

MAR 3 0 2011

M-NCPCC



THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

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Agenda Date: March 10, 2011

## MEMORANDUM

To: Planning Board

From: David Lieb, Associate General Counsel *DL*  
301.495.4646

Date: March 2, 2011

Subject: Oxbridge Development at Batchellors Forest

The attached corrected resolution is provided for the Planning Board to adopt in compliance with an order of the Circuit Court for Montgomery County remanding this matter to the Planning Board for further action consistent with a decision of the Maryland Court of Special Appeals. Because the Board is under a court order to make certain changes to the original resolution, and there are no other substantive changes in this corrected resolution, Board members do not need to review the underlying record to vote to adopt this resolution.

The Board originally approved this preliminary plan on January 11, 2008. Two rounds of appeal ensued, first in the Circuit Court and then in the Court of Special Appeals. The appeal concerned the proper methodology for calculating the number of moderately priced dwelling units required for the Batchellors Forest subdivision. The Court of Special Appeals upheld the Planning Board's decision to require the applicant to build six MPDUs instead of the five the applicant proposed, but required the Board to adopt a slightly modified calculation methodology. This corrected resolution reflects the methodology ordered by the Court of Special Appeals. Please contact me if you wish to see copies of the court orders.



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

**MCPB No. 11-21**  
**Preliminary Plan No. 120060850**  
**Batchellors Forest**  
**Date of Hearing: July 26, 2007**

**MONTGOMERY COUNTY PLANNING BOARD**

**CORRECTED 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 February 21, 2006, Oxbridge Development at Northwest, L.L.C. ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 37 lots on 94 acres of land located on the north and south sides of Batchellors Forest Road, approximately 3,000 feet south of the intersection with Doctor Bird Road ("Property" or "Subject Property"), in the Olney Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120060850, Batchellors Forest ("Preliminary Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated July 13, 2007, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

<sup>1</sup> This Resolution is adopted in compliance with the April 7, 2010 decision of the Maryland Court of Special Appeals in *Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission v. Oxbridge Development at Batchellors Forest LC*, Case No. 2702, September Term 2008, and the September 22, 2010 order of the Circuit Court for Montgomery County in *Oxbridge Development at Batchellors Forest v. Montgomery County Planning Board*, Case No. 292245-V remanding this matter to the Planning Board for further action consistent with the Court of Special Appeals's decision.

  
Approved for legal sufficiency  
M-NCPPC Office of General Counsel

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staffs of other governmental agencies, on July 26, 2007, 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 July 26, 2007, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Lynch; seconded by Commissioner Cryor; with a vote of 3-1, Commissioners Cryor, Hanson, and Lynch voting in favor, Commissioner Bryant voting against, and Commissioner Robinson absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120060850 to create 37 lots on 94 acres of land located on the north and south sides of Batchellors Forest Road, approximately 3,000 feet south of the intersection with Doctor Bird Road ("Property" or "Subject Property"), in the Olney Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Limit future development on the Property to a maximum of 37 single-family units, including 15% moderately priced dwelling units (MPDUs).
- 2) The proposed development must comply with the conditions of the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits. Conditions include, but are not limited to:
  - a. Approval of final forest conservation plan consistent with the approved preliminary forest conservation plan.
  - b. Split rail fencing and permanent forest conservation signage are required along the easement line that adjoins residential lots and must be shown on the final Forest Conservation Plan.
- 3) The record plat must reflect a Category I conservation easement over all areas of environmental buffer and forest conservation as shown on the preliminary forest conservation plan
- 4) The Applicant must make payments equal to 50% of the applicable transportation impact tax for the area (consistent with the 2003-2005 Annual Growth Policy (AGP) – Policy Element, Section TLI ) to the Montgomery County Department of Permitting Services (DPS), concurrent with the release of the initial building permits for the proposed dwellings, to mitigate traffic impact related to the subject development at the Georgia Avenue (MD 97)/Emory Lane and Norwood Road/Layhill Road/Ednor Road intersections.

