



NOV 15 2010

MCPB No. 10-143
Preliminary Plan No. 12006027B
Burton Woods, Phase III
Date of Hearing: September 30, 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 11, 2007, Mitchell and Best Homebuilders, L.L.C., ("Applicant"), filed an application for approval of an amendment to a preliminary plan of subdivision of property that would create five lots on 28.13 acres of land in the RE-2 zone, located on the north side of Davis Mill Road, opposite the intersection of Huntmaster Road ("Property" or "Subject Property"), in the Agricultural and Rural Open Space Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan Amendment No. 12006027B, Burton Woods, Phase III ("Preliminary Plan" or "Application"); and

WHEREAS, this Preliminary Plan is the third phase of a four phase development for the Property: Phase I approved on October 19, 2006 for five-one family lots on approximately 14 acres of land (Preliminary Plan No. 120060270), and Phase II approved on September 27, 2007 for 16-one family lots on approximately 47 acres of land (Preliminary Plan No. 12006027A); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated September 17, 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 September 30, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

Approved as to
Legal Sufficiency:

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on September 30, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Alfandre, Carrier, Dreyfuss, Presley, and Wells-Harley, voting in favor.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code, Chapter 50, the Planning Board approved Preliminary Plan No. 12006027B to create five lots on 28.13 acres of land in the RE-2 zone, located on the north side of Davis Mill Road, opposite the intersection of Huntmaster Road ("Property" or "Subject Property"), in the Agricultural and Rural Open Space Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to 5 lots, for 5 one-family dwelling units.
- 2) The proposed development must comply with the conditions of 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: Conditions include but are not limited to:
 - a. Applicant must obtain approval of final forest conservation for the Phase III development prior to any further clearing, grading or demolition within the Phase III portion of the site. The final forest conservation plan must include an ISA Certified Arborist's tree save plan (TSP) for the hedgerow of trees just south of the proposed private roadway for Phase III.
- 3) A Category I conservation easement must be recorded over all stream buffers and forest conservation areas.
- 4) The Applicant must dedicate property along the Davis Mill Road frontage to provided 35 feet of right-of-way from the centerline of the road. Record plat(s) must reflect the dedication.
- 5) The record plat must reflect a public use and access easement over all private streets.
- 6) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 7) The record plat must contain a note that states: "Outlot A contains the septic field and reserve area for Lot 39".
- 8) The applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated June 29, 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 letter dated July 12, 2010 and August 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 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, on-site parking, site circulation, 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."
- 11) 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 opinion.
- 12) The record plat must show necessary easements.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the Hearing, and 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 Agricultural and Rural Open Space (AROS) Master Plan.*

This property falls within the Central Sector of the AROS Master Plan area. At the time of the writing of this Master Plan in 1980, it noted that 76% of the area was still receiving agricultural assessments, but that most of the area had already been subdivided. The Master Plan recommended retaining the RE-2 zoning designation and acknowledged that additional RE-2 lots will be developed. This Preliminary Plan conforms to the AROS Master Plan as it includes some of the anticipated lots developed to the RE-2 zoning standards.

2. *The Preliminary Plan substantially conforms to the Rustic Road Functional Master Plan (RRFMP)*

The Property is located on Davis Mill Road, identified in the RRFMP as a rustic road. The RRFMP identifies two significant features for this road: 1) the road's alignment above Great Seneca Creek, and 2) mature and adjacent woodlands along the edge of the road. The Board found that the Application did not affect the views from the road down to the adjacent Great Seneca Creek and that the forest conservation easements on the preliminary forest conservation plan would

maintain a thick, forested edge along the perimeter of the Property adjacent to Davis Mill Road. The Planning Board found that the plan adequately protected the significant features for Davis Mill Road and that it was, therefore; in conformance with the RRFMP.

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

The proposed lots and those already approved as part of Phases I and II, do not generate 30 or more vehicle trips during the morning or evening peak-hours, therefore; there are no Local Area Transportation Review requirements for this development. The project is also not subject to Policy Area Mobility Review (PAMR) because the filing date of the Application for Phase I (Preliminary Plan No. 120060270) predates the trigger for PAMR review. The Board finds that the Application complies with both the LATR and PAMR guidelines.

The Clarksburg High School Cluster is operating at acceptable levels for the elementary, middle and high school levels, therefore; no School Facilities Payment is required.

