

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Date Mailed: APR 13 2005

Action: Approved Staff  
Recommendation

Motion of Commissioner Bryant,  
seconded by Commissioner  
Robinson, with a vote of 5 – 0.  
Chairman Berlage and  
Commissioners Perdue, Bryant,  
Wellington and Robinson voting in  
favor.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-04080

NAME OF PLAN: Damascus Hills

APR 13 2005

*The date of this written opinion is \_\_\_\_\_ (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court - State).*

On 4/16/04, Roy Stanley ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the RE-2C and RC zone. The property, identified as Parcels 333, 444, 468 and 688 (Subject Property), is developed with a one-family detached dwelling unit, which will remain.

The application proposed to create 31 lots on 146.36 acres of land located on the south side of Damascus Road (MD 108), approximately 2000 feet east of Howard Capital Drive, in the Damascus master plan area. The application was designated Preliminary Plan 1-04080. On 02/17/05, Preliminary Plan 1-04080 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the

Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies; and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

The Applicant proposed to create 29 residential lots and 2 outlots for the construction of 29 one-family detached dwelling units, one of which is an existing dwelling which will remain. The Subject Property contains a stream and associated stream valley buffer.

The development is proposed under an optional method of development and therefore must comply with Section 22A-12(f) of the Montgomery County Code (Forest Conservation Law). This section of the code requires developments utilizing an optional method of development to either retain or plant a certain percentage of forest onsite. There are 52.4 acres of existing forest on the property. The plan proposes the removal of fewer than 9 acres of forest. The applicant will meet the forest conservation requirements through the retention of 43.4 acres of existing forest. (Part of this existing forest was dedicated to M-NCPPC in 2002.)

As part of the preliminary plan review, the Applicant asked for three waivers allowed under the Subdivision Regulations. The first waiver was to allow the proposed lots to have frontage on, and access from, a private cul-de-sac. The Zoning Ordinance, in Section 59-C-1.34.1 provides that:

In the RE-2 zone, lots may front on a private cul-de-sac if the Planning Board finds, as part of the subdivision plan approval process, that the private cul-de-sac:

1. Provides safe and adequate access;
2. Has sufficient width to accommodate the dwelling units proposed;
3. Will better protect significant environmental features on and off site than would a public road; and
4. Has proper drainage.

Staff recommended approval of request to allow the lots to front on the private cul-de-sac. The private street provides access to and from a proposed secondary roadway (Damascus Hills Lane) that connects with MD 108. Staff advised the Board that the private street allows for safe and adequate access, as it follows a fairly straight alignment. At the public hearing, transportation staff testified that provided the 1,600-foot long private street were 20 feet in width, the width would be adequate for the number of lots proposed (11 lots and two adjacent parcels).<sup>1</sup> Staff testified that the private street will better protect significant environmental features on and off site than would a public road, in that it allows better protection of the environmental setting of the historic resource (George Gue Barn) located on proposed lot 16B; requires much less impervious paving and site disturbance than would a public street and/or multiple common-use driveways; and protects certain steep slopes. Finally, Montgomery County's Department of Permitting Services has found, during its review of the Stormwater Management Concept for the site, that drainage from the paved areas for the private street is adequate space. Consequently, staff advised the Board that in its opinion the criteria for frontage of lots on a private cul-de-sac had been met, and recommended approval of this waiver.

The second requested waiver was to allow the creation of two cul-de-sac roads greater than 500 feet in length: the road extending south from MD 108; and the extension of existing Bonny Brook Lane onto this site. Per Section 50-26(d) of the Montgomery County Code, a cul-de-sac road should be no longer than 500 feet unless a greater length is justified by reason of property shape, size, topography, large lot size, or improved street alignment. Staff testified that the shape of the property and the fact that the proposed street alignments provide protection of environmentally sensitive areas and the setting for historic resources justifies design of these over-length roadways. If roadway loops or connections were required for these roads, sensitive environmental areas would be impacted by stream and wetland crossings.

The third requested waiver was from a requirement for a sidewalk on both sides of the planned private roadway, which is being built to tertiary street standards. Per Section 50-26(h) of the Subdivision Regulations, sidewalks are required on both sides of a tertiary road unless the Board finds that pedestrians will be able to safely use the roadway.

Staff agrees with the justification provided by the applicant for a sidewalk on only one side of the proposed private road. Further, staff believes that pedestrians will be able to safely cross the roadway to access the planned sidewalk. Staff therefore recommends approval of the sidewalk waiver.

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<sup>1</sup> Development Review Division staff in its staff report recommended approval of a 16-foot wide private street, however at the public hearing Transportation staff revised the staff's recommendation to a width of 20 feet for the safety reasons discussed below.

At the public hearing, the Applicant appeared, represented by legal counsel. The only condition of approval recommended by staff that the applicant disputed was Condition No. 16. The Applicant asked for a width of 18 feet (rather than staff's recommendation of 20 feet) for the width of the private drive. In response to Planning Board questioning, transportation staff advised the Board that in the opinion of staff, 20 feet is the minimum required for safety on this street. Staff noted that parking would be allowed on both sides of the street, and with cars parked on both sides of the street, then the street might not be wide enough to allow emergency vehicle access. The applicant also asked that the public trail be natural surface (rather than paved) in all areas where it is not contiguous to the paved driveway access.

