



**\*Montgomery Hospice and the Preserve at Rock Creek**

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Staff Report Date: 07/03/14

**Description**

**\*Montgomery Hospice and the Preserve at Rock Creek**

Release of Rural Open Space Easement granted to the M-NCPPC by SM Bowie Mill LLC on approximately 1.99 acres of land, which is a portion of the rural open space preserved as a condition of Bowie Mill Estates Preliminary Plan No. 120060320 and Site Plan No. 820060110 located on the west side of Bowie Mill Road and the north side of Muncaster Mill Road (MD 115), in exchange for a Rural Open Space Easement to be granted to the M-NCPPC by Montgomery Hospice on approximately 1.99 acres of land located in the western quadrant of the intersection of Bowie Mill Road and Muncaster Mill Road (MD 115) in accordance with the policy adopted by the Planning Board in May 2103. RE-1 Zone, Upper Rock Creek Master Plan

**A. Montgomery Hospice: Preliminary Plan Amendment No. 11994021A:**

Resubdivide the existing Montgomery Hospice lot into two lots and apply a Rural Open Space Easement to a new lot (1.99 acres) to be conveyed to the Preserve at Rock Creek and create a second lot for the Hospice, located in the western quadrant of the intersection of Bowie Mill Road and Muncaster Mill Road (MD 115), approximately 6.93 acres

**Staff Recommendation:** Approval with Conditions

**B. Preserve at Rock Creek: Preliminary Plan 12006032B and 82006011A:**

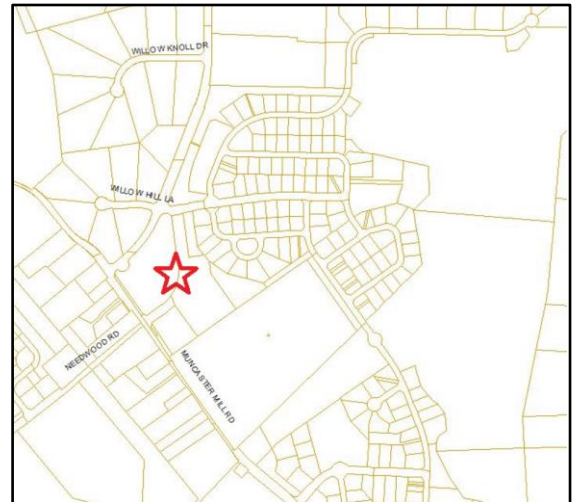
Release the Rural Open Space Easement on existing Parcel G of the Rock Creek Preserve, 1.99 acres

**Staff Recommendation:** Approval with Conditions

**C. Preserve at Rock Creek: Site Plan No. 82006011A:**

Release the Rural Open Space Easement on existing Parcel G of the Rock Creek Preserve, 1.99 acres

**Staff Recommendation:** Approval with Conditions



**Applicants:** Ann Mitchell (Montgomery Hospice)

David Duggar (SM Bowie Mill)

**Submittal Date:** 07/19/2012

**Summary**

Applicants, Montgomery Hospice and SM Bowie Mill, own separate properties under this review for which there are three applications to amend existing approved plans: Montgomery Hospice, Preliminary Plan Amendment 11994021A and the Preserve at Rock Creek (aka Bowie Mill Estates, SM Bowie Mill), Preliminary Plan Amendment 12006032B and Site Plan Amendment 820060110A.

(Summary continued)

Following the approval of a special exception by the Board of Appeals, the preliminary plan for Montgomery Hospice was approved for one, 6.3 acre lot in the RE-1 zone on November 14, 1995. The Preserve at Rock Creek

(SM Bowie Mill) preliminary plan was approved for 186 lots on 467.84 acres in the RNC zone on June 6, 2007 and the site plan was approved on September 27, 2007 also for 186 lots on 467.84 acres. More than 65 percent of the Preserve at Rock Creek property was either dedicated to Parks or retained as rural open space and placed under a Rural Open Space (ROS) easement.

The Montgomery Hospice has been operating on the property as Montgomery County's only dedicated hospice facility since the late 1990's; the adjacent Preserve at Rock Creek development is currently under construction with significant sections of homes completed and occupied.

The Applications are presented together, as they seek to release a ROS easement per the October 7, 2013 Code Interpretation Policy for Release of Rural Open Space Easement or Covenant. The Applicants propose to lift the ROS easement from a 1.99 acre open space parcel on the SM Bowie Mill property and replace the ROS easement on an equally sized parcel, to be created by subdivision under this application, on Montgomery Hospice property. Montgomery Hospice and SM Bowie Mill would then swap ownership of those 1.99 acre parcels (SM Bowie Mill receiving the newly created and encumbered parcel and Montgomery Hospice receiving the newly unencumbered property), thus leaving the SM Bowie Mill development (Preserve at Rock Creek), in conformance with the density and open space requirements of their preliminary plan and site plan approvals; and leaving Montgomery Hospice with an unencumbered 1.99 acre property adjacent to the existing hospice building for future consideration of development consistent with its hospice activities.

## **RECOMMENDATION AND CONDITIONS**

### **A. Montgomery Hospice: Preliminary Plan Amendment No. 11994021A**

**Staff recommends** approval of Preliminary Plan No. 11994021A with the following conditions:

- 1) Approval is limited to one lot of approximately 4.93 acres and one open space parcel with a minimum area of 1.9999 acres.
- 2) The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 over the entire open space parcel identified as "Proposed Parcel H" as shown on the approved preliminary plan.
- 3) Prior to recordation of the plat(s), Applicant must obtain approval from the Board of Appeals to reflect the change in property boundaries for Special Exception S-2045.
- 4) Prior to recordation of the plat, a revised preliminary plan with amended boundary lines must be certified by Staff.
- 5) Approval under this Preliminary Plan will remain valid for 36 months from its initiation date 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.

**B. Preserve at Rock Creek: Preliminary Plan 12006032B and 82006011A:**

**Staff recommends** approval of Preliminary Plan No. 12006032A with the following conditions:

- 1) Record plat to designate Parcel G, Block F, as shown on Record Plat No. 24250, Preserve at Rock Creek as an outlot.
- 2) Prior to recordation of the plat, a revised preliminary plan with amended boundary lines must be certified by Staff.
- 3) Approval under this Preliminary Plan will remain valid for 36 months from its initiation date 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.

**C. Preserve at Rock Creek: Site Plan No. 82006011A:**

**Staff recommends** approval of the Site Plan No. 82006011B with the following condition:

- 1) Prior to recordation of the plat, a revised site plan with amended boundary lines must be certified by Staff.

All previous conditions of approval of Preliminary Plan 119940210, Preliminary Plan 120060320 and Site Plan 820060110 will remain valid, unchanged, and in full force and effect.

**SITE DESCRIPTION**

The properties that are part of this application include the Montgomery Hospice, (“Hospice”) and the SM Bowie Mill property (“Preserve at Rock Creek” or “Preserve”). The Montgomery Hospice includes four parcels totaling 7.43 acres of land in the RE-1 zone, operated as a Hospice and located on the southeast corner of the intersection of Muncaster Mill Road and Bowie Mill Road, (“Hospice Property”)

1) The Preserve at Rock Creek (12006032B and 82006011A), and 2) The Preserve is a 467.84 acre subdivision approved for 186 lots with 308 acres as Rural Open Space or Parks dedication, currently under development by Stanley Martin Homes in the RNC Zone and located along the east side of portions of Bowie Mill Road, the northeast side of Muncaster Mill Road, the north side of MD Route 200, and west of the North Branch of Rock Creek (“Preserve Property”) (Figure 1).

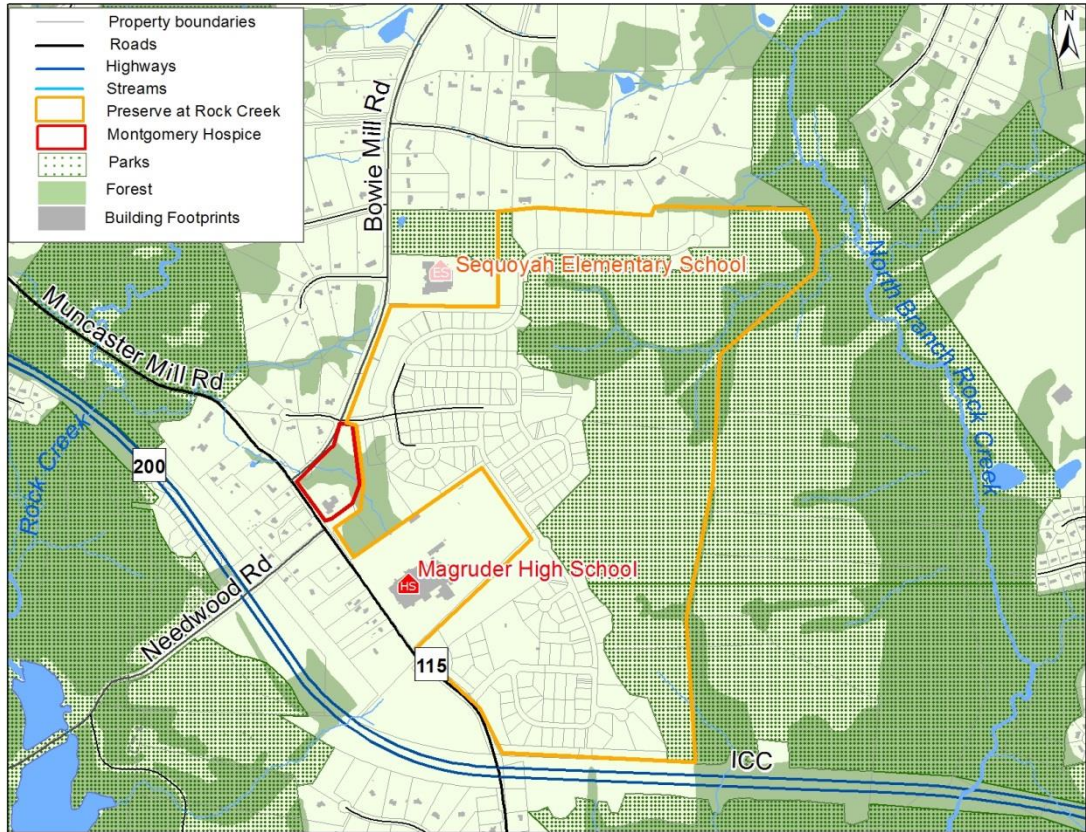


Figure 1



Currently separating the Preserve Property from the Hospice Property is a small stream and wooded stream valley that has its headwaters near Magruder High School, and flows northwest along Muncaster Mill Road toward Rock Creek and bisecting the Hospice Property (Figure 2). The Hospice Property includes two recorded parcels, one accommodates the Hospice building (Parcel C) and the second (Parcel B) which was created when the Hospice preliminary plan was approved to accommodate a realignment of Bowie Mill Road at the Needwood Road and Muncaster Mill Road intersection. (Figure 3) This realignment was removed from consideration by the 2006 Upper Rock Creek Master Plan. The Hospice building is constructed in the southern portion of the Parcel C on high terrain. To the north of the Hospice lot there are dozens of recorded lots within the Rock Creek Preserve subdivision with detached and attached dwellings wither built or under construction on the Preserve Property

