



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

MCPB
Item #
November 5, 2009



MEMORANDUM

DATE: October 23, 2009

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Catherine Conlon, Subdivision Supervisor *CC*
Development Review Division

FROM: Richard A. Weaver, Coordinator (301) 495-4544 *RAW*
Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: One (1) lot for one (1), one-family detached dwelling unit

PROJECT NAME: Weaver Property

CASE #: 120090160

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RE-2

LOCATION: On the north side of Esworthy Road at the terminus of Cervanties Avenue

MASTER PLAN: Potomac

APPLICANT: Christopher Weaver

ENGINEER: Benning & Associates

FILING DATE: December 23, 2008

HEARING DATE: November 5, 2009

RECOMMENDATION: Approval subject to the following conditions:

- 1) Approval under this preliminary plan is limited to one (1) residential lot.
- 2) The proposed development must comply with the following conditions of the preliminary forest conservation plan (FCP). 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 appropriate.
 - a) Revise the preliminary forest conservation plan to:
 - i) Show all remnant forest areas as cleared on the forest conservation worksheet, as some areas are below minimum size requirements, and
 - ii) Provide mitigation for forest loss using off-site options, including offsite planting and forest mitigation banks, but excluding fee-in-lieu.
 - b) Approval of final forest conservation plan consistent with the approved preliminary forest conservation plan prior to any clearing, grading or demolition on the site.
- 3) The applicant must comply with the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated February 17, 2009. Stormwater management will be addressed at the time of building permit.
- 4) Liber and folio references for the existing driveway ingress/egress easement for the proposed lot to be shown on the record plat.
- 5) The applicant must comply with the conditions of the MCDOT letter dated February 23, 2009. These conditions may be amended by MCDOT provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 6) 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.
- 7) Other necessary easements must be shown on the record plat.

SITE DESCRIPTION

The subject property "Subject Property" or "Property" is a 7.56 acre parcel, zoned RE-2, and created by a deed recorded in the 1960's. The parcel is located on the north side of Esworthy Road near the terminus of Cervanties Avenue. There is an existing one family house on the Property that was constructed in 1946. The parcel has no frontage on a public road but has access to Esworthy Road via a deeded ingress and egress easement across a neighboring parcel. Montgomery County (Parks) owns the property to the east of the Subject Property and the property to the north, south and west is under private ownership and is also zoned RE-2.

The Parcel is currently served by a well and septic system; a new septic reserve area has been approved by the Montgomery County Department of Permitting Services. The parcel has no sensitive environmental features other than forest. Since no clearing or grading is proposed on the Property at this time, none of the 1.90 acres of forest will be physically removed. The site is located within the Muddy Branch watershed (Use Class I/I-P).

PROJECT DESCRIPTION (Figure A)

The Applicant proposes to plat the existing parcel in its current configuration. The house on the Property will remain but by platting the parcel, it allows an eventual building permit to be issued for repair, addition or replacement of the house. As mentioned above, the parcel has no frontage on a public street, and as such, a finding of safe and adequate access for a lot with no frontage has been requested by the Applicant and is supported by staff.

The application is recommended for conditional approval; however, staff notes that per the recommended conditions of approval, a revision to the preliminary forest conservation plan is required. The Applicant disagrees with the staff's determination that certain areas of forest on the Subject Property cannot be counted as saved forest. Because of how this affects the forest conservation worksheet, the Applicant would be required to afforest a portion of the Property to meet the threshold requirements of the Montgomery County Forest Conservation Law. A discussion of this issue follows in the Environment Section – Forest Conservation.

