



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

**MCPB No. 10-164**  
**Preliminary Plan No. 120100030**  
**Brooke Park**  
**Date of Hearing: December 2, 2010**

**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 October 13, 2009, Brooke Park venture, L.L.C., ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 1.18 acres of land in the R-30 zone, located at the intersection of Brookes Lane/Sangamore Road and MacArthur Blvd ("Property" or "Subject Property"), in the Bethesda - Chevy Chase Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100030, Brooke Park ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated November 19, 2010, 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 December 2, 2010, 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

WHEREAS, on December 2, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Wells-Harley; with a vote of 5-0, Commissioners Alfandre, Carrier, Dreyfuss, Presley and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant

Approved as to  
Legal Sufficiency:

*Christina Jones* 4/28/11

8787 Georgia Avenue, N.C. 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120100030 to create one lot on 1.18 acres of land in the R-30 zone, located at the intersection of Brookes Lane/Sangamore Road and MacArthur Blvd in the Bethesda - Chevy Chase Master Plan area, subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to one (1) lot for ten (10) multi-family (condominium) units.
- 2) Applicant must meet the forest conservation planting requirements off site. A determination of the method and/or location is to be shown on the final forest conservation plan.
- 3) Applicant must submit and obtain approval of a final forest conservation plan prior to any land disturbing activities occurring onsite.
- 4) Applicant must prepare and submit specific tree save measures as part of the final forest conservation plan.
- 5) The Applicant must dedicate all road rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan unless otherwise designated on the Preliminary Plan.
- 6) 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 Staff and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By \_\_\_\_\_" are excluded from this condition.
- 7) Applicant must construct an off-site sidewalk along the Sangamore Road frontage to connect to the crosswalk located at the intersection of MacArthur Boulevard and Sangamore Road.
- 8) The record plat must reflect a public use and access easement over all shared driveways and off-site sidewalks not within the public right-of-way.
- 9) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 10) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated February 12, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 11) The Applicant must comply with the conditions of the letter from MCDOT dated October 13, 2010. These conditions may be amended by MCDOT provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 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.
- 13) Other necessary easements must be shown on the record plat.

BE IT FURTHER RESOLVED, that having given full consideration to 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 (except as modified herein), 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 Bethesda-Chevy Chase Master Plan land use map shows that this Property is suitable for medium density residential and has recommended an R-30 zone designation which allows up to 17.69 units per acre. The R-30 zone does not allow individually recorded townhouse lots. As such, this property will develop under a condominium regime for 10 multi-family units. The Master Plan contains the following language that applies to the overall area that includes the Subject Property:

*"Provide for a balanced housing supply so that persons of varying income levels, age backgrounds, and household characteristics may find suitable housing opportunities."*

The site is rather small, and the opportunity to provide a varied supply of housing for different income levels within the confines of the Subject Property is limited. However, the Master Plan recommended that this property remain in the R-30 zone with no other apparent R-30 zones within the immediate area. Since the R-30 zone allows multi-family type development which is somewhat lacking in the general area, the Board finds the proposal provides for a type of use that was envisioned by the Master Plan.

The Master Plan also recognizes the significance of the "Palisades" which is the remnants of the ancient stream bank created by the former alignment of the Potomac River. The Palisades are defined by a linear stretch of steep slopes, mostly wooded, and running parallel to the current Potomac River. On page 64, the Master Plan provides the following guidance on protection of the Palisades:

*"recommends preservation of the Potomac Palisades unique environmental features of steeply wooded slopes and vistas and the perpetuation of the open space character established in the area."*

and

*"Their preservation in an undisturbed state is essential to minimize erosion and stream degradation."*

The Master Plan recommended as the first and foremost means of preserving this sensitive feature to rezone a certain area from Massachusetts Avenue to the Potomac River and west of Sangamore Road from R-60 to R-90. The Subject Property is at the very southern tip of this described area, yet it was recommended to remain in the R-30 zone for the purpose of allowing existing multi-family uses to continue. Although the extent of the Palisades is not specifically mapped, the Board concurred with the Staff's contention that a small, non-forested, portion of the Palisades exists on the southern edge of this Property where it is most steeply sloped. Staff recommended that the slopes here, although non-forested and not necessarily creating a scenic vista, be preserved. The reason to preserve the sloped area is that it is currently dotted with trees and provides for the open space character that the Master Plan describes.

