



**Consent Item - Preliminary Plan Amendment No. 12011012A: Bowie Mill Property**

*RAW* Richard Weaver, Supervisor, Area 3 [richard.weaver@montgomeryplanning.org](mailto:richard.weaver@montgomeryplanning.org) (301)-495-4544

*JAC* John Carter, Chief, Area 3 [john.carter@montgomeryplanning.org](mailto:john.carter@montgomeryplanning.org)

Staff Report Date: 11/8/13

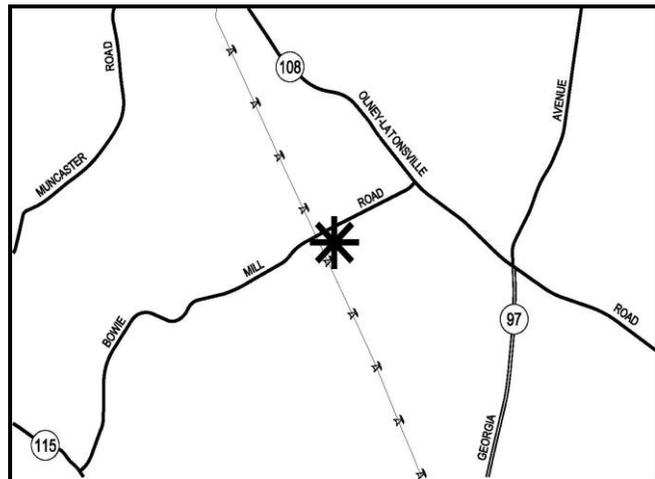
**Description**

**Consent Item - Preliminary Plan No. 12012012A:  
Bowie Mill Property**

A request to revise a condition of approval related to the timing for completion of sidewalks, located on the south side of Bowie Mill Road opposite the intersection with Thornhurst Road, 32.74 acres, PD-3 Zone, Olney Master Plan area

*Staff Recommendation:* Amend condition #2 of the Planning Board Resolution regarding timing elements for sidewalk completion

**Applicant:** Bowie Mill Road, L.L.C.



**Summary**

- The Application requests a modification to the required timing elements for completion of an offsite sidewalk on the north side of Bowie Mill Road. The Applicant cites unforeseen delays in acquiring PEPCO right-of-way property where the sidewalk crosses under PEPCO power lines. PEPCO requires the Applicant to not only acquire the area necessary for the sidewalk but to also acquire the entire right-of-way for existing Bowie Mill Road so that it can be dedicated to the County. The process to acquire the additional land for the road was unforeseen and will delay construction of sidewalks.
- The Application requests a modification to amend the timing for completion of a sidewalk on the south side Bowie Mill Road that has been delayed due to utility pole relocation. The pole relocation is almost complete and the Applicant requests that additional permits be released prior to completion of the sidewalk.

## PRELIMINARY PLAN RECOMMENDATION AND CONDITIONS

Staff recommends approval of Preliminary Plan 12011012A with the following revised condition:

*To mitigate seven peak-hour trips for Policy Area Mobility Review (PAMR), construct the following five-foot wide, off-site sidewalks within the existing public right-of-way:*

- a) *On the north side of Bowie Mill Road from Brightwood Road to Wickham Drive (1,100 feet). This sidewalk must be complete and open to pedestrian use prior to release of any portion of the Site Plan or Landscaping Bond held by M-NCPPC Staff for this project.*
- b) *On the south side of Bowie Mill Road from the easternmost Property line to Daly Manor Place (285 feet). This sidewalk is in addition to the five-foot wide sidewalk required to be constructed by the Applicant along the Property's frontage within the Bowie Mill Road right-of-way. The construction of this sidewalk must be complete prior to obtaining the 85<sup>th</sup> building permit.*

## PROPERTY AND VICINITY DESCRIPTION

The 33 acre property is located at 18241 Bowie Mill Road, approximately one-half mile west of Laytonsville Road (MD 108), in Olney, Maryland ("Property" or "Subject Property"). Local Map Amendment G-885 rezoned the Property from R-200 to PD-3 (Planned Development).



Vicinity Map

As shown in the Vicinity Map, the dominant land use in the surrounding area is residential, one-family detached developments in the R-200, RE-1 and RE-1/TDR zones. Confronting the Property on Bowe Mill Road are one-family residences in the R-200 zone, and RE-1/TDR zone. To the south, the residential lots were developed under the R-200 zone. The area includes local recreational facilities and neighborhood parks. A 250-foot wide PEPCO power line right-of-way runs north-south along the western border of the Property. On the opposite side of the PEPCO property, R-200 zoned neighborhoods are located on the east side of Cashell Road with RE-1 zoned developments to the west.

### **PREVIOUS APPROVALS**

On September 21, 2010, the County Council approved Zoning Application No. G-885 for the reclassification of the Property from the R-200 Zone to the PD-3 Zone (Resolution No. 16-1481) with binding elements.

