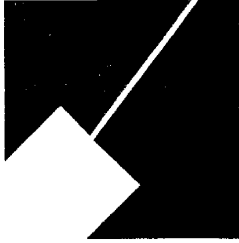


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

MCPB
Item #6
2/16/06



MEMORANDUM

DATE: February 3, 2006

TO: Montgomery County Planning Board

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

Catherine Conlon, Supervisor *CC*
Development Review

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

REVIEW TYPE: Preliminary Plan Review

APPLYING FOR: Subdivision of Eight Lots (5 Child Lots)

PROJECT NAME: Ganassa Property

CASE #: 120040600 (formerly 1-04060)

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RDT

LOCATION: Located on the west side of Halterman Road approximately 2,000 feet north of New Hampshire Avenue (MD 650) a.k.a. Damascus Road

MASTER PLAN: Agricultural and Rural Open Space (AROS)

APPLICANT: Antonia and Vera Ganassa

ENGINEER: Tri-County Surveys

FILING DATE: March 22, 2004

HEARING DATE: January 19, 2006

STAFF RECOMMENDATION: Approval, pursuant to Chapter 50 of the Montgomery County Code, of eight lots and one outlot, including five “child lots” pursuant to Section 59-C-9.74 (b)(4) of the Zoning Ordinance, and subject to the following conditions:

- 1) Approval under this preliminary plan is limited to eight one-family residential dwelling units.
- 2) Record plat to include the following note: “Lot Nos. ___ ___ ___ and ___ are being created under Section 59-C-9.74 (b)(4) for use for a one-family residence by a child, or the spouse of a child, of the property owner.” Separate notation to be made on each child lot shown on the plat(s) referencing this note.
- 3) Prior to issuance of building permit for a one-family residence on a lot created pursuant to Code Section 59-C-9.74(b)(4), each child for whose benefit such a lot was created shall submit an affidavit to DPS and MNCPPC staff, in a form approved by MNCPPC staff, attesting, among other things, that the affiant is a child of the Applicant.
- 4) Compliance with the conditions of approval of the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.
- 5) If any house on proposed lots 2 through 7 are sited within 50 feet of an unforested portion of the proposed forest conservation easement, a two-rail permanent split rail fence must be erected along the conservation easement boundary.
- 6) Compliance with the conditions of approval of the MCDPS stormwater management approval dated March 12, 2004.
- 7) Compliance with conditions of MCDPWT letter dated September 9, 2005, unless otherwise amended.
- 8) The applicant shall dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan unless otherwise designated on the preliminary plan.
- 9) Record plat to reflect a Category I easement over all areas of stream valley buffers and forest conservation.
- 10) Compliance with conditions of MCDPS (Health Dept.) septic approval dated May 4, 2005 with correction dated September 2, 2005.
- 11) Record plat to reflect common ingress/egress and utility easements over all shared driveways.
- 12) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
- 13) Other necessary easements.

SITE DESCRIPTION:

The 81-acre subject property is located at 24250 Halterman Road on the north side of New Hampshire Avenue extended (Attachment A). The property currently includes one one-family residence, farm buildings, lawn, pasture, and woodlands. There are 21.35 acres of existing forest on the property. The site includes a stream flowing south to north with associated floodplains and wetlands. The entire property is within the Upper Patuxent River watershed and is zoned Rural Density Transfer (RDT).

PROJECT DESCRIPTION:

This is an application to subdivide the Subject Property into eight (8) lots for the construction of seven one-family detached residences; the existing house will be located on the remaining lot (Attachment B). Access to six of the eight lots will be from Halterman Road. Four of those six lots will share a common driveway. The existing farmhouse and proposed Lot 2 will each have direct driveway access from Halterman Road. Proposed Lots 7 and 8 will have no frontage on a public right-of-way but will have access via a shared driveway from Damascus Road (MD 108).

