



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 10-57
Preliminary Plan No. 120070570
Snow Hill Farm
Date of Hearing: May 6, 2010

SEP 29 2010

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 January 17, 2007, Ronald Furman ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one (1) lot approximately 6.45 acres in size located on the west side of Frederick Road (MD 355) approximately 2000 feet south of the intersection with Little Bennett Drive ("Property" or "Subject Property"), in the Clarksburg Master Plan and Hyattstown Special Study Area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070570, Snow Hill Farm ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated April 26, 2010, 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 May 6, 2010, 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 May 6, 2010, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Dreyfus; with a vote of 4-0, Commissioners Dreyfuss, Hanson, Presley, and Wells-Harley voting in favor, with Commissioner Alfandre absent.

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, NCFPC Special Department 10 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120070570 to create one (1) lot approximately 6.45 acres in size on the Property Clarksburg Master Plan and Hyattstown Special Study Area, subject to the following conditions:

- 1) Total development under the Preliminary Plan is limited to one lot for 25,923 square feet of Rural Service (RS) permitted uses, which is comprised of 3,100 square feet of retail space for nursery, 2,500 square feet of storage space for the nursery, and 20,323 square feet of a farm machinery/service area.
- 2) The Applicant must provide pavement marking and signal timing modifications at the intersection of MD 355 and MD 121 subject to the State Highway Administration's approval. The pavement marking is to provide an exclusive left-turn lane and a shared through/right-turn lane on each approach of MD 121. This improvement must be complete prior to obtaining a building permit.
- 3) The Preliminary Plan must comply with all conditions of 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 appropriate.
- 4) The Applicant must provide an 8-foot-wide shared use path with a 5-foot-wide landscape panel along the entire length of the Property's frontage on MD 355.
- 5) The Applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated February 12, 2008. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) The Applicant must comply with the conditions of the MCDPS, Stormwater Management Section approval dated February 5, 2008. 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 dedicate 40 feet of right-of-way from the centerline of Frederick Road (MD 355) along the Property frontage as shown on the Preliminary Plan.
- 8) The Applicant must dedicate 75 feet of right-of-way along the Property frontage of Interstate 270 as shown on the plan.
- 9) The Applicant must satisfy provisions for access and improvements as required by the Maryland State Highway Administration (MDSHA), and including construction of the 8-foot-wide shared use path, prior to issuance of access permits.
- 10) 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.

- 11) 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 presented at the Hearing and 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 zoned Rural Service (RS) and is located in the Clarksburg Master Plan & Hyattstown Special Study Area. The Master Plan does not make specific recommendations for the Property; however, the Property is located in an area identified by the Master Plan as the southern portion of the Hyattstown transition area. The Plan recognized this area as having several existing non-conforming commercial uses and a unique location between I-270 and MD 355. The Plan offers the following recommendations with respect to this area (page 84):

- Non-residential land uses in this area which is projected to experience severe noise impacts;
- Creation of a new zone to permit services of a scale and character which would be compatible in rural settings and would encourage appropriate landscaping and access. Such a zone would be appropriate in this portion of the plan;

The Applicant is proposing a landscaping business and farm machinery storage and servicing business onsite, which is consistent with the zoning and non-residential land uses recommended by the Master Plan. Therefore, the Board finds the Application substantially conforms to the Clarksburg Master Plan.

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

Local Area Transportation Review (LATR)

Two intersections were identified as critical intersections affected by the proposed Snow Hill Farm development. These two intersections were examined in a submitted traffic study to determine whether they met the applicable congestion standard. The congestion standards for the MD 355/MD 109 intersection (located in the Rural East Policy Area) and MD 355/MD 121 intersection (located in the Clarksburg Policy Area) are 1,350 and 1,425 Critical Lane Volumes (CLV), respectively. The result of the CLV analysis is summarized in Table 1.

Table 1: Calculated Critical Lane Volume Values at Studied Intersections

Intersection	Weekday Peak Hour	Traffic Condition		
		Existing	Total	Total w/ Improvement
MD 355 & MD 109	Morning	1,076	1,089	1,089
	Evening	1,253	1,268	1,268
MD 355 & MD 121	Morning	1,063	1,092	1,050
	Evening	1,441	1,471	1,228

As shown in the above table, the MD 355/MD 109 is currently operating within an acceptable CLV level of 1,350 and is expected to continue to do so for the total future development. The MD 355/MD 121 intersection is currently operating with an unacceptable CLV level (higher than 1,425) during the weekday PM peak hour and this condition would continue for the total future development. To address this failing intersection condition, the Applicant must provide restriping at the intersection to create an exclusive left-turn lane and a shared through/right-turn lane on each approach of MD 121, and modify the signal timing. With the proposed intersection improvements the MD 355/MD 121 intersection is expected to operate within an acceptable CLV level during the weekday PM peak hour. Therefore, the Board finds this Preliminary Plan Application meets the LATR requirements of the APF review.

Policy Area Mobility Review (PAMR)

The Property is located within the Rural East Policy Area where there is no PAMR trip mitigation requirement according to the Growth Policy. Thus, the Board finds the Preliminary Plan Application meets the PAMR requirements of the APF review.

Site Access and Vehicular/Pedestrian Circulation

Access to the Subject Property is provided via a private driveway from Frederick Road (MD 355). SHA will require the construction of an exclusive northbound MD 355 left turn lane and a southbound MD 355 deceleration lane and acceleration lane at the MD 355/Site Access Drive intersection. The Board finds that the proposed access point is adequate to accommodate the site-generated traffic. The Board also finds the proposed internal traffic/pedestrian circulation systems shown on the Preliminary Plan to be adequate.

