



Consent Item - Boswell's Addition to Riding Stable Estates: Preliminary Plan Amendment No. 12008008A

RAW

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JAC

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Staff Report Date: 12/5/13

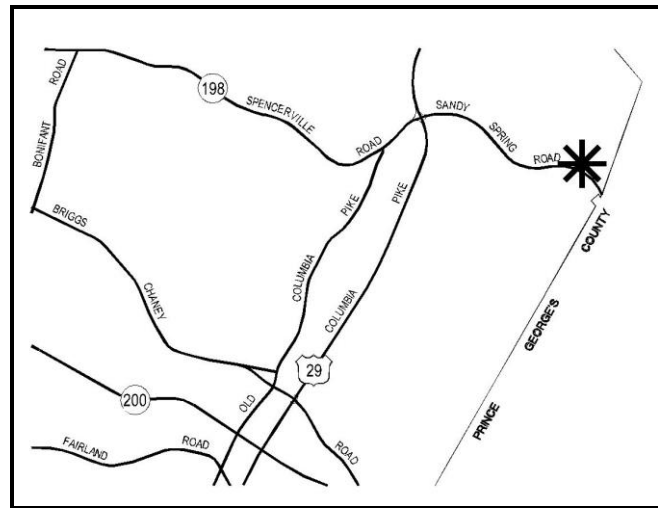
Description

Consent Item - Boswell's Addition to Riding Stable Estates (Previously approved for three lots): Preliminary Plan Amendment No. 12008008A

A request to revise a condition of approval related to the forest easement to be recorded to protect off-site forest, located at 15615 Riding Stable Road, 4.87 acres, RE-1 Zone, Patuxent Policy Area and Fairland Master Plan

Staff Recommendation: Approval subject to amended conditions

Applicant: Chuck and Robin Boswell



Summary

- The Applicants' 5.17 acre property ("Parent Tract") extends across the Montgomery/Prince George's County border.
- For the approval of the three lot subdivision on the 4.87 acres in Montgomery County, the Applicants were allowed to use forest on the Prince George's County portion of the Parent Tract as an off-site forest for purposes of meeting certain forest conservation requirements under Chapter 22A of the Montgomery County Code ("Forest Conservation Law").
- In order to meet the long term protective measures required by §22A-12(h)(2), the off-site forest was to be encumbered by a Prince George's County Woodland and Wildlife Habitat Conservation Easement, modified so that no amendment or release of the easement would be effective without the written approval of the Planning Board.
- Prince George's County will not approve a modified Woodland and Wildlife Habitat Conservation Easement as anticipated.
- This Amendment provides a satisfactory alternative long term protection measure for the off-site forest which has been agreed to, in concept, by the Office of General Counsel.

STRAFF RECOMMENDATION

Staff recommends approval of Preliminary Plan Amendment No. 12008008A subject to the following revision to Condition #2(f), (g), and (h):

2. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan dated January 15, 2013, and approved as part of this Preliminary Plan, subject to the following:

a....

b....

c....

d....

e....

f. The use of any land in Prince George's County must be identified on the Final Forest Conservation Plan as an off-site area for purposes of meeting the requirements for afforestation. Any existing forest located in the off-site area will be assigned an afforestation credit at the rate of 1 acre of existing forest per ½ acre of required afforestation and must be placed in a Deed of Easement granted to and enforceable by the Planning Board as a protective measure for offsite forest preservation in a form approved by the Office of General Counsel. ~~Prince George's County Woodland and Wildlife Habitat Conservation Easement, modified as indicated in these conditions of approval.~~

g. The Prince George's County Woodland and Wildlife Habitat Conservation Easement must be modified i) to acknowledge the Planning Board's approval of the easement as a protective measure under Montgomery County Code, Section 22A-12(h)(2) as offsite forest preservation within the same watershed; and ii) to state that no amendment or release of the easement can be effective without the written approval of the Planning Board. The modifying language must be submitted to the Prince George's County Planning Department and Montgomery County Planning staff for review and approval prior to recordation of plat.