The Staff Report noted that a particular concern with the original version of the Preliminary Plan was a driveway that looped from the northern side of the building to the southern side around the eastern end of the building. This driveway required significant grading to the steeper slopes of the site including those in the area determined to be a part of the Palisades. Grading would also require removal of some of the trees between the building and MacArthur Boulevard. The Applicant addressed this concern by working with the adjacent neighbors to use and modify an existing driveway used by the two residential properties to the west. Access to the southern side of the building will be accommodated with this driveway rather than constructing the more environmentally damaging alternative. The Board finds that the Palisades, as defined in the Master Plan, are adequately protected.

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

#### LATR and PAMR

The proposed lots do not generate 30 or more vehicle trips during the morning or evening peak-hours and actually generate less vehicular trips than the existing 17 unit apartment building currently on the site. Because the project will generate 30 or less peak hour trips, the Application is not subject to Local Area Transportation Review. Likewise, there are no Policy Area Mobility Review (PAMR) requirements because the project

reduces the amount of peak hour trips that are currently generated by the 17 unit apartment building. The Board finds that the Preliminary Plan satisfies LATR and PAMR requirements.

#### Access

Access to the building for residents is to be from MacArthur Boulevard. MacArthur Boulevard is controlled by the Army Corps of Engineers (ACE) who oversees the water conduit under the road and the Dalecarlia Reservoir which provides drinking water to the District of Columbia. The ACE has restricted new access points onto this road, therefore, the Applicant has entered into an "Irrevocable Declaration of Private Easement" with the two adjacent property owners at 6407 and 6409 MacArthur. The Agreement will allow the developer to improve and widen their existing shared driveway so that it can also provide access for the homeowners of each unit. This new private driveway from MacArthur will provide vehicular access to the ground floor level garages located within each of the 10 units. The Board finds that access is adequate for the subdivision.

#### Rights-of-Way

The Applicant is also required to make right-of-way dedications along the property's northern boundary for Brookes Lane and Sangamore Road, as well as certain frontage improvements. The frontage improvements consist of a new entranceway, new curb and gutter, and construction of a new sidewalk along Sangamore Road that will connect to the new internal sidewalks within the project boundaries. The Board placed a condition upon the Applicant that the public sidewalk be extended off-site to connect to the existing sidewalk at the intersection of Sangamore Road and MacArthur Boulevard. This off-site extension will also be done on ACE property and connect to a developer built crosswalk improvement at the intersection of Sangamore Road and MacArthur Boulevard. With the construction of the internal and external sidewalks and the improvements to the road frontage, the Board finds that vehicle and pedestrian access for the subdivision will be safe and adequate.

#### Other Public Facilities and Services

The Preliminary Plan has been reviewed by all public utilities including Washington Gas, PEPCO, Verizon and the WSSC. All agencies recommend approval of the Preliminary Plan having found that their respective utilities are adequate to serve the proposed development. The

Department of Fire and Rescues Services has approved a Fire Access Plan that assures emergency vehicles can access the site. Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The Application is within the Whitman school cluster which is currently operating above 105 percent capacity at the middle school level; however, the proposed development will have fewer dwelling units than the existing apartment building. As such, no School Facility Payment is needed, and the Application satisfies the APF schools test as well as all other requirements for APF. The Board finds that the subdivision will be adequately served by all public facilities and utility providers.

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

The Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The Board considered the proposed lot's size, width, shape and orientation given the surrounding neighborhood and the recommendations within the Master Plan. Given the recommendation in the Master Plan for R-30 zoning which does not allow townhomes on individual lots, the Board finds the lot to be appropriate for the location of the subdivision to accommodate a single multi-family, condominium structure.

