



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PR 28 2009

**MCPB No. 09-36**  
**Preliminary Plan No. 120090070**  
**Black Hills Estates**  
**Date of Hearing: March 19, 2009**

## 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 September 4, 2008, Michael Gresalfi ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 2 lots on 4.5 acres of land located on the south side of Ascot Square Court, 370 feet east of Clarksburg Road (MD 121) ("Property" or "Subject Property"), in the Boyds master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090070, Black Hills Estates ("Preliminary Plan" or "Application"); and

WHEREAS, on June 5, 2008, pre-preliminary plan application No. 720060240 was approved by the Board and memorialized through a Resolution issued on February 24, 2009, at which time the Board found that an exceptional circumstance did exist in order to justify approval of a proposed lot with inadequate frontage, and that the frontages of the proposed lots would be in character with other lots in the designated Neighborhood; and

WHEREAS, the Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated March 9, 2009, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

<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.

Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, N.C. Planning Department 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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WHEREAS, following the review and analysis of the Application by the Staff and the staff of other governmental agencies, on March 19, 2009, 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

WHEREAS, on March 19, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Hanson; with a vote of 3-0, Commissioners Cryor, Hanson, and Robinson voting in favor, Commissioners Alfandre and Presley absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120090070 to create 2 lots on 4.5 acres of land located on the south side of Ascot Square Court, 370 feet east of Clarksburg Road (MD 121) ("Property" or "Subject Property"), in the Boyds Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to two lots for two one-family detached dwelling units.
- 2) The Applicant must construct a turnaround on Black Hills Road for public use as shown on the Preliminary Plan.
- 3) The applicant must comply with the conditions of approval for the preliminary Forest Conservation Plan prior to recording of a plat or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit, as applicable.
- 4) The record plat(s) must reflect a Category I Conservation Easement over the entire stream valley buffer and the areas of planted and retained forest as delineated on the Preliminary Plan.
- 5) The Applicant must comply with the conditions of the MCDPS Stormwater Management Concept Plan approval dated November 24, 2008. These conditions may be amended by MCDPS provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) The Applicant must comply with the conditions of the MCDPS, Well and Septic Section approval dated November 20, 2007. These conditions may be amended by MCDPS provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 7) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated December 1, 2008. These conditions may be amended by MCDOT provided the amendments do not conflict with other conditions of the Preliminary Plan approval.

- 8) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat.
- 9) 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.
- 10) The record plat must show necessary easements.

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.*

The Boyds Master Plan supports the retention and reconfirmation of the RE-2 zone and residential land-use for the Subject Property. The Master Plan specifically recommends that the area continue as a rural, residential community composed primarily of single-family detached dwellings at varying densities. The proposed Application has been reviewed by the appropriate agencies, and it has been determined that the proposed use will not adversely impact environmental, land use and zoning, transportation, or community facilities as identified by the Master Plan. The proposed Application would create two lots that are consistent with the zoning and larger-lot, rural-residential community identified by the Master Plan. Therefore, the Board finds the proposed Application substantially conforms to the Master Plan.

*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. In addition, the Board's Transportation Staff has determined that the Application is not subject to Policy Area Mobility Review because the proposed development generates fewer than 3 new peak-hour trips within the weekday morning and evening peak periods. Ascot Square Court is a secondary residential road, requiring 60 feet of right-of-way. Sixty feet of right-of-way currently exists, therefore, no additional dedication is required. Black Hills Road is a tertiary residential road requiring 50 feet of right-of-way. 28 feet to 37 feet of right-of-way currently exists; however, since Black Hills Road only provides access to a M-NCPPC Parks Department maintenance yard, additional right-of-way is not required. Sidewalks are not required for lots in the RE-2 zone because pedestrians can safely

use the streets, and sidewalks do not currently exist on either side of Ascot Square Court or Black Hills Road.

A previous discussion during the pre-preliminary plan hearing centered upon the abutting property owner's concern that vehicles use their driveway to turnaround. This use has caused negative impacts including higher maintenance costs and noise, and headlight glare to the abutting property owner. In order to mitigate these negative impacts the Applicant is providing a paved turnaround on the Subject Property at the end of Black Hills Road for public use. Therefore, the Board finds the proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed private improvements.

#### Other Public Facilities and Services

The Board finds other public facilities and services are available and will be adequate to serve the proposed dwelling units. The Application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access. The Subject Property is within a school moratorium area, but new subdivisions creating up to three new homes are permitted within such an area. However, a school facilities payment must be made prior to issuance of building permits for the new lot. Other public facilities and services, such as police stations, firehouses and health services, are operating within the standards set by the Growth Policy Resolution currently in effect. Electrical and telecommunications services are also available to serve the Property.

