



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

MAY 28 2009

MCPB No. 09-43
Preliminary Plan No. 120080220
Norbrook Village
Date of Hearing: April 16, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on December 21, 2007, George Ondiek ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create two lots and one outlot on 5.03 acres of land located on both sides of Ampeg Lane, approximately 600 feet east of Old Baltimore Road ("Property" or "Subject Property"), in the Olney Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120080220, Norbrook Village ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated April 3, 2009, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on April 16, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

Approved as to
 Legal Sufficiency:

Christina Sorrento 5/13/09

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WHEREAS, on April 16, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Alfandre; with a vote of 5-0, Commissioners Alfandre, Cryor, Hanson, Presley, and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120080220 to create two lots and one outlot on 5.03 acres of land located on both sides of Ampeg Lane, approximately 600 feet east of Old Baltimore Road ("Property" or "Subject Property"), in the Olney Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to two lots for two dwelling units and one outlot.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 3) The Applicant must dedicate and the record plat must show dedication of a 13,789 square-foot, variable width right-of-way along the Property frontage for Ampeg Lane, as shown on the Preliminary Plan.
- 4) The record plat must show a 2,608 square-foot, variable width public improvement easement on proposed Lot 43 along the Property frontage for Ampeg Lane, as shown on the Preliminary Plan.
- 5) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the design standards imposed by the Montgomery County Department of Transportation (MCDOT).
- 6) The record plat must reflect common ingress/egress and utility easements over the shared driveway.
- 7) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated December 11, 2008. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 8) The Applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated January 26, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) The Applicant must comply with the conditions of the MCDOT letter dated February 23, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 10) Prior to approval of the record plat, the Applicant must provide to MCDOT a recorded covenant for the payment of a pro-rata share for the future

construction or reconstruction of Ampeg Lane, whether built as a Montgomery County project or by a private developer under permit to MCDPS. The record plat must provide a reference to the recorded covenant.

- 11) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 12) The record plat must show necessary easements.
- 13) 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.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

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

The Olney Master Plan does not specifically address the Subject Property. The Master Plan recommends retention of existing zoning throughout the Master Plan area in the absence of a specific recommendation for change on a particular property. Thus, in the case of the Subject Property, the Master Plan calls for retention of the existing RE-2 zoning. The proposed subdivision substantially conforms with the recommendations adopted in the Master Plan in that it proposes one-family residential development consistent with surrounding development patterns and the current zoning designation. The proposed lots will be similar to surrounding lots with respect to dimensions, orientation, and shape, and the proposed residences will have a similar relationship to the public street and surrounding residences as existing residences in the area. The proposed subdivision will not alter the existing pattern of development or land use, in conformance with the Master Plan recommendation to maintain the existing land use.

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

Roads and Transportation Facilities

The proposed subdivision does not generate 30 or more vehicle trips during the morning or evening peak hours. Therefore, the Application is not subject to Local Area Transportation Review. In addition, the proposed subdivision does not generate more than three new vehicle trips in the morning or evening peak hours. Therefore, the Application is also not subject to Policy Area Mobility Review.

Access to the proposed lots will be provided by a shared driveway from Ampeg Lane. No sidewalks exist on Ampeg Lane, and no new sidewalk is required as a condition of this Application because Chapter 49 of the Montgomery County Code does not require the installation of sidewalks where the minimum lot size for a one-family detached dwelling is 25,000 square feet or greater. Despite this, the low traffic volume on this street allows safe pedestrian use of the roadway. Proposed vehicle and pedestrian access for the site will be safe and adequate.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by private wells. The existing residence is served by a private septic system, and the proposed residence will be served by public sewer. The Subject Property is in an area that is served by public sewer, but MCDPS has allowed the existing house to continue to use its septic system. The Application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, schools, and health services are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. The Application is not within a school moratorium area, and a school facilities payment is not required. Electrical and telecommunications services are also available to serve the Property.

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

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 as discussed below. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

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

There is no forest on the site, but the Property is subject to the Forest Conservation Law. An afforestation requirement of approximately one acre will be met off-site. There are seven specimen trees measuring 30 inches or larger diameter at breast height (DBH) and six large trees measuring between 24 and 30 inches DBH. One of these trees is proposed to be removed. Appropriate tree protection measures for the remaining trees will be determined during the final review of the forest conservation plan.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by MCDPS that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept on December 11, 2008. The stormwater management concept includes water quality control and recharge via nonstructural methods. Channel protection is not required because the one-year post-development peak discharge is less than 2 cubic feet per second.

