



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

MCPB
Item #
2 /3/11



MEMORANDUM

DATE: January 21, 2011

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief
 Catherine Conlon, Subdivision Supervisor
 Development Review Division

FROM: Richard A. Weaver, Coordinator (301-495-4544)
 Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: 4 lots for 4 one-family detached dwelling units

PROJECT NAME: Hidden Hill
CASE #: 120100180
REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RE-2
LOCATION: Southeast quadrant of the intersection of Query Mill Road and Esworthy Road
MASTER PLAN: Potomac

APPLICANT: Ronald Furman
ENGINEER: Site Solutions, Inc.

FILING DATE: February 19, 2010
HEARING DATE: February 3, 2011

Approval signatures

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RECOMMENDATION: Approval subject to the following conditions:

- 1) Approval under this preliminary plan is limited to four lots for four one-family detached dwelling units.
- 2) The applicant must comply with the conditions of approval for the preliminary forest conservation plan prior to recording of a plat or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit, as applicable.
- 3) The record plat(s) must reflect a Category I Conservation Easement over the entire stream valley buffer and the areas of retained forest.
- 4) The applicant must comply with the conditions of the MCDPS stormwater management concept approval dated July 22, 2010. These conditions may be amended by MCDPS, as long as the amendments do not conflict with other conditions of the preliminary plan approval.
- 5) The applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated January 21, 2011. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 6) The applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated July 30, 2010. These conditions may be amended by MCDOT, as long as the amendments do not conflict with other conditions of the preliminary plan approval.
- 7) Record plat to reflect dedication on Query Mill Road and Esworthy Road 35 feet from centerline.
- 8) The applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat.
- 9) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
- 10) The record plat must show all necessary easements.

SITE DESCRIPTION (Figure 1)

The site of the Hidden Hill preliminary plan application, "Property" or "Subject Property", is a 9.55 acre unrecorded parcel located in the southeast quadrant of the intersection of Query Mill Road and Esworthy Road. The Property is zoned RE-2 and is in the Potomac Master Plan area. Other property zoned RE-2 is located to the west across Esworthy Road and to the north across Query Mill Road. Adjacent properties to the south and east of the Subject Property are also zoned RE-2. Most of these adjoining properties are developed with low density one-family detached homes. The Property is currently improved with a one-family detached residential dwelling unit, swimming pool, and croquet court.

The Property is located within the Muddy Branch Watershed a Use I-P stream. An environmental buffer wraps around the northern, western and southern portions of the Property. There are 2.22 acres of forest on the Property; the existing house is situated in a cleared area in the upland portions of the site.

