



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

MCPB
12/10/09
Item # 6



MEMORANDUM

DATE: November 30, 2009

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *Rd K*
Catherine Conlon, Subdivision Supervisor *CAC*
Development Review Division

FROM: Richard A. Weaver, Coordinator (301-495-4544) *RAW*
Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: Three (3) lots for three (3) one family detached dwellings (one existing),
to include two lots for children of the property owner.

PROJECT NAME: Duck's End

CASE #: 120060810

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations and Chapter 59
Sec. 59-C-9.74(b)(4)

ZONE: RDT

LOCATION: On the southeast side of Bucklodge Road (MD 117), approximately 500
feet west of White Store Road

MASTER PLAN: Agricultural and Rural Open Space

APPLICANT: Charles and Joanne Weber

ENGINEER: CAS

ATTORNEY: Miller, Miller and Canby

FILING DATE: March 13, 2006

HEARING DATE: December 10, 2009

RECOMMENDATION: Approval, pursuant to Section 59-C-9.74(b)(4) and subject to the following conditions:

- 1) Approval under this preliminary plan is for three lots, including two child lots.
- 2) The applicant must comply with the conditions of the Final Forest Conservation Plan. The applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable. The applicant must dedicate and the record plat must show dedication of 35 feet from the centerline (70 ft. right-of-way) along the property frontage for Bucklodge Road.
- 3) The record plat must reflect a Category I easement over all areas of forest conservation.
- 4) The applicant must comply with the conditions of the MCDPS stormwater management approval dated March 17, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 5) The applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated February 26, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 6) The applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated April 26, 2006. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 7) The applicant must comply with the conditions of the Maryland State Highway Administration (MDSHA) letter dated March 31, 2006. These conditions may be amended by MDSHA, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 8) The final Certified Preliminary Plan and record plat must show a cistern easement as approved by the Montgomery County Fire and Rescue Services.
- 9) Record plat to reference appropriate common ingress/egress and public utility easement for the shared driveway.
- 10) The record plat must identify Lots 1 and 2 as shown on the certified preliminary plan to be Child Lots, approved pursuant to Section 59-C-9.74(b)(4) of the Montgomery County Zoning Ordinance.
- 11) 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.
- 12) Other necessary easements must be shown on the record plat.

SITE DESCRIPTION (Figure 1)

The subject property (Property” or “Subject Property”) is 28.28 acres in size and is zoned RDT. It is located on the southeast side of Bucklodge Road (MD 117), approximately 500 feet west of the intersection with White Store Road. There is one, one family house with a detached garage located in the southeastern corner of the site. The Property is currently used for hay production

and occasionally for the boarding of horses. The Property is bisected by a stream valley that includes a pond. A driveway from Bucklodge Road crosses the stream to reach the house.

There are 4.52 acres of forest on the Property. For the 3-lot subdivision requested by the Applicant, 20.55 acres of the 28.22 acres are exempted from the requirements of the forest conservation law under an Agricultural Declaration of Intent. The remaining 6.49 acres make up the net tract area subject to forest conservation. It includes proposed lot 1, proposed lot 2, the residential (non-farmable) portion of lot 3, and other portions of the site used for improvements as part of this project (septic, cistern, expanded driveway, etc...).



Figure 1

PROJECT DESCRIPTION (Figure 2)

This application has been submitted pursuant to Section 59-C-9.74(b)(4) of the Montgomery County Zoning Ordinance. This section, known as the child lot provision, permits creation of lots for children of the property owner, under certain circumstances. Child lots created under this provision can exceed the standard lot densities otherwise prescribed in the RDT zone, but must not exceed the number of TDR's that are available on a given property.

Section 59-C-9.74(b)(4) reads as follows:

Section 59-C-9.74. Exempted lots and parcels – Rural Density Transfer

- (b) The following lots are exempt from the area and dimensional requirements of section 59-C-9.4 but must meet the requirements of the zone applicable to them prior to their classification in the Rural Density Transfer zone.
 - (4) A lot created for use for a one-family residence by a child, or the spouse of a child, of the property owner, provided that the following conditions are met:
 - (i) The property owner can establish that he had legal title on or before the approval date of the most recent sectional map amendment which initially zoned the property to the Rural Density Transfer Zone;
 - (ii) This provision applies to only one such lot for each child of the property owner;
 - (iii) Any lots created for use for one-family residence by children of the property owner must not exceed the number of development rights for the property.

