



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

DEC 10 2014

MCPB No. 14-113
Preliminary Plan No. 120140250
AVA Wheaton
Date of Hearing: December 4, 2014

RESOLUTION

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

WHEREAS, on July 18, 2014, Avalon Bay Communities, Inc. ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 3.7 acres of land in the CR4 C3.5 R3.5 H100 zone, located in the Northeast quadrant of the intersection of Georgia and Blueridge Avenues ("Subject Property"), in the Kensington/Wheaton Policy Area, *Wheaton CBD and Vicinity Sector Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120140250, AVA Wheaton ("Preliminary Plan" or "Application"); and

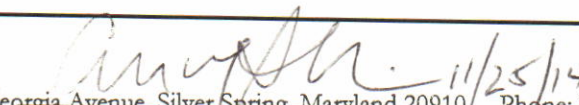
WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated November 21, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 4, 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. 120140250 to create one lot on the Subject Property, subject to

Approved as to
Legal Sufficiency:

 11/25/14

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the following conditions:¹

1. Approval is limited to one (1) lot for a maximum of 350,000 residential square feet to allow up to 324 dwelling units, of which a minimum of 12.5% must be moderately-priced dwelling units ("MPDU"s).
2. The Applicant must dedicate, and show on the record plat the following:
 - a. The Countywide Transit Corridors Functional Master Plan recommended 129-foot right-of-way (64.5 feet from the centerline along the Subject Property frontage) for Georgia Avenue (MD 97) as shown on the Preliminary Plan; and
 - b. The Wheaton CBD and Vicinity Sector Plan recommended 70-foot right-of-way (35 feet from the centerline along the Subject Property frontage) for Blueridge Avenue as shown on the Preliminary Plan.
3. The Applicant must provide the Master Plan recommended, LB-4, on-street/signed shared bikeway along the north side of Blueridge Avenue.
4. The Applicant must enter into a Traffic Mitigation Agreement ("TMAg") with the Montgomery County Department of Transportation ("MCDOT") and the Planning Board to participate in the Wheaton Transportation Management Organization when it is established and if applicable.
5. Except as otherwise provided, the Planning Board accepts the recommendations of the MCDOT in its letter dated August 15, 2014 and hereby incorporates them as conditions of Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter except Nos. 3 and 21.b (modification of road design standard), No. 4 (truncation at Georgia and Blueridge Avenues), and No. 13.a (parking). Recommendation No. 13.e (bikeshare) is modified so that the Applicant is only required to pay the capital cost of the bikeshare station if MCDOT establishes a bikeshare program in Wheaton by January 1, 2016. Regardless, the Applicant will not be required to pay the operating expenses. This letter may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. The Planning Board accepts the recommendation of the Maryland State Highway Administration ("MDSHA") in its letter dated August 18, 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.
 - a. The Applicant must satisfy the provisions for improvements as required by MDSHA.

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.

7. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") - Water Resources Section in its letter of stormwater management concept approval, dated October 10, 2014. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. The Applicant must comply with the Final Forest Conservation Plan ("FFCP") approved with Site Plan No. 820140190, including mitigation for the Protected Trees approved for removal.
 - a. Prior to any demolition, clearing, or grading, the Applicant must obtain Staff approval of a Certificate of Compliance Agreement for use of an M-NCPPC approved offsite forest mitigation bank to satisfy the 0.53 acre afforestation requirement.
 - b. Limits of disturbance (LOD) shown on the Sediment and Erosion control Plan must be consistent with the LOD on the Final Forest Conservation Plan.
9. No demolition, clearing, grading, or recording of plats can occur prior to Certified Site Plan approval.
10. In the event that a subsequent site plan approval substantially modifies the subdivision shown on the approved Preliminary Plan with respect to lot configuration or right-of-way location, width, or alignment (except the modifications required by these conditions), the Applicant must obtain approval of a preliminary plan amendment prior to approval of a site plan amendment.
11. 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 Site Plan review. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for this lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
12. All necessary easements must be shown on the Record Plat.
13. 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 (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.*

This Application is consistent with, and furthers the recommendations of the 2012 Wheaton CBD and Vicinity Sector Plan. The site is located in the Blueridge District. The Master Plan states: "Blueridge District is the northern gateway to downtown Wheaton and is within walking distance of the Core, Wheaton Regional Park, and nearby neighborhoods. It is evolving into a residential neighborhood with small, neighborhood-serving retail on the ground floor and some office uses. Future development should include street-oriented businesses along Georgia Avenue and University Boulevard West, along with housing, professional offices, and neighborhood retail centered on a public space in the vicinity of Parking Lot 14" (p.49).

