



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

JUL 31 2012

MCPB No. 12-102
Preliminary Plan No. 120110420
Great Falls Estates (Trone Property)
Date of Hearing: July 26, 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 13, 2011, June Trone, ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create two lots on 4.82 acres of land in the RE-2 zone, located at 11417 Skipwith Land and 11501 Skipwith Lane ("Subject Property"), in the Potomac Subregion Master Plan ("Master Plan") area; and

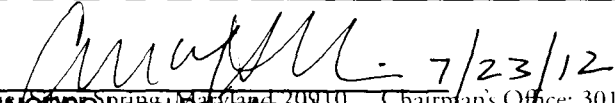
WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110420, Great Falls Estates (Trone Property) ("Preliminary Plan" or "Application"); and

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 July 16, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 26, 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, at the hearing, the Planning Board approved the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120110420 to create two lots on the Subject Property, subject to

Approved as to
Legal Sufficiency:  7/23/12
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the following conditions:¹

- 1) Approval under this Preliminary Plan is limited to two one family residential lots.
- 2) Prior to issuance of a sediment and erosion control permit, the Applicant must receive approval of a final forest conservation plan consistent with the preliminary forest conservation plan approval and Section 22A.00.01 09(B) of the Forest Conservation Regulations.
- 3) Prior to any land disturbance for the driveway construction, the Applicant must identify the size and condition of each of the eight Protected Trees located outside of the reserved septic fields. Each of those eight Protected Trees are to be tagged and an ISA certified arborist tree assessment with tree-specific information is to be performed and submitted to Staff. If any of those eight Protected Trees dies or has significant health decline within five (5) years from the initiation of clearing or grading activities, the Applicant must replace the tree loss on a one-inch to one-inch caliper basis within the same watershed (Potomac River Direct).
- 4) The Applicant must meet all of the Variance and proffered mitigation planting requirements (Variance - 46.5 inches of trees, or sixteen 3" DBH native canopy trees to mitigate the 186 caliper inches of the five Protected Trees counted as removed; Proffered - 15.5 inches of trees, or six 3" DBH native canopy trees to mitigate the 62 caliper inches of the two trees proffered for replacement), and replacement for any of the eight Protected Trees impacted as described in condition #3 within the same watershed (Potomac River Direct).
- 5) The Applicant must provide a two-year maintenance period on all planted material required under condition #4 by entry into maintenance and management agreement approved by Staff.
- 6) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated October 12, 2011, and does hereby incorporate them as conditions of the Preliminary Plan

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.

approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the MCDOT letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

- 7) 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 October 28, 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.
- 8) The record plat must show necessary easements.

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, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The Master Plan does not contain any site-specific recommendations for the Subject Property; however, the Master Plan confirms the existing RE-2 zoning for all properties along Skipwith Lane including the Subject Property. The lots approved under this Application comply with the RE-2 zoning standards and the use of the Subject Property for one-family homes is in substantial conformance with the Master Plan.

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

A. Roads and Transportation Facilities

The Preliminary Plan will not generate additional peak hour trips and therefore is not subject to Local Area Transportation Review or Policy Area Mobility Review. Both lots retain their existing access locations on Skipwith Lane and no additional right-of-way dedication is required. Sidewalks are not required in this low density zone as pedestrians can be safely accommodated within the street and cul-de-

sac pavement given the low traffic volumes. The required public utility easements will be shown on the new record plat.

B. Other Public Facilities and Services

The Subject Property will continue to be served by public water and previously approved individual septic systems. All other required public facilities and utilities are already provided to the Subject Property and continue to be adequate. The Montgomery County Fire and Rescue Services reviewed the Application and did not comment other than to indicate that they have no review authority for single driveways that serve a single residence. The Application does not propose any additional homes; therefore, there is no School Facility Payment.

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

This Application is in compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations, including the requirements for resubdivision as discussed below.

The lots were reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

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

A. Forest Conservation

There are no environmental buffers, streams, or wetlands on the Subject Property in accordance with the approved Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #420110950) approved on March 29, 2011. The Subject Property is located in the Potomac River Direct watershed. The Board finds that as conditioned, the forest conservation plan complies with the requirements of the forest conservation law.

The forest conservation plan shows 1.88 acres of forest clearing and no forest retention. However, only 0.22 acres is to be removed at this time. The remaining 1.66 acres of forest, although not being physically cleared, is counted as cleared since it is not being protected by a conservation easement. The forest clearing generates a 2.45 acre reforestation planting requirement. The Applicant will meet the entire planting requirement off-site in the Potomac River Direct watershed.

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 a Protected Tree(s), 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 CRZ impact to thirteen 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/or 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:

The Protected Trees and their CRZs lie within the developable area of the Property, and a Variance would be required for either new driveway construction, or reconfiguration of the existing driveway.

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

The dwelling on the Subject Property is in the last phase of an extensive and complex renovation project, nearing 90% completion. In order to expedite construction of the renovations, the Applicant submitted for permits under a forest conservation exemption for the existing lot, with the intention of later going through the preliminary plan process with forest conservation plan to incorporate property to be acquired at the front of the site. MCDPS approved a stormwater concept² under the exemption. Although the Applicant had planned to relocate the driveway anyway, retention of the existing driveway is no longer an option for the Applicant to avoid a Variance. First, while the renovation was

² Erosion and sediment control permit incorporated the stormwater management concept.

progressing through construction, there were changes in the stormwater management law, and the revised stormwater management concept necessitates relocation of the existing driveway to accommodate the enlarged the stormwater management facilities. A Variance would be required whether to reuse the existing driveway reconfigured to accommodate the stormwater management facilities, or to replace the driveway as shown on the Preliminary Plan.

