

Highland Development Corporation \* BEFORE THE  
Petitioner \* PLANNING BOARD OF  
PLANNING BOARD CASE NO. 419 \* HOWARD COUNTY, MARYLAND

\* \* \* \* \*

**DECISION AND ORDER**

In accordance with pertinent portions of 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 September 1, 2016, to consider the petition of Highland Development Corporation, Petitioner, to approve a Preliminary Equivalent Sketch Plan, SP-16-004, for 12 single-family cluster lots, 1 buildable preservation parcel and three non-buildable preservation parcels. The 29.03 acre Brighton Mill II subdivision, located at 13441 Triadelphia Mill Road and identified as Parcel 16 on Tax Map 34, in the Fifth Election District of Howard County, Maryland, The property is in the Tier III residential land use category as designated on Howard County’s General Plan, *2030 PlanHoward*, and is zoned RR-DEO (Rural Residential – Density Exchange Option).

The notice of the public 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.

**PLANNING BOARD HEARING**

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

Tanya Krista-Maenhardt presented the Technical Staff Report for the Department of Planning and Zoning which recommended approval of Preliminary Equivalent Sketch Plan, SP-16-004, subject to comments from reviewing agencies and any Conditions of Approval by the Planning Board. The Department of Planning and Zoning in its 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 was inapplicable because Howard County had an adequate facilities law which already required a review of government services. It determined that the purpose of the adequate public facilities law “is to provide a predictable planning environment for adequate public road facilities and adequate public school facilities by requiring residential and nonresidential projects to pass certain tests as conditions of subdivision or site development plan approval.” The Department of Planning and Zoning further noted that “the test for adequate public road facilities was conducted and approved by the Department of Public Works and Department of Planning and Zoning with the review of the preliminary equivalent sketch plan. The test for adequate housing allocations and the test for adequate public schools will be conducted upon approval of the Decision and Order of the Planning Board.”

As to criterion 2 above, The Department of Planning and Zoning found:

The Natural Resource Inventory indicates two (2) unnamed tributaries to the Triadelphia Reservoir and ten (10) wetland systems.

- The first stream system is an unnamed, Class IV perennial stream and is the larger of the two tributaries. It flows from north to south and is situated on the western portion of the property and exits the site to the south.
- The second stream system is also an unnamed, Class IV perennial stream that flows into the first stream system. It flows in a west to east direction and is situated on the southwest portion of the property.

All Wetland Systems are located on the western portion of the property, are adjacent to the perennial streams and will be contained within proposed Non-Buildable Preservation Parcel ‘B’:

- Wetland Systems ‘1’ and ‘2’ are forested nontidal wetlands and are 0.09 acres in total area.
- Wetland Systems ‘2’ through ‘10’ are considered emergent nontidal wetlands and encompass a total area of 0.63 acres.

The Natural Resource Inventory also indicates 35 specimen trees and two distinct forest stands that encompass approximately 3.81 acres of the project site.

- Forest Stand #1 occupies approximately 1.92 acres, located on the northern portion of the property, directly south of Triadelphia Mill Road.
- Forest Stand #2 occupies approximately 1.89 acres, located on the western portion of the property, adjacent to the perennial stream.

The Natural Resource Inventory and Floodplain report indicates floodplain along the perennial stream. The plan also indicates a total of 1.68 acres of steep slopes located within the project site.

The Wildlife and Heritage Service indicates that there are no State or Federal records for rare, threatened or endangered species within the project site.

The plan does not propose any disturbance to the above referenced streams, wetlands, their buffers, floodplain, or steep slopes (20,000 s.f. contiguous). These features are encompassed and protected within Non-Buildable Preservation Parcel 'B'. The plan does propose removing 1.8 acres of forest and 8 specimen trees (as approved, with condition, under WP-16-064). This clearing consists of existing trees or forest that will be maintained on residential lots but would not be located within an easement; or clearing which has been determined to be necessary in order to accommodate utilities, stormwater management devices, houses, driveways, topography, a gas main easement, and private septic systems.

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 preliminary equivalent sketch plan SP-16-004 because it met the requirements of Section 5-104(e) of the Land Use Article of the Maryland Annotated Code.

#### **PETITIONER'S TESTIMONY**

The petitioner was not represented by legal counsel.

Mr. Richard Demmitt, petitioner, testified that he concurred with the information contained within the Staff Report. He also gave the Planning Board a brief history of the project, stating that he had also been the developer for the first phase of the project, that being "Brighton Mill" to the south of Parcel 16, along Broccolino Way. He had recently acquired Parcel 16 from the property owners, after the death of Mr. Curtis, who was the original land owner. He now wishes to move forward with Phase 2 of the project.

Mr. John Carney, consulting engineer for the developer, testified on behalf of Mr. Demmitt, and indicated to the Board that a site distance analysis for the project was submitted and approved by the County. He also indicated that Mr. Demmitt will be purchasing density, which could potentially be a savings to the County for land that could have otherwise been placed into the agricultural land preservation program, and for which the County would have paid for. They are removing some specimen trees and their removal will be mitigated at the time of road construction and, therefore, there would be no obligation that would be passed on to any future lot owners. Landscaping along Broccolino Way will be substantial. Preservation parcels have more restrictive setbacks than the cluster lots, are generally larger lots and they can be used for environmental, agricultural and green space preservation. They are also governed by restrictive covenants that are recorded and Howard County is the holder of those easements.

