



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

AUG - 6 2009

MCPB No. 09-62
Preliminary Plan No. 120060610
Greenbriar at Norbeck Crossing
Date of Hearing: May 21, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on December 6, 2005, Georgia Group Ltd, and Mid-Atlantic Golf/Norbeck L.L.C., ("Applicants"), filed an application for approval of a preliminary plan of subdivision of property that would create 118 lots on 30.76 acres of land located in the northeast quadrant of the intersection of Georgia Avenue (MD 97) and Norbeck Road (MD 28) ("Property" or "Subject Property"), in the Olney master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No.120060610., Greenbriar at Norbeck Crossing ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated May 10, 2009 setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on May 21, 2009 the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

Approved as to
Legal Sufficiency:

Christina Souter 7/15/09

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WHEREAS, May 21, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Alfandre, Cryor, Hanson, Presley and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120060610 to create 118 lots on 30.76 acres of land located in the northeast quadrant of the intersection of Norbeck Road (MD 28) and Georgia Avenue (MD 97) ("Property" or "Subject Property"), in the Olney master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to a maximum of 262 dwelling units. A minimum of 15% of the dwelling units must be moderately priced dwelling units (MPDUs). The number of multifamily units must not exceed 55% of the total number of units and the number of one family detached units must not be less than 8.8% of the total number of units. At the time of site plan, the application should be designed to provide no less than three distinct neighborhoods based on the unit types approved and their location within the subdivision.
- 2) Final approval of the number of buildings and dwelling units, and location of sidewalks/bikepaths will be determined at site plan approval including final number of MPDUs and TDR's per Condition 1. The final location of the Master Plan recommended internal bikepath must be along a public street.
- 3) The initial stage of development will be limited to 200 units due to the lack of a primary street intersection with Norbeck Road. The staging of development will be determined at Site Plan, MPDU's and TDR's must be provided in accordance with approved percentages and ratios. The building permit for the 201st dwelling unit must not be issued until a primary street intersection at Norbeck Road (MD 28) is provided by either an extension of Public Road "A" from the Park and Ride access road to MD 28, or an extension of Norbeck Boulevard from MD 28 to Public Road "A". The design of this intersection must be reviewed by M-NCPPC Staff prior to SHA approval.
- 4) The proposed one-family detached units located on the north side of the private open space adjacent to Coolidge Avenue must be relocated and the open space enlarged.
- 5) No clearing, grading or recording of plats prior to certified site plan approval.
- 6) The final location of the different unit types will be determined at Site Plan. One-family detached units must have frontage on public roads. Townhouses and multi-family units may front on private roads provided that they are constructed to tertiary street standards and have appropriate public access and circulation.

- 7) The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable. Conditions include:
 - a. On-site reforestation and forest retention will total a minimum of 6.0 acres.
 - b. All drywells and other stormwater management devices must be removed from Category I forest conservation easements.
 - c. Approval of final forest conservation plan consistent with approved preliminary forest conservation plan prior to any clearing, grading or demolition on the site.
 - d. Final forest conservation plan will show a planting plan consistent with adjacent land use. Canopy trees must be sited a minimum distance of 20' from all proposed structures. Understory and shrub plantings may be used to the easement line.
 - e. Split rail fencing and permanent forest conservation signage will be required along boundaries with residential lots and must be shown on the Final Forest Conservation Plan.
- 8) Record plat(s) must reflect a Category I conservation easement over all areas of forest conservation. Prior to plat recordation, MNCPPC Staff must approve any amended language to easements or agreements.
- 9) At time of site plan, noise mitigation measures must be shown to meet the 65 dBA L_{dn} exterior noise guidelines and 45 dBA L_{dn} interior noise guidelines.
- 10) Prior to the release of a building permit that permits construction of the 49th residential unit, the Applicant must implement Maryland State Highway Administration (SHA) required "interim" frontage and site access improvements along MD 28. The Applicant must also construct or fund the "ultimate" frontage, exclusive of any interchange improvements, and access improvements as required by SHA, and any requirement to install/upgrade/modify new/existing traffic signals. The timing for construction of "ultimate" frontage and site access improvements related to this development at a future date will be as directed by SHA.
- 11) To satisfy Adequate Public Facilities (APF) traffic requirements the Applicant must satisfy either of the following requirements prior to release of the building permit for the construction of the 49th residential unit of any type within the proposed development:
 - a. widen westbound MD 28 approach to MD 97 to provide 1 left-turn lane, 3 through lanes, and 1 free-flow right-turn lane in place of existing 1 left/through lane, 2 through lanes, and 1 free-flow right-turn with SHA approval, or