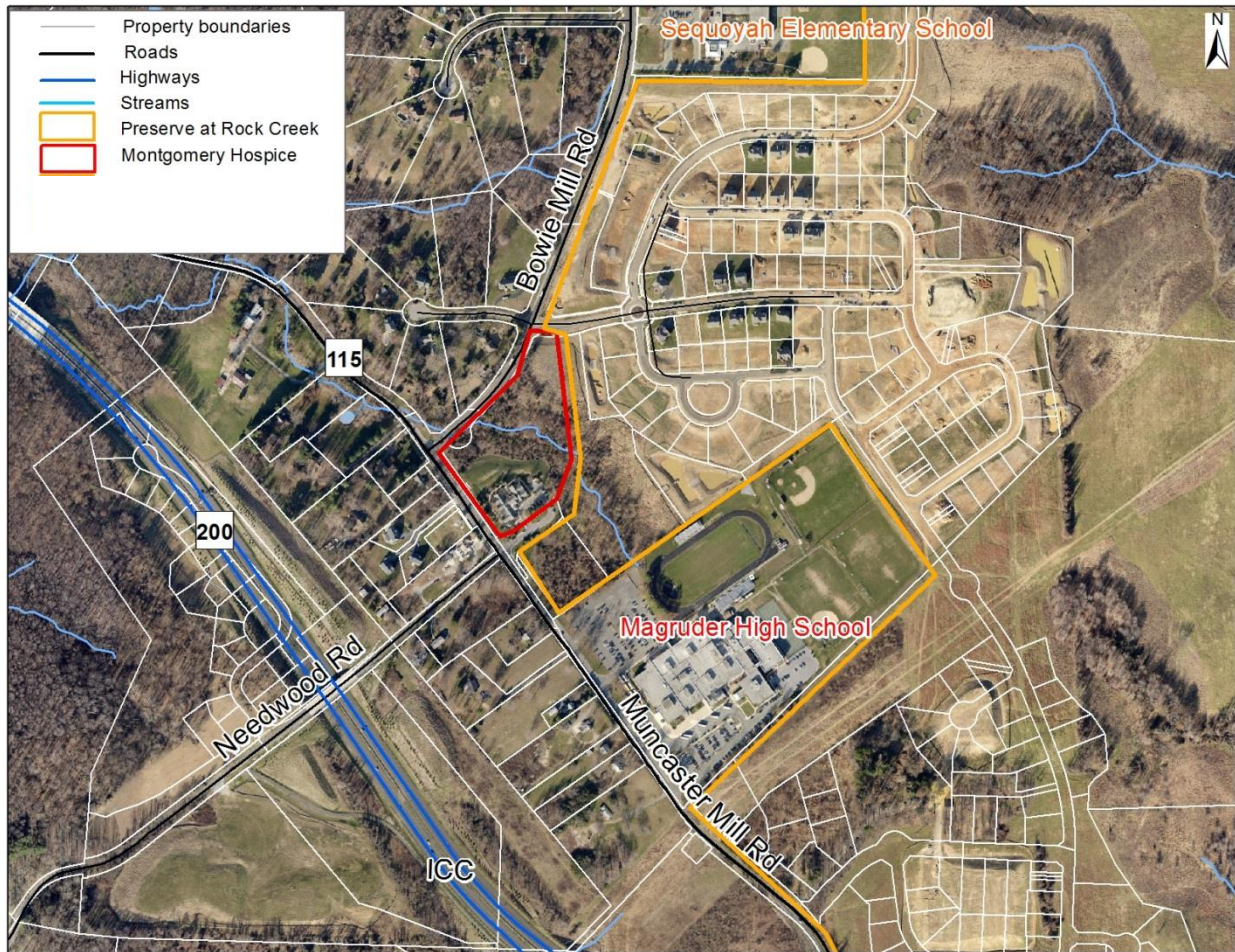


Figure 2



The Preserve Preliminary Plan was amended as Preliminary Plan No. 12006032A by MCPB No. 12-110 on September 26, 2012 to change previously approved conditions 29 and 30, and to remove condition 33, which were triggers regarding the restoration of the Historic resource located on the Preserve Property.

#### Montgomery Hospice

The Montgomery Hospice Society Preliminary Plan No. 119940210 was approved by resolution on November 12, 1995 to allow the development of a health care facility, as outlined by the Board of Appeals Case No. S-2045 for a Domiciliary Care Home, and to meet required forest conservation conditions. At the time of approval, there was no impervious surface limitation in the relevant Master Plan for the Hospice Property.

#### **DISCUSSION**

On July 19, 2012, amendments to the Preserve at Rock Creek Preliminary Plan No. 12006032B (“Preserve Preliminary Amendment”), Site Plan No. 82006011A (“Preserve Site Amendment”), and the Montgomery Hospice Preliminary Plan No. 11994021A (“Hospice Amendment”) were filed. The ultimate purpose of this exercise is to provide some flexibility for the Hospice to grow and expand its operations on property adjacent to its current facility but owned by the Preserve at Rock Creek. The means of doing so is to lift the ROS easement from the 1.99 acre Parcel G, Block F, Rock Creek Preserve and to create an open space parcel on the Hospice Property of 1.99 acres upon which a new ROS easement can be placed. The properties would then be exchanged between the two property owners.

Parcel G, Block F (“Parcel G”) is adjacent to the Hospice building on Muncaster Mill Road. Parcel G is separated by a small creek from the bulk of the Preserve Property and has frontage directly on Muncaster Mill Road, a state highway. Parcel G was included in the gross tract area and was accounted for in the Rural Open Space requirement for the Preserve Property approvals. The Hospice Property is bisected by the same small creek, having nearly half of its land located on each side of the stream with the existing Hospice facility on the southern half adjacent to Parcel G (Figure 4). The Hospice Applicant has proposed this request to acquire the *unencumbered* Parcel G in trade for a portion of their property that is currently separated from the Hospice building by the stream, stream buffer and conservation easement. It is the belief of the Hospice Applicant that Parcel G is more accessible to the existing Hospice building and therefore, more desirable for possible development with a use related to the Hospice.



