



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

NOV 3 - 2007

MCPB No. 07- 53
Preliminary Plan No. 120060750
Clement West Property
Date of Hearing: April 26, 2007

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

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 January 18, 2006, the Estate of Stephanie J. Clement & Lynwood Farm LLP ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 9 lots on 243.86 acres of land located on the southeast side of Peach Tree Road, approximately 4,550 feet south of Old Hundred Road (MD 109) ("Property" or "Subject Property"), in the Agricultural and Rural Open Space master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120060750, Clement West Property ("Preliminary Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated April 6, 2007, 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 Planning Board staff ("Staff") and the staffs of other governmental agencies, on April 26, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

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

WHEREAS, on April 26, 2007 the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

Approved as to
Legal Sufficiency:

DRN 10/9/07

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Commissioner Bryant; with a vote of 5-0, Commissioners Bryant, Hanson, Perdue, Robinson, and Wellington voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120070750 to create 9 lots on 243.86 acres of land located on the southeast side of Peach Tree Road, approximately 4,550 feet south of Old Hundred Road (MD 109) ("Property" or "Subject Property"), in the Agricultural and Rural Open Space master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval is limited to nine (9) lots for nine (9) one-family detached residential dwelling units.
- 2) The applicant must comply with the conditions of approval of the Preliminary Forest Conservation Plan. The applicant must satisfy all conditions prior to recording of plat(s) or issuance of sediment control permits, as applicable.
- 3) The applicant must place Category I conservation easements over all environmental buffers and forest retention areas on proposed lots 1 through 4, and 6 through 9, and on the 1.9-acre forest retention area on proposed lot 5.
- 4) The applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated December 13, 2006.
- 5) The applicant must comply with the conditions of MCDPS (Health Dept.) septic approval dated November 9, 2006.
- 6) The applicant must comply with the conditions of the Montgomery County Department of Public Works and Transportation (MCDPWT) approval letter dated April 20, 2006, unless otherwise amended.
- 7) The applicant must revise the Preliminary Plan drawing prior to certification to reflect creation of an ingress/egress easement in the southwest corner of the property over the existing driveway.
- 8) The record plat shall 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."
- 9) The applicant shall dedicate all road rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan unless otherwise designated on the Preliminary Plan.
- 10) The applicant shall construct all road rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By _____" are excluded from this condition.

- 11) The record plat submission must include a title search and affidavit verifying the availability of a TDR for each existing and proposed dwelling unit shown on the approved Preliminary Plan. A note referencing the affidavit must be included on the record plat.
- 12) The record plat must reflect an ingress/egress easement in the southwest corner of the property over the existing driveway that accesses parcels P350 and P407.
- 13) Access and improvements as required must be approved by MCDPWT prior to approval of the record plat.
- 14) The term "denied access" is to be placed on the final record plat along the property that abuts Interstate 270, and along Peach Tree Road except for the proposed internal public street.
- 15) Other necessary easements to be reflected on plat.
- 16) The Applicant must revise the Preliminary Plan and preliminary forest conservation plan for staff approval prior to certification of the Preliminary Plan, to reflect reservation of additional right-of-way along the I-270 frontage of the property as requested by the Maryland State Highway Administration (SHA).
- 17) The Applicant must record a Plat of Reservation placing the additional I-270 right-of-way per Condition #16 in reservation for a minimum of 2 years from the date of the Planning Board's resolution for the Preliminary Plan.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, 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 master plan.

The property is located within the Agricultural and Rural Open Space (AROS) Master Plan which establishes agriculture as the preferred use for land area in the Rural Density Transfer (RDT) zone. These areas contain a critical mass of productive farmland worthy of protection, as well as other non-farmland uses which serve to support and define the critical mass. The proposed development plan creates seven residential lots located in the northwest corner of the property, and two large farm lots. Almost 190 acres (about 78 percent of the site) are included in the large lots and will remain available for agricultural use and forestry. The smaller lots range in size between 3.7 and 11.6 acres. More than half the acreage of most of these lots is made up by stream valley buffer and forest area that is not currently farmed, and would not likely be farmed in the future because of steep slopes. Grouping the smaller lots provides large, contiguous areas for continued agricultural use. The Application includes a five-year commitment to continue farming on the largest lot, and in all likelihood, the other large lot will be used similarly. The Planning Board finds that the

Application substantially conforms to the AROS Master Plan in that it meets the master plan goal for agricultural preservation and the requirements for the RDT zone.

The property fronts on, and will be accessed from, Peach Tree Road which is designated as a rustic road in the *Rustic Roads Functional Master Plan*. The plan notes that the road has high historic value, outstanding farm views, and natural features. The narrow, twisting alignment through interesting terrain is noted as a significant feature of the roadway north of Comus Road, including the Subject Property frontage. The plan recommends retention of tree canopy and vegetation on the embankments adjacent to the road to maintain the character. The Application addresses the goals of the Functional Master Plan by preserving all the existing vegetation along Peach Tree Road except for the necessary and unavoidable clearing associated with construction of the new access road. Furthermore, views of proposed houses from the rustic road will be minimized by the presence of existing vegetation and the topography of the site.

