

MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB Item # 5/13/10



MEMORANDUM

DATE:

April 19, 2010—<u>REVISED May 7, 2010</u>

TO:

Montgomery County Planning Board

VIA:

Catherine Conlon, Subdivision Supervisor

Development Review Division

FROM:

Erin Grayson, Senior Planner (301-495-4598)

Development Review Division

REVIEW TYPE:

Amendment to a Preliminary Plan of Subdivision, Consent Item

APPLYING FOR:

Request for a Planning Board finding to permit an existing dwelling unit

to remain as an accessory apartment

PROJECT NAME: Bennett's Addition to Piney Glen Farms

CASE #:

11977121A

REVIEW BASIS:

Chapter 50, Montgomery County Subdivision Regulations

ZONE:

RE-2

LOCATION:

12009 Piney Meetinghouse Road, 500 feet north of Piney Glen Lane

MASTER PLAN:

Potomac Subregion

APPLICANT:

Zorayda and Reynaldo Lee-Llacer

CONSULTANT:

Joseph R. Davis

ATTORNEY:

Lerch, Early & Brewer

FILING DATE:

March 11, 2010

HEARING DATE: May 13, 2010

RECOMMENDATION: Amend the findings of the Board's previous approval which created 3 lots for 3 one-family detached dwelling units (Lots 34, 35, and 36 as shown on Record Plat No. 11865) to permit the retention of an accessory dwelling unit on Lot 36 as an accessory apartment that has been permitted by a special exception from the County Board of Appeals.

SITE DESCRIPTION

The site of this preliminary plan amendment is a 2.54 acre recorded lot located at 12009 Piney Meetinghouse Road in Potomac. The subject property is zoned RE-2 and identified as lot 36 on plat no. 11865 as part of the Piney Glen Farms subdivision recorded in 1978 (Attachment A). The lot contains two one-family detached residential dwelling units: the original dwelling unit located on the property in 1978, and a new dwelling that was constructed after the subdivision. At the time of the subdivision, it was anticipated that the existing dwelling would be removed, however, it was retained on the site as an accessory structure. Access to the main and accessory structures are provided via a private driveway from Piney Meetinghouse Road.

PROPOSED AMENDMENT

This consent item amendment proposes to amend the Planning Board's approval of the Piney Glen Farms subdivision to permit the accessory dwelling that has been retained on Lot 36 to be retained. The amendment is necessary because the Board's previous approval of the subdivision prohibited such retention because it resulted in the placement of a note on the record plat that was recorded as a result that states:

Public Water Only. Existing house on Lot 36 must be removed prior to issuance of building permit for new house on Lot 36. Existing well on Lot 36 must be properly abandoned as per Maryland Water Resources Code.

Despite this note, a building permit for a new structure on Lot 36 was issued and the existing house was retained as an accessory structure to the main dwelling unit on the lot. It has been used as such for quite some time without explicit permit by the County, however, in 2009 the applicant sought, and was granted, a special exception by the Board of Appeals that allows the structure to remain as an accessory apartment on the property. The case was Special Exception Case No. S-2674, originally approved on February 9, 2009, conditioned upon deletion of the restrictive note on the 1978 plat through "approval of a minor subdivision by the Planning Board". That condition was then amended by the Board of Appeals in their Resolution dated November 18, 2009 (Attachment B) to permit approval "conditioned upon approval by the Planning Board of the deletion of the restrictive note on the record plat requiring removal of the guest house"; without specifically requiring a minor subdivision.

The Planning Board required the note be placed on the plat in 1978 because the Department of Environmental Protection informed the Department of Permitting Services that a septic reserve area could not be identified for the accessory structure. The Montgomery County Council, however, recently approved a sewer category change for the property to S-1, allowing the main dwelling unit and accessory apartment to be served by an existing public sewer abutting the property.

PUBLIC NOTICE

A notice regarding the subject amendment was sent to all parties of record by the Applicant on March 17, 2010. An affidavit of sign posting dated January 29, 2010 was provided as part of the application submission. The notice gave interested parties 15 days to review and comment on the amendment per the Development Review Manual. Staff received no inquiries or comments regarding the proposed amendment.

