



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

MCPB No. 16-096  
 Preliminary Plan No. 12004080A  
 Damascus Hills  
 Date of Hearing: September 15, 2016

SEP 19 2016

**RESOLUTION**

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

WHEREAS, on April 13, 2005, the Planning Board, by Opinion dated April 13, 2005, approved Preliminary Plan No. 120040800, creating 29 lots and 2 outlots on approximately 147 acres of land in the RE-2C and RC zones, located on the south side of Damascus Road, approximately 2,000 feet east of Howard Capital Drive, directly opposite Viewland, in the Damascus Policy Area and the 2006 Damascus Master Plan ("Master Plan") area; and

WHEREAS, on August 23, 2011, Roy Stanley ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to add approximately 30.11 acres of RC zoned land to the area covered by Preliminary Plan No. 120040800 for a total tract area of 176.7 acres, and to create 7 new lots and effect a park dedication on 42.41 acres of RE-2C and RC zoned land within the amended total tract area ("Subject Property");<sup>1</sup> and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12004080A, Damascus Hills ("Preliminary Plan," "Amendment," 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 September 2, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 15, 2016, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

<sup>1</sup> Although the amended total tract area is 176.7 acres, the "Subject Property" covered by this Preliminary Plan Amendment and the conditions of approval listed below consists of the 42.41 acres of RE-2C and RC zoned land.

Approved as to  
 Legal Sufficiency:

8787 Georgia Avenue, Suite 200, Spring, Maryland 20981 Chairman's Office: 301.495.4605 Fax: 301.495.1320

M-NCPPC Legal Department  
 www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 12004080A to add approximately 30.11 acres to the land covered by the Preliminary Plan for a total tract area of 176.7 acres, and to create 7 new lots with the following conditions, which apply only to the 42.41-acre Subject Property and the 7 lots included in this Amendment:<sup>2</sup>

- 1) This Preliminary Plan amendment is limited to seven lot(s) for seven dwelling units.
- 2) The Applicant must comply with the following conditions of approval for the Final Forest Conservation Plan No. 12004080A, approved as part of this Preliminary Plan amendment:
  - a. Prior to the start of any clearing, grading, or demolition on the Subject Property, the Applicant must record a Category I conservation easement over 8.68 acres of land, including 7.67 acres of forest retention, and forest planting, and must protect an additional 6.75 acres of forest and stream valley buffer through forest retention and planting on dedicated park land as shown on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be recorded in the Montgomery County Land Records in the form of a deed approved by the M-NCPPC Office of the General Counsel, and the Liber Folio for the easement must be referenced on the record plat.
  - b. Prior to the start of any clearing, grading, or demolition on the Subject Property, the Applicant must provide financial surety to the M-NCPPC Planning Department for the 1.82 acres of new forest planting.
  - c. Prior to the start of any clearing, grading, or demolition on the Subject Property, the Applicant must submit a Maintenance and Management Agreement for the 1.82 acres of new forest planting. The Agreement must be approved by the M-NCPPC Office of the General Counsel and recorded in the Montgomery County Land Records.
  - d. At the direction of the M-NCPPC forest conservation inspector, the Applicant must install permanent conservation easement signage along the perimeter of the Category I conservation easements as specified on the approved Final Forest Conservation Plan or as determined by the M-NCPPC forest conservation inspector.

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<sup>2</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.

