



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

AUG 1 2013

MCPB No. 13-116
Preliminary Plan No. 120110210
Barton Property
Date of Hearing: July 25, 2013

RESOLUTION

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

WHEREAS, on June 28, 2012, Teresa & Mitra Ramson ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 2.84 acres of land in the R-200 zone, located on the south side of Brooke Knolls Road, opposite the intersection with Barton Manor Lane ("Subject Property"), in the Rural East Policy Area, Upper Rock Creek Area Master Plan ("Master Plan") area; and

WHEREAS, the application was designated Preliminary Plan No. 120110210, Barton 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 11, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 25, 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, subject to certain conditions, by the vote as certified below;

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120110210 to create one lot on the Subject Property, subject to

Approved as to
Legal Sufficiency:


8/8/13 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
M-NCPPC Legal Department
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

the following conditions:¹

1. Approval under this Preliminary Plan is limited to one lot for one dwelling unit.
2. The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan no. 120110210, approved as part of this Preliminary Plan:
 - a. A Final Forest Conservation Plan must be approved prior to recordation of the plat and address the following conditions:
 - i. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
 - ii. Mitigation for the removal of tree ST-1 (34-inch DBH black walnut) in the form of three native canopy trees with a minimum size of three inches in diameter at breast height. The trees must be planted on the Subject Property, outside of any rights-of-way, or utility easements, including stormwater management easements.
 - iii. Tree protection measures must be shown on the plan for existing trees located along the perimeter of the Subject Property and/or adjacent properties, which currently serve as hedgerows and visual screens between the Subject Property and the adjoining properties.
 - b. Prior to land disturbing activities, the Applicant must obtain Staff approval of a Certificate of Compliance Agreement for the offsite forest planting requirement. The offsite forest planting requirement must be met within the Upper Rock Creek Special Protection Area or within the Upper Rock Creek watershed.
3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated July 11, 2013, 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 approval.
4. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
5. The Planning Board approves the Special Protection Area Water Quality Plan. The Planning Board accepts the recommendations of the Montgomery County

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.

Department of Permitting Service ("MCDPS") – Water Resources Section Special Protection Area Water Quality Plan letter dated April 25, 2013, and hereby incorporates 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 – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

6. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Well & Septic Section in its letter dated March 14, 2013, and hereby incorporates 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 – Well & Septic Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
7. 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 issuance of building permit(s) [or] site plan approval. Please refer to the 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.
8. Record plat must show necessary easements.
9. The Adequate Public Facilities (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
10. The Subject Property is within the Gaithersburg School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the elementary school level at the single-family detached unit rate for each unit for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

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 Preliminary Plan substantially conforms to the Master Plan.

The Application substantially conforms to the recommendations of the Upper Rock Creek Area Master Plan. The Master Plan makes no specific recommendations for this Property, but sets as a general goal to maintain this portion of the Upper Rock Creek watershed as a low density housing resource in order to minimize impacts to water quality and to allow residential development that is compatible with the existing low density development patterns. In order to maintain low densities, the Master Plan recommends that the Subject Property not be included in the sewer envelope and that it rely on septic, as has the surrounding community. The Master Plan also recommends that much of the Upper Rock Creek watershed, including the Subject Property, be designated as a Special Protection Area ("SPA"). The Preliminary Plan has minimized imperviousness levels to the extent possible by moving the house location as close as possible to the septic system in order to shorten the length of the new driveway. Further reductions of imperviousness are not practical. The resulting lot at 2.84 acres is consistent with the low density character of the surrounding community and supports the goals of the Master Plan.

As part of the requirements of the Special Protection Area Law, a Special Protection Area ("SPA") Water Quality Plan must be reviewed in conjunction with this Preliminary Plan. Under the provision of the law, MCDPS and the Planning Board have different responsibilities in the review of a water quality plan. MCDPS has reviewed and conditionally approved the elements of the Preliminary/Final Water Quality Plan under its purview. As part of this Application, the Planning Board determined that site imperviousness limits, environmental buffer protection, and SPA forest conservation and planting requirements, have been satisfied. The Subject Property is not within or adjacent to any environmental buffers. Per Chapter 59-C-18.242, the Application is not subject to the impervious limits outlined in the SPA Overlay Zone since the Subject Property will not be served by public sewer. The Applicant has minimized impervious limits to the greatest extent possible. The house location was determined based on existing site features including the 100 year dam breach area and the suitable septic locations. The resulting 8.9 percent impervious area is below the 15.4 percent impervious average found on other R-200 Zoned properties.

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

Roads and Transportation Facilities

Vehicle and pedestrian access for the lot is adequate. All necessary road dedication along the Subject Property frontage has been previously granted as part of the 1989 Record Plat for Brooke Grove. There are no existing sidewalks along Brooke Knolls Road and given that the Subject Property only has 25 feet of frontage in which to

build a sidewalk, they are not part of this Application. The lot generates less than 30 vehicle trips during the morning and evening peak-hours. Therefore, the Application is not subject to Local Area Transportation Review. The Subject Property is located in the Rural East Policy area Transportation Policy Area Review, which is exempt from review in the 2012-2016 Subdivision Staging Policy.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the proposed dwelling unit. Although the Subject Property is located in the R-200 Zone, it is not within the recommended sewer or water envelope and is appropriately in the W6 and S6 water and sewer categories. An on-site well and septic system was approved by the MCDPS - Water Resources Section on March 14, 2013. Other utilities including electric and telecommunications services are adequate to serve the Subject Property. The Application has been reviewed by the Montgomery County Department of Fire and Rescue Service who have determined that the Subject Property has adequate access for fire and rescue vehicles. Other public facilities and service, such police stations, and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect. The Application is not within a school moratorium area but is subject to payment of School Facilities Payment at the elementary school level (Gaithersburg cluster).

