

Elm Street Development * BEFORE THE
Petitioner * PLANNING BOARD OF
PLANNING BOARD CASE NO. 436 * 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 June 21, 2018, to consider the petition of Elm Street Development, Petitioner, to approve a Preliminary Equivalent Sketch Plan, SP-17-002, for 45 buildable lots, 1 buildable preservation parcel, 10 non-buildable preservation parcels, and 5 non-buildable bulk parcels. The 99.95 acre property, located on Green Bridge Road, south of Ten Oaks Road and north of Triadelphia Mill Road, and identified as Parcels 34, 36, 98, 111, & 112, in the 5th Election District of Howard County, Maryland, is in the Tier III residential land use category, as designated on Howard County’s General Plan, *PlanHoward 2030*, and zoned RR-DEO (Rural Residential Density Exchange Option).

The notice of the public 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. 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 (DPZ), 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 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.

PLANNING BOARD HEARING

Department of Planning and Zoning’s Technical Staff Report

J.J. Hartner presented DPZ’s Technical Staff Report which recommended approval of Preliminary Equivalent Sketch Plan, SP-17-002, subject to comments from reviewing agencies and any conditions by the Planning Board. The report found that of the two criteria for the Planning Board to consider, pursuant to Section 5-104(e) of the Land Use Article of the Maryland Annotated Code for a Tier III major subdivision, 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.

DPZ found that the Natural Resource Inventory indicates two stream systems and areas of non-tidal wetlands:

- The site is bisected by a large perennial stream that flows from north to south through the middle of the site. A 100-year floodplain is associated with the stream and there are areas of non-tidal wetlands. An existing driveway crosses this perennial stream over a small culvert.
- An intermittent stream enters the property's western and northwestern boundaries. A 100-year floodplain is associated with the western stream and there are areas of non-tidal wetlands around the northwestern stream. Both streams flow to the south before connecting and flowing to the property line.

The Natural Resource Inventory also indicates 50 specimen trees and two distinct forest stands that encompass approximately 37.05 acres:

- Forest Stand #1 is approximately 26.2 acres and includes mature mixed hardwoods and are located mostly around the edges of the site to the east, south and west. A majority of the perennial stream is located within this forest stand. Floodplains and non-tidal wetlands are associated with the northern and eastern legs of the stream.
- Forest Stand #2 occupies approximately 10.85 acres. It is located on the eastern and central portions of the site and contains a stream channel that comes off the western side of the perennial stream.

The Natural Resource Inventory and Floodplain report indicates a floodplain along the perennial and intermittent streams; however, there are no steep slopes being disturbed by the proposed development.

The subdivision proposes a stream crossing along the southern portion of the property to access the site. The proposed stream crossing will provide a larger culvert for the stream to flow through, allowing for a more natural flow pattern. This stream crossing will cause minor disturbances to the stream buffer and floodplain. A second stream crossing is proposed on the northwest portion of the site to access Lots 35, 36, 37, and 38. The second stream crossing will cause minor disturbances to the stream buffer and wetland buffer. However, the stream and wetland buffers are already being disturbed in this area for the removal of a farm pond. The remaining natural resources will be protected and preserved within two non-buildable preservation parcels. While the plan proposes removing 15.3 acres of forest and 40 specimen trees, the site will be replanted with more forested area than is on site currently. Additionally, the proposed removal of forest and specimen trees has been determined necessary and reasonable due to poor tree health and to accommodate driveways, houses, private septic systems, and utilities.

Based on the Petitioner's natural resources inventory for the site, the Department of Planning and Zoning recommended approval of preliminary equivalent sketch plan (SP-17-002) because it met the requirements of Section 5-104(e) of the Land Use Article of the Maryland Annotated Code.

PETITIONER'S TESTIMONY

Mr. William Erskine, Esq., represented the petitioner. Opening statements were waived.

Mr. Erskine called Brandon Rowe, of Bohler Engineering, as his only witness. Mr. Rowe said that he concurred with DPZ's staff report and provided a site overview; including existing conditions, and reasoning for the plan layout. Mr. Rowe highlighted the site's natural resources and noted that there are streams, stream buffers, wetlands, wetlands buffers, and floodplains that would not be disturbed, except for a stream crossing to gain access to the property and another stream crossing to gain access to lots 35, 36, 37, and 38.

In response to a question from Mr. Erskine regarding the number of proposed buildable lots on the property, Mr. Rowe testified that they are proposing 45 buildable lots and 1 buildable preservation parcel.

In response to a question from Mr. Erskine regarding the stream crossing to gain access to lots 35, 36, 37, and 38, Mr. Rowe testified that there is an existing manmade farm pond that was not permitted or built to code. Mr. Rowe stated that the proposal is to drain the existing farm pond because it poses a public health and safety concern, and construct the stream crossing in the area that will already be disturbed by the pond removal.

