



Pre-Preliminary Plan No. 720110080: Hobson's Choice

BCB

Ben Berbert, Senior Planner, Area 3 – benjamin.berbert@montgomeryplanning.org 301-495-4644

EAU

Richard Weaver, Supervisor, Area 3 – richard.weaver@montgomeryplanning.org 301-495-4544

JAC

John Carter, Chief, john.carter@montgomeryplanning.org 301-495-4575

Staff Report Date: 05/03/13

Description

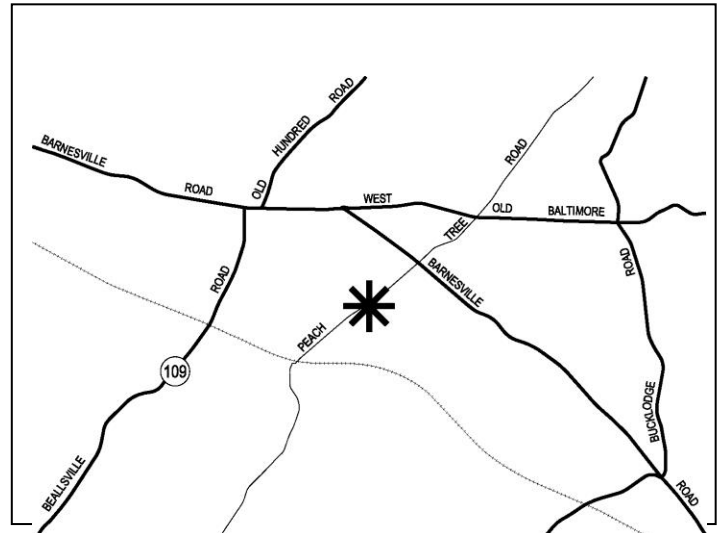
Pre-Preliminary Plan No. 720110080: Hobson's Choice

Request to create one (1) five acre lot and 0.217 acres of dedication on an existing 5.217 acre parcel through the minor subdivision process; located on the north side of Peach Tree Road, about 2,400 feet west of the intersection with Barnesville Road; 5.217 acres, RDT Zone, Agricultural/Rural Open Space Plan.

Staff Recommendation: Approval with conditions.

Applicant: Walter Pritchard

Review Basis: Chapter 50 and Chapter 59



Summary

- The Application is a request for Planning Board approval of 5.0 acre lot under the “minor subdivision” provision, Section 50-35A(8)d of the Montgomery County Code.
- The Application includes a request for a waiver of Section 50-30(c)(1) to reduce the amount of dedication on Peach Tree Road to allow the Property to remain at or above 5.0 acres in size in order to meet Zoning Ordinance requirements.
- Staff and MCDOT staff have reviewed the waiver request letter which includes the concept to provide a Public Improvement Easement where dedication is not possible.
- Staff finds that the waiver is justified and granting the waiver is not adverse to the public interest.
- MCDOT staff recommends approval of the Application.

RECOMMENDATION: Approval to proceed as a Minor Subdivision under 50-35A(a)(8) including a waiver of Section 50-30(c)(1), subject to the following conditions:

1. This Pre-Preliminary Plan is limited to one lot for a one family dwelling unit.
2. The certified Pre-Preliminary Plan must contain the following note:

Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprint shown on the Pre-Preliminary Plan is illustrative. The final locations of the building will be determined at the time of issuance of building permit. Please refer to the zoning data table for development standards such as setbacks and building restriction lines for the lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.

3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated January 13, 2013 and does hereby incorporate them as conditions of the Pre-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 Pre-Preliminary Plan approval.
4. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") Well and Septic Section in its letter dated January 13, 2013 and does hereby incorporate them as conditions of the Pre-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 provided that the amendments do not conflict with other conditions of the Pre-Preliminary Plan approval.
5. The Planning Board has accepted the recommendations of the Montgomery County Fire Marshall in a memo dated December 30, 2011, and does hereby incorporate them as conditions of the Pre-Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the memo, which may be amended by the Fire Marshall provided that the amendments do not conflict with other conditions of the Pre-Preliminary Plan approval.
6. The Applicant must dedicate the right-of-way as shown on the Certified Pre-Preliminary Plan and reflect the dedication on the record plat.
7. The Applicant must record a Public Improvement Easement as shown on the Certified Pre-Preliminary Plan and reflect the easement on the record plat.
8. The record plat must show necessary easements.

