



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

MAY 19 2015

MCPB No. 15-51
Preliminary Plan No. 120130280
Lake Potomac
Date of Hearing: May 14, 2015

RESOLUTION

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

WHEREAS, on August 27, 2013, Lowell Baier ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create four lots on 11.11 acres of land in the RE-2 zone, located in the southeast quadrant of the intersection of Stoney Creek Road and Stoney Creek Way ("Subject Property"), in the Rural West Policy Area, Potomac Subregion master plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120130280, Lake Potomac ("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 May 4, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 14, 2015, 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

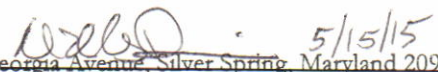
WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120130280 to create four lots on the Subject Property, subject to the following conditions:¹

1. This Preliminary Plan is limited to four lots for four single-family dwelling units.

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.

Approved as to
Legal Sufficiency

 5/15/15
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2. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan, including:
 - a. Prior to recordation of plat(s), the Applicant must receive Staff approval of a Final Forest Conservation Plan that is consistent with the approved Preliminary Forest Conservation Plan.
 - b. Prior to the earlier of demolition, clearing, or grading, or the recordation of plat(s), a Category I Conservation Easement must be recorded in the Montgomery County Land Records by deed and the liber folio must be reflected on the plat. The deed of easement must be approved by the M-NCPPC Office of the General Counsel.
 - c. Permanent Category I Conservation Easement signs must be placed every 50 feet along the perimeter of the conservation easement boundaries at the time of forest planting.
 - d. The Final Forest Conservation Plan must depict where the Applicant will plant the 31, 3-inch caliper native trees on the Subject Property to mitigate for the removal of the 11 variance trees.
 - e. The Final Forest Conservation Plan must be corrected (table on sheet 3) to reflect tree ST-17 as "To be removed" as indicated in the variance request.
 - f. The Final Sediment Control Plan must be consistent with the final limits of disturbance as shown on the approved Final Forest Conservation Plan.
3. Record plats must delineate a Category I conservation easement over all areas of forest as shown on the approved FFCP, and the Liber and Folio numbers of the recorded easement must be referenced on the record plat(s).
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated August 28, 2014, and hereby incorporates them as conditions of the Preliminary Plan approval. 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.
5. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated October 1, 2014, and hereby incorporates them as conditions of the Preliminary Plan approval. 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.

7. The Planning Board accepts the recommendations of the MCDPS – Well and Septic Section in its letter dated April 3, 2015 for removal of existing wells and septic systems, and hereby incorporates them as conditions of the Preliminary Plan approval. 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.
8. The Applicant must dedicate and show on the record plat(s) a minimum of thirty-five feet from the centerline along the Subject Property frontage for Stoney Creek Road.
9. 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 at the time of issuance of building permit(s). Please refer to the zoning data table and record plat for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
10. The record plat must show all necessary easements, including common ingress/egress and utility easements over all shared driveways.
11. The record plat must delineate a 45-foot building restriction line along the shared side property line of new Lot 6 and existing Lot 5, Block A. The building restriction line must be substantially the same as shown on the Certified Preliminary Plan.
12. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of this Planning Board Resolution.
13. Certified Preliminary Plan must contain the following note:

The location of the driveway for any dwelling on Lot 6 will be on the west side of the Lot 6 house, connecting to Stoney Creek Way, as generally shown on the Preliminary Plan.

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.*

Potomac Subregion Master Plan (2002)

The Subject Property is located in the Potomac Subregion Master Plan, within the Travilah community area. The Master Plan describes the Travilah area as containing low-density residential neighborhoods in keeping with nearby rural and natural areas, but does not make specific recommendations for the Subject Property.

The Subject Property will be developed with single-family residential units and will preserve existing sensitive areas and maintain the existing rustic character of Stoney Creek Road. As envisioned by the Master Plan, the Application proposes to develop the Subject Property under the RE-2 standard method of development at a density below the maximum permitted in the RE-2 Zone (i.e., 4 lots instead of 5 lots). The Subject Property contains natural features including forest and stream buffer. The Application limits the impact to natural environment and preserves the forest by replacing the existing house and locating the new housing on the existing cul-de-sac that is not densely forested. The development also uses stream buffer averaging to allow limited encroachments into the existing stream buffer in exchange for protecting a significantly larger area of land on the Subject Property as stream valley buffer.

