



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

NOV 6 2014

MCPB No. 14-104
Preliminary Plan No. 120140090
Center for Jewish Living
Date of Hearing: October 30, 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 17, 2014, Lewis Shrensky ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 1.65 acres of land in the R-200 zone, located on the west side of Georgia Avenue, approximately 1,500 feet north of the intersection with MD 108, at 18320 and 18326 Georgia Avenue ("Subject Property"), in the Olney Policy Area, 2005 Olney Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120140090, Center for Jewish Living ("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 October 17, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 30, 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. 120140090 to create one lot 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.

1. Approval under this Preliminary Plan is limited to one (1) lot for a religious institution including a house of worship with 168 seats, living quarters, religious education (weekend school), and weekday childcare with no more than 6 employees at any one time. No weekday private school is permitted.
2. The Applicant must comply with the following conditions of approval for Preliminary Forest Conservation Plan ("FCP") No. 120140090, dated August 19, 2014:
 - a. Prior to any clearing, grading or demolition on the Property, the Applicant must obtain M-NCPPC approval of a Final FCP consistent with the approved Preliminary FCP.
 - b. Mitigation for the removal of the seven trees subject to the variance provision must be provided in the form of planting native canopy trees totaling seventy (70) caliper inches, with a minimum tree size of three (3) inches in diameter at breast height. The trees must be planted on the Property, outside of any rights-of-way, or utility easements, including stormwater management easements. These mitigation trees must be shown on the Final FCP.
 - c. If Trees #5 or #6 as shown on the Forest Conservation Plan experience severe decline or death within two years of the post-construction meeting, the trees will be replaced with native canopy species in a quantity determined by the M-NCPPC forest conservation inspector.
 - d. 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.
 - e. The Final Sediment Control Plan must be consistent with the final limits of disturbance as approved by the M-NCPPC Staff.
 - f. 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.
3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 7, 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 MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. The Planning Board has accepted the recommendations of the Maryland State Highway Administration ("MDSHA") in its letter dated June 23, 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 MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

5. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
6. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section letter dated July 14, 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 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."
8. Record plat must show necessary easements.
9. 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.
10. The Subject Property is located in the Olney Policy Area and must make a Transportation Policy Area Review ("TPAR") Mitigation Payment for any new square footage for the house of worship and the new square footage for the child daycare center, 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 will be in accordance with Chapter 52 of the Montgomery County Code.
11. The Applicant must dedicate and show on the record plat(s) sixty (60) feet of dedication from the existing pavement centerline along the Subject Property frontage for Georgia Avenue.

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 Application substantially conforms to the recommendations of the Master Plan. The Subject Property is located just outside of the northern boundary of the Town Center portion of the Master Plan and was not given specific recommendations on land uses. The Master Plan does have overall goals of reinforcing Olney as a satellite community in the residential and agricultural wedges of the General Plan and protecting the Patuxent watershed. The Master Plan retained the R-200 Zoning for the Subject Property, and houses of worship are a permitted use within that Zone.

The Master Plan identifies the section of Georgia Avenue between Spartan Road and Prince Philip Road, where the Subject Property is located, as a major highway with a right-of-way of 120 feet and a four lane divided highway cross section. This Preliminary Plan requires the dedication of 60 feet from centerline across the Subject Property's frontage, which will provide the room to ultimately construct the Master Plan highway cross-section.

The Master Plan also recommends a shared use path between 8 and 10 feet wide (SP-39) between Brookville Road and MD 108 and recommends where possible that the path be set back from the roadway edge with a green panel. There is a newly constructed 8.5 foot wide bicycle and pedestrian shared use path across the Subject Property's frontage that extends along Georgia Avenue between MD 108 and Prince Phillip Drive. Although this path is not set back from the edge of the road pavement with a planting strip, the Board does not find it necessary or practical for the Applicant to relocate the portion of the path across the Subject Property's frontage (only 250 feet of a 2,200 foot long section of shared use path), because this would cause further impacts to specimen trees and would cause a short segment of path to be out of alignment with the remainder of the existing path.

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

Roads and Transportation Facilities

The vehicle and pedestrian access to the Subject Property is adequate for the Application. Georgia Avenue is a major highway, and MDSHA has agreed that the Application may use the existing commercial entrance onto the Subject Property. The existing shared use path across the Subject Property's frontage provides pedestrian and bicycle connections to surrounding uses, including the Town Center.

The 168 seat house of worship is exempt from Adequate Public Facilities (“APF”) review, including Local Area Transportation Review (“LATR”) per Section 50-35(k)(6) of the Subdivision Regulations. The Preliminary Plan includes a weekday child daycare operating between 8 AM and 6 PM with no more than six faculty members. According to LATR guidelines, weekday child daycare centers with 6 or fewer employees are exempt from the requirement to submit a traffic study to satisfy LATR, because they generate fewer than 30 weekday peak-hour trips.

