



Date of Mailing: July 29, 2003

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

## MONTGOMERY COUNTY PLANNING BOARD OPINION

Preliminary Plan No.: 1-03007  
Project: Glen Falls  
Date of Hearing: November 21, 2002

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**Action:** ***APPROVAL OF TWO (2) LOTS SUBJECT TO CONDITIONS.*** (Motion to approve was made by Commissioner Perdue; duly seconded by Commissioner Robinson; with a vote of 5-0, Commissioners Berlage, Perdue, Robinson, Bryant and Wellington voting in favor of the motion.)

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The date of this written opinion is July 29, 2003 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before August 28, 2003 (which is thirty days from the date of this written opinion).

### INTRODUCTION

On July 31, 2002, F. S. Peoples Realty ("Applicant") submitted an application for preliminary plan review, designated Preliminary Plan 1-03007 ("Preliminary Plan"), with the Montgomery County Planning Board ("Planning Board"). The Preliminary Plan requested approval of three (3) lots on 1.68 acres of land in the R-200/TDR Zone.

After due notice, the Preliminary Plan was brought before the Planning Board for a public hearing on November 21, 2002, in accordance with the requirements of the Maryland Code Annotated, Article 28 ("Regional District Act"), the Montgomery County Code, Chapters 50 ("Subdivision Regulations") and 59 ("Zoning Ordinance"), and the Planning Board's Rules of Procedure. At the public hearing, the Planning Board heard testimony from its expert technical staff ("Staff"), representatives of the Applicant and a neighboring property owner, and received evidence into the record on the application.

In presenting the application to the Planning Board, Staff prepared and distributed packets of information including a Staff Report, dated November 14, 2002, which contained Staff's expert analysis of the proposal; plan drawings and vicinity maps; correspondence

**ATTACHMENT ONE**

from the Applicant's representative dated October 4, 2002; and correspondence from the Montgomery County Department of Public Works and Transportation ("DPWT") dated November 15, 2002, recommending approval of the plan subject to conditions. In addition, at the public hearing, the Applicant's counsel submitted additional vicinity maps, a zoning map, plan drawings and photographs of the adjoining and confronting houses. The information packets and additional materials are part of the record on the Preliminary Plan application and are incorporated herein by reference.

### **THE SUBJECT PROPERTY**

The subject property is located in Potomac on the north side of South Glen Road, approximately 200 feet west of Normandie Farm Drive. The property is comprised of three unrecorded parcels created about 1976 and consisting of 1.68 acres in the R-200/TDR Zone (Residential Zone, with a minimum lot size of 20,000 square feet) ("Subject Property"). The Subject Property is improved by one existing single-family dwelling, which is proposed to be removed. There are no tree stands, wetlands, intermittent streams, steep slopes or 100-year flood plains on the Subject Property.

The surrounding area consists of single-family detached residential development with varied zoning. The two adjoining lots are the only other lots in the vicinity that are zoned R-200/TDR. The rest of the Glen Falls subdivision, which is located immediately north of the subject property, is zoned RE-2/TDR and was recorded by plat in 1989. The lots in Glen Falls, which range in size from 33,000 square feet to 87,000 square feet, were developed under the RE-2/TDR-1 standards. The Potomac Hills subdivision is located to the south, across South Glen Road, and is zoned R-200. The Potomac Hills lots range in size from 20,000 to 30,000 square feet. Properties beyond the immediate vicinity are zoned RE-2.

The Preliminary Plan proposes to subdivide the Subject Property into three lots for single-family detached dwellings. The proposed layout locates two lots along South Glen Road and the third lot behind the others using a pipestem configuration. The proposed lots range in size from 20,400 square feet to 22,500 square feet and are proposed to have access to South Glen Road via a common driveway. The Applicant proposes to dedicate 0.18 acres for the remainder of the right-of-way for South Glen Road. The reforestation requirement of 0.57 acres is proposed to be satisfied off-site. Stormwater management concept plan proposes the use of diversion berms and dry wells for quality control.

