



MONTGOMERY COUNTY PLANNING BOARD OPINION

Application Number: 1-92004
 Project Name: The Denit Property
 Hearing Date: May 8, 1997

Preliminary Plan # 1-92004 -- Action: Approval subject to conditions. Motion was made by Commissioner Richardson, seconded by Commissioner Baptiste; Commissioner Richardson, Baptiste, Holmes, Hussmann and Aron all voting in favor.

BACKGROUND

On January 2, 1992, Francis E. Yeatman, Trustee for the Estate of Helen Denit¹, submitted an application for the approval of a preliminary plan of subdivision to create 133 residential lots. During the course of the review, the applicant proposed several revisions that reduced the total number of lots requested to a maximum of 100. The Denit property includes over 666 acres of land classified in the Rural Cluster (RC) Zone. The property is located along both sides of MD 650 (New Hampshire Avenue), north of Rocky Glen Drive and southeast of the rural, crossroads community of Sunshine. The subject application was originally filed as a pre-preliminary plan (Plan No. 7-90015) in 1990. The pre-preliminary plan proposed development under the cluster method of development. The original submission showed 135 lots on an area of 679 acres.

The pre-preliminary plan was revised, after completion of required soils testing to determine septic suitability, and presented to the Planning Board in 1991. At this meeting, the Planning Board expressed concern that the proposed development was too close to the Triadelphia Reservoir and that a 1,500 foot buffer area should be maintained between the proposed development and the reservoir.

The Denit property preliminary plan (1-92004) was filed in January of 1992. The application was filed without an actual preliminary plan drawing in order to allow the applicant to conduct a hydrogeological study of the property, in an attempt to demonstrate that septic tanks located within 1,500 feet of the Triadelphia Reservoir would not adversely affect the Reservoir. Staff of M-NCPPC, WSSC, MCDEP (now MCDPS) and the former Health Department (now

¹ Nations Bank is the present Trustee for the Helen Denit Estate.

Staff of M-NCPPC, WSSC, MCDEP (now MCDPS) and the former Health Department (now MCDPS) met with the applicant and their consultants to discuss study methodology and to review the study results. These meetings occurred from 1992 to 1995. Community representatives also participated in these discussions.

In May of 1995, the preliminary plan application was presented to the Planning Board at a scheduled public hearing. After considerable discussion, the Planning Board expressed their continued opposition to development located within 1,500 feet of the reservoir. Chairman Hussmann also commented that he felt that the proposed development would not protect the rural character of the area. The lots proposed along MD 650 were of particular concern. The Board concluded that the preliminary plan did not meet a major purpose of the cluster method of development which is to protect scenic and environmentally sensitive areas. The 1980 Olney and Vicinity Master Plan also recommends that significant open space be preserved to maintain the rural character of the area. The application was then deferred at the applicant's request.

On April 4, 1996, the applicant again appeared before the Planning Board, as a scheduled discussion item, to discuss the two major issues affecting the application. The first involved the 1,500 foot building setback from the reservoir, and the second involved the extent of measures necessary to protect the scenic vistas along MD 650. A third issue also discussed involved the cross sections for intersections along MD 650.

At the April 4th meeting, the Planning Board advised the applicant that they could support a reduction in the buffer for the reservoir to provide for a 1,000 foot setback provided that the applicant could propose appropriate guidelines and performance criteria that would protect the reservoir from adverse effects associated with any development proposed between 1,000 feet and 1,500 feet from the reservoir. The Planning Board supported preserving the scenic vistas along MD 650, and advised the applicant to work with staff concerning an appropriate layout to address this issue. The Planning Board agreed that it would be appropriate to try and reduce the amount of paving required by MDSHA, but safety should not be compromised.

On January 23, 1997, the application was again presented to the Planning Board. The plan proposed a total of 105 lots and 16 outlots that had not yet received septic approval by the Montgomery County Department of Permitting Services (MCDPS). Twenty-eight of the lots/outlots (6 involved existing dwellings) were located within 1,500 feet of the Triadelphia Reservoir. The applicant proposed several measures/performance criteria to address the Planning Board's concern with possible future groundwater contamination of the reservoir, which is a major source of drinking water for a large portion of the WSSC service area. The Planning Board members were not convinced that the measures proposed by the applicant would adequately protect the reservoir and again expressed opposition to any development located within 1,500 feet of the reservoir. The Board was concerned that the amount of development proposed and the close proximity to the reservoir requires careful monitoring of conditions during development to assure that there are no sediment and erosion problems.

The Applicant requested that the application be deferred to enable them to further revise the preliminary plan to better address the Planning Board's concerns. Preliminary Plan application Number 1-92004 was brought back before the Planning Board on May 8, 1997 for a continuation of the public hearing. At this meeting, the Board heard testimony both in favor and in opposition of the applicant's revised plan. The record of the previous Planning Board public hearings on this application is incorporated by reference into this Opinion. After careful deliberation over the testimony and other evidence in the record, the Board made the following findings concerning the issues discussed at the public hearing.

