



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

NOV 16 2010

MCPB No. 10-144
Pre-Preliminary Plan No. 720080110
Project Name: Hungerford Property
Hearing Date: September 30, 2010

MONTGOMERY COUNTY PLANNING BOARD RESOLUTION

WHEREAS, pursuant to Montgomery County Code, Section 50-35A(a)(8), plats for up to five lots are permitted under the minor subdivision procedure in the RDT zone, provided that, as in the subject Application, a pre-preliminary plan is submitted and approved by the Montgomery County Planning Board (“Planning Board” or “Board”); and

WHEREAS, on December 27, 2007, Catherine Hungerford (“Applicant”), filed an application for approval of a pre-preliminary plan of subdivision of property that would create 1 lot on 14.03 acres of land located on Martinsburg Road approximately 4,000 feet southeast of Wasche Road (“Property” or “Subject Property”), in the RDT zone, in the Agriculture and Rural Open Space master plan area (“Master Plan”); and

WHEREAS, Applicant’s pre-preliminary plan application was designated Pre-Preliminary Plan No. 720080110, Hungerford Property (“Pre-Preliminary Plan” or “Application”); and

WHEREAS, 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 Planning Board staff (“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

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 Dreyfuss; seconded by Commissioner Alfandre; 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 Chapters 50 and 59, the Planning Board approved Pre-Preliminary Plan No. 720080110 to create 1 lot on the Property, subject to the following conditions:

APPROVED AS TO LEGAL SUFFICIENCY
Carol M. [Signature]
M-NCPPC Legal Department

- 1) Approval under this pre-preliminary plan is limited to 1 lot for 1 one-family detached residential dwelling unit.
- 2) The Applicant must dedicate right-of-way for Martinsburg Road along the property frontage to provide a total of 40 feet from the centerline as shown on the pre-preliminary plan.
- 3) The Applicant must submit a final forest conservation plan for review and approval by MNCPPC Environmental Planning Staff prior to submission of a record plat. The final driveway location with approved sight distance must be reflected on the final forest conservation plan.
- 4) The forest conservation plan and record plat must reflect a Category I easement over all areas of stream valley buffer and forest conservation.
- 5) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS), Well and Septic Section approval dated June 23, 2010. These conditions may be amended by MCDPS, provided they do not conflict with other conditions of the pre-preliminary plan approval.
- 6) The Applicant must satisfy provisions for access and improvements as required by the Montgomery County Department of Transportation (MCDOT) prior to issuance of access permits.
- 7) At the time of record plat application, the Applicant must provide verification to MNCPPC staff of the availability of a TDR for the proposed lot.
- 8) The Applicant must resolve the final property boundary prior to approval of the record plat, either by agreement with the National Park Service, or by final decision of a court of competent jurisdiction.
- 9) 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 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 proposed lot, which is to be platted through the minor subdivision process meets the applicable criteria set forth in Section 50-35A(a)(8).
 - a. MCDPS approved the proposed well and septic plan on June 23, 2010. All required street dedications along the frontage of the proposed lot will be shown on the record plat.
 - b. The proposed lot encompasses the entire Property and may not be further subdivided. The Planning Board finds an easement pursuant to § 50-35A(a)(8)(c) is not required to be filed because there is no balance to the Subject Property.

