



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

JAN 24 2013

MCPB No. 12-107
 7001 Arlington Road
 Preliminary Plan No. 120120220
 Date of Hearing: November 1, 2012

RESOLUTION

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

WHEREAS, on April 26, 2012, AERC 7001 Arlington Road, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property to create 1 lot on 2.7 acres of land in the PD-44 zone, located on the east side of Arlington Road approximately 330 feet south of the intersection of Bethesda Avenue and Arlington Road ("Subject Property"), in the Bethesda CBD Sector Plan ("Master Plan") area; and


WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120120220, 7001 Arlington Road ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued an undated memorandum to the Planning Board, entitled *Preliminary Plan 120120220 & Site Plan 820120140, 7001 Arlington Road*, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on November 1, 2012, 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, on November 1, 2012, the Planning Board voted to approve the Application subject to conditions on motion of Commissioner Dreyfuss, seconded by Commissioner Presley, with a vote of 4-0; Commissioners Anderson, Carrier, Dreyfuss, and Presley voting in favor, with Commissioner Wells-Harley being absent from the hearing.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120120220 to create 1 lot on the Subject Property, subject to the

Approved as to
 Legal Sufficiency:  1/3/13
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following conditions:¹

1. Total development is limited to a maximum of 140 residential dwelling units and 7,000 square feet of commercial uses. A minimum of 15% of the total number of dwelling units must be moderately priced dwelling units ("MPDUs").
2. The certified Final Forest Conservation Plan must include the following:
 - a) Increase the soil depth over the entire rooftop planting beds so that a minimum soil depth of 3' will be provided. Limited exceptions to the soil depth may be accommodated subject to Staff approval.
 - b) Provide appropriate details, exhibits and notes on the Final Forest Conservation Plan to clearly show the soil volumes/depth associated with plantings. Include provisions for irrigation and maintenance as applicable.
 - c) Include a tree save plan component which addresses the foreseeable impacts to Park trees along the Capital Crescent Trail. The tree save plan shall also address the conditions enumerated by the Park arborist.
 - d) Revised forest conservation data table.
 - e) Clarification of the legend, notes and graphics to more clearly/accurately show the credited portions of planted tree canopy.
3. The sediment and erosion control plan and stormwater management plan must be submitted with the revised Final Forest Conservation Plan to ensure consistency with the limits of disturbances ("LODs") and the associated tree preservation measures.
4. Prior to approval of the certified site plan, the details for and location of noise mitigation techniques to attenuate current noise levels to no more than 65 dBA Ldn for areas of common outdoor activity must be approved by Staff.
5. Prior to approval of the certified site plan, the Applicant must submit a noise analysis prepared by an engineer specializing in acoustics that addresses details and locations of noise mitigation techniques to appropriately attenuate noise levels for the affected dwelling units.
6. The Applicant must provide Staff with a certification from an engineer specialized in acoustics that the building shell has been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn prior to certified site plan. The builder must construct the units in accordance with these design specifications, and any changes that may affect acoustical performance must be approved by the acoustical engineer in advance of installation.

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. After construction is complete, and prior to use and occupancy, the builder must provide Staff with a certification from an engineer specialized in acoustics confirming that interior noise levels do not exceed 45 dBA Ldn.
8. The Applicant must dedicate and show on the record plat(s) the following dedications: a minimum of 40 feet from the roadway right-of-way centerline or 80 feet from the opposite right-of-way line along the Subject Property frontage for Arlington Road.
9. The proposed traffic signal for the Arlington Road/Southern Site Access Driveway/Northern Bradley Boulevard Shopping Center intersection must be operational prior to the issuance of the residential Certificate of Use and Occupancy for the development.
10. The Subject Property is within the Bethesda-Chevy Chase High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the multi-family unit rates for all units (except MPDUs) for which a building permit is issued. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
11. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated April 18, 2012, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, 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 Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated September 25, 2012, (except for No. 17 as modified herein), and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, 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 (except for No. 17 as modified herein), other conditions of the Preliminary Plan approval.

