

MITRON LLC \* BEFORE THE  
PETITIONER \* PLANNING BOARD OF  
PLANNING BOARD CASE NO. 440 \* 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 December 6, 2018, to consider the petition of Mitron LLC, Petitioner, through the authority of the Personal Representative for Mitron LLC, to approve a Preliminary Equivalent Sketch Plan, SP-17-010b, for 28 single-family lots, 1 buildable preservation parcel, and 3 non-buildable preservation parcels. The 71.09 acre Lyhus Property subdivision, located on Lime Kiln Road and identified as Parcel 135 on Tax Map 40, 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, Mitron LLC. There was no opposition present at the hearing. 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 Preliminary Equivalent Sketch Plan, SP-17-010b, 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 7.09 acres of floodplain, 11.39 acres of streams, 12.30 acres of wetlands and their associated buffers, and 16.51 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 the preliminary equivalent sketch plan SP-17-010b because it met the requirements of Section 5-104(e) of the Land Use Article of the Maryland Annotated Code.

Mrs. Adler requested clarification regarding the last paragraph on page 3 of the Staff Report that specified "it has been determined that this subdivision design effectively protects, preserves and minimizes disturbances to environmental resources and buffers" of who and how that determination is made. Mr. Valdis Lazdins provided testimony regarding the definition of environmental issues and how it relates to the second criterion 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. Mr. Lazdins explained that the Howard County Department of Planning and Zoning reached out to the Maryland Department of Planning with the question of what constituted environmental issues as it relates to the second review criteria the Planning Board must consider with Tier III subdivisions. Mr. Lazdins testified that the conclusion of the discussion with the Maryland Department of Planning was the features specifically listed in the Development Regulations including streams and buffers, wetlands and buffers, 100-year floodplain, steep slopes, and agricultural and forest land specified for protection and conservation would apply. Mr. Lazdins added that the Department of Planning and Zoning has been reviewing these environmental issues and features which was deemed appropriate as their review was in accordance with the Regulations and standards. Mr. Lazdins added that the environmental impacts were deemed to be appropriate for the development of the property by allowing a stream crossing that minimizes disturbance to the stream in a previously disturbed area, and that density would be imported which would preserve other agriculturally sensitive areas in the western portion of the property. Mr. Lazdins concluded that The Planning Boards recommendation should be, does the Board agree with the assessment of the impacts and could these impacts could be better served in different locations.

2. Mr. Erskine provided his opening statement in that the petitioner concurs with the information presented in The Department of Planning and Zonings staff report as well as the

explanation of how the Board should review the criteria in Senate Bill 236. Mr. Erskine also testified that the petitioner Mitron LLC is a family owned LLC and the owners of the property Mr. and Mrs. Dixon specified that the property was mainly in agricultural use in the past as a response to a question asked by Mr. Coleman regarding the past history of the property.

3. Mr. Brandon Rowe, an Engineer with Bohler Engineering, testified on behalf of the Petitioner. Mr. Rowe testified that he was the civil engineer who prepared the Preliminary Equivalent Sketch Plan. Mr. Rowe provided testimony regarding the natural resource inventory of the property identifying environmental features on the subject property such as the streams, wetlands and their associated buffers on the provided plans.

Mr. Rowe provided testimony on the proposed design of the development. He provided testimony regarding the environmental features and how they would be preserved in relation to the proposed subdivision. Mr. Rowe described how the environmental features on the subject property shaped the design of the proposed subdivision, identified the two points of public access to the property, and explained how the existing environmental features such as the streams and soil conditions molded the two proposed roadways in accordance with the Howard County Engineering Design Guidelines. Mr. Rowe explained that utilizing the Guidelines the proposed clustered lots and homes and their respective well and septic areas were condensed in order to avoid disturbance to the main corridor of environmental features located on the property.

