



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

MCPB No. 09-145
Preliminary Plan No. 120080390
Luhn Property
Date of Hearing: December 3, 2009

MAR 2 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

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 May 30, 2008, George Magas ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 1 lot on 3.0 acres of land in the RC zone, located on Bowman Acres Lane, 1360 feet southwest of Damascus Road ("Property" or "Subject Property"), in the Damascus master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120080390, Luhn Property ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 23, 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 December 3, 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

WHEREAS, on December 3, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Presley; with a vote of 4-0, Commissioners Alfandre, Hanson, Presley, and Wells-Harley voting in favor, one seat being vacant.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120080390 to create 1 lot on 3.0 acres of land in the RC zone,

Approved as to
 Legal Sufficiency:

Christina Somers 2/2/10

8787 Georgia Avenue, NACPPC Legal Department, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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located on Bowman Acres Lane, 1360 feet southwest of Damascus Road ("Property" or "Subject Property"), in the Damascus master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to 1 lot for 1 dwelling unit.
- 2) 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 MCDPS issuance of sediment and erosion control permits, as applicable.
- 3) The record plat must reflect a Category I easement over all areas of stream valley buffers and forest conservation.
- 4) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 5) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated May 29, 2008. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) The Applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated September 25, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 7) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated June 15, 2008. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 8) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
- 9) Other necessary easements must be shown on the record plat.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff 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 Montgomery County Planning Board FINDS, with the conditions of approval, that:

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

The 2006 Approved and Adopted Damascus Master Plan does not specifically identify the Subject Property but does make general recommendations regarding zoning and land use for the Rural Transition Area in which the site is located. The Rural Transition Area assists in the transition from 1 dwelling unit per 25 acres

zoning in the Agricultural Reserve east of the Property to 1 dwelling unit per acre zoning to the west. For the Rural Transition Area, the Master Plan recommends a mix of low-density residential and agricultural uses at a density of 1 dwelling unit per 5 acres. The Master Plan does recognize, however, that 1 dwelling unit per 2 acre zoning does exist in this area as a result of older subdivisions. The Planning Board finds the Preliminary Plan substantially conforms to the Damascus Master Plan in that low-density residential development is proposed without infringing on existing agricultural uses in the immediate area.

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

Roads and Transportation Facilities

Since the proposed lot does not have frontage on a public street, right-of-way dedication for a public road is not necessary, nor can a sidewalk along the Property frontage be required. However, proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed private improvements. The addition of one new lot generates less than 3 new peak-hour vehicle trips, so the Application is not subject to either Local Area Transportation or Policy Area Mobility reviews.

Other Public Facilities and Services

The proposed lot will be served by a private, standard septic system and well. The 30-foot wide ingress/egress easement is proposed to be re-recorded as an ingress/egress and utility easement to accommodate the installation of electrical and telecommunication services to serve a new dwelling unit. The Application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access because the Application includes providing a pull-off area off-site, within the 30-foot wide ingress/egress easement as well as a T-turnaround on-site. Area schools are operating at adequate levels; therefore, the Subject Property is not within a school moratorium area and no facilities payment is required. 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. Gas, electrical and telecommunications services are also available to serve the lots.

3. *The size, width, shape, and orientation of the proposed lot is appropriate for the location of the subdivision. The Planning Board expressly finds that the size of the proposed lot, which is less than 5 acres, is appropriate for the location of the subdivision and that the lot is exempt from the area and dimensional requirements of the RC zone.*

The Subject Property is zoned Rural Cluster (RC), but does not meet the minimum net lot area of 5 acres for the RC zone. It is, however, exempt pursuant to Section 59-C-9.73(b)(2) of the Zoning Ordinance which states that a lot created by deed executed on or before the approval date of the most recent sectional map amendment or local map amendment that included the lot is exempt from the area and dimensional requirements of section 59-C-9.4 but must meet the requirements of the zone applicable to them prior to their classification in the Rural Cluster zone.

In this case, the most recent sectional map amendment rezoned the Property from RE-2 to RC in 1982. The Applicant provided documentation that the Property boundaries of the current deed have not changed since the deed was executed in 1966 and, therefore, the Application is eligible to be recorded per this provision of the Zoning Ordinance. The Planning Board finds the proposed lot meets the area and dimensional requirements of the Rural zone and the Board finds that the proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

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

The Subject Property is fully forested, containing 3.0 acres of forest. The Applicant proposes to retain 1.20 acres and clear 1.80 acres of existing forest. This Application meets the break-even point, where no reforestation is required. The Planning Board finds the submitted forest conservation plan complies with the Montgomery County Forest Conservation Law. All retained forest will be protected in a Category I easement located on the Property.

There are no specimen trees on-site but there are 2 large or specimen trees just off-site, neither of which will be disturbed by this proposed development. Under State Bill #666 "No Net Loss of Forest Policy" a variance is not required because no specimen trees are proposed to be removed.

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 stormwater management concept for this Application was approved by the MCDPS Stormwater Management Section on May 29, 2009. The concept consists of on-site water quality control and groundwater recharge via drywells and disconnection practices. Channel protection volume is not required because

the one-year post development peak discharge is less than or equal to 2.0 cubic feet per second.

6. *The Planning Board finds that a lot without street frontage is appropriate per Section 50-29(a)(2) of the Subdivision Regulations.*

Section 50-29(a)(2) of Chapter 50, the Subdivision Regulations requires all lots to abut on a street or road which has been dedicated to public use or which has acquired the status of a public road. This section of the regulations also states that in exceptional circumstances, the Board may approve not more than (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, for installation of public utilities and is accessible for other public services and not detrimental to future subdivision of adjacent lands.

This Application requests the creation of a lot with no street frontage. The Applicant, in his justification, argues that the Subject Property is land-locked and thus an exceptional circumstance exists in that the only access to the site is via a private lane in an easement through the adjacent property to the east. Furthermore, the Applicant states that the driveway access to the site is free and clear of any obstructions and is suitable for the installation of underground utilities and for emergency vehicle access with the additional pull-off and turnaround improvements. The Planning Board, with input from Staff and Montgomery County Fire and Rescue, finds that access is adequate to serve the lots for emergency vehicles and installation of the necessary utilities.

With the addition of the Subject Property, two lots will now be served by the private driveway. Parcel 888 directly east of the site contains only one main structure but many accessory structures, therefore, the 2 lot limitation will not be exceeded by this subdivision. Any future subdivision of Parcel 888 will be accommodated by extending Woodfield School Road, which is currently stubbed at the boundary of Parcel 888. Access to MNCPPC park property to the south and the open space area to the north will be unaffected by the new lot.

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), 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 Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

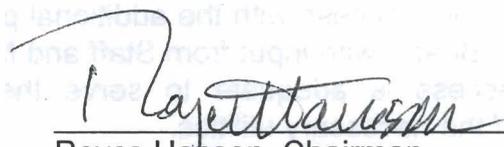
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAR - 2 2010 (which is the date that this Resolution is mailed to all parties of record); and

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 Wells-Harley, seconded by Commissioner Presley, with Commissioners Hanson, Wells-Harley, Alfandre, and Presley voting in favor of the motion, with a four-member Board, at its regular meeting held on Thursday, February 18, 2010, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board