9. The Applicant must include with the submission of the record plat an affidavit to verify the availability of a TDR for the lot shown on the plat. Include a note referencing the affidavit on the record plat.

10. The record plat(s) must contain the following note:

Agriculture is the preferred use in the Rural Density Transfer Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone.

SITE DESCRIPTION

Pre-Preliminary Plan No. 720110080, Hobson's Choice ("Application") pertains to an unplatted parcel identified as P635 on Tax Map DV12 at approximately 5.217 acres and located at 21710 Peach Tree Road in Dickerson MD. ("Property" or "Subject Property") (Attachment A – Vicinity Map). Peach Tree Road is a Rustic Road which are recommended to have a 70 foot wide right-of-way. The parcel, depicted below, is currently zoned Rural Density Transfer (RDT). As an unplatted property, it is described by deed and was first described in its current configuration by a deed recorded in February of 1979, prior to the adoption of the RDT zone on the Property in 1981. The Property contains a barn and a run-in shed and previously included a residential structure that was removed some time ago. The barn is currently used to store agricultural equipment. The Property is surrounded by farmland but there are many large lot residences along both sides of Peach Tree Road.

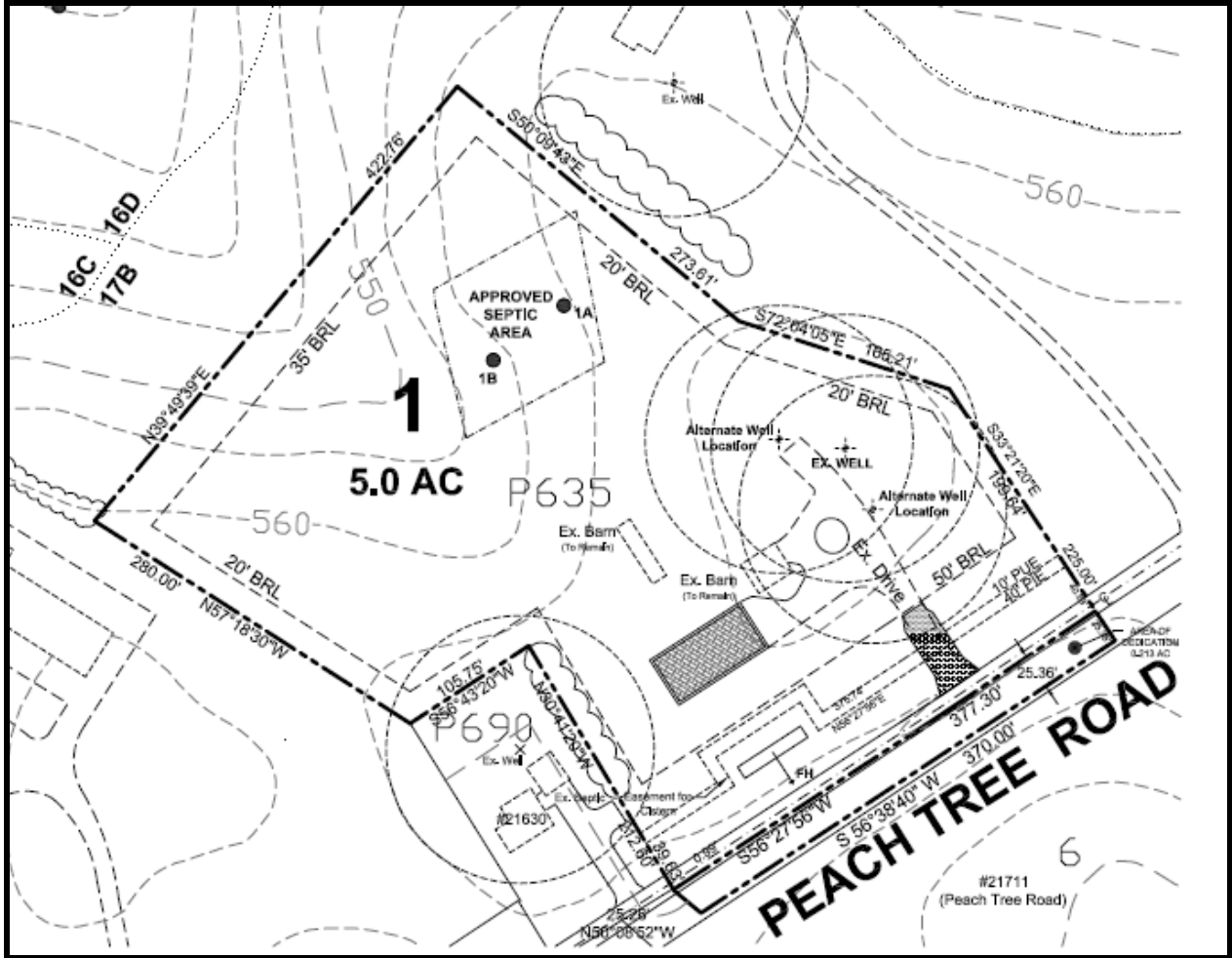


Subject Property

PROJECT DESCRIPTION

The Application requests approval of one, 5.0 acre lot to accommodate a one-family detached dwelling unit via the minor subdivision process outlined in Section 50-35A(a)(8) of the Subdivision Regulations. (Attachment B – Proposed Pre-Preliminary Plan). This Section permits up to 5 lots in the RDT zone "if a pre-preliminary plan is submitted and approved by either the Planning Board or Planning Board staff."

The Property is exempt from the area and dimensional requirements of the RDT Zone pursuant to Section 59-C-9.74(b)(2) of the Zoning Ordinance and is grandfathered back to the prior Rural Zone which requires a minimum lot size of 5.0 acres. Because the Property must be platted, the Planning Board must determine the appropriate dedication for