



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

MAY 29 2013

MCPB No. 13-73
Pre-Preliminary Plan No. 720110080
Hobson's Choice
Date of Hearing: May 16, 2013

RESOLUTION

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

WHEREAS, on March 15, 2011, Walter Pritchard ("Applicant"), filed an application for approval of a pre-preliminary plan of subdivision of property to allow one lot on 5.0 acres of land in the RDT zone to be recorded by record plat under the minor subdivision process on property located at 21710 Peach Tree Road ("Subject Property"), in the Poolesville Policy Area and the Preservation of Agricultural and Rural Open Space ("AROS") master plan ("Master Plan") area; and

WHEREAS, Applicant's pre-preliminary plan application was designated Pre-Preliminary Plan No.720110080, Hobson's Choice ("Pre-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 May 3, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 16, 2013, 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 voted to approve the Application, with a waiver of Subdivision Regulation Section 50-30(c)(1), subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Pre-Preliminary Plan No. 720110080 to create one (1) lot on the Subject Property, pursuant to Section 50-35A(a)(8) of the Montgomery County Subdivision Regulations

Approved as to
Legal Sufficiency:

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M-NCPPC Legal Department
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subject to the following conditions:¹

1. This Pre-Preliminary Plan is limited to one lot for a one-family dwelling unit.
2. The certified Pre-Preliminary Plan must contain the following note:
Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprint shown on the Pre-Preliminary Plan is illustrative. The final locations of the building will be determined at the time of issuance of building permit. Please refer to the zoning data table for development standards such as setbacks and building restriction lines for the lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated January 13, 2013, and hereby incorporates them as conditions of approval. 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 Pre-Preliminary Plan approval.
4. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") Well and Septic Section in its letter dated January 13, 2013, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS provided that the amendments do not conflict with other conditions of the Pre-Preliminary Plan approval.
5. The Planning Board has accepted the recommendations of the Montgomery County Fire Marshall in its memo dated December 30, 2011, and hereby incorporates them as conditions of approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the memo, which may be amended by the Fire Marshall provided that the amendments do not conflict with other conditions of the Pre-Preliminary Plan approval.
6. The Applicant must dedicate the right-of-way as shown on the Certified Pre-Preliminary Plan and reflect the dedication on the record plat.
7. The Applicant must record a Public Improvement Easement as shown on the Certified Pre-Preliminary Plan and reflect the easement on the record plat.
8. The record plat must show other necessary easements.
9. The Applicant must include with the submission of the record plat an affidavit to verify the availability of a TDR for the lot shown on the plat, and include a note referencing the affidavit on the record plat.
10. The record plat must contain the following note:

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.

Agriculture is the preferred use in the Rural Density Transfer Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery, and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone.

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 (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Pre-Preliminary Plan substantially conforms to the AROS Master Plan and the Rustic Roads Functional Master Plan*

The Subject Property is within the Rural Density Transfer Zone of the AROS Master Plan. The intent of the RDT Zone is to promote agriculture as the primary land use by providing large areas of contiguous properties suitable for agriculture and related uses, which is supported by the transfer of Transferable Development Rights to designated receiving areas. Loss of productive farmland is a critical issue that the Master Plan attempts to address.

Given that the 5.2 acre parcel pre-existed the adoption of the AROS Master Plan, it was not part of the critical mass of farmland which the AROS plan attempts to protect from fragmentation. Since the Subject Property once had a house located on it, the Subject Property likely served as a small farmstead and perhaps as a residence for a person(s) engaged in agricultural activities in the area. The house was removed many years ago due to neglect; however, the barn and fencing remain in remarkably good condition having been maintained by the Applicant. This subdivision re-establishes the historic use of the Subject Property as a residence and the size of the proposed lot provides an opportunity for small scale agriculture such as pasturing of livestock or growing a small crop to continue.

The Rustic Roads Functional Master Plan ("RRFMP") does not specify a viewshed or other feature on the Subject Property that must be considered as part of this review. The RRFMP does recommend a 70 foot wide right-of-way for Peach Tree Road to be addressed at the time of plan approval and record plat.

The Planning Board considered a Subdivision Regulation Waiver as part of the review of the Application to reduce the area of the right-of-way dedication for Peach Tree Road and to place a Public Improvement Easement ("PIE") over the area that would have been dedicated. The PIE will serve the same function as the dedication of the right-of-way, giving MCDOT the ability to make any necessary improvements to the road surface as if it were dedicated. With the

approval of the Subdivision Regulations Waiver as proposed and conditioned, the Application is in substantial conformance with the RRFMP.

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

The Application was reviewed by MCDOT for transportation adequacy, MCDPS – Well and Septic for water supply and sewage disposal adequacy, and MCFRS for adequacy of fire access. All agencies recommended approval of the Application.

The Application accommodates a public utility easement to be shown on the record plat; all local utility providers recommended approval of the Application.