Staff has determined that this Property qualifies for subdivision under the child lot provision because the Property owner has had legal title to the Property prior to January 6, 1981, or the date of adoption of the sectional map amendment that rezoned the Property to the RDT zone. The preliminary plan proposes three lots: two child lots at 2.0 acres and 1.97 acres, respectively, and one large lot at approximately 23 acres, with the existing house on it. All three lots will rely on sand mounds to provide the necessary sewage disposal and will use individual wells for water supply.

This application was originally submitted for three child lots for a total of four lots, with the four lots spread out over the entirety of the farm. Under this original concept there were three lots at approximately 5.0 acres each and one larger lot with the existing house on it at 10.0 acres. Staff did not support such a layout because it would not preserve agriculture to the extent envisioned by the AROS plan. Essentially, the farm would become a residential subdivision with lot sizes that would not likely be able to support larger scale and more viable agricultural operations.

The current proposal is a revision in response to staff's concerns that proposes to cluster two child lots on the southern half of the site as tightly to the existing house as possible. The child lots have been reduced in size so that they do not exceed 2.0 acres and each lot will include the three sand mounds fields for their respective homes. The parents' house will remain and be located on a 23.07 acre lot. The sand mounds for the parents' lot will be located on the opposite side of the stream that bisects the site, but on the same lot. This sand mound is required to replace the existing septic system currently used by the existing house.

The current driveway would be widened, where necessary, to satisfy Fire and Rescue Services access requirements, and used to access all three lots. A cistern easement and pull-off, also required by Fire and Rescue Services, is shown on the plan alongside the driveway that and could be used in the future to accommodate a 30,000 gallon underground water cistern for fire department use. To avoid unusually long pipestems the two child lots are proposed to have no direct frontage on the public right-of-way. The findings for lots without frontage are discussed later in this report.

The house locations have been situated by the Applicant to minimize impact to existing and future agricultural uses that could take place on the farm. The lots have been reduced in number and in size to 2 acres or less to further minimize the impact to productive agricultural areas. The proposed child lots will be located partially on "prime soils". Prime soils are soils that exhibit characteristics that produce the highest sustained yield of crops while requiring the minimal expenditure of economic and energy resources and that can be farmed with less environmental damage. The Property has 6.99 acres of "prime soils" available for farming with an additional 2.89 acres of prime soils in the forested areas. Child Lot 1 would take up 1.24 acres (17.7 percent) and Child Lot 2 would take up 1.59 acres (22.7 percent).

