

WILBUR AND EVELYN HINKLE * BEFORE THE
FAMILY LTD. * PLANNING BOARD OF
PETITIONER * HOWARD COUNTY, MARYLAND

PLANNING BOARD CASE NO. 423

* * * * *

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 November 17, 2016, to consider the petition of Wilbur and Evelyn Hinkle Family Ltd., Petitioner, to approve a Preliminary Equivalent Sketch Plan, SP-16-007, for nine single-family cluster lots, one buildable preservation parcel, and two non-buildable preservation parcels. The 43.37 acre Hinkle Property subdivision, located on Haven Court and identified as Parcel 93 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.

PLANNING BOARD HEARING

Department of Planning and Zoning’s Technical Staff Report

Nicholas Haines presented the Technical Staff Report for the Department of Planning and Zoning which recommended approval of Preliminary Equivalent Sketch Plan, SP-16-007, subject to comments from reviewing agencies and any conditions of approval by the Planning Board. The Department of Planning and Zoning in its 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 was inapplicable because Howard County has an adequate 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 and placed in Non-Buildable Preservation Parcel "B", including the floodplain, streams, wetlands and their associated buffers, and 23.11 acres of forest. Approximately 5.94 acres of forest will be removed for development and 9 of the 60 specimen trees will be removed.

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 preliminary equivalent sketch plan SP-16-007 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; however, the opposition did not have legal representation.

Mr. Carl Gutschick, a Principal of Gutschick, Little & Weber, P.A., testified as to the proposed design of the property. He provided testimony in regards to the environmental features and how they relate to the proposed subdivision. Testimony was also provided describing the forest conservation requirements, specimen trees, and how the subdivision would affect those elements.

In response to a question from Mr. Edward Coleman, Planning Board member, as to the species of the specimen trees to be removed as part of the development were. Mr. Gutschick identified the specimen tree species to be removed as Black Walnut, Pin Oak, and Tulip Poplar.

Also in response to a question from Planning Board Member Coleman, as to whether converting some proposed individual driveways into shared driveways for some of the lots had been considered to minimize the amount of proposed impervious surface and if it would limit environmental impacts specifically to specimen trees and reduce the runoff for storm water management, Mr. Gutschick responded that shared driveways are an option but would not have saved either of the two specimen trees between Buildable Preservation Parcel A and Lot 9. Mr. Gutschick further explained that while shared driveways would reduce the amount of runoff, that

the project's proposed stormwater management was designed to handle every square foot of impervious surface on site.

In response to a question from Mr. Daniel Buettner, resident of 7416 Bucks Lane, as to who would be taking ownership of Non-Buildable Preservation Parcel B and Non-Buildable Preservation Parcel C, Mr. Gutschick responded that the Howard County Department of Recreation and Parks would be taking ownership of Non-Buildable Preservation Parcel B, and Non-Buildable Preservation Parcel C would be owned by the homeowners association to locate the storm water management facilities to treat the roadway runoff.

In response to a further question by Mr. Buettner as to where the trail to access park land would be located, Mr. Gutschick explained that the majority of the conceptual trail would be located in Non-Buildable Preservation Parcel B to be owned and maintained by Howard County Department of Parks and Recreation with a small portion running through Non-Buildable Preservation Parcel C. Mr. Gutschick also explained that the plans for the trail were still in the conceptual stage.

In response to another question by Mr. Buettner as to whether the homeowners association would be responsible for maintaining the section of trail located within Non-Buildable Preservation Parcel C, Mr. Gutschick responded that it is possible that Department of Parks and Recreation would agree to maintain the section of trail located on Non-Buildable Preservation Parcel C, but nothing yet had been arranged.

In response to a question by Mrs. Karen Koback, resident of 12745 Hall Shop Road, as to whether the existing horse trails located in the wooded areas of the property where the potential pedestrian trails are proposed were to be paved, Mr. Gutschick responded that the trail system is very conceptual and that the Howard County Department of Recreation and Parks would be implementing the trail system and suggestions and questions should be directed to Department of Recreation and Parks regarding the trails design.