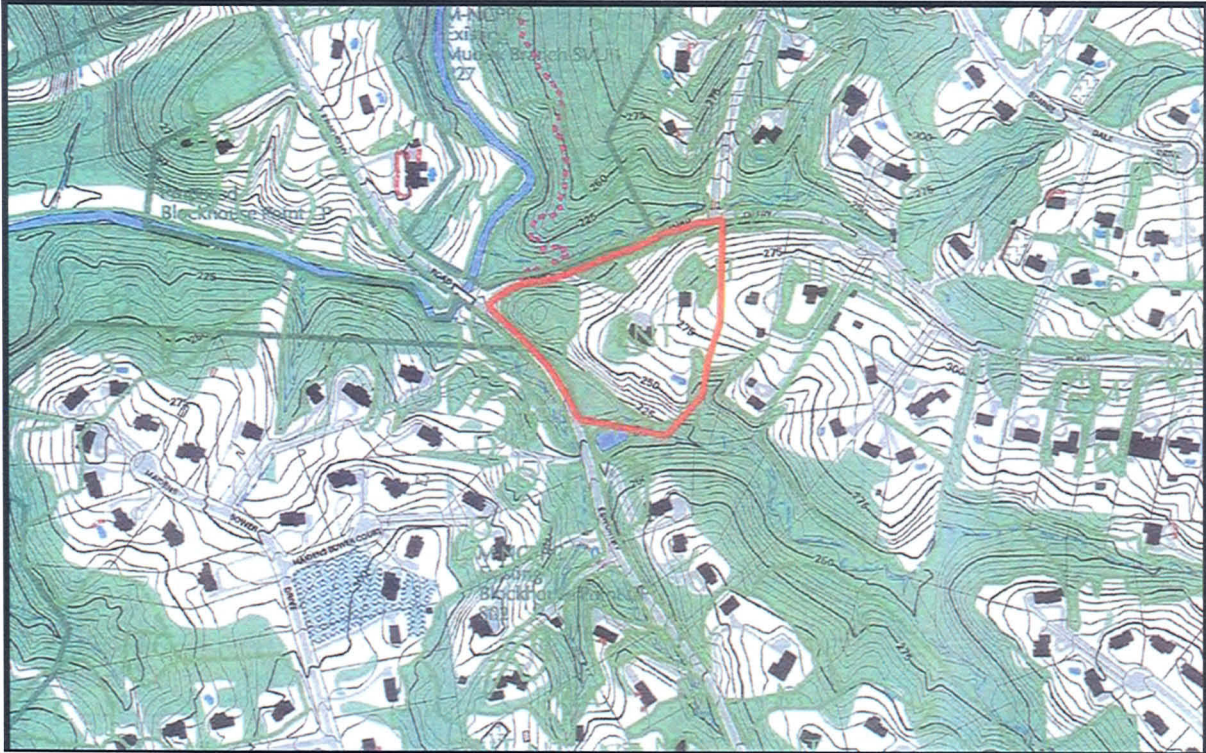


Figure 1

PROJECT DESCRIPTION (Figures 2 and 3)

The Applicant proposes to subdivide the Subject Property into 4 lots to accommodate 4 one-family detached residential dwelling units. Lot 1 is 2.10 acres, lot 2 is 2.48 acres, lot 3 is 2.20 acres, and lot 4 is 2.34 acres in size. Access to all 4 lots is proposed from Query Mill Road via a shared private driveway that will be 20 feet wide to accommodate emergency apparatus. The existing house will remain on proposed lot 1 and the existing swimming pool could remain on proposed lot 3 if a future owner so chooses. The lots will be served by public sewer and private wells.

The lots are arranged so that the homes can be aligned to the shared driveway and mimic a cul-de-sac community. The development takes advantage of the upland open areas and minimizes disturbance to the environmental buffers. Some disturbance within the buffer is necessary for the driveway and sewer connection. The Applicant has also requested other minimal buffer encroachments to accommodate grading for the lots. This is fully discussed in the environmental section.

