



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 09-152

Preliminary Plan No. 120060810

Duck's End

Date of Hearing: December 10, 2009

APR - 8 2010

## MONTGOMERY COUNTY PLANNING BOARD

### RESOLUTION

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

WHEREAS, on February 7, 2006, Charles and Joanne Weber ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 4 lots on 28.28 acres of land in the RDT zone, located on the east side of Bucklodge Road, approximately 500 feet east of White Store Road ("Property" or "Subject Property"), in the Agricultural and Rural Opens Space ("AROS") master plan ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120060810, Duck's End ("Preliminary Plan" or "Application"); and

WHEREAS, subsequent to the review of the Application the plan was revised to create only 3 lots, two child lots pursuant to Sec. 59-C-9.74(b)(4) of the Montgomery County Zoning Ordinance and one lot for the existing house on the Property, and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated November 30, 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 by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Hanson, Presley and Wells-Harley, voting in favor, with Commissioner Alfandre absent and one seat vacant.

Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, N.W., Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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NOW, THEREFORE, BE IT RESOLVED, that, pursuant to Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No.120060810 to create three lots on 28.28 acres of land, in the RDT zone, located on the east side of Bucklodge Road, approximately 500 feet east of White Store Road in the AROS master plan area, subject to the following conditions:

- 1) Approval under this Preliminary Plan is for three lots, including two child lots, pursuant to Section 59-C-9.74(b)(4).
- 2) The Applicant must comply with the conditions of the Final 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. The Applicant must dedicate and the record plat must show dedication of 35 feet from the centerline (70 ft. right-of-way) along the property frontage for Bucklodge Road.
- 3) The record plat must reflect a Category I easement over all areas of forest conservation.
- 4) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated March 17, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 5) The Applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated February 26, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) The Applicant must comply with the conditions of the Montgomery County Department of Transportation ("MCDOT") letter dated April 26, 2006. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 7) The Applicant must comply with the conditions of the Maryland State Highway Administration ("MDSHA") letter dated March 31, 2006. These conditions may be amended by MDSHA, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 8) The final Certified Preliminary Plan and record plat must show a cistern easement as approved by the Montgomery County Fire and Rescue Services.
- 9) Record plat to reference appropriate common ingress/egress and public utility easement for the shared driveway.
- 10) The record plat must identify Lots 1 and 2 as shown on the certified Preliminary Plan and record plat to be Child Lots, approved pursuant to Section 59-C-9.74(b)(4) of the Montgomery County Zoning Ordinance.

- 11) 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.
- 12) Other necessary easements must be shown on the record plat.

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 (except as modified herein) 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 Agricultural and Rural Open Space Master Plan and the Rustic Roads Functional Master Plan.*

The AROS plan focuses on the preservation of agriculture as the preferred use in the Rural Density Transfer (RDT) zone and provides the following recommendations to accomplish this:

- "Preservation of critical masses of farmland...
  - "Applications of incentives and regulations to preserve farmland and... to encourage agricultural use of the land.
  - "Application of specific innovative preservation techniques such as the Rural Density Transfer Zone...
- (pg. iv AROS Plan)

The Planning Board finds that the proposed Preliminary Plan substantially preserves farmland, and that this farmland will continue to contribute to the critical mass of agricultural land in the Agricultural Reserve as a small scale farm. The Planning Board also believes that the incentives inherent to the Transferable Development Right ("TDR") program can be applied to this Property. As a result in the reduction of one lot from the original Application, the Property will continue to have an additional TDR after platting that can be sold to developers in TDR receiving areas as an incentive to develop with one less lot.

The 28.28 acre property is not a large farm, but one of the many small, family-owned operations in the Agricultural Reserve that may or may not be family-operated. The Subject Property is fairly isolated with boundaries defined by streams, roads, forest or unbroken hedgerows. It is generally closed off from other adjacent farm fields. In reviewing the Application, the Planning Board considered, among other things, aerial photos, which do not indicate any current combined use of the Property's fields with adjacent fields. The Planning Board agrees with staff that it is unlikely that the adjacent uses could or would expand

onto the Subject Property to create a large-scale farm operation, and therefore that its greatest agricultural potential is as a standalone farm.

The Preliminary Plan has been configured both to minimize the size of the residential lots and locate them where they will detract least from the subject property's agricultural potential. Because the Property is distinctly bisected by a stream and associated pond, the Applicant revised the plan to eliminate one lot and to locate two child lots on the same side of the stream as the existing house. This change permitted the Applicant to use the driveway serving the existing house to access the proposed child lots. The two new child lots will be clustered adjacent to the existing home site on the rear of the Property and they have been reduced in size to 2.0 acres and 1.97 acres, the minimum size necessary on this property to facilitate well and septic requirements.

Although the new homes will be located on prime soils, the location of the homes is in an isolated portion of the Property not conducive to sustainable agricultural use. The Staff Report described this field as the "side yard" for the existing home, which is inaccessible, relatively small, and not able to be used in conjunction with the residential lot to the south for sustainable farming operations. The loss of prime soils in this location is outweighed by the preservation of the front field on the other side of the stream. Staff described the front field as also having prime agricultural soils, slight to moderate slopes, presently cleared of most trees, good accessibility to a public road and of such a size to be attractive to farming operations.

