



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 10-114  
Preliminary Plan No. 120090330  
Piedmont Road  
Date of Hearing: July 15, 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 May 19, 2009, Dale Hayman and Jean Hulse-Hayman ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create four (4) lots on approximately 3.6 acres of land that is zoned R-200. The Subject Property is located on the south side of Piedmont Road, approximately 350 feet east of Grand Elm Street ("Property" or "Subject Property"), in the Clarksburg Master Plan Area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090330, Piedmont Road ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated July 5, 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 15, 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 15, 2010, the Planning Board voted to approve 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, Dreyfuss, and Wells-Harley voting in favor, Commissioner Presley absent.

Approved as to  
Legal Sufficiency:

*Christina Somet* 8/30/10

8787 Georgia Avenue, N.C. Planning Commission, Department 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)

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120090330 to create four (4) lots on approximately 3.6 acres of land that is zoned R-200. The Subject Property is located on the south side of Piedmont Road, approximately 350 feet east of Grand Elm Street ("Property" or "Subject Property"), in the Clarksburg Master Plan Area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to four one-family detached residential lots.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan prior to recording of a plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit, as applicable.
- 3) The Applicant must obtain Staff approval of the final forest conservation plan in accordance with Forest Conservation Regulations, Section 109-B prior to any land clearing activities.
- 4) The record plat must provide for dedication along the entire property frontage on Piedmont Road of 30 feet from centerline as indicated on the Preliminary Plan.
- 5) The Applicant must comply with the conditions of the MCDPS stormwater management section approval letter dated May 15, 2009. These conditions may be amended by MCDPS, as long as the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated January 25, 2010. These conditions may be amended by MCDOT, as long as the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 7) The record plat must reflect creation of a Category I conservation easement over all forest conservation and stream buffer areas as shown on the Preliminary Plan.
- 8) The Applicant must satisfy provisions for access and improvements as required by the MCDOT prior to issuance of an access permit.
- 9) The certified Preliminary Plan must contain the following note: "The building footprints shown on the Preliminary Plan are illustrative. Final building locations and associated driveways and parking will be determined during the building permit review process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
- 10) The record plat must reflect common ingress/egress and utility easements over all shared driveways.

- 11) The record plat must show other necessary easements.
- 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.

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. The Preliminary Plan substantially conforms to the Master Plan.*

The Preliminary Plan substantially conforms to the primary land use provision of the applicable Newcut Road Neighborhood planning subarea of the Approved and Adopted, June 1994 Clarksburg Master Plan which calls for a residential land use designation of 2 to 4 units per acre for the site and the immediate surrounding area. The Preliminary Plan includes a total of 4 residential single family detached lots, with 3 new units and retention of the existing house. With the 4 units proposed, the 3.6 acre (156, 611 sq. ft.) site results in a density of 0.9 residential units per acre, which is well under the designated range provided by the Master Plan. The Property is zoned R-200/ TDR 3 consistent with the zoning designation in the 1994 Clarksburg Master Plan (MP, p. 97, Fig. 38). In this case, the narrow width of the Subject Property, steep slopes, and stream valley buffers limit the ability to achieve more density as anticipated by the Master Plan. Therefore, the Preliminary Plan as proposed will use the Standard method of development and, therefore, must conform to applicable zoning and subdivision regulations of this section of the Zoning Ordinance.

The proposed lots will exceed the minimum required lot area of 20,000 square feet. The largest lot will allow preservation of the stream valley buffer and protection of steep slopes in the southern portion of the Subject Property. The Application has been reviewed by jurisdictional agencies, and it has been determined that the proposed use will not adversely impact environmental, land use and zoning, transportation, or community facilities as identified by the Preliminary Plan. The Application would create three lots that are in substantial conformance with the zoning, density, and residential use identified 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.*

Roads and Transportation Facilities

The Application does not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the Application is not subject to Local Area

Transportation Review. Also, the Subject Property is located in the Clarksburg Policy Area; therefore, the Application is not subject to Policy Area Mobility Review. Piedmont Road is a country road, requiring 60 feet of right-of-way. The Applicant must dedicate approximately 3,628 square feet of property (thirty feet from centerline) to create a 60-foot-wide right-of-way along the property frontage of Piedmont Road. The Applicant proposes to construct two houses that will each have their own private driveway from Piedmont Road. The current access driveway to the existing house will be widened and shared with one other lot. Since Piedmont Road along the property frontage is designated as a country road, sidewalk construction along the road is not necessary per Chapter 49 of the County Code. Therefore, the Board finds the vehicular and pedestrian access for the subdivision will be safe and adequate with the existing public road and proposed private driveways.

#### Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. 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 lots are appropriate for the location of the subdivision. The lots were reviewed for compliance with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. The proposed lots meet 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 lots 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.*

#### Environmental Guidelines

The approved Natural Resources Inventory/Forest Stand Delineation indicates that there are 1.43 acres of forest and 0.13 acre of wetlands with 0.12 acres of wetlands being forested on this site. The site also contains 1.32 acres of stream buffer with 1.08 acres being forested. The Subject Property contains a small pocket of steep slopes toward the rear of the site within the existing forested stream buffer.

The topography of the Property slopes from Piedmont Road toward the south and west of the site. The high point of the site is located in the northeast corner adjacent to Piedmont Road and slopes away to the west/southwest at an approximate 8% grade and slopes to the south at an approximate 10% slope. Small pockets of steep slopes exist within the stream buffer.

The site drains from north to the south and west into a tributary of the Upper Little Seneca Creek. This portion of the Little Seneca Creek is designated as Use IV-P waters and is listed in excellent condition on the Department of Environmental Protection's County Stream Protection Strategy (CSPS) website.

The Board finds the Preliminary Plan to be in compliance with the Environmental Guidelines, particularly Chapter V – Guidelines for Special Protection Areas, because the stream valley buffers and steep slopes will be replanted, and these sensitive areas being protected by a Category I Conservation Easement.

#### Forest Conservation

The Applicant submitted a preliminary forest conservation plan as part of the Preliminary Plan of subdivision. The forest conservation plan indicates that the Applicant will remove 0.35 acres of the 1.43 acres of existing forest on-site. There is no reforestation requirement since this forest removal is below the threshold that would require forest mitigation. However, since the site lies within the Clarksburg Special Protection Area all unforested on-site stream buffers must be planted as per Montgomery County Code Sect. 19-64(a) and M-NCPPC's Environmental Guidelines (Jan. 2000). This results in an afforestation requirement of 0.23 acres. Therefore, the Board finds that the Application satisfies the requirements of the Forest Conservation Law and the Environmental Guidelines.

#### Forest Conservation Variance

Section 1607(c) of the Natural Resources Article, MD Annotated Code identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. An Applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the Montgomery County Code. The law requires no impact to, and the retention and

protection to the greatest extent possible, of all trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; trees associated with a historical site or structure; and rare, threatened and endangered species. Since this project did not obtain approval of a Preliminary Forest Conservation Plan (PFCP) prior to October 1, 2009 and the Applicant is proposing to affect/impact two (2) trees, the Applicant must request a variance.

In accordance with Montgomery County Code, Section 22A-21(c) the Planning Board referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. In this case, the variance request was referred to the Montgomery County Arborist on November 9, 2009. The County Arborist responded to the variance request on November 19, 2009 by stating that their office had no recommendations.

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 requested variance will not confer on the Applicant any special privileges that would be denied to other applicants. The loss of certain large trees, and need for a variance, is often a necessary and unavoidable consequence of development and redevelopment to realize master plan objectives, housing goals, and the application of other land use policies and regulations affecting site development. The Board consistently applies a review of reasonable and feasible avoidance and minimization options to each unique site situation. Therefore, the Board finds that granting this 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 requested variance is based on site layout and design for a small residential development within an R-200 zone. The site layout and design necessitates the removal of the 2 trees for the proposed homes. The Preliminary Plan provides clustering of the proposed lots and reduces the amount of disturbance that may have occurred under the standard method of development.

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 as 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 requested variance will not violate State water quality standards or cause measurable degradation in water quality. The Subject Property is located within the upper reaches of the Little Seneca Creek watershed which has a use IV-P designation. Use IV-P have water quality standards that, if met, make them suitable for water contact recreation, recreational trout fishing and public water supply. Readily available information on Total Maximum Daily Loads (TMDLs) from MDE and EPA indicate that there is no approved sediment or other TMDLs established for Little Seneca Creek or this portion of the Great Seneca Creek watershed.

