



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JUL 16 2014

MCPB No. 14-46
Preliminary Plan No. 120120040
19230 Chandlee Mill Road
Date of Hearing: June 26, 2014

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on August 30, 2011, Jefferson D. Lawrence ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 2 lots on 4.14 acres of land in the RE-2 zone, located at 19230 Chandlee Mill Road ("Subject Property"), in the Olney Policy Area and Sandy-Spring/Ashton master plan ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120120040, 19230 Chandlee Mill Road ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated June 13, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 26, 2014, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

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

Approved as to
Legal Sufficiency

 06/18/14

6787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
MNCPPC Legal Department
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120120040 to create 2 lots on the Subject Property, subject to the following conditions:¹

- 1) Approval under this Preliminary Plan is limited to two residential lots.
- 2) The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. 120120040, received by M-NCPPC on April 24, 2014, subject to the following conditions:
 - a. Prior to recordation of the plat, the Applicant must obtain M-NCPPC approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan.
 - b. The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the Final Forest Conservation Plan.
 - c. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan.
 - d. Additional tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
 - e. The record plat must show a Category I conservation easement over all areas of forest retention and portions of the stream buffer as specified on the approved Final Forest Conservation Plan and reference the Category I conservation easement recorded at liber 13178, folio 412.
 - f. The Applicant must install permanent Category I conservation easement signage along the perimeter of all forest conservation easements as specified on the approved Final Forest Conservation Plan or as determined by the M-NCPPC forest conservation inspector.
 - g. The Final Forest Conservation Plan must indicate that Trees #8 and #27 will be flush cut with stumps to remain in place to minimize disturbance.

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

- 3) Prior to recordation of the plat, the Applicant must enter into an Impervious Surface Compliance Agreement with the Planning Board to limit the impervious surface to no more than ten percent (10.0%) of the entire gross tract area as shown on the Impervious Surface Exhibit dated March 11, 2014. The gross tract area includes the Subject Property and the portion of the offsite ingress/egress easement that overlaps the limits of disturbance for the Application.
- 4) Prior to release of any building permit, the Applicant must show compliance with the Impervious Surface Compliance Agreement by submitting to M-NCPPC Staff a Preconstruction Proposed Impervious Surface Summary Table. The Summary Table must provide detailed calculations of the proposed impervious areas for each lot including: driveways, rooftop area, lead sidewalk area, and proposed impervious surfaces for all fire department required features and any other impervious surface improvements included within the Subject Property's gross tract area.
- 5) The record plat must contain the following note:

"Initial development of the lots shown hereon is subject to an Impervious Surface Compliance Agreement with the Montgomery County Planning Board for Preliminary Plan No. 120120040."
- 6) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated July 24, 2012, and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 7) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 8) The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated July 21, 2011, and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources

Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

- 9) The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Well and Septic Section included in a letter dated December 9, 2011, and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well and Septic Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 10) The record plat must reference the liber and folio for the offsite common ingress/egress/ utility easement over the shared driveway as shown on the approved Preliminary Plan.
- 11) The record plat must reflect the Public Safety Water Supply Easement required by the Montgomery County Department of Fire and Rescue Services ("MCFRS").
- 12) 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.
- 13) The record plat must reflect other easements as necessary.

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 Preliminary Plan substantially conforms to the Master Plan.*

The Application is in substantial conformance with the 1998 Sandy Spring/Ashton Master Plan. As a development in conformance with RE-2 zoning standards, the Preliminary Plan conforms with the Master Plan's general guidance to maintain rural character in the Brooke Road/Chandlee Mill Road area and properly addresses any soil and septic limitations by allowing development on large lots in excess of two acres.

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

Roads and Transportation

The lots do not generate 30 or more vehicle trips during the morning or evening peak hours; therefore, the Application is not subject to the Local Area Transportation Review. The lots do not generate more than three vehicle trips during the morning or evening peak hour and the Application is therefore, exempt from the Transportation Policy Area Review. The Applicant is required to make a driveway apron improvement within the Chandlee Mill Road right-of-way for the new driveway in accordance with County standards. No sidewalks currently exist on Chandlee Mill Road and none are required for this Application.

Other Public Facilities and Services

The Application was reviewed by all required public service agencies and utility companies and was found to have adequate public facilities available to serve the proposed lots. The MCFRS approved the driveway for sufficient emergency access and recommended that a location for a water supply vault be identified on the Application. The MCDPS – Well and Septic Section approved the necessary septic systems and well locations. Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect. The Application is located in the Sherwood High School cluster, which is not identified as a school moratorium area; and is not subject to a School Facilities Payment.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

Pursuant to Section 50-29 of the Subdivision Regulations, the proposed lot size, width, shape and orientation is found to be appropriate for the location of the subdivision, taking into consideration the recommendations of the Master Plan and the intended use. The Master Plan designated the Property in the RE-2 zone in order to meet certain rural character recommendations and to allow larger lots in areas where septic suitability was questionable. The lots are large and provide the ability to situate homes that work with the available soil septic suitability and well locations. The lots are appropriately dimensioned and situated to accommodate two homes.

