



JUL 15 2011

# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB No. 11-36**  
**Preliminary Plan No. 120090160**  
**Weaver Property**  
**Date of Hearing: April 21, 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 November 26, 2008, Christopher Weaver ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 7.56 acres of land in the RE-2 zone, located on the north side of Esworthy Road at the terminus of Cervanties Avenue ("Property" or "Subject Property"), in the Potomac Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090160, Weaver Property ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 23, 2009 setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions; and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies on November 5, 2009, the Planning Board held a public hearing on the Application, and;

WHEREAS, the Applicant requested, and the Planning Board granted, a deferral of the Planning Board's decision so that the Applicant could further address issues associated with the preliminary forest conservation plan; and,

WHEREAS, Staff issued a new memorandum to the Planning Board, dated April 8, 2011 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, Suite 30010 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies on April 21, 2011, the Planning Board continued the hearing from November 5, 2009 ("Hearing"); and,

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

WHEREAS, on April 21, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Wells-Harley; with a vote of 4-0, Commissioners Alfandre, Carrier, Presley, and Wells-Harley voting in favor, with Commissioner Dreyfuss 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. 120090160 to create one lot on 7.56 acres of land in the RE-2 zone, located on the north side of Esworthy Road at the terminus of Cervanties Avenue, in the Potomac Master Plan area, subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to one (1) residential lot.
- 2) The proposed development must comply with the following conditions of the Preliminary Forest Conservation Plan, and 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 appropriate.
  - a) Revise the preliminary Forest Conservation Plan to:
    - i. Show all remnant forest areas as cleared on the forest conservation worksheet and provide mitigation for forest loss using off-site options, including offsite planting and forest mitigation banks, but excluding fee-in-lieu. On-site afforestation is also allowed.

Or

    - ii. Show all remnant forest areas as saved on the forest conservation worksheet and plant all of these areas up to the minimum standard of 50 feet wide and 10,000 square feet.
  - b) Applicant must submit, and Staff must approve a final forest conservation plan prior to any land disturbing activities.

- 3) The applicant must comply with the Montgomery County Department of Permitting Services stormwater management letter dated February 17, 2009. Stormwater management will be addressed at the time of building permit.
- 4) Liber and folio references for the existing driveway ingress/egress easement for the proposed lot to be shown on the record plat.
- 5) The applicant must comply with the conditions of the MCDOT letter dated February 23, 2009. These conditions may be amended by MCDOT provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 6) 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 (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 Planning Board finds that the proposed application is in conformance with the recommendations in the Potomac Master Plan. The proposed lot is a permitted use in the RE-2 Zone as recommended by the Master Plan. This subdivision will not result in any significant changes to the neighborhood since the house will remain. If approved, the resulting plat will allow for a building permit to be issued on the property to either improve or replace the one family residential structure.

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

Roads and Transportation Facilities – The proposed lot does not generate 30 or more vehicle trips during the morning or evening peak-hours, and the Application is not subject to Local Area Transportation Review. In addition, the Application is not subject to Policy Area Mobility Review because it is in the Rural Policy Area. The Planning Board finds that road and transportation facilities will be safe and adequate for the subdivision.

Other Public Facilities and Services – The Planning Board finds that other public facilities and services are available and will be adequate to serve the dwelling unit. The Application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access. The existing dwelling unit is not

subject to a schools test, however, area schools are operating at adequate levels. 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.*

The Board finds that this Application meets the development standards in the Montgomery County Code, Chapter 50, the Subdivision Regulations and Zoning Ordinance. The proposed size, width, shape and orientation of the lot is appropriate for its location. The lot was also reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The proposed lot will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

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

The Board reviewed the submitted preliminary forest conservation plan and finds that with the conditions imposed by the Planning Board, the Application will fully comply with Chapter 22A, the Montgomery County Forest Conservation law.

A tree variance under Section 22A-12(b)(3) of the County Code is not necessary because, with Condition No. 2 above, all trees protected under Section 5-1607(c) of the Natural Resources Article, MD Ann. Code, including their critical root zones will be left in an undisturbed condition.

- 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.*

A stormwater management concept is not required by MCDPS at this time because no development is proposed on the property. The Board finds that the Application complies with Chapter 50, Section 50-24(j) which requires that stormwater management be addressed by MCDPS, prior to consideration by the Planning Board.

6. *The Application satisfies all the applicable requirements of the Subdivision Regulations and the Zoning Ordinance of the Montgomery County Code.*

Lots Without Frontage. Section 50-29(a)(2) of the Subdivision Regulations requires that ..."every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road. In exceptional circumstances, the Board may approve not more than two (2) lots on a private driveway or private right-of-way; provided that proper showing is made that such access is adequate to serve the lots for emergency vehicles, and for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands."

The Subject Property and house have existed since the 1960's and can continue to be safely and adequately served by the existing driveway. The ingress and egress easement that exists on the driveway provides assurances for the continuation of that access. Further, Fire and Rescue Services has found that emergency equipment can adequately access the Property and access by other public services is not hindered by the private driveway. Utilities are already in place and are not required to be altered by this application. The approval of this lot without frontage would not hinder future development of adjacent lands because it would not tend to landlock other adjacent properties. Therefore, The Planning Board finds that a proper showing has been made to allow this lot to be approved without frontage

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

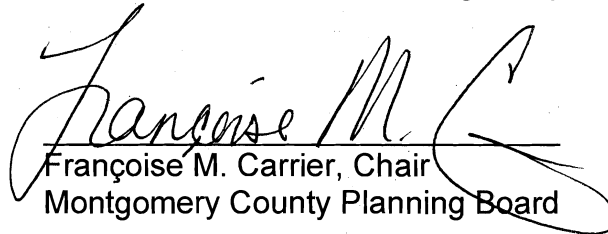
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 15 2011 (which is the date that this Resolution is mailed to all parties of record); and

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 Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor of the motion, and with Commissioner Anderson abstaining, at its regular meeting held on Thursday, June 23, 2011, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board