



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

MCPB
Item #
6/17/10



MEMORANDUM

DATE: June 4, 2010

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Catherine Conlon, Subdivision Supervisor *CC*
Development Review Division

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

REVIEW TYPE: Pre-Preliminary Plan of Subdivision

APPLYING FOR: 2 lots and 1 outlot for 2 one-family detached dwelling units and a farm remainder

PROJECT NAME: Aigner
CASE #: 720090110
REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations, Section 50-35A(a)(8)

ZONE: RDT
LOCATION: On the east side of Old Hundred Road (MD109), approximately 3000 feet south of the intersection with Thurston Road
MASTER PLAN: Agriculture & Rural Open Space

APPLICANT: Hans Aigner
ENGINEER: CAS Engineers

FILING DATE: March 18, 2009
HEARING DATE: June 17, 2010

RECOMMENDATION: Approval subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 2 lots and 1 outlot for 2 one-family detached residential dwelling units.
- 2) The Applicant must obtain final approval of the preliminary forest conservation plan prior to approval of the minor subdivision record plat by the Planning Board.
- 3) At the time of record plat application, the applicant must provide verification to MNCPPC staff of the availability of a TDR for each of the proposed lots.
- 4) Compliance with conditions of MCDPS, Well and Septic Section letter dated March 2, 2010.
- 5) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 6) The record plat must contain the following note: "Agriculture is the preferred use in the Rural Density Transfer Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery, and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone."
- 7) 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.
- 8) Other necessary easements must be shown on the record plat.

SITE DESCRIPTION (Figure 1 – vicinity map)

This application consists of a single unplatted parcel (P682, Tax Map DX33) "Property" or "Subject Property", and contains 115.51 acres, zoned RDT and located on the east side of Old Hundred Road (MD109) approximately 3,000 feet south of the intersection with Thurston Road. Adjacent and confronting properties are also zoned RDT. The site is currently used for agricultural operations and contains a house in the western portion of the Property, accessory structures, and numerous utility rights-of-way.

The Property abuts a historic resource identified as the W.O. Sellman House #10/69 and located on Parcel 020 to the south. The driveway that provides access to the historic home passes through the Subject Property. Other driveways also traverse through the Property and provide access to adjacent properties.

The Property contains 12.91 acres of forest according to the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD). The site drains to the Little Bennett watershed a Use III-P stream. There are numerous wetlands and small headwater streams on the perimeter of the Property that include 21.89 acres of associated environmental buffers. There are no prime agricultural soils on the Property.