- e. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the approved FCP may be required by the M-NCPPC forest conservation inspector.
  - f. The Final Sediment Control Plan must be consistent with the final limits of disturbance as shown on the approved Final Forest Conservation Plan.
- 3) Prior to the start of any clearing, grading, or demolition on the Subject Property, the Applicant must dedicate to M-NCPPC the approximately 15.59-acre portion of the Subject Property identified as "Parcel D" on the Preliminary Plan for use as a stream valley park per the Damascus Master Plan. The land must be dedicated to the Commission prior to record plat in the form of a deed approved by the Office of General Counsel, and the dedication must be noted on the record plat. At the time of conveyance, the property must be free of any trash and unnatural debris. At the direction of M-NCPPC Staff, the Applicant must install permanent park property line poles along the perimeter of the park dedication areas as specified on the approved Final Forest Conservation Plan or as determined by M-NCPPC staff.
  - 4) No clearing, grading, or demolition on the Subject Property prior to recordation of the Record Plat(s)
  - 5) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated August 17, 2016, 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 MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
  - 6) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
  - 7) Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of a five-foot wide sidewalk along the property frontage on Stanley Hills Way, unless construction is waived by MCDPS.
  - 8) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated December 23, 2013, 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.

- 9) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Well and Septic Section in its letter dated August 15, 2016, 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 – Well and Septic Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 10) The Applicant must provide dedication for the cul-de-sac at the end of Stanley Hills Way, as shown on the Preliminary Plan Drawing.
- 11) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by 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.
- 12) 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 permit(s). 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.*

- 13) The record plat must reflect common ingress/egress, and utility easements over all shared driveways.
- 14) 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.”
- 15) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.

- 16) The record plat must reflect an access easement over the shared driveway, and a portion of lot 21, to grant HOA access to use and maintain Open Space Parcel E as identified on the Preliminary Plan drawing.
- 17) The certified Preliminary Plan must correct the area tabulations identified on the plan notes to reflect the values presented in the data table within the Staff Report.
- 18) Prior to recordation of the plat, the Applicant must grant to M-NCPCC a rural open space easement over no less than 60 percent of the net lot area of the Subject Property as shown on the Preliminary Plan amendment and record the easement, in a form approved by the Office of General Counsel, in the Montgomery County Land Records. Reference to the recorded easement must be noted on the record plat(s).
- 19) The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of this Planning Board Resolution.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

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:

*Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan, and all findings not specifically addressed remain in effect.*

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

The Preliminary Plan substantially conforms to the 2006 Damascus Master Plan (“Master Plan”). The Master Plan envisions a small town surrounded by agricultural and rural open spaces. The Subject Property is located within the transition area identified by the future land use plan map. Transition areas are described as areas designed to reduce imperviousness, protect scenic vistas, to allow connectivity to activity centers and to provide a small town like design

pattern. The Master Plan land use plan and the open space plan also identifies a portion of the Subject Property as future parkland.

The Master Plan's environmental resources section emphasizes protecting forest resources within the Master Plan boundary to help create green infrastructure, and specifically recommends protecting forest resources in environmental buffers, environmentally sensitive areas, and in high priority stands. The Master Plan also strives to protect watershed and stream quality, and has identified Upper Great Seneca Creek as a stream suitable for fishing and swimming that should be protected using normal levels of regulatory protection measures. The Master Plan recommends protecting the existing hydrology and reducing nutrient and sediment loads with limited new impervious surfaces and best management practices.

The portion of the Subject Property to be developed is zoned RC (Rural Cluster) which has a density of one unit per 5 acres, which is consistent with low density residential development with low imperviousness and acts as a transition between the agricultural reserve and the town center. The Amendment includes seven new lots over the Subject Property, and will provide the 60% open space required by the zone to protect natural resources and to provide 15.59 acres of park dedication to the Great Seneca Stream Valley Park. The Amendment also protects a total of 11.9 acres of existing forest through category 1 conservation easement and park dedication, and requires the planting of 1.82 additional acres of forest in stream valley areas to enhance water quality and green infrastructure.

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

#### Transportation

The Subject Property is located at the end of Stanley Hills Way. The Amendment requires the dedication and construction of a cul-de-sac consistent with the design standards from MCDOT for an open section secondary residential street with sidewalks. The Amendment generates 30 or fewer trips during the weekday peak hour; therefore, it is exempt from review under Local Area Transportation Review. The Subject Property is located in the Damascus Policy Area for the Transportation Policy Area Review. The Damascus Policy Area is considered adequate for transit and adequate for roadway capacity therefore no payments are required.

