



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DEC 10 2009

MCPB No. 09-139
Preliminary Plan No. 120070730
Mainhart Property
Date of Hearing: November 12, 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 May 16, 2007, Magruder Reed at Woodward Hall, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 32 lots on 3.28 acres of land located in the southwest quadrant of the intersection of Washington Grove Lane and Mid-County Highway ("Property" or "Subject Property"), in the Gaithersburg Vicinity Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070730, Mainhart Property ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 29, 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 November 12, 2009, 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

Approved as to
Legal Sufficiency:

M-NCPPC Legal Department

WHEREAS, on, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Wells-Harley; with a vote of 4-0, Commissioners Alfandre, Hanson, Presley, and Wells-Harley voting in favor, with one seat being vacant.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120070730 to create 32 lots on 3.28 acres of land located in the southwest quadrant of the intersection of Washington Grove Lane and Mid-County Highway ("Property" or "Subject Property"), in the Gaithersburg Vicinity Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to 32 lots for 32 townhouse dwelling units, of which 12.5% must be moderately priced dwelling units (MPDUs).
- 2) Final approval of the number and location of buildings, dwelling units, MPDUs, on-site parking, site circulation, sidewalks, and bike paths will be determined at site plan.
- 3) 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:
 - a. The final forest conservation plan must fully conform with Section 109.B of the forest conservation law prior to scheduling a pre-construction meeting.
 - b. The record plat must reflect a Category II Forest Conservation Easement over all areas of forest conservation delineated on the Preliminary Forest Conservation Plan.
 - c. The Applicant must install permanent forest conservation easement signage along the perimeter of the Category II Forest Conservation Easement.
 - d. The final sediment and erosion control plans must be consistent with the final limits of disturbance as approved by M-NCPPC Staff in the Final Forest Conservation Plan.
 - e. Trees that are to be taken for landscape credit on both the Preliminary and Final Forest Conservation Plans must either be species native to the Maryland Piedmont Region or trees that are shown on the Montgomery County Department of Transportation list of acceptable street trees.
- 4) The Applicant must dedicate and the record plat must show dedication of ten feet of right-of-way along the Property frontage for Woodward's Store Road. The right-of-way is to measure 40 feet wide, including the ten-foot-wide dedication from the Subject Property.

- 5) The Applicant must construct five-foot-wide sidewalks along the Property frontage on Washington Grove Lane and along the proposed internal loop street, as shown on the approved Preliminary Plan and as presented in the development phasing of the site plan.
- 6) The Applicant must construct an eight-foot-wide multi-use path along the Property frontage on Mid-County Highway as presented in the development phasing of the site plan.
- 7) The record plat must reflect a public use and access easement over all private streets, adjacent surface parking areas, and adjacent sidewalks and over the pedestrian connection between the private street and Woodward's Store Road.
- 8) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 9) 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.
- 10) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated March 18, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan and site plan approvals.
- 11) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated October 14, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan and site plan approvals.
- 12) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 13) No clearing, grading or recording of plats prior to certified site plan approval.
- 14) Site Plan No. 820070250 must be approved by the Planning Board and signed by the Development Review Staff prior to the approval of the record plat.
- 15) The record plat must show necessary easements.
- 16) 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 Subject Property is located in the area covered by the Gaithersburg Vicinity Master Plan, approved and adopted in January 1985, and amended in 1988 and in 1990. The subject site is not specifically mentioned in the text of the Master Plan, but it is included as part of "Analysis Area 4" in Table 3 on page 46, and it is depicted in the map on the preceding page of the Master Plan. The Master Plan recommended the R-90/TDR-5 Zone for Analysis Area 4, which at the time (i.e., prior to the construction of Mid-County Highway), was an 8-acre area, including part of what is now Mid-County Highway and land across Mid-County Highway. Given the current size of the Property (3.28 acres), neither the Applicant nor Staff believed that utilizing TDRs was feasible because only one additional unit would be gained. Thus, the Planning Board and County Council found, in Local Map Amendment G-840, that the zone recommended in the Master Plan for the subject site no longer had practical application.

