



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

SEP 27 2010

MCPB No. 10-116
Preliminary Plan No. 120100110
Shirkey's Addition to Fairland Acres
Date of Hearing: July 15, 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 October 27, 2009, Brett Roberts ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property and a preliminary/final water quality plan that would create two lots on 7.12 acres of land in the R-200 and Environmental Overlay for the Upper Paint Branch Special Protection Area zones, located on the north side of Old Briggs Chaney Road, 420 feet west of Old Columbia Pike ("Property" or "Subject Property"), in the Fairland Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100110, Shirkey's Addition to Fairland Acres ("Preliminary Plan" or "Application"); and

WHEREAS, Applicant's preliminary/final water quality plan was designated Water Quality Plan No. 120100110 ("Water Quality Plan"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated July 2, 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 approved the Application subject to certain conditions, on motion of Commissioner Wells-Harley; seconded by Commissioner Alfandre; with a vote of 4-0, Commissioners Alfandre, Carrier, Dreyfuss, and Wells-Harley voting in favor, Commissioner Presley being absent.

WHEREAS, on July 15, 2010, the Planning Board approved the Water Quality Plan subject to certain conditions, on motion of Commissioner Wells-Harley; seconded by Commissioner Alfandre; with a vote of 4-0, Commissioners Alfandre, Carrier, Dreyfuss, and Wells-Harley voting in favor, Commissioner 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. 1201010110 and Water Quality Plan No. 120100110 to create two lots on 7.12 acres of land in the R-200 and Environmental Overlay for the Upper Paint Branch Special Protection Area zones, located on the north side of Old Briggs Chaney Road, 420 feet west of Old Columbia Pike ("Property" or "Subject Property"), in the Fairland Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to two lots for two one-family dwelling units.
- 2) The Applicant must comply with the conditions of approval for 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 applicable. Specific conditions include the following:
 - a. The Applicant must provide permanent signs along the boundaries of the Category I conservation easement area.
 - b. The final forest conservation plan must include the following elements:
 - i. A planting plan for the entire environmental buffer area that is not currently in forest cover.
 - ii. A planting schedule for the environmental buffer area and forest bank area outside the buffer that provides for forest planting during the construction of the new one-family dwelling.
 - iii. Measures to remove wood piles in the environmental buffer.
 - iv. A tree save plan that provides adequate protection measures for two trees on adjoining Parcel N100.
- 3) The record plat must reflect a Category I conservation easement over all areas of forest retention, forest planting, and environmental buffers, including proposed and future forest banking areas as shown on the certified Preliminary Plan.

- 4) Prior to recording of a plat, Applicant must enter into an agreement with the Planning Board to limit impervious surfaces on the Subject Property to no more than eight percent.
- 5) Prior to release of a building permit for the proposed one-family dwelling, the Applicant must demonstrate conformance with the impervious surface limit. Any modifications to these plans that increase imperviousness will require Planning Board approval.
- 6) The Applicant must satisfy MCDPS requirements prior to recordation of the plat to ensure the construction of a 182-foot long, five-foot-wide sidewalk along the south side of Old Briggs Chaney Road, from the terminus of the existing sidewalk west of the intersection with Old Columbia Pike.
- 7) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated October 29, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 8) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated April 8, 2010. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 10) The record plat must show necessary easements.
- 11) 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, driveways, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape 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."
- 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 as 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 Fairland Master Plan does not specifically address the Subject Property. The Master Plan recommends retention of existing zoning throughout the Master Plan area in the absence of a specific recommendation for change on a particular property. Thus, in the case of the Subject Property, the Master Plan calls for retention of the existing R-200 zoning. Further, the Master Plan recommends that new development consist largely of detached dwellings in order to correct an imbalance caused by an overabundance of attached dwellings in the Master Plan area. The proposed subdivision is in conformance with the recommendations adopted in the Master Plan in that it proposes one-family detached residential development consistent with surrounding development patterns, the current zoning designation, and the Master Plan's recommendations. The proposed lots will be similar to surrounding lots with respect to dimensions, orientation, and shape, and both residences will have a similar relationship to the public street and surrounding residences as existing residences in the area. The Application will not alter the existing pattern of development or land use, in substantial conformance with the Master Plan recommendation to maintain the existing land use and provide detached dwellings. In addition, the Preliminary Plan is in substantial conformance with Master Plan recommendations to protect the environment by limiting imperviousness and disturbance of environmental buffers within the Upper Paint Branch Special Protection Area (SPA). Impervious surfaces will occupy no more than 6.8% of the site, which is within the 8% limit established for the SPA.

