

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

MCPB
Item #



MEMORANDUM

DATE: March 9, 2009

TO: Montgomery County Planning Board

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

FROM: Patrick Butler (301-495-4561) *P.B.*
Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: Resubdivision to create two lots for two one-family detached dwelling units on approximately 4.5 acres of land

PROJECT NAME: Black Hills Estates
CASE #: 120090070 (720060240)
REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RE-2
LOCATION: Located on the south side of Ascot Square Court, 370 feet east of Clarksburg Road (MD 121)
MASTER PLAN: Boyds

APPLICANT: Michael Gresalfi
ENGINEER: CAS Engineering

FILING DATE: September 4, 2008
HEARING DATE: March 19, 2009

RECOMMENDATION: Approval subject to the following conditions:

- 1) Approval under this preliminary plan is limited to two lots for two one-family detached dwelling units.
- 2) The applicant must construct a turnaround on Black Hills Road for Fire and Rescue vehicles and public use as shown on the preliminary plan.
- 3) 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.
- 4) The record plat(s) must reflect a Category I Conservation Easement over the entire stream valley buffer and the areas of planted and retained forest as delineated on the preliminary plan.
- 5) The applicant must comply with the conditions of the MCDPS stormwater management concept approval dated November 24, 2008. 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 MCDPS, Well and Septic Section approval dated November 20, 2007. These conditions may be amended by MCDPS provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 7) The applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated December 1, 2008. These conditions may be amended by MCDOT provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 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 sixty-one (61) months from the date of mailing of the Planning Board resolution.
- 10) The record plat must show necessary easements.

SITE DESCRIPTION

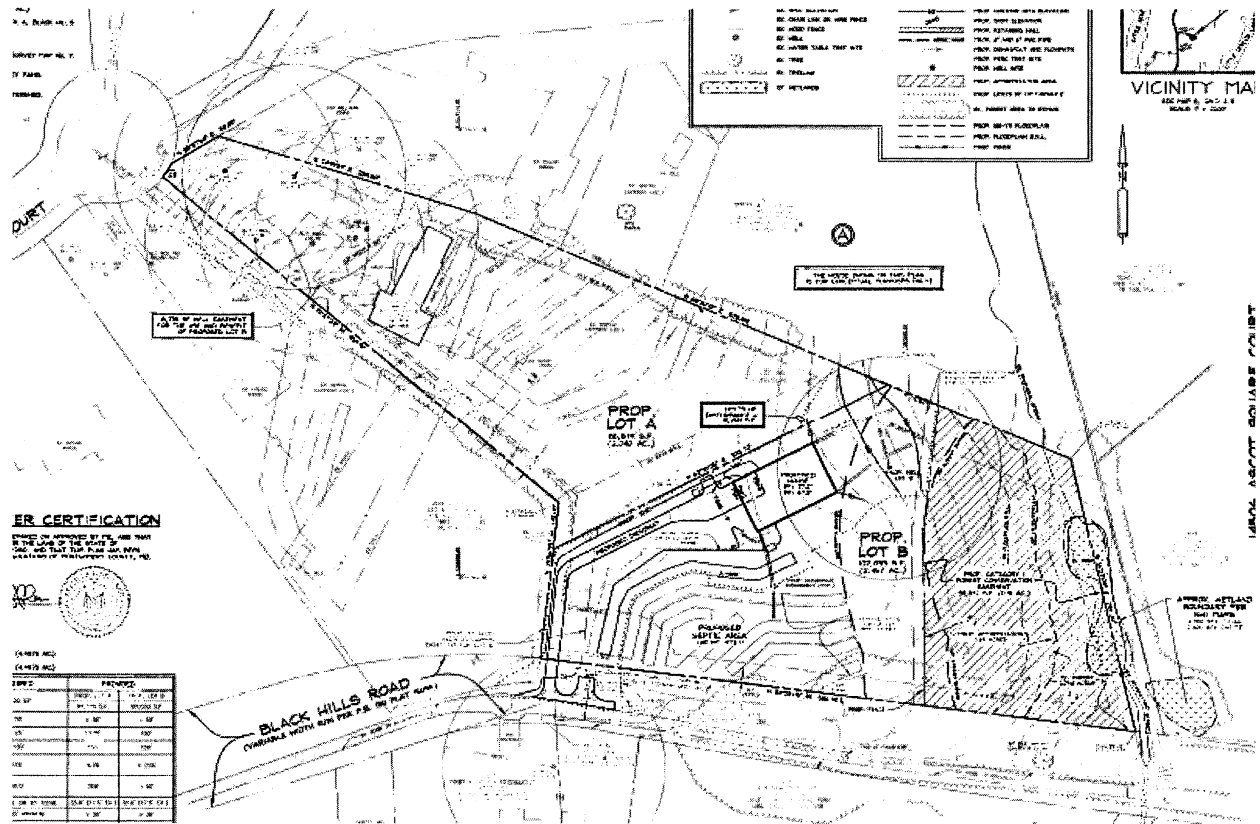
The subject property, shown below and in Attachment A, is a 4.5-acre platted lot in the RE-2 zone. The property is located on the south side of Ascot Square Court, approximately 370 feet east of Clarksburg Road (MD 121). The property also has frontage on Black Hills Road, to the south. The subject property is currently developed with one one-family detached residence, which is proposed to remain on one of the two proposed new lots. Surrounding properties are developed with one-family detached residences in the RE-2 and R-200 zones. Black Hill Regional Park is located to the south and east of the subject property.