Based on this determination, the zoning was changed to a higher density residential use (from R-90 to RT-10), in support of the goals and objectives of both the General Plan and the Master Plan. The General Plan encourages a pattern of "wedges and corridors" - concentrated development along the urban transportation corridors with low intensity and agricultural uses within the wedges. In order to accomplish the general intent of the wedges and corridors concept, the Master Plan (pages 8-9) incorporates the following purposes and objectives:

- Residential densities are the highest near the center of the area, closest to I-270, and lower along the edges of the Planning Area;
- Higher density development is channeled to areas of high accessibility by private automobile and public transit; and
- New residential communities proposed in the Plan are planned with a variety of housing types with local shopping and educational and recreational facilities.

The proposed townhouse development is near the center of the area, adjacent to a major roadway, and will provide additional variety in available housing, thus meeting all three objectives. Moreover, the Master Plan, on its first page, lists the objective of:

- Increasing the County's total housing stock and concurrently providing an appropriate mix of affordable housing.

The proposed townhouse community, with four MPDUs, will help to achieve that objective in a community where existing developments include one-family detached residences, townhome communities, and apartment. The proposed project and associated RT-10 zoning classification are thus more consistent with the Master Plan

goals for housing than the original base zoning recommendation, and are more appropriate given the current density and character of the surrounding area.

Staff, the Planning Board, and the Hearing Examiner all recommended approval of, and the County Council approved, the Local Map Amendment to rezone the Property from R-90 to RT-10, based on a project substantially similar to the one currently submitted, noting that circumstances have changed significantly since the Master Plan was adopted in 1985. There is now a major roadway next to the subject site and a mix of residential land uses in the immediate area of the subject site. Thus, developments built since the Master Plan's adoption have made the subject site much more compatible with a higher density townhouse development than it was before.

In addition, the cooperative process used by the Applicant to alter the binding elements and design the project in a way that does not unduly impact adjacent residents on Woodward's Store Road demonstrates compatibility between the proposed project and adjacent development.

Therefore, the Planning Board finds that the Application is in substantial conformance with the Master Plan, albeit not its specific zoning recommendation.

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

Roads and Transportation Facilities

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. The Application predated the effective date of the 2007 Growth Policy requirements. Therefore, the Application is also not subject to Policy Area Mobility Review.

Vehicular access to the site will be provided by a proposed private street from Washington Grove Lane, which will form a loop within the site. The private street will provide access to individual garages for the townhouse units as well as surface parking for guests. Pedestrian access will be provided by sidewalks on Mid-County Highway and Washington Grove Lane and proposed sidewalks on the proposed private street. A pedestrian path will also provide access to the site from Woodward's Store Road, to the west of the site. A ten-foot-wide strip measuring 5,038 square feet will be dedicated for right-of-way for Woodward's Store Road. No road improvements have been required by MCDOT on Woodward's Store Road because this project does not create vehicular access on that road and because the road does not connect to Mid-County Highway and it provides access to only four lots.

Therefore, the Planning Board finds that proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed improvements.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and public sewer. 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 police stations, firehouses, schools, and health services, are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. The Application is not within a school moratorium area, and a school facilities payment is not required. Electrical, telecommunications, and natural gas services are also available to serve the Subject Property.

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

The Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable Sections. The proposed 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 RT-10 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 plan.

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

The preliminary forest conservation plan indicates eight specimen sized trees (larger than 30 inches in diameter) on the site. Four of the large trees, including a 60 inch diameter Northern Red Oak (*Quercus rubra*), are being preserved and are proposed to be protected within a 0.3-acre Category II Forest Conservation Easement (FCE). This Category II FCE is located along the southern property line and will act to protect the remaining specimen sized trees and as an open space buffer between this project and the single family residence immediately to the south. The remaining four trees will be removed.

This 3.28-acre project has an overall afforestation requirement of 0.54-acres. The Applicant has proposed to meet this afforestation requirement with a combination of 0.11 acres of on-site Category II FCE and the remaining 0.43 acres proposed to be met at an off-site location, to be determined at the time of Final Forest Conservation Plan (FFCP) approval.