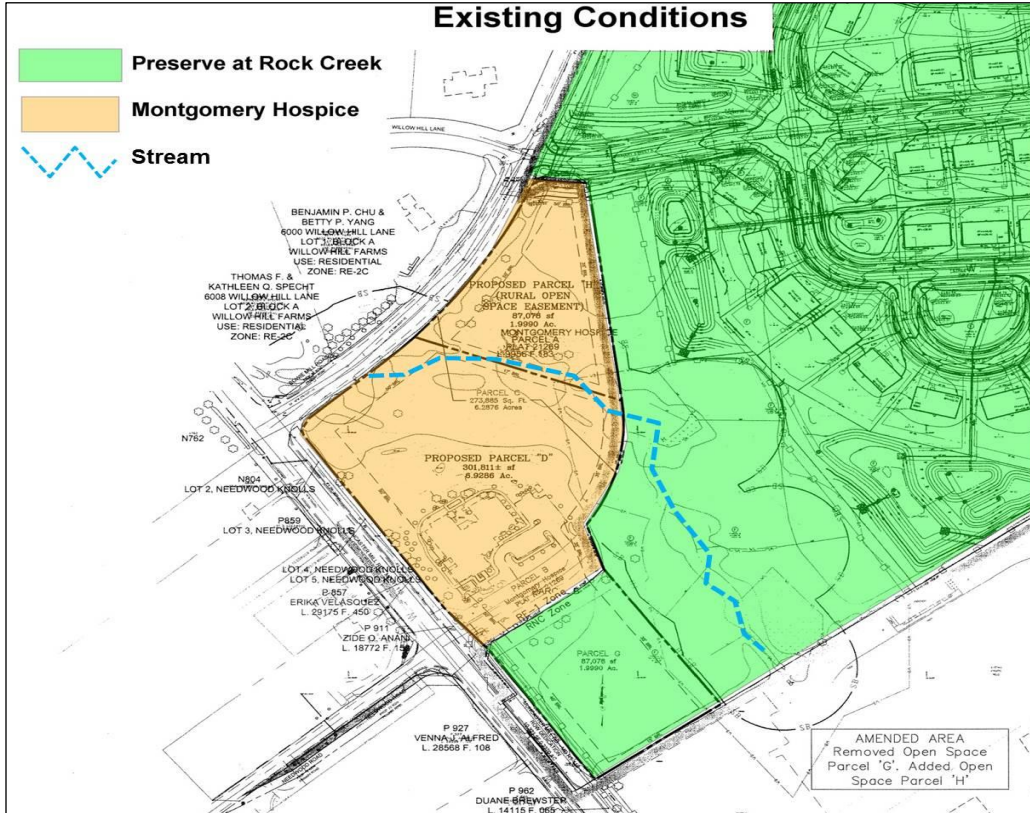


Figure 4

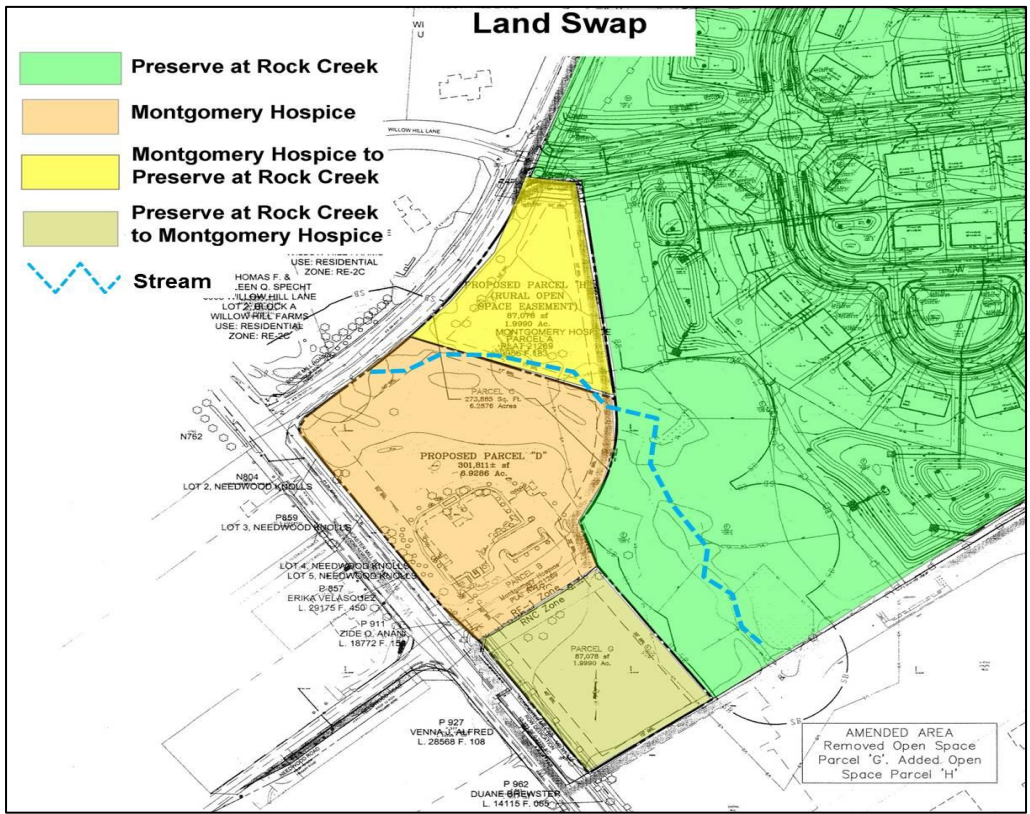


Figure 5

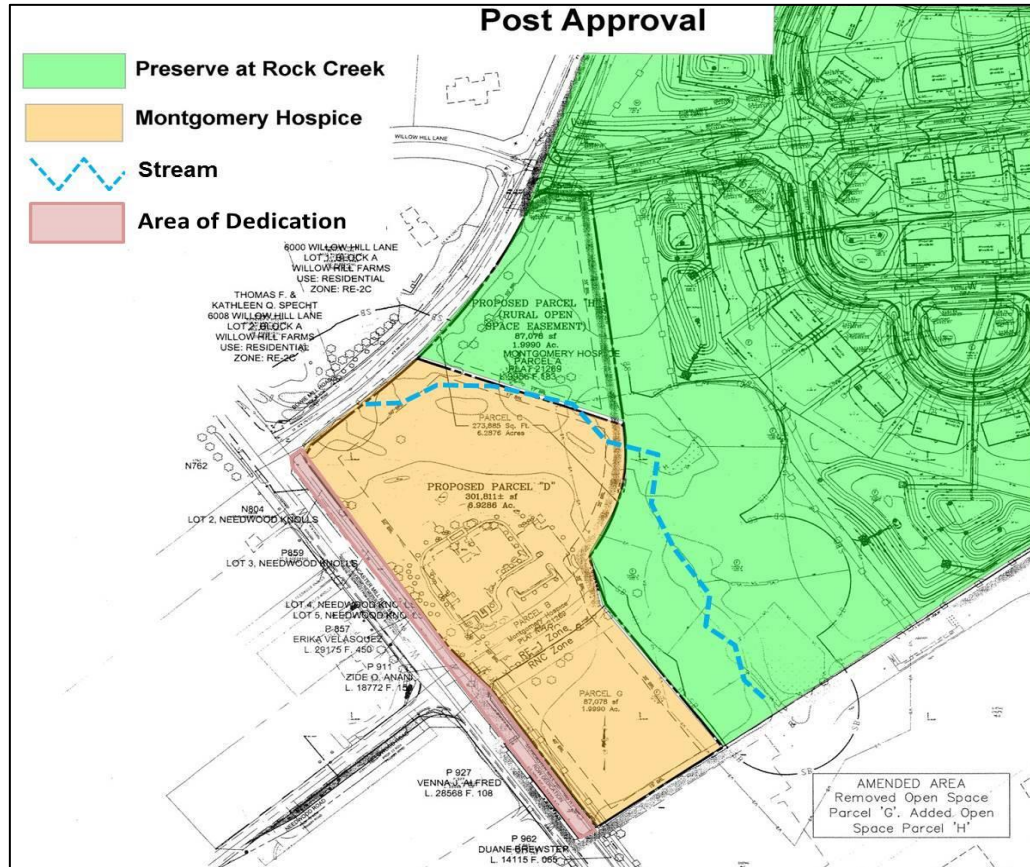


Figure 6

Approval of these applications will result in the Hospice acquiring property from the Preserve that is immediately adjacent and accessible to the Hospice building and that will have no ROS easement encumbrances. At the same time, the Preserve will acquire land of equal size and arguably higher, ecological value with a replacement for the released ROS Easement so that it can remain in compliance with the density and open space findings contained in the original preliminary and site plan approvals.

With this, the Hospice would consolidate the remainder of their lot with a platted parcel and unplatted parcel into a new lot for the Hospice building. Since the Hospice has not provided any specific plans for development of its expanded site, Staff recommends that Parcel G, Block H be re-platted as an outlot so that it would not be eligible to receive a building permit until a determination is made regarding its development potential. (Image 5)

The Planning Board must approve the following in order for the Applicant to complete the entire transaction:

- 1) Release the ROS easement from Parcel G, Block F, Preserve at Rock Creek;
- 2) Resubdivision of the 6.9 acre Hospice lot (Parcel C, RE-1 zone) with Parcel B and a remnant parcel into two lots; one at 4.9 acres to contain the Hospice building (S-2045), and, a 1.99 acre open space parcel on which the ROS easement released from Parcel G, will be replaced.



From a property boundary perspective, the end result of these requested amendments is that the Preserve at Rock Creek subdivision boundaries will change slightly in shape, having swapped one parcel for another parcel of equal size with no net change in the required ROS easement area. The Preserve at Rock Creek would remain in conformance with their prior approvals and be able to continue on with development of the remaining vacant lots. The Hospice will continue to have ownership of the same gross area, but it would now own two properties; one lot around the Hospice building and an outlot; former Parcel G.

## **RELEASE OF RURAL OPEN SPACE EASEMENT**

On May 2, 2013, the Planning Board established a Policy on the Release of Rural Open Space Easements ("Policy") (Attachment 1), in which it would consider five specific criteria to determine whether to release an existing Rural Open Space Easement. In a letter dated March 28, 2014, (Attachment 3) the Hospice Applicant provides justification as to how the request meets all five criteria.

*a. The Purpose for the release must be to balance another public interest;*

The purpose of the release is to allow the Hospice to acquire the *unencumbered* Parcel G, Block F, in trade for a portion of their property that is currently separated from the Hospice building by a stream, stream buffer and conservation easement. The Hospice Applicant firmly believes that because of Parcel G's superior accessibility to the existing Hospice building, it is more desirable for possible development with a use related to the Hospice. Further, the purpose of this release is to balance the interests of the Montgomery Hospice, which serves a public benefit. In the Applicant's Letter of Explanation (Attachment 2), a discussion of the facility's mission, history and background is provided and gives ample evidence that the Hospice provides a public benefit. As the County's only facility entirely dedicated to end-of-life care and which provides care for more than 30% of county residents with such critical needs, the true benefit that Montgomery Hospice provides cannot be overstated. The transfer of the unfettered Parcel G, provides the Montgomery Hospice with an area of land adjacent to their existing building that is more accessible to that building; fronts to an arterial highway and is located at a traffic controlled intersection. The Hospice Applicant believes that the property has potential for development with a Hospice related use and that it is ostensibly more developable than the property which they will convey to the Preserve at Rock Creek.

*b. The party requesting such release must, at a minimum, provide another property, similarly situated in location (watershed), and size, to be encumbered with the same Rural Open Space restriction so that the intension of "perpetuity" as required by the Zoning Ordinance is addressed;*

Montgomery Hospice is providing the Preserve at Rock Creek with an area of land for ROS equal in size (87,070 sq. ft.) to the area of land it is requesting be released from ROS restrictions. These properties are within the same watershed and are less than 500 feet from each other. The property that is to be newly encumbered is equally, if not more desirable to be placed under such an encumbrance. It is more steeply sloped than the other property and contains similar forest resources. The property which the Hospice is to convey is more reasonably attached to the Preserve development than Parcel G because it is not separated from the Hospice building by a stream buffer and conservation easement. Therefore, if it was transferred

to the Preserve, it is more likely to be monitored by the Preserve HOA because it would be within eyeshot of the residents of the Preserve.

