



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

OFFICE OF
THE GENERAL COUNSEL

(301) 495-4646
FAX (301) 495-2173

Board Approval Date: Sept. 29, 2005

Date Mailed: JAN 25 2006

Action: Approved Staff Recommendation
Motion of Commissioner Wellington,
seconded by Commissioner Robinson, with a
vote of 4-0;
Chairman Berlage and Commissioners
Perdue, Wellington and Robinson voting in
favor. Commissioner Bryant was necessarily
absent.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 120050900 (formerly 1-05090)
NAME OF PLAN: Ruppert Nurseries Fall Creek Farm East

The date of this written opinion is JAN 25 2006 (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 within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court - State).

On 4/19/05 Fall Creek Farm East LLC ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the RDT zone. The application proposed to create 1 lot on 16.61 acres of land located at On the east side of Laytonsville Road (MD 108), approximately 1200 feet south of the intersection with Hawkins Creamery Road, in the Olney master plan area. The application was designated Preliminary Plan 120050900 (formerly 1-05090). On 9/29/05, Preliminary Plan 120050900 (formerly 1-05090) was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

I. BACKGROUND

The Planning Board reviewed and recommended approval of Special Exception No. S-2636 on April 28, 2005. Final approval of the Special Exception was granted by the Board of Appeals on August 3, 2005. At the Planning Board's hearing, the Board considered a request to locate the landscape contracting business on the future lot of approximately 16.04 acres. The remaining acreage around the lot is currently managed as a tree nursery for Ruppert Nurseries, the applicant, and is not part of the preliminary plan application. This preliminary plan application is to create only the lot for the uses approved as part of the Special Exception application.

II. SITE and PROJECT DESCRIPTION

The subject property is comprised of one parcel (P820) totaling 2.5 acres and a portion of another parcel (P666) totaling 13.53 acres for a total land area of approximately 16.0 acres. The property is gently rolling. Laytonsville Road bisects the property into eastern and western portions and Hawkins Creamery Road bisects the western portion into north and south portions. Approximately 50 acres of the site is in the Great Seneca watershed a Use I-P watershed and the remainder is in the Hawlings River Watershed, a Use IV-P watershed and the Patuxent Area Management Area (PMA). A stream and stream buffer runs approximately along the eastern boundary line of the eastern portion of the property. There is approximately 32 acres of existing forest.

An historic house occupies the property (Jacob Allnutt Farm 23/123), and will be incorporated into the overall layout of the landscape contracting operation. Historic Preservation staff reviewed the proposal at the Special Exception phase and has given conceptual approval for the project as an adaptive re-use. A Historic Area Work Permit will need to be issued for the project if it proceeds.

The proposed lot is centrally located within the larger 179 acre property. As stated above, the remainder of the larger parcel (P666) is currently operated as a tree farm. An existing driveway to the house extends to Laytonsville Road (MD 108), a second

driveway access point for the new structures to rear of the historic structure is proposed and has been approved for sight distance safety by the State Highway Administration (SHA). SHA has also made specific requirements for improvements to the lot frontage on Laytonsville Road; these requirements are reflected as a condition of approval.

The conditions of approval for the Special Exception detail the operation of the business and the structures proposed. To summarize, the operation will employ up to 119 employees on site and up to 120 field crew employees. Aside from the existing historic structure, there will be an equipment maintenance shop, office barn and building, two pole barns a fuel pump, storage bins and gravel parking. The applicant will also provide a soccer field for employee use. The Special Exception also places restrictions on the hours of operation.

III. TRANSPORTATION DISCUSSION

A traffic study was prepared as part of the special exception application. The Countywide Planning Division-Transportation Planning Section found that with the appropriate improvements as required by the SHA, there would be no adverse effects on area roadways based on the stated traffic operations. The improvements, as required by a letter from SHA, are reflected in Condition #5 above.

IV. ENVIRONMENTAL DISCUSSION

A. Environmental Guidelines

Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 4-02273R was re-certified on April 5, 2004. The NRI/FSD identifies the environmental constraints on the subject property and areas of forest. The 179-acre site includes stream buffers, wetlands, and 32-acres of existing forest.