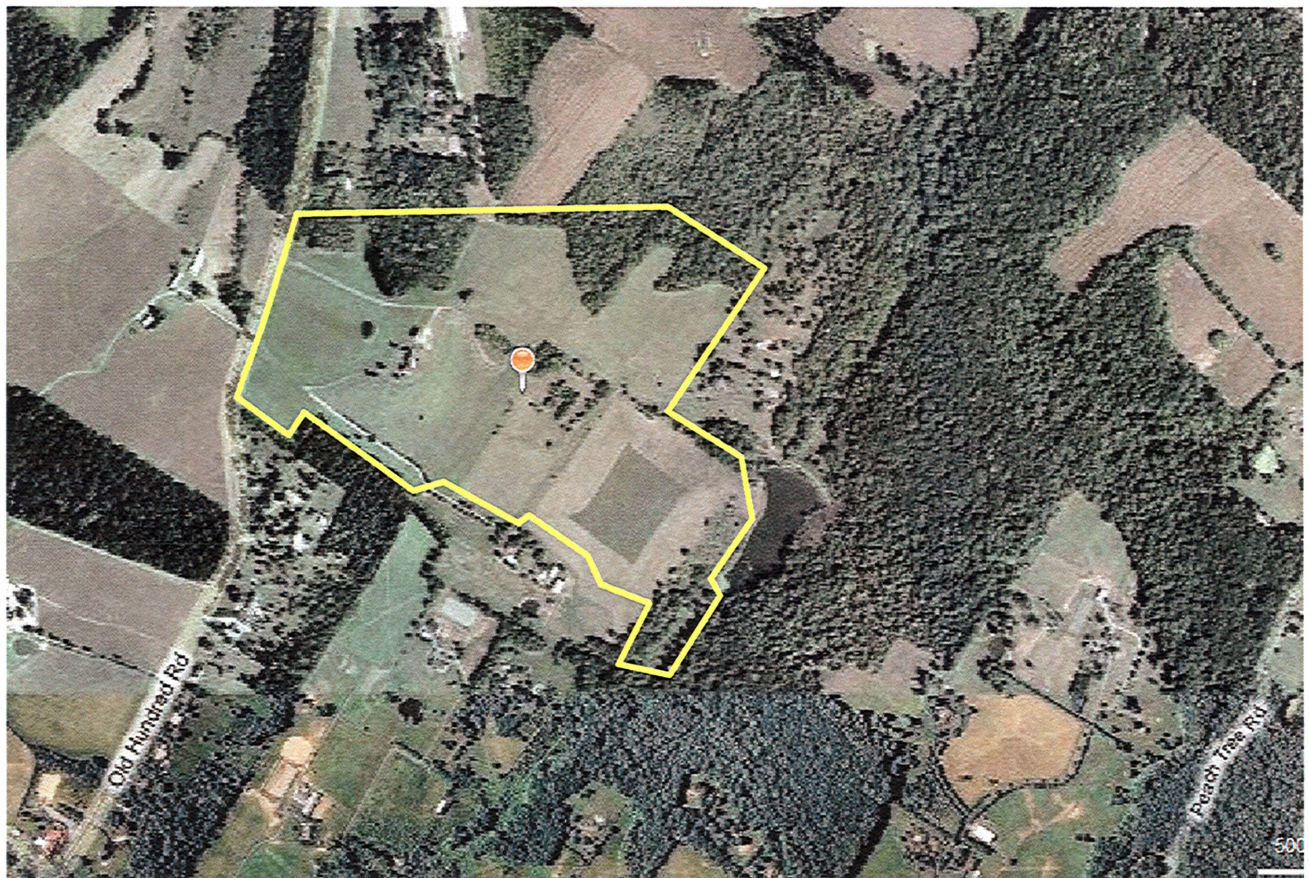


Figure 1: Aerial Image

PROJECT DESCRIPTION (Figure 2 – proposed plan)

The application requests approval to create 2 lots, one with the existing house at 30.0 acres and a second lot at 27.3 acres which will allow construction of a new home. The application also proposes to create an outlot of 50.1 acres that will remain unbuildable but that can be farmed. Given that there are four Transferable Development Rights remaining on this Property, and density remaining under the one lot per 25 acre allowance, there is a potential to create 2 additional lots from this outlot in the future.

As part of this subdivision application, the existing house on Proposed Lot 1 is required to have a modern septic system approved and this will be accomplished by using sand mounds. The new house, on proposed Lot 2, has been approved for a conventional septic system. No development is proposed on the outlot at this time.

Both proposed lots will have frontage on Old Hundred Road (MD109) which is identified as a Rustic Road in the Rural and Rustic Road Functional Master Plan. Access to the existing house on Proposed Lot 1 will continue to be via a shared driveway with the historic home to the south.

Access to Proposed Lot 2 will be from an existing driveway that traverses the site and is currently used by a property to the northeast. Shared ingress/egress and utility easements will be recorded for all shared driveways. The access points have been reviewed and approved by the Maryland State Highway Administration.