ANALYSIS AND FINDINGS

The Planning Board's January 5, 1978 approval of the Bennett's Addition to Piney Glen Farms Subdivision was limited to the following conditions (as referenced on the archived copy of the original preliminary plan included in Attachment C since no Board Opinion is available):

- 1) Provision for necessary slope and drainage easements
- 2) Dedication along Piney Meetinghouse Road in accordance with the master plan
- 3) Lots to be served by public water only

The proposed amendment does not conflict with conditions 1-3 but seeks the Board's approval of the existing house remaining on Lot 36 as an accessory apartment. The Applicant does not wish to file a new record plat, but instead seeks the Board's finding that the note on Record Plat No. 11865 no longer applicable. No changes to the recorded boundaries, dedications or easements are proposed and thus only the note on Record Plat 11865 would no longer be applicable.

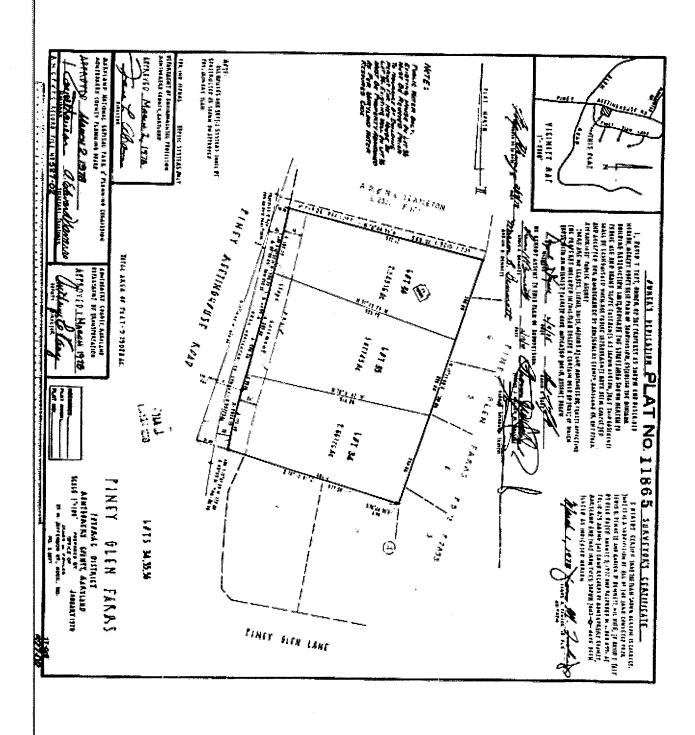
In staff's opinion, the Board can make the finding requested by the applicant because it does not conflict with the intent of the original subdivision approval. That approval anticipated replacement of the existing house on Lot 36 with a new dwelling served by public water and a private septic system, but apparently, a new house was permitted to be built without removal of the structure. Subsequently, public sewer has been made available to the lot and the County Board of Appeals has granted approval of a special exception to permit the original structure to remain as an accessory apartment. Thus, the need for the restrictive note has been removed. Therefore, staff recommends that the Planning Board find that the restrictive note on the existing record plat is no longer applicable. All other conditions of the Board's original approval remain in full force and effect.

CONCLUSION

The preliminary plan amendment will allow an accessory apartment on Lot 36 to fully comply with the Board of Appeals approval of the use and will render a note on Record Plat No. 11865 no longer applicable. The preliminary plan amendment complies with Chapter 50, the Subdivision Regulations and Chapter 59, the Zoning Ordinance and will not require further review by applicable county agencies since no new construction is proposed. Therefore, staff recommends approval of the preliminary plan amendment as requested.

Attachments

- A. Record Plat No. 11865
- B. Board of Appeals November 18, 2009 Resolution
 C. Original 1977 Preliminary Plan
 D. Applicant's Letter of Justification
 E. Draft Resolution



BOARD OF APPEALS for MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2674

PETITION OF REYNALDO AND ZORAYDA LEE-LLACER

RESOLUTION TO AMEND OPINION OF THE BOARD

(Resolution Adopted November 18, 2009) (Effective Date of Resolution: February 1, 2010)

The Board of Appeals has received a letter, dated October 30, 2009, from Harry W. Lerch, Esquire, on behalf of Reynaldo and Zorayda Lee-Llacer. Mr. Lerch requests revision of Condition No. 1 of the Board's February 9, 2009 Opinion granting the special exception. The Board of Appeals granted Case No. S-2674 to Reynaldo and Zorayda Lee-Llacer on February 9, 2009, to permit an accessory apartment. The Board's approval of the special exception was conditioned upon deletion of a restrictive note on the 1978 record plat for the property which required removal of the guest house on the property through "approval of a minor subdivision by the Planning Board".