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

Roads and Transportation Facilities

Access to the proposed lots will be provided by driveways from Old Briggs Chaney Road. There is no sidewalk along the Property frontage on Old Briggs Chaney Road. The Montgomery County Road Code requires that a sidewalk be constructed along the Property frontage, but the Planning Board, with the concurrence of MCDOT, required that the Applicant construct a sidewalk on the opposite side of the street rather than along the Property frontage. A new sidewalk on the opposite side of Old Briggs Chaney Road will connect with an existing sidewalk, creating a more functional pedestrian environment.

The Application does not generate 30 or more vehicle trips during the morning or evening peak hours. Therefore, it is not subject to Local Area Transportation Review. In addition, the Application does not generate more than

three new vehicle trips in the morning or evening peak hours. Therefore, it is also not subject to Policy Area Mobility Review.

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 sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has 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. The Application is not within a school moratorium area, and a school facilities payment is not required. Electrical, gas, 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 Application meets all applicable sections, including the requirements for resubdivision as discussed below. The proposed lot size, width, shape and orientation 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 lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

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

The Preliminary Forest Conservation Plan proposes to retain all of the site's existing 0.61 acres of forest. There is a 0.47-acre afforestation requirement that is proposed to be met by forest planting in the environmental buffer. The remaining 1.47-acre portion of the buffer that is currently unforested will be planted in forest. This is consistent with the Planning Board's Environmental Guidelines: The guidelines recommend that a development site in a SPA should reforest the entire environmental buffer that exists onsite, even if the reforestation exceeds the development's forest planting requirements under the Forest

Conservation Law. Credits associated with the excess planting area may be created and sold to others to meet their offsite requirements.

Since the forest planting area is in the environmental buffer and is physically separated by at least 400 feet from the proposed construction on proposed Lot 2, the Planning Board finds that the forest planting should occur in the first planting season that occurs after issuance of a building permit for the construction of the new house. This would be consistent with the Environmental Guidelines recommendation that "reforestation on SPA sites is to begin as soon as possible after the issuance by MCDPS of grading permits, with appropriate phasing to allow for the construction of sediment and erosion control structures."

Most of the northern portion of the site lies within the environmental buffer. The extreme northern portion of the Property, covering 0.28 acres, lies outside the environmental buffer, but is physically separated and isolated from the developable portion of the site by the buffer. Since the 0.28-acre portion of the site is not proposed for development and adjoins both the environmental buffer on the site and a forested Category I conservation easement on a neighboring property, the Planning Board required that this portion of the site be protected with a Category I conservation easement. The Applicant proposes to use the area as a future forest bank. The Planning Board supports this proposal. This forest bank area should be planted in forest at the same time as the planting in the environmental buffer area. This would allow the entire conservation easement area to be planted in forest during the construction phase of the one new house in the subdivision.

The proposed clearing and grading for the new house will affect portions of the critical root zone for two relatively large trees on adjoining parcel N100: a 26.2-inch diameter at breast height (DBH) black cherry and a 24-inch DBH silver maple. The preliminary forest conservation plan shows that less than one-third of each tree's critical root zone will be disturbed and that the trees will be retained. The Planning Board required that the Final Forest Conservation Plan include specific tree preservation measures as part of a tree save plan for these two trees.

- 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 MCDPS Stormwater Management Section approved the stormwater management concept and preliminary/final Water Quality Plan for the project on

October 29, 2009. The stormwater management concept includes channel protection and water quality control via nonstructural measures, including dry wells and disconnection credits. The project will be designed in accordance with the most recent revisions to the Maryland Department of the Environment Stormwater Management Manual.