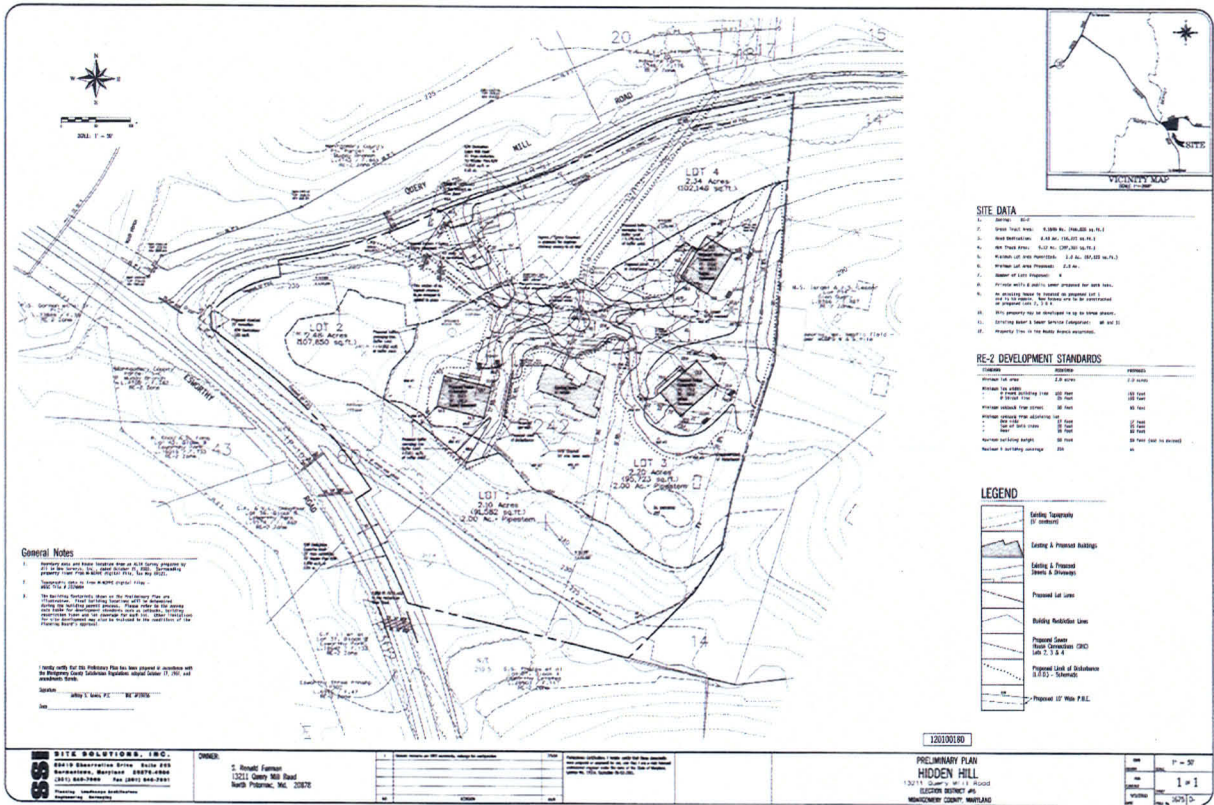


Figure 2



Figure 3

ANALYSIS AND FINDINGS

Conformance to the Master Plan

The *Approved and Adopted 2002 Potomac Subregion Master Plan* does not specifically discuss the Subject Property but does recommend that the RE-2 zoning designation remain on the Property as it was before the master plan update. Staff finds that this preliminary plan of subdivision substantially conforms to the Master Plan because it proposes residential development under the RE-2 standards that conforms to the current development pattern of the area, and it meets the area and dimensional requirements for the RE-2 zone.

Public Facilities

Roads and Transportation Facilities

The proposed lots do not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the application is not subject to Local Area Transportation Review. In addition, Transportation Planning staff has determined the application is not subject to Policy Area Mobility Review. Esworthy Road is a primary residential street and Query Mill Road is a rustic road, however, 70 feet of right-of-way is required for both streets. The Applicant is required to dedicate 35 feet from the centerline along the property frontage where there is not full right-of-way dedication.

Sidewalks are not required by the road code for lots in the RE-2 zone and no sidewalks exist along Esworthy Road or Query Mill Road. The nearest walkable public amenity is the Muddy Branch Stream Valley Park which abuts the Property to the north and west. Access to the Park can be attained by crossing either Query Mill Road or Esworthy Road without the need for sidewalks. Vehicular and pedestrian access for the subdivision will be safe and adequate as proposed.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the proposed dwelling units. The application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access. Other public facilities and services, such as schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. Electrical and telecommunications services are also available to serve the Property. The Subject Property is not within a school moratorium area and is not subject to a School Facilities Payment.

Environment

Natural Resources

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420092110 for this property was approved on October 6, 2009. The NRI/FSD identifies the environmental constraints and forest resources on the subject property. The property contains 2.22 acres of forest. There are 43 trees 30 inches and greater diameter at breast height (DBH) and 45 trees between 24" and 30" DBH on the property. The site's topography includes moderate slopes (> 15%). There are streams running along the north side and south side of the property. The stream to the north is separated from the property by Query Mill Road. The stream to the south is on the property and flows toward and under Esworthy Road. The property contains .88 acres of wetlands and 5.33 acres of environmental buffers. Of the 5.33 acres of environmental buffer 1.83 acres are currently forested.

The property is within the Muddy Branch watershed; a Use I-P watershed. The Countywide Stream Protection Strategy (CSPS) rates streams in this watershed as good.

Stream Buffer Encroachments and Mitigation

The applicant has proposed 8,749 square feet of encroachment into the delineated stream buffer to accommodate houses on Lot 2 and Lot 4 to create usable outdoor space and to allow for well sites for water service. *The Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County* (approved January 2000) section V.A.1.(e) allows for small amounts of clearing and grading within the SVB on a case-by-case basis so long as the modification is consistent with a comprehensive approach to protecting the environmental resources. Chapter 22A-12(b) requires permanent protection, such as Category I conservation easement, for all stream valley buffers, forested and unforested. There are instances where permanent encroachments have been allowed.

