



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

APR 26 2016

MCPB No. 16-038  
Preliminary Plan No. 120150070  
Mateny Hill Road Property  
Date of Hearing: March 31, 2016

**RESOLUTION**

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

WHEREAS, on October 14, 2014, Kate Kubit of Elm Street Development ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 46 lots on 5.86 acres of land in the RT-12.5 and R-200 zones, located on the northeast side of Mateny Hill Road, approximately 200 feet north of the intersection with Dawson Farm Road ("Subject Property"), in the Germantown West Policy Area and 1989 Germantown Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120150070, Mateny Hill Road Property ("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 March 18, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 31, 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, on March 31, 2016, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Wells-Harley, seconded by Commissioner Presley, with a vote of 4-0; Commissioners Anderson, Fani-Gonzalez, Presley, and Wells-Harley voting in favor and Commissioner Dreyfuss absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120150070 to create 46 lots on the Subject Property, subject to the following conditions:<sup>1</sup>

<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.

Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, Suite 20910, Springfield, Maryland 20910

MNCPPC Legal Department  
www.MCParkandPlanning.org

Chairman's Office: 301.495.4605 Fax: 301.495.1320

E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)



- 1) Approval under this Preliminary Plan is limited to 46 lots for 44 one-family attached and 2 one-family detached dwelling units, a private road parcel, and an open space parcel.
  - 2) The Applicant must comply with the following conditions of approval for the preliminary forest conservation plan No. 120150070, approved as part of this Preliminary Plan, unless modified by the final forest conservation plan or final forest conservation plan amendments:
    - a. Prior to demolition, clearing, or grading 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 and the Liber Folio for the easement must be referenced on the record plat.
    - b. Prior to any land disturbing activities, the Applicant must:
      - i. Submit for Staff review and approval, and record in the Montgomery County Land Records, a Certificate of Compliance for an off-site forest conservation mitigation bank for 1.98 acres of planting requirement.
      - ii. Install conservation easement signs and split rail fencing, or a Staff approved equivalent.
      - iii. Provide financial surety to the M-NCPPC Planning Department for the 0.55 acres of new forest planting.
    - c. The Applicant must plant a minimum of 94 caliper inches of native canopy trees as mitigation for the tree variance impacts on the Subject Property within one calendar year or two growing seasons after issuance of the final use and occupancy certificate. The trees must be a minimum of three-inch caliper.
  - 3) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 2, 2016, 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) Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
  - 5) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated November 17, 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 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.

- 6) The Applicant must dedicate and show on the record plat thirty (30) feet of dedication from the centerline of Mateny Hill Road along the Subject Property's entire frontage.
- 7) The Applicant must reflect a separate parcel on the record plat that accommodates the private one-way street and abutting sidewalks and parking spaces as shown on the Preliminary Plan. The private street must be constructed to applicable Montgomery County tertiary structural standard MC-2001.02: Tertiary Residential Street Modified, as shown on the Preliminary Plan.
- 8) The Applicant must construct a five-foot wide sidewalk along the north/east side of Mateny Hill Road from the terminus of the existing sidewalk in front of Lot 52, Recorded on Plat No. 22547 Germantown Station, southeast to the existing sidewalk along Dawson Farm Road, including across the Site frontage. The final location and design will be determined at site plan.
- 9) The Record Plat must show necessary easements.
- 10) The record plat must reflect a public use and access easement over all private streets and adjacent parallel sidewalks.
- 11) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 12) Final approval of the number and location of buildings, on-site parking, site circulation, sidewalks, and open spaces will be determined at site plan.
- 13) Prior to submission of any plat, Site Plan No. 820160020 must be certified by M-NCPPC Staff.
- 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.
- 15) 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 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."*

- 16) The Applicant must make a Transportation Policy Area Review payment, equal to 25 percent of the applicable impact tax, to MCDPS. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
- 17) Prior to certification of the Preliminary Plan, the Applicant must show on the plan a public access easement accommodating a 5-foot sidewalk running next to Lot 1 and connecting the sidewalk along the internal private street to the sidewalk on the east side of Mateny Hill Road. The public access easement must avoid the Category I Conservation Easement on the Subject Property to the extent possible.

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 Subject Property is located within the boundaries of the 1989 Germantown Master Plan, and specifically within the Clopper Village Land Use Area. The Clopper Village Land Use Area is planned to be a predominantly residential area with minimal commercial uses located around a village center, and the Master Plan recommends higher residential densities around the village center or areas with high accessibility. The Subject Property is part of sub-analysis area CL-1, which predominantly includes properties immediately south of the MARC station and the Germantown Historic District. There are no specific recommendations for the Subject Property within the Master Plan, but the Master Plan recommended retaining existing zoning.