On September 15, 2011, the Planning Board approved Preliminary Plan No. 1201110120 and Site Plan No. 820110050, Olney Springs (aka Bowie Mill Property) for 114 one-family detached and attached/townhouse units. Development of the Property is under a negotiated agreement with the county government who formerly owned the Property as a possible school site. The agreement committed the Applicant to provide 40% of the units as market-rate units, 30% as MPDUs, and 30% as Workforce Housing units. The Preliminary and Site Plans were found to substantially conform to the Development Plan approved with Zoning Application No. G-885 and the Binding Elements of that approval. The lot layout shown on the Preliminary and Site Plan drawings substantially follows the layout which was shown on the Development Plan. The Resolution for both the Preliminary Plan and Site Plan were mailed on January 19, 2012.



## DISCUSSION

As required by Chapter 50 of the County Code, Subdivision Regulations, new developments are required to make improvements to existing roads that front the property if conditions warrant. Bowie Mill Road, in this instance, had not been improved to full County standards along the Property's frontage; therefore, the developer is required by the conditions of the preliminary plan approval to dedicate right-of-way for Bowie Mill Road and to make certain improvements within that right-of-way, including an on-road bike lane, sidewalks, drainage, and stormwater management. In addition to those frontage improvements, and to satisfy a portion of the development's Policy Area Mobility Review (PAMR) requirements, the Applicant proposed to build offsite sidewalks that would make logical connections to existing sidewalks located within the area. The Planning Board accepted the offsite sidewalks as a means to meet a portion of the PAMR requirements and approved the preliminary plan with a condition that contained a timing element for completion of the sidewalks, both along the Property frontage and offsite. Condition #2 contained within the Resolution for Preliminary Plan No. 120110120 reads as follows:

2. *To mitigate 7 peak-hour trips for Policy Area Mobility Review (PAMR), construct the following 5-foot wide, off-site sidewalks within the existing public right-of-way:*
  - a) *On the north side of Bowie Mill Road from Brightwood Road to Wickham Drive (1,100 feet)*
  - b) *On the south side of Bowie Mill Road from the easternmost Property line to Daly Manor Place (285 feet)*

*These sidewalks are in addition to the 5-foot wide sidewalk required to be constructed by the Applicant along the Property's frontage within the Bowie Mill Road right-of-way. The construction of sidewalks must be complete and open to pedestrian use prior to obtaining the 58<sup>th</sup> building permit.*



In a letter dated September 19, 2013 (Attached), the Applicant discusses the project and states that the pace of home sales has been better than expected including sales of MPDU's and the Workforce Housing units. The 58<sup>th</sup> building permit is now on hold because of delays in getting sidewalks constructed. The Applicant requests a modification to the condition above citing circumstances that were unknown at the time of approval which has delayed the ability to construct certain sections of onsite (frontage) and offsite sidewalks.

At the time of approval, the Applicant proposed to build an offsite sidewalk along the north side of Bowie Mill Road to satisfy portion of the project's PAMR requirements. Said sidewalk would connect the existing sidewalks on Brightwood Road to those on Wickham Drive/Cashell Road. It was understood at that time that this sidewalk would be parallel to Bowie Mill Road and cross under the PEPCO power and be next to existing Bowie Mill Road. What was not understood at that time was that the portion of Bowie Mill Road that crosses through the 250 foot wide PEPCO right-of-way is within a prescriptive easement, not publically dedicated right-of-way. Initially, the Applicant believed that they would need to only acquire sufficient area to build the sidewalk; however, PEPCO is requiring the Applicant to purchase the entire 80 foot wide right-of-way that will ultimately include the new sidewalk and the existing pavement of Bowie Mill Road. In addition, PEPCO requires that the Applicant also acquire the 10 foot wide public utility easement areas that would run parallel and adjacent to each side of the right-of-way so that any future utility work along the road and under the overhead power lines is not in easement, but rather on land under fee simple ownership of the County. The process of acquiring this amount of property from PEPCO was unforeseen and the Applicant claims that purchasing land from PEPCO is a lengthy process that has already delayed home deliveries. Appraisals of the PEPCO land are currently underway, however, this delay in sidewalk construction has resulted in a hold on issuance of further building permits.

As such, the Applicant requests that the timing for construction of the offsite sidewalk on the north side of Bowie Mill Road be tied to release of the Site Plan and Landscaping Bonds currently held by Park and Planning for the onsite amenities and landscaping features. A Surety Bond will be submitted to the Montgomery County Department of Permitting Services that ties the construction of the sidewalk on the north side of Bowie Mill Road, including that portion within the newly acquired and dedicated right-of-way, to occur prior to release of the bonds held by Park and Planning which total more than \$700,000. Staff believes that the request to tie this particular section of sidewalk to release of staff-held bonds is appropriate in this instance.

