

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

**MCPB No. 09-81**  
**Preliminary Plan No. 120090150**  
**Addition to Brooke Grove**  
**Date of Hearing: July 9, 2009**

**SEP 17 2009**

**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 July 9, 2009, BGM Enterprises ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 4 lots on 2.34 acres of land located on Briars Road, 250 feet west of MD 108 ("Property" or "Subject Property"), in the Olney master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090150, Addition to Brooke Grove ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated June 15, 2009, 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 Staff and the staff of other governmental agencies, on July 9, 2009, 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, on July 9, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Robinson; with a vote of 4-0, Commissioners Cryor, Hanson, Presley and Robinson voting in favor, Commissioner Alfandre being absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120090150 to create 4 lots on 2.34 acres of land located on Briars Road 250 feet west of MD 108 ("Property" or "Subject Property"), in the Olney master plan area ("Master Plan"), subject to the following conditions:

Approved as to  
 Legal Sufficiency:

*Janey Haron*

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 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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- 1) Approval under this preliminary plan is limited to 4 residential lots.
- 2) The proposed development must comply with the conditions of the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable. Conditions include but are not limited to:
  - a. Revise the preliminary plan and preliminary forest conservation plan to accommodate a minimum 35-foot wide tree-save area along the part of the property adjacent to MD 108, consistent with an approved noise mitigation plan.
  - b. Approval of final forest conservation plan consistent with the revised preliminary forest conservation plan prior to any clearing, grading or demolition on the site.
  - c. Final forest conservation plan must include a tree protection plan to identify individual trees that will be protected or removed on and adjacent to the subject property.
  - d. The reforestation requirement must be met using an offsite option (reforestation offsite or purchase of credits at an approved forest conservation bank). The specific option selected will be reviewed and approved as part of the final forest conservation plan.
- 3) The proposed development must comply with MNCPPC noise compatibility guidelines:
  - a. Revise the traffic noise report, "Md. Rte. 108 Preliminary Traffic Noise Estimate, Addition to Brooke Grove, Montgomery County, Maryland" by Michael A. Staiano (April 6, 2009) to include the delineation of projected traffic noise levels of 65 dBA, Ldn for the subject site.
  - b. Prior to approval of a record plat, the applicant must submit a noise mitigation plan for staff review and approval that provides outdoor noise mitigation for the rear yards of Lots 1,2, and 4. Noise mitigation must include the following elements:
    - i. Orient the houses on lots 1, 2, and 4 so that the fronts of the houses face MD 108 and/or design the house footprints which may include architectural features to maximize noise mitigation of the backyard areas.
    - ii. Protect a minimum 35-foot wide area of vegetation along MD 108.
    - iii. Add landscaping and noise fence, as needed.
  - c. For those houses which lie within the projected 65dBA, Ldn or higher noise impact area, an acoustical engineer must certify through building shell analysis that interior noise levels for affected dwelling units will not exceed 45 DBA Ldn at the time of building permit.
  - d. The builder must construct the buildings in accordance with these acoustical recommendations, with any changes affecting acoustical performance approved by the acoustical engineer, with copy to MNCPPC

staff.

- e. The certification and builder acceptance letter must be provided to MNCPPC Environmental Planning staff before building permits are approved.
- 4) The applicant must construct a 5-foot-wide sidewalk along the property frontage on Briars Road as shown on the preliminary plan and as required by MCDPS.
- 5) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 6) The applicant must comply with the conditions of the MCDPS stormwater management approval dated December 11, 2008. 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 May 26, 2009. 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(s).
- 9) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
- 10) The record plat must reflect "Access Denied" along the MD 108 property frontage.
- 11) Other necessary easements must be shown on the record plat.
- 12) The applicant must provide either fencing or tree planting along the northern and western boundary of lines of proposed lot 1.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff 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 Montgomery County Planning Board FINDS, with the conditions of approval, that:

*1. The Preliminary Plan substantially conforms to the master plan.*

The Olney Master Plan, approved and adopted in 2005, does not specifically identify the Subject Property. The Property is located in what is identified as the Northern Olney area, outside of the town sector area. On page 41 of the master plan, the authors state that "protecting the existing communities from potential negative impacts of future growth is a significant objective of the Olney Master Plan, achieved mainly by discouraging proliferation of commercial uses outside the Town Center." The R-200 zoning of the Property is recommended to remain. The Addition to Brooke Grove preliminary plan proposes residential uses that do not negatively affect existing

communities. The proposed sidewalk to be installed as part of this application will improve the condition of Briars Road and the community-wide pedestrian network. The proposed plan meets the standards of the R-200 zone and conforms to the existing pattern of development along MD 108.

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

#### 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. The Property has frontage on both MD 108 and Briars Road. MD 108 is classified as a major highway with 150 feet of required right-of-way. Briars Road is a primary residential street requiring 70 feet of right of way. The right-of-way for both roads is adequate, as delineated on the preliminary plan, and no additional dedication is necessary as part of this subdivision. A sidewalk does not currently exist along the Property's Briars Road frontage, therefore, construction of a 5 foot-wide sidewalk is required and must tie-in to the existing shared use path along the Property's MD 108 frontage. The Planning Board finds proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public and private improvements.

#### Other Public Facilities and Services

The Planning Board also finds other public facilities and services to be available and will be adequate to serve the proposed dwelling units. The dwelling units will be served by public water and sewer. Gas, electric and telecommunications services are also available to serve the lots. Schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The application has been reviewed and approved by the Montgomery County Fire and Rescue Service which has determined that the property has adequate access for emergency vehicles.

*3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Planning Board finds the size, width, shape and orientation of the proposed lots are appropriate for the location of the subdivision.

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

The preliminary forest conservation plan (dated April 29, 2009) proposes no onsite forest retention. Reforestation requirements must be met offsite or through payment of a fee-in-lieu. The Applicant proposes to protect some of the large trees on the northwestern portion of the site and four trees that are 24 inches or greater, dbh, along the western property line. The Planning Board finds the application satisfies the requirements of Chapter 22A.

The Planning Board also finds that in order to properly protect proposed lot 1 from noise and lighting impacts caused by the existing use to the north, the Applicant must provide fencing or tree planting along the northern and western boundary lines of proposed lot 1. The Applicant agreed to implement such measures.

*5. 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.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on December 11, 2008 which includes on-site water quality control and recharge via disconnection of rooftop and non-rooftop runoff and drywells. Channel protection volume is not required because the one-year post development peak discharge was computed to be less than or equal to 2.0 cubic feet per second.

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), as amended) 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 among the Land Records of Montgomery County, Maryland 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 SEP 17 2009 (which is the date that this Resolution is mailed to all parties of record); and

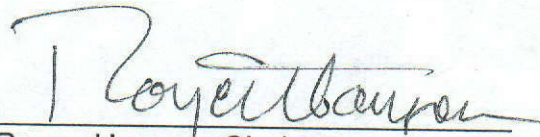
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative

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 Wells-Harley, seconded by Commissioner Presley, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, September 10, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman  
Montgomery County Planning Board