existing roads (and new roads) so that the dedication can be shown on the record plat. Full dedication of the 70 foot wide right-of-way in this instance, will reduce the lot area to less than 5.0 acres. In order to meet the 5.0 acre minimum lot size that is required in the Rural Zone, a subdivision waiver is requested to provide relief from the full width dedication of Peach Tree Road. Because a waiver is required, the Application must proceed to the Planning Board for a determination on the appropriateness of a waiver request.



Lot Detail

ZONING CONFORMANCE

The lot was reviewed for compliance with the dimensional requirements for the Rural zone as provided under the Exempted Lots and Parcels - Rural Density Transfer Zone provision of Zoning Ordinance Section 59-C-9.74(b)(2) which states:

- (b) The following lots are exempt from the area and dimensional requirements of Section 59-C-9.4 but must meet the requirements of the zone applicable to them before their classification in the Rural Density Transfer Zone.
- (1) A lot created by deed executed before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone.

The parcel was created by a deed dated February 13, 1979 and the RDT zone was applied to the Property on January 6, 1981. As a parcel that meets the grandfathering provision, it must also meet the area and dimensional requirements of the prior zoning which was Rural. Staff finds that the lot can comply with the prior zoning but that a waiver of dedication is necessary so that the lot may stay above the 5.0 acre minimum lot size required in the Rural zone. The waiver request is discussed in detail later in this report. A summary of the zoning conformance for the 5.0 acre lot is included in the table below

Preliminary Plan Data Table

PLAN DATA	Rural Zone Development Standard	Proposed for Approval by the Preliminary Plan
Minimum Lot Area	5.0 acres.	5.0 acres.
Lot Width @ Street Line	300 ft.	370 ft.
Setbacks		
Front	50 ft. Min.	Must meet minimum ¹
Side	20 ft. Min./40 ft. total	Must meet minimum ¹
Rear	35 ft. Min.	Must meet minimum ¹
Maximum Residential Dwelling Units	One	One
TDRs	1 Required	1 Available

¹ As determined by MCDPS at the time of building permit.

