

Maple Lawn Partners, LLC \* BEFORE THE  
Maple Lawn Farms, Inc. \* PLANNING BOARD OF  
Petitioner and Owner \* HOWARD COUNTY, MARYLAND  
PLANNING BOARD CASE NO. 415 \*

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**DECISION AND ORDER**

On June 18, 2015 and June 23, 2015, the Planning Board of Howard County, Maryland, in accordance with Section 107.0.F. of the Howard County Zoning Regulations, held a public hearing to consider the petition of Maple Lawn Partners, LLC, Petitioner, and Maple Lawn Farms, Inc., Owner (“the Petitioner”), for approval of a Preliminary Equivalent Sketch Plan, SP-15-014, for 176 single-family detached lots and thirteen (13) open space lots at the Maple Lawn South subdivision, consisting of 91.31 acres of residential land use zoned R-ED-MXD-3 (Residential Environmental Development-Mixed Use Overlay). The Maple Lawn South subdivision (“the subject property”) is located at Scaggsville Road (MD Route 216), approximately eight tenths of a mile west of U.S. Route 29 in the Fulton area of southern Howard County, and identified as Parcel 113 on Tax Map 46, in the Fifth Election District of Howard County, Maryland.

The notice of the hearing 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, all of the reports and official documents pertaining to the petition, including the Technical Staff Report of the Department of Planning and Zoning, the Howard County Code, the General Plan of Howard County, the Howard County Subdivision and Land Development Regulations, the Howard County Zoning Map and Regulations, the Howard County Landscape and Forest Conservation Manuals, the Adequate Public Facilities Ordinance, and comments from the Subdivision Review Committee agencies were made part of the record in this case.

The Petitioner was represented by William Erskine, Esq. There were several individuals, not represented by legal counsel, who appeared in opposition to the Petition.

After careful evaluation of all the information presented, the Planning Board makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. Derrick Jones, the planner assigned to this case for the Department of Planning and Zoning, summarized the Technical Staff Report which recommended approval of the Preliminary Equivalent Sketch Plan, SP-15-014, subject to comments from reviewing agencies and any Conditions of Approval by the Planning Board. Mr. Jones reported that all requirements for subdivision of the site in accordance with the R-ED Zoning Regulations had been met, environmental resources would be protected, areas of forest were preserved, all building and project boundary setbacks were met and that a secondary road connection shall be provided at the southern end of the property. Mr. Jones provided to the Board an aerial photo of the parcel as well as a colored rendering of the subdivision which featured the street layout, lot design, landscaping, preservation of environmental features, forest easements and open space lots which included a multi-use pathway.

2. Mr. William Erskine, attorney for the Petitioner, indicated that the Petitioner concurred with the Staff Report, but indicated that the zoning for this property is R-ED/MXD-3 not just R-ED as reported in the Technical Staff Report. Mr. Erskine noted that the subject property was placed into a MXD-3 Overlay District at the 2013 Comprehensive Zoning. Mr. Erskine further noted that this MXD option would have permitted commercial uses to be developed on the site, but that the developer did not feel that it would be appropriate for this project and that only a residential subdivision would be the best use for the site. Mr. Erskine indicated for that reason only residential uses permitted by R-ED zoning was utilized in this proposal.

Mr. Erskine introduced into the record Petitioner's Exhibit No. 1, an overall layout of the Maple Lawn South subdivision. Mr. Erskine proffered that although the density requirement would permit a total of 180 dwelling units, the developer did not seek to maximize the residential density available by proposing 176 dwelling units. Mr. Erskine explained that the reason why this project does not reach its maximum density is because there are no pipestem or flag lots

included in the design - every single building lot has public road frontage and backs to open space. In addition, Mr. Erskine noted that there is open space around the entire perimeter of the property.

3. The proposed Preliminary Equivalent Sketch Plan, SP-15-014, Maple Lawn South, is for the subdivision of 176 single-family detached lots and 13 open space lots in the R-ED/MXD-3 Zoning District. The subject property contains 91.3 acres and the density requirements would permit 180 dwelling units at 2 dwelling units per net acre but the Petitioner, as indicated above, proposes only 176 dwelling units.

