

Heritage Land Development * BEFORE THE
Petitioner * PLANNING BOARD OF
PLANNING BOARD CASE NO. 432 * HOWARD COUNTY, MARYLAND

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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 December 7, 2017, to consider the petition of Heritage Land Development, Petitioner, to approve Preliminary Equivalent Sketch Plan, SP-17-003, for 44 single-family cluster lots, one buildable preservation parcel, and three non-buildable preservation parcels. The 176.68-acre Linden Grove subdivision is located at the intersection of Frederick and Daisy Roads and identified as Parcel 5 on Tax Map 8, in the Fourth 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 RC-DEO (Rural Conservation-Density Exchange Option).

The public hearing notice, 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. The certificates of publication and posting were made a part of the record. 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, Howard County Subdivision and Land Development Regulations, Howard County Zoning Map and Regulations, Howard County Design Manuals, Howard County Landscape and Forest Conservation Manuals, and Adequate Public Facilities Ordinance were also made part of the record.

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 (DPZ). It recommended approval of Preliminary Equivalent Sketch Plan, SP-17-003, subject to remaining comments from reviewing agencies and any conditions of approval by the Planning Board. 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, however, only the second applies.

Criterion 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.

Criterion one does not apply because Howard County has an adequate facilities ordinance that requires a review of government services, including the adequacy of public roads and public schools. DPZ noted that the test for adequate public roads was conducted and approved during the review of the preliminary equivalent sketch plan. The test for adequate housing allocations and adequate public schools will be conducted upon approval of the Planning Board’s Decision and Order.

Criterion 2. The potential environmental issues or a natural resources inventory related to the proposed subdivision.

The Natural Resource Inventory indicates two perennial streams, one intermittent stream area, and four wetland systems. These are within Lisbon Little Creek watershed which, in turn, is part of the Cattail Creek watershed.

- The first stream system is an unnamed, Class IV, perennial stream along Daisy Road and within proposed forest conservation easement #2.
- The second stream system is a Class IV, perennial stream and the main stem of Lisbon Little Creek. It flows north to south and is on the western portion of the property, within proposed forest conservation easement areas #3 and #4.
- The third stream system is an unnamed intermittent stream in the lower southwestern portion of the property, within proposed forest conservation easement #1.

All wetland systems, totaling 1.57 acres, are located on the northwestern and eastern portions of the property, are adjacent to the perennial and intermittent streams, and will be contained within proposed buildable preservation parcel 'A':

- Wetland systems 'A-1' and 'A-2' are grassy nontidal wetlands along Lisbon Little Creek, which is a perennial stream in the northwestern portion of the property.
- Wetland system 'B' is associated with forest stand 'B' and occupies most of the streamside terrace of the intermittent stream.
- Wetland system 'C' is a small headwater wetland seep located within forest stand 'A', near Daisy Road.

The Natural Resource Inventory indicates two distinct forest stands encompassing approximately 4.3 acres. There are no specimen or champion trees outside the forest limits and except for a small area along the proposed road, forest clearing is not proposed. Therefore, specimen tree data within the forest stands was not collected.

- Forest stand #1 is approximately 1.1 acres, located on the northeastern portion of the property, along Daisy Road, and adjacent to the perennial stream and wetland system 'C'.
- Forest stand #2 occupies approximately 3.2 acres in the lower southwestern corner of the project area, adjacent to the intermittent stream, wetland system 'B', and steep slopes.

The Natural Resource Inventory and Floodplain report indicates 6.2 acres of floodplain along both perennial streams and 0.60 acres of steep slopes in the lower southwestern corner of the project area, within proposed forest conservation easement #1.

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 disturbing any of the above referenced environmental features except 0.06 acres of forest to be removed for a roadway dedication. All others are encompassed and protected within the non-buildable preservation parcels.

Based on the Petitioner's presentation of the above information, the Department of Planning and Zoning recommended approval of preliminary equivalent sketch plan SP-17-003 because it meets the requirements of Section 5-104(e) of the Land Use Article of the Maryland Annotated Code.

PETITIONER'S TESTIMONY

The petitioner was represented by Joan Becker, legal counsel.

Ms. Becker testified that she concurred with DPZ's staff report and gave a brief history of the project. She stated that the plan results in very limited environmental impacts and that the approximately 113 acre buildable preservation parcel will continue to be farmed. The silo and barn, built around 1910, will remain. While the project area is mostly farm land, more than 12 acres of forest will be planted per subdivision requirements and all easements will be on preservation parcels, not residential lots. The applicant is currently seeking a letter of permission to cross a Colonial pipeline located on the property. She further stated that perc and well location results have been favorable.

Mr. Ed Coleman, Planning Board member, asked if septic areas would be shared and Ms. Becker confirmed that each lot would have its own. She also said that each lot must be perc tested.

