



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MAR 17 2009**

**MCPB No. 08-160**  
**Preliminary Plan No. 120061190**  
**Miller Property**  
**Date of Hearing: October 16, 2008**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION<sup>1</sup>**

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 June 5, 2006, Ms. Guelda Miller, ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 3 lots on 16.11 acres of land on the north side of Darnestown Road (MD 28), approximately 860 feet northeast of Turkey Foot Road ("Property" or "Subject Property"), in the Potomac master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120061190, Miller Property ("Preliminary Plan" or "Application"); and

WHEREAS, the Applicant's Preliminary Plan application was revised by the Applicant in the course of the Planning Board staff ("Staff") review to propose 2 lots and one outlot with associated open space; and

WHEREAS, 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

<sup>1</sup> 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* 2/26/09

8787 Georgia Avenue, Suite 200, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

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

WHEREAS, on October 16, 2008, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Presley; 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. 120061190 to create 2 lots and one outlot on 16.11 acres of land on the north side of Darnestown Road (MD 28), approximately 860 feet northeast of Turkey Foot Road, in the Potomac Master Plan area, subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to two lots, one outlot for potential future development, and an open space parcel.
- 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 or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit, as applicable. Conditions include but are not limited to:
  - a) Applicant to begin reforestation during the first planting season after issuance of the first sediment control permit.
  - b) Applicant to install permanent Category I Forest Conservation Easement signage along the perimeter of the conservation easement in Outlot A and along the Forest Conservation Easement on Lot 2.
  - c) Applicant to install permanent split-rail fencing along Category I Forest Conservation Easement on Lot 3 and Outlot 1.
  - d) Applicant to submit a final forest conservation plan consistent with Section 109-B of the Forest Conservation Regulations.
  - e) Applicant to submit and implement an invasive species management plan for forest stand E, as identified on the approved NRI/FSD, as part of the final forest conservation plan.
- 3) Record plat must reflect Category I easements as shown on the approved preliminary forest conservation plan.
- 4) The record plat must contain a note stating that Outlot 1, as currently shown on the plan, may be converted to a buildable lot only upon a finding by the Planning Board that acceptable frontage is available.
- 5) The record plat must contain a note stating that, "The land contained hereon lies within an approved cluster development. Subdivision or resubdivision except as provided for Outlot 1, as shown on the approved preliminary plan,

- is not permitted and development of the land is permitted only in accordance with the land uses indicated on the approved preliminary plan.”
- 6) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
  - 7) The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 (“Covenant”). Applicant must provide verification to Commission Staff prior to release of final building permit that Applicant’s recorded HOA Documents incorporate by reference the Covenant.
  - 8) The Applicant must comply with the conditions of the MCDPS stormwater management concept approval dated September 28, 2007.
  - 9) The Applicant must comply with the conditions of the MCDPS, Well and Septic Section approval dated September 25, 2007.
  - 10) The Applicant must comply with the conditions of the Montgomery County Department of Public Works and Transportation (DOT) letter dated June 12, 2006, unless otherwise amended.
  - 11) The Applicant must comply with the approval conditions of the Building/Fire Code Modification Advisory Committee letter signed by Michael T. Hamilton, Assistant Fire Marshall, dated June 12, 2007, unless otherwise amended.
  - 12) Prior to the issuance of any building permit the Applicant must make the applicable School Facilities Payment to MCDPS.
  - 13) 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.
  - 14) Other necessary easements must be shown on the record plat.

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 Potomac Master Plan supports the retention and reconfirmation of existing zoning for all developed, underdeveloped, and undeveloped land in the Subregion, except for those sites specifically recommended for change in the Master Plan. The Master Plan does not specifically identify the Subject Property, and therefore recommends that RC zoning be maintained and is appropriate for the site. The Preliminary Plan has been reviewed by jurisdictional agencies, and it has been determined that the Preliminary Plan will not adversely impact environmental, land use and zoning, transportation, or community facilities as identified by the Master Plan. The Board finds the Preliminary Plan substantially conforms to the Potomac Subregion Master Plan in that it is consistent with residential development in the RC zone.

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

The Preliminary Plan does not generate more than 3 additional vehicle trips during the morning or evening peak-hours. Therefore, the Application is not subject to Local Area Transportation or Policy Area Mobility Reviews. Access to the site is from an existing driveway and site distance is adequate at its intersection with MD 28.

