MCPB No. 16-021
Site Plan No. 82013004B
Chelsea Court
Date of Hearing: July 21, 2016

JUL 26 2016

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, under Section 59-7.7.1.B.3, the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014; and

WHEREAS, on June 12, 2012, the Montgomery County Council sitting as the District Council by Resolution No 17-471 approved Local Map Amendment (LMA) Application No. G-892 to reclassify 5.25 acres of land located at 711 Pershing Drive, south of Springvale Road, in the Silver Spring/Takoma Park Policy Area and North and West Silver Spring Master Plan area from the existing R-60 Zone to the RT-12.5 Zone ("Parent Tract"); and

WHEREAS, approval of the LMA included approval of a schematic development plan that contained illustrative and binding elements, including Binding Element No. 13, which states:

> "At the time of record plat, [CS Homes Associates LLC, as] the Applicant will record a restrictive covenant for the open space area around the 37,056 square foot environmental setting for the Riggs Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable [CS Homes Associates LLC] to complete all work approved by the Planning Board as part of site plan approval. Following completion of those improvements, the covenant will require advice form the Historic Preservation Commission to the Planning Board for any site plan amendment to the area subject to the covenant."

Approved as to
Legal Sufficiency: 7/25/16
M-NCPPC Legal Department

WHEREAS, on April 25, 2013, the Planning Board, by Resolution MCPB No. 13-64, approved Site Plan No. 820130040 for 63 townhouses, including eight moderately priced dwelling units, and one one-family detached dwelling on the Parent Tract; and

WHEREAS, the required restrictive covenant was recorded among the Land Records of Montgomery County, Maryland on January 31, 2014 in Liber 48264 in folio 246 ("Restrictive Covenant"); and

WHEREAS, on February 25, 2016, the Planning Board approved an amendment to the previously approved site plan, designated Site Plan No. 82013004A (MCPB No. 16-020), to make minor changes in site grading, landscaping, and hardscape on the Parent Tract; and

WHEREAS, on November 23, 2015, Sam Fleming ("Applicant") filed an application for approval of an amendment to the previously approved site plans to add a detached garage to Lot 64 of the Chelsea Court subdivision, on 0.85 acres of the Parent Tract ("Subject Property"), in the Silver Spring/Takoma Park Policy Area and North and West Silver Spring Master Plan ("Master Plan") area; and

WHEREAS, Applicant's application to amend the site plan was designated Site Plan No. 82013004B, Chelsea Court ("Site Plan," "Amendment," or "Application"); and

WHEREAS, on February 25, 2016, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board deferred action on the Application because although generally in line with the Restrictive Covenant, the Application did not meet the intent of Binding Element No. 13; and

WHEREAS, on June 3, 2016, Applicant submitted a revised Application to make only minor modifications to hardscape (addition of one pedestrian walkway and removal of one pedestrian walkway); and

WHEREAS, following review and analysis of the revised Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 8, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 21, 2016, the Planning Board held a public hearing on the Application at which it 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 Site Plan No. 82013004B for minor modifications to hardscape (addition of one pedestrian walkway and removal of one pedestrian walkway) on a lot containing a one-family detached dwelling by adding the following conditions:[1]

1. The Applicant must replace any trees and other landscaping damaged by construction of the walkway or otherwise removed with trees and plants of the same size and species as those shown on the approved landscape plan, on a one-to-one basis. The full extent of the approved landscape must be restored on the Subject Property within the first growing season after completion of the walkway. Locations of plantings may be adjusted as needed, but all previously approved plantings as shown on the approved landscape plan must be planted on the Subject Property.

2. The Applicant must replace topsoil on all areas of soils disturbance. Topsoil must be uniformly distributed in a four to eight-inch layer and lightly compacted to a minimum thickness of four inches.

3. Prior to certification of the Site Plan, the Applicant must revise the landscape plan to show the location, details, and specifications of the necessary tree protection fence.

4. Prior to certification of the Site Plan, the Applicant must revise the Site Plan to show a limits of disturbance line on the plan. The limits of disturbance must encompass all grading, trenching, utility work, and other soil disturbance. The limits of disturbance line must be located so that there will be no new impacts to or removals of trees that would otherwise be subject to a variance.

5. Prior to certification of the Site Plan, the Applicant must revise the green area tabulations to ensure numerical consistency in all columns.