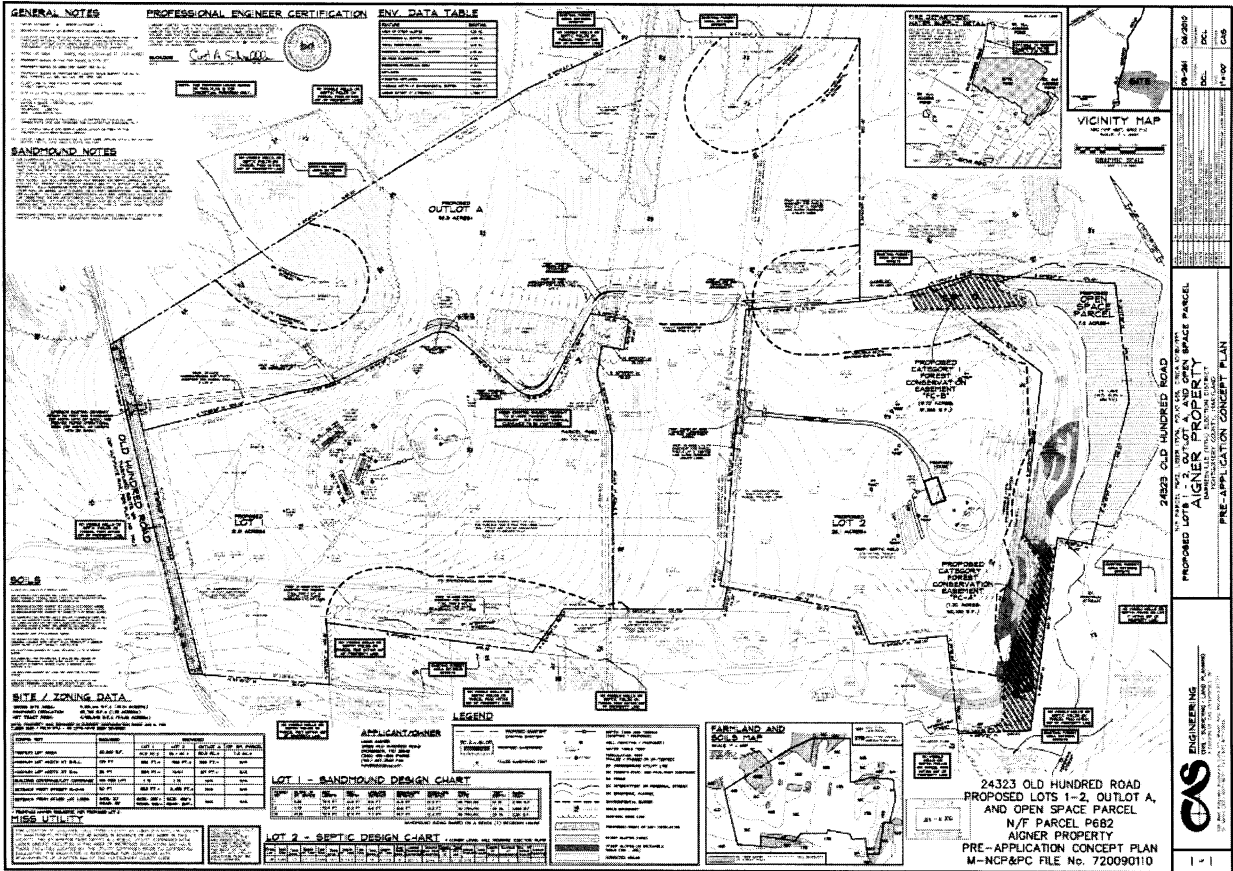


Figure 2: Pre-Preliminary Plan

ANALYSIS AND FINDINGS

Section 50-35(8) requirements

The proposed lots are to be platted pursuant to Section 50-35A(a)(8) of the Subdivision Regulations – Minor Subdivision. This section establishes the ability to plat up to five (5) lots in the RDT zone through the minor subdivision process after Staff *or* Planning Board approval of a pre-preliminary plan. Applications for minor subdivision under Section 50-35A(a)(8) must meet the following criteria:

- a. Written approval for a proposed septic area must be received from the Montgomery County Department of Permitting Services, Well and Septic Section prior to recordation of the plat;
- b. Any required street dedications along the frontage of the proposed lot(s) must be shown on the record plat;
- c. An easement must be recorded for the balance of the property noting that density and TDR's have been utilized for the new lots. Reference to this easement must be reflected in the record plat for the lots;
- d. Lots created in the RDT zone through the minor subdivision procedure must not exceed an average lot size of five (5) acres in size unless approved by the Planning Board in the review of a pre-preliminary plan of subdivision; and
- e. Forest conservation requirements must be satisfied prior to recording of the plat.

