



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

MAR 10 2009

MCPB No. 09-09
Preliminary Plan No. 120070450
Martins Property
Date of Hearing: January 15, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on December 5, 2006, Tri Capital Partners ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 15 lots on 3.37 acres of land located on the west side of Blackburn Road, 100 feet north of Burleigh Hill Court ("Property" or "Subject Property"), in the Fairland Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070450, Martins Property ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated January 2, 2009, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on January 15, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

Approved as to
 Legal Sufficiency:

Christina Sorensen 2/23/09

8787 Georgia Avenue, N.C.P.C. Special Department 10 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, on January 15, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Robinson; with a vote of 5-0, Commissioners Alfandre, Cryor, Hanson, Presley, and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120070450 to create 15 lots on 3.37 acres of land located on the west side of Blackburn Road, 100 feet north of Burleigh Hill Court ("Property" or "Subject Property"), in the Fairland Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to 15 lots for ten townhouse dwelling units and five one-family detached dwelling units.
- 2) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bike paths will be determined at site plan.
- 3) The final number of TDRs as per condition #1 above will be determined at the time of site plan.
- 4) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. 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 applicable. Conditions include, but are not limited to, the following:
 - a. The Applicant must provide permanent tree protection fencing and signage along the northern and eastern boundaries of the Category I conservation easement.
 - b. The Final Forest Conservation Plan must include measures to remove landscape debris and trash from the conservation easement area.
- 5) Prior to submission of a site plan application, the Applicant must update the May 9, 2007 noise analysis report to analyze traffic noise impacts and recommend specific noise attenuation measures for the most current proposal for the subdivision. Standard wooden fencing must not be used for noise mitigation for outdoor use areas.
- 6) At the time of submission of a site plan application, the Applicant must provide plans for noise attenuation measures to achieve an exterior level of no more than 60 dBA, Ldn for backyard areas of lots, and 45 dBA Ldn for the interior of residential dwelling units, where ultimate noise levels are found to exceed 65 dBA Ldn for any habitable story. Noise mitigation may include measures other than sound walls.
- 7) Prior to certification of the Preliminary Plan, the site data on the Plan must be revised to accurately reflect the gross tract area, area previously dedicated to

- public right-of-way, area proposed for dedication to public right-of-way, and net tract area.
- 8) The Applicant must dedicate and the record plat must show dedication of approximately 930 square feet of right-of-way along the Property frontage for Blackburn Road to create a variable width right-of-way, as shown on the approved Preliminary Plan.
 - 9) The Applicant must construct all public road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan and to the design standards imposed by all applicable road codes.
 - 10) The Applicant must construct all private streets to the widths shown on the Preliminary Plan, including the typical sections shown on the Preliminary Plan. The streets must be built to the structural standards of a tertiary road, as specified in Section 50-25(h) of the Subdivision Regulations.
 - 11) The Applicant must construct five-foot wide sidewalks along the proposed private street and along the Blackburn Road frontage of the Subject Property.
 - 12) The Applicant must provide a crosswalk across Blackburn Road at the intersection of Blackburn Road and the proposed private street.
 - 13) The record plat must reflect serialization and liber/folio reference for all TDRs utilized by the development.
 - 14) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
 - 15) The record plat must reflect a public use and access easement and a utility easement over all private streets and adjacent parallel sidewalks.
 - 16) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
 - 17) The record plat must reflect a Category I conservation easement over all areas of forest conservation.
 - 18) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated January 3, 2008. These conditions may be amended by MCDPS, as long as the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 19) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated November 14, 2008, unless otherwise amended.
 - 20) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
 - 21) No clearing, grading or recording of plats prior to certified site plan approval.
 - 22) The record plat must show necessary easements.
 - 23) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The Fairland Master Plan recommends that properties in the Blackburn Road area, including the Subject Property, be developed with a mix of one-family detached dwellings and townhouses. The Master Plan also recommends the use of transferable development rights (TDRs). The Planning Board finds that the Preliminary Plan substantially conforms with the Master Plan because the Application proposes a subdivision comprised of lots for both one-family detached dwellings and townhouses and also utilizes TDRs. The subdivision is within the allowed density established for development using optional TDRs. The allowable base density is 3.6 units per acre and the allowable density with TDRs is 4.6 units per acre; the proposed project density is 4.45 dwelling units per acre.

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

Roads and Transportation Facilities

The Preliminary Plan 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. The Application predated the effective date of the 2007 Growth Policy requirements. Therefore, the Application is also not subject to Policy Area Mobility Review.

Access to the townhouse lots and to one of the five one-family detached lots (Lot 5) will be provided via driveways from a 20-foot wide private street. The private street will include a turn-around to serve emergency vehicles and the general public. Six guest parking spaces will also be accessed via the private street. Access to the remaining four one-family detached lots will be provided via driveways from Blackburn Road. Two of those lots will be accessed via a shared driveway. Pedestrian access to the site will be enhanced with a five-foot wide sidewalk along the Property frontage on Blackburn Road. The Planning Board finds that provision of the sidewalk along the Subject Property frontage, along with a crosswalk across Blackburn Road, is sufficient to provide safe and

adequate pedestrian access. The Planning Board also requires the Applicant to provide a crosswalk across Blackburn Road.