6. Prior to certification of the Site Plan, the Applicant must revise the Site Plan to show offsets to the hardscape so that the pedestrian walkway will have a maximum width of eight feet, with no more than a net addition in 300 square feet of hardscape overall.

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[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. Applicant must sign an amendment to the Restrictive Covenant recorded in the Montgomery County Land Records at Liber 48264 folio 246, such amendment to reflect the intent of Binding Element No. 13 of Local Map Amendment G-892 (approved in Council Resolution No. 14-628 (June 12, 2012)). Planning Board legal staff will prepare the amendment, and within 30 days of receipt the Applicant must sign and return such amendment to legal staff for recordation.

BE IT FURTHER RESOLVED that all other Site Plan conditions of approval for this project remain valid, unchanged and in full force and effect; and

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Site Plan 82013004B, Chelsea Court, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and set forth in the Staff Report, which the Planning 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. *Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan, as revised by previous amendments, and all findings not specifically addressed remain in effect.*

2. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, and conforms to the conditions of approval of the previously approved preliminary plan.*

   The Application is subject to the binding elements of the previously approved Local Map Amendment G-892. One of those binding elements, No. 13, states:

   13. At the time of record plat, the Applicant will record a restrictive covenant for the open space area around the 37,056 square foot environmental setting for the Riggs Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable Applicant to complete all work approved by the Planning

Board as part of the site plan approval. Following completion of those improvements, the covenant will require advice from the Historic Preservation Commission to the Planning Board for any site plan amendment to the area subject to the covenant.

The Application is also subject to the conditions of approval of Preliminary Plan 120130060. Condition 16 of the approved preliminary plan states:

16. Prior to recordation of the plat, the Applicant must record a restrictive covenant for the open space area around the 37,056 square-foot environmental setting for the Riggs-Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable the Applicant to complete all work approved by the Planning Board as part of the site plan approval. Following completion of those improvements, the covenant will require advice from the Historic Preservation Commission to the Planning Board for any site plan amendment to the area subject to the covenant.

Pursuant to the binding element and Condition 16 of the preliminary plan, a restrictive covenant was recorded in the land records that sets forth restrictions on allowed uses and structures within the designated open space. Three of the provisions of the restrictive covenant state:

3. The open space area may include, but not be limited to, lawns, decorative planting, sidewalks and walkways, and active and passive recreation areas, including children's playgrounds, fountains, wooded areas, watercourses and driveways, parking areas and accessory structures as approved by the Montgomery County Planning Board, but shall not include other parking lots or vehicular surfaces or buildings, except as shown on an approved Site Plan.

4. As allowed by Binding Element 13 of the Development Plan approval, Developer may complete the improvements shown on Exhibit C or others approved by the Planning Board as part of the Site Plan process in the area subject to this Covenant.

5. Following completion of the improvements depicted on the Site Plan (Exhibit C) any amendment to the Site Plan that is sought for the area subject to this Covenant requires the advice by the Historic Preservation Commission to the Planning Board. This advice will

be provided during the Site Plan amendment process, as applicable.

Binding Element 13 and Preliminary Plan condition 16 require that the area outside of the environmental setting on Lot 64 (and on an adjacent open space parcel) remain as open space controlled by a restrictive covenant. The binding element and the condition allow site plan amendments for additional improvements that are compatible with the open space, with Historic Preservation Commission advice. The restrictive covenant specifically allows placement of walkways in the open space area if they are shown on a site plan approved by the Planning Board. The restrictive covenant also allows amendment of the originally approved site plan, with advice from the Historic Preservation Commission.

The Historic Preservation Commission met on May 25, 2016, to discuss the application. In a memo dated June 22, 2016, the Historic Preservation Commission advised the Planning Board that the proposed scope of work is compatible with the historic Riggs-Thompson House, the scope of work supports the goal of preserving this *Master Plan for Historic Preservation*-designated historic site, and that the application is consistent with the purposes of the Historic Preservation Ordinance, Chapter 24A of the County Code.

In addition, the width of the walkway has been conditioned to not exceed a width of seven feet, in order to minimize environmental impact.

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 Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; 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 26 2016 (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 Fani-González, 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, July 21, 2016, in Silver Spring, Maryland.

Casey Anderson, Chair
Montgomery County Planning Board