4. The subject property is located on Scaggsville Road (MD Route 216) in the Fulton area. To the north of the subject property across MD Route 216 is located the Howard County Public School campus. To the south and west of the subject property is located Murphy Road and RR-DEO-zoned lots and properties improved with single-family detached dwellings. To the east is located properties owned by Howard County, the State of Maryland and Grace Community Church, all zoned RR-DEO.

5. Mr. Erskine also proffered that there is a historic house on the property and during the subdivision design layout, Mr. Vogel designed a lot around this historic house by reserving the ability to renovate the house if found to be appropriate. Mr. Erskine also proffered that in December of 2014, Mr. Vogel consulted with a structural engineer who determined that the house had been devastated by termite infestation. The recommendation of the structural engineer is that the house is unsafe and needs to be taken down for safety reasons. Mr. Erskine stated that should the house be taken down, there may be an opportunity to reuse existing elements of the house that could be preserved and incorporated into the proposed community center.

Mr. John Schneider, a professional engineer, testified as an expert witness as to the historic house on the farm. He testified that the house is not salvageable due to termite damage and that the house is not structurally sound or safe. In order to repair this house, it would require a complete tear down and rebuild as there is nothing left to renovate.

In connection with this issue, Mr. Erskine introduced into the record Petitioner's Exhibit 2, a copy of Mr. John L. Schneider's Inspection Report of the historic house on the subject property and Petitioner's Exhibit 3, a series of photographs of the historic house on the subject property.

6. Mr. Erskine argued and the Board agrees that there are only three criteria that the Planning Board is permitted to consider in making a decision on this petition- the criteria contained in Section 107.0.F.6. a. through c of the Howard County Zoning Regulations. Those three criteria, used in evaluating preliminary equivalent sketch plans in the R-ED District are the following:

a. The proposed lay-out of lots and open space effectively protects environmental and historic resources.

b. Buildings, parking areas, roads, storm water management facilities and other site features are located to take advantage of existing topography and to limit the extent of clearing and grading.

c. Setbacks, landscaped buffers, or other methods are proposed to buffer the development from existing neighborhoods or roads, especially from designated scenic roads or historic districts.

These criteria will be addressed below in relation to the testimony and evidence adduced as to those criteria. The Board finds that the Department of Planning and Zoning's evaluations, findings and conclusions in its Technical Staff Report as to the pertinent criteria for decision-making in this case to be convincing and persuasive, and the Board adopts the Report's evaluations, findings and conclusions as its own in making the findings of fact and conclusions of law contained in this decision.

#### **7. The Proposed Lay-out Of Lots and Open Space Effectively Protects Environmental and Historic Resources.**

Mr. Robert Vogel, the consulting engineer, testified as the Petitioner's first witness. Mr. Vogel testified that the subdivision was designed with preservation efforts in mind. All of the environmentally sensitive areas will be located on open space. The site is predominately wooded with one stream area that is not wooded, but that area will be 'afforested' to satisfy the County's forest conservation requirements. Mr. Vogel noted that a waiver was sought and granted to allow the removal of 11 specimen trees but that many more trees would be preserved and that the removed trees would be off-set at 2-1 ratio. Mr. Vogel also testified that the existing forest would be preserved and that the current farm field areas would be planted with 3000 new trees.

Mr. Vogel testified that storm water management will be provided with 36 micro bio-retention facilities; 28 bio-swales; 176 drywells (to get water back in the ground) and 181 rain barrels to be utilized for slow release of storm water into landscaped areas.

Mr. Vogel explained that the storm water management report provided some comparisons between the runoff of the current conditions and the proposed conditions. He said that the runoff co-efficient for farmland runoffs are comparable to those with development runoff.

