



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

FEB 25 2014

MCPB No. 14-10

Batchellors Forest Subdivision: Release of Rural Open Space Easement

Date of Hearing: February 20, 2014

RESOLUTION

WHEREAS, On May 9, 2013, the Montgomery County Planning Board ("Planning Board") of The Maryland-National Capital Park and Planning Commission ("M-NCPPC") adopted a policy setting forth certain criteria to guide it in its review of requests to release Rural Open Space easements from properties so encumbered in conformance with Sections 59-C-9.573(3) and 59-C-9.574(h)(4) of the Montgomery County Zoning Ordinance 2004, as amended ("ROS Easement Release Policy"); and

WHEREAS, Pulte Home Corporation received development approvals from the Planning Board, including Preliminary Plan No. 120060850 and Site Plan No. 82008019A, for development of 37 dwelling units on approximately 94 acres of RNC zoned land along Batchellors Forest Road known as Batchellors Forest Subdivision, in the 1995 Olney Master Plan area; and

WHEREAS, as a condition of the development approvals for Batchellors Forest Subdivision, Pulte dedicated a 17.11433 acre portion of the 94 acres to M-NCPPC for use as parkland, which property is identified as Rural Open Space and shown as "Parcel B, Block C" on Record Plat No. 24593, recorded among the Land Records of Montgomery County, Maryland ("Dedicated Property"); and

WHEREAS, the approved Site Plan showed the Property without any improvements, as it was intended to be dedicated to M-NCPPC to develop as a local park consistent with the 1995 Olney Master Plan; and

WHEREAS, as a further condition of the development approvals for Batchellors Forest Subdivision, Pulte granted a Rural Open Space Easement to M-NCPPC dated December 10, 2012, and recorded in Liber 45943 at folio 108 among the Land Records of Montgomery County, Maryland ("Pulte ROS Easement") over the Dedicated Property; and

WHEREAS, immediately adjacent to the Dedicated Property, Montgomery County Public Schools ("MCPS") owns, in fee simple, certain real property containing

Approved as to
Legal Sufficiency


M-NCPPC Legal Department
www.montgomeryplanningboard.org

Phone: 301.495.4605 Fax: 301.495.1320

E-Mail: mcp-chair@mncppc-mc.org

approximately 19.5 acres of land, which is currently improved with the William H. Farquhar Middle School ("MCPS Property"); and

WHEREAS, on December 12, 2013, MCPS submitted an application to the Planning Board for mandatory referral review under MD Code, Land Use, §20-301 to combine the MCPS Property with the adjacent Dedicated Property on which MCPS proposed to build a new and upgraded Farquhar Middle School, known as Mandatory Referral No. 2014028 ("Change of Use Mandatory Referral"),¹ and once the new school building is ready for occupancy, deliver the MCPS Property to M-NCPPC improved with interim park uses, pending the Montgomery County Department of Parks' ultimate improvement of that property as the local park contemplated in the 2005 Olney Master Plan; and

WHEREAS, in addition to the mandatory referral, MCPS included a request for the Planning Board to approve release of the Pulte ROS Easement ("Release Application") because construction of the new Farquhar Middle School on the Dedicated Property requires release of the Pulte ROS Easement; and

WHEREAS, following review and analysis of the Release Application by Planning Board staff ("Staff"), Staff issued a memorandum to the Planning Board, dated February 6, 2014, setting forth its analysis and recommendation for approval of the Release Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 20, 2013, the Planning Board held a public hearing on the mandatory referral and the Release Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Release Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Release Application, subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves the Release Application to release the Pulte ROS Easement from the Dedicated Property, subject to the following conditions:

1. Prior to M-NCPPC recording the Abandonment of Dedication of the Dedicated Property, MCPS must acquire the underlying fee to the Dedicated Property from Pulte by eminent domain.

¹ The Planning Board's recommendations on Mandatory Referral No. 2014028 will be addressed in a separate letter to MCPS as the submitting agency. This Resolution is intended to set forth the conditions of the Planning Board's approval to release the Pulte ROS Easement and the findings of the Planning Board as established in the ROS Easement Release Policy.