The site is located within the Little Seneca Creek watershed. An unnamed tributary to Little Seneca Creek meanders on and off the property along the eastern property line. A stream buffer related to this tributary is located in the southeastern portion of the site.



PROJECT DESCRIPTION

The application is a preliminary plan, shown below and in Attachment B, filed pursuant to Section 50-29(b)(2) of the Subdivision Regulations. The applicant proposes to resubdivide the existing lot into two lots, one of which will be 88,879 square feet (2.04 acres) and one of which will be 107,033 square feet (2.46 acres). Proposed Lot A will front on Ascot Square Court. The existing house on this lot will remain. It has driveway access from Ascot Square Court. Proposed Lot B will front on Black Hills Road. A new house with driveway access from Black Hills Road is proposed on this lot. Both homes will be served by on-lot standard septic systems and private wells.



PREVIOUS PRE-PRELIMINARY PLAN ACTION

An earlier pre-preliminary plan application was filed for this project under the alternative review procedures of Section 50-33A of the Subdivision Regulations. The applicant requested a binding decision from the Planning Board with respect to approval of the proposed lots' conformance with the resubdivision criteria in Section 50-29(b)(2) of the Subdivision Regulations, specifically the frontage criterion. The Board approved the pre-preliminary plan at a hearing on June 5, 2008 with the findings and conditions as noted in the Resolution dated February 24, 2009 (Attachment C). A detailed discussion of this previous action is included in the resubdivision analysis below.

ANALYSIS AND FINDINGS

Master Plan Compliance

The Boyds Master Plan supports the retention and reconfirmation of the RE-2 zone and residential land-use for the Subject Property. The master plan specifically recommends that the area continue as a rural, residential community composed primarily of single-family detached dwellings at varying densities. The proposed application has been reviewed by jurisdictional agencies, and it has been determined that the proposed use will not adversely impact environmental, land use and zoning, transportation, or community facilities as identified by the Plan. The proposed application would create two lots that are consistent with the zoning and larger-lot, rural-residential community identified by the master plan. Therefore, staff finds the proposed application conforms to the Boyds Master Plan.

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 because the proposed development generates fewer than 3 new peak-hour trips within the weekday morning and evening peak periods. Ascot Square Court is a secondary residential road, requiring 60 feet of right-of-way. Sixty feet of right-of-way currently exists, therefore, no additional dedication is required. Black Hills Road is a tertiary residential road requiring 50 feet of right-of-way. 28 feet to 37 feet of right-of-way currently exists; however, since Black Hills Road only provides access to a Parks Department maintenance yard, additional right-of-way is not required. In response to previous discussion as part of the pre-preliminary plan, a turnaround is being provided for both Fire and Rescue vehicles and the public. The previous discussion centered upon the abutting property owner's concern that vehicles use their driveway to turnaround. This use has caused negative impacts including higher maintenance costs and noise, and headlight glare to the abutting property owner.

Sidewalks are not required for lots in the RE-2 zone because pedestrians can safely use the streets, and no sidewalk currently exists on either side of Ascot Square Court or Black Hills Road. Proposed vehicular and pedestrian access for the subdivision will be safe and adequate with the existing public road and proposed private driveways.

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. The Subject Property is within a school moratorium area, but new subdivisions creating up to three new homes are permitted within such an area. However, a school facilities payment must be made prior to issuance of building permits for the new lot. Other public facilities and services, such as police stations, firehouses and health services, are operating within the standards set by the Growth Policy Resolution currently in effect. Electrical and telecommunications services are also available to serve the Property.

Environment

Stormwater Management & Sediment Control

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on November 24, 2008. The stormwater management concept includes on-site water quality control and onsite recharge via the Environmentally Sensitive Development Credit. Channel protection is not required because the one-year post-development peak discharge is less than two cubic feet per second.