The Subject Property is within the Olney Policy Area of the Transportation Policy Area Review (“TPAR”). The TPAR test has the roadway test as adequate and the transit test as inadequate. Therefore, the Applicant must make a TPAR Mitigation Payment, equal to 25 percent of the General District Transportation Impact Tax on any new square footage for a house of worship and for a child daycare center, pursuant to the 2012-2016 Subdivision Staging Policy. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the Application. The Subject Property is located in the W-1 and S-1 water and sewer service categories and has existing access to public utilities located in the Georgia Avenue right-of-way. Other utilities, including electric and telecommunications services, are adequate to serve the Subject Property. The Application has been reviewed by the Montgomery County Department of Fire and Rescue Service, which has determined that the Subject Property has adequate access for fire and rescue vehicles. Other public facilities and services, such as police stations and health services, are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

- 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 meets all applicable sections of the Subdivision Regulations, Chapter 50 of the Montgomery County Code. Under the Master Plan, the approved lot size, width, shape and orientation are appropriate. The lot will also meet all the dimensional requirements of the R-200 zone for area, frontage, and width, and the structures depicted on the Preliminary Plan can meet all required setbacks.

Parking counts under this Preliminary Plan are based on those allowed in Chapter 59-E-3.7 for places of worship that prohibit the use of motor vehicles on the day of Sabbath, which equates to 21 parking spaces for a sanctuary with 168 seats. The weekday childcare use can share the parking for the sanctuary, because the timing of the child care does not overlap with weekend worship services, and the 21 parking spaces are adequate to accommodate the childcare use as well as the place of worship.

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.*

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law including the granting of a Forest Conservation Variance for specimen trees and protection of the Primary Management Area ("PMA") for the Patuxent River watershed.

A. Primary Management Area

The Subject Property is located within the Hawlings River sub-watershed in the Patuxent River Primary Management Area ("PMA"). This Application is subject to the PMA requirements as outlined in the *Guidelines for Environmental Management of Development in Montgomery County*; however, the Master Plan states that properties with existing zoning densities greater than RE-2 are subject to "nonconformance requirements," including stormwater management and best management practices. The Subject Property is zoned R-200 and is therefore subject to the "nonconformance requirements."

There are no stream buffers on the Subject Property, and the approved stormwater management concept utilizes the most current environmental site design practices. Although not subject to the 10% impervious limit that is required for low-density zones under the PMA *Guidelines* and the Master Plan, the Applicant will utilize best management practices to minimize impervious surfaces on the Subject Property. Two of the three existing houses and the existing garage will be removed, and a synagogue will be constructed in their place. The Application will use pervious pavement for the parking spaces, walkways and paths, and gathering area between the synagogue and rabbi's residence. Additionally, this Preliminary Plan includes fewer parking spaces than are typically associated with a house of worship, as described above, which

further reduces the impervious surface associated with this Application. These measures satisfy the requirements of the PMA *Guidelines*.

B. Forest Conservation

There is no existing forest on the Subject Property. The Application has a net tract area of 1.64 acres of land, including the addition of a 0.02 acre area of off-site disturbance necessary for utility construction and the deduction of 0.03 acres of land dedication necessary for Georgia Avenue. The forest conservation worksheet generated an afforestation planting requirement of 0.24 acres, which the Applicant will meet offsite.

C. 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 of seven and CRZ impact to four 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 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 specified trees are due to the existing conditions on the Subject Property and are necessary for the development approved through this Preliminary Plan. While it contains no forest, the Subject Property has many large individual trees located within the developable area. Granting the Variance request to allow land disturbance within the developable portion of the Property is not unique to this Applicant. Granting this Variance is not a special privilege that would be denied to other applicants.

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 upon existing site conditions and the development standards of the R-200 zone, not conditions or circumstances that are the result of the Applicant's actions. The Subject Property is currently improved with structures that will remain, including the existing access driveway and parking lot. The remaining area available for development on the Subject Property is therefore limited. The trees subject to the variance provision are located throughout this this remaining developable area.

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 on the Subject Property, not conditions on a neighboring property.

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

Granting the Variance does not violate State water quality standards or cause measurable degradation in water quality. The Variance trees are not located in or immediately adjacent to any stream valley buffers or wetland buffers. Onsite mitigation for the removal of the trees will replace the functions currently provided by the subject trees. In addition, Montgomery County Department of Permitting Services has found the stormwater management concept for the Preliminary Plan to be acceptable.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. Replacement of Protected Trees will be at a ratio of approximately 1-inch caliper for every 4-inch DBH removed. No mitigation is required for Protected Trees impacted but retained.

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 July 14, 2014. The concept proposes to meet stormwater management goals through the use of micro-bioretenion facilities and the use of permeable pavement in portions of the parking lot and on-site pedestrian sidewalks.

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 NOV 6 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 Dreyfuss, seconded by Commissioner Presley, with Chair Anderson, and Commissioners Dreyfuss, Presley, and Fani-Gonzalez voting in favor, and Vice Chair Wells-Harley absent at its regular meeting held on Thursday, October 30, 2014, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board