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

MCPB No. 11-78
Preliminary Plan No. 120110120
Bowie Mill Property
Date of Hearing: September 15, 2011

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 January 20, 2011, Bowie Mill Road, L.L.C. ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 114 lots on 32.74 acres of land in the PD-3 zone located at 18241 Bowie Mill Road, on the south side of Bowie Mill Road opposite the intersection with Thornhurst 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. 120110120, Bowie Mill Property ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, 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 September 15, 2011, 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 September 15, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Wells-Harley; with a vote of 5-0, Commissioners Anderson, Carrier, Dreyfuss, 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 hereby approves Preliminary Plan No. 120110120 to create 114 lots on the Subject Property,

Approved as to
Legal Sufficiency:

8787 Georgia Avenue

Christina Sorrento 1/4/12

MNCPPC Legal Department

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subject to the following conditions:

1. Total development is limited to 114 residential units for 57 one-family detached and 57 one-family attached units as shown on the Preliminary Plan.
2. To mitigate 7 peak-hour trips for Policy Area Mobility Review (PAMR), construct the following 5-foot wide, off-site sidewalks within the existing public right-of-way:
 - a) On the north side of Bowie Mill Road from Brightwood Road to Wickham Drive (1,100 feet).
 - b) On the south side of Bowie Mill Road from the easternmost Property line to Daly Manor Place (285 feet).These sidewalks are in addition to the 5-foot wide sidewalk required to be constructed by the Applicant along the Property's frontage within the Bowie Mill Road right-of-way. The construction of sidewalks must be complete and open to pedestrian use prior to obtaining the 58th building permit.
3. To mitigate the remaining 4 peak-hour trips for Policy Area Mobility Review (PAMR), make a lump sum payment of \$45,200.00 prior to obtaining the first building permit.
4. Comply with the conditions of approval of the Final Forest Conservation Plan prior to recording of plat(s) or Montgomery County Department of Permitting Services ("MCDPS") issuance of sediment and erosion control permits, as applicable. Conditions include but are not limited to:
 - a) No clearing or grading prior to Staff approval of the financial instrument securing all obligations under the forest conservation plan.
 - b) No clearing or grading prior to recordation by plat of all easements shown on the forest conservation plan.
 - c) The limits of disturbance shown on the final Sediment Control Plan must be consistent with the limits of disturbance shown on the Final Forest Conservation Plan.
 - d) The record plat(s) must show a Category I conservation easement over all areas of forest retention, forest planting, and environmental buffers that lie outside a public road right-of-way or a WSSC easement.
 - e) Forest planting that exceeds the planting requirement as determined in the Final Forest Conservation Plan Worksheet may be used for forest banking.
 - f) Any approved forest banking area must be planted concurrently with the planting required by the approved Final Forest Conservation Plan.
 - g) Permanent Category I Forest Conservation Easement signs must be placed along the perimeter of the conservation easement area.
5. Dedicate all road rights-of-way as shown on the approved Preliminary Plan.
6. Construct all road improvements within the 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.
7. Comply with the conditions of the MCDPS stormwater management approval dated June 28, 2011. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.

8. Comply with the conditions of the Montgomery County Department of Transportation (“MCDOT”) letter dated June 17, 2011. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. Satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
10. No plats may be recorded prior to certification of the site plan.
11. Final approval of the number and location of buildings, on-site parking, site circulation, and sidewalks will be determined at site plan.
12. The record plat must show necessary easements.
13. The certified Preliminary Plan must contain the following note: “Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures, and hardscape will be determined at the time of site plan review. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), 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 Olney Master Plan.*

The Preliminary Plan substantially conforms to the recommendations in the 2005 Olney Master Plan. The Master Plan makes specific recommendations for this Property on pages 37 and 38. The Master Plan recommends that the Property, which has been publicly owned, be used for affordable housing in a design compatible with the existing residential communities that surround it. It proposes a floating, Planned Development Zone (PD-3) for the Property, with a density of three units per acre. The Master Plan also lists five objectives to be met in order to achieve the full yield allowed in the PD-3 Zone:

