



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

MCPB No. 13-11  
Tschand Property  
Preliminary Plan No. 120110330  
Date of Hearing: January 24, 2013

FEB 4 2013

**RESOLUTION**

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

WHEREAS, on September 21, 2011, Om Tschand ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 0.99 acres of land in the R-200 zone, located at 17601 Burdette Lane north of Black Rock Road ("Subject Property"), in the Preservation of Agriculture and Rural Open Space Functional Master Plan ("AROS") area and also covered by the Rustic Roads Functional Master Plan ("RRFMP"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110330, Tschand Property ("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 January 10, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 24, 2013, 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, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120110330 to create one lot on the Subject Property, subject to

Approved as to  
Legal Sufficiency:

*Christina Smith* 1/18/13  
M-NCPPC Legal Department

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the following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to one lot for one-family dwelling unit.
2. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated November 25, 2011, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
3. Prior to recordation of plat, the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
4. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated April 19, 2011, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
5. The Planning Board has accepted the recommendations of the MCDPS – Well and Septic Section in its letter dated June 20, 2012, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well and Septic Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. The Applicant must dedicate and show on the record plat(s) the dedication of 60 feet from the opposite right-of-way line along the Subject Property frontage for Burdette Lane.
7. The record plat must reflect overlapping Public Improvement Easements and Public Utility Easement as shown on the Certified Preliminary Plan.
8. The record plat must show necessary easements.

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<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

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, with the conditions of approval, that:

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

The Application is guided by two functional master plans: the Functional Master Plan for the Preservation of Agriculture and Rural Open Space (1980) and the Rustic Roads Functional Master Plan (1996).

#### AROS

"This Plan confirms...

- That farmland, rural open space, and residential development (rural communities and large lot development) can be compatible land-uses within the Agricultural Preservation Study Area, if appropriately located" (Summary of Findings and Recommendations, p. iv).

The Subject Property is abutting the South Germantown Recreational Park and is surrounded by homes built in the 1960s that are zoned R-200. These properties were created, and the homes were built, well before AROS went into effect.

#### "Rural Communities and Villages

These are historic rural settlements that were not affected by the 1973 Rural Zone Sectional Map Amendment of the upper county. Today the rural communities and villages remain zoned R-200 (1/2 acre lot sizes), or as in Boyds and Sandy Spring/Ashton which are governed by separate local area master plans. This functional master plan reconfirms and is consistent with land use recommendations of those area master plans" (p. 38).

The Subject Property is in the R-200 zone and is 0.99-acres. The R-200 zone was reconfirmed in the AROS plan. This area is in a historic rural settlement and was the site for a 19th century freed slave community that once included a church and a school. The Planning Board finds the Preliminary Plan substantially conforms to AROS.

#### "Recommended Transportation Guidelines

- Allow roads to remain in their present condition for 15-20 years except for maintenance and safety projects” (p. 63).

The Subject Property is within the AROS area and is also covered by the RRFMP. The RRFMP was adopted in 1996, which is 16 years after the recommended transportation guidelines.

### RRFMP

Burdette Lane was designated a rustic road in 1996 with the adoption of the RRFMP. The Significant Features of the road are:

- Example of a small residential rural area
- Roadway and edges flow together (RRFMP, 1996, pp. 66-67).

The Roadway Characteristics indicate the road has 16 feet of pavement, and the illustrative photo of the road in the RRFMP shows the road with a house that is less than a car length from the edge of the pavement.

