



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 09-140  
Preliminary Plan No. 120090190  
Muncaster Manor  
Date of Hearing: November 12, 2009

MAR - 2 2010

## MONTGOMERY COUNTY PLANNING BOARD

### RESOLUTION

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 December 23, 2008, Samuel Joseph ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 2 lots on 5.21 acres of land located on Granby Road 1,205 feet northwest of Muncaster Road ("Property" or "Subject Property"), in the Upper Rock Creek master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090190, Muncaster Manor ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 19, 2009, 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 staff of other governmental agencies, on November 12, 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 November 12, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Presley; with a vote of 4-0, Commissioners Alfandre, Hanson, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120090190 to create 2 lots on 5.21 acres of land located on

Approved as to  
Legal Sufficiency:

*Christina Sorrento* 2/2/10

8787 Georgia Avenue, Muncaster Manor, Maryland 20850 Chairman's Office: 301.495.4605 Fax: 301.495.1320

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

Granby Road 1,205 feet northwest of Muncaster Road ("Property" or "Subject Property"), in the Upper Rock Creek master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to 2 lots for 2 one-family detached residential dwelling units.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy the following conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits:
  - a. All areas of unforested stream valley buffer must be reforested in accordance with the Planning Board's Environmental Guidelines.
  - b. Approval of final forest conservation plan consistent with the approved preliminary forest conservation plan prior to any further clearing, grading or demolition on the site.
  - c. All financial security must be submitted to M-NCPPC prior to any demolition, clearing, or grading on the Subject Property.
- 3) The record plat must reflect a Category I easement over all areas of forest conservation. Prior to plat recordation, M-NCPPC staff must approve any amended language to the standard easements or agreements.
- 4) The building permit for house construction on proposed lot 2 must comply with limits of disturbance on the approved preliminary forest conservation plan.
- 5) The Applicant must dedicate and show on the record plat approximately 9,563 square feet for a 60 foot-wide right-of-way for the extension of Hillside Terrace to the eastern property line of Lot 2 as shown on the approved Preliminary Plan.
- 6) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the design standards imposed by all applicable road codes.
- 7) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated September 21, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 8) The Applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated August 19, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) The Applicant must comply with the conditions of the MCDOT letter dated June 23, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.

- 10) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 11) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
- 12) 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 as set forth in the Staff Report, 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 Upper Rock Creek Master Plan does not specifically identify the Subject Property but does make general recommendations regarding zoning and land use. The Master Plan recommends that RE-1 zoning be maintained. It also recommends that environmental protection measures be in place to protect the high water quality and unusually sensitive features of the Upper Rock Creek. The Planning Board finds the proposed subdivision substantially conforms with the recommendations adopted in the Master Plan in that low-density residential development is proposed in compliance with the Environmental Guidelines for a Special Protection Area.

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

#### Roads and Transportation Facilities

Proposed lot 1 fronts Granby Road, a secondary residential street requiring 60 feet of right-of-way. As delineated on the Preliminary Plan, the right-of-way is adequate along the frontage of proposed lot 1 and no additional dedication is necessary. Proposed lot 2 fronts Hillside Terrace, also a secondary residential street, which terminates at the Subject Property in a substandard manner and must be extended and properly terminated according to MCDOT requirements. Staff and MCDOT considered whether to terminate Hillside Terrace and construct a cul-de-sac on the Subject Property, but both agencies found that additional development on adjacent properties may be possible, and a cul-de-sac located north of the site will have fewer impacts on the nearby environmental buffers. Sidewalks are not required in the RE-1 zone because pedestrians can safely use the roadway in such a low-density situation. The Planning Board finds proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public and private improvements. The addition of



one new lot generates less than 3 new peak-hour vehicle trips, so the Application is not subject to either Local Area Transportation or Policy Area Mobility reviews.

Other Public Facilities and Services

The two lots will be served by private, standard septic systems and wells. A 10-foot public utility easement has been provided along the frontage of both lots to accommodate any necessary installation of electrical and telecommunication services. The Application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access and provides an easement for the possible construction of a cistern to enhance water supply to the area. Area schools are operating at adequate levels; therefore, the Subject Property is not within a school moratorium area and no facilities payment is required. 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. Gas, electrical and telecommunications services are also available to serve the lots.

