



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

JUN 12 2014

MCPB No. 14-18
Preliminary Plan No. 120070550
Rock Creek Forest
Date of Hearing: May 8, 2014

RESOLUTION

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

WHEREAS, on January 11, 2007, Glavell, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create eight lots on 3.72 acres of land in the R-60 zone, located on the south side of Ashboro Drive, 400 feet west of Grubb Road ("Subject Property"), in the Silver Spring/Takoma Park Policy Area, North and West Silver Spring Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070550, Rock Creek Forest ("Preliminary Plan" or "Application"); and


WHEREAS, in 2012 the Montgomery County Parks Department purchased 2.16 acres of the Subject Property through the Legacy Open Space program as an addition to Rock Creek Park; and

WHEREAS, subsequently the Application was revised to a two-lot subdivision of the remaining 1.56-acre Subject Property; 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 25, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 8, 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

Approved as to
Legal Sufficiency:


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WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Commissioner Anderson, by 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 Preliminary Plan No. 120070550 to create two lots on the Subject Property, subject to the following conditions:¹

- 1) This Preliminary Plan is limited to two lots for one dwelling unit on each lot and one parcel to be dedicated to M-NCPPC.
- 2) Prior to any tree impacts or land disturbing activity occurring on the Subject Property, the Applicant must comply with the conditions of approval for the final forest conservation plan ("FCP") approved as part of this Preliminary Plan, subject to the following:
 - a. The revised plan must show all the necessary utility connections and the associated limits of disturbance. Changes to the net tract area and tree save measures must be addressed accordingly.
 - b. Revise the FCP drawing to show the location of an unnumbered 16-inch ash and an unnumbered 18-inch tulip poplar tree, both located on adjacent Lot 23.
 - c. Revise the limits of disturbance ("LOD") so that the LOD is no closer than ten feet to the trees identified in condition 2. b. above.
 - d. Revise the FCP drawing to show a Category II conservation easement on the portion of Lot 26 between the rear lot line and a line 90 feet inward from, and parallel to, the rear lot line. The Category II conservation easement must be shown on the record plat.
- 3) Prior to any tree impacts or land disturbing activity, the Applicant must enter into a contract with an appropriate tree care professional to implement the three-year tree maintenance and monitoring for Trees 66, 67, 79, 80, and 84, as noted on the FCP.
- 4) The sediment and erosion control plan and storm water management plan must be consistent with the limits of disturbance and the associated tree/forest preservation measures of the Final FCP.
- 5) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated November 19, 2010, 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

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.

- MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
 - 7) 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 August 28, 2012, 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 MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 8) 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.
 - 9) At the time of recordation of the plat, the Applicant must dedicate to M-NCPPC the 26,844-square-foot portion of the Subject Property identified as "Parcel A" on the approved Preliminary Plan for use as an addition to Rock Creek Stream Valley Unit 1. The land must be dedicated to the Commission through notation on the plat and by conveyance after recordation of the plat in a form of deed approved by the Office of General Counsel. At the time of conveyance, the Subject Property must be free of any trash and unnatural debris.
 - 10) The Subject Property is within the Bethesda Chevy Chase School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the single-family detached unit rate 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.
 - 11) Prior to certification of the Preliminary Plan, the Applicant must revise the plan drawing to show a building restriction line parallel to the rear lot line of Lot 26, located 90 feet from the rear property line.
 - 12) The record plat must show a building restriction line parallel to the rear lot line of Lot 26, located 90 feet from the rear property line. The plat must contain a note that states that building foundations must not be placed in the area between the rear property line of Lot 26 and the building restriction line.

- 13) Prior to certification of the Preliminary Plan, the Applicant must remove the note "maintained grass" on Parcel A.
- 14) The record plat must show necessary easements.
- 15) 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, 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 North and West Silver Spring Master Plan recommends retention of existing zoning throughout the Master Plan area in the absence of a specific recommendation for change on a particular property. The Master Plan does not specifically address the Subject Property, but does call for retention of the existing R-60 zoning. In the Master Plan, the Subject Property and surrounding development are identified as suitable for one-family detached housing. The Application substantially conforms to the Master Plan because the Application provides one-family detached housing consistent with the current density of the neighborhood, and the current zoning designation. The lots are similar to the surrounding existing lots with respect to dimensions, orientation, and shape. Future residences will have a similar relationship to the public street and surrounding residences as do existing residences in the area. The Application will not alter the existing pattern of development or land use, which is in substantial conformance with the Master Plan recommendation to maintain the existing residential land use.

In addition, the Master Plan recommends the acquisition of parcels adjacent to existing urban parks to help meet recreational needs and expand existing urban green space. The Application is in substantial conformance with this recommendation because the Applicant will dedicate the 26,844-square-foot Parcel A to the Montgomery County Parks Department as an addition to Rock Creek Park.

