

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

APR 8 2014

MCPB No. 14-16
 Preliminary Plan No. 120140040
 Country Club Village
 Date of Hearing: April 3, 2014

RESOLUTION

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

WHEREAS, on August 23, 2013, Charles Mahaffie ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 1 lot on 21,511 square feet of land in the R-60 zone, located 350 feet south of the intersection of Wynkoop Boulevard and Winston Lane ("Subject Property"), in the Bethesda-Chevy Chase Policy Area, Bethesda-Chevy Chase master plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120140040 Country Club Village ("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 March 21, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 3, 2014, 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. 120140040 to create 1 lot on the Subject Property, subject to the

Approved as to
 Legal Sufficiency

Christina Soma 3/20/14

following conditions:¹

- 1) This Preliminary Plan is limited to one lot for one single family dwelling unit.
- 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 Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated February 11, 2014, and hereby incorporates 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.
- 4) Prior to recordation of the plat, the Applicant must satisfy MCDOT requirements to ensure the construction of a five (5) foot wide sidewalk along the property frontage on Wynkoop Boulevard, unless construction is waived by Montgomery County Department of Permitting Services ("MCDPS").
- 5) Prior to recordation of plat, the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 6) The Certificate of Compliance which satisfies the 0.29 acre reforestation requirement must be submitted by the Applicant and approved by Staff prior to any clearing, grading or construction activity within the proposed development area.
- 7) The Final Forest Conservation Plan must comply with all tree protection and tree save measures shown on the approved Preliminary Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
- 8) The tree save components of the Final Forest Conservation Plan must be appropriately certified by an International Society of Arboriculture certified arborist.
- 9) The Planning Board accepts the recommendations of the MCDPS Water Resources Section in its stormwater management concept letter dated October

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.

- 29, 2013, and hereby incorporates them as conditions of this approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS Stormwater Section provided that the amendments do not conflict with other conditions of this approval.
- 10) The Sediment Control Plan must be consistent with final limits of disturbance as approved on the Final Forest Conservation Plan.
 - 11) The Subject Property is within the Whitman High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the middle and high school level at the one-family detached unit rates for any unit for which a building permit is issued. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code
 - 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.
 - 13) The Applicant must comply with the Established Building Line for Lot 13 as shown on the Preliminary Plan dated January 20, 2014.

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 Subject Property lies within the area defined as the Potomac Palisades in the Master Plan. This land is characterized by rolling and hilly topography. Some areas have moderately steep (15 to 25 percent grade) to extremely steep (over 25 percent) slopes. The Master Plan states that a community land use is to protect the environment, character, and cultural resources of the Palisades area. Another major goal is to protect the natural resources and environmental features which are important to the quality of life for Bethesda-Chevy Chase.

The [Master] Plan recommends "preserving the Potomac Palisades' unique environmental features of steeply wooded slopes and vistas and the perpetuation of the open space character established in the area." The Master Plan also stated that "the established pattern of development in the Palisades has resulted from average lot sizes larger than the minimum 6,000 square feet required for the R-60 Zone. These larger lots have allowed for less intrusion on the steeply sloped and wooded topography characteristic of this area." The Master Plan also cited natural features in an effort to avoid erosive conditions and protect the steep slopes of this area and recommended "the preservation, whenever

possible, of wetlands and steeply sloped areas (25 percent and greater slopes) that may lie outside floodplains or stream buffers.”

The Subject Property’s topography is severe and approximately 48 percent of the site has slopes steeper than 25 percent. Another 22 percent of the site has slopes ranging from 15-25 percent, and the remaining 30 percent of the site has slopes less than 15 percent. The majority of the site is Brinklow-Blocktown Channery silt loam; a highly erodible soil. The Applicant adhered to the Master Plan recommendations by proposing a single lot on the Subject Property. The single lot instead of two lots on the Subject Property preserves more of the site’s environmentally sensitive areas of steep slopes, erodible slopes and forest canopy. The lot, at 21,511 square feet, will be larger than the R-60 Zone minimum of 6,000 square feet. The Master Plan notes that development patterns in the Potomac Palisades have skewed towards average lot sizes larger than the 6,000 square foot minimum of the R-60 Zone. This larger lot size is in keeping with the Master Plan’s recommendation for larger lots in the R-60 zone to maintain and protect the environmentally sensitive areas in the Palisades as well as to reinforce the established lotting pattern for residential development. An Established Building Line, of 50 feet, shown on the Preliminary Plan will reinforce the protection of these environmentally sensitive areas.

The Application complies with the recommendations adopted in the Master Plan in that it proposes one-family residential development consistent with surrounding development patterns and the current zoning designation. The residential lot will be similar to surrounding lots with respect to dimensions and orientation. The Application will not alter the existing pattern of development or land use and is in substantial conformance with the Master Plan recommendation to maintain the existing land use and to protect environmentally sensitive features.

