



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

JUN 18 2013

MCPB No. 13-57
Preliminary Plan No. 120130060
Chelsea Court
Date of Hearing: April 25, 2013

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on September 27, 2012, EYA/Chelsea Residential Associates, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 64 lots on 4.85 acres of land in the RT-12.5 zone, located at 711 Pershing Drive, south of Springvale Road ("Subject Property"), in the North and West Silver Spring Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120130060, Chelsea Court ("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 April 12, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 25, 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, on April 25, 2013, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Anderson, seconded by Commissioner Dreyfuss, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves

Approved as to
Legal Sufficiency:

Christopher J. Smith 6/5/13
8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
MNCPPC Legal Department
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

Preliminary Plan No. 120130060 to create 64 lots on the Subject Property, subject to the following conditions:¹

- 1) This Preliminary Plan is limited to 64 lots for 63 townhouses and one one-family detached dwelling unit, including at least 12.5% moderately priced dwelling units (MPDUs).
- 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 site plan approval. 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. Revise the mitigation planting tables for variance trees to specify only canopy trees.
 - b. Revise the variance tree table on sheet 5 of the final forest conservation plan to clearly identify the trees that are subject to the variance.
 - c. Ensure that the limits of disturbance include all areas of sidewalk construction on Ellsworth Drive.
- 4) Prior to demolition or any land disturbing activities occurring onsite, the Applicant must submit to Staff and obtain M-NCPPC Associate General Counsel Office approval of the certificate of compliance for the off-site forest mitigation bank providing an equivalent credit of 1.86 acres.
- 5) The record plat must contain a note extinguishing the existing Category II Conservation Easement on the Subject Property.
- 6) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 7, 2013, as amended by its correspondence dated March 18, 2013, 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.

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.

- 7) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 8) 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 October 24, 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 MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) 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.
- 10) Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of five-foot wide sidewalks and five-foot wide green panels along the Subject Property frontage on Ellsworth Drive, Springvale Road, and Pershing Drive, unless construction is waived by MCDPS. The green panel may be omitted on the Ellsworth Drive frontage between the proposed crosswalk across Ellsworth Drive and the southern limit of the Subject Property frontage.
- 11) Prior to certification of the Preliminary Plan, the plan drawing must be revised to show the proposed sidewalk on Ellsworth Drive extended along the entire Subject Property frontage.
- 12) The record plat must reflect a public use and access easement over all private streets and adjacent parallel sidewalks, subject to the traffic restrictions stated in Condition No. 6.b. of Site Plan No. 820130040.
- 13) The record plat must reflect a public use and access easement over open space areas as required by Binding Element No. 2, as stated in County Council Resolution 17-471, dated June 12, 2012.
- 14) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 15) 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.
- 16) Prior to recordation of the plat, the Applicant must record a restrictive covenant for the open space area around the 37,056 square-foot environmental setting for the Riggs-Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable the Applicant to complete all work approved by the Planning Board as part of the site plan approval. Following completion of those improvements, the covenant will require advice from the Historic Preservation Commission to the Planning Board for any site plan amendment to the area subject to the covenant.

- 17) The Applicant must comply with the binding elements of County Council Resolution No. 17-471 approving Local Map Amendment G-892.
- 18) The final number of MPDUs as per condition #1 above will be determined at the time of site plan approval.
- 19) The Subject Property is within the Northwood High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the single-family attached unit rates for all units 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.
- 20) Prior to recordation of any plat, Site Plan No. 820130040 must be certified by Staff.
- 21) No clearing, grading or recording of plats prior to certified site plan approval.
- 22) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan.
- 23) The record plat must show necessary easements.
- 24) 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.

At its hearing of May 19, 2011, for rezoning case G-892, which rezoned the Subject Property from R-60 to RT-12.5, the Planning Board determined that the proposal was in substantial conformance with the North and West Silver Spring Master Plan. The Planning Board's determination was based on the following analysis:

The neighborhoods of North Silver Spring are predominantly comprised of one-family detached homes, with a limited number of townhomes and apartments. On page 20, the Master Plan states that the preservation of residential character and the stabilization of the neighborhood edge along major highways and the Central Business District perimeter are of major concern to North Silver Spring. In this light, the Master Plan reconfirms the existing R-60 Zone for virtually all of North Silver Spring with a few exceptions for specific locations that were in discussion at the time of the Master Plan's publication.