- 1) At least half the units are affordable
- 2) The development’s design preserves environmental resources that comprise a significant portion of the 32-acre property
- 3) The density proposed does not have a negative impact on “the area’s already strained public facilities”

- 4) Lot sizes and housing types are compatible with adjacent neighborhoods
- 5) There is no commercial development proposed

The Preliminary Plan meets these five objectives with the following:

- 1) Sixty percent of the units proposed are moderately priced dwelling units or workforce housing units.
- 2) The proposed development preserves as open space, a substantial area along a small tributary of the North Branch of Upper Rock Creek, providing, along with other open play areas, 45 percent of the property as open space.
- 3) The proposed density is less than the allowed maximum for the zone and, under the applicable Subdivision Staging Policy standard, public facilities are adequate.
- 4) The project has been designed with attached units away from existing communities and detached units along the property edges, where it abuts existing houses, to provide compatibility with existing neighborhoods.
- 5) No commercial uses are proposed.

The Master Plan also recommends that open space with active recreation be included in any development of the Property and that any newly created open space be accessible to the adjoining communities. In addition to meeting each of the five objectives enumerated above, the Preliminary Plan provides several areas for formal or informal active recreation and paths that traverse the preserved open space, adhering to the Master Plan's recommendations for these amenities. Finally, a path connects the proposed development to the existing community to the east and south, offering access to the preserved open space and its pedestrian paths.

The Planning Board finds that the Preliminary Plan is in substantial conformance with the Olney Master Plan.

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

Roads and Transportation Facilities – The Planning Board evaluated the roadway network laid out in the Staff Report after evaluation by Staff, staff of MCDOT and the Montgomery County Department of Fire and Rescue Services (MCFRS). The road network provides an efficient, continuous loop of traffic with no public cul-de-sacs. Sidewalks are provided along all public streets for adequate pedestrian access.

The internal private streets are designed to function as public streets; all have adequate turnarounds at their terminus. The private street system will be constructed to meet tertiary road construction standards and the standards of MCFRS, which mandates that their heaviest rescue vehicles can safely use all paved road surfaces. The Planning Board finds that the road and transportation facilities will be adequate to serve the proposed lots.

Local Area Transportation Review (LATR) - Five intersections were identified as critical intersections affected by the proposed development and were examined in a traffic study to determine whether they would be able to meet the applicable congestion standards. The congestion standards for the Olney Policy Area and the Rural East Policy Area are 1,450 and 1,350 Critical Lane Volumes (CLV), respectively.

The result of the CLV analysis indicates that all analyzed intersections are currently operating within acceptable congestion standards for the background and will be acceptable under total future development conditions. Therefore, the Planning Board finds that the Preliminary Plan meets the LATR requirements of the Adequate Public Facilities (APF) review.

Policy Area Mobility Review (PAMR) - The site is located within the Olney Policy Area where there is a 10% PAMR trip mitigation requirement according to the County's Subdivision Staging Policy. The Applicant proposes to construct 1,385 feet of 5-foot wide off-site sidewalks to mitigate seven of the eleven peak-hour trips and make a lump sum payment of \$45,200.00 to mitigate the remaining four peak-hour trips which represents 10% of new trips generated by the proposed development. The Planning Board finds that the Preliminary Plan meets the PAMR requirements of the APF review.

Other Public Facilities – The Property will be served by public water and sewer systems and there are no conveyance or treatment limitations identified by the Washington Suburban Sanitary Commission. The Application has been reviewed by MCFRS which has determined that the street system provides appropriate access for fire and rescue vehicles. Electrical and telecommunications services are also available and adequate to serve the Property. Local health clinics, police stations and fire stations are all operating within acceptable levels as established by the Subdivision Staging Policy. The Property is located in the Sherwood High School cluster. Sherwood High School, and all middle and

elementary schools within this cluster are operating at acceptable capacities; therefore, no school facilities payment is required. The Planning Board finds that all public facilities and services are adequate to serve the Preliminary Plan.

