

ORVILLE E. AND PATRICIA L. SHEPHERD \* BEFORE THE  
PETITIONER \* PLANNING BOARD OF  
PLANNING BOARD CASE NO. 426 \* HOWARD COUNTY,  
MARYLAND

\* \* \* \* \*

**DECISION AND ORDER**

In accordance with State Senate Bill 236, Section 5-104 of the Land Use Article of the Maryland Annotated Code the Planning Board of Howard County, Maryland, held a public hearing on January 5, 2017, to consider the petition of Orville and Patricia Shepherd, Petitioner, through the authority of the Personal Representative for the Estate of Patricia L. Shepherd, to approve a Final Plan, F-16-123, for six single-family lots. The 20.12 acre Ten Oaks Farm subdivision, located on Ten Oaks Road and identified as Parcel 140 on Tax Map 28, in the Fifth Election District of Howard County, Maryland, is in the Growth Tier III residential land use category and is zoned RR-DEO (Rural Residential – Density Exchange Option).

The Notice of Hearing, which is required by Section 5-104(d)(1) of the Land Use Article of the Maryland Annotated Code, was published and the subject property was posted in accordance with the Planning Board’s requirements, as evidenced by certificates of publication and posting, all of which were made a part of the record of the case. Pursuant to the Planning Board’s Rules of Procedure, the reports and official documents pertaining to the petition, including the Technical Staff Report of the Department of Planning and Zoning, the Howard County Subdivision and Land Development Regulations, the Howard County Zoning Map and Regulations, the Howard County Design Manuals, the Howard County Landscape and Forest Conservation Manuals, and the Adequate Public Facilities Ordinance were made part of the record in this case.

Mr. William Erskine, Esq., represented the petitioner, the Estate of Orville E. and Patricia L. Shepherd. One individual, Mr. Alan Magan, an adjoining property owner, who

testified in opposition, did not have legal representation. A list of Exhibits introduced into evidence by the Petitioner is attached to this Decision and Order as Attachment 1.

Based on all the information presented, the Planning Board makes the following findings of fact and conclusions of law:

**Department of Planning and Zoning's Technical Staff Report**

1. Nicholas Haines presented the Technical Staff Report for the Department of Planning and Zoning, which recommended approval of Final Plan, F-16-123, subject to comments from reviewing agencies and any conditions of approval by the Planning Board. The Technical Staff Report found that there are two criteria for the Planning Board to review pursuant to Section 5-104(e) of the Land Use Article of the Maryland Annotated Code for a proposed major subdivision on a Tier III property, only the second of which is applicable:

1. The cost of providing local government services to the residential major subdivision unless a local government's adequate public facilities law already requires a review of government services; and
2. The potential environmental issues or a natural resources inventory related to the proposed subdivision.

The Department of Planning and Zoning found that criterion 1 above did not apply because Howard County has an adequate public facilities law, which already requires a review of government services and, therefore, this requirement has been met.

As to criterion 2 above, the Department of Planning and Zoning found that while the property contains environmental features, the majority will be preserved, including the 1.76 acres of floodplain, 2.64 acres of streams, 5.76 acres of wetlands and their associated buffers, and 1.45 acres of forest.

Based on the Petitioner's presentation of the above information as to a "natural resources inventory related to the proposed subdivision", the Department of Planning and Zoning recommended approval of final plan F-16-123 because it met the requirements of Section 5-104(e) of the Land Use Article of the Maryland Annotated Code.

2. Ms. Stephanie Tuite, an Engineer with Fisher, Collins & Carter, Inc., testified on behalf of the Petitioner. Ms. Tuite testified that she was familiar with the requirements of what is commonly referred to as SB 236, Section 5-104 of the Land Use Article of the Maryland Annotated Code. Ms. Tuite testified that she agreed with the Department of Planning and Zoning that the only criterion for approval in this case concerned a review of potential environmental issues or a natural resources inventory related to the proposed subdivision. Ms. Tuite testified that the proposed subdivision met this criterion.