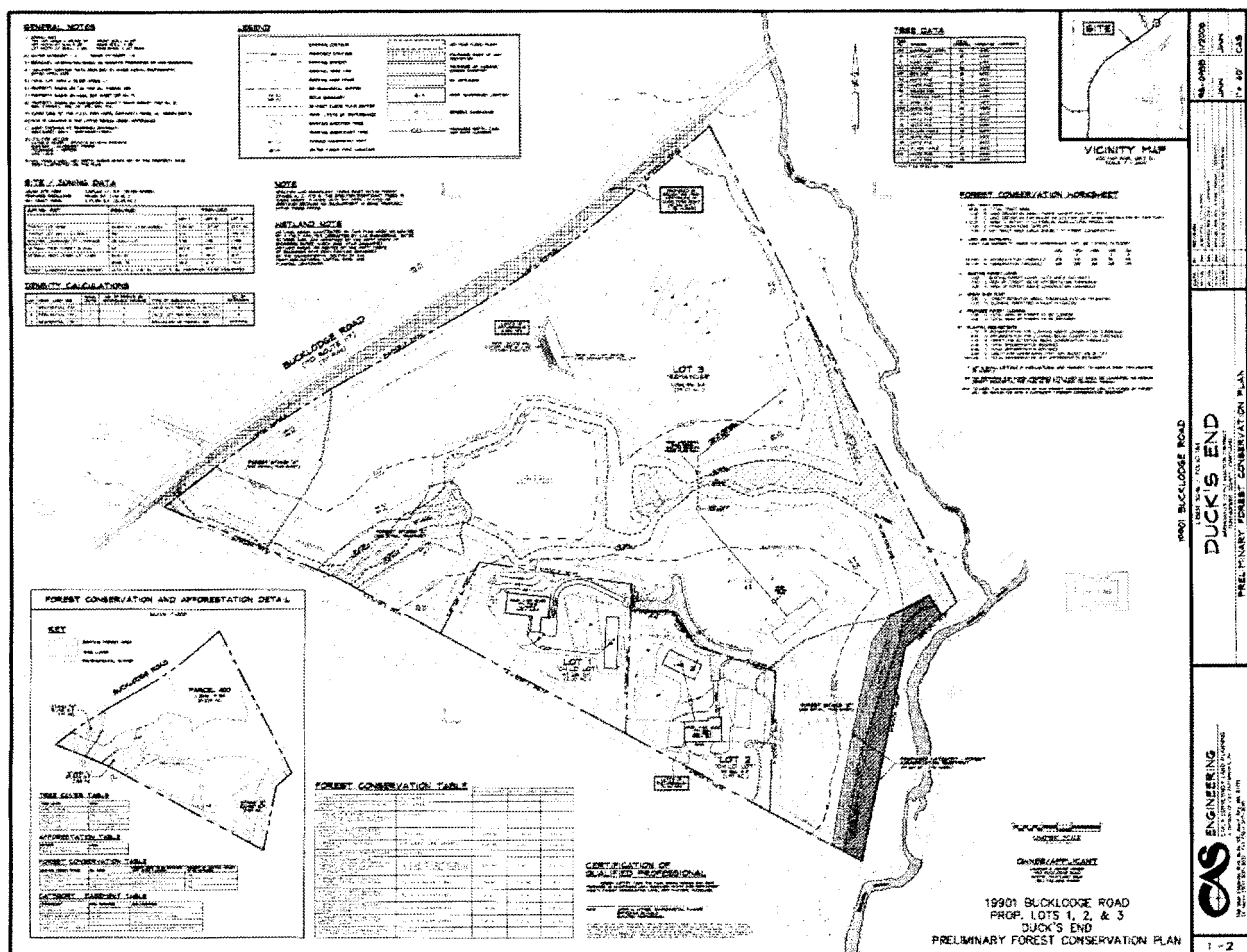


Figure 2

ANALYSIS AND FINDINGS

Master Plan Compliance

The Functional Master Plan for the Preservation of Agriculture and Rural Open Space (AROS) guides the development of this property. Applicable excerpts from AROS appear below in the order of their appearance in the master plan.

Functional Master Plan for the Preservation of Agricultural and Rural Open Space (AROS, 1980)

“This Plan focuses on the preservation of farmland but it also tries to establish a policy framework that will contribute to the continuation of farming in the County” (p. i, emphasis original).

“This Plan recommends...

- *“Preservation of critical masses of farmland...*
- *“Applications of incentives and regulations to preserve farmland and... to encourage agricultural use of the land.*
- *“Application of specific innovative preservation techniques such as the Rural Density Transfer Zone...*
(pg. iv)

“For those areas designated as the Agricultural Reserve, the Rural Density Transfer Zone (RDT) is recommended. These areas contain a critical mass of productive farmland worthy of protection, as well as other non-farmland uses which serve to support and define the critical mass” (p. 41, emphasis original).

This application required difficult decisions regarding the creation of child lots within the RDT zone given the lack of any refinements being made to existing child lot policy by the County Council. As such, considerable thought and discussion have gone into this staff report and its recommendations. In the end, staff reached a conclusion in this case by focusing upon the historical interpretation of child lots, past staff recommendations on the subject, the specific language of the Master Plan, and past decisions by the Planning Board since the inception of the child lot concept rather than the more recent discussions of policy changes. Staff strongly supports these proposed changes as the appropriate way of moving forward in the Agricultural Reserve, but doesn't feel that they can be used to influence pending applications until they are formally adopted.

With regard to the Master Plan language, staff concluded that the proposed application does preserve farmland that can continue to be farmed, and that this farmland, while not specifically fitting into the critical mass referred to in the Master Plan, will continue to contribute to it as it is configured. Staff does not consider the 28.28 acre farm to be a part of the agricultural reserve's critical mass of farmland because, while a large property in the residential sense, it is a small scale farm operation in the RDT zone. It is a fairly isolated property with boundaries that are generally lined with forest or unbroken hedgerows. Aerial photos do not indicate any combined use of the Property's fields with adjacent fields and it does not appear likely that the adjacent uses could or would expand onto the Subject Property to create large scale farm operations. The Subject Property is fairly isolated unto itself; streams separate the northern and eastern boundaries from adjacent properties; Bucklodge Road forms the western boundary with forest on the opposite side of the road, and the property to the south looks to be primarily used for residential purposes. The house on the property to the south is located immediately adjacent to the area proposed for the two new child lots. The adjacent house is surrounded with yard, swimming pool and other non-farm related uses. Since the Property is a standalone "farm", the review of the application focused on the preservation of agriculture on the site itself.

The Property is distinctly bisected by a stream, and associated pond. The two new lots are shown clustered adjacent to the existing home site on the rear (south) of the Property and they have been reduced in size to 2.0 acres and 1.97 acres. As previously mentioned, the location of the new homes would be on prime soils, but on an isolated portion of the Property not favorable for sustainable agricultural uses. The area is best described as the "side yard" for the existing home and as described previously, it is inaccessible, relatively small, and not likely able to be used in conjunction with the residential lot to the south.

