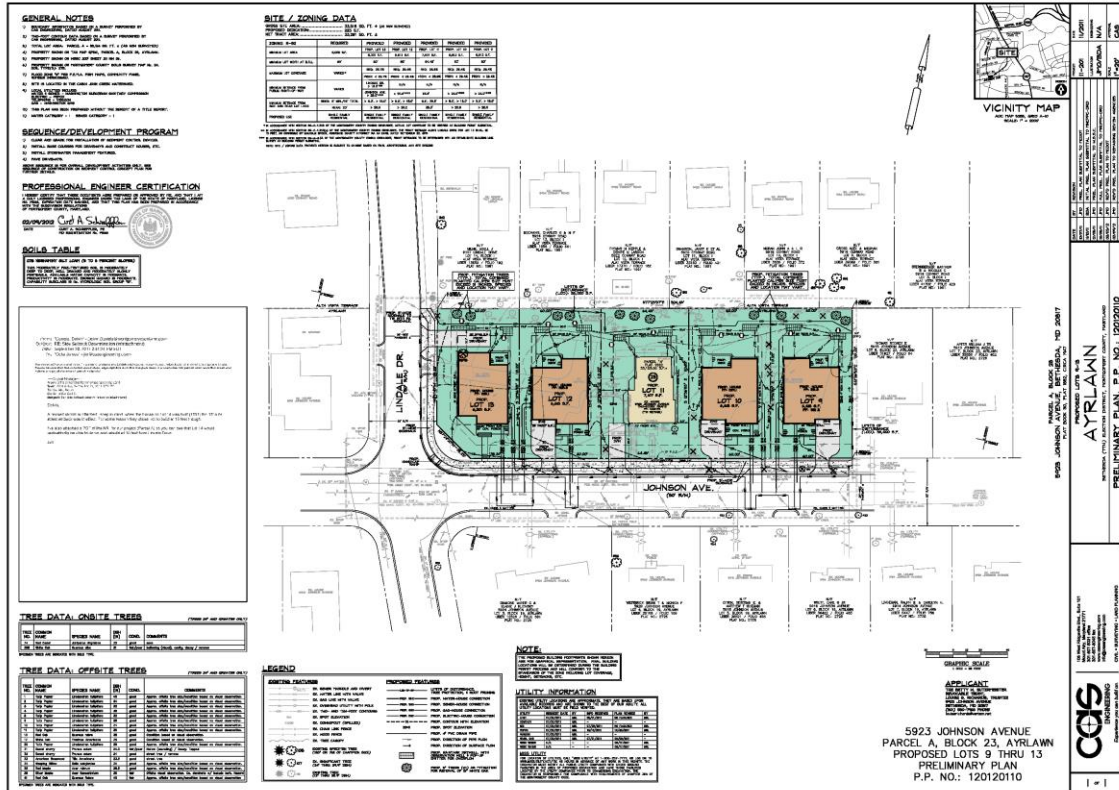


Stump of the unnumbered 17" cedar tree

In addition to the tree save plan, Staff was informed that the condition for the school facility payment only accounted for the High School level but should have included the middle school level as well. The previous condition has been modified to include the middle school level.

PROJECT DESCRIPTION

The property was subdivided into 5 lots for 5 single-family detached dwellings on September 26, 2013. One lot will be maintained for the existing dwelling and all lots will range in size from 6,301 square feet to 7,107 square feet. Vehicular access will be provided by 4 individual driveways from Johnson Avenue and one from Lindale Drive.



(Image A – Previous Approval)

AMENDMENT

The applicant is proposing to revise condition #2 of the approved Preliminary Plan. This condition is related to tree protection measures and storm water management.

COMMUNITY OUTREACH

The Applicant has met all proper signage and noticing requirements. Staff received comments on the on the size of the proposed lots which is not relevant to the subject amendment.

Recommendations and Conditions

As conditioned he proposed modifications to the resubdivision plan do not alter the plan's overall character; as such Staff believes that the proposed modifications are in keeping with the previous Preliminary Plan approval.

The 17" Cedar has already been removed from the site, while the remaining tree #74 measures 25" DBH and therefore meets the criteria established for prioritized retention as a significant or specimen tree. Staff has spoken with the applicant regarding Tree #74 and it is recommended that Condition #2 be edited as follows:

Staff recommends approval of site plan amendment 12012011A with the changes to condition #2 as follows:

2) Prior to issuance of ~~a~~ any additional sediment and erosion control permits, the Applicant must obtain ~~from~~ Staff approval of a revised tree save plan that addresses the following:

~~a. Provide protection measures for tree #74 and the unnumbered 17-inch red cedar located east of the existing house on Lot 11.~~

~~b. Show the drywells in the same location as shown on the approved Preliminary Plan.~~

~~c. Provide three new replacement trees on Lot 11 to mitigate the 17" tree that was removed. At least one of the replacement plantings must be located near the area of the tree that was removed.~~

9) Prior to the issuance of any additional building permits, the Applicant must make school facilities payments to the Montgomery County Department of Permitting Services at the middle school and high school levels.

