

PFEFFERKORN ROVER MILL, LLC * BEFORE THE
PETITIONER * PLANNING BOARD OF
PLANNING BOARD CASE NO. 438 * 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 October 4, 2018, to consider the petition of Pfefferkorn Rover Mill, LLC., Petitioner, to approve a Preliminary Equivalent Sketch Plan, SP-18-001, for seven single-family cluster lots and two non-buildable preservation parcels. The 16.42 acre Rover Mill Estates subdivision, located at 2790 Pfefferkorn Road and identified as Parcel 169 on Tax Map 15, in the Third Election District of Howard County, Maryland, is in the Growth Tier III residential land use category, as designated on Howard County’s General Plan, *PlanHoward 2030*, 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

Eric Buschman presented the Technical Staff Report for the Department of Planning and Zoning. 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.

The Department of Planning and Zoning found that criterion 1 above did not apply because 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 while the property contains environmental features, those features will be preserved with no impact, including two streams, stream buffers, wetlands, wetland buffers, floodplain and forest.

PETITIONER'S TESTIMONY

Mr. Robert Vogel, an engineer with Vogel Engineering/Timmons Group, testified on behalf of the petitioner that he concurred with the information contained within the Technical Staff Report and that the project complied with the criteria for Planning Board approval. Mr. Vogel stated that the project will result in approximately 120'-250' of wooded resources between the proposed lots and the streams. Forest Conservation Easements, floodplain easements and stream buffers will be established which do not exist today and will help to preserve and enhance the environmental areas.

Board Chair Phil Engelke asked about the potential impact to the adjacent agricultural property across Rover Mill Road. Mr. Vogel stated that street trees and perimeter landscaping consisting of evergreens and deciduous trees are proposed along the project boundary and public road frontage, which will help screen the development from adjacent properties.

Board Chair Phil Engelke questioned the removal of the four Norway Maple specimen trees. Mr. Vogel stated that the trees are located along the Rover Mill Road frontage and are invasive and in poor health. Additional discussions between the Board and Mr. Vogel continued regarding public road improvements, the proposed shared driveway, stormwater management and distances between the proposed wells and septic systems.

Board member Kevin McAliley raised a question regarding the newspaper advertisement requirement and that the petitioner missed the requirement by two days. David Moore from the Office of Law stated that the petitioner was advised of the issue and wished to move forward with the Planning Board hearing.

OPPOSITION TESTIMONY

Cheri Vincent, 13880 Rover Mill Road, spoke as an adjacent property owner. Ms. Vincent stated that the stream along the western boundary floods frequently and breaches the stream banks onto her rear yard. The County placed a culvert pipe below Rover Mill Road to convey runoff from Tall Ships Drive. This has resulted in additional water in the stream. Ms. Vincent was concerned about additional runoff being generated by the proposed development. She also questioned the timing of the proposed forest conservation plantings.

Mr. Robert Vogel stated that afforestation plantings are proposed along the stream in the area adjacent to Ms. Vincent's property. The timing of the plantings will be determined by the developer or builder, but generally they are planted early in the construction phase so the two-year survival period can begin, which is required prior to release of the developer's surety. Mr. Vogel discussed the runoff rates between various land uses and stated that the rates are very similar between agricultural fields and mowed lawns. The Board and Mr. Vogel discussed runoff rate calculations.

Sammy Eldon, 14026, 14030 & 14038 Tall Ships Drive, spoke as an adjacent property owner. Mr. Eldon stated that the intersection at Tall Ships Drive and Rover Mill Road is a low point and is often flooded with standing water. He questioned why the entrance to the development is proposed along Rover Mill Road, which is a narrow country road, rather than Pfefferkorn Road. He stated that there is poor sight distance at the Rover Mill Road and Pfefferkorn Road intersection and the proposed tree plantings will impact sight distance. Valdis Lazdins, Planning Board Executive Secretary, pointed out the criteria for Planning Board approval, which is specific to the potential environmental impacts by the proposed development.

WORK SESSION

The Planning Board went into work session and agreed that the plan preserves the site's natural resources and complies with the criteria set forth in SB 236. The Board voted 5 to 0 to approve the plan, without any conditions.

FINDINGS OF FACT

1. The proposed Preliminary Equivalent Sketch Plan, SP-18-001, creates seven single-family cluster lots and two non-buildable preservation parcels on 16.42 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 illustrated all streams, stream buffers, wetlands, wetland buffers, floodplain and forest on the property. This inventory shows that the plan does not propose any major disturbance to forest, floodplain, streams, wetlands, or their required buffers. Based on this information, which the Board finds to be persuasive, convincing and reliable, the Board finds that sufficient information has been presented to show that there are no environmental issues associated with the proposed subdivision.
5. The proposed subdivision, based on the Board's findings of fact, will effectively protect, and preserve the environmental resources by placing streams, wetlands, buffers, floodplain and forest within a non-buildable preservation parcel. The development plan does not disturb environmentally sensitive areas.

CONCLUSIONS OF LAW

1. Petitioner, 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 only criterion of Section 5-104(e)(2) of the Land Use Article of the Maryland Annotated Code which applies in Howard County - that there are no potential environmental issues related to a natural

resources inventory associated with the proposed residential subdivision.

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 Petitioner has conclusively established, through the evidence in the record that the proposed Preliminary Equivalent Sketch Plan, SP-18-001, 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 Pfefferkorn Rover Mill, LLC, to approve a Preliminary Equivalent Sketch Plan, SP-18-001, to subdivide 7 single-family cluster lots and 2 non-buildable preservation parcels on 16.42 acres of Tier III land, zoned RR-DEO, is this 8th day of November 2018 APPROVED by the Planning Board of Howard County, Maryland.

HOWARD COUNTY PLANNING BOARD


Phillips Engelke – Chairperson



Erica Roberts - Vice-Chairperson


Delphine Adler

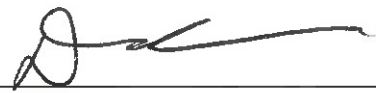

Ed Coleman


Kevin McAiley

PB Case No. 438
ATTEST:


Valdis Laxdins
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