### **FINDINGS**

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies<sup>2</sup>; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds as follows:

1. With respect to the Applicant's request that the driveway width be reduced from 20 to 18 feet, the Board found persuasive the testimony of its transportation staff that a reduced width potentially compromised emergency vehicle access to the proposed lots, and consequently potentially compromised public safety. The Board finds that 20 feet is the minimum necessary to ensure public safety along the private driveway.

2. With respect to the remaining findings, listed below, the uncontested evidence in the record proves that:

- a) The Preliminary Plan No. 1-04080 substantially conforms to the Damascus Master Plan.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision.
- c) The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.

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<sup>2</sup> The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) All three waivers should be granted as follows:
  - i. The provision of a private cul-de-sac provides safe and adequate access, at 20 feet is sufficiently wide to accommodate the dwelling units proposed, creates the ability to better protect the environmental setting of the historic resource and natural environmental features (*i.e.*, minimizes imperviousness and allows for the preservation of more of the forest and steep slopes on the site); and based upon the review of MCDPS provides adequate drainage;
  - ii. The over-length cul-de-sacs are approved based on the enhanced environmental protection allowed by this design, and as noted in finding (g)(i), above; and
  - iii. Pedestrians can safely walk along the private roadway with one (and not two) sidewalks, and grants a waiver of the requirement that there be two sidewalks.
- g) With respect to all other issues, the Board finds that they are uncontested in the record; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

### **CONDITIONS OF APPROVAL**

Finding Preliminary Plan No. 1-04080 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-04080, subject to the following conditions:

1. Approval under this preliminary plan is limited 29 dwelling units.
2. Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
3. Record plat to reflect Category I conservation easement over all environmental buffers and preserved forest.

4. Dedication to M-NCPPC of the 12.3 acre open space parcel located within the future development area east of the interim terminus of proposed Damascus Hills Lane at the time the future phase is recorded, or two years from the preliminary plan approval date, whichever is sooner. Property to be conveyed at time of record plat and to be free of trash and unnatural debris. Property corners to be staked and signed to distinguish parkland from private properties. Applicant to install a sign to identify the parkland where it abuts the public street.
5. Dedication to M-NCPPC of the 1.75-acre open space parcel located at the southwest corner of the development lying adjacent to current parkland. Property to be conveyed at time of record plat and to be free of trash and unnatural debris. Property corners to be staked and signed to distinguish parkland from private properties.
6. Compliance with the conditions of approval of the MCDPS stormwater management approval October 7, 2004.
7. Compliance with conditions of MCDPWT letter dated, February 9, 2005 unless otherwise amended.
8. Compliance with conditions of MCDPS (Health Dept.) septic approval dated December 1, 2004.
9. Access and improvements as required to be approved by MDSHA prior to issuance of access permits.
10. Dedicate right-of-way to provide a 60-foot width from the centerline of Damascus Road.
11. Dedicate a 60-foot wide right-of-way and construct Damascus Hills Lane to Montgomery County Department of Public Works and Transportation (MCDPWT) Secondary Residential Road Standards with four-foot sidewalks on both sides.
12. Dedicate a 60-foot wide right-of-way and construct Bonnie Brook Lane to Montgomery County Department of Public Works and Transportation (MCDPWT) Open Section Secondary Residential Road Standards.
13. Provide public street connection to adjacent parcels labeled "future phase" by extending Damascus Hills Lane dedication, and improvements from Damascus Road past Lots 17B, 18B and 19B.
14. Provide a hammerhead terminus at the end of Damascus Hills and Bonnie Brook Lanes.

15. Dedication of Outlot A to the adjacent First Baptist Church of Damascus to allow future connection of the Church to the proposed internal street.
16. The private street shall have a pavement width of a least 20 feet wide, and shall have a four-foot sidewalk adjacent to a six-foot landscaping panel on one side.
17. Provide a minimum eight-foot (recommended ten-foot) wide shared-use trail, and easement to connect the private street to Bonnie Brook Lane.
18. Provide a covenant for operation and maintenance of private streets, and pedestrian trails.
19. Provide access easements for common driveways.
20. Provide Public Improvement Easements (PIE), and Public Improvement Agreements (PIA), along internal streets, as required by MCDPWT.
21. Other necessary easements.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

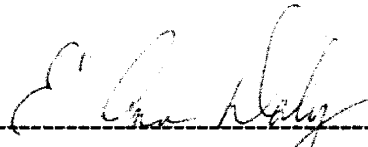
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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

NR 3/25/05  
Approved for legal sufficiency  
M-NCPPC Office of General Counsel

**CERTIFICATION OF BOARD ADOPTION OF OPINION**

At its regular meeting, held on **Thursday, March 31, 2005**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Preliminary Plan No. 1-04080, Damascus Hills**. Commissioner Perdue was absent.



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Certification As To Vote of Adoption  
E. Ann Daly, Technical Writer