Environmental Guidelines

Environmental Planning staff approved the Natural Resource Inventory/Forest Stand Delineation for the site on January 23, 2008. The site drains to a Use Class IV-P tributary of Little Seneca Lake. Little Seneca Lake lies approximately 650 feet downstream of the site. A Category I Conservation Easement is proposed to protect the stream valley buffer and neighboring wetlands. There are no other known environmentally sensitive areas onsite. Therefore, staff finds the proposed application in conformance with the Montgomery County Environmental Guidelines.

Forest Conservation

The applicant submitted a preliminary forest conservation plan as part of the preliminary plan of subdivision. Currently, there are approximately 0.25 acres of forest on the Subject Property. The forest is located along the eastern property line in the stream valley buffer, which will be protected by a Category I Conservation Easement. There is a 0.90-acre afforestation planting requirement. Therefore, the applicant must plant a total of 0.65 acre of forest onsite within the unforested portion of the stream valley buffer. With this condition, staff finds the proposed application satisfies the requirements of the forest conservation law.

Compliance with the Subdivision Regulations and Zoning Ordinance (Attachment D – Agency Correspondence)

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections, including the requirements for resubdivision as discussed below. The proposed size, width, shape and orientation of the lots 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 proposed lots will meet the dimensional requirements for area, frontage¹, 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.

Conformance with Section 50-29(b)(2) (Attachment E – Neighborhood Map) (Attachment F – Resubdivision Data Table)

A. Statutory Review Criteria

In order to approve an application for resubdivision, the Planning Board must find that the proposed lot(s) comply with all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

Resubdivision. Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size,

¹ 720060240 Per pre-preliminary plan review and binding decision regarding frontage by Planning Board.

shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.

B. Neighborhood Delineation

In administering Section 50-29(b)(2) of the Subdivision Regulations, the Planning Board must determine the appropriate "Neighborhood" for evaluating the application. In this instance, the Neighborhood selected by the applicant, and agreed to by staff, consists of 16 lots. The Subject Property and the proposed lots will have access from Ascot Square Drive and Black Hills Road; therefore, the Neighborhood includes lots along Ascot Square Drive and Black Hills Road adjacent to and confronting the Subject Property, and lots located on these two roads north and west of the Subject Property. All the lots share the same zoning classification as the Subject Property. The designated Neighborhood provides an adequate sample of the lots and development pattern of the area.

C. Analysis

Comparison of the Character of Proposed Lots to Existing

In performing the analysis, the above-noted resubdivision criteria were applied to the delineated Neighborhood. The proposed lots are of the same character with respect to the resubdivision criteria as other lots within the defined neighborhood. Therefore, the proposed resubdivision complies with the criteria of Section 50-2(b)(2). As set forth below, the attached tabular summary and graphical documentation support this conclusion:

Frontage: As previously noted, the Planning Board made a binding decision concerning proposed frontages for this application as part of the pre-preliminary plan. In that decision, the Board found that there are exceptional circumstances which apply to this Property that justify creation of a lot with inadequate frontage on a public street, and that both proposed lots will be of the same character as others in the Neighborhood with regard to street frontage.

In a neighborhood of 16 existing lots, lot frontages range from 0 feet (no frontage) to 499 feet. The smallest frontage of an existing lot other than the one without frontage is 26 feet. Three of the lots have frontages smaller than that of proposed Lot B and one lot has a frontage smaller than proposed Lot A. Proposed Lot A has a frontage of 14 feet on Ascot Square Court, and proposed Lot B has a frontage of 37 feet on Black Hills Road.

With respect to proposed Lot A, the existing 14-foot frontage on Ascot Square Court will continue to serve as access and principle frontage for the lot containing the existing structure. Therefore, the Board found that the character of the existing frontage on Ascot Square Court will not be changed by the proposed subdivision and the frontage for proposed Lot A will be of the same character as existing lots in the neighborhood.

With respect to proposed Lot B, the Board found that the proposed frontage will also be in character with the existing lots in the Neighborhood. Although only 37 feet of the

frontage will be available for access from the lot to Black Hills Road, up to 500 feet of the lot will actually front on the portion of the road within the adjacent parkland. Thus, the frontage of the lot as perceived from the street will be well within the range of frontages for the Neighborhood. **The proposed lots will be in character with existing lots in the neighborhood with respect to frontage.**



Alignment: In terms of alignment, the road network is curvilinear with cul-de-sacs, and the lots in the Neighborhood are a mixture of perpendicular, radial, and flag lots. Three of the eight lots in the Neighborhood are perpendicular, three are flag lots, and five are radial. The proposed lots are radial and perpendicular in alignment. **The proposed lots are of the same character as existing lots with respect to the alignment criterion.**

