



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

MCPB No. 10-37
Preliminary Plan No. 120100060
Sullivan Property
Date of Hearing: March 18, 2010

APR 13 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 August 28, 2009, Robert E. Sullivan ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 2 lots on 9 acres of land in the RC zone, located on the north side of Ashton Road (MD 108), 950 feet northeast of Mink Hollow Road ("Property" or "Subject Property"), in the Sandy Spring-Ashton master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100060, Sullivan Property ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated February 23, 2010, 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 March 18, 2010, 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

Approved as to
Legal Sufficiency:

M-NCPPC Legal Department

WHEREAS, on March 18, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Wells-Harley; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Alfandre, Dreyfuss, Hanson, Presley, and Wells-Harley 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. 120100060 to create 2 lots on 9 acres of land in the RC zone, located on the north side of Ashton Road (MD 108), 950 feet northeast of Mink Hollow Road ("Property" or "Subject Property"), in the Sandy Spring-Ashton master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this preliminary plan is limited to two lots for two one-family detached residential dwelling units.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to the recording of plat(s) or the Montgomery County Department of Permitting Services' (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 the shared driveway.
- 5) The Applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated October 28, 2008. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 6) The record plat must reference that Lot 2, as shown on the preliminary plan, is being created under Section 59-C-9.73 for use as a single-family residence only by the child or spouse of a child of the property owner. Applicant to provide signed affidavit to that effect with record plat application. A note specifically identifying the child lot on the record plat must be provided.
- 7) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated October 6, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 8) The Applicant must dedicate 40 feet of right-of-way from the centerline of Ashton Road (MD 108) along the property frontage as shown on the preliminary plan.
- 9) The Applicant must satisfy provisions for access and improvements as required by the Maryland State Highway Administration (MDSHA) prior to issuance of access permits.

- 10) Prior to approval of record plat, the Applicant must construct bikepath improvements along the Property frontage or pay a fee in lieu. If the Applicant chooses to pay a fee in lieu, a payment of \$11,500 must be made to MCDOT Annual Sidewalk Program No. 506747.
- 11) 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.
- 12) 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, 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 Subject Property is part of the Rural/Open Space area identified in the *1998 Approved and Adopted Sandy Spring-Ashton Master Plan*. The objective for this area is to maintain a low-density land use pattern to protect farmland and other open space. On page 39 of the plan, the writers state that "The few remaining farms in this area are interspersed with subdivisions and development pressures are mounting. Unlike Olney, where the Agriculture Reserve was established to protect large areas of working farms, this area has never been considered part of the County's critical mass of farm-land. This plan envisions continuation of small farms along with some residential development." The Planning Board finds the preliminary plan application complies with these recommendations in that a child lot of the smallest possible size is configured to have minimal impacts on current agricultural operations on the site.

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

Roads and Transportation Facilities

Proposed Lot 1 fronts on Ashton Road (MD 108), an arterial road requiring 80 feet of right-of-way. As delineated on the preliminary plan, the Applicant is dedicating right-of-way along the property frontage to provide 40 feet of right-of-way from the centerline. The Countywide Bikeways Functional Master Plan recommends a shared use path on the north side of MD 108. Because a path is not currently present within the Property vicinity, the Applicant is required either to construct or pay a fee-in-lieu for the path along the Property frontage. The addition of one new lot generates less than three new peak-hour vehicle trips, so the application is not subject to either Local Area Transportation or Policy Area Mobility reviews. The Planning Board finds

proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public and private improvements.

Other Public Facilities and Services

The two lots will be served by private, standard septic systems and wells. A 10-foot public utility easement has been provided along the frontage of both lots to accommodate any necessary installation of electrical and telecommunication services. The application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access. 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 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 Planning Board finds the application meets all applicable sections including the provisions for a lot without frontage. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

- 4. The Planning Board finds the proposed child lot is exempt from the area and dimensional requirements of the RC zone under Section 59-C-9.73(b)(4) of the Zoning Ordinance but subject to the requirements of the previous zone.*

The lots were reviewed for compliance with the dimensional requirements for the RC zone as specified in the Zoning Ordinance. The Planning Board finds the lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone, including the provisions for a two-acre child lot, as discussed below. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

The Applicant proposes to create proposed Lot 2 as a child lot. This lot is two acres in size, which is three acres less than the minimum lot size required in the RC zone. A lot created for a one-family residence to be used by a child of the property owner is exempt from the area and dimensional requirements of the RC zone under Section 59-C-9.73(b)(4) of the Zoning Ordinance but subject to the requirements of the previous zone, provided that the property owner can establish that he had legal title on or before the approval date of the most recent sectional map amendment that included the lot. The previous zoning in this case was a two-acre zone.

This provision applies to only one such lot for each child of the property owner. The Applicant provided a deed demonstrating ownership of the parcel prior to the sectional map amendment and a birth certificate for the child for whom the lot is intended.

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

The forest on the Property is comprised of one, high-priority forest stand located in the northern portion, toward the rear of the Property. A portion of the environmental buffer is included within the forest stand. There is no land-disturbing activity proposed on the site and the final forest conservation plan proposes to retain all of the forest on-site and all of the significant and specimen trees. All of the forest will be protected in a 1.41-acre Category I conservation easement. A portion of the environmental buffer included in proposed lot 1 will remain in commercial agricultural production, and will not be protected in a conservation easement. That portion of the environmental buffer is currently used as pasture. There is no forest-planting required on the site. The Planning Board finds the preliminary plan complies with the applicable requirements of the Forest Conservation Law.

6. *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 Applicant requested relief from the requirement to submit a stormwater management concept plan from the MCDPS Stormwater Management Section by letter dated June 24, 2009. This request was approved on June 25, 2009 because no new development is proposed as part of this preliminary plan application.

7. *The Planning Board finds the preliminary plan conforms to the pre-preliminary plan in that there are exceptional circumstances which apply to this Property that justify creation of a lot without frontage on a public street.*

The Applicant proposed to record the lot for the child of the property owner as a lot without frontage. Section 50-29(a)(2) of the Subdivision Regulations requires lots to abut on a street that has been dedicated to public use or that has acquired the status of a public road, however, in exceptional circumstances, the Planning Board may approve not more than two lots on a private driveway if access is adequate to serve the lot(s) for emergency vehicles, for installation of public utilities, and the lot(s) are accessible for other public services and not detrimental to future subdivision of

adjacent lands. The Board supported creation of a lot without frontage. Due to the location of the existing house on proposed Lot 1, a pipestem along the western property line to proposed Lot 2 is impractical because there is not enough distance between the house and the property line. Alternatively, a pipestem along the eastern property line would create an ownership line that could inhibit agricultural use on the Property if the lot were to be sold, and it also results in an odd lot configuration.

The Board found the proposed ingress/egress and utilities easement on the driveway will allow for the installation of public utilities and the proposed lot without frontage will not adversely affect the future subdivision of adjacent properties. Furthermore, by approval letter dated December 15, 2009, the Montgomery County Department of Fire and Rescue determined the proposed private driveway will be adequate for emergency vehicles and other public services.

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 APR 13 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 Presley, seconded by Vice Chair Wells-Harley, with Chairman Hanson, Vice Chair Wells-Harley, and

MCPB No. 10-37
Preliminary Plan No. 120100060
Sullivan Property
Page 7 of 7

Commissioners Presley, Alfandre, and Dreyfuss present and voting in favor of the motion at its regular meeting held on Thursday, April 1, 2010, in Silver Spring, Maryland.



Royce Hanson, Chairman
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