



JUN 6 2012

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

MCPB No. 12-40
Preliminary Plan No. 120110070
Brookeville Preserve
Date of Hearing: March 15, 2012

RESOLUTION

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

WHEREAS, on December 14, 2010, Carl M. Freeman ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 16 lots on 12.77 acres of land in the RE-2/TDR-4 zone, located in the southeast quadrant of the intersection of Georgia Avenue (MD 97) and Owens Road ("Subject Property"), in the Olney Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110070, Brookeville Preserve ("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 March 1, 2012, setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on March 15, 2012, 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, on March 15, 2012, the Planning Board voted to approve the Application subject to certain conditions, on the motion of Commissioner Dreyfuss, seconded by Commissioner Anderson, with a vote of 4-0; Commissioners Anderson, Carrier, Dreyfuss, and Wells-Harley voting in favor, with Commissioner Presley being absent.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board approves Preliminary Plan No. 120110070 to create 16 lots on the Subject Property, subject to

Approved as to
Legal Sufficiency:


5/23/12

8787 Georgia Avenue, Suite 200, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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the following conditions:¹

1. Total development is limited to sixteen (16) residential units including five (5) one-family detached and eleven (11) one-family attached units as shown on the Preliminary Plan.
2. The record plat(s) must reflect serialization and liber/foio reference for all transferable development rights ("TDRs") utilized by the development.
3. To mitigate 2 peak-hour trips for policy area mobility review ("PAMR"), make a lump sum payment to Montgomery County of \$23,400.00 prior to obtaining the first building permit.
4. The Applicant must comply with the conditions of approval of the final forest conservation plan. Conditions are as follows:
 - a) Inspections must occur consistent with Section 22A.01.01.10 of the Forest Conservation Regulations.
 - b) Final sediment control plan must be consistent with the final limits of disturbance as approved by the Staff.
 - c) Applicant must place a Category I conservation easement over all areas of forest retention and environmental buffers, as shown on the approved final forest conservation plan. Conservation easements must be shown on the record plats.
 - d) The Category I conservation easements must be recorded in the land records prior to the start of clearing and grading.
 - e) Compliance with all tree protection measures shown on the approved final forest conservation plan.
 - f) Tree save measures not specified on the final forest conservation plan may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
 - g) Applicant must install permanent Category I conservation easement signage along the perimeter of the conservation easements prior to the pre-construction meeting.
5. Dedicate all road rights-of-way as shown on the approved Preliminary Plan.
6. Construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan and to the design standards imposed by all applicable road codes.
7. Comply with the conditions of the Montgomery County Department of Permitting Services ("MCDPS"), stormwater management approval letter dated June 8, 2011. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.

¹ 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.

8. Comply with the conditions of the Montgomery County Department of Transportation ("MCDOT"), letter dated January 28, 2011. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. Comply with the conditions of the Maryland State Highway Administration ("MDSHA") letter dated August 24, 2011. These conditions may be amended by MDSHA, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
10. No plats may be recorded prior to certification of the site plan.
11. Final approval of the number and location of buildings, on-site parking, site circulation, sidewalks, and number of TDR's will be determined at site plan.
12. The record plat(s) must show necessary easements.
13. The record plat must contain a note that limits access to Georgia Avenue and Owens Road to approved locations only and must reference a shared ingress/egress and utility easement for any shared driveway and a public access easement on the private street for the townhomes. Any agreement for shared access that is reached with the three adjacent property owners in the Manor Oaks subdivision must be done prior to recordation of plat(s) so that the appropriate ingress/egress and utility easement can be referenced on the record plat to include the liber and folio reference.
14. 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 hardscape will be determined at the time of site plan review. Refer to the site plan 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."
15. 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.

BE IT FURTHER RESOLVED, that having given full consideration to 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, 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 Master Plan does not specifically address the Subject Property but does recommend a continuation of the RE-2/TDR zone that had been applied to it under the previous 1980 Olney Master Plan. Generally, the Master Plan supports the satellite town concept articulated for Olney by the General Plan and maintains the land use and zoning recommendations made in the 1980 Olney Master Plan for significant portions of the planning area. The Master Plan also includes as a goal, the provision of “a wide choice of housing types and neighborhoods for people of all income levels and ages at appropriate densities and locations” (p. 5).