Mr. Vogel testified that the proposed layout of the lots and open space effectively protects environmental and historic resources. He stated that should it be decided that the historic house is to be preserved, the lot design can accommodate the house. The subdivision lots and roads are laid out to conform to the existing topography and how the storm water management is oriented for site drainage and the preservation of environmental areas.

Mr. Vogel testified that house materials have been preserved on other projects before and if for some reason the house can be salvaged, the developer will attempt to do that. Mr. Vogel responded that he did not know if the Historic Preservation Commission knew about the extensive termite infestation when it made its recommendation and he believed that it did not have enough information about the house at that time or have a reason to not recommend retaining it.

Mr. Vogel testified that the clubhouse/community center will be located on an open space lot where a traffic circle is proposed at the intersections of proposed Roads A, B and C.

Mr. Vogel testified as to the location of the recreation and park owned open space lots and advised that the storm water management features will be encapsulated in HOA owned open space. Mr. Vogel testified that it has not been determined at this stage of the process whether the County or the HOA would be responsible for the maintenance of the pathway system and bridge but that the developer was responsible for its construction. The Department of Recreation and Parks will make a determination during the final plan stage of whom will take on such maintenance responsibility.

Mr. Vogel testified that the three criteria that the Planning Board is to consider for R-ED preliminary equivalent sketch plan was complied with in the subdivision design, including the fact that the proposed lot and open space layout effectively protected environmental and historic resources.

No opposition testimony was presented on the criterion as to whether the proposed lay-out of lots and open space effectively protects environmental resources. Ms. Susan Gray questioned Derrick Jones as to the possible effects of the development on the Duckett-Rocky Gorge (Patuxent) Reservoir but the Board notes that the criterion as to the protection of environmental resources by the proposed development's lot and open space layout refers to protection of on-site, not off-site environmental resources.

Based on all the above testimony, which the Board accepts and finds to be persuasive, and based on the evaluation of the Department of Planning and Zoning as to this criterion on page 8 of the Technical Staff Report, which the Board accepts and incorporates as its own findings, the Board finds that there is undisputed and substantial evidence in the record that the environmental and historic resources on the subject property are protected by the Petitioner's proposed lay-out of lots and open space.

The proposed lots are located outside the sensitive environmental areas, and these sensitive environmental areas will be located in open space lots to be maintained by either the County or the HOA. Over 50% of the subject property will be dedicated as open space in compliance with County requirements.

As to the historic house on the subject property, the Board finds that the substantial evidence in the record is that this structure is not an historic structure as defined in the Zoning Regulations, and has been decimated by termite damage to the point that it cannot be structurally renovated. The Board notes, however, that the Petitioner has made every effort to maximize any possible preservation efforts by locating the historic house on its own lot and pledging to salvage as many historic objects in any razing of the structure for possible future incorporation in the community center.

The entire proposed subdivision plan accomplishes protection of the environmental resources by the following means:

- a. The clustering of residential lots away from the environmental resources to further protect these features and the existing forest.
- b. Designing the lots to be close in size to the minimum lot size of 6,000 square feet as practical.

- c. Maximizing the amount of environmental open space by establishment of a minimum of 50% open space on the entire subdivision. The subject property will provide a substantial environmental buffer from surrounding residential lots.

**8. Buildings, Parking Areas, Roads, Storm Water Management Facilities And Other Site Features Are Located To Take Advantage Of Existing Topography And To Limit The Extent Of Clearing And Grading.**

Mr. Vogel testified that the three criteria that the Planning Board is to consider for R-ED preliminary equivalent sketch plan was complied with in the subdivision design, including the above criterion.

Mr. Vogel testified that houses, roads, storm water management facilities and other site features are located to take advantage of existing topography and to limit the extent of clearing and grading. Mr. Vogel testified that the land bowls down to the streams and the houses will be designed as ‘walk-outs’ to conform with the environment. A pump station is required for this project and allowed the integration of this project with the topography naturally. All of the County and State requirements for storm water management have been adhered to. From an open space perspective, there is open space linkage with sidewalks and pathways so every lot will have some access to open space from the rear of the lots.