In addition to the amendment requested for the sidewalk on the north side of Bowie Mill Road, the relocation of utility poles on the south side of Bowie Mill Road has delayed the construction of the sidewalk along the property frontage and a short offsite extension of sidewalk to connect to Daly Manor Drive. For this, the Applicant requests that the condition for completion of the sidewalks on the south side of Bowie Mill Road be amended to require that it be open to pedestrian use prior to obtaining the 85<sup>th</sup> building permit rather than the 58<sup>th</sup>. The 85<sup>th</sup> building permit represents 3/4 of the total 114 building permits required for this project as opposed to the 58<sup>th</sup> permit which is essentially half of all permits. The Planning Board has used the 75% threshold on other cases in which amenities must be built. Staff believes this is a reasonable request in this instance.

**STAFF RECOMMENDATION:** Amend Condition #2 as follows:

2. To mitigate 7 peak-hour trips for Policy Area Mobility Review (PAMR), construct the following 5-foot wide, off-site sidewalks within the existing public right-of-way:
  - c) On the north side of Bowie Mill Road from Brightwood Road to Wickham Drive (1,100 feet). *This sidewalk must be complete and open to pedestrian use prior to release of any portion of the Site Plan or Landscaping Bond held by M-NCPPC Staff for this project.*
  - d) On the south side of Bowie Mill Road from the easternmost Property line to Daly Manor Place (285 feet). *This sidewalk is in addition to the 5-foot wide sidewalk required to be constructed by the Applicant along the Property's frontage within the Bowie Mill Road right-of-way. The construction of this sidewalk must be complete prior to obtaining the 85<sup>th</sup> building permit.*

~~These sidewalks are in addition to the 5-foot wide sidewalk required to be constructed by the Applicant along the Property's frontage within the Bowie Mill Road right of way. The construction of sidewalks must be complete and open to pedestrian use prior to obtaining the 58<sup>th</sup> building permit.~~

**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 120110210, Bowie Mill Road (Olney Springs) 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.

Attachments

# BOWIE MILL ROAD, L.L.C.

MNCP&PC  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

September 19, 2013

Re: Preliminary Plan #120110120A, Request for Revised Condition

To Whom This May Concern:

We are asking that a Preliminary Plan condition be revised as follows:

Current Condition 2. Paragraph 2,

“These sidewalks are in addition to the 5-foot wide sidewalk required to be constructed by the Applicant along the property’s frontage within the Bowie Mill Road right-of-way. The construction of sidewalks must be complete and open to pedestrians use prior to obtaining the 58<sup>th</sup> building permit.”

Revised condition 2. Paragraph 2,

“These sidewalks are in addition to the 5-foot wide sidewalk required to be constructed by the Applicant along the property’s frontage within the Bowie Mill Road right-of-way. It must be demonstrated to the satisfaction of the MNCP&PC Staff that a surety bond for the construction of all sidewalks has been posted with the Montgomery County Department of Permitting Services prior to obtaining the 58<sup>th</sup> building permit. The construction of off-site sidewalks in 2 a) and 2b) above must be complete and open to pedestrians use prior to release of any on-site Site Plan and Landscaping surety bonds held by MNCP&PC. The construction of the sidewalk along the property frontage must be completed and open to pedestrian use prior to release of the 86<sup>th</sup> building permit.”

This change is required due to, 1) the length of time it has taken to acquire right-of-way from PEPCO, and 2) the length of time it has taken the utilities to relocate their existing lines along the property frontage. The current right-of-way for Bowie Mill Road is only a prescriptive right-of-way. Due to the deficiencies in the right-of-way, we have to purchase the property for the sidewalk. Simultaneously, PEPCO asked us to also purchase the property necessary for the ultimate right-of-way width to eliminate their liability for the road going through their property. We have agreed to the purchase and purchase price for the full width right-of-way, which will be given to Montgomery County. Unfortunately, purchasing land from PEPCO is a lengthy process and is still ongoing.

# BOWIE MILL ROAD, L.L.C.

The pace of home sales has gone well. At the current rate of sales we expect to have sold all of the MPDU Housing Units by mid-October, 2013 (31 have been sold). If the Preliminary Plan Condition is left unchanged, it will be necessary to suspend home sales and interrupt home deliveries. We expect to sell all of the Workforce Housing Units by mid-November, 2013 (15 have been sold). However, even with these successes, the financial viability of the project is dependent on the ability to sell and deliver the market housing. To date 12 of the market homes have been sold. 50% of the homes in the community have already been put under contract by home purchasers.

Thank you for your consideration of our request.

Sincerely,

A handwritten signature in black ink that reads "Mike Bingley". The signature is written in a cursive, slightly slanted style.

Mike Bingley, for Bowie Mill Road, LLC