



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

MCPB No. 12-72
Preliminary Plan No. 120110260
Country Club Village
Date of Hearing: May 10, 2012

AUG 13 2012

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 June 9, 2011, Ulrike Berger, ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 2 lots on 0.49 acres of land in the R-60 zone, located at 6311 Wynkoop Boulevard approximately 350 feet south of its intersection with Winston Lane ("Subject Property"), in the Bethesda Chevy Chase Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110260 Country Club Village ("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 April 27, 2012, setting forth its analysis and recommendation for denial of the Application ("Staff Report"); and

WHEREAS, on May 10, 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 May 10, 2012, the Planning Board voted to deny the Application on motion of Commissioner Dreyfuss seconded by Commissioner Wells-Harley with a vote of 4-0; Commissioners Carrier, Dreyfuss, Presley and Wells-Harley voting in favor, and Commissioner Anderson being absent from the meeting.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board denies Preliminary Plan No. 120110260 to create 2 lots¹ on the Subject Property.

¹ Although the Planning Board was authorized to restrict the Preliminary Plan to a single lot under Sections 50-32(a)-(d) of the Subdivision Regulations, the Applicant was unwilling to revise the Application accordingly.

Approved as to
 Legal Sufficiency:

Anna M. [Signature] 7/19/12
 MNCPPC Legal Department

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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, and upon consideration of the entire record, the Planning Board FINDS, that:

1. *The Preliminary Plan fails to substantially conform to the Master Plan as required under Section 50-35(l) of the Subdivision Regulations.*

The entire Master Plan area is in the Piedmont Region. The Subject Property lies within the area identified in the Master Plan as the Potomac Palisades, an area characterized by rolling and hilly topography with both moderately steep slopes (15 to 25 percent grade) and extremely steep slopes (over 25 percent grade). Master Plan goals include protection of the environment, character, and cultural resources of the Palisades area. The Master Plan stated the following objectives for natural resource protection in this area:

“The Master Plan recommends preserving the Potomac Palisades unique environmental features of steeply wooded slopes and vistas and the perpetuation of the open space character established in the area.”

“The established pattern of development in the Palisades has resulted from average lot sizes larger than the minimum 6,000 square feet required for the R-60 Zone. These larger lots have allowed for less intrusion on the steeply sloped and wooded topography characteristic of this area.”

The Master Plan recommends the preservation of steeply sloped areas of 25 percent and greater by strict adherence to the criteria established in the Staff Guidelines for the Protection of Slopes and Stream Valleys, prepared by the Montgomery County Planning Department (April 1983), which states:

“Due to the sensitive topography in the Palisades, it is critical to protect the steep slopes from disturbance. With development pressure mounting, slopes which were once considered “unbuildable” are now being developed. In many instances, these slopes are being cleared of vegetation and excavated, leading to further erosion and runoff. To minimize this destruction these guidelines should be strictly applied to preliminary plans of subdivision in this area. Where areas of steep slopes and mature trees exist a conservation easement may be placed to ensure the preservation of these environmentally sensitive areas in an undisturbed state. The placement of conservation easements should be done on case-by-case basis.”

The Master Plan also discussed natural features in an effort to avoid erosive conditions and protect the steep slopes of this area, recommending "the preservation, whenever possible, of wetlands and steeply sloped areas (25 percent and greater slopes) that may lie outside floodplains or stream buffers".

The topography of the Subject Property is comprised mostly of slopes exceeding 15 percent, with nearly half of the site on slopes greater than 25 percent. The soils are highly susceptible to erosion as classified in the 1995 Soil Survey of Montgomery County. Although the Master Plan recommends conservation easements as a measure to protect steep slopes, the Application does not preserve any of the onsite forest. Furthermore, properties with environmentally sensitive features trigger additional review under the Montgomery County Planning Board Environmental Guidelines, January, 2000 ("Environmental Guidelines"). The Environmental Guidelines outlined a variety of restrictions that may be required to protect the slopes and forest, including the deletion of lots and the establishment of building restriction lines.