Mr. Rowe testified that the proposed design includes a stream crossing and that its location was selected to place the crossing at the narrowest width where the least amount of disturbance would be required. Mr. Rowe indicated that at a preapplication meeting with the Maryland Department of the Environment in June of 2016 MDE conceptually approved the crossing location. Mr. Rowe testified that the stream crossing location was an existing at grade crossing that was previously used for logging and recreational purposes and was not maintained and severely rutted. Mr. Rowe explained that retaining walls and a box culvert will be utilized at the crossing location as well as minimizing the road width in order to minimize the impact to the stream and stream buffer.

Mr. Rowe testified that 52 acres of forest exists on site of which 16 acres of forest is being retained and roughly 10 acres of afforestation and forest planting will be provided on the property. Mr. Rowe specified that the onsite forest conservation easement will be approximately 26 acres in size with 20 acres being credited towards the forest conservation requirement. Mr. Rowe explained that 6 acres of the easement would not be counted as the Forest Conservation Regulations do not allow credit for forest resources occurring within floodplain. He explained that because of this approximately 3 acres of offsite mitigation to be provided through the purchase of an offsite forest conservation bank.

Mr. Rowe testified that there are 20 specimen trees that are proposed to be removed generally located around the area to be occupied by the public road. Mr. Rowe indicated that well and septic regulations require that any specimen trees that lie within a future septic area be removed through submission of an alternative compliance request. He further explained that of the 20 trees proposed to be removed 5 trees fell into that category.

Mr. Erskine stated that Mr. Rowe testified that a total of six lots would be on the shared septic system and asked if there was a need to cross the stream with a road independent to the need to construct lots 20 through 28. Mr. Rowe responded that Lots 1, 7, 15-17, and 28 would all utilize the shared publicly maintained septic system located on the western side of the property. Mr. Rowe explained that the Howard County Department of Public Works and the Bureau of Utilities have requirements for the maintenance of the public shared septic system, which would require a 24-foot-wide vehicular access across the stream to maintain the facility. Mr. Rowe further testified that the proposed sewer line for the shared septic area would be constructed under the proposed road way and would cross the stream with the same road crossing. Mr. Erskine asked Mr. Rowe if the road crossing would be required independent of the construction of 20 through 28 as Lots 1, 7, and 15-17 would require the crossing for Septic system access. Mr. Rowe agreed with Mr. Erskine's statement.

Mr. Erskine asked Mr. Rowe provide testimony regarding an exhibit of the summary of the environmental impacts and describe the relative impacts to the environment based on the proposed project. Mr. Rowe testified the how the proposed design protects the onsite environmental features including disturbances to 148 linear feet of the total 2700 linear feet of stream channel and 0.43 acres of the 11.82 total acres of stream buffer. Mr. Rowe further testified that of the 12.5 acres of non-tidal wetlands located on the property only 0.18 acres was proposed to be disturbed and of the total 4.5 acres of wetland buffer, 0.19 acres was proposed to be disturbed. Mr. Rowe further explained that of the 6.71 acres of the onsite 100 year floodplain the proposed design would only impact 0.71 acres.

Mr. Phil Engelke asked who is responsible for the maintenance of the shared septic system proposed for the subdivision. Mr. Rowe responded that the septic field would be a public facility and the Howard County department of Public Works would be responsible for the upkeep and maintenance of the septic field and the necessary pumps. Mr. Engleke then asked what happens to the system if it fails and is there a failsafe mechanism? Mr. Rowe responded that typically it is the septic field that fails and they would be fixed.

4. Mr. John Canoles, an environmental consultant, testified on behalf of the Petitioner. Mr. Rowe testified that he provided information and performed data collection of the environmental elements for the engineers in order to prepare the submitted plans. Mr. Canoles testified that he provided the environmental resource assessment of the property, wetland delineation, and forest stand resource assessment for the Lyhus Property.