The Application substantially conforms to the Master Plan by providing residential uses at a higher density as allowed by the existing zoning and as recommended by the Master Plan for highly accessible properties; the Subject Property is highly accessible because it is less than 1/3 of a mile from the Germantown MARC station



and less than 200 feet from Dawson Farm Road, a four lane divided highway that acts as a spur between two major State highways.

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

The Subject Property is located along Mateny Hill Road, an existing, non-Master Plan classified road which is maintained to tertiary standards with a 60-foot wide right-of-way. As part of the Preliminary Plan, the Applicant is dedicating approximately 0.33 acres to achieve 30 feet from centerline of dedication across the Subject Property frontage. The Subject Property is also approximately 1/3 of a mile from the Germantown MARC station, which has regular weekday AM rush-hour service toward Washington, D.C. and regular PM rush-hour service from Washington, D.C. The Applicant will construct all required frontage improvements along Mateny Hill Road including sidewalks, and, to enhance local pedestrian connectivity, will also construct two sections of off-site sidewalk improvement, creating a continuous sidewalk along the northeast side of Mateny Hill Road from Dawson Farm Road almost all the way to the MARC station.

*Local Area Transportation Review (LATR)*

The Preliminary Plan was analyzed based on the creation of 44 new townhouse dwellings on the Subject Property. There is one existing dwelling that will remain, and a second existing dwelling that will be demolished and effectively replaced with the dwelling on lot 2. Because these two dwellings already exist and function as one-family detached homes, they were excluded from further analysis. A traffic study was submitted analyzing three local intersections to determine whether they meet the applicable congestion standard of 1,425 Critical Lane Volume. All three intersections will operate at an acceptable Critical Lane Volume after development of the Preliminary Plan; therefore, no LATR improvements are required.

*Transportation Policy Area Review (TPAR)*

The Subject Property is located in the Germantown West Policy Area. According to the 2012-2016 Subdivision Staging Policy, the Germantown West Policy Area is adequate for the roadway test but inadequate under the transit test; therefore, a TPAR payment of 25% of the General District Transportation Impact Tax is required. The timing and amount of the payment will be in accordance with that set in Chapter 52 of the Montgomery County Code.

Other public facilities and services are available and will be adequate to serve the proposed dwelling units. The Subject Property is located in the W1 and S1 categories for water and sewer, and the Application proposes all dwellings be serviced by public water and sewer. Other telecommunications and utility companies reviewed the Preliminary Plan and found that the Subject Property can



be adequately served. The Application has also been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Application provides adequate access for fire and emergency vehicles. Other public services such as police and health services are operating within the standards set by the Subdivision Staging Policy currently in effect. The Application is within the Northwest High school cluster 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 has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections of the Subdivision Regulations. Although the two properties that make up the Subject Property each have existing dwellings, they are not platted parcels and therefore not subject to the resubdivision analysis. The proposed lot sizes, widths, shapes and orientations are appropriate for the location of the subdivision. The lots were reviewed for compliance with the dimensional requirements for the RT-12.5, R-200 and R-60<sup>2</sup> zones as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in the appropriate zones. The application has been reviewed by other applicable county agencies, all of which have recommended approval of the plan.

At the hearing on this Application, a member of the public questioned the Application's conformance to Section 59-C-1.628(e)(2) of the Zoning Ordinance, which applies to a combined MPDU development in two or more zones. The provision states, "No uses are permitted in any part of the combined tract except those that are permissible in the zone in which that part is classified." This Application includes detached dwellings and townhomes on both the R-200 and RT 12.5 portions of the Subject Property. Detached dwellings and townhomes are permissible for MPDU developments in the R-200 zone and in the RT 12.5 zone. Accordingly, the Board finds that the Application conforms to Section 59-C-1.628(e).

*Section 59-C-1.621, Appropriate Unit Mix*

As described in the Staff Report, the Applicant requested that the Planning Board approve the Application with the number of one-family attached units exceeding the maximum 40 percent allotment for an MPDU development in the R-200 subdivision under the Zoning Ordinance. The Board has the authority

---

<sup>2</sup> One-family detached dwellings in the RT-12.5 zone use the R60 zone for their development standards.



to grant up to 100 percent townhomes on a site developed under the R-200 MPDU standards as identified in footnote 1 in Section 59-C-1.621 of the Zoning Ordinance.

