



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

JAN 23 2013

MCPB No. 13-04
Preliminary Plan No. 120070520
Chevy Chase View
Date of Hearing: January 17, 2013

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 January 5, 2007, Frederick Gore ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create three lots on 0.96 acres of land in the R-60 zone, located at 4311 Clearbrook Lane, 125 feet west of Cedar Lane ("Subject Property"), in the Kensington-Wheaton Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070520, Chevy Chase View ("2007 Application"); and


WHEREAS, on October 28, 2009, the Planning Board, by Resolution MCPB No. 09-131 MCPB, denied the 2007 Application; and

WHEREAS, on March 4, 2010, the Planning Board granted a reconsideration of the 2007 Application¹ for the purpose of deferring the 2007 Application to allow the Applicant to revise the 2007 Application; and

WHEREAS, on March 11, 2010, Applicant submitted a revision to the 2007 Application that would create two lots and two outlots on the Subject Property ("Preliminary Plan" or "Application"); and

¹ In accordance with the Planning Board's Rule of Procedure 4.12.2 upon the Board's vote to reconsider, Resolution MCPB No. 09-131 was void.

Approved as to
Legal Sufficiency:

 1/8/13
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M-NCPPC Legal Department
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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 January 4, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 17, 2013, 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, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120070520 to create two lots and two outlots on the Subject Property, subject to the following conditions:²

- 1) This Preliminary Plan is limited to two lots for one dwelling unit on each lot, and two outlots.
- 2) 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."
- 3) The Applicant must comply with the conditions of approval for the final forest conservation plan approved as part of this Preliminary Plan, subject to the following:
 - a. The final sediment control plan must be consistent with the final limits of disturbance shown on the approved final forest conservation plan.
 - b. Prior to recordation of the plat, the Applicant must obtain Staff approval of a Certificate of Compliance Agreement for use of an M-NCPPC-approved offsite forest mitigation bank to satisfy the forest mitigation planting requirements.
 - c. The Applicant must comply with all tree protection and tree save measures shown on the approved final forest conservation plan. Tree save measures not specified on the final forest conservation plan may be required

² 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.

- by the M-NCPPC forest conservation inspector at the pre-construction meeting.
- 4) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated June 16, 2009, 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.
 - 5) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
 - 6) 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 November 30, 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 – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 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 Subject Property frontage on Clearbrook Lane, unless construction is waived by MCDPS.
 - 8) The record plat must reflect common ingress/egress and utility easements over the shared driveway.
 - 9) The Subject Property is within the Walter Johnson High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the elementary and middle school levels at the single-family unit rates for which a building permit is issued for Lot 10. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
 - 10) The deed reference of the covenant required by the MCDOT letter of June 16, 2009, must be noted on the record plat.
 - 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 this 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 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. The Master Plan does not specifically address the Subject Property, but does call for retention of the existing R-60 zoning. In the Master Plan, the Subject Property and surrounding development are identified as suitable for one-family detached housing. The Application substantially conforms to the Master Plan because the Application provides one-family detached housing consistent with the current density of the neighborhood and the current zoning designation. The lots are 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

Access to the approved lots will be via a shared driveway from Clearbrook Lane. Pedestrian access will be provided via a sidewalk along the Subject Property frontage on Clearbrook Lane. Only a small gap will exist between the Subject Property and an existing sidewalk along Cedar Lane.

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. In addition, the Application does not generate more than three new vehicle trips in the morning or evening peak hours. Therefore, the Application is also not subject to Policy Area Mobility Review.

Vehicle and pedestrian access for the lots will be safe and adequate.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the approved lots. The Subject Property will be 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 currently in effect and will be adequate to serve the Subject Property. The Subject Property is within the Walter Johnson School cluster area, which is currently operating between 105-120% of capacity at the elementary and middle school levels, and a school facilities payment is required for the future dwelling unit. 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.*

The 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 lots meet all the dimensional requirements for area, frontage, width, and setbacks in the R-60 zone as specified in the Zoning Ordinance. The size, width, shape, and orientation of the lots are appropriate for the location of the subdivision.

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. A final forest conservation plan for a previous 1.47-acre subdivision that created Lot 8, which is the Subject Property, was approved with Preliminary Plan No. 19920530 in 1993. That subdivision resulted in an afforestation requirement of 0.22 acres. The planting requirement was satisfied through onsite landscape credits. The Application will result in the removal of the areas used for landscape credits, and the Application now satisfies the previous 0.22-acre planting requirement through an offsite, M-NCPPC-approved forest mitigation bank.

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 or CRZ impact to five 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 Protected Trees and their CRZs lie within the developable area of the Subject Property. The only Protected Tree to be removed is a Norway maple. The Norway Maple is listed by the Maryland Department of Natural Resources as an invasive species of concern in Maryland and is generally encouraged to be removed. The other four Protected Trees will be minimally impacted by the improvements to the driveway for the homes and required stormwater management features. Granting a Variance to allow land disturbance within the developable portion of the site is not unique to this Applicant.

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

The requested Variance is based upon existing site conditions that would necessitate impact to the Protected Trees to develop the site consistent with zoning and applicable regulatory controls.

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

The requested Variance is a result of the 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.*

The only Protected Tree being removed is not within a stream buffer, wetland, or a special protection area. Furthermore, it is

The only Protected Tree being removed is not within a stream buffer, wetland, or a special protection area. Furthermore, it is classified as an invasive species of concern in Maryland and is generally encouraged to be removed. All other Protected Trees are being impacted, but will remain to provide the same level of water quality protection as they currently provide. A stormwater management concept plan was approved by the MCDPS – Stormwater Management Section. The stormwater management concept incorporates Environmentally Sensitive Design (ESD).

