



**JAN 22 2009**

**MCPB No. 08-115**  
**Preliminary Plan No. 120061180**  
**Stern Property**  
**Date of Hearing: September 11, 2008**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION<sup>1</sup>**

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on May 16, 2006, Bethany Homes ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 7 lots on 29.26 acres of land located on Bonny Brook Lane, 231 feet northwest of Heather Field Court ("Property" or "Subject Property"), in the Damascus master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120061180, Stern Property ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated August 10, 2008, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on September 11, 2008, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

APPROVED AS TO LEGAL SUFFICIENCY  
*Dr/D (KGO) 12/30/08*  
MONTGOMERY COUNTY PLANNING BOARD

<sup>1</sup> This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

WHEREAS, on September 11, 2008, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Alfandre; with a vote of 5-0, Commissioners Alfandre, Cryor, Hanson, Presley and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board APPROVES Preliminary Plan No. 120061180 to create 7 lots on 29.26 acres of land located on Bonny Brook Lane, 231 feet northwest of Heather Field Court ("Property" or "Subject Property"), in the Damascus master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to 7 lots for 7 one-family detached residential dwelling units and 1 open space parcel.
- 2) The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan. The Applicant must meet all conditions prior to the recording of plat(s) or Montgomery County Department of Permitting Services ("MCDPS") issuance of sediment and erosion control permit(s), as applicable.
- 3) Record plat to reflect a Category I easement over all environmental buffers and retained and planted forest areas.
- 4) Record plat to reflect common ingress/egress and utility easements over all shared driveways.
- 5) Record plat to have the following note in reference to the lots and open space parcel: "The land contained hereon is within an approved cluster development and subdivision or resubdivision is not permitted after the property is developed."
- 6) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated December 8, 2006.
- 7) The Applicant must comply with conditions of MCDPS (Health Dept.) septic approval dated November 22, 2006.
- 8) Record plat to reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to Staff prior to release of final building permit that Applicant's recorded HOA documents incorporate by reference the Covenant.
- 9) The Applicant must provide, and show on the record plat, a 15 foot-wide access easement for residents in the following locations: a) along the western boundary of the Property for access to Open Space Parcel A; and b) from Open Space Parcel A to Upper Great Seneca Stream Valley Park, as shown on the Preliminary Plan.
- 10) The Applicant must provide, and show on the record plat, a 15 foot-wide access easement from the termination of the shared private drive on Lot 3A to Upper Great Seneca Stream Valley Park.

- 11) The Applicant must comply with conditions of the Montgomery County Department of Transportation ("MCDOT") letter dated June 12, 2006 unless otherwise amended.
- 12) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s) and the Maryland State Highway Administration ("MDSHA") prior to issuance of access permits.
- 13) The Applicant must comply with the conditions of the MDSHA letter dated August 26, 2008, unless otherwise amended.
- 14) Record plat to reflect an environmental setting boundary for the historic resource, containing the dwelling house, corn crib, bank barn, dairy barn and milk house on a single lot of at least 9.59 acres, as specified in the Damascus-Goshen Master Plan Amendment.
- 15) The approved environmental setting boundary and historic resource number and name must be clearly identified on the record plat.
- 16) If Locational Atlas Resource No. 11/21, Rezin Bowman Farm, be designated to the Master Plan for Historic Preservation, the final record plat must include a note that states: "Any new construction and/or site modification within the established environmental setting are subject to the review and approval of the Montgomery County Historic Preservation Committee."
- 17) Record plat must include a note that future subdivision of the outlot will require an amendment to this Preliminary Plan.
- 18) The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution.
- 19) Other necessary easements must be shown on the record plat.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

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

On page 105 of the 2006 Master Plan, under the Community Water and Sewer Service Recommendations section, the Master Plan provides that the "provision of community sewer service in the Damascus plan area is guided by the County's Water Supply and Sewerage Systems Plan, the General Plan, and prior Master Plans; as well as regional environmental policies, such as the Chesapeake Bay Initiative and the Maryland Smart Growth policies." This section further provides that certain properties are specifically recommended for community sewer service under the cluster development method. The area zoned RE-2C, which includes the proposed subdivision, is not included in this section. As a result, a

cluster development absent of community sewer service is supported in this area.

Additionally, the section specifically provides that the provision of community sewer service is guided, in part, by prior master plans. Page 103 of the 1982 *Damascus Master Plan*, the "Proposed Sewer & Water Service Areas" illustration indicates that the Woodfield Road and Route 108 Transition Area is recommended for community water service but not for community sewer service. The Planning Board finds the proposed subdivision complies with the recommendations adopted in the 2006 Master Plan in that clustered, low density residential development is proposed for the site and private standard septic systems will serve the lots.

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

#### Roads and Transportation Facilities

The proposed 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 pre-dates Policy Area Mobility Review ("PAMR") requirements and PAMR requirements are not currently applicable to the Damascus policy area. Bonny Brook Court is proposed as an open section tertiary street with 50 feet of right-of-way. Sidewalks are not required. The Planning Board finds that the proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

#### Other Public Facilities and Services

The Planning Board finds that other public facilities and services are available and will be adequate to serve the proposed dwelling units. The Subject Property will be served by public water and private standard septic systems. Gas, electric and telecommunications services are also available to serve the Property. Police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. This Preliminary Plan Application is not subject to a School Facilities Payment. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles.