The result of the proposed layout is that approximately 24 acres, or 86 percent, of the Property could continue to operate as a small-scale farm. The front field, adjacent to Bucklodge Road, will remain as the most attractive portion of the farm for continued agricultural use either by the Property owner or through a lease agreement with an off-site user. The front field would constitute approximately 15.0 acres of available agriculture, including the field, pond and area to be dedicated to the public-right-of-way. The pond may serve as a source of irrigation for crops or livestock and the dedicated portion of right-of-way can also continue to be farmed. The sand mound back up reserve areas for the existing house, while in the front farm field, can also be used for agriculture. Further, the location of all three homes, removed from views along Bucklodge Road, addresses a goal of the Rustic Roads Functional Plan to minimize visual impacts to designated roads, if possible.

The Preliminary Plan also utilizes "incentives" to preserve farmland as recommended by the AROS plan. Staff objected to the initial, four lot proposal, mainly because it located lots in the front field, which the Board has viewed as the most appropriate for viable agriculture. The four lot proposal fragmented the

farmable fields. By eliminating one child lot from the proposal, one additional TDR is preserved on the property and remains available to be transferred at a later date.

For these reasons, The Planning Board finds this plan in conformance with the AROS master plan. Reduction of one lot or two on this isolated Property would not contribute meaningfully to the critical mass of farmland in the Agricultural Reserve. The location and size of the proposed lots do not impact, to a significant degree, the most logical and contiguous areas on the Property suitable for agriculture. The proposed new homes and lots are appropriately located in an area not as conducive to successful, long-term agriculture.

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

The Board finds local vehicular and pedestrian access to be adequate without improvement, other than driveway aprons the Applicant must provide. The Application has been reviewed by the Montgomery County Fire and Rescue Services, who have determined that the Property has appropriate access for fire and rescue vehicles but that an easement must be created to provide an area to construct a water supply cistern in the future should the County establish a policy for them. Other public facilities such as schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The Application is not within a school moratorium area; and is not subject to payment of School Facilities Payment. Both Verizon and the local electrical utility have reviewed this plan to determine if their respective utility can adequately serve the proposed development. Both utility providers have found that utilities are adequate. Washington Gas does not serve this area of the County. The Board finds that the lots created by this Application will be adequately served by all public and private utilities and services.

- 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 as previously discussed regarding the size, shape and location of the lots on the farm.

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

The Board finds that the plan meets all applicable requirements of the county Forest Conservation Law, Chapter 22A. Of the 28.28 acre farm, 20.55 acres will remain in agriculture and be exempted from forest conservation requirements through a staff-approved, agricultural Declaration of Intent. The remaining net tract area consists of 6.49 acres of non-farmable area and is subject to the law. The forest conservation requirement on the 6.49 acre net tract equals 1.46 acres. To meet the 1.46 acre planting requirement the Applicant has proposed to retain, at a 2:1 ratio, 2.92 acres of on-site forest in a Category I easement to be located within the otherwise agriculturally exempted portion of the site.

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.*

On March 17, 2009, MCDPS approved a stormwater management concept to address runoff as required under Chapter 19 of the County Code. The concept requires quality control of runoff through non-structural methods. No quantity control is required because runoff volumes do not exceed 2.0 cubic feet per second. Chapter 50 requires that the stormwater management concept plan be approved by MCDPS prior to Planning Board action on a Preliminary Plan. Therefore, the Board finds that stormwater management requirements are adequately addressed.

6. *Lots Without Frontage*

Section 50-29(a)(2) of the Subdivision Regulations states that "every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road. In exceptional circumstances, the Board may approve not more than two (2) lots on a private driveway or private right-of-way; provided that proper showing is made that such access is adequate to serve the lots for emergency vehicles, and for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands."

For this Application, the Board finds that an exceptional circumstance exists whereby lots without frontage may be approved. Because of the rather large size of this property, the desire to place the new lots to the rear of the Property near the parents' home and to preserve maximum agriculture, unusually elongated pipestems would need to be created to provide frontage. The Board has determined that the proposed lots can be safely and adequately served by the

existing driveway, and that the ingress and egress easement that would be created on the driveway provides assurance for the continuation of that access. Further, Fire and Rescue Services has found that emergency equipment can adequately access the Property and access by other public services is not hindered by the private driveway. Utilities could be accommodated in the suggested ingress/egress and utility easement recommended in Condition #10. The approval of lots without frontage will not hinder future development of adjacent lands. Therefore, the Board finds that a proper showing has been made to allow lots to be approved without frontage

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

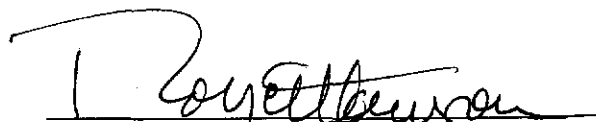
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is APR - 8 2010 (which is the date that this Resolution is mailed to all parties of record); and

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, Alfandre, and Dreyfuss present and voting in favor of the motion at its regular meeting held on Thursday, April 1, 2010, in Silver Spring, Maryland.

  
Royce Hanson, Chairman  
Montgomery County Planning Board

120060810

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