- 4. The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features:*

#### Forest Conservation

The site is subject to Chapter 22A of the County Code (forest conservation law). There is no forest on the property, however, according to the forest conservation law, even properties without existing forest are required to obtain approval of a forest conservation plan and meet afforestation requirements either on or off site. The Applicant's forest conservation plan shows a net tract area of 1.26 acres and a 0.19 acre planting requirement. The net tract area for the forest conservation plan is greater than the total tract area for the Preliminary Plan of subdivision because disturbances will occur outside of the subject property. Therefore, the forest conservation law requires the tract area to be increased to include those disturbed areas.

The Preliminary Forest Conservation Plan (PFCP) proposes to meet the 0.19 acre planting requirement by a combination of on-site existing tree canopy credit and using an off-site forest mitigation bank. The submitted PFCP shows 0.04 acres of tree canopy credit, however, the Board does not believe tree canopy credit should be allowed in this instance because the canopy that will remain on-site after demolition and grading consists of undesirable trees species, trees in poor health, or trees that either share the stem with the adjoining property or are not physically on the Property. The Board directed the Applicant to meet all planting requirements off-site either in a forest mitigation bank or via an in-lieu fee payment.

#### Forest Conservation (Tree) Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as 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 Tree Variance "Variance" under Section 22A-12(b)(3) of the County Code. Otherwise, such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will require one (1) Protected Tree, 30 inches and greater DBH to be removed. Further, the project will impact two (2) Protected Trees that will not be removed; therefore, a Variance is required.

The Board made the following findings necessary to grant the Tree Variance:

- i. Granting the Tree 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 as the removal and/or disturbance of the specimen trees noted above are the minimum necessary in order to develop the Property. Furthermore, the need for the variance is necessary and unavoidable in order to develop the Subject Property according to the Master Plan. The same criteria has been applied to other projects where the impacts and removals are unavoidable.

- ii. The need for the Tree 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 of the Applicant. The Property is steeply sloped and the need to provide multiple access points and appropriate fire and rescue access has increased the limits of disturbance and the impact to the 31 inch silver maple and the 36 inch red maple. The variance is necessary to provide the required green space and stormwater management facilities associated with the development. Furthermore, the property owner proposes to provide additional tree protection measures to save the 39 inch sycamore.

- iii. The need for the Tree Variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.

The requested variance is not the result of a condition, either permitted or non-conforming on a neighboring property. The neighboring properties are developed residential or commercial properties, or public right-of-ways.

- iv. Granting the Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. The development will actually improve the water quality generated from the site because the new development will introduce stormwater management onto a location that is currently developed and has no stormwater controls. The stormwater management devices will increase the amount of the water that is recharged into groundwater and reduce the quantity and increase the quality of the stormwater discharged into the Potomac River.

#### Forest Conservation Variance mitigation

The Board will not require any additional mitigation to offset the impact to the critical root zones of the impacted trees.

The Board finds that the Application complies with 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 Montgomery County Department of Permitting Services approved a Stormwater Management Concept on February 12, 2010. On-site water quality control is being addressed through the use of green roofs and a flow based "StormFilter". On-site recharge cannot be provided because of the steep slopes located on the downhill side of the building and has been waived. Channel protection volume is not required because the one-year post development flow is less than or equal to 2.0 cubic feet per second. The Board finds that this Application complies with all stormwater management requirements.

BE IT FURTHER RESOLVED that for the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor in interest to the terms of this approval.

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 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 MAY 3 2011 (which is the date that this Resolution is mailed to all parties of record); and

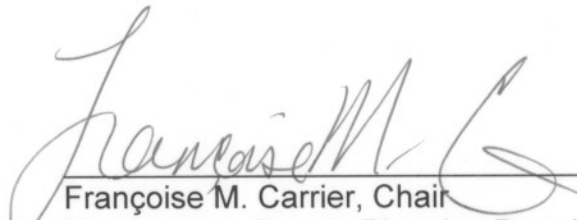
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley present and voting in favor of the motion and Commissioner Alfandre absent, at its regular meeting held on Thursday, April 28, 2011, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
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