Other public facilities and services are available and will be adequate to serve the proposed dwelling units. The Application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access. Schools are operating within acceptable standards at the middle and high school levels, but elementary schools are operating between 105-120% of capacity. Therefore, a school facilities payment will be required prior to issuance of building permits for the dwelling units. Services, such as police stations, firehouses and health services, are currently operating within the standards set by the Growth Policy Resolution currently in effect. Electrical and telecommunications services are also available to serve the Property. The lots will be served by private on-site well and septic systems. The Board finds that all road and public service facilities will be adequate to serve the subdivision.

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

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

There are 13.20-acres of existing forest on this Property and it lies within the agricultural resource area under the Forest Conservation Law. Pursuant to Section 22A-12(f) the retained forest must meet the applicable conservation threshold. Of the 13.20 acres of existing forest, the preliminary forest conservation plan indicates the removal of 4.70-acres of forest and the retention of 8.50 acres. The applicable conservation threshold for this site is 7.63 acres. This Application meets the requirements of 22A-12(f) by saving more forest than the conservation threshold, however; there is still a 0.31 acre forest planting

requirement to compensate for the proposed clearing. The Applicant is proposing to plant 0.83 acres on-site to meet this requirement. Both the 0.83 acres of forest plantings and the 8.50 acres of retained forest will be placed in a Category I Forest Conservation Easement.

The preliminary forest conservation plan does not show any house footprints within 30 feet of the forest conservation easement or the stream valley buffer; however, the Preliminary Plan establishes the building envelopes, not the specific building locations. The builder has the flexibility to locate each residence anywhere within the building envelope. To identify the building envelopes, the preliminary forest conservation plan recommends a split rail fence along the easement on Lot 3 and Outlot 1. The Preliminary Plan recommends permanent forest conservation easement signage along the easement line contained within Outlot A and on Lot 2. With these requirements, the Board finds that the Application complies with Chapter 22A, the Montgomery County 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 concept provides for on-site water quality controls and onsite recharge using non-structural methods. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cubic feet per second. The Board finds that the Application satisfies the requirement to provide adequate stormwater controls.

6. *The Application meets all the criteria for lots without frontage under Section 50-29(a)(2) of the Subdivision Regulations.*

The Preliminary Plan consists of two lots, both without frontage, as well as an outlot that may be re-platted as a lot in the future. The outlot can only be re-platted as a lot after a finding by the Planning Board that it has appropriate frontage. Under the current law, the outlot does not meet the requirements to be re-platted.

In order for the Preliminary Plan to be approved, the Planning Board must find that the two lots without frontage meet the criteria of Section 50-29(a)(2) – Lots to Abut a Public Street, which reads as follows:



*Except as otherwise provided in the zoning ordinance, every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road which has been dedicated to public use or which has acquired the status of a public road. In exceptional circumstances, the board may approve not more than two (2) lots on a private driveway or private right-of-way; provided, that **proper showing is made that such access is adequate to serve the lots for emergency vehicles, for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands.** In multi-family and town house development, not subdivided into individually recorded lots, the board may approve more than two (2) lots or buildings on private roads or drives, provided there is adequate access from such roads or drives to a public street, as above.*

The Planning Board determined that an exceptional circumstance existed whereby the Property has been land locked due to a failure of surrounding subdivisions to provide sufficient land to construct a public street. Rather than providing frontage, or access to frontage, adjacent subdivisions and plats granted continuation of an easement which had long served the Property. The Board considered the approval letter from the Department of Fire and Rescue signed June 12, 2007, by the Assistant Fire Marshall which stated that there was adequate access for fire and emergency apparatus. The private driveway will also be adequate for other public services and the easement has allowed the extension of public utilities. The Board also considered the surrounding development and finds that the two lots without frontage, in this particular location, will not inhibit further subdivision since surrounding properties are already developed or are held in public ownership as parkland. For these reasons, the Planning Board finds that the lots meet the criteria to be approved without frontage under Section 50-29 (a)(2) "Lots to Abut a Public Street" of the Subdivision Regulations

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

MAR 17 2009 BE IT FURTHER RESOLVED, that the date of this Resolution is (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