



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MAR -4 2016

MCPB No. 16-015
Preliminary Plan No.120160060
Wheaton Woods
Date of Hearing: February 25, 2016

RESOLUTION

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

WHEREAS, The Planning Board approved Record Plat No. 4803 on January 30, 1957, which created the existing Parcel A of the Aspen Knolls subdivision; and

WHEREAS on November 7, 2013, the Planning Board reviewed a Pre-Preliminary Plan No. 720130110 and provided non-binding advice to the Applicant; and

WHEREAS, on October 20, 2015, Sitka Properties, LLC (“Applicant”) filed an application for approval of a preliminary plan of subdivision to resubdivide the property in order to create six lots on 4.08 acres of land in the R-90 zone, located 300 feet west of the Landgreen Street and Marianna Drive intersection (“Subject Property”), in the Aspen Hill Policy Area and Aspen Hill Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120160060, Wheaton Woods (“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 February 11, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); 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 voted to approve the Application, subject to certain conditions, by the vote certified below;

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120160060 to create six lots on the Subject Property, subject to

Approved as to
Legal Sufficiency

M-NCPPC Legal Department
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the following conditions:¹

1. Approval is limited to a total of six lots comprising five lots for single-family detached dwellings and one lot for the existing Wheaton Woods community pool.
2. The Applicant must comply with the conditions of approval of Special Exception No. 434.
3. The Applicant must dedicate a 44-foot-wide right-of-way for the proposed extension of the reclassified Tertiary Landgreen Street (and the proposed cul-de-sac) as a modified Tertiary Residential Street.
4. The Applicant must construct all road improvements within the right-of-way shown on the approved Preliminary Plan per the applicable modified Road Code design standards.
5. The Applicant must satisfy the Transportation Adequate Public Facilities-Policy Area Review test by making a Transportation Policy Area Review (TPAR) payment, equal to 25% of the applicable development impact tax, to the Montgomery Department of Permitting Services (MCDPS).
6. No clearing, grading, or recording of record plats may occur prior to Certified Preliminary Plan approval.
7. Prior to submission of a record plat, the Applicant must obtain approval of a Final Forest Conservation Plan (FFCP) from the Planning Department. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan (PFCP) as amended by any condition of Planning Board approval.
8. Prior to demolition, clearing, or grading, the Applicant must record a Category II Conservation Easement as shown on the FFCP in the Montgomery County Land Records by deed. The deed must be in a form approved by the Maryland-National Capital Park and Planning Commission (M-NCPPC) Office of the General Counsel, and the Liber Folio for the easement must be referenced on the record plat.
9. Prior to any land disturbing activities occurring on-site, a financial security agreement reviewed and approved by the Associate General Counsel Office of the M-NCPPC must be obtained for the planting requirements and invasive management work specified on the FFCP.
10. The Sediment and Erosion Control Plan and Stormwater Management Plan must be consistent with the limits of disturbance and the associated tree/forest preservation measures of the FFCP.
11. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Additional tree save measures not specified on the FFCP may be required by the M-NCPPC's forest conservation inspector at the pre-construction meeting.
12. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services (MCDPS) – Water Resources Section

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.

in its stormwater management concept approval letter, dated January 15, 2016, and hereby incorporates them as conditions of 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.

13. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated November 5, 2015, except recommendation #2, and as amended on November 30, 2015, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in these letters (except recommendation #2), which may be further amended by MCDOT, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
14. Prior to issuance of the building permit for the fourth dwelling unit, the Applicant must widen the existing four-foot wide sidewalk on the south side of Landgreen Street between the property line and Marianna Drive to a minimum width of five feet per the current County standards.
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 dwelling units' footprints, dwelling units' heights, on-street parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of the dwelling units, accessory structures and hardscape will be determined at the time of building permit review for each dwelling unit. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height and lot coverage. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
16. Show the required off-site sidewalk improvements on the south side of Landgreen Street for a minimum five-foot-wide sidewalk on the Certified Preliminary Plan.
17. The Subject Property is within the Wheaton High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the middle and high school-levels at the single-family detached unit rate for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
18. 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.

The Subject Property is located in the 1994 Aspen Hill Master Plan area. The Plan does not have specific recommendations for the site. However, the Application is consistent with the Plan's vision of maintaining Aspen Hill's primarily suburban, residential character. It supports several of the Plan's land use objectives:

- To encourage the protection, enhancement and continuation of current land use patterns.
- To protect and reinforce the integrity of existing residential neighborhoods.
- To preserve and increase the housing resources in support of Montgomery County housing policies.

Furthermore, the development will increase Aspen Hill's housing stock while maintaining the suburban character of the existing neighborhood. The lot sizes are compatible with those in the surrounding residential community, and the Application represents a logical continuation of the existing neighborhood. Therefore, the Preliminary Plan is in substantial conformance with the land use recommendations of the Master Plan.

