



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

MCPB No. 20-077
Preliminary Plan No. 12006102A
Rosewood Manor Estates
Date of Hearing: July 30, 2020

AUG 17 2020

RESOLUTION

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

WHEREAS, July 22, 2008, the Planning Board, by Resolution MCPB No. 08-61, approved Preliminary Plan No. 120061020, creating two lots on 7.89-acres of land in the RE-1 zone and Upper Rock creek Overlay zone, located on the north side of Rosewood Manor Lane, approximately 1,150 feet east of Woodfield Road (MD124) ("Subject Property"), in the Rural East Policy Area and 2004 *Upper Rock Creek Master Plan* ("Master Plan") area; and

WHEREAS, on October 7, 2019, Allen Roy Builders and Alban Salaman ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to extend the Preliminary Plan validity by 16 months and update the Preliminary/Final Water Quality Plan on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12006102A, Rosewood Manor Estates ("Preliminary Plan," "Amendment," 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 14, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 30, 2020, 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. 12006102A to extend the Preliminary Plan validity by 16 months and update the Preliminary/Final Water Quality by adding the following conditions:¹

- 12) The Preliminary Plan Amendment will remain valid for 16 months from the original expiration date, August 22, 2019.
- 13) The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
- 14) 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). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.

- 15) Prior to submittal of the Certified Preliminary Plan, the Applicant must update the Upper Rock Creek Special Protection Area information on the Preliminary Plan to be consistent with the Staff Report.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan, and all findings not specifically addressed remain in effect.

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.

6. Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.

Preliminary Plan Validity – Section 50.4.2.H

The Preliminary Plan Amendment includes a 16-month extension to the original 36-month Preliminary Plan validity period. The current plan validity expiration date was August 22, 2019. To approve an extension to plan validity, the Board must make the following analysis and findings.

1. Extension Request

a. Only the Board is authorized to extend the validity period. The applicant must submit a request to extend the validity period of an approved preliminary plan in writing before the previously established validity period expires.

The Applicant submitted a plan validity extension request to the Planning Board. The request was received on August 20, 2019, before the validity expired on August 22, 2019.

b. The Director may approve a request to amend the validity period phasing schedule of an approved preliminary plan if the length of the total validity period of the preliminary plan is not extended. The applicant must submit the request in writing before the previously established validity period of the phase expires.

This finding is not applicable because this Application does not have a phasing schedule.

c. The written request must detail all reasons to support the extension request and include the anticipated date by which the plan will be validated. The applicant must certify that the requested extension is the minimum additional time required to record all plats for the preliminary plan.

The Applicant has provided a justification statement for the requested extension to the plan validity. The current validity expired on August 22, 2019. The request for 16 months of extended validity from the expiration date will allow the Applicant to finish the plating process, which has been put on hold until the Plan validity is extended. The Applicant has demonstrated that their request is the minimum additional time required to complete recordation of the outstanding plat.

2. Effect of failure to submit a timely extension request.

The request was received in a timely manner; therefore, the sub-sections herein does not apply.

3. *Grounds for extension.*

a. The Board may only grant a request to extend the validity period of a preliminary plan if the Board finds that:

i. delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or

ii. the occurrence of significant, unusual and unanticipated events, beyond the applicant's control and not caused by the applicant, have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to the applicant if the plan were not extended.

The Applicant's Statement of Justification states that the Applicant's ability to validate the plan has been delayed due to multiple unforeseen events, which prevented recordation.

For context, the Preliminary Plan was approved on July 22, 2008 and the recession followed shortly after, reducing demand for new construction homes. In 2011, the real estate market began to rebound, and the Applicant submitted a record plat application No. 220111220. It was at this point that the Applicant began trying to satisfy the conditions of approval resulting in significantly, unforeseen delays, and basis of the Applicant's request.

The primary unforeseen circumstance that impacted the Applicant's ability to validate the Preliminary Plan is the inability to meet Condition 10 of the Preliminary Plan Resolution.

This condition requires the Applicant to work with the adjacent property owner's (Lots 15-17) to implement the shared driveway configuration and associated shared access easement. The existing driveway serving Lot 15-17 is within a recorded access and utility easement and consolidating access on a new shared driveway would also require remove of a section of the existing driveway. The Applicant provided a letter from their representative at Remax documenting their attempts to work with the adjacent property owners.

The Applicant met with Planning Staff on numerous occasions, attempting to find a solution that would let the Record Plat move forward that didn't require

removing the existing driveway and remained in the spirit of the Preliminary Plan.

These delays were not a direct result of actions by the Applicant and the Applicant has demonstrated a good faith effort in trying to resolve these issues in a timely manner.

Additionally, the Applicant's validity extension justification states that these significant, unusual and unanticipated events, beyond their control and not caused by the Applicant, have impacted their ability to validate the plan, and that an undue hardship would result to the Applicant if the validity period were not extended. If the validity were not extended, the Applicant would not be able to complete the record plat process which has already been initiated.

To date, the Applicant has recorded the requisite Category I Conservation Easements and is in the final stages of the record plat process.

b. The applicant bears the burden of establishing the grounds in support of the requested extension.