Mr. Vogel testified that storm water management will be provided with 36 micro bio-retention facilities; 28 bio-swales; 176 drywells (to get water back in the ground) and 181 rain barrels to be utilized for slow release of storm water into landscaped areas

No opposition testimony was presented on the criterion as to whether buildings, parking areas, roads, storm water management facilities and other site features are located to take advantage of existing topography and to limit the extent of clearing and grading.

Based on all the above testimony, which the Board accepts and finds to be persuasive, and based on the evaluation of the Department of Planning and Zoning as to this criterion on page 8-9 of the Technical Staff Report, which the Board accepts and incorporates as its own findings, the Board finds that there is undisputed and substantial evidence in the record that buildings, parking areas, roads, storm water management facilities and other site features are located on the proposed subdivision lay-out to take advantage of existing topography and to limit the extent of clearing and grading.

**9. Setbacks, Landscaped Buffers, Or Other Methods Are Proposed To Buffer The Development From Existing Neighborhoods Or Roads, Especially From Scenic Roads Or Historic Districts.**

Mr. Vogel testified that the three criteria that the Planning Board is to consider for R-ED preliminary equivalent sketch plan was complied with in the subdivision design, including the above criterion.

Mr. Vogel testified that there is landscaping on all sides of the project with no buildable lots abutting adjacent properties. He further testified that there are no designated scenic roads or historic districts from which buffering would be needed, although a lot of attention was given to the area in terms of landscaping, buffering and berms and not turning the back of the houses to MD Route 216. In effect, Mr. Vogel indicated that the subdivision was designed as if the area roads adjoining the subject property were designated scenic roads even though they are not so designated. Mr. Vogel testified that the lots were held back from Murphy Road more than was required and that none of the houses would back to Md. Route 216, thus minimizing any effect of traffic noise on the backyards of the proposed homes. The entire subdivision, as noted by Mr. Vogel, is designed with open space area between the residential lots and site boundaries. No opposition testimony was presented on the criterion as to whether setbacks, landscaped buffers, or other methods are proposed to buffer the development from existing neighborhoods or roads, especially from designated scenic roads or historic districts.

Based on all the above testimony, which the Board accepts and finds to be persuasive, and based on the evaluation of the Department of Planning and Zoning as to this criterion on page 9 of the Technical Staff Report, which the Board accepts and incorporates as its own findings, the Board finds that there is undisputed and substantial evidence in the record that setbacks, landscaped buffers, or other methods are proposed to buffer the development from existing neighborhoods or roads, despite the fact that there are no designated scenic roads or historic districts adjoining the subject property.

10. The Board notes that this project is subject to compliance with 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, but that the Department of Planning and Zoning enforces these requirements through the Subdivision and Land Development Regulations process. The Planning

Board, as noted above, only determines whether the Petitioner has met the specific criteria for approval of Preliminary Equivalent Sketch Plans in the R-ED District as noted above.

Mr. Vogel testified that the Adequate Public Facilities and traffic study requirements were approved by the County and the State Highway Administration (SHA) provided their input. Mr. Vogel added that if there is a road improvement proposed, the SHA would have to approve such improvements, because the site fronts on a State road. Mr. Vogel testified that it is his understanding that the County has no problem with the Adequate Public Facilities Roads test and traffic study, but are waiting to see if the SHA has any issues or concerns. Mr. Vogel stated that the noise study was performed by his firm, in accordance with County criteria, and the study is based on a 30 year traffic horizon. The required 65 dBA noise line is not impacting the rear yards of the houses located near MD Route 216.

As to the issue of the second access road off Murphy Road, Mr. Vogel testified that the Traffic Engineering Division of DPW wanted a public road connection and required that the connection be made. Instead of the design being a ‘soft’ connection, restricted to emergency use by Fire and EMS, it became a ‘hard’ connection. The Traffic Division’s rationale for requiring the road connection was that in the event that there is an emergency, a second means of access would be available for safety reasons if the primary access off of Maryland Route 216 was blocked for some reason. The Petitioner indicated that it did not want to provide this access but was required to provide in order to gain approval of the subdivision. The Board finds that this issue of the second access, like the APFO issues, is not an issue over which the Planning Board has decision-making authority under the Zoning Regulations in this case.