The owners of the property wish to create five lots, one for each of their five children and three “market” lots.¹ The existing house (farmhouse) and a majority of the farmland will be located on one of the market lots. The lot, proposed Lot 1, will include the house along with the farm outbuildings and pastures. The lot is to be approximately 39.0 acres in size and can, therefore, continue to receive an agricultural assessment. Proposed Lots 7 and 8, at 9.0 and 9.5 acres respectively, are also market lots. The child lots are identified on the preliminary plan as proposed Lots 2-6 and are 2.8, 2.4, 3.5, 3.2 and 7.2 acres, respectively. The location of the child lots on the property serve to preserve as much of the contiguous farm area for proposed Lot 1 as practical. All the lots are approved by MCDPS for standard septic systems and private wells.

All forest and stream buffers on this property will be protected by conservation easements. The property is entirely within the Patuxent River Watershed and the Patuxent River Primary Management Area (PMA). As such, existing and proposed impervious surfaces on the property may not exceed 10% of the gross tract area. Staff has evaluated the project and determined that it meets this standard.

Because tributary streams to the Patuxent River bisect the property and would require a stream crossing to provide public road access to Halterman Road for Lots 7 and 8, the plan proposes “lots without frontage” based on the justification outlined later in this report.

COUNTYWIDE PARK TRAIL PLAN

The plan proposes to create a 4.52 acre outlot on the westernmost edge of the property, which is severed from the main part of the property by a Colonial gas pipeline. The outlot area is identified by the MNCPPC - Countywide Park Trails Plan as a desirable linkage between the Seneca Creek Watershed and the Patuxent Watershed. The applicant proposes to donate this outlot to MNCPPC to create this linkage and this is shown on the preliminary plan.

RELATIONSHIP TO THE MASTER PLAN

¹ The applicant has submitted birth certificates identifying the five children at birth as: Stephen Anthony, Frank Joseph, Michael Peter, Rina Marie and Linda Ann Ganassa, As a condition of approval, each of the children must submit an affidavit prior to issuance of building permit.

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 preliminary plan lot configurations in the RDT zone should promote the continued use of the property for agricultural purposes. For this plan, a 39-acre farm operation will be maintained on proposed Lot 1. The five designated child lots are smaller, generally separated from the main farm parcel by a conservation easement along a wetland swale. The applicant has attempted to shrink the child lots to only include the house, septic and wells, and pipestems. While proposed Lot 6 may be able to shrink further, it would serve little purpose as most of the rear yard is stream buffer to be protected by a conservation easement. The two “market” lots on the far western side of the site are 9.0 acres and 9.5 acres and may be large enough for some type of agricultural use. The proposed preliminary plan conforms to the recommendations for preservation of agricultural uses which are included in the Agricultural and Rural Open Space Master Plan.

DENSITY CALCULATION - ZONING ORDINANCE

Because of the child lots, the density proposed in this application is higher than the one lot per twenty-five acres permitted under the zone. Specifically, the five proposed “child lots” are shown in addition to “market” lots (“Market Lots”) permitted under the base density in the RDT zone. The proposal is consistent with the Planning Board’s prior practice of not counting child lots toward the base density. As discussed below, certain groups have challenged this practice and interpretation of the child lot provisions of the RDT zone.

CIVIC GROUP’S POSITION

In a detailed memorandum dated September 29, 2005 (Attachment C) , the Conservation Federation of Maryland, Inc. (“CFM”) and T/A For a Rural Montgomery (“FARM”) presented their opposition to “child lots” being created in addition to, rather than inclusive of, base zone density. CFM and FARM contend there is nothing in the Zoning Ordinance to support the Board’s longstanding application of the child lot provision. In support of their position, CFM and FARM argue that Section 59-C-9.41 of the Zoning Ordinance (Density in the RDT zone) only exempts a “farm tenant dwelling, farm tenant mobile home, or guest house” and “an accessory apartment or accessory dwelling” from the one one-family dwelling unit per 25 acre density limitation in the RDT zone. The section also states that once property is subdivided, these dwellings are no longer excluded from density calculations. CFM and FARM contend that although Section 59-C-9.74(b)(iii) allows the number of “child lots” to exceed regular density, the section cannot be interpreted to exempt them from being included in the density calculation since they are not specifically exempted from density requirements by Section 59-C-9.41 or any other within the Zoning Ordinance.