The Planning Board finds that the vehicle and pedestrian access for the subdivision in addition to the public and private street improvements will be adequate to support the subdivision.

Other Public Facilities and Services

The Planning Board finds that public facilities and services are available and will be adequate to serve the development. The Property will be served by public water and public sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses, and health services are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. The Application is not within a school moratorium area, and a school facilities payment is not required. Electrical, gas, and telecommunications services are also available to serve the Property.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The Planning Board finds that the lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the R-90/TDR zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom 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 0.27-acre forest stand exists on the southeastern corner of the site, and six large trees exist on the site. Five of the six large trees, including a specimen black oak and a coffee tree, may be removed. These five trees are located within the portion of the site to be developed, and their loss is unavoidable. The

sixth large tree, a 29-inch chestnut oak, is located within the existing forest and will be retained.

Since this site is developing under the optional method of development in a one-family residential zone (R-90/TDR), and the existing forest is less than the conservation threshold (0.62 acre), the Forest Conservation Law requires that all existing forest be retained, and on-site forest planting up to the afforestation threshold (0.47 acre) must be provided per Section 22A-12(f)(2)(C) of the County Forest Conservation Law.

The Applicant must retain the entire existing forest and plant 0.20 acres of forest adjacent to the existing forest. The existing and planted forest will be placed in a Category I conservation easement and will be located within the common open space adjacent to the Columbia Pike (US 29) ramp. This meets the Forest Conservation Law requirement of retaining and planting all forest on-site for a one-family residential subdivision when the optional method of development is used.

The Planning Board requires that permanent fencing and signs be installed along those boundaries of the Category I conservation easement that are located near lots or stormwater management facilities. This will ensure that homeowners know where the conservation easement lies and will not unknowingly cut or clear trees and shrubs within the existing or planted forest areas. The Planning Board also requires that the Applicant remove trash and landscape debris that lie within the existing forest.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept on January 3, 2008. The stormwater management concept includes water quality control via two biofilters and use of nonstructural practices, including porous pavers and porous concrete driveways. Onsite recharge is provided by storage below the biofilters. Channel protection is not required because the one-year post-development peak discharge is less than 2 cubic feet per second.

6. *The Application meets all applicable requirements of the Noise Guidelines.*

A traffic noise study, dated May 9, 2007, projects that the traffic noise impacts on the Subject Property will be as high as 70 dBA, Ldn for outdoor areas and 71.1 dBA, Ldn for facades of proposed homes at the second floor. The proposed lots that will be subjected to the highest traffic noise levels are townhouse unit T10 (westernmost end unit) and detached lot 5. Other proposed lots will also be affected by adverse traffic noise levels.

Environmental Planning's noise guidelines (created June 1983) set a limit of 60 dBA, Ldn as the basic "residential noise guideline which will be applied in most areas of the County where suburban densities predominate. Maintenance of this level will protect health and substantially prevent activity interference both indoors and outdoors." If use of all feasible exterior attenuation measures cannot protect noise-sensitive rooms of proposed residential units, then the guidelines recommend that an interior noise guideline of 45 dBA, Ldn be applied. Meeting the interior noise guideline may require the developer to include extraordinary elements in the building design to attenuate traffic noise levels to acceptable levels in the interior of affected dwelling units. Examples of such building elements include: elimination of features which may cause sound to reverberate between different parts of a building, construction with masonry or other materials that transmit little sound, location of balconies and noise-sensitive rooms away from noise sources, and minimizing door and window areas facing the noise source.

At the Public Hearing, the Applicant raised a concern that compliance with the noise guidelines would require the construction of excessively tall and long sound walls. In response, the Planning Board modified Condition 6 to clarify for the Applicant that noise mitigation may include measures other than sound walls.

7. *The proposed private street has acquired the status of a public street.*

A private street is proposed to provide access to and frontage for the ten townhouse lots². Section 50 29(a)(2) of the Subdivision Regulations requires that lots must front on a street that has been dedicated to public use or that has acquired the status of a public street. The Planning Board finds that the private street meets the minimum standards necessary to make the finding that it has acquired the status of a public street. These standards, as previously applied by the Planning Board for townhouse lots, include a 20-foot pavement width, 25-foot turning radii, five-foot sidewalk width, an appropriate circulation pattern, and an appropriate paving cross-section. The road will also be placed within an easement that ensures it remains fully accessible to the public. The Planning

² The one one-family lot that will be accessed by the private street will have frontage on Blackburn Road, along with all other one-family detached lots in this proposed subdivision.

Board finds, therefore, that the private street has acquired the status of a public street.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) 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 among the Montgomery County Land Records or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that the date of this Resolution is MAR 10 2009 (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 Presley, seconded by Commissioner Robinson, with Commissioners Hanson, Robinson, Cryor, and Presley present and voting in favor of the motion, and Commissioner Alfandre absent at its regular meeting held on Thursday, February 26, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board