Prior to submission of the Traffic Mitigation Agreement ("TMAg"), the Applicant must review potential locations on the application site for a bike sharing docking station (or similar provision required by the bike sharing system) to

enable this form of transportation to be used by residents, employees and visitors at the Project. If the Applicant elects to provide a bike sharing docking station on the application site, the location of this docking station will be selected by the Applicant with approval of the [Bethesda Transportation Management District], based upon the requirements of the bike sharing system and in a highly-visible, convenient, and well-lit location on the Project. If zoning regulations or other provisions adopted prior to issuance of the building so provide, the Project shall be required to pay the capital cost of such station and five years of operating expenses in return for offsetting parking reductions or other benefits.

13. The Applicant must enter into a TMAg with the Planning Board and MCDOT to participate in the Bethesda Transportation Management District ("TMD") and must execute the TMAg prior to the release of any residential building permit for development on the site. The TMAg must include those trip mitigation measures recommended by MCDOT, except as modified herein.
14. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
15. Prior to recordation of any plat, Site Plan No. 820120140 must be certified by Staff.
16. The record plat must show necessary easements.
17. Final approval of the number and location of buildings, on-site parking, site circulation, and sidewalks will be determined at site plan.
18. Clearing and grading must correspond with construction activities to minimize soil erosion and must not occur prior to certification of the Final Forest Conservation Plan, approval of Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices. The Applicant may receive a demolition permit, access permit, and utility permits prior to approval of the certified Site Plan and record plat, subject to approval from MCDOT and DPS.
19. 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.

20. 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 Preliminary Plan substantially conforms to the Master Plan because it consolidates three parcels into one lot. The creation of this lot, with frontage on Arlington Road and access to the Capital Crescent Trail, establishes a building envelope that can satisfy the general objectives and principles identified in the Master Plan for this area. The Master Plan calls for a diversity of architectural styles, greater pedestrian connectivity along streets, developing Arlington Road between Montgomery Lane and Bradley Boulevard as a Main Street, vehicular access to Arlington Road from the south-west corner of the site, and pedestrian and bicycle access to the Capital Crescent Trail on the east.

The consolidated lot is rectangular in shape with approximately 277 feet of street frontage on Arlington Road. The required streetscape improvements along Arlington Road will emphasize pedestrian activity and contribute to the main street concept where Arlington Road links the TS-R district to the north with residential areas to the south as the central spine of the shopping district. Furthermore, the proposed vehicular entrance to the site at the southwest corner as well as pedestrian and bicycle access from the Capital Crescent trail can be achieved with a lot of this shape and size. The mix of residential and commercial uses proposed will enliven and activate the area as envisioned by the Master Plan.

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

The access and road improvements shown on the Preliminary Plan will meet the applicable standards when the traffic signalization is installed.

Consistent with recommendations in the Master Plan, the Applicant will install a mid-block pedestrian/traffic signal on Arlington Road at the northern

Bradley Boulevard Shopping Center driveway/ southern site access driveway, which will accommodate safe pedestrian crossing across Arlington Road as well as safe in/out access from the development and the shopping center. The traffic signal at this location will thus promote access, traffic circulation, and pedestrian safety goals recommended in the Master Plan.

Transit services in the area include RideOn bus Route 36 that run between Bethesda Metro Station and areas in Potomac off Bradley Boulevard and River Road. Bus stops related to this route are located approximately 350 feet south of the site.

Critical Lane Volume ("CLV") values for intersections included in the Applicant's traffic study were estimated to be below the respective policy area congestion standards (1,800 CLV for the Bethesda CBD Policy Area). Based on the analysis presented in the traffic study, the Application satisfies the LATR requirements of the APF test. The Application will not result in any net "new" trips, and therefore is not subject to the PAMR requirements of the APF test.