PLANNING BOARD FINDINGS

Setback from the Reservoir:

The applicant has revised the preliminary plan to delete all new lots that were proposed within 1,500 feet of the reservoir. This change satisfies the longstanding concern by the Planning Board and nearby residents that a significant setback from the reservoir is required to preclude possible adverse effects resulting from development at this environmentally sensitive location. The plan shows six existing homes that are located within the 1,500 foot buffer area.

Scenic Vista along MD 650:

The Planning Board finds that significant open space must be provided along the frontage of MD 650. This would conform to Master Plan recommendations and requirements of the Rural Cluster zone. The Planning Board noted that the proposed density is almost 75% of the density allowed by the Rural Cluster Zone. After extensive discussion and review of staff's recommendations and the applicant's argument in support of the preliminary plan proposals, the Board concludes that 2 of the proposed lots must be deleted to achieve better protection of the scenic vistas along this major roadway. The 2 lots are lot 25E and Lot 24S.

Density of the Proposed Project:

Nearby residents expressed their opposition to the number of lots proposed. They testified that the development, even as revised by the applicant to address the 1,500 foot buffer from the reservoir, would adversely affect the rural character of the area and create safety problems for traffic on MD 650, particularly at the existing intersection of Rocky Glen Road and MD 650. (The MDSHA reports that this intersection, as presently constructed, satisfies their design standards.) The Planning Board finds that the density of development, as shown on the revised preliminary plan, is acceptable and will not create traffic problems along MD 650.

Proposed Cross Sections for Intersections with MD 650:

The applicant has submitted information required by MDSHA to satisfy the standard design criteria for streets intersecting with MD 650. The Planning Board concludes that the applicant

must submit additional data required by MDSHA to enable them to consider reductions in the standard design but still meet minimum adequate safety standards given the vertical and horizontal curves along MD 650. The applicant has not provided the information requested by MDSHA to enable them to consider the reductions originally sought by the applicant and supported by both the Planning Board and staff. The applicant has agreed to supply this information after the preliminary plan is approved. Moreover, the Board agreed with staff's recommendation to include a condition that will require the applicant to submit the required information prior to recording any record plats (Condition #5).

Applicant's Request for Subdivision Variation (waiver) and Road Code Waivers to Allow the Applicant to Construct a Non-Standard, Closed Section Roadway along Proposed Street "B":

The applicant has requested a waiver from the road code to allow the construction of a closed section, dualized roadway along a portion of proposed Street "B" to save some existing trees. The proposed roadway would involve a tertiary street (50 foot) right of way. The applicant has requested a variation (waiver) from the Subdivision Regulations, in accordance with the procedures of Sec. 50-38, to allow for a reduced width tertiary street, where the dualized road transitions back to an open section, secondary street. The variation is a request to set aside the normal requirement of Sec. 50-26 that a Division 59-D-3 site plan be resubmitted and approved for projects that include reduced width tertiary streets.

Staff of the Park and Planning Department, MCDPW&T and MCDPS support the applicant's request for a non-standard portion of Proposed Street "B". The applicant has been able to satisfy the requirement for approval of the requested waiver by submitting additional water quality improvement measures to compensate for the impact of curb and gutter. The Planning Board finds that the proposed reduced width tertiary street is appropriate and will result in a better street layout for this area. The Planning Board also finds that sufficient information has been provided by the applicant as part of the preliminary plan process. Therefore, a site plan is not needed in this instance.

Additional Requirements/Safeguards to Protect the Triadelphia Reservoir:

The Planning Board finds that the applicant must provide additional safeguards to preclude any adverse effects from the proposed development on the nearby Triadelphia Reservoir. The Planning Board requires that the stream buffers be protected by Category I conservation easements and that they be reforested. A plan identifying future open space/agricultural uses within the 1,500 foot buffer from the reservoir also needs to be prepared by the applicant for approval by the technical staff of M-NCPPC. Any agricultural activity within this buffer should be subject to a conservation plan that is approved by staff of the Soil and Water Conservation District or any successor agency responsible for the regulation of agricultural activity near the Triadelphia Reservoir. The conservation plan must also be reviewed and approved by staff of the M-NCPPC Department of Park and Planning. The Planning Board also requires that the applicant prepare a grading plan for each section that will be reviewed and approved by the technical staff of

MCDPS. Each grading plan should include phasing of on-site grading and construction to preclude any adverse effects on streams on the property, particularly those that drain to the Triadelphia Reservoir. The Board also requires that sediment and erosion control measures include on-site monitoring and inspections during construction by the applicant/developer. These inspections must be conducted to the satisfaction of MCDPS staff who are responsible for approving the sediment and erosion control plans for the site.

Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan File, the Montgomery County Planning Board finds Preliminary Plan 1-92004 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-92004 including the approval of a waiver for over-length cul-de-sacs, per Sec. 50-26(d) and the approval of a variation (waiver) to the requirements of Sec. 50-26(h)(2) allowing for a reduced width tertiary street (Street "B"), without requiring approval of a Division 59-D-3 site plan. The APPROVAL of the preliminary plan for 91 lots and 7 outlots is subject to the conditions listed below:

- (1) Prior to recording any plats, enter into an agreement with the Planning Board to limit development to a maximum of 91 one-family, residential lots and 7 outlots, and to provide the necessary roadway improvements as identified in the 5/1/97 transportation memorandum prepared by Park and Planning Department staff.
- (2) Prior to recording any plats, submit a revised preliminary plan for staff approval which deletes proposed lots 25E and 24S. The revised preliminary plan must also show final pedestrian/equestrian trails subject to appropriate approvals from PEPCO.
- (3) Record Plat(s) to reference the 1,500 foot building restriction line for new construction as measured from the Triadelphia Reservoir. The revised preliminary plan must address proposed open space uses within the 1,500 foot reservoir buffer. Plat to also contain a note stating that all agricultural uses within this buffer will be subject to an ongoing conservation plan developed in cooperation with and approved by the Soil and Water Conservation District, or any successor agency responsible for regulating agricultural activity near the Triadelphia Reservoir including the M-NCPPC Department of Park and Planning.
- (4) Prior to issuance of building permits for constructing each section, applicant to submit detailed grading plans for approval by staff of M-NCPPC and MCDPS. Each grading plan must include phasing of on-site grading and construction so as to preclude any adverse effects on streams, particularly those draining to the Triadelphia Reservoir. Sediment and erosion control measures must include on-site monitoring and inspection by the applicant/developer during the construction phase, to the satisfaction of MCDPS.
- (5) Prior to recording any plats, applicant to provide information to MDSHA to enable a final

decision by that agency concerning the length of deceleration, acceleration and bypass lanes along MD 650.

- (6) Access and roadway improvements as required and approved by MCDPW&T and MDSHA.
- (7) Compliance with conditions of approval for the preliminary forest conservation plan. Applicant must meet all conditions prior to recording of plats or MCDPS issuance of sediment and erosion control permits, as appropriate.
- (8) A substantial buffer of heterogeneous plantings of evergreen and deciduous trees must be established along the common boundary with Parcel 482 within Lots 13S, 14S through 23S for purposes of screening the new construction from the Far View Historic site. Prior to record plat, a landscaping/planting plan for this buffer must be submitted for staff approval and the area of the buffer must be delineated on the revised preliminary plan.
- (9) A substantial buffer of heterogeneous plantings of evergreen and deciduous trees must be established to screen the proposed development in the South Section from MD 650 to maintain a rural vista. Prior to record plat, a landscaping/planting plan for this buffer must be submitted for staff approval and the area of the buffer must be delineated on the revised preliminary plan. In addition, the applicant needs to show building restriction lines and conceptual tree plantings on the preliminary plan.
- (10) The two cemeteries reported to be located on the property will be preserved in designated conservation areas.
- (11) Record plats to reflect delineation of conservation easements over the areas of stream buffers and forest conservation. Stream buffers are to be placed in a Category I conservation easement to be reforested, by the developer or others, or allowed to regenerate naturally.
- (12) Conditions of MCDPS stormwater management approval dated 4/25/97.
- (13) Record plat(s) to contain reference to pedestrian/equestrian easements as shown on the revised preliminary plan, required in Condition #2 above.
- (14) Conditions of MCDPS septic areas approval dated 5/1/97.
- (15) Record plat(s) to note "denial of driveway access to MD 650".
- (16) Dedication of MD 650 for 80 feet as shown on the preliminary plan.
- (17) Record plat(s) to reference common ingress/egress easements including requirement for

joint maintenance agreements.

- (18) Outlot A, shown in the Far East Section of the plan, providing for a relocated driveway for adjacent Parcel 17 should be relabeled as an ingress/egress parcel if it is to be conveyed to the owner of Parcel 17. Otherwise, it should be shown on the record plat as an ingress/egress easement.
- (19) Prior to recording of plats, applicant to submit for staff approval Home Owner's Association (HOA) documents which address the maintenance and care of the open space/agricultural areas and stormwater management facilities.
- (20) No stormwater management facilities are to be located within 1,500 feet of the Triadelphia Reservoir.
- (21) Prior to recording of the first plat, Applicant to enter into an agreement with the owner of Parcel 171 and/or Montgomery County concerning a "pro-rata" sharing of the cost of constructing Street "F" between MD 650 and the intersection of the future street to Parcel 171. Agreement must also specify the timing of dedication and construction for Street "F".
- (22) Other necessary easements
- (23) This preliminary plan will remain valid until July 3, 2000 (37 months from the date of mailing, which is June 3, 1997). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or an extension must be filed.