Mr. Erskine asked Mr. Canoles to describe a series of slides containing photographs of the existing environmental conditions. Mr. Canoles provided testimony to the dilapidated state of the existing stream crossing where the proposed roadway will cross, invasive species within the forest area, and areas of leaf litter and debris from dumping on the property. Mr. Canoles testified that the forest on the property was fairly young and contained a lot of stumps, and stated that the property has been logged in recent history. Mr. Canoles testified that representatives from the Maryland Department of the Environment were able to walk the site and assisted in selecting the most suitable location of the stream crossing that was conceptually approved at the

meeting in June of 2016. Mr. Canoles explained the stream classification system that the Maryland Department of the Environment uses to classify streams and noted that the streams present on site were Class I streams which are the least protected in Howard County and would be less sensitive to development. Mr. Canoles testified that the proposed development minimizes impacts, preserves, and protects the majority of the environmental resources on the property.

Mr. Ed Coleman asked Mr. Lazdins from The Department of Planning and Zoning about the requirements for public septic tanks and if the proposed design meets the current criteria. Mr. Lazdins responded that the engineer has been working with the Howard County Health Department and the Development Engineering Division regarding the design of the facilities. Mr. Rowe added that the necessary percolation certification plan approval from the Howard County Health Department had been approved and the further refinement of the proposed design would meet the necessary requirements and regulations. Mr. Rowe further testified that public septic facilities were still allowed per the regulations but could only support a maximum of six lots.

Mr. Kevin McAiley asked what measures were being provided to mitigate impacts to surrounding areas from immediate stormwater runoff from the site. Mr. Rowe responded that the stormwater management would be provided to treat the water quality of volume by utilizing swales, dry wells, and surface sand filters. Mr. Rowe explained that the property is not in a watershed that requires the management of 10 or 100 year storms but due to existing drainage problems along Lime Kiln Road the development team agreed to provide 25 year stormwater management to ensure that no additional runoff from the property occurs during a 25 year storm event.

### **SUMMATION**

5.The proposed Preliminary Equivalent Sketch Plan, SP-17-010b, creates 28 single-family lots, 1 buildable preservation parcel, and 3 non-buildable preservation parcels on 70.09 acres of Growth Tier III land, zoned RR-DEO (Rural Residential – Density Exchange Option).

6. 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.

7. 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 regarding the adequacy or cost of public facilities in relation to this subdivision.

8. 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 Preliminary Equivalent Sketch 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 sections of stream and stream buffers, wetlands and wetland buffers, and floodplain has been determined to be necessary to facilitate a necessary stream crossing and on site improvements. Based on this information, and the testimony of Mr. Rowe, Petitioner's engineer, and Mr. Canoles, petitioners environmental consultant 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.



9. 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 construct the necessary roadway and stream crossing and minor disturbances for on site improvements. The Planning Board is convinced that these alterations are necessary for the reasonable development of the subject property.

### 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 Preliminary Equivalent Sketch Plan, SP-17-010b, 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 Mitron LLC, through the authority of the Personal Representative for Mitron LLC, to approve a Preliminary Equivalent Sketch Plan, SP-

17-010b, to subdivide 28 single-family lots, 1 buildable preservation parcel, and 3 non-buildable preservation parcels on 71.09 acres of Growth Tier III land, zoned RR-DEO, is this 6<sup>th</sup> day of December, 2018 APPROVED by the Planning Board of Howard County, Maryland.

HOWARD COUNTY PLANNING BOARD

Phillips Engelke /pk  
Phillips Engelke – Chairperson

Erica Roberts /pk  
Erica Roberts – Vice-Chairperson

Delphine Adler /pk  
Delphine Adler

Ed Coleman /pk  
Ed Coleman

Kevin McAliley /pk  
Kevin McAliley

PB Case No. 440

ATTEST:

Valdis Ilazdins  
Valdis Ilazdins  
Executive Secretary

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

David Moore  
David Moore, Senior Assistant County Solicitor

**LIST OF APPLICANT'S EXHIBITS:**

1. Resolution of Personal Representatives for Mitron LLC
2. Complete Set of Submitted Preliminary Equivalent Sketch Plan, SP-17-010b

**LIST OF PROTESTANT'S EXHIBITS:**

None were introduced