- 5) The Applicant must dedicate to M-NCPPC the approximately 17.4 acre portion of the Subject Property that lies east of Batchellors Forest Road and identified as "Parcel A" for use as a local park per the Olney Master Plan. The land must be conveyed by the time of record plat and must be free of any trash and unnatural debris
- 6) The Applicant must dedicate all road rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan unless otherwise designated on the Preliminary Plan.
- 7) The Applicant must construct all road rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By \_\_\_\_\_" are excluded from this condition.
- 8) At the time of site plan, the Applicant must show alignment of a pedestrian connection from the terminus of Old Vic Boulevard at Batchellors Forest Road to the existing sidewalk on the Farquhar Middle School site per letter dated May 8, 2006, from Montgomery County Public Schools (MCPS).
- 9) The Applicant must construct and install all Montgomery County Department of Public Works and Transportation (MCDPWT) and MCPS required site frontage roadway improvements along Old Vic Boulevard, Batchellors Forest Road, "Street A", and "Street B", including street trees, prior to the release of a building permit for the 22<sup>nd</sup> single-family unit.
- 10) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 11) The record Plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management areas.
- 12) The record plat must have the following note: "The land contained hereon is within an approved cluster development and subdivision or resubdivision is not permitted after the Property is developed."
- 13) The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). The Applicant must provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
- 14) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated July 2, 2007.
- 15) The Applicant must comply with the conditions of MCDPWT approval letter dated May 4, 2006, unless otherwise amended.
- 16) No clearing, grading or recording of plats prior to certified site plan approval.
- 17) The final approval of the number and location of dwelling units, sidewalks, and bike paths will be determined at site plan. The Final number of MPDUs as per condition #1 above will be determined at the time of site plan in accordance with the actual number of units approved.
- 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 opinion.

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 2005 Olney Master Plan has general recommendations about properties in the Southeast Quadrant as well as specific recommendations for the Subject Property. On page 23, among other general recommendations for the Southeast Quadrant, it states:

Preserve open space, streams, significant forests, and the low-density character of the Southeast Quadrant through cluster development, on community sewer where appropriate.

Determine the exact amount and configuration of open space to be preserved on each property at the subdivision stage.

Protect the rustic road character of Batchellors Forest Road by using topography, clustering of houses away from the road, and landscaping to preclude, or minimize, the visibility of new developments from Batchellors Forest Road.

The Master Plan has the following design guidelines for all properties recommended for the RNC Zone in the Southeast Quadrant (including the Subject Property):

1. Cluster new houses away from sensitive areas.
2. Minimize the fragmentation of forest by preserving contiguous forest areas covering more than one property.
3. Minimize new driveway entrances on Batchellors Forest Road to preserve its rustic character.
4. Design connections of new access roads to Batchellors Forest Road to be respectful of the rustic character of the road.
5. For properties along Georgia Avenue, provide a green buffer of at least 100 feet, outside the Master Plan right-of-way, to screen views of houses from the road.
6. Preserve exceptional vistas of open fields on larger properties from Batchellors Forest Road, especially on the Casey, Hyde and Polinger

properties by clustering homes in such a way that they are not visible from the road. If that is not feasible, use landscaping techniques to screen houses from the road.

The Property is designated as #3 in the Land Use Section of the Master Plan and has the following specific recommendations on page 28:

The 17.4-acre portion of the Property, located on the east side of Batchellors Forest Road is appropriate for ball fields and possibly other active recreation. Permitted density from the 17.4-acre portion should be located on the larger portion of the Property on the west side of Batchellors Forest Road and the 17.4-acre portion should be designated as rural open space under RNC Zone and dedicated as parkland for active recreation purposes. Houses should be clustered away from Batchellors Forest Road to preserve the views of open fields along the existing road. Preservation of the rustic character of Batchellors Forest Road and the existing vistas from this road should be explored at the time of subdivision through careful placement of housing clusters in appropriate locations to minimize their visibility from Batchellors Forest Road and other techniques.

The western portion of the site is recommended to contain a realigned Old Vic Boulevard Extended so that the new road will terminate at Batchellors Forest Road opposite one of the Farquhar Middle School entrances. The right-of-way of the proposed alignment should be dedicated at the time of the subdivision.

The proposal protects the environmentally sensitive portions of the Property by minimizing impacts to the stream valley buffers and placing them in a Category I easement. Contiguous forest is protected within the stream buffers. The plan responds to the need to protect Batchellors Forest Road by minimizing curb cuts and striving to preserve the viewsheds that the Master Plan calls for. Site Plan review will attempt to further minimize the visual impact of the development. The 17.4-acre portion of the Property is to be dedicated to MNCPPC for park purposes. The Planning Board finds, therefore, that the proposed subdivision accomplishes all of the Master Plan's goals and recommendations for this Property.

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

A traffic study was required for the subject Preliminary Plan in accordance with the Local Area Transportation Review (LATR) Guidelines since the

development, with 32 new one-family dwelling units and five townhouse units, was estimated to generate 30 or more peak-hour trips during the typical weekday morning (6:30 a.m. - 9:30 a.m.) and evening (4:00 p.m. - 7:00 p.m.) peak-periods.

