



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

MCPB No. 13-157
 Preliminary Plan No. 120130030
 Bounding Bend Residual
 Date of Hearing: November 14, 2013

NOV 18 2013

RESOLUTION

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

WHEREAS, on September 27, 2012, Kathleen Guinane and Robert Cunningham, ("Applicants"), filed an application for approval of a preliminary plan of subdivision of property that would create 2 lots on 1.01 acres of land in the R-90 zone, located at 7915 Bounding Bend Court ("Subject Property"), in the Shady Grove Sector Plan ("Sector Plan") area; and

WHEREAS, Applicants' preliminary plan application was designated Preliminary Plan No. 120130030 ("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 November 1, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on November 14, 2013, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120130030 to create 2 lots on the Subject Property, subject to the following conditions:¹

¹ For the purpose of these conditions, the term "Applicants" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Approved as to
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1. This Preliminary Plan is limited to two residential lots.
2. The Applicants must obtain approval of a Final Forest Conservation Plan from the Staff prior to recordation of the plat.
3. The impacts to tree #13 may not exceed 12% of the critical root zone as shown on the Preliminary Forest Conservation Plan. This includes any house location.
4. The impacts to tree #14 may not exceed 26% of the critical root zone as shown on the Preliminary Forest Conservation Plan. This includes any house location.
5. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated July 12, 2013 and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicants must comply with each of the recommendations as set forth in the MCDOT letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. Prior to recordation of plat, the Applicants must satisfy provisions for access and improvements as required by MCDOT.
7. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated June 28, 2013, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicants must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Stormwater Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. The Applicants must construct a five-foot wide sidewalk with a green panel along the Subject Property's Bounding Bend Court frontage, unless construction is waived by MCDPS prior to recordation of plat upon payment of a fee-in-lieu.
9. 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.
10. The Subject Property is within the Gaithersburg High School Cluster area. The Applicants must make a School Facilities Payment to MCDPS at the elementary school level at the applicable unit rates for any building permit issued for a new

residential unit. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

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 Shady Grove Sector Plan area. The Sector Plan confirms the existing R-90 zone for the Subject Property, but it makes no specific recommendations for the site. The Sector Plan supports protecting residential communities, while providing sidewalks, bike routes, and traffic calming measures in residential neighborhoods (p. 21). The Preliminary Plan will add a new residential dwelling to the area built to the development standards of the R-90 zone, which is consistent with the Sector Plan.

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

Roads and Transportation Facilities

The Subject Property will generate fewer than three total weekday peak hour trips. Accordingly, the Application is not subject to Local Area Transportation Review or to Transportation Policy Area Review ("TPAR"). Additionally, the Applicants are not proposing any new roads, drainage structures, or pavement widening. Existing conditions will be maintained as much as possible, resulting in very little impact on the capacity and/or operation of roads, intersections, and drainage systems at or near the Subject Property.

Sidewalks are required for lots in the R-90 Zone, but no sidewalks currently exist on Bounding Bend Court along the frontage of the Subject Property or the entire street. Chapter 49 of the Montgomery County Code requires the installation of a sidewalk along the property frontage, but the Applicant may request that MCDPS waive construction in exchange for a fee-in-lieu of providing the sidewalks.

Given the lack of sidewalks in the neighborhood, the Planning Board does not oppose such a waiver. Requiring the Applicant to provide a sidewalk along the property frontage would create the only sidewalk in the neighborhood, which fails to address overall neighborhood pedestrian connectivity.

Therefore, the Planning Board supports a fee-in-lieu of the sidewalk construction and believes that a comprehensive sidewalk network in the neighborhood should be dealt with through a County CIP project.

Other Public Facilities and Services

The Application has been reviewed by all public utilities, including Washington Gas, PEPCO, Verizon, and the Washington Suburban Sanitary Commission. All agencies have found that their respective utilities are adequate to serve the development. The Department of Fire and Rescue Services has approved a Fire Access Plan that assures emergency vehicles can access the site. Other public facilities and services, such as police stations, firehouses and health services, are currently operating within the standards set by the Subdivision Staging Policy currently in effect.

