

# Montgomery Planning

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**

Item No. 4

Date: 4-8-2021

**Lake Potomac: Preliminary Plan No.12013028A**



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**Completed: 3-25-2021**

## Description

A request to reinstate Preliminary Plan No. 120130280, which was approved for the creation of four lots for four single-family dwelling units.

**Location:** Located in the southeast quadrant of the intersection of Stoney Creek Road and Stoney Creek Way.

**Master Plan:** 2002 *Potomac Subregion Master Plan*

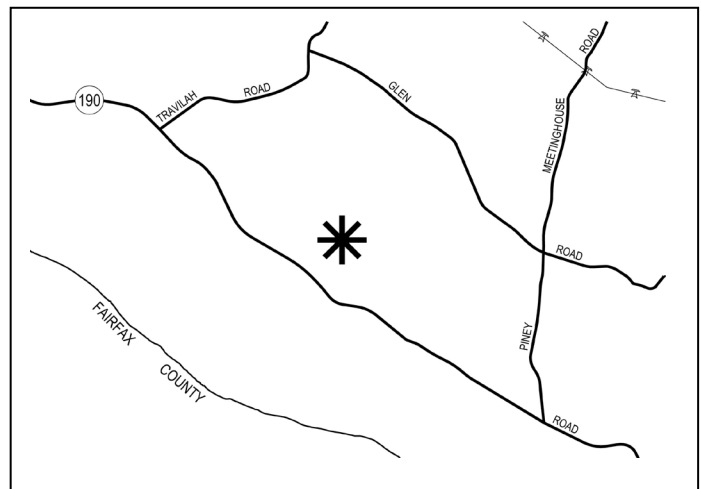
**Zone:** RE-2

**Property Size:** 11.11 acres

**Applicant:** Lowell Baier

**Acceptance date:** October 27, 2020

**Review Basis:** Chapters 50 and 59



## Summary

- Staff recommends **approval with conditions**
  - Staff supports the Applicant's request to reinstatement Preliminary Plan No. 120130280, through June 19, 2022, and Adequate Public Facilities validity period be extended 2 years, until June 19, 2024.
  - Due to a series of practical difficulties and undue hardship experienced by the Applicant, the Preliminary Plan validity expired on June 19, 2020, prior to the Applicant filing the approved record plat or requesting a timely extension.
  - Reinstatement criteria are set forth in Section 50.4.2.H.2.b. of the Subdivision Regulations, which permits the Board to reinstate a preliminary plan if an Applicant demonstrates practical difficulty or undue hardship.
  - No additional lots are proposed and the configuration of the lots remains unchanged.
  - Staff has not received any citizen correspondence on the Application.

## SECTION 1 – RECOMMENDATION AND CONDITIONS

Staff recommends approval of Preliminary Plan Amendment No. 12013028A, to reinstate the Planning Board approval and Adequate Public Facility validity period and extend the Preliminary Plan validity period. All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified below. Except for the amended conditions below, the conditions approved under Preliminary Plan No. 120130280, remain valid and in full effect.

**RECOMMENDATION:** Approval, subject to the following conditions:

Existing Condition to be revised:

12. 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~~ until June 19, 2024.

New Condition:

14. The Preliminary Plan will remain valid until June 19, 2022.

## SECTION 2 – SITE AND VICINITY DESCRIPTION

The subject property (Figure 1) is north of River Road (MD 190) within the Travilah community area of the 2002 *Potomac Subregion Master Plan* (“Master Plan”). The subject property is located on the south side of Stoney Creek Way in the southeast quadrant of the intersection of Stoney Creek Road and Stoney Creek Way and consists of 11.11 acres comprised of Parcel P384, Parcel P426 and Parcel P475 on Tax Map EQ32 in the RE-2 Zone (“Property” or “Subject Property”). Parcel 426 is improved with an existing house and a private driveway that provides access to Stoney Creek Way. The remaining parcels are unimproved. The surrounding land uses consist entirely of RE-2 zoned property developed with single-family homes.

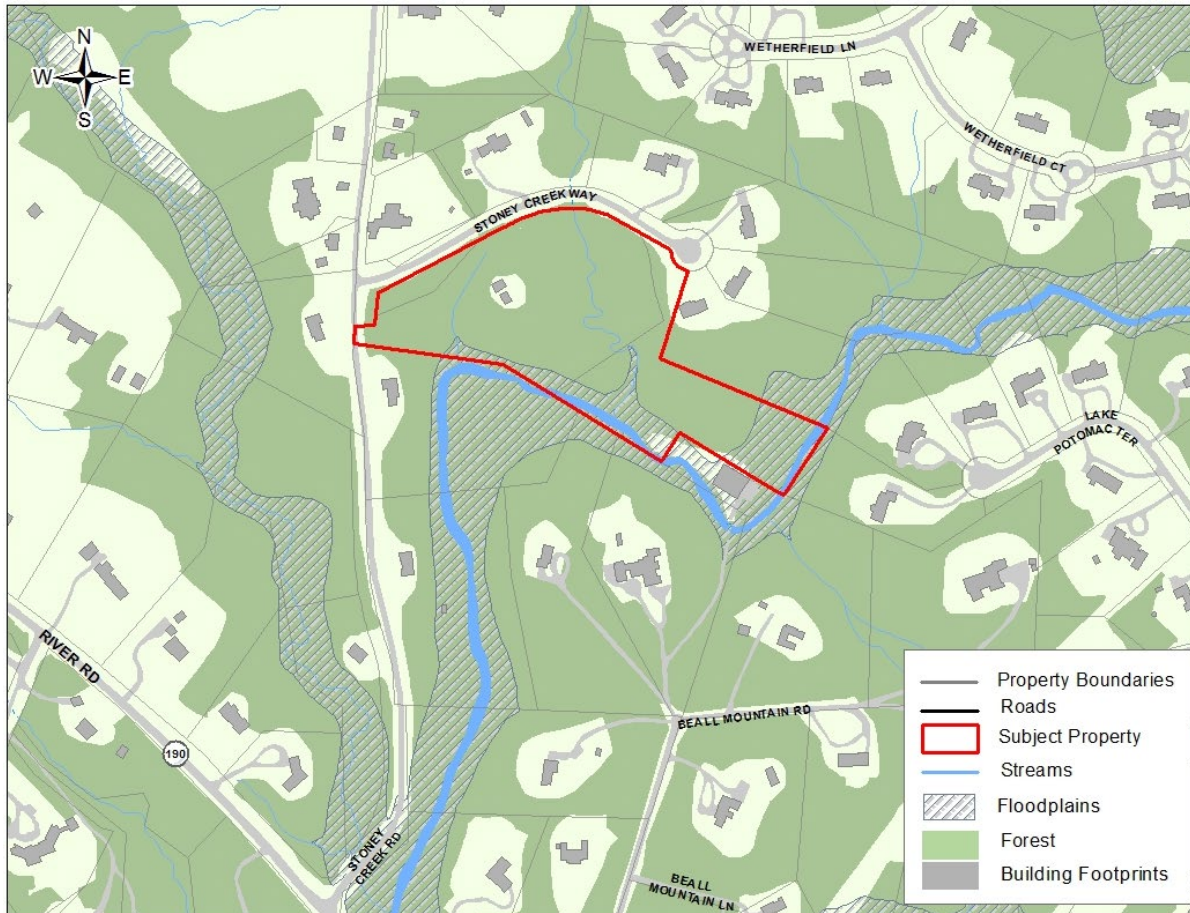
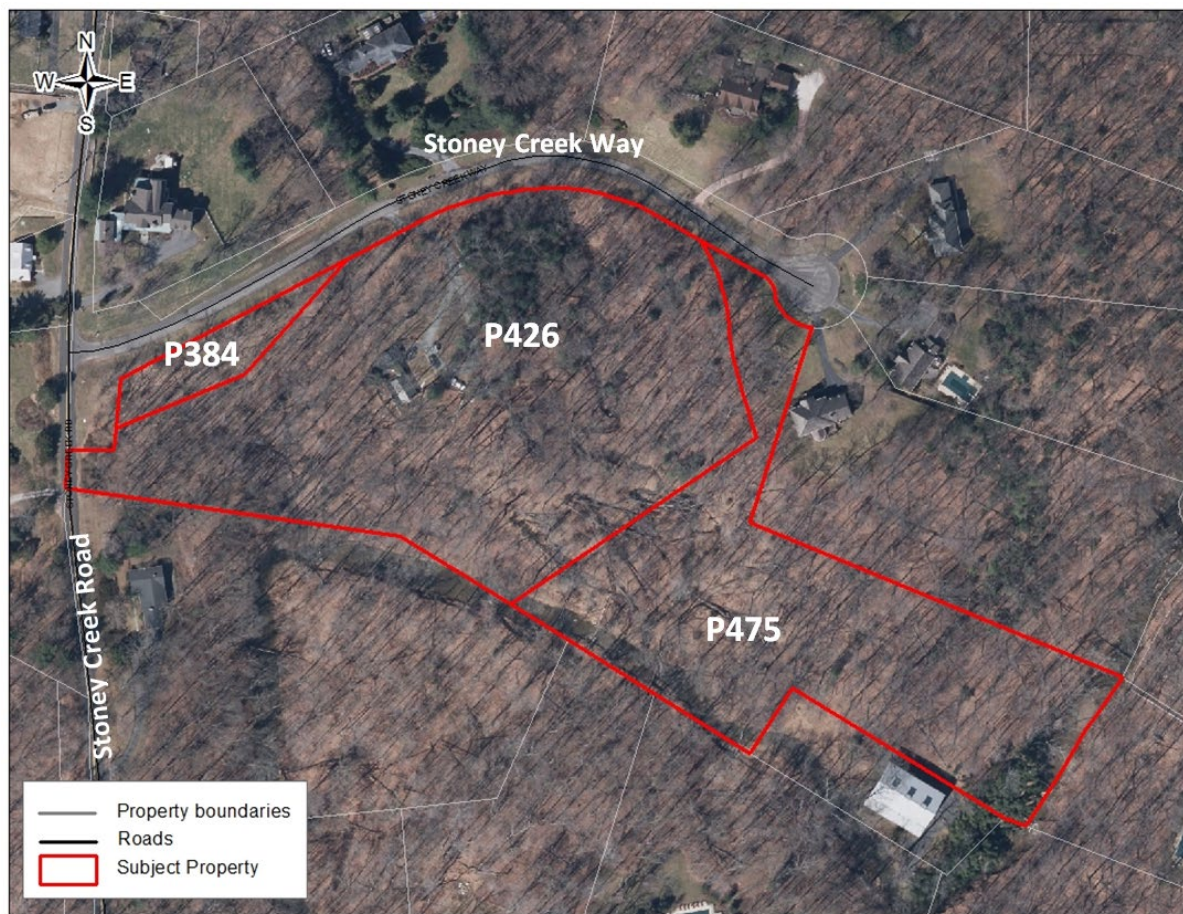