Size: Lot sizes in the Neighborhood range from 87,435 square feet to 259,196 square feet. Four of the existing lots in the Neighborhood are approximately 88,000 square feet or smaller, eleven of the existing lots in the Neighborhood are between approximately 90,000 square feet and 160,000 square feet, and one lot is approximately 260,000 square feet in size. The proposed lots are 88,844 square feet and 107,000 square feet in size. **The size of the proposed lots is in character with the existing lots in the neighborhood.**

Shape: With respect to shape, five existing lots in the Neighborhood are rectangular, three lots are flag, two lots are pie, and eight are irregular. The proposed lots are irregular

much like the majority of existing lots in the Neighborhood. **The shape of the proposed lots will be in character with shapes of the existing lots.**

Width: Lot widths in the Neighborhood range from 150 feet to 440 feet. Thirteen of the existing lots are between 150 and 170 feet wide, one lot is 224 feet wide, and two corner lots with frontage on two streets have a combined frontage of 303 feet and 440 feet. The proposed lots have lot widths of 150 feet each. **The proposed lots will be in character with existing lots in the neighborhood with respect to width.**

Area: Buildable area in the Neighborhood ranges in size from approximately 44,800 square feet to 199,600 square feet. Six of the lots are between 44,800 and 55,700 square feet, seven of the lots are between 64,800 and 88,000 square feet, and three of the lots are between 91,700 and 199,600 square feet in size. The proposed lots have buildable areas of 49,600 and 78,900 square feet. **Therefore, the proposed lots will be in character with the existing lots in the neighborhood with respect to buildable area.**

Suitability for Residential Use: The existing and the proposed lots are zoned residential and the land is suitable for residential use.

Citizen Correspondence and Issues

As of the date of this report, no citizen concerns have been brought to Staff's attention regarding the proposed subdivision. On August 26, 2008 a pre-submission meeting was held, as required, and on September 4, 2008 the applicant properly notified adjacent and confronting property owners and civic associations of the preliminary plan submission. The application information was properly posted on the Property.

CONCLUSION

Section 50-29(b)(2) of the Subdivision Regulations specifies seven criteria with which resubdivided lots must comply. They are street frontage, alignment, size, shape, width, area and suitability for residential use within the existing block, neighborhood or subdivision. As set forth above, the proposed lots are of the same character as the existing lots in the defined neighborhood with respect to each of the resubdivision criteria, and therefore, comply with Section 50-29(b)(2) of the Subdivision Regulations. The proposed lots also meet all other requirements established in the Subdivision Regulations and the Zoning Ordinance, and the proposed lots substantially comply with the recommendations of the Boyds 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.

Attachments

Attachment A – Vicinity Development Map
Attachment B – Proposed Development Plan
Attachment C – Resolution for Pre-preliminary Plan 720060240
Attachment D – Agency Correspondence
Attachment E – Resubdivision Neighborhood Map
Attachment F – Resubdivision Data Table

