



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

JAN 24 2013

MCPB No. 13-09
Preliminary Plan No. 120110180
Parmjit and Saini Estates
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 February 22, 2011, Chattar Singh and Parmjit Singh, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create four lots on 2.63 acres of land in the R-200/TDR zone, located on the northern side of Travilah Road abutting Patrick Avenue ("Subject Property"), in the 2002 Potomac Subregion Master Plan area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110180, Parmjit and Saini Estates ("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 January 3, 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. 120110180 to create four lots on the Subject Property, subject to the following conditions:¹

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Approved as to
Legal Sufficiency:  1/21/13
8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
M-NCPPC Legal Department
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1. This Preliminary Plan is limited to four lots for four, one-family detached dwelling units.
2. Prior to clearing, grading, or building demolition, the Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan, approved as part of this Preliminary Plan, subject to:
 - i. The Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Department prior to the issuance of a Sediment Control Permit from the Montgomery County Department of Permitting Services ("MCDPS"). The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
 - ii. Submit the reforestation, fee-in-lieu payment to the M-NCPPC as required by the Final Forest Conservation Plan.
 - iii. The Applicant must plant nine-three inch caliper native trees as mitigation for the removal of four specimen trees. The species and locations of the mitigation trees must be identified on the Final Forest Conservation Plan.
3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated October 23, 2012, and does hereby incorporate them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. The Applicant must satisfy the provisions for access and improvements as required by MCDOT prior to recordation of plat.
5. The Planning Board has accepted the recommendations of the MCDPS – Water Resources Section in its letter dated August 9, 2012, and does hereby incorporate them as conditions of the Preliminary Plan approval. 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.
6. For purposes of noise attenuation, any building permits for one-family residences that are issued for Lots 1 and 4 pursuant to this Preliminary Plan must show that the buildings are to be built in substantially the same locations and orientations as shown on the certified Preliminary Plan, or prior to the issuance of the building

permit the Applicant must obtain Staff approval of appropriate measures to mitigate unacceptable noise levels.

7. The Applicant must dedicate, and the record plat must show dedication of 157 square feet of land for the right-of-way for Travilah Road to accommodate an existing shared use path, as shown on the Preliminary Plan.
8. The record plat must show necessary easements.
9. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
10. The Subject Property is located in the Thomas S. Wootton High School Cluster. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the unit rate for all lots for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
11. 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 2002 Potomac Subregion Master Plan ("Master Plan").*

The Master Plan does not specifically address the Subject Property but makes general recommendations for the area in which the Subject Property is located. The Subject Property will be developed in accordance with R-200/TDR standard method of zoning standards recommended by the Master Plan. The Application appropriately addresses the dedication needed for the existing shared use path on Travilah Road.

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

Roads and Transportation Facilities

The Application will generate traffic volumes well below the 30-trip threshold, and therefore, no Local Area Transportation Review is required. The Subject Property is exempt from Policy Area Mobility Review because the four lots will generate three or less new trips.

Access to the Subject Property will be provided by utilizing the existing driveway cut, and building a new shared driveway from Travilah Road. The sight distance for the driveway is acceptable per MCDOT. The Application was reviewed and approved by the Montgomery County Fire and Rescue Services. The Applicant is required to dedicate an additional 157 square feet of right-of-way for the existing shared use path. The path and driveways will adequately serve the needs of pedestrians and vehicles within this subdivision.

Other Public Facilities and Services

The Planning Board finds that all other public facilities and services are available and will be adequate to serve the approved subdivision. Police stations and health clinics are operating within the standards set by the Subdivision Staging Policy currently in effect. The Application is located in the Thomas S. Wootton School Cluster, which is operating at an inadequate capacity at the high school classroom level. A School Facility Payment at the high school level will be required for any building permit issued on a lot approved under this Application.

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

The Application was reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The size, width, shape, and orientation of all four lots are appropriate for the location of the subdivision based on a review of the Master Plan recommendations and the local area map included in the Staff Report. The lots are comparable in size, width, shape and orientation to existing properties fronting onto Travilah Road in the general area.

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 Subject Property contains no forest. Development of the Subject Property generates a 0.39 acre afforestation planting requirement to meet

the requirements of the Forest Conservation Law. As conditioned, the Applicant will meet the entire planting requirement through a Fee-In-Lieu payment.

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 four² 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.*

Granting the Variance will not confer a special privilege on the Applicant as the CRZ location/distribution of the Protected Trees is in such a manner that they provide near continuous root zone coverage that stretches the entire width of the Subject Property behind the existing residence. Any applicant considering development of the Subject Property consistent with the Master Plan and the zone would require disturbance and/or removal of the Protected Trees.

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

The majority of the Subject Property would not be developable in accordance with the Master Plan or the zoning if the CRZ of specimen trees were required to remain undisturbed.

² Applicant is required to mitigate for the removal of Protected Tree #1 that was removed without approval.

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 proposed development and not 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 Protected Trees being removed are not within a stream buffer, wetland, or a special protection area. Mitigation at a rate that approximates the form and function of the Protected Trees removed will provide some mitigation for water quality protection as the trees grow and mature. A Stormwater Management Concept Plan was approved by the MCDPS – Stormwater Management Section.

Mitigation for the Variance should 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 one inch diameter at breast height (“DBH”) for every four inches DBH removed, using trees that are three-inches in DBH. This means that for the total 70 caliper inches of Protected Trees removed, six – three inch DBH native canopy trees must be planted on the Property. 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.

The MCDPS Stormwater Management Section conditionally approved the Stormwater Management Concept for the Application on August 9, 2012. Environmental Site Design has been integrated on-site using drywells and non-rooftop disconnect techniques.

6. The Application satisfies all the applicable requirements of the Noise Guidelines.

The Applicant provided a noise study to identify the 60 decibel level day – night (dBA Ldn) contour and to indicate methods to attenuate interior noise of any affected homes to 45 dBA Ldn and exterior private spaces (backyard) to 60 dBA Ldn. The noise analysis identified the unmitigated 60 dBA Ldn noise contour line included in the Staff Report. All houses shown on the Preliminary Plan are located outside of the

unmitigated 60 dBA Ldn area to satisfy the noise recommendations. If either of the dwelling units on Lots 1 and 4 are not to be built in the same general location and orientation as shown on the Preliminary Plan, a noise study must be reviewed by Staff prior to issuance of the building permit for that dwelling to determine appropriate noise mitigation techniques. As conditioned, the Application will satisfy applicable noise limits.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for eighty-five (85) 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; and

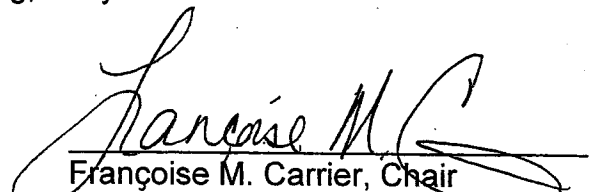
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JAN 24 2013 (which is the date that this Resolution is mailed to all parties of record); and

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).

* * * * *

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, 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