- b. pay a fee-in-lieu contribution towards design and construction of the improvement as described in this condition to SHA
 - 12) The following right-of-way dedications for public roads must be shown on the Certified Preliminary Plan and record plat:
 - a. MD 28 - Not less than 75 feet (Major Highway) from the ultimate road right-of-way centerline along Property frontage. The right-of-way dedication will be expanded if SHA determines that additional right-of-way is necessary to accommodate the MD 97/MD 28 interchange improvements. Any modification to the dedication shown on the Preliminary Plan as may be required by SHA must be coordinated with M-NCPPC Staff and the Applicant and must be shown on the Certified Preliminary Plan;
 - b. Coolidge Avenue - 60 feet (Secondary Street) from MD 28 to Public Road "A". 50 feet (Tertiary Street) from Public Road "A" to the first proposed private road north of proposed Public Road "B". 30 feet from existing road centerline (half Tertiary Street) to the north of this point;
 - c. Bradford Road - 30 feet (Secondary Street) from centerline along Property frontage;
 - d. Public Road "A" - 70 feet (Primary Street) at MD 28, transitioning to 60 feet (Secondary Street) approaching proposed Private Road 1. 50 feet (Tertiary Street) from proposed Private Street 1 to Coolidge Avenue. (Note: Private Street 1 to become a public street per condition (12f), below);
 - e. Public Road "B" - 50 feet (Tertiary Street) from Coolidge Avenue to Property boundary at Bradford Road; and
 - f. Private Road 1 - 50 feet (Tertiary Street) public road right-of-way from Public Road "A" to Coolidge Avenue.
 - 13) Until adjacent development occurs and Bradford Road is improved to full public road standards, Public Road B must terminate as a temporary "hammer-head" turnaround with no access to Bradford Road. This design must be reflected on the Certified Preliminary Plan and future site plan. The development, as proposed on the Preliminary Plan dated April 30, 2009, must not have access to Bradford Road.
 - 14) The Applicant must construct the section of Coolidge Avenue between the proposed alley north of Private Road 1 and proposed Private Road 3 to a minimum width of 20 feet to permit two-way travel.
 - 15) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan and to the design standards imposed by all applicable road codes except as otherwise noted on the Preliminary Plan.
 - 16) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.

- 17) The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant must provide verification to Commission Staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
- 18) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated March 13, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 19) The Applicant must comply with the conditions of the MDSHA letter dated May 7, 2009. These conditions may be amended by MDSHA, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 20) The record plat(s) must reflect serialization and liber/folio reference for all TDRs utilized by the development.
- 21) 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.
- 22) Prior to approval of the Site Plan, the stormwater management pond currently shown within the dedicated right-of-way for Norbeck Avenue will need to either be moved out of the right-way or the right-of-way will need to be properly abandoned.

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

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

The Planning Board finds that the Preliminary Plan substantially conforms to the recommendations of the Olney Master Plan to provide a small neighborhood type development with safe and convenient pedestrian access. Although this development only represents a portion of the overall Golden Bear Area, the Board is satisfied that it provides a reasonable mix of unit types at a density that fulfills the goals of the Olney Master Plan. The internal eight foot wide bikepath connection is provided along Public Road "A", Private Road 1 and Public Road "B" will ultimately provide a connection to the East Norbeck Local Park. With the recommended expansion of the proposed private local park, and other proposed open space areas, the Board believes that sufficient recreational and outdoor opportunities will exist for the future residents here. The Board advises that distinct neighborhoods shall be further refined at the time of Site Plan to ensure continued compliance with the Olney Master Plan.

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

The Application complies with the Local Area Transportation Review Policy criteria. Local intersection improvements are required as conditions of approval to be built to satisfy the LATR. The project is not subject to the Policy Area Mobility Review because the Application for subdivision was filed prior to January 1, 2007

The Board finds that all public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. The Application is not within a school moratorium area and is not subject to payment of a School Facilities Payment. Electrical and telecommunications services are also available to serve the Property.

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

The Board finds that the lots' size, shape, width and orientation is appropriate for the location of this subdivision given the recommendations of the Olney Master Plan including the recommended R-200/TDR zoning.

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

The predevelopment existing forest cover is 16.71 acres and the total forest removed as part of both previous and current development is 14.51 acres. The remaining 2.20 acres of forest will be retained and placed in Category I easements. Per Sec. 22A-12(f)(2)(B) of the forest conservation law, on-site forest retention must equal the applicable conservation threshold, or additional forest must be planted so that the combination of on-site forest retention and planting meets this threshold. For the Subject Property, the conservation threshold is 20%, or 6.0 acres. The proposed development meets this requirement by planting an additional 3.8 acres onsite. The additional 4.32 acres of forest

conservation requirements will be met off-site. The Board finds that the Preliminary Plan meets all the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved a stormwater management concept for the project on March 12, 2009, which includes: on-site channel protection measures via three detention ponds, on-site water quality control via construction of seven Montgomery County Sand Filters (MCFS's) and nonstructural methods and recharge via disconnection and other nonstructural elements. The Board finds that the Preliminary Plan meets all applicable stormwater management requirements.

