



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item # 10  
5/5/05



**MEMORANDUM**

**DATE:** April 28, 2005

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief *RK*  
Development Review Division

**FROM:** Catherine Conlon, Acting Supervisor *CC*  
Development Review Division

**REVIEW TYPE:** Pre-Preliminary Plan of Subdivision

**APPLYING FOR:** One (1) lot for one (1) one-family detached dwelling unit, under Section 50-35A(a)(8), minor subdivision process.

**PROJECT NAME:** Nehouse Property

**CASE #:** 7-03022

**REVIEW BASIS:** Chapter 50, Montgomery County Subdivision Regulations.

**ZONE:** RDT

**LOCATION:** Located in the northwest quadrant of the intersection of Hawkes Road and Piedmont Road.

**MASTER PLAN:** Agricultural and Rural Open Space

**APPLICANT:** Roy Stanley

**ENGINEER:** Benning and Associates, Inc.

**FILING DATE:** March 7, 2005

**HEARING DATE:** May 5, 2005

**STAFF RECOMMENDATION:** Approval of one (1) Lot to be platted under the provisions of Section 50-35A(a)(8) of the Montgomery County Subdivision Regulations, and an approximately 8 acre remainder parcel, subject to the following conditions:

- 1) Approval is limited to one (1) one-family detached dwelling unit.
- 2) Record Plat to reference a recorded deed for the remainder of the parent parcel north of Hawkes Road indicating that all available density from the parent parcel, Parcel 050 at Liber 9812, Folio 465, has been taken, and that two TDR's were available on the parent parcel and have been used for creation of two lots.
- 3) Prior to recordation of plat, Applicant shall record a Deed for the remainder of the parent parcel stipulating that no additional density may be taken from the parcel and this parcel cannot be used as Rural Cluster Open Space for the adjacent proposed subdivision.
- 4) Record Plat to contain a note stating that, "density for P047 has been taken from the parent tract and P047 may be platted through the Section 50-35A(8) minor subdivision provisions".
- 5) Record Plat shall reflect dedication of all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan.
- 6) Final approval for wells and septic systems must be obtained from Montgomery County Department of Permitting Services, Well and Septic prior to recordation of lot.
- 7) Final approval of a forest conservation plan, or forest conservation exemption, must be obtained from M-NCPPC Environmental Planning prior to recordation of the lot.
- 8) Applicant to submit a complete record plat application to M-NCPPC within thirty-seven (37) months of the date of issuance of the opinion for this pre-preliminary plan.
- 9) Other necessary easements to be reflected on plat.

#### **ORIGINAL PRE-PRELIMINARY PLAN SUBMISSION**

The original submission for Pre-preliminary Plan No. 1-03022 filed in January, 2003 included approximately 94 acres of land located on either side of Hawkes Road. The tract included approximately 54 acres zoned RDT within the Agricultural and Rural Open Space Master Plan area, and 40 acres zoned RC within the Clarksburg Master Plan Area. Although the applicant requested staff-only review of a concept for development in both zones, the primary purpose of the application was to initiate the process of soil testing for on-site sewage disposal systems.

Septic testing has now been completed for the RDT portion of the site, but continues on the remaining RC-zoned land. Rather than wait for the completion of testing, the Applicant is now requesting Board review of the development proposal for only the RDT-zoned land.

## SITE DESCRIPTION

The subject property is located mostly in the northwest quadrant of the intersection of Hawkes Road and Piedmont Road (Attachment A). Hawkes Road, which is classified as a rustic road, bisects the property in the northeast corner. The property contains approximately 54 acres of land and is within the RDT zone. The property is currently pasture and open fields.

An existing one-family detached residence on a 1.18 acre, unrecorded parcel is located within the subject property. This parcel was created by deed from the subject parent parcel in 1991 and, while not a part of the subject application, uses density from the subject parcel. Being less than 5 acres in size, this 1.18 acre parcel may be platted through Section 50-35A(8) minor subdivision provisions with Planning staff approval. A minor subdivision application has not been submitted for this 1.18 acre parcel, but staff's recommended conditions document the fact that density has been taken from the parent parcel for this future lot.

The property is within the Little Bennett Creek watershed (Use Classification III) and contains two tributary streams and their associated floodplain and stream buffers. A total of 12.93 acres of the site is forested.

## PROJECT DESCRIPTION

The pre-preliminary plan proposes to create one lot and one parcel through the minor subdivision process (Attachment B). The proposed lot will be 45 acres in size. A future residence on the lot will have access to Piedmont Road via private driveway. The lot will be served by private septic (trench design) and wells.

Approximately 8 acres of the parent parcel will remain unplatted on the northeast side of Hawkes Road. A deed will be recorded for this remainder noting that density has been taken into account for the proposed lot and future recordation of the existing residential parcel as a lot.

The currently proposed lot will be platted pursuant to Section 50-35A(a)(8) of the Subdivision Regulations. Section 50-38A(a)(8) establishes the ability to plat up to five (5) lots in the RDT zone through the minor subdivision process after Planning Staff *or* Planning Board approval of a pre-preliminary plan. Per Section 50-35A(a)(8)d (see below), if proposed lots exceed an average lot size of five (5) acres, the pre-preliminary plan *must* be approved by the Planning Board.

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.

The Department of Permitting Services and the Department of Public Works and Transportation will, as a matter of process, review the record plat application(s) for compliance with their requirements. Approval of a stormwater management concept plan will occur simultaneously with a sediment and erosion control plan at the time of building permit.

## **RELATIONSHIP TO THE MASTER PLAN**

The Agricultural and Rural Open Space (AROS) Master Plan establishes agriculture as the preferred use for land in the Rural Density Transfer (RDT) zone. The proposed plan creates one large lot. The proposed plan meets the goal of the master plan for agricultural preservation and the requirements for the RDT Zone. Location of one dwelling unit on the proposed lot will not significantly impact its use for agricultural purposes.

The unplatted remainder of the property is located on the opposite side of Hawkes Road adjacent to Rural Cluster zoned property also owned by the applicant of the subject property. This land is currently used for agricultural purposes, but may ultimately be combined and sold with lots created through future subdivision of the adjacent property. Since the parent parcel is located within the RDT zone, this remainder will not be permitted to be used to meet density or rural open space requirements for any future subdivision.

## **ENVIRONMENTAL**

### Forest Conservation

There are 12.93 acres of existing forest on the property. Per the agricultural exemption provided in the forest conservation law (Section 22A-5(b)), a conservation easement is not required to be placed over this forest but clearing would not be permitted unless it is directly related to planned agricultural uses. Although the applicant anticipates filing for an agricultural exemption for the pasture and field areas of the site, he has expressed interest in protecting the existing forest using a forest "bank". Forest

banking is a voluntary option for landowners who agree to protect forest over and above any forest conservation law requirements.

### Environmental Guidelines

The site includes stream buffers, floodplains, and wetlands. These areas will not be required to be placed in conservation easements within the farm remainder of the property unless they are part of a future forest bank.

### **CONCLUSION**

This request complies with all applicable ordinances and regulations regarding the subdivision of land in Montgomery County. Based on the discussion above, staff recommends approval of the request to allow this application to proceed through the minor subdivision process, subject to the conditions cited above. The applicant will need to satisfy all conditions prior to recordation of the plat(s).

### **ATTACHMENTS:**

Attachment A	Vicinity Map
Attachment B	Preliminary Plan

*No citizen letters concerning this proposal have been received up to this point.*