Ms. Tuite provided testimony as to the proposed design of the development. She provided testimony in regards to the environmental features and how they would be preserved in relation to the proposed subdivision. Ms. Tuite described the environmental features on the subject property, concurring with the Department of Planning and Zoning's analysis in the Technical Staff Report as to those environmental features. Ms. Tuite agreed with DPZ that there would only be minimal disturbance to just the stream buffer, not wetlands or the stream itself, near the driveway in order to widen the driveway and repair a damaged and degraded culvert but that no other environmental features would be disturbed, and in fact the design considerations of the plan was to avoid disturbance of environmental features. Ms. Tuite testified that specimen trees and forest were being retained on-site in the lower section of the property and that trees were also being added in the wetlands in the eastern portion of the property

Ms. Tuite testified that the existing driveway for the property was proposed to be retained as the location for the driveway for the proposed subdivision in order to minimize additional disturbance on the property. Ms. Tuite described the improvement of the driveway as a widening of the driveway to 16 feet and also a repair of the culvert by inserting a 36 inch pipe sleeve inside the existing damaged culvert which was made of corrugated metal and concrete.

Ms. Tuite testified that the culvert associated with the driveway was not within the 100 year floodplain; Ms. Tuite indicated that the floodplain was located on the eastern portion of the property away from the driveway culvert.

Ms. Tuite testified that the driveway would not act as a dam retaining large amounts of water under heavy rainfall; Ms. Tuite further explained that the control structure is the only element that would control water. She explained that modeling showed the structure only restricts the flow of water exiting the pipe and does not impound water to a point of impacting the driveway.

Ms. Tuite testified that there are provisions in place to inspect and maintain the proposed stormwater devices. Ms. Tuite testified that Declarations of Covenants are recorded for stormwater management features on the property, but inspections of the culverts would be left up to the property owners. Mr. Erskine proffered that the use-in-common driveway agreement would be in place for maintenance of the driveway and associated culvert.

In response to a question from Mr. Alan Magan, resident of 5038 Ten Oaks Road, as to the parameter used in the design of the stormwater management system and the intensity storms modeled, Ms. Tuite stated that the culvert was designed for a 10 year storm and to ensure the driveway doesn't over top in the 100 year storm. Ms. Tuite testified that her modeling of the runoff had indicated that there would be no cascading of water on the driveway under 100 year storm conditions.

3. Mr. Alan Magan, an adjacent property owner, testified that he was not opposed to the proposed development but that he did not believe the driveway should be widened at its present location adjacent to his property but that it should be relocated to the west side of the property. He testified that the environmental impacts onsite and offsite should be considered by the Planning Board in accordance with Senate Bill 236 before the driveway location for the proposed subdivision. Mr. Magan further requested additional time be taken to more thoroughly and comprehensively review the plans. Mr. Magan did not present any testimony in support of his belief that the use of the location of the current driveway for the subdivision driveway could

pose potential environmental issues and cause water to run off the driveway onto his property. He expressed his belief that a bad situation was being made worse by the current proposal.

### SUMMATION

4. The proposed Final Plan, F-16-123, creates six single-family lots, on 20.12 acres of Growth Tier III land, zoned RR-DEO (Rural Residential – Density Exchange Option).

5. The Planning Board has the authority to review the Preliminary Equivalent Sketch Plan in accordance with the criteria set forth in State Senate Bill 236.

6. Howard County's Adequate Public Facilities Ordinance (APFO) requires certain government services to be reviewed. Therefore, Howard County's APFO fulfills the requirements of the first criterion of the Planning Board's review under Section 5-104(e)(1), of the Land Use Article, as indicated in the Department of Planning and Zoning's Technical Staff Report. Review by the Planning Board of the cost of providing local government services to a residential subdivision does not apply to a major subdivision on Tier III designated property, such as the subject property, because Howard County has an APFO law. The Board agrees with and adopts the analysis of the Department of Planning and Zoning, with which the petitioner concurred, as to the inapplicability of the Planning Board's review of public facility costs based on the language of Section 5-104(e)(1) of the Land Use Article of the Maryland Annotated Code. Consequently, the Board did not consider any testimony with regard to the adequacy or cost of public facilities in relation to this subdivision.