The subject property is located within the area covered by the Potomac Subregion Master Plan ("Master Plan"). The Master Plan does not make any site-specific recommendations. The Master Plan classifies South Glen Road as a Country Road.

## **THE SUBDIVISION CRITERIA**

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act and the Subdivision Regulations. The application also must meet the requirements of the Zoning Ordinance applicable to the subject preliminary plan.

The general provisions for lot design for a subdivision are set forth in Section 50-29 of the Subdivision Regulations. In order to be approved by the Planning Board, lot size, width, shape and orientation must be appropriate for the location of the subdivision and for the type of use contemplated. Lots must also abut a dedicated street or public road.

Section 50-35 of the Subdivision Regulations sets forth the approval procedure for preliminary subdivision plans. After presentation of the plan to the Planning Board, the Board must act to approve or disapprove the plan, or to approve the plan subject to conditions and/or modifications necessary to bring the plan into accordance with the Subdivision Regulations and other applicable regulations. The Planning Board's approval procedure for preliminary plans includes review pursuant to: Section 50-35(k) of the Subdivision Regulations ("Adequate Public Facilities Ordinance" or "APFO"), which directs the Planning Board to approve preliminary plans of subdivision only after finding that public facilities, including the transportation system, will be adequate to serve the proposed subdivision; Section 50-35(l), which requires a finding that the Preliminary Plan substantially conforms to the Master Plan; and Section 50-35(o), which mandates that the Planning Board ensure that all requirements of the forest conservation law (Chapter 22A of the Montgomery County Code) are satisfied before approving a preliminary plan.

## **SUMMARY OF TESTIMONY AND EVIDENCE OF RECORD**

The record on the subject application includes uncontested information about the lot size, width, shape and orientation of the proposed three-lot subdivision, the relationship of the proposed lots to public roads, and the adequacy of public facilities. The record also contains uncontested information regarding the Preliminary Plan's conformance with the development standards for the R-200/TDR Zone. No traffic study was required because the proposed development will generate fewer than 50 vehicles per hour during peak hours.

In its report and through testimony at the public hearing, Staff recommended approval of two lots only with conditions. Staff testified that by reducing the number of lots from three to two, the lot configuration, size and orientation of the proposed development would satisfy the subdivision regulations requirement that the development be appropriate, consistent and compatible with the development pattern found in the Glen Falls subdivision. Staff further testified that, although the proposed subdivision meets the minimum zoning requirements of the R-200/TDR Zone, the configuration and orientation of the proposed three lots does not satisfy the subdivision requirements because it is inconsistent with the existing lot pattern in the Glen Falls subdivision. Staff explained that

the existing lots are oriented parallel to the rights-of-way, with houses fronting on the roads. The proposed lot layout orients the two lots along South Glen Road so that the houses face the common driveway and the side yards front the road. The third lot ("Lot 44") is configured with its front yard to the rear of the other two new lots and the house located somewhat behind the other houses. In addition, the proposed lot layout would result in tight frontages and be out of character with the way the neighborhood has evolved. Staff also stated that its recommendation on the subject preliminary plan is consistent with its recommendations on other recent subdivisions.

In response to a question from Commissioner Bryant about the consistency of the proposed lot layout for the Subject Property with the configuration of existing lots in the site area, including two pipestem lots located to the southwest across South Glen Road, Staff testified that the lot layout is affected by the varied zoning in the area. Staff explained that the lots to the south of South Glen Road are located in the R-200 Zone and to the north of South Glen Road, the Subject Property and the two adjacent lots are the only lots in the vicinity that are zoned R-200/TDR. The lots to the rear were developed under the RE-2/TDR development option.

Through testimony at the hearing and correspondence dated October 4, 2002, the Applicant's counsel argued that the proposed three-lot subdivision complies with the applicable requirements of the Subdivision Regulations and meets every development standard of the R-200/TDR zone. He further testified that the proposed lot configuration is consistent with the existing pattern of development and the established character along South Glen Road. He detailed the orientation of lots adjacent to and across from the Subject Property and concluded that the proposed subdivision does not have an inappropriate orientation of houses or yards.

