



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 10-36  
Preliminary Plan No. 120090200  
Spring Meadows  
Date of Hearing: March 18, 2010

APR -8 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 December 28, 2008, Mr. Kenneth Steben, ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would revise the common lot line between two abutting lots under common ownership that total 42.82 acres of land in the Rural Cluster zone, located on the east side of Poplar Hill Road, approximately 2500 feet south of the intersection with Spring Meadows Drive ("Property" or "Subject Property"), in the Potomac Subregion Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090200, Spring Meadows ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated March 5, 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

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Approved as to  
Legal Sufficiency:

  
M-NCPCC Legal Department

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

WHEREAS, March 18, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Wells-Harley; 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.120090200 to revise the common lot lines between two abutting lots and to require platting of the two newly configured lots on the Subject Property, in the Potomac Subregion Master Plan area, subject to the following conditions:

- 1) Approval is limited to two reconfigured one-family detached residential lots.
- 2) The proposed development must comply with the conditions of 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.
- 3) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) well and septic approval dated June 8, 2009. These conditions may be amended by MCDPS provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 4) The Applicant must comply with the Montgomery County Department of Permitting Services (MCDPS) stormwater management letter dated October 14, 2008. These conditions may be amended by MCDOT provided the amendments do not conflict with other conditions of the preliminary plan.
- 5) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated March 24, 2009. These conditions may be amended by MCDOT provided the amendments do not conflict with other conditions of the preliminary plan.
- 6) Existing viewshed easements for adjacent Lots 65 and 66 must be shown on record plat for proposed Lot 81.
- 7) The certified preliminary plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the preliminary plan are illustrative. The final locations of buildings, structures and driveways will be determined during the building permit process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's 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 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 Potomac Subregion Master Plan (2004) recommended the continuation of the RC zone for the Property and nearby properties in recognition of, and to accommodate, the existing development patterns that have been established in the area. This area was envisioned to be a transition area between the higher densities in and around Darnestown proper, and the Rural Density Transfer Zone densities to the north. Because this subdivision proposes two large lots, much in keeping with what is already established on the Property, and that those lots support the rural character, the Board finds this application to be in conformance with the Master Plan recommendations.

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

The application will not generate any additional trips and was not subject to Local Area Transportation Review or Policy Area Mobility Review. Sidewalks were not required when the subdivision developed initially, and they are not required today because of the low density RC zoning. Pedestrians can continue to use the streets safely for mobility. The Board finds that that vehicle and pedestrian access for the subdivision will be safe and adequate.

All requisite utilities currently exist and are available. Other public facilities and services, such as schools, police stations, firehouses and health services, are operating within the standards set by the Growth Policy Resolution currently in effect. The Property is not subject to a School Facilities Payment because the school cluster is operating within adequate standards. The Board finds that all utilities and public facilities are adequate to serve the two lots.

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

The Board reviewed the application for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections. The Board finds the proposed lot size, width, shape and orientation to be 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 Planning Board finds that the plan meets all applicable requirements of the county Forest Conservation Law, Chapter 22A. The plan saves high priority forest and exceeds the amount of forest that needs to be retained to avoid reforestation. The forest conservation plan shows 3.47 acres of forest clearing and 27.33 acres of forest retention: all retention areas are to be protected in a Category I easement. Additionally, all areas of unforested environmental buffer, except in the location of the existing driveway, will be placed into a Category I easement.

#### Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection. If a forest conservation plan cannot be altered to protect these trees, the Applicant is required to demonstrate that it qualifies for a variance in accordance with Section 22A-21 of the Montgomery County Code to remove them. In general, law requires the retention and protection of all trees that measure 30" DBH and greater; trees that are 75% the diameter of the county champion for that species; and rare, threatened and endangered species. Since this project will require one tree greater than 30 inches DBH to be removed, a variance is required. The large tree that is requested to be removed is identified on the Preliminary Forest Conservation Plan as a 46.5" White Oak. The applicant's arborist has determined this tree to be a hazard tree in poor condition. The tree is located approximately 40' from an existing shed and 85' from the nearest point on the driveway. It is also located within an approved septic area for the existing house.

In accordance with Montgomery County Code Section 22A-21(c), the Planning Board referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a written recommendation prior to acting on the request. The County Arborist has elected not to review the variance request. The County Arborist's recommendation for the variance request is, therefore, presumed to be favorable.

In accordance with Section 22A-21(e), the Planning Board found that the Applicant has met all criteria required to grant the variance.

- a) *Will not confer on the applicant a special privilege that would be denied to other applicants.*

The White Oak tree that is the subject of the variance is/was located within the septic field drainage area for the existing house when it was approved in 1985, prior to the Montgomery County Forest Conservation Law. Because it is within the septic reserve easement it cannot be shown as a tree to be saved on the preliminary forest conservation plan and must be shown as a tree to be removed. Therefore, the need for the variance results from a change in regulations since the original lots were approved and does not confer any special privilege upon this Applicant.

- b) *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The need for the variance is based upon a change in regulations, as indicated above, and not as a result of actions by the Applicant.

- c) *Does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

The request for a variance is not a result from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

- d) *Will not violate State water quality standards or cause measurable degradation in water quality.*

The granting of a variance to remove this one tree will not result in a violation of State water-quality standards or in any measurable degradation in water quality in general.

As a result of the above findings, the Board approves the applicant's request for a variance from the Forest Conservation Law to remove the 46.5" White Oak.

5. *The Application meets all applicable stormwater management requirements.*

This finding is based on the determination, via letter dated October 14, 2008, by the Montgomery County Department of Permitting Services ("MCDPS"), that the requirements for a Stormwater Management Concept Plan approval will be met when a building permit review for a structure on the vacant lot is submitted to MCDPS.

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; 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 8 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).

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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 Presley, seconded by Vice Chair Wells-Harley, with Chairman Hanson, Vice Chair Wells-Harley, and 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  
Montgomery County Planning Board

## Adjacent and Confronting Property Owners & Other Interested Parties List/Labels

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