Figure 1 – Vicinity Map

The Subject Property is within the Watts Branch watershed, classified by the State of Maryland as Use I/I-P waters. There is a small stream and ephemeral drainage channel on the Property which drain into the lower main stem of Sandy Branch paralleling the southern property line. The Property is largely forested, contains intermittent steep slopes (15-25%) and extensive environmental buffers associated with the streams. As shown on Figure 1, a portion of the Property is within the 100-year floodplain associated with Sandy Branch.





*Figure 2 – Aerial Photo (Existing Parcels)*

### SECTION 3 – PROJECT DESCRIPTION

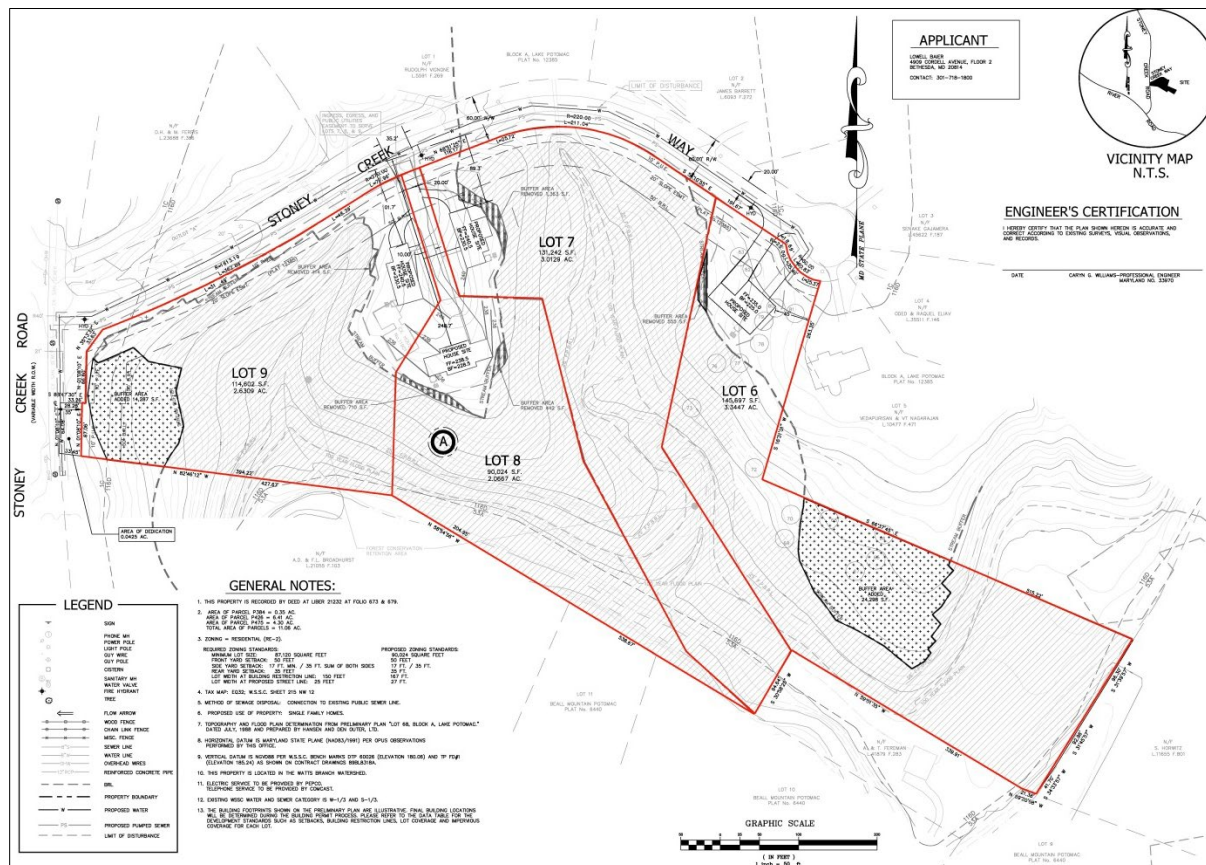
#### Previous Approvals

##### Preliminary Plan No. 120130280

The Planning Board approved Preliminary Plan No. 120130280, Lake Potomac (“Preliminary Plan”), by Resolution No. 15-51 (mailed on May 19, 2015) which created four lots for four single-family dwellings on 11.11 acres of land in the RE-2 zone (Attachment A). The Preliminary Plan was reviewed under the Subdivision Regulations in effect prior to February 2017. The Preliminary Plan was granted a validity period of 60 months, and an Adequate Public Facilities (APF) validity period of 85 months from the mailing date on the resolution. The Preliminary Plan validity expired on June 19, 2020<sup>1</sup> and because a timely extension request was not submitted prior to expiration of the Preliminary Plan validity, the original APF validity which would have remained valid until June 19, 2022, is void.

Preliminary Forest Conservation Plan No. 120130280 was approved with the Preliminary Plan and the Final Forest Conservation Plan was approved administratively on March 29, 2016 (Certified set received by M-NCPPC on April 9, 2019). To date, the requisite Conservation Easements have been recorded.

<sup>1</sup> Section 50.4.2.G specifies that the plan validity period starts on the initiation date, which is, if no appeal has been filed, 30 days from the mailing date of the resolution.



Following approval of the Preliminary Plan, the Applicant Lowell Baier, (“Applicant”) submitted Record Plat Application No. 220160090 (“Record Plat”), which was accepted on August 21, 2015 and subsequently approved by the Planning Board on July 11, 2019 (Figure 4 and Attachment B). The only remaining step in the record plat approval process prior to the Preliminary Plan being vested, is to file the Record Plat so it can be recorded in the Land Records of Montgomery County. Due to unforeseen circumstances detailed below, the Applicant suffered undue hardship and the Record Plat was not filed prior to expiration of the Preliminary Plan validity.

## Proposal

Preliminary Plan Amendment No. 120130128A (“Application” or “Amendment”) requests reinstatement of the Preliminary Plan approval, including the original Adequate Public Facilities validity period, and establishment of a new Preliminary Plan validity through June 19, 2022 and a new APF validity through June 19, 2024. Reinstatement and a brief extension of the Preliminary Plan will afford the Applicant the necessary time to file the Record Plat. This reinstatement request is in accordance with Section 50.4.2.H.2.b. of the Montgomery County Code, which permits the Board to reinstate a Preliminary Plan if an Applicant has suffered a practical difficulty or undue hardship.

As evident in the Applicant's Statement of Justification (Attachment C) and detailed in the findings below, the Applicant has suffered a practical difficulty or undue hardship which prevented completion of the

record plat process. As discussed in Section 4 below, the Amendment does not alter the intent of the original Preliminary Plan approval.