The subject property is Lot 36, Piney Glen Farms Subdivision, located at 12009 Piney Meetinghouse Road, Potomac, Maryland, 20854, in the RE-2 Zone

Mr. Lerch explains that the minor subdivision process is typically used for recordation of previously unrecorded properties, or for properties which require adjustment of lot boundaries, and that it generally requires the recording of a new record plat. He relates that the staff of the Maryland National Capital Park and Planning Commission (MNCPPC) believes that an alternate procedure for deletion of the restrictive note would be acceptable, provided that such a procedure is consistent with the Board of Appeals' intent.

Mr. Lerch suggests that 1) the weight of the Board's intent is removal of the restrictive note, rather than the process by which it is removed; and 2) that this can be accomplished by revising Condition No. 1 of the Board's Opinion granting the special exception.

The Board of Appeals considered Mr. Lerch's letter at its Worksession on November 18, 2009. The Board finds that the proposed, revised condition is entirely consistent with its intent that the restrictive note be removed from the record plat for the subject property. Therefore, on a motion by David K. Perdue, Vice-Chair, seconded by Stanley B. Boyd, with Carolyn J. Shawaker and Catherine G. Titus, Chair, in agreement and Walter S. Booth necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2674 is re-opened to receive Harry W. Lerch's letter dated October 30, 2009; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that Condition No. 1 of the Board's Opinion granting the special exception is revised to read as follows:

"Approval of this special exception is conditioned upon approval by the Planning Board of the deletion of the restrictive note on the record plat requiring removal of the guest house. If changes to the site plan or other plans filed in this case are required by the Planning Board, Petitioners must file a copy of the revised site plan and related plans with the Board of Appeals."

Catherine G. Titus

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book of the Board of Appeals for Montgomery County, Maryland this 1st day of February, 2010.

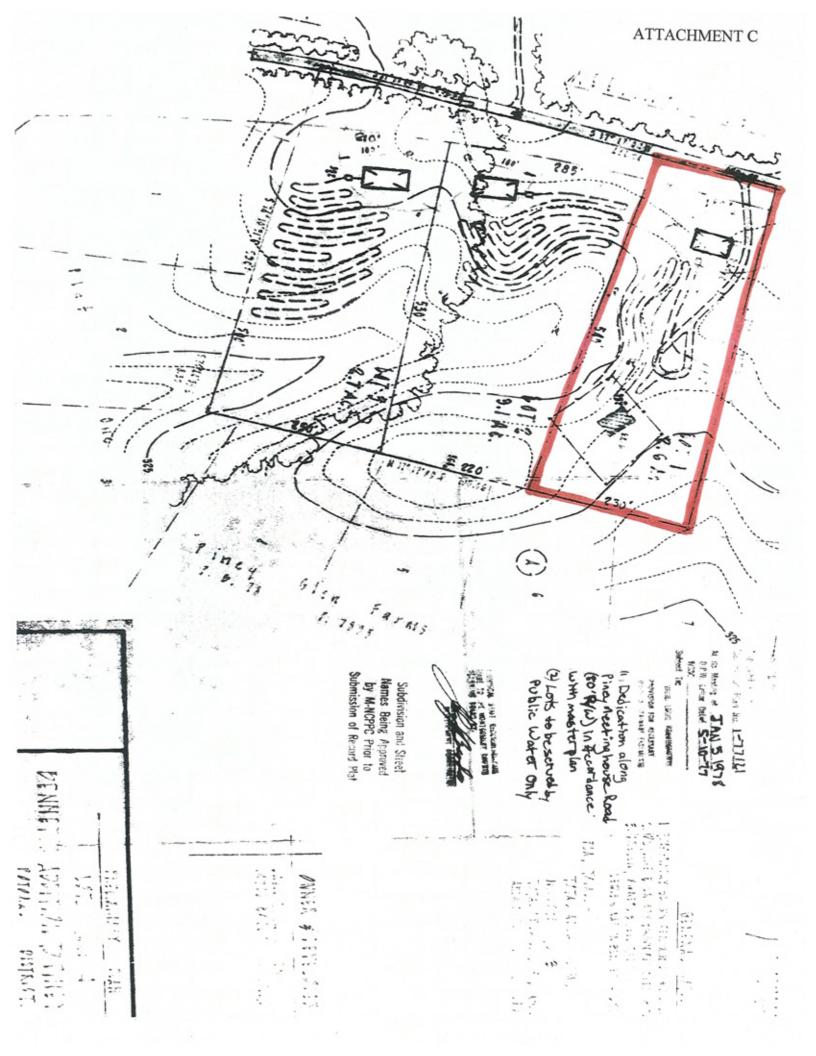
Katherine Freeman Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

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Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.