The Sewer Service Policies section of the Master Plan allows for limited expansion of community water and sewer service in areas zoned RE-2 which is in close proximity to the sewer envelope. The Subject Property was approved for community water and sewer by the Department of Environmental Protection ("DEP") via category change in 1990 and is within the existing sewer envelope.

The Subject Property is located in the Watts Branch Watershed, which the Master Plan recognizes as having "the highest concentration of unique environmental features in the Subregion." The steep slopes, mature forest, and other environmentally sensitive areas on the Subject Property make the

development of the Subject Property very challenging. However, the Application attempts to make the best use of the Subject Property's limited buildable area while minimizing overall environmental impacts on the Watts Branch Watershed. In particular, the area of land placed into Category 1 easement as part the stream valley buffer averaging described in more detail below significantly increases the total amount of protected land on the Subject Property.

Given the environmental constraints on the Subject Property, the Application provides the ideal lot layout to maximize the buildable envelope that is outside of the environmentally sensitive areas. The Application substantially conforms to the Master Plan.

Rustic Roads Functional Master Plan (1996)

The Rustic Roads Advisory Committee ("RRAC") reviewed several early options for the Preliminary Plan to determine if it would have any effect on the adjacent Stoney Creek Road, a rustic road. In its letter dated June 9, 2014, the RRAC expressed its preference for an option that places all driveways on Stoney Creek Way, which is not a rustic road, and that limits impacts to Stoney Creek Road to the minimal additional traffic generated by the proposed subdivision.

Following the RRAC review, the Applicant revised the Preliminary Plan to include no access on or directly adjacent to Stoney Creek Road. As approved, the Preliminary Plan is consistent with the recommendations of the Rustic Roads Functional Master Plan.

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

Local Area Transportation Review (LATR)

The four lots do not generate 30 or more new vehicle trips during the AM and PM peak-hours. The Application is not subject to LATR.

Transportation Policy Area Review (TPAR)

The Subject Property is located in the Rural West Policy Area, which according to the *2012-2016 Subdivision Staging Policy* is exempt from the roadway and transit test; therefore, no TPAR payment is required.

Road Design

The Subject Property fronts on the entire south side of Stoney Creek Way, which is classified as Open Section Secondary Residential Road (MC-211.02) with 20 feet of pavement and a total right-of-way of 60 feet. The full right-of-way for Stoney Creek Way was previously dedicated and no additional dedication is required as part of this Application.

Stoney Creek Road is classified as a rustic road with a minimum width of 70 feet according to the *Rustic Roads Functional Master Plan*, which was recommended in the *Potomac Subregion Master Plan*. While there are no improvements required on Stoney Creek Road as part of this Application, the Applicant is dedicating 35 feet from centerline to achieve the Master Plan-recommended width. A sidewalk is not required along the Subject Property frontage because it is in the rural policy area. There is no public transportation within two-and-a-half miles of the Subject Property.

The Application has been reviewed by the MCDOT, which determined that the Subject Property has adequate vehicular access and sight distance. The vehicle and pedestrian access for the subdivision is sufficient to serve the lots with the approved private improvements.

Other Public Facilities and Services

All other public facilities and services including schools, police, health services, electric, and telecommunication are available and adequate to support and serve the dwelling units. The Application has been reviewed by the Montgomery County Department of Fire and Rescue Service, which determined that the Subject Property has adequate access for fire and rescue vehicles. The Subject Property is in the Winston Churchill School Cluster, which is operating at an adequate level according to the current Subdivision Staging Policy. Therefore, the Application is not subject to payment of School Facilities Payment. Other public facilities and services are operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

The Subject Property is located in the W-3 and S-3 service category, which is consistent with use of community water and sewer. The Application has been reviewed by Washington Suburban Sanitation Commission, which determined that there is an existing 12-inch water main along Stoney Creek Road that terminates just south of the Stoney Creek Way intersection that will be extended to serve the lots. There is an existing 8-inch gravity sewer main that runs along Stoney Creek Road and will connect to the proposed pressure sewer at the intersection. On-site grinder pump systems and low pressure gravity sewer will be installed to serve the new lots.