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

The Staff Report evaluated the Application for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The Board considered the size, width, shape and orientation of the lots and finds that they are appropriate for the location of the subdivision, given the specific recommendations of the Olney Master Plan and because of the attention afforded to the perimeter lots during the review of the Development Plan.

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

A Preliminary Forest Conservation Plan was approved by the Planning Board on June 23, 2010, with the review of the Zoning Application No. G-588 for this Property. The Planning Board also approved a required Tree Variance with that approval. In the review of the Preliminary Forest Conservation Plan, the Planning Board considered Section 22A-12(f)(2)(B) of the Forest Conservation Law as it applies to properties that are developed under the PD-3 zone. This section of the law states:

In a planned development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a)...

In a case where the Planning Board finds that the required on-site forest retention cannot be provided and is justified, Section 22A-12(f)(3) allows for the combination of on-site forest retention and forest planting to be maximized.

If the Planning Board or Planning Director, as appropriate, finds that forest retention required in this subsection is not possible, the Applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping.

For this Application, the Planning Board finds that the required forest retention is not possible and therefore Section 22A-12(f)(3) applies to the Preliminary Plan. The Preliminary Forest Conservation Plan was approved with this finding and the Final Forest Conservation Plan submitted with the Preliminary Plan comports with the approved Preliminary Forest Conservation Plan. The Applicant may clear 0.85 acres of forest for roads and other infrastructure but must retain 5.94 acres of forest and plant 1.31 acres to meet the requirements under Section 22A-12(f)(3) and as approved by the Preliminary Forest Conservation Plan. The Applicant proposes to plant additional areas of unforested buffer above the requirements of the forest conservation worksheet which can be used as a forest mitigation bank.

The Planning Board finds that the Final Forest Conservation Plan is consistent with the approved Preliminary Forest Conservation Plan. With the conditions enumerated above regarding the Final Forest Conservation Plan, the Application complies with Chapter 22A of the Montgomery County Code.

5. *The Planning Board finds that 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 MCDPS that the Stormwater Management Concept Plan meets MCDPS standards. A stormwater management concept dated June 28, 2011 was approved in accordance with Chapter 19 of the Montgomery County Code.

6. *The Application complies with the District Council approval for Zoning Application No. G-588 including the specifications and requirement of the approved Development Plan.*

The Planning Board finds that the Preliminary Plan complies with the Binding Elements of the approved Development Plan for Zoning Application No. G-588. This finding is based, in part, on the review of the layout of the Preliminary Plan which was substantially unchanged from that shown on the Development Plan. The Binding Elements are as follows:

BINDING ELEMENTS	
CATEGORY	BINDING ELEMENT
Density	There will be not more than 114 dwelling units constructed on the subject property.
Unit Affordability	At least one-half of the units to be constructed will be deemed affordable under the County's moderate priced dwelling unit and/or work force housing programs.
Screening	Landscape screening at the rear of proposed Lots 1 through 4, Block A, and along the east side of proposed Street A (behind existing Lots 16-19, Block E, OLNEY SQUARE subdivision), will be provided. Details of such plantings (e.g., quantity, species, caliper, and spacing) shall be determined at the time of site plan review.
Unit Type	No dwelling units commonly known as "two over twos" will be permitted.
Lot Use / Lot Size	The dwelling units to be located on the perimeter of the subject site abutting single family detached homes on Darnell Drive and Daly Manor Place will all be single family detached units and the lot sizes will be approximately the same size as shown on the Development Plan. There may be open play area on the southern property line abutting existing Darnell Drive homes.

The Planning Board reviewed the Preliminary Plan for compliance with each of the five Binding Elements. The Board finds compliance with each as follows:

Density – Condition #1 of the Preliminary Plan approval restricts development to a maximum of 114 dwelling units.

Unit Affordability - The Preliminary Plan provided lots to accommodate the appropriate lot mix to accommodate the unit types that would be designated Market Rate, MPDU, or workforce housing. The final number (percentage) of affordable units and their location was appropriately established with the site plan.

