



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

MCPB No. 13-165
 Preliminary Plan No. 120130260
 Potomac Highlands
 Date of Hearing: December 5, 2013

DEC 7 17 2013

RESOLUTION

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

WHEREAS, on May 22, 2013, Winchester Homes ("Applicant") filed an application for approval of a Preliminary Plan of subdivision of property that would create 23 townhouse lots on 5.41 gross acres of land in the R-90 Zone, located on the east side of Seven Locks Road approximately 1,600 feet north of Democracy Blvd. ("Subject Property"), within the Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, the May 22 application was designated Preliminary Plan No. 120130260, Potomac Highlands ("Preliminary Plan" or "Application"); and

WHEREAS, on November 22, 2013, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 5, 2013, the Planning Board held a public hearing and heard testimony concerning the Application, and 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. 120130040 to create 23 townhouse 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:

M-NCPPC Legal Department
 www.montgomeryplanningboard.org

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 E-Mail: mcp-chair@mncppc-mc.org

1. Approval under this Preliminary Plan is limited to twenty-three (23) townhouse lots with a minimum of 15 percent MPDUs.
2. The Applicant must comply with the conditions of approval for the Final Forest Conservation Plan, approved as part of the Site Plan.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated November 6, 2013, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDOT may amend provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
5. The Applicant must make the Transportation Policy Area Review ("TPAR") Mitigation Payment, equal to 25 percent of Impact Tax, in accordance with the 2012-2016 Subdivision Staging Policy prior to obtaining the first building permit.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated April 30, 2013, and hereby incorporates 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.
7. The Applicant must dedicate and show on the record plat(s) a minimum of 40 feet from the existing pavement centerline along the Subject Property frontage on Seven Locks Road.
8. The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan and/or to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By _____" are excluded from this condition.
9. The record plat must reflect a Category I conservation easement over all areas of stream valley buffers and forest conservation.

10. The record plat must show all private streets within separate parcels, and must reflect a public use and access easement over all private streets and adjacent parallel sidewalks.

11. 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) [or] 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.

12. The record plat must show necessary easements.

13. 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 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 project satisfies the relevant Master Plan recommendations for the Property. It is consistent with the Plan's recommendation of residential land use, and consistent with its zoning recommendation, which calls for retaining the R-90 Zone. The development exceeds the requirement for providing affordable housing, a goal specifically recommended in the Master Plan.

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

According to the 2012-2016 Subdivision Staging Policy (SSP), the Potomac Policy Area is adequate under the roadway test and inadequate under the transit test, so the Applicant must make a TPAR Mitigation Payment prior to obtaining the first building permit.

3. *The size, width, shape, and orientation of the approved lots 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.*

The proposed lot sizes, widths, shapes and orientations are appropriate for the location of the subdivision taking into account Master Plan recommendations, and for the type of development and use contemplated. The Board reviewed a binding pre-preliminary plan for this subdivision, and found the use of townhouse lots to be appropriate.

The lots were reviewed for compliance with the dimensional requirements for the R-90/MPDU zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, and width, and can accommodate townhouse units within the required setbacks.

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

A. Forest Conservation

As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The site is forested except for the street frontage. A significant amount of damage has been done to the forest by storms in recent years. The area of forest to be removed is 3.05 acres with 1.26 acres of forest retention. Forest retention exceeds the 20 percent forest conservation threshold by 0.17 acres. A 0.48-acre reforestation requirement is being partially met onsite by supplementing remaining forest areas with 0.28 acres of planting. In addition, 0.20 acres of off-site mitigation is required.

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 six Protected Trees as identified in the Staff Report. In accordance with Section 22A-

21(a), the Applicant has requested a Variance and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes 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 zone of the property together with its severe topography along the road frontage require significant grading in order to develop the property. Another applicant seeking to similarly develop the property would be granted a similar variance.

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

The Applicant has prepared and submitted plans that meet all applicable master plan, and forest conservation requirements. The requested variance is based upon existing site conditions, the high intensity zone, and the number and locations of the large trees.

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.*

A Stormwater Management Concept Plan has been accepted by the MCDPS – Stormwater Management Section. In accordance with that approval, the concept design will satisfy the water quality, quantity and recharge requirements to maintain appropriate water quality standards.

The six (6) trees to be removed are located within the existing forest, and their removal, along with the impact to two trees, will be mitigated as part of the Forest Conservation Plan requirements of Chapter 22A of the County Code.

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 in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards. The concept consists of dry wells and micro-bioretenion that MCDPS has deemed to be acceptable.

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, or a request for an extension must be filed; and

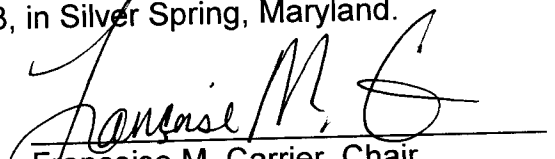
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 11 2013 (which is the date that this Resolution is mailed to all parties of record); and

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 and Dreyfuss voting in favor, and Commissioner Presley absent, at its regular meeting held on Thursday, December 5, 2013, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board