The Master Plan highlights the Priority Retail Streets within the Blueridge District on page 22. The project's frontages along Georgia Avenue, Blueridge Avenue and Elkin Street are not designated Priority Retail Streets. Although the project does not include any retail uses, it provides activation along Georgia Avenue and Blueridge Avenue with individual residential entrances, and by locating the lobby, fitness center and bike spa at the sidewalk level.

The streets are consistent with Master Plan recommendations and Wheaton Design Guidelines for streets.

- a) The Master Plan designates Georgia Avenue (MD 97) as a six-lane divided major highway, M-8, with a recommended minimum 120-foot wide right-of-way and no bikeway. However, the 2013 Countywide Transit Corridors Functional Master Plan for the Bus Rapid Transit (BRT) recommends a wider, 129-foot wide right-of-way between 400 feet north of Blueridge Avenue and Reddie Drive, to the south (p. 33). It states that this 129-foot width "may not include land needed for spot improvements such as turn lanes and stations." The project therefore provides dedication necessary for a total of 64.5 feet dedication from the centerline of Georgia Avenue.
- b) Blueridge Avenue is designated as a two-lane business street, B-15, with the recommended 70-foot wide right-of-way and an on-street bike lane/signed shared roadway, LB-4. The Project provides dedication for a total 35 feet from the centerline of Blueridge Avenue.
- c) Elkin Street is designated as a two-lane residential primary street, P-31, with a 70-foot wide right-of-way and no bikeway. The existing right-of-way dedication is 35 feet from the centerline. No additional dedication is necessary.

Pedestrian and Bikeway Network

The Master Plan recommended two pedestrian connections for this site: an east-west connection along the northern property line between Georgia Avenue and Elkin Street; and a north-south connection between the northern property line and Blueridge Avenue. The Master Plan states, "The north-south pedestrian connection shown on this block ... should be designed as a safe and pleasant, direct passage, open to the public, with ample width, height and adequate lighting between Blueridge Avenue and future connection provided on the Leesborough development site to the north. Pedestrians should be able to travel from Blueridge Avenue to points north, including any future development at the underdeveloped WMATA site, the Leesborough community, the Wheaton Library, and the Wheaton Recreational Center, without obstacles and in an inviting and safe manner. This connection may also be provided as a private street." (p. 50)

The project provides an east-west pedestrian path along the northern property line and a modified alignment of the north-south connection illustrated on page 61 of the Sector Plan. The alignment for the north-south connection is on the eastern edge of the Subject Property, between the east-west connection and Elkin Street, traversing the open space along Elkin Street. The modified alignment, in combination with the east-west connection along the northern property line, achieves the Master Plan's intent to provide pedestrian access between Blueridge Avenue and points north without obstacles and in an inviting and safe manner.

A Signed Shared Roadway/On-Road bikeway is recommended in the Sector Plan for Blueridge Avenue (LB-4). The project accommodates the implementation of the recommended bikeway.

Environment

The Master Plan envisions the area as growing "greener through redevelopment by creating a sustainable community that conserves energy and uses roofs and green spaces to filter stormwater and purify air" (p. 73). Minimization of carbon emissions; minimization and mitigation of impervious surface; and increasing tree canopy are some of the Master Plan's environmental goals. The project features vegetated wall, cool roof, and planting areas throughout the development along with bio-filters and stormwater vaults.