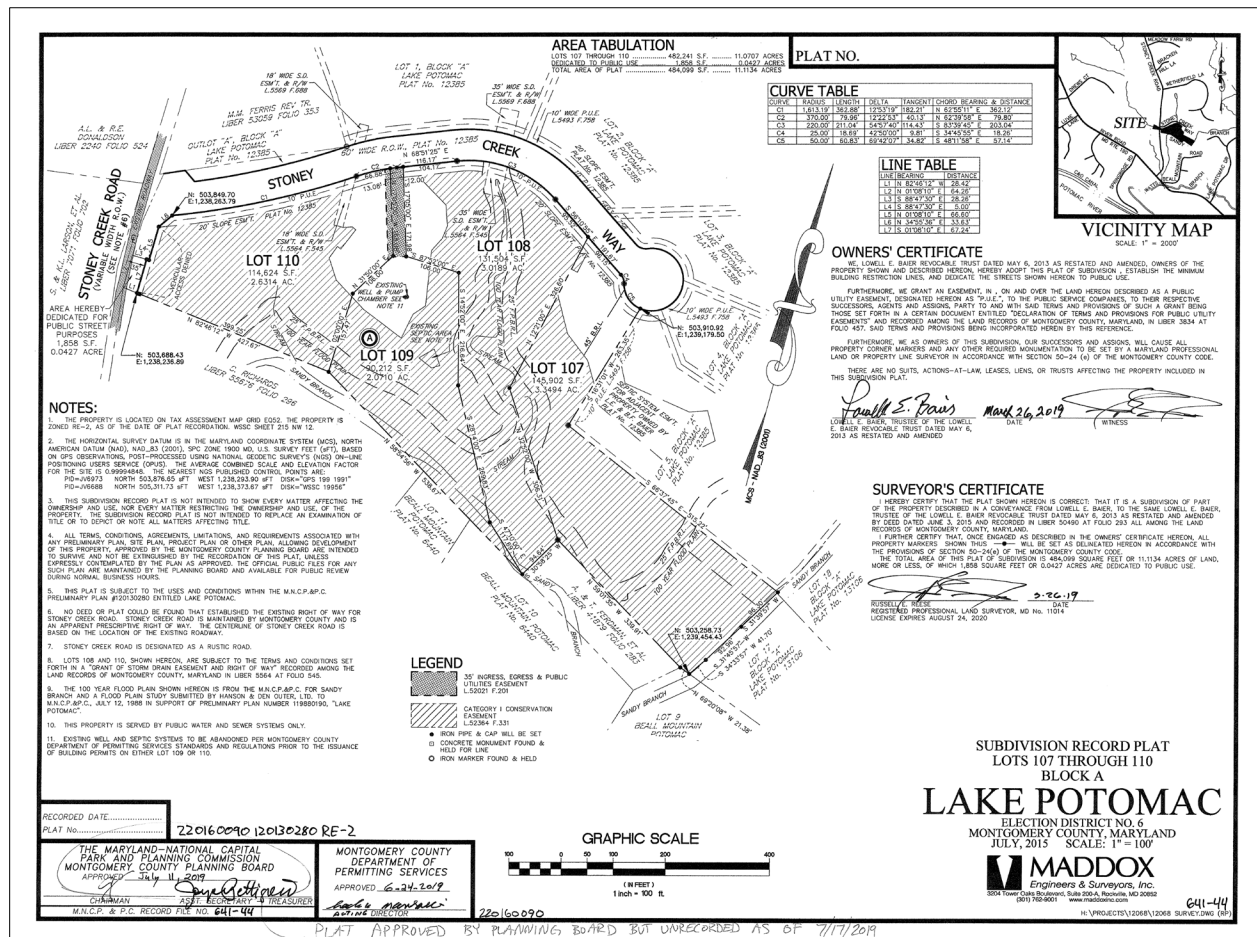


Figure 4 – Record Plat

## SECTION 4 – ANALYSIS AND FINDINGS – CHAPTER 50

The Planning Board found that Preliminary Plan No. 120130280 met the requirements of the RE-2 zone; satisfied Forest Conservation requirements and complied with other applicable regulatory requirements. Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the Preliminary Plan and all findings not specifically addressed remain in full force and effect.

The elements of Preliminary Plan Amendment No. 12013028A remain consistent with the original findings, as modified, to reinstate the Preliminary Plan.

### Preliminary Plan Reinstatement

Section 50.4.2.H.2.a of the Montgomery County Code states that failure to submit an extension request in a timely fashion voids all non-validated portions of the preliminary plan. However, Section 50.4.2.H.2.b.



states that the Board may reinstate a Preliminary Plan and establish a new validity period, with or without a new APF review, if the Applicant demonstrates practical difficulty or undue hardship.

As part of this Amendment, the Applicant requests reinstatement of the Preliminary Plan, including extending the Preliminary Plan validity until June 19, 2022 and a two year APF extension, from the date the original APF would have expired (June 19, 2022), establishing a validity period until June 19, 2024.

Because the Preliminary Plan expired before July 28, 2020, the Application is not eligible for the recent two-year extension granted by Montgomery County Council Ordinance No. 19-12 (Subdivision Regulation Amendment No. 20-01) due to COVID-19. For the same reason and with the new APF review, included below, Staff supports the Applicant's request to establish a new APF validity period until June 2024.

In the Statement of Justification for the reinstatement, the Applicant's representative, explained that Mr. Baier satisfied all requirements of the approval prior to the expiration of the Preliminary Plan validity and the Record Plat was ready for recordation to vest the approval. However, in December 2018, as explained in his letter and doctor's statement (Attachment D), the Applicant was diagnosed with radiation cystitis (a complication from his cancer treatment) discovered after an emergency surgery. In March of 2019, the Applicant underwent a second surgery for the same issue. After the initial surgery and throughout 2019 and 2020, the Applicant was frequently hospitalized and was disabled to the point that he was unable attend to his business affairs. It was during that time the Preliminary Plan validity expired.

To compound the issue, the Applicant's business affairs were further disrupted with the spread of COVID-19. Given his aforementioned health issues, the Applicant was limited in what he could physically do and when he was able to continue with his business, regular communication and day-to-day coordination was restricted by the COVID-19 Pandemic. In short, the Applicant had no choice but to prioritize his health once he became ill, suffering an undue hardship, and wasn't aware the Record Plat had not been filed until after the validity period had expired.

To reassure the Board that the Preliminary Plan is still viable and moving forward, the Applicant has provided a letter from a local builder, Mitchell & Best, expressing their interest in purchasing the lots predicated on approval of this Application (Attachment E).

The Application to reinstate the Preliminary Plan through June 19, 2022, does not alter the intent of the original approval and the only changes to conditions of approval are those necessary to complete the record plat process and establish a new APF validity period, as detailed below.

### Adequate Public Facilities

3. *public facilities will be adequate to support and service the area of the subdivision;*

#### Local Area Transportation Review (LATR)

The Preliminary Plan was approved for four lots for four new single-family detached units. The existing dwelling unit on the Property will be removed prior to construction of any new dwelling, which results in three net new units. A traffic study is not required to satisfy the Application's Adequate Public Facilities LATR test because three net new single-family detached units generates fewer than 50 person trips in the peak hour, which occurs within the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods.

## Schools Adequacy Test

### **Overview and Applicable School Test**

The Application was submitted in 2020 and will come before the Planning Board in April 2021. Therefore, the rules of the 2016 Subdivision Staging Policy (SSP) and FY21 Annual School Test, approved by the Planning Board on June 25, 2020 and effective July 1, 2020 are applicable. The Application proposes reinstatement of the original Preliminary Plan approved for 4 single-family detached lots on 11.11 acres. The Applicant is removing an existing dwelling unit, so the net unit increase is 3, which means it is exempt from any applicable residential development moratoria and it is unnecessary to test the project's estimated impact on school enrollment. Nevertheless, below is additional information about the schools and school cluster that serve the application property.

### **Cluster Adequacy Test**

The Property is located in the Winston Churchill High School Cluster. The student enrollment and capacity projections from the FY21 Annual School Test under the 2016 SSP for the cluster are noted in the following table:

School Level	Projected Cluster Totals, September 2025			Moratorium Threshold	Estimated Application Impact
	Enrollment	Program Capacity	% Utilization		
Elementary	2,505	2,866	87.4%	935	0
Middle	1,564	1,731	90.4%	513	0
High	2,327	1,986	117.2%	56	0

### **Individual School Adequacy Test**

The applicable elementary and middle schools for this Application are Potomac ES and Herbert Hoover MS, respectively. Based on the FY21 Annual School Test results under the 2016 SSP, the student enrollment and capacity projections for these schools are noted in the following table:

School	Projected School Totals, September 2025			
	Enrollment	Program Capacity	% Utilization	Seat Deficit
Potomac ES	356	479	74.3%	+123
Herbert Hoover MS	964	1,139	84.6%	+175

### Other Public Facilities and Services

The Application does not modify the approval lot configuration in a manner that alters fire department access, configuration of utilities or any other public services, therefore, all original approvals remain valid. The Application can be adequately served by all other public facilities and services according to the 2016 Subdivision Staging Policy.