Because the Board is limited to hearing testimony on and deciding matters related to the criteria in Section 107.0F.6 of the Zoning Regulations, the Board did not admit evidence and will not make determinations in this decision with respect to the issues as to whether the property is properly in the Planned Service Area or whether the R-ED zoning of the subject property properly prioritizes farming as a use in the County, issues raised by several residents testifying against the Petition. The Board notes that while Mr. Jones, in one reference to the “Site History” in the Technical Staff Report incorrectly stated that Council Resolution 117-2011 was the County legislation placing the property in the Planned Service Area in the *Plan Howard 2030*, the 2012 Howard County General Plan, that reference was corrected on the record to be Council Bill 26-2012.

Ms. Marsha McLaughlin, Director of DPZ, stated that *Plan Howard 2030* identified several properties that were in the rural area outside of public water and public sewer and proposed that they be included in the Planned Service Area boundary that is shown on all of the maps that are in the general plan related to public water and public sewer. That is what the premise is for this property being rezoned R-ED in the comprehensive zoning process; once it goes into the planned service area, the RR zone is no longer appropriate. A decision was made by the Council during the General Plan process and comprehensive rezoning that this property should be part of the planned service area.

The Board finds that it does not have the authority to decide the issue of whether a property is legally within the Planned Service Area on Howard County's General Plan, nor does it have the authority to question the R-ED Zoning of the subject property, even if that zoning is based on the inclusion of the subject property in the Planned Service Area. The Board finds that there is ample evidence in the record that the property is in the Planned Service Area on the 2012 General Plan, that it is zoned R-ED, and that the subject property will be served by public water and sewer, upon further approvals of the County. The Board finds that there is nothing in the R-ED Regulations which gives the Planning Board authority to decide any disputes as to these issues.

### **CONCLUSIONS OF LAW**

The Board concludes that, based on the above findings of fact, the proposed preliminary equivalent sketch plan, SP-15-014, satisfies all of the standards for approval of a Sketch Plan provided in Section 107.0.F of the Howard County Zoning Regulations for the reasons stated in the above findings and for the reasons stated in the Department of Planning and Zoning's Technical Staff Report.

For the foregoing reasons, the Petitioner's petition for approval of a Preliminary Equivalent Sketch Plan, SP-15-014, for the subdivision of 176 single-family detached residential lots and thirteen (13) open space lots on 91.31 acres of land zoned R-ED-MXD-3, on this \_\_\_\_ day of \_\_\_\_\_, 2015 is APPROVED by the Planning Board of Howard County, Maryland.

HOWARD COUNTY PLANNING BOARD

ABSENT

Josh Tzucker– Chairperson

William Santos – Vice-Chairperson

Jacqueline Easley

Phil Engelke

ABSENT

Erica Roberts

ATTEST:

Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY:  
HOWARD COUNTY OFFICE OF LAW  
Margaret Ann Nolan, County Solicitor

Paul Johnson, Deputy County Solicitor

LIST OF APPLICANT’S EXHIBITS:

- Exhibit No. 1 - *Overall Layout of Maple Lawn South*
- Exhibit No. 2 - *Photographs of Historic House*
- Exhibit No. 3 - *A copy of the Engineer’s Inspection Report of Historic House*

LIST OF PROTESTANT’S EXHIBITS:

- (proffered but not admitted as irrelevant)
- Exhibit No. 1 - *A copy of a letter by County Executive Elizabeth Bobo*
- Exhibit No. 2 - *Copy of Page 3 of the Technical Staff Report; Copies of the County Council’s Legislation Search Database; Copies of the Proposed Guidelines for the 2030 General Plan*
- Exhibit No. 3 - *References taken from Plan 2030*

*Exhibit No. 4 - Copy of an Email from Paul Johnson,  
Deputy County Solicitor*