- 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, the Subdivision Regulations. The Planning Board finds the Application meets all applicable sections, including the requirements of Section 50-29(b)(2) for resubdivision. The proposed size, width, shape and orientation of the lots are appropriate for the location of the subdivision.

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

The forest conservation plan under consideration shows the removal of 1.34 acres of forest on-site and 0.26 acres off-site for the septic field associated with lot 2. All forest conservation planting requirements will be met on-site. Proposed development on lot 2 affects 8 large trees located on the Property, all of which will be removed, including four trees that are greater than 30" DBH or greater: a 48" fair/poor condition tulip poplar, a 36" tulip poplar in hazard condition, a 42" tulip poplar in poor condition, and a 33" fair condition green ash.

Newly enacted provisions of Natural Resources, Title 5, Section 5-1607 of the Maryland Code require the Applicant to file an application for a variance to remove trees that are 30" DBH and greater or trees that are 75 percent the diameter of the county champion for that species, if a project did not receive approval of a Preliminary Forest Conservation Plan prior to October 1, 2009. Since this project did not obtain approval of

a Preliminary Forest Conservation Plan prior to October 1, 2009 and the Applicant is proposing to remove 4 trees greater than 30" DBH, a variance is required. The Applicant has requested a variance to remove the trees. The County Arborist has elected not to review the variance request, therefore the County Arborist's recommendations for the variance request are presumed to be favorable.

The Planning Board finds as follows:

- a. The requested variance will not confer on the Applicant any special privileges that would be denied to other applicants. Proposed lot 2 is constrained by a wetland buffer, stream valley buffer and required roadway dedication which greatly impacts the building envelope for a new dwelling unit. Three of the four trees 30" DBH or greater that are requested to be removed are located interior to the project site and the remaining tree is located just beyond the right-of-way for Hillside Terrace and near the primary well location for the proposed dwelling unit. The trees range in size from 33" DBH up to 48" DBH but are not champion trees or 75% of the DBH of the state champion tree for that species. Therefore, the Planning Board finds that grant of the variance is not a special privilege that would be denied to other applicants.
- b. The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The variance is based on a site layout for 2 lots where the existing home will maintain its current access from Granby Road and the new home must be accessed from Hillside Terrace at the southern end of the Property to avoid impacts to environmental buffers. Right-of-way dedication through proposed lot 2 is required for Hillside Terrace which places additional limitations on the building envelope for a new dwelling unit on the lot. Achieving goals of public access and protection of environmentally sensitive areas results in limited house locations on the lot which makes removal of these 4 trees unavoidable.
- c. The requested variance is a result of the proposed site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.
- d. The requested variance will not violate State water quality standards or cause measurable degradation in water quality. Under section 22A-16(d) of the Forest Conservation Law "*The Board or Director may treat any forest clearing in a stream buffer, wetland or special protection area as creating a rebuttable presumption that the clearing had an adverse impact*

*on water quality.*" In this case, the trees proposed to be removed are not within environmental buffer areas and a water quality plan has been submitted and approved by MCDPS and Environmental Planning staff; therefore, it is presumed that the removal of these individual trees would not cause any additional degradation to water quality.

In consideration of the above findings, the Planning Board approves the forest conservation plan and the Applicant's request for a variance from the Forest Conservation Law to remove the four trees subject to the newly enacted provisions of Natural Resources, Title 5, Section 5-1607 of the Maryland Code.

- 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.*

A Preliminary/Final Water Quality Plan for the site was approved by the MCDPS Stormwater Management Section on September 21, 2009. The stormwater management concept includes drywells, pervious pavement and rooftop and non-rooftop disconnections for quality control. Control of the channel protection storm is not required because the one-year post development peak discharge is less than 2.0 cubic feet per second. MCDPS does not review limits on imperviousness or stream buffer encroachments.