SUITE 460 3 BETHESDA METRO CENTER BETHESDA, MD 20814-5367 TEL 301.986.1300 WWW.LERCHEARLY.COM

ACTORNEYS

March 2, 2010

Ms. Catherine Conlon Subdivision Supervisor The Maryland-National Capital Park & Planning Commission 8787 Georgia Avenue Silver Spring, Maryland 20910

Re: Letter of Explanation

Consent Agenda Plan Amendment 11977121A Bennett's Addition to Piney Glen Farms, Lot 36

Dear Ms. Conlon:

On behalf of Drs. Reynaldo and Zorayda Lee-Llacer ("Lee-Llacers" or the "Applicant"), we are submitting this Consent Agenda Amendment No. 11977121A (the "Amendment") for the Lee-Llacers' property located at 12009 Piney Meeting House Road in Potomac, Maryland (the "Property"). The Property is also identified as Lot 36 of the Bennett's Addition to Piney Glen Farms Subdivision, which is recorded in the Land Records of Montgomery County as Plat No. 11865. Our proposed Amendment requests the deletion of a notation included on the plat, which requires that the existing house that is located on the Property be removed. Specifically, the note reads as follows:

"Public water only. Existing house on Lot 36 must be removed prior to issuance of building permit for new house on Lot 36. Existing well on Lot 36 must be properly abandoned as per Maryland Water Resources Code."

Our proposed Amendment requests that the Montgomery County Planning Board ("Planning Board") amend the 1977 Preliminary Plan No. 119771210 to delete the above referenced note because an approved special exception by the Montgomery County Board of Appeals ("Board of Appeals") (Case No. S-2674) allows continued use of the original house as an accessory apartment. Additionally, the Montgomery County Council ("County Council") recently approved a sewer category change for the Property (WSSCR 08A-TRV-01). The sewer category change places the Property within sewer category S-1, which allows both the current dwelling and the guest cottage to be served by public sewer.

The Lee-Llacers originally purchased the Property from the subdivider/builder in 1979 with a new dwelling unit in place and the existing house advertised as a "guest cottage" located to the rear of the property. Although the original home was not removed by the builder as required by the record plat, the County did issue a building permit for a new single

954760.1



family home. The Lee-Llacers specifically purchased the property from the builder with a new home and the original guest cottage based on assurances from the builder that the new dwelling and guest cottage complied with the Montgomery County requirements. In fact, the Lee-Llacers joined in a lawsuit with their neighbors against the seller for a number of issues, including non-disclosure of the plat note to the Lee-Llacers, which the Lee-Llacers discovered soon after purchasing the property. The Lee-Llacers and neighbors won their case in court and the Lee-Llacers mistakenly thought that the court decision resolved the issue regarding the original guest cottage. It was not until 2006 when the Lee-Llacers were cited by the Montgomery County Department of Permitting Services ("DPS") for operating a guest house for more than six months as a "second dwelling." The guest cottage was occupied by their niece who, in fact, provides care to Dr. Reynaldo Lee-Llacer, a retired surgeon.

In researching the subdivision history of the property, it appears that the Planning Board required the plat note in response to a recommendation by the then Department of Environmental Protection ("DEP") in a letter dated December 23, 1977. Unfortunately, a copy of this letter was not located in the file for Preliminary Plan No. 119771210, known as "Bennett's Addition to Piney Glen Farms." However, in the recent special exception application for the subject property, DPS staff provided direct testimony concerning the note on the record plat. The following statement is found on page 19 of the Hearing Examiner's Report and Recommendation for Special Exception Application S-2674 ("Hearing Examiner's Report") and involves a request for approval of an existing accessory apartment located in the original dwelling on the property:

"Amy Hart, the manager of the well and septic section of the Department of Permitting Services (DPS), testified, based on DPS records, that when DPS reviewed a preliminary plan for the construction of a new home on the subject site in 1978, they were able to establish a septic area for one new home, but not a septic area for a second home. According to Ms. Hart, as part of approval in a preliminary plan, you need a septic reserve area for each dwelling on the property. The note on the plat indicating that the guest house had to be removed was added because there was not a second septic area for the second house.