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

Roads and Transportation Facilities

Access to the lots will be provided via individual driveways from Ashboro Drive. Pedestrian access will be provided via an existing sidewalk along the Ashboro Drive frontage.

The Application does not generate 30 or more vehicle trips during the morning or evening peak hours. Therefore, the Application is not subject to Local Area Transportation Review. In addition, the Application does not generate more than three new vehicle trips in the morning or evening peak hours. Therefore, the Application is also not subject to Transportation Policy Area Review.

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

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the subdivision. The Subject Property will be served by public water and sewer facilities. The Application was reviewed by the Montgomery County Fire and Rescue Service, which 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 will be adequate to serve the Subject Property. The Subject Property is situated within the Bethesda Chevy Chase High School cluster area, and is currently operating between 105-120% of capacity at the high school level. Therefore, a school facilities payment is required. Telecommunications and other public 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.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections, including the requirements for resubdivision as discussed below. The lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations included in the Master Plan, and for the type of development or use contemplated.

The lots were reviewed for compliance with the dimensional requirements of the R-60 zone. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

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

A. Forest Conservation

The application is subject to the Chapter 22A Montgomery County Forest Conservation Law, and a Final Forest Conservation Plan was submitted for approval on March 26, 2014. The application includes 0.90 acres of on-site forest clearing, offset by protecting 0.58 acres of forest through dedication to the Montgomery County Parks Department. The Planning Board has accepted dedication of (or expansions to) conservation parks as equivalent to protection by a Category I conservation easement for forest conservation purposes.

The park dedication area satisfies the forest conservation worksheet requirements triggered by the 0.90 acres of forest clearing. Additionally, most of the on-site stream valley buffer occurs within the area to be dedicated to the Parks Department. There are 510 square feet of stream valley buffer located on Lot 26 outside of the dedication area, and 11,615 square feet of the stream valley buffer are on the land to be dedicated.

As a condition of this approval, the Applicant must place the rear 90 feet of Lot 26 into a Category II conservation easement. The purpose of the Category II easement is to allow this area to be maintained, while ensuring that substantial trees are protected. By ensuring the long-term protection of substantial trees, the easement will help to prevent erosion of the steep slope on which it is located, and further protect the nearby stream from the potentially adverse impacts of runoff from this subdivision.

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 ten Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the

Applicant has requested a Variance and the Planning Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board made the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The tree impacts and removals associated with the site are within the buildable area established by the setbacks and other site constraints, such as the building restriction lines. Therefore, the Variance 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 Variance is based on development allowed under the existing zoning and the need to provide usable outdoor space while achieving adequate stormwater management. The Variance can be granted under this condition as long as the impacts are avoided or minimized, and required mitigation is provided. Design changes were incorporated to reduce the impact of tree disturbance and removal, and mitigation is being provided for the disturbed trees.

Plan opponents argue that the need for the variance is generated by the Applicant's proposal to resubdivide one lot into two. In their view, it is the actions of the Applicant that create the need for the variance. Moreover, in the view of plan opponents, the Applicant would still have a reasonable use of the property with only one lot. This argument, which could be made about virtually any density-increasing development, misconstrues the standard that the Board has consistently applied when considering variances. The question for the Board is not whether the Applicant would still have a reasonable use of the property if the proposed resubdivision were denied. The question is whether the Applicant has proposed a reasonable use, and whether denying the variance would deprive the Applicant of it. It is not whether the Applicant would be left with any reasonable use without the variance. Where, as here, the Applicant has proposed a development that complies with zoning, substantially conforms to the master plan, and is compatible with the surrounding neighborhood, and takes reasonable steps to avoid unnecessary trees impacts, this standard is met. The fact that the zoning would allow even greater density on this site underscores the

reasonableness of this resubdivision as a use of the property, which the Applicant should not be denied because it will result in impacts to a small number of variance trees.

Finally, although not material to the specific variance standards, it is noteworthy that if the resubdivision of this property were not allowed and it remained one lot, it would be possible for the lot to be cleared in a manner that would evade forest conservation altogether. As a result, all of the variance trees could be cleared.

- 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 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.*

Any measurable adverse water quality impact from the removal of the variance trees will be mitigated by the sediment and erosion control, stormwater management, and substantial buffering required for this development. MCDPS approved the stormwater management concept for the project on August 28, 2012. The MCDPS review and ultimate approval of the sediment and erosion control and storm water management plans will help ensure that appropriate standards are met. The stormwater management standards that govern this site are designed to mimic forest in good condition, so runoff from the site will be controlled. Furthermore, the subject property overlaps a portion of the stream valley buffer, which will be protected from development. There are 510 square feet of stream valley buffer on Lot 26 to be protected by the building restriction line at the rear of Lot 26, and the remaining 11,615 square feet of subject stream valley buffer are included in the land to be dedicated into a conservation park. The portion of the stream valley buffer that is outside of the conservation park, and a substantial additional area of sloped forest, will be covered by a Category II forest conservation easement. This long-term protective measure will enhance the buffer between this site and the nearby stream. For all of these reasons, the Board is convinced that the application will not violate State water quality standards or cause measurable degradation in water quality. Although the Board is sensitive to concerns about locating development where it will minimize or avoid

water quality impacts, testimony about the possibility of the removal of the variance trees causing an adverse water quality impacts does not change the conclusion that granting the variance in this case will not result in an a measurable adverse water quality impact.