Parcel G, on the other hand, is not as sloped and is better monitored as *undeveloped land next to a high school* by the Hospice staff. These two considerations should also be considered as additional public benefits.

- c. *The replacement, or substitute property would have been acceptable as the Rural Open Space property in the original development application under which the Rural Open Space easement was approved;*

The land proposed to receive the new ROS easement is adjacent to the larger Preserve at Rock Creek property and is mostly forested and partially in the stream valley buffer. There is no reason to believe that it would not have been included in Rural Open Space had it always been part of the Preserve Property. Because of its relative position to the Preserve subdivision, it is a logical extension of that subdivision's open space.

- d. *The impact of such release cannot place the party who granted the Rural Open Space easement as a condition of approval in a position in which its entitlements, such as density, may be challenged; and*

Because the Preserve Property is receiving new Rural Open Space easement equal in size to the area it proposes releasing, the previous findings for percentage of total tract area protected as Rural Open Space does not change; nor does the total allowed density on the Preserve Property. The RE-1 zoning on the property to be transferred to the Preserve carries with it, a higher density than that allowed for the same area of property zoned RNC. The development will continue to meet all RNC zoning standards including density and open space requirements.

The Montgomery Hospice property will change its configuration by virtue of this application; therefore, as a special exception use, Staff recommends that the Applicant seek Board of Appeals acknowledgement that the property boundaries have changed prior to recordation of plats. The Hospice lot will continue to meet RE-1 zoning standards.

- e. *There must be a finding of conformance with Master Plan for the ultimate replacement of Rural Open Space restricted property.*

If approved, both the Hospice development and the Preserve at Rock Creek development remain in substantial conformance with the Upper Rock Creek Master Plan. The lands to be swapped are not specifically discussed in the Master Plan. No new development is currently proposed or enabled by this ROS easement removal and the land transfer, as conditioned by establishing an outlot, provides assurances that any new development will require Planning Board review and approval, including considerations for water quality protection in the Upper Rock Creek Special Protection Area. Given the logical nature of the land transfer with respect to the adjoining ownership of each property, the property swap will be seamless.

The proposed swap of land and Rural Open Space easements between the Preserve Property and the Hospice Property meets the five criteria for releasing a Rural Open Space easement, and therefore, Staff supports the release.

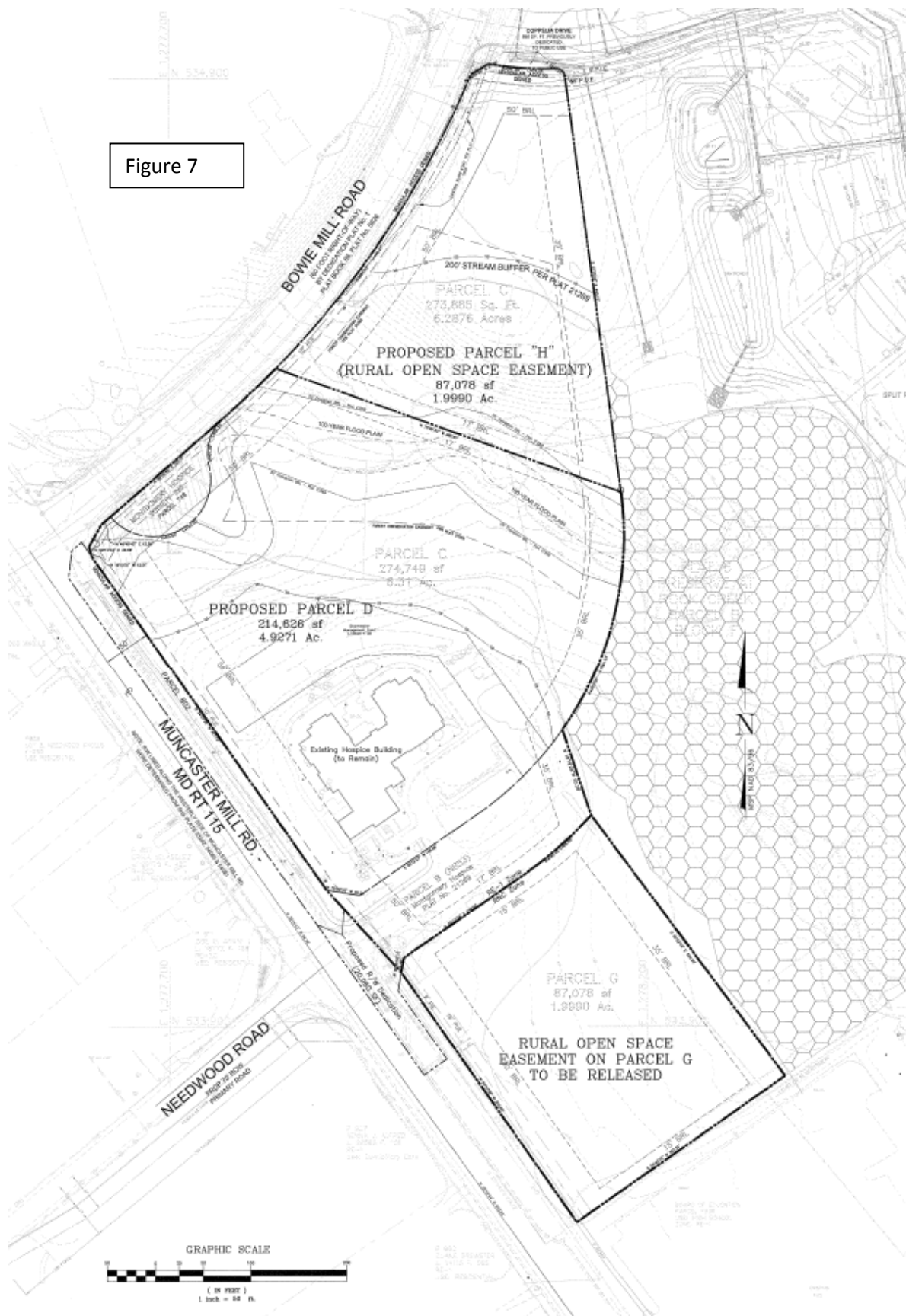
### **Subdivision Discussion (Figure 7)**

In order to accommodate the equal transfer of 1.99 acres of land between the two Applicants, the Hospice lot identified as Parcel C, Montgomery Hospice at 6.28 acres must be resubdivided to create a 1.99 acre open space parcel with a 1.99 acre Rural Open Space easement for transfer to the Preserve at Rock Creek. A second record lot must be created for the Hospice building. The record lot for the Hospice building will be a consolidation of the following properties that are all under ownership of Montgomery Hospice: The remainder of Parcel C that is not included in the 1.99 acre lot; Parcel B, Montgomery Hospice, which is no longer necessary for the Bowie Mill Road realignment and an unplatted parcel (P748 - liber 32600/folio 611) which was created by deed for possible dedication for the cul-de-sac bulb for Bowie Mill Road. This cul-de-sac is no longer necessary since the realignment of Bowie Mill Road is no longer recommended in the Master Plan. Parcel 802 with an area of 20,960 square feet as shown on the Preliminary Plan drawing will be dedicated for Muncaster Mill Road (MD 115) right-of-way and completes the dedication of this road 50 feet from its centerline. The consolidation of these properties results in a 4.93 acre record lot for the Hospice building in conformance with all RE-1 zoning standards. Because the size of the Hospice building lot will change, Staff has recommended a condition that requires the Montgomery Hospice to obtain approval, administrative or otherwise, from the Board of Appeals to change the configuration of the property that is subject to the Special Exception approval for S-2041, Montgomery Hospice.

The Hospice Applicant has specifically requested that Parcel G, as it is currently known, remain a separate platted property and not consolidated into the Hospice lot. Parcel G will not necessarily be changed in shape or configuration as a result of the removal of the ROS easement, however, Staff has recommended a condition of approval that requires Parcel G to be re-platted in order to remove the ROS easement notation and to convert the open space parcel into an outlot. As an outlot, it cannot be issued a building permit and it would remain an outlot until such a time that it is evaluated for development by the Planning Board and possibly, the Board of Appeals. The Montgomery Hospice requests that the Planning Board eliminate this condition and argues that re-platting the property as an outlot is an extreme and somewhat costly method to prohibit or control development on the 1.99 acres. The Hospice acknowledges that any development for a Hospice related use on this property will be subject to a Board of Appeals review which entails a Planning Board review, including approval of a forest conservation plan and water quality plan. The Hospice is of the opinion that the current record plat designates Parcel G as "open space" and that this designation alone is sufficient to preclude a building permit on the property until further evaluation is done.

Staff supports the condition requiring Parcel G to be re-platted as an outlot. The outlot designation removes any question as to whether the property can or cannot receive a building permit and that it is essentially "on hold" until the Planning Board has the opportunity to review and approve a preliminary plan application that makes the proper determinations for master plan conformance, adequate public facilities, lot design and zoning conformance.

Figure 7



## **FINDINGS**

### **A. Preliminary Plan 11994021A: Montgomery Hospice**

#### Compliance with the Subdivision Regulations and Zoning Ordinance

The proposed lot for the Hospice building, Parcel D, complies with all RE-1 zoning requirements and all application sections of the Subdivision Regulations. Parcel D is of the appropriate size, shape width and orientation to accommodate the Hospice building and required infrastructure. All previous findings and conditions of approval as part of Preliminary Plan 119940210, Montgomery Hospice Society remain valid and are not modified by the approval of this Application.

### **B. Preliminary Plan 12006032B: Preserve at Rock Creek**

#### Compliance with the Subdivision Regulations and Zoning Ordinance

The proposed amendment to Preliminary Plan 12006032B complies with the subdivision regulations and the Zoning Ordinance for the RNC Zone. The Amendment does not change the size, shape, width, orientation or quantity of any previously approved *building* lots, and does not change any public access points. The amendment does not conflict with any of the dimensional requirements of the RNC Zone regarding area, frontage, width or ability to meet setbacks, however it does change the shape of the previously approved Rural Open Space easement. With the findings made with the previous discussion of the five criteria for evaluating a request for the release of an existing Rural Open Space easement, the Amendment does not change the quality or quantity of Rural Open Space easement required by the RNC Zone.