6. *The proposed 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 by Staff in the Staff Report) ("Neighborhood"), as analyzed below.*

Size: The lots in the delineated Neighborhood range from 87,120 square feet to 198,801 square feet. One existing lot is 87,120 square feet, one is 98,498 square feet, and one is 198,801 square feet. Proposed Lot 43 is 87,190 square feet in size and Proposed Lot 44 is 87,120 square feet in size. Although proposed Lot 44 will be tied with an existing lot for the smallest size and proposed lot 43 will have the second smallest size, the size criterion is less critical in large lot zones than it is in small lot zones, because the proposed areas are more than adequate to accommodate houses and yards and provide the open, rural character that is expected in the RE-2 zone. Finally, with only three existing lots in the Neighborhood with which to compare, a high degree of statistical correlation between the lots is difficult to achieve. The sizes of the proposed lots are, however, of the same character as typical lots created using RE-2 standards. Therefore, the Planning Board finds that the proposed lots are of the same character as existing lots in the Neighborhood with respect to buildable area.

Width: The lots in the delineated Neighborhood range from 209 feet to 318 feet in width. One lot is 209 feet wide, one is 271 feet wide, and one is 318

feet wide. Proposed Lot 43 has a width of 189 feet and Proposed Lot 44 has a width of 205 feet. All of the existing and proposed lots are significantly wider than the minimum lot width required by the RE-2 zone. While the proposed lots will have the smallest widths in the Neighborhood, the proposed lots do not have substantially smaller widths, and, in the case of existing Lot 42, the angled lot line of the existing lot creates a wider lot than would have been created with a standard rectangular lot. Finally, with only three existing lots in the Neighborhood with which to compare, a high degree of statistical correlation between the lots is difficult to achieve. The widths of the proposed lots are, however, of the same character as typical lots created using RE-2 standards. Therefore, the Planning Board finds that the proposed lots are of the same character as existing lots in the Neighborhood with respect to width.

Frontage: In a Neighborhood of 3 lots, lot frontages range from 225 feet to 358 feet. One existing lot has a frontage of 225 feet, one lot has a frontage of 271 feet, and one lot has a frontage of 358 feet. Proposed Lot 43 has a frontage of 194 feet, and proposed Lot 44 has a frontage of 205 feet. All of the existing and proposed lots have frontages that are significantly wider than the 25-foot minimum required in the RE-2 zone. While the proposed lots will have the smallest frontages in the Neighborhood, the proposed lots do not have substantially smaller frontages, and, in the case of existing Lot 42, the angled lot line of the lot creates a larger frontage than would have been created with a standard rectangular lot. Finally, with only three existing lots in the Neighborhood with which to compare, a high degree of statistical correlation between the lots is difficult to achieve. The frontages of the proposed lots are, however, of the same character as typical lots created using RE-2 standards. Therefore, the Planning Board finds that the proposed lots are of the same character as existing lots in the Neighborhood with respect to lot frontage.

Area: The lots in the delineated Neighborhood range from 56,207 square feet to 137,893 square feet in buildable area. One existing lot has a buildable area of 56,207 square feet, one lot has a buildable area of 65,767 square feet, and one lot has a buildable area of 137,893 square feet. Proposed Lot 43 has a buildable area of 55,170 square feet and Proposed Lot 44 has a buildable area of 57,816 square feet. Although proposed Lot 43 has a buildable area that is smaller than that of the smallest existing lot and proposed Lot 44 would also have an area near the lower end of the range, the area criterion, as a measure of developable area within a lot, is less critical in large lot zones than it is in small lot zones, because the proposed useable areas are larger than one acre on each of the lots and are more than adequate to accommodate houses and yards. Finally, with only three

existing lots in the Neighborhood with which to compare, a high degree of statistical correlation between the lots is difficult to achieve. The areas of the proposed lots are, however, of the same character as typical lots created using RE-2 standards. Therefore, the Planning Board finds that the proposed lots are of the same character as existing lots in the Neighborhood with respect to buildable area.