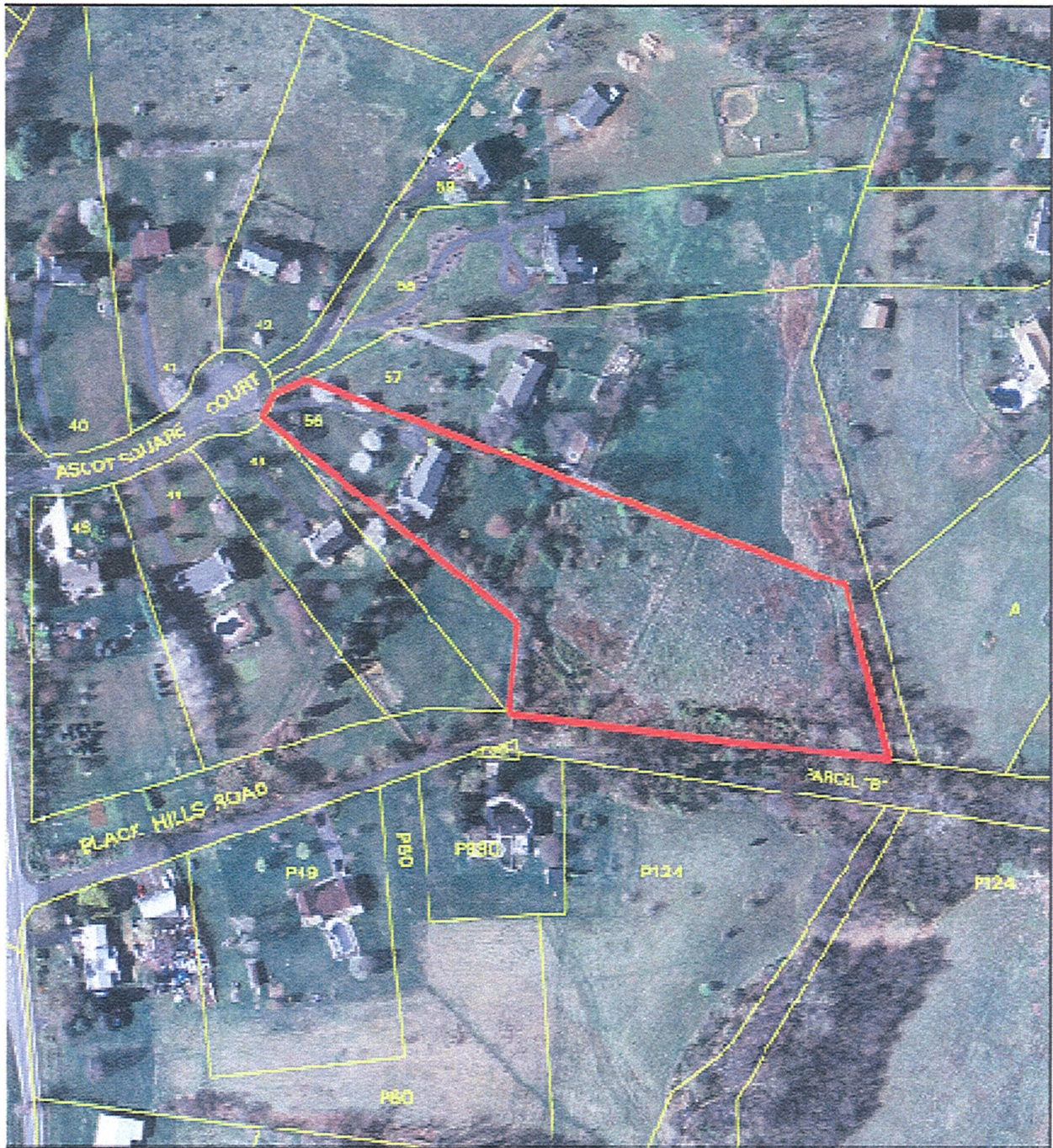
Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Black Hills Estates				
Plan Number: 120090070				
Zoning: RE-2				
# of Lots: 2				
# of Outlots: 0				
Dev. Type: Residential				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Pre-Preliminary Plan	Verified	Date
Minimum Lot Area	87,120 sq. ft.	88,844 sq. ft. minimum	<i>PB</i>	2/27/09
Lot Width	150 ft.	167 ft. minimum	<i>PB</i>	2/27/09
Lot Frontage	25 ft.	14 ft. minimum	<i>PB</i>	2/27/09
Setbacks				
Front	50 ft. Min.	Must meet minimum ¹	<i>PB</i>	2/27/09
Side	17 ft. Min./35 ft. total	Must meet minimum ¹	<i>PB</i>	2/27/09
Rear	35 ft. Min.	Must meet minimum ¹	<i>PB</i>	2/27/09
Height	50 ft. Max.	May not exceed maximum ¹	<i>PB</i>	2/27/09
Max Resid'l d.u. per Zoning	2	2	<i>PB</i>	2/27/09
MPDUs	N/a			2/27/09
TDRs	N/a			2/27/09
Site Plan Req'd?	No			2/27/09
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street		Yes ²	<i>PB</i>	2/27/09
Road dedication and frontage improvements		Yes	Agency letter	12/1/08
Environmental Guidelines		Yes	Staff memo	12/31/08
Forest Conservation		Yes	Staff memo	12/31/08
Master Plan Compliance		Yes	<i>PB</i>	2/27/09
Other (i.e., parks, historic preservation)				
ADEQUATE PUBLIC FACILITIES				
Stormwater Management		Yes	Agency letter	11/24/08
Water and Sewer (WSSC)		N/A	Agency comments	10/27/08
10-yr Water and Sewer Plan Compliance		Yes	Agency comments	11/24/08
Well and Septic		Yes	Agency letter	11/20/07
Local Area Traffic Review		No	Staff memo	10/27/08
Policy Area Mobility Review		No	Staff memo	10/27/08
Transportation Management Agreement		No	Staff memo	10/27/08
School Cluster in Moratorium?		No	<i>PB</i>	2/27/09
School Facilities Payment		No	<i>PB</i>	2/27/09
Fire and Rescue		Yes	Agency letter	11/20/08

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

2 720060240 Per pre-preliminary plan review and binding decision regarding frontage by Planning Board.

