



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

MCPB No. 17-061
Preliminary Plan No. 120170140
Rothbard Property
Date of Hearing: July 20, 2017

JUL 25 2017

RESOLUTION

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

WHEREAS, on December 5, 2016, Michael Rothbard ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot and one outlot on 9.77 acres of land in the RE-2 zone, located on the east side of Stonebarn Lane, approximately 1,000 feet east of the intersection with Squires Court ("Subject Property"), in the Rural West Policy Area and the Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120170140, Rothbard 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 7, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 20, 2017, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120170140 to create one lot and one outlot on the Subject Property, subject to the following conditions:¹

¹ 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.

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
MNCPPC Legal Department
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

1. This Preliminary Plan is limited to one lot for one dwelling unit, and one outlot.
2. Include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
3. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. 120170040, approved as part of this Preliminary Plan, subject to the following:
 - a. A Final Forest Conservation Plan must be approved by M-NCPPC Staff prior to recordation of the plat and address the following conditions:
 - i. The limits of disturbance on the Final Forest Conservation Plan must be substantially consistent with the approved Preliminary Forest Conservation Plan, subject to staff review.
 - ii. Tree protection measures must be shown on the plan for existing trees to remain.
 - b. Applicant must have all required site inspections performed by M-NCPPC Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 - c. The Applicant must record a Category I Conservation Easement (“Easement”) over all areas of forest retention, forest plantings and environmental buffers as specified on the approved Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property, and the Liber Folio for the easement must be referenced on the record plat.
 - d. The Applicant must execute a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel prior to the start of any demolition, clearing or grading on the Property. The maintenance and management agreement is required for all forest planting areas credited toward meeting the requirements of the Forest Conservation Plan, including the reforestation of environmental buffers.
 - e. The Applicant must provide financial surety to the M-NCPPC Planning Department for the 2.30 acres of new forest planting prior to the start of any demolition, clearing, or grading on the Property.
 - f. The Applicant must install permanent forest conservation easement signage along the perimeter of the conservation easements in all areas, as shown on the forest conservation plan, or as amended by the M-NCPPC forest conservation inspector.
 - g. The Applicant must comply with all tree protection and tree save measures shown on the approved FCP. Tree save measures not specified on the FCP may be required by the M-NCPPC forest conservation inspector.
 - h. The limits of disturbance (LOD) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.

4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated May 18, 2017, and hereby incorporates them as conditions of the Preliminary Plan approval. 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.
5. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated April 20, 2017, and hereby incorporates them as conditions of the Preliminary Plan approval. 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.
7. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Well and Septic Section in its letter dated May 18, 2017, and hereby incorporates them as conditions of the Preliminary Plan approval. 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.
8. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated March 13, 2017, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
9. The record plat must show necessary easements.
10. The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of this Planning Board Resolution.
11. 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, on-site parking, site circulation,

and sidewalks 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) [or] site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.

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

1. *The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

The layout of the subdivision is appropriate considering the lot size, width, shape, and orientation, given its location, the type of development contemplated, and the requirements of Chapter 59. The Preliminary Plan is creating one lot from part of an outlot, located within an existing subdivision. The lot size, shape and orientation is largely dictated by the existing surrounding development, and the density is permitted by the zone and consistent with surrounding development.

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

The Master Plan recognizes and affirms the general area around the Subject Property as a green wedge with low-density residential development, and it reconfirmed all existing residential zoning within the Master Plan boundary unless specifically changed. The Subject Property is located within the Travilah portion of the Master Plan, which is described on Page 80 of the Master Plan as “a transition from the higher densities of Potomac and North Potomac to lower densities in Darnestown and the natural environment of the Potomac River.” This part of the Potomac Subregion is meant to be reliant on septic systems to ensure the more rural character and lists RE-2 as one of the preferred zones for the area. There are no specific recommendations for the Subject Property in the Master Plan and no recommendations to change the zoning to anything other than RE-2. The Application is in conformance with the Master Plan by proposing one lot for a one-family detached dwelling consistent with the residential estate zone.

The Master Plan does not identify the Subject Property in a watershed or resource area intended for extra protection; however, the Master Plan does provide general water resource and wetland recommendations including maintaining and protecting stream buffer and forest areas, clustering, and appropriately

locating stormwater management facilities. The large size of the Subject Property provides the opportunity to locate the proposed dwelling and all associated impacts away from the pond and stream valley, and the Preliminary Plan protects these features with Category I conservation easements.

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

The Subject Property has access to Stonebarn Lane, an existing tertiary residential street with 20 feet of paving in a 60-foot-wide right-of-way. No additional dedication or frontage improvements are required.

The Application creates one new residential lot, which generates fewer than 30 peak hour trips, and therefore satisfies the Local Area Transportation Review with a traffic statement documenting the minimal impact. The Preliminary Plan was reviewed under the Rural West Policy Area for the Transportation Policy Area Review. The Rural West area is exempt from the roadway and transit tests, therefore the Application is adequate under that review.