SUBDIVISION REGULATION CONFORMANCE

SUBDIVISION WAIVER 50-38

In the Planning Board’s review of a preliminary plan and record plat, Subdivision Regulation Section 50-30 - *Public sites and adequate open spaces* specifies the circumstances by which adequate areas for parks, playgrounds, schools, recreation and roads are determined and acquired. Section 50-30(c)(1) instructs the Board to require dedication to public use of roads, whether existing or planned, in order to locate such road within the public domain. 50-30(c)(1) states:

(c) *Adequate open space for traffic, coordination of roads, utilities and storm drainage.*

- (1) Roads. In its consideration of the approval of a proposed subdivision, resubdivision or of a preliminary plan of subdivision, or resubdivision, **the board shall require the dedication to public use of adequate open spaces for traffic and the coordination of roads within the subdivision with other existing, planned or platted roads, or with other feature of the district, or with the commission’s general plan or with any road plan adopted or approved by the commission as a part of the commission’s general plan.** Such dedication to public use shall be to the full extent of any and all rights-of-way for all roads, street and highways, including widening of any existing street, determined to be necessary and proper and such as would be required by reason of the maximum utilization and development of the subject property in its present zone classification or that higher use shown on any adopted or approved master plan of the applicable jurisdiction.

As explained in the Applicant's waiver letter dated September 10, 2012, dedication of a 70 foot wide right-of-way as recommended in the Rustic Roads Functional Master Plan results in a serious hardship. As the submitted Pre-Preliminary Plan illustrates, the pavement of Peach Tree Road actually traverses the Property and the parcel extends to the other side of the road. If full dedication were provided to include the pavement and an area 35 feet from centerline of pavement, the remaining area of the existing 5.217 acre parcel would be reduced to less than 5.0 acres and therefore, unable to meet the minimum area and dimensional requirements of the Rural zone and unable to plat and therefore, unable to get a building permit.

The Applicant thereby requests a waiver of Section 50-30(c)(1) to allow for a dedication of Peach Tree Road that is less than what is required by the Rustic Roads Functional Master Plan. Under this waiver proposal, the Applicant would be able to provide some dedication of land, approximately 0.217 acres or a strip of land 24.5 feet wide that is actually on the opposite side of the pavement from the Subject Property. The Applicant will then place a PIE, to be granted to the County, over the remaining area that would have been dedicated under the full width requirements, to include the pavement and an area 35 feet from the pavement centerline. The concept of the PIE has been reviewed and approved by MCDOT. The PIE affords the County the same level of access and maintenance capabilities that would be provided by dedication. The area of the Property within the PIE, remains with the resulting recorded lot and the lot remains above the 5.0 acre threshold.

Waiver Discussion

The Planning Board's authority to grant a waiver is found in Section 50-38(a)(1) of the Subdivision Regulations. A waiver may be granted provided certain findings can be made. The section states:

"The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest."

The Applicant's waiver request letter (Attachment A) provides a correct statement of facts regarding the Property's zoning history and other facts of this Application, and it makes a reasonable argument that full dedication would create a practical difficulty that prevents this Application from fully complying with the requirements of Chapter 50. Any dedication of more than 0.217 acres prevents the recordation of the Property as a buildable lot thereby eliminating 100% of the potential residential development on this Property. The Applicant has proposed the PIE as a solution that minimizes any potential issue that waiving full dedication might create. The PIE will function in much the same way as dedication.

Staff finds that practical difficulties exist that prevent full compliance with the Subdivision Regulations. The waiver is the minimum necessary to provide relief from the requirements of Chapter 50 to allow this Property to be platted. The waiver is not inconsistent with the objectives of the General Plan or AROS Plan and the waiver is not adverse to the public interest because the PIE provides the same function as would full dedication.