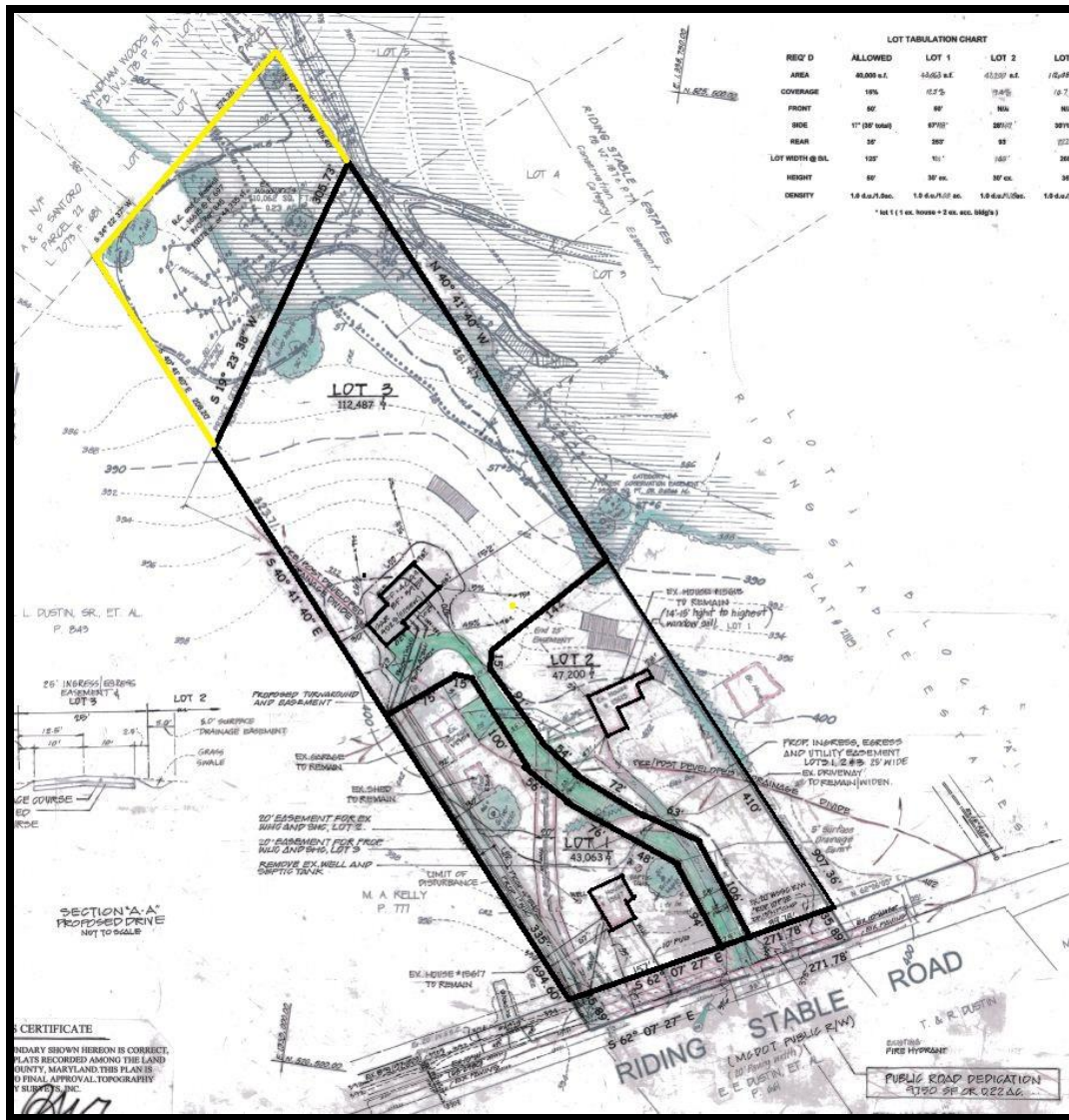
h. The approved Conservation Deed of Easement must be recorded in the Prince George's County land records prior to recordation of the plat, and the recording reference must be noted on the record plat. The Woodland and Wildlife Habitat Conservation Easement, modified as approved by Staff, must be recorded in the Prince George's County land records prior to recordation of the plat, and the recording reference must be noted on the record plat.

The development must comply with the conditions of approval for Preliminary Plan No. 120080080, including the Forest Conservation Plan, as set forth in the MCPB No. 13-35, except as amended by this Application.

PROPERTY DESCRIPTION

The property is 5.89 acres in size and identified in the State of Maryland tax assessment maps as Parcel P845 on Tax Map LS22 ("Parent Tract"). The Parent Tract is split between county boundaries with approximately 4.87 acres in Montgomery County and approximately 1.02 acres (outlined in yellow below) in Prince George's County. The 4.87 acre portion within Montgomery County is zoned RE-1 and

is located at 15615 Riding Stable Road in the Fairland Master Plan (“Subject Property” or “Property”).¹ There are two existing residences, a garage, a shed, and associated driveways on the Property.