All other previous findings and conditions of approval for Preliminary Plan 120060320 not discussed herein remain valid and are not modified by the approval of this Application.

### **C. Site Plan 82006011A: Preserve at Rock Creek**

#### The site plan continues meets all of the requirements of the zone in which it is located.

The Amendment does not change any of the dimensional requirements of the RNC Zone regarding area, frontage, width or ability to meet setbacks, however it does change the shape of the previously approved Rural Open Space Easements. With the findings made with the previous discussion of the five criteria for evaluating a request for the release of an existing Rural Open Space Easement, the Amendment does not change the quality or quantity of Rural Open Space easement required by the RNC Zone. Therefore, Staff finds the amendment meets all the requirements of the RNC Zone.

#### The locations of buildings and structures, open spaces, landscaping, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.

The location of buildings and structures, landscaping, and pedestrian and vehicular circulation and systems are not changed with this amendment. The location of open spaces, and specifically the Rural Open Space Easements is changed with the amendment. The location proposed for release from Rural Open Space was located on the opposite side of a creek from the majority of the Preserve Property and against a state highway. The new location proposed for Rural Open Space is on the same side of the creek as the Preserve Property, and is equal in size and has additional benefit to the Preserve Property because it has equal environmental benefit but is more accessible and more easily monitored by the homeowners of the Preserve at Rock Creek. The new open space is adequate for purposes of meeting



open space requirements, but superior in safety and efficiency because of its relative location to the homeowners who may best benefit from it.

All other previous finds and conditions of approval for Site Plan 820060110 not discussed herein remain valid and are not modified by the approval of this Application.

### **COMMUNITY OUTREACH**

The three applications were properly signed and noticed in accordance with Planning Board adopted procedures. Staff has received no public comment on any of the three applications.

### **CONCLUSION**

Staff finds that the request to lift the ROS easement from Parcel G, Block F, Preserve at Rock Creek meets the five criteria used to evaluate such requests as established by Board Policy. Further, Staff finds that the proposal to subdivide the Montgomery Hospice property into two lots to accommodate replacement of the ROS easement is in conformance with all zoning and subdivision requirements.

### Attachments

- 1) Release of Easement Policy
- 2) Applicant Statement of Operation
- 3) Applicant Statement of Justification



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**CODE INTERPRETATION POLICY**

|                                |  |   |
|--------------------------------|--|---|
| <b>DATE</b><br>October 7, 2013 | <b>SECTION OF CODE</b><br>59-C-9.574 (h)(4), 59-C-9.571, 59-C-9.23.1 | <b>Release of Rural Open Space Easement or Covenant</b> |
|--------------------------------|--|---|

**STATEMENT/BACKGROUND OF ISSUE**

**Introduction**

Two projects have been presented to Planning Staff regarding the potential transfer and development of property currently protected by Rural Open Space (“ROS) easements granted to The Maryland-National Capital Park and Planning Commission (“Commission”), which would require the Planning Board to approve the release of ROS easements: 1) for redevelopment/modernization of Farquhar Middle School, which would require release of an ROS Easement granted by Pulte Home Corporation over property dedicated to the Commission (“Park Property”) as part of the Batchellors Forest development, and 2) for expansion of the Montgomery County Hospice (“Hospice”) site, which would require release of an ROS Easement granted by Stanley Martin as part of the Preserve at Rock Creek development. Each project is proposing to have the existing ROS easements released, exchange the protected property with adjacent properties that are not part of the original application, and place an ROS easement on the exchanged property. Staff presented these proposals to the Board solely to establish the context for the Board to consider and adopt a policy to guide the release of certain ROS easements through consistent bases for such release.

**Park Property**

The Park Property involves a 17.4-acre property that was dedicated to the M-NCPPC as required for approval of the Batchellors Forest Preliminary Plan #120060850 and Site Plan #820080190/A for development to be used an active park in accordance with the Olney Master Plan (page 28 of the Land Use Section), and encumbered by an ROS easement to protect the site as required under §59-C-9.574(h)(4). Batchellors Forest is comprised of 37 one-family detached and attached lots in the Rural Neighborhood Cluster (“RNC”) Zone, located across Batchellors Forest Road from the Park Property. Consistent with the RNC zone, the plan provides approximately 70% of the tract area as ROS; a portion surrounding the homes and property owned by the homeowner’s association-protected by an ROS easement granted to The M-NCPPC and Sandy Spring Green Space, with the balance being the Park Property. Batchellors Forest is dependent on the Park Property to meet its density and ROS development standards of the zone. Adjacent to the Park Property is Farquhar Middle School, which is slated for reconstruction and would require relocation of students for at least two years while the building is razed and reconstructed on site. Therefore, at the urging of the parents, and with official support of the Board of Education, the Montgomery County Public Schools (“MCPS”) is proposing to build the new school on the adjacent Park Property so that the students could remain at the existing school during construction, after which the students would be relocated to the new school, and the existing school site would be developed into the park contemplated by the Master Plan. If approved, the process required to implement the exchange of properties will be outlined in separate agreements among MCPS, M-NCPPC, the County and Pulte. The action requested by the Board at this time is approval of the policy to provide guidance to Planning Staff and MCPS to determine, if appropriate, the conditions required to release the existing ROS easement from the Park Property.

### Hospice Site

The Casey House at 6001 Muncaster Mill Road is a hospice program providing medical, nursing and other health services in a 14-bed facility that received special exception approval for a Domiciliary Care Home in 1994 and subsequent Preliminary Plan approval in 1995. The Hospice owns four separate parcels of land all located in the RE-1 Zone. The adjoining Preserve at Rock Creek development owned by Stanley Martin is within the RNC Zone and consists of 186 one-family attached and detached residential units. Several parcels, which are privately owned, are protected with ROS easements granted to the Commission, including a 2 acre tract on Muncaster Mill Road directly adjacent to the Hospice Site.

The Hospice and Stanley Martin have submitted the amendments (Preliminary Plans #11994021A and #12006032B, and Site Plan #82006011A) (“Amendments”) to exchange parcels of land, both of which equal 2 acres in size. Without release of the ROS easement from the parcel owned by Stanley Martin, the Hospice can’t move forward with its expansion plans, as the parcel owned by the Hospice is limited for development due to environmental constraints. Other issues to resolve as part of this proposal will be discussed as part of the Board’s consideration of the Amendments at a later hearing. The action requested by the Board at this time is approval of the policy to provide guidance to Planning Staff and the Applicants to determine, if appropriate, the conditions required to release the existing ROS easement from the Stanley Martin parcel.

## **AGENCY INTERPRETATION/POLICY**

### **Discussion**

#### *RNC Zone Criteria*

The purpose of the RNC zone under §59-C-9.23.1 is to preserve open land, environmentally sensitive natural resources and rural community character that would be lost under conventional, large lot development. This is accomplished through site design and protection of open spaces and with the provision of public water and sewer to allow clustering of lots. To implement the purposes of the zone, a master plan provides recommendations for vistas, preservation of neighborhood character and environmentally sensitive areas to ensure compatibility with the surrounding community. And more specifically, §59-C-9.571 sets forth certain special regulations for development in the RNC zone to preserve large areas of contiguous rural open space, consistent with the recommendations and guidelines of the applicable master or sector plan.

Rural Open Space is typically unmanaged land that is contiguous with other open spaces and natural resources; however, it may be managed or modified to improve its appearance, function and overall condition and can include reforestation, woodland, wetlands, agricultural and meadow management, stream bank protection and non-structural stormwater management practices. Or under §59-C-9.571 it may be developed and managed consistent with the recommendations and guidelines of the applicable master or sector plan.<sup>1</sup> The RNC zone does not address whether the ROS easement area is required to be in RNC zoned land.

#### *Perpetuity*

All land designated as the ROS area as part of a development plan, whether developed under the standard or optional method must be *preserved in perpetuity*. This requires either dedication as parkland

<sup>1</sup> In the case of the Park Property, the Master Plan recommended ball fields and possibly other active recreation on the ROS protected land.

(limited to standard method development), or application of an easement or covenant in a recordable form approved by the Planning Board. However, in *Hyde v. Planning Board*,<sup>2</sup> the Court required the Board to protect ROS but agreed with the Board’s attorney that there is no such thing as perpetuity in land use when it was suggested that even “perpetual” easements might be extinguished through condemnation or abandonment. Therefore, although the Zoning Ordinance requires preservation in perpetuity, it is clear that even the courts would support release of an ROS easement under certain circumstances and conditions designed to meet the legislative intent of the preservation in perpetuity. Therefore, Staff recommended the criteria and conditions under which the Board may find it is appropriate to release certain ROS easements.

**Recommendation**

Staff recommended that the Planning Board approve the release of certain ROS easements, if and when appropriate, as determined by applying the following criteria for their replacement/substitution when evaluating the specific request for such release:

- a. The purpose for the release must be to balance another public interest;
- b. The party requesting such release must, at a minimum, provide another property, similarly situated in location (watershed), and size, to be encumbered with the same ROS restriction so that the intention of “perpetuity” as required by the Zoning Ordinance is addressed;
- c. The replacement, or substitute property would have been acceptable as the ROS property in the original development application under which the ROS easement was approved;
- d. The impact of such release cannot place the party who granted the ROS easement as a condition of approval in a position in which its entitlements, such as density may be challenged; and
- e. There must be a finding of conformance with Master Plan for the ultimate replacement of ROS restricted property.

Staff received correspondence and testimony. A copy of the transcript is available as an attachment to this policy. The primary issue of concern was of meeting the intent to protect ROS “in perpetuity.” The Board found that with the recommended criteria, subject to the revision as outlined below, will assure the legislative intent is met. The adopted policy gives direction to Planning staff and applicants that a request for release of an ROS easement must include sufficient support that meets the recommended criteria. Furthermore, the request may require appropriate amendments to preliminary and/or site plans and address master plan compliance as well as compatibility.