The Subject Property will be served by public water and sewer connections that have been reviewed by Washington Suburban Sanitary Commission, which found that local lines of adequate size exist to serve the proposed development. The Montgomery County Fire and Rescue Service has determined that the Subject Property has appropriate access for fire and rescue vehicles. Electrical and telecommunications services are also available. Local health clinics, police stations and fire stations are all operating within acceptable levels as established by the Subdivision Staging Policy. The Subject Property is located within the school service areas of the Bethesda Chevy Chase Cluster (B-CC) which includes Bethesda Elementary School, Westland Middle School, and Bethesda-Chevy Chase High School. The FY 2013 Subdivision Staging Policy school test finds that the elementary and middle school capacity to be adequate in the B-CC cluster. At the high school level a school facility payment is required for subdivision approval in FY 2013.

- 3. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision.*

The application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The preliminary plan reflects the general layout and road network that was reviewed by the District Council as part of the Development Plan Amendment application DPA 11-4 approved in January of 2012. The lot will have frontage on a public street. The lot size is appropriate, for it accommodates a single building with a mix of uses. The width of the lot is suitable given the two points of access that are necessary

to accommodate the required on-site loading and residential parking garage. The shape is appropriate, for the consolidation creates a more rectangular lot which is appropriate for the orientation of 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 Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Subject Property which is located within a PD zone, triggers the special provision of forest conservation law section 22A-12(f)(2)(D) requiring that the afforestation requirements be met onsite.

The net tract area for the forest conservation plan (which includes the Subject Property boundary and the offsite LOD) is 2.61 acres in size and does not include any forest. However, there is an afforestation requirement of 0.39 acres which will be met onsite by canopy credit for landscape plantings. Because the development plan for this project provides a garage footprint over the entire site, the afforestation credits will be met onsite via roof top plantings. Based on case studies provided by the Applicant and further research by Staff, a number of recommended conditions have been included (such as increased soil volume) to help ensure the forest conservation requirements are appropriately satisfied and survive. In a natural setting the majority of tree roots are within a 3 foot depth. Such a 3 foot minimum depth is required as a condition of approval, however due to the accommodation of other required elements such as drainage slopes throughout the rooftop, some areas of even deeper depth will result. Forest conservation plantings in traditional ground setting often experience issues with the soil quality; whereas the imported rooftop plantings media will be ideal for root establishment. Further, the site plan approval is conditioned on Applicant's granting a perpetual covenant for the maintenance and replacement of the afforestation trees planted on the rooftop.

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 one Protected Tree. 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 site is surrounded by a retaining wall along portions of the Subject Property. The minor impact, less than 1% to the Protected Tree's CRZ is necessary to address stability of the existing retaining wall. The wall is proposed to remain however must be included in the LOD to allow for stabilization of the site during construction. Instability of the wall would result in further impacts or disturbance to the Protected Tree and surrounding properties in general. Therefore, the variance request would be granted to any applicant in a similar situation.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The the variance is to address the instability of an existing retaining wall. The variance is necessary due to existing conditions of the Subject Property; not as a result of actions by the Applicant.

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 need for the variance is not as 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 project will not violate State water quality standards or cause measurable degradation in water quality because the Protected Tree is not proposed for removal.

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.

The stormwater management concept for the site was approved on April 18, 2012, and meets the required stormwater management goals by the use of environmentally sensitive design ("ESD") measures to the maximum extent practicable. Treatment is provided by a combination of micro-biofilters and the use of volume based proprietary structural filter. The stormwater facilities on the site will be maintained by the Applicant. For routine inspections and maintenance, MCDEP will be allowed to access stormwater facilities on the terrace level via a vehicular lift provided by the Applicant to remain on the Subject Property at all times.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for eighty-five (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 JAN 24 2013 (which is the date that this Resolution is mailed to all parties of record); and

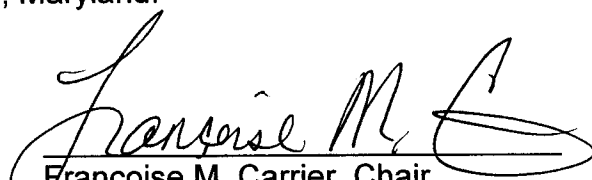
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative

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 Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor, at its regular meeting held on Thursday, January 17, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board