Other public facilities and services are available and will be adequate to serve the approved dwelling units. The Subject Property is located in the W-3 and S-6 categories for water and sewer, and all new dwellings will be serviced by public water with private on-lot septic. Other telecommunications and utility companies reviewed the Preliminary Plan and found that the approved development can be

adequately served. The Montgomery County Fire and Rescue Services has also reviewed the Application and has determined that it provides adequate access for fire and emergency vehicles with the provision of adequate passing room for emergency vehicles on the shared driveways. Other public services such as police and health services are currently operating within the standards set by the Subdivision Staging Policy currently in effect. The Application is within the Damascus school cluster which is not in moratorium and not subject to any school facility payments for FY 2017.

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 Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections of the Subdivision Regulations. The approved lot sizes, widths, shapes and orientations are appropriate for the location of the subdivision taking into account the lot size and open space requirements of the RC zone, and the land use and environmental recommendations in the Master Plan. In this instance, creating pipe stem lots and sharing driveways minimizes the environmental impact to the Subject Property and creates the open space required by the zone. The lot and open space sizes and locations are also adequate to meet the 60% required rural open space, and allow room for on-site septic systems consistent with the County's current sewer policy.

The lots were reviewed for compliance with the dimensional requirements for the RC zone as specified in the Zoning Ordinance. The lots as approved will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

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

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. This Amendment incorporates an amendment to the Final Forest Conservation Plan approved with Preliminary Plan No. 120040800. While the amended Final Forest Conservation Plan includes the entire 176.7-acre total tract area, this Amendment focuses on the land that was not covered by the original Forest Conservation Plan and that will be developed in accordance with this

Amendment.<sup>3</sup>

As described in the Staff Report, this Amendment includes the retention of 11.9 acres of forest and the planting of 1.82 acres of forest for a total of 13.72 acres of forest. This will be protected through a combination of 8.68 acres of Category I Conservation easement area and the 15.59-acre park dedication.

Forest Conservation Finding 22A-12(f)(3)

The optional method of development for the entire residential subdivision requires compliance with Section 22A-12(f) of the Montgomery County code. This section of the code requires developments utilizing an optional method of development in specific zones to either retain or plant a certain percentage of forest onsite. The RC zoned portion of the area covered by the Forest Conservation Plan amendment is subject to Section 22A-12(f)(2)(A), which states that on-site forest retention must equal 25% of the net tract area. In this case, 25% of the 50.05-acre net tract area is 12.51 acres. Since there are only 12.3 acres of existing forest, it is not possible to retain 25% of the net tract area. Section 22A-12(f)(2)(C) states that "if existing forest cover is less than the minimum required retention, all existing forest must be retained and on-site afforestation up to the minimum standard must be provided". However, Section 22A-12(f)(3) states that if the Planning Board, "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, not including landscaping."

The FCP amendment shows 0.40 acres of forest in the RC zoned area as cleared, which generates a 0.8-acre reforestation requirement for clearing below the conservation threshold. Approximately 0.13 acres of this clearing is located in the southeastern corner of the Subject Property, at the rear of Lot 22 where there is an existing narrow strip of trees. This strip of trees currently meets the dimensional definition of forest because it is contiguous with a larger area of offsite forest. However, the adjacent offsite contiguous forest is unprotected and may be cleared as part of a future development, and the onsite strip does not meet the definition of forest on its own. Therefore, this area of forest must be counted as cleared forest even though it is outside of the limits of disturbance on the FCP. The remaining 0.27 acres of forest clearing is the result of construction of the private, shared driveway and a water line from Stanley Hills Way, which will provide access and water service to Lots 21, 22, and 23.

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<sup>3</sup> As described in the Staff Report, the forest conservation worksheet associated with the land to be developed according to this Amendment is not coextensive with the boundaries of the Subject Property as defined in this Resolution. The net tract area for the purpose of the Forest Conservation Plan amendment is 50.05 acres.