**The Planning Board adopted the Rural Open Space Policy by a vote of 5-0, with a motion by Commissioner Anderson and seconded by Commissioner Presley. Commissioners Anderson, Carrier, Dreyfuss, Presley and Wells-Harley voted in favor of the application, with criteria (d) revised as follows:**

The impact of such release cannot place the party who granted the ROS easement as a condition of approval in a position in which its entitlements, such as density may be lost.

|  |                         |   |
|--|-------------------------|---|
| <b>INTERPRETATION/POLICY<br/>NO. 9</b> | <b>DATE<br/>6-21-13</b> | <b>AREA CHIEF<br/>Robert Kronenberg</b> |
|--|-------------------------|---|

<sup>2</sup> *Hyde v. Planning Board* was a challenge in the Batchellors Forest development approval to the park dedication as allowable protection of ROS in an optional method development

|  |                                |   |
|--|--------------------------------|---|
|  |                                |   |
|  | <b>DATE</b><br><b>8-29-13</b>  | <b>M-NCPPC LEGAL STAFF</b><br><br><b>Carol Rubin</b>  |
|  | <b>DATE</b><br><b>5-2-2013</b> | <b>PLANNING BOARD</b><br><b>Agenda Item 12, Planning</b><br><b>Board Agenda May 2, 2013</b> |





ATTORNEYS

STUART R. BARR  
DIRECT 301.961.6095  
SRBARR@LERCHEARLY.COM

July 19, 2012

**By Hand Delivery**

Mr. John Carter, Chief  
Area 3 Division  
Maryland-National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

**Re:** Letter of Explanation  
Montgomery Hospice and Stanley Martin Homes – Real Estate Parcel  
Exchange and Transfer of Rural Open Space Designation  
Intersection of Bowie Mill and Muncaster Mill Roads, Gaithersburg,  
Maryland  
Preliminary Plan and Site Plan Amendment Numbers 11994021A,  
12006032B, and 82006011A (Limited Plan Amendments under Development  
Review Procedures §8.E.)

**I. Introduction**

On behalf of Montgomery Hospice (a/k/a Casey House) (“Hospice”) and Stanley Martin Homes (“Stanley Martin”), we are submitting Preliminary Plan and Site Plan Amendments for consideration by the Montgomery County Planning Board. The Amendments modify the Montgomery County Planning Board’s resolutions approving Preliminary Plan Numbers 1-94021 and 1-20060320 and Site Plan Number 8-20060110. These Amendment applications have been discussed with Area 3 planning staff over the past several months.

**II. Summary of Prior Plan Approvals and Overview of Proposal**

Hospice is a nonprofit hospice program serving residents of Montgomery County and providing the community with medical, nursing, and other health services during the final stages of life through home or inpatient care during the illness and bereavement period. The Casey House located at 6001 Muncaster Mill Road is a 14-bed facility that is the only all-hospice acute care inpatient medical facility in Montgomery County.

Hospice received special exception approval in 1994 under a Domiciliary Care Home special exception use category under Zoning Ordinance §59-G-2.37 (Case No. S-2045) and received subdivision approval in 1995 (Preliminary Plan Number 1-94021).

Hospice currently owns four parcels of property, all in the RE-1 Zone:

1. Parcel C, Plat 24243 (Parcel N746, Tax Map GT61), Tax Account #08-03683827 – 6.3 acres located at 6001 Muncaster Mill Road.
2. Parcel B, Plat 21269 (Parcel N853, Tax Map GT61), Tax Account #08-03278011 – 0.7 acres located at Muncaster Mill Road.
3. Parcel P748, Tax Map GT61, Tax Account #08-03484382 – 5,882 sf located at Muncaster Mill Road.
4. Parcel P802, Tax Map GT61, Tax Account #08-03124658 – 0.3 acres located at Muncaster Mill Road.

Stanley Martin acquired and is in the process of constructing the optional method development project in the RNC Zone known as The Preserve at Rock Creek (formerly Bowie Mill Estates) that adjoins the Hospice properties. The Preserve at Rock Creek development received preliminary plan and site plan approvals in 2007 for a combination of 186 single-family attached and detached residential units (Preliminary Plan No. 1-20060320 and Site Plan 8-20060110). Several parcels were reserved for rural open space as required by the RNC Zone, including a 2 acre parcel on Muncaster Mill Road identified as Parcel G, Block F.

Hospice and Stanley Martin are under contract to exchange parcels of land of equal square footage (approximately 2 acres each), and the objective of the enclosed Amendments is to accomplish that transaction. Hospice will acquire the entirety of Stanley Martin's Parcel G, Block F (not to be confused with Parcel G, Block N), and Stanley Martin will acquire an equivalent square footage of land on the northern end of the Hospice property (proposed parcel "H" shown on the enclosed preliminary plan). As shown on the enclosed preliminary plan, Hospice proposes right-of-way dedication for Muncaster Mill Road and proposes to consolidate the remainder of its property with Parcel G, Block F (proposed "Lot 1" shown on the enclosed preliminary plan). Sami Totah, the original developer of Bowie Mill Estates (Stanley Martin's current development), actually thought of the original idea for the donation of land to Hospice that later evolved into the parcel exchange. This transaction will potentially allow Hospice to use the additional two acres fronting Muncaster Mill Road to further its mission. Hospice does not intend to propose further development at this time in connection with the proposed Amendments.



### **III. Montgomery Hospice – Mission and Background Information**

The story of Hospice begins in 1977 when a Montgomery County pastor had a vision. He wanted seriously ill patients in the County to be able to live out their last days in their own homes and to die with dignity. And he wanted their families to have caring support. This vision (along with his research, fundraising and leadership) was the beginning of hospice care in Montgomery County. The vision became official in 1981 when Montgomery Hospice came into existence as a nonprofit organization. In 1986, Montgomery Hospice received certification to be a provider of the Medicare hospice benefit, becoming the first licensed hospice in Maryland.

Montgomery Hospice has been caring for residents of Montgomery County ever since, providing professional medical expertise and personal comfort for terminally ill patients for the past 30 years. Each year, Montgomery Hospice cares for more than 30% of county residents dealing with life-limiting illnesses, and provides bereavement services and end-of-life education to the general public. In 2011, the National Institutes of Health (NIH) recognized Montgomery Hospice's contributions when it selected Montgomery Hospice to represent area charities at its Combined Federal Campaign kickoff meeting.

Montgomery Hospice cared for over 2,000 hospice patients in 2011. The Hospice at Home program made it possible for more than 1,400 patients to remain in their own homes (including private homes, nursing homes and assisted living facilities) while receiving comforting physical, emotional and spiritual care. For the last 12 years, Montgomery County has benefitted from the services of Casey House, the only facility solely dedicated to end-of-life care in the County. Casey House has been described as a "home away from home" because of its warm and supportive atmosphere. In 2011, 581 patients with acute medical needs that could not be managed in their homes received comprehensive end-of-life care from the specialized medical team at Casey House.

Hospice services are covered, but not fully, by Medicare, Medicaid and private health insurance. Under Medicare and Medicaid rules, Montgomery Hospice must provide 100% of the medical needs of its patients, including pharmaceuticals, and is not permitted to invoice patients for any shortfall. Of necessity, Montgomery Hospice actively raises money from the community to be able to care for the uninsured and the underinsured and to fill any gaps in insurance coverage. These community donations also support the Complementary Therapies program, free grief support and education for the community, the Montgomery Kids program and the Montgomery Hospice Center for Learning.



Montgomery Hospice offers free bereavement support to families of patients, as well as others in the Montgomery County community. Master's trained counselors provide grief and loss counseling to family and loved ones of Montgomery Hospice patients for up to 13 months following their death. Grief counseling necessitates making 1,200 phone calls per (typical) month to the bereaved. In addition, Montgomery Hospice annually provides free loss and grief education and leads support groups for approximately 8,000 Montgomery County residents, including programs for employers, faith organizations, high school students and teachers, and young children. During the 2011-2012 school year, more than 3,500 high school students will receive education in dealing with personal grief and loss.

When children need hospice services, they need an expert team of hospice professionals who understand what they and their families have already gone through, and who know how to ensure that their hospice journey is a gentle one. Montgomery Hospice decided that the best way to provide care to the youngest patients was to work collaboratively with other hospices in Maryland. The result was Montgomery Kids, a program begun in late 2011 after several years of diligent work with pediatric experts from hospices, hospitals and palliative care services. Montgomery Kids has a dedicated team of clinicians with pediatric end-of-life expertise.

Montgomery Hospice provides education for community members about serious illness, loss and transition. Recognizing the community's need for more education, the Montgomery Hospice Center for Learning was launched in 2010. The goals of the Center are to teach families in the community about dealing with grief and end-of-life issues and to share clinical expertise with other professionals. In 2011, 157 educational programs were attended by more than 7,000 people. Montgomery Hospice also reaches beyond Montgomery County by hosting attendees from the entire metropolitan area at its annual major conference (attended by approximately 400 professionals in 2011), and recently by the use of online education to reach a national audience.

From four patients in 1981 to 2,072 in 2011, the demand for hospice services has grown exponentially, and Montgomery Hospice has grown to meet the needs of its community. Starting in 1981 with a handful of dedicated, visionary volunteers, Montgomery Hospice has grown in 2012 to an organization of more than 250 employees and 270 volunteers. Montgomery Hospice's vision for the future now includes building a Hospice Center on Muncaster Mill Road in order to increase the number of beds in Casey House, to have space to continue the educational programs of the Center for Learning, and to consolidate the staff in one building. The residents of Montgomery County will benefit from this Hospice Center for years to come.