The result of the proposed layout is that approximately 24 acres, or 86 percent of that property could continue to operate as a small-scale farm. The front field, adjacent to Bucklodge Road, remains very attractive for continued agricultural use either by the Property owner or through a lease agreement with an off-site user. The front field would constitute approximately 15.0 acres of available agriculture, including the field, pond and area to be dedicated to the public-right-of-way. The pond may, in fact, serve as a source of irrigation should the need arise; the right-of-way can continue to be farmed. The sand mound back up reserve areas can also be used for agriculture. Further, the location of all three homes, removed from views along Bucklodge Road, also addresses a goal of the Rustic Roads Functional Plan to minimize visual impacts to designated roads, if possible.

The preliminary plan also utilizes "incentives" to preserve farmland as recommended by the AROS plan. As noted, staff objected to the initial, four lot proposal, mainly because it located lots in the front field, which staff views as the most appropriate for viable agriculture given accessibility to roads, gentle slopes, and existence of cleared fields. With the four lot proposal, the usable areas of the farm were totally fragmented. The applicant eliminated one of the child lots from the proposal. By eliminating one lot, one TDR is preserved on the property and remains available to be transferred at a later date, thereby, promoting the transfer of development from the Agricultural Reserve to a TDR receiving area in other parts of the County.

For these reasons, staff finds this plan in conformance with the AROS master plan. Preservation of this entire isolated Property would provide little to no benefit to the protection of the overall critical mass of farmland in the Agricultural Reserve. The location and size of the proposed lots do not impact, to a significant degree, the most logical and contiguous areas on the Property suitable for agriculture. The proposed new homes and lots are appropriately located in an area not as conducive to successful, long-term agriculture. The reduction of one lot preserves a TDR on the Property for the potential transfer of density to a receiving area.

Public Facilities

Roads and Transportation Facilities

The proposed lots do not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the application is not subject to Local Area Transportation Review. Right-of-ways will be dedicated to the full width required for a rustic road (35 ft. from centerline), and no improvements are proposed. Sidewalks are not supported, nor required, in the RDT; development densities in the Agricultural Reserve generate little pedestrian traffic. Local roads may be used in these instances to safely accommodate pedestrians. Staff finds that proposed vehicle and pedestrian access for the subdivision will be safe and adequate.

Other Public Facilities and Services

The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property will have appropriate access for fire and rescue vehicles but that an easement must be created to provide an area to construct a water supply cistern in the future should the County establish a policy for them. Other public facilities such as schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The application is not within a school moratorium area; and is not subject to payment of School Facilities Payment. Both Verizon and PEPCO have reviewed this plan to determine if their respective utility can adequately serve the proposed development. Both utility providers have found that utilities are adequate. Washington Gas does not serve this area of the County. Staff finds that the lots created by this application will be adequately served by all public and private utilities and services.

Environment

Forest Conservation

Staff finds that the plan meets all applicable requirements of the county Forest Conservation Law, Chapter 22A. Of the 28.28 acre farm, 20.55 acres will remain in agriculture and be exempted from forest conservation requirements through a staff approved, agricultural Declaration of Intent (DOI). The remaining net tract area consists of 6.49 acres of non-farmable area and is subject to the law. The forest conservation requirement on the 6.49 acre net tract equals 1.46 acres. To meet the 1.46 acre planting requirement the Applicant has proposed to retain, at a 2:1 ratio, 2.92 acres of on-site forest in a Category I easement to be located within the otherwise agriculturally exempted portion of the site.

Environmental Guidelines

The farm from which the two proposed lots are to be created does contain a stream and associated stream valley buffer. Since the Applicant proposes to continue agriculture uses on the remainder farm, a Declaration of Intent (DOI) has been approved by staff to allow continuation of agriculture. However, a portion of the stream valley buffer as discussed above will be protected with a Category I easement to meet the forest conservation requirements for the two lots. The proposed lots are in compliance with the Environmental Guidelines.

Stormwater Management

The Montgomery County Department of Permitting Services (MCDPS) has approved a stormwater management concept to address runoff as required under Chapter 19 of the County Code. The concept requires quality control of runoff through non-structural methods. No quantity control is required because runoff volumes do not exceed 2.0 cubic feet per second. Chapter 50 requires that the stormwater management concept plan be approved by MCDPS prior to Planning Board action on a preliminary plan. Therefore, staff finds that stormwater management requirements are adequately addressed.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision as previously discussed regarding the size, shape and location of the lots on the farm. Access and circulation for vehicles, emergency equipment and pedestrians has also been found by staff to be adequate. The Plan has also been found to comply with Chapter 22A and adequately protects forest and environmentally sensitive feature on the lots.