The Master Plan gives extensive guidance for an area along Georgia Avenue where there was particular interest in potential townhomes during the time of the master planning process. On page 21, among the many guidance points for this stretch of Georgia Avenue, the Master Plan states, "limit the development of townhomes to the blocks along Georgia Avenue and do not encroach into the interior blocks." This language, when read on its surface, may appear to recommend an absolute prohibition on townhouse development anywhere in the planning area except along Georgia Avenue. However, when the language is read in its entirety, it becomes apparent that the Master Plan was providing specific guidance solely for the area along Georgia Avenue where there was a current interest in applying the townhouse zones. The language is recommending against the development of townhomes in the interior blocks along Georgia Avenue. To read the language in the alternative would lead to the conclusion that the drafters of the Master Plan analyzed each of the hundreds of properties in North Silver Spring for its suitability for townhomes and only this one area along Georgia Avenue was deemed appropriate. This is an unrealistic interpretation. Therefore, the Master Plan does not provide specific recommendations for the Subject Property's suitability for townhomes.

While the Master Plan doesn't provide specific guidance for the Subject Property's suitability for townhomes, the Master Plan does reconfirm the existing R-60 zoning for the entire North Silver Spring area and does specifically acknowledge the institutional school use on the site. Additionally, the Master Plan provides guidance for the one-family houses along Cedar Street directly south of the Subject Property on page 44. The Master Plan designates the entire row of homes as suitable for professional office special exceptions because the homes will provide a transition between the Silver Spring Central Business District and the one-family neighborhoods of North Silver Spring. In its reasoning, the Master Plan states that the homes are "somewhat isolated from other [one]-family homes in the neighborhood by the Chelsea School." Because the Chelsea School is not a residential use, this language indicates that the drafters of the Master Plan envisioned the entire block – both the special exception-designated homes along Cedar and the Chelsea School – as a transitional block that buffers the North Silver Spring residential neighborhoods from the Silver Spring Central Business District. Given that townhomes are inherently one-family residential homes, just like detached houses, and that the zoning ordinance intends the townhouse zones for transitional areas between commercial districts and one-family detached neighborhoods, it is likely that a townhouse development at this

location will serve as a more appropriate transition, with better compatibility, than the existing school on the Subject Property.

While the Master Plan does not provide specific guidance on the development of townhomes at this particular location, the proposal substantially conforms to the Master Plan's general guidance of preserving the residential character of North Silver Spring and stabilizing the edge along the Central Business District perimeter. By replacing an institutional use with a residential one-family development, the residential character of North Silver Spring is enhanced and the transitional block between the Silver Spring Central Business District and the North Silver Spring residential neighborhoods is improved.

The County Council remanded rezoning case G-892 to the Hearing Examiner in October 2011, requesting that the Applicant provide a revised schematic development plan "with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan." In its resolution, the County Council found that the Applicant's initial proposal for townhomes at the Subject Property was an appropriate use, and compatibility with the surrounding area can be furthered with a lower density and slight revisions to the layout and design of the site.

After the County Council remanded rezoning case G-892, the Applicant reduced the number of townhouse units from 76 to 63. At a public hearing on January 26, 2012, the Planning Board once again determined that application G-892 was in substantial conformance with the Master Plan. The Hearing Examiner and the County Council agreed with the Planning Board's determination, stating that the density and massing of the development would be compatible with the surrounding land uses, the Applicant adequately demonstrated that the alignment of the internal private road would operate compatibly with the neighborhood and in a manner consistent with the Master Plan, the density and massing proposed was consistent with the Master Plan, and the environmental setting for the Riggs-Thompson House shown on the revised schematic development plan was also consistent with the Master Plan. The County Council approved the rezoning in June 2012.

The previous analysis of Master Plan conformance, which was accepted by both the Planning Board and the Hearing Examiner, and the finding of Master Plan conformance made by the County Council remain valid. Therefore, the Planning Board finds that the Preliminary Plan is in substantial conformance with the North and West Silver Spring Master Plan.

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

Roads and Transportation Facilities

The Subject Property is located just north of the Silver Spring Central Business District. The Subject Property is bordered by Springvale Road to the north, Pershing Drive to the east and Ellsworth Drive to the west. Access to the townhouses will be via a right-in right-out private street from Springvale Road and an entrance on Ellsworth Drive. Access to the single family unit will be via a driveway from Pershing Drive.