Although the 1980 Olney Master Plan designated the Property as a receiving area for TDRs with density of four units to the acre, it recognized that maximum development at recommended TDR densities was unlikely. Under Section 59-C-1.393(b), the Planning Board waived the minimum TDRs required on the Subject Property due to its environmental constraints.

The properties that surround the Subject Property have developed, for the most part, in accordance with the Master Plan goals. The Preliminary Plan with its mix of one-family detached and one-family attached units, contributes to broadened housing choices in the area.

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

Roads and Transportation Facilities

Access to the 11 townhouses is from Georgia Avenue and two separate driveways will provide access to the five, one-family detached units on Owens Road. The Applicant explored combining the easternmost driveway on Owens Road with an existing shared driveway on the neighboring property, and MCDOT granted a waiver to allow five units on a single shared driveway. However, as of the date of the hearing, an agreement had not been reached between the adjoining property owners and the Applicant for the shared use of that existing driveway. The Preliminary Plan provides an alternative driveway that is within the Property. The Planning Board finds either driveway to adequately support the Preliminary Plan, and should the Applicant reach an agreement prior to record plat the Preliminary Plan is conditioned to allow either alternative.

A 5-foot wide sidewalk is provided along the Property's frontage on Owens Road, and an 8-foot wide asphalt shared use path is provided along Georgia Avenue within the public right-of-way, which connects with the terminus of the existing path. The Preliminary Plan provides a lead-in sidewalk from Georgia Avenue

serving the townhouse cluster and a crosswalk across Owens Road at the intersection with Georgia Avenue.

MCDOT, MDSHA, and the Montgomery County Department of Fire and Rescue Services support the right-of-way dedications and road system shown on the Preliminary Plan. The vehicular access points, internal traffic/pedestrian circulation system, and external sidewalks/shared use path have been approved by the Board as adequate to support and service the area.

Local Area Transportation Review ("LATR") – Based on the Applicant's traffic statement dated November 2, 2010, the 16-unit residential development will generate fewer than 30 peak-hour trips, and therefore, is not subject to LATR.

Policy Area Mobility Review ("PAMR") – The Subject Property is located within the Olney Policy Area where there is a 10% PAMR trip mitigation requirement according to the Subdivision Staging Policy. The Applicant must make a lump sum payment of \$23,400.00 (2 x \$11,700 = \$23,400) to mitigate two peak-hour trips representing 10% of new trips generated by the Preliminary Plan to meet PAMR requirements.

Other Public Facilities - The Property will be served by public water and sewer systems. Washington Suburban Sanitary Commission has determined that local lines exist, and they are of adequate size to serve the approved number of homes. MCFRS has determined that the Property has appropriate access for fire and rescue vehicles. Electrical and telecommunications services are also available to serve the Property. Local health clinics, police stations and fire stations are all operating within acceptable levels as established by the Subdivision Staging Policy. The Property is located in the Sherwood High School cluster. Sherwood High School, and all middle and elementary schools within this cluster are operating at acceptable capacities.

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

The size, width, shape and orientation of the lots are appropriate for the location of the subdivision, given the recommendations of the Master Plan. The Preliminary Plan shows one-family detached units along the northern and eastern Property boundaries, which is in proximity to existing one-family detached homes in the Manor Oaks subdivision. The townhouse cluster is located along the western Property boundary and is bounded by the stream valley buffer and gas line easement to the east and south, respectively. This distribution of unit types creates an adequate transition to the existing unit types in the surrounding neighborhoods.

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

A. Forest Conservation

Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") No. 420070460 for this Property, approved on September 28, 2010, identified two streams, two wetland areas, and a 100-year floodplain and associated environmental buffer on the Property. The 6.30-acre environmental buffer is entirely forested with the exception of the existing transcontinental gas line easement. The Property contains 9.23 acres of high priority forest. The Property's topography is gently sloping, with minimal steep slopes along the stream banks. There are no mapped highly erodible soils on the Property.