#### **IV. Other Considerations Related to the Proposed Project**

After consultation with Area 3 planning staff, we have identified the following matters for consideration in connection with the proposed Amendments:

Rural Open Space Requirements. Stanley Martin's current Parcel G is one of the properties designated as open space under the RNC Zone requirements and is encumbered by a Rural Open Space Easement recorded in Liber 39147 Folio 482. The property that Stanley Martin will acquire from Hospice (proposed parcel "H" shown on the enclosed preliminary plan) will count towards the open space requirements to offset the loss of Parcel G. The Open Space Easement will need to be amended accordingly.

Impervious surface cap. Both the Hospice and Stanley Martin properties are in the Environmental Overlay Zone for the Upper Rock Creek Special Protection Area and are subject to an 8% impervious cap. Planning staff advised Hospice at a meeting in January, 2010 that after the land exchange, in their opinion, the total available impervious surface square footage on the consolidated Hospice property will be the sum of the existing square footage on the Hospice properties plus 8% of the square footage of Parcel G. This total amount can then be applied on the new consolidated Hospice property on either the RE-1 zone or RNC portions, as design preferences dictate.

Upper Rock Creek Master Plan provisions. The Hospice and Stanley Martin properties are in the Upper Rock Creek Master Plan planning area. The Master Plan contains language concerning the preservation of viewsheds along Muncaster Mill and Bowie Mill Roads (page 19) and a potential relocation of Bowie Mill Road (pages 68-69). Hospice will address any viewshed requirements after the consolidation of property and once it proposes further development. The potential realignment of Bowie Mill Road to align with Needwood Road appears to be highly, if not entirely, unlikely given that 1/ the Master Plan recommends retaining the existing configuration of intersections, 2/ the recent Preserve at Rock Creek approvals did not require the necessary dedication of the proposed realignment of Bowie Mill Road, and 3/ the State Highway Administration has determined that it will not study the reconfiguration of the Bowie Mill Road/Muncaster Mill Road intersection. Hospice therefore proposes that all references on existing maps and in existing land use documents to the possible extension of Bowie Mill Road through the Hospice parcel be deleted.

Amendment to Hospice Special Exception approval (Case No. S-2045). Hospice is approved under a Domiciliary Care Home special exception use category (under Zoning Ordinance §59-G-2.37). Hospice intends to submit a modification request to the Board of Appeals reflecting the land exchange at the appropriate time.



ATTORNEYS

M-NCPPC  
July 19, 2012  
Page 6 of 7

Adequate Public Facilities. Given that Hospice proposes no additional development at this time, APF review will be conducted in connection with future proposed development (most likely at special exception modification).

Resubdivision Criteria. Resubdivision criteria does not apply in this instance since the lots in question are not residential lots.

**V. Application Materials**

As part of this Application, we are submitting the following items, in addition to this Statement of Explanation:

1. Application Forms
2. Fee Schedule and Filing fees
3. Original Certified Plans with Opinion/Resolution
4. Application Notice Letter (Draft)
5. Notice List
6. Amended Plans (redlined and black and white)
7. Certificate of Compliance
8. CD with Amended Plans
9. Signage Information

We look forward to working with you to obtain these limited plan amendment approvals. Thank you very much for your assistance.

Very Truly Yours,



Stuart R. Barr  
Lerch Early & Brewer, Chtd.

cc: Fred Boyd – MNCPPC, Area 3  
Rich Weaver – MNCPPC, Area 3  
Cathy Conlon, MNCPPC



ATTORNEYS

M-NCPPC  
July 19, 2012  
Page 7 of 7

- Ann Mitchell – Montgomery Hospice
- Arnold Kohn – Montgomery Hospice
- J. Truett Young – Stanley Martin Homes
- Carly Schrader – Stanley Martin Homes
- Vic Bryant – Macris Hendricks and Glascock
- Lauren Ireland – Macris Hendricks and Glascock
- Robert G. Brewer, Jr.

March 28, 2014

**BY E-MAIL**

Mr. John Carter, Chief, and Mr. Richard Weaver  
Area 3 Division  
Maryland-National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

**Re:** **UPDATED** Letter of Explanation  
Montgomery Hospice and Stanley Martin Homes – Real Estate Parcel  
Exchange and Transfer of Rural Open Space Designation  
Intersection of Bowie Mill and Muncaster Mill Roads, Gaithersburg,  
Maryland  
Preliminary Plan and Site Plan Amendment Numbers 11994021A,  
12006032B, and 82006011A (Limited Plan Amendments under Development  
Review Procedures §8.E.)

**I. Introduction**

On behalf of Montgomery Hospice, Inc. (“Hospice”) and Stanley Martin Homes (“Stanley Martin”), we are submitting this updated letter of explanation in support of the Preliminary Plan and Site Plan Amendments referenced above. These Amendment applications were filed in July, 2012. The Amendments modify the Montgomery County Planning Board’s resolutions approving Preliminary Plan Numbers 1-94021 and 1-20060320 and Site Plan Number 8-20060110.

**II. Summary of Prior Plan Approvals and Overview of Proposal**

Hospice is a nonprofit hospice program serving residents of Montgomery County and providing the community with medical, nursing, and other health services during the final stages of life through home or inpatient care during the illness and bereavement period. The “Casey House,” located at 6001 Muncaster Mill Road, is a 14-bed facility that is the only all-hospice acute care inpatient medical facility in Montgomery County. Casey House received special exception approval in 1994 under a Domiciliary Care Home special exception use category under Zoning Ordinance §59-G-2.37 (Case No. S-2045) and received subdivision approval in 1995 (Preliminary Plan Number 1-94021).

Hospice currently owns four adjoining parcels of property, all in the RE-1 Zone:





ATTORNEYS

M-NCPPC, Area 3 Division  
March 28, 2014  
Page 2 of 8

1. Parcel C, Plat 24243 (Parcel N746, Tax Map GT61), Tax Account #08-03683827 – 6.3 acres located at 6001 Muncaster Mill Road.
2. Parcel B, Plat 21269 (Parcel N853, Tax Map GT61), Tax Account #08-03278011 – 0.7 acres located at Muncaster Mill Road.
3. Parcel P748, Tax Map GT61, Tax Account #08-03484382 – 5,882 square feet located at Muncaster Mill Road.
4. Parcel P802, Tax Map GT61, Tax Account #08-03124658 – 0.3 acres located at Muncaster Mill Road.

Stanley Martin acquired and is in the process of constructing the optional method development project known as The Preserve at Rock Creek (formerly Bowie Mill Estates) that adjoins the Hospice properties and is located in the Rural Neighborhood Cluster (RNC) Zone. The Preserve at Rock Creek development received preliminary plan and site plan approvals in 2007 for a combination of 186 single-family attached and detached residential units (Preliminary Plan No. 1-20060320 and Site Plan 8-20060110). Several parcels were reserved for rural open space as required by the RNC Zone, including a two acre parcel on Muncaster Mill Road identified as Parcel G, Block F.

Hospice and Stanley Martin are under contract to exchange parcels of land of equal square footage (approximately 2 acres each), and the objective of these Amendment applications is to accomplish that transaction.<sup>1</sup> Hospice will acquire the entirety of Stanley Martin’s Parcel G, Block F (not to be confused with Parcel G, Block N), and Stanley Martin will acquire an equivalent square footage of land on the northern end of the Hospice property (proposed parcel “H” shown on the enclosed preliminary plan). As shown on the enclosed plan, Hospice proposes right-of-way dedication for Muncaster Mill Road and proposes to consolidate the remainder of its property (proposed Parcel “D” shown on the enclosed plan). Parcel G, Block F will adjoin Hospice’s consolidated property and could offer some expansion opportunities for Hospice to further its mission after the land exchange is finalized.

Hospice does not intend to propose any further development at this time in connection with the proposed Amendments. While Hospice has preliminarily considered the possibilities for a future expansion, it has not prepared formal development plans at this time. In all likelihood, once Hospice has determined its plans for the new property, it will propose a consolidation of Parcel G with the remainder of Hospice’s property.

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<sup>1</sup> Sami Totah, the original developer of Bowie Mill Estates (now Stanley Martin’s current development -- The Preserve at Rock Creek), actually thought of the original idea for the donation of land to Hospice that later evolved into the parcel exchange proposal.

ATTORNEYS

M-NCPPC, Area 3 Division  
March 28, 2014  
Page 3 of 8

### **III. Compliance with Rural Open Space Requirements and Release of Rural Open Space Easement Policy**

Stanley Martin's current two acre Parcel G is one of the properties designated as open space under the RNC Zone requirements and is encumbered by a Rural Open Space easement recorded in Liber 39147 Folio 482. The property that Stanley Martin will acquire from Hospice (proposed parcel "H") will count towards the open space requirements to offset the loss of Parcel G. The Rural Open Space easement will need to be released and transferred from Parcel G to Parcel H.

In 2013, the Planning Board adopted a Code Interpretation Policy for the release (transfer) of Rural Open Space (ROS) easements. The proposed land exchange and replacement of ROS easements complies with the ROS easement release policy and the five criteria adopted by the Planning Board, as follows:

- a. *The purpose for the release must be to balance another public interest;*

The release of the ROS easement from Parcel G and transfer to Parcel H will serve the public interest. Hospice is a unique one-of-a-kind program in the County, and Casey House is the only all-hospice, acute care inpatient medical facility in the County. Hospice served over 2,150 County residents last year.

The story of Hospice begins in 1977 when a Montgomery County pastor had a vision. He wanted seriously ill patients in the County to be able to live out their last days in their own homes and to die with dignity. And he wanted their families to have caring support. This vision (along with his research, fundraising and leadership) was the beginning of hospice care in Montgomery County. The vision became official in 1981 when Montgomery Hospice commenced as a nonprofit organization. In 1986, Montgomery Hospice received certification to be a provider of the Medicare hospice benefit, becoming the first licensed hospice in Maryland.