## **SECTION 5 – COMMUNITY CORRESPONDENCE**

This Application was submitted and noticed in accordance with all required procedures. Signs referencing the Application were posted along the Property's frontage on Stoney Creek Road and Stoney Creek Way. To date, Staff has not received and community inquiries and correspondence regarding the Application.

## **SECTION 6 – CONCLUSION**

Based on the information provided by the Applicant, Staff believes that the Applicant has in fact suffered a practical difficulty and an undue hardship and recommends that the Planning Board reinstate the Preliminary Plan, with the conditions enumerated in Section 1. As proposed, the approved lots continue to meet all requirements established in the applicable Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the 2002 *Potomac Subregion Master Plan*.

### **Attachments**

- A. Preliminary Plan Resolution
- B. Record Plat
- C. Statement of Justification
- D. Applicant's statement and medical letter
- E. Mitchell & Best letter



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

**MAY 19 2015**

MCPB No. 15-51  
Preliminary Plan No. 120130280  
Lake Potomac  
Date of Hearing: May 14, 2015

**RESOLUTION**

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

WHEREAS, on August 27, 2013, Lowell Baier ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create four lots on 11.11 acres of land in the RE-2 zone, located in the southeast quadrant of the intersection of Stoney Creek Road and Stoney Creek Way ("Subject Property"), in the Rural West Policy Area, Potomac Subregion master plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120130280, Lake Potomac ("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 May 4, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 14, 2015, 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 Preliminary Plan No. 120130280 to create four lots on the Subject Property, subject to the following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to four lots for four single-family dwelling units.

<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.

Approved as to  
Legal Sufficiency

*[Signature]* 5/15/15  
8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
M-NCPPC Legal Department  
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org



2. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan, including:
  - a. Prior to recordation of plat(s), the Applicant must receive Staff approval of a Final Forest Conservation Plan that is consistent with the approved Preliminary Forest Conservation Plan.
  - b. Prior to the earlier of demolition, clearing, or grading, or the recordation of plat(s), a Category I Conservation Easement must be recorded in the Montgomery County Land Records by deed and the liber folio must be reflected on the plat. The deed of easement must be approved by the M-NCPPC Office of the General Counsel.
  - c. Permanent Category I Conservation Easement signs must be placed every 50 feet along the perimeter of the conservation easement boundaries at the time of forest planting.
  - d. The Final Forest Conservation Plan must depict where the Applicant will plant the 31, 3-inch caliper native trees on the Subject Property to mitigate for the removal of the 11 variance trees.
  - e. The Final Forest Conservation Plan must be corrected (table on sheet 3) to reflect tree ST-17 as "To be removed" as indicated in the variance request.
  - 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. Record plats must delineate a Category I conservation easement over all areas of forest as shown on the approved FFCP, and the Liber and Folio numbers of the recorded easement must be referenced on the record plat(s).
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated August 28, 2014, 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 recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
6. 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 October 1, 2014, 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.

7. The Planning Board accepts the recommendations of the MCDPS – Well and Septic Section in its letter dated April 3, 2015 for removal of existing wells and septic systems, 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.
8. The Applicant must dedicate and show on the record plat(s) a minimum of thirty-five feet from the centerline along the Subject Property frontage for Stoney Creek Road.
9. 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 and record plat 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.
10. The record plat must show all necessary easements, including common ingress/egress and utility easements over all shared driveways.
11. The record plat must delineate a 45-foot building restriction line along the shared side property line of new Lot 6 and existing Lot 5, Block A. The building restriction line must be substantially the same as shown on the Certified Preliminary Plan.
12. 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.
13. Certified Preliminary Plan must contain the following note:



The location of the driveway for any dwelling on Lot 6 will be on the west side of the Lot 6 house, connecting to Stoney Creek Way, as generally shown on the Preliminary Plan.

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.*

*Potomac Subregion Master Plan (2002)*

The Subject Property is located in the Potomac Subregion Master Plan, within the Travilah community area. The Master Plan describes the Travilah area as containing low-density residential neighborhoods in keeping with nearby rural and natural areas, but does not make specific recommendations for the Subject Property.

The Subject Property will be developed with single-family residential units and will preserve existing sensitive areas and maintain the existing rustic character of Stoney Creek Road. As envisioned by the Master Plan, the Application proposes to develop the Subject Property under the RE-2 standard method of development at a density below the maximum permitted in the RE-2 Zone (i.e., 4 lots instead of 5 lots). The Subject Property contains natural features including forest and stream buffer. The Application limits the impact to natural environment and preserves the forest by replacing the existing house and locating the new housing on the existing cul-de-sac that is not densely forested. The development also uses stream buffer averaging to allow limited encroachments into the existing stream buffer in exchange for protecting a significantly larger area of land on the Subject Property as stream valley buffer.

The Sewer Service Policies section of the Master Plan allows for limited expansion of community water and sewer service in areas zoned RE-2 which is in close proximity to the sewer envelope. The Subject Property was approved for community water and sewer by the Department of Environmental Protection ("DEP") via category change in 1990 and is within the existing sewer envelope.

The Subject Property is located in the Watts Branch Watershed, which the Master Plan recognizes as having "the highest concentration of unique environmental features in the Subregion." The steep slopes, mature forest, and other environmentally sensitive areas on the Subject Property make the

development of the Subject Property very challenging. However, the Application attempts to make the best use of the Subject Property's limited buildable area while minimizing overall environmental impacts on the Watts Branch Watershed. In particular, the area of land placed into Category 1 easement as part the stream valley buffer averaging described in more detail below significantly increases the total amount of protected land on the Subject Property.

Given the environmental constraints on the Subject Property, the Application provides the ideal lot layout to maximize the buildable envelope that is outside of the environmentally sensitive areas. The Application substantially conforms to the Master Plan.

#### *Rustic Roads Functional Master Plan (1996)*

The Rustic Roads Advisory Committee ("RRAC") reviewed several early options for the Preliminary Plan to determine if it would have any effect on the adjacent Stoney Creek Road, a rustic road. In its letter dated June 9, 2014, the RRAC expressed its preference for an option that places all driveways on Stoney Creek Way, which is not a rustic road, and that limits impacts to Stoney Creek Road to the minimal additional traffic generated by the proposed subdivision.

Following the RRAC review, the Applicant revised the Preliminary Plan to include no access on or directly adjacent to Stoney Creek Road. As approved, the Preliminary Plan is consistent with the recommendations of the Rustic Roads Functional Master Plan.

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

#### *Local Area Transportation Review (LATR)*

The four lots do not generate 30 or more new vehicle trips during the AM and PM peak-hours. The Application is not subject to LATR.

#### *Transportation Policy Area Review (TPAR)*

The Subject Property is located in the Rural West Policy Area, which according to the 2012-2016 *Subdivision Staging Policy* is exempt from the roadway and transit test; therefore, no TPAR payment is required.

#### *Road Design*



The Subject Property fronts on the entire south side of Stoney Creek Way, which is classified as Open Section Secondary Residential Road (MC-211.02) with 20 feet of pavement and a total right-of-way of 60 feet. The full right-of-way for Stoney Creek Way was previously dedicated and no additional dedication is required as part of this Application.

Stoney Creek Road is classified as a rustic road with a minimum width of 70 feet according to the *Rustic Roads Functional Master Plan*, which was recommended in the *Potomac Subregion Master Plan*. While there are no improvements required on Stoney Creek Road as part of this Application, the Applicant is dedicating 35 feet from centerline to achieve the Master Plan-recommended width. A sidewalk is not required along the Subject Property frontage because it is in the rural policy area. There is no public transportation within two-and-a-half miles of the Subject Property.

The Application has been reviewed by the MCDOT, which determined that the Subject Property has adequate vehicular access and sight distance. The vehicle and pedestrian access for the subdivision is sufficient to serve the lots with the approved private improvements.

#### *Other Public Facilities and Services*

All other public facilities and services including schools, police, health services, electric, and telecommunication are available and adequate to support and serve the dwelling units. The Application has been reviewed by the Montgomery County Department of Fire and Rescue Service, which determined that the Subject Property has adequate access for fire and rescue vehicles. The Subject Property is in the Winston Churchill School Cluster, which is operating at an adequate level according to the current Subdivision Staging Policy. Therefore, the Application is not subject to payment of School Facilities Payment. Other public facilities and services are operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

The Subject Property is located in the W-3 and S-3 service category, which is consistent with use of community water and sewer. The Application has been reviewed by Washington Suburban Sanitation Commission, which determined that there is an existing 12-inch water main along Stoney Creek Road that terminates just south of the Stoney Creek Way intersection that will be extended to serve the lots. There is an existing 8-inch gravity sewer main that runs along Stoney Creek Road and will connect to the proposed pressure sewer at the intersection. On-site grinder pump systems and low pressure gravity sewer will be installed to serve the new 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.*

The Master Plan recommends low-density single-family residential zoning and preservation of the natural environment in the Travilah area.