The RRFMP recommends a 70 foot width for the right-of-way for Burdette Lane (p. 194). The Subject Property is the last remaining privately owned property on Burdette Lane that will be able to dedicate right-of-way. Prior to its designation as a rustic road, all other properties on the opposite side of Burdette Lane dedicated land to provide for a total right-of-way of 60 feet. The MCDOT approval letter dated November 25, 2011, specifically made note of the existing dedications that had already occurred along Burdette Lane and supported a reduced dedication width, 60 feet from the opposite right-of-way line to mirror those prior dedications. MCDOT also requested a 5 foot wide Public Improvement Easement (PIE) across the front Property line to allow for additional maintenance of the right-of-way edge. Staff explained that there is no hedgerow or other feature along the right-of-way that contributes to the rustic road character and that additional dedication would not serve a useful purpose. The Planning Board determined that the 60 foot wide right-of-way, in conjunction with the 5-foot wide PIE, provides the same level of protection and public maintenance opportunities for Burdette Lane as would be provided by a 70 foot wide right-of-way and, therefore; the Application is in substantial conformance with the RRFMP.

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

### Roads and Transportation Facilities

The Application will generate no new traffic; therefore, Local Area Transportation Review is not required. The Subject Property is located in the Poolesville Policy Area where there is a no Policy Area Mobility Review mitigation requirement.

The Subject Property will continue to be accessed through the existing driveway cut from Burdette Lane. The sight distance for the driveway is acceptable per the Sight Distance Evaluation reviewed and approved by MCDOT on November 25, 2011. The Application was not reviewed by the Montgomery County Fire and Rescue Service since they do not review one house located on a single driveway. The Applicant is required to dedicate additional right-of-way measured 60 feet from the opposite right-of-way line and grant a five-foot wide PIE along their Burdette Lane site frontage.

#### Other Public Facilities and Services

The Planning Board finds that all public facilities and services are available and adequate to serve the approved subdivision. The house will be served by the existing well, and the septic will be replaced with an approvable septic system. Gas, electrical and telecommunications services are available to serve the Subject Property. A 15-foot wide PUE is required along Burdette Lane. Other public facilities and services, such as schools, police stations, and health services, are operating within the standards set by the Subdivision Staging Policy currently in effect. The Application is located in the Northwest School Cluster which is operating at adequate levels according to the FY13 Annual School Test. No School Facility Payment is required.

- 3. The size, width, shape, and orientation of the approved lot are appropriate for the location of the subdivision.*

The Application was reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Subject Property was reviewed for compliance with the dimensional requirements of the R-200 zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, and width established in that zone. The existing building shown on the Preliminary Plan will not meet the required 40-foot front setback because of the required dedication. The existing house does not need to be altered to meet the setback, but any future buildings permits must be behind the 40-foot setback line. The Application meets all applicable sections. The size, width, shape and orientation for the lot is appropriate for the location of the subdivision based on a review of the vicinity map included in the Staff Report. The lot is comparable in size, width, shape, and orientation to existing properties fronting onto Burdette Lane in the general area.

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

A. Forest Conservation

The Board finds that as conditioned, the Preliminary Plan complies with the requirements of the Forest Conservation Law.

The Subject Property contains no forest. The Subject Property was granted a Forest Conservation Plan Exemption (42010216E) on April 5, 2011, under 22A-5(s)(2) the small property exemption.

5. *All stormwater management requirements shall be met as provided in Chapter 19, article II, title "stormwater management", Section 19-20 through 19-35.*

The MCDPS Stormwater Management Section conditionally approved the Stormwater Management Concept Plan for the Application on April 19, 2011. The Application will meet the required stormwater management goals via disconnection credits.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 85 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), 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 in the Montgomery County Land Records, 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       FEB 14 2013       (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).

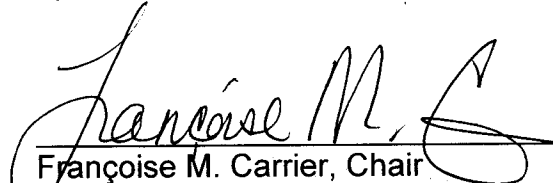
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CERTIFICATION

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 Commissioner Dreyfuss, seconded by Commissioner Presley, with Chair Carrier and Commissioners Anderson, Dreyfuss, and

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Presley voting in favor of the motion, and with Vice Chair Wells-Harley absent, at its regular meeting held on Thursday, January 24, 2013, in Silver Spring, Maryland.



Françoise M. Carrier, Chair  
Montgomery County Planning Board