



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

OCT 29 2013

MCPB No. 13-114  
Preliminary Plan No. 120040640  
Ganassa Property  
Date of Hearing: July 25, 2013

**RESOLUTION**

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

WHEREAS, on March 22, 2004 (amended on November 6, 2012), Vera Ganassa ("Applicant") applied for approval of a preliminary plan of subdivision to create five child lots and a farm remainder on 81.72 acres of land in the RDT zone, located at 24520 Halterman Road, approximately 2,000 feet north of New Hampshire Avenue (MD650) ("Subject Property") in the Preservation of Agriculture and Rural Open Space Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120040640, Ganassa Property ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 11, 2013, setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on July 25, 2013, the Planning Board held a public hearing on the Application, and at the hearing heard testimony and received evidence concerning the Application; and

WHEREAS, at the Hearing, on motion of Commissioner Dreyfuss, seconded by Commissioner Mary Wells-Harley, by a vote of 5-0, Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor, the Planning Board voted to approve the Application subject to certain conditions;

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Board approves Preliminary Plan No. 120040640 to create five child lots and a farm remainder subject to the following conditions:

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Approved as to  
Legal Sufficiency

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MNCPPC Legal Planning Department E-Mail: mcp-chair@mncppc-mc.org  
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- 1) Approval under this preliminary plan is limited to five lots for one-family residential dwelling units, and a farm remainder.
- 2) Record plat to include the following note: "Lot Nos. 1, 2, 3, 4 and 5 are being created under Section 59-C-9.41.1(f)(3) of the zoning ordinance for use for a one-family residence by a child or the spouse of a child of the property owner." Separate notation to be made on each child lot shown on the plat(s) referencing this note.
- 3) Approval of a final forest conservation plan consistent with the preliminary forest conservation plan to include tree protection measures. The Applicant must satisfy all conditions prior to MCDPS issuance of sediment and erosion control permits.
- 4) Prior to any land disturbance a Category I Easement must be recorded in the land records on the forest mitigation area located on the farm remainder as shown on the preliminary forest conservation plan.
- 5) Record plat to reflect a Category I Easement over wetland buffer on proposed lots.
- 6) A two-rail permanent split rail fence must be erected along the wetland buffer easement boundary at time of pre-construction meeting.
- 7) Submit an updated Agriculture Declaration of Intent for future use of the farm remainder prior to record plat.
- 8) The Planning Board accepts and hereby incorporates as conditions of approval the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 6, 2013. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDOT may amend, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) The Planning Board accepts and hereby incorporates as conditions of approval the recommendations of the Montgomery County Department of Fire and Rescue Services ("MCFRS") in its memo dated April 18, 2012. The Applicant must comply with each of the recommendations as set forth in the memo, which MCFRS may amend, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 10) The Planning Board accepts and hereby incorporates as conditions of approval the recommendations of the Montgomery County Department of Permitting

Service ("MCDPS") – Water Resources Section in its stormwater management concept memo dated March 8, 2012. The Applicant must comply with the recommendation set forth in the memo, which MCDPS – Water Resources Section may amend, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

- 11) The Planning Board accepts and hereby incorporates as conditions of approval, the recommendations of the MCDPS – Well and Septic Section in its memo dated December 13, 2012. The Applicant must comply with the recommendations set forth in the memo, which MCDPS – Well and Septic Section may amend, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 12) The Applicant must dedicate 0.52 acres for future potential widening of Halterman Road.
- 13) The record plat must show necessary easements.
- 14) An easement must be recorded for the balance of the property noting that five TDRs have been used for the child lots. The record plat must contain a reference to this easement.
- 15) The certified 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, building heights, and site circulation shown on the Preliminary Plan are illustrative. The final locations of buildings and hardscape will be determined at the time of issuance of building permits. Please refer to the zoning data table for development standards such as setbacks and building heights. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
- 16) The record plat(s) must contain the following note:  
Agriculture is the preferred use in the Rural Density Transfer Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone.
- 17) The Adequate Public Facilities review for the Preliminary Plan will remain valid for 85 months from the date of mailing of this Planning Board Resolution.
- 18) Record plat to reflect common ingress/egress and utility easements over all shared driveways.