A series of traffic restrictions exist on the streets in the surrounding neighborhood, such as prohibitions against turns at certain intersections and one-way street segments. The purpose of these restrictions is to discourage through traffic between the Silver Spring central business district and the Capital Beltway from using the neighborhood streets as an alternative to Colesville Road. The development includes a new private street that will intersect Ellsworth Drive at one end and Springvale Road at the other, creating a new connection between these two streets. Citizen correspondence on the Application has raised the concern that the new street will allow drivers to circumvent the existing traffic restrictions, which some residents believe would cause adverse impacts on the neighborhood from a large increase in through traffic. However, this approval includes a condition that requires the Applicant to install traffic restriction signs on the private street, which will prohibit non-resident and non-visitor traffic from using the new street between Ellsworth Drive and Springvale Road. The Planning Board does not expect a lower level of compliance for these signs than for the existing signs. Thus, the Application will not cause an increase in through traffic in the neighborhood.

Master/Sector-Planned Roadways and Bikeways

Springvale Road is a tertiary residential street not listed in the North & West Silver Spring Master Plan. Pershing Drive is also a tertiary residential street not listed in the Master Plan, but it has a designated bikeway (either bike lanes or a signed shared roadway); PB-17. This section of Ellsworth Drive is a secondary residential street not listed in the Master Plan, but it has a signed shared roadway, SR-31.

Available Transit Service

Although transit service is not available on Springvale Road, Pershing Drive or Ellsworth Drive, there are existing bus stops located on nearby Wayne Avenue. These bus stops are within a quarter-mile walking distance of the Subject Property and are served by Ride-On routes 12, 15 and 19. The Subject Property is located less than a mile from the Silver Spring Metrorail station.

Pedestrian Facilities

There is currently a sidewalk and green panel along Pershing Drive on the east side of the Subject Property. There are, however, no sidewalks along the Subject Property's frontage on Springvale Road and Ellsworth Drive. The Applicant will provide a five-foot wide sidewalk and five-foot wide green panel along the Subject Property frontage, except that the green panel along Ellsworth Drive is only required along the Subject Property frontage from the intersection of Springvale Drive to a point approximately 65 feet north of the southern Subject Property line. This 65-foot segment of the Ellsworth Drive frontage was excluded from the frontage to be improved with a green panel to avoid the loss of three trees. The Applicant will provide a crosswalk to connect the new sidewalk to the existing sidewalk on the opposite side of the street. The number of dwellings and the close proximity to the Silver Spring Central Business District and Silver Spring Metrorail Station will result in a large number of pedestrians on Ellsworth Drive. Therefore, this approval includes a condition that requires the Applicant to continue the construction of the sidewalk along Ellsworth Drive to the southern boundary of the Subject Property.

The Applicant is providing three bike racks on the site. Two will be located adjacent to the open space area on Chelsea Court and one will be near the intersection of Ellsworth Drive on Chelsea Court.

Local Area Transportation Review (LATR)

A traffic study is required to satisfy the LATR component of the adequate public facilities (APF) test when a proposed land use generates a total of 30 or more peak-hour trips within the weekday morning peak period (6:30 to 9:30 a.m.) or evening peak periods (4:00 to 7:00 p.m.). The traffic study shows the net new number of weekday peak-hour trips generated by the redevelopment of the school into 63 townhouses and one single-family unit during the weekday a.m. and the p.m. peak periods.

The traffic study shows that the critical lane volume (CLV) values at all analyzed intersections during the weekday morning and evening peak-hours will

be less than their applicable congestion standard of 1,600 for the Silver Spring/Takoma Park Policy Area or 1,800 for the intersections located within the Silver Spring CBD Policy Area. Based on the analysis presented in the traffic study, it is concluded that the Application will satisfy the LATR requirements of the APF test.

Policy Area Mobility Review (PAMR)

Pursuant to Paragraph AP2, Transition, of the 2012-2016 Subdivision Staging Policy, the Applicant has selected to use the PAMR test in lieu of the Transportation Policy Area Review (TPAR) test to satisfy the policy area requirements of the APF test. The PAMR Guidelines require a 5 percent mitigation of base trips in the Silver Spring/Takoma Park Policy Area. The required number of trips to be mitigated is two peak hour trips ($34 \times 0.05 = 2$), as shown in Table 3. The Applicant proposes to pay a mitigation fee of \$23,400 ($2 \times \$11,700$), which will pay for improvements located in the immediate neighborhood. With the required mitigation, the Application thus satisfies the PAMR requirements of the APF test.

