



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

MCPB No. 16-133
Preliminary Plan No. 120160230
Beall's Mount
Date of Hearing: December 8, 2016

JAN - 3 2017

RESOLUTION

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

WHEREAS, on March 14, 2016, Rod Escobar/The Robert & Florence Sanders Farm Trust ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create three lots on 21.59 acres of land in the RE-2 zone, located 12220 Stoney Creek Road, north of Bracken Hill Lane and 500 feet south of Meadow Farm Road ("Property" or "Subject Property"), in the Rural West Policy Area and 2002 Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120160230, Beall's Mount ("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 November 28, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 8, 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

WHEREAS, on December 8, 2016, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Commissioner Fani-Gonzalez, with a vote of 5-0; Commissioners Anderson, Cichy, Dreyfuss, Fani-Gonzalez, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120160230 to create three lots on the Subject Property, subject to

Approved as to
Legal Sufficiency:


M-NCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320
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the following conditions:¹

- 1) This Preliminary Plan is limited to three lots for three, single-family detached dwelling units.
- 2) The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the Certified Preliminary Plan approval or cover sheet(s).
- 3) The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan No. 120160230 ("FCP"), approved as part of this Preliminary Plan:
 - a. A Final Forest Conservation Plan must be approved by M-NCPPC Staff prior to recordation of the plat and address the following conditions:
 - i. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
 - ii. Tree protection measures must be shown on the plan for existing trees to remain.
 - b. Applicant must have all required site inspections performed by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 - c. The Applicant must record a Category I Conservation Easement ("Easement") over all areas of forest retention, forest plantings and environmental buffers as specified on the approved Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property, and the Liber Folio for the easement must be referenced on the record plat.
 - d. The Applicant must execute a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel prior to the start of any demolition, clearing or grading on the Property. The maintenance and management agreement is required for all forest planting areas credited toward meeting the requirements of the Forest Conservation Plan, including the reforestation of environmental buffers.
 - e. The Applicant must provide financial surety to the M-NCPPC Planning Department for the 2.30 acres of new forest planting prior to the start of any demolition, clearing, or grading on the Property.
 - f. The Applicant must install permanent forest conservation easement signage along the perimeter of the conservation easements in all areas, as shown on

¹ For these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

- the forest conservation plan, or as amended by the M-NCPPC forest conservation inspector.
- g. The Applicant must comply with all tree protection and tree save measures shown on the approved FCP. Tree save measures not specified on the FCP may be required by the M-NCPPC forest conservation inspector.
 - h. The limits of disturbance (LOD) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
- 4) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated August 4, 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.
 - 5) Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
 - 6) Entrances on Stoney Creek Road must be constructed in the same locations identified on the Certified Preliminary Plan.
 - 7) 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 July 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 – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 8) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Well and Septic Section in its letter dated September 20, 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.
 - 9) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) Fire Code Enforcement Section in its letter dated June 16, 2016, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Fire Code Enforcement Section provided

that the amendments do not conflict with other conditions of Preliminary Plan approval.

10) The Applicant must dedicate and show on the record plat(s) dedication for Stoney Creek Road, as shown on the Preliminary Plan.

11) 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) approval. 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."

12) The record plat must show necessary easements.

13) The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for 85 months from the date of mailing of this Planning Board Resolution.

14) The Subject Property is within the Churchill High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the single-family detached unit rate for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

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.*

2002 Potomac Subregion Master Plan

The Subject Property is in the Travilah Community, which is described in the 2002 Potomac Subregion Master Plan. The Preliminary Plan includes three lots for three single-family detached dwellings on private well and septic systems, which is consistent with the low-density development recommended in the Master Plan. The three approved lots are well below the maximum density of ten

lots permitted on the Property under the RE-2 zone. Lot 3 is at the western side of the Property, and includes the on-site stream and stream valley buffer. Based on the recommendations of the Master Plan for projects in the Watts Branch watershed and the Sandy Branch tributary, protective measures will be implemented as part of this Application to protect the Subregion's water resources. As conditioned, the stream valley buffer and existing forest will be placed in a conservation easement and the Applicant will reforest 2.30 acres of stream valley buffer as described in the environmental section below. As approved the Application substantially conforms with the recommendations adopted in the *2002 Potomac Subregion Master Plan*.

Rustic Roads Functional Master Plan (1996)

The Rustic Roads Advisory Committee ("RRAC") has reviewed the Application to determine if it has any effect on Stoney Creek Road, a rustic road. The Applicant presented the RRAC with two development options for them to review, one with a shared driveway and the current proposal with three separate driveways accessing Stoney Creek Road. In its letter dated June 7, 2016, the RRAC expressed that it preferred the option that preserved the existing driveway with two additional driveways accessing Stoney Creek Way.