Preliminary Plan No. 120080080 was a request to subdivide the Subject Property into three, one-family residential lots. Since the Montgomery County Planning Board has no jurisdiction in Prince George’s County, the area of the Parent Tract within Prince George’s County was not included within the three approved lots that constitute the Subject Property. No land area within Prince George’s County was used for purposes of density calculations for this application.

¹ To clarify, the Parent Tract includes 5.89 acres that is owned by the Applicant and extends into Prince George’s County. For purposes of density and platting under the Planning Board’s authority, the Subject Property or Property refers only to the land in Montgomery County.

The application was subject to the Montgomery County Forest Conservation Law and generated a 0.60 acre forest planting requirement. The Forest Conservation Plan that was submitted with the preliminary plan requested that forest within the Prince George's County portion of the Parent Tract be considered as off-site forest and used to satisfy some of the planting requirements for the three lot subdivision.

The Planning Board determined that protection of the forest in Prince George's County on contiguous land under common ownership by the Applicant was preferable to other off-site options. Pursuant to Section 22A-12(e)(4) of the Montgomery County Forest Conservation Law, the Planning Board was satisfied that off-site reforestation or afforestation requirements may be met in other counties or watersheds under certain circumstances. Because the forest in Prince George's County is counted as off-site forest, it can only receive one-half credit under the Forest Conservation Law. Therefore, the Applicant was required as a condition of approval, to protect 0.53 acres of forest in Prince George's County with a Prince George's County's Woodland and Wildlife Habitat Conservation Easement, modified to identify the easement as a protective measure for off-site forest preservation that cannot be amended or released without the written approval of the Planning Board. The modified easement was to be recorded in the Prince George's County land records and the liber and folio was to be shown on the record plat.

At the time of the public hearing for the application, Staff expressed optimism that Prince George's County would accept a modified Woodland and Wildlife Habitat Conservation Easement and allow it to be recorded in the Prince George's County land records. Despite efforts by the Applicant and the Office of General Counsel, Prince George's County is not willing to accept a modified easement, and this has prevented the Applicant from recording a record plat for the approved subdivision.

As an alternative to the modified Prince George's County's Woodland and Wildlife Habitat Conservation Easement, the Applicant suggests that a Conservation Deed of Easement granted to, and enforceable by, the Planning Board will provide equal protection of the off-site forest resource. The Office of General Counsel has agreed to this concept with the stipulation that any such easement must be approved by our legal staff prior to the document being recorded in the Montgomery County land records.

COMMUNITY OUTREACH

The Applicant has complied with all submittal and noticing requirements and Staff has not received any correspondence as of the date of this report.

FINDINGS

All previous findings and conditions of approval not modified herein for Preliminary Plan No. 120080080 Boswell's Addition to Riding Stable Estates remain valid and are not amended by this Application. All approved validity periods also remain unchanged.

CONCLUSION

Staff recommends approval of this Preliminary Plan Amendment subject to the amended condition.

Attachment:

MCPB 13-35



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 13-35
Preliminary Plan No. 120080080
Boswell's Addition to Riding Stable Estates
Date of Hearing: March 14, 2013

APR 15 2013

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on September 13, 2007, Robin L. and Chuck Boswell, ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create three (3) lots on 4.87 acres of land¹ in the RE-1 zone, located 15615 Riding Stable ("Subject Property"), in the Patuxent Policy Area, in the Fairland master plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No.120080080, ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated March 1, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 14, 2013, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on March 14, 2013, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Presley, seconded by Commissioner Anderson, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley all voting in favor.

¹ The Parent Tract on which the Subject Property is a part is comprised of 5.89 acres, of which 4.87 acres is located in Montgomery County and 1.02 acres is located in Prince George's County. For the purposes of density, platting and other provisions of the Subdivision Regulations under the Planning Board's authority, the Subject Property refers to the land in Montgomery County, while the land in Prince George's County is considered off-site.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120080080 to create three (3) lots on the Subject Property, subject to the following conditions:²

