



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

**NOV 5 2013**

MCPB No. 13-155  
 Pre-Preliminary Plan No. 720130100  
 Pleasant Plains, Lot 4  
 Date of Hearing: Oct. 31, 2013

**RESOLUTION**

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

WHEREAS, on June 24, 2013, Deborah Leafy ("Applicant"), filed an application for approval of a pre-preliminary plan of subdivision of property using the minor subdivision process outlined in Section 50-35A(a)(8) of the Subdivision Regulations that would create one lot on 15.09 acres of land in the Rural Density Transfer ("RDT") Zone, located at 7209 Hawkins Creamery Road, 1,150 feet west of Olney-Laytonsville Road (MD 108) ("Subject Property"), in the Goshen Policy Area, Damascus Master Plan ("Master Plan") area; and

WHEREAS, Applicant's pre-preliminary plan application was designated Pre-Preliminary Plan No. 720130100, Pleasant Plains, Lot 4 ("Pre-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 October 18, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 31, 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, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Pre-Preliminary Plan No. 720130100 to create one lot on the Subject Property, subject

Approved as to  
 Legal Sufficiency:

*Christina Sonnet* 11/4/13

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

1. Approval under this Pre-Preliminary Plan is limited to one lot for one detached dwelling unit.
2. The certified Pre-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, and sidewalks shown on the Pre-Preliminary Plan are illustrative. The final locations of buildings, structures, and hardscape will be determined at the time of issuance of a building permit. 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.
3. The Planning Board accepts and hereby incorporates as conditions of approval the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated October 15, 2013. 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 the Pre-Preliminary Plan approval.
4. The Planning Board accepts and hereby incorporates as conditions of approval the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Well and Septic Section in its letter dated August 23, 2013. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well and Septic Section provided that the amendments do not conflict with other conditions of the Pre-Preliminary Plan approval.
5. The Applicant must dedicate and show on the record plat a dedication of 35 feet from the existing pavement centerline along the Subject Property frontage on Hawkins Creamery Road.
6. Prior to recordation of the plat, the Applicant must satisfy MCDPS requirements to ensure the construction of a five foot wide sidewalk along the property frontage on Hawkins Creamery Road, unless construction is waived by MCDPS.

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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 Applicant must comply with the conditions of approval for the final forest conservation plan prior to recording of plats. Any Category 1 easements must be shown on the record plat.
8. The Applicant must include with the submission of the record plat an affidavit to verify the availability of a TDR for this lot and include a note referencing the affidavit on the record plat.
9. The record plat must contain the following note:

Agriculture is the preferred use in the Rural Density Transfer Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery, and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone.

10. The record plat must show all necessary easements.

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 Pre-Preliminary Plan substantially conforms to the Master Plan.*

The Subject Property is in the Rural Areas Section of the Approved and Adopted (2006) *Damascus Master Plan*. The Application will provide low density housing in the Rural Areas, and it is designed to preserve contiguous farmland, prime farm soils, and forest. The location of the septic reserve area dictates that the house will be set back from Hawkins Creamery Road, allowing retention of the area's rural character and open vistas while maximizing viable farmland. The Pre-Preliminary Plan substantially conforms to the Master Plan.

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

#### **Roads and Transportation Facilities**

The proposed single dwelling use will generate one vehicle trip during the weekday AM and PM peak hours, which is considered "de minimis" and therefore, does not require Local Area Transportation Review or Transportation Policy Area Review. MCDOT has accepted the 10 foot wide private driveway location on Hawkins Creamery Road for Safe Sight Distance. The Application provides for the full right of way dedication and establishes an area suitable for construction of a 5 foot wide

sidewalk along Property's frontage on Hawkins Creamery Road. Pedestrian access to the lot is currently adequate given its rural location and low pedestrian volume. The Planning Board finds that vehicle and pedestrian access to the lot will be adequate.

