



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

MCPB No. 14-54
Preliminary Plan No. 120140030
Beall's Manor
Date of Hearing: July 17, 2014

JUL 29 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 27, 2013, Charlie Gilroy - RCG Development, LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 3 lots on 2.0 acres of land in the R-200 zone, located at the terminus of Spearmint Lane, approximately 150 feet southeast of the intersection with Amberleigh Terrace ("Subject Property"), in the Cloverly Policy Area, Cloverly Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120140030, Beall's Manor ("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 July 3, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 17, 2014, the Planning Board held a public hearing on the Application, and at the hearing 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 certified below:

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Board approves Preliminary Plan No. 120140030 to create three 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


MNCPPC Legal Department

8707 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

- 1) The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. 120140030, approved as part of this Preliminary Plan, subject to:
 - a. The Final Forest Conservation Plan must be approved prior to recordation of the plat.
 - b. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
 - c. Prior to any clearing, grading, or demolition on the Property, the Applicant must record a Certificate of Compliance Agreement executed by the Applicant and the Planning Board or its designee for the offsite forest planting requirement.
 - d. The Final Sediment Control Plan must be consistent with the final limits of disturbance as approved by M-NCPPC Staff.
 - e. The Applicant must comply with all tree protection and tree save measures shown on the approved Final FCP. Tree save measures not specified on the Final FCP may be required by the M-NCPPC forest conservation inspector.
- 2) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 14, 2014, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 3) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 4) 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 May 2, 2014, and hereby incorporates them as conditions of 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.
- 5) The Applicant must dedicate all road rights-of-way to the full width of 27'4" as designated on the Preliminary Plan.

- 6) 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.
- 7) Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of a 5-foot wide sidewalk along the property frontage around Spearmint Lane Cul-de-sac, unless construction is waived by MCDPS.
- 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)."
- 9) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 10) Record plat must reflect a 15-foot public improvement easement (PIE) on Lot 3 as shown on the Preliminary Plan.
- 11) Record plat must show necessary easements.
- 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 the Planning Board resolution.
- 13) The Subject Property is within the Springbrook High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the middle 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.

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 is located in the southern portion of the 1997 Cloverly Master Plan ("Master Plan") area, known as the "Suburban Communities," and is located in the North Sherwood Forest neighborhood. The Master Plan does not make any specific recommendations for the Property or nearby residential properties. However, for "Suburban Communities" the Master Plan generally recommends to "join new development with existing neighborhoods through street and pedestrian connections." The proposed subdivision substantially conforms to the recommendations adopted in the Cloverly Master Plan in that the proposed development directly ties into the existing framework of the surrounding subdivision and improves the last piece of developable property within the North Sherwood Forest neighborhood. In addition, the Application provides a 15-foot wide public improvement easement (PIE) on Lot 3, along the common property line with Parcel A. The PIE will serve as a pedestrian connection to a future pedestrian path that will connect to New Hampshire Avenue.

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

Roads and Transportation Facilities

Local Area Transportation Review

The Local Area Transportation Review (LATR) guidelines require a traffic study to be performed if a development generates 30 or more weekday peak-hour trips. The three proposed dwelling units will generate only three morning peak-hour trips and four evening peak-hour trips. Therefore, no LATR is required.

Transportation Policy Area Review (TPAR)

The Property is located in the Fairland/White Oak Transportation Policy Area, which is defined as *inadequate* under the roadway test and *adequate* under the transit test for TPAR. To mitigate the roadway test the Applicant must make a TPAR Mitigation Payment, equal to 25 percent of the General District Transportation Impact Tax, pursuant to the 2012-2016 Subdivision Staging Policy. The timing and amount of the payment must be in accordance with Chapter 52 of the Montgomery County Code.

Road Design

In order to transition into the built section of Spearmint Lane, the Applicant proposes to extend the stub of existing Spearmint Lane as a modified tertiary residential street (Montgomery County Road Code Standard Number MC-210.3) with 26 feet of pavement and total right-of-way width of 27'4". MCDOT has approved the road section

and with Staff concurs that the reduced width tertiary section is the only feasible way to complete Spearmint Lane which was also built to reduced width tertiary standards. Spearmint Lane will terminate on the Property in a new cul-de-sac, which will adequately serve as access to the new lots.

The Application includes a sidewalk around the new cul-de-sac bulb in conformance with road code standards. However, there is no other sidewalk on the existing section of Spearmint Lane that would provide a connection to the existing sidewalk on Amberleigh Terrace, the closest existing sidewalk to the Property. The surrounding neighborhood was built with sidewalks on only one side of the roads and partially around the existing cul-de-sacs. Although the Master Plan recommends that new development be joined to existing neighborhoods, in this case, Spearmint Lane can serve as a vehicular and pedestrian connection to the surrounding neighborhood's pedestrian and vehicular network. The proposed cul-de-sac is expected to be a low traffic area and, therefore, the pavement without a sidewalk will be safe and adequate for pedestrian use.

The Application has been reviewed by the Montgomery County Department of Transportation, which concluded that the Property has adequate vehicular access and site distance as mentioned in their letter dated, April 1, 2014. Vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

Other Public Facilities and Services

All other public facilities and services including electric, telecommunication, police and health services are available and adequate to support and serve the proposed dwelling units. The Property is located in the W-1 and S-1 water and sewer service categories which permit public water and sewer connection. The Application has been reviewed by Washington Suburban Sanitation Commission, which has determined that there is an existing eight-inch water main and an eight-inch gravity sewer main in the existing section of Spearmint Lane that will be extended and are adequate to serve the Property.