Wheaton Design Guidelines

While the Design Guidelines do not provide specific recommendations for the Subject Property, the project furthers the goal of supporting an identifiable center (Guidelines p. 10), and providing appropriate transitions by enhancing Georgia

Avenue as an urban boulevard through wider sidewalks. It also establishes the corner of Georgia and Blueridge Avenues with a distinctive design treatment that will mark it as the gateway.

The project provides appropriate transitions (Guidelines p. 25) by stepping the building height down in relation to the topography and retaining the existing open space along Elkin Street. These two design elements minimize the impact on adjacent and confronting properties.

The project improves the public realm (Guidelines p. 30) by enhancing pedestrian access along the street and by providing the east-west pedestrian connection through the site.

In concert with the Master Plan, the Design Guidelines recommend pedestrian through-block connections to shorten walking distances, to create connections between open spaces, and to promote additional retail activity (p. 24). The project provides an east-west connection along its northern property line and provides for a future connection to points north.

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

Transportation Adequate Public Facilities Review

The 324 mid-rise apartments generate 133 peak-hour trips within the weekday morning peak period (6:30 to 9:30 am) and 153 peak-hour trips within the evening peak period (4:00 to 7:00 pm.). The development is located in a Metro Station Policy Area, and in accordance with the Local Area Transportation Review and Transportation Policy Area Review Guidelines, these trips were reduced by 18%.

The Applicant submitted a traffic study because the proposal generates 30 or more peak-hour trips within the weekday morning and evening peak periods. The calculated Critical Lane Volume values at all analyzed intersections do not exceed the applicable congestion standards. Regarding the Transportation Policy Area Review test, a payment of the transportation impact tax is not required due to the Subject Property's location in the Wheaton CBD (Metro Station) Policy Area.

When the Wheaton Transportation Management District ("TMD") is established, a Traffic Mitigation Agreement ("TMAg") with the Planning Board and MCDOT would be required. Therefore, since the Applicant is required to work with MCDOT to promote non-auto modes of transportation, the TMAg will be required at use and occupancy in anticipation of the TMD being established. The Master

Plan recommends a non-auto driver mode share goal of 30% that could be achieved with transportation demand strategies for alternative non-single-auto-occupancy modes.

Public Transit Service

The Subject Property is located 0.4 miles northeast of the Wheaton Metrorail Station, and a number of bus routes currently operate along the Subject Property's adjacent and nearby roadways.

No transit routes operate along the property frontages of Blueridge Avenue and Elkin Street.

Other Public Facilities and Services

The site will be served by public water and sewer systems. The Montgomery County Fire and Rescue Service has determined that the project has appropriate access for fire and rescue vehicles. Other public facilities and services including police stations, firehouses and healthcare are currently operating in accordance with the Subdivision Staging Policy and will continue to be sufficient following the construction of the project. Electric, gas and telecommunications services will also be available and adequate.

The Subject Property is located in the Downcounty Consortium. According to Montgomery County Public School's estimate, the project will generate 41 elementary, 17 middle and 22 high school students. While this consortium is subject to a School Facility Payment at the elementary, middle and high school levels, the Subject Property is located in an Enterprise Zone. County Code Section 52-89(c)(5) stipulates that development impact tax for public school improvements must not be imposed on "any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone."

- 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 size, shape, and width of the approved lot allows the development to meet the Master Plan goals to provide a more urban and walkable community while providing the residential development envisioned for this district. The lot complies with 50-29(a) of the Subdivision Regulations. The Planning Board finds that the size, shape, width, and area of the lot are appropriate for its location within the subdivision.

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

A. Forest Conservation

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

The Application does not have any activities within any streams, wetlands, or environmental buffers and is therefore in compliance with the Environmental Guidelines. There is no forest on site but eight trees greater than 24" diameter at breast height (DBH) exist on-site. There is a 0.61-acre afforestation requirement, which the Applicant will meet by preserving 0.08 acres of credit for retaining existing trees and 0.53 acres of off-site afforestation.