With respect to subparagraph (a), MCDPS has reviewed the wells, sand mound septic locations and conventional septic locations and has approved the septic plan. With respect to (b), dedication for Old Hundred Road is shown along the Property frontage. For provision (c), the applicant must record an easement on any remainder specifying that density has been drawn from the remainder. This requirement does not apply to this subdivision since no density is drawn from the remainder. The lots, at 30 acres and 26 acres, have sufficient gross area to allow 2 lots at the one lot per 25 acre density in the RDT zone. The applicant has submitted a forest conservation plan that is under review to satisfy provision (e). The proposed lot sizes both exceed 5 acres and this is the reason why the plan has been brought to the Planning Board for review and approval.

In staff's opinion, all of the required provisions are, or can be met. The size of the lots, in excess of 25 acres is appropriate and supports agriculture. Therefore the application is recommended for approval with conditions.

Roads and Transportation Facilities

The proposed lots and associated uses 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. The Property is located on Old Hundred Road which is classified as a rustic road. Sidewalks are not required to be constructed in the RDT zone. Proposed vehicle and pedestrian access for the subdivision will be safe and adequate in this low density, agricultural area.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the proposed dwelling units. The school cluster in which the Subject Property lies is not currently in moratorium and a School Facilities payment is not required. Other public facilities and services, such as police stations, firehouses and health services, are operating within the standards set by the Growth Policy Resolution currently in effect. Electrical and telecommunications services are also available to serve the Property. The plan has been reviewed by Montgomery County Fire and Rescue who have recommended approval.

Substantial Master Plan Conformance

Two master plans guide the development of the Subject Property: the Functional Master Plan for the Preservation of Agriculture and Rural Open Space (AROS) and the Rustic Roads Functional Master Plan (RRFMP).

Functional Master Plan for the Preservation of Agriculture and Rural Open Space in Montgomery County (1980)

Based on staff's review, this proposed subdivision conforms to the AROS plan's goal of preserving farmland, and the lot sizes comport with the recent draft ZTA forwarded to the County Council regarding lot standards. The lots proposed by this plan will qualify as farms as envisioned by the AROS plan and will meet the definition of a farm as defined in the Subdivision Regulations. While the Planning Board typically does not dictate house locations on lots, staff advises that the location of the proposed house on Lot 2 would work well with a farm that raises livestock because it affords views of the entire lot/farm including any established pastures and fenced fields. Further, the house location could be altered from where it is currently shown by using a grinder pump to pump effluent up to the approved septic field location. The ultimate house location will be at the discretion of the eventual home builder. The proposed lots do not impact prime farm soils since none exist on the property. Based on Staff's review, the proposed preliminary plan substantially conforms to the stated goals of the AROS plan.

Rustic Roads Functional Master Plan (1996)

This property is located on Old Hundred Road, a rustic road identified in the RRFMP. The master plan states, "Beallsville Road, in partnership with Old Hundred Road, has outstanding vistas of farm and rural landscapes" (pp. 54-57). The Significant Features of the road include a "ridge road with great views." The map in the RRFMP shows Farm Fields as the identified views in this applicant's vicinity. The proposed new house will not be visible from the road, though the backup sand mounds for the existing house on Lot 1 may appear on the horizon. As submitted, the existing driveways will be used for the existing and proposed homes which is preferred.

Environment

This plan is in compliance with the Montgomery County Environmental Guidelines for protection of environmentally sensitive areas. The applicant submitted a forest conservation plan that is currently under review by Environmental Planning staff and must be approved prior to approval of the record plat by the Planning Board.

