



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 10-100  
Preliminary Plan No. 120100210  
Boxwell Property  
Date of Hearing: July 1, 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 March 18, 2010, the Caroline M. Mitchell-Boxwell Revocable Trust ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 1 lot on 1.70 acres of land in the RE-2 zone, located at 15340 Peach Orchard Road, 1,200 feet north of Siebel Drive ("Property" or "Subject Property"), in the Cloverly master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100210, Boxwell Property ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated June 16, 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 July 1, 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 July 1, 2010, 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, Carrier, Presley, and Wells-Harley voting in favor, Commissioner Dreyfuss being absent.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary

Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, Suite 200, Spring Department Chairman's Office: 301.495.4605 Fax: 301.495.1320

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Plan No. 120100210 to create 1 lot on 1.70 acres of land in the RE-1 zone, located at 15340 Peach Orchard Road, 1,200 feet north of Siebel Drive ("Property" or "Subject Property"), in the Cloverly master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 1 one-family detached residential dwelling lot.
- 2) The Applicant must comply with the conditions of approval for the SPA Preliminary/Final Water Quality Plan:
  - a. Prior to recording of plat, the Applicant must enter into an agreement with the Planning Board to limit impervious surface to no more than 14.8 percent (or 11,037 square feet) of the property acreage of 1.7 acres.
  - b. Prior to release of building permit, the Applicant must demonstrate conformance to the impervious surface limit. Any modifications to these plans which increase imperviousness will require Planning Board action.
- 3) The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan. The applicant must meet all conditions and requirements prior to recording of plat or MCDPS issuance of sediment and erosion control permit(s), as appropriate:
  - a. Prior to issuance of building permit or sediment and erosion control permit, a Final Forest Conservation Plan must be submitted for review and approval by M-NCPPC Environmental Planning Division. The Final Forest Conservation Plan must include the following elements:
    - i. Forest bank or offsite forest planting site must be identified.
    - ii. Proposed limits of disturbance.
    - iii. Tree save plan.
  - b. Prior to the preconstruction meeting, forest bank credits must be purchased or planting plan for offsite forest planting site must be approved by M-NCPPC Environmental Planning Division.
- 4) 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.
- 5) The Applicant must dedicate and the record plat must show dedication of 38 feet of right-of-way from the centerline (for a total of approximately 1,913 square feet) along the property frontage for Peach Orchard Road.
- 6) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated December 30, 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 Montgomery County Department of Transportation (MCDOT) letter dated May 12, 2010. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.

- 8) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 9) 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.
- 10) 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 Subject Property is identified as part of the Residential Wedge in the Approved and Adopted 1997 Cloverly Master Plan. This master plan "continues the low-density land use recommendations of the 1981 plan to protect the Northwest Branch and Paint Branch watersheds through low-density residential zoning and enhanced park and recreation linkages" (p. 22). The recommendations for the residential areas include a recommendation to maintain low-density zoning to protect residential stability, neighborhood character, and rural character. The Planning Board finds the proposed plan substantially conforms to the Cloverly Master Plan in that a residential lot that exceeds minimum RE-1 zoning standards is being created and the creation of the lot fits within the current development pattern of the area.

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

Roads and Transportation Facilities

The proposed lot is not subject to Local Area Transportation Review or Policy Area Mobility Review because the proposed development generates fewer than 3 new peak-hour trips within the weekday morning and evening peak periods. The Property has frontage on Peach Orchard Road, which is a primary residential street requiring 70 feet of right-of-way. Right-of-way dedication from the centerline totaling 1,913 square feet is required to achieve 70 feet of right-of-way from the opposite right-of-way line. Sidewalks are not required in the RE-1 zone because pedestrians can safely use the road in this low density situation. The Planning Board finds the proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public and private improvements.

Other Public Facilities and Services

The Planning Board also finds other public facilities and services are available and

will be adequate to serve the proposed dwelling unit. The dwelling unit will be served by public water and sewer. Gas, electric and telecommunications services are also available to serve the lot. Schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The application has been reviewed and approved by the Montgomery County Fire and Rescue Service which has determined that the Property has adequate access for emergency vehicles.