MINOR SUBDIVISION 50-35A(A)(8)

The proposed lot is to be platted pursuant to Section 50-35A(a)(8) of the Subdivision Regulations. This section establishes the ability to plat up to five (5) lots in the RDT zone through the minor subdivision process after Planning Staff or Planning Board approval of a pre-preliminary plan. Applications for minor subdivision under Section 50-35A(a)(8) must meet the following criteria:

- a. Written approval for a proposed septic area must be received from the Montgomery County Department of Permitting Services, Well and Septic Section prior to recordation of the plat;
- b. Any required street dedications along the frontage of the proposed lot(s) must be shown on the record plat;
- c. An easement must be recorded for the balance of the property noting that density and a TDR have been utilized for the new lot. Reference to this easement must be reflected in the record plat for the lot;
- d. Lots created in the RDT zone through the minor subdivision procedure must not exceed an average lot size of five (5) acres in size unless approved by the Planning Board in the review of a pre-preliminary plan of subdivision; and
- e. Forest conservation requirements must be satisfied prior to recording of the plat.

With regards to provision (a), the well and septic facilities were approved by the Department of Permitting Services Well and Septic Section on September 7, 2004. For provision (b), additional right-of-way dedication is required for Peach Tree Road along the property frontage, however, the Applicant is not able to fully comply with this requirement and has requested a waiver. The waiver request is the reason that this Application must proceed to the Planning Board for review and approval. Item (c) does not need to be addressed because there is no remainder Property for which to make a reference to density. Item (d) is addressed; the lot complies with the 5.0 acre requirement. Item (e) has been addressed with the approval of a forest conservation plan by staff. Conservation easements, if applicable, will be shown on the record plat.

MASTER PLAN

The Application must be in compliance with two Functional Master Plans:

- 1) Preservation of Agriculture and Rural Open Space (AROS), and
- 2) The Rustic Roads Functional Master Plan.

The Property falls within the Agricultural Reserve area described in the AROS plan. The AROS plan describes the Agricultural Reserve as an area that “includes the majority of the remaining working farms, as well as other land uses that will serve to define and support those working farms” (p. 38), and as areas that “contain a critical mass of productive farmland worthy of protection, as well as other non-farmland uses which serve to support and define the critical mass” (p. 41). The AROS plan recommends

RDT zoning and the transfer of development density to help preserve farmland and agricultural uses in these areas. The purpose clause of the RDT zone also speaks to this intent:

“The intent of this zone is to promote agriculture as the primary land use * * *. This is to be accomplished by providing large areas of generally contiguous properties suitable for agricultural and related uses and permitting the transfer of development rights from properties in this zone to designated receiving areas. * * * Agriculture is the preferred use in the Rural Density Transfer zone.”

The AROS plan contains goals and objectives for the preservation of critical masses of farmland and rural open space in the county. The plan contains the following language:

“[t]his plan focuses on the preservation of farmland but it also tries to establish a policy framework that will contribute to the continuation of farming in the County”. (Forward)

“The critical land use issue in this Plan is the loss of productive farmland; the focus is the identification and application of land use regulations and incentives to help retain agricultural land in farming”. (pg. 8)

“Farmland and open space are irreplaceable and valuable natural resources, and should be protected”. (pg. 25)

At 5.217 overall acres, the Property is smaller than the minimum acreage typically considered suitable for a working farm, but the Property does offer a 2-3 acre fenced (paddock) area that provides an opportunity to be used for livestock, or equestrian uses. The Property contains no prime farmland soils. The Application substantially conforms with the recommendations adopted in the AROS Master Plan in that the proposed lot will not significantly reduce the area available for farming, nor will it affect the critical mass of land available for farming. Any house built on the Property will certainly be placed in the footprint of the house that formerly stood on the Property. The Application is designed to minimize fragmentation of the viable farmland and could be viewed as a means to re-establish a residence that once stood on this Property.

