



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

**MAR 11 2014**

MCPB No. 14-07  
Preliminary Plan No. 120130170  
No Gain  
Date of Hearing: March 6, 2014

**RESOLUTION**

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

WHEREAS, on March 3, 2013, 7111 Brookville Company LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create two lots on 0.97 acres of land in the R-60 zone, located 220 feet south of the intersection of Brookville Road and Thornapple Street ("Subject Property"), in the Bethesda-Chevy Chase Policy Area, Bethesda Chevy Chase Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No.120130170, No Gain ("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 14, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 6, 2014, 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 certified below;


NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120130170 to create 2 lots on the Subject Property, subject to the following conditions:<sup>1</sup>

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<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.

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Approved as to  
Legal Sufficiency

  
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- 1) This Preliminary Plan is limited to two lots for two-2 one-family dwelling units.
  - 2) 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 issuance of building permit(s). 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.
  - 3) The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its storm water management concept letter dated January 2, 2014, 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.
  - 4) The Applicant must enter into a stormwater management easement with DPS prior to RP application, and record it prior to record plat approval.
  - 5) The Applicant must dedicate and show on the final record plat 35 feet of right-of-way for Brookville Road, as measured from the existing right-of-way centerline, to provide a 70 feet wide right-of-way along the site's frontage as recommended in the 1990 Approved and Adopted *Bethesda-Chevy Chase Master Plan*.
  - 6) The record plat must reflect common ingress/egress and utility easements over the shared driveway.
  - 7) The fee-in-lieu payment or certificate of compliance to use an off-site mitigation bank that satisfies the 0.13 acre afforestation requirements must be submitted by the Applicant then approved by M-NCPPC staff prior to any clearing or grading within the project area.
  - 8) The Final Forest Conservation Plan must show and the applicant must install on site six 3" caliper native canopy trees to satisfy the tree variance mitigation requirements.
  - 9) 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 single-family detached unit rate for any unit for which a building permit is issued. The timing and amount of the
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payment will be in accordance with Chapter 52 of the Montgomery County Code.

- 10) 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 Master Plan does not specifically address the Subject Property, but recommends retention of existing zoning absent a specific recommendation for change on a particular property.

The Application complies with the recommendations adopted in the Master Plan in that it proposes one-family residential development consistent with surrounding development patterns and the current zoning designation. The residential lots will be similar to surrounding lots with respect to dimensions and orientation. This Application will not alter the existing pattern of development or land use and is in substantial conformance with the Master Plan recommendation to maintain the existing land use.

#### Historic Preservation

The property directly north and abutting the Subject Property, is known as "No Gain". It is an individually designated site in the Master Plan for Historic Preservation (#35/069), and the environmental setting includes the entire property. Because of the environmental setting, any work undertaken on the No Gain, property will be reviewed by the Historic Preservation Commission ("HPC"). The Applicant's arborist submitted a report noting that a 28" black cherry tree (Tree #7) and a 5" Sassafras (Tree "C") are growing on both the historic property and the Subject Site. Staff reviewed and granted permission for the removal of Tree #7. Tree "C" is less than 6"DBH, but is associated with the historic property's environmental setting and identified to be removed. The Preliminary Plan will have no adverse impact on this identified historic resource.

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

The Subject Property is located on Brookville Road (MD 186), which is owned, operated and permitted by the Maryland State Highway Administration (SHA). As such, the Montgomery County Department of Transportation (MCDOT) had no comment on the Application, and deferred any recommendations on the subdivision to SHA.

The site has vehicular access from MD 186 via one existing residential driveway. Vehicular access to the subject property will be limited to the existing residential driveway and will be a shared between the two residential lots. Bicyclist access to the site will be provided on MD 186, which is a designed shared roadway in the 2005 Bikeways Functional Master Plan.

SHA waived the requirement to provide a sidewalk along the Subject Property's frontage. The waiver of the sidewalk requirement was based on existing physical constraints within the roadway that make construction in this location unfeasible. The immediate area is served by Montgomery County Ride-On and Metrobus transit service.

The Master Plan and the 2005 Bikeways Functional Master Plan designates MD 186, Brookville Road, (P-5), as a Primary Roadway with a minimum right-of-way width of 70 feet and an on-road shared bicycle facility designated as SR-4. Primary roads are described in the Master Plan as streets that serve as local collectors between higher volume roadways and residential uses.

The Property will generate two AM peak-hour and three PM peak-hour vehicular trips. Because of this de minimis impact, the subdivision is exempt from the Local Area Transportation Policy Review (LATR) and Transportation Policy Area Review (TPAR). The Application satisfies Adequate Public Facility (APF) requirements and does not necessitate further traffic analysis. The development satisfies the LATR and TPAR requirements of the APF review and will provide safe, adequate, and efficient site access.

#### Other Public Facilities and Services

The property will be served by public water and sewer systems. The Montgomery County Fire and Rescue Service reviewed the Application and determined that the Subject Property had appropriate access for fire and rescue vehicles. The Site is located in the Bethesda - Chevy Chase cluster, which is operating over its program capacity at the high school level. Consequently, a school facility payment is required. Other public facilities and services, such as police stations, firehouses, health services and utilities are available to serve 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 Planning Board finds that the Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, Subdivision Regulations. The lot size, width, shape and orientation are appropriate for the location of the subdivision. The Subject Property consists of two unplatted parcels that separately and together have a flag shape. The tract contains ample area for two lots that fully meet the R-60 zoning development standards as anticipated by the Master Plan, but the existing shape of the Subject Property necessitates that the lots continue to be flag shaped. Although flag lots do not exist elsewhere in the area, this is the manner in which the house being replaced on the property was developed and is the only option for achieving the second lot that the underlying zoning supports.

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

A. Forest Conservation

No forest exists on-site but the Application is subject to an afforestation requirement of 0.13 acres. Given the relatively small size of the property, the lack of environmentally sensitive areas, the modest amount of afforestation requirements, the afforestation will be satisfied by either fee-in-lieu or the use of an off-site forest mitigation 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 will require the removal or impact to 14 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance. 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 Planning Board finds the two lots could not be constructed without impacts to the subject trees, and the lots are configured to minimize impacts to the subject trees. 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 requested variance is not based on conditions or circumstances that are the result of actions by the applicant. The requested variance is based on achieving standard development goals allowed within the existing zoning and associated regulations.

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 a result of the Application on the Subject Property, and is not related to 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 replanting of mitigation trees will provide shade, water retention and uptake, which will result in even less Stormwater runoff. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

4. *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.*

The Montgomery County Department of Permitting Services has reviewed storm water management concept plan (#250291) and determined by letter dated January 2, 2014 that the Application met the storm water management requirements contained in Chapter 19, of the Montgomery County Code.

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

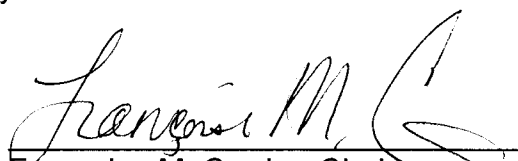
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAR 11 2014 (which is the date that this Resolution is mailed to all parties of record); and

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 Anderson, 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, March 6, 2014, in Silver Spring, Maryland.

  
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Françoise M. Carrier, Chair  
Montgomery County Planning Board