

MAY 3 2011



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

**MCPB No. 11-04**  
**Preliminary Plan No. 120100150**  
**Clewerwall**  
**Date of Hearing: January 13, 2011**

**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 April 20, 2010, Mr. John Troha and Ms. Carol Tutera ("Applicants"), filed an application for approval of a preliminary plan of subdivision of property to create 2 lots on 5.20 acres of land in the RE-2 zone, located at the intersection of Saunders Court and Saunders Lane ("Property" or "Subject Property"), in the Potomac Subregion master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100150, Clewerwall ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated December 22, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

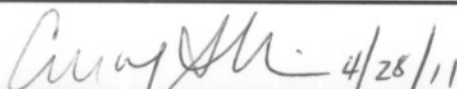
WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on January 13, 2011, the Planning Board held a public hearing on the Application (the "Hearing"); and

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

WHEREAS, on January 13, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss and seconded by Commissioner Alfandre with a vote of 4-0; Commissioners Alfandre, Carrier, Dreyfuss, and Presley voting in favor, Commissioner Wells-Harley 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. 120100150 to create 2 lots on 5.20 acres of land in the RE-2 zone, located at the intersection of Saunders's Court and Saunders's Lane, in the Potomac Subregion

Approved as to  
Legal Sufficiency:

 4/28/11

8787 Georgia Avenue, Suite 200, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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master plan area, subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to 2 one-family detached residential lots.
- 2) The development must comply with the conditions of the preliminary forest conservation plan (FCP). The Applicant must satisfy these conditions prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits. Conditions of the preliminary FCP include, but are not limited to:
  - a. Provide permanent signs along the boundaries of the Category I conservation easement area.
  - b. The final FCP must be submitted in accordance with section 109.B. of the forest conservation regulations and approved by Staff.
- 3) Record plat to reflect a Category I conservation easement over all areas of forest retention and environmental buffers as shown on the approved preliminary FCP.
- 4) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated November 3, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 5) The Applicant must comply with the conditions of the MCDOT letter dated July 6, 2010. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 6) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 7) Before any building permit is issued for the new dwelling unit, the Applicant must make the applicable school facilities payment at the middle school level to the Montgomery County Department of Permitting Services (MCDPS).
- 8) 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.
- 9) 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.
- 10) 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 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:

*1. The Preliminary Plan substantially conforms to the master plan.*

The Approved and Adopted 2002 Potomac Subregion Master Plan does not specifically discuss the Subject Property but does recommend that the RE-2 zoning designation remain on the Property as it was before the Master Plan update. The Master Plan only briefly discusses the adjacent Rock Run stream but makes no specific recommendations that would affect the Subject Property.

The Planning Board finds that this Preliminary Plan substantially conforms to the Master Plan because it proposes residential development under the RE-2 standards that generally conforms to the current development pattern of the area, and it meets the area and dimensional requirements for the RE-2 zone.

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

The lots do 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. In addition, the Application is not subject to Policy Area Mobility Review because the development generates fewer than 3 new peak-hour trips within the weekday morning and evening peak periods. The existing right-of-way for Saunders Court meets the 50-foot standard for a tertiary residential street, and no additional dedication is necessary. A sidewalk does not currently exist along the Subject Property's frontage and none is required because pedestrians can safely walk in the streets in this low density neighborhood. The Planning Board finds that vehicular and pedestrian access for the subdivision will be safe and adequate

The Planning Board finds that other public facilities and services are available and will be adequate to serve the proposed dwelling units. The Department of Permitting Services will allow the existing house to continue to use the existing wells and septic system while the new lot will be provided with a public water and sewer hookup. The Application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access. The Walt Whitman High School cluster is currently operating between 105% and 120% capacity for the middle school level and, therefore, a school facilities payment at the middle school level is required at the time of building permit for the one new residential lot. 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 lots.

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.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.* The Board finds that the proposed Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A the Montgomery County Forest Conservation Law.

- a. Section 5-1607(c) of the Natural Resources Article, MD Ann. 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. The Planning Board finds that the Applicant has met all criteria required to grant a variance to Section 5-1607(c) of the Natural Resources Article, MD Ann. Code as required by Section 22A-21 of the Montgomery County Code as follows:

- i. Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.

The Board finds that granting the variance will not confer a special privilege on the Applicant as the removal and/or disturbance of the protected trees noted in the Staff Report are the minimum necessary in order to develop the Property as illustrated on the Preliminary Plan. Based on the constraints of the Stream Valley Buffer and the topography of the site the proposed house is in the only suitable location. The driveway is located within the pipe stem for lot B and is in the only viable location.

- ii. Granting the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant;

The Board finds that the requested variance is not based on conditions or circumstances which are the result of actions of the Applicant. The variance is based upon proposed site development, required stormwater



management best management practices, and the environmentally sensitive areas on the site. The house and driveway are located in the only areas on proposed Lot B outside the stream valley buffer.

- iii. Granting the Variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property

The Board finds that the requested variance is a result of the proposed development and not a result of land or building use on a neighboring property.

- iv. Granting the variance will not violate State water quality standards or cause measurable degradation in water quality.

The Board finds that the requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Stormwater Management Plan will be approved by Montgomery County.