6. *Resubdivision*

This Application represents the resubdivision of a portion of the Olney Master Plan area which was only recently rezoned to the R-200/TDR-7 zone. Since it is the first Application for development under this new zone in the area, there are no other adjacent or confronting properties (lots) where one could establish a resubdivision Neighborhood using the established criteria that the Planning Board has accepted for defining resubdivision Neighborhoods. Historically, the Board only compares proposed lots to existing recorded lots that are in the same zone and that have been developed under the same zoning standards. This Application is the first in this location under the R-200/TDR-7 zone and cannot be directly compared to any of the adjacent lots because none were developed under similar zones or standards. All other existing lots in this quadrant of Olney were platted under RE-2 zoning standards. Leisure World, to the south, was developed under the Planned Retirement Community (PRC) zone standards which also carries an entirely different set of zoning requirements.

For this Application, the Planning Board recognizes that a Neighborhood for which to analyze this resubdivision does not exist, and, therefore, the Board's evaluation of the resubdivision criteria focuses on the Zoning Ordinance standards that apply to the Property and to the appropriateness of the lots with respect to their location. For this Application, the proposed lots comply with the minimum standards established within the Zoning Ordinance for this zone (TDR-7 using the Planned Development (PD) standards) and the Preliminary Plan

compiles with the findings of a standard subdivision as outlined in Section 50-29(A) of the Subdivision Regulations. The size, shape, width and orientation of the proposed lots, as discussed in the sections above, are appropriate for the location of this subdivision given the language in the Master Plan and for the residential uses proposed. The Board therefore, finds that this Preliminary Plan meets the resubdivision criteria by complying with the standards of the R200/TDR7 zone and having lots with size, shape, width, and orientation that are appropriate for the location of the subdivision.

7. Waiver of the Allowed Unit Mix

Section 59-C-1.395 of the Zoning Ordinance specifies that TDR development in the range of 6 to 10 units per acre is required to provide a minimum of 15% of the units as one-family detached, and limits multi-family units to less than 35%. The minimum/maximum percentages can be waived by the Planning Board if the "development is more desirable for environmental reasons or is more compatible with adjacent development..."

The Applicant requested that the Board make a finding to waive the minimum percentage of one-family detached units from 15% to 8.8% and increase the number of multi-family from 35% to 55%. This request is based on a finding that because of compatibility, additional multi-family units are appropriate given the nature of the site. The Applicant argued that the Olney Master Plan envisioned the highest densities within the Golden Bear Area, to the west, along the Georgia Avenue Corridor Park and Ride lot and future Georgia Avenue busway. Densities to the east would transition from higher to lower. Had the entire Golden Bear Area developed as a single piece, one could argue that the greatest concentration of multi-family units would have been located on the Greenbriar at Norbeck Property in the location shown on the Preliminary Plan. Yet, without a compatibility finding by the Planning Board, the Applicant would be unable to reach the types of density that could be expected on this Property because of the limitations that the Zoning Ordinance places on multi-family units. Further, the Applicant argued that as densities transition to the east, the one family homes that exist in the Golden Bear Area justify locating proposed attached and detached units in the eastern portions of the Subject Property.

Staff supported the waiver, believing that the transition of uses is more compatible with adjacent development and existing one-family detached homes. The transition of higher density multi-family uses near Georgia Avenue creates a sensible transition toward Bradford Road to the east. The remaining pockets of attached and detached uses create a step-down approach to the surrounding one-family neighborhoods to the east. Staff also believed that from a compatibility stand point, if properties to the east ever develop, the majority of the

uses will be one-family attached and detached uses, making it more practical to accommodate a greater percentage of multi-family uses on the Subject Property. Finally, the increased percentage of multi-family units is appropriate given that the height proposed for each building is allowed to go to four stories. Based on height considerations, multi-family is most appropriate in the westernmost portions of the Property.

The Planning Board concurred with the Staff rationale for allowing a waiver of the unit mix. Although the Board was concerned about how distinct neighborhoods could be better defined at the time of Site Plan, they generally supported the density and unit mix shown on the Preliminary Plan. The Board agreed that there would be no less than 8.8% one family detached units and no more than 55% of the units as multi-family.

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), as amended) 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 among the Land Records of Montgomery County, Maryland or a request for an extension must be; 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 AUG - 6 2009 (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 Presley, seconded by Commissioner Alfandre, with Commissioners Hanson, Alfandre, and Presley voting in favor of the

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motion, and with Commissioner Cryor absent and one Planning Board position vacant, at its regular meeting held on Thursday, July 23, 2009, in Silver Spring, Maryland.

A handwritten signature in black ink, appearing to read "Royce Hanson", written over a horizontal line.

Royce Hanson, Chairman
Montgomery County Planning Board