



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

MCPB No. 11-39  
Preliminary Plan No. 120110110  
Willerburn Acres  
Date of Hearing: May 5, 2011

**MAY 25 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 January 6, 2011, Tamara Corporation ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create two lots on 1.01 acres of land in the R-90 zone, located on the east side of Gainsborough Road, approximately 400 feet southeast of Whistler Court ("Property" or "Subject Property"), in the Potomac Subregion master plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110110, Willerburn Acres ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated April 22, 2011, 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 May 5, 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 May 5, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Carrier, Dreyfuss, and Wells-Harley voting in favor, commissioners Alfandre and Presley were absent.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved

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Approved as to  
Legal Sufficiency: *[Signature]* 5/13/11

Preliminary Plan No. 120110110 to create two lots on the Property subject to the following conditions:

- 1) Approval under this preliminary plan is limited to two lots for two dwelling units.
- 2) The Applicant must submit a revised final forest conservation plan which shows all forest onsite as cleared and the entire planting requirement to be met off-site<sup>1</sup>. 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 applicable.
- 3) At the time of final survey and prior to recordation of the plat, Applicant must place an approved Park boundary marker in the northeast corner and southeast corner of the Subject Property.
- 4) 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.
- 5) The Applicant must satisfy MCDPS requirements prior to recordation of the plat to ensure the construction of a five-foot-wide sidewalk along the property frontage on Gainsborough Road, unless construction is waived by MCDPS.
- 6) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated December 14, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 7) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated March 11, 2011. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 8) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat.
- 9) Any building permits for one-family residences that are issued pursuant to this preliminary plan must show that the buildings are to be built in substantially the same locations and orientations as shown on the certified preliminary plan.
- 10) The Adequate Public Facility review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
- 11) The record plat must show necessary easements.

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<sup>1</sup> The revised forest conservation plan can show a change to the limit of disturbance since all forest onsite will be shown as cleared.

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 as revised at the Hearing, 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 Preliminary Plan shows development on a vacant property that is being resubdivided in conformance with the R-90 zoning recommended in the Master Plan. The subdivision and subsequent development for two homes is consistent with the land use and zoning recommendations shown on the Existing and Proposed Zoning map and the Land Use, Parks, and Community Facilities map within the Master Plan. Therefore, the Planning Board finds the Application to be consistent with the 2002 Potomac Subregion master plan.

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

The new lots 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 and it meets the de minimus provision of the Policy Area Mobility Review (PAMR) and is, therefore; not subject to PAMR. The Property is not within a school moratorium area and is not subject to a School Facilities Payment. Right-of-way dedication is not required since all appropriate dedications have already been made for the Property and the road is built to County standards. Sidewalks are required by the Montgomery County Department of Permitting Services but the Applicant has expressed interest in pursuing a waiver of this requirement from MCDPS. In order to more fully protect the character of this neighborhood which currently lacks paved sidewalks, the Planning Board supports the Applicant with respect to any sidewalk waiver request for this Property's frontage. The Planning Board finds that vehicular access and circulation is adequate for the proposed lots. Pedestrian circulation, without sidewalks, can be safely accommodated using the edge of pavement or grass apron of Gainsborough Road. Fire and Rescue has determined that the Property has appropriate access for fire and rescue vehicles. All other public facilities and services, including utilities are adequate to serve the two lots.

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

The Planning Board finds that the Preliminary Plan complies with all other requirements of the Montgomery County Subdivision Regulations. This finding is based on a determination that the size, shape, width and orientation of each of the proposed lots is appropriate for their location within the Willerburn Acres Subdivision having also taken into account any pertinent recommendations in the Potomac Master Plan. The Planning Board analyzed the location of the subdivision within the greater Willerburn Acres Subdivision specifically for those lots fronting on Gainsborough Road between Seven Locks and Fontaine Street. The Planning Board believes that the location of the two lots is at the transition area where lots that were originally platted on septic abut lots that were platted after sewer was extended. The dimensions of each lot is substantially consistent with respect to the size, shape, width and orientation of nearby lots and they also fit into this section of the overall subdivision. It was also observed by the Planning Board that existing Lot 12 (Subject Property) is among the largest of lots in the overall subdivision, and the two lots in this Application are more in character with the rest of the subdivision. The Planning Board finds that the proposed lots' size, shape, width and orientation are appropriate at this location.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features:*

A. Forest Conservation

The Board finds that with the conditions imposed by this Resolution the Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

B. Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection (Protected Trees). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone (CRZ), requires a variance under Section 22A-12(b)(3) of the County Code. Otherwise such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will require two Protected Trees, 30 inches and greater DBH to be impacted.