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

Roads and Transportation Facilities

The Application will generate five new trips within the AM peak-period (6:30 to 9:30 a.m.) and six trips within the PM peak-period (4:00 to 7:00 p.m.) for the single family detached lots, and will continue to generate less than 50 peak-hour trips for the community pool. Accordingly, the Application is not subject to Local Area Transportation Review.

For the Policy Area Transportation Review, the Subject Property is located in the Aspen Hill Policy Area that has inadequate roadway capacity and adequate transit capacity. The Applicant must pay the Montgomery County Department of Permitting Services 25% of the Development Impact Tax based on the per unit rate for five new single-family detached units.

Landgreen Street is not a designated street in the 1994 *Aspen Hill Master Plan*. Marianna Drive and the segment of Landgreen Street between the Subject Property and Marianna Drive is a 60-foot wide Secondary Residential Street. Landgreen Street

extension within the Subject Property will be a modified Tertiary Residential Street, which can support up to 75 houses (or an equivalent of 83 peak-hour trips).

Landgreen Street Design Exception

Both the MCDOT and the Staff recommended sidewalks on both sides of the Landgreen Street extended, which would require it to be a Tertiary Street with minimum 50-foot-wide right-of-way. However, this increased right-of-way width would reduce lot sizes and push building restriction lines into the lots such that three of the lots would not be feasible. The Applicant has requested a modification of the Landgreen Street extended to be a modified 44-foot-wide right-of-way Tertiary Residential Street (Std, Detail MC-2001.01), with five-foot-wide sidewalks and six-foot green panels on both sides of the road instead of the standard 50-foot right-of-way. The Board finds that a 50-foot wide right-of-way is not necessary for these six lots, and that the standard 50-foot right-of-way will adversely impact some of the lots in the subdivision and may render them unbuildable. The MCDOT has accepted the modified Tertiary Street section and approved the design exception request.

Although the current Landgreen Street was created as a 60-foot wide Secondary Street (a Tertiary Road classification with a 60-foot right-of-way was not available then), the more appropriate classification for this existing street is today's Tertiary Road classification (created by the County Council in 1970 per Bill 42-70). At MCDOT's request, the Board finds and hereby reclassifies the existing Landgreen Street between the Subject Property and Marianna Drive as a Tertiary Street. This reclassification will not have any material impact on the functioning or the dedicated right-of-way of the street. It is only to create a consistent classification between the existing and the proposed extension since the current right-of-way of Landgreen Street is more appropriate as a Tertiary Street rather than a Secondary Street.

Public Transit Service

The closest Ride On route is route 26, which operates along Aspen Hill Road with 30-minute headways between the Glenmont Metrorail Station and the Montgomery Mall Transit Center on weekdays and weekends. The nearest bus stop is at the intersection of Aspen Hill Road and Marianne Drive, approximately 750 feet from the Subject Property.

Pedestrian Facilities

The existing Landgreen Street between the community pool's property line and Marianna Drive is approximately 290 feet in length and consists of four-foot wide sidewalks on both sides of the street with 11-foot wide green panels. These four-foot wide sidewalks do not meet the current County standard of minimum width of five feet. Section 50-35(m) of the Subdivision Regulation states that, "the Board may require a

developer to provide a reasonable amount of off-site sidewalks or sidewalk improvements..." In response to the MCDOT and the Staff's recommendation for off-site improvement of the existing sidewalks on Landgreen Street between the Subject Property and the Marianna Drive to bring them into compliance with the current road code, the Applicant requested that it not be required to install off-site sidewalks due to the cost of providing these improvements.

The Board finds that, in order to provide safe and adequate circulation for pedestrians and persons in wheelchairs, it is necessary to provide adequate off-site sidewalks that meet the current County code requirements. However, the Board finds that it is not necessary to provide improved sidewalks on both sides of the existing Landgreen Street. The Board therefore requires the Applicant to upgrade the existing sidewalk on the south side of the street only as conditioned in the approval of this Application.

With the required improvement of the sidewalk on the south side, the Application will have safe and adequate pedestrian access to and from the Subject Property.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

The Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. With the resubdivision criteria waiver discussed in Finding #6 below, the Application meets all applicable sections of the Subdivision Regulations, including the requirement that the size, shape, width, and orientation of the lots are appropriate for the location of the subdivision. The lots also comply with the dimensional requirements for width and setback in the R-90 Zone as specified in the Zoning Ordinance. Lots 21, 22 and 25 meet the frontage requirements of the zone, and the Board approves a waiver for Lots 23 and 24 as described below. As stated in Finding #1 above, the Application substantially conforms to the Master Plan because it is a logical continuation of the existing residential character of the Aspen Knolls neighborhood and it will promote the Plan's vision to increase the housing resources consistent with Montgomery County housing policies. Therefore, 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 uses contemplated for the Subject Property.

