

**IN THE PLANNING BOARD
MONTGOMERY COUNTY MARYLAND**

**In re: Resolution NO. 10-129, dated September 28, 2010
Barnesville Oaks Farm
Preliminary Plan No. 1200901 10**

PETITION FOR RECONSIDERATION

The Montgomery Countryside Alliance and its members, pursuant to MNCPPC Rules of Procedure Section 4.12.1, respectfully request that the Planning Board reconsider the above referenced Resolution. Petitioner is a Party of Record, having testified at the July 22, 2010 hearing. This request is based upon the following:

- 1) **The Board was mistaken in not exercising its authority to limit density during subdivision to be substantially consistent with the AROS Master Plan.** This is a critical threshold issue in this, or any, subdivision matter. During the hearing, the Chair seemed surprised that the Board had the authority to require less density than the maximum allowed under the Zoning Ordinance, if necessary to achieve substantial conformity with the Master Plan. The Board erred in misinterpreting their authority even though testimony given cited two cases that provided the necessary basis for this authority. See: Coffey v. MNCPPC, 293 Md.24 (1982) and Board of Commissioners of Cecil County v. Gaster, 285 Md. 233 (1979). This is a subdivision case. While a subdivision must also meet the requirements of the zone, the allowable density of the zone is not a right. If the plan (or other regulations such as the forest Conservation law) requires, or can be fairly interpreted to require, less density than is permitted by the zone, the plan governs. Maryland courts have repeatedly made clear that subdivision is distinguished from zoning in that while the Plan is a guide to zoning, subdivisions must be consistent with the Plan if the Subdivision Ordinance requires it, as ours explicitly does.

2) **The Board was mistaken in determining that the subdivision plan substantially conforms to the AROS Master Plan.** The State Legislature amended Article 66 B in 2009 providing that there is no discernable difference in phrases such as *consistent*, *substantially conform*, or be *in harmony with*. Following the decision of the Court in *Trail v. Terrapin Run* 403 Md. 523 (2008) the General Assembly in new Sect. 1.02(c) defined consistency with a master plan to mean:

. . . an action taken that will further, and not be contrary to, the following items in the plan:

- (1) policies;
- (2) timing of the implementation of the plan;
- (3) timing of development;
- (4) timing of rezoning;
- (5) development patterns;
- (6) land uses; and
- (7) densities or intensities..

(SB 280, 2009 session)

Numerous individuals testified during the public hearing that the proposed subdivision plan presents conflict with the policies, development patterns and densities or intensities as provided in the AROS Master Plan. The record holds numerous citations to the Master Plan and testimony as to the conflict already occurring as a result of suburban style development on Peach Tree Road. That testimony provided evidence demonstrating that this plan would further exacerbate this problem. This subdivision does not substantially conform to the Master Plan because the number and location of the lots, while preserving some agricultural land, largely as open space serving the residences rather than providing residential uses that “serve the agricultural industry and the rural community at large,” as recommended by the AROS Plan. Nor does it provide residential uses on a limited manner that is consistent with preservation policies. The large number of lots essentially creates a new center, equivalent in scale to

Barnesville or historic Boyds. The layout is suburban rather than rural in character. The proposed plan may be appropriate for the area zoned for Rural Cluster, but not in the Reserve.

The resolution asserts, but does not provide the findings of fact that the subdivision, given its size and character, substantially conforms to the master plan's policy of preserving agriculture and *"the need for commercial and residential uses to serve the agricultural industry and the rural community at large"*. AROS, p.35. Also see p.30: "Preservation encourages and fosters a rural lifestyle important to Montgomery County." The Board's Resolution states on page 6 that: the focus of the Master Plan is preservation of agriculture within the Reserve – not maintenance of rural character." This statement seems to conflict with the AROS Master Plan. Moreover, the AROS Master Plan properly identifies rural villages or municipalities such as Damascus and Poolesville as vital elements of the plan, see: Summary of Findings and Recommendations at iv and Preservation Land Use Policies at p. 38. The Plan does not provide for the creation of new villages within the RDT that will present direct conflict with the conduct of agriculture and result in the inflation of land value that puts acreage beyond the reach of those seeking to farm. See hearing record, testimony of Montgomery Countryside Alliance. The Resolution asserts that concerns regarding conflict will be addressed: "The Preliminary Plan calls for the new homes to be buffered, where practical, from the agricultural areas to reduce conflict." Whether such a provision for a "buffer" would achieve reduction of conflict is certainly debatable. However, there is no question that the mere need to provide this solution reveals a plan with real potential to produce conflict with the conduct of agriculture and thus the primary purpose of the zone.

In summary, the hearing record holds sufficient testimony supporting this request for reconsideration. The mere confusion as to Board authority in this matter alone should constitute a need to revisit the issue. In this case, the board seems to have been more concerned with what

the zone permits than with whether the subdivision was in harmony with the purpose of the zone and the rural character of the area, and thus, with furtherance of the objectives of the master plan.

CONCLUSION

For the foregoing reasons, the Board should grant reconsideration of its approval of Preliminary Plan No. 120090110 to create 21 lots and 3 outlots for up to 24 one family detached dwelling units, i.e. Resolution 10-29 (July 22, 2010).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Caroline Taylor". The signature is written in a cursive style with a large, sweeping initial "C".

Caroline Taylor, Executive Director
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