The Property is located within the Hawlings River watershed, a tributary to the Patuxent River, and the entire Property is in the Patuxent River Primary Management Area ("PMA"). Per the Environmental Guidelines, the zoning for this Property results in this Property being subject to the "non-conformance requirements," which consist of stormwater management and best management practices that minimize the impacts of higher density zones, particularly higher levels of imperviousness, on water quality. The stormwater management concept plan, approved by the MCDPS incorporates numerous best management practices designed to protect water quality including micro-biofilters, landscape infiltration facilities, drywells, and area of sheetflow to buffers. The final forest conservation plan is in compliance with the Montgomery County Environmental Guidelines and the Patuxent River PMA Guidelines.

As required by the County Forest Conservation Law, a final forest conservation plan was submitted with the Preliminary Plan application. The final forest conservation plan clears approximately 3.03 acres of existing forest. The remaining 6.20 acres of forest will be retained and protected in a Category I conservation easement. There is no planting requirement for this project.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to eleven Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board made the following findings necessary to grant the Variance:

- i. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Removal and disturbance to the Protected Trees are due to the constraints of the Property. The Protected Trees and their CRZs are located within the limited developable area of the Property, dictated by the existing gas line right-of-way, environmental buffer constraints, and the requirement to provide stormwater management facilities. The Applicant has reduced the number of lots and revised the locations of storm drain outfalls to avoid/minimize disturbance to forest and Protected Trees. The impacts and removal of the Protected Trees cannot be avoided. Granting a Variance to allow land disturbance within the developable portion of the site is not unique to this Applicant.

- ii. *The need for the Variance 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 existing site conditions, including the existing gas line right-of-way, environmental buffer, and the number and locations of the large trees, which significantly limits the developable area of the Subject Property.

- iii. *The need for the Variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The need for the Variance is a result of the existing site conditions; not as a result of land or building use on a neighboring property.

- iv. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Protected Trees to be removed or disturbed are not within a stream buffer, wetland, or a special protection area. A stormwater management

concept plan to assure protection of water quality emanating from the Subject Property has been approved by MCDPS.

All of the Protected Trees to be removed are located within the existing forest and their removal has been incorporated in the "forest clearing" calculations of the forest conservation plan. Therefore, the Planning Board does not require additional mitigation for the loss of these trees since they are already accounted for in the forest conservation worksheet as "forest clearing". There is some disturbance within the critical root zones of four trees; however, they will receive adequate tree protection measures. The Planning Board requires no mitigation for trees impacted but retained.

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 approval by MCDPS of the stormwater management concept plan approved June 8, 2011. The concept consists of on-site stormwater management through the use of environmental site design including micro-biofilters, landscape infiltration facilities, drywells, and areas of sheetflow to buffers.

6. Under Section 59-C-1.393(b), the Planning Board waives the minimum TDRs required on the Subject Property due to its environmental constraints.

The Preliminary Plan meets all of the requirements of the RE-2/TDR-4 under the optional method of development using TDRs. A stream bisects the Property from the northwest corner to the southeast corner and along the southern boundary line and the transcontinental gas line easement bisects the Property from east to west. The Planning Board grants a waiver of the requirement to acquire at least two-thirds of the maximum number of TDRs permitted to be transferred to the Property because the available buildable area is significantly constrained by environmental buffers associated with the stream, and by the existing gas line easements. The Applicant must acquire a total of 10 TDR's.

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

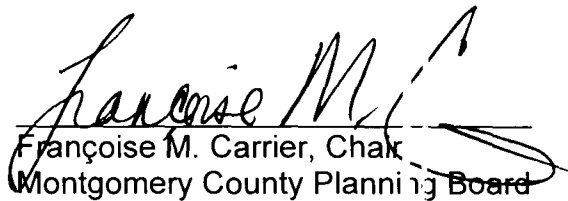
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUN 6 2012 (which is the date that this Resolution is mailed to all parties of record) and

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 Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, May 31, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board