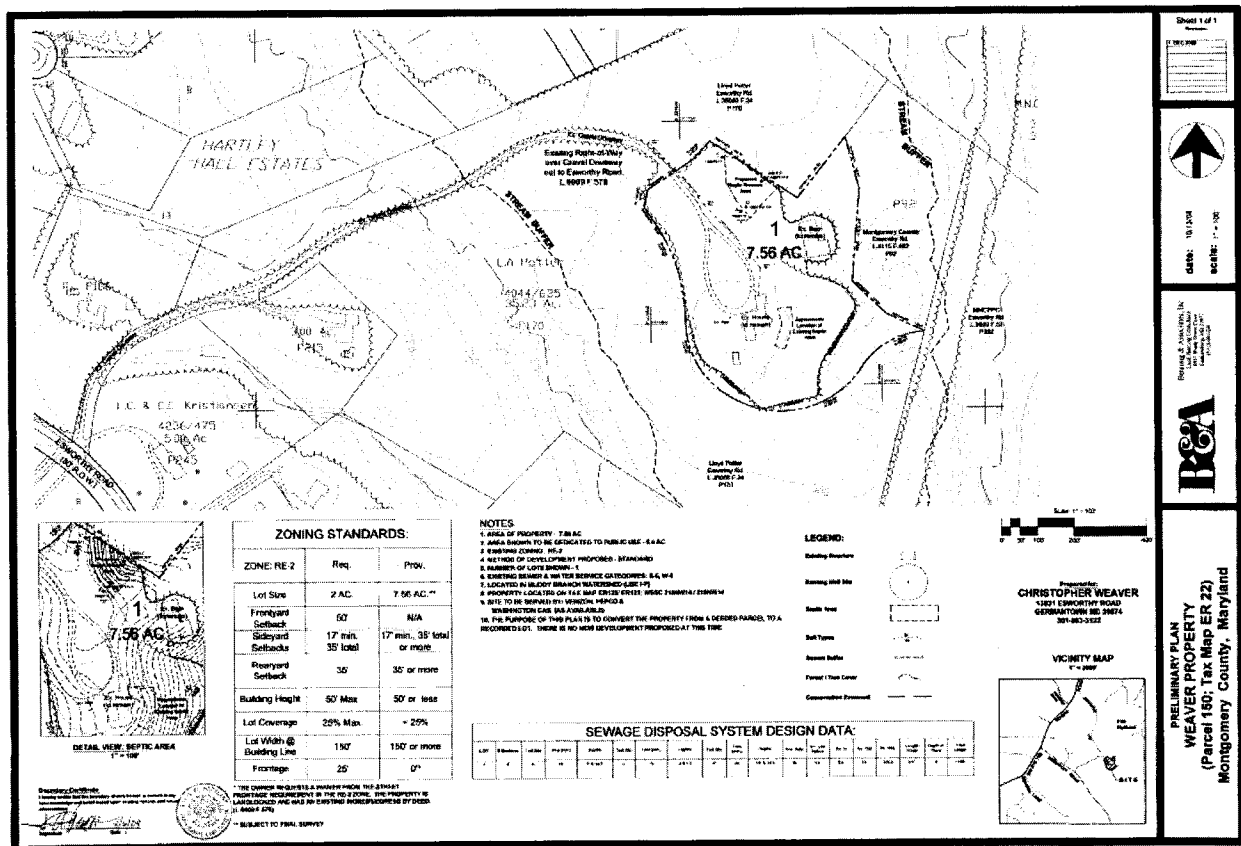


Figure A.

ANALYSIS AND FINDINGS

Substantial Master Plan Conformance

The Potomac Master Plan makes no specific recommendations regarding this Property or adjacent properties. The Master Plan only reconfirms the existing RE-2 zoning for the area. This preliminary plan of subdivision will not result in any significant changes to the neighborhood since the house will remain. If approved, the resulting plat will allow for a building permit to be issued on the Property to either improve or replace the one family residential structure.

Public Facilities

Roads and Transportation Facilities

The proposed lot does 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. In addition, Transportation Planning staff has determined the application is not subject to Policy Area Mobility Review because it is in the Rural Policy Area. For this single lot, proposed vehicular and pedestrian access for the subdivision will be safe and adequate.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the dwelling unit. The application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access. The existing dwelling unit is not subject to a schools test, however, area schools are operating at adequate levels. Other public facilities and services, such as police stations, firehouses and health services, are operating within the standards set by the Growth Policy Resolution currently in effect. Electrical and telecommunications services are also available to serve the lots.

Environment

Environmental Guidelines

No streams, wetlands or steep slopes are located on the Property; therefore, staff finds that the proposed subdivision is not subject to the Planning Board's Environmental Guidelines. Protection of the only environmentally sensitive feature on the site, forest, is addressed in the section below.

Forest Conservation

The preliminary forest conservation plan, as currently proposed, contains three areas of forest remnants which do not meet the minimum size or composition standards, as defined in Chapter 22A, the Montgomery County Forest Conservation Law. Section 22A-3 defines forest as: a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and

is at least 50 feet wide. Even though the on-site remnants are contiguous to on-site forest or off-site forest on adjacent Parcel 170, (Potter property), they are too narrow and/or of such poor composition as standalone forest to be saved and credited as such on the forest conservation worksheet. Although the plan does not show any physical removal of trees/forest, these three remnants must be counted as “cleared” forest under the Law. This results in a planting requirement for the Applicant who disputes this determination and has requested Planning Board consideration of this issue.

The most notable of the three remnants is the strip of forest edge along the southern boundary of the Property where it is contiguous to the Potter property. In actuality, the forest shown here on the Subject Property is an extension of the canopy from the forest on the Potter property, not actual tree trunks. Although the strip is forest, as shown on the approved Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) and FCP, it cannot qualify as forest save unless it is protected with the larger forest on the Potter property. Since the Potter property is under private ownership and has not been subdivided, the forest on it is not protected. Although Parcel 170 (Potter) is within the Park desire line for the Muddy Branch Stream Valley Park, the *potential* for public acquisition is not a guarantee of permanent protection of the forest resource on the property. A certain potential exists for this forest to be cleared as part of a subdivision of the Potter property with perhaps acquisition/protection of only the most environmentally sensitive forest in the stream valley buffers. Therefore, staff has resisted placing a permanent Category I easement on the forested strip on the Subject Property because it is not part of a larger, protected off-site forest. If the adjacent forest on the Potter property were removed, the remnant on the Subject Property would be wiped out, as it is only overhanging canopy.