The RRAC believed that a fire department compliant shared driveway would have undesirable results. The option recommended by the RRAC and proposed by the Applicant better preserves the rustic entry features and hedgerow lining the existing driveway. The new single driveways are narrower than what would be required for a shared driveway and will access Stoney Creek Road at points that minimize impacts to the rustic road. As approved, the Preliminary Plan is consistent with recommendations in the *2002 Potomac Subregion Master Plan* and *1996 Rustic Road Functional Master Plan*.

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

Roads and Transportation Facilities

The Subject Property is located on the west side of Stoney Creek Road in Potomac. The three approved lots will have their own driveways on Stoney Creek Road. Vehicle parking is provided on-site on driveways and/or in garages.

According to the *Rustic Roads Functional Master Plan*, a rustic road must have a 70-foot-wide right-of-way, therefore, the Preliminary Plan shows dedication of 35 feet from the centerline of Stoney Creek Road, to accommodate half of the recommended minimum 70-foot-wide right-of-way. A sidewalk is not required along the Property frontage because of the rustic road designation.

The Application has been reviewed by the MCDOT, which determined that the Property has adequate vehicular access and sight distance by transmittal letter dated, August 4, 2014. The access to the Subject Property and the individual lots, as shown on the Preliminary Plan, is adequate to serve the approved development.

Local Area Transportation Review (LATR)

A traffic study is not required to satisfy the LATR test because the development of two new single-family detached units will generate fewer than 30 trips during the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak-hour.

Transportation Policy Area Review (TPAR)

The Property is in the Rural West Policy Area. According to the 2012-2016 Subdivision Staging Policy, the Rural West Policy Area is exempt from the TPAR roadway test and transit test; therefore, no TPAR General District Transportation Impact Tax payment is required.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the approved lots. On-site well and septic systems will serve each dwelling unit. The use of individual, on-site well water service and septic systems is consistent with the existing W-6 and S-6 services categories designated for the Property. The Application has been reviewed by MCDPS – Well and Septic Section, which determined the proposed well and septic locations are acceptable as shown on the approved well and septic plan dated September 20, 2016.

The Application has been reviewed by the Montgomery County Department of Permitting Services Fire Code Enforcement Section, which determined that the Property has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan dated June 16, 2016. Other public facilities and services, police stations, and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

The Application is in the Churchill High School Cluster which is operating at an inadequate level at the high school level according to the current Subdivision Staging Policy. Therefore, the Applicant must make a School Facilities Payment to MCDPS at the high school level at the single-family detached unit rate for all

units for which a building permit is issued. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on July 15, 2016. The approved concept proposes to meet the required stormwater management goals via drywells and non-rooftop disconnects. Other public facilities and services are available and adequate to serve the approved lots.

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. The approved lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations included in the Master Plan, and for development of single-family detached homes. The lots are consistent with the low-density development envisioned by the Master Plan and are adequately sized to accommodate the on-lot well and septic systems.

The lots were also reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The lots as approved meet all the dimensional requirements for area, frontage, and width, and can accommodate a reasonably sized detached home that would meet setbacks in that zone. A summary of this review is included in the Staff Report. The Application has been reviewed by other applicable county agencies, all of which have recommended approval of the Preliminary Plan.

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

A. Forest Conservation

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420161040 for the Property was approved on January 14, 2016. The NRI/FSD identified all the required environmental features on and adjacent to the Property, as further described in the *Environmental Guidelines for Management of Development in Montgomery County* (Environmental Guidelines).

The Property is within the Watts Branch watershed, which is classified by the State of Maryland as Use I-P waters. The Property is not located within a Special Protection Area or the Patuxent River Primary Management Area. The NRI/FSD identified a perennial stream, wetlands, in-stream farm pond (man-made), steep slopes and slopes with highly erodible soils. In addition, the NRI/FSD also identified a high priority existing forest stand of 2.02 acres along the stream at the rear of the Property.

The Property slopes down from the front of the Property along Stoney Creek Road to the existing house at an approximate slope of 4.4%. The average slope increases to about 17.1% from the house to the rear of the Property where a stream and a farm pond exist. There are pockets of slopes steeper than 25% within this overall area behind the house. Additionally, there are highly erodible soils on slopes between 15% and 25% present on most of the slopes adjacent to the existing house and back to the stream channel. The Application will not impact the steep slopes and highly erodible soils identified on the NRI/FSD.