In response to a question from Mr. Gary Segal, resident 3630 Church Road, as to whether the design of the proposed storm water management system located within the development was designed to handle a 10 year, 100 year, or greater storm, Mr. Gutschick responded that the property is not located in one of the special designated storm water management areas in the county that require enhanced storm water management. He indicated that the subject property's vicinity has no known flooding problems and therefore the proposed system had to be designed in accordance with the Storm Water Management Manual which calls for environmental site design to the maximum extent practicable.

PROTESTANT'S TESTIMONY

There was no opposition testimony provided as to the proposed development.

After careful evaluation of all testimony and information presented, the Planning Board made the following Findings of Facts and Conclusions of Law:

FINDINGS OF FACT

1. The proposed Preliminary Equivalent Sketch Plan, SP-16-007, is to create nine single-family cluster lots, one buildable preservation parcel, and two non-buildable preservation parcels on 43.37 acres of Growth Tier III land, zoned RR-DEO (Rural Residential – Density Exchange Option).
2. This project is subject to 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.
3. The subject property was properly posted and advertised in accordance with legal requirements for a Planning Board public hearing.
4. 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.
5. 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. The review by the Planning Board of the cost of providing local government services to the residential subdivision criterion is inapplicable in Howard County for a proposed major subdivision of a Tier III designated property such as the subject property due to Howard County's 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 with regard to the adequacy or cost of public facilities in relation to this subdivision.
6. 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 Natural Resource Inventory as to all streams, stream buffers, wetlands, wetland buffers, floodplains, steep slopes, forested areas, and specimen trees on the property. This inventory shows that the plan does not propose any disturbance to the above referenced streams, stream buffers, wetlands, wetland buffers, floodplains, or steep slopes. These features are encompassed and protected within a non-buildable preservation parcel. The plan does propose the removal of 5.89 acres of forest and 8

specimen trees. This has been determined to be necessary in order to accommodate a public road cul-de-sac, utilities, storm water management devices, houses, driveways, and private septic systems. 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.

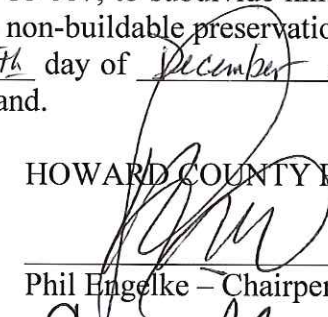
- 7. The proposed subdivision will effectively protect, preserve, and minimize disturbance of the environmental resources by placing streams, wetlands, required buffers, floodplains and steep slopes within non-buildable preservation parcels. The development plan does not disturb environmentally sensitive areas, except by removing 8 of the 65 specimen trees and removing 5.89 acres of the 25.62 acre forested areas. The Board is convinced that these alterations are necessary for the reasonable development of the subject property.

CONCLUSIONS OF LAW

The proposed Preliminary Equivalent Sketch Plan, SP-16-007, satisfies all of the approval standards for a major subdivision, according to State Senate Bill 236, and Section 5-104(e)(2) of the Land Use Article of the Maryland National Code for the reasons stated in the Department of Planning and Zoning Technical Staff Report.

For the foregoing reasons, the petition of Wilbur and Evelyn Hinkle Family, LTD., to approve a Preliminary Equivalent Sketch Plan, SP-16-007, to subdivide nine single-family cluster lots, one buildable preservation parcel, and two non-buildable preservation parcels on 43.37 acres of Tier III land, zoned RR-DEO, is this 15th day of December, 2016 APPROVED by the Planning Board of Howard County, Maryland.

HOWARD COUNTY PLANNING BOARD



Phil Engelke - Chairperson



Erica Roberts - Vice-Chairperson



Tudy Adler




Jacqueline Easley



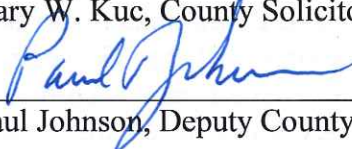
Ed Coleman

ATTEST:



Valdis Lardins
Executive Secretary

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



Paul Johnson, Deputy County Solicitor

LIST OF APPLICANT'S EXHIBITS:
None were introduced

LIST OF PROTESTANT'S EXHIBITS:
None were introduced