

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

December 17, 2024

MCPB No. 24-118

Appeal of Denial of Natural Resources Inventory/Forest Stand Delineation No. 420240850

Persimmon Tree Subdivision

Date of Hearing: October 31, 2024

RESOLUTION

WHEREAS, pursuant to Sections 22A-20(c)(1) and (c)(2) of the Montgomery County Code, the Montgomery County Planning Board is authorized to hear and decide appeals from the denial of a Natural Resources Inventory/Forest Stand Delineation (hereinafter “NRI/FSD”); and

WHEREAS, on September 16, 2024, Applicant¹/Appellant (hereinafter “Appellant”) Hamid Shirazi filed such an appeal following the August 16, 2024, denial of NRI/FSD No. 420240850 by the Planning Director, concerning property located at and near 9810 Newhall Road and 9312 Persimmon Tree Road, Potomac, Montgomery County, Maryland, said land being zoned R-200 and located within the bounds of the *2002 Potomac Subregion Master Plan*;

WHEREAS, on October 31, 2024, the Planning Board held a duly-noticed de novo review hearing in this matter in accordance with the Montgomery County Code, with all Commissioners present; and

WHEREAS, following review and analysis of the evidence and testimony presented at the hearing, all of which is hereby incorporated by reference, the Planning Board voted to sustain the appeal and reverse the decision of the Planning Director, made certain accompanying findings of fact, and remanded the matter to the Planning Department and Planning Director for further proceedings not inconsistent with this Resolution, on the motions of Commissioner Linden, as seconded by Commissioner Pedeem; Commissioner Bartley, as seconded by Commissioner Pedeem; and Commissioner Hedrick, as seconded by Commissioner Linden, with all Commissioners voting in favor of all motions.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board SUSTAINS the appeal, REVERSES the decision of the Planning Director, and REMANDS this matter to the

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 decision.

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Approved as to

Legal Sufficiency: /s/ Matthew Mills
M-NCPPC Legal Department

Planning Department and Planning Director for further proceedings not inconsistent herewith, and in support thereof states as follows:

1. The NRI/FSD at issue was filed in October 2023 in conjunction with Concept Plan No. 520240040, by which Appellant demonstrated his intention to resubdivide two existing lots at 9810 Newhall Road and 9312 Persimmon Tree Road, along with an abandoned portion of right-of-way, collectively “the Site,” in order to create three new buildable lots.
2. Thereafter, Planning Staff and Appellant found themselves in disagreement as to whether or not a channel located on the Site constitutes an intermittent stream, as maintained by Planning Staff, or an ephemeral stream, as maintained by Appellant.
3. The Planning Director ultimately decided the issue on July 23, 2024, upholding the position of Planning Staff that the channel in question constitutes an intermittent stream. The instant appeal is the result of that decision by the Planning Director.
4. At the Planning Board hearing on October 31, 2024, having heard the sworn testimony of various witnesses, including on cross-examination and upon questioning by the Board, as well as having reviewed all the relevant documentary evidence (posted ten days in advance of the hearing on the Board’s October 31, 2024 Agenda website - www.montgomeryplanningboard.org), the Board determined that the following facts were established by a preponderance of the evidence:
 - a. the channel in question constitutes an ephemeral stream based upon the application of all relevant criteria and characteristics provided in the *Guidelines for Environmental Management of Development in Montgomery County* (the “*Environmental Guidelines*”) approved by the Planning Board in 2021, including but not limited to geomorphology, hydrology, and biology; and
 - b. the ephemeral stream becomes an intermittent stream beginning approximately eighty (80) feet south of the relevant property line.
5. These determinations were made as a matter of the weight of the evidence and credibility of the witnesses in light of the lay testimony of the Appellant, and the expert testimony with respect to stream analysis and determination of both Michael Klebasko and Robert Zarzecki, as well as all accompanying documentary evidence, including but not limited to:
 - a. the January 5, 2024 letter from the Maryland Department of the Environment; and;
 - b. the written reports of both expert witnesses (Klebasko and Zarzecki), applying, in pertinent part, the *Environmental Guidelines*, as well as commonly used and accepted methodologies in the field, and predicated upon their own investigations and observations of the Site.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is

December 17, 2024

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 consistent with the Maryland Rules for the judicial review of administrative agency decisions.

* * * * *

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 Vice Chair Pedoeem, seconded by Commissioner Hedrick, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, at its regular meeting held on Thursday, December 12, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board