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

Roads and Public Transportation Facilities

The proposed development generates less than 30 vehicle trips during the morning and evening peak-hours, and therefore, is not subject to Local Area Traffic Review (LATR). Safe and adequate vehicle access will be provided via the proposed tertiary roadway to existing Peach Tree Road. Peach Tree Road is a designated rustic road which is not built to County standards, but has been determined by the Montgomery County Department of Public Works and Transportation (DPWT) to have adequate capacity in its existing condition for the proposed development. The Planning Board finds that sidewalks are not necessary for the proposed internal roadway because the street will be safe for use by pedestrians in this rural subdivision. The Planning Board finds that the proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

Other public facilities and services

The Planning Board finds that other private and public facilities and services are available and will be adequate to serve the proposed units. The Property is served by private septic and wells that have been approved by the Department of Permitting Services, Well and Septic Section. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have 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 currently operating within acceptable county standards and will be adequate to serve the Property. Electrical 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.*

The size, width, shape and orientation of the proposed lots are appropriate for the location of the subdivision. The proposed lots will have frontage on a new public street that will provide adequate access and circulation. The lots were reviewed for compliance with the dimensional requirements specified in the Zoning Ordinance for the RDT zone. The lots as proposed will meet all applicable dimensional requirements for area, frontage, width, and setbacks in that zone.

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

The Preliminary Plan meets the forest conservation requirements of Chapter 22A of the Montgomery County Code. The Applicant submitted an Agricultural Declaration of Intent (DOI) to continue farming operations on proposed Lot 5. The DOI reduces the net tract area subject to forest conservation to 110.6-acres, and reduces the amount of existing forest counted toward forest conservation requirements to 51.32 acres. The submitted preliminary forest conservation plan includes permanent protection of 50.85 acres of this forested area, and removal of 0.47-acre for the construction of the new subdivision street from Peach Tree Road. The forest removal generates a 0.94-acre planting requirement that will be met by permanently protecting 1.9 acres of existing forest on proposed Lot 5, for a total of 52.75 acres of forest protection onsite.

The proposed development is in an agricultural resource area, as defined by the forest conservation law, and therefore must comply with Section 22A-12(f) of the Montgomery County Code which requires retention or planting of a certain percentage of the onsite net tract area in forest. For this particular plan, 25 percent of the net tract, or approximately 28 acres, must be in retained forest. The preliminary forest conservation plan submitted exceeds this requirement.

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.*

MCDPS approved a stormwater management concept for the subject property on December 13, 2006. The concept consists of onsite water quality control and onsite recharge via use of non-structural measures. Channel protection volume storage is not required because the one-year post development peak discharge is less than or equal to 2.0 cubic feet per second.

6. *An over-length cul-de-sac is suitable for the proposed subdivision by reason of property shape and large lot size.*

Staff noted during the public hearing that the Preliminary Plan includes access via a tertiary road that will end in a cul-de-sac approximately 1,100 feet in length. Pursuant to section 50-26 of the Subdivision Regulations, a cul-de-sac longer than 500 feet is not permitted "unless, by reason of property shape, size, topography, large lot size or improved street alignment, the Board may find a greater length to be justified." The proposed cul-de-sac is justified because looping the proposed road around to another entrance point along the Property's relatively narrow frontage on Peach Tree Road would negatively impact this rustic road. The road design is justified by the large lot configuration of the Preliminary Plan.

7. *Extension of the proposed public road through the proposed agricultural lots to adjacent property is not appropriate for this Application.*

Prior to the public hearing, and during testimony at the hearing, a request was made by the owner of two adjacent, currently landlocked parcels of land (P500 and P800) to extend the proposed public road right-of-way through the Subject Property to provide access for future residential development. The Board previously discussed access to these adjacent parcels as part of the subdivision plan for the Garden of Remembrance Cemetery which is located on Comus Road, south of the parcels. The Planning Board found, pursuant to Section 50-35(k)(5)(d) of the Montgomery County

Code, Subdivision Regulations² that an ingress/egress easement through the cemetery property to the adjacent parcels was necessary to ensure that the development of the parcels was not significantly impaired. A condition requiring creation of the easement along the western boundary of the cemetery was included as part of the approval. That easement did not extend all the way out to existing Comus Road to the south, but, rather, required acquisition of an additional easement through an intervening property. The additional access through the Subject Property was sought because the adjacent property owner has been unable to obtain the additional easement to Comus Road from the intervening property owner.

The Planning Board finds that the previously granted easement through the Garden of Remembrance Cemetery Property, and other access that could be provided to Peach Tree Road or Slidell Road through adjacent properties, provide adequate access for residential development of parcels P500 and P800, without encroaching on the more desirable agricultural uses on the Subject Property with an extended public road. The record of the previous cemetery case indicates that access to Peach Tree Road and Slidell Road through other parcels was, and may still be, available to P500 and P800. Additional easement for a public road extension through the cemetery was required because the adjacent property owner, and staff at the time, did not believe connection to either of these roads was desirable because portions are prescriptive rights-of-way with substandard road surfaces. The Planning Board finds that although conditions along these existing roads vary, extension of driveways to these roads, or through the existing cemetery easement, is preferable to bisecting desirable farmland with a road for residential uses. Slidell Road is not designated as a rustic road, and already exists as a prescriptive right-of-way. It could be improved as part of a public road extension to P500 and P800 that would be shorter in length, and less impact to farmland, than an extension through the subject property.

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 50-35(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

² Section 50-35(k)(5)(d) of the Montgomery County Code, Subdivision Regulations, provided that the Planning Board must find that existing or proposed street access within the area of an application is adequate, and does "not result in the inability to develop adjacent lands in conformity with sound planning practices." This requirement has since been removed from the regulations.


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

~~BE IT~~ **NOV 3 - 2007** FURTHER RESOLVED, that the date of this Resolution is (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).

* * * * *

At its regular meeting held on Thursday November 1, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Vice Chair Robinson, seconded by Commissioner Bryant, with Chairman Hanson, Vice Chair Robinson, and Commissioner Bryant present and voting in favor. This Resolution constitutes the final decision of the Planning Board, and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan No. 120060750, Clement West Property.



Royce Hanson, Chairman
Montgomery County Planning Board