7. The only applicable criterion for the Planning Board to consider in its review of this proposed major subdivision in Growth Tier III is "the potential environmental issues or a natural resources inventory related to the proposed residential subdivision". The Petitioner presented a Final Supplemental Plan that illustrated all streams, stream buffers, wetlands, wetland buffers, floodplains, forested areas, and specimen trees on the property. This

inventory shows that the plan does not propose any major disturbance to the above referenced streams, stream buffers, wetlands, wetland buffers, or floodplain. Minor disturbance to a section of stream buffer has been determined to be necessary in order to facilitate improvements to storm water management devices and the existing driveway. Based on this information, and the testimony of Ms. Tuite, Petitioner's engineer, which the Board finds to be persuasive, convincing and reliable, the Board agrees with and adopts the Department of Planning and Zoning's recommendation for approval, and finds that sufficient information has been presented to show that there are no environmental issues associated with the proposed development.

8. The proposed subdivision, based on the Board's findings of fact above, will effectively protect, preserve, and minimize disturbance of the environmental resources by incorporating the proposed development around the existing environmental features. The development plan does not disturb environmentally sensitive areas, except to improve the storm water management devices and expand the existing driveway. The Planning Board is convinced that these alterations are necessary for the reasonable development of the subject property.

9. The adjacent property owner, Mr. Magan, testified that he believed that the widening of the existing driveway on the subject property and its proposed use as the driveway for the proposed subdivision would cause water runoff onto his property. Mr. Magan testified that he believed the driveway should be relocated to the other side of the subject property. Mr. Magan did not present any evidence in support of his concerns as to potential worsening of runoff. The Board notes that the Department of Planning and Zoning has approved the proposed subdivision for compliance with storm water management requirements prior to the plan coming to the Planning Board for its approval. The Board also notes that it must decide this matter based on the information presented at the hearing and lacks authority to defer the matter or independently study the matter but instead must base its decision on the technical review of the matter by DPZ and the presentations made to it.

**CONCLUSIONS OF LAW**


1. Petitioner, as one seeking approval of a major subdivision in a property designated as a Growth Tier III area of the County, has the burden of demonstrating that it has satisfied the only criterion of Section 5-104 of the Land Use Article of the Maryland Annotated Code which is applicable in Howard County, that there are no potential environmental issues in connection with a natural resources inventory related to the proposed residential subdivision.

2. There is sufficient evidence in the record as identified in the Board's Findings of Fact above, for the Board to conclude that the Petitioner has met its burden of demonstrating that it has satisfied the above-cited criterion for approval.

3. For the reasons stated in the above Findings of Fact and the Department of Planning and Zoning's Technical Staff Report, the Board concludes that the Petitioner has conclusively established through the evidence in the record that the proposed Final Plan, F-16-123, has satisfied all of the approval standards for a major subdivision, according to State Senate Bill 236, Section 5-104(e)(2) of the Land Use Article of the Maryland Annotated Code f.

For the foregoing reasons, the petition of Orville E. and Patricia L. Shepherd, through the authority of the Personal Representative for the Estate of Patricia L. Shepherd, to approve a Final Plan, F-16-123, to subdivide six single-family detached lots on 20.12 acres of Growth Tier III land, zoned RR-DEO, is this 2<sup>nd</sup> day of March, 2017 APPROVED by the Planning Board of Howard County, Maryland.


HOWARD COUNTY PLANNING BOARD

  
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Phillips Engelke – Chairperson

  
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Erica Roberts – Vice-Chairperson

  
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Delphine Adler

  
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Jacqueline Easley

  
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Ed Coleman

PB Case No. 426

ATTEST:

  
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Valdis Lazdins  
Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY:  
HOWARD COUNTY OFFICE OF LAW  
Gary W. Kuc, County Solicitor

  
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Paul Johnson, Deputy County Solicitor

**LIST OF APPLICANT’S EXHIBITS:**

1. Resolution of Personal Representatives for Estate of Patricia L. Shepherd
2. Complete Set of Submitted Final Plan, F-16-123
3. State of Maryland Letters of Administration for the Estate of Patricia L. Shepherd

**LIST OF PROTESTANT’S EXHIBITS:**

None were introduced