PREVIOUS BOARD DISCUSSIONS OF DENSITY

The interpretation of the density provision as submitted by CFM and FARM was presented to the Board on December 8, 2005, as part of an item discussing proposed modifications to the RDT child lot provisions. Staff discussed the differences between the Board’s long-standing interpretation and this alternative interpretation, but did not recommend modification of the established interpretation and practice. The Board did not act on staff’s

recommendations at that time. While the CFM and FARM request that density be limited by their suggested interpretation, the Agricultural Preservation Advisory Board and the Agricultural Advisory Committee have voiced strong support for the existing interpretation of the density calculation.

STAFF'S POSITION

The Planning Board's interpretation and application of the RDT zone density limits, as applicable to child lots, has remained constant since the inception of the RDT zone and the accompanying zoning text amendment. Specifically, the Board has consistently interpreted and applied the language in Division 59-C-9 as permitting child lots to be created in addition to the base zone density of one unit per twenty-five acres. An original tract owner (who meets the eligibility requirements) may create a lot for each child or the spouse of a child plus "market" lots up to the base density, provided the total number of lots do not exceed the number of TDRs (one per five acres) available for the original tract.

There appears to be no disagreement that, under the current Zoning Ordinance language, eligible property owners may create one child lot for each of their children, provided sufficient TDRs remain on the property. Staff agrees with CFM's and FARM's position that the language of Section 59-C-9.41 (Density in RDT zone) does not preclude child lots from exceeding the one dwelling unit per twenty-five acre density limit in the RDT zone. On page 7 of their memorandum, CFM and FARM expressly concede that "Section 59-C-9.74(b)(iii) does allow the number of [child lots] to exceed the Regular Density applicable to the RDT zone" (See also pages 3 and 5, and Examples 4 and 7 in the memorandum).²

Because child lots may be created above base density, interpreting the child lot provisions as prohibiting Market Lots if child lots have been created to base density—as CFM and FARM would like the Planning Board to do—would potentially result in the disparate treatment of

² Additional support for the view that child lots may exceed the base density of the RDT zone follows. The child lot provision of the RDT zone was fashioned on and mirrors the child lot provision in the Rural zone, with one significant difference. In the Rural zone, the District Council expressly precluded child lots from exceeding the base density, by enacting Zoning Ordinance language exempting child lots from the area and dimensional requirements of the Rural zone provided that, among other things, "[t]he overall density of the property does not exceed one dwelling unit per 5 acres in any subdivision recorded as of October 1, 1981." Code § 59-C-9.71(d)(3). However, in approving the language of the RDT zone, it is Staff's view that the Council purposefully omitted the above-quoted density-setting language from the Rural zone, replacing it with language confirming the Council's intent to permit child lots to exceed the base density in the RDT Zone. Code § 59-C-9.74(b)(4)(iii) (providing that child lots are exempt from the area and dimensional requirements of the RDT zone provide, among other things, that such lots "must not exceed the number of development rights for the property."). It is conceivable that the Council, in allowing child lots to exceed base density in the RDT zone acknowledged the significant downzoning of the property from, generally, one dwelling unit per 5 acres to one unit per 25 acres (in contrast with the earlier and less substantial downzoning to the Rural zone, generally from one unit per 2 acres to one unit per 5 acres).

similarly situated farmers based on the timing of their applications. For example, CFM and FARM would argue that a farmer who created child lots up to base density in 1985 should not be permitted, in 2006, to create any Market Lots on the property. However, if that same farmer had created the Market Lots to base density in 1985, CFM and FARM do not contend that the property owner may not subsequently create child lots for each of his or her children on the remainder. Therefore, under the interpretation presented by CFM and FARM, simply choosing to create child lots first, penalizes the farmer.

