



MAY 17 2012

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

MCPB No. 12-49
Preliminary Plan No. 120110150
Stoney Creek Road
Date of Hearing: May 3, 2012

RESOLUTION

WHEREAS, under 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 February 15, 2011, Donald and Carol Dell ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create four lots on 17.29 acres of land in the RE-2 zone, located at 12010 Stoney Creek Road on the west side of Stoney Creek Road ("Property"), in the 2002 Potomac Subregion master plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110150, Stoney Creek Road ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board, dated April 20, 2012, setting forth its analysis, and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 3, 2012, the Planning Board held a public hearing on the Application (the "Hearing"), and at the Hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the Hearing, the Planning Board approved the Application subject to certain conditions, in accordance with the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120110150 to create four lots on the Property, subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to four (4) one-family detached residential lots.

Approved as to
Legal Sufficiency:

Christina Sorensen 4/25/12

8787 Georgia Avenue, Suite 20910, Springfield, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

- 2) The Applicant must comply with the conditions of the approved Preliminary Forest Conservation Plan No. 120110150. Conditions are:
 - a. The final forest conservation plan must be consistent with the preliminary forest conservation plan and address the following:
 - i. Revise the limit of disturbance to accommodate the repair of the eroded channel as specified in the Soil Erosion and Sediment Control/Stormwater Management Plan Montgomery County Department of Permitting Services – Water Resources Section approval letter dated March 17, 2011.
 - ii. Show the removal of all impervious surfaces (including gravel) within the Category I Conservation Easement area and revise the limit of disturbance to accommodate those changes.
 - b. The final forest conservation plan must be approved prior to record plat.
 - c. A Category I conservation easement must be shown on the record plat as specified on the Final Forest Conservation Plan.
 - d. The Applicant must remove all impervious surfaces (including gravel) within the Category I Conservation Easement area prior to the issuance of building permits.
- 3) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated March 22, 2011, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 4) The Applicant must satisfy the provisions for access and improvements as required by MCDOT prior to recordation of the plat(s).
- 5) The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services (MCDPS) – Water Resources Section in its letter dated March 17, 2011, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the

amendments do not conflict with other conditions of the Preliminary Plan approval.

- 6) The Planning Board has accepted the recommendations of the MCDPS – Well and Septic Section in its letter dated September 22, 2011, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well and Septic Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 7) The Applicant must dedicate and show on the record plat(s) the dedication of their portion of the 70 foot wide right-of-way for Stoney Creek Road as measured from the opposite right-of-way line.
- 8) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 9) The approved Preliminary Plan must contain the following note:

“Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints and internal driveways shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage requirements. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”

BE IT FURTHER RESOLVED, that for the purpose of these conditions, the term “Applicant” shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

BE IT FURTHER RESOLVED, that, having considered the recommendations and findings of its Staff as presented at the Hearing and 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 2002, Potomac Subregion Master Plan.*

The Potomac Subregion Master Plan does not specifically address the Subject Property but makes general recommendations for the area in which the Property is located. The Property will be developed in accordance with RE-2 zoning standards recommended by the Master Plan. The lots will be served with private, on-site well and septic systems in conformance with the Master Plan recommendations that do not support the extension of public water and sewer systems to this Property. The use of private septic systems enables the Application to conform with the Master Plan recommendation to establish this area of Potomac as a low density transition between higher densities of Potomac and North Potomac and lower densities in the Darnestown area and the natural areas along the Potomac River. The Application appropriately addresses the preservation of roadside vegetation along Stoney Creek Road and conforms to the Rustic Road recommendation for this road in the Master Plan.

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

Roads and Transportation Facilities

The Application shows the proper dedication for Stoney Creek Road, a Rustic Road, to the full 70 foot width specified by the Master Plan. No frontage improvements are required by MCDOT other than at the driveway openings. There will be two driveways to serve the Property; two lots will share a single driveway with a common ingress/egress easement shown on each driveway. The sight distances for the driveways are acceptable per the Sight Distance Evaluations reviewed and approved by MCDOT. Montgomery County Fire and Rescue Service (MCFRS) approved of the driveway design and finds it will provide adequate access for emergency apparatus.

The subdivision is expected to generate four morning peak hour trips and five evening peak hour trips which are below the 30-trip threshold that would require a full Local Area Transportation Review (LATR). No LATR is required for this Application. The Property is located in the Rural Policy Area where there is no Policy Area Mobility Review (PAMR) mitigation requirement.

Other Public Facilities and Services

The Planning Board finds that all other public facilities and services are available and will be adequate to serve the lots. The Application meets the MCFRS requirements for fire and rescue vehicle access per the December 21, 2011 letter. Other public facilities and services, such as schools, police stations, and health services are currently operating within the standards set by the Subdivision Staging Policy currently in effect. The Property is not within a school moratorium area and is not subject to the School Facilities Payment.

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

The Application was reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The area, frontage, width and setbacks for all four lots are appropriate for the location of the subdivision based on a review of the development map included in the Staff Report.