Conclusion

Vehicle and pedestrian access for the subdivision will be adequate with the required improvements.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the development. 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 resolution currently in effect and will be adequate to serve the Subject Property. The Subject Property is within the Northwood High 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 Subject Property.

- 3. The lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

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 taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated, because the lots are appropriately dimensioned to contain the townhouse units. The provision of townhouses is consistent with the RT-12.5 zoning designation and in substantial conformance with the Master Plan.

The lots were reviewed for compliance with the dimensional requirements for the RT-12.5 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

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

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 (FFCP) was approved on September 20, 2001, with the approval of Preliminary Plan No. 120000130 for a proposed school expansion. The FFCP included a substantial development envelope for the construction of building additions, new school buildings, parking, and access drives. The forest conservation requirements for the school were met through a combination of credited tree preservations and supplemental plantings. A Category II Conservation Easement was established over the entirety of the Subject Property as recorded in plat 22270, protecting the onsite trees and the associated forest conservation credits. The plan for the school expansion was not implemented except for the installation of a driveway and parking area off of Pershing Drive.

Local Map Amendment G-892 for the project was not subject to a formal forest conservation review. However, a preliminary forest conservation plan (PFCP) associated with the rezoning was submitted on May 4, 2011. The PFCP showed that the forest conservation requirements could be achieved, although the PFCP did not address the potential forest conservation variance issues. Ultimately, the project was remanded to decrease the density. The revised schematic development plan included greater setbacks, lower density, more

green space, and less overall disturbance; indicating that the forest conservation and tree save requirements could be satisfied.

Revised NRI/FSD 420121810 was submitted by the Applicant and approved on July 16, 2012. During the review period, a severe storm had occurred in the area, which felled or damaged a number of the trees within the study area. Prior to approval, the forest conservation plan was updated to reflect the felled and damaged trees.

The formal submission of the final forest conservation plan (FFCP) and associated forest conservation variance request have been included for review during the Preliminary Plan and Site Plan review. The current FFCP shows some additional tree impacts and removals beyond the levels previously approved on the FFCP for the school expansion. The additional impacts and removals trigger forest conservation variance requirements which are discussed further below. Onsite mitigation plantings for the variance trees are included on the FFCP and are generally located behind the residences along Cedar Street, within the boundary of the Subject Property.

The existing Category II Conservation Easement already established over the entire Subject Property was suitable for an institutional, owner-occupied use, such as the school. However, the same easement would not be appropriate for a residential, multi-owner townhouse community. Additionally, current practice is to avoid overlap of conflicting easements such as the stormwater management and public access easements within the site. As a result of these circumstances, the Planning Board abandons the existing Category II Easement. Mitigation of the easement area will be satisfied by use of an offsite forest conservation bank. The standard policy adopted by the Planning Board for off-site mitigation of conservation easement abandonment is to provide replacement at a 2:1 ratio. However, the Category II Easement associated with the project covers the entire site, which includes substantial areas of buildings, parking lots, driveways, and turf fields in addition to the protected trees and plantings. The blanket easement was established to avoid a complex easement description that would have only included the particular areas of interest such as the plantings and tree cover (which are interspersed throughout the site). Therefore, in this case the easement mitigation will be satisfied by a 2:1 mitigation ratio of the forest conservation credits provided by the original plan (rather than a 2:1 ratio of the easement area). Since the original forest conservation plan provided 0.93 acres of forest credit, a mitigation requirement of 1.86 acres will be satisfied by the Applicant's purchase of equivalent credits from an offsite conservation bank. No forest conservation easements are approved with this Application.

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 25 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.*

Trees 98 and 116 are both in poor condition and would be removed independent of the development activity. Furthermore tree 116 is located within the existing Springvale Road right-of-way; the MCDOT arborist was consulted on the condition of the tree and agrees that the tree warrants removal. The other removals (trees No. 45 and 87) and impacts are within the buildable area established by the setbacks and other site constraints. Therefore, the Variance request 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 requested Variance is based on development allowed under the existing zoning. 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 tree disturbance and removals. A variety of alternative townhouse configurations and roadway alignments were explored, but none of those configurations resulted in fewer impacts to or removals of trees that would be subject to the Variance. Additionally, mitigation is provided to reduce the effects of the trees to be removed.