BLACK HILLS ESTATES (120090070)



Map compiled on September 12, 2008 at 10:02 AM | Site located on base sheets - 2214A14 Date of Orthophoto: April 2005 - Used with permission from Montgomery County Government

NOTICE

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Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field lines. Measurements taken were completed in 1988/89 and do not include any significant changes in topography since that time.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within fifteen feet of their true location. This map may not be the same as a map of the same area plotted in an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Unknown Date





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

24 2009

MCPB No. 08-84
Pre-Preliminary Plan No. 720060240
Black Hills Estates
Date of Hearing: June 5, 2008

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review pre-preliminary plan applications; and

WHEREAS, on December 14, 2005, Michael Gresalfi ("Applicant"), filed a pre-preliminary plan application, including a Concept Plan, for Planning Board approval, pursuant to the provisions of Section 50-33A of the Subdivision Regulations for a property in the RE-2 zone; and

WHEREAS, the Concept Plan depicted a subdivision of property that would create two lots on 4.5 acres of land located on the south side of Ascot Square Court, 370 feet east of Clarksburg Road (MD 121) ("Property" or "Subject Property"), in the Boyds Master Plan area ("Master Plan"); and

WHEREAS, the Applicant requested a decision by the Planning Board on the following matters:

- 1) A finding pursuant to Section 50-29(a)(2) of the Subdivision Regulations that a policy change regarding the use of a park road as frontage for subdivision purposes amounts to a loss of previously recognized street frontage on the prescriptive right-of-way for Black Hills Road and constitutes an exceptional circumstance that justifies approval of the proposed lot with inadequate frontage; and
- 2) A finding pursuant to Section 50-29(b)(2) of the Subdivision Regulations that the frontages of the proposed lots will be in character with other lots in the designated neighborhood; and

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

Approved as to:
Legal Sufficiency:

[Signature] 2/13/09

8787 Georgia Avenue, Montgomery, MD 20886-1010 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, Applicant's pre-preliminary plan application was designated Pre-Preliminary Plan No. 720060240, Black Hills Estates ("Pre-Preliminary Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated April 25, 2008, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staffs of other governmental agencies, on May 8, 2008, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, after deliberation on the Application the Planning Board requested additional information from Staff and recessed the Hearing until the information was provided; and

WHEREAS, on May 23, 2008, Staff issued a supplemental memorandum ("Supplemental Staff Report") to the Planning Board setting forth its further analysis, and continuing to recommend approval of the Application subject to the condition set forth in the Supplemental Staff Report; and

WHEREAS, on June 5, 2008, the Planning Board held a second public hearing to continue its deliberation of the Application ("Continuation Hearing"); and

WHEREAS, on June 5, 2008, the Planning Board approved the proposed lot frontages shown on the Concept Plan subject to the condition set forth in the Supplemental Staff Report, on motion of Commissioner Cryor; seconded by Commissioner Robinson; with a vote of 3-0, Commissioners Cryor, Hanson, and Robinson voting in favor, and Commissioner Bryant absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board determines that the street frontages shown on the Pre-Preliminary Plan No. 720060240 for creation of two one-family residential lots on 4.5 acres of land located on the south side of Ascot Square Court, 370 feet east of Clarksburg Road (MD 121) ("Property" or "Subject Property"), in the Boyds Master Plan area ("Master Plan") are acceptable, subject to the following condition:

- 1) Any preliminary plan submitted pursuant to this approval must be substantially similar to the approved Pre-Preliminary Plan with respect to layout, lot size, and lot shape.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the above condition, that:

1. *There are exceptional circumstances which apply to this Property that justify creation of a lot with inadequate frontage on a public street.*

The Pre-Preliminary Plan proposes to resubdivide an existing residential lot to create two lots for two one-family detached dwelling units. The dwelling on one of the lots is existing and the second lot will contain a new dwelling. As proposed on the Application, the new lot being created for the existing residential dwelling ("Lot A") will have 14 feet of frontage on Ascot Square Court, and the second lot ("Lot B") will have 37 feet of frontage on Black Hills Road.

Section 50-29(a)(2) of the Subdivision Regulations requires lots to abut on a street that has been dedicated to public use or that has acquired the status of a public road. However, in exceptional circumstances the Planning Board may approve up to two lots on a private driveway or private right-of-way provided such access is found to be adequate. In interpreting these provisions, the Board has consistently found that to meet the requirement to abut on a public street, a lot must have the minimum street frontage required by the Zoning Ordinance or a finding of exceptional circumstances is necessary.

Although both proposed lots will abut public streets, proposed Lot A cannot be said to meet the Subdivision Regulations requirement because it has only 14 feet of frontage on Ascot Square Court instead of the required 25 feet. The existing lot is in conformance with the street frontage requirement because it also has 37 feet of frontage on Black Hills Road. As proposed by this Application, the Black Hills Road frontage will be used for proposed Lot B containing a new dwelling unit, and the existing dwelling will be located on a second lot that only has the Ascot Square Court frontage. Therefore, a finding of exceptional circumstances is needed to justify creation of Lot A.