The approved development is low-density, and reflects a layout that addresses the fact that the vast majority of the Subject Property is environmentally constrained. The size, shape, width and orientation of the lots are appropriate when considering the location of the subdivision and the environmental sensitivity of the Subject Property. The lots minimize disturbance of the sensitive environmental features as recommended by the Master Plan.

The Application has been reviewed for compliance with the Subdivision Regulations and meets all applicable sections. The four lots were reviewed for compliance with the dimensional requirements for the RE-2 Zone as specified in the Zoning Ordinance. The lots as approved will meet all the dimensional requirements for area, frontage, width, and establishment of the required setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of which have recommended approval of the plan.

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.

The Forest Conservation Plan ("FCP") contains 11.07 acres of net tract area. The FCP proposes clearing of 1.34 acres of forest and retention of 8.94 acres of existing forest which will be placed in a conservation easement. For forest conservation purposes, the Application falls within the Medium-Density Residential Land Use, for which the Subject Property has a 2.77-acre conservation threshold. No forest mitigation, other than planting required as part of the Variance described below, is required as part of this FCP because the Application is above the break-even point, which is the amount of clearing permitted without mitigation relative to the land use category and size of the Subject Property.

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 includes the removal of 11 Protected Trees and CRZ impact to 3 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has 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.

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.*

In this case, the removal of the existing house and construction of four new homes will require encroachment into forested areas and clearing the yard of the existing house. Since the existing house was built more than forty years ago, the trees around the house and the surrounding forest have had a chance to grow and mature. Demolition of the existing house and the areas required for maneuvering construction equipment will damage many of the variance trees. It is not possible to redevelop this site without impact to the Protected Trees. Therefore, granting of the variance is not unique to this Applicant, and the variance will not confer on the Applicant 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 the action by the Applicant, but rather on the site conditions and the zone for the Subject Property. The Subject Property is zoned RE-2 which could yield five units given the size of the Subject Property; however, the Application only includes four lots. In addition, the Applicant will remove an existing dwelling and redevelop the new homes in a compact cluster which minimizes forest clearing, land disturbing activity, and makes the most efficient use of driveway pavement. All efforts have been made to limit the number of trees affected by this Application. There

are no feasible options to reconfigure this four-lot subdivision to avoid impact to 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 Variance is not related in any way to a condition on a neighboring property.

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

Although four of the trees being removed are within the County required stream buffer, the Applicant will mitigate for these as well as the loss of specimen trees located outside of forested areas. This approval is conditioned on mitigation that approximates the form and function of trees removed. Therefore the removal will not violate State water quality standards.

The Protected Trees being impacted will remain to provide the same level of water quality protection as they currently provide.

As mitigation for the removal of the 11 Protected Trees, totaling 93 caliper inches (372 inches DBH), the Applicant is required to plant approximately 31, three-inch caliper native canopy trees on the Subject Property. There must be particular emphasis on the placement of trees on or adjacent to the steeply sloping areas of the Subject Property. The planting locations will be shown on the Final Forest Conservation Plan to be reviewed and approved by Staff.

No mitigation is required for Protected Trees impacted but retained.

#### C. Stream Buffer Encroachment

The Subject Property is located at the downstream tip of the Sandy Branch subwatershed of Watts Branch. The forested stream valley, steep slopes, and erodible soils associated with Sandy Branch are the dominant features of the Subject Property and constrain the areas available for usable yard space except near the existing home and cul-de-sac.

Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420130860 for the Subject Property was approved on January 15, 2013. The NRI/FSD identified 10.3 acres of forest (93% of the Subject Property), which is considered



high priority due to the sensitive areas, diversity of species (including nearly 100 specimen trees) and the maturity of the forest. The NRI/FSD also identified approximately 8.6 acres, or 78% of the Subject Property, of environmentally sensitive areas, including stream valley buffer (8.46 acres), steep slopes, and erodible soils. There are no parklands or conservation easements in the vicinity of the Subject Property.

In applications that include significant areas of stream buffer that restrict development, the *Environmental Guidelines* provide the option for buffer compensation to offset buffer encroachment. The *Guidelines* specify that buffer compensation proposals are reviewed 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* recommends consideration of the following factors when reviewing a buffer compensation proposal, and the Board concludes that in this case:

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

The approved Preliminary Plan represents a collaborative effort between the Applicant, Staff, and adjacent property owners. The approved Preliminary Plan has reduced the Applicant's original proposal by one lot and significantly reconfigured the house locations to the most developable area of the Subject Property. Without unreasonably limiting the development potential of the Subject Property, further alternatives for avoiding the small remaining area of buffer encroachment are not available.

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

The stream buffer encroachment within the entire subdivision is limited to 3,184 square feet. No structures are proposed within the buffer area. The areas of encroachment are to provide a 15 to 20 foot construction area around each house and to provide reasonable access to a usable rear yard space. In addition, the Preliminary Plan design reflects an imperviousness level of four percent, which exceeds even the most stringent impervious caps in other parts of the county and is well below what is normally associated with residential development in the RE-2 zone. The Application minimizes overall encroachment by limiting it to small portions of rear yard and does not propose any roads, driveways or utilities within the stream buffer area. By limiting development to four lots and carefully configuring the house locations, the Preliminary Plan minimizes buffer encroachments to the maximum extent practicable.



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);*

The majority of the sensitive areas on the Subject Property have been avoided by redesigning the subdivision and clustering three of the proposed dwelling on the Subject Property's central knoll with a shared driveway. While approximately one third of the encroachment area is forested and on steep slopes, no clearing or grading is proposed in those areas as part of construction. There is no encroachment into the 100 year floodplain. The Subject Property does not contain any rare, endangered, or threatened species that could be impacted by the proposed buffer encroachment.

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

No structures or retaining walls are proposed within the stream buffer encroachment area. The approved Preliminary Plan removes an existing septic field from the Subject Property that could otherwise pollute the stream if it were to fail. In addition an approved septic reserve area on Lot 5 (for the use of the Subject Property) will also be abandoned.

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

The Applicant will use stream buffer averaging to compensate for the encroachment into 3,184 square feet of stream valley buffer area on the Subject Property. As compensation, the Applicant will place 38,585 square feet of additional forested area outside of the stream buffer into a Category 1 Conservation Easement, which equates to a 12:1 replacement ratio. The area added as compensation is primarily forested, consisting of one-third acre of pioneer upland forest and a half-acre of mature upland forest, and adequately compensates for the relatively minor loss of buffer function.

The Preliminary Plan meets all applicable requirements for protection of environmentally sensitive areas.

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

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



MCDPS approved a stormwater management concept on October 1, 2014. The concept proposes to meet the required stormwater management goals via cisterns and pervious pavement located on the individual lots.

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

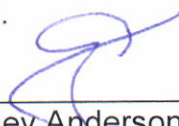
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 19 2015 (which is the date that this Resolution is mailed to all parties of record); and

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).

\* \* \* \* \*

**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 Dreyfuss, Presley, and Fani-González voting in favor at its regular meeting held on Thursday, May 14, 2015, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Casey Anderson, Chair  
Montgomery County Planning Board

MR. RICHARD BRUSH, MANAGER  
MCDPS-WATER RES. PLAN REVIEW  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MS. LISA SCHWARTZ  
DHCA  
100 MARYLAND AENUE  
4<sup>TH</sup> FLOOR  
ROCKVILLE, MD 20850

MS. SUSAN SCALA-DEMBY  
MCDPS-ZONING  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. CHRISTOPHER ANDERSON  
MPDU MANAGER, DHCA  
100 MAYLAND AVENUE  
4<sup>TH</sup> FLOOR  
ROCKVILLE, MD 20850

ANDREW DER  
3 BETHESDA METRO CENTER  
SUITE 800  
BETHESDA, MD 20814

JOHN BLADES  
MADDOX ENGINEERS & SURVEYORS  
3204 TOWER OAKS BOULEVARD  
SUITE 200-A  
ROCKVILLE, MD 20852

MR. GREG LECK  
MCDOT  
100 EDISON PARK DRIVE  
4<sup>TH</sup> FLOOR  
GAITHERSBURG, MD 20878

MR. ATIQ PANJSHIRI  
MCDPS-RIGHT-OF-WAY  
PERMITTING  
355 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MS. CHRISTINA CONTRERAS  
MCDPS-LAND DEVELOPMENT  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. ALAN SOUKUP  
MCDDEP-WATER RESOURCE  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