The Board considered protection of the steepest areas of the site by limiting subdivision of the Subject Property to one lot. The Applicant could develop this Property with one lot that would place a single dwelling unit in an area of the site that would have less impact on the existing environmentally sensitive areas. One lot on the site would limit the amount of disturbance to the steep slopes and existing trees. However, the Applicant was not prepared to revise the Application accordingly. The Application failed to address and adequately protect the natural resources and environmental quality of the Palisades through any of the recommended measures. This Application neither encourages nor considers the type of environmentally sensitive development envisioned by the Master Plan.

2. *The Preliminary Plan as proposed is unsafe for development due to unprotected steep slopes and highly erodible soils.*

The majority of the Subject Property is comprised of Brinklow-Blocktown Channery silt loam; a highly erodible soil. The Property's topography is severe with approximately 48 percent of the site having slopes steeper than 25 percent, and approximately 22 percent having slopes ranging from 15-25 percent. The Application proposed subdivision into two lots, grading the steep slopes and removing all forest. The intensive grading and clearing proposed will permanently alter the topography.

Section 50-32(b) of the Subdivision Regulations states:

"Unsafe land. The Board must restrict the subdivision of any land which it finds to be unsafe for development because of possible flooding or erosion

stream action, soils, with structural limitations, unstabilized slope or fill or similar environmental or topographical.”

The Environmental Guidelines, referring to the Soil Survey of Montgomery County, Maryland identify soils with severe limitations for development as those that are located on excessive slopes with high susceptibility to erosion. The Environmental Guidelines states:

“Development should avoid areas of the site that contain soils with severe limitations. In some cases, development may be prohibited or restricted in these areas as a condition of plan approval. Restrictions can include the requirement for implementation of engineered solutions, the use of building restriction lines, restriction of housing types (such as prohibiting basements), and relocation or deletion of lots.”

Sections 50-32(c) and (d) provide additional support for the Planning Board to limit the Preliminary Plan to a single lot. One lot would have less impact on the existing environmentally sensitive areas and limit the amount of disturbance to the steep slopes and existing trees. A topographic overlay of the area reveals that other dwellings in the surrounding neighborhood were carefully sited and tucked into their sites to protect the slope and community character. Lots to the south of the Property were successfully developed through the careful placement of houses that averted cutting and removing steep, forested slopes. The Application does not follow this careful placement.

3. *The Application fails to satisfy all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features under the Environmental Guidelines.*

The Application’s failure to protect environmentally sensitive features, specifically steep slopes under the Environmental Guidelines has been addressed.

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 CRZ, requires a variance under Section 22A-12(b)(3) (“Variance”). This Application will require the removal or CRZ impact to eight Protected Trees. In accordance with Section 22A-21(a), the Applicant has requested a Variance.

The Board was unable to make the following findings necessary to grant the Variance:

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

The Board finds that the recommendations in the Master Plan for larger lots are not intended to increase neighborhood density but for protection of natural features such as steep slopes and trees. The Board finds that granting this Variance would confer a special privilege on this Applicant since other applicants that had sought to subdivide in the Palisades had significant development controls imposed in order to protect the environmental sensitive features on their properties.

- b) *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The Planning Board finds that this Variance is based on circumstances which are the result of actions undertaken by the Applicant. The Board finds that the Applicant could restrict the development to a single lot, and undertake further tree and slope protection measures to meet the requirements of the Master Plan, the Forest Conservation Law, and the Environmental Guidelines. The Board does not agree that disturbance has been minimized, that sensitive house placement was considered, or that the shorter driveways significantly reduce impacts to the erodible slopes. When comparing the lot layout with the layouts found in the rest of the community, it is apparent that other house designs and layouts worked to avoid the steep slopes to protect the integrity of the local ecology and geology.

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

The Board finds that the need to remove trees on this site was not caused by conditions or actions that have taken place on the neighboring properties.

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

The Board finds granting of this variance will cause measurable degradation in water quality. Although stormwater management will be provided for the Subject Property, the erodible soils and grade of the slopes will likely result in some sloughing.

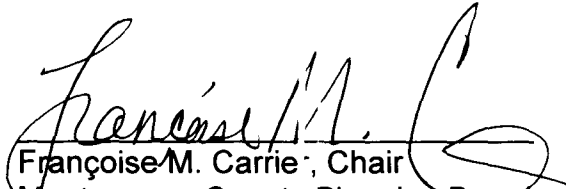
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 13 2012 (which is the date that this Resolution is mailed to all parties of record); and

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, July 26, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board