The Applicant submitted a traffic study (dated May 2007) that presented traffic-related impacts of the development within the study area during weekday morning and evening peak-periods. Staff review of the traffic study indicated that the study complied with the requirements of the LATR Guidelines and the traffic study scope provided to the Applicant by staff.

The traffic study estimated that the site would generate approximately 32 peak-hour trips during the weekday morning peak period and 40 peak-hour trips during the weekday evening peak period.

Under background traffic conditions, CLV at the Norwood Road/Layhill Road/Ednor Road and Georgia Avenue/Emory Lane intersections exceed the congestion standard for Olney Policy Area (1,475 CLV) during the morning and evening peak-hours, respectively. Under total (build) traffic conditions, site traffic increases CLV at these two intersections by three and four, respectively, thereby impacting the intersections.

Because CLV for the Norwood Road/Layhill Road/Ednor Road and Georgia Avenue/Emory Lane intersections exceeded the congestion standard for the Olney Policy Area (1,475 CLV) under background traffic conditions, the Applicant is required to mitigate site traffic impact to at or below the background traffic condition CLV. However, as a development that would generate between 30 and 49 peak-hour trips during the typical weekday morning and evening peak periods, the Applicant is eligible for the "Limited LATR" review, as provided for in the FY 05 AGP. Under this provision, the Planning Board must require the Applicant either to implement/construct all required LATR mitigation improvements or to make additional payments equal to 50% of the applicable transportation impact tax, before the subdivision receives any building permit.

The Applicant has expressed interest in paying the additional transportation impact tax in-lieu of physical improvements to mitigate the development's impact. The Planning Board supports this request since the proposed development will have minimal impact at the affected intersections (less than 5 CLV), one of which (Georgia Avenue and Emory Lane) already has a planned privately funded mitigation improvement. The Planning Board, therefore, determines that the Applicant must pay the additional transportation impact tax and satisfy the LATR requirements of the APF test.

The Planning Board finds that other public facilities and services are available and will be adequate to serve the proposed units. The Property will be served by public water and sewage systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services are currently operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. 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.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. Access and public facilities will be adequate to support the proposed lots and uses. The size, width, shape and orientation of the proposed lots are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the RNC zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

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

There are 19.42 acres of existing forest included in the seven distinctive forest stands on the subject site. Tulip trees dominate three of the stands, maple trees dominate two stands, and the remaining two stands have mixed forests. The approved NRI/FSD indicates 74 trees that are 24 inches in diameter and greater on the Subject Property, including 40 trees that are 30 inches in diameter and greater.

Because the Preliminary Plan proposes an optional method of development, it must comply with Section 22A-12(f) of the Montgomery County code. This section of the code states that “[a]ny site developed under a cluster or other optional method of development in a one-family residential zone...must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement.” The Property is zoned Rural Neighborhood Cluster (RNC) which includes a single-family residential component; therefore, this section of the forest conservation law is applicable. Also, since there is more



existing forest onsite than the afforestation threshold, the Applicant must reforest to meet the conservation threshold on-site. This requires that 25 percent of the net tract area, 22.97 acres, be in forest either as retained forest or planted forest.

The forest conservation plan submitted by the Applicant indicates that 2.08 acres of forest will be removed. This generates a 4.16-acre planting requirement. But in order to meet Section 22A-12(f) of the Forest Conservation law the Applicant needs to plant an additional 1.47 acres of forest. The plan submitted by the Applicant indicates that 17.34 acres of forest will be retained and 8.7 acres of forest will be planted for a total of 26.04 acres of forest. The amount of forest proposed for retention and planting exceeds the 25 percent requirement under Section 22A-12(f), and, therefore, the forest conservation plan submitted complies with this section 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 July 2, 2007. The stormwater management concept includes on-site channel protection measures via construction of three detention facilities, on-site water quality control via construction of six sand filters, and on-site recharge via open section roadway swales and other nonstructural measures such as rooftop disconnection.

6. *The requested waiver of maximum cul-de-sac length is granted.*

Section 50-26(d) of the Subdivision Regulations limits the use of cul-de-sacs in new subdivisions unless their use results in an improved street layout because of the unusual shape, size or topography of the subdivision. The section also limits the maximum length of a cul-de-sac to 500 feet, unless the Planning Board finds that a greater length is justified because of shape, size, topography, large lot size, or improved street alignments.