RUSS REESE  
3 BETHESDA METRO CENTER  
SUITE 800  
BETHESDA, MD 20814

CARYN WILLIAMS  
MADDOX ENGINEERINGS & SURVEYORS  
100 PARK AVENUE  
ROCKVILLE, MD 20850

MR. RICHARD BRUSH, MANAGER  
MCDPS-SEDIMENT/STORMWATER  
INSPECTION & ENFORCEMENT  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. ESHAN MOTAZEDI  
MCDPS-SITE PLAN ENFORCEMENT  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. GENE VON GUNTEN  
MCDPS-WELL & SEPTIC  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

LERCH, EARLY & BREWER  
ROBERT HARRIS  
3 BETHESDA METRO CENTER  
SUITE 800  
BETHESDA, MD 20814

LOWELL BAIER  
4909 CORDELL AVENUE  
2<sup>ND</sup> FLOOR  
BETHESDA, MD 20814



## AREA TABULATION

LOTS 107 THROUGH 110 ..... 482,241 S.F. .... 11.0707 ACRES  
 DEDICATED TO PUBLIC USE ..... 1,858 S.F. .... 0.0427 ACRES  
 TOTAL AREA OF PLAT ..... 484,099 S.F. .... 11.1134 ACRES

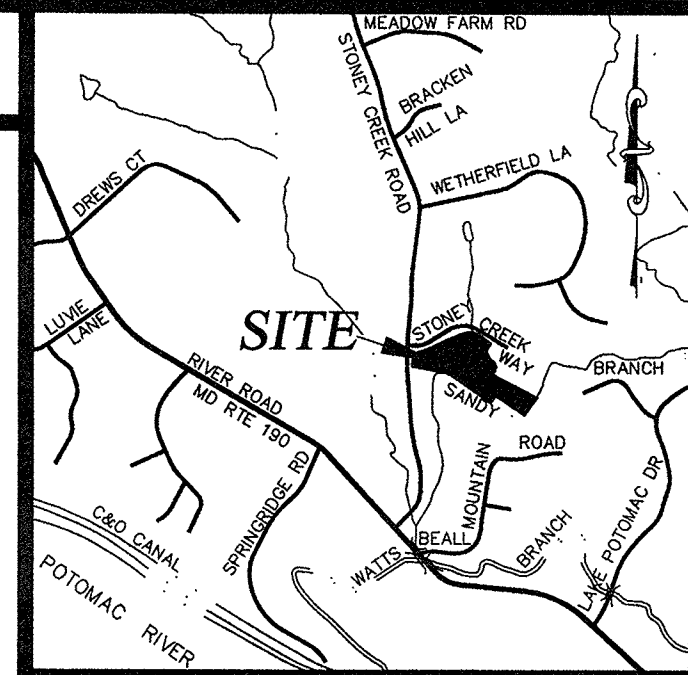
PLAT NO.

## CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA	TANGENT	CHORD BEARING & DISTANCE
C1	1,613.19'	362.88'	12°53'19"	182.21'	N 62°55'11" E 362.12'
C2	370.00'	79.96'	12°22'53"	40.13'	N 62°39'58" E 79.80'
C3	220.00'	211.04'	54°57'40"	114.43'	S 83°39'45" E 203.04'
C4	25.00'	18.69'	42°50'00"	9.81'	S 34°45'55" E 18.26'
C5	50.00'	60.83'	69°42'07"	34.82'	S 48°11'58" E 57.14'

## LINE TABLE

LINE	BEARING	DISTANCE
L1	N 82°46'12" W	28.42'
L2	N 01°08'10" E	64.26'
L3	S 88°47'30" E	28.26'
L4	S 88°47'30" E	5.00'
L5	N 01°08'10" E	66.60'
L6	N 34°55'36" E	33.63'
L7	S 01°08'10" E	67.24'



## VICINITY MAP

SCALE: 1" = 2000'

## OWNERS' CERTIFICATE

WE, LOWELL E. BAIER REVOCABLE TRUST DATED MAY 6, 2013 AS RESTATED AND AMENDED, OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON, HEREBY ADOPT THIS PLAT OF SUBDIVISION, ESTABLISH THE MINIMUM BUILDING RESTRICTION LINES, AND DEDICATE THE STREETS SHOWN HEREON TO PUBLIC USE.

FURTHERMORE, WE GRANT AN EASEMENT, IN, ON AND OVER THE LAND HEREON DESCRIBED AS A PUBLIC UTILITY EASEMENT, DESIGNATED HEREON AS "P.U.E.", TO THE PUBLIC SERVICE COMPANIES, TO THEIR RESPECTIVE SUCCESSORS, AGENTS AND ASSIGNS, PARTY TO AND WITH SAID TERMS AND PROVISIONS OF SUCH A GRANT BEING THOSE SET FORTH IN A CERTAIN DOCUMENT ENTITLED "DECLARATION OF TERMS AND PROVISIONS FOR PUBLIC UTILITY EASEMENTS" AND RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND, IN LIBER 3834 AT FOLIO 457. SAID TERMS AND PROVISIONS BEING INCORPORATED HEREIN BY THIS REFERENCE.

FURTHERMORE, WE AS OWNERS OF THIS SUBDIVISION, OUR SUCCESSORS AND ASSIGNS, WILL CAUSE ALL PROPERTY CORNER MARKERS AND ANY OTHER REQUIRED MONUMENTATION TO BE SET BY A MARYLAND PROFESSIONAL LAND OR PROPERTY LINE SURVEYOR IN ACCORDANCE WITH SECTION 50-24 (e) OF THE MONTGOMERY COUNTY CODE.

THERE ARE NO SUITS, ACTIONS-AT-LAW, LEASES, LIENS, OR TRUSTS AFFECTING THE PROPERTY INCLUDED IN THIS SUBDIVISION PLAT.

*Lowell E. Baier*  
 LOWELL E. BAIER, TRUSTEE OF THE LOWELL E. BAIER REVOCABLE TRUST DATED MAY 6, 2013 AS RESTATED AND AMENDED

*Mark 26, 2019*  
 DATE

*[Signature]*  
 WITNESS

## SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE PLAT SHOWN HEREON IS CORRECT: THAT IT IS A SUBDIVISION OF PART OF THE PROPERTY DESCRIBED IN A CONVEYANCE FROM LOWELL E. BAIER, TO THE SAME LOWELL E. BAIER, TRUSTEE OF THE LOWELL E. BAIER REVOCABLE TRUST DATED MAY 6, 2013 AS RESTATED AND AMENDED BY DEED DATED JUNE 3, 2015 AND RECORDED IN LIBER 50490 AT FOLIO 293 ALL AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND.

I FURTHER CERTIFY THAT, ONCE ENGAGED AS DESCRIBED IN THE OWNERS' CERTIFICATE HEREON, ALL PROPERTY MARKERS SHOWN THUS WILL BE SET AS DELINEATED HEREON IN ACCORDANCE WITH THE PROVISIONS OF SECTION 50-24(e) OF THE MONTGOMERY COUNTY CODE.

THE TOTAL AREA OF THIS PLAT OF SUBDIVISION IS 484,099 SQUARE FEET OR 11.1134 ACRES OF LAND, MORE OR LESS, OF WHICH 1,858 SQUARE FEET OR 0.0427 ACRES ARE DEDICATED TO PUBLIC USE.

*Russell E. Reese*  
 RUSSELL E. REESE  
 REGISTERED PROFESSIONAL LAND SURVEYOR, MD No. 11014  
 LICENSE EXPIRES AUGUST 24, 2020

