



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

MCPB No. 13-94  
Preliminary Plan No. 120100100  
Little Bennett Creek  
Date of Hearing: June 20, 2013

JAN 27 2014

**RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on November 17, 2009, Friend Indeed LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create two lots on 13.23 acres of land in the RNC/TDR zone, located approximately 1,000 feet south of the intersection of Kings valley Road and Mountain View Road ("Subject Property"), in the Damascus Policy Area, Damascus master plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100100, Little Bennett Creek ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated June 7, 2013, setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on June 20, 2013, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Vice-Chair Wells-Harley, by a vote of 5-0, Commissioners Carrier, Dreyfuss, Anderson, Presley and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120100100 to create two lots on the Subject Property, subject to

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Approved as to  
Legal Sufficiency

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the following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to two lots for two dwelling units.
2. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. 120100100, approved as part of this Preliminary Plan, subject to:
  - a. Relocate 0.29 acre planting area adjacent to the existing forest on the Open Space Parcel to enlarge the existing forest stand.
3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated January 29, 2013, and hereby incorporates them as conditions of this approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of this approval.
4. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements required by MCDOT.
5. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated February 12, 2010, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. The Planning Board has accepted the recommendations of the MCDPS – Well & Septic Section letter dated January 21, 2010, and hereby incorporates them as conditions of this approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well & Septic Section provided that the amendments do not conflict with other conditions of this approval.

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<sup>1</sup> 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.

7. 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 issuance of building permits. 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.

8. The Applicant must dedicate and show on the record plat(s) the following dedication:

- a. Forty two (42) feet from the existing pavement centerline along the Subject Property frontage for Kings Valley Road.

9. The record plat must show necessary easements.

10. A Rural Open Space Easement must be recorded in the Montgomery County Land Records for the 7.82 acre area designated as Rural Open Space (Open Space Parcel, as shown on the Preliminary Plan). Reference to the recorded easement is to be noted on the record plat(s).

11. The Applicant must dedicate to M-NCPPC the 7.82-acre portion of the Subject Property identified as "Open Space Parcel" on the approved Preliminary Plan for use as a conservation park per the Damascus Master Plan. The land must be dedicated to the Commission through notation on the plat and by conveyance at the time of record plat in a form of deed approved by the Office of General Counsel. At the time of conveyance, the property must be free of any trash and unnatural debris.

12. The Adequate Public Facilities review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.

BE IT FURTHER RESOLVED, that, having considered 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 Planning Board FINDS, with the conditions of approval, that:

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

The Subject Property is part of the Kingstead/Leishear Properties in the Master Plan. The Master Plan sets forth multiple goals that this Application achieves, including protecting open rural vistas, clustering development in open areas to preserve tree cover, designing lots to avoid back yards along Kings Valley Road, dedicating parkland in the headwaters of Little Bennett Creek, and providing sidewalk connections to amenities and trails. The Preliminary Plan protects open vistas and existing forest by establishing 7.82 acres of dedication to Parks and retaining or planting a total of 3.31 acres of forest. The lot orientation also allows the fronts of houses to face Kings Valley Road.

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

Transportation

The vehicle and pedestrian access for this Application will be safe and adequate as approved on the Plan. The lots generate 30 or fewer vehicle trips during the morning or evening peak-hours; therefore, the Application is not subject to Local Area Transportation Review. The Property is located within the Damascus Policy Area for the Transportation Policy Area Review, and the adequacy analysis for 2013 shows both transit and roadway tests are adequate, and require no payments. The right-of-way required by MCDOT for Kings Valley Road is 84 feet, and the Preliminary Plan provides 42 feet of dedication along its frontage.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lots. The Subject Property is located in the W-6/S-6 water and sewer service categories, and will use on-site well and septic. The MCDPS – Well and Septic reviewed the Application and issued a letter of approval on January 21, 2010. The Montgomery County Fire Marshal's office reviewed and approved the application. Other utilities, public facilities, and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The Application is located in the Damascus school cluster, which is not identified as a school moratorium area, and is not subject to a School Facilities Payment.

*3. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included*

*in the applicable master plan, and for the type of development or use contemplated.*

This Application has been reviewed for compliance with the Subdivision Regulations, and meets all applicable sections. The lot size, width, shape and orientation are appropriate for the location of the subdivision within the Master Plan.

The lots were reviewed for compliance with the dimensional requirements for the RNC/TDR zone as specified in the Zoning Ordinance. The lots meet all the dimensional requirements for area, frontage, width, and open space, and future dwellings can meet the setbacks required in that zone. A summary of this review is included in attached Table 1. The Application has been reviewed by other applicable county agencies, all of whom recommended approval.

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

A. Forest Conservation

As conditioned, the Forest Conservation Plan (FCP) complies with the requirements of the Forest Conservation Law.

The FCP (Attachment B) proposes no forest clearing and 3.02 acres forest retention. There is a 0.29 acre planting requirement. Section 22A-12(f) of the County code requires all agricultural and resource areas to have 25 percent of the net tract area in forest. Since the forest is less than 25% of the net tract, the Applicant must plant forest to achieve the requirement.

The Applicant proposes to meet the planting requirement on-site within the unforested portion of the stream buffer on the northwestern corner of the property. Unforested stream buffers are the highest priority for on-site planting. However in this case with the entire area being dedicated to M-NCPPC Parks and the small amount of planting required a small isolated pocket of forest would be created. Therefore, the 0.29 acre planting requirement must be moved so that it is located adjacent to the existing onsite forest onsite.

5. *All storm water management requirements shall be met as provided in Chapter 19, article II, title "storm water management", Section 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The MCDPS Stormwater Management Section accepted a stormwater management concept for the Application on February 12, 2010. The stormwater management concept consists on on-site water quality control and onsite recharge through the use of environmental site design techniques.

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)), 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 in the Montgomery County Land Records, or a request for an extension must be filed; and

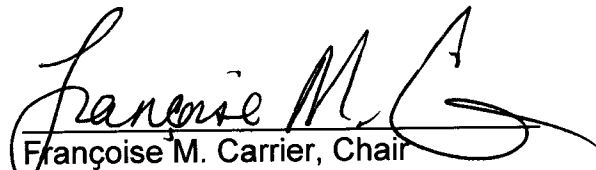
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JAN 27 2014 (which is the date that this Resolution is mailed to all parties of record); and

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 Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, June 20, 2013, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board