



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

MAR 22 2010

MCPB No. 10-15
Preliminary Plan No. 120070740
Avery Village
Date of Hearing: February 18, 2010

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 May 18, 2007, Josh Haines, filed an application for approval of a preliminary plan of subdivision of property that would create two lots on 4.24 acres of land in the RE-2 zone, located on the south side of Serenity Lane, 450 feet east of Avery Road ("Property" or "Subject Property"), in the Upper Rock Creek Master Plan area ("Master Plan"); and

WHEREAS, the preliminary plan application was designated Preliminary Plan No. 120070740, Avery Village ("Preliminary Plan" or "Application"); and

WHEREAS, on November 24, 2009, Satwant Singh Bajwa ("Applicant") became the successor-in-interest of the Application, assuming all rights and liabilities,

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated February 5, 2010, 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 February 18, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

Approved as to
Legal Sufficiency:


M-NCPPC Legal Department

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

WHEREAS, on February 18, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Wells-Harley; with a vote of 4-0, Commissioners Alfandre, Hanson, Presley, and Wells-Harley voting in favor, with one seat being vacant.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board APPROVES Preliminary Plan No. 120070740 to create two lots on 4.24 acres of land in the RE-2 zone, located on the south side of Serenity Lane, 450 feet east of Avery Road ("Property" or "Subject Property"), in the Upper Rock Creek Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to two one-family detached residential lots.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to the recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 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 July 3, 2007. 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 January 13, 2010. 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 June 19, 2007. 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 satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 8) The certified Preliminary Plan must contain the following note: "The building footprints shown on the Preliminary Plan are illustrative. Final building locations will be determined during the building permit process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines and lot coverage for each lot. Other limitations for site

development may also be included in the conditions of the Planning Board's approval."

- 9) The record plat must show necessary easements.
- 10) 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 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 Master Plan.*

The Upper Rock Creek 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 complies 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 and residences will be compatible with existing features and development, with similar dimensions, orientations, and topography, as more fully detailed in Finding No. 6 below. The proposal will also be sufficiently accommodated by existing roadways, as provided in Finding No. 2 below. The proposed subdivision will not alter the existing pattern of development or land use, in substantial 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

Access to the proposed lots will be provided by driveways from Serenity Lane. Sidewalks do not exist on Serenity Lane. Sidewalks are not required to be constructed on roads where the minimum lot size is larger than 25,000 square feet, as is the case here, in the RE-2 zone, because the low volume of traffic allows pedestrians to travel safely in the roadway. Proposed vehicle and pedestrian access for the site will be safe and adequate, considering the application proposes a mere re-subdivision of 4.24 acres of land.

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.

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 public water and private septic systems. 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 schools, 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, and a school facilities payment is not required. Electrical, gas, 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 plan.

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

The Subject Property features 2.92-acres of existing forest, with 1.76 acres of forest clearing, as shown on the preliminary forest conservation plan. The Property is located in the RE-2 zone, and has a land-use category of Medium Density Residential (MDR) for forest conservation purposes. The MDR

land-use category has a 20 percent afforestation threshold and 25 percent conservation threshold. The breakeven point, or the amount of forest that can be cleared without mitigation, is 1.49-acres. The Applicant proposes to clear 0.27-acres more forest than the breakeven point, generating a 0.34-acre planting requirement which must be completed off-site, in accordance with Condition No. 2 of this Resolution and the preliminary 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 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 July 3, 2007. The stormwater management concept includes water quality control and recharge via drywells and non-structural 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, and adopted here by the Planning Board by reference) ("Neighborhood"), as analyzed below.*

Size: The lots in the delineated neighborhood range from 87,120 square feet to 511,896 square feet. Six of the lots are smaller than 100,000 square feet, seven are between 100,000 and 220,000 square feet, and one is larger than 500,000 square feet. Proposed Lot 27 is 96,858 square feet in size and Proposed Lot 28 is 87,632 square feet in size. The proposed lot sizes are in character with the size of existing lots in the neighborhood.

Width: The lots in the delineated neighborhood range from 133 feet to 657 feet in width. Seven of the lots have widths of less than 200 feet, four lots have widths between 200 and 400 feet, and the remaining three lots have widths of more than 400 feet. Proposed Lot 27 has a width of 283 feet and proposed Lot 28 has a width of 251 feet. The proposed lots will be in character with existing lots in the neighborhood with respect to width.

Frontage: In a neighborhood of 14 lots, lot frontages range from 35 feet to 778 feet. Three of the lots have frontages of less than 60 feet, six lots have frontages between 60 and 300 feet, and the remaining five lots have frontages of more than 300 feet. Proposed Lot 27 has a frontage of 294 feet, and proposed Lot 28 has a frontage of 248 feet. The proposed lots will be of

the same character as existing lots in the neighborhood with respect to lot frontage.

Area: The lots in the delineated neighborhood range from 43,472 square feet to 436,562 square feet in buildable area. Nine of the lots have a buildable area less than 100,000 square feet, four are between 100,000 and 200,000 square feet, and one is over 400,000 square feet. Proposed Lot 27 has a buildable area of 65,275 square feet and proposed Lot 28 has a buildable area of 58,082 square feet. Although the buildable area of proposed Lot 28 is well within the range of neighborhood lots, the usable buildable area will be constrained by an on-lot forest conservation easement. After subtracting the easement area, the buildable area would be reduced to approximately 31,000 square feet. While this is less than the buildable area of any of the neighborhood lots, the lot is still left with more than adequate space for placement of a residence and accessory structures. Further, it is not the Planning Board's practice to account for easements when calculating buildable area for resubdivision purposes. The proposed lots will be of the same character as other lots in the neighborhood with respect to buildable area.

Alignment: Seven of the 14 existing lots in the neighborhood are radial in alignment, Three are angled, two are perpendicular, and the remaining two are corner lots. One proposed lot is angled and one is perpendicular in alignment. The proposed lots are of the same character as existing lots with respect to the alignment criterion.

Shape: Nine of the existing lots in the neighborhood are irregularly shaped, four are trapezoidal, and the remaining one is a pipestem lot. The two proposed lots are trapezoidal. 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.

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 MAR 22 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 Wells-Harley, seconded by Commissioner Dreyfuss, with Commissioners Hanson, Wells-Harley, and Dreyfuss voting in favor of the motion, and with Commissioners Alfandre and Presley absent, at its regular meeting held on Thursday, March 11, 2010, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board

FOA 120076740

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