The Applicant provided Staff with a justification statement outlining the validity extension request and the necessary justifications.

4. Planning Board considerations for extension.

a. The Board may condition the grant of an extension on a requirement that the applicant revise the plan to conform with changes to the requirements of this Chapter since the plan was approved.

The Board require the Applicant to conform to any changes that have occurred in Chapter 50 since the initial approval date.

b. The Board may deny the extension request if it finds that the project, as approved and conditioned, is no longer viable. The Board must consider whether the project is capable of being financed, constructed, and marketed within a reasonable time frame. The Applicant must demonstrate the project's viability upon request by the Board or the Director.

The Applicant has confirmed in their extension justification that the Preliminary Plan is still viable from a financial, construction and market standpoint. The Applicant has already submitted their plat application which is currently in the process of being reviewed.

5. Planning Board action.

a. After a duly noticed public hearing, the Board must determine whether it should grant a request for an extension. The requirements for noticing and conducting a public hearing must follow the requirements for a preliminary plan.

The Preliminary Plan Amendment was noticed like all other amendments pursuant to the requirements of Chapter 50 and the Development Manual. The Amendment is also scheduled for a public hearing before the Planning Board, which was properly noticed.

b. If voting to approve an extension, the Board must only grant the minimum time it deems necessary for the applicant to validate the plan.

The Applicant has requested a 16-month extension from the original expiration date, August 22, 2019 and states this is the minimum necessary to complete the validation. Staff supports the Applicant's request.

c. The Board may only grant an extension to a preliminary plan within the plan's APFO validity period, unless a further extension is allowed by law.

The requested plan validity extension period falls within the Preliminary Plan's existing APFO validity period, which is not set to expire until August 22, 2021.

d. An applicant may request, and the Board may approve, more than one extension.

This is the first request for a plan validity extension made for the current Preliminary Plan approval.

e. Once a phasing schedule is approved by the Board as part of a preliminary plan approval, the Board must treat any revision or alteration to the schedule other than an amendment approved under Section 4.3.J.7 as a minor amendment to the preliminary plan. Board approval of a revised phasing schedule is required to extend the total length of validity period.

This finding is not applicable because this Application does not have a phasing schedule.

Environment

Upper Rock Creek Special Protection Area Preliminary/Final Water Quality Plan

The Property is located within the Upper Rock Creek SPA and the Upper Rock Creek Overlay Zone. Per Section 19-62 of the Montgomery County Code, a Preliminary/Final Water Quality Plan was approved as part of Preliminary Plan No. 120061020. This Application includes an amendment to the Preliminary/Final Water Quality Plan to update the stormwater management plans and to clarify the applicability of the Upper Rock Creek Overlay Zone requirements as discussed previously.

As part of the requirements of the SPA law, a Water Quality Plan should be reviewed in conjunction with a Preliminary Plan and Site Plan. Under Section 19-65 of the Montgomery County Code, the Montgomery County Department of Permitting Services ("MCDPS") and the Planning Board have different responsibilities in the review of a Water Quality Plan. MCDPS has reviewed and conditionally approved the elements of the amendment to the Preliminary/Final Water Quality Plan under its purview. The Planning Board must determine if SPA forest conservation and planting requirements, environmental buffer protection, and any applicable limits on impervious surfaces have been satisfied. Sec. 19-65(a)(2)(A) of the Montgomery County Code states that:

"In acting on a preliminary or final water quality plan, the Planning Board has lead agency responsibility for:

- (i) Conformity with all policies in the Planning Board's Environmental Guidelines which apply to special protection areas;
- (ii) Conformity with any policy or requirement for special protection areas, including limits on impervious area, in a land use plan, watershed plan, or the Comprehensive Water Supply and Sewer System Plan; and
- (iii) Any other element of the plan in which the Planning Board has lead agency design, review, and approval responsibility."

MCDPS Special Protection Area Review Elements

In a letter dated July 9, 2020, MCDPS has found the Water Quality Plan and Stormwater Management concept for this Application to be acceptable for their portion of the Preliminary/Final Water Quality Plan under its purview including 1) stormwater management facilities and 2) sediment and erosion control measures.

Planning Board Special Protection Area Review Elements

The Planning Board's responsibilities related to conformance with forest conservation and environmental buffer protection have been met under the approved Final Forest Conservation Plan No. 120061020. Limits on impervious surfaces are defined in the Upper Rock Creek Overlay Zone; however, this Application is exempt from those limits under Chapter 59, Section 4.9.20.B.1.g., which states that development not served by public sewer is *exempt* from the Overlay Zone. The Application creates of two lots to be served by private sand mounds. Since the Application will not be served by public sewer, it is exempt from the requirements of the Overlay Zone, including the impervious surface limit of 8 percent.

The original Preliminary Plan approval erroneously included a finding in the Planning Board Resolution MCPB No. 08-61 that the application complied with the 8 percent limit on impervious surfaces. This finding was made in error since the 8 percent impervious surface limit does not apply to the Application.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 17 2020 (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 Cichy, seconded by Commissioner Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, July 30, 2020, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board