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

The Subject Property is located along the east side of Wynkoop Boulevard, across from the “T-Intersection” with Wynkoop Court, and approximately 350 feet south of Winston Drive. Winston Drive connects Wynkoop Boulevard to River Road (MD 190). The Subject Property is unimproved and does not have vehicular access to Wynkoop Boulevard but future vehicular access will be via a new driveway located approximately 25 feet south of Wynkoop Court.

Neither the Master Plan nor the Countywide Bikeways Functional Master Plan provides specific recommendations for Wynkoop Boulevard, a 26-foot wide secondary residential road (60 foot public right-of-way) with no sidewalk on either

side. The Application does not propose dedications or modifications to this roadway.

The Subject Property will generate one AM peak-hour and two PM peak-hour vehicular trips. Because of the de minimis impact, the subdivision is exempt from the Local Area Transportation Policy Review (LATR) and Transportation Policy Area Review (TPAR). The Applicant satisfies Adequate Public Facilities (APF) requirements and does not necessitate further traffic analysis. The development satisfies the LATR and TPAR requirements of the APF review and will provide safe, adequate, and efficient site access.

Other Public Facilities and Services

The Subject Property will be served by public water and sewer systems. The Montgomery County Fire and Rescue Services reviewed the Application and determined that the Subject Property has appropriate access for fire and rescue vehicles. The Subject Property is located in the Whitman cluster, which is operating over its program capacity at the middle and high school level. Consequently, a school facility payment is required. Other public facilities and services, such as police stations, firehouses, health services and utilities are 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, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

The Application was 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 shown on Table 1 and as discussed below. The lot will meet all the dimensional requirements for area, frontage, width, and setbacks of the R-60 Zone as specified in the Zoning Ordinance. The lot size, width, shape and orientation are appropriate for the location of the subdivision given the environmentally sensitive site conditions and the Master Plan recommendations for maximizing protection.

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

A. Forest Conservation

The Planning Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. The

Preliminary Forest Conservation Plan (PFCP) was submitted on November 29, 2013 for one lot and it showed that the forest clearing required for house construction was reduced from the 0.49 acres for a two lot plan to 0.27 acres for the Application. The newly created lot is small in size (less than an acre), thus a conservation easement is not recommended to be placed on the retained forest and all forest is counted as cleared for forest conservation purposes. The Forest Conservation Worksheet for the Subject Property generates a 0.29 acre planting requirement. The Applicant can meet this requirement through either a forest mitigation bank or via 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 nine Protected Trees as identified in the Staff Report. Development on the Subject Property is constrained by the existing site conditions. The site is forested and a large portion is encompassed by steep slopes and erodible soils. There are also a few large trees located within the existing onsite forest and the adjacent properties. The Applicant has reduced impacts to the forest as much as possible to accommodate the location of the single dwelling. The forest to be cleared includes 0.27 acres on the southern portion of the Subject Property. The Applicant will preserve the remainder of the forest through strict adherence to the limits of disturbance that is established on the Preliminary Forest Conservation Plan and further refined with the Final Forest Conservation Plan. 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.*

Disturbance and/or removal of trees on the Subject Property is due to development of the site. The trees and/or their critical root zones lie within the developable area of the Subject Property. The removal of two specimen trees, (ST-6 a tulip poplar and ST-11, a white oak) is due to the grading requirements for the house's footprint and the retaining walls necessary to avoid the existing steep slopes. Granting a Variance request to allow land disturbance within the developable portion of the site is not unique to this Applicant. Therefore, the Planning Board finds that the Variance request will not confer a special privilege on the 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 not based on conditions or circumstances which are the result of actions by the Applicant. The Variance is based upon existing site conditions and the applicable development regulations.

- 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.*

Avoiding construction impact to the forest canopy on half of the Subject Property will preserve the water quality benefits through rain interception and steep slope stabilization. A Stormwater Management Concept Plan has been approved by the MCDPS – Stormwater Management Section. The stormwater management concept plan intends to treat runoff from the developed portion of the lot in an effort to eliminate degradation to the receiving streams and therefore be in compliance with the State's water quality standards

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. There are two (2) specimen trees proposed for removal in this Variance request. Both of the trees are located within the existing forest and their loss is accounted for in the forest conservation worksheet. No additional mitigation is required or recommended. 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 "storm water management", Section 19-20 through 19-35.*

The MCDPS Stormwater Management Section has reviewed a stormwater management concept plan (#254313) and determined by letter dated October 29, 2013 that the Application met the stormwater management requirements contained in Chapter 19 of the Montgomery County Code.

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: The delineated neighborhood contains 31 lots, with lot frontages ranging from 25 feet to 286 feet. The frontage for 18 lots ranges from 25 feet to 75 feet, six lots have frontage between 75 feet and 125 feet. Seven lots have frontage in excess of 125 feet. The lot on this Preliminary Plan will have frontage of 155 feet but only 5 lots with frontage greater than 155 feet and these five lots all have either corner or double frontages. Therefore, Lot 13 has the widest frontage in the neighborhood for a standard single frontage lot. The larger lot frontage results from the Applicant's efforts to protect the existing onsite sensitive environmental features, to subdivide the Subject Property into only one lot and to develop only in the southern portion of the Subject Property. Therefore, the Planning Board granted a waiver for frontage under Section 50-38 (a) (1) for lot 13.