2. MCPS must submit a subsequent mandatory referral with more detailed design plans that includes both the new school facility on the Dedicated Property, consistent with the concept plans submitted with the Change of Use Mandatory Referral, and the interim park on the MCPS Property ("Detailed Mandatory Referral"). MCPS' submission of the Detailed Mandatory Referral will not be considered complete until MCPS has executed and delivered the following documents, with terms and conditions as approved by the Planning Board:
 - a. Perpetual Use Easement encumbering the MCPS Property;
 - b. ROS Easement encumbering the MCPS Property; and
 - c. Joint Use Agreement establishing the terms and conditions of joint operations of shared facilities for the new school and park sites.
3. The Abandonment of Dedication and the Release of Rural Open Space Easement from the Dedicated Property will be held in escrow by the Department of Parks until i) its staff has reviewed the 100% Construction Plans or the final Bid Documents for construction of a) the new school facilities and found them to be consistent with the concept plans submitted with the Change of Use Mandatory Referral, and b) the interim park and found them to be consistent with the Detailed Mandatory Referral; and (ii) based on staff's recommendation, the Planning Board has given its approval, anticipated as a consent agenda item, to record the Abandonment and the Release.
4. MPCPS must construct the new school facilities on the Dedicated Property consistent with the concept plans approved by the Planning Board with the Change of Use Mandatory Referral.
5. MPCPS must construct the interim park on the MCPS Property consistent with the Detailed Mandatory Referral as approved by the Planning Board.

BE IT FURTHER RESOLVED, that, having considered 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 Planning Board FINDS, with the conditions of approval, that:

1. *The purpose for the release of the Pulte ROS Easement balances another public interest.*

The Planning Board finds that releasing the ROS Easement meets two public interests: i) it enables the new school to be constructed without burdening educational opportunities for Farquhar students or contributing to traffic congestion; and ii) it enables recreational activities on an interim basis on land controlled by the Department of Parks years earlier than previously anticipated.

Release of the Pulte ROS Easement will enable construction of a new Farquhar middle school without requiring its student body to relocate to a holding school, which would necessitate that students spend as much as three hours a day in transit, both compromising extracurricular activities by complicating parents' ability to pick students up from school in the late afternoon, and requiring extensive redesign by MCPS of bus routes. In addition, much of the travel time would occur during peak periods, further burdening the roadway networks between Olney and Bethesda.

Enabling construction of a new middle school on the Dedicated Property will also hasten creation of the local park for the community's use. The Joint Use Agreement includes delivery of the MCPS Property, cleared and graded, once construction of the new school is complete. Department of Parks staff has indicated that such an arrangement would allow interim use of the MCPS Property for recreation while facility and detailed site planning for a permanent park is underway.

2. *MCPS will provide another property, similarly situated in location (watershed), and size, to be encumbered with the same ROS restriction so that the intention of "perpetuity" as required by the Zoning Ordinance has been addressed.*

To replace the Rural Open Space, MCPS will provide the MCPS Property, at approximately 19.5 acres, encumbered with an ROS Easement as required by the Zoning Ordinance. The Commission's current interest in the Dedicated Property was acquired as a dedication from Pulte Homes, which allows for the property to be used as the local park contemplated in the Master Plan. Under Maryland law, the dedication has the effect of Pulte having granted a restrictive use easement to the Commission, operative for so long as the designated use continues. MCPS must grant a Perpetual Use Easement to the Commission for use of the property as the local park contemplated in the Master Plan. This would provide the Commission with an equivalent guarantee of property for use as a park in perpetuity, immediately adjacent to the original park location.

In order for MCPS to begin construction of the new school, release of the ROS Easement from the Dedicated Property must occur prior to June 2014. In order for MCPS to continue to operate the existing school until the new school is occupiable, the effective date of the new ROS Easement on the MCPS Property must be delayed until July 2016, the projected completion date for the school construction. Although the replacement requires a two-year delay, the value of the ROS Easement on the Dedicated Property would not have been experienced during that time.

