



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

SEP 28 2010

MCPB No. 10-129
Preliminary Plan No. 120090110
Barnesville Oak Farm
Date of Hearing: July 22, 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, Balsamah Corporation N.V. (formerly known as Malsama Corporation N.V.), a Netherlands Antilles corporation ("Balsamah") is the owner of approximately 840 acres of land located on the east and west sides of Peach Tree Road, bounded on the north by Whites Store Road and to the west by Beallsville Road (MD 109) ("Property" or "Subject Property"); and

WHEREAS, by letter dated November 13, 2008, Balsamah authorized Katherine S. Sexton and/or Barnesville Oak Farms LLC, a Maryland corporation, as their appointed representatives to act individually or together, on behalf of Balsamah to take all necessary steps to obtain preliminary subdivision plan approval for the Property; and

WHEREAS, on December 4, 2008, Barnesville Oak Farms LLC, ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 21 lots and 3 outlots for up to 24 one family detached dwelling units and two farm parcels to be unplatted on the Property, in the Agricultural and Rural Open Space Master Plan ("AROS Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090110, Barnesville Oak Farm, ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated July 9, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, N.C. Planning Department 3010 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, Montgomery Countryside Alliance and the Audubon Naturalist Society, two parties of record requested a delay of the Hearing alleging that Balsamah did not have authority to authorize their appointed representatives to file the Application and act on its behalf during the proceedings for the Application because neither Balsamah, its predecessor in interest (Malsama Corporation), nor its Managing Director (Curcao Corporation) is registered to do business in the state of Maryland; and

WHEREAS, upon testimony heard and evidence submitted for the record by Montgomery Countryside Alliance, the Audubon Naturalist Society, and Applicant as a preliminary matter on July 23, 2010, the Planning Board denied the request for delay, on motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley, with a vote of 4-0, Commissioners Dreyfuss, Wells-Harley, Alfandre, and Carrier, voting in favor, with Commissioner Presley abstaining; and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on July 23, 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 23, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Alfandre, with a vote of 4-1, Commissioners Dreyfuss, Alfandre, Carrier, and Wells-Harley voting in favor, with Commissioner Presley voting to disapprove.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No.120090110 to create 21 lots and 3 outlots for up to 24 one family detached dwelling units, and two unplatted farm parcels on 840 acres of land, in the RDT zone, located on the east and west sides of Peach Tree Road, bounded on the north by Whites Store Road and to the west by Beallsville Road (MD 109), in the AROS master plan area, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 21 one-family detached residential lots and 3 outlots for up to 24 one family detached dwelling units, and two unplatted farm parcels.
- 2) The applicant must comply with all conditions of approval of the preliminary forest conservation plan prior to plat recordation or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit(s), as appropriate. Conditions include, but are not limited to:
 - a. Category I conservation easements on platted portions of the Property

must be shown on the record plats.

- b. Category I conservation easements must be placed over all forest conservation areas located on the unplatted farm remainders of the Property. These conservation easements must be recorded by deed in the County land records and referenced on the record plat(s) for the residential lots.
- 3) A Public Use Trail Easement ("PUTE") must be created on the Property as shown on the preliminary plan. The PUTE will name Equestrian Partners in Conservation ("EPIC"), a 501c3 non-profit corporation, its successors or assigns, or another suitable entity identified by MNCPPC staff, as the Grantee and must include, at a minimum:(i) the conditions and restrictions governing uses that are within the definition of "Recreational Purpose" as defined in the MD Ann. Code, Natural Resources Article, §5-1101; (ii) the right of Grantee to construct, maintain and repair the trail, with no obligation by either Grantee or the Grantor to do so; and (iii) rights of enforcement by both the Grantor and the Grantee, with no obligation on either to do so. The PUTE must be approved by the Commission's Office of the General Counsel which approval may not be delayed beyond 120 days following adoption of the MCPB Resolution of approval of the Preliminary Plan but no less than 90 days after submission of a reasonable draft for review. Prior to recordation of the initial plat, the applicant must record the PUTE in the land records and the plat must include a reference to the Liber and Folio of the recorded PUTE. Should the designated Grantee as specified herein decline to accept the PUTE, the record plat may be recorded without the reference.
 - 4) Prior to recordation of the plat(s), Applicant must submit an affidavit to MNCPPC staff that verifies the availability of one Transferrable Development Right for each lot and outlot shown on the plat(s).
 - 5) The record plat must show dedication of Peach Tree Road to a width of 70 feet (or 35 feet from centerline) to Rustic Road standards and the new internal road (Barnesville Oak Lane) as a 50 foot wide tertiary road right-of-way as shown on the approved preliminary plan.
 - 6) The Applicant must construct all road improvements within the rights-of-way shown on the approved preliminary plan to the full width mandated by the master plan and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By _____" are excluded from this condition.
 - 7) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
 - 8) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated September 9, 2009 and reconfirmed on May 14, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.