The approved and adopted Functional Master Plan for Rustic Roads (“FMPPR”) classifies Peach Tree Road as a rustic road because of the road’s high historic value, natural features including tree canopies and vegetated roadside banks and an “interesting” narrow twisting alignment north of Comus Road. The FMPPR identifies certain historic resources along Peach Tree Road. The closest resource, the Earp Farmhouse, is located approximately 2,000 feet to the south and is not otherwise visible from the Subject Property. The FMPPR identifies certain viewsheds that should be addressed as part of any subdivision along the path of this rustic road. No viewsheds are identified in the vicinity of the Property. In addition, given the existing driveway cut that exists along the Property’s frontage, no additional impacts to the road’s edge are necessary

The FMPPR recommends a 70 foot wide right-of-way for the majority of the County’s rustic roads, including Peach Tree Road. The 70 wide right-of-way places the section of road in the public domain and out of private control. The FMPPR strongly discourages improvements that would alter the rustic character of a rustic road and this holds true for all subdivisions along rustic roads which are generally

relieved from making frontage improvements other than at the immediate driveway opening or at the immediate intersection of a new intersecting street. For this Application, dedication of the required right-of-way will have a significant impact to the size of the remaining lot area that will essentially eliminate the ability to plat this Property. The Applicant has provided an alternative to full dedication (35 feet from centerline of pavement) by offering a Public Improvement Easement (PIE) to serve the same purpose as dedication. MCDOT, in this instance, will have all of the same maintenance and improvements capabilities within the PIE as they would in a dedicated right-of-way. Staff believes that the PIE will serve the same purpose as dedication and is substantially in conformance with the Rustic Roads Functional Master Plan.

ADEQUATE PUBLIC FACILITIES

Roads and Transportation Facilities

The proposed lot will not generate 30 or more vehicle trips during the morning or evening peak-hours and therefore, is not subject to Local Area Transportation Review and is not subject to Policy Area Mobility Review. If the Planning Board were to grant the waiver of full dedication, Staff finds that the dedication is not essential to the adequacy of the transportation system to serve the lot since this Application requests only one lot for one detached home. Access to the lot will be by a single driveway which has been accepted for safe sight distance by MCDOT. No sidewalks are proposed because of the rustic road designation. Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the waiver of dedication and the improvements shown.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the proposed lot. Private well and on-site septic systems are proposed to serve the new dwelling unit, and were approved by the Department of Permitting Services Well and Septic Section on September 7, 2004. Electrical and telecommunications services are available to serve the Property. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have 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 currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect. The Subject Property is within the Poolesville School cluster area which is operating at acceptable levels. The Application is not subject to a School Facilities Payment.

Lot Design

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location given the AROS Plan's recommendation to minimize further fragmentation of farmland. The location of the lot pulls development activity up to the street and away from the critical mass of farmland located further from the roads.

Stormwater Management

No development activity is proposed at this time. A stormwater management concept will be approved at the time of building permit that addresses the specific needs of the structure built on the lot.

ENVIRONMENT

Environmental Guidelines

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420112020 for this site was approved on February 18, 2011. The NRI/FSD identifies the environmental constraints and forest resources on the Property. There are no forest, wetlands, or streams on the property, and the project has very limited environmental impacts. The site is in the Little Monocacy Watershed, a Use I-P watershed. The Countywide Stream Protection Strategy (CSPS) rates streams in this watershed as in generally good condition. The Application adequately protects sensitive environmental features.

Forest Conservation will be addressed at the time of record plat.

CORRESPONDENCE AND ISSUES

The Applicant notified adjacent and confronting property owners of the pre-preliminary plan submission, as required. Staff did discuss the Application with the adjacent Property owner who was concerned about the location of any new home. Staff briefly explained the front setback of 50 feet would allow the home to be placed no closer to the street than her adjoining home. Staff also explained that the house could not be located too far to the north (rear) because the home must flow by gravity to the septic reserve area. If it was located too far downslope, (to the north) it would not be able to flow by gravity.

Citizen concerns have been adequately addressed by the proposed plan.