Montgomery Hospice has been caring for residents of Montgomery County ever since, providing professional medical expertise and personal comfort for terminally ill patients for the past 33 years. Each year, Montgomery Hospice cares for more than 30% of County residents dealing with life-limiting illnesses, and provides bereavement services and end-of-life education to the general public. In 2011, the National Institutes of Health (NIH) recognized Montgomery Hospice's contributions when it selected Montgomery Hospice to represent area charities at its Combined Federal Campaign kickoff meeting.

Montgomery Hospice cared for 2,150 hospice patients in 2013. The Hospice at Home program made it possible for more than 1,900 patients to remain in their own



ATTORNEYS

M-NCPPC, Area 3 Division  
March 28, 2014  
Page 4 of 8

homes (including private homes, nursing homes and assisted living facilities) while receiving comforting physical, emotional and spiritual care. For the last 15 years, Montgomery County has benefitted from the services of Casey House, the only facility solely dedicated to end-of-life care in the County. Casey House has been described as a “home away from home” because of its warm and supportive atmosphere. In 2013, 558 patients with acute medical needs also received comprehensive end-of-life care from the specialized medical team at Casey House.

Casey House offers a comfortable, home-like atmosphere, and all patient rooms are private. Meals are cooked in the on-site kitchen, and snacks are always available. Patients and families appreciate that there are no limits to visiting hours. Casey House has a highly skilled team of professionals who are experts in end-of-life care. All Casey House patients receive around-the-clock monitoring and care from a team of doctors, nurses, nurse practitioners, hospice aides, social workers, chaplains and highly-trained volunteers. Casey House is recommended when a patient’s pain and symptoms cannot be safely or appropriately managed at home, or when symptoms require intensive nursing and medical care and attention.

Hospice services are covered, but not fully, by Medicare, Medicaid and private health insurance. Under Medicare and Medicaid rules, Montgomery Hospice must provide 100% of the medical needs of its patients, including pharmaceuticals, and is not permitted to invoice patients for any shortfall. Of necessity, Montgomery Hospice actively raises money from the community to be able to care for the uninsured and the underinsured and to fill any gaps in insurance coverage. These community donations also support the Complementary Therapies program, free grief support and education for the community, the Montgomery Kids program and the Montgomery Hospice Center for Learning.

Montgomery Hospice offers free bereavement support to families of patients, as well as others in the Montgomery County community. Master’s trained counselors provide grief and loss counseling to family and loved ones of Montgomery Hospice patients for up to 13 months following their death. Grief counseling necessitates making 1,500 phone calls per month to the bereaved. In addition, Montgomery Hospice annually provides free loss and grief education and leads support groups for approximately 9,500 Montgomery County residents, including programs for employers, faith organizations, high school students and teachers, and young children. During the 2013-2014 school year, more than 4,100 high school students will receive education in dealing with personal grief and loss.

When children need hospice services, they need an expert team of hospice professionals who understand what they and their families have already gone through, and who know how to ensure that their hospice journey is a gentle one. Montgomery



Hospice decided that the best way to provide care to the youngest patients was to work collaboratively with other hospices in Maryland. The result was Montgomery Kids, a program begun in late 2011 after several years of diligent work with pediatric experts from hospices, hospitals and palliative care services. Montgomery Kids has a dedicated team of clinicians with pediatric end-of-life expertise. The hospice team works closely with tertiary care hospitals such as Children's National and Johns Hopkins.

Montgomery Hospice provides education for community members about serious illness, loss and transition. Recognizing the community's need for more education, the Montgomery Hospice Center for Learning was launched in 2010. The goals of the Center are to teach families in the community about dealing with grief and end-of-life issues and to share clinical expertise with other professionals. In 2013, 90 educational programs were attended by more than 7,000 people. Montgomery Hospice also reached beyond Montgomery County by hosting attendees from the entire metropolitan area at three major conferences (attended by approximately 400 professionals in 2013), and recently by the use of online education (725 online workshops in 2013) to reach a national audience.

From four patients in 1981 to 2,150 in 2013, the demand for hospice services has grown exponentially, and Montgomery Hospice has grown to meet the needs of its community. Starting in 1981 with a handful of dedicated, visionary volunteers, Montgomery Hospice has grown in 2014 to an organization of more than 250 employees and 300 volunteers.

Montgomery Hospice's vision for the future now includes modest expansion possibilities such as an increase in the number of beds in Casey House, additional educational programs in the Center for Learning, and potential consolidation of staff. The proposed parcel exchange will allow Hospice the flexibility to consider such reasonable expansion possibilities to continue to provide care to County residents. Given the stream valley buffer, topography, and distance, it would be far more difficult, if not impossible, for Hospice to make use of the two acres on the property that Hospice proposes to convey to Stanley Martin as open space. Without this project, Hospice's opportunities to expand its facilities will be extremely limited. The residents of Montgomery County will benefit from Hospice for years to come. Hospice's mission and ability to reasonably expand to continue to meet the needs of County residents in the future is in the public interest.

- b. The party requesting such release must, at a minimum, provide another property, similarly situated in location (watershed), and size, to be encumbered with the same ROS restriction so that the intention of "perpetuity" as required by the Zoning Ordinance is addressed;*

Hospice will replace the released ROS easement on Parcel G with another, virtually identical ROS easement on Parcel H. The existing ROS easement and the proposed ROS easement are similarly situated properties. The Hospice Property is in the same watershed as The Preserve at Rock Creek, the ROS easements will be exactly the same size, and the properties are virtually adjacent to each other. The proposed and existing ROS easement properties are both adjacent to roads, are comprised of open fields and are adjacent to forests. The ROS easement language will be identical. The proposed ROS easement property will comply with Zoning Ordinance Section 59-C-9.574(h).

- c. The replacement, or substitute property would have been acceptable as the ROS property in the original development application under which the ROS easement was approved;*

The two ROS easement properties in question have very similar visual and environmental characteristics. Parcel H, the proposed ROS easement property, can meet all requirements for rural open space in the RNC Zone and complies with Zoning Ordinance Section 59-C-9.574(h). Had Stanley Martin owned it at the time that The Preserve at Rock Creek development received preliminary plan and site plan approvals, it would have been an acceptable property for open space purposes. The proposed ROS easement location would have been accepted because it is so similar to the existing location. Both locations preserve viewsheds -- one along Muncaster Mill Road, the other along Bowie Mill Road.

- d. The impact of such release cannot place the party who granted the ROS easement as a condition of approval in a position in which its entitlements, such as density may be lost;*

The proposed replacement of the ROS easement will not adversely impact The Preserve at Rock Creek approvals. The land exchange proposal would increase Stanley Martin's allowed density by one dwelling unit given the two different zones (RNC and RE-1). A condition could be placed on the The Preserve at Rock Creek Site Plan Amendment that the density would be limited to the existing 186 units.

- e. There must be a finding of conformance with the Master Plan for the ultimate replacement of ROS restricted property.*

The Hospice and Stanley Martin properties are located in the Upper Rock Creek Master Plan planning area. Page 12 of the Master Plan provides general recommendations for the planning area that include maintaining and enhancing open space and natural resources. The Master Plan contains language concerning the preservation of viewsheds along Muncaster Mill and Bowie Mill Roads (page 19) and a potential relocation of Bowie Mill Road (pages 68-69).



Page 19 recommends preserving views along Bowie Mill Road and Muncaster Mill Road. Both viewsheds are protected because no further development is proposed at this time. Page 19 also recommends enhancing the compatibility of uses by maintaining ROS areas adjacent to existing residential communities. The existing ROS location is surrounded by Alfred House, Magruder High School, Casey House, and a few residential homes. The proposed location is very similar. Hospice will address any viewshed requirements further once it proposes any development in the future.

The potential realignment of Bowie Mill Road to align with Needwood Road appears to be highly, if not entirely, unlikely given that 1/ the Master Plan recommends retaining the existing configuration of intersections, 2/ the recent Preserve at Rock Creek approvals did not require the necessary dedication of the proposed realignment of Bowie Mill Road, and 3/ the State Highway Administration has determined that it will not study the reconfiguration of the Bowie Mill Road/Muncaster Mill Road intersection. Hospice therefore proposes that all references on existing maps and in existing land use documents to the possible extension of Bowie Mill Road through the Hospice parcel be deleted.

The proposed land exchange and replacement of the ROS easement properties substantially conforms to the Master Plan.

#### **IV. Other Considerations Related to the Proposed Project**

After consultations with Area 3 Planning Staff, we have identified the following other considerations in connection with the proposed Amendments:

Impervious surface cap. Both the Hospice and Stanley Martin properties are in the Environmental Overlay Zone for the Upper Rock Creek Special Protection Area and are subject to an impervious surface cap. Any further development will be subject to an approved Water Quality Plan.

Amendment to Hospice Special Exception approval (Case No. S-2045). Hospice is approved under a Domiciliary Care Home special exception use category under Zoning Ordinance §59-G-2.37. Hospice intends to submit a modification request to the Board of Appeals reflecting the land exchange at the time the properties are conveyed.

Adequate Public Facilities. Given that Hospice proposes no additional development at this time, APF review will be conducted in connection with future proposed development (most likely at special exception modification).

ATTORNEYS

M-NCPPC, Area 3 Division  
March 28, 2014  
Page 8 of 8

Resubdivision Criteria. Resubdivision criteria does not apply in this instance since the lots in question are not residential lots.

**V. Conclusion**

We request approvals of the amended plans, as submitted, and release of the existing ROS easement on Parcel G. Hospice will grant an ROS easement over proposed Parcel H to offset the release on Parcel G and to comply with the Planning Board's ROS easement policy. The proposed land exchange complies with all of the criteria adopted by the Planning Board under its ROS easement policy. The project also just makes sense on many levels, so we ask for the Staff's cooperation and favorable recommendation as we move forward.

Given the prior delays, we would like to move forward as soon as possible. Please provide us with feedback on this information, please schedule this matter on the Planning Board's agenda, and please advise as soon as possible if you identify any other matters to be addressed. We look forward to obtaining these limited plan amendment approvals. Thank you very much for your assistance.

Very Truly Yours,



Stuart R. Barr  
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