



IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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FARID SROUR & :  
F. S. PEOPLES REALTY, :  
 :  
 :  
 Plaintiffs, :  
 :  
 v. : Civil No. 245372  
 :  
 MONTGOMERY COUNTY PLANNING BOARD, :  
 :  
 :  
 Defendant. :  
 :  
-----x

Rockville, Maryland  
February 12, 2004

WHEREUPON, the proceedings in the above-entitled  
matter commenced

BEFORE: THE HONORABLE NELSON W. RUPP, Jr., Judge

APPEARANCES:

FOR THE PLAINTIFF:

MR. ORENS

(No further information available)

FOR THE DEFENDANT:

TARIQ A. EL-BABA, Esq.  
8787 Georgia Avenue 205  
Silver Spring, Maryland 20910

PE

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P R O C E E D I N G S

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*(Whereupon, the requested portion of the hearing was as follows:)*

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**JUDGE'S RULING**

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All right. I have reviewed the record, the exhibits, the memoranda that has been submitted, and as I told Mr. Orens at the outset, this is, from his perspective, is a difficult case because even if -- even if I disagree with the conclusion that was reached by the planning board if there is sufficient evidence within the record to support the decision by the planning board, then I must affirm the decision of the planning board, and as Mr. Orens pointed out, the sufficient evidence essentially is almost any evidence.

The difficulty I have had in this case is the application of section 50-29 and the evidence that was introduced by the planning board and the opinion and conclusion reached by the planning board. Section 50-29, as counsel agrees, 50-29A1 is the section which applies, and that is the law which dictates the decision that must be made with respect to the preliminary plan that petitioner has submitted.

The planning board staff concludes or finds at page 22 of the record that the proposed subdivision has met all the minimum requirements of the R200TDR zone.

The difficulty that I have with the decision by the

1 planning board is that it does not apply the applicable law  
2 to the facts and the evidence which was before it.

3 It is a statutory obligation the that planning  
4 board has in evaluating the subdivision plan to evaluate that  
5 plan, and in addition to evaluating the plan, to evaluate  
6 whether that plan is -- has the type of develop -- in this  
7 instance, it is residential.

8 The surrounding area and type of use is single  
9 family detached housing, the same as in the surrounding area.  
10 The subdivision is located in the R200TDR zone, which I find  
11 the planning board ignored.

12 Accordingly, I find that the planning board erred,  
13 as a matter of law, in arriving at its decision, and  
14 accordingly, there was insufficient evidence to allow it to  
15 reach the conclusion which it reached.

16 I am going to reverse the decision of the planning  
17 board, remand this case, and have the planning board to  
18 review the petitioner's plan consistent with section 50-29A1  
19 of the Montgomery County code.

20 Anything further?

21 MR. ORENS: Thank you, Your Honor. Would Your  
22 Honor like us to submit an order.

23 THE COURT: That would be fine.

24 *(Whereupon, the requested portion of the hearing*  
25 *was concluded.)*

C E R T I F I C A T E

Montgomery Transcribers, Inc., hereby certifies that the attached pages represent an accurate transcript of the duplicated electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Civil No. 245372

FARID SROUR/F. S. PEOPLES REALTY

v.

MONTGOMERY COUNTY PLANNING BOARD

By:



Paula Eden,  
Transcriber

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

FARID SROUR &  
F.S. PEOPLES REALTY

Plaintiffs

v.

MONTGOMERY COUNTY PLANNING BOARD

Defendants

Civil No. 245372

**ENTERED**

MAR 30 2004

Clerk of the Circuit Court  
Montgomery County, Md.

ORDER

Upon consideration of the entire record and Petitioners' and Respondents' memoranda in support of and in opposition to the Petition for Judicial Review as well as oral argument by their respective counsel, the Court finds that the November 21, 2002 decision of the Montgomery County Planning Board to deny one of the three lots requested in Preliminary Plan No. 1-03007, "Glen Falls" was erroneous as a matter of law and that Respondent failed to apply Montgomery County Code Section 50-29 (a)(1) to the factual evidence of record. The type of use proposed by Preliminary Plan No. 1-03007 is single-family detached housing, the same as in the surrounding area. The proposed three lot subdivision is located in the R-200/TDR Zone, which the Court finds Respondent Planning Board ignored.

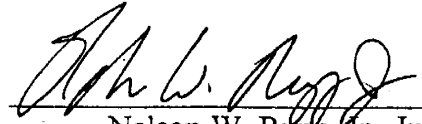
Accordingly, it is this 26 day of March, 2004, by the Circuit Court for Montgomery County, Maryland,

ORDERED, that Plaintiffs' Petition for Judicial Review be and the same is hereby GRANTED; and it is further,

ORDERED, that the decision of the Montgomery County Planning Board to deny one of the three lots requested in Preliminary Plan No. 1-03007 is hereby REVERSED; and it is further,

**ATTACHMENT THREE**

ORDERED, that Preliminary Plan No. 1-03007 is hereby REMANDED to the Montgomery County Planning Board for further action consistent with the ruling of this Court, and the evidence of record.



Nelson W. Rupp, Jr., Judge

Copies to:

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Tariq El-Baba, Esquire  
Montgomery County Planning Board  
8787 Georgia Avenue, Room 205  
Silver Spring, Maryland 20910

**ENTERED**

MAR 30 2004

Clerk of the Circuit Court  
Montgomery County, Md.