



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

NOV 15 2010

MCPB No. 10-78  
Preliminary Plan No. 120090370  
9490 River Road  
Date of Hearing: June 3, 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 July 10, 2009, Louis and Ann Donatelli ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 2 lots on 5.44 acres of land in the RE-2 zone, located in the southeast corner of the intersection of River Road and Logan Drive ("Property" or "Subject Property"), in the Potomac Subregion Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090370, 9490 River Road ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated May 21, 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 June 3, 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 June 3, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Hanson, seconded by Commissioner Wells-Harley with a vote of 2-1; Commissioners Hanson and Wells-

Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, N.W., Suite 200, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

Harley voting in favor: Commissioner Alfandre voting to deny, and Commissioners Dreyfuss and Presley being 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. 120090370 to create 2 lots on the Subject Property, in the Potomac Subregion Master Plan area, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to two residential lots.
- 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.
- 3) The applicant must dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan unless otherwise designated on the preliminary plan.
- 4) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated March 5, 2010. These conditions may be amended by MCDPS provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 5) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated April 20, 2010. These conditions may be amended by MCDOT provided the amendments do not conflict with other conditions of the preliminary plan.
- 6) The certified preliminary plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, driveway and sidewalks shown on the preliminary plan are illustrative. The final locations of buildings, structures and driveway will be determined during the building permit process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
- 7) 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.
- 8) Other necessary easements must be shown on the 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 Potomac Subregion Master Plan (2002) recommends the continuation of the RE-2 zone for the Property and nearby properties in recognition of, and to accommodate, the existing development patterns that had been established in this area. The Master Plan makes no specific recommendations for this Property. As such, the Board finds that the creation of lots in conformance with the RE-2 zoning designation as shown on the preliminary plan drawing to be in conformance with the Master Plan recommendations.

The claim of some plan opponents that the existing home on proposed Lot 1 will violate the minimum setback along Logan Drive is not a basis for denying the proposed subdivision. Opponents of the plan argue that by creating proposed Lot 2, which fronts on Logan Drive and has a 50-foot minimum front yard setback, a uniform building line is established, and that the existing home on Lot 1 must abide by this setback. But there is no uniform building line setback requirement in the RE-2 zone. There is an "established building line" setback in certain denser residential zones, but not RE-2. Moreover, the Department of Permitting Services has confirmed that to the extent there is a nonconformance in the Lot 1 setback along Logan Drive it already exists. The approval of Lot 1, as configured on the preliminary plan drawing, will not change the setback of the nonconforming structure and, therefore; not exacerbate the nonconformance.

Opponents of the plan also incorrectly argue that an existing barn will violate a 35-foot rear yard setback requirement. The rear yard setback for accessory structures in the RE-2 zone is ten feet, not 35 feet.

Finally, opponents of the plan incorrectly argue that the tennis court that is currently located on the boundary between proposed lot 1 and proposed lot 2 must be removed prior to preliminary plan approval. The Board generally does not require structures that cross proposed lot lines to be removed prior to preliminary plan approval. The argument that the tennis court must be removed prior to preliminary plan so that the record plat can be consistent with the approved preliminary plan is incorrect. The preliminary plan reflects that the tennis court is to be removed. The final plat must reflect this requirement. Development review staff will ensure that the tennis court is removed prior to plat recordation.

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

The application has been reviewed by all local utility agencies (gas, electric, and telecommunications) who have recommended approval of the plan because their

respective utility, if available, can adequately serve the development. Other public facilities and services, such as schools, police stations, firehouses and health services, are operating within the standards set by the Growth Policy Resolution currently in effect. The Property is not subject to payment of a School Facilities Payment; the local school cluster is operating within acceptable levels at the high school, middle school and elementary school levels.

The proposed use will generate less than 30 vehicle trips during the morning or evening peak-hour, and therefore, the application is not subject to Local Area Transportation or Policy Area Mobility Review.

The Planning Board discussed, at length, the nature of the pavement within the Logan Drive right-of-way which currently serves two existing homes fronting on Logan Drive and that is proposed to be extended as a private driveway and serve the new home on proposed Lot 2. Because Logan Drive is a dedicated right-of-way, the private driveway within it provides adequate access to the new lot. Further, the Board would encourage the eventual abandonment of Logan Drive since there is an intermittent stream within the right-of-way and that there is considerable neighborhood opposition to its completion as a through-street.

Opponents of the plan assert that (1) the Board cannot approve the termination of a street in a turnaround for this subdivision, (2) the plan does not meet the requirements for an overlength turnaround; and (3) Logan Drive must be built to public street standards.

