



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

JUN 3 2015

MCPB No.15-52  
Preliminary Plan No.120140140  
Ingleside  
Date of Hearing: May 28, 2015

**RESOLUTION**

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

WHEREAS, on March 13, 2014, Daniel & Jacqueline McGroarty ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create three lots on 6.17 acres of land in the R-200 Zone, located on the south side of New Hampshire Avenue approximately 0.20 miles southeast of the intersection of MD 108 and MD 650 (Ashton, MD) at 17720 New Hampshire Avenue ("Subject Property"), in the 1998 Sandy Spring/Ashton Master Plan. ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120140140, Ingleside ("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 May 15, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 28<sup>th</sup>, 2015, 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. 120140140 to create three lots on the Subject Property, subject to

Approved as to  
Legal Sufficiency

*Christina Sand* 5/19/15  
M-NCPPC Legal Department

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the following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to three (3) lots for three residential dwelling units.
2. Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan (PFCP) No. 120140140:
  - a. Prior to Planning Board approval of the record plat, the Applicant must obtain Staff approval of a Final Forest Conservation Plan (FFCP) consistent with the approved Preliminary Forest Conservation Plan and including mitigation for the loss of a specimen tree at a ratio of approximately 1" caliper for every 4" DBH removed, using trees that are a minimum of 3" caliper size.
  - b. The Applicant must place a Category I Conservation Easement over approximately 1.5 acres of forest retention as shown on the approved forest conservation plan. The easement must be approved by the M-NCPPC Office of General Counsel and recorded by deed in the Montgomery County Land Records prior to clearing or grading. The liber and folio of the deed must be referenced on the record plat.
  - c. The limits of disturbance shown on the Final Sediment Control Plan must be consistent with the limits of disturbance shown on the FFCP.
  - d. Permanent Category I Conservation Easement signs must be placed along the perimeter of the conservation easement area.
  - e. The Applicant must comply with all tree protection and tree save measures shown on the approved PFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC forest conservation inspector.
3. The Applicant must dedicate, by record plat, the following rights-of-way:
  - a. 60 feet from the centerline along their site frontage on New Hampshire Avenue as shown on the Preliminary Plan.
  - b. 50 feet for the extension of Crystal Spring Terrace as shown on the Preliminary Plan, unless otherwise determined by the Montgomery County Department of Transportation ("MCDOT") to be unnecessary prior to recordation of the plat.
4. Prior to issuance of the use and occupancy permit for the first new residence, the Applicant must construct a 10-foot shared use path along New Hampshire Avenue as shown on the Preliminary Plan to be permitted, bonded, and constructed under a Maryland State Highway Administration ("MDSHA") access permit.

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<sup>1</sup> 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.



5. The Applicant must construct the extension of Crystal Spring Terrace as a publicly maintained tertiary street within the existing 50-foot right-of-way from Crystal Spring Drive to the Property boundary and extended as temporary "T-type" turnaround located on the Subject Property. The construction within the Crystal Spring Terrace right-of-way must be to MCDOT Road Code Standard MC-2001.03: Tertiary Residential Street Modified. The modification allows for the reduction of right-of-way from 74-feet to 50-feet, no sidewalks, and a reduction in the side ditch area for stormwater management.
6. All existing septic system on the Subject Property must be abandoned in accordance with Montgomery County Department of Permitting Services ("MCDPS") standards. All existing houses on the Subject Property must be connected to public sewer prior to the first Use and Occupancy Certificate for any new residence.
7. The Planning Board accepts the recommendations of the Montgomery County Fire and Rescue Services ("MCFRS") approval dated February 3, 2015 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 approval. These recommendations may be amended by MCFRS provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. The Planning Board accepts the recommendations of the MCDOT in a letter dated April 2, 2015 and does hereby incorporate 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.
9. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
10. The Planning Board accepts the recommendations of the MDSHA in a letter dated May 1, 2014 except for comments #1 and #4. Comments #2 and #3 from the SHA letter are incorporated as conditions of the Preliminary Plan approval. The Applicant must comply with the recommendations associated with comments #2 and #3 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.
11. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated March 24, 2015) and does hereby incorporate 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.
12. 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 permits. 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.*

13. Record plat must show necessary easements.
14. 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 1998 Sandy Spring/Ashton Master Plan.*

The Planning Board finds the Application complies with the recommendations of the Master Plan. The Master Plan defines and discusses the "New Hampshire Avenue" area, which includes the Subject Property. The Master Plan recommends maintaining the existing zones for land straddling New Hampshire Avenue. The Master Plan strives to preserve the existing rural character of the remaining rural road character (Page 52). The Master Plan seeks to preserve rural open space where it exists along New Hampshire Avenue, orient new homes to the street, maintain vegetated edges where appropriate, and integrate pedestrian and bicycle paths in ways that can enhance rural character (Page 43-45).

The Application places one lot along New Hampshire Avenue, to allow a new home to face New Hampshire Avenue in keeping with the vision of the Master Plan. The Application maintains existing trees along the Subject Property frontage and utilizes the existing driveway location without any widening of the driveway pavement in an attempt to preserve existing conditions and maintain rural character. The Application also shows construction of a shared use path (SP-15) on New Hampshire Avenue in



conformance with the Master Plan and the Countywide Bikeways Functional Master Plan of 2005.

