JAMES AND SUSAN BRICKELL	*	BEFORE THE
PETITIONERS	*	PLANNING BOARD OF
PLANNING BOARD CASE NO. 446	*	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 July 11, 2019, to consider the petition of James and Susan Brickell, Petitioners, to approve a Preliminary Equivalent Sketch Plan, SP-19-003, for 10 single-family cluster lots, 1 buildable preservation parcel and 4 non-buildable preservation parcels. The 36.13-acre Brickell Property, located on the north side of Mayapple Drive and identified as Parcels 254 and 274, on Tax Map 9 and 10, in the Third 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. Frank Manalansan, II represented the petitioners, James and Susan Brickell.

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

Brenda Luber presented the Technical Staff Report for the Department of Planning and Zoning, which recommended approval of Preliminary Equivalent Sketch Plan, SP-19-003, subject to 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.

As to criterion 1 above, 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 placement of the environmental features, stream, wetlands, wetland buffers, and stream buffers within non-buildable preservation parcels protected and preserved these environmental resources.

Based on the Petitioner's presentation that no environmental resources would be disturbed, the Department of Planning and Zoning recommended approval of Preliminary Equivalent Sketch Plan SP-19-003, because it met the requirements of Section 5-104(e) of the Land Use Article of the Maryland Annotated Code.

Mr. Frank Manalansan, II, a representative from Fisher, Collins and Carter, Inc. testified on behalf of the petitioners. He concurred with the information contained within the Technical Staff Report that the project complied with the criteria for Planning Board approval.

Mr. Coleman asked how much disturbance is required for Lots 6 and 7, and questioned the need retaining wall proposed to the east side of Lot 7 near the steep slopes. Mr. Manalansan testified that final design has not been determined, but disturbance to the steep slopes would be minimize to accommodate the septic field. He testified that no disturbance would occur within the environmentally sensitive areas.

Chairperson Engelke asked for clarification of the MIHU note. Mr. Manalansan testified that the developer is required to satisfy MIHU requirements and the payment of a fee-in-lieu would be provided for this subdivision. The plan note would be corrected to clearly stated how the MIHU requirement would be met. Chairperson Engelke asked about the maintenance of the shared driveway. Mr. Manalansan testified that an easement would be created and a Maintenance Agreement would be recorded requiring the users to share in the maintenance and upkeep of the shared driveway.

Chairperson Engelke asked for an explanation of the landscaping along the public road. Mr. Manalansan explained that the trees along Mayapple Drive were part of the Walker Meadows subdivision. The Brickell Property would provide trees along Brickell Way and along the boundary of the residential lots. Ms. Luber added that the landscaping plan would be further evaluated at the final plan phase. She stated that one street tree every 40 feet would be required along the public road, the residential lots would be screened from the preservation parcels, and a Type B buffer would be required along the rear of the lots abutting the public road.

No one appeared in support or opposition to the petition. No closing arguments were provided.

FINDINGS OF FACT

1. The proposed Preliminary Equivalent Sketch Plan, SP-19-003, creates 10 single-family cluster lots, 1 buildable preservation parcel and 4 non-buildable preservation parcels on 36.13 acres of Tier III land, zoned RR-DEO (Rural Residential – Density Exchange Option).

2. 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.

3. 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 Planning Board review criterion 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 the residential subdivision does not apply to a major subdivision in Tier III designated property, such as the proposed development, because Howard County has an APFO law. The Board agrees with and adopts the Department of Planning and Zoning's analysis, with which the petitioner concurred, that 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, does not apply. Consequently, the Board did not consider any testimony regarding the adequacy or cost of public facilities related to this subdivision.

4. 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 plan that wetlands, wetlands buffers, stream or stream buffers will be protected within the non-buildable preservation parcels. Based on this information, 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 the environmental resources are adequately protected.

CONCLUSIONS OF LAW

1. Petitioners, as one seeking approval of a major subdivision on a property designated as a Growth Tier III area of the County, has the burden of demonstrating that it has satisfied the criterion of Section 5-104(e)(2) of the Land Use Article of the Maryland Annotated Code, that there are no potential environmental issues related to a natural resources inventory associated with the proposed residential subdivision. The criterion of Section 5-104(e)(1) does not require Planning Board review because the County's adequate public facilities law already requires a review of government services.

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 Petitioners have conclusively established, through the evidence in the record that the proposed Preliminary Equivalent Sketch Plan, SP-19-003, has satisfied all 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.

For the foregoing reasons, the petition of James and Susan Brickell, to approve a Preliminary Equivalent Sketch Plan, SP-19-003, to subdivide 10 single-family cluster lots, 1 buildable preservation parcel and 4 non-buildable preservation parcels on 36.13 acres of Tier III land, zoned RR-DEO, is this 25th day of July, 2019 APPROVED by the Planning Board of Howard County, Maryland.

HOWARD COUNTY PLANNING BOARD

Phillips Engelke/LK
Phillips Engelke - Chairperson

Erica Roberts - Vice-Chairperson

ABSENT
Delphine Adler

Ed Coleman

ABSENT
Kevin McAliley

PB Case No. 446
ATTEST:

Valdis Lazdins

Executive Secretary

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

David Moore
Senior Assistant County Solicitor

LIST OF APPLICANT'S EXHIBITS:
None were introduced

LIST OF PROTESTANT'S EXHIBITS:
None were introduced