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

The lots have been reviewed for compliance with Section 50-29(a) of the Subdivision Regulations. The Planning Board finds that the size, shape, width, and area of the lots are appropriate for their location within the subdivision.

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

The Application was reviewed for compliance with Chapter 22A of the Montgomery County Code, the Forest Conservation Law. There are approximately 0.25 acres of forest on the Subject Property. The forest is located along the eastern property line in the stream valley buffer, which will be protected by a Category I Conservation Easement. There is a 0.90-acre afforestation planting requirement. Therefore, the Applicant must plant a total of 0.65 acre of forest onsite within the unforested portion of the stream valley buffer. With the additional planting, the Board finds the Application satisfies the 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 approval dated June 4, 2008, meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the Stormwater Management Concept Plan for the project on November 24, 2008. The Stormwater Management Concept Plan includes on-site water quality control and onsite recharge via the Environmentally Sensitive Development Credit. Channel protection is not required because the one-year post-development peak discharge is less than two cubic feet per second.

6. *The proposed lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing Neighborhood (as delineated by Staff in the Staff Report) ("Neighborhood"), as analyzed below.*

Frontage:

As contained in the Planning Board's binding decision concerning proposed frontages for this application as part of the pre-preliminary plan the Board found that there are exceptional circumstances which apply to this Property that justify creation of a lot with inadequate frontage on a public street, and that both proposed lots will be of the same character as others in the Neighborhood with regard to street frontage.

In a neighborhood of 16 existing lots, lot frontages range from 0 feet (no frontage) to 499 feet. The smallest frontage of an existing lot other than the one without frontage is 26 feet. Three of the lots have frontages smaller than that of proposed Lot B and one lot has a frontage smaller than proposed Lot A. Proposed Lot A has a frontage of 14 feet on Ascot Square Court, and proposed Lot B has a frontage of 37 feet on Black Hills Road. Therefore, the proposed lots will be in character with existing lots in the Neighborhood with respect to frontage.

Alignment:

In terms of alignment, the road network is curvilinear with cul-de-sacs, and the lots in the Neighborhood are a mixture of perpendicular, radial, and flag lots.



Three of the eight lots in the Neighborhood are perpendicular, three are flag lots, and five are radial. The proposed lots are radial and perpendicular in alignment. The proposed lots are of the same character as existing lots with respect to the alignment criterion.

Size:

Lot sizes in the Neighborhood range from 87,435 square feet to 259,196 square feet. Four of the existing lots in the Neighborhood are approximately 88,000 square feet or smaller, eleven of the existing lots in the Neighborhood are between approximately 90,000 square feet and 160,000 square feet, and one lot is approximately 260,000 square feet in size. The proposed lots are 88,844 square feet and 107,000 square feet in size. The size of the proposed lots is in character with the existing lots in the Neighborhood.

Shape:

With respect to shape, five existing lots in the Neighborhood are rectangular, three lots are flag, two lots are pie, and eight are irregular. The proposed lots are irregular much like the majority of existing lots in the Neighborhood. The shape of the proposed lots will be in character with shapes of the existing lots.

Width:

Lot widths in the Neighborhood range from 150 feet to 440 feet. Thirteen of the existing lots are between 150 and 170 feet wide, one lot is 224 feet wide, and two corner lots with frontage on two streets have a combined frontage of 303 feet and 440 feet. The proposed lots have lot widths of 150 feet each. The proposed lots will be in character with existing lots in the Neighborhood with respect to width.

Area:

Buildable area in the Neighborhood ranges in size from approximately 44,800 square feet to 199,600 square feet. Six of the lots are between 44,800 and 55,700 square feet, seven of the lots are between 64,800 and 88,000 square feet, and three of the lots are between 91,700 and 199,600 square feet in size. The proposed lots have buildable areas of 49,600 and 78,900 square feet. The proposed lots will be of the same character as other lots in the Neighborhood with respect to buildable area.

Suitability for Residential Use:

The existing and the proposed lots are zoned residential and the Property is suitable for residential use.

The Planning Board finds that the Application complies with all seven resubdivision criteria as identified in Section 50-29(b)(2) of the Montgomery County Subdivision Regulations.

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 Apr 28 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).

\* \* \* \* \*

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Commissioner Robinson, with Commissioners Hanson, Robinson, and Presley voting in favor of the motion, and with Commissioners Alfandre and Cryor absent, at its regular meeting held on Thursday, April 23, 2009, in Silver Spring, Maryland.

  
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Royce Hanson, Chairman  
Montgomery County Planning Board