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

Natural Resource Inventory/Forest Stand Delineation (NRI/FSD)

This Property is subject to the Montgomery County Forest Conservation Law. NRI/FSD #420090920 was approved on January 15, 2009.

Preliminary Forest Conservation Plan

As required by the County Forest Conservation Law, a Preliminary Forest Conservation Plan (PFCP) for the project was submitted with the Application. The PFCP will retain 4.31 acres and clear 0.37 acres of existing on-site forest. The amount of forest remaining on the Property is above the conservation threshold and there is no reforestation requirement. Retained forest and the stream valley buffers will be protected with Category I conservation easements.

Variance Request for Impacts to or Removal of Trees that are at least 30 inches, DBH (Section 22A-12(b)(3)(C))

The Application will remove two trees that are 30 inches and greater diameter at breast height (DBH), and impact, but not remove, three other trees 30 inches and greater. These five trees were reviewed as part of a forest conservation variance request. In accordance with Section 22A-21(c), the Planning Board referred a copy of the variance request to the County Arborist which the Arborist elected not to review. The Planning Board finds that enforcing the law for these five trees would result in an unwarranted hardship to the Applicant.

The Planning Board made the following determinations in the review of the variance request:

- (1) Approval of the variance will not confer on the Applicant a special privilege that would be denied to other applicants:

Granting the variance will not confer a special privilege on the Applicant because the disturbance and removal of the specified trees are due to the

development of the site. The Property has a substantial area that is considered environmentally sensitive, including the stream, stream valley, steep slopes and the forest resource. The frontage road, Stoney Creek, is a Rustic Road which has a 70 foot wide right-of-way. The number of allowable driveway access points has been minimized to meet goals of the Master Plan's Rustic Road designation. Because of this, internal driveways tend to be longer to connect to the two access points. Further, the Property has no access to public sewer and must rely on septic systems including a minimum reserve area of 10,000 square feet per lot to meet the County standards for septic disposal. These restrictions leave a rather small area available for development of four homes as allowed under the density provisions of the RE-2 zone.

The variance trees and/or their critical root zones lie within the necessary developable area of the Property and are affected by grading required for the new homes or for the typical infrastructure required to serve them. Granting a variance request to allow the trees to be disturbed is not unique to this Applicant.

- (2) Approval of the variance is not based on conditions or circumstances which result from the actions by the Applicant:

The requested variance is not based on conditions or circumstances which are the result of actions of the Applicant. The Property is located on a Rustic Road with rolling topography that limits where access can be provided because of sight distance issues. The Property's existing access point is to be maintained in its current location with a second access point recommended by the Rustic Roads Advisory Committee and approved by MCDOT. The two points of access determine, to some degree, where development can occur on the Property. While the lots are located in the most developable portions of the Property, this area is constrained by the longer driveways, septic reserve areas and other infrastructure required by building codes. A significant portion of the Property (5.81 acres), within the environmental buffer will be protected with a Category I conservation easement and not available for development purposes.

- (3) Approval of the variance is not based on a condition relating to land or building use, either permitted or nonconforming, on a neighboring property:

The requested variance is not a result of land or building use on a neighboring property.

- (4) Approval of the variance will not violate State water quality standards or

cause measurable degradation in water quality:

MCDPS approved a Stormwater Management Concept on March 17, 2011. The approval confirms that the goals and objectives of the current State water quality standards were met for the proposed improvements to the Property. In addition, there are no impacts to trees or forest within environmental buffers. Existing erosion on the Property will be corrected as a requirement of sediment and erosion permits.

In conformance with the above findings, the Planning Board approved the Applicant's request for a forest conservation variance to remove and/or impact five trees that are 30 inches or greater, DBH.

Mitigation for Trees Subject to the Variance Provisions

The Planning Board did not recommend compensation be required beyond the forest retention plan requirement for the proposed impacts to, or removal of, the five trees. Three of the impacted trees will be preserved and the two trees being removed (34" Black Locust and 30" Mulberry) are in poor condition and potentially hazardous.

- 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 conditionally approved a stormwater management concept on March 17, 2011. MCDPS will require that the severe erosion on Lot 3 be repaired and that safe conveyance of the runoff flow be provided. Environmental Site Design has been integrated on-site using techniques such as overall site design and shared minimum-width driveways. Other on-site water quality mitigation will be provided through non-rooftop disconnects and dry wells. Therefore, the Planning Board finds that the Applicant meets all applicable stormwater management requirements.

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 Montgomery County Land Records or a request for an extension must be filed; and

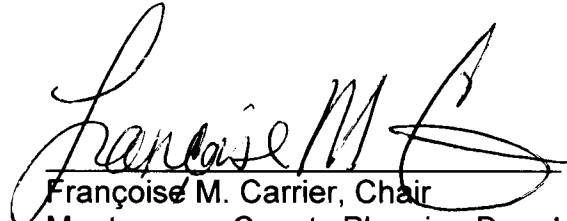
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 17, 2012 (which is the date that this Resolution is mailed to all parties of record); and

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 Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion at its regular meeting held on Thursday, May 3, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board