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

#### Site Access, Parking, and Public Transportation

The MDSHA recommends approval of the Application with the existing driveway entrance remaining even though its May 1, 2014 letter states that the driveway must be removed if access to all new lots is provided to Crystal Spring Drive. Since the new lot fronting New Hampshire Avenue does not have access to Crystal Spring Terrace, access must be provided to New Hampshire Avenue. Thus, MDSHA is willing to allow Lot 1, as shown on the Preliminary Plan, to maintain the driveway connection to New Hampshire Avenue. The existing house on proposed Lot 3 and the new house on proposed Lot 2 will have access via driveways to Crystal Spring Terrace. Sufficient parking will be provided on the driveways of each house and/or in garages. With the construction of the new terminus for Crystal Spring Terrace, access for the 3 new lots will be adequate.

The Washington Metropolitan Area Transit Authority route Z2 provides bus service in the area along New Hampshire Avenue. Route Z2 connects the Olney area to Silver Spring Metrorail Station with service every 30 minutes during the morning and evening peak commuting periods Monday through Friday. The closest southbound bus station is located on New Hampshire Avenue at Tree Lawn Drive approximately 600 feet to the south of the site. The closest northbound bus stop is located on New Hampshire Avenue at Crystal Spring Drive approximately 100 feet to the north of the site. Local public transportation is available to serve the Subject Property.

#### Local Area Transportation Review (LATR)

As conditioned, the Preliminary Plan for the three lots does not trigger LATR since the two new homes only generate two additional trips in the AM and PM peak hour. The threshold for an LATR review, according to the *LATR & TPAR Guidelines*, is 30 net new additional trips.

#### Transportation Policy Area Review (TPAR)

The Subject Property is located in the Rural East Policy Area. According to the 2012-2016 *Subdivision Staging Policy*, the Rural East Area is exempt from the roadway test and transit test; therefore, no TPAR payment is required.



Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lots. The Subject Property is located in the W-1/S-1 water and sewer service categories and, therefore will be utilizing existing water and sewer infrastructure. The Application was also reviewed by MCFRS, and was approved on February 3, 2015. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the FY 2015 Growth Policy Resolution currently in effect. The Application is located in the Sherwood High School cluster, which is not identified as a school moratorium area; and is not subject to a School Facilities Payment.

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 complies with all applicable sections within the Montgomery County Code, Chapter 50, the Subdivision Regulations. The lot size, width, shape and orientation are appropriate for the subdivision given the intended use and guidance from the Master Plan. The lots meet all the dimensional requirements for area, frontage, and width, and new homes can meet the 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 Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Application meets all requirements of Chapter 22A of the Montgomery County Forest Conservation Law. The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) No. 420141100 for the Subject Property was approved on February 7, 2014. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The Property contains 1.5 acres of forest and does contain trees greater than 24" DBH. The topography is generally flat and there are no streams, wetlands, or environmental buffers on the Subject Property.

The Subject Property is within the Northwest Branch watershed; a Use IV watershed. The Countywide Stream Protection Strategy rates streams in this section of the watershed as overall fair condition.

The Forest Conservation Plan (FCP) proposes no forest clearing and 1.5 acres of forest retention. The Subject Property is 6.17 acres, with the off-site disturbance necessary to construct the public road extension for Crystal Spring Terrace. The net tract area for purposes of forest conservation is 6.42 acres.

#### 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 CRZ impact to nine Protected Trees and removal of one Protected Tree 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 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 use of the Subject Property for new homes is permitted by the R-200 zone. The current lot design meets zoning requirements for building setbacks. Development of the Subject Property for this use will necessarily impact the Specimen Trees and cannot be reasonably avoided. The granting of this Variance is not unique to this Applicant and does not provide special privileges or benefits that would not be available to 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 configuration of the Subject Property, regulatory requirements, and the location of the Specimen Trees are not the result of actions by the Applicant. There are no feasible options to reconfigure lot design and house locations to avoid all impacts to the Specimen Trees.



- 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 not related in any way to a condition on an adjacent, neighboring 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. The Specimen Trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A stormwater management concept plan approval has been approved by MCDPS.

Mitigation for the Variance is at a rate that approximates the form and function of the tree removed. Thus, the required mitigation is to occur at a ratio of approximately 1" caliper for every 4" DBH removed, using trees that are a minimum of 3" caliper size.

- 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 accepted a stormwater management concept for the Application on March 24, 2015. The stormwater management concept consists of a combination of drywells, a micro infiltration trench, and landscape infiltration on the lots. The new public street will utilize bioswales located in the right-of-way. The Application complies with Chapter 19 of the County Code regarding stormwater management.

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 3 2015 (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

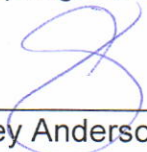


Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**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 Commissioner Presley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor at its regular meeting held on Thursday, May 28, 2015, in Silver Spring, Maryland..

  
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Casey Anderson, Chair  
Montgomery County Planning Board