



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

**PRE-PRELIMINARY PLAN RESOLUTION
FOR RDT ZONED PROPERTY**

MAR 10 2009

MCPB No. 09-25
Pre-Preliminary Plan No. 720080130
Project Name: Hull Property
Hearing Date: 2/19/09

**MONTGOMERY COUNTY PLANNING BOARD
RESOLUTION¹**

WHEREAS, pursuant to Montgomery County Code, Section 50-35A(a)(8), the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review pre-preliminary plan applications involving the creation of lots in the RDT zone; and

WHEREAS, on January 18, 2008, Robert Hull ("Applicant"), filed an application for approval of a pre-preliminary plan of subdivision of property that would create one one-family detached residential lot on 7.71 acres of land located on the south side of Comus Road, approximately 700 feet east of its intersection with Slidell Road ("Property" or "Subject Property"), in the Agriculture and Rural Open Space Preservation Functional Master Plan area ("AROS Master Plan"); and

WHEREAS, Applicant's pre-preliminary plan application was designated Pre-Preliminary Plan No. 720080130, Hull Property ("Pre-Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated February 9, 2009, 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 February 19, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); 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
M-NCPPC Legal Department

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

WHEREAS, on February 19, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Hanson; with a vote of 4-0, Commissioners Alfandre, Cryor, Hanson, and Robinson voting in favor, with Commissioner Presley absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Pre-Preliminary Plan No. 720080130 to create one lot on 7.71 acres of land located on the south side of Comus Road, approximately 700 feet east of its intersection with Slidell Road ("Property" or "Subject Property"), in the Agriculture and Rural Open Space Preservation Functional Master Plan area ("AROS Master Plan"), subject to the following conditions:

- 1) Approval under this Pre-Preliminary Plan is limited to 1 lot for 1 one-family detached residential dwelling unit.
- 2) The Applicant must dedicate right-of-way for Comus Road along the Property frontage to provide a total of 40 feet from the centerline as shown on the Pre-Preliminary Plan.
- 3) The record plat must reflect a Category I easement over all areas of stream valley buffer and forest conservation.
- 4) The Applicant must submit a final forest conservation plan to M-NCPPC Staff for review and approval prior to recordation of the lot.
- 5) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS), Well and Septic Section approval dated September 17, 2008. These conditions may be amended by MCDPS, as long as the amendments do not conflict with other conditions of the Pre-Preliminary Plan approval.
- 6) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated March 11, 2008. These conditions may be amended by MCDOT, as long as the amendments do not conflict with other conditions of the Pre-Preliminary Plan approval.
- 7) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to issuance of access permits.
- 8) At the time of record plat application, the Applicant must provide proof to M-NCPPC Staff of the availability of a TDR for the proposed lot. A note referencing this fact must be included on the record plat.
- 9) Before any building permit is issued, the applicable school facilities payment must be paid to MCDPS.
- 10) 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. *Prior to record plat, there will be written approval for a proposed septic area from the Montgomery County Department of Permitting Services, Well and Septic section.*

MCDPS approved the proposed well and septic plan on September 17, 2008.

2. *All required street dedications along the frontage of the proposed lot will be shown on the record plat.*

Dedication for Comus Road is shown on the Pre-Preliminary Plan in accordance with the Master Plan of Highways and will be reflected on the future record plat.

3. *The proposed lot encompasses the entire Property and may not be further subdivided.*

The Planning Board finds an easement pursuant to § 50-35A(a)(8)(c) is not required to be filed because there is no balance to the Subject Property. The subdivision accounts for the total density currently allowed by the Subdivision Regulations and Montgomery County Zoning Ordinance, and the Applicant must provide Staff with information verifying a TDR is available at the time of record plat.

4. *The width, shape, and orientation of the proposed lot is appropriate for the location of the subdivision.*

The Planning Board expressly finds that this Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations, and that the lot may be platted through the minor subdivision process set forth in Section 50-35A. The Application meets all applicable sections, and the lot size, width, shape and orientation are appropriate for the location of the subdivision.

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

The Planning Board finds the Applicant has an approved preliminary forest conservation plan and is required to have an approved final forest conservation plan prior to recording a plat.

The Planning Board further finds the forest retention area is located on all areas of forest outside of the limit of disturbance, and outside the environmental buffer along the eastern edge of the Subject Property. The forest retention area will be protected through a Category I Forest Conservation Easement, which also protects the environmentally sensitive areas on site. The amount of retained forest slightly exceeds the break-even point of 4.49 acres; therefore, no reforestation planting is required for this Preliminary Plan. The Application satisfies the requirements of the forest conservation law.

6. *The Pre-Preliminary Plan substantially conforms to the AROS Master Plan.*

The Planning Board finds that the Pre-Preliminary Plan complies with the AROS Master Plan goals for land in the RDT zone in that it maintains rural open space that protects environmental features, maintains the area's low density character, and provides a buffer between adjacent residential and agricultural properties. The Application provides protection of the site's environmentally sensitive areas, including stream valley buffer area, floodplain, steep slopes, and associated forest and trees in Category I conservation easement. Preservation of these areas will in turn buffer the proposed house location and contribute to preserving the rural character of the area by limiting the view of the house from the road.

The Planning Board further finds that creation of this lot will not contribute toward fragmenting of agricultural land intended for preservation through RDT zoning, because the Subject Property is a parcel that falls under a limited exemption that allows the lot to be developed under the provisions of the previous zone, and the majority of the site will be preserved in a Category I conservation easement.

7. *The Pre-Preliminary Plan satisfies all applicable requirements of Chapter 59 of the Montgomery County Code.*

The Planning Board finds pursuant to Section 59-C-9.74(b)(2), the Subject Property is exempt from the area and dimensional requirements of the RDT zone because it is a lot created by deed executed on or before the approval date of the sectional map amendment which initially zoned the Property to the Rural Density Transfer Zone.

The Planning Board further finds the Property was created by deed in 1978 and the sectional map amendment took place on January 6, 1981. As a result, the Property must comply with the area and dimensional requirements of the earlier Rural zone. The lot was reviewed for compliance with the Rural zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

8. *Public facilities will be adequate to serve the proposed lot.*

The proposed lot will continue to have access directly from Comus Road via an existing private driveway that will be resurfaced. Comus Road is classified as a country arterial road, and the required right-of-way is 80 feet. The Applicant will dedicate 40 feet from centerline along the entire frontage of Comus Road. The Application is within a school moratorium area, but new subdivisions creating up to three new homes are permitted within such an area. Since this Application is for only one, one-family detached dwelling unit, it meets this provision. However, a school facilities payment must be made prior to issuance of building permits for the proposed lot. Other public facilities and services, such as police stations, firehouses and health services, are operating within the standards set by the Growth Policy Resolution currently in effect. The Planning Board finds that roads and other transportation facilities will be safe and adequate, and that other public facilities and services are available and will be adequate to serve the proposed lot.

BE IT FURTHER RESOLVED, that this Pre-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 Pre-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 10 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).

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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

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Planning Commission on motion of Commissioner Alfandre, seconded by Commissioner Cryor, with Commissioners Hanson, Robinson, Cryor, and Alfandre 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