The Application has been reviewed by the Montgomery County Department of Fire and Rescue Service, which has determined that the Property has adequate access for fire and rescue vehicles by transmittal dated, April 1, 2014 (Attachment D of staff report).

The Application is in the Springbrook High School Cluster, which is operating at an inadequate level (over 105% utilization) at the middle school level according to the current Subdivision Staging Policy. Therefore, the Applicant must make a School Facilities Payment to MCDPS at the middle 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.

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 has been reviewed for compliance with the Subdivision Regulations and meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations of the Cloverly Master Plan and the intended residential use. The subdivision achieves the Master Plan recommendations by joining new development to existing neighborhoods and properly terminating Spearmint Lane in a cul-de-sac. The lots are appropriately dimensioned and provide for an orderly completion of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the R-200 Zone. The proposed lots meet all the dimensional requirements for area, frontage, width, and setbacks in the R-200 Zone. A summary of this review is included in Table 3 of the staff report. The Application has been reviewed by other applicable County agencies, all of whom have recommended approval of the plan.

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

A. Forest Conservation

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

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for the Property on June 17, 2013. There are no sensitive environmental features or forest on the Property. A Preliminary Forest Conservation Plan has been submitted for review (Attachment E of staff report). The Application includes 0.06 acres of offsite disturbance for the construction of a sewer connection on Spearmint Drive and a storm drain that will outfall to an existing offsite stormwater management facility. There are eight specimen trees, each with a diameter at breast height (DBH) greater than 30 inches, and five significant trees with a DBH greater than or equal to 24 inches located on the Property. One significant tree is located offsite, west of the Property. There is a 0.31 acre forest planting requirement, which the Applicant will meet offsite.

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. 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.

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. The law requires no impact to trees that: measure 30 inches or greater, DBH ("Protected Tree"); are part of a historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. Any impact to a Protected Tree, including removal or disturbance within the Protected Tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law.

The Applicant submitted a variance request dated January 31, 2014 for the removal of seven Protected Trees and impact to one Protected Tree. All of these Protected Trees are rated in poor or fair condition.

Under Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the Protected Trees in an undisturbed state would result in an unwarranted hardship. Development on the Property is dictated by the existing conditions on the site, development standards of the R-200 Zone, and County agency requirements. The affected Protected Trees are located throughout the Property and the layout of the development is dictated to some extent by the pre-determined access to the Property from the existing terminus of Spearmint Lane. The shape of the Property, the required cul-de-sac, and the necessary stormwater management features limit the ability to avoid disturbing the Protected Trees. If the variance were not considered, the development anticipated on this R-200 zoned Property could not occur. There would be an unwarranted hardship if a variance were not considered. The County Arborist recommends that the variance be granted with mitigation.

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

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

Granting the variance will not confer a special privilege on the Applicant as the removal and impacts to the Protected Trees is due to the development of the Property in a manner consistent with surrounding development, and the existing condition of the Protected Trees which are either in poor or fair condition. Granting a variance request to allow land disturbance within the developable portion of the Property is not unique to this Applicant.

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

The need for the variance is not based on conditions or circumstances that are the result of actions by the Applicant. The requested variance is based upon existing site conditions and the development standards of the R-200 zone.

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 need for a variance is a result of the existing conditions, and the proposed site design and layout on the subject Property.

4. Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.

The variance will not violate State water quality standards or cause measurable degradation in water quality. Onsite mitigation for the removal of the trees will replace the functions currently provided by the Protected Trees. In addition, Montgomery County Department of Permitting Services has found the stormwater management concept for the proposed project to be acceptable.

Mitigation for the Variance is at a rate that approximates the form and function of the tree removed. The mitigation is based on Staff's practice at the time the variance request was received whereby mitigation was not required for trees in poor condition.

The Board approved replacement of Protected Trees at a ratio of approximately one-inch caliper for every four-inch DBH removed. Mitigation for the removal of the three Protected Trees in fair condition (Trees #1, 7, and 8) must be provided in the form of nine native canopy trees with a minimum size of three inches in diameter at breast height. While these trees will not be as large as the trees lost, they will provide some immediate canopy and will help augment the functions lost. No mitigation is required for

Protected Trees impacted but retained. Mitigation for the loss of the Protected Trees will be provided onsite.

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.

MCDPS approved a stormwater management concept on May 2, 2014. The concept proposes to meet the required stormwater management goals via dry wells and micro-biofilters located both on-lot and on Parcel A. In addition, there is an existing stormwater pond that is capable of serving as an overflow if necessary, pending MCDPS final design approval.

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

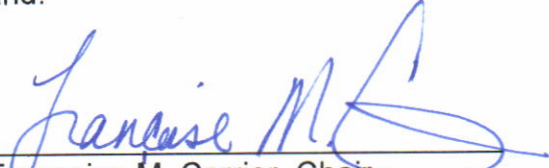
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 29 2014 (which is the date that this Resolution is mailed to all parties of record); and

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).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, July 17, 2014, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board