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 Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

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

The Preliminary Plan, which is designed to minimize lot size, minimize fragmentation of the Subject Property, and maximize the viable farmland, substantially conforms to the Master Plan by preserving and promoting agriculture.

The five residential lots measure 1.7, 2.8, 2.9, 3.2, and 3.6 acres, respectively. Each lot is the minimum size to support on-lot well and septic, with the exception of Lot 1, the size of which is further reduced by locating the septic on the farm remainder. Excluding the pipe stems from the area calculation, no lot is larger than 3.0 acres. As a result, the subdivision leaves a substantial, 67-acre farm remainder. The residential lots are located away from the existing barn, which will minimize conflicts between agricultural and residential uses, further promoting agriculture. Certain plan opponents argued that configuration of the houses is inconsistent with the purpose of the child lots. The Planning Board does not agree with this assertion – the location of the houses would permit the residents to participate in the farm's operation – and finds, more importantly, that the configuration of the lots does a better job of preserving contiguous agricultural land, as the AROS Master Plan and the RDT zone call for, than many other configurations might.

Some plan opponents argued that the Planning Department did not carefully examine the impact of this proposed subdivision on the Agricultural Reserve. But it is readily apparent that the Planning Department carefully analyzed the project and worked very hard with the property owner to increase the amount of land that this subdivision would retain for agriculture. The result is a subdivision that substantially conforms with the Master Plan.

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

Because the approved lots and farm remainder do not generate 30 vehicle trips during the morning and evening peak-hours, the Application is not subject to Local Area Transportation Review. In accordance with the Master Plan right-of-way recommendation, 0.52 acres of right-of-way dedication for Halterman Road is provided along the property frontage (although the road is unlikely to be widened). Vehicle and pedestrian access for the subdivision will be safe and adequate.

Other public facilities and services are available and will be adequate to serve the approved lot. Wells and septic systems have been approved by the Department of Permitting Services to serve the new dwelling unit on the child lots. Gas, electrical, and telecommunications services are available to serve the Subject Property. The Application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Subject Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses, and health services are currently operating within the standards set by the Subdivision Staging Policy currently in effect. The Application is not within a school moratorium area and is not required to make a School Facilities Payment.

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

The approved lots are a maximum of 3.0 acres, discounting the area of the pipe stems, and are no larger than the minimum area necessary for approval of well and septic, as per Section 59-C-9.41.1 of the Zoning Ordinance. The width, shapes, and orientation of the lots are all appropriate for the location.

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

A. Forest Conservation

The Planning Department approved the Preliminary Forest Conservation Plan, and a Final Forest Conservation Plan will be approved prior to record plat.

5. *All stormwater management requirements shall be met as provided in Chapter 19, article II, title "storm water management," Section 19-20 through 19-35.*

The subdivision is covered by an approved stormwater concept plan, which mimics runoff from "woods in good condition" by using environmental site design. Lots 1-4 drain to wetland and a pond. Lot 5 drains to a stream. The Applicant will be required to further address stormwater management at the sediment and erosion control permit stage of obtaining a building permit.

6. *The Application complies with other applicable requirements of the subdivision regulations and zoning ordinance.*

The Subject Property meets all the subdivision requirements applicable in RDT zones under Section 50-35A(a)(8):

- A. The MCDPS Well and Septic Section approved the septic areas on December 13, 2012;
- B. 0.52 acres of additional right-of-way dedication is provided for Halterman Road along the property frontage;
- C. Recording an easement noting the density and use of TDRs on the plat is a condition of approval;
- D. The approved Subject Property meets the size requirements for subdivision in an RDT zone because the child lots are a maximum of three acres; and
- E. The Final Forest Conservation Plan will be approved by Staff prior to record plat.