Alignment: Of the 31 lots in the neighborhood, three lots are corners, 4 lots are panhandled, five lots are perpendicular, nine lots are radial, and ten lots are angled. Lot 13 will be angled. Lot 13 is of the same character as existing lots with respect to the alignment criterion.

Size: Lot sizes in this neighborhood of 31 lots ranges from 6,374 square feet to 15,307 square feet. Ten lots fall within the 6,000 square feet to 8,000 square feet range. Five lots are between 8,000 and 10,000 square feet range, while eleven lots fall within the 10,000 to 12,000 square foot range. The remaining five lots are above 12,000 square feet. Lot 13 will be 21,511 square feet and will be the largest lot in the delineated neighborhood. The larger lot size for Lot 13 is due to the Subject Property's numerous environmental features and the Applicant's recognition to protect these features and create only one lot on the Subject Property. Therefore, the Planning Board granted a waiver for size under Section 50-38 (a) (1) for lot 13.

Shape: The 31 lots in the neighborhood consist of the following shapes: four lots are flag shaped, seven lots are trapezoidal, and nine lots are rectangular. The remaining 11 lots are irregular in shape. Lot 13 will be rectangular in shape. The shape of the lot 13 will be in character with shapes of the existing lots.

Width: Lots in the neighborhood range from approximately 45 feet to 118 feet in width. 12 lots are between 40 feet and 70 feet in width, 14 lots range from 70 feet to 95 feet in width, and five lots are in excess of 99 feet in width. The lot width for Lot 13 will be 156 feet thereby creating the largest lot width in the neighborhood. This larger width is the result of subdividing the Subject Property into one lot. By subdividing the Subject Property into one lot, the Applicant has left a large portion of the site's steep slopes and onsite forest undistributed thus creating the largest lot width in the delineated neighborhood. Therefore, the Planning Board granted a waiver for width under Section 50-38 (a) (1) for lot 13.

Area: The buildable areas for lots in the delineated neighborhood range from 2,041 square feet to 9,313 square feet. 14 lots have buildable areas between 2,000 square feet and 4,000 square feet. Ten lots have buildable areas between 4,000 and 6,000 square feet. Six lots have a buildable area ranging from 6,000 square feet to 8,000 square feet and one remaining lot has a buildable area of 9,313 square feet. The buildable area for Lot 13 will be 9,493 square feet. The buildable area for Lot 13 is the result of the Applicant developing in only the southern portion of the Subject Property and efforts to minimize impacts to the trees and steep slopes and to incorporate these elements into the design of the single lot. Therefore, the Planning Board granted a waiver for area under Section 50-38 (a) (1) for lot 13.

Suitability for Residential Use: The existing lots and Lot 13 are zoned residential. Currently, the Subject Site is vacant and the land is suitable for residential use.

7. *A waiver that the frontage, size, width and area of Lot 13 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 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 interests.*

The Application involves resubdividing part of a previously platted lot into a new lot. Resubdivision of previously platted lots is subject to review criteria specified in Section 50-29(b)(2) of the Subdivision Regulations. The review requires the comparison of a proposed lot 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 13 will have the largest dimensional characteristics for frontage, size, width, and area of all the lots within the neighborhood and a waiver pertains only to this lot. The waiver request for Lot 13 is justified by a practical difficulty that exists due to the Subject Property's onsite environmental features, notably steep slopes, specimen trees, and erodible soils. A previously submitted and denied preliminary plan (Preliminary Plan No. 120110260) for two lots was proposed for the site. That 2011 application offered minimal, if no, protection to the environmental features as the development would have created two lots on a hilly property, denuded of vegetation and trees with the potential for slope failure given the site's existing erodible soils. This Application proposes only one lot and serves to protect these features but prevents full compliance with the resubdivision criteria as the resulting lot is larger than the range in the neighborhood.

The requested waiver is not inconsistent with the purposes and objectives of the General Plan. Moreover, the Preliminary Plan substantially conforms to the Master Plan's recommendations of protecting onsite environmental features in the Palisades area as discussed above.

The waiver is not adverse to the public interest because the development of only one lot on the Subject Property produces a larger lot that protects environmentally sensitive areas. By protecting these sensitive areas, the Applicant creates an area on Lot 13 where a house can be located that is similar in size to the other existing lots in the neighborhood. Therefore, the Planning Board grants the abovementioned waiver.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for _____ 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 APR 8 2014 (which is the date that this Resolution is mailed to all parties of record); and

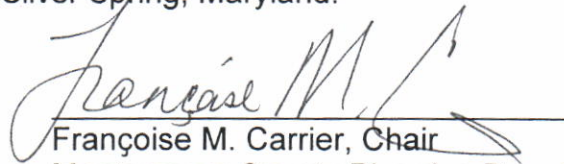
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Presley voting in favor, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, April 3, 2014, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board