For the subject Application, the existence of the mainstem of the Northwest Branch on the western edge of the Property justifies using a cul-de-sac in that location to provide access for proposed Lots 16 through 27. Properties immediately abutting the Subject Property in that location have already been subdivided and have no need for additional road access. Crossing the stream with a through-road would be both unnecessary and environmentally damaging. Connecting the cul-de-sac to Old Vic Boulevard was investigated,

however, this would not be possible without paving within the stream valley buffer, and the language in the Master Plan places a premium on preservation of forest and open space.

The Planning Board determines that development located in this portion of the site is best served by the road alignments as proposed. The Planning Board finds that the length of the cul-de-sac is essential to reach the developable portions of the Property and give all lots frontage on a public right-of-way; a trail connection will provide pedestrian access between the two developable areas of the Property.

7. *With the approval of 37 lots and 15% MPDUs, the required number of MPDUs is six units, not the five proposed by the Applicant.*<sup>2</sup>

The Applicant proposes to create 37 lots for 37 dwelling units. The base density for the subject property is 31 units. But by providing 15% MPDUs, the Applicant achieves a total density bonus of six units, for a total of 37 units.

The Applicant correctly calculates the number of MPDUs required under Section 25A-5(c) as six, but proposes to reduce the number to five based on the provisions of Section 25A-5(d)(2) of the Montgomery County Code, which states:

If the Planning Board approves a density bonus of at least 20 percent for a development which consists of 20 or more but fewer than 50 units at one location, the number of MPDUs required must be governed by subsection (c) unless the formula in subsection (c) would not allow the development to have one bonus market rate unit. In that case, the Planning Board must reduce the required number of MPDUs by one unit and approve an additional market rate unit.

Citing Section 25A-5(d)(2), the Applicant argues that one of the six MPDUs required in this case should be converted to a market-rate unit. In support of this proposal, the Applicant argues that unless the number of required MPDUs is reduced by one and the number of market-rate units permitted is increased by one, no bonus market-rate unit is achieved. The Applicant bases this argument on a comparison of the number of market-rate units that may be built after the bonus density calculations are performed (31 units), and the underlying base density permitted for the project (31 units). The Applicant asserts

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<sup>2</sup> This resolution adopts the calculation methodology mandated by the Maryland Court of Special Appeals in *Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission v. Oxbridge Development at Batchellors Forest LC*, Case No. 2702, September Term 2008.

that the Board should therefore reduce the required number of MPDUs from six to five, permitting the development of a total of 32 market-rate units and five MPDUs.

The correct allocation in this case is 31 market-rate and six moderately-priced units. Section 25A-5(d)(2) requires the Board to convert one MPDU to a market-rate unit only where the applicant achieves a bonus density of 20-22% but does not receive at least one bonus market-rate unit. As explained by the Maryland Court of Special Appeals in *Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission v. Oxbridge Development at Batchellors Forest LC*, Case No. 2702, September Term 2008, this percentage is calculated by dividing the actual number of bonus units allowed under Section 25A-5(c) (in this case, six) by the base density (in this case, 31). This calculation yields an achieved bonus density of 19.4%, less than 20-22% achieved bonus density that triggers application of the conversion provision of Section 25A-5(d)(2).

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 MAR 30 2011 (which is the date that this Resolution is mailed to all parties of record).

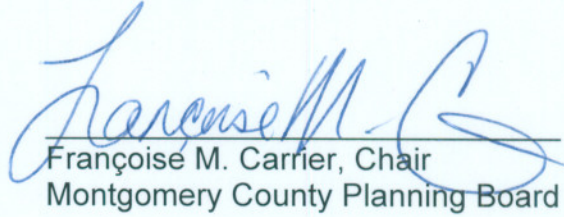
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#### CERTIFICATION

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 Vice Chair Wells-Harley, seconded by Commissioner Alfandre, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre and Dreyfuss voting in favor of the motion, and with

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Batchellors Forest  
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Commissioner Presley absent, at its regular meeting held on Thursday, March 10, 2011,  
in Silver Spring, Maryland.



Françoise M. Carrier, Chair  
Montgomery County Planning Board

Dave Williams  
Norwood Village Homeowners Assn.  
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Adjacent and Confronting Property Owners  
Batchellors Forest  
MHG Project No. 2005-119  
Feb 2006  
AP01.PPOS.MJW

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2700 Covered Wagon Way  
Olney, MD 20832

Lot 19, Blk B, Norbeck Village

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Parcel 240

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Lot 5, Benson Estates

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Parcel 907, Parcel 852

George Howard  
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Parcel 452

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