- 9) The Applicant must comply with the conditions of the MCDPS, Well and Septic Section approval dated April 16, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 10) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated June 23, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 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 and driveway locations shown on the preliminary plan are illustrative. The final locations of buildings, structures and hardscape will be determined during the building permit approval 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) 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."
- 13) Record Plat must reference a recorded easement for the parent parcels indicating i) that density and TDRs for these lots was removed from the parent parcels; and ii) per §59-C-9.41 of the Montgomery County Zoning Ordinance, following this subdivision, any farm tenant dwelling, farm tenant mobile home, or guest house is included in the total permitted density of 33 residential structures on the Property.
- 14) 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.
- 15) Other necessary easements must be shown on the record plat(s).

BE IT FURTHER RESOLVED, that, having given full consideration to testimony heard and evidence submitted for the record by Montgomery Countryside Alliance, the Audubon Naturalist Society, and Applicant, the Montgomery County Planning Board FINDS that:

1. *The Applicant had authority to file the Application on behalf of Balsamah Corporation N.V. (formerly known as Malsama Corporation N.V.), a Netherlands Antilles corporation as the owner of the Property.*

The Subdivision Regulations, Chapter 50 of the Montgomery County Code, defines an Owner as “[a] person or corporation holding a legal title in the land...” Subdivider is defined as “[a]n individual, partnership or corporation (or agent thereof) that undertakes the subdivision of land or the activities covered under [Chapter 50].....” Nothing in either of those definitions or in the Subdivision Regulations requires that the owner or subdivider be registered to do business in the State of Maryland. And Montgomery Countryside Alliance or the Audubon Naturalist Society provided no legal basis on which the Board could rely. It has been the longstanding practice of the Planning Board to accept applications for subdivision from an agent of a property owner, so long as the authority of the agent is clear. In accordance with the subdivision regulations, the Applicant submitted written verification with the Application authorizing the Applicant to file the Application and it was found to be complete. In fact, as stated by Montgomery Countryside Alliance and the Audubon Naturalist Society, the request for delay of the proceedings was raised in order to provide these interested parties with an opportunity to discuss their concerns about the Application directly with the owner of the Property; their preference over working through their issues with the owner’s appointed representatives.

The Planning Board did not find the request or the evidence presented to be so compelling as to warrant a delay of the Hearing, particularly since Applicant’s appointed representatives have made themselves available through a public meeting held in Poolesville on their proposed Application, have provided updated plans to the neighbors, and have been available at several Rustic Roads Advisory Committee meetings. To the contrary, the Planning Board found the authorization submitted with the Application, together with the July 22, 2010, letter with supporting documentation from Stephen J. Orens, on behalf of Applicant objecting to the requested postponement, and the reasons set forth therein to be compelling.

AND 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:

2. The Preliminary Plan substantially conforms to the AROS Master Plan.

The Planning Board determined that the Preliminary Plan, as proposed, protects to a significant degree, the ability for agricultural practices to continue on the Property as recommended by the AROS Master Plan. Of the 840 acres making up this Property, 780 acres will remain in agriculture. The AROS Master Plan does not set a specific objective goal for preservation, and the intent of the

Master Plan is that the Planning Board, in its discretionary role must be satisfied that the Applicant has made reasonable good faith efforts to protect as much agricultural land as possible. The Board was satisfied that the Preliminary Plan protects agriculture and minimizes fragmentation of active farmland by creating residential lots that are as small as reasonably possible, and that are clustered in areas that do not detract from the active agricultural land. The Preliminary Plan intentionally minimizes the spread of residential development to avoid fragmentation and to minimize the potential for conflicts between farm and non-farm properties. Although there was testimony that the proposed development would change the character of the area, creating a suburban enclave within the Agricultural Reserve, the focus of the Master Plan is preservation of agriculture within the Reserve -- not maintenance of the rural character. However, in order to allay those concerns, the Preliminary Plan calls for the new homes to be buffered, where practical, from the agricultural areas to reduce conflicts. The Board finds that the Preliminary Plan is in substantial conformance with the AROS Master Plan.