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.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections, including the requirements for resubdivision. The lot size, width, shape and orientation are appropriate for the location of the subdivision in the Upper Rock Creek Master Plan. The dimensional characteristics and location of the lot support the Master Plan goal to maintain low density residential development in this area.

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

A. Forest Conservation

As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. There are no streams, wetlands, 100-year floodplains or environmental buffers on or adjacent to the Subject Property. The Subject Property does not contain any forest, steep slopes or highly

erodible soils. An onsite 34 inch diameter at breast height ("DBH") black walnut was the only tree identified with a DBH of 24 inches or greater located on or within 100 feet of the Subject Property. The preliminary Forest Conservation Plan worksheet identifies a 0.43-acre afforestation requirement for the Subject Property that is to be met offsite.

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 requires the removal of one Protected Tree, a 34-inch DBH black walnut is in moderate condition and is noted as ST-1 on the preliminary Forest Conservation Plan, and is located in the southeastern corner of the Subject Property. The Board finds that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance. Development on the Subject Property is dictated by the existing conditions on the site, development standards of the R-200 zone, and County agency requirements. The location of the construction activities for the proposed single family home is dictated by several factors. There is an existing offsite stormwater management pond that outfalls onto the northern portion of the Subject Property into a swale. There is a 100-year dam breach area associated with the pond and outfall area that covers the northern half of the Subject Property, making that portion of the Subject Property undevelopable. The Subject Property will be served by private well and septic and the location of these features is dictated by the results of soil testing, which on this Property were found to be acceptable only on the central portion of the Subject Property. The septic field requires adequate space for the initial and three reserve fields set back a minimum of 100 feet from any well. Building restriction lines on this triangular shaped lot, further limit the area available for construction of the residence. The one Protected Tree is located within the area that remains available for construction of the residence, and the grading necessary to locate a house in this buildable area will impact the Protected Tree to an extent that warrants the trees removal.

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.*

Granting the variance will not confer a special privilege on the Applicant as the removal of the specified tree is due to the development of the Property. The Property contains numerous constraints, which limit the developable area of the site. Granting a variance request to allow land disturbance within the developable portion of the site is not unique to this Applicant, and does not confer on the Applicant a special privilege that would be denied to other applicants.

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

The need for the variance is not based on conditions or circumstances that are the result of actions by the Applicant. The requested variance is based upon existing site conditions and the development standards of the R-200 zone.

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 need for a variance is a result of the existing conditions, and the proposed site design and layout on the Subject Property.

4. *Granting the 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. Onsite mitigation for the removal of the tree will replace the functions currently provided by the subject tree. In addition, MCDPS has found the stormwater management concept for the Application to be acceptable.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1 inch caliper for every 4 inch DBH removed. Therefore the removal of the 34-inch Protected Tree must be provided in the form of three native canopy trees with a minimum size of three inches, DBH.

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.*

A stormwater management concept was approved for the Subject Property as part of the water quality approval issued by MCDPS on April 25, 2013. The concept proposes to meet stormwater management goals through a use of dry wells, gravel trench wells and non-rooftop disconnections.

6. *The approved lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood (as delineated in the Staff Report).*

Frontage: The lot is of the same character as existing lots in the neighborhood with respect to lot frontage. The proposed frontage is just over 25 feet, which is the same as two other adjacent properties in the identified Neighborhood.

Alignment: The lot is of the same character as existing lots in the neighborhood with respect to the alignment criterion. The Subject Property fronts on a curved street with a cul-de-sac, and the alignment is angular based on its relation to surrounding lots. Other lots within the Neighborhood also have angular alignments.

Size: The lot size is in character with the size of existing lots in the Neighborhood. The proposed size of the lot is large but within the range of sizes in the Neighborhood. Further subdivision of the Subject Property is not possible given the limited frontage and the size, shape and stormwater constraints.

Shape: The shape of the lot is in character with shapes of the existing lots in the Neighborhood. The shape of the propose lot is flag/pipestem shaped, which is the same as two adjacent lots in the Neighborhood.

Width: The lot is in character with existing lots in the Neighborhood with respect to width. The width of the proposed lot is within the lower end of the width range, and is dictated by the placement of the on-site septic system and the angular shape of the lot.

Area: The lot is of the same character as existing lots in the neighborhood with respect to buildable area. The proposed lot's buildable area is within the high end of the range of lot areas found in the Neighborhood but is of the same character.

Suitability for Residential Use: The existing lots and the Subject Property within the identified subdivision are all zoned R-200 for residential uses and are all 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

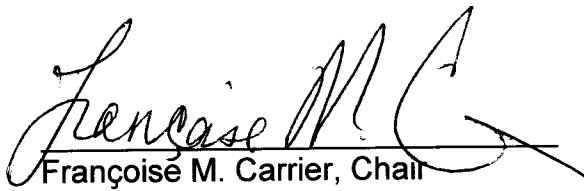
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 11 2013 (which is the date that this Resolution is mailed to all parties of record); and

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).

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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 Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor, at its regular meeting held on Thursday, July 25, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board