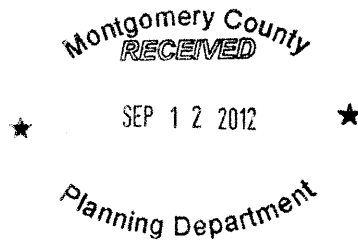
CONCLUSION

The proposed lot meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the Preservation of Agriculture and Rural Open Space Master Plan and the Rustic Roads Master Plan. Access and public facilities will be adequate to serve the proposed lot, and the application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. The request to waive a portion of the required dedication is also acceptable, therefore, approval of the Application with the conditions specified above is recommended.

Attachments

Attachment A – Waiver Request Letter

Attachment B – Agency Approval Letters



Benning & Associates, Inc.
Land Planning Consultants

8933 Shady Grove Court
Gaithersburg, Md. 20877
(301) 948-0240

September 10, 2012

Mr. John Carter, Area 3 Chief
Montgomery County Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Hobson's Choice (720110080)

Dear Mr. Carter,

On behalf of Walter Prichard, the applicant for the subject project, I am writing to request a waiver of one of the requirements of Chapter 50 (Subdivision of Land) as it applies to this property. Specifically, we are requesting a waiver from Section 50-30(c)(1) which states "the board shall require the dedication to public use of adequate open spaces for traffic and the coordination of roads". As will be explained, dedication in accordance with this requirement for this single-lot subdivision project would result in a serious hardship to the applicant and much more of a land taking than 50-30(c)(1) intends.

The subject property abuts Peach Tree Road which is identified in the Rustic Roads Functional Master Plan (December 1996) as a *Rustic Road* with the master plan designation of R-32. The master plan identifies the minimum right-of-way width for Peach Tree Road to be 70 feet. Under normal circumstances, dedication of land within 35 feet of the center of Peach Tree Road would be provided during subdivision of a property in accordance with the requirements of 50-30(c)(1). However, dedication of land area from the subject property to this extent would result in a lot size for the one lot proposed of less than the minimum required by Article 59-C of the Montgomery County Zoning Ordinance. Therefore, it is not possible to meet both the requirements of 50-30(c)(1) and 59-C at the same time.

As shown on the Pre-Application Plan submitted for the property, the subject site consists of an existing 5.217 acre parcel which was created by deed in February of 1979. The property is currently located within the Rural Density Transfer (RDT) zone of the County but in accordance with Section 59-C-9.74(b)(2) of the Zoning Ordinance, the parcel is exempt from the area and dimensional requirements of the RDT zone because it was created before the RDT zone existed. However, the property is required to meet the area and dimensional requirements of the zone which was in existence when it was created. The prior zone which existed in 1979 was Rural which has a minimum lot size requirement of 5 acres. Since the property as currently exists consists of just over 5 acres, land dedication of more than 0.217 acres to public use will result in a lot which does not meet the requirements of the Rural zone. We must therefore request a waiver of 50-30(c)(1) so that the requirements of 59-C-9.74(b) and the Rural zone can be met.

Section 50-38 of the Subdivision Regulations states “the Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.” I believe it has been shown that practical difficulties do exist which support granting a waiver of dedication in this case. If a waiver is not granted, the minimum lot size requirement of Section 59-C and the Rural zone cannot be met and as such the property cannot be recorded as a building lot. Therefore, the requirement to dedicate to meet requirements of Section 50-30(c)(1) results in a “regulatory taking” not intended by Chapter 50.

The requested waiver is the minimum necessary to provide relief from the requirements. The waiver is only requested so that the minimum lot size requirements of 59-C and the Rural zone can be met. Granting the waiver allows the property to be recorded as a building lot in conformance with all requirements of Chapter 59.

The requested waiver is not inconsistent with the purposes and objectives of the General Plan. As noted previously, Peach Tree Road has been declared to be a Rustic Road as identified in the Rustic Roads Functional Master Plan. Accordingly, Montgomery County intends to keep the road in its present condition. The road will not be widened or improved in such a way that additional right-of-way is needed. The roadway will continue to function as it currently does and will maintain the same relationship to the subject property as currently exists. Even so, the Pre-Application Plan for the property proposes to provide an area of easement for public use where dedication would normally exist so that the County will have the ability to maintain and improve the roadway in the future as it sees fit to do so. The fact that dedication of land to public use will not occur does not in any way interfere with the current or future objectives of the General Plan.