The Planning Board finds that a policy change regarding the use of a park road as frontage for subdivision amounts to a loss of previously recognized street frontage for the Property and constitutes an exceptional circumstance that supports approval of Lot A with 14 feet of frontage. As currently configured, the Property has more than 500 feet of frontage along a prescriptive right-of-way

containing Black Hills Road. The majority of this right-of-way is not accessible from the existing lot because it is in park ownership. However, when the existing lot was created in 1990, the entirety of the frontage was recognized as being acceptable. In fact, Lot 57 immediately north of the Subject Property was created with no frontage on Ascot Square Court, but with a pipestem to the portion of Black Hills Road that is within the park. This pipestem would not have been created to Black Hills Road unless it was considered to be a public street that provided the necessary frontage because access to Lot 57 was not needed from Black Hills Road. Approval of the prior subdivision therefore indicates that, at that time, both Staff and the Planning Board considered Black Hills Road to be a public street for purposes of street frontage for the subdivision.

Although in 1990 Staff and the Planning Board considered the road within the park to be available as street frontage for the subdivision, the Planning Board would not make such a finding today. The Planning Board finds that it is not appropriate for a road that is not open to general public use to be considered as street frontage. This is a policy change that reduces the effective frontage of the Subject Property. Loss of this previously acceptable 500 feet of street frontage on Black Hills Road is an exceptional circumstance that justifies approval of proposed Lot A with 14 feet of frontage on Ascot Square Court. A minimum of 50 feet of frontage on Black Hills Road would be necessary to accommodate both Lots.

The Board further finds, based on Staff analysis and applicable agency approvals, that the existing access to Lot A via a private driveway is adequate to serve the lots for emergency vehicles, can be used for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent land.

- 2. The proposed lots are of the same character as to street frontage as other lots within the existing neighborhood (as delineated by Staff in the Staff Report) ("Neighborhood").*

The Planning Board finds that the proposed Neighborhood consisting of 16 lots on Ascot Square Court and Little Sierra Court, all of which are in the RE-2 zone and share access on one of those two streets, provides an adequate sample of the lot and development pattern of the area.

With respect to street frontage, the Planning Board finds that the proposed lots will be of the same character as existing lots in the neighborhood. In a neighborhood of 16 existing lots, lot frontages range from 0 feet (no frontage) to 499 feet. The smallest frontage of an existing lot other than the one without frontage is 26 feet. Three of the lots have frontages smaller than that of

proposed Lot B and one lot has a frontage smaller than proposed Lot A. Proposed Lot A has a frontage of 14 feet on Ascot Square Court, and proposed Lot B has a frontage of 37 feet on Black Hills Road.

With respect to proposed Lot A, the existing 14-foot frontage on Ascot Square Court will continue to serve as access and principle frontage for the lot containing the existing structure. Therefore, the Board finds that the character of the existing frontage on Ascot Square Court will not be changed by the proposed subdivision and the frontage for proposed Lot A will be of the same character as existing lots in the neighborhood.

With respect to proposed Lot B, the Board finds that the proposed frontage will also be in character with the existing lots in the Neighborhood. Although only 37 feet of the frontage will be available for access from the lot to Black Hills Road, up to 500 feet of the lot will actually front on the portion of the road within the adjacent parkland. Thus, the frontage of the lot as perceived from the street will be well within the range of frontages for the Neighborhood.

BE IT FURTHER RESOLVED, that this Pre-Preliminary Plan binding review will remain valid for 90 days from the date of the Planning Board's action at the public hearing. The Applicant must file a preliminary plan application for the proposed subdivision within 90 days of the action of the Board on the Pre-Preliminary Plan. Otherwise, the Pre-Preliminary Plan approval will expire, unless it is extended by action of the Planning Board; and

BE IT FURTHER RESOLVED, that the date of this Resolution is FEB 24 2009 (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 Robinson, seconded by

Commissioner Cryor, with Commissioners Hanson, Robinson, and Cryor present and voting in favor of the motion, and Commissioners Alfandre and Presley abstaining at its regular meeting held on Thursday February 19, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board

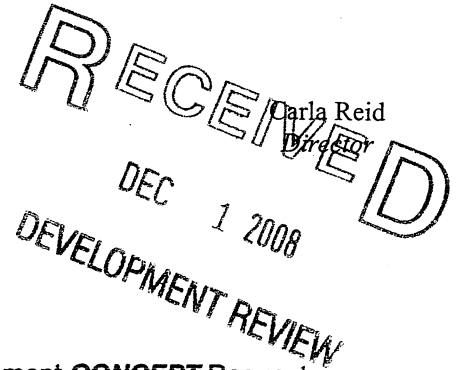


Attachment D

DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

November 24, 2008



Mr. James P. King, P.E.
CAS Engineering
108 West Ridgeville Boulevard, Suite 101
Mount Airy, MD 21771

Re: Stormwater Management **CONCEPT** Request
for Black Hills Estates
Preliminary Plan #: 120090070
SM File #: 234417
Tract Size/Zone: 2.457 acres/RE-2
Total Concept Area: 2.457 acres
Lots/Block: 56/A
Parcel(s): NA
Watershed: Little Seneca Creek

Dear Mr. King:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site water quality control and onsite recharge via the Environmentally Sensitive Development Credit. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is not required.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact William Campbell at 240-777-6345.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard R. Brush". The signature is fluid and cursive, with the first name being the most prominent.

