



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

**MCPB No. 09-155**  
**Preliminary Plan No. 120070610**  
**Townhouses at Small's Nursery**  
**Date of Hearing: December 17, 2009**

**FEB -1 2010**

**MONTGOMERY COUNTY PLANNING BOARD**

**CORRECTED RESOLUTION<sup>1</sup>**

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 January 25, 2007, the Tower Company ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 17 lots on 3.11 acres of land in the RT-10 zone and later submitted a revised application on January 23, 2009 to create 19 lots on the same 3.11 acres in the RT-10 zone, located on the north side of Norbeck Road between the intersections of Georgia Avenue and Muncaster Mill Road ("Property" or "Subject Property"), in the Olney Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070610, Townhouses at Small's Nursery ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated November 30, 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 December 17, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

<sup>1</sup> This is a correction to a resolution adopted by the Planning Board on January 14, 2010. The original resolution was not mailed.

Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, N. MNCPPC Legal Department 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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

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

WHEREAS, on December 17, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Wells-Harley; seconded by Commissioner Hanson, with a vote of 2-1, Commissioners Hanson and Wells-Harley voting in favor and Commissioner Alfandre not in favor, with Commissioner Presley absent and one seat vacant.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No.120070610 to create 19 lots on the Property in the Olney Master Plan area subject to the following conditions as amended by the Planning Board at the Hearing:

- 1) Approval under this preliminary plan is limited to nineteen (19) lots for nineteen (19) one family attached units.
- 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.
- 3) The record plat(s) must reflect a Category I conservation easement over all areas of forest conservation.
- 4) At the time of site plan review, the Applicant must amend final forest conservation plan #819950150 (Small's Nursery) to accommodate the proposed off-site access/connector road shown on the certified preliminary plan drawing.
- 5) The Applicant must place in reservation for a period of three years the remainder of Parcel P907, which is not part of this development, but is necessary to accommodate the Maryland State Highway Administration (SHA) selected design alternative for the master-planned Georgia Avenue/Norbeck Road interchange (Alternative 7 Enhanced).
- 6) Prior to the submission of site plan for this development, the Applicant must finalize the Policy Area Mobility Review (PAMR) trip mitigation proposal to reduce four (4) peak-hour trips and must satisfy the PAMR requirement(s) prior to the release of the 14<sup>th</sup> building permit for the development. The mitigation options that are available to this development are those in effect as of January 23, 2007, and that any mitigation payment will be subject to escalation commensurate with the inflation rate.
- 7) The Applicant must dedicate and show on the record plat, all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan unless otherwise designated on the preliminary plan.

- 8) The Applicant must construct all road improvements within the rights-of-way shown on the approved certified preliminary plan to the full width mandated by the master plan and to the design standards imposed by all applicable road codes. This includes construction of the private off-site access/connector road to a minimum of tertiary street standards with sidewalk on at least one side.
- 9) The off-site portion of the connector road and sidewalks, between the Subject Property and Thistlebridge Road, must be within a recorded ingress/egress and utility easement and the liber/folio must be properly referenced on the record plat(s) for this subdivision.
- 10) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated March 19, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 11) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated October 7, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 12) The Applicant must comply with the conditions of the Maryland State Highway Administration (MDSHA) letter dated August 10, 2007. These conditions may be amended by MDSHA, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 13) The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant must provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
- 14) No clearing, grading or recording of plats prior to certified site plan approval.
- 15) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
- 16) 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.
- 17) Other necessary easements must be shown on the record plat.

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, 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 Planning Board finds that this plan conforms to the 2005 Olney Master Plan. Specifically, for the 10.5 acre Tower Company Property, which includes the 3.11 acre Property, the Olney Master Plan recommends:

- a. Maintain the current RE-1/R-200 Zone with community water and sewer for a portion of the property needed for the proposed road interchange project. The remaining portion of the property would be suitable for RT-10 Zone.
- b. Encourage SHA to acquire and provide parkland on this property to augment the existing Norbeck–Muncaster Road Neighborhood Local Park in exchange for any land used for Norbeck/Georgia interchange project.