In this case, the Planning Board approves up to 87.5% townhouse units on the 2.15 acre, R-200 portion of the Subject Property by finding:

- a) *the proposed development is more desirable from an environmental perspective than development that would result from adherence to the percentage limits.*

Three environmental benefits would be obtained by allowing more than 40% townhomes on the R-200 portion of the Subject Property:

- (1) *A Reduction in Impervious Surfaces by Approximately 30%*

The Application increases the number of total dwellings on the R-200 zoned area by three additional units to a total of seven townhomes. However, by permitting 87.5% townhouses on that portion of the Subject Property, the total imperviousness is reduced to approximately 12,900 square feet, compared to the possible alternative of four one-family detached dwellings which may create as much as 18,554 square feet. This reduction is possible because townhouse units are situated closer to the street, the footprint of each unit is smaller, and the massing of the units is more efficiently laid out with the garage under the living space rather than alongside the living space.

- (2) *A Tighter Lot Layout Resulting in 0.55 Acres Available for a Category I Conservation Easement*

The tightening of the developed area and reduction in impervious spaces associated with the townhomes allow the Applicant to create a critical mass of open space that meets the size and dimensional requirements for a Category I conservation easement. This Category I easement will be 0.55 acres in size and will be located adjacent to an existing off-site Category I easement. Creating a location on-site to meet some of the forest conservation requirements is an important factor for the Planning Board to consider under Section 22A-12(f) of the Forest Conservation Law.

- (3) *Resource Protection/Variance Tree Impacts*

In addition to creating room for on-site conservation easements, tightening the development and creating more green area allows the Applicant to save some of the existing tree canopy and reduce the critical root zone

(CRZ) impacts to four trees identified by the environmental section of this report as variance trees. Protecting as much of the existing tree canopy as possible was important to the community and is a key in protecting water quality.

- b) *that any increase in the one-family attached dwelling unit type would achieve not less than the same level of compatibility as would exist if the development were constructed using the standard percentage of that type of dwelling unit (40% attached).*

The layout of the one-family attached dwelling units in the Application increases compatibility with the surrounding community in two ways:

*(1) Improved Layout and Massing*

The Subject Property is irregularly shaped, and to achieve an efficient on-site circulation that also minimizes the impact to the neighboring one-family detached dwellings, one of the rows of townhomes crosses the zoning line from the RT-12.5 Zone onto the R-200 Zone on the Subject Property. The townhouse units that overlap into the R-200 Zone are clustered in one row, and are located adjacent to the private street in an orientation that locates the narrow side end of the row toward the one-family detached dwellings to the north, reducing visual impact to the existing single-family homes. By building four detached units in this area instead, the placement of detached dwellings would likely be closer to the Subject Property boundary, and the views from the existing houses to the north would be the rear of each of these dwellings, in addition to the primary community open space and recreation amenities.

*(2) Increased Setbacks and Buffering*

The tighter lot and structure layout also increases the available open space for landscaping, forest conservation plantings and increased setbacks from the Subject Property boundary than would otherwise be possible with detached dwellings. This landscaping and the on-site Category I Easement provide substantial buffering between the Subject Property and adjacent one-family detached developments.

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

A. Forest Conservation



As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Forest Conservation Plan ("FCP") contains 5.93 acres of net tract area. Based on the Forest Conservation worksheet, the Subject Property has a 1.19 acre conservation threshold under the High Density Residential land use category, and the FCP proposes clearing all 1.81 acres of forest onsite. The Application generates a 2.53 acres planting requirement, which the Applicant will meet with 0.55 acre onsite planting and 1.98 acres of credit at an offsite forest conservation mitigation bank.

*Minimum On-Site forest retention 22A-12(f)*

22A-12(f) contains special provisions for minimum retention, reforestation and afforestation for certain sites, including any site developed under a cluster or other optional method of development in a one-family residential zone, or any site seeking a waiver or variance from the base zoning standards. In this situation, the law states that on-site forest retention must equal the applicable conservation threshold. Section 22A-12(f)(2) is applicable to the Subject Property because a portion is being developed under the R-200 zone's MPDU development option, and the Applicant is seeking to develop the R-200 portion of the Subject Property with more than 40% townhomes.

However, Section 22A-12(f)(3) states that if the Planning Board finds that the forest retention required in subsection 12(f) is not possible, the applicant must provide the maximum possible on-site retention, in combination with on-site reforestation and afforestation. As described below, the Planning Board finds that in this case the forest retention required in 22A-12(f) is not possible and that the Application includes the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping.

*(1) All of the existing on-site forest is on the RT-12.5 zoned portion of the Subject Property*

The existing 1.81 acres of forest on the Subject Property is located on the portion of the Subject Property zoned RT-12.5. If developed on its own, that portion of the Subject Property would not trigger an analysis under Section 22A-12(f) and the development would not necessitate any on-site forest retention. It is also the most regularly shaped portion of the Subject Property, making it the most appropriate location to develop townhomes. Having to retain the existing forest would



severely limit total density on the Subject Property and create an inefficient site circulation and layout.

*(2) Compatibility with the neighboring development*

The RT-12.5 portion of the Subject Property is adjacent to other properties zoned RT-12.5 and currently developed with townhouses. In contrast, the R-200 portion of the Subject Property is adjacent to other one-family detached zones. Placing the bulk of the townhouses on the RT-12.5 portion of the Subject Property is therefore more compatible with current adjacent townhouse development and allows for more open space and forest conservation areas to be placed adjacent to existing one-family detached dwellings.

*(3) Low Priority Forest/New Easement*

The existing forest on the RT-12.5 portion of the Subject Property is classified as priority 3 and priority 4, typically considered appropriate for development by M-NCPPC standards. The Applicant's development of this forest will be offset in part by a new on-site Category I Conservation Easement, which will be planted with 2"-3" caliper canopy trees and will abut existing off-site Category I Conservation Easements. The new easement and plantings will create a better forest resource than the protection of the existing forest.

*Section 22A-12(f) Mitigation*

Mitigation for applications granted relief from total on-site forest retention uses the standards for reforestation and afforestation outlined in 22A-12(e). The Applicant will provide 0.55 acres of new on-site forest, with the remainder of the reforestation off-site. Additionally, although not counted toward the reforestation, the Applicant will plant 32 additional caliper inches of native canopy trees as landscaping above that required for tree variance mitigation, and is saving an additional 129 inches of tree caliper on portions of the Subject Property that will be protected as open space. This afforestation solution complies with the intent of the Forest Conservation Law and the result will provide more high quality forest than if the Applicant preserved all existing on-site forest. The remainder of the required reforestation (1.98 acres) will be taken off-site.

With the 0.55 acres of on-site Category I Conservation Easement, the 1.98 acres of off-site forest creation, and the review and mitigation proposed in conjunction with relief of Section 22A-12(f), the Planning



Board finds the Application meets the requirements of the Forest Conservation Law.

#### 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.

The Subject Property is covered by numerous Protected Trees that must be impacted if the Subject Property is to be developed. Furthermore, Mateny Hill Road is a secondary residential road with a minimum of 60 feet of right-of-way. Development of the Subject Property will require additional dedication and road widening, which will cause impacts and removals of Protected Trees. Not considering a Variance would preclude development of the Subject Property and create an unwarranted hardship.

This Application requires removal of or CRZ impact to 16 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant 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 makes 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 such a variance is not unique to this Applicant. This type of development is typical for properties zoned to allow medium intensity townhouse development. The Protected Trees are also located on the more readily developable portion of the Subject Property. The variance will not confer on the Applicant 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 not based on conditions or circumstances which are the result of the action by the Applicant, but rather on the site conditions and the zone for this 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 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. No trees located within a stream buffer, wetland, or special protection area will be removed as part of this Application. In addition, the Montgomery County Department of Permitting Services has found the stormwater management concept for the proposed project to be acceptable as stated in a letter dated November 17, 2015. The stormwater management concept incorporates Environmental Site Design standards described in finding five below.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves replacement of Protected Trees at a ratio of approximately 1 caliper inch for every 4 caliper inches removed. No mitigation is required for Protected Trees impacted but retained.

- 5. All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on November 17, 2015. The Application will meet stormwater management goals through the use of pervious pavement, dry wells, microbioretention, stone storage areas, and underground storage areas.

- 6. The Application was properly noticed.*

Based on information provided by Staff at the public hearing on this Application, the Board finds that the Application and the public hearing were properly noticed. Individuals who were unable to attend the hearing due to vacation plans or other scheduling issues were able to submit written testimony on the Application in accordance with the Board's Rules of Procedure.



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 APR 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).

\* \* \* \* \*

**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 Commissioner Dreyfuss, with Chair Anderson and Commissioners Dreyfuss and Presley voting in favor, and Vice Chair Wells-Harley and Commissioner Fani-González absent, at its regular meeting held on Thursday, April 21, 2016, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Casey Anderson, Chair  
Montgomery County Planning Board