The Subject Property is within the Gaithersburg High School cluster. Under the FY2013 Annual School Test, residential development in this cluster, including this subdivision, must make a School Facility Payment at the elementary school level.

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 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 setbacks in the R-90 zone as specified in the Zoning Ordinance. Lot 1 will meet the frontage requirements of the zone, and the Board approves Lot 2 without frontage pursuant to Section 50-29(a)(2). Due to the history and current configuration of the property, exceptional circumstances exist that warrant the creation of Lot 2 without frontage, sharing a driveway with Lot 1. The shared driveway will be adequate to serve Lot 2 for emergency vehicles, the installation of public utilities, and access for other public services. It is also not detrimental to future subdivision of adjacent land, as the surrounding land is subdivided to its maximum potential. In light of the development pattern of the area and the recommendations of the Sector Plan, the lots are appropriately configured with respect to the surrounding development.

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

A. Forest Conservation

The Subject Property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and a preliminary forest conservation plan ("PFCP") was approved with the Application. The PFCP proposes no forest clearing on-site; however, a planting of 0.15 acres is required under the Forest Conservation Law for this Application. The Applicants propose to meet the 0.15 acre planting requirement by purchasing credits in an approved off-site forest bank.

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 requests a Variance to impact the critical root zones (CRZ) of two specimen trees (trees ≥ 30 " DBH) that are considered high priority for retention under Section 22A-12(b)(3) of the Forest Conservation Law. These two trees include a 48" diameter at breast height (DBH) red maple (tree #13) and a 32" DBH silver maple (tree #14) as identified in the Staff Report.

In accordance with Section 22A-21(a), the Board finds that absent a Variance, Applicant would be denied reasonable and significant use of the Subject Property and therefore suffer an unwarranted hardship.

The Board made the following findings necessary to grant the Variance:

- i. *Will not confer on the Applicants a special privilege that would be denied to other applicants.*

Granting the Variance will not confer a special privilege on the Applicants. Due to the configuration of the Subject Property and given that there is an existing house to be preserved on Parcel 331, there is only one suitable design configuration to divide the Subject Property into two lots. This design

configuration requires the removal of an existing swimming pool and framed deck and the extension of a gravel driveway to provide an adequate driveway for the existing house, and it includes the location of a proposed house. These necessary improvements will unavoidably impact the CRZs of trees #13 and #14.

- ii. *Is not based on conditions or circumstances which are the result of the actions by the Applicants.*

The approved Variance is based on the constraints of the Subject Property, the layout of the existing buildings on-site, the driveway configuration needed to meet the Montgomery County Fire and Rescue Services requirements, and the placement of stormwater management facilities as required by Montgomery County Department of Permitting Services. The Variance is not based on conditions or circumstances which are the result of actions by the Applicants.

- iii. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The approved Variance is a result of the proposed site design and layout on the Subject Property and not a result of land or building use on a neighboring property.

- iv. *Will not violate State water quality standards or cause measurable degradation in water quality.*

Because the specimen trees are not proposed for removal and are not located within an environmental buffer or within a Special Protection Area, the project will not violate State water quality standards or cause measurable degradation in water quality.

- 5. *All stormwater management requirements shall be met as provided in Chapter 19, article II, title "stormwater management", Section 19-20 through 19-35.*

The MCDPS Stormwater Management Section conditionally approved the Stormwater Management Concept for the Applicants on June 28, 2013. The stormwater management concept meets required stormwater management goals via two landscape infiltration practices, a bioswale and a drywell.

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

Frontage: Among the Neighborhood's 29 existing lots, lot frontages range from 26 feet to 153 feet. Eighteen of the lots have frontages of 75 feet or less. Eleven lots have frontages of 77 feet or greater. Proposed Lot 1 will have a street frontage of 39 feet and therefore is of the same character as existing lots in the Neighborhood with respect to frontage.

However, proposed Lot 2 will have zero feet of frontage and will access Bounding Bend Court by sharing a common driveway with Lot 1. Unusual circumstances prevent the full compliance of Lot 2 with the requirements of the Subdivision Code. Accordingly, a waiver under 50-38(a)(1) of the 50-29(b)(2) requirement that Lot 2's frontage be of the same character as those of other lots in the Neighborhood is warranted, as discussed below.