The requested waiver is not adverse to the public interest. In fact, approval of the waiver actually benefits the public interest. Without approval of the waiver, the minimum lot size requirement of the Rural zone cannot be met and the property cannot be recorded as a building lot. There would be no dedication of land to public use in this case and the situation would remain as currently exists. In order to obtain any necessary right-of-way for Peach Tree Road, the County would need to purchase the land from the property owner. Approval of the requested waiver allows the property to be recorded as a building lot with the proposed easement to public use (in lieu of dedication) at no cost to the County.

We appreciate your consideration of this request. Please let us know if any further information is needed. We look forward to review of this matter before the Planning Board as soon as a hearing date can be arranged.

Respectfully submitted,



David W. McKee



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

January 11, 2013

Mr. Richard Weaver, Supervisor
Area 3 Planning Division
The Maryland-National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Pre-Preliminary Plan No. 720110080
Hobson's Choice

Dear Mr. Weaver:

We have been requested to amend the comments in our May 11, 2011 letter as well as the March 27, 2012 amended comments for this pre-preliminary plan. The comments contained in the preceding letters remain applicable unless modified below:

1. Peach Tree Road is a Rustic Road located within the Agricultural Reserve. No widening or other significant modifications to the roadway are proposed within the foreseeable future.
2. The applicant has submitted a revised plan that achieves the 5.0 acre minimum lot size required by the zone. Providing a standard right-of-way dedication would reduce the lot size below the 5.0 acre minimum. To remedy this situation, the applicant has proposed to reduce the width of the right-of-way dedication while simultaneously granting a Public Improvement Easement (PIE). The net effect of this change allows the lot to satisfy the zoning ordinance while providing a mechanism for public stewardship of the Rustic Road.

We concur with the proposed twenty-four and a half (24.5) foot dedication and forty (40) foot Public Improvement Easement (PIE) shown in the plan signed and sealed September 10, 2012. The Public Utilities Easement (PUE) is to include the ten (10) feet beyond the PIE *and* forty (40) feet overlapping the PUE.

Division of Traffic Engineering and Operations

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878
Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080
trafficops@montgomerycountymd.gov

Mr. Richard Weaver
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January 11, 2013
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3. Coordinate with Mr. Henry Emery of the Department of Permitting Services (DPS) on modifying the PIE as necessary to account for the proposed fire cistern as well as increasing limitations on access by the Washington Suburban Sanitary Commission.
4. The details of the PIE agreement can be worked out at the record plat stage with Mr. Emery and Mr. Mac Spicer, the County Attorney representing DPS.

Thank you for your cooperation and patience with this review. If you have any questions or comments regarding this letter, please contact Andrew Bossi, our Development Review Area Engineer for this project, at andrew.bossi@montgomerycountymd.gov or (240) 777-2197.

Sincerely,



Gregory M. Leck, Manager
Development Review Team

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cc: Walter Prichard
Josh Maisel Benning & Associates, Inc.
John Carter M-NCPPC Area 3
Ki Kim M-NCPPC Area 3
Catherine Conlon M-NCPPC DARC
Preliminary Plan folder
Preliminary Plan letters notebook

cc-e: Henry Emery MCDPS RWPR
Atiq Panjshiri MCDPS RWPR
Sam Farhadi MCDPS RWPR
Rick Brush MCDPS WRM
Bill Campbell MCDPS WRM
Marie LaBaw MCFRS
Malcolm Spicer MCGOCA



FIRE MARSHAL COMMENTS

ATTACHMENT B

DATE: 30-Dec-11
TO: Joshua Maisel - benninglandplan@aol.com
Benning and Associates
FROM: Marie LaBaw
RE: Hobson Choice
720110080

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **30-Dec-11**. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.