*9-26-19*  
 DATE

SUBDIVISION RECORD PLAT  
 LOTS 107 THROUGH 110  
 BLOCK A

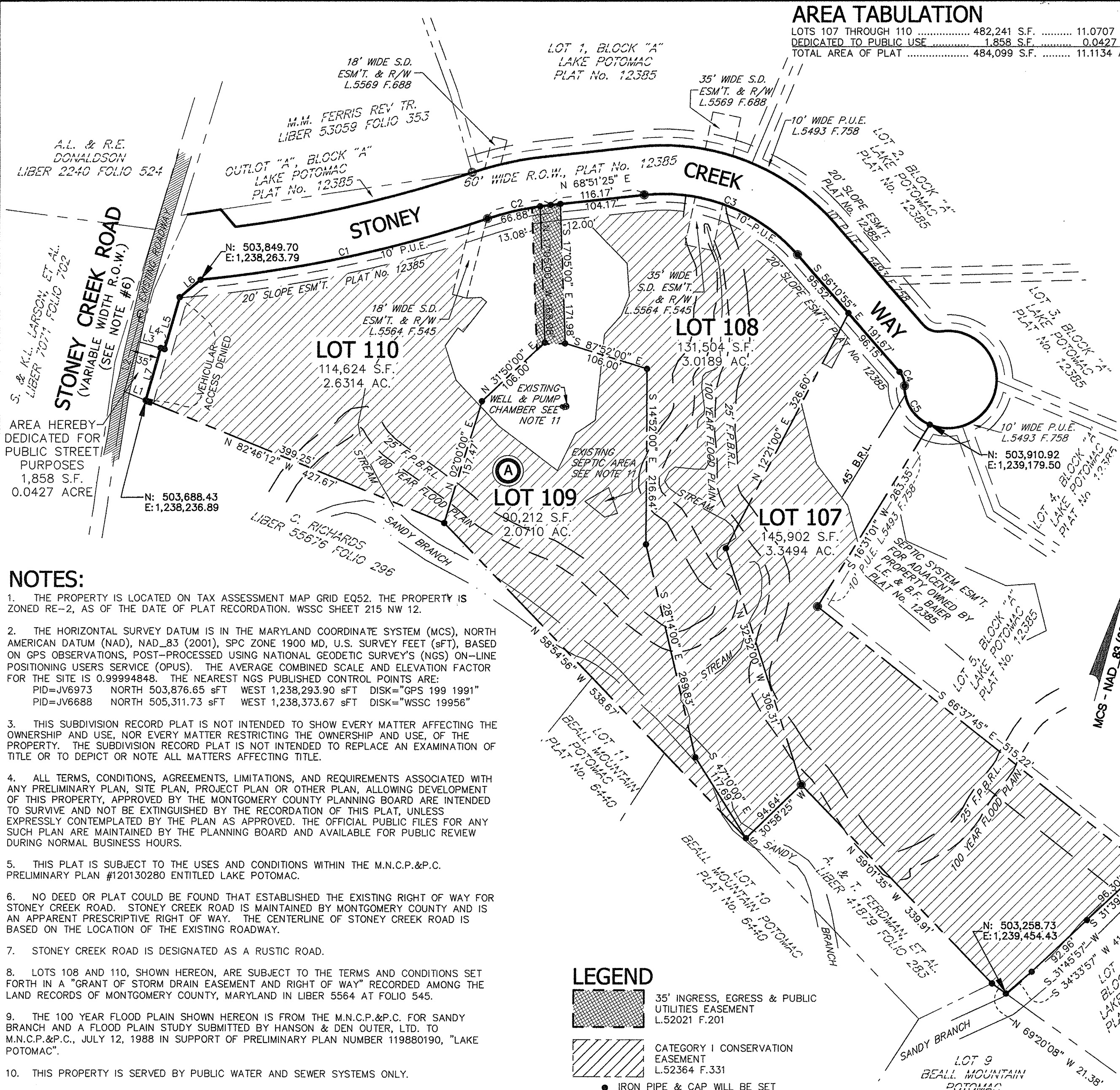
## LAKE POTOMAC

ELECTION DISTRICT NO. 6  
 MONTGOMERY COUNTY, MARYLAND  
 JULY, 2015 SCALE: 1" = 100'

**MADDOX**  
 Engineers & Surveyors, Inc.  
 3204 Tower Oaks Boulevard, Suite 200-A, Rockville, MD 20852  
 (301) 762-9001 www.maddoxinc.com

641-44

H:\PROJECTS\12068\12068 SURVEY.DWG (RP)



## LEGEND

- 35' INGRESS, EGRESS & PUBLIC UTILITIES EASEMENT L.52021 F.201
- CATEGORY I CONSERVATION EASEMENT L.52364 F.331
- IRON PIPE & CAP WILL BE SET
- CONCRETE MONUMENT FOUND & HELD FOR LINE
- IRON MARKER FOUND & HELD

## NOTES:

- THE PROPERTY IS LOCATED ON TAX ASSESSMENT MAP GRID EQ52. THE PROPERTY IS ZONED RE-2, AS OF THE DATE OF PLAT RECORDATION. WSSC SHEET 215 NW 12.
- THE HORIZONTAL SURVEY DATUM IS IN THE MARYLAND COORDINATE SYSTEM (MCS), NORTH AMERICAN DATUM (NAD), NAD\_83 (2001), SPC ZONE 1900 MD, U.S. SURVEY FEET (SFT), BASED ON GPS OBSERVATIONS, POST-PROCESSED USING NATIONAL GEODETIC SURVEY'S (NGS) ON-LINE POSITIONING USERS SERVICE (OPUS). THE AVERAGE COMBINED SCALE AND ELEVATION FACTOR FOR THE SITE IS 0.99994848. THE NEAREST NGS PUBLISHED CONTROL POINTS ARE:  
 PID=JV6973 NORTH 503,876.65 SFT WEST 1,238,293.90 SFT DISK="GPS 199 1991"  
 PID=JV6688 NORTH 505,311.73 SFT WEST 1,238,373.67 SFT DISK="WSSC 19956"
- THIS SUBDIVISION RECORD PLAT IS NOT INTENDED TO SHOW EVERY MATTER AFFECTING THE OWNERSHIP AND USE, NOR EVERY MATTER RESTRICTING THE OWNERSHIP AND USE, OF THE PROPERTY. THE SUBDIVISION RECORD PLAT IS NOT INTENDED TO REPLACE AN EXAMINATION OF TITLE OR TO DEPICT OR NOTE ALL MATTERS AFFECTING TITLE.
- ALL TERMS, CONDITIONS, AGREEMENTS, LIMITATIONS, AND REQUIREMENTS ASSOCIATED WITH ANY PRELIMINARY PLAN, SITE PLAN, PROJECT PLAN OR OTHER PLAN, ALLOWING DEVELOPMENT OF THIS PROPERTY, APPROVED BY THE MONTGOMERY COUNTY PLANNING BOARD ARE INTENDED TO SURVIVE AND NOT BE EXTINGUISHED BY THE RECORDATION OF THIS PLAT, UNLESS EXPRESSLY CONTEMPLATED BY THE PLAN AS APPROVED. THE OFFICIAL PUBLIC FILES FOR ANY SUCH PLAN ARE MAINTAINED BY THE PLANNING BOARD AND AVAILABLE FOR PUBLIC REVIEW DURING NORMAL BUSINESS HOURS.
- THIS PLAT IS SUBJECT TO THE USES AND CONDITIONS WITHIN THE M.N.C.P.&P.C. PRELIMINARY PLAN #120130280 ENTITLED LAKE POTOMAC.
- NO DEED OR PLAT COULD BE FOUND THAT ESTABLISHED THE EXISTING RIGHT OF WAY FOR STONEY CREEK ROAD. STONEY CREEK ROAD IS MAINTAINED BY MONTGOMERY COUNTY AND IS AN APPARENT PRESCRIPTIVE RIGHT OF WAY. THE CENTERLINE OF STONEY CREEK ROAD IS BASED ON THE LOCATION OF THE EXISTING ROADWAY.
- STONEY CREEK ROAD IS DESIGNATED AS A RUSTIC ROAD.
- LOTS 108 AND 110, SHOWN HEREON, ARE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN A "GRANT OF STORM DRAIN EASEMENT AND RIGHT OF WAY" RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN LIBER 5564 AT FOLIO 545.
- THE 100 YEAR FLOOD PLAIN SHOWN HEREON IS FROM THE M.N.C.P.&P.C. FOR SANDY BRANCH AND A FLOOD PLAIN STUDY SUBMITTED BY HANSON & DEN OUTER, LTD. TO M.N.C.P.&P.C., JULY 12, 1988 IN SUPPORT OF PRELIMINARY PLAN NUMBER 119880190, "LAKE POTOMAC".
- THIS PROPERTY IS SERVED BY PUBLIC WATER AND SEWER SYSTEMS ONLY.
- EXISTING WELL AND SEPTIC SYSTEMS TO BE ABANDONED PER MONTGOMERY COUNTY DEPARTMENT OF PERMITTING SERVICES STANDARDS AND REGULATIONS PRIOR TO THE ISSUANCE OF BUILDING PERMITS ON EITHER LOT 109 OR 110.

RECORDED DATE.....  
 PLAT No.....

220160090 120130280 RE-2

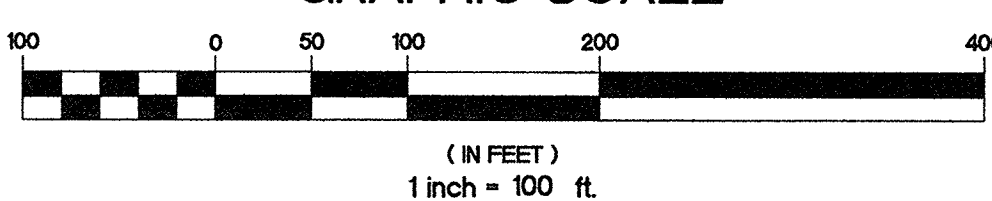
THE MARYLAND-NATIONAL CAPITAL  
 PARK AND PLANNING COMMISSION  
 MONTGOMERY COUNTY PLANNING BOARD  
 APPROVED July 11, 2019

CHAIRMAN ASST. SECRETARY & TREASURER  
 M.N.C.P. & P.C. RECORD FILE NO. 641-44

MONTGOMERY COUNTY  
 DEPARTMENT OF  
 PERMITTING SERVICES

APPROVED 6-24-2019  
 Acting Director

## GRAPHIC SCALE



220160090

PLAT APPROVED BY PLANNING BOARD BUT UNRECORDED AS OF 7/17/2019

## Statement of Justification

## Extension/Reinstatement Request

Lake Potomac  
Preliminary Plan No. 120130280

This Preliminary Plan extension request is being submitted under Section 50.4.2.H.2b of the Subdivision Regulations, on behalf of Mr. Lowell Baier, the owner of the subject property located at the southeast quadrant of the intersection of Stony Creek Road and Stoney Creek Way in the Potomac Subregion Master Plan. The subject property consists of 11.11 acres. The Montgomery County Planning Board approved the subdivision of this land into four lots under Plan No. 120130280. Applicant is requesting this extension *nunc pro tunc* to enable the extension to apply retroactively to June 18, 2020, and to have the Preliminary Plan validity extend until June 19, 2022 when the APFO period expires.