The Applicant's counsel stated that the subject application proposes an original subdivision of an existing tax parcel and argued that it is not subject to the "resubdivision" requirements of Section 50-29(b)(2) of the Subdivision Regulations. He asserted that Section 50-29(a) of the Subdivision Regulations and the criteria for a new subdivision require the Planning Board to find only that the proposal is consistent with the Master Plan and "appropriate," not "compatible," "consistent," or "in conformity" with surrounding existing subdivisions. He also contended that Section 50-35(f) requires the Planning Board to approve the Preliminary Plan because it is in accordance with the purposes of the Subdivision Regulations. He concluded that the proposed subdivision is appropriate, and the proposed lot orientation is compatible and consistent with the existing lot orientation of the adjoining properties.

The Applicant's engineer also testified at the public hearing. He disagreed with Staff's recommendation that the proposed driveway be relocated to align with Gary Road. He argued that relocating the driveway would put a severe curve in the driveway. He stated that Gary Road is not a road, but a common driveway located on a public right-of-way and not maintained by DPWT.

One adjoining property owner testified at the public hearing that he and other neighbors would be comfortable with a two-lot subdivision, but the third lot would be too crowded. He explained that the proposed three lots would be significantly smaller than the existing surrounding lots. He also expressed concern about the separation of the new houses from the adjoining existing houses. Noting that the proposed houses would be located within 30 feet of the property lines, he requested additional tree plantings. He also testified that the existing houses have tremendous front and back yards, although the side yards are not necessarily large, while the proposed lots would have very large side yards and the depth would be shallow. Finally, he expressed concern about parking because the current resident parks 20-25 cars on the property every weekend and the proposed lots would not be large enough to accommodate such use.

In rebuttal and in response to the adjoining neighbor's testimony, the Applicant's counsel stated that a row of trees along the east side of the subject property would remain. He also testified that some reforestation would be provided as part of the final Forest Conservation Plan and additional trees toward the north side of the property would be appropriate. The Applicant's engineer testified that the Preliminary Plan provides setbacks of at least 30 feet on all sides, even with the fairly sizable house footprints shown (approximately 3,200-square-foot). The Applicant's counsel further testified that the difference in the size of the proposed lots and the adjoining lots to the north is the result of the varied zoning. He explained that the Applicant had addressed the varied zoning and ensured compatibility by arranging the lots so that back yards face back yards and side yards face side yards. Regarding the neighbor's concern about the number of cars on the property, the Applicant's counsel testified that the existing house will be removed and the current tenant will not remain on the property.

Responding to the Applicant's testimony, Staff testified that it did take the orientation of the properties located directly across South Glen Road into consideration when it reviewed the proposed three-lot subdivision, but that it also considered the spatial relationship between the lots and the frontage of the existing development along South Glen Road. Staff explained that the lot located directly south has 450 feet of frontage whereas the proposed lots have only 250 feet of frontage. In response to a question from the Commissioners regarding the justification for a second lot, Staff explained that the recommendation was based on the R-200/TDR zoning and the potential resubdivision of the adjoining properties.

## **FINDINGS**

The Planning Board has considered the testimony and information in the record and acknowledges the Applicant's efforts to configure the proposed lots to complement surrounding lots. Nevertheless, the Planning Board finds that the proposed three lots are not appropriate for the subject property in terms of size, shape, width and orientation. In particular, the Board finds that the size, shape, width and orientation of the proposed rear lot is not appropriate for the location of the subdivision and is incompatible with the existing pattern of development for the area and that, in accommodating the rear lot, the other two

proposed lots are also configured, with respect to their size, shape and width, and oriented in a manner inconsistent with the existing development pattern in the Glen Falls subdivision and are not appropriate for the location of the subdivision. In particular, the proposed lots range in size from 20,400 square feet to 22,540 square feet while the surrounding lots range in size from 30,000 square feet to 87,000 square feet.