Newly enacted provisions of Natural Resources, Title 5, Section 5-1607 of the Maryland Code require the Applicant to receive approval of a variance to remove trees that are 30" DBH and greater or trees that are 75 percent the diameter of the county champion for that species, if a project did not receive approval of a Preliminary Forest Conservation Plan prior to October 1, 2009. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the Applicant is proposing to remove four trees greater than 30 inches DBH, a variance is required. The Applicant has requested a variance to remove the trees.

Variations to the Forest Conservation Law are granted under the provisions of Section 22A-21. These provisions require the Planning Board to refer a copy of each variance request to the County Arborist in the Montgomery County Department of Environmental Protection (MCDEP) for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. If the County Arborist does not provide a recommendation within 30 days, the recommendation is presumed to be favorable. In this case, the variance request was referred to the Montgomery County Arborist within MCDEP on September 29, 2009. The County Arborist has elected not to review the variance request. The County Arborist's recommendations for the variance request are, therefore, presumed to be favorable.

The Planning Board must make four findings before granting a variance. Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

- a. Will confer on the Applicant a special privilege that would be denied to other Applicants;
- b. Is based on conditions or circumstances which are the result of the actions by the Applicant;
- c. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
- d. Will violate State water quality standards or cause measurable degradation in water quality.

With respect to the forest conservation variance, the Planning Board finds as follows:

- a. The requested variance will not confer on the Applicant any special privileges that would be denied to other Applicants. Two of the four large trees requested to be removed are located interior to the project site and the remaining two are located within the right-of-way of Woodward's Store Road. The trees range in size from 33" DBH up to 55" DBH but are not champion trees or 75% of the DBH of the state champion tree for that species. Even though this is the first variance submitted for review, the Planning Board does not envision that this circumstance will be unique. Other applications are pending now. Variances will be necessary in some cases to realize master planned densities and in other cases to remove a potentially hazardous tree and still others to obtain other planning goals. Therefore, this variance request is not a special privilege that would be denied to other Applicants.
- b. The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The variance is based on a site layout for a townhouse development that was submitted to the County Council as part of the zone change request from R-90 to RT-10, which was subsequently approved by the County Council. The layout included the removal of four trees with diameters 30" or greater, two of which are within the development area and two of which are within the right-of-way of Woodward's Store Road, which may be improved in the future. The Planning Board supports the proposed layout as the appropriate way to develop the Property.
- c. The requested variance is a result of the proposed site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.
- d. The requested variance will not violate State water quality standards or cause measurable degradation in water quality. Under Section 22A-16(d) of the Forest Conservation Law the "Board or Director may treat any forest clearing in a stream buffer, wetland or special protection area as creating a rebuttable presumption that the clearing had an adverse impact on water quality." In this case, the specimen trees proposed to be removed are not within a stream buffer, wetland or a special protection area and as such it is presumed that the removal of these individual trees would not cause degradation to water quality.

In consideration of the above findings, the Planning Board approves the Forest Conservation Plan and the Applicant's request for a variance from the Forest Conservation Law to remove the four specimen trees.

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.*

6. The MCDPS Stormwater Management Section approved the stormwater management concept on February 22, 2007. The stormwater management concept consists of on-site channel protection via a detention pond, on-site water quality control via a surface sand filter, and on-site recharge via additional storage below the sand filter.

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 Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 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).

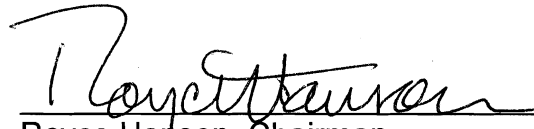
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CERTIFICATION

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 Planning Commission on motion of Commissioner Presley, seconded by Commissioner Alfandre, with Commissioners Hanson, Alfandre, and Presley voting in favor of the

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motion, and Commissioner Wells-Harley absent, with a four-member Board, at its regular meeting held on Thursday, December 3, 2009, in Silver Spring, Maryland.

A handwritten signature in black ink, appearing to read "Royce Hanson", written over a horizontal line.

Royce Hanson, Chairman
Montgomery County Planning Board