- 3. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

The orientation of the lot keeps the development activity up along the street and away from the critical mass of farmland located further from the roads in this area of the County. The lot is of the appropriate size and width to allow a house to be built and for some agricultural activity to continue on the Subject Property in accordance with AROS Master Plan recommendations.

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

Section 50-35A(a)(8) requires that forest conservation requirements be satisfied prior to recordation of the record plat.

- 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 Application is not subject to a preliminary plan approval; therefore, Chapter 19 of the County Code requires that stormwater management must be addressed for any development of this Subject Property no later than at the time of the building permit application.

- 6. Subdivision Regulations Waiver*

Subdivision Regulation Section 50-30 - *Public sites and adequate open spaces* specifies the circumstances by which adequate areas for parks, playgrounds, schools, recreation and roads are determined and acquired. Section 50-30(c)(1) instructs the Board to require dedication to public use of roads, whether existing or planned, in order to locate such road within the public domain. 50-30(c)(1) states:

(c) *Adequate open space for traffic, coordination of roads, utilities and storm drainage.*

(1) Roads.

In its consideration of the approval of a proposed subdivision, resubdivision or of a preliminary plan of subdivision, or resubdivision, the board shall require the dedication to public use of adequate open spaces for traffic and the coordination of roads within the subdivision with other existing, planned or platted roads, or with other feature of the district, or with the commission's general plan or with any road plan adopted or approved by the commission as a part of the commission's general plan. Such dedication to public use shall be to the full extent of any and all rights-of-way for all roads, street and highways, including widening of any existing street, determined to be necessary and proper and such as would be required by reason of the maximum utilization and development of the subject property in its present zone classification or that higher use shown on any adopted or approved master plan of the applicable jurisdiction.

Requiring dedication of the full right-of-way would prevent this lot from meeting the 5-acre zoning minimum. Specifically, after dedication of the 70 foot wide right-of-way for Peach Tree Road, the remaining land area of the Subject Property would be approximately 4.7 acres, which is less than the minimum lot size required by the Section 59-C-9.74(b)(2) of the Zoning Ordinance. As discussed in the Staff Report, Section 59-C-9.74(b)(2) allows parcels that were created by deed prior to the adoption of the RDT Zone to be exempt from the area and dimension requirements of the RDT Zone, but they must meet the requirements of the zone applicable to them before their classification in the RDT Zone. For this Application, the prior zone was the Rural Zone, which required a minimum lot size of 5.0 acres. The parcel was created by a deed dated February 13, 1979, and the RDT zone was applied to the Subject Property on January 6, 1981.

The Applicant contends that full dedication to the extent recommended by the RRFMP would create a serious hardship because the resulting lot size would not be able to meet the zoning requirements of Section 59-C-9.74(b)(2), and, therefore, could not be recorded as a lot. The Applicant requested a waiver of Section 50-30(c)(1) to allow for a dedication of Peach Tree Road that is less than that required by the RRFMP. Under the waiver proposal, the Applicant would be able to provide approximately 0.217 acres of dedication or a strip of land 24.5 feet wide and would grant a PIE to the County over the remaining area that would have been dedicated under the full width dedication requirements. The combination of the dedicated area and the PIE would include the road pavement and an area 35 feet from the pavement centerline within the lot. MCDOT supports the PIE. The PIE affords the County the same level of access and maintenance capabilities that would be provided by dedication. The area of the PIE remains with the resulting recorded lot but does not reduce its area. The lot remains above the 5.0 acre zoning threshold.

The Planning Board is authorized to grant a waiver under Section 50-38(a)(1) of the Subdivision Regulations, which states:

The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.

The Planning Board finds that full dedication of the 70-foot wide right-of-way creates a practical difficulty that prevents this Application from fully complying with the requirements of Chapter 50. Dedication of more than 0.217 acres prevents the recordation of the Subject Property as a buildable lot thereby eliminating the development potential on this Subject Property. The PIE will function in much the same way as dedication and has been approved by MCDOT.

The Planning Board finds that practical difficulties exist that prevent full compliance with the Subdivision Regulations. The waiver is the minimum necessary to provide relief from the requirements of Chapter 50 to allow this Subject Property to be platted. The waiver is not inconsistent with the objectives of the General Plan, the AROS Plan and the RRFMP and the waiver is not adverse to the public interest because the PIE provides the same function as would full dedication.

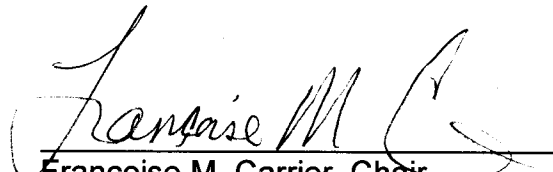
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 29 2013 (which is the date that this Resolution is mailed to all parties of record); and

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 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, May 16, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board