Mr. Rowe further testified that the proposed stream crossing necessary to gain access to the site is already being crossed by an existing use-in-common driveway that is being held up by a crumbling and deteriorating concrete structure with a small culvert running through it. The developer is proposing to remove the deteriorating structure and culvert, and replace it with a much larger culvert and a new road. Mr. Rowe testified that the entrance location to the site will be shifted to provide adequate sight distance. Shifting the roadway entrance coupled with the addition of stormwater management facilities to the site will require the removal of additional specimen trees, but the proposed stream crossing will be in the same location as the existing stream crossing.

Board Chair Phil Engelke asked about the size of the existing culvert compared to the size of the proposed culvert. Mr. Rowe stated that the existing culvert was approximately 12 to 18 inches and that he is still working on the culvert design with the Maryland Department of Environment (MDE), but the proposed culvert would most likely be an 8 foot wide by 6 foot high box culvert.

Mr. Rowe also testified that the proposed stormwater management is consolidated into a single facility, minimizing the impact to environmental features.

In response to a question from Mr. Erskine, Mr. Rowe testified that the site design protects environmental resources to the extent reasonably practical. Mr. Rowe also testified that the stream crossing necessary to gain access to the site was deemed a necessary disturbance by the Department of Planning and Zoning, and an alternative compliance was not required for that stream crossing.

Board member Ed Coleman asked Mr. Rowe whether the new culvert design would be required to slow the flow of water similar to the way that the old culvert slowed the flow of water. Mr. Rowe stated that they were required to study the floodplain and have determined that there are no downstream impacts with the new culvert.

Board member Ed Coleman asked Mr. Rowe whether the removal of the farm pond was required by MDE or whether the consultant made the decision to remove the pond. Mr. Rowe stated that MDE was not requiring removal of the pond, but it was decided in consultation with MDE and the Corps. that the pond should be removed because there were life safety concerns downstream since the pond was never permitted

or built to code. Mr. Rowe also testified that the pond would be removed regardless of site design due to life safety concerns.

Board member Ed Coleman asked Mr. Rowe where the steep slopes are located on site. Mr. Rowe outlined where the steep slopes are located and testified that no steep slopes will be disturbed by this development.

Board Vice Chair Erica Roberts asked Mr. Rowe to describe how the pond would be removed. Mr. Rowe stated that they would drain the pond and construct a culvert in the manmade embankment to allow the water to flow in its natural pattern.

Board member Kevin McAliley asked Mr. Rowe whether there are any concerns about flooding from the streams on site. Mr. Rowe stated that much of the site is currently being used for agricultural purposes, and those agricultural fields have a higher runoff coefficient than lawns. Mr. Rowe also stated that more forest would be replanted than would be removed and that also helps with runoff, and that there are no downstream concerns with 100 year storms.

Additional questions were posed by the Planning Board that were not related to the review criteria in Senate Bill 236.

CROSS EXAMINATION

There was no cross examination of Mr. Rowe.

OPPOSITION TESTIMONY

There was opposing testimony, however, opposing testimony was not relevant to the review criteria in Senate Bill 236.

WORK SESSION

The Planning Board went into work session and agreed that the plan complies with the requirements of Senate Bill 236 "The Sustainable Growth and Agricultural Preservation Act of 2012." The Board voted 5 to 0 to approve the plan, without any conditions.

FINDINGS OF FACT

1. Preliminary Equivalent Sketch Plan, SP-17-002, contains 45 buildable lots, 1 buildable preservation parcel, 10 non-buildable preservation parcels, and 5 non-buildable bulk parcels on 99.95 acres in Tier III and a RR-DEO (Rural Residential Density Exchange Option) zoning district.
2. This 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 legal requirements.
4. The Planning Board has authority to review the Preliminary Equivalent Sketch Plan in accordance with the pertinent criteria set forth in 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, with which the petitioner concurred, 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, and forested area and trees and the Planning Board finds that the plan complies with the requirements of Senate Bill 236 "The Sustainable Growth and Agricultural Preservation Act of 2012."

7. 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.

CONCLUSIONS OF LAW

Preliminary Equivalent Sketch Plan, SP-17-002, satisfies all of the 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 Elm Street Development, to approve a Preliminary Equivalent Sketch Plan, SP-17-002, to subdivide 45 buildable lots, 1 buildable preservation parcel, 10 non-buildable preservation parcels, and 5 non-buildable bulk parcels on 99.95 acres of Tier III land, zoned RR-DEO, on this 7th day of June, 2018 APPROVED by the Planning Board of Howard County, Maryland.

HOWARD COUNTY PLANNING BOARD


Phil Engelke - Chairperson


Erica Roberts - Vice-Chairperson

Absent
Tudy Adler


Ed Coleman


Kevin McAliley

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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:

Photographs of the two proposed stream crossing locations.

LIST OF PROTESTANT'S EXHIBITS:

None