The right-of-way as shown on the Preliminary Plan complies with the Rustic Road Functional Master Plan. No sidewalks on the private street are necessary due to the low-density zoning in the rural area of the County as defined in the Road Code. There is no sidewalk system on Davis Mill Road to connect to. The Board finds that the proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed private road system.

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 police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. Local electric and telecommunication utilities are all adequate to serve the proposed lots. All of the lots have approved well locations and approved septic systems. The Board finds that all public facilities and services are adequate to serve the proposed lots.

4. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

The Planning Board considered the review of the subdivision layout and determined that the proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

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

The preliminary forest conservation plan was submitted for the entire 107.4 acre property and approved by the Planning Board on March 30, 2006. Forest conservation requirements for the site are met by the forest retention shown on the plans. Individual final forest conservation plans are required for each phase of the project. For this Phase III (12006027B), no specimen trees are being removed or negatively affected and all areas of forest retention are to be placed into Category I conservation easements. The Property is not subject to the tree variance review since the preliminary forest conservation plan was approved for the entire tract, prior to inception of the tree protection provisions of Section 1607(c) of the Natural Resources Article, MD Ann. Code.

As part of this Preliminary Plan, the applicant has agreed to implement an ISA Certified Arborist's tree save plan (TSP) for the hedgerow of trees just south of the proposed private roadway. This hedgerow contains numerous shingle oaks that Staff and the community have looked to preserve. The hedgerow is within the future Phase IV of this project, but the TSP will provide protection from roadway construction elements for the Phase III development of the site.

This Phase III Preliminary Plan is consistent with the previously approved preliminary forest conservation plan. A final forest conservation plan will be required prior to DPS issuance of a sediment control permit for development of Phase III. There are no forest planting requirements associated with Phase III. The Board finds that Preliminary Plan No.12006027B is in compliance with Chapter 22A of the Montgomery County Code, the Forest Conservation Law.

6. *The Board finds 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 stormwater management concept consists of on-site water quality control and recharge through the use of Environmentally Sensitive Development Credits as described by the Maryland Department of the Environment, Stormwater Design Manual Section 5.6. The Property will use Multiple Lot Development criteria. Channel protection volume is not required because the one year post development peak discharge is less than or equal to 2.0 cubic feet per second.

7. *Approval of an overlength cul-de-sac.*

The Planning Board considered a recommendation from Staff at the Hearing to support the use of a cul-de-sac longer than 500 feet for the proposed lots. Section 50-26(b) of the Montgomery County Subdivision Regulations provides that the Board may approve the installation of cul-de-sacs or turnarounds when their use would produce an improved street layout because of the subdivision's unusual shape, size or topography. The Board must only approve cul-de-sacs that exceed 500 feet in length because of a property's shape, size, topography, large lot size, or that it would result in an improved street alignment. The Board found that because of the Property's topography, which drops off to a stream valley buffer on the north and to Davis Mill Road on the east and south, there are limitations on providing a through-street connection that would avoid a cul-de-sac. Also, because of the Property's size, an overlength cul-de-sac is necessary to reach all five lots.

The Board found that the Property did have unusual topography which required the cul-de-sac to be placed up on the ridgeline where development was to occur and that it was not prudent to construct a road into the stream valley buffers solely to avoid a cul-de-sac. Further, the Board found that because the Rustic Roads Functional Master Plan attempts to minimize curb cuts and that the Rustic Roads Advisory Committee specifically restricted this development to a single access point; an overlength cul-de-sac resulted in an improved street layout and, therefore, the Board approved a cul-de-sac that exceeded 500 feet in length.

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 NOV 15 2010 (which is the date that this Resolution is mailed to all parties of record); and

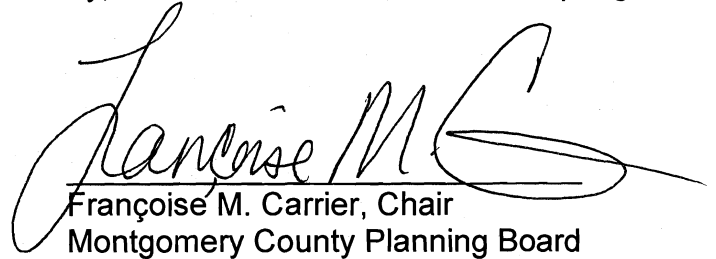
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Vice Chair Wells-Harley, seconded by Commissioner Alfandre, with Chair Carrier, Vice Chair Wells-Harley, and Commissioner Alfandre voting in favor of the motion, and with Commissioners Dreyfuss and Presley absent, at its regular meeting held on Thursday, October 21, 2010, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board