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 size, width, shape and orientation of the lots is appropriate for the location of the subdivision. The lots were reviewed for compliance with 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.

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 a lot without frontage. Because of the rather large size of this property, the desire to place the new lots to the rear of the existing house in an area suitable for agriculture an unusually elongated pipestems would need to be created to provide frontage. Initially, the Applicant proposed a pipestem for Lot 2 that was immediately adjacent to the southern boundary of the 115 acre farm, however, it was for the most part located in a stream and its buffer. Although the pipestem was not to be used for the actual driveway, staff did not support the pipestem because of the significant environmental features within it. Staff believes that permitting for a driveway, should it ever be needed, would be very unlikely and asked the Applicant to investigate other pipestem locations for Lot 2.

As determined by the Applicant, the other most reasonable location for a pipestem would be along the northernmost driveway that will provide access to Lot 2 and a home to the east of the subject property. The issue is that a pipestem in this location would sever ownership of the farm. The Applicant will continue to live in the house on Lot 1 and own the outlot. Lot 2 will be conveyed to others. A pipestem traversing the property along the driveway will separate Lot 1 from the outlot and the Applicant objects to this. Staff believes that because of the extreme length of any pipestem that might provide frontage for proposed Lot 2 and that it will tend to sever ownership of land, there is an extraordinary circumstance upon which the Board can find that a lot without frontage is appropriate.

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 #5. The Board’s approval of a lot without frontage would not hinder future development of adjacent lands. Therefore, staff believes that a proper showing has been made to allow a lot to be approved without frontage

Citizen Correspondence and Issues

The applicant notified adjacent and confronting property owners as well as community groups and civic associations of the application submission to MNCPPC, as required. As of the date of this report, no concerns from these parties have been brought to Staff's attention.

CONCLUSION

The proposed lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance and comply with the recommendations of the Functional Master Plan for Preservation of Agriculture and Rural Open Space. Access and public facilities will be adequate to serve the proposed lots. Therefore, approval of the application with the conditions specified above is recommended.

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Aigner Property				
Plan Number: 720090110				
Zoning: RDT				
# of Lots: 2				
# of Outlots: 1				
Dev. Type:				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	
Minimum Lot Area	40,000 sq. ft.	27.3 ac is min. proposed	RW	
Lot Width	125 ft.	830 ft. is min. proposed	RW	
Lot Frontage	25 ft.	25 ft.	RW	
Setbacks				
Front	50 ft. Min.	Must meet minimum ¹	RW	
Side	20 ft. Min./40 ft. total	Must meet minimum ¹	RW	
Rear	35 ft. Min.	Must meet minimum ¹	RW	
Height	50 ft. Max.	May not exceed maximum ¹	RW	
Max Resid'l d.u. or Comm'l s.f. per Zoning	4 dwelling units	2 dwelling units	RW	
MPDUs	No		RW	
TDRs	Yes		RW	
Site Plan Req'd?	No		RW	
FINDINGS				
<i>SUBDIVISION</i>				
Lot frontage on Public Street		Yes	RW	
Road dedication and frontage improvements		Yes	RW	
Environmental Guidelines		Yes	Staff memo	
Forest Conservation		Prior to plat	RW	
Master Plan Compliance		Yes	Staff memo	
Other (i.e., parks, historic preservation)				
<i>ADEQUATE PUBLIC FACILITIES</i>				
Stormwater Management		Prior to plat	Agency email	
Water and Sewer (WSSC)		N/a	Agency comment	
10-yr Water and Sewer Plan Compliance		N/a	Agency Comment	
Well and Septic		Yes	Agency Letter	
Local Area Traffic Review		N/a	Staff memo	
Policy Area Mobility Review		N/a	Staff memo	
Transportation Management Agreement		No	Staff memo	
School Cluster in Moratorium?		No	RW	
School Facilities Payment		No	RW	
Fire and Rescue		Yes	Agency Letter	
Other (i.e., schools)				

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