In Staff's view, it is unreasonable to expect farmers, the first time they subdivide their property, to anticipate all possible ways they might want to utilize that property. CFM and FARM's interpretation may, in fact, have the unintended consequence of encouraging farmers to subdivide farmland to base density with Market Lots simply to preserve their right under the Zoning Ordinance to create such Market Lots. The Board should note that, although CFM and FARM contend that the Ordinance does not permit Market Lots in addition to child lots, they do not—and, in Staff's view, cannot--point to any language in the Zoning Ordinance that would preclude such an interpretation.

ENVIRONMENTAL ANALYSIS

Forest Conservation

There are 21.35 acres of existing forest on the property, including 5 distinctive forest stands. All stands have good forest structure value and are of mixed age, but suffer from excessive invasive growth in the understory. Chestnut oaks, tulip trees, and red maples are the dominant tree species.

The applicant has submitted a declaration of intent to farm 27.8-acres of the 39-acre lot and requests an exemption for the area from the forest conservation requirements. The 11.2 acres not included in the agricultural exemption is forested. The Agricultural Declaration of Intent reduces the net tract area on which forest conservation requirements are calculated from 81.7 acres to 53.9 acres. Section 22A-12(f)(2)(A) of the Montgomery County code states "in an agricultural and resource area, on-site forest retention must equal 25% of the net tract area". Since this property is zoned RDT, the forest conservation plan must comply with this section of the code. The applicant is proposing to preserve all 21.35 acres of existing forest and place this forest in a Category I conservation easement. This corresponds to approximately 40 percent of the net tract area, which exceeds the minimum requirements established by the code.

Environmental Buffers

The site includes 30.45 acres of environmental buffer (26.05 acres of stream buffer and 4.5 acres of wetland buffer). There is also a farm pond in the middle of the subject property. Proposed Lots 1, 6, 7, and 8 will have on-lot conservation easements. All environmental buffers on proposed Lots 6, 7, and 8 will be included in conservation easement along with the forested portions of the environmental buffers on proposed Lot 1. Proposed Lots 2, 4, and 5 will border environmental buffers. The preliminary plan of subdivision does not indicate any encroachment into the environmental buffers except for the continuation of the agricultural activities.

Imperviousness

The subject property is located in the Patuxent River Primary Management Area (PMA) and is subject to a 10 percent impervious limitation. The applicant's preliminary plan of subdivision shows imperviousness levels of less than 5 percent.

LOTS WITHOUT FRONTAGE

As noted above, the plan proposes two lots (Lots 7 and 8) without frontage on a public right-of-way. Frontage for these lots is required under Section 50-29(a)(2) of the Subdivision Regulations, however, this section allows the Planning Board, in exceptional circumstances, to approve not more than two lots without frontage on a private driveway where a proper finding is made for the driveway to:

- Provide adequate access for emergency vehicles
- Allow placement of public utilities
- Provide access for other public service vehicles
- Not hinder future subdivisions

Staff has received the necessary approval from the Department of Fire and Rescue Services that assures that the largest piece of County fire apparatus and other public vehicles can reach and depart the two homes on the proposed private driveway. The conditions of approval require that a common ingress/egress and utility easement be placed on the driveway so that utilities can be run along its length. Further, staff does not believe that the lack of a public road will preclude future development since property to the north is State Park and the property to the west has ample frontage on a public road if it should ever subdivide.

This is exceptional circumstance given the environmental impacts that would result if a public right-of-way and road were required to be constructed to Halterman Road to serve proposed Lots 7 and 8. Aside from the loss of farmland to accommodate a road, both a wetland and stream channel would need to be crossed. The alternative to a road extension would be to create two extremely long pipestems that would extend from proposed Lots 7 and 8 to the east, all the way across the property, to serve as frontages on Halterman Road. Excessively long pipestems are unnecessary, awkward and poor design. Long pipestems can and do become a maintenance and liability problem as well as a source for neighbor discord. Staff has historically looked at all alternatives to avoid unnecessary stream crossings and strongly feels that the shared driveway out to Damascus Road is the best alternative. Therefore, Staff recommends approval of the two lots without frontage.

