



DEC 29 2009

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

MCPB No. 09-148
Preliminary Plan No. 120090390
Potomac Estates
Date of Hearing: November 19, 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 5, 2009, the Potomac Estates Corporation (“Applicant”), filed an application for approval of a preliminary plan of subdivision of property that would create 2 lots on 73.0 acres of land in the RDT zone, located on the east side of Montevideo Road, approximately 150 feet east of Sugarland Road (“Property” or “Subject Property”), in the Agricultural and Rural Open Space (AROS) master plan (“Master Plan”); and


WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120090390, Potomac Estates, (“Preliminary Plan” or “Application”); and

WHEREAS, Planning Board staff (“Staff”) issued a memorandum to the Planning Board, dated November 5, 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 19, 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

WHEREAS, on November 19, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley, seconded

Approved as to
Legal Sufficiency: 
M-NCPPC Legal Department

by Commissioner Wells-Harley with a vote of 3-0, Commissioners Hanson, Presley and Wells-Harley, voting in favor, with Commissioner Alfandre being absent and 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.120090390 to create 2 lots on 73.0 acres of land, in the RDT zone, located on the east side of Montevideo Road, approximately 150 feet east of Sugarland Road ("Property" or "Subject Property"), in the AROS master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this preliminary plan is limited to two lots for two dwelling units as shown on the certified preliminary plan.
- 2) The applicant must comply with all 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. Conditions include but are not limited to:
 - a. Category I conservation easements must be placed over all planted and retained forest as shown on the preliminary forest conservation plan.
 - b. The easement area to be protected with split rail fencing, or other staff approved equivalent, to prohibit damage from grazing livestock or encroachment by farm equipment.
- 3) The applicant must dedicate and the record plat must show dedication of 40 feet from the centerline (80 ft. right-of-way) along the property frontage for Montevideo Road.
- 4) The record plat must reflect a Category I easement over all areas of forest conservation.
- 5) Prior to recordation of the plat(s), the Applicant must record an easement on the balance of the Property noting that density and TDR's have been utilized for the two lots. Reference to this easement must be reflected on the record plat.
- 6) The applicant must comply with the conditions of the MCDPS stormwater management approval dated April 23, 2009, and as revised September 21, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 7) The applicant must comply with the conditions of the Wells and Septic Section approval of the MCDPS dated November 2, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 8) The applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated July 14, 2009. These

conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.

- 9) The final Certified Preliminary Plan and record plat must show a cistern easement as approved by the Montgomery County Fire and Rescue Services.
- 10) The applicant must satisfy provisions for access and improvements as required by MCDOT and the Rustic Roads Advisory Committee prior to recordation of plat.
- 11) Record plat to reference an appropriate easement on lot to allow vehicular and farm machinery access to the unplatted remainder of Property.
- 12) 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.
- 13) 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 as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein) 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 Planning Board determined that the lots, as proposed, protect to a significant degree, the ability for agricultural practices to continue on the Property as recommended by the recommendations of the AROS plan. While the Planning Board continues to have serious concerns about the use of sand mounds to support new lots in the RDT, the Board stated that until the County Council adopts new policy in the RDT zone regarding sand mounds, they will continue to accept sand mound-supported lots in the RDT zone provided that the lots do not diminish the ability of the land to continue to be farmed at or near the same level as could be done prior to development.

The Planning Board also determined that the preliminary plan complies with the Rustic Roads Functional Master Plan in that the home sites are set back from Montevideo Road, an exceptional rustic road, in order to minimize the visual impact of the proposed homes along this road.

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

Local vehicular and pedestrian access was reviewed by the Board and found to adequate with no significant improvements, other than driveway aprons, required of the Applicant. The application has been reviewed by the Montgomery County

Fire and Rescue Services who have determined that the Property has appropriate access for fire and rescue vehicles but that an easement must be created to provide an area to construct a water supply cistern in the future should the County establish a policy for them. Other public facilities such as schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The application is not within a school moratorium area; and is not subject to payment of School Facilities Payment. Both Verizon and PEPCO have reviewed this plan to determine if their respective utility can adequately serve the proposed development. Both utility providers have found that utilities are adequate. Washington Gas does not serve this area of the County. The Board finds that the lots created by this application will be adequately served by all public and private utilities and services.

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, Subdivision Regulations. The application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision as previously discussed regarding the size, shape and location of the lots on the farm.

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

The Board finds that the plan meets all applicable requirements of the county Forest Conservation Law, Chapter 22A. Of the 73.0 acre farm, 64.33 acres will remain in agriculture and be exempted from forest conservation requirements through an agricultural Declaration of Intent (DOI). After removing 1.17 acres of road dedication from the remaining 64.33 acre tract, a net tract area of 7.5 acres remains and is subject to the law. The forest conservation requirement on the 7.5 acre net tract equals 1.5 acres. To meet this requirement, the Preliminary Forest Conservation Plan shows protection of the 2.39 acre forest and 0.305 acres of afforestation which is to be protected in a Category I easement.

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 Montgomery County Department of Permitting Services (MCDPS) has approved a stormwater management concept to address runoff as required under Chapter 19 of the County Code. The concept requires quality control of runoff through non-structural methods. No quantity control is required because runoff volumes do not exceed 2.0 cubic feet per second. Chapter 50 requires that the stormwater management concept plan be approved by MCDPS prior to Planning Board action on a preliminary plan. Therefore, the Board finds that stormwater management requirements are adequately addressed.

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 19 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 Commissioners Hanson, Alfandre, and Wells-Harley voting in favor of the motion, and Commissioner Presley absent, with a four-member Board, at its regular meeting held on Thursday, December 17, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board