Attachment A: Previous Preliminary Plan Approval – Corrected Resolution No. 12-79



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Agenda Date: November 15, 2012

Agenda Item No.: 1C

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Rose Krasnow, Acting Planning Director *RdK*

VIA: *PAK* Robert Kronenberg, Acting Chief, Area One
NB Neil Braunstein, Planner Coordinator, Area One

Re: Correction of Resolution for Preliminary Plan No. 120120110,
MCPB No. 12-79, Aylawn

Attached, please find a redlined version of the Resolution for Preliminary Plan No. 120120110, Aylawn. The Resolution was adopted by the Planning Board at the September 27, 2012, Planning Board Hearing, and was mailed out to all parties of record on October 10, 2012. This Corrected Resolution addresses one error on page 1 of the original Resolution.

The correction is to address a typographical error on page 1 of the Resolution. The Resolution states that the application for this preliminary plan was filed on December 7, 2012, but the correct date is December 7, 2011.

cc: Carol Rubin, Associate General Counsel



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 12-79
Preliminary Plan No. 120120110
Ayr lawn
Date of Hearing: July 16, 2012

NOV 21 2012

CORRECTED RESOLUTION

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

WHEREAS, on December 7, ~~2012~~ 2011, Betty W. Sutermeister Revocable Trust ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create five lots on 0.76 acres of land in the R-60 zone, located in the northwest quadrant of the intersection of Johnson Avenue and Lindale Drive ("Subject Property"), in the Bethesda/Chevy Chase Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120120110, Ayr lawn ("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 July 6, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 16, 2012, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 16, 2012, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Presley, seconded by Commissioner Wells-Harley, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120120110 to create five lots on the Subject Property, subject to

Approved as to
Legal Sufficiency:

Christina Sorenson 11/7/12

8787 Georgia Avenue

M-NCPPC Legal Department

Chairman's Office: 301.495.4605

Fax: 301.495.1320

www.MCParkandPlanning.org

E-Mail: mcp-chairman@mncppc.org

the following conditions:¹

- 1) This Preliminary Plan is limited to five lots for five one-family detached dwelling units.
- 2) Prior to issuance of a sediment and erosion control permit, the Applicant must obtain from Staff approval of a revised tree save plan that addresses the following:
 - a. Provide protection measures for tree #74 and the unnumbered 17-inch red cedar located east of the existing house on Lot 11.
 - b. Show the drywells in the same location as shown on the approved Preliminary Plan.
- 3) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated June 15, 2012, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 4) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 5) The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated June 8, 2012, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Stormwater Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) The Applicant must dedicate and show on the record plat(s) the dedication of approximately 225 square feet for the truncation of right-of-way at the intersection of Johnson Avenue and Lindale Drive, as shown on the Preliminary Plan.
- 7) Prior to recordation of the plat(s), the Applicant must satisfy MCDPS requirements to ensure the construction of a five-foot wide sidewalk along the property frontages on Lindale Drive and Johnson Avenue, unless construction is waived by MCDPS. A six-foot-wide tree panel must be provided between each sidewalk and the curb.
- 8) Prior to the issuance of any building permit, the Applicant must make a payment of \$11,700.00 to MCDOT to mitigate one peak-hour trip.

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.

- 9) Prior to the issuance of any building permit, the Applicant must make school facilities payments to the Montgomery County Department of Permitting Services at the high school level.
- 10) The certified Preliminary Plan must contain the following note: "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. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
- 11) The record plat must show necessary easements.
- 12) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.

BE IT FURTHER RESOLVED, that, having considered the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. The Preliminary Plan substantially conforms to the Master Plan.

The Master Plan does not specifically address the Subject Property. The Master Plan recommends retention of existing zoning throughout the Master Plan area in the absence of a specific recommendation for change on a particular property. Thus, in the case of the Subject Property, the Master Plan calls for retention of the existing R-60 zoning. In the Land Use and Zoning section of the Master Plan, the Subject Property and surrounding development is identified as suitable for one-family detached housing. The Application conforms to the recommendations adopted in the Bethesda/Chevy Chase Master Plan in that it provides one-family detached housing consistent with the current density of the neighborhood and the current zoning designation. The approved lots will be similar to surrounding existing lots with respect to dimensions, orientation, and shape, and future residences will have a similar relationship to the public street and surrounding residences as do existing residences in the area. The Application will not alter the existing pattern of development or land use, which is in substantial conformance with the Master Plan recommendation to maintain the existing residential land use.

2. Public facilities will be adequate to support and service the area of the approved subdivision.

Roads and Transportation Facilities

The Application does not generate 30 or more vehicle trips during the morning or evening peak hours. Therefore, the Application is not subject to Local Area Transportation Review. To satisfy the Policy Area Mobility Review (PAMR) requirements of the adequate public facilities (APF) test, a development located within the Bethesda/Chevy Chase Policy Area is required to mitigate 25 percent of its new peak-hour trips. Therefore, the Applicant is required to mitigate one peak-hour trip by making a payment of \$11,700.00 to MCDOT prior to the issuance of any building permit for the development to satisfy the PAMR trip mitigation requirement.