- b. Forest Conservation Variance mitigation

Three trees shown on the Natural Resources Inventory/Forest Stand Delineation and identified as #20, #24, and #30, are being impacted or removed and will be compensated for as part of the FCP in accordance with Chapter 22A of the County Code.

- c. Forest Conservation Plan

Of the 4.8 acres of forest on the Property, the preliminary forest conservation plan shows that 1.30 acres will be removed and 3.5 acres will be protected in a Category I easement. The 3.5 acres of forest proposed for retention exceeds the break-even point of 2.0 acres. The break-even point is the exact level of forest retention at which a developer is not required to reforest, therefore; no forest planting is required on this project. The final forest conservation plan must include details of forest preservation and signage that will provide the appropriate forest protection measures during construction of the subdivision. This is included as a condition of approval.

5. *The Application has an approved stormwater management concept dated November 13, 2009, therefore; the Board finds that the Application meets all applicable stormwater management requirements. This finding is based on the*

*determination by the Montgomery County Department of Permitting Services ("MCDPS") that stormwater management controls will be fully analyzed at the time of sediment/stormwater management plan stage. MCDPS advises that an engineered sediment control plan will be required that meets all sediment control and stormwater management regulations in effect at the time those plans are submitted.*

6. *The lots are of the same character as to street frontage, alignment, shape, width, 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:

Lot sizes in the Neighborhood range from 87,120 square feet (2.0 acres) to 174,889 square feet (4.01 acres). Lot A is 94,894 square feet (2.18 acres) and Lot B is 131,831 square feet (3.03 acres) in size. Both lots are within the range of lot sizes for the Neighborhood. The Board finds that the proposed lot sizes are in character with the size of existing lots in the neighborhood.

Width

Lot widths measured at the front building line in the 20 lot Neighborhood range from 185 feet to 442 feet. Lot A has 332 feet of width and lot B is 357 feet wide. The Board finds that the proposed lots are in character with existing lots in the neighborhood with respect to width.

Frontage

Lot frontages in the Neighborhood range from 25 feet to 499 feet. Lot A has 375.91 feet of frontage and lot B has 25 feet of frontage. Lot A is similar in character with respect to frontage; Lot B is one of two other pipestem lots with 25 feet of frontage. While pipestem lots are not prevalent in this Neighborhood, the Board does not find that Lot B is out of character because the two other pipestems are located on Saunders Court, in very close proximity to the Subject Property. In fact, one of the pipestems directly abuts the subject pipestem, creating a mirror image of the pipestem lot approved by previous Planning Board action. The Board finds that the proposed lots are of the same character as existing lots in the neighborhood with respect to lot frontage.

Area:

Buildable area calculations for the Neighborhood range from 28,133 square feet to 129,037 square feet. It is important to note that the buildable area, for

purposes of this review, excludes the stream valley buffers which affect the Subject Property and one other lot in the Neighborhood. After excluding the stream buffer on Lot A, the buildable area is 16,294 square feet, the smallest in the Neighborhood, but it is in this area where the existing house will remain. On Lot B, the buildable area is 24,480 square feet the second smallest in the Neighborhood. Although the two lots statistically fall at the bottom of the range with respect to buildable area, the Board finds that the area of the lots is of the same character with respect to this criterion as other lots within the defined Neighborhood. The area criterion (as a measure of developable area within a lot) is less critical in large lot zones than it is in small lot zones because the usable area in a large lot is typically more than adequate to accommodate a house and yard. Therefore, the Board does not believe a statistically "high correlation" is necessary to find that the lots are of the same character. At over one-half acre, the buildable area of Lot B as shown on the Preliminary Plan reveals that there is ample room to accommodate a large home with a garage, large driveway and a pool with surrounding deck and the house on Lot A already exists. The buildable area on Lot B does not restrict the use of this lot for residential purposes and allows a home to be built that one might consider typical for this area of the County. The Board finds that the proposed lots are of the same character as other lots in the Neighborhood with respect to buildable area.

Alignment:

All of the existing and proposed lots align in a relatively perpendicular manner to the street line. Alignment is a general description of how the side lot lines for each lot meet the street line. The Board finds that the alignment of each proposed lot is in character with other lots in the Neighborhood.

Shape:

Eight lots in the Neighborhood are irregular, 8 are rectangular, 2 are trapezoidal and 2 are pipestem shaped. The new lots are described as rectangular and pipestem. As discussed above in the frontage section, the occurrence of a pipestem in this portion of the Neighborhood, especially when adjacent to another pipestem, supports the finding that the pipestem is of the same character with respect to shape. The Board finds that the shape of both new lots are in character with shapes of the existing lots.

Suitability for Residential Use:

The lots are zoned residential and have a reasonable area available for development, therefore; the Board finds that the lots are suitable for residential use.

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

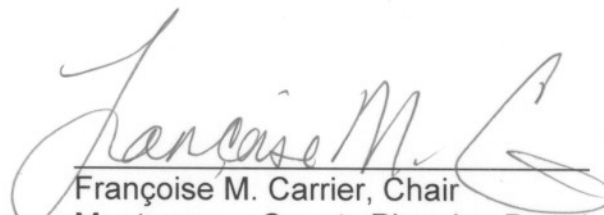
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is MAY 3 2011 (which is the date that this Resolution is mailed to all parties of record); and

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 Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley present and voting in favor of the motion and Commissioner Alfandre absent, at its regular meeting held on Thursday, April 28, 2011, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board



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