The other two remnant areas are located adjacent to the existing barn on the Property. To the immediate south of the barn, the forest becomes too narrow and of such poor composition to be included in the saved area. To the north of the barn, a finger of forest becomes less than 50 feet wide; without protected forest on the adjacent Potter property it also cannot be counted as saved.

It is staff's position that the currently proposed PFCP does not meet the minimum standards of Chapter 22A, and that compliance with the conditions recommended above is necessary to assure compliance. Staff finds that compliance with the conditions of approval for the preliminary FCP will bring this plan into conformance with Chapter 22A.

Stormwater Management

No stormwater management concept is required by MCDPS at this time because no development is proposed on the Property. Staff finds that the application complies with Chapter 50, Section 50-24(j) which requires that stormwater management be addressed prior to consideration by the Planning Board.

Lots Without Frontage

Section 50-29(a)(2) of the Subdivision Regulations requires that ...”every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road. In exceptional circumstances, the Board may approve not more than two (2) lots on a

private driveway or private right-of-way; provided that proper showing is made that such access is adequate to serve the lots for emergency vehicles, and for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands.”

For this application, staff suggests that the existing circumstance has existed without conflict since the 1960’s, the Property can continue to be safely and adequately served by the existing driveway, and that the ingress and egress easement that exists on the driveway provides assurances for the continuation of that access. Further, Fire and Rescue Services has found that emergency equipment can adequately access the Property and access by other public services is not hindered by the private driveway. Utilities are already in place and are not required to be altered by this application. The Board’s approval of this lot without frontage would not hinder future development of adjacent lands. Therefore, staff believes that a proper showing has been made to allow this lot to be approved without frontage

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections, including the requirements for resubdivision as discussed below. The proposed lot size, width, shape and orientation is appropriate for the location of the subdivision.

The lot was reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The proposed lot will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in attached Table 1. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

Citizen Correspondence and Issues

After proper notification of the proposed plan submission to adjacent and confronting property owners and civic associations, a pre-submission meeting was held on August 5, 2008, as required. Issues raised by attendees included questions about the need for improvements to the private driveway and fire access; unspecified concerns about the forest conservation plan and the accuracy of the tree survey.

Staff notes that improvements are not required to the driveway as it exists and that Fire and Rescue Services has approved the plan with the existing driveway configuration. With respect to tree locations, the NRI/FSD was prepared by a qualified arborist who has attested to its accuracy. Staff has approved the NRI/FSD.

CONCLUSION

The proposed lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance and comply with the recommendations of the Potomac Master Plan. Access and public facilities will be adequate to serve the proposed lots, and the application has

been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, approval of the application with the conditions specified above is recommended.

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Weaver Property				
Plan Number: 120090160				
Zoning: RE-2				
# of Lots: 1				
# of Outlots: 0				
Dev. Type: Standard, Residential				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	87,120 sq. ft (2.0 acres).	7.56 acres. proposed	RW	10/23/09
Lot Width	150 ft.	250 ft. is min. width of lot at any location	RW	10/23/09
Lot Frontage	25 ft.	0 ft. with finding by Board	RW	10/23/09
Setbacks				10/23/09
Front	50 ft. Min.	Must meet minimum ¹	RW	10/23/09
Side	17 ft. Min./35 ft. total	Must meet minimum ¹	RW	10/23/09
Rear	35 ft. Min.	Must meet minimum ¹	RW	10/23/09
Height	50 ft. Max.	May not exceed maximum ¹	RW	10/23/09
Max Resid'l d.u. or Comm'l s.f. per Zoning	3 dwelling units	1 (existing) dwelling units	RW	10/23/09
MPDUs	No		RW	10/23/09
TDRs	No		RW	10/23/09
Site Plan Req'd?	No		RW	10/23/09
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street	No		RW	10/23/09
Road dedication and frontage improvements	N/a		RW	10/23/09
Environmental Guidelines	Yes		Staff memo	10/6/09
Forest Conservation	Yes		Staff memo	10/6/09
Master Plan Compliance	Yes		RW	10/23/09
Other (i.e., parks, historic preservation)				
ADEQUATE PUBLIC FACILITIES				
Stormwater Management	No		Agency letter	2/17/09
Water and Sewer (WSSC)	N/a		Agency comments	2/17/09
10-yr Water and Sewer Plan Compliance	Yes		Agency comments	2/17/09
Well and Septic	Yes		Agency Comments	8/5/09
Local Area Traffic Review	N/a		RW	10/23/09
Policy Area Mobility Review	N/a		RW	10/23/09
Transportation Management Agreement?	N/a		RW	10/23/09
School Cluster in Moratorium?	No		RW	10/23/09
School Facilities Payment?	No		RW	10/23/09
Fire and Rescue	Yes		Agency letter	5/11/09
Other (i.e., schools)				