The Master Plan suggests that the 10.5 acre Tower Company property was appropriate for a special exception use and determined that 5.4 acres of the tract was needed by MNCPPC to expand the Norbeck – Muncaster Mill Neighborhood Park. The Plan indicates that SHA will likely need some of the acquired Park property plus additional portions of the 10.5 acre tract to complete the MD28/97 interchange improvements. The plan then suggests that there “would be approximately 3.2 acres of the Tower Company property available for development” and that it, “would be suitable for a small special exception use or a townhouse development under the RT-10 Zone.” Sectional Map Amendment G-838, adopted September 20, 2005, rezoned the remaining 3.2 acres (actually 3.11 acres - Subject Property) to the RT-10 Zone.

The proposal to develop the site with townhouses conforms to the land use envisioned by the Master Plan and the Property is being developed within the density limits established by the RT-10 Zone. MNCPPC has acquired, in fee simple, the 5.4 acres needed to expand the Norbeck - Muncaster Mill Neighborhood Park. SHA has yet to determine the ultimate right-of-way needed to accommodate the interchange improvements but will likely need the southern portion of Parcel 907 which is also owned by the Applicant for this subdivision. SHA has requested that the southern portion of Parcel 907 be placed in reservation for a period not to exceed 3 years so SHA can further assess the need for, and/or acquire, this land. Condition No. 5 addresses the requirement for reservation. With this, the Planning Board finds this plan is in conformance with the Olney Master plan.

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

LATR

A traffic study is not required for the subject Application, because the proposed density will generate less than 30 peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods. The Board finds that the Application satisfies the LATR requirements of the Adequate Public Facilities test.

### PAMR

As a use located within the Olney Policy Area, this Application is required to mitigate 25% of site-generated “new” peak-hour trips (the mitigation percentage applicable to the preliminary plan based on the filing date of the Application) to satisfy the PAMR requirements of the APF test.

With 10 and 16 “new” peak-hour trips during the morning and evening peak-periods, respectively, the trip mitigation requirement for the proposed use is three (3) trips during the morning peak-hour and four (4) trips during the evening peak-hour.<sup>2</sup> The Applicant is proposing to satisfy the PAMR mitigation requirement to mitigate four (4) peak-hour trips with a variety of options available to them as of the date of the Application, including constructing off-site sidewalks and/or payment of \$11,000 per trip. This payment is subject to an escalation clause outlined in the PAMR guidelines.

The Applicant must coordinate mitigation options with the Transportation Planning Division and DOT staff at the time of Site Plan and satisfy the PAMR requirement(s) prior to the release of the 14th building permit for the development. With the conditions outlined herein, the Board finds the Application meets the PAMR requirement of the APF test.

### Other APF Findings

The private streets will function as public streets in that they will be designed to the structural standards of a public street and provide adequate vehicular circulation. Sidewalks are required and will provide adequate pedestrian circulation. All appropriate local utility agencies have recommended approval of

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<sup>2</sup> At the public hearing, the Applicant requested that the Planning Board reduce the PAMR mitigation requirement from four trips to two, citing as support for their request that there was no PAMR requirement in place at the time the Application was filed, and that the PAMR mitigation requirement has since been reduced from 25% to 10%. Generally, the Planning Board determines the PAMR requirement as of the time the application is filed. Moreover, late in 2006, the Council rejected proposals to place certain areas of the County in a moratorium, but in doing so announced that in connection with adopting a new Growth Policy in 2007 it would adopt a new traffic mitigation policy that would apply to any application filed on January 1, 2007 or later. Thus, the Planning Board does not find that there is any basis for reducing the mitigation requirement as the Applicant requests.

the project; the project will be adequately served by water and sewer, gas, electric, and telecommunications service. The Application is not within a school moratorium area; and is not subject to a School Facilities Payment.

