



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

MCPB No. 09-120
Preliminary Plan No. 120090020
Day Property
Date of Hearing: September 10, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

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

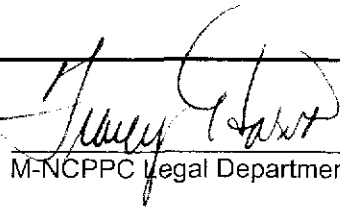
WHEREAS, on August 8, 2008, Mariella Day ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 11 lots on 52.3 acres of land located on the west side of Avery Road approximately 500 feet south of Muncaster Mill Road at the intersection of Avery Road and Needwood Lake Drive ("Property" or "Subject Property"), in the Upper Rock Creek master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090020, Day Property ("Preliminary Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated August 31, 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 Planning Board staff ("Staff") and the staff of other governmental agencies, on September 10, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

Approved as to
Legal Sufficiency:


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 September 10, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Hanson, Presley, and Wells-Harley voting in favor, Commissioners Alfandre and Cryor absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120090020 to create 11 lots on 52.3 acres of land located on the west side of Avery Road approximately 500 feet south of Muncaster Mill Road at the intersection of Avery Road and Needwood Lake Drive ("Property" or "Subject Property"), in the Upper Rock Creek master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this preliminary plan is limited to eleven lots for eleven one-family detached dwelling units.
- 2) The applicant must comply with the conditions of approval of the preliminary forest conservation plan prior to plat recordation or Montgomery County issuance of sediment and erosion control permit(s), as appropriate.
- 3) The Category I conservation easement covering all stream valley buffers and proposed forest conservation areas must be shown on the record plat(s).
- 4) The final sediment and erosion control plans must be consistent with the final limits of disturbance as approved by MNCPPC staff in the Final Forest Conservation Plan.
- 5) The record plat must provide for dedication along the property frontage to create a right-of-way for Avery Road that is 80 feet wide as measured from the opposite right-of-way line.
- 6) The record plat must provide for dedication of right-of-way for the onsite extension of Lake Christopher Drive as a public tertiary road with a 50 foot right-of-way.
- 7) The applicant must provide an 8-foot-wide bike and pedestrian path on the west side of Avery Road along the property frontage.
- 8) The applicant must provide a 15' wide ingress/egress easement between Needwood Lake Drive, and the end of the shared driveway located on Lots 6, 7, and 8 to provide access to the park entrance for residents of this subdivision.
- 9) The applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated January 16, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.

- 10) The applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated January 8, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 11) The applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated September 16, 2008, unless otherwise amended. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 12) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 13) The record plat must show other necessary easements.
- 14) Proof of demolition or relocation of structures that cross proposed lot lines must be provided to M-NCPPC staff prior to recording a plat.
- 15) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) 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 as set forth in the Staff Report, 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 Upper Rock Creek Master Plan contains the following recommendations regarding development in the residential wedge areas of the Master Plan.

- Protect the low density residential character in the area surrounding the Subject Property;
- Preserve natural resources;
- Provide community design that is compatible with adjacent development, and offers harmonious road design, and preserves and enhances views from local roads; and
- Preserve additional open space and maintain views along local roads by locating large or conservation lots along them, and by protecting views of meadows and woodlands.

The proposed subdivision has eleven (11) lots ranging in size from 2.24 acres to 9.06 acres, which protects the low density residential character of the area surrounding the Subject Property. The applicant proposes to replant the majority of the stream valley buffers, retain 1.85 acres of forest, and establish a Category I Conservation Easement around all stream valley buffers, replanted forest, and

retained forest. Thus, the proposed subdivision preserves and enhances the natural resources on site. Therefore, the proposed subdivision is compatible with adjacent development, and the proposed road design preserves and enhances views from local roads by creating only one intersection to serve the site. The applicant is proposing to replant the stream valley buffer near Avery Road, and is providing open space easements between Avery Road and the stream valley buffer, which will be forested. Thus, the proposed subdivision preserves and maintains views along local roads, and protects views of woodlands. Therefore, the Board finds the proposed subdivision will be in substantial conformance with the Upper Rock Creek Master Plan.

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

The submitted plan proposes to extend Lake Christopher Drive for approximately 650 feet onto the Subject Property, where it will terminate in a cul-de-sac. The right-of-way for the road would also be down-graded from 60-feet to a 50-foot tertiary road. Thus, the proposed extension of Lake Christopher Drive will create an overlength cul-de-sac.

Section 50-26(b) of the Subdivision Regulations discusses cul-de-sacs and reads as follows:

Cul-de-sacs and turnarounds. The Board may approve the installation of cul-de-sacs or turnarounds when their use would produce an improved street layout because of the unusual shape, size or topography of the subdivision. The Board must not approve any other cul-de-sac or turnaround. A cul-de-sac or a street that would end in a turnaround must not be longer than 500 feet, measured on its centerline, unless, because of property shape, size, topography, large lot size, or improved street alignment, the Board approves a greater length.

Although the property fronts on Needwood Lake Drive, prohibiting access to Needwood Lake Drive allows the small forest on the southwest portion of the Subject Property to be preserved, while also preventing potential encroachment into the stream valley buffer on the southwest portion of the Subject Property. Therefore, the Board prefers to keep Needwood Lake Drive solely as an entrance to Needwood Park.

Pursuant to Section 50-26(c)(2) of the Montgomery County Code, "..., proposed intersections with an arterial or major highway must be spaced no closer together than 600 feet." Due to the location of the intersections of Lake Christopher Drive with Avery Road and Needwood Lake Drive with Avery Road, the Subject Property does not have enough frontage on Avery Road to accommodate the 600 foot requirement

as described above. Thus, the existing conditions of the Subject Property preclude the applicant from providing a loop road with intersections on Avery Road. Therefore, the Board hereby grants the applicant's request for a cul-de-sac of more than 500 feet, and further finds that the cul-de-sac design provides improved street alignment as required by the Subdivision Regulations.

Roads and Transportation Facilities

The proposed lot 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 application is not subject to Policy Area Mobility Review, because the proposed subdivision is located in the Rural East Policy Area. Access to the lots will be provided by the proposed extension of Lake Christopher Drive and two shared driveways. The applicant will dedicate approximately 1.3 acres of property to create both an 80-foot-wide right-of-way along the property frontage of Avery Road and a 50-foot-wide right-of-way for the extension of Lake Christopher Drive to serve the proposed subdivision. An 8-foot-wide bike and walking path will be constructed on the west side of Avery Road along the property frontage. The proposed lots will be accessed by a combination of individual and shared driveways off of Lake Christopher Drive. A 15-foot-wide ingress and egress pedestrian easement will be located between Needwood Lake Drive and the shared driveway for Lots 6, 7, and 8. This easement is for access to the park entrance, and is solely for the use of the residents of the proposed subdivision. Therefore, the Board finds the proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the proposed dwelling unit. The application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access. Other public facilities and services, such as schools, 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.

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

The lots have been reviewed for compliance with 50-29(a) of the Subdivision Regulations. The Planning Board finds that the size, shape, width, and area of the lots were appropriate for their location within the subdivision.

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

The project was reviewed for compliance with Chapter 22A of the Montgomery County Code, the Forest Conservation law. The site is mainly open fields, and has two small streams and four ponds. The four ponds are proposed to be drained, planted, and placed in a Category I Conservation Easement.

There are 9.89 acres of stream valley buffer on the Subject Property. The outdoor equestrian ring and stormwater management facilities encroach into the stream valley buffer. However, the Applicant proposes to plant 0.37 acres of forest above the minimum requirements to compensate for the permanent encroachment. The preliminary forest conservation plan indicates there is currently 1.85 acres of forest on site. The applicant proposes to retain all 1.85 acres of existing forest and plant 8.99 acres of forest mostly within the stream valley buffer. All retained and replanted forest will be protected in a Category I forest conservation easement as shown on the preliminary forest conservation plan. Therefore, the Board finds that the application satisfies the Forest Conservation Law and the Environmental Guidelines.

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 approval dated January 8, 2009, meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on January 8, 2009. The stormwater management concept includes on-site water quality control and recharge via a site design which meets the Environmentally Sensitive Development Credit for multiple lot developments as outlined in 2000 MDE Stormwater Design Manual. A biofilter and surface sandfilter are proposed to provide water quality control and recharge for those areas which do not meet the above mentioned credit. Channel protection is not required because the one-year post-development peak discharge is less than or equal to two cubic feet per second.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 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

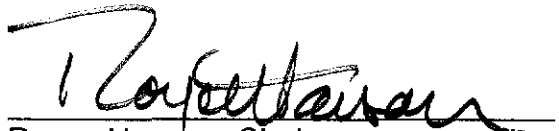
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter and the date of this Resolution is OCT 2 2009 (which is the date that this Resolution is mailed to all parties of record); and

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 Wells-Harley, seconded by Commissioner Alfandre, with Chairman Hanson, and Commissioners Wells-Harley and Alfandre voting in favor of the motion, and Commissioners Cryor and Presley absent at its regular meeting held on Thursday, September 24, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board