Therefore, a variance is required. Although the Applicant proposed tree preservation measures to help ensure the Protected Trees with anticipated impacts survive construction, the variance is required simply due to the impact.

The Board made the following findings necessary to grant the Tree Variance:

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

Granting the Tree Variance will not confer a special privilege as based on the topography of the site and the proposed house locations, the applicant has devised a plan that does not remove any trees requiring a Tree Variance and has only minor impacts to two trees.

- ii. *The need for the Tree Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested Tree Variance is not based on conditions or circumstances which are the result of actions of the Applicant. The variance is based on the topography of the site and the proposed house locations. The applicant has devised a plan that does not remove any trees requiring a Tree Variance and has only minor impacts to two trees.

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

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 Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The 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 Concept Plan has been approved by the Montgomery County Department of Permitting Services.

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.*

The Planning Board finds that 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 that the Stormwater Management Concept Plan approved December 14, 2010, meets MCDPS' standards. The stormwater management concept uses Environmental Site Design techniques that include drywells for rooftop runoff and disconnects for non-rooftop runoff.

6. *In accordance with Section 50-29(b)(2) of the County Code, the proposed lots are of the same character as to street frontage, alignment, size, shape, width, area 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:** The lot sizes are in character with the size of existing lots in the neighborhood. The range of Neighborhood lot sizes are from 9,783 square feet to 54,763 square feet. The lots are at 24,011 square feet for Lot 60 and 20,118 square feet for Lot 61 and within the range of all lot sizes.

**Width:** The lots will be in character with existing lots in the Neighborhood with respect to width. The two lots will be subject to an established building line (EBL) at the time of building permit. The Applicant has calculated the proposed EBL and measured the lot width at that point. The width of Lot 60 will be 108 feet and the width of Lot 61 will be 99 feet. The lot widths in the Neighborhood range from 82 feet to 203 feet. The lots are within the range of overall lot widths.

**Frontage:** The lots will be of the same character as existing lots in the Neighborhood with respect to lot frontage. The lots have frontages of 101 feet and 96 feet for proposed lots 60 and 61, respectively. There is a wide range of frontage widths for the existing lots in the Neighborhood from 25 feet to 204 feet. The lots fit into the middle of this range.

**Area:** The lots will be of the same character as other lots in the Neighborhood with respect to buildable area. The building envelope "area" for the lots in the Neighborhood range from 3,437 square feet to 38,736

square feet. Lot 60 and 61 will have buildable areas of 9,454 and 7,604 respectively

**Alignment:** The lots are of the same character as existing lots with respect to the alignment criterion. All Neighborhood lots that front on a straight segment of Gainsborough Road align in a perpendicular manner; all lots that front to a curved segment of Gainsborough align in a radial manner. Corner lots tend to align perpendicularly to the two streets on which they front. The proposed lots front on a straight section of Gainsborough Road and align in a perpendicular manner that is of the same character as other lots.

**Shape:** The shapes of the lots are in character with shapes of the existing lots. There is a wide variety of lot shapes in the Neighborhood with many standard shapes and irregular shapes. The two lots are best described as standard rectangles and similar to many other lots in the Neighborhood.

**Suitability for Residential Use:** The new lots are zoned residential and the land is 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 Board in this matter, and the date of this Resolution is \_\_\_\_\_ (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

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BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 25 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).

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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 Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor of the motion, and with Commissioner Alfandre absent, at its regular meeting held on Thursday, May 19, 2011, in Silver Spring, Maryland.



Françoise M. Carrier, Chair  
Montgomery County Planning Board