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

The Variance is a result of the proposed development and not a result of land or building use on a neighboring property.

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

The Variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees are not within a stream buffer, wetland, or a special protection area. A Stormwater Management Concept Plan has been approved by the MCDPS – Stormwater Management Section.

Forest Conservation Variance Mitigation

The Planning Board requires mitigation for any Protected Tree that is not located within existing forest, which is to be physically removed or counted as cleared. This Application has Protected Trees within the septic easements for adjoining lots, and therefore, they must be counted as removed since that septic field could be enlarged at any time. The septic reserve areas are not covered by the worksheet calculations because they are outside the established forest conservation plan boundaries.

Mitigation is required at a rate that approximates the form and function of the Protected Trees that are removed or deemed removed. For the loss of the five Protected Trees, the Board requires a replacement ratio of 1" DBH for every 4" DBH removed, using replacement tree stock that is 2" to 3" DBH. This results in a minimum of 46.5 inches of trees or, sixteen 3" DBH native canopy trees to mitigate the 186 caliper inches of the Protected Trees counted as removed. Additionally, the Applicant proffered to replace two trees that would have qualified as Protected Trees, which were removed from the Subject Property during the period in which the Applicant was redeveloping the Subject Property

under a forest conservation exemption approved by Staff in July 2010. This results in an additional 15.5 inches of trees, or six additional 3" DBH native canopy trees for a total mitigation of 248 caliper inches replaced.

There is very little unencumbered and/or open area remaining on the Subject Property to accommodate on-site plantings of the mitigation stock. The Board allows the Applicant meet all of the planting requirements for this Variance off-site but within the same watershed (Potomac River Direct).

5. *All storm water 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 approved on October 28, 2011, meets applicable standards. Environmental Site Design and required stormwater management goals have been integrated on-site using techniques via the use of micro bio filtration, porous pavement, and non-structural techniques.

6. *The approved lots are of the same character with respect to other lots in the neighborhood (as delineated in the Staff Report, "Neighborhood"). The approved lots have been found to share similar characteristics when compared to the street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing Neighborhood.*

Frontage: Lot frontages in the Neighborhood range from 27 feet to 816 feet and are grouped into three categories: 13 lots have frontages between 27 feet to 198 feet; 13 lots have frontages between 220 feet and 283 feet and 10 lots have frontage exceeding 300 feet, ranging from 300 feet to 816 feet. Thus, there is a wide and well dispersed range of lot frontages for the Neighborhood. Lot A, (Trone Lot) as identified for purposes of the resubdivision analysis, has 103.54 feet of frontage and Lot B (Vessali Lot), also identified as such for purposes of the resubdivision analysis, has 391.36 feet of frontage. The frontages for both lots are well within the overall range of lot frontages (27 to 816 feet). Each lot is also well within one of the three groupings identified above. Therefore, both lots are of the same character as existing lots in the Neighborhood with respect to lot frontage.

Alignment: In terms of alignment, 22 of the 34 lot lots in the Neighborhood align perpendicularly to the street line in either a radial or standard perpendicular fashion. The remaining 14 lots are irregular in that they align to the street line with one non-radial side lot line. The alignment of Lot A and Lot B to Skipwith Lane is perpendicular. Both lots are of the same character as existing lots with respect to the alignment criterion.

Size: Lot sizes in the Neighborhood range from 2.00 acres to 6.50 acres. 20 lots are smaller than 2.5 acres and 14 lots are larger than 2.5 acres. Lot A is 2.81 acres in size and within the range of a sizeable group of lots within the Neighborhood over 2.5 acres in size. Lot B is 2.02 acres and very similar in size to 12 other lots that are also under 2.1 acres. The size of the both lots is in character with the existing lots in the Neighborhood.

Shape: With respect to shape, 24 lots in the Neighborhood have an irregular shape and 10 lots resemble either a rectangle or trapezoid. There is no established lot pattern within the Neighborhood and the lot shapes vary considerably. Both of the new lots are irregularly shaped which is a common characteristic of most of the lots in the Neighborhood.

Width: Lot width is measured at the front building line ("BFL"). Lot widths also vary considerably in the Neighborhood ranging from 25 feet to 654 feet. Sixteen of the lots are at or less than 200 feet in width at the BRL and 17 are greater than 200 feet in width at the BRL. Lot A and Lot B have widths of 93 feet and 370 feet, respectively and are within one of the two ranges described above. Therefore, they share the same characteristics with all of the lots in the Neighborhood with respect to width.

Area: The area of a lot is the area that is available for development and excludes the area within the front, rear and side yard setbacks established by the RE-2 zone. Existing lots in the Neighborhood have areas that range from 44,134 square feet to 210,574 square feet. Lot A has a buildable area that is 66,190 square feet and Lot B has a buildable area that is 54,844 square feet. Both are well within the area range for the Neighborhood lots and therefore, of the same character with respect to area.

Suitability for Residential Use: Both Lot A and Lot B are improved with detached, one-family homes and there are no known limitations that would prohibit additional development or redevelopment. The lots are zoned residential and the land is suitable for residential use.

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

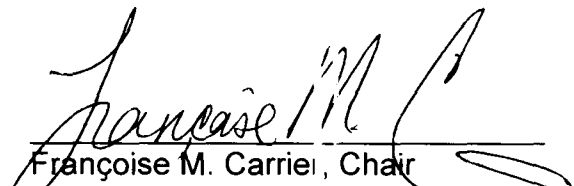
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 31 2012 (which is the date that this Resolution is mailed to all parties of record); and

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 Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, July 26, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board