The contention that this plan would terminate a public street in an overlength turnaround in violation of Section 50-26(b) is incorrect. Logan Drive is not a public street because it has never been accepted as a public street by the County. Rather, it is a private driveway in a dedicated right-of-way. Moreover, even if Logan Drive were a public street, this plan does not "terminate" it. The Board reads "terminate" to imply a permanent design, not a temporary one such as this. The right-of-way which currently extends from Persimmon Tree Road to River Road creates a presumption that Logan Drive will eventually be built and extended to connect these two streets. That is precisely the purpose of the right-of-way. Therefore, it would be improper to treat this driveway ending as the type of permanent turnaround that the subdivision regulations prohibit. It does not matter that Logan Drive is unlikely to ever be improved into a public street or extended to River Road. It also does not matter that due to the presence of wetlands in Logan Drive's path and neighborhood opposition to its extension the Board would not support improving and extending it. Finally, the plan does not include a turnaround as defined in Section 50-1 of the subdivision regulations. A turnaround is "[t]he termination of a public street in the approximate shape of a "T," built to allow vehicles to reverse direction using 3-point turn." The driveway

ending in this case is not "T"-shaped. It is a stub-out without the perpendicular extensions that would make it a turnaround as defined in the subdivision regulations. For each of the reasons, the argument that Logan Drive is an overlength turnaround is incorrect.

The claim of some plan opponents that Logan Drive must be built to public street standards if this subdivision is approved is incorrect because it is a driveway, not a public street. Section 50-24(a) requires streets, not driveways, to be built to the requirements of the road code, and DOT did not require this driveway to be upgraded to street standards. Moreover, Section 50-24(b) requires lots fronting on an existing state, county, or municipally maintained road to be built along the lot frontage. Logan Drive is privately maintained, and thus does not fall under this provision.

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

The application was reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections including the resubdivision criteria, as discussed below. The Board finds that the proposed lot sizes, widths, shapes and orientations are appropriate for the location of the subdivision.

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

Staff finds that the plan meets all applicable requirements of the county Forest Conservation Law, Chapter 22A. The 5.44 acre property has an afforestation requirement on the 1.09 acres. This is to meet the minimum afforestation threshold since there is no forest on-site currently. To meet this requirement, the Preliminary Forest Conservation Plan shows the entire 1.09 acre requirement being met off-site in a forest conservation bank.

There are five specimen trees onsite and one specimen tree off-site, all of which are being retained. Under State Bill #666 "No Net Loss of Forest Policy" no variance is required because no specimen trees are proposed for removal.

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 application has an approved stormwater management concept dated March 5, 2010. The concept consists of non-structural water quality control measures. Channel protection measures are not required because post development flow does not exceed 2.0 cubic feet per second. The Board finds that the application meets the requirements of Chapter 50-24(j) for stormwater management.

6. *The Board finds that the proposed lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood (as delineated by Staff in the Staff Report) ("Neighborhood"), as analyzed below.*

Size: Lot sizes in the Neighborhood range from 1.96 acres to 7.05 acres. The Proposed lots are 2.24 acres and 2.78 acres. Both proposed lots fall within the range of all lot sizes as is demonstrated in the tabular summary(s). **The lots are of the same character with respect to size as the other lots in the defined Neighborhood.**

Width: Lot widths in the Neighborhood range from 150 feet to 780 feet. The proposed lots vary in width from 240 to 336 feet and, therefore, **will be in character with existing lots in the Neighborhood with respect to width.**

Frontage: Lot frontages in the Neighborhood range from 135 feet to 790 feet. The Proposed lots will have frontages that range from 240 feet to 336 feet and fall well within the range of all lots as is demonstrated in the tabular summary. **The proposed lots will be of the same character as existing lots in the Neighborhood with respect to lot frontage.**

Area: The buildable area of lots in the Neighborhood ranges from 0.85 acres to 5.64 acres. The buildable areas for lot 1 and 2, respectively are, 1.60 acres and 1.89 acres and are well within the range. **The lots are of the same character with respect to area as the other lots in the defined Neighborhood.**

Alignment: In the 38 lot Neighborhood, all lots align perpendicularly to the street line in either a corner or standard perpendicular fashion. Both of the proposed lots have standard perpendicular alignments to the street. **The proposed lots are of the same character as existing lots with respect to the alignment criterion.**

Shape: There are a variety of lot shapes in the Neighborhood including rectangular, irregular, angular and triangular shapes. The proposed lots are

generally rectangular. **The shapes of the proposed lots will be in character with shapes of the existing lots.**

**Suitability for Residential Use: The existing and the proposed lots are zoned residential and the land is suitable for residential use.**

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

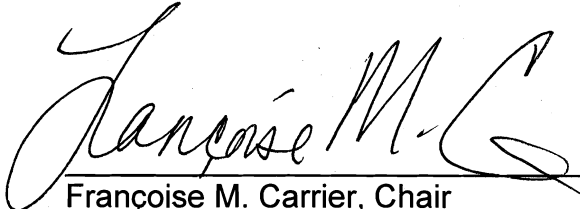
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is NOV 15 2010 (which is the date that this Resolution is mailed to all parties of record); and

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).

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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 Vice Chair Wells-Harley, seconded by Commissioner Alfandre, with Chair Carrier, Vice Chair Wells-Harley, and Commissioner Alfandre voting in favor of the motion, and with Commissioners Dreyfuss and Presley absent, at its regular meeting held on Thursday, October 21, 2010, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board