*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 Planning Board finds the application meets all applicable sections. The proposed lot size, width, shape and orientation 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.*

The Preliminary Forest Conservation Plan identifies a 0.33-acre afforestation requirement. The Applicant proposes to satisfy the requirement by purchasing credits from a forest bank, which is acceptable to staff. If a forest bank site is not available, the Planning Board recommends the Applicant afforest at an offsite location. The Planning Board recommends approval of the Preliminary Forest Conservation Plan pursuant to the relevant conditions of approval.

Because staff anticipates the Applicant will apply for a building permit and/or sediment and erosion control permit shortly after the preliminary plan is approved, the Planning Board recommends the Final Forest Conservation Plan be submitted for review and approval prior to the release of a sediment and erosion control permit or building permit. The Final Forest Conservation Plan should include a tree save plan that identifies trees on and near the property that can and should be protected during construction. Further, a variance may then be necessary if the critical root zone of trees that are at least 30 inches in diameter at breast height (DBH) are affected by proposed redevelopment on the site. The Final Forest Conservation Plan should also identify the specific forest mitigation bank or offsite forest planting location.

*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.*

A Preliminary/Final Water Quality Plan for the site was approved by the MCDPS Stormwater Management Section on December 30, 2009. Since there is no proposed development or other land disturbing activity associated with this Preliminary/Final Water Quality Plan, there are no associated stormwater management, sediment control, or monitoring requirements at this time.

*6. The Preliminary/Final Water Quality Plan is approved by the Planning Board.*

The Planning Board finds the environmental guidelines for special protection areas, site imperviousness requirements and forest conservation requirements are satisfied for this preliminary plan.

*Site Imperviousness*

Impervious surface restrictions for development projects in the Upper Paint Branch SPA are set forth in the Environmental Overlay Zone for the Upper Paint Branch SPA. An 8% imperviousness limit was established for the Environmental Overlay Zone for new projects or redevelopment projects. However, there is also a provision for projects with impervious surfaces that exceed the 8% limit that lawfully existed before July 31, 2007 and are proposing to construct features within the project area. Section 59-C-18.152 (a)(1)(A) of the Montgomery County Code states:

*“(A) Any impervious surface lawfully existing pursuant to a building permit issued before July 31, 2007 that exceeds the 8 percent restriction, may continue or be reconstructed under the development standards in effect when the building permit was issued.”*

The existing site has 11,037 square feet of impervious surfaces, or about 14.8 % of the site. These include the existing house, patio area, walkway, driveway, and a small portion of Peach Orchard Road that lies within the Property. Since there is an existing house that lawfully existed prior to July 31, 2007, the site imperviousness for this project can exceed the 8% cap but cannot be increased over what exists today.

Although the proposed preliminary plan shows the existing house will remain as is, the Applicant has indicated that the house may be either reconstructed or demolished and a new house built. Since a house exists on the site, and the residential use is to remain, the Planning Board recommends that if and when the house is reconstructed or replaced, an impervious limit that is equivalent to the imperviousness that occurs on the site today should be applied. This would be consistent with the Environmental Overlay Zone.

*Environmental Buffers*

The pipestem portion of the property lies within the environmental buffer of the intermittent stream that flows through the site. Since vehicular access to the site can only occur along the pipestem, the existing driveway cannot be relocated outside the buffer. The Planning Board finds placement of a conservation easement over the environmental buffer is unnecessary.

*Site Performance Goals*

Since there is no proposed development or land-disturbing activity for the site, no site performance goals were required to be established for the site at this time.

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 SEP 29 2011 (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 Alfandre, seconded by Vice Chair Wells-Harley, with Chairman Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre and Dreyfuss present and voting in favor of the motion, and Commissioner Presley absent at its regular meeting held on Thursday, September 16, 2010, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board