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

A. Forest Conservation

The Preliminary Forest Conservation Plan (PFCP), as conditioned, complies with the requirements of the Forest Conservation Law. There is no forest on-site; however, the land use, zoning and net tract area yield an afforestation requirement of 0.64 acres of forest planting. The Applicant will meet the requirement with on-site planting in one Reforestation Area identified on the PFCP to be placed in a Category II Forest Conservation Easement.

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 of one specimen tree and CRZ impacts to three 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.*

Impacts to specimen trees are minimal and confined to the center of the developable portion of the Subject Property; the proposed development is consistent with the zoning. Proposed impacts to the trees subject to the variance requirement cannot be avoided. Granting 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 requested variance is not based on conditions or circumstances, which are the result of actions by the Applicant, but on environmental, engineering and site constraints.

- 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 based on the 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.*

Three of the trees are not being removed and will continue to provide water quality functions as at pre-development. The one tree to be removed will be mitigated by the planting of replacement trees that will, in time, replace the lost water quality functions of the tree being removed. Therefore, the Applicant's Preliminary Plan will not violate State water quality standards or cause a measurable degradation in water quality.

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 Applicant received approval of their stormwater management concept plan by the MCDPS that includes a design to meet required stormwater management goals using a combination of ESD approaches including dry wells, micro-biorention and landscape infiltration.

6. *The approved lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood, as delineated in the Staff Report.*

Frontage: Lots 21, 22 and 25 have street frontages of 122, 96 and 60 feet, respectively, and are within the range of lots in the defined neighborhood. Lots 23 and 24 with frontages of 44 and 32 feet, respectively, do not meet the frontage requirement of the resubdivision criteria. The Applicant submitted a waiver request to the Resubdivision section of the Subdivision Regulations as follows:

Resubdivision of residential lots are subject to seven review criteria specified in Section 50-29(b)(2) of the Subdivision Regulations, which require the comparison of the new lots with existing lots in a delineated neighborhood to ensure that the new lots are of the same character as the existing lots in the neighborhood. Two of the five new lots (Lots 23 and 24) do not meet the street frontage requirement of the criteria. The Planning Board has the authority to grant a waiver pursuant to Section 50-38(a)(1) of the Subdivision Regulations, which state:

"The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide

relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.”

The Application cannot meet the frontage requirement for two lots because of the Subject Property's shape and its location within an existing neighborhood with access from only one public street. Since all new lots are required to have frontage on a public street, the extension of the existing Landgreen Street into the Subject Property with a cul-de-sac is the only feasible way to provide adequate public access and meet all other relevant fire and safety requirements. And since cul-de-sacs have wedge-shaped lots at the terminus (for Lots 23, 24 and 25 in this case), it is impossible for all new residential lots around the proposed cul-de-sac to have similar frontages as the lots in the neighborhood which does not does not have cul-de-sacs.

The location of the Subject Property with only one vehicular access point and the need to retain the existing community pool, makes a cul-de-sac the only viable layout feasible to create the new subdivision. The Board, therefore, finds that a practical difficulty exists due to the location of the Subject Property with a single point of access, which will terminate in a cul-de-sac on the Subject Property. Granting the waiver request for the frontage criterion for Lots 23 and 24 is the minimum waiver necessary to provide relief from the requirements. The waiver is not inconsistent with the purposes and objectives of the General Plan (as amended by the applicable master plan) and is not adverse to the public interest because the five new lots will be developed in accordance with the Zoning Ordinance (single-family development is permitted in the R-90 Zone). Furthermore, the resubdivision is in substantial conformance with the Master Plan. The Board thereby grants the waiver of lot frontage requirement for Lots 23 and 24.

Alignment: The five new lots are oriented directly to the street similar to a majority of existing lots in the defined neighborhood, although other orientations do occur in the neighborhood.

Size: The five new lots range in size from 9,167 square feet to 22,070 square feet; the existing lots in the Aspen Knolls neighborhood range from 9,000 square feet to 24,471 square feet.

Shape: The five new lots are slightly irregular-shaped; the existing lots in Aspen Knolls are a mixture of corner, irregular, rectangular and wedge-shaped lots.

Width: The five new lots range from 75 feet to 122 feet wide; existing lots in Aspen Knolls have widths that range from 75 to 160 feet.

Area: The five new lots will have a building area ranging from +2,812 square feet to +11,109 square feet. The surrounding neighborhood lots range from +2,261 to +13,023 square feet.

Suitability for Residential Use: The five new lots are suitable for residential use. The resubdivision is a logical extension of the existing residential neighborhood's character.

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 MAR -4 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 Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioner Fani-González voting in favor, Commissioner Dreyfuss opposed, and Commissioner Presley absent, at its regular meeting held on Thursday, February 25, 2016, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board