



## MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 12-78  
Preliminary Plan No. 120070750  
Alta Vista - ACC  
Date of Hearing: July 16, 2012

SEP 19 2012

### 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 May 29, 2012, American College of Cardiology ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 34 residential lots and four open space and conservation parcels on 9.87 acres of land in the R-60 zone, located in the southeast quadrant of the intersection of Alta Vista Road and Old Georgetown Road ("Subject Property"), in the Bethesda Chevy/Chase Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070750, Alta Vista - ACC ("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 Anderson, seconded by Commissioner Presley, with a vote of 4-0; Commissioners Anderson, Carrier, Presley, and Wells-Harley voting in favor, and Commissioner Dreyfuss abstaining.

Approved as to  
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NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120070750 to create 34 lots and four parcels on the Subject Property, subject to the following conditions:<sup>1</sup>

- 1) This Preliminary Plan is limited to 34 lots for 34 dwelling units, including 12.5% moderately priced dwelling units (MPDUs).
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan, approved as part of this Preliminary Plan, subject to:
  - a. An approved final forest conservation plan, which is consistent with the preliminary forest conservation plan and addresses the conditions of approval, must be obtained prior to any clearing, grading, demolition, or construction activity within the project area.
  - b. The Applicant must appropriately record the required Category I & II Conservation Easements over all areas of forest conservation and tree canopy preservation. Recordation must occur prior to any clearing, grading demolition, or construction activity within the project boundary.
  - c. The sediment and erosion control plan and stormwater management plan must be submitted with the final forest conservation plan to ensure consistency with the limits of disturbance (LOD) and the associated tree/forest preservation measures.
  - d. Provide all of the 52 mitigation tree plantings onsite and not within a right-of-way or public utility easement.
  - e. The Applicant must obtain the services of a Maryland Licensed Tree Expert, to perform the required tree preservation measures and appropriately protect the saved trees.
  - f. Provide written confirmation to Staff that the consent for the removal of off-site and/or jointly owned trees has been granted by the property owners of the property on which the trees are located. The confirmation is required prior to approval of a site plan.
  - g. Clearly show the LOD footprint within the right-of-way near tree #105 (as identified on the preliminary forest conservation plan).
  - h. Clarify which trees have already been removed by representing the missing trees with a stump symbol or similar, rather than a symbol representing proposed removal.
  - i. Provide original, non-black ink signatures for the plan preparer and arborist on each sheet, including sheet 1 of 3.
  - j. Adjust graphics to clarify that tree #64 (as identified on the preliminary forest conservation plan) will remain (the plan elements inadvertently create an apparent "x" over the tree).

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<sup>1</sup> 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.



- 3) Prior to approval of the certified site plan, the Applicant must submit a revised noise analysis prepared by an engineer specializing in acoustics that addresses details and locations of noise mitigation techniques to appropriately attenuate noise levels for the affected dwelling units.
- 4) Prior to approval of the certified site plan, the Applicant must submit to Staff a certification from an engineer specialized in acoustics that the building shell has been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. The Applicant must commit to construct the units in accordance with these design specifications, with any changes that may affect acoustical performance approved by the acoustical engineer in advance of installation.
- 5) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letters dated May 24, 2012, and 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 MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 7) 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 July 19, 2011, 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.
- 8) The Applicant must dedicate and show on the record plat(s) dedication of 60 feet from the centerline along the Subject Property frontage for Old Georgetown Road.
- 9) The Applicant must dedicate and show on the record plat(s) full-width dedication of 57 feet, with a modified residential street cross-section as approved by MCDOT, for the extension of Camberley Avenue between Alta Vista Road and the current terminus of Camberley Avenue, except where the right-of-way tapers to a minimum width of 50 feet, as shown on the Preliminary Plan.
- 10) The Applicant must show on the record plat(s) the right-of-way for Alta Vista Road, between Old Georgetown Road and Locust Avenue, along property frontage with a minimum of 25 feet from the roadway right-of-way centerline.
- 11) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the design standards imposed by all applicable road codes.