The Subject Property also meets the density requirements applicable in RDT zones under Section 59-C-9.41.1 for having child lots above the density of one one-family dwelling unit per 25 acres because the Applicant:

- A. Recorded title to the Property before January 7, 1981;
- B. Personally applied for approval to create the Subject Property; and
- C. Retains a development right for each lot.

7. Other Issues.

Certain plan opponents argued that they should have received notice of an amendment to Section 59-C-9.41.1 of the zoning ordinance, which applies to child lots in the RDT zone and therefore to this subdivision. While the Planning Board appreciates the difficulty of keeping pace with the County's legislative agenda, that the Planning Department did not take the unusual step of sending notice of a pending Zoning Text Amendment to the opponents of this plan has no bearing on what the Planning Board is tasked with deciding in this case, which is the whether the proposed subdivision complies with the subdivision regulations, zoning ordinance, and other applicable requirements of County law. ZTA 10-12 reduced the number of child lots for which an individual property owner may qualify, but exempted properties covered by a pending subdivision plan from that limit. This Preliminary Plan qualifies for that exemption. Plan opponents testified that they were not notified of ZTA 10-12, and argued that the Planning Department should have notified them of it. But it is the County Council, and not the Planning Board or the Planning Department, who is responsible for providing public notice about its actions. There is no rule that requires such notice, and given the myriad of laws that may affect the review of subdivision plans, and the frequency with which they are changed, it would be unreasonable to expect the Planning Board or Department to provide such notice. Certain plan opponents argued that the Planning Department in not providing such notice made "an adjudicative decision." It is unclear what this statement means, given that the Planning Department is not an adjudicative body, that ZTA 10-12 was legislation, and that the Planning Department and Planning Board played only an advisory role in its adoption. Moreover, it is misleading to call the

Planning Department's inaction a "decision" at all, because it suggests that the Planning Department made a conscious decision to withhold notice. It is more accurate to say that the Planning Department is not required to provide notice of a pending ZTA in connection with a pending plan that the ZTA may affect, does not normally provide such notice, and did not take the unusual step of providing such notice for ZTA 10-12.

Plan opponents further argued that the Ganassa children live elsewhere, and do not need – or are unlikely to use – these child lots. More generally, plan opponents argue that the allowance for child lots has harmed the Ag Reserve by allowing residential development above the otherwise allowed density of one unit per 25 acres. Section 59-C-9.41.1 of the zoning ordinance addresses these concerns, at least partially, by allowing only the Ganassa children to obtain building permits to construct houses on the approved child lots. The law further addresses this concern by restricting for five years who may live in a house on a child lot once it is built. The law was not intended to ensure that only the children in whose names the lots were created will ever live there. For purposes of this approval, there is no dispute that the Applicant owned this property in 1980 when it was downzoned and that she has five children – or her children's spouses – who qualify for child lots.

Finally, plan opponents raised concerns about tree impacts of this subdivision. As explained by the Planning Department, the plan calls for no forest removal, and will meet forest mitigation requirements by placing a 5.78-acre forest conservation easement. The plan may cause minimal impact to the roots of four offsite trees.

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), 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 in 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 Planning Board in this matter, and the date of this Resolution is OCT 29 2013 (which is the date that this Resolution is mailed to all parties of record); and

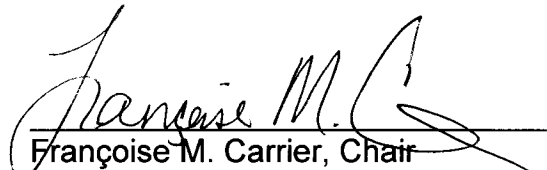
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Anderson, seconded by Commissioner Dreyfuss, with Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor, and Chair Carrier and Commissioner Presley temporarily absent, at its regular meeting held on Thursday, October 17, 2013, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board