Other Public Facilities and Services

The Property will be served by private wells and private standard septic systems. A 10-foot public utility easement has been provided along the MD 355 frontage of the Property to accommodate any necessary installation of electrical and telecommunication services. The Application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access. The proposed subdivision is for commercial use; therefore, the Application is not subject to the school moratorium or school facilities payment. 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. Gas, 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.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The proposed size, width, shape and orientation of the lot is appropriate for the location of the subdivision. The lot was reviewed for compliance with the dimensional requirements for the RS zone as specified in the Zoning Ordinance. The proposed lot meets the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of which have recommended approval of the Preliminary Plan. Therefore, the Planning Board finds that the size, shape, width, and area of the lot is 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.*

Environmental Guidelines

The site is in the Little Bennett Creek watershed, a Use I-P watershed. There are no forests, wetlands, or streams onsite. The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #4-07108 for this site was approved on December 21, 2006. This plan is in compliance with the Montgomery County Environmental Guidelines.

Forest Conservation

The Applicant submitted a preliminary forest conservation plan as part of the Preliminary Plan. Under Forest Conservation Section 22A-12 of the Montgomery County Code properties must retain, plant, or mitigate up to a certain threshold (percentage) of forest. There is no forest onsite, and the applicant proposes to meet the 1.03-acre planting requirement via off-site planting. Two trees are proposed to be

removed that are greater than 30 inches in Diameter at Breast Height (DBH), therefore a Forest Conservation Variance is required.

Forest Conservation Variance

Section 1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection. If a forest conservation plan cannot be altered to protect these trees, the Applicant is required to demonstrate that it qualifies for a variance in accordance with Section 22A-21 of the Montgomery County Code to remove them. In general, the law requires the retention and protection of all trees that measure 30" DBH and greater; trees that are 75% or greater than the diameter of the county champion for that species; and rare, threatened and endangered species. Since this project will require the removal of two trees greater than 30 inches DBH, a variance is required. The trees that are requested to be removed are identified on the Preliminary Forest Conservation Plan as tree #104 and tree #118. Tree #104 is located in the center of the proposed drive on the north side of the property and is a 31" DBH Norway maple (*Acer platanoides*). Tree #118, located in the center of the Property, is a 33" honey locust (*Gleditsia triacanthos*).

In accordance with Section 22A-21(e), the Planning Board must find that the Applicant has met all criteria required to grant the variance. The Board finds the Applicant has satisfied the requirements for a Forest Conservation Variance for the following reasons:

- a) The variance will not confer on the applicant a special privilege that would be denied to other applicants.

The proposed rural service uses on the Subject Property necessitate grading and improvements to the majority of the site. The two trees in question are located in areas of the site which make them difficult to avoid while still providing the necessary area for the proposed uses. If the trees were required to remain, the critical root zones (CRZ) of both would be adversely impacted by the proposed development. As a result, the trees would most likely become hazardous. The proposed uses and intensity of the development are anticipated by the Clarksburg Master Plan for this site, and providing these uses necessitates impact to the trees. Therefore, the proposed variance is not a special privilege that would be denied to other applicants.

- b) The variance is not based on conditions or circumstances which are the result of the actions by the Applicant.

The Norway maple, an invasive species, will need to be removed to accommodate the proposed driveway from 355. The proposed display area and narrow width of the lot doesn't leave the Applicant with enough room to relocate the driveway in a way that will not impact the Norway maple. The honey locust is located in an area near the proposed nursery that will be used for storage and display purposes, which will likely impact the CRZ. Therefore, the site layout and design necessitates the removal of the 31" DBH Norway maple (*Acer platanoides*) and the 33" honey locust (*Gleditsia triacanthos*) since the trees will likely become hazardous following the removal of the CRZ and the proposed grading for the proposed buildings.

c) The need for the variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

The requested variance is a result of the proposed site design and layout on the subject property and not a result of land or building use on a neighboring property.

d) The variance will not violate State water quality standards or cause measurable degradation in water quality.

The trees in question are isolated individuals that are not associated with any streams or environmentally sensitive areas or steep slopes. As such, the removal of these trees is not considered to have an adverse impact on the water quality standards or degradation in water quality.

As a result of the above findings, the Board approves the Applicant's request for a variance from Forest Conservation Law to remove the 31" DBH Norway maple (*Acer platanoides*) and the 33" honey locust (*Gleditsia triacanthos*).

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 meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on February 5, 2008. The stormwater management concept consists of on-site channel protection measures via the use of a dry pond. On-

site water quality control and groundwater recharge will be handled via the use of a surface sand filter and nonstructural measures.

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

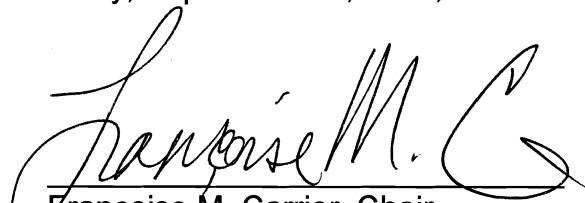
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board, and that the date of this Resolution is SEP 29 2010 (which is the date that this Resolution is mailed to all parties of record); and

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 Dreyfuss, seconded by Commissioner Presley, with Vice Chair Wells-Harley, Commissioners Alfandre, Dreyfuss, and Presley present and voting in favor of the motion, and Chair Carrier abstaining, at its regular meeting held on Thursday, September 23, 2010, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board