CONCLUSION:

Staff finds, for reasons discussed and set forth above, that: Preliminary Plan #1-04064, Ganassa Property, conforms to the Agricultural and Rural Open Space Master Plan and meets all necessary requirements of the Subdivision Regulations and Zoning Ordinance, as summarized in attached Table 1; the size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision; and the density calculations are based on the Planning Board's historical interpretation and application of the relevant provisions of Division 59-C-9, which allows child lots to exceed the base zone density of the TDR zone. The applicant has demonstrated the availability of sufficient Transfer Development Rights (TDRs) remaining on the property to support the requested lots. As such, Staff recommends approval of the preliminary plan, subject to compliance with the above conditions.

ATTACHMENTS:

- Attachment A – Vicinity Map
- Attachment B – Preliminary Plan
- Attachment C – Conservation Federation/Farm Memorandum
- Attachment D – Agency Correspondence

TABLE 1. Preliminary Plan Data Table and Checklist

Plan Name: GANASSA PROPERTY				
Plan Number: 120040640				
Zoning: RDT				
# of Lots: 8				
# of Outlots: 1				
Dev. Type: Residential/Agricultural				
PLAN DATA	Zoning Ordinance Requirements	Proposed for Approval on Preliminary Plan	Verified	Date
Minimum Lot Area	40,000 s.f.	Must meet min.		1/6/06
Lot Width	125 ft.	Must meet min.		1/6/06
Lot Frontage	25 ft.	Must meet min.		1/6/06
Setbacks				1/6/06
Front	50 ft. Min.	Must meet min.		1/6/06
Side	20 ft. Min.	Must meet min.		1/6/06
Rear	35 ft. Min.	Must meet min.		1/6/06
Height	50 ft. Max.	May not exceed maximum		1/6/06
Max Resid'l d.u	3 as per base zone *	3 "market" lots 5 child lots		1/6/06
MPDUs	Not required	0		1/6/06
TDRs	8 must be available	8 available		1/6/06
Site Plan Req'd?	No	No		1/6/06
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street	Yes	Yes**	As shown on plan	9/29/05
Road dedication and frontage improvements	Yes 60 ft. on Halterman	Dedication has been provided	By agency Memo	9/9/05
Environmental Guidelines	Yes	Yes	By staff memo	9/22/05
Forest Conservation	Yes	Yes	By staff memo	9/22/05
Master Plan Compliance	Yes	Yes		9/29/05
ADEQUATE PUBLIC FACILITIES				
Stormwater Management	Yes	Yes	By agency memo	3/12/04
Well and Septic	Yes	Wells and standard septic	By agency memo	9/10/05
Local Area Traffic Review	N/A	N/A		
Fire and Rescue	Yes	Yes	By agency letter	11/22/05
State Highway	Yes	Yes	By agency letter	7/26/05

* Child lot provisions permit additional density.

** Two lots without frontage requested pursuant to Planning Board finding

TABLE 1. Preliminary Plan Data Table and Checklist

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Height	50 ft. Max.	May not exceed maximum	<i>CAC</i>	1/6/06
Max Resid'l d.u	3 as per base zone *	3 "market" lots 5 child lots	<i>CAC</i>	1/6/06
MPDUs	Not required	0		1/6/06
TDRs	8 must be available	8 available	<i>CAC</i>	1/6/06
Site Plan Req'd?	No	No		1/6/06
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street	Yes	Yes**	As shown on plan	9/29/05
Road dedication and frontage improvements	Yes 60 ft. on Halterman	Dedication has been provided	By agency Memo	9/9/05
Environmental Guidelines	Yes	Yes	By staff memo	9/22/05
Forest Conservation	Yes	Yes	By staff memo	9/22/05
Master Plan Compliance	Yes	Yes	<i>CAC</i>	9/29/05
ADEQUATE PUBLIC FACILITIES				
Stormwater Management	Yes	Yes	By agency memo	3/12/04
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