- c. The proposed subdivision accounts for the total density currently allowed by the Subdivision Regulations and Montgomery County Zoning Ordinance, and the Applicant must provide Staff with information verifying a TDR is available at the time of record plat.
2. The Pre-Preliminary Plan satisfies all other applicable requirements of Chapter 50 of the Montgomery County Code.
 - a. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision, as it will meet all the dimensional requirements for area, frontage, width, and setbacks for the Rural zone as more specifically discussed in Condition No. 7 herein.
 - b. As a result of the Allegheny Power right-of-way between the Subject Property and Martinsburg Road, the Subject Property does not have frontage on a public street as required by Section 50-29(a)(2) of the Subdivision Regulations. However, in exceptional circumstances, the Planning Board may approve up to two lots on a private drive way or right-of-way; provided that such access is adequate for utility providers and emergency vehicles to serve the Subject Property, and it is not detrimental to future subdivision of adjacent lands. The boundaries of the right-of-way acquired by Allegheny Power prohibit the Property from having any portion of the site abutting Martinsburg Road. Without relief from the requirements of this section, it would render the Property unbuildable for residential structures. The Planning Board finds this situation constitutes an exceptional circumstance. Allegheny Power has agreed to grant access to the site through the company's property. Such access will be adequate for utility providers and emergency vehicles to serve the Subject Property. Furthermore, because the land west of the Subject Property is owned by the National Park Service and encumbered by floodplain and environmental buffers, creation of a lot in this location will not affect subdivision of adjacent lands. Therefore, the Planning Board finds that one lot can be created without public street frontage.
3. The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.

This plan is in compliance with the Montgomery County Environmental Guidelines for protection of environmentally sensitive areas. The Applicant is required to submit a final forest conservation plan to Environmental Planning staff that must be approved prior to record plat submission.

4. The Pre-Preliminary Plan substantially conforms to the AROS Master Plan.

The Agriculture and Rural Open Space (AROS) Master Plan does not specifically identify the Subject Property for discussion but does give general guidance and recommendations regarding preservation of farmland and rural open space. The master plan recommends that this area maintain lower densities for the protection of agriculture, environmental features, and residential use of a rural character. The Planning Board finds the pre-preliminary plan complies with the master plan goals in that it contributes to the area's low density character, protects environmental features via a Category I forest conservation easement that will cover approximately 70% of the site, and the lot does not create further fragmentation within the zone.

5. The Pre-Preliminary Plan satisfies all applicable requirements of Chapter 59 of the Montgomery County Code.

Pursuant to Section 59-C-9.74(b)(2), the Subject Property is exempt from the area and dimensional requirements of the RDT zone because it is a lot created by deed executed on or before the approval date of the sectional map amendment which initially zoned the Property to the Rural Density Transfer Zone. The Property as it exists today was created by deed in 1979 and the sectional map amendment took place on January 6, 1981. As a result, the Property must comply with the area and dimensional requirements of the Rural zone provisions in place in 1979. The lot was reviewed for compliance with the Rural zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

6. Public facilities will be adequate to serve the proposed lot.

Martinsburg Road, in this location, is classified as an exceptional rustic road. The required right-of-way is 80 feet. The Applicant will dedicate approximately 20 feet along the Property boundary for 40 feet from the centerline, as shown on the pre-preliminary plan. Neither roadway improvements nor a sidewalk is required along the Property frontage.

Other public facilities and services are available and will be adequate to serve the proposed dwelling unit. 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. The school cluster in which the Subject Property lies is not currently in moratorium. Other public facilities and services, such as police stations, firehouses and health services, are operating within the standards set by the Growth Policy Resolution currently in effect. Electrical and telecommunications services are also available to serve the Property. Development on the site will be served by standard well and septic systems.

BE IT FURTHER RESOLVED, that this Pre-Preliminary Plan will remain valid for 36 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 Pre-Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed; and

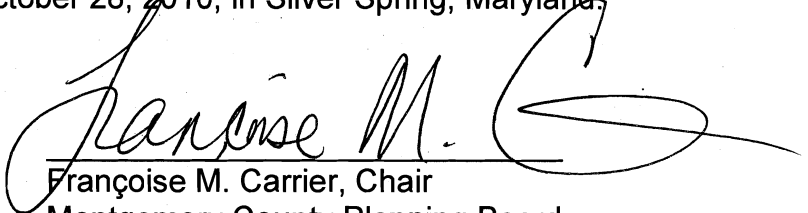
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and the date of this Resolution is NOV 16 2010 (which is the date that this Resolution is mailed to all parties of record); and

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 Presley, seconded by Commissioner Alfandre, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre and Presley voting in favor of the motion, and with Commissioner Dreyfuss absent, at its regular meeting held on Thursday, October 28, 2010, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board