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.*

Granting this Variance request will not violate State water quality standards or cause measurable degradation in water quality. MCDPS approved the stormwater management concept for the project on October 24, 2012. The MCDPS review and ultimate approval of the sediment and erosion control and stormwater management plans will ensure that appropriate standards are met. The Subject Property is not directly associated with any steams, wetlands, or related buffers. Additionally the mitigation plantings will help provide shading and water retention and uptake. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is 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 diameter at breast height ("DBH") of tree caliper for every four inches DBH removed. No mitigation is required for Protected Trees impacted but retained.

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

This finding is based in part 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 October 24, 2012. According to the approval letter, the stormwater management concept meets stormwater management requirements using environmental site design to the maximum extent practicable. The full volume of environmental site design is provided using permeable pavement, micro-bioretenion, planter boxes, bio-swales, and dry wells.

The Planning Board has received correspondence from the Seven Oaks Evanswood Citizen Association, the Audubon Naturalist Society, and nearby

residents that raises the concern that the stormwater management concept is not in compliance with state and county laws that require the use of environmental site design to the maximum extent practicable, and that MCDPS inappropriately approved the stormwater management concept. In support of those concerns, the correspondence argues that preservation of the existing steep slopes and an existing grove of trees on the Subject Property are necessary in order to determine that the stormwater management concept uses environmental site design to the maximum extent practicable.

Rick Brush of MCDPS responded to these concerns in an email dated October 11, 2012. The email provides a detailed response to each of the concerns that were raised, and states that the stormwater concept is fully in compliance with the requirement to implement environmental site design. A March 14, 2013 letter from Diane Schwartz Jones, Director of MCDPS, to the Audubon Naturalist Society and the Seven Oaks Evanswood Citizen Association reiterates that the stormwater concept meets the requirements for use of environmental site design, and confirms that approval of the stormwater management concept was appropriate. Both Mr. Brush's and Ms. Schwartz Jones's responses on the issue also address the concerns raised with respect to retention of the existing steep slopes and a grove of trees.

With respect to steep slopes, Ms. Schwartz Jones states:

The intent of the requirement to protect steep slopes is not based on any intrinsic value concerning hydrology. In fact, steep slopes tend to limit the infiltration of runoff. The intent is to limit development on steep slopes which may cause or exacerbate erosion and sedimentation within the stream system. That is not a factor in this case due to the location of the steep slopes and the proposal to remove them. In addition, these existing steep slopes are not a part of or associated with a stream valley buffer. In this case the removal of these slopes poses no significant erosion or environmental hazard. Preservation of the slopes reaps no significant hydrologic benefit.

With respect to the removal of trees, Ms. Schwartz Jones states:

Where forested areas are preserved within conservation easements or stream valley buffers, they may provide some Environmentally Sensitive Design ("ESD") credit. Credit can also be given using the "Sheet Flow to Buffer" ESD standard. However, that is not the case for this project. Therefore, no ESD credit can be given for saving the grove of trees. Although a reduction in the impervious area may occur if the requirement is to keep these trees, the MDE [Maryland Department of the

Environment] design manual does not specify the preservation of existing trees as an ESD practice.

Ms. Schwartz Jones's response with respect to removal of the grove of trees is making the distinction between removal of forest, per the definition in the Forest Conservation Law, and a grove of trees that does not meet that definition. While the preservation of forest is eligible for ESD credit, preservation of trees that are not in a forest is not eligible.

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 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 new 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 RT-12.5 zone, but the surrounding neighborhood has been developed under development standards of the R-60 zone for standard method development. The RT-12.5 zone allows unit types, such as townhouses and duplexes, that are not permitted in the R-60 zone with standard development. In addition, the RT-12.5 zone allows significantly smaller lot sizes than the R-60 standard method of development.

