



MCPB No. 12-86  
Preliminary Plan No. 120110430  
Rolling Stone  
Date of Hearing: July 16, 2012

DEC 5 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 July 7, 2011, Bonifant Road Joint Venture ("Applicant"), filed an application for approval of a preliminary plan of subdivision to convert a 0.68 acre outlot in the R-200 zone into one (1) lot, located on the north side of Bonifant Road, approximately 1,300 feet west of the intersection with Notley Road ("Subject Property"), in the Cloverly master plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110430, Rolling Stone ("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 February 24, 2012 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions; and

WHEREAS, on March 8, 2012, the Planning Board held a public hearing on the Application ("First Hearing"), and at the First Hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the First Hearing the Planning Board considered the testimony from an adjacent Property owner that, as an affected downstream property owner, they had not been provided an adequate opportunity to meet with staff of the Montgomery County Department of Permitting Services to discuss their concerns about the Preliminary Plan, and

WHEREAS, at the First Hearing, the Planning Board had questions regarding the stormwater management concept that had been approved by the Montgomery County

Approved as to  
Legal Sufficiency:

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Department of Permitting Services for the Application, and specifically requested information on how the stormwater concept would address or impact adjacent property owners, and

WHEREAS, at the First Hearing the Planning Board was not able to conclude that the Application would adequately protect the health, safety, comfort or welfare of local property owners without communicating directly with staff of Montgomery County Department of Permitting Services, and

WHEREAS, on March 8, 2012, the Planning Board accepted the Applicant's request to defer action on the Application to allow the affected downstream property owners adequate time to meet with Montgomery County Department of Permitting Services staff and to reconvene the public hearing at such a time after the meeting had occurred, and

WHEREAS, after further review and analysis by Staff and staff of other appropriate governmental agencies, Staff issued a supplement to the February 24, 2012 memorandum, dated June 29, 2012, ("Staff Report"), and

WHEREAS, on July 16 2012, the Planning Board held a second public hearing on the Application, and at the hearing the Planning Board heard testimony, including oral testimony from staff of Montgomery County Department of Permitting Services regarding the meetings with adjacent property owners and any recommendations to address their issues, and received evidence submitted for the record on the Application; and

WHEREAS, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120110430 to create one (1) lot on the Subject Property, subject to the following conditions:<sup>1</sup>

1. Compliance with the conditions of approval for the Preliminary Forest Conservation Plan dated June 14, 2012 Conditions are as follows:

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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.

- a. Approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan prior to any clearing, grading or demolition on the site.
  - b. The Final Sediment Control Plan must be consistent with the final limit of disturbance as approved by M-NCPPC Planning Department Staff and as shown on the approved Final Forest Conservation Plan.
  - c. M-NCPPC Planning Department Staff review and approval of a Certificate of Compliance Agreement for use of an approved offsite forest mitigation bank to satisfy the forest mitigation planting requirements prior to any clearing, grading or demolition on the site.
2. 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 May 24, 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 – Stormwater Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated December 30, 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.
4. The Planning Board has accepted the recommendations of the Montgomery County Department of Fire and Rescue Service ("MCFRS") in its letter dated December 20, 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 MCFRS provided that the amendments do not conflict with other conditions of the Preliminary Plan.
5. Prior to issuance of a building permit, the Applicant must make a school facilities payment to the MCDPS at the elementary school level.
6. Any building permit for a one-family residence that is issued pursuant to this Preliminary Plan must show that the building is to be built in substantially the same location and orientation as shown on the Certified Preliminary Plan.
7. 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.
8. The new record plat must show necessary easements.

9. The Applicant must work with MCDOT to attempt to maximize the separation between the LOD for the new storm drain pipe and the western property line to no less than 5 feet.

BE IT FURTHER RESOLVED, that, having considered the recommendations and findings of its Staff as presented at both hearings 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 conversion of Outlot A, Rolling Stone into a buildable lot is in substantial conformance with the policies set forth in the Cloverly Master Plan to maintain one-family residential development in the area. The Property is located within the Suburban Communities section of the Cloverly Master Plan in the Naples Manor and Stonegate Neighborhood, which recommends retaining the existing residential zoning and development patterns. Outlot A is part of a six lot subdivision created by Preliminary Plan No. 11986082 which resulted in five buildable lots being recorded by plat and the sixth being recorded as an outlot. The use of this Property for residential purposes is in conformance with the Cloverly Master Plan.

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

The lot does not generate 30 or more vehicle trips during the morning or evening peak-hours; therefore, the Application is not subject to a Local Area Transportation Review (LATR). The Policy Area Mobility Requirement (PAMR) guidelines for the Cloverly policy area require no mitigation of new peak hour trips. The Application satisfies LATR and PAMR requirements.

The lot has adequate access to a public street. No additional dedication for the public right-of-way is required. The existing shared driveway will be widened to 22 feet wide from the access point at Bonifant Road, north to a point just beyond the driveway for the lot to accommodate the Fire Marshal's comments pertaining to the maneuverability of fire equipment.