Access to four of the approved lots will be via individual driveways from Johnson Avenue and access to one approved lot will be via an individual driveway from Lindale Drive. Pedestrian access will be provided via a sidewalk on Johnson Avenue. Vehicle and pedestrian access for the approved subdivision will be adequate because the existing circulation pattern is not being changed, the additional driveways will not overburden the existing streets, and the existing sidewalks will be enhanced to provide improved pedestrian circulation.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the development. The Subject Property is proposed to be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service which has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Subdivision Staging Policy currently in effect and will be adequate to serve the Subject Property. The Application is within the Bethesda/Chevy Chase School cluster area, which is currently operating between 105-120% of capacity at the high school level, and a school facilities payment is required. Electrical, telecommunications, and gas services are also available to serve the Subject Property.

- 3. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections, including the requirements for resubdivision as discussed below. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the R-60 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

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

The Applicant was granted an exemption from submitting a forest conservation plan under Chapter 22A-5(s)(2) for an activity on a tract of land less than one acre that will not result in the clearing of more than a total of 20,000 square feet of forest.

5. *All stormwater management requirements shall be met as provided in Chapter 19, article II, title "stormwater management", Section 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The MCDPS Stormwater Management Section approved the stormwater management concept on June 8, 2012. The stormwater management concept consists of environmental site design through the use of drywells and non-rooftop disconnect.

6. *The approved lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood (as delineated in the Staff Report).*

Size: The lots in the delineated neighborhood range from 6,490 square feet to 13,083 square feet. Fifteen of the lots are smaller than 7,000 square feet, 22 are between 7,000 and 10,000 square feet, and three are larger than 10,000 square feet. One approved lot will be 6,301 square feet in size, three approved lots will be 6,613 square feet in size each, and one approved lot will be 7,107 square feet in size.

Approved Lot 13, at 6,301 square feet, will be the smallest lot in the neighborhood. Lot 13 is a corner lot at the intersection of Lindale Drive and Johnson Avenue. Land from the Subject Property will be dedicated to street right-of-way for truncation at the intersection, as required by the Subdivision Regulations. However, other existing corner lots in the neighborhood were created with arcs at the corners instead of standard right-of-way truncation, and, thus, they are larger than they would be if they were subdivided with the

current truncation requirements. If proposed Lot 13 were similarly created with an arced corner, the lot would measure 6,570 square feet, which would be well within the range of existing lot areas. The approved lot sizes are in character with the size of existing lots in the neighborhood.

Width: The lots in the delineated neighborhood range from 55 feet to 132 feet in width. Nineteen of the lots have widths of less than 60 feet, 13 lots have widths between 60 and 70 feet, and the remaining eight lots have widths of more than 100 feet. Three of the approved lots have widths of 60 feet, one has a width of 64 feet, and one has a width of 110 feet. The approved lots will be in character with existing lots in the neighborhood with respect to width.

Frontage: In a neighborhood of 40 lots, lot frontages range from 55 feet to 131 feet. Nineteen of the lots have frontages of less than 60 feet, 13 lots have frontages between 60 and 100 feet, and the remaining eight lots have frontages of over 100 feet. Three of the approved lots have frontages of 60 feet, one approved lot has a frontage of 64 feet, and one has a frontage of 110 feet. The approved lots will be of the same character as existing lots in the neighborhood with respect to lot frontage.

Area: The lots in the delineated neighborhood range from 2,160 square feet to 5,861 square feet in buildable area. Eighteen of the lots have a buildable area less than 3,000 square feet, nineteen are between 3,000 and 4,000 square feet, and three are larger than 4,000 square feet. One approved lot has a buildable area of 2,438 square feet, three approved lots have a buildable area of 2,739 square feet, and one approved lot has a buildable area of 3,031 square feet. The approved lots will be of the same character as other lots in the neighborhood with respect to buildable area.

Alignment: Thirty-two of the 40 existing lots in the neighborhood are perpendicular in alignment, and the remaining eight are corner lots. Four of the approved lots are perpendicular in alignment, and one is a corner lot. The approved lots are of the same character as existing lots with respect to the alignment criterion.

Shape: All of the 40 existing lots in the neighborhood are rectangular, and all of the five approved lots are rectangular. The shapes of the approved lots will be in character with shapes of the existing lots.

Suitability for Residential Use: The existing and the approved lots are zoned residential and the land is suitable for residential use.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), and that prior to the expiration 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 must be filed; and

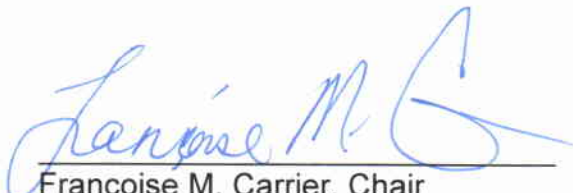
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is NOV 21 2012 (which is the date that this Resolution is mailed to all parties of record); and

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 the original mailing date, or, if the appeal relates to the corrected portions of this resolution, within thirty days of the date of this Corrected 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 Presley, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, November 15, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board

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