



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

**PRE-PRELIMINARY PLAN RESOLUTION
 FOR RDT ZONED PROPERTY**

JUL 13 2010

MCPB No. 10-89
 Pre-Preliminary Plan No. 720090110
 Project Name: Aigner Property
 Hearing Date: June 17, 2010

**MONTGOMERY COUNTY PLANNING BOARD
RESOLUTION**

WHEREAS, pursuant to Montgomery County Code, Section 50-35A(a)(8), the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review and approve the creation of up to five lots in the RDT zone under the pre-preliminary plan procedures as set forth in Montgomery County Code, Section 50-33A; and

WHEREAS, on March 18, 2009, Hans Aigner ("Applicant"), filed an application for approval of a pre-preliminary plan of subdivision of property that would create two one-family detached residential lots and one outlot on 115.51 acres of land located on the east side of Old Hundred Road (MD 109), approximately 3000 feet south of the intersection with Thurston Road ("Property" or "Subject Property"), in the Preservation of Agriculture and Rural Open Space Functional Master Plan area ("Master Plan"); and

WHEREAS, Applicant's pre-preliminary plan application was designated Pre-Preliminary Plan No. 720090110 Aigner Property ("Pre-Preliminary Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated June 4, 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 Planning Board staff ("Staff") and the staffs of other governmental agencies, on June 17, 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 17, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by

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Commissioner Presley; with a vote of 4-0, Commissioners Alfandre, Dreyfuss, 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 Pre-Preliminary Plan No. 720090110 to create two lots and one outlot on 115.51 acres of land located on the east side of Old Hundred Road (MD 109), approximately 3000 feet south of the intersection with Thurston Road ("Property" or "Subject Property"), in the Preservation of Agriculture and Rural Open Space Functional Master Plan area ("Master Plan"); subject to the following conditions:

- 1) Approval under this Pre-Preliminary Plan is limited to 2 lots and 1 outlot for 2 one-family detached residential dwelling units.
- 2) The Applicant must obtain final approval of the preliminary forest conservation plan prior to approval of the minor subdivision record plat by the Planning Board.
- 3) At the time of record plat application, the applicant must provide verification to MNCPPC staff of the availability of a TDR for each of the proposed lots.
- 4) Compliance with conditions of MCDPS, Well and Septic Section letter dated March 2, 2010.
- 5) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 6) The record plat must contain the following note: "Agriculture is the preferred use in the Rural Density Transfer Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery, and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone."
- 7) The Adequate Public Facility (APF) review under this Pre-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 record plat.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, 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. Applicant has written approval for a proposed septic area from the Montgomery County Department of Permitting Services, Well and Septic section.
2. The Subject Property is zoned Rural Density Transfer (RDT) and meets the minimum density for the RDT zone, one dwelling unit per 25 acres.

3. The width, shape, and orientation of the proposed lots is appropriate for the location of the subdivision. The Planning Board finds that proposed lots, both in excess of 25 acres, are appropriate for the location of the subdivision and that the lots may be platted through the minor subdivision process set forth in § 50-35A of Chapter 50 of the Montgomery County Code (“Subdivision Regulations”).
4. The Application is in compliance with the Montgomery County Environmental Guidelines for protection of environmentally sensitive areas.
5. The Pre-Preliminary Plan substantially conforms to the Preservation of Agriculture and Rural Open Space (AROS) Master Plan.

The AROS Master Plan does not specifically identify the Subject Property for discussion but does give general guidance and recommendations regarding preservation of farmland and rural open space. The master plan recommends that this area maintain lower densities for the protection of agriculture, environmental features, and residential use of a rural character. The creation of record lots larger than 25 acres creates opportunities for continuing agricultural uses and the 50 acre outlot can also continue as an agricultural use. This Pre-Preliminary Plan complies with the master plan goals in that it contributes to the area’s low density character, protects environmental features, and preserves farmland to the greatest extent possible.

6. The Pre-Preliminary Plan satisfies all applicable requirements of Chapter 59 (Zoning) of the Montgomery County Code.
7. Public facilities will be adequate to serve the proposed lot.

The proposed lots and associated uses do not generate 30 or more vehicle trips during the morning or evening peak-hours, as determined by the *Local Area Transportation Review Guidelines*. Therefore, the application is not subject to further Local Area Transportation Review. A sidewalk is not required to be constructed. Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed improvements.

Other public facilities and services are available and will be adequate to serve the proposed dwelling unit. The Property will be served by a private standard septic system and private well. The school cluster in which the Subject Property lies is not currently in moratorium. 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. Electrical and telecommunications services are also available to serve the Property.

8. Proper circumstances exist to approve a lot without frontage.

Section 50-29(a)(2) of the Subdivision Regulations states that ...”every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road. In exceptional circumstances, the Board may approve not more than two (2) lots on a private driveway or private right-of-way; provided that proper showing is made that such access is adequate to serve the lots for emergency vehicles, and for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands.”

For this application, the Board finds that an exceptional circumstance exists whereby they may approve a lot without frontage. Because of the rather large size of this property and the desire to place a new lot to the rear of the existing house in an area suitable for agriculture, an unusually elongated pipestem for Lot 2 along the southern boundary of the 115 acre farm would be required. However, the pipestem would not be used for the driveway, and its location in a stream and its buffer would create unnecessary adverse impacts to the environmental features on the Property.

The Board considered the other most reasonable location for a pipestem along the northernmost driveway. A pipestem in this location would sever ownership of the farm since Applicant intends to continue to live in the house on Lot 1 and own the outlot and convey Lot 2 to others.

The Board determined that the proposed lots can be safely and adequately served by the existing driveway, and that the ingress and egress easement that would be created on the driveway provides assurances for the continuation of that access. Further, Fire and Rescue Services has found that emergency equipment can adequately access the Property and access by other public services is not hindered by the private driveway. Utilities could be accommodated in the suggested ingress/egress and utility easement recommended in Condition #5. The approval of a lot without frontage would not hinder future development of adjacent lands. Therefore, the Board believes that a proper showing has been made to allow Lot 2 to be approved without frontage.

BE IT FURTHER RESOLVED, that this Pre-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 Pre-Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed; and

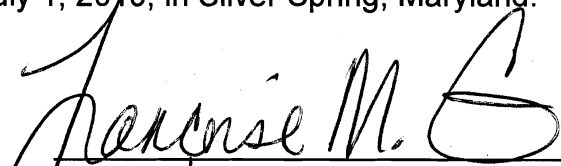
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 13 2008 (which is the date that this Resolution is mailed to all parties of record); and

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 Wells-Harley, with Commissioners Wells-Harley, Alfandre, and Presley voting in favor of the motion, and with Chair Carrier abstaining and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, July 1, 2010, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board