- 1) This Preliminary Plan is limited to three (3) lot(s) for three (3) detached dwelling units.
- 2) The Applicant must comply with the conditions of approval for the preliminary Forest Conservation Plan dated January 15, 2013, and approved as part of this Preliminary Plan, subject to the following:
 - a. Prior to Staff approval of the certified Preliminary Plan and final Forest Conservation Plan, the Applicant must revise the preliminary Forest Conservation Plan to: (i) revise the forest conservation worksheet and associated table so that the total tract area equals the net tract area, and document other required changes resulting from the change in the net tract area; (ii) configure the required planting area as 0.33 acre on Lot 3; and (iii) correctly identify Tree ST#2 as a Silver Maple.
 - b. Prior to issuance of a sediment and erosion control permit, the Applicant must secure Staff approval of a final Forest Conservation Plan that is consistent with the revised Preliminary Forest Conservation Plan and any other revisions required by these conditions.
 - c. In addition to the planting requirements shown on the forest conservation worksheet, the final Forest Conservation Plan must include on-site planting on Lot 3 in or near the environmental buffer, with a minimum of 6 native, overstory trees of 2 inches in caliper or larger to mitigate for removal of the 66 inch silver maple Protected Tree.
 - d. The Applicant must install permanent forest conservation signs along the boundary of all conservation easement areas. Specifications and locations for signs must be shown on the final Forest Conservation Plan.
 - e. A Category I Conservation Easement must be placed over all environmental buffers, forest retention areas, forest planting areas, and

² For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

mitigation plantings on the Subject Property. Conservation easement areas must be shown on the final Forest Conservation Plan.

- f. The use of any land in Prince George's County must be identified on the final Forest Conservation Plan as an offsite area for purposes of meeting the requirements for afforestation. Any existing forest located in the offsite area will be assigned an afforestation credit at the rate of 1 acre of existing forest per ½ acre of required afforestation, and must be placed in a Prince George's County Woodland and Wildlife Habitat Conservation Easement, modified as indicated in these conditions of approval.
 - g. The Prince George's County Woodland and Wildlife Habitat Conservation Easement must be modified i) to acknowledge the Planning Board's approval of the easement as a protective measure under Montgomery County Code, Section 22A-12(h)(2) as offsite forest preservation within the same watershed; and ii) to state that no amendment or release of the easement can be effective without the written approval of the Planning Board. The modifying language must be submitted to the Prince George's County Planning Department and Montgomery County Planning staff for review and approval prior to recordation of plat.
 - h. The Woodland and Wildlife Habitat Conservation Easement, modified as approved by Staff, must be recorded in the Prince George's County land records prior to recordation of the plat, and the recording reference must be noted on the record plat.
- 3) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated January 11, 2013, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 4) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
 - 5) The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated September 6,

2012, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

- 6) The Applicant must dedicate and show on the record plat(s) the following dedication:

Thirty-five (35) feet from the existing pavement centerline along the Subject Property frontage for Riding Stable Road.

- 7) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan and/or to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By _____" are excluded from this condition.
- 8) The Subject Property is within the Paint Branch High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the elementary school level at the one-family detached rate unit rate for all units for which a building permit is issued and a School Facilities Payment is applicable. Note that approval under this Preliminary Plan allows one additional, one-family detached unit on the Subject Property. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
- 9) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 10) The certified Preliminary Plan must contain the following note:
- "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines,

building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."

- 11) Record plat must show necessary easements.
- 12) The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.

BE IT FURTHER RESOLVED, that, having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The Application substantially conforms to the 1997, Fairland Master Plan, which recommends the RE-1 zone with public water and public sewer for all property between Riding Stable Road and the Montgomery/Prince George's County line so that these properties, including the Subject Property could serve as a transition between the higher density zones allowed in Prince Georges County to the lower density zones within Montgomery County, specifically the low density zones in portions of the Patuxent River Watershed. The Application provides a low density residential transition envisioned by the Master Plan.

2. *Public facilities will be adequate to support and service the area of the approved subdivision.*

The lots do not generate 30 or more vehicle trips during the morning or evening peak-hours; therefore, the Application is not subject to Local Area Transportation Review. This Application is subject to Transportation Policy Area Review ("TPAR") since it is being reviewed after January 1, 2013. However, the Subdivision Staging Policy allows an Applicant to affirmatively choose by March 1, 2013 to be reviewed under Policy Area Mobility Review ("PMAR"). The Applicant chose to proceed under PAMR because it generates less than three new peak hour trips and has no obligation for PAMR mitigation. The Application reflects proper dedication on Riding Stable Road which is 35 feet from the centerline of the existing pavement in accordance with the 70 foot wide right-of-way recommended in the Master Plan. Sidewalks are not required because the Subject Property is located in a rural RE-1 zone. Adequate access is provided to the three lots with the construction of the 20 foot wide driveway in accordance

with MCDOT and Montgomery County Fire and Rescue Services' ("MCFRS") standards. Vehicular traffic will be adequately accommodated by the existing road network. Pedestrian activity can be adequately accommodated using the roadway or adjacent shoulders.