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

- A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. The Application includes a tract area of 4.50 acres of land which includes 0.36 acres of off-site improvements for the construction of the shared driveway that will provide access to the Property. Two forest stands were identified on the Property. The Forest Conservation Plan proposes to clear approximately 2.28 acres of existing forest for development of the two lots including the access driveway, septic fields, stormwater management facilities, and utilities. The remaining 2.00 acres of high priority forest, including the onsite stream buffer, will be retained and protected in a Category I conservation easement. The forest clearing required to develop this Property does not result in a planting requirement.

The Planning Board determined that the disturbance to the stream valley buffer for the new driveway within the offsite ingress/egress/utility easement was necessary for access to the Property and that the development proposal could not be reasonably altered to avoid the disturbance. Crossing the stream valley buffer, which separates the entire Property from the only available public street, is unavoidable. The Board determined that all planning and zoning options had been used to minimize forest impacts and protect vegetation within the buffer pursuant to the provisions in Section 22A-12(b)(1) of the Forest Conservation Law. Further, the Planning Board determined that the driveway was located in the most appropriate location based on a discussion in the Staff Report explaining that the clearing for the new driveway is adjacent to an existing clearing on the neighboring property's driveway, and that widening the existing cleared area was preferable to fragmenting the forest by clearing for the driveway in a different location.

The Planning Board also determined that the Application met the water quality protection measures established in the Environmental Guidelines for the protection of the Patuxent River watershed. Based on its findings regarding the location of the driveway the Board finds that it is appropriate to calculate impervious surface area as a percentage of the entire area of the Subject Property including the area within the limits of disturbance for the driveway in the offsite ingress/egress/utility easement. Using this calculation, imperviousness associated with the development of the two

lots was determined to be less than 10% in accordance with the recommendations for the Patuxent River Primary Management Area.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law 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) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to seven Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

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

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

Granting the Variance will not confer a special privilege on the Applicant as the removal and disturbance to the Protected Trees are due to the reasonable development of the Property. The Property is entirely forested and the Protected Trees are located within the developable area of the site and the offsite access easement. Granting the Variance request to allow land disturbance within the developable portion of the site is not unique to this Applicant. The development of the Property dictates access through the offsite ingress/egress easement containing forest and Protected Trees. Granting of this Variance is not a special privilege that would be denied to other applicants.

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

The need for the Variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested Variance is based upon existing site conditions, including the existing

access easement, and the number and locations of the Protected Trees.

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

The need for the Variance is a result of the existing conditions and the proposed site design and layout on the Subject Property, and not a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

Of the four Protected Trees requested for removal, one is located in an environmental buffer. This Tree is in poor condition and the Applicant is required to flush cut the Tree and leave the stump intact to minimize land disturbance. Another Protected Tree being removed is not in an environmental buffer but is in poor condition and will also be flush cut to minimize land disturbance. The third Protected Tree will be located within the septic reserve field of one lot and will not be physically removed until the septic reserve area is needed in the future. The fourth Protected Tree is located within the footprint of the buildable area for one lot. The disturbed area for the house will have stormwater management water quality controls. Water quality will not be adversely affected by the granting of the Variance.

All of the Protected Trees subject to the Variance provision and proposed to be removed are located within the existing forest. The removal of these trees is incorporated in the "forest clearing" calculations of the Forest Conservation Plan. The Board does not recommend additional mitigation for the loss of these Trees as they are accounted for in the forest conservation worksheet as "forest clearing".

5. *All stormwater management requirements shall be met as provided in Chapter 19, article II, title "stormwater management", Section 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards. MCDPS approved a stormwater management concept for the subdivision in a letter dated July 21, 2011. The concept consists of Environmental Site Design through the use of flow disconnection, dry wells and pervious concrete pavement.

6. *In accordance with Section 50-29(a)(2) of the Subdivision Regulations, the Planning Board determined that a proper showing was made to allow two lots without frontage.*

The Planning Board approved two lots on a private driveway upon a determination that access on the private driveway is adequate to serve the lots for: emergency vehicles, installation of public utilities, accessibility for other public services, and that the Application is not detrimental to future subdivision of adjacent lands.

The MCFRS reviewed the Application and required the Applicant to design the driveway with 20 foot-wide bump-outs where emergency apparatus can safely pass one another on the driveway and to construct a T-turnaround near the house locations where emergency trucks can maneuver. The Preliminary Plan also shows an easement adjacent to the driveway where a below-grade water supply cistern can be located in accordance with MCFRS requirements. MCDOT has approved a sight distance evaluation at the proposed driveway apron on to Chandlee Mill Road. The ingress/egress easement will be amended to include the ability to place utilities within the easement area. Access for all public service providers and utilities is adequate. The Board determined that the lots, as approved without frontage and accessed only by a shared driveway cannot provide access to adjacent lands and therefore, are not detrimental to future subdivision of adjacent lands.

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)), 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 in 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 in this matter, and the date of this Resolution is JUL 16 2014 (which is the date that this Resolution is mailed to all parties of record); and

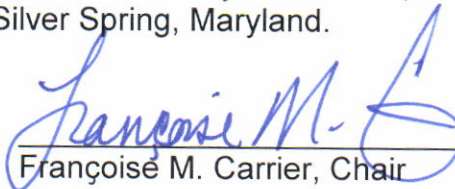
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

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 Vice Chair Wells-Harley, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Presley voting in favor, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, June 26, 2014, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board