- 12) The Applicant must construct a five-foot wide sidewalk, with handicapped ramps, along the Alta Vista Road site frontage between Old Georgetown Road and Locust Avenue. This sidewalk must be completed with the construction of residential units along Alta Vista Road.
- 13) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 14) The record plat must reflect a public use and access easement over the walkway from Old Georgetown Road to Camberley Avenue located between Lots 8-11 and 12-15.
- 15) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 16) The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). The Applicant must provide verification to Staff prior to release of the final building permit that the Applicant's recorded HOA Documents incorporate the Covenant by reference.
- 17) 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.
- 18) No clearing, grading or recording of plats prior to certified site plan approval.
- 19) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan.
- 20) In the event that a subsequent site plan approval substantially modifies the subdivision shown on the approved Preliminary Plan with respect to lot configuration or location or right-of-way width, or alignment, the Applicant must obtain approval of a Preliminary Plan amendment prior to certification of the site plan.
- 21) The final number of MPDUs as per condition 1 above will be determined at the time of site plan.
- 22) At the time of site plan application, the Applicant must submit architectural elevations of the townhouse units along Old Georgetown Road to address conformance with the Master Plan. The elevations must provide detailed information regarding architectural features, orientation and building location.
- 23) The record plat must show necessary easements.
- 24) 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."



- 25) Prior to certification of the preliminary plan, the Applicant must revise the plan drawing by showing the correct zone on adjacent property and ensuring that all notations in the data table are correct.
- 26) 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 (except as modified herein), 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 Preliminary Plan is in substantial conformance with the Master Plan because the Master Plan recommends retention of the R-60 zone. The Master Plan also recommends retention of a campus-like setting that does not include a townhouse development, residential development along Alta Vista Road, and retention of a green corridor along Old Georgetown Road. The Preliminary Plan is designed to match those recommendations.

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

#### Roads and Transportation Facilities

The Application will extend Camberley Avenue from its current terminus at the Subject Property boundary to Alta Vista Road. Vehicular access to all of the approved lots will be via Camberley Avenue. Most lots will be accessed by individual driveways from Camberley Avenue, but several of the one-family detached lots and all of the duplex and townhouse lots will be accessed via shared driveways. Pedestrian access will be provided via existing and proposed sidewalks on Old Georgetown Road, Alta Vista Road, and Camberley Avenue.

Although there was citizen opposition to the connection of Camberley Avenue to Alta Vista Road by which they alleged unacceptable safety risks to the residents of Camberley Avenue by increased traffic, the Planning Board finds that the connection will not create unacceptable safety risks. Further, the street connection provides alternate travel routes, facilitates connectivity between different parts of the neighborhood, and may alleviate future street closures due to emergencies, and these benefits contribute to the adequacy of the local road network.

#### Local Area Transportation Review (LATR)

Since the approved lots will generate more than 30 peak-hour trips, a traffic study was completed for the Application. As shown in the traffic study, the Application will generate significantly fewer peak-hour trips during the weekday morning and evening peak periods than the existing institutional use on the Subject Property.

Under total (post-development) traffic conditions, CLV values for intersections included in the study were estimated to be below the Bethesda/Chevy Chase congestion standard of 1,600 CLV. Based on the analysis presented, it is concluded that the Application will satisfy the LATR requirements of the adequate public facilities (APF) test.

#### Policy Area Mobility Review (PAMR)

To satisfy the PAMR requirements of the APF test, a development located within the Bethesda/Chevy Chase Policy Area is required to mitigate 25% of new peak-hour trips generated by the development. Since the Preliminary Plan will not result in any net new trips, there is no PAMR mitigation requirement, and the Application, therefore, satisfies the PAMR requirements of the APF test.

#### Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the Application. The Subject Property is served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who 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 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 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. The lot size, width, shape and orientation are appropriate for the location of the subdivision.



The lots were reviewed for compliance with the dimensional requirements for the R-60 zone using the optional method for projects with MPDUs, as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. Fifteen percent of the lots will contain dwelling unit types other than one-family detached units, in compliance with the 60% maximum established for such units in the Zoning Ordinance. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

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.

The Application is subject to the Chapter 22A of the Montgomery County Code, the Forest Conservation Law, and a Forest Conservation Plan was included as part of the Application. Due to a number of factors related to the Application, including the use of the optional method of development and the zoning of the Subject Property, the project is subject to special provisions of the Forest Conservation Law [Section 22A-12.(f)(1) & 22A-12.(f)(2)(B)], which require that the forest conservation requirements must be met through on-site forest retention only. The forest conservation worksheet for the project establishes a two-acre forest conservation threshold (20% of the net tract area). The forest conservation plan requires retention of 2.07 acres of forest, which satisfies the requirement without the use of afforestation or reforestation plantings (per the special provisions referenced above). A Category I conservation easement will protect all of the retained forest.

A Category II conservation easement will be created along Old Georgetown Road to provide long-term protection of existing trees and the green character of the property frontage. The Category II conservation easement will uphold the Master Plan recommended green corridor policy and the Old Georgetown Road recommendations. The limits of disturbance (LOD) clears 0.30 acres of forest, and includes a number of impacts and removals of trees which are subject to a forest conservation variance.

## B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law 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 variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal of or CRZ impact to 39 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board made 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.*

The impact to the off-site tree on the opposite side of Alta Vista Road is associated with utility tie-ins within the right-of-way, where such impacts are anticipated. The tree impacts and removals on the Subject Property are within the buildable area established by the setbacks and other site constraints. Development of the Subject Property in conformance with Master Plan recommendations could not take place without impacts to and/or removal of the Protected Trees. Therefore, the Variance would be granted to any applicant in a similar situation.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The Variance is based on development allowed under the existing zoning and the need to achieve adequate stormwater management. The Variance can be granted under this condition if the impacts are avoided or minimized and that any necessary mitigation is provided. Design changes were incorporated to reduce disturbance and removal of Protected Trees and mitigation is provided to reduce the effects of the impacts and removals.

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 Variance is a result of the site design and layout on the Subject 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.*

MCDPS approved the stormwater management concept for the project on July 19, 2011. The MCDPS review and ultimate approval of the sediment and erosion control and storm water management plans will ensure that appropriate standards are met. The Subject Property is not directly associated with any streams, wetlands or related buffers. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance will be at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately one inch of diameter at breast height ("DBH") for every four inches DBH removed, using on-site tree plantings that are a minimum of 3" caliper. No mitigation is required for Protected Trees impacted but retained.

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

This finding is based 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 to the maximum extent possible through the use of permeable pavement, drywells, micro-bioretenment, bio-swales, and planter boxes.

6. *Practical difficulties or unusual circumstances exist so that a waiver of the resubdivision analysis as required by of Section 50-29(b)(2) of the Subdivision Regulations is appropriate, and i) a waiver is the minimum necessary to provide relief, ii) such waiver is not inconsistent with the purposes and objectives of the General Plan, and iii) such waiver is not adverse to the public interest.*

The Application is a resubdivision of two parts of platted lots. Resubdivision of residential lots is subject to review criteria specified in Section 50-29(b)(2) of the Subdivision Regulations. The review requires the comparison



of proposed lots with existing lots in a delineated neighborhood to ensure that the new lots are of the same character with respect to street frontage, alignment, size, shape, width, area, and suitability for residential use. The Subject Property is to be developed under development standards of the R-60 zone optional method for developments that include MPDUs, but the surrounding neighborhood has been developed under development standards of the R-60 zone using standard development. The optional method allows unit types, such as townhouses and duplexes, which are not permitted in the R-60 zone with standard development. In addition, the optional method allows significantly smaller lot sizes than the standard method. Therefore, in the case of this Application, a comparison of the character of the new lots with the character of existing lots would fail based on the different development standards since there are no other optional method developments in the surrounding area.

The fact that the required analysis cannot be made presents a practical difficulty for this Application. This is an unusual circumstance because no preceding subdivisions in the neighborhood have been developed using the optional method of development. Granting a waiver of the requirements of Section 50-29(b)(2) is the minimum waiver necessary to provide relief from the requirements. The waiver is neither inconsistent with the purposes and objectives of the General Plan nor adverse to the public interest. Providing MPDUs in this area is not only in the public interest, but a high priority of the County, and the provision of MPDUs requires development under the optional method.

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 SEP 19 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 this



Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules)

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**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 Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor, and Commissioner Presley absent, at its regular meeting held on Thursday, September 13, 2012, in Silver Spring, Maryland.

  
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Françoise M. Carrier, Chair  
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