All other public facilities and services are available and will be adequate to serve the lot. Water and sewer mains abut the Property in Bonifant Road. The Washington Suburban Sanitary Commission has determined that local transmission and treatment capacity is adequate to serve the lot. All utilities,

including Verizon, Washington Gas, PEPCO, and cable providers have indicated that local service is available and adequate. 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 currently in effect. The Application is within the Paint Branch High School cluster where there is a School Facilities Payment required at the elementary school level. This payment must be made at the time of building permit.

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

The Application was reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The size, width, shape and orientation of the lot is appropriate for the location of the subdivision. The lot meets all other requirements of the Subdivision Regulations, including the requirements for access, frontage, adequate public facilities, and for the protection of sensitive environmental features.

The lot meets the dimensional requirements of the R-200 zone as specified in the Zoning Ordinance including area, frontage, width, and setbacks. The Application has been reviewed by MCDPS - Zoning who recommended approval of the Preliminary Plan.

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

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan (FCP) complies with the requirements of the Forest Conservation Law. The FCP shows removal of all of the existing 0.51 acres of forest onsite and an additional 0.08 acres of offsite disturbance for the construction of a storm drain along Bonifant Road and for the stabilization measures in the ephemeral channel located within the storm drain easement along the north boundary of the Property. To accommodate the removal of forest required to develop the Property, there is a 0.39 acre forest planting requirement that will be met in an offsite forest mitigation bank.

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 five Protected Trees. In accordance with Section 22A-21(a), the Applicant 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:

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

The variance is required to allow reasonable development of the Property. The Property is fairly narrow in its configuration, is almost entirely forested, and contains numerous large trees located throughout the Property. These trees and their critical root zones lie within the developable area of the site. One of the three trees proposed to be removed was determined to be in poor condition and is currently a hazard. Granting a variance request to allow land disturbance within the developable portion of the site is not unique to this Applicant. The proposed development activities that result in the impacts to trees subject to the variance requirement are within the existing developed area of the site. The Board determined that the removal and impacts to the trees subject to the variance requirement cannot be avoided and therefore, that granting the variance is not a special privilege that would be denied to other applicants.

2. *The need for the variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The variance is based upon existing site conditions, including the existing storm drain outfall and drainage swale, and the number and locations of the large trees.

3. *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 variance is a result of the existing and proposed site design and layout on the Subject Property, and not a result of land or building use on a neighboring property.

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

The variance will not result in the removal of, or impacts to any trees located within the environmental buffer or wetland. The Montgomery County Department of Permitting Services has found the stormwater management concept for the project to be acceptable and conditionally approved it in a letter dated, May 24, 2011. The stormwater management concept plan addresses stormwater management for the proposed house as well as stabilization of eroding channels. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

The Planning Board does not recommend mitigation for any tree removal or impact.

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

This finding is based in part upon the determination by MCDPS that the stormwater management concept plan meets applicable standards. The stormwater management concept was approved by the Montgomery County Department of Permitting Services on May 24th, 2011.

The Planning Board was informed that the affected downstream property owners who testified at the March 8, 2012 hearing had been able to meet with MCDPS staff to discuss their concerns. MCDPS staff was present at the hearing and testified that the development of the Property offers the County an opportunity to require the Applicant to construct proper controls for the water released from a pipe coming from under Bonifant Road, and to address the erosion that is now occurring within the storm drain easement between the Property and Lot 24. MCDPS staff explained how the water from the pipe under Bonifant Road will be piped down the hill through the Property to a plunge pool/stilling basin on the Property in which the water's velocity is slowed and released at a non-erosive rate into the drainage channel. MCDPS staff also testified that the Applicant will be required to place rip-rap stone within the eroding drainage channel to stabilize the channel walls and prevent further erosion. MCDPS staff acknowledged that erosion of the channel further downstream is a continuing problem, however; the current stormwater regulations do not provide MCDPS with the authority to require the Applicant to perform offsite work to address what MCDPS staff

believes to be an area-wide problem caused by uphill properties. The Planning Board was satisfied that the Applicant complied with all applicable County requirements for stormwater management and that there was nothing additional the Applicant could do to fix downstream erosion problems. The Application has met all applicable stormwater requirements; the concept approved on May 24, 2011 fully complies with Chapter 19 of the County Code.

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)), 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

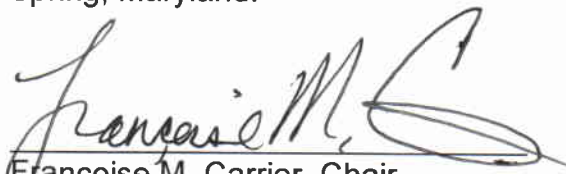
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 5 2012 (which is the date that this Resolution is mailed to all parties of record); and

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).

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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 Commissioner Dreyfuss, 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, November 29, 2012, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board