#### **Other Public Facilities and Services**

MCDPS - Well and Septic Section approved private well and septic systems for the Subject Property on August 23, 2013. Telecommunications and electrical service are available and adequate to serve the approved lot. Montgomery County Fire and Rescue Service has reviewed the Application and determined that the Subject Property has acceptable access for fire and rescue service. The Subject Property is within the Damascus School Cluster Area, which is operating at an acceptable level and therefore is not subject to a School Facilities Payment. Other public facilities and services such as schools, fire stations, police stations, and health services are operating within the acceptable standards established by the current Subdivision Staging Policy Resolution.

3. *The size, width, shape, and orientation of the approved lot is 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.*

#### **Zoning Conformance**

As a 15 acre property in the current RDT zone, which requires 25 acres for every lot, the Subject Property must qualify for the "grandfathering" provision in order to comply with the Zoning Ordinance and be platted. Section 59-B-9.74(b)(2), governing this Property's "grandfathered" status, states:

- (b) The following lots are exempt from the area and dimensional requirements of Section 59-C-9.4 but must meet the requirements of the zone applicable to them before their classification in the Rural Density Transfer zone.
  - (2) A lot created by deed executed before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer zone.

As a parcel that was recorded by deed prior to adoption of the RDT zone, the Subject Property is exempt from the area and dimensional requirements of the RDT zone. It must instead conform to the requirements of the RE-2 zone, applicable prior to adoption of the RDT zone. The Subject Property is 15.09 acres which exceeds the minimum lot size required in the RE-2 zone. The width, area, and frontage of the proposed lot meet the dimensional requirements of the zone. The Subject Property complies with the area and dimensional requirements of the RE-2 zone.

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

A Forest Conservation Plan was deemed acceptable by Staff, and a Final Forest Conservation Plan will be approved prior to record plat.

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

A stormwater management concept will be reviewed prior to issuance of a building permit.

6. *The Application complies with Montgomery County Code applicable subdivision requirements under Section 50-35A(a)(8).*

**Section 50-35A(a)(8) states:**

Up to five lots are permitted under the minor subdivision procedure in the RDT zone if a pre-preliminary plan is submitted and approved by either the Planning Board or Planning Board staff, under the procedures for submission of a pre-preliminary plan of subdivision. In addition:

- a. Written approval for a proposed septic area must be received from the Montgomery County Department of Permitting Services, Well and Septic Section prior to recordation of the plat;
- b. Any required street dedications along the frontage of the proposed lots must be shown on the record plat;
- c. An easement must be recorded for the balance of the property noting that density and TDRs have been utilized for the new lot. Reference to this easement must be reflected in the record plat for the lot;
- d. Lots created in the RDT zone through the minor subdivision procedures must not exceed an average lot size of five acres in size unless approved by the Planning Board in the review of the pre-preliminary plan of subdivision; and
- e. Forest conservation requirements must be satisfied before recording the plat.

These requirements have been satisfied as follows:

- a. MCDPS – Well and Septic Section approved well and septic facilities for the Subject Property on August 23, 2013;
- b. Pursuant to condition 5 above, Applicant must show on the record plat a dedication of 35 feet from the existing pavement centerline along the Subject Property's frontage on Hawkins Creamery Road;
- c. Section 50-35A(a)(8)(C) is not applicable to this Application, because there will be no remainder property after subdivision;
- d. The Planning Board approves the Subject Property at roughly 15 acres, which exceeds the typical five acre average for lots created in the RDT zone through the minor subdivision procedures; and
- e. The Final Forest Conservation Plan will be approved by Staff prior to record plat.

Further, the size, width, shape, and orientation of the lot are appropriate for the location of the subdivision given the recommendations of the Master Plan. The lot provides ample area to accommodate a residential structure but does not restrict viable agricultural opportunities.

BE IT FURTHER RESOLVED, that this Pre-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 Pre-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 NOV 15 2013 (which is the date that this Resolution is mailed to all parties of record); and

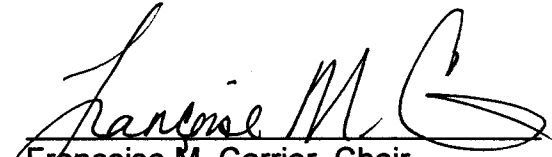
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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, October 31, 2013, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board