The circumstances of this application justify a retroactive extension of the validity period. This is a small subdivision plan for four homes in a developed area of Potomac. Mr. Baier recently discovered that the approved plat (attached as Exhibit 1) was not recorded by June 19, 2020, despite his execution of it, approval and execution by the Montgomery County Department of Permitting Services and, finally, execution by the Maryland-National Capital Park and Planning Commission on July 11, 2019. In essence, by July, 2019, well in advance of the expiration date of the validity period, Mr. Baier had satisfied all requirements of the approval and the plat was ready for recordation to vest the approval. Unfortunately, as explained in the two attached letters (Exhibits 2 and 3) last year Mr. Baier became very ill requiring two operations in 2019 and was unable to function in the business world for nine months. He was not focused on the plat



deadline and was unable to complete the plat process until now. Recently, Mr. Baier initiated the process to sell the four lots to a builder who discovered that final recordation of the plat had not happened. That builder is interested in the property but requires that the approval be validated by the recordation of the plat. We note that the APFO approval for the Preliminary Plan was valid for 85 months meaning that it still has nearly 2 years remaining. Applicant would like to be able to record this plat so that builder can proceed with development.

There is no harm in granting this approval and allowing the retroactive extension of the Preliminary Plan validity period so that it runs coterminous with the APFO validity period. The project went through a full review process and was deemed an appropriate subdivision. No circumstances have changed to prevent development of this property. It would be inefficient for the applicant to have to initiate a new subdivision application just to reinstate the approval already granted.

We do not believe a waiver of the Subdivision Regulations is required given the provision in Section 50.4.2.H.2.b cited above. To the extent a waiver of any provision of the Subdivision Regulations is required, we request such a waiver under Section 9.5.

Admitted:  
Indiana  
Maryland  
District of Columbia

4909 Cordell Avenue  
Bethesda, MD 20814  
301.718.1800 P  
301.718.8303 F  
LEBaier@LawBaier.com

**LOWELL E. BAIER**  
ATTORNEY AT LAW

December 18, 2020

The Montgomery County Planning Board  
c/o Jonathan Casey  
Montgomery Planning Department  
2425 Reddie Drive, 14<sup>th</sup> Floor  
Wheaton, MD 20902

RE: Lake Potomac, Preliminary Plan No. 120130280

Dear Mr. Casey:

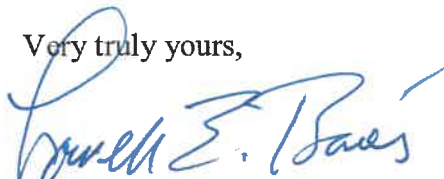
The reason the referenced plan expired is twofold: (1) my continuing health problems, and (2) the impact of the Covid virus on efficiently operating my business affairs.

Enclosed is a letter of verification from my urologist regarding my health problems. On December 5, 2018 I was rushed to Sibley Memorial Hospital with severe bleeding. The diagnosis was radiation cystitis. A TURP operation followed in December, and a second one in March, with repeated hospitalizations throughout this period. While the bleeding was finally arrested, the consequence that followed are severe, and will handicap me for life. The Cleveland Clinic diagnosed this problem, and could not offer a remedy. I'm still struggling with resolving the issues with two local gastroenterologists.

This medical situation caused me to lose 8-9 months during 2019 of any attention to my business affairs. Frankly, I couldn't work I was so disabled. Thereafter I've only been able to work intermittently. Then when the Covid virus forced both my staff and I to work remotely, all attention to the deadline on the preliminary plan was lost in the inefficiency of running a business remotely. Moreover, I thought I had 5 years before the plan expired, only to be told that the 5 years had to do with the APFO approval.

Given these circumstances, I'd ask that the Planning Commission grant me an extension on the expired plan to facilitate proceeding with the development of the referenced 4 lot subdivision.

Very truly yours,



Lowell E. Baier

Enclosure



## FOXHALL UROLOGY

Nicholas L. Constantinople, M.D., F.A.C.S.  
Stephen W. Dejter, Jr., M.D., F.A.C.S.  
Edward F. Dunne, Jr., M.D., F.A.C.S.  
Chartered

3301 New Mexico Avenue, N.W.  
Suite 311  
Washington, DC 20016  
(202) 364-3434  
Fax (202) 686-6382

June 18, 2019

Re: Lowell E. Baier  
Visit Date: 06/18/2019

### To Whom It May Concern:

This gentleman has been a patient of mine for several years dating back to June 2016. His past history is notable for external beam radiation in 2007 for a Gleason 6 prostate cancer. Between June 2016 and approximately 8 months ago he suffered with intractable urgency, frequency, and nocturia x6, for which he was treated with Myrbetriq 50 mg daily plus Vesicare 10 mg daily, which did seem to help quell his severe overactive bladder and urge incontinence.

Approximately 6 months ago the patient developed severe intractable radiation cystitis characterized by heavy bleeding, clots, urinary clot retention, and the like. He underwent several procedures at Sibley Hospital, the first in December by my partner, and another procedure in March by myself, at which time cauterization of the bladder and in March resection of a benign pseudotumor secondary to radiation was accomplished. Fortunately we did not have to use intravesical Formalin. Thankfully, the bleeding has subsided, however the patient's bladder has remained dysfunctional. I have taught the patient how to perform CIC, which he does as needed once to three times a day. Obviously he is off Myrbetriq and Vesicare. He is also having terrible diarrhea with fecal incontinence. Understandably, he is terribly depressed about his urinary and colon situation. I have recommended to the patient that he go to the Cleveland Clinic as the Department of Urology has always been helpful over the years to my few very complicated patients like this. I look forward to your advisements and recommendations. Please feel free to call me if there are any questions that I might answer.

Sincerely,



---

Stephen W. Dejter Jr., MD

D: 06/18/2019 10:57:06 EST  
T: 06/18/2019 11:07:12 EST/MIS1052/22783529  
JOB#: 1642244



# Mitchell & Best<sup>SM</sup>

Mitchell & Best Group LLC • Mitchell & Best Homebuilders LLC

Rockmanor Office Park • 1686 E. Gude Drive • Rockville, Maryland 20850 • (301) 762-9511 • Fax: (301) 610-0086 or (301) 762-8308 • web address: [www.mitchellbesthomes.com](http://www.mitchellbesthomes.com)

August 27, 2020

Mr. Robert Harris  
Lerch, Early & Brewer  
7600 Wisconsin Ave, Suite 700  
Bethesda, MD 20814

Re: Lake Potomac – Lots 107-110 Block A  
Preliminary Plan No. 120130280  
Expression of Interest

Dear Bob,

As you know I have been talking to Lowell Baier about his for lots on Stoney Creek Way for some time. We are still interested in working something out for the purchase of the property; however, to move forward with the purchase we would have to know that the expired Preliminary Plan has been renewed. If you have any questions concerning this letter, please let me know.

Sincerely,

Martin J. Mitchell,  
CEO

Builders • Developers: Snug Hill Overlook • Normandy Falls • Fallsreach • Fallsridge • Stonegate Overlook • Hollyoak • Carper's Farm  
Riverway • Seven Locks Overlook • Flints Grove • Flintsridge • Middlebridge • Heatherhill • Tuckerman Station • Fallsgate • Fallswick  
Riverhill • Normandy Hills • Stoney Creek Knoll • Maplewood Park • Player's Crossing • Player's Turning • Player's Gate • Potomac Bend  
Village Gate • Trafton Place • Eagle Ridge • Great Elm Farm • Potomac Glen • Kentlands • Longmeade • Highland Ridge Farm • Wootton's Mill  
Ashleigh Knolls • Rockmanor Executive Center • Redgate Business Park • River Creek • Glen Meadows • King Farm • Bancroft • Endicott Hill  
Oak Creek • Maple Lawn • Bancroft North • Bancroft Woods/Springview Woods • Fieldstone Farm • Blue Ridge Glen • Fox Knoll • Hampshire Hamlet