"Ms. Hart further testified that if both of the structures were connected to the public sewer system, as has been suggested, that would remove the rationale for the restrictive note on the plat. Then, as far as she was concerned, the plat could be amended, removing the note."

In early 2009, the Board of Appeals approved the special exception application for the Lee-Llacers' lot to allow the original home on the lot to be utilized as an accessory apartment.



The Board of Appeals' Opinion (the "Opinion"), which has an effective date of February 9, 2009, provides several conditions that must be satisfied. Condition Number 1 concerns deletion of the restrictive note on the record plat requiring removal of the original dwelling. On November 18, 2009, the Board of Appeals approved a clarification of that condition, which now reads as follows:

"Approval of this special exception is conditioned upon approval by the Planning Board of the deletion of the restrictive note on the record plat requiring removal of the guest house. If changes to the site plan or other plans filed in this case are required by the Planning Board, Petitioners must file a copy of the revised site plan and related plans with the Board of Appeals."

As originally approved in February, 2009, the Opinion created the impression that approval of the special exception was conditioned upon approval of a minor subdivision by the Planning Board to delete the restrictive note from the plat. The Board of Appeals concluded that a clarification was necessary because it did not want to appear to require a particular process or procedure for the Planning Board to follow to accomplish the objective of deleting the note from the plat. In fact, the Lee-Llacers are filing the subject Amendment to request the Planning Board to adopt a Resolution to amend the 1977 preliminary plan to remove the condition requiring the said note on the plat. This action will effectively remove the plat stipulation and save the Lee-Llacers the significant expense and time of having to record a new plat that has no changes in terms of boundaries, dedications, easements, or other matters typically addressed by a new record plat.

The Lee-Llacers have an urgent need, as approved by the Board of Appeals, to continue utilizing the cottage as an apartment for their niece, who is a medical school graduate and provides care to Dr. Reynaldo Lee-Llacer. This need for assistance is referenced on Page 13 of the Hearing Examiner's Report. The need for a caregiver was demonstrated in a letter from Dr. Lee-Llacer's cardiologist, which was submitted for the record (Exhibit 42) at the special exception public hearing and referenced in the Hearing Examiner's Report. A denial of the Amendment would force the Lee-Llacers to undergo the much more burdensome minor subdivision process, which is typically utilized to record properties that are previously unrecorded or to adjust lot boundaries. A denial of the Amendment would also force the ill Dr. Reynaldo Lee-Llacer to replace his niece as caregiver.

With recent approval of the special exception and the recent granting of a sewer category change for the property by the County Council, the Lee-Llacers will be able to extend sewer lines onto the property to serve the dwelling and the approved accessory apartment. Based on the approvals by the Board of Appeals and the County Council, there is no longer a need for the restrictive note on the plat. Approval of a Resolution by the Planning Board recognizing that the note is no longer applicable will enable the Lee-Llacers to be in

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full compliance with County rules and regulations. Approval of a Planning Board Resolution removing the note and recording the Planning Board's action in the Land Records of Montgomery County will effectively remove the restrictive note, as a matter of public record, without the need for a new record plat.

As part of this Amendment application, we are submitting the following items in addition to <u>five</u> copies of this Letter of Explanation:

- 1. Application Form;
- 2. Checklist;
- 3. Fee schedule;
- 4. \$500 filing fee;
- 5. Original Certified Plan with Opinion/Resolution (3 copies);
- 6. Record plat for the lot (3 copies);
- 7. Application notice prepared by the Applicant (draft copy);
- 8. Adjacent property owner list + HOA, Civics, School, Cluster (one paper copy and two sets of labels);
- 9. Signage information;
 - a. Dated pictures;
 - b. Affidavit:
 - c. Location plan;
- 10. Hearing Examiner's Report;
- 11. Board of Appeals Opinions
 - a. Opinion of the Board adopted December 17, 2008 and effective February 9, 2009; and,
 - b. Resolution to Amend Opinion of the Board adopted November 18, 2009 and effective February 1, 2010.
- 12. County Council Sewer Category Change Approval WSSCR 08A-TRV-01.