3. *The MCPS Property as the replacement, or substitute property would have been acceptable as the ROS property in the original development application for Batchellors Forest Subdivision.*

The MCPS Property contains approximately 20 acres. The Dedicated Property is approximately 17 acres in size. Before the school was constructed, the properties exhibited very similar visual and environmental characteristics. They both are situated in the same geographic position with respect to Batchellors Forest Road and had similar topographic features, including similar slopes, which directed runoff to a stream that essentially created a natural separation of the two properties. It is reasonable to assume that because of the same soil types, the vegetation on the properties would have likely been the same, if left out of agricultural production and allowed to lie fallow. Views from Batchellors Forest Road would have been similar looking across either property.

The properties' similarity strongly suggests that they are equally suitable for recreational uses. In addition, the MCPS Property can meet all requirements for rural open space in the RNC Zone: it was largely unmanaged at the time of subdivision, confronts the Batchellors Forest Subdivision and is large enough to make a significant contribution to the required rural open space percentage for RNC development. Had both properties been vacant at the time the Batchellors Forest Subdivision was under review, and had Pulte owned the MCPS Property instead of the Dedicated Property, the MCPS Property would have been an acceptable property for implementing the Olney Master Plan recommendations in this area.

4. *Release of the Pulte ROS Easement does not place Pulte in a position in which its entitlements for the Batchellors Forest Subdivision, such as density, will be lost.*

The Dedicated Property was a portion of the Rural Open Space required for the Batchellors Forest subdivision with the optional method of development in the RNC Zone. This arrangement allows development to be concentrated on smaller lots, creating a land use pattern that preserves sensitive natural features as undeveloped open space. This undeveloped open space nonetheless contributed to allowable density on the site. So it cannot be simply severed from the rest of the development without risking creation of non-conformity.

Release of the Pulte ROS Easement is conditioned on MCPS acquiring Pulte's underlying fee in the Dedicated Property through eminent domain. Section 59-G-4.25 of the Zoning Ordinance states that a lot that is reduced in area by a government taking and would become as a result deficient in any dimension is not non-conforming. Therefore, while the Rural Open Space associated with the

Batchellors Forest subdivision will be reduced, it will be the result of government action that will not create a non-conforming condition for the subdivision.

5. *Replacement of Dedicated Property with the MCPS Property substantially conforms to the Master Plan.*

The Olney Master Plan made specific recommendations for the Dedicated Property, identifying it as suitable for a local park and including it as part of the Rural Open Space associated with the RNC Zone. Releasing the Pulte ROS Easement from the 17-acre parcel identified as parkland, condemning certain underlying interests so that the parcel can be used as a school, and encumbering the larger property now occupied by the school with a perpetual rural open space restriction so that it can function as a park—creates a local park on property adjacent to Farquhar Middle School, which conforms to the Master Plan's recommendation. It maintains the Master Plan recommendations for a single access to serve the school and the park, and the proposed concept contributes to the rural character of Batchellors Forest Road by locating the fields nearest the road.

The replacement arrangement provides a local park in the Southeast Quadrant and enables provision of recreational fields needed in this part of Olney. It also meets Master Plan objectives and recommendations for preserving the rural character of both Southeast Olney and Batchellors Forest Road. As such, it substantially conforms to the Olney Master Plan.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is FEB 25 2014 (which is the date that this Resolution is mailed to all parties of record); and

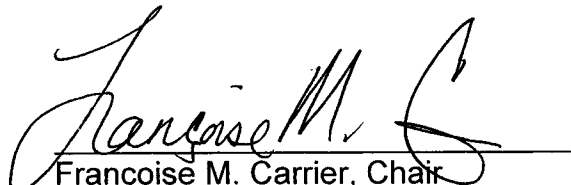
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, February 20, 2014, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board