Screening - An area along the rear of Lots 1-4, Block A, and Lots 16-19, Block E was shown to be available on the Preliminary Plan for landscape

screening. A landscape plan showing the actual plant types was reviewed with the site plan application for this project.

Unit Type - The Preliminary Plan did not approve any lots to accommodate "two over two's".

Lot Use/Lot Size - All lots on the perimeter of the Property that abut the one family lots on Darnell Drive are shown to be for one family homes only on the Preliminary Plan. Further, those lots are substantially identical to those shown on the Development Plan in size and width and are approximately the same size as the abutting lots. An open space play area is shown along the southern boundary, behind existing homes on Darnell Drive.

7. *The Planning Board finds that a waiver of Section 50-29(a)(2) of the Subdivision Regulations pursuant to Section 50-38(a) is appropriate.*

The Planning Board considered the Staff Report and the Staff presentation which discussed Section 50-29(a)(2) of the Subdivision Regulations. This section is applied to one family detached lots and it allows the Board to approve (without waiver) not more than 2 lots without frontage on a shared driveway. The design of this subdivision resulted in one lot (Lot 11, Block B) that had no frontage and by necessity, had to share access with four other townhouse lots, all on a private drive. Because this exceeds the limit of "no more than two lots on a shared driveway" imposed by Section 50-29(a)(2), Lot 11 could not satisfy this section. Therefore, the Applicant requested a waiver of this section.

Section 50-38(a) authorizes the Planning Board to waive any part of the Subdivision Regulations based upon a finding that practical difficulties or unusual circumstances exist which prevent full compliance with the requirements. The Board must find in granting a waiver that it is the minimum needed to provide relief from the requirement, that it is not contrary to the recommendations of the General Plan, and that it is not adverse to the public interest.

The Preliminary Plan reflects the general layout and road network that was reviewed by the Planning Board and the District Council as part of the Development Plan approved with the rezoning of the Property. While the Development Plan did show a pipestem for Lot 11, Block B that would provide adequate frontage, for reasons of design and harmonious development, the Applicant has removed the pipestem from the Preliminary Plan because it

conflicted with a stormwater management feature that is now required to be in the same location as the pipestem. Staff and the Applicant reviewed alternatives to provide a pipestem for this lot, but all alternatives resulted in some type of public feature on the pipestem, i.e., stormwater, community open space or a private driveway. The Board agreed with Staff's conclusion that placing public features on private property should generally be avoided and if re-design is not possible, a waiver is an appropriate solution due to the practical difficulties of providing a pipestem for the lot.

In support of the waiver, MCFRS determined that they can access the home using the private drive as could all other utility and public service vehicles. There will be a public access easement on all of the private streets and drives which will assure perpetual access for all homeowners, including those of the subject lot.

The Planning Board concluded that practical difficulties exist that necessitate a waiver for Lot 11. Further, the Planning Board concluded that the waiver is the minimum needed to provide relief from the restrictions imposed by Section 50-29(a)(2); that it is not contrary to the purposes and objectives of the General Plan, and it is not adverse to the public interest. Therefore, the Planning Board granted the waiver of Section 50-29(a)(2) for lot 11.

BE IT FURTHER RESOLVED, that for the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successor(s) in interest to the terms of this approval; and

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 JAN 19 2012 (which is the date that this Resolution is mailed to all parties of record); and

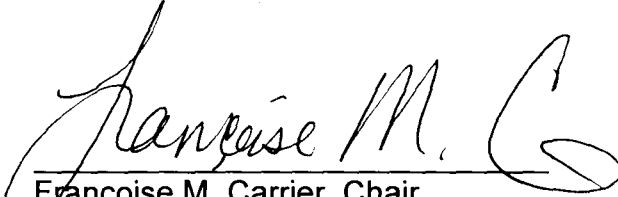
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor of the motion, and with Commissioner Presley abstaining, at its regular meeting held on Thursday, January 12, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board