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

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, Subdivision Regulations. Access and public facilities will be adequate to support the proposed lots and uses. The lots were reviewed for compliance with the dimensional requirements for the RE-2C zone as specified in the Montgomery County Code, Chapter 59, Zoning Ordinance. The Planning Board finds that the lots, as proposed, will meet all the requirements for area, frontage, width, and setbacks in the zone as well as all requirements for cluster development method, as previously discussed. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, the Planning Board finds that the size, width, shape and orientation of the proposed lots are appropriate to the location of the subdivision.

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

There are 13.36 acres of existing forest in four distinct forest stands on the subject site. Black cherry, red maple, and tulip popular trees dominate all stands. The primary distinction between the stands is the age and size of the trees in each stand and the stand location relative to environmental buffers and contiguous forests on adjacent properties. There are 5 trees that are 24 inches in diameter and greater on the Subject Property. All of these trees are shown as retained in the Preliminary Forest Conservation Plan.

Because the development utilizes an optional method of development, it must comply with Section 22A-12(f) of the Forest Conservation Law. This section requires minimum on-site retention, or retention and planting of forest. For this particular plan, 25 percent of the net tract, or 7.32 acres, must be retained and/or planted forest. The Preliminary Forest Conservation Plan indicates that 4.69 acres of forest will be removed and 8.67 acres of forest will be preserved, which satisfies the requirements of Section 22A-12(f). The project is below the break-even point for forest clearing and, therefore, has no planting requirement. All retained forest will be protected in a Category I forest conservation easement. The Planning Board finds the Preliminary Forest Conservation Plan for this Preliminary Plan satisfies the requirements of 22A-12(f) through protection of retained forest, and meets all applicable requirements of the Forest Conservation Law.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on March 11, 2008. The concept consists of on-site water quality control and recharge through a combination of dry wells, porous pavement and a surface sand filter.

6. *The Application satisfies requirements for cluster development as specified in the Zoning Ordinance; including the provisions for a waiver of the minimum area for cluster development in the RE-2C zone.*

Section 59-C-1.522 of the Zoning Ordinance provides:

No land shall be subdivided under [the cluster development] method and no building permit shall be issued unless the resulting development will be connected to community water supply and sewerage systems. The only exception to this requirement is the RE-2C zone, where land that is not served by community sewer may be subdivided under the cluster development method, as long as it meets all of the following conditions:

- (a) An approved and adopted master plan or sector plan specifically recommends cluster development with community water but not community sewer.
- (b) The resulting development will be connected to community water.
- (c) The resulting development meets all of the requirements for individual sewerage systems outlined in the most recent county comprehensive water supply and sewerage systems plan and Executive Regulation No. 5-79 on individual water supply and sewage disposal systems.

The Planning Board finds that the proposed plan complies with the recommendations adopted in the 2006 Master Plan, as well as the 1982 *Damascus Master Plan*. Community water service has been conditionally approved upon Planning Board approval of the plan. The MCDPS Well and Septic Division approved the septic field locations for the proposed lots on March 25, 2008.

Section 59-C-1.524 of the Zoning Ordinance states that “[t]he preliminary or site plan must include a description of the procedures and methods to be followed for assuring the common use and adequate maintenance of common open space included in the plan.” The Applicant has allocated 5.66 acres for open space, identified as Open Space Parcel A on the plan. The Planning Board further finds

that Open Space Parcel A satisfies the provision for open space under the cluster development method and will provide adequate open space should Outlot A be subdivided in the future.

Section 59-C-1.532 of the Zoning Ordinance stipulates that for cluster development in the RE-2C zone the minimum area of development is 50 acres. The Subject Property contains 29.26 acres. Section 59-C-1.526(a), however, states that when 2 or more cluster developments are combined in the same zone, "[t]he planning board may waive the minimum areas specified in subsection 59-C-1.532 if the tract abuts an existing cluster development in the same zone and approval of the proposed subdivision will make possible a compatible extension thereof." The Planning Board finds that because the Subject Property abuts two other cluster developments in the same zone, a waiver of the minimum area of development is justified. The proposed subdivision will provide a compatible extension of the Damascus Hills and the Seneca Springs subdivisions.

Environmental Planning also supports development of the Subject Property under the cluster development method. The plan proposes an average lot size of approximately 1.3 acres (not including the lot for the existing house). The minimum lot size permitted under the RE-2C zone is 25,000 square feet. Although the minimum lot size is desirable in a cluster development, it would be difficult to achieve on lots containing septic fields and reserve septic fields, despite sincere efforts by the Applicant to reduce the lot sizes. The smaller lot sizes allow for forest retention on Lot 3A and on Open Space Parcel A. Open Space Parcel A is entirely forested and includes environmental buffers and steep slopes that will be permanently protected in a conservation easement. The Applicant has met the forest conservation threshold onsite, as required under cluster development.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) 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 among the Montgomery County Land Records or a request for an extension must be filed; and

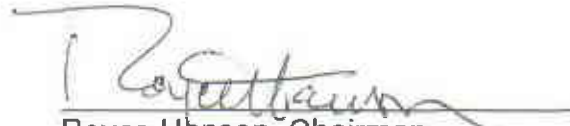
BE IT FURTHER RESOLVED, that the date of this Resolution is JAN 22 2009 (which is the date that this Resolution is mailed to all parties of record); and

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).

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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 Robinson, seconded by Commissioner Cryor, with Commissioners Hanson, Robinson, Alfandre, and Cryor voting in favor of the motion, and Commissioner Presley absent, at its regular meeting held on Thursday, January 8, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman  
Montgomery County Planning Board