Richard R. Brush, Manager
Water Resources Section
Division of Land Development Services

RRB:dm

cc: C. Conlon
S. Federline
SM File # 234417

QN -less than 2cfs; Acres: 2.457
QL - onsite; Acres: 2.457
Recharge is provided

05-214(c)



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Carla Reid Joyner
Director

MEMORANDUM

November 20, 2007

TO: Cathy Conlon, Development Review,
Maryland National Capital Park and Planning Commission

FROM: Carla Reid, Director *CR*
Department of Permitting Services

SUBJECT: Status of Pre-Application Plan: # 7-06024,
Black Hills Estates, 2 lots

This is to notify you that the Well & Septic Section of MCDPS approved the plan received in this office on October 25, 2007.

Approved with the following reservations:

1. The record plat must be at the same scale as the preliminary plan, or submit an enlargement of the plat to match the preliminary plan.
2. The record plat must show the water well easements as they are shown on this plan.

If you have any questions, contact Gene von Gunten at (240) 777-6319.

cc: Surveyor
File

*Att: Curt S.
Gul
11/21/07*



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

December 1, 2008

Ms. Catherine Conlon, Subdivision Supervisor
Development Review Division
The Maryland-National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RE: Preliminary Plan #1-20090070
Black Hills Estates

Dear Ms. Conlon:

We have completed our review of the above referenced preliminary plan. This plan was reviewed by the Development Review Committee at its meeting on October 27, 2008. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
2. Show the conceptual design and location of the proposed driveway and turnaround improvements as determined by Ms. Linda Duhamel of this office on the preliminary plan.
3. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
4. The sight distance study has been accepted. A copy of the approved sight distance form is enclosed for your information and reference.
5. The drainage study has been accepted.

Division of Traffic Engineering and Operations

101 Orchard Ridge Drive, 2nd Floor • Gaithersburg, Maryland 20878
Customer Service 240-777-6000 • Main Office 240-777-2190 • 240-777-6013 TTY • 240-777-2080 FAX
trafficops@montgomerycountymd.gov

Ms. Catherine Conlon
Preliminary Plan No. 1-20090070
December 1, 2008
Page 2

6. Wells and septic systems cannot be located within the right of way, slope easement or drainage easements.
7. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but necessarily be limited to, the following improvements:
 - A. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.
 - B. Construct required driveway and turnaround improvements at site entrance on Black Hills Road.
 - C. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by DPS.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at greg.leck@montgomerycountymd.gov or (240) 777-6000.

Sincerely,



Gregory M. Leck, Manager
Traffic Engineering and Operations Section
Development Review Team

Enclosures ()

Cc: Curt Schreffler, CAS Engineering
James King, CAS Engineering
Michael Gresalfi
Joseph Y. Cheung; DPS RWPPR
Christina Contreras; DPS RWPPR
Sarah Navid; DPS RWPPR
Shahriar Etemadi; M-NCPPC TP
Gregory Leck; Manager, DPT TSIPT
Preliminary Plan Folder

**Proposed Lots A B
Black Hills Estates
Lot Data Table**

Attachment F

Lot #	Frontage	Alignment	Lot Size	Lot Shape	Width	Buildable Area
36	75	radial	108,252	irregular	193	64,839
40	499	corner	101,350	irregular	162	51,067
41	194	perpendicular	134,238	irregular	208	91,729
42	66	radial	87,435	irregular	186	55,691
43	159	perpendicular	87,510	irregular	167	47,231
44	276	perpendicular	88,271	irregular	189	51,919
45	476	corner	88,219	irregular	197	44,766
46	46	radial	118,213	irregular	253	80,099
47	39	radial	115,229	irregular	178	75,434
48	48	radial	98,192	irregular	242	64,973
49	436	corner	130,205	irregular	339	76,966
54	287	corner	90,957	irregular	247	49,235
55	196	perpendicular	124,927	irregular	291	88,084
57	0	perpendicular	162,291	pipestem	272	104,450
58	33	radial	127,461	pipestem	181	85,068
59	26	radial	259,196	pipestem	355	199,598
A	14	radial	88,844	irregular	167	49,607
B	37	perpendicular	107,018	irregular	273	79,512