In reviewing buffer encroachment proposals, staff considers buffer averaging, enhanced reforestation, bioengineering practices, and other environmental beneficial techniques. Buffer averaging provides environmentally comparable on-site areas outside the delineated stream buffer in exchange for being allowed to encroach elsewhere within the delineated buffer. The applicant is proposing buffer averaging in this specific case to compensate for the permanent encroachment into the delineated stream buffer.

When considering buffer averaging requests, Staff must consider five factors:

- 1) Reasonable alternatives for avoidance of the buffer are not available.
- 2) Encroachment into the buffer has been minimized.
- 3) Existing sensitive areas have been avoided (forest, wetlands and their state designated buffers, floodplain, steep slopes, habitat for rare, threatened, and endangered species and their associated buffers).

- 4) The proposed use is consistent with the preferred use of the buffer.
- 5) The plan design provides compensation for the loss of buffer function.

The proposed plan indicates 8,749 square feet of stream buffer encroachment; however the two areas proposed for encroachment are currently unforested. The encroachment is being requested to allow the homeowners to create usable outdoor space and accommodate well sites for water service. Placing a Category I conservation easement over these areas would restrict some of the activities that are usually related with single family homes including wells sites for water service. The amount of encroachment being requested has been minimized; only the amount needed to achieve the goals requested above were proposed for removal.

The areas of SVB encroachment include 2 out of the 3 required well sites (primary and two reserves) for each of the proposed lots. Alternate house and lot layouts were reviewed as part of the process, and the current layout works best for all agencies involved and helped reduce the amount of forest clearing. All reasonable alternatives had additional negative impacts to the environment, and staff believes this layout with the buffer averaging and proposed mitigation is a better comprehensive approach for protecting the environmental resources.

The encroached stream buffer area does not contain any steep slopes, forest, and it does not impact any wetlands, rare threatened and endangered species habitat, or any state mandated buffers. However, the area of SVB encroachment on proposed lot 4 does contain a specimen tree (tree #4) which is shown to be saved.

The applicant is proposing to mitigate the stream buffer encroachment by planting 1.14 acres of unforested stream valley buffer in excess of the planting requirements (0.36 acres) and to help mitigate for specimen tree loss (0.32 acres). This area of stream valley buffer would not otherwise be required to be planted, but would be shown as an area of natural regeneration on the forest conservation plan. Accelerated reforestation of the stream valley buffer increases the functionality of the stream valley buffer and speeds up the establishment of forest cover while helping to reduce invasive species encroachment.

After reviewing the plan and considering all five factors above staff believes the applicant's proposal is consistent with a comprehensive approach to protecting environmentally sensitive areas while remaining flexible with proposed uses. Staff recommends the applicant be permitted to permanently encroach into the stream buffer with the mitigation shown on the forest conservation plan.

Forest Conservation

The Preliminary Forest Conservation Plan (FCP) proposes to preserve 1.93 acres of the existing forest and to clear 0.18 acres of existing forest. The site contains 2.22, acres of forest, however, 0.11 acres has been deducted out as it is within proposed right-of-way dedication and is not being developed as part of this plan. Therefore, the net tract area of the property for forest conservation purposes is 2.11 acres. The amount of existing forest is below the conservation threshold of 2.28 so any clearing will require a planting requirement. The 0.18 acres of proposed clearing generates a 0.36 acre planting requirement. The applicant is proposing to meet the

planting requirement on-site within delineated stream buffers.

a. Forest Conservation Variance

Section 22A-12(b)(3) of the County code requires applicants to identify certain trees, shrubs, plants, and specific areas as priority for retention and protection. This section of the code requires those areas to be left in an undisturbed condition unless the applicant obtains a variance in accordance with Chapter 22A-21 of the County code. More specifically the vegetation to remain undisturbed includes:

- A. *Trees, shrubs, or plants determined to be rare, threatened, or endangered under:*
 - (1) *The federal Endangered Species Act of 1973,*
 - (2) *The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§10-2A-01—10-2A-09, Annotated Code of Maryland, and*
 - (3) *COMAR 08.03.08;*
- B. *Trees that:*
 - (1) *Are part of an historic site,*
 - (2) *Are associated with an historic structure, or*
 - (3) *Have been designated by the State or the Department as a national, State, or county champion tree; and*
- C. *Any tree having a diameter measured at 4.5 feet above the ground of:*
 - (1) *30 inches or more, or*
 - (2) *75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current State champion tree of that species as designated by the Department of Natural Resources.*

Under Chapter 22A-21 of the County Code a person may request in writing a variance from this Chapter if the person demonstrates that enforcement would result in unwarranted hardship to the person. The applicant for a variance must:

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) Verify that State water quality standards will not be avoided or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and
- (4) Provide any other information appropriate to support the request.

