



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

OCT 13 2014

MCPB No. 14-90
Preliminary Plan No. 120140150
Allanwood
Date of Hearing: October 9, 2014

RESOLUTION

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

WHEREAS, on March 11, 2014, Mitchell & Best ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 3 lots on 5.6 acres of land in the R-200 zone, located in the southeast quadrant of the intersection of Norbeck Road and Woods Center Road ("Subject Property"), in the Aspen Hill Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120140150 ("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 September 26, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 9, 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. 120140150 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:

- 1) This Preliminary Plan is limited to three (3) residential lots;
- 2) The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. 120140150, approved as part of this Preliminary Plan, subject to the following:
 - a. Prior to any land disturbing activities, the Applicant must obtain M-NCPPC approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan.
 - b. The Final Forest Conservation Plan must include 15 3-inch caliper native shade trees as mitigation plantings for the loss of trees requiring a variance.
 - c. A Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to any demolition, clearing, or grading, and the liber folio for the easement must be referenced on the record plat. The plat must depict the easement.
- 3) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated May 15, 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;
- 4) The Applicant must dedicate, and the record plat must reflect, 18 feet of right-of-way for a total of 78 feet along Woods Center Road as an open-section secondary residential street as required under Road Code Standard No. 2002.04;
- 5) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT;
- 6) 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 June 25, 2014, 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 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;
- 8) The Applicant must coordinate their building plans with the Maryland State Highway Administration (SHA) regarding future frontage improvements associated with SHA's Consolidated Transportation Plan (CTP) Project No. M08861, MD 28 (Norbeck Road) / MD 198 (Spencerville Road) Corridor Improvement Study;
- 9) 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 applicable development standards.";
- 10) The record plat must show all necessary easements;
- 11) 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.
- 12) Before plat recordation, the Applicant must remove all existing structures from the property.

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 Property is located in the 1984 Aspen Hill Master Plan. It is included in the *Allanwood/Gayfield/WilsonHills/Gaywood* Area, (Significant Parcel No. 25, page 77). The Master Plan highlights the large lot character of the area and states that the "area is dominated by single-family detached houses on lots that are larger than the rest of the Aspen Hill community (page 77). It recommends that "the character should be emphasized and encouraged in the development of the unimproved area in this portion of the planning area" (pgs. 80). In general, the Aspen Hill Master Plan recommends sustaining and enhancing residential neighborhoods while providing safe linkages to public facilities and town centers. The proposed Preliminary Plan follows this recommendation by creating 3 lots that will provide additional housing in a desirable area. The surrounding area is a mature, stable community, predominantly zoned R-200.

The Preliminary Plan substantially conforms to the Master Plan recommendations since it is compatible with the existing neighborhood in terms of use and building type, and meets the requirements and development standards of the R-200 Zone.

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

Roads and Transportation Facilities

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.

For the Transportation Policy Area Review (TPAR) test, a transportation impact tax payment is not required because the Aspen Hill Policy Area has adequate capacity for the transit and roadway tests. Additionally, the Applicant is not proposing any new roads, drainage structures or pavement widening. Existing conditions will be maintained as much as possible resulting in very little impact

on the capacity and/or operation of roads, intersections and drainage systems at or near the Property.

Other Public Facilities and Services

The Application has been reviewed by all public utilities including: Washington Gas, PEPCO, Verizon and WSSC. All agencies have determined that their respective utilities are adequate to serve the development.

The Application has been reviewed by the Montgomery County Department of Fire and Rescue Service which determined that the Property has adequate access for fire and rescue vehicles by transmittal dated, June 10, 2014. Other public utilities and services such as police stations, fire houses, and health service are currently operating with the standards set by the Subdivision Staging Policy currently in effect.

The Application is in the Blake High School Cluster area. The Applicant is not required to make a School Facilities Payment to MCDPS at any school level for the development of three single-family detached units.

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 lots were reviewed for compliance with the dimensional requirements for the R-200 Zone as specified within the Montgomery County Zoning Ordinance. The Application meets all applicable sections and, as proposed, will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone and for the location of the Property. 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.*

A. Forest Conservation

The Subject Property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and a Preliminary Forest Conservation plan ("PFCP") is approved with this Application.

The PFCP proposes 1.94 acres of forest clearing, 2.62 acres of forest retention, and 0.03 acres of forest planting. The 0.03 acres of forest planting are to mitigate for environmental buffer encroachment, not a planting requirement. All forest conservation requirements are being met on-site. Areas of forest retention and planting will be protected by a Category I Conservation Easement.

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 requests a Variance for the removal of 25 trees and to impact the CRZ of 10 specimen trees (trees ≥30” DBH) that are considered high priority for retention under Section 22A-12(b)(3) of the Forest Conservation Law. These ten trees include eight Tulip Poplars, a Pin Oak and a Sycamore as identified in the table below.

Table 2: Trees to be impacted, but not Removed

ID	Type	DBH	Condition	Impacts	Comments
27	Tulip poplar	33”	Good	5%	Grading and clearing of debris
46	Tulip poplar	34”	Good	1%	Grading
62	Pin oak	36”	Good	15%	Grading, existing driveway
101	Sycamore	31.5”	Good	5%	Driveway grading, water line connection
112	Tulip poplar	33”	Good	38%	Grading
146	Tulip poplar	36”	Good	21%	Grading
153	Tulip poplar	33.5”	Good	10%	Grading
157	Tulip poplar	35.5”	Good	7%	Grading
158	Tulip poplar	35.5”	Good	37%	Grading
181	Tulip poplar	31”	Good	5%	PUE

In accordance with Section 22A-21(a), the Board finds that without a Variance, the Applicant would be denied reasonable and significant use of the Subject Property and therefore suffer an unwarranted hardship.

The Board made the following findings that granting the requested Variance:

- i. *Will not confer on the Applicants a special privilege that would be denied to other applicants.*

Granting this variance will not confer a special privilege on the Applicant as disturbance of the specified trees is due to the location of the trees in less sensitive parts of the Property. The Property is predominantly forested. Granting a variance request to remove 25 trees and disturb the CRZs of 10 trees for the purposes of developing single-family houses is not unique to this Applicant. Therefore, staff believes that granting this variance is not a special privilege that would be denied to other applicants.

- ii. *Is not based on conditions or circumstances which are the result of the actions by the Applicants.*

The requested variance is based on the locations of the trees and the minimum disturbance required in order to develop the Property, and not on conditions or circumstances which are the result of actions by the Applicant.

- iii. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the location of trees on the property impacted by the proposed layout of the three lots on the Property, and not as a result of land or building use on a neighboring property.

- iv. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The proposed development does not impact environmental buffers and provides mitigation plantings for trees lost outside of existing forest. The requested variance will not violate State water quality standards or cause a measurable degradation in water quality.

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

The MCDPS Stormwater Management Section conditionally approved the Stormwater Management Concept for the Applicant on June 25, 2014. The stormwater management concept meets required stormwater management goals via Environmental Site Design, such as drywells for each lot.

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 OCT 13 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 Presley, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioner Presley voting in favor, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, October 9, 2014, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board