In conclusion, the proposed Amendment facilitates the continued use of the original cottage as an accessory apartment for the use of the Lee-Llacers' niece. In addition, the Amendment will effectively delete a note on the 1978 record plat that is no longer required



based on subsequent approvals by the Board of Appeals and the County Council. We look forward to working with you on this consent agenda amendment approval. Thank you very much.

Sincerely,

Harry W. Lerch

Joseph R. Davis

Attachments

cc: Drs. Reynaldo and Zorayda Lee-Llacer April H. Birnbaum, Esq.

MCPB No. 10-56
Preliminary Plan No. 11977121A
Bennett's Addition to Piney Glen Farms
Date of Hearing: May 13, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

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

WHEREAS, on March 11, 2010, Zorayda and Reynaldo Lee-Llacer (Applicant"), filed an application for approval of a preliminary plan limited amendment on 2.54 acres of land in the RE-2 zone, located at 12009 Piney Meetinghouse Road, 500 feet north of Piney Glen Lane ("Property" or "Subject Property"), in the Potomac master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan limited amendment application was designated Preliminary Plan No. 11977121A, Bennett's Addition to Piney Glen Farms ("Preliminary Plan" or "Amendment"); and

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staff of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated April 19, 2010 setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on May 13, 2010, Staff presented the Amendment to the Planning Board as a consent item for its review and action (the "Hearing"); and

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby approves Preliminary Plan No. 11977121A on 2.54 acres of land in the RE-2 zone, located at 12009 Piney Meetinghouse Road, 500 feet north of Piney Glen Lane ("Property" or "Subject Property"), in the Potomac master plan area ("Master Plan").

Approved as to -Legal Sufficiency:

3787 Georgia AvM+NCFIRC Scenal Department 1010

Chairman's Office:

Ear. 301 495 1320

MCPB No. <u>10-56</u>
Preliminary Plan No. <u>11977121A</u>
Bennett's Addition to Piney Glen Farms
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BE IT FURTHER RESOLVED, the Montgomery County Planning Board FINDS, that:

1. The note on Plat No. 11865 stating "Public Water Only. Existing house on Lot 36 must be removed prior to issuance of building permit for new house on Lot 36. Existing well on Lot 36 must be properly abandoned as per Maryland Water Resources Code" is no longer applicable.

Despite this note, a building permit for a new structure on Lot 36 was issued and the existing house was retained as an accessory structure to the main dwelling unit on the lot. It has been used as such for quite some time without explicit permit by the County; however, in 2009 the Applicant sought, and was granted, a special exception by the Board of Appeals that allows the structure to remain as an accessory apartment on the Property. The case was Special Exception Case No. S-2674, originally approved on February 9, 2009, conditioned upon deletion of the restrictive note on the 1978 plat through "approval of a minor subdivision by the Planning Board". That condition was then amended by the Board of Appeals in their Resolution dated November 18, 2009 to permit approval "conditioned upon approval by the Planning Board of the deletion of the restrictive note on the record plat requiring the removal of the guest house"; without specifically requiring a minor subdivision.

The Planning Board required the note be placed on the plat in 1978 because the Department of Environmental Protection informed the Department of Permitting Services that a septic reserve area could not be identified for the accessory structure. The Montgomery County Council, however, recently approved a sewer category change for the Property to S-1, allowing the main dwelling unit and accessory apartment to be served by public sewer. Based on the granting of the special exception and the sewer category change, the Planning Board finds the note is no longer applicable to lot 36; and if the current owner or subsequent property owners choose to do so, the note may be removed through the minor subdivision application procedure in Section 50-35A(a)(5) of Chapter 50, the Subdivision Regulations.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is _____ (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

MCPB No. <u>10-56</u>
Preliminary Plan No. <u>11977121A</u>
Bennett's Addition to Piney Glen Farms
Page 3 of 3

Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

CERTIFICATION

The Montgomery County Planning Boa Planning Commission on motion	true and correct copy of a resolution adopted by ard of The Maryland-National Capital Park and of Commissioner, seconded by sioners,
	ng in favor of the motion, [modify vote as
	abstains, etc.] at its regular meeting held or
	Royce Hanson, Chairman Montgomery County Planning Board