Other public facilities and services are adequate to meet the demands of this Preliminary Plan. The Application is providing on-lot private wells and sewer system as approved by MCDPS Well and Septic. The MCDPS Fire Department Access and Water Supply Section has also recommended approval of the Application. Electricity and telecommunications are available for the Subject Property, and the police and health services are operating within the standards set by the Subdivision Staging Policy. The Subject Property is located in the Wootton High School cluster which was not in a payment or building moratorium area.

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

As conditioned, the Forest Conservation Plan complies with the requirements of Chapter 22A, the Forest Conservation Law.

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420151260 for the Subject Property was approved on March 16, 2015. The NRI/FSD identified all the required environmental features on and adjacent to the Subject Property, as further described in the *Environmental Guidelines for Management of Development in Montgomery County*. The NRI/FSD identified a perennial stream, wetlands, in-stream farm pond (man-made), steep slopes and slopes with highly erodible soils. In addition, the NRI/FSD also identified a high priority existing forest stand of 1.07 acres along the stream and pond at the south end of the Subject Property.

Buffer Averaging

The Preliminary Forest Conservation Plan (“PFCP”) includes areas of Category I Forest Conservation Easement (“FCE”) around the pond that differs from the approved stream valley buffer (“SVB”) shown on the NRI/FSD. The Applicant has requested that the SVB not be surrounded by Category I FCE along the northwest and southwest sides of the existing pond to allow for future maintenance and dam safety of the embankment, and to allow access by the current and future Subject Property owners, which is consistent with past practice. The Planning Board has agreed to leave these areas identified on the PFCP free of FCE, and to instead use buffer averaging to meet the Environmental Guidelines.

The *Environmental Guidelines, Section V-A1* provides the option for buffer compensation to offset buffer encroachment on a case-by-case basis, including buffer averaging, which permanently protects environmentally comparable on-site areas outside the delineated stream buffer in exchange for the allowance of encroachment elsewhere in the delineated buffer. To approve the use of buffer averaging, the following five criteria must be met:

1. *Reasonable alternative for avoidance of the buffer are not available;*

The portion of the SVB being left out of FCE for maintenance of the dam and for recreational and aesthetic access to the pond cannot be reasonably avoided, since the entire pond is surrounded by a 25-foot wide SVB. No reasonable means of access can therefore be provided without omitting a portion from the FCE.

2. *Encroachment into the buffer has been minimized;*

The Applicant has limited access to approximately 150 feet along one side of the pond, which faces the rear of the proposed single-family detached house, and to the dam face which needs to be maintained free of vegetation. No construction or clearing activities are proposed at this time; however, the Applicant wishes flexibility to maintain the view shed and access to the pond in the future.

3. *Existing sensitive areas have been avoided (forest, wetlands and their state-designated buffers, floodplain, steep slopes, habitat for rare, endangered, and threatened species and their associated buffers);*

The locations that would not be placed in conservation easement is part of a 25-foot wide wetland buffer that would be adjacent to any pond. Other than being within the buffer, the areas do not contain any other sensitive environmental features.

4. *The proposed use is consistent with the preferred use of the buffer;*

The area of the SVB not being placed in the FCE is predominantly an open grassed area with some existing tree cover. This area will likely continue to be unimproved but maintained, and as such, will continue to function in the same manner as it does currently.

5. *The plan design provides compensation for the loss of buffer function;*

The Applicant proposes to use stream buffer averaging to compensate for the amount of SVB not being protected with FCE, by increasing the area of FCE outside of and adjacent to the SVBs on the northeast side of the existing farm pond adjacent to wetlands. The area of SVB not included in the proposed FCE is approximately 8,300 square feet. As compensation, the Applicant proposes to place 8,300 square feet of additional land outside of, but adjacent to, the SVB into FCE on the Subject Property. This additional area will be planted with new forest to supplement existing vegetation (approximately 6,500 SF of planting).

The Planning Board approves the use of buffer averaging on the Subject Property, including the location of the FCE, and the supplemental forest planting.

Forest Conservation

Based on the total tract area of this parcel at 9.77 ac., the Land Use Category of Medium Density Residential, and the existing 1.07 acres of on-site forest, the Forest Conservation Worksheet results in a planting requirement of 1.86 acres. The Application meets the requirements of the forest conservation plan by retaining all 0.58 acres of existing high priority forest and planting an additional 1.86 acres onsite, in addition to the 8,300 square feet of buffer averaging plantings. All retained forest, planted forest both inside and outside of the SVB, wetland areas, and SVB areas not otherwise discussed prior, will be placed into a Category I Conservation Easement, consistent with that shown on the PFCP.

5. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS water resources division on April 20, 2017. The Application will meet stormwater management goals through a variety of techniques including the use of landscape infiltration and drywells.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), 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 Board in this matter, and the date of this Resolution is JUL 25 2017. (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 Fani-González, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, July 20, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board