MCDPS will require the final engineered sediment control plan for this project to limit disturbance as much as possible. Use of a super silt fence will be acceptable for sediment control and the disturbed area is to be permanently stabilized as soon as possible after the initial disturbance.

- 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.*

Size: Lot sizes in the selected Neighborhood range from 61,898 square feet to 300,929.5 square feet, with 7 existing lots being less than 90,000 square feet in size. The proposed lot sizes fall within this range, with lot 1 consisting of 90,115 square feet and lot 2 containing 119,508.4 square feet. **The Planning Board finds the proposed lot sizes are in character with the size of existing lots in the Neighborhood.**



Width: Lot widths at the building line within the Neighborhood range from 126 feet to 361 feet. Proposed lot 1 will be 150 feet wide and proposed lot 2 will be 266 feet wide at the building line. **The Planning Board finds the proposed lots will be in character with existing lots in the Neighborhood with respect to width.**

Frontage: In the 24 lot Neighborhood, lot frontages range from 25 feet to 1,063 feet. Nine lots in the Neighborhood have less than 100 feet of lot frontage and 15 lots have more than 100 feet of linear frontage at the street. Proposed lot 1 will have 150 feet of lot frontage and proposed lot 2 will have 181 feet of lot frontage. **The Planning Board finds the proposed lots will be of the same character as existing lots in the Neighborhood with respect to lot frontage.**

Area: Buildable areas for lots within the 24 lot Neighborhood range from 32,730 square feet to 220,124 square feet. Proposed lot 1 will have 60,547 square feet of buildable area and lot 2 will have 61,068 square feet of buildable area. Nine lots in the Neighborhood have a buildable area less than proposed lot 2 and 13 lots have a buildable area greater than proposed lot 1. **As a result, the Planning Board finds the two lots fall well within the range and will be of the same character as other lots in the Neighborhood with respect to buildable area.**

Alignment: Fourteen lots in the designated Neighborhood are radial in alignment to the street, 7 lots are perpendicular and 3 lots are corner lots. The alignment of both proposed lots to the street will be perpendicular. **The Planning Board finds the proposed lots are of the same character as existing lots in the Neighborhood with respect to the alignment criterion.**

Shape: There are 2 triangular-shaped lots, 3 rectangular lots, 5 trapezoid-shaped lots, 9 irregularly-shaped lots and 5 pipestems in the 24 lot Neighborhood. **The Planning Board finds the shapes of the two proposed lots are both irregular and will, therefore, be in character with shapes of the existing lots in the Neighborhood.**

Suitability for Residential Use: The existing and the proposed lots are zoned residential and the land is suitable for residential use.

7. *The Application satisfies site imperviousness, environmental guidelines and forest conservation requirements for Special Protection Areas (SPAs).*

As part of the requirements of the Special Protection Area law, a preliminary and final water quality plan must be reviewed in conjunction with a Preliminary Plan. The Planning Board's responsibility is to determine if the environmental

guidelines for special protection areas, site imperviousness requirements and forest conservation requirements are satisfied.

The Upper Rock Creek SPA has an eight percent (8%) site imperviousness limit on land development projects. The imperviousness limit is set forth in the Environmental Overlay Zone for the Upper Rock Creek SPA. The site imperviousness limit is only applicable to projects that are connected to a public sewer system. This project is being served by an on-site septic system and, as a result, the impervious cap of 8% does not apply to this development. The SPA forest conservation requirements, as specified in the Planning Board's Environmental Guidelines, are being met through the afforestation of all unforested environmental buffer. The Planning Board finds approval of the preliminary and final water quality plan is warranted because the Application satisfies site imperviousness, environmental guidelines and forest conservation requirements for the Upper Rock Creek SPA.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 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 Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAR 22 2010 (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 Wells-Harley, seconded by



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Commissioner Presley, with Commissioners Hanson, Wells-Harley, Alfandre, and Presley voting in favor of the motion, with a four-member Board, at its regular meeting held on Thursday, February 18, 2010, in Silver Spring, Maryland.

A handwritten signature in black ink, appearing to read "Royce Hanson", written over a horizontal line.

Royce Hanson, Chairman  
Montgomery County Planning Board