The Application meets the requirements of Chapter 22A of the Montgomery County code. A Preliminary Forest Conservation Plan ("FCP") has been submitted for review as part of this Application. Based on the total tract area of this parcel and the Land Use Category on the Forest Conservation Worksheet, development of this site results in an afforestation requirement of 2.30 acres. The Applicant will meet this requirement by retaining the 2.02 acres of existing high priority forest on the Subject Property and planting 2.30 acres of stream valley buffer ("SVB"). All retained forest, planted forest, SVB and wetland areas shown on the FCP will be placed into a Category I Conservation Easement. The existing pond, spillway and maintenance access path to the pond will remain outside of any conservation easement to allow periodic maintenance to be performed on this structure.

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 CRZ impacts to six 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 use of the Subject Property without the Variance.

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 impacting the six trees is due to the location of the trees and necessary site design requirements. The Applicant's impacts to the CRZs of the six trees will range from a 23 percent impact up to a 49 percent impact, which, based on Staff's analysis, will not require removal of the trees. Therefore, the granting of this variance 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 variance is not based on conditions or circumstances which are the result of actions by the Applicant. The variance is based upon the existing site conditions and necessary design requirements of this application.

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 requested variance is a result of the existing conditions and not because 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. The Protected Trees being impacted are not located within a stream buffer and these trees should recover from these impacts. These trees will therefore remain to provide the same level of water quality protection as they currently provide. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision

The Planning Board does not require mitigation for specimen trees that are impacted, but not removed. Therefore, no mitigation is required in this case.

C. Stream Buffer Averaging

The approved boundary of the Easement at the rear of the existing house differs in some locations from the approved stream valley buffer ("SVB") shown on the Preliminary Plan and the NRI/FSD. In this case, the SVB, which is located at the top of the steep slope, would be immediately adjacent to the existing pool and residential structure allowing no spacing between the residential living space and the Easement. Based on Staff's recommendation, the Planning Board concludes that a 40-foot gap between the existing residential structure and the Easement boundary is desirable to reduce any potential Easement violations in the future. To compensate for the amount of SVB not protected by the Easement, buffer averaging is necessary.

The Board's *Environmental Guidelines* provide the option for buffer compensation to offset buffer encroachment on a case-by-case basis. One method of compensation is "buffer averaging," which permanently protects environmentally comparable on-site areas outside the delineated stream buffer in exchange for the allowance of encroachment elsewhere in the delineated buffer. The *Guidelines* recommend that the following criteria be met.

1. *Reasonable alternative for avoidance of the buffer are not available;*

The existing residential structure and its additions were built before the SVB was identified and located on the approved NRI/FSD. The Applicant has also limited development for the two lots to the front portion of the Property well outside of the SVB.

2. *Encroachment into the buffer has been minimized;*

The Applicant does not propose any encroachments into the approved SVB. The SVB line runs along the top of the steep slope on which the existing structure was placed. The SVB is directly adjacent to the pool structure leaving no gap between the structure and the conservation easement to allow maintenance or access. To avoid any potential forest conservation easement violation in the future it was decided to place the easement line 40-feet west of the pool structure instead of following the SVB line as is typically done.

3. *Existing sensitive areas have been avoided (forest, wetlands and their state-designated buffers, floodplain, steep slopes, habitat for rare, endangered, and threatened species and their associated buffers);*

This area of the SVB that is not being protected with a Category I Conservation Easement is considered steep slopes with a grade of approximately 30%. This area of the SVB is an open grassed area with scattered trees. Except for this area of SVB not within the proposed Easement, the remaining environmentally sensitive areas have been avoided by locating the proposed dwellings and associated well and septic systems in front of the existing house, closer to Stoney Creek Road.

4. *The proposed use is consistent with the preferred use of the buffer;*

The area of the SVB not being placed in the proposed Easement is an open grassed area with tree cover and located on a section of steep slopes. This area will most likely not be developed in the future and will remain in its current state.

5. *The plan design provides compensation for the loss of buffer function;*

The Applicant proposes to use "stream buffer averaging" to compensate for the amount of SVB not being protected with Easement. The area of SVB not included in the proposed Easement is approximately 8,815 square feet. As compensation, the Applicant proposes to place 8,980 square feet of additional land outside of, but adjacent to, the SVB into Easement. This additional area will be planted with new forest. The loss in SVB protection has been compensated for by increasing the area of conservation easement outside of and adjacent to the SVBs, both southeast and northeast of the existing farm pond near the Property lines.

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 MCDPS Stormwater Management Section approved the stormwater management concept for the project on July 15, 2016. The approved concept proposes to meet the required stormwater management goals via drywells and non-rooftop disconnects.

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 - 3 2017 (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 Vice Chair Wells-Harley, seconded by Commissioner Fani-González, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Fani-González, and Cichy voting in favor at its regular meeting held on Thursday, December 15, 2016, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board