The Environmental Guidelines recommend a 10 percent impervious cap for all properties in the Patuxent River Watershed Primary Management Area (PMA) for which this site is partially located. Approximately 95 acres of the site is within the Primary Management Area. The application proposes 2.1 acres of impervious surfaces within the PMA, which corresponds to 2.2 percent of impervious surfaces. If in the future someone chooses to expand the imperviousness within the 16.04-acre lot or develop the nursery portion of the property into other uses only 7.4 acres of additional imperviousness would be allowed within the PMA.

B. Forest Conservation

The applicant submitted a preliminary forest conservation plan as part of the preliminary plan of subdivision. Under section 22A-12(f) of the Montgomery County Code properties in agricultural resource areas must plant or retain a certain percentage of the forest onsite. Section 22A-5(c) of the Montgomery County Code allows exemptions from the forest conservation requirements for tree nurseries. All but 16.04 acres of the 179-acre site is exempt from forest conservation. On the remaining 16.04 acres of property there is no forest and no stream buffers. The applicant will meet the conservation threshold by preserving 6.24 acres of existing forest on the "exempt" portion of the property. This forest will be permanently protected by a Category I forest conservation easement. The project complies with Section 22A of the Montgomery County Code.

V. MASTER PLAN DISCUSSION

This property is currently in the Agricultural and Rural Open Space Master Plan (AROS) but was recently adopted into the Olney Master Plan area on March 15, 2005. A future sectional map amendment will need to confirm the zoning and land use for this property. Neither the AROS plan nor the Olney Master Plan make recommendations on Special Exceptions for this area.

At the Planning Board hearing, Community Based Planning Division found that the use is permitted in the RDT zone and meets all development standards of the zone. Further, staff believes that the uses, as proposed, will not have adverse impacts to the surrounding properties.

VI. PUBLIC HEARING TESTIMONY

At the public hearing, Staff recommended approval of the application subject to conditions, as reflected in its memorandum dated 9/9/05 ("Staff Report"). The Applicant, through legal counsel, concurred in the Staff recommendation.

Staff advised the Board that it had received a letter from an adjacent property owner expressing concerns with the application. Among these concerns were the commercial agricultural use of the subject property, the project's impact on traffic, the generation of night pollution, and the environmental threat from a proposed fuel station.¹ Staff stated that the conditions of approval developed by the Board of Appeals in Special Exception Case No. S-2636, in which that body approved the Applicant's petition to conduct a landscape contracting business on the subject property, adequately addressed the concerns. The Applicant's legal counsel, testifying to the same effect, expanded upon Staff's assertion by offering a more detailed analysis of the Board of Appeals findings.

¹ The use is determined by a special exception approval from the Board of Appeals. Aside from traffic, the remaining issues raised in the letter are beyond the jurisdiction of the Planning Board to address.

VIII. CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 12005090 (formerly 1-05090) in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120050900 (formerly 1-05090), subject to the following conditions:

1. Applicant is bound by the Board of Appeals conditions of approval for Special Exception Case No. S-2636.
2. Compliance with the conditions of approval for the forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
3. 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.
4. Compliance with the conditions of the MCDPS stormwater management approval dated July 21, 2005.
5. Compliance with conditions of the SHA approval letter dated August 24, 2005.
6. Compliance with conditions of the DPS, Well and Septic approval letter dated July 29, 2005.
7. Prior to recordation of plat, applicant to provide MNCPPC-Environmental Planning Division with a copy of recorded deeds showing Category I easements on off-site forest preservation areas as shown on the approved forest conservation plan.
8. Other necessary easements

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

MR 11/7/06
Approved for legal sufficiency
M-NCPPC Office of General Counsel

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on Thursday, January 19, 2006, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent, ADOPTED the above Opinion, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Ruppert Nurseries Fall Creek Farm East, Preliminary Plan 120050900 (formerly 1-05090). Commissioner Bryant abstained.



Certification As To Vote of Adoption
Technical Writer