



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

OCT 16 2015

MCPB No. 15-94
Preliminary Plan No. 120120170
Horizon Hill
Date of Hearing: July 30, 2015

RESOLUTION

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

WHEREAS, on July 31, 2012, Charles Rabkin ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create three lots on 6.35 acres of land in the RE-2 zone, located at 10616 Red Barn Lane on the southwest side of Red Barn Lane in the 2002 Potomac Subregion Master Plan ("Potomac Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120120170, Horizon Hill ("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 July 17, 2015, setting forth its analysis and recommendation for denial of the Application ("Staff Report"); and

WHEREAS, on July 30, 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, on July 30, 2015, the Planning Board voted to deny the Application on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, with a vote of 5-0; Commissioners Anderson, Dreyfuss, Fani-González, Presley and Wells-Harley voting in favor of the denial.

WHEREAS, the Planning Board based the denial on findings, more specifically outlined below, that i) the Application does not substantially conform to the Master Plan, and ii) due to its shape, proposed lot 3 is not of the same character as other lots within the existing neighborhood delineated in the Staff Report.

Approved as to
Legal Sufficiency

[Handwritten signature]
10/16/15
M-NCPPC Legal Department

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, that:

1. *The Preliminary Plan does not substantially conform to either the Potomac Master Plan, or to the Rustic Road Functional Master Plan.*

In determining the acceptability of a preliminary plan submitted under Chapter 50, the Planning Board must find that the preliminary plan substantially conforms to the applicable master plan, sector plan, or urban renewal plan, including maps and text.

The Potomac Master Plan designated the section of Glen Mill Road where the Applicant has proposed access for Lot 3 as an Exceptional Rustic Road. The creation of the Rustic Roads Program in 1993 was a result of a Council-appointed the task force recommendation of a program "to protect and preserve historic, scenic and agricultural roads in Montgomery County," through the designation of roads as Rustic Roads or Exceptional Rustic Roads in either area master plans or, as later implemented, in the Rustic Roads Functional Master Plan adopted in 1996. The Rustic Roads Functional Master Plan defines a rustic road as, "a road... which enhances the rural character of the area due to its particular configuration, alignment, scenic quality, landscaping, adjacent views, and historic interest, and which exemplifies the rural and agricultural landscape of the county," and an exceptional rustic road as a road, "having such unusual and pleasing character as it exists today that preservation of the road in its current state is highly desirable [with] special characteristics which contribute significantly to the rural, scenic, or historic features of Montgomery County and might lose these specific characteristics if improved or widened."

Glen Mill Road, in the area surrounding the intersection with Red Barn Lane meets all ten evaluation criteria outlined in the Rustic Roads Program. Both the Potomac Master Plan and the Rustic Road Functional Master Plan identify Glen Mill Road as an Exceptional Rustic Road at the location that would be directly impacted by adding an access driveway for Lot 3 in the Application.

The Rustic Roads Functional Master Plan specifically states that, "The rustic roads designation is not intended to affect the use of adjoining land *except in the design of access to a subdivision.*" (emphasis added). Numerous impacts that a new driveway would have on the rustic character of Glen Mill Road

were identified and presented to the Board including loss of the vegetation that gave the road a green edge and with the excessive grading that would be required to bring a driveway out to Glen Mill Road within the narrow pipestem width, the likely need for retaining walls within sight of the road.

As proposed, the Planning Board finds that access to the subdivision, specifically Lot 3, directly off of Glen Mill Road, will negatively impact Glen Mill Road as an Exceptional Rustic Road, and such access is inconsistent with both Master Plans.

2. *As a result of the resubdivision analysis required by §50-29(b)(2) of the Subdivision Regulations, the shape of proposed Lot 3 would create a lot out of character with other lots in the neighborhood.¹*

Section 50-29(b)(2) requires that:

“Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential uses as other lots within the existing block, neighborhood or subdivision.”

To determine if a resubdivided lot is “of the same character” the Planning Board must find that each proposed lot has a high correlation with respect to each of the listed criteria to existing lots within a delineated neighborhood (“Neighborhood”). The Neighborhood used for the resubdivision analysis includes all lots that abut the Subject Property and all lots that abut Red Barn Lane. The Neighborhood accepted by the Board for this analysis, which provides an adequate sample of the lot and development pattern of the area, consists of 24 lots. Consistent with Planning Board practice, unplatted parcels, parts of previously platted lots and properties with a different zoning category than the Subject Property are excluded from the Neighborhood.

The Planning Board did not raise any concerns with regard to street frontage, alignment, size, width, area and suitability for residential uses. However, it determined that the shape of proposed Lot 3, a “flag lot” or “pipestem,” was not of the same character as existing lots in the Neighborhood. The Planning Board noted that there is only one other “flag lot” and with frontage at the far end of Red Barn Lane, it is somewhat removed from the Subject Property. In

¹ Inherent in its review and ultimate decision, under 50-29(b)(2), the Planning Board must delineate the boundaries of the “existing neighborhood” so those properties directly affected by the resubdivision are included in Planning Board’s resubdivision analysis.

fact, the Board noted that the existing lot was part of the original development, and later development along Red Barn Lane was limited to rectangular lots. The Board also noted that no flag lots in the Neighborhood front on Glen Mill Road, making a clear distinction between lots fronting on Glen Mill Road as proposed by the Application, and lots fronting on Red Barn Lane in the vicinity of the proposed subdivision.

The Board found that flag lots are not a prevalent characteristic within the Neighborhood, and therefore, did not find that proposed Lot 3 had a high correlation as to shape of existing lots within the Neighborhood. The Planning Board found that proposed Lot 3 was out of character with existing lots in the Neighborhood.

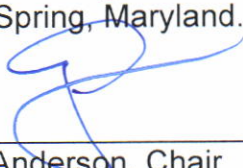
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is OCT 16 2015 (which is the date that this Resolution is mailed to all parties of record); and

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).

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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 Vice Chair Wells-Harley, seconded by Commissioner Presley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor, at its regular meeting held on Thursday, October 15, 2015, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board