6. *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: The lots in the delineated neighborhood range from 20,718 square feet to 243,936 square feet. Five of the lots are smaller than 50,000 square feet, three are between 50,000 and 90,000 square feet, and one is larger than 240,000 square feet. Proposed Lot 1 is 277,074 square feet in size and proposed Lot 2 is 31,122 square feet in size. While proposed Lot 2 is well within the size range of existing Neighborhood lots, proposed Lot 1 will be the largest lot in the Neighborhood. Creation of the largest lot in the Neighborhood is unavoidable because the Subject Property is itself currently the largest lot in the Neighborhood, and additional lots that would further reduce the size of proposed Lot 1 cannot be created because of limited street frontage and environmental constraints. The location of the existing dwelling on proposed Lot 1 prevents allocating more land to the rear of proposed Lot 2, which would have reduced the size of proposed Lot 1. However, because the existing lot is being reduced in size and the resultant lot will more closely match the character of existing lots, the Planning Board finds that the proposed lot sizes are in character with the size of existing lots in the Neighborhood.

Width: The lots in the delineated Neighborhood range from 100 feet to 450 feet in width. Three of the lots have widths of 100 feet, three lots have widths between 100 and 200 feet, two have widths between 200 and 250 feet and the remaining lot has a width of 450 feet. Proposed Lot 1 has a width of 228 feet and proposed Lot 2 has a width of 132 feet. The proposed lots will be in character with existing lots in the Neighborhood with respect to width.

Frontage: In a Neighborhood of nine lots, lot frontages range from 0 feet (no frontage) to 182 feet. Not including the lot with no frontage, the smallest frontage in the Neighborhood is 25 feet. Three of the lots have frontages of less than 90 feet, three lots have frontages between 90 and 100 feet, and the remaining three lots have frontages between than 121 feet and 182 feet. Proposed Lot 1 has a frontage of 50 feet, and proposed Lot 2 has a frontage

of 125 feet. The proposed lots will be of the same character as existing lots in the Neighborhood with respect to lot frontage.

Area: The lots in the delineated Neighborhood range from 2,154 square feet to 185,791 square feet in buildable area. Three of the lots have a buildable area less than 10,000 square feet, three are between 15,000 and 20,000 square feet, two are between 30,000 and 50,000 square feet and one is over 180,000 square feet. Proposed Lot 1 has a buildable area of 229,719 square feet and proposed Lot 2 has a buildable area of 18,243 square feet. While proposed Lot 2 is well within the area range of existing Neighborhood lots, proposed Lot 1 will have the largest buildable area in the Neighborhood. Creation of the lot with the largest buildable area in the Neighborhood is unavoidable because the Subject Property itself currently has the largest buildable area in the Neighborhood, and additional lots that would further reduce the buildable area of proposed Lot 1 cannot be created because of limited street frontage and environmental constraints. The location of the existing dwelling on proposed Lot 1 prevents allocating more land to the rear of proposed Lot 2, which would have reduced the size of proposed Lot 1. However, because the area of the existing lot is being reduced in size and the resultant lot will more closely match the character of existing lots, the Planning Board finds that the proposed lots will be of the same character as other lots in the Neighborhood with respect to buildable area.

Alignment: All nine of the existing lots in the Neighborhood are perpendicular in alignment. Both of the proposed lots are also perpendicular in alignment. The proposed lots are of the same character as existing lots in the Neighborhood with respect to the alignment criterion.

Shape: Five of the existing lots in the Neighborhood are rectangular, and the remaining four are pipestem lots. One proposed lot is rectangular and one is a pipestem lot. The shapes of the proposed lots will be in character with shapes of the existing lots in the Neighborhood.

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

7. The preliminary/final Water Quality Plan is approved by the Planning Board.

Because the Property is within the Upper Paint Branch Special Protection Area (SPA), it has been determined to require approval of a preliminary/final Water Quality Plan. MCDPS approved its portion of the Water Quality Plan requirements on October 29, 2009. The Preliminary Plan complies with the 8%

limit on impervious surfaces. The Planning Board, therefore, approves the Water Quality Plan, consistent with the approval by MCDPS.

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

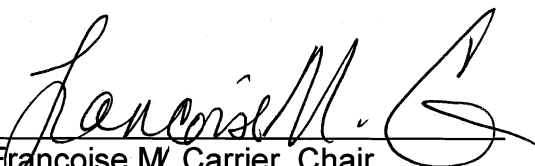
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 27 2010 (which is the date that this Resolution is mailed to all parties of record); and

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 Commissioner Alfandre, seconded by Vice Chair Wells-Harley, with Chair 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