Based on the testimony and evidence in the record, the Planning Board further finds that limiting development of the subject property to two lots and implementation of Staff's recommendations will result in lots that are larger, wider, more rectangular, oriented to South Glen Road, and more appropriate for the Subject Property considering the location of the subdivision. In making these findings, the Planning Board expressly states that it is basing its decision on the compliance of the Preliminary Plan with the requirements of Section 50-29(a) of the Subdivision Regulations, in particular the appropriateness of the proposed lots for the location of the subdivision, and not on the proposed plan's compliance with the resubdivision review criteria set forth in Section 50-29(b)(2). The Planning Board further finds that compatibility and consistency may be considered as an element of the appropriateness analysis of Section 50-29(a). Moreover, the Planning Board finds that the proposed development of three lots on the Subject Property does not meet the purposes of the Subdivision Regulations as set forth in Section 50-2. Specifically, it does not provide for the harmonious development of the district nor does it provide other benefits to the health, comfort, safety or welfare of the present and future population of the regional district.

Accordingly, after review and consideration of the evidence of record, including testimony given at the public hearing, the Planning Board finds Preliminary Plan No. 1-03007, as modified to depict two lots for single-family dwelling units, to be in accordance with the purposes and requirements of the Subdivision Regulations, the development standards of the Zoning Ordinance, and the Regional District Act. Based on the testimony and evidence contained in the record, the Planning Board further finds that, with the conditions enumerated below: (1) two lots are appropriate with regard to lot size, width, shape and orientation for the location of the subdivision and the contemplated residential use; (2) the two lots will abut a public road; (3) the Preliminary Plan meets the development standards of the R-200/TDR Zone; (4) the Preliminary Plan substantially conforms to the Master Plan; and (5) the site is adequately served by public facilities. In addition, the Planning Board finds that the proposed conditions will ensure the appropriate use of the subject property and adequate access and road improvements, forest conservation measures, screening, and stormwater management. Therefore, the Planning Board adopts Staff's recommended conditions as modified to approve the development of two lots only.

Regarding screening, the Planning Board finds that it is not necessary to require additional plantings because limiting the development to two lots will allow enough space for the houses to be sited a sufficient distance from the property boundaries and neighboring homes to provide adequate buffering. The Planning Board further finds that compliance with the 30-foot building restriction line, required by the Zoning Ordinance, will

ensure that the houses are located at least 30 feet from the property lines as requested by the adjoining property owner.

### **CONCLUSION**

Having considered all of the evidence presented and all of the testimony taken, as well as the contents of the Preliminary Plan file, the Planning Board finds Preliminary Plan No. 1-03007, as modified, to be in accordance with the purposes and requirements of the Subdivision Regulations and Zoning Ordinance of the Montgomery County Code and the provisions of the Regional District Act. Therefore, the Planning Board approves Preliminary Plan No. 1-03007, as modified, to permit two lots, subject to the following conditions:

- 1) Prior to the submission of record plat, Applicant to submit revised plans depicting a two (2) lot layout for technical staff review and approval. Plan to include specific site grading and tree preservation measures.
- 2) Conditions of MCDPS stormwater management approval.
- 3) All roads shown on the approved preliminary plan shall be dedicated by the Applicant, to the full width mandated by the Potomac Subregion Master Plan, unless otherwise designated on the preliminary plan.
- 4) Access and improvements, as required, to be approved by MCDPW&T prior to recording of plat.
- 5) Record plat to reference common ingress/egress easement.
- 6) Final landscaping plans to be submitted for review and approval by technical staff prior to recording of plat.
- 7) Other necessary easements.
- 8) The Adequate Public Facilities (APF) review for this preliminary plan will remain valid for sixty-one (61) months from the date of mailing of this Planning Board Opinion.
- 9) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of this Planning Board Opinion. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.

DYD:cmd