As described below, the Applicant considered several options to see if it would be possible to meet the requirements of 22A-12(f)(2)(c) by saving all existing forest, in addition to supplemental plantings, to reach 25% of the net tract area.

*Lot Relocation*

The Applicant investigated alternative locations for the three lots that would not require forest clearing. The lots cannot be relocated because they are served by private on-site septic systems which require specific soil and water table conditions for approval of septic field locations, and the topography of the site isolates much of the prime developable area from the on-site road access with stream buffers or forested area. The Planning Board finds there are no viable alternative locations for the lots that meet the septic requirements and that would not require forest removal, making it infeasible to retain the 0.27 acres of forest.

*Lot Access*

The Applicant also investigated alternative means of accessing the lots, including contacting four adjacent property owners in an effort to secure an access easement using off-site driveways. In response to the Applicant's outreach, the Planning Board received written correspondence from one of the owners (Ness) and telephone correspondence from a second owner (Betts) of the land upon which the driveways traversed. In both cases, the correspondence expressed an unwillingness to grant the Applicant use of said driveway(s). Neither the Applicant nor the Board received a response from the other two adjacent property owners (Wenzloff and Duvall), which the Board interprets as declines to the request. The Applicant did coordinate with the Fire Marshal's office to minimize the width of the shared driveway within the forested area, reducing the total impact to the forest. The Applicant exhausted all reasonable efforts to secure alternative access to Lots 21, 22 and 23 through adjacent properties and has worked to minimize the necessary impacts.

*Mitigation*

The Applicant is already required to mitigate 0.8 acres of reforestation for clearing above the conservation threshold. The Applicant is providing an additional 1.02 acres of planting within the stream buffer, with larger 3-inch caliper tree stock along the shared driveway to mitigate for the 0.4 acres of forest clearing.

Accordingly, the Planning Board finds that forest retention as required in Section 22A-12(f) is not possible and therefore allows for 0.4 total acres of forest removal under Section 22A-12(f)(3), with the 1.82 total acres of forest planting mitigation.

## B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the CRZ impact to four Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance. If the Variance were not granted, the Applicant could not fully develop the property in a manner consistent with the Master Plan, as described in the Staff Report.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to the reasonable development of the Subject Property. The Protected Trees are located within the area most suitable for providing access to the eastern part of the Subject Property, which is dictated by the location of the existing terminus of Stanley Hills Way and the necessity to avoid the sensitive resources including seeps, wetlands, stream and stream buffer to the south. Granting a variance request to allow land disturbance to access a developable portion of the Subject Property is not unique to this Applicant and is not a special privilege that would be denied to other applicants.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The need for the variance is not based on conditions or circumstances that are the result of actions by the Applicant. The requested variance is based upon existing conditions, including the existing terminus of Stanley Hills Way, the location of the sensitive resources protected within the stream buffer, and the number and locations of the Protected Trees.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The need for a variance is a result of the existing conditions and the site design and layout on the Subject Property, and not a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. No trees located within a stream buffer, wetland or special protection area (SPA) will be impacted or removed as part of this Application. The existing stream buffer located on the Subject Property will be planted with forest and protected in a Category I conservation easement or through parkland dedication. In addition, the Montgomery County Department of Permitting Services has found the stormwater management concept for the project to be acceptable as stated in a letter dated December 23, 2013. The stormwater management concept incorporates Environmental Site Design standards.

5. *All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

The Amendment meets the stormwater management requirements of chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS water resources division on December 23, 2013. The Application will meet stormwater management goals through a variety of techniques including the use of micro biofiltration, bioswales, drywells, and non-structural practices.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 19 2016 (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 Fani-González, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, September 15, 2016, in Silver Spring, Maryland.



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Casey Anderson, Chair  
Montgomery County Planning Board