Because of these differences between the RT-12.5 and the R-60 zones, a meaningful comparison between the new lots and the existing lots in the neighborhood cannot be made. Therefore, the Applicant has requested a waiver of the resubdivision analysis required by Section 50-29(b)(2). The Planning Board has the authority to grant such a waiver pursuant to Section 50-38(a)(1) of the Subdivision Regulations, provided that certain findings can be made. The section states:

The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that 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 fact that the required analysis cannot be made presents a practical difficulty for the Applicant. In addition, this is an unusual circumstance because no preceding subdivisions in the neighborhood have been developed in the RT-12.5 zone. 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 not inconsistent with the purposes and objectives of the General Plan and is not adverse to the public interest because the waiver is needed in order to develop the Subject Property in accordance with a local map amendment to change the zone of the site from R-60 to RT-12.5. The local map amendment was found by the County Council to be consistent with the purposes and objectives of the General Plan and to be in the public interest.

7. *Practical difficulties or unusual circumstances exist so that a waiver of the requirement that individually recorded lots abut on a street that has been dedicated to public use or which has acquired the status of a public road, as required by of Section 50-29(a)(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.*

Section 50-29(a)(2) of the Subdivision Regulations requires "...that individually recorded lots shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road." The townhouse lots will be on individually recorded lots and will front onto private alleys, which will be accessed via a private street. Therefore, in order to approve the Preliminary Plan, the Planning Board would typically also find that the private alleys and street have acquired the status of a public road. This finding is based upon the road being fully accessible to the public; accessible to fire and rescue vehicles, as needed; and designed to minimum public road standards, except for right-of-way and pavement widths.

In the case of this Application, the street and alleys that provide frontage to the individually recorded townhouse lots can meet the minimum design standards necessary to make the finding that they have the status of public roads. These standards, as previously applied by the Planning Board, include 20-foot pavement width, 25-foot or larger curve radii, an appropriate circulation pattern, and an appropriate paving cross-section.

However, public access to the street is subject to the limitations of a binding element placed on Local Map Amendment G-892. The binding element states:

The internal private road will be restricted to use by residents and visitors of Chelsea Court and will include design features to avoid cut through traffic such as limited roadway width, on-street parking, special paving at each of the two ingress/egress points, signage prohibiting cut through traffic, and other control measures, to be finalized at the time of site plan approval.

Compliance with the binding element precludes the street being accessible to the public. This presents a practical difficulty for the Applicant and prevents compliance with Section 50-29(a)(2) of the Subdivision Regulations. Granting a waiver of the requirements of Section 50-29(a)(2) is the minimum waiver necessary to provide relief from the requirements. The waiver is not inconsistent with the purposes and objectives of the General Plan and is not adverse to the public interest because granting the waiver is necessary in order to comply with the binding element, which itself was placed in response to public concerns.

8. *Approval of the Application will not result in development of unsafe land.*

The Subject Property contains several areas of man-made steep slopes (some in excess of 25% slope). These generally occur in the form of straight, graded slopes that were created when the site was graded to create flat areas for the school's buildings, sports fields, and parking areas. The development will result in regrading of the Subject Property and, consequently, removal of these steep slopes.

Section 50-32 of the Subdivision Regulations addresses special controls for environmentally sensitive areas. Paragraph (b) of the section states that the Planning Board must restrict subdivision of any land that it finds to be unsafe for development because of unstabilized slope or fill, among other reasons. To address the requirements of this section, the Applicant has provided a letter from a geotechnical engineering firm that states that the development will not result in unsafe conditions, as defined by Section 50-32.

Paragraph (c) of Section 50-32 states that the Planning Board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to the conservation of environmentally sensitive land. For purposes of the subsection, environmentally sensitive land is defined to include slopes over 25% or over 15% with highly erodible soils. The Subject Property does not contain any erodible soils. As mentioned above, the slopes that exceed 25% have been artificially created. They are not adjacent to any streams or stream buffers, and they are not within a forest. Thus, they are not inherently environmentally valuable. Further, regrading of the Subject Property will eliminate the steep slopes, so that

a potentially erosive condition will not be created after development of the Subject Property. For these reasons, the Planning Board did not restrict development based on Section 50-32.

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

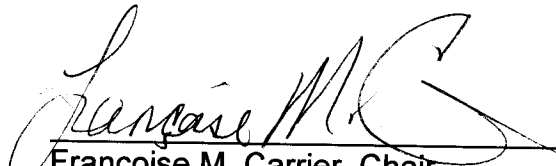
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUN 18 2013 (which is the date that this Resolution is mailed to all parties of record); and

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 Anderson, 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, June 13, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board