Mitigation of the forest clearing, which includes the Protected Trees, is satisfied by the Conservation Park dedication. Therefore, no additional mitigation for the removal of Protected Trees is required.

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

This finding is based 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 Plan on August 28, 2012, and determined that it meets all applicable standards. The stormwater management concept consists of environmental site design through the use of drywells, rooftop disconnect, and driveway gravel trenches.

6. *The approved lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood (as delineated in the Staff Report).*

Frontage: In the neighborhood of 21 lots, lot frontages range from 25 feet to 152 feet. Seven of the lots have frontages of less than 60 feet, 12 lots have frontages between 60 and 100 feet, and two lots have frontages of over 100 feet. Lot 25 will have a frontage of 88 feet, and Lot 26 will have a frontage of 25 feet. The new lots will be of the same character as existing lots in the neighborhood with respect to lot frontage.

Alignment: Sixteen of the 21 existing lots in the neighborhood are perpendicular in alignment, two are corner lots, and three are radial. Both of the new lots will be perpendicular in alignment. The new lots are of the same character as existing lots in the neighborhood with respect to the alignment criterion.

Size: The lots in the delineated neighborhood range from 6,023 square feet to 30,638 square feet. Five of the lots are smaller than 7,000 square feet, 12 are between 7,000 and 10,000 square feet, and four are larger than 10,000 square feet. Lot 25 will be 13,225 square feet, and Lot 26 will be 28,082

square feet in size. The new lot sizes are in character with the size of existing lots in the neighborhood.

Shape: Ten of the 21 existing lots in the neighborhood are rectangular, six are irregularly shaped, three are trapezoids, one has a pipestem shape, and one is triangular. Lot 25 will be rectangular in shape, and Lot 26 will be a pipestem lot. The shapes of the new lots will be in character with shapes of the existing lots in the neighborhood.

Width: The lots in the delineated neighborhood range from 32 feet to 115 feet in width. Seventeen of the lots have widths between 30 and 50 feet, three of the lots have widths between 70 and 100 feet, and the remaining one lot has a width of more than 100 feet. Lot 25 will have a width of 88 feet, and Lot 26 will have a width of 95 feet. The new lots will be in character with existing lots in the neighborhood with respect to width.

Area: The lots in the delineated neighborhood range from 1,732 square feet to 20,487 square feet in buildable area. Fourteen of the lots have buildable areas smaller than 4,000 square feet, seven have buildable areas between 4,000 and 10,000 square feet, and one has a buildable area larger than 20,000 square feet. Lot 25 will have a buildable area of 7,825 square feet in size, and Lot 26 will have a buildable area of 20,487 square feet. The new lots will be of the same character as other lots in the neighborhood with respect to buildable area.

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

7. The Application is in conformance with Section 50-32 of the Subdivision Regulations with respect to protection of steep slopes.

Section 50-32(c) of the Subdivision Regulations states that “the board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources and to protect environmentally sensitive areas.” For purposes of that section, environmentally sensitive areas are defined to include slopes over 25% or over 15% with highly erodible soils.

The rear of the Subject Property contains an area of steep slopes and highly erodible soils. Most of the area contains slopes that are between 15% and 25% in gradient, but a small area contains slopes in excess of 25%. The shape of the Subject Property, the location of the steep slopes, and the location of two trees that are to be saved on Lot 25, necessitate that at least a portion of the

footprint of any dwelling on Lot 26 will be built on slopes that are between 15% and 25% gradient on highly erodible soils.

In order to protect the remainder of the steep slopes south of (and downhill of) the future dwelling, a building restriction line and Category II easement have been established on the rear of Lot 26. This approval includes conditions that require a building restriction line to be located 90 feet from the rear property line, in conformance with Section 50-32(d) of the Subdivision Regulations, and impose a Category II easement behind the building restriction line.

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

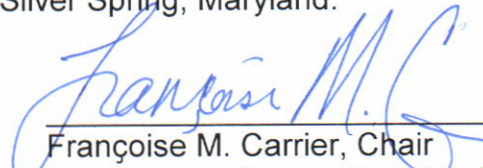
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUN 12 2014 (which is the date that this Resolution is mailed to all parties of record); and

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 Dreyfuss voting in favor, and Commissioner Presley absent, at its regular meeting held on Thursday, June 5, 2014, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board