



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JAN 15 2010

MCPB No. 09-151
Preliminary Plan No. 120080420
Tischer Property – Parcel 617
Date of Hearing: December 10, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

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 July 21, 2008, Rudolf Tischer (“Applicant”), filed an application for approval of a preliminary plan of subdivision of property that would create two lots and one outlot on 13.2 acres of land in the RC zone, located in the northwest quadrant of the intersection of Dustin Road and Columbia Pike (US 29) (“Property” or “Subject Property”), in the Fairland Master Plan area (“Master Plan”); and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120080420, Tischer Property – Parcel 617 (“Preliminary Plan” or “Application”); and

WHEREAS, Planning Board staff (“Staff”) issued a memorandum to the Planning Board, dated November 25, 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 December 10, 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

WHEREAS, on December 10, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded

Approved as to
Legal Sufficiency:

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by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Hanson, Presley, and Wells-Harley voting in favor, and Commissioner Alfandre absent.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120080420 to create two lots and one outlot on 13.2 acres of land in the RC zone, located in the northwest quadrant of the intersection of Dustin Road and Columbia Pike (US 29) (“Property” or “Subject Property”), in the Fairland Master Plan area (“Master Plan”), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to two lots for two one-family detached dwelling units and one outlot.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan (PFCP). 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. Conditions include:
 - a. The record plat must reflect a Category I easement over all areas of stream valley buffers and forest conservation.
 - b. The Applicant must allow the area within the environmental buffer area to naturally regenerate into a forested condition.
 - c. The Applicant must provide permanent signs and/or fencing along the boundaries of the conservation easement areas.
 - d. The Applicant must remove all existing structures and/or dumped debris as identified on the approved NRI/FSD from the proposed conservation easements.
 - e. The Applicant must provide an invasive species management program for the area of invasive species identified on the PFCP, utilizing MNCPPC’s *Best Management Practices for Control of Non-Native Invasives* document as guidance. The program must be implemented for a minimum of two years.
- 3) The Applicant must limit impervious surface on the Property to no more than ten percent of the Property, not including the environmental buffer, in compliance with the requirements of the Patuxent River Primary Management Area (PMA) guidelines.
- 4) The Applicant must dedicate and the record plat must show dedication of 40 feet of right-of-way, as measured from the centerline, along the Property frontage for Dustin Road.
- 5) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 6) The record plat must have the following note: “The land contained hereon is within an approved cluster development and subdivision or resubdivision is not permitted after the property is developed.”

- 7) The record plat must reflect a rural open space easement over all areas of open space shown on the approved Preliminary Plan. Such open space easement areas must comprise no less than 60% of the Subject Property.
- 8) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated June 16, 2008. 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 MCDPS, Wells and Septic Section approval dated October 23, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 10) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated August 26, 2008. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 11) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 12) Before any building permit on proposed Lot 1 is issued, the Applicant must make the applicable school facilities payment to MCDPS.
- 13) The record plat must show necessary easements.
- 14) 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 as set forth in the Staff Report, 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 Fairland Master Plan designates the area containing the Subject Property as Area 26. The Preliminary Plan meets the following recommendations in the Master Plan:

1. Retains RC zoning.
2. Locates the stormwater facilities outside regulatory stream buffers.
3. Provides no more than 10 percent imperviousness.
4. Does not extend sewer service.

As recommended in the Master Plan, the Application proposes two lots (both on well and septic) using the RC Cluster zoning option. The plan proposes

to use no more than 40% of the total Property for residential uses. The remaining 60% will be designated as rural open space. In addition, since the Subject Property is in the Patuxent Management Area (PMA), the maximum impervious coverage is 10%. This project proposes 8.4% impervious coverage on the whole site.

The Master Plan designates Dustin Road as a rustic road. Features that qualified the road for designation include the densely wooded character of the area alongside the roadway, the historic Water's Gift site, and the road's alignment (a number of horizontal curves). Dustin Road has approximately twenty feet of paved width and no curbs, and a majority of the houses in this area are hidden behind natural screening. This proposal includes no changes to the road.

On May 10, 2007, the Rustic Roads Advisory Committee (RRAC) reviewed an earlier version of this plan with five proposed lots and additional overall acreage, and recommended that all of the future lots on this Property share one driveway. The current proposal of two lots with one driveway, which also serves adjacent houses, conforms to the RRAC's recommendation.

The Planning Board finds, therefore, that the proposed subdivision substantially conforms with the recommendations adopted in the Master Plan.

- 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.

Vehicular and pedestrian access to the proposed lots will be provided by an existing shared driveway from Dustin Road. The driveway was constructed partially off-site, on Maryland State Highway Administration (MDSHA)-owned right-of-way for Columbia Pike (US 29). MDSHA has stated that the driveway may remain in the public right-of-way. No sidewalks exist on Dustin Road, and none are required or proposed. However, the low volume of traffic allows pedestrians to use the roadway safely. 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 and septic systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses 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, but a school facilities payment must be made prior to issuance of any building permit on proposed Lot 1. 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. 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 RC 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 plan.

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

There are approximately 3.16 acres of forest on the Property. This forest is comprised of three separate forest stands. The preliminary forest conservation plan proposes to retain all of the forest on-site and all of the significant and specimen trees. There is no forest planting required on the site. The retained forest and the environmental buffer will be protected in a Category I conservation easement. The majority of the environmental buffer is devoid of forest, but the requirements of the conservation easement will allow for this area to naturally regenerate. This establishment of forest cover within the environmental buffer is also consistent with the Patuxent River PMA guidance.

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 the Montgomery County Department of Permitting Services (“MCDPS”) that the Stormwater Management Concept Plan meets MCDPS’ standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept on June 16, 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.

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), 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

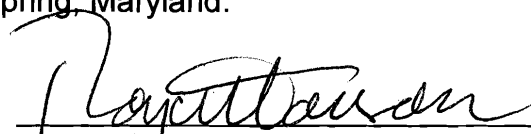
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JAN 15 2010 (which is the date that this Resolution is mailed to all parties of record); and

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 Presley, seconded by Vice Chair Wells-Harley, with Chairman Hanson, Vice Chair Wells-Harley, and Commissioners Presley and Alfandre present and voting in favor of the motion, at its regular meeting held on Thursday, January 7, 2010, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board