



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MAR 9 2009

**MCPB No. 08-132
Preliminary Plan No. 120080170
Charles L. Duvall Farm
Date of Hearing: October 16, 2008**

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on November 2, 2007, Scott C. McIntyre and Maura Wade ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create two lots on 2.4 acres of land located on the north side of Duvall Road, 1,000 feet west of Duvall Court ("Property" or "Subject Property"), in the Fairland Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120080170, Charles L. Duvall Farm ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 3, 2008, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on October 16, 2008, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

Approved as to
Legal Sufficiency:

Christina Sorrento 2/24/09

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WHEREAS, on October 16, 2008, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Robinson; with a vote of 5-0, Commissioners Alfandre, Cryor, Hanson, Presley, and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120080170 to create two lots on 2.4 acres of land located on the north side of Duvall Road, 1,000 feet west of Duvall Court ("Property" or "Subject Property"), in the Fairland Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to two lots for two one-family detached dwelling units.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable. Conditions include, but are not limited to, the following:
 - a. A certified arborist must provide recommendations for tree protection measures before, during, and after construction for individual trees that are proposed to be protected; and implement the tree protection measures at appropriate stages.
 - b. The Applicant must identify a forest bank or other off-site area to be utilized to satisfy the 0.36-acre afforestation requirement for this project.
- 3) Prior to recordation of the plat, the Applicant must enter into an agreement with the Planning Board to limit impervious surfaces to no more than 8 percent. Prior to release of building permits, the Applicant must demonstrate conformance to impervious surface limits.
- 4) The Applicant must dedicate and the record plat must show dedication of 60 feet of right-of-way, as measured from the opposite right-of-way line, for Duvall Road.
- 5) The record plat must reflect common ingress/egress and utility easements over the shared driveway.
- 6) The Applicant must comply with the conditions of the MCDPS stormwater management and preliminary water quality plan approval dated August 1, 2008.
- 7) The Applicant must comply with the conditions of the Montgomery County Department of Public Works and Transportation (MCDPWT) letter dated July 15, 2008, unless otherwise amended.
- 8) The Applicant must satisfy provisions for access and improvements as required by MCDPWT prior to recordation of plat(s).
- 9) The record plat must show necessary easements.

- 10) 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 Resolution.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The Fairland Master Plan does not specifically address the Subject Property. The Master Plan recommends retention of existing zoning throughout the Master Plan area in the absence of a specific recommendation for change on a particular property. Thus, in the case of the Subject Property, the Master Plan calls for retention of the existing R-200 zoning. The Preliminary Plan complies with the recommendations adopted in the Master Plan in that it proposes one-family residential development consistent with surrounding development patterns and the current zoning designation.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*

The proposed subdivision does 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. In addition, the proposed subdivision does not generate more than three new vehicle trips in the morning or evening peak hours. Therefore, the Application is also not subject to Policy Area Mobility Review.

Access to the proposed lots will be via a shared driveway from Duvall Road. Proposed vehicle and pedestrian access for the site will be safe and adequate.

Public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses, and health services are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. Electrical and telecommunications services are also available to serve the Property.

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the R-200 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. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

- 4. The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

There is no existing forest on the Property; however, several large and specimen trees are on the site. The preliminary forest conservation plan shows one large tree, a 27-inch diameter maple, and one specimen tree, a 33-inch diameter silver maple to be removed as part of this project. These two trees are located within the right-of-way dedication area for Duvall Road. This project has an afforestation planting requirement of 0.36 acres, which will be satisfied at an off-site location. The 0.36-acres of forest planting will be protected in a Category I conservation easement. The preliminary forest conservation plan meets the requirements of the Forest Conservation Law.

- 5. The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept and the preliminary/final water quality plan on August 1, 2008. The stormwater management concept includes water quality control via dry wells. Channel protection is not required because the one-year post-development peak discharge is less than 2 cubic feet per second.

- 6. The preliminary water quality plan (PWQP) is approved by the Planning Board.*

Because the Property is within the Upper Paint Branch Special Protection Area (SPA), it has been determined to require approval of a preliminary/final water quality plan (WQP). MCDPS approved its portion of the WQP requirements on August 1, 2008. The Preliminary Plan complies with the 8% limit on impervious surfaces. The Planning Board, therefore, approves the WQP, which is consistent with the approval by MCDPS.

BE IT FURTHER RESOLVED, that 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) and that 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; and

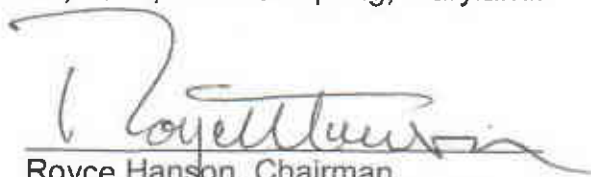
BE IT FURTHER RESOLVED, that the date of this Resolution is MAR 9 2009 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Alfandre, seconded by Commissioner Cryor, with Commissioners Hanson, Robinson, Alfandre, and Cryor present and voting in favor of the motion, and Commissioner Presley absent, at its regular meeting held on Thursday, March 5, 2009, in Silver Spring, Maryland.


Royce Hanson, Chairman
Montgomery County Planning Board