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.*

The Master Plan recommends low-density single-family residential zoning and preservation of the natural environment in the Travilah area.

The approved development is low-density, and reflects a layout that addresses the fact that the vast majority of the Subject Property is environmentally constrained. The size, shape, width and orientation of the lots are appropriate when considering the location of the subdivision and the environmental sensitivity of the Subject Property. The lots minimize disturbance of the sensitive environmental features as recommended by the Master Plan.

The Application has been reviewed for compliance with the Subdivision Regulations and meets all applicable sections. The four lots were reviewed for compliance with the dimensional requirements for the RE-2 Zone as specified in the Zoning Ordinance. The lots as approved will meet all the dimensional requirements for area, frontage, width, and establishment of the required setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of which have recommended approval of the plan.

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 Forest Conservation Plan ("FCP") contains 11.07 acres of net tract area. The FCP proposes clearing of 1.34 acres of forest and retention of 8.94 acres of existing forest which will be placed in a conservation easement. For forest conservation purposes, the Application falls within the Medium-Density Residential Land Use, for which the Subject Property has a 2.77-acre conservation threshold. No forest mitigation, other than planting required as part of the Variance described below, is required as part of this FCP because the Application is above the break-even point, which is the amount of clearing permitted without mitigation relative to the land use category and size of the Subject Property.

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 includes the removal of 11 Protected Trees and CRZ impact to 3 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes 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.*

In this case, the removal of the existing house and construction of four new homes will require encroachment into forested areas and clearing the yard of the existing house. Since the existing house was built more than forty years ago, the trees around the house and the surrounding forest have had a chance to grow and mature. Demolition of the existing house and the areas required for maneuvering construction equipment will damage many of the variance trees. It is not possible to redevelop this site without impact to the Protected Trees. Therefore, granting of the variance is not unique to this Applicant, and the variance will not confer on the Applicant 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 variance is not based on conditions or circumstances which are the result of the action by the Applicant, but rather on the site conditions and the zone for the Subject Property. The Subject Property is zoned RE-2 which could yield five units given the size of the Subject Property; however, the Application only includes four lots. In addition, the Applicant will remove an existing dwelling and redevelop the new homes in a compact cluster which minimizes forest clearing, land disturbing activity, and makes the most efficient use of driveway pavement. All efforts have been made to limit the number of trees affected by this Application. There

are no feasible options to reconfigure this four-lot subdivision to avoid impact to 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 Variance is not related in any way to a condition on a neighboring property.

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

Although four of the trees being removed are within the County required stream buffer, the Applicant will mitigate for these as well as the loss of specimen trees located outside of forested areas. This approval is conditioned on mitigation that approximates the form and function of trees removed. Therefore the removal will not violate State water quality standards.

The Protected Trees being impacted will remain to provide the same level of water quality protection as they currently provide.

As mitigation for the removal of the 11 Protected Trees, totaling 93 caliper inches (372 inches DBH), the Applicant is required to plant approximately 31, three-inch caliper native canopy trees on the Subject Property. There must be particular emphasis on the placement of trees on or adjacent to the steeply sloping areas of the Subject Property. The planting locations will be shown on the Final Forest Conservation Plan to be reviewed and approved by Staff.

No mitigation is required for Protected Trees impacted but retained.

C. Stream Buffer Encroachment

The Subject Property is located at the downstream tip of the Sandy Branch subwatershed of Watts Branch. The forested stream valley, steep slopes, and erodible soils associated with Sandy Branch are the dominant features of the Subject Property and constrain the areas available for usable yard space except near the existing home and cul-de-sac.

Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420130860 for the Subject Property was approved on January 15, 2013. The NRI/FSD identified 10.3 acres of forest (93% of the Subject Property), which is considered

high priority due to the sensitive areas, diversity of species (including nearly 100 specimen trees) and the maturity of the forest. The NRI/FSD also identified approximately 8.6 acres, or 78% of the Subject Property, of environmentally sensitive areas, including stream valley buffer (8.46 acres), steep slopes, and erodible soils. There are no parklands or conservation easements in the vicinity of the Subject Property.

In applications that include significant areas of stream buffer that restrict development, the *Environmental Guidelines* provide the option for buffer compensation to offset buffer encroachment. The *Guidelines* specify that buffer compensation proposals are reviewed on a case-by-case basis. One method of compensation is "buffer averaging," which permanently protects environmentally-comparable on-site areas outside the delineated stream buffer in exchange for the allowance of encroachment elsewhere in the delineated buffer. The *Guidelines* recommends consideration of the following factors when reviewing a buffer compensation proposal, and the Board concludes that in this case:

1. *Reasonable alternative for avoidance of the buffer are not available;*

The approved Preliminary Plan represents a collaborative effort between the Applicant, Staff, and adjacent property owners. The approved Preliminary Plan has reduced the Applicant's original proposal by one lot and significantly reconfigured the house locations to the most developable area of the Subject Property. Without unreasonably limiting the development potential of the Subject Property, further alternatives for avoiding the small remaining area of buffer encroachment are not available.

2. *Encroachment into the buffer has been minimized;*

The stream buffer encroachment within the entire subdivision is limited to 3,184 square feet. No structures are proposed within the buffer area. The areas of encroachment are to provide a 15 to 20 foot construction area around each house and to provide reasonable access to a usable rear yard space. In addition, the Preliminary Plan design reflects an imperviousness level of four percent, which exceeds even the most stringent impervious caps in other parts of the county and is well below what is normally associated with residential development in the RE-2 zone. The Application minimizes overall encroachment by limiting it to small portions of rear yard and does not propose any roads, driveways or utilities within the stream buffer area. By limiting development to four lots and carefully configuring the house locations, the Preliminary Plan minimizes buffer encroachments to the maximum extent practicable.

3. *Existing sensitive areas have been avoided (forest, wetlands and their state-designated buffers, floodplain, steep slopes, habitat for rare, endangered, and threatened species and their associated buffers);*

The majority of the sensitive areas on the Subject Property have been avoided by redesigning the subdivision and clustering three of the proposed dwelling on the Subject Property's central knoll with a shared driveway. While approximately one third of the encroachment area is forested and on steep slopes, no clearing or grading is proposed in those areas as part of construction. There is no encroachment into the 100 year floodplain. The Subject Property does not contain any rare, endangered, or threatened species that could be impacted by the proposed buffer encroachment.

4. *The proposed use is consistent with the preferred use of the buffer; and*

No structures or retaining walls are proposed within the stream buffer encroachment area. The approved Preliminary Plan removes an existing septic field from the Subject Property that could otherwise pollute the stream if it were to fail. In addition an approved septic reserve area on Lot 5 (for the use of the Subject Property) will also be abandoned.

5. *The plan design provides compensation for the loss of buffer function.*

The Applicant will use stream buffer averaging to compensate for the encroachment into 3,184 square feet of stream valley buffer area on the Subject Property. As compensation, the Applicant will place 38,585 square feet of additional forested area outside of the stream buffer into a Category 1 Conservation Easement, which equates to a 12:1 replacement ratio. The area added as compensation is primarily forested, consisting of one-third acre of pioneer upland forest and a half-acre of mature upland forest, and adequately compensates for the relatively minor loss of buffer function.

The Preliminary Plan meets all applicable requirements for protection of environmentally sensitive areas.

5. *All storm water management requirements shall be met as provided in Chapter 19, article II, title "storm water 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 on October 1, 2014. The concept proposes to meet the required stormwater management goals via cisterns and pervious pavement located on the individual lots.

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

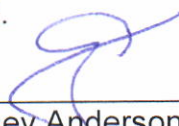
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 19 2015 (which is the date that this Resolution is mailed to all parties of record); and

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 Fani-González, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor at its regular meeting held on Thursday, May 14, 2015, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board