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 three (3) 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. The Subject Property is only 3.68 acres but zoned to encouraged high density development with an urban character. Tree "V7" is located along the Georgia Avenue frontage. Achieving the Master Plan goal and design guidance of street-oriented development with a consistent street wall along sidewalks necessitates the removal of "V7". While the open space surrounding "V8" is being preserved, this Protected Tree will need to be removed because it will be severely impacted by underground proprietary filters needed to implement the environmental site design criteria to the maximum extent possible. While the open space surrounding tree "V2" is being preserved, this Protected Tree will be impacted by the construction of the Master Plan recommended through block connection. The recommended alignment in the Master Plan would

have necessitated complete removal. The modified alignment will impact 19% of the CRZ.

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 of the specified trees is due to the need to substantially conform to the Master Plan and design guidelines and implement storm water management practices as required. Granting a Variance request to remove two Protected Trees and disturb the CRZ of one Protected Tree for these purposes is not unique to this Applicant and would be granted for any other 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 due to the locations of the trees coupled with minimum disturbance required to develop the Subject Property in conformance with the Master Plan and other required laws.

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 development on the Subject Property 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.*

The Protected Trees requested for removal are not located in an environmental buffer or special protection area. This approval is conditioned on mitigation that approximates the form and function of trees removed. The Board approved replacement of the Protected Trees at a ratio of approximately 1 inch caliper for every 4 inch DBH removed. Therefore, granting the Variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Tree being impacted will remain to provide the same level of water quality protection as it currently provides. Therefore, 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.

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

MCDPS issued a letter accepting the Stormwater Management Concept for the Site on October 10, 2014. The Stormwater Management Concept proposes to meet required stormwater management goals through environmental site design to the maximum extent practicable with the use of stormwater vaults and bioretention areas throughout the site including in the private court yards and parking garage.

6. Safe sight distance or traffic channelization can be accomplished without full truncation.

Section 50-26(c)(3) of the Subdivision Regulations states: "The corner lots at an intersection must be truncated by straight lines joining points 25 feet back from the theoretical property line intersection in each quadrant. In any case where more or less width is needed for safe sight distance or traffic channelization, the Board may specify a greater or lesser cut-off than otherwise required."

The Applicant requested a reduction in the standard truncation requirement for the northeast corner of the intersection of Georgia Avenue and Blueridge Avenue. Although MCDOT recommended that the project provide the full truncation because the final design of the Georgia Avenue BRT and its relationship to the new building are uncertain, the Planning Board finds a reduced truncation of 16 feet to be adequate because i) the sight distance with the building design will be adequate and safe; ii) a reduced truncation is consistent with the urban character within the designated Wheaton Urban District; iii) the new building is set back further from the intersection than the existing building for an improved line-of-sight; and iv) slower vehicles speeds on Blueridge Avenue combined with the existing traffic signal installation at Georgia Avenue/Blueridge Avenue intersection provides additional safety measures.

7. Retaining the existing 7-foot parking lane along Elkin Street will not significantly impair safety, usability, accessibility of the road, or community character.

The Planning Board has authority under Section 49-32(a) of the County Code, in approving a subdivision or site plan, to waive any applicable design standard unless the waiver would significantly impair public safety.

The Applicant requested a modification from MCDOT design standard No. MC-2003.12 (Primary/Principal Secondary Residential Street with parking on both sides) contained in the County Context Sensitive Road Design Standards designated for Elkin Street. Elkin Street is currently improved with 36 feet of paving width accommodating two travel lanes (11 feet each) and parking lanes on both sides (7 feet each). To meet the required code standard, the Applicant would need to relocate the existing curb and gutter by one foot to widen the road along its Elkin Street frontage.

Although MCDOT recommended that the Applicant improve Elkin Street in accordance with the Road Code Standard, the Planning Board finds that retaining the existing 7-foot parking lane will not significantly impair safety, usability, accessibility of the road, or community character. Moving the curb will require relocating major utility lines along Elkin Street at a significant expense with no significant public benefit. In addition, relocating the curb one foot back will create an awkward streetscape edge since the remaining curb north of the property will remain as is, for the foreseeable future.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 85 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 DEC 10 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 Vice Chair Wells-Harley, seconded by Commissioner Presley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Presley and Fani-Gonzalez voting in favor, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, December 4, 2014, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board