The 2 trees in question are located in an upland area outside of the existing forest and isolated from the stream buffer. Therefore, removal of the 2 specimen trees does not directly impact stream temperature or stream quality. The Subject Property is being designed under new stormwater management regulations required by the Stormwater Management Act of 2007. Disturbance of the site is to be limited as much as possible by constructing the lots one at a time. If only one lot is developed at a time the use of double super silt fence will be required for sediment control. However, if more than one lot is developed at one time the use of super silt fence, sediment traps and earth dikes will be required.

The Board finds that the development impacts will not cause measurable degradation in water quality because: 1) the removal of the requested trees will not directly impact the stream; 2) there are no stated TMDLs for this portion of the Little Seneca Creek; and 3) additional soil erosion and sediment control measures will be used during construction which include the use of double super silt fence and requiring dry wells to be sized to treat 125% of runoff.

As a result of the above findings, the Board approves the Applicant's request for a variance from Forest Conservation Law to remove the 30" DBH silver maple (*Acer saccharinum*) and the 31" red maple (*Acer rebrum*).

- 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 dated January 8, 2009, meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept and preliminary water quality plan for the project on May 15, 2009. The stormwater management concept consists of on-site water quality control and onsite recharge via non-structural measures that include drywells, and disconnections for rooftops and non-rooftop areas. Channel protection is not required because the one-year post-development peak discharge is less than two cubic feet per second.

- 6. The preliminary/final Water Quality Plan is approved by the Planning Board.*

The Applicant has submitted a preliminary/final water quality plan for review by both Montgomery County Department of Permitting Services (DPS) and M-NCPPC. As part of the requirements of the Special Protection Area (SPA) law, a SPA Water Quality Plan must be reviewed in conjunction with a preliminary plan<sup>1</sup>. Under the provision of the law, DPS and the Planning Board have different responsibilities in the review of a water quality plan. DPS has reviewed and conditionally approved the elements of the preliminary/final water quality plan under its purview. The Planning Board's responsibility is to determine if environmental buffer protection, site imperviousness minimization goals and SPA forest conservation and planting requirements have been satisfied.

### Site Imperviousness

There is no overlay zone or Master Plan recommendation that sets an impervious cap for developments in this portion of the Clarksburg Special Protection Area. However, Section 19-63(a)(4) of the County SPA Law requires a plan to minimize impervious area for a proposed project.

In reviews of imperviousness for other projects in this SPA, the Board compares a proposed project's imperviousness with the range of expected imperviousness that would result in a typical development allowed in the underlying zoning of the Property. The Board's Staff uses studies that have calculated countywide impervious surface averages for different zones as the basis for comparison. The Board's Staff also

---

<sup>1</sup> Section 19-62 (b) of the Montgomery County Code states that "...the requirements for a water quality inventory and a preliminary and final water quality plan apply in any area designated as a special protection area to a person proposing land disturbing activity on privately owned property: (1) who is required by law to obtain approval of a ...preliminary plan of subdivision...."



assesses the proposed development to look for ways to attempt to reduce the amount of impervious surfaces in the subdivision consistent with the SPA and the new SWM Environmental Site Design (ESD) requirements.

According to the preliminary/final water quality plan and the preliminary forest conservation plan dated December 23, 2009, the Applicant proposes approximately 0.34 acres (14,751 square feet) acres of impervious surface on the 3.93 acre Property. This represents a proposed total impervious surface coverage of approximately 9 percent (0.34 acres/3.93 acres) for the site. The R-200 zone has a countywide average of 22 percent to 29 percent impervious surface. This project falls well below the countywide average.

#### Expanded and Accelerated Forest Conservation

Forest has been protected, and reforestation/landscaping will be planted on the site to meet all forest conservation requirements onsite. Priority areas for planting exist onsite and are adjacent to off-site existing forest protected by a Category I conservation easement on the Clarksburg Village development. Expanded and accelerated forest conservation is required per the Environmental Guidelines for SPAs.

For the reasons discussed above, the Board approves the Preliminary/Final Water Quality Plan.

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 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