Mr. Tim Feaga, petitioner, said he wished to continue to use the existing farm lane for farm equipment and that an alternative compliance for this access onto an arterial right-of-way is pending. He pointed out the public roads within the subdivision and the use-in-common access easement. He also stated while forested areas would not be cleared, the forested area associated with the future right-of-way improvement must be shown as being cleared.

Mr. Coleman asked how the new residents would be informed of on-going farming operations. Mr. Feaga responded that information is provided in both HOA documents and full disclosure documentation with the sale of each home.

PROTESTANT'S TESTIMONY

Ms. Catherine Datz, resident, was concerned about traffic on Daisy Road and possible impacts to existing wells. She wanted confirmation that wells would not be impacted and additional traffic will not be a danger to the existing community.

Mr. Anthony Martinez, resident, was also concerned about Daisy Road traffic and impacts to existing wells. He believed Daisy Road was a "cross through", speed limits were being exceeded, and it was frequently used by farm equipment. Mr. Martinez also wanted to confirm lot sizes.

Mr. Aldo Vitucci, consultant for the developer, indicated that each lot would be at least one acre and served by individual wells and septic systems. He stated that MDE would issue a ground water appropriation permit and that he was not aware of any issues. The Health Department has preliminarily approved the septic area and before the final plat is recorded, the Health to Department must finally approve both well and septic locations.

Ms. Renee Martinez, resident, asked for a definition of a buildable preservation parcel. Ms. Becker stated that a buildable preservation parcel permits one dwelling and that easement restrictions prohibit further subdivision.

Ms. Martinez also asked about an adjacent home, which is not on the subject property, and future use of the barn and silo.

Mr. Feaga indicated that about 5% of the barn is currently being used and the silo not at all. He said he intends to keep the silo for aesthetic reasons and may consider future improvements to the barn so more of it may be used for ongoing farming operation.

Mr. Coleman asked about the traffic study and if a site development plan would be available for the Planning Board to review in the future.

Mr. Paul Johnson, Planning Board attorney, responded that APFO, which includes a traffic study, would be reviewed by county and state agencies at the final plan stage. Because the site is in western Howard County a site development plan is not required and the final plat and plan are the last steps in the subdivision process. He reminded the Board that it is only tasked with assessing potential impacts to environmental features.

FINDINGS OF FACT

1. Preliminary Equivalent Sketch Plan, SP-17-003, creates 44 single-family cluster lots, one buildable preservation parcel, and three non-buildable preservation parcels on 176.68 acres designated Tier III and zoned RC-DEO (Rural Residential – Density Exchange Option).
2. The project is subject to the Howard County Subdivision and Land Development Regulations, including Forest Conservation Regulations, Landscape Manual, Zoning Regulations and Maps, Design Manual, and Adequate Public Facilities Ordinance.
3. The property was properly posted and advertised in accordance with all legal requirements.
4. The Planning Board has authority to review the Preliminary Equivalent Sketch Plan in accordance with 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) fulfills the Planning Board's first review criterion under Section 5-104(e)(1) of the Land Use Article of the Maryland Annotated Code, which is to assess the cost of providing local governmental services to a major subdivision on Tier III designated property. Since APFO requires certain government services to be reviewed, the Board agrees with and adopts the Department of Planning and Zoning's analysis that the cost of providing public facilities has already been analyzed and addressed.
6. The only criterion the Planning Board must consider when reviewing a 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 showing all streams, wetlands, wetland buffers, floodplains, steep slopes, and forested areas and trees. The inventory shows that disturbance to the above referenced streams, wetlands, their buffers, floodplain, or steep slopes is not proposed. These features are encompassed and protected within the Preservation Parcels. The plan does account for the potential removal of 0.06 acres of forest for a roadway dedication. 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 preservation parcel. The development plan does not disturb environmentally sensitive areas, except removing 0.06 acres of the existing 4.3 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-17-003, satisfies all 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.

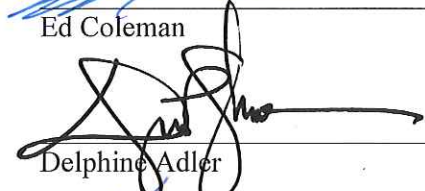
For the foregoing reasons, the petition of Heritage Land Development, to approve a Preliminary Equivalent Sketch Plan, SP-17-003, to subdivide 44 single-family cluster lots, 1 buildable preservation parcel and three non-buildable preservation parcels on 176.68 acres of Tier III land, zoned RC-DEO, is this 18th day of January 2018 APPROVED by the Planning Board of Howard County, Maryland.

HOWARD COUNTY PLANNING BOARD


Phillips Engelke-Chairman


Erica Roberts-Vice Chairperson



Ed Coleman


Delphine Adler


Kevin McAiley

PB Case No. 432

ATTEST:


Valdis Lazdins
Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY:

HOWARD COUNTY OFFICE OF LAW
Gary W. Kuc, County Solicitor


Paul Johnson, Deputy County Solicitor

LIST OF APPLICANT'S EXHIBITS:
None were introduced

LIST OF PROTESTANT'S EXHIBITS:
None were introduced