Alignment: Two of the three existing lots in the Neighborhood are perpendicular in alignment, and the remaining one is a corner lot. The two proposed lots are perpendicular in alignment. The proposed lots are of the same character as existing lots with respect to the alignment criterion.

Shape: Two of the existing lots in the Neighborhood are slightly irregularly shaped, and one is rectangular. One of the proposed lots is slightly irregularly shaped and one is rectangular. The shapes of the proposed lots will be in character with shapes of the existing lots.

Suitability for Residential Use: The existing and the proposed lots are zoned residential and the land is suitable for residential use.

7. *A non-standard right-of-way cross-section for Ampeg Lane is approved.*

Ampeg Lane is proposed to be dedicated and constructed by the Applicant with a non-standard cross-section. This is necessary in order to allow the paved road and the right-of-way to conform to the existing curves in a section of the right-of-way that was dedicated with the approval of an earlier preliminary plan on an adjacent property and to allow the proposed lots to achieve the two-acre minimum lot size required by the RE-2 zone.

Ampeg Lane has a dedicated right-of-way width of 60 feet over much of its approximately 1,000-foot length. When the lot adjacent to the Subject Property on the west was created, the subdivider dedicated right-of-way for Ampeg Lane in an arc, instead of in a straight line, in order to provide the required two acres of land for the new lot. Although the roadway was not constructed within that dedicated section, it was anticipated that it would be once future subdivision occurred. The current Application now proposes to dedicate right-of-way in a continuation of the same arc and to construct the road. But the right-of-way is proposed to vary in width, instead of being uniformly 60 feet wide. The right-of-way is proposed to be approximately 40 feet wide at its narrowest point, with the differential between the proposed right-of-way width and 60 feet being provided in a variable width public improvement easement. The combined width of the public improvement easement and the public street right-of-way is always 60 feet along the frontage of the Subject Property. The purpose is to ensure that both of

the lots that are now proposed have the required two-acre lot area. The paved street will be 20 feet wide and will be entirely within the existing and proposed public right-of-way and not within the proposed public improvement easement. The easement will accommodate grading for the road. The paved road cannot be shifted away from the front property line of the proposed lots, i.e., closer to the center of the road right-of-way, because such a shift would create sharp curves that do not meet construction standards and may not be safe.

Section 50-25(b) of the Subdivision Regulations requires that preliminary plans provide for the continuation of existing roads in accordance with the Road Construction Code (Chapter 49 of the Montgomery County Code), unless the Planning Board determines otherwise. In this case, the Planning Board determines that Ampeg Lane will be continued with the proposed variable width right-of-way instead of the sixty-foot-wide right-of-way specified in Chapter 49, because practical difficulties exist that prevent provision of the full right-of-way.

Practical difficulties exist in this case that prevent full compliance with the requirement to dedicate a standard width right-of-way (60 feet in this case), because earlier subdivisions on Ampeg Lane to the west and east of the Subject Property established segments of the right-of-way with which the proposed right-of-way segment must now be tied. As a consequence the northern edge of the right-of-way is fixed at certain points and the right-of-way cannot be expanded in that direction. Further dedication on the south side of the right of way is also not possible because dedication of the full 60-foot-wide right-of-way would not leave sufficient land area on the Subject Property to create two lots that meet the two-acre minimum lot size of the RE-2, as discussed above. Further, the need to tie the proposed paving in with the existing street paving while meeting the centerline turning radii requirements prevents the paved street from being constructed in the center of the right-of-way.

MCDOT has recommended approval of this Preliminary Plan with the proposed non-standard right-of-way. Also, the Montgomery County Fire and Rescue Service has approved the proposed street design.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) 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 among the Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

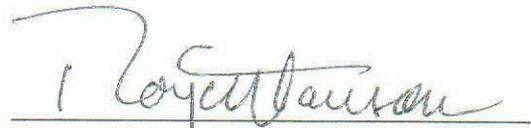
BE IT FURTHER RESOLVED, that the date of this Resolution is MAY 28 2009 (which is the date that this Resolution is mailed to all parties of record); and

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 Cryor, seconded by Commissioner Presley, with Commissioners Hanson, Robinson, Alfandre, Cryor, and Presley voting in favor of the motion, at its regular meeting held on Thursday, May 21, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board