The lots were reviewed for compliance with the dimensional requirements for the RDT zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in attached Table 1. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

Lots Without Frontage

Section 50-29(a)(2) of the Subdivision Regulations states that ...”every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road. In exceptional circumstances, the Board may approve not more than two (2) lots on a private driveway or private right-of-way; provided that proper showing is made that such access is adequate to serve the lots for emergency vehicles, and for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands.”

For this application, staff finds that an exceptional circumstance exists whereby the Board may approve lots without frontage. Because of the rather large size of this property, the desire to place the new lots to the rear of the Property near the parents' home and to preserve maximum agriculture, unusually elongated pipestems would need to be created to provide frontage. Staff has determined that the proposed lots can be safely and adequately served by the existing driveway, and that the ingress and egress easement that would be created on the driveway provides assurances for the continuation of that access. Further, Fire and Rescue Services has found that emergency equipment can adequately access the Property and access by other public services is not hindered by the private driveway. Utilities could be accommodated in the suggested ingress/egress and utility easement recommended in Condition #10. The Board's approval of a lots without frontage would not hinder future development of adjacent lands. Therefore, staff believes that a proper showing has been made to allow lots to be approved without frontage

Citizen Correspondence and Issues

The Applicant properly noticed adjacent and confronting property owners as well as local civic associations in accordance with the submittal procedures established at the time this application was received for review. No correspondence has been received by staff on this application as of the date of this report.

CONCLUSION

The creation of lots for children is generally recognized as one of the means to promote the continuation of family owned farming operations in Montgomery County. This plan would allow two child lots in addition to a lot for the parents' house on 28.28 acres of land in the RDT zone. Staff finds that the plan will not conflict with the AROS master plan goals of preserving the critical mass of farmland in the Agricultural Reserve because this Property's contribution to that area is limited by its size and configuration. This plan protects the large majority of the farmable area as a farmette lot, including a large contiguous field that can continue to be farmed. The proposed child lots are the minimum size that they can be and are located in a manner that limits their impact on the continued farm use. The plan has been reviewed for consistency with the Subdivision Regulations and Zoning Ordinance and is found to comply with all applicable sections. As such, staff recommends approval of the plan with the conditions specified.

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Duck's End				
Plan Number: 120060810				
Zoning: RDT				
# of Lots: 3 (2 Child Lots)				
# of Outlots:				
Dev. Type: Residential/Agricultural				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	40,000 sq. ft.	1.97 acres. minimum	RW	11/30/09
Lot Width	150 ft.	400 ft. minimum	RW	11/30/09
Lot Frontage	25 ft.	0 ft. minimum	RW	11/30/09
Setbacks			RW	11/30/09
Front	50 ft. Min.	Must meet minimum ¹	RW	11/30/09
Side	20 ft. Min./ 40 ft. total	Must meet minimum ¹	RW	11/30/09
Rear	35 ft. Min.	Must meet minimum ¹	RW	11/30/09
Height	50 ft. Max.	May not exceed maximum ¹	RW	11/30/09
Max Resid'l d.u. per Zoning	1	3 (2 Child lots)	RW	11/30/09
MPDUs	N/A		RW	11/30/09
TDRs	N/A		RW	11/30/09
Site Plan Req'd?	No		RW	11/30/09
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street	Yes	RW		11/30/09
Road dedication and frontage improvements	Yes	Agency letter		4/26/06
Environmental Guidelines	Yes	Staff memo		11/9/09
Forest Conservation	Yes	Staff memo		11/9/09
Master Plan Compliance	Yes	Staff memo		11/30/09
Other (i.e., parks, historic preservation)				
ADEQUATE PUBLIC FACILITIES				
Stormwater Management	Yes	Agency letter		3/13/09
Water and Sewer (WSSC)	N/A	Agency comments		3/13/06
10-yr Water and Sewer Plan Compliance	Yes	Agency comments		3/13/06
Well and Septic	Yes	Agency letter		2/26/09
Local Area Traffic Review	N/A	Staff memo		3/13/06
Policy Area Mobility Review	N/A	Staff memo		3/13/06
Transportation Management Agreement	No	Staff memo		3/13/06
School Cluster in Moratorium?	No	RW		11/30/09
School Facilities Payment	No	RW		11/30/09
Fire and Rescue	Yes	Agency letter		1/9/08
Other (i.e., schools)	No	RW		11/30/09

¹ As determined by MCDPS at the time of building permit.