The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services, are operating within the standards set by the Growth Policy Resolution currently in effect. Therefore, the Planning Board finds that the Application satisfies all requirements for Adequate Public Facilities.

- 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 within Chapter 50 of the Montgomery County Code, the Subdivision Regulations. The proposed lots size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations of the local master plan and for the type of development or use proposed. The Board finds the Application meets all requirements within Chapter 50.

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

The Plan proposes an alternative off-site road connection that will avoid impact to an area of high quality wetlands located on the Property, impacting instead an off-site wetland that will be disturbed by future SHA road improvements. This connector road also minimizes impact to the on-site environmental buffer. To provide for this off-site connection, the Board will require that the final forest conservation plan (#819950150) for the adjacent Preserve at Small's Nursery project be amended as part of the site plan for the Property. The off-site portion of the connector road is not included within the limits of disturbance for the purposes of the preliminary forest conservation plan for this Property but is shown for graphical purposes.

The preliminary forest conservation plan for the Property shows the removal of 1.95 acres of forest, retention of 1.02 acres, and planting of .09 acres. All forest conservation planting requirements will be met on-site. This plan does not propose to remove any trees or vegetation that would necessitate a variance request. Therefore no waiver of any of the provisions of Chapter 22A, Forest Conservation Law, is required. The Board finds that all requirements for forest

conservation, Chapter 22A, and the protection of sensitive environmental features, have been met for this Application.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.*

This Planning Board finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan approval dated, October 7, 2008 meets MCDPS's standards. The approved concept consists of on-site water quality control and recharge via a combination of non-structural measures and one biofiltration facility. Channel protection volume control is not required because the one-year post development peak discharge was calculated 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

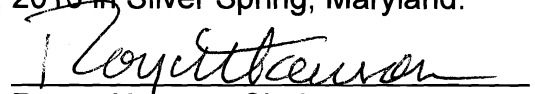
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is FEB -1 2010 (which is the date that this Resolution is mailed to all parties of record); and

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).

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**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 Vice Chair Wells-Harley, seconded by Commissioner Presley, with Chairman Hanson, Vice Chair Wells-Harley, and Commissioners Alfandre and Presley present and voting in favor of the motion at its regular meeting held on Thursday, January 28, 2010 in Silver Spring, Maryland.

  
Royce Hanson, Chairman  
Montgomery County Planning Board



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

**FEB 11 2010**

**Memorandum**

**TO:** Rollin Stanley, Planning Director *RS*

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

**FROM:** Richard A. Weaver, Coordinator *RAW*  
Development Review Division

**RE:** Correction of typographical errors on Preliminary Plan Resolution for Townhouses at Small's Nursery  
PLAN #120070610

**DATE:** January 28, 2010

Pursuant to Section 4.11.4 of the Montgomery County Planning Board Regulation on Rules of Procedure (Correcting Errors in Resolutions), typographical errors may be corrected by issuance of a corrected Resolution approved by the Planning Director.

On December 17, 2009, the Planning Board approved Preliminary Plan No. 120070610 for the Townhouses at Small's Nursery. The Resolution sent to the Legal Department for review and subsequently approved by the Planning Board on January 14, 2010. Prior to mailing of the Resolution staff noticed typographical errors. On page #1, paragraph #2, the original date of the application submittal was inadvertently omitted and should read,

*"WHEREAS, on January 25, 2007 ~~January 23, 2009~~, the Tower Company ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 17 ~~19~~ lots on 3.11 acres of land in the RT-10 zone and later submitted a revised application on January 23, 2009 to create 19 lots on the same 3.11 acres in the RT-10 zone, located on the north side of Norbeck Road between the intersections of Georgia Avenue and Muncaster Mill Road ("Property" or "Subject Property"), in the Olney Master Plan area ("Master Plan"); and"*



Staff recommends correction of these typographical errors; no further changes are required or recommended.

ACCEPTED & APPROVED BY:



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Rollin Stanley, Planning Director

1-26-10

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Date Approved