Since this project will require seven trees 30 inches and greater DBH to be removed and eleven others will be impacted, a variance is required. The applicant is proposing some tree preservation measures to help ensure the trees with proposed impacts survive construction.

	Common Name	Scientific Name	Size	Condition
Tree #7	Boxelder	Acer negundo	38" DBH	Good Condition
Tree #17	Sycamore	Platanus occidentalis	44" DBH	Good Condition
Tree #18	White Pine	Pinus strobus	34" DBH	Good Condition
Tree #24	White Pine	Pinus strobus	37" DBH	Good Condition
Tree #25	Red Maple	Quercus rubra	30" DBH	Good Condition
Tree #773	White Pine	Pinus strobus	33" DBH	Good Condition
Tree #790	White Pine	Pinus strobus	33" DBH	Good Condition

Table 1: Specimen Trees Proposed for Removal

	Common Name	Scientific Name	Size	Condition
Tree #2	White Pine	Pinus strobes	36" DBH	Good Condition
Tree #3	White Pine	Pinus strobes	34" DBH	Good Condition
Tree #4	Sycamore	Platanus occidentalis	34" DBH	Good Condition
Tree #9	Red Oak	Quercus rubra	34" DBH	Good Condition
Tree #14	White Oak	Quercus alba	38" DBH	Good Condition
Tree # 23	Red Oak	Quercus rubra	33" DBH	Good Condition
Tree #774	American Beech	Fagus grandifolia	52" DBH	Good Condition
Tree #776	Tulip Poplar	Liriodendron tulipifera	39" DBH	Poor Condition (hollow trunk)
Tree #782	American Beech	Fagus grandifolia	43" DBH	Good Condition
Tree #787	Tulip Poplar	Liriodendron tulipifera	58" DBH	Good Condition
Tree #791	Sycamore	Platanus occidentalis	34" DBH	Good Condition

Table 2: Specimen Trees with Proposed Impacts

b. County Arborist's Recommendation

In accordance with Montgomery County Code, Section 22A-21(c) the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on September 16, 2010. The County Arborist has elected not to review the variance request. As such, the County Arborist's recommendation for the variance request is therefore presumed to be favorable.

c. Variance Findings

The Planning Board must make findings that the applicant has met all requirements of this Chapter 22A-21 before granting the variance. Staff has made the following determination on the required findings:

1. 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 as the removal and/or disturbance of the specimen trees noted above are the minimum necessary in order to develop the property as illustrated on the plan provided. Furthermore, the loss of certain trees and the need for a variance is often necessary and unavoidable in order to develop property for the use and enjoyment of its owner. Based on the constraints of the Stream Valley Buffers and the topography of the site, the proposed houses are in the only suitable locations. The driveway is being shifted to the east of the current access point to improve sight distance. This driveway shift causes 2 specimen trees to be removed. The remaining five specimen trees to be removed are within the footprint of the house on proposed lot 4.

2. Is not based on conditions or circumstances which are the result of the actions by the applicant;

The requested variance is not based on conditions or circumstances which are the result of actions of the applicant. The variance is based upon proposed site development, required stormwater management best management practices, and the environmentally sensitive areas on the site. Approximately 49 percent (4.43 acres) of the property is proposed to be placed into Category I conservation area. These easements are a result of the streams and wetlands along the north and south sides of the property. This distribution of conservation easements only leaves a 4.69 acre wedge (51% of the property) interior to the site as developable area. This concentrated developable area, while unforested, contains specimen trees. The environmental constraints combined with required stormwater management best management practices, and necessary drinking water well locations, dictates the locations of the proposed houses and the impacts to the specimen trees.

3. Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property

The requested variance is a result of the proposed development and not a result of land or building use on a neighboring property.

4. Will not violate State water quality standards or cause measurable degradation in water quality.

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Stormwater Management Concept Plan has been approved by the Montgomery County Department of Permitting Services.

d. Forest Conservation Variance mitigation

The seven specimen trees proposed for removal on-site are located within the footprints of the

proposed houses and the proposed main access point for the site. There will also be some disturbance within the critical root zone (CRZ) of another 11 specimen trees on-site but they are excellent candidates for safe retention. Mitigation should be at a rate that approximates the form and function of the trees removed. Therefore staff is recommending that replacement occur at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are 1.5" to 2" DBH. This means that the 249 caliper inches of specimen trees that will be removed will be mitigated for by the applicant with 32 1.5" to 2" DBH native canopy trees in the unforested SVB area, which is equivalent to 0.32 acres of forest planting. These 32 trees, in conjunction with the SVB encroachment plantings, will create new forest in most of the unplanted SVB on-site. No mitigation is recommended for trees impacted but retained.

Staff finds that the proposed Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A the Montgomery County Forest Conservation Law. Staff recommends approval of the Preliminary Forest Conservation Plan with the conditions stated above.

Stormwater Management

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on July 22, 2010. The concept consists of on-site channel protection, on-site water quality control, and onsite recharge via Environmental Site Design using drywells, landscape infiltration micro-bioretenment, rooftop disconnect and flow to conservation areas. Staff finds that the preliminary plan addresses the requirement to provide stormwater management.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the RE-2 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. A summary of this review is included in attached Table 1. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

Citizen Correspondence and Issues

On October 1, 2009 a pre-submission meeting was held with interested citizens at the Hidden Hills Elementary School in accordance with adopted procedures. Two residents attended the meeting. According to the minutes of the meeting, the only issue raised concerned the adequacy of the driveway to handle residential and emergency vehicle use. The representative for the applicant assured the residents that the Department of Fire and Rescue Service would review the

plan to ensure the proper dimensions for ingress and egress of large emergency vehicles, and that review has now occurred.

To date, no inquiries have been made to staff regarding the submitted preliminary plan. Staff finds that the plan and the review process it must follow have adequately addressed all concerns raised by local residents.

CONCLUSION

The proposed lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the Potomac Master Plan. Access and public facilities will be adequate to serve the proposed lots, and the application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, approval of the application with the conditions specified above is recommended.

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Hidden Hill				
Plan Number: 120100180				
Zoning: RE-2				
# of Lots: 4				
# of Outlots: 0				
Dev. Type: Standard, Residential				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	1/21/11
Minimum Lot Area	2 acres	2.10 ac is min. proposed		1/21/11
Lot Width	150 ft.	150 ft. minimum		1/21/11
Lot Frontage	25 ft.	25 ft. minimum		1/21/11
Setbacks				
Front	50 ft. Min.	Must meet minimum ¹		1/21/11
Side	17 ft. Min./35 ft. total	Must meet minimum ¹		1/21/11
Rear	35 ft. Min.	Must meet minimum ¹		1/21/11
Height	50 ft. Max.	May not exceed maximum ¹		1/21/11
Max Resid'l d.u. or Comm'l s.f. per Zoning	4 d.u.	4 d.u.		1/21/11
MPDUs	No		RW	1/21/11
TDRs	No		RW	1/21/11
Site Plan Req'd?	No		RW	1/21/11
FINDINGS				
<i>SUBDIVISION</i>				
Lot frontage on Public Street		Yes	RW	1/21/11
Road dedication and frontage improvements		Yes	Agency letter	7/30/10
Environmental Guidelines		Yes	Staff memo	1/5/11
Forest Conservation		Yes	Staff memo	1/5/11
Master Plan Compliance		Yes	RW	1/21/11
Other (i.e., parks, historic preservation)		N/A	RW	1/21/11
<i>ADEQUATE PUBLIC FACILITIES</i>				
Stormwater Management		Yes	Agency letter	7/22/10
Water and Sewer (WSSC)		Yes	Agency comments	4/12/10
10-yr Water and Sewer Plan Compliance		Yes	Agency comments	4/12/10
Well and Septic		Yes	Agency letter	1/21/11
Local Area Traffic Review		No	Staff memo	4/10/10
Policy Area Mobility Review		No	Staff memo	4/10/10
Transportation Management Agreement		No	Staff memo	4/10/10
School Cluster in Moratorium?		No	Staff memo	4/10/10
School Facilities Payment		No	RW	1/21/11
Fire and Rescue		Yes	Agency letter	10/1/10
Other (i.e., schools)		N/A		

¹ As determined by MCDPS at the time of building permit.