Mr. Phil Engelke, Vice Chairperson, asked Mr. Carney if any of the area along Broccolino Way, was wooded. Mr. Carney confirmed that this part of the site, with the exception of a few street trees along Broccolino Way, was devoid of any forest or trees and is currently being farmed for

hay. Mr. Engelke asked for clarification as to the purpose of the proposed landscaping at the rear of Lots 8-12. Mr. Carney responded that the landscaping was required due to the proposed house orientation on those lots and the need for screening from Broccolino Way. The landscaping as shown also includes mitigation for removal of 8 specimen trees.

### **PROTESTANT'S TESTIMONY**

There were no protestants to testify in opposition of PB 419.

### **FINDINGS OF FACT**

1. The proposed Preliminary Equivalent Sketch Plan, SP-16-004, is to create 12 single-family cluster lots, 1 buildable preservation parcel and three non-buildable preservation parcels on 29.03 acres of Tier III land, zoned RR-DEO (Rural Residential – Density Exchange Option).
2. This project is subject to the Howard County Subdivision and Land Development Regulations including the Forest Conservation Regulations, the Landscape Manual, the Zoning Regulations and Maps, the Design Manual and the Adequate Public Facilities Ordinance.
3. The subject property was properly posted and advertised in accordance with legal requirements for this public hearing.
4. The Planning Board has the authority to review the Preliminary Equivalent Sketch Plan in accordance with the pertinent criteria set forth in Senate Bill 236, codified in Section 5-104 of the Land Use Article of the Maryland Annotated Code.
5. 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. The review by the Planning Board of the cost of providing local governmental services to the residential subdivision criterion is inapplicable in Howard County for a proposed major subdivision of a Tier III designated property such as the subject property due to Howard County's 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 plain 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.

- 6. The only applicable criterion for the Planning Board to consider in its review of this proposed major subdivision in Tier III is “the potential environmental issues or a natural resources inventory related to the proposed residential subdivision”. The Petitioner presented a Natural Resource Inventory as to all streams, wetlands, wetland buffers, floodplains, steep slopes and forested area and trees on the property. This inventory shows that the plan does not propose any disturbance to the above referenced streams, wetlands, their buffers, floodplain, or steep slopes. These features are encompassed and protected within the Non-Buildable Preservation Parcel ‘B’. The plan does propose removing 1.8 acres of forest and 8 specimen trees. This has been determined to be necessary in order to accommodate utilities, stormwater management devices, houses, driveways, topography, a gas main easement and private septic systems. Based on this information, which the Board finds to be convincing and reliable, the Board agrees with and adopts the Department of Planning and Zoning’s recommendation for approval.
  
- 7. The Board finds that the proposed subdivision will effectively protect, preserve, and minimize disturbance of the environmental resources by placing streams, wetlands, required buffers, floodplains and steep slopes within a non-buildable preservation parcel. The development plan does not disturb environmentally sensitive areas, except by removing 8 of the 35 specimen trees and removing 1.8 acres of the existing 3.81 acres of forested area, which the Board is convinced is necessary for the reasonable development of the subject property.

**CONCLUSIONS OF LAW**

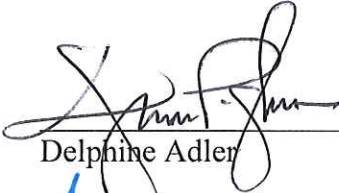
The proposed Preliminary Equivalent Sketch Plan, SP-16-004, satisfies all of the approval standards for a Tier III major subdivision, according to the pertinent portions of State Senate Bill 236, Section 5-104(e)(2) of the Land Use Article of the Maryland Annotated Code, for the reasons stated in the above findings of Fact and in the Department of Planning and Zoning Technical Staff Report, which the Board finds persuasive and which it adopts as its own in this decision.


For the foregoing reasons, the petition of Highland Development Corporation, to approve a Preliminary Equivalent Sketch Plan, SP-16-004, to subdivide 12 single-family cluster lots, 1 buildable preservation parcel and three non-buildable preservation parcels on 29.03 acres of Tier III land, zoned RR-DEO, is this 6<sup>th</sup> day of October, 2016 APPROVED by the Planning Board of Howard County, Maryland.


HOWARD COUNTY PLANNING BOARD

  
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 William Santos – Chairperson

  
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 Phil Engelke – Vice-Chairperson

  
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Delphine Adler

  
\_\_\_\_\_  
Jacqueline Easley


  
\_\_\_\_\_  
Erica Roberts

PB Case No. 419

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 T. Johnson  
Deputy County Solicitor

LIST OF APPLICANT'S EXHIBITS:  
None were introduced

LIST OF PROTESTANT'S EXHIBITS:  
None were introduced