Alignment: Twelve of the 29 existing lots in the Neighborhood are perpendicular in alignment, 12 are radial, and the remaining 5 are corner lots. Proposed Lot 1 and Lot 2 will have a radial alignment and therefore are similar in character to existing lots.

Size: The size of the lots in the Neighborhood range from 8,063 square feet to 28,540 square feet. Nine of the existing lots are 9,630 square feet or smaller. Fourteen of the lots are 9,713 square feet to 12,402 square feet and 6 lots are 12,473 square feet to 28,540 square feet. The largest lot, at 28,540 square feet, (Lot 97) is adjacent to proposed Lot 1. At 25,018 and 19,087 square feet, the proposed lots will fall within the range of the existing lots in the Neighborhood. Although the proposed lots will be the second and third largest in the Neighborhood, they nonetheless are within the character of the Neighborhood, because the subdivision brings them more into conformance with the current situation. Therefore, the proposed size of Lots 1 and 2 are similar in character to the existing lots in the Neighborhood.

Shape: Fourteen existing lots in the Neighborhood are rectangular, and fifteen are irregular. The irregular shape of the proposed lots will be in character with shapes of the existing lots in the Neighborhood.

Width: Lot widths in the Neighborhood range from 75 feet to 165 feet. The lot widths for the most part are evenly dispersed within the range. Sixteen lots are 75 feet to 85 feet in width and 13 lots are greater than 85 feet wide.

Therefore, the proposed lots, at 75 and 85 feet wide, will be in character with existing lots in the Neighborhood with respect to width.

Area: The buildable area of lots in the Neighborhood ranges from 2,339 square feet to 16,211 square feet. Proposed Lot 1 will have a buildable area of 10,212 square feet. Proposed Lot 2 will have a buildable area of 14,056 square feet. The proposed lots fall within the Neighborhood range and will be of the same character as existing lots in the Neighborhood.

Suitability for Residential Use: The existing and the proposed lots are zoned residential, and the land is developed with residential uses. The proposed lots are, therefore, suitable for residential use and in character with the rest of the Neighborhood.

7. Subdivision Regulations Waiver, Section 50-38

The Planning Board, pursuant to Section 50-38(a)(1), grants a waiver to the requirements of Section 50-29(b)(2) for frontage for Lot 2. Unusual circumstances exist that prevent full compliance with the requirements, and the waiver is the minimum necessary to provide relief from the requirements; is not inconsistent with the purposes and objectives of the General Plan; and is not adverse to the public interest.

The waiver of the requirement that the resubdivided lots have street frontage of the same character as other lots in the Neighborhood only pertains to Lot 2, which contains the existing dwelling. Currently located on Parcel 331, the existing dwelling originally had street access solely by Ridge Road. The subsequent approval of the Mill Creek South Subdivision eliminated this access, and currently, access to Parcel 331 is provided via Outlot D, which has 39 feet of frontage on Bounding Bend Court. Thus, Parcel 331 and the existing home currently have no street frontage.

Parcel 331's current lack of street frontage and its abnormally large lot size constitute unusual circumstances that justify waiver approval. Because of the configuration of Parcel 331 and Outlot D, the requested waiver for proposed Lot 2 is the minimum necessary to provide relief from the frontage conformity requirement of Section 50-29(b)(2), and it is not adverse to the objectives of the General Plan. The waiver is also not adverse to the public interest, as the proposed driveway will serve as access to both proposed lots for emergency vehicles and other public services in conformance with the requirements of the Montgomery County Fire and Rescue Services. Furthermore, there is no detriment to future subdivision of adjacent lands, as the surrounding land is subdivided to its maximum potential.

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

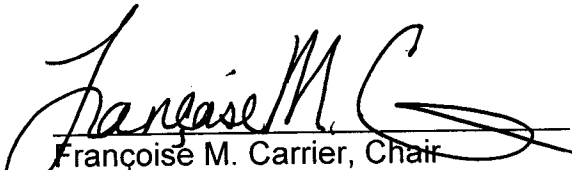
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is NOV 18 2013 (which is the date that this Resolution is mailed to all parties of record); and

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).

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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 Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, November 14, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board