3. The Preliminary Plan substantially conforms to the Rustic Roads Functional Master Plan.

The Planning Board finds that the Preliminary Plan substantially conforms to the Rustic Roads Functional Master Plan. All three abutting roads, Beallsville Road, Peach Tree Road and Whites Store Road are Rustic Roads, with Whites Store Road also being designated as an Exceptional Rustic Road. The lot layout proposed on the Preliminary Plan does not visually impact Beallsville Road or Whites Store Road but concentrates development along Peach Tree Road. The Board considered the impact of the two driveways and the two new road access points along Peach Tree Road and understood that the Rustic Roads Advisory Committee had recommended approval of the Preliminary Plan with these points of access.

The Planning Board was satisfied that the visual impacts to Peach Tree Road were minimized by using shared driveways to serve multiple lots and that the two access points for the new tertiary street were necessary for the number of lots proposed. The Board also considered the Staff Report which explained that the five lots in the southernmost cluster were relocated back off Peach Tree Road to minimize impact to a designated viewshed in the Rustic Roads Functional Master Plan that captured a view to Sugarloaf Mountain. The remaining 16 lots and three outlots on the Preliminary Plan uses forest, to the extent possible, to screen views along Peach Tree Road. The Board was satisfied that the Preliminary Plan appropriately addressed the recommendations of the Rustic Roads Functional Master Plan and finds that the Preliminary Plan is in substantial conformance with that plan.

4. *All public facilities will be adequate to support and service the area of the proposed subdivision.*

The Planning Board finds that all public facilities will be adequate to serve the lots proposed by this Application. The Board determined that a new road is required to serve the 13 proposed lots and 3 outlots located on the east side of Peach Tree Road, and that it should be constructed to tertiary road standards within a dedicated 50 foot wide right-of-way. No sidewalks are required for this section of road because of its low traffic volume and because it is in the "rural area" defined in the road code. Pedestrians can safely use the road shoulders in this low traffic volume area. The Board also determined that two shared driveways will be adequate to serve the three-lot and five-lot clusters on the west side of Peach Tree Road.

The Board considered the Staff Report and determined that the 21 lots and three outlots proposed will 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. The Subject Property is located in the Rural West Policy Area where there is no trip mitigation requirement for PAMR according to the current Growth Policy. The Board was satisfied that the local road network will not be overburdened by the additional traffic generated by this development. Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

The Board finds that other public facilities and services are available and will be adequate to serve the proposed dwelling units. Local utilities have found that their respective services, if located in the area, are adequate to serve the proposed subdivision. The Montgomery County Department of Permitting Services (MCDPS) has approved the septic systems for all but three lots (11, 19, 20), which as a result are to be recorded as outlots. The Maryland Department of the Environment (MDE) has analyzed the well water withdrawal and has issued a groundwater appropriation permit. The Board understood that MDE was satisfied that well water supplies would be adequate for the new lots and that recharge to the groundwater supply was adequate for local wells.

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 and that it includes an easement for a future water supply cistern that will be shown on the record plat. 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 Application is not within a school moratorium area and is not subject to a School Facilities Payment.

5. *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 Board finds the application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision as previously discussed regarding the size, shape and location of the lots on the farm.

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

The Board finds that the Preliminary Plan meets all applicable requirements of the Montgomery County Forest Conservation Law, Chapter 22A. Of the 840 acres making up this Property, 780 acres will remain in agriculture and are exempt from forest conservation requirements through an agricultural Declaration of Intent. The residential component of this Application generates a 57.8 acre net tract area that is subject to the law. The forest conservation requirement on the 57.8 acre net tract will be met by protecting 8.30 acres within the residential lots and 89.6 acres on the unplatted farm portion of the Application. The Applicant also proposed to protect an additional 50 acres of existing forest to be used for forest banking purposes.

7. *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 for the project on September 9, 2009 and the concept was reaffirmed on May 14, 2010. The concept plan consists of on-site water quality controls and onsite recharge via roadside swales, drywells and rooftop disconnects. Channel protection volume is not required because the one-year post development peak hour discharge is less than or equal to 2.0 cubic feet per second.

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

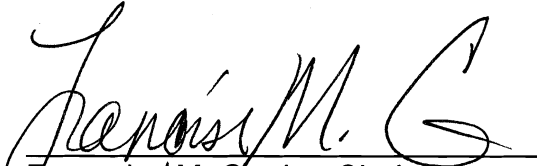
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 28 2010 (which is the date that this Resolution is mailed to all parties of record); and

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