The lots are to be served by public water and sewer, electrical utilities, and telecommunications. All required utility service can be provided to the lots.

MCFRS determined that the lots have appropriate access for fire and rescue vehicles. Other public facilities and services, including police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect. The Subject Property is located in the Paint Branch High School cluster. The current FY2013 Subdivision Staging Policy indicates that this cluster has inadequate capacity at the elementary school level and will be required to make a School Facility Payment. The School Facility Payment requirement is reflected as a condition of approval for this Application.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision.*

The lots are appropriately located as compared to the lot pattern that has evolved in the general area along Riding Stable Road. Two lots will accommodate the two existing homes on the Subject Property, and the third lot will be located to the south to accommodate one new residence. The lots will be similar in size, shape and width to many other lots in the area and in conformance with the use and zoning recommended by the Master Plan.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

A. Forest Conservation

The preliminary Forest Conservation Plan as conditioned meets all applicable requirements of the Montgomery County Forest Conservation Law.

This Application results in a forest planting requirement of 0.60 acres. Pursuant to Section 22A-12(e)(4) of the Montgomery County Forest Conservation Law, offsite reforestation or afforestation requirements may be met in other counties or watersheds under certain circumstances. The Planning Board determined that protection of forest in Prince George's County on contiguous land under common ownership by the Applicant

was preferable to other offsite options. The Applicant is required to protect the 0.53 acres of forest in Prince George's County with a Prince George's County's Woodland and Wildlife Habitat Conservation Easement, modified to identify the easement as a protective measure for offsite forest preservation that cannot be amended or released without the written approval of the Planning Board. Because this is counted as off-site forest, the retention of the Prince George's portion of forest will only receive one-half credit under the Montgomery County Law. The Applicant must meet the remaining afforestation requirement within, or adjacent to, the environmental buffer on Lot 3.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to three (3) Protected Trees as identified in the Staff Report. Two of the Protected Trees were previously approved for removal by a M-NCPPC inspector due to their poor condition and will not be subjected to a Variance. A third Protected Tree, a 66-inch silver maple identified as ST#2 on the forest conservation plan, will be impacted, and in accordance with Section 22A-21(a), the Applicant requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship if denied reasonable and significant use of the Subject Property without the Variance.

The Board made the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The locations of sewer and water house connections for the new house are in an area that is typically available for land disturbance (i.e., outside of environmentally-sensitive areas). In addition, the location of the proposed water and sewer house connections that must tie into existing sewer and water lines, and the location of the new house at the highest part of the site to allow for sewage gravity flow to the sewers is not adjustable. The required location of these features, which are outside of environmentally-sensitive areas, result in unavoidable

impact to the critical root zone of the Protected Tree, which is already in confirmed poor health are in no way unique to this Applicant.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The impact to the Protected Tree is based on existing site conditions, the location of the existing sewer and water lines near the northeastern property line in the right-of-way of Riding Stable Road, and the preference by WSSC to locate a new house on the highest elevation of the Property to allow for gravity flow of sewer. The need for the Variance is not a direct result of the Applicant but is rather a result of site conditions and engineering requirements.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

No conditions on neighboring properties affect the Subject Property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

Granting the variance will not result in the removal of any trees located within an environmental buffer, wetland, or special protection area. This approval is conditioned on mitigation that approximates the form and function of the tree that is to be removed.

Because of the existing poor health of the Protected Tree, its form and function is already significantly diminished. The Board approved a mitigation rate that is lower than what would be required for removal of a healthy tree of similar size. Because of the deteriorated condition of this Protected Tree, the Board required a mitigation rate of approximately 1 inch caliper for every 6 inch diameter at breast height removed which results in 6, native overstory trees with a 2-inch caliper that are to be planted within or adjacent to the environmental buffer on Lot 3. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

5. *All stormwater management requirements shall be met as provided in Chapter 19, article II, title "stormwater management", Section 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan approved September 6, 2012 meets applicable standards.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 61 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed, and

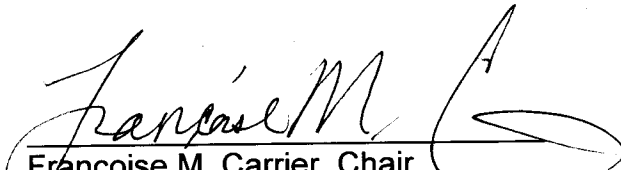
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is APR 15 2013 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, April 4, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board

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