Mitigation for the Variance should be at a rate that approximates the form and function of the Protected Trees removed. However, no mitigation for the one Protected Tree to be removed is required because the tree, a Norway maple, is listed by the Maryland Department of Natural Resources as an invasive species of concern in Maryland and is generally encouraged to be removed. 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", Section 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 November 30, 2011. The stormwater management concept consists of environmental site design through the use of drywells.

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).*

Frontage: In the neighborhood of 21 lots, lot frontages range from 19 feet to 108 feet. Five of the lots have frontages of less than 60 feet, 15 lots have frontages between 60 and 100 feet, and one lot has a frontage of over 100 feet. One approved lot has a frontage of 70 feet, and the other has a frontage of 79 feet. The new lots will be of the same character as existing lots in the neighborhood with respect to lot frontage.

Alignment: Eighteen of the 21 existing lots in the neighborhood are perpendicular in alignment, and the remaining three are corner lots. Both of the approved lots are perpendicular in alignment. The new lots are of the same character as existing lots with respect to alignment.

Size: The lots in the delineated neighborhood range from 6,000 square feet to 18,877 square feet. Six of the lots are smaller than 7,000 square feet, 12 are between 7,000 and 10,000 square feet, and three are larger than 10,000 square feet. One approved lot will be 16,008 square feet in size, and the other will be 19,910 square feet in size.

Lot 9, at 19,910 square feet, will be the largest lot in the neighborhood. This is a consequence of resubdividing the largest lot in the neighborhood (41,916 square feet). Resubdividing the existing lot into three lots would have created lots that are within the range of sizes for existing lots. However, the Board found the three-lot subdivision as originally proposed in the 2007 Application to be out of character with existing lots with respect to shape and frontage. Therefore, the Planning Board granted a waiver under Section 50-38 for size for Lot 9, as discussed below.

Lot 10, at 16,008 square feet, will be the third largest lot in the neighborhood and will be within the range of existing lot sizes. The size of Lot 10 is in character with the size of existing lots in the delineated neighborhood.

Shape: Fourteen of the 21 existing lots in the neighborhood are rectangular, six are irregularly shaped, and one has a pipestem shape. The two approved lots will be irregular in shape. The shapes of the new lots will be in character with shapes of the existing lots.

Width: The lots in the delineated neighborhood range from 60 feet to 133 feet in width. Eight of the lots have widths between 60 and 70 feet, 11 lots have widths between 70 and 100 feet, and the remaining two lots have widths of more than 100 feet. One of the approved lots will have a width of 70 feet, and the other will have a width of 84 feet. The approved lots will be in character with existing lots in the neighborhood with respect to width.

Area: The lots in the delineated neighborhood range from 1,995 square feet to 10,728 square feet in buildable area. Twelve of the lots have buildable areas that are less than 3,000 square feet, five are between 3,000 and 5,000 square feet, and four are between 5,000 and 11,000 square feet.

Lot 9, with 12,453 square feet of buildable area, will have the largest buildable area in the neighborhood. This is a consequence of resubdividing the largest lot in the neighborhood (41,916 square feet). Resubdividing the existing lot into three lots would have created lots that are within the range of buildable area for existing lots. However, the Board found the three-lot subdivision as originally proposed in the 2007 Application to be out of character with existing lots with respect to shape and frontage. Therefore, the Planning Board

granted a waiver under Section 50-38 for buildable area for Lot 9, as discussed below.

Lot 10, with a buildable area of 8,772 square feet, will be within the range of existing buildable areas. The buildable area of Lot 10 is in character with the existing lots in the delineated neighborhood.

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

7. *A waiver that the size and buildable area of lot 9 is in character with the delineated neighborhood under Section 50-38 is appropriate as practical difficulties or unusual circumstances exist that prevent full compliance with the requirements of the Subdivision Regulations from being achieved, and the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.*

The Application is a resubdivision of a platted lot. 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 the surrounding neighborhood to ensure that they are of the same character with respect to street frontage, alignment, size, shape, width, area, and suitability for residential use.

Lot 9 will have the largest size and buildable area for all lots within the neighborhood, and the waiver pertains only to this lot. A practical difficulty exists due to the fact that the existing lot, at 41,916 square feet, is significantly larger than any other lot in the neighborhood. Although resubdivision into three lots would create lots that are of the same character as existing lots with respect to size and buildable area, the 2007 Application for three lots was rejected by the Planning Board because the lots were found to be out of character with respect to the shape and frontage criteria of the resubdivision analysis. As a result, nearly any resubdivision into two lots would create at least one lot that is larger than and contains a greater buildable area than the other lots in the neighborhood.

The Applicant's intent to retain the existing house and garage on Lot 9 precludes making the lot or the buildable area smaller because there would be insufficient space for the required setbacks in the zone. The Board finds that this constitutes practical difficulties that prevent full compliance with the requirements.

buildable area were already reduced by excluding the rear of the Subject Property by creating two outlots. The waiver is not inconsistent with the purposes and objectives of the General Plan, as the Board has found the Preliminary Plan to substantially conform to the Master Plan. The waiver is not adverse to the public interest because the creation of two lots through this Preliminary Plan are significantly more in character with the neighborhood than the existing lot prior to resubdivision.

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

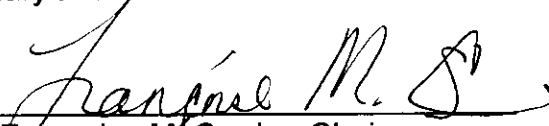
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JAN 23 2013 (which is the date that this Resolution is mailed to all parties of record); and

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 Anderson, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, January 17, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board