



**MCPB No. 10-01**  
**Preliminary Plan No. 120080270**  
**Hermitage**  
**Date of Hearing: January 7, 2010**

FEB 1 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 January 7, 2010, Robert Conner, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 7 lots on 2.46 acres of land in the R-60 zone, located at the termination of Wexford Drive and Brandywine Street, on the west side of Connecticut Avenue ("Property" or "Subject Property"), in the Kensington-Wheaton master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120080270, Hermitage ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated December 14, 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 January 7, 2010, 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 January 7, 2010, the Planning Board approved the Application subject to certain conditions as set forth in the Staff Report and revised at the Hearing, on motion of Commissioner Wells-Harley; seconded by Commissioner Presley; with a vote of 4-0, Commissioners Alfandre, Hanson, Presley, and Wells-Harley voting in favor with one Planning Board seat being vacant.

Approved as to  
Legal Sufficiency:

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120080270 to create 7 lots on 2.46 acres of land in the R-60 zone, located at the termination of Wexford Drive and Brandywine Street, on the west side of Connecticut Avenue ("Property" or "Subject Property"), in the Kensington-Wheaton master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 7 lots for 7 one-family detached residential dwelling units.
- 2) The Applicant must comply with the conditions of approval for 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.
- 3) The record plat must reflect a Category I easement over all areas of stream valley buffers and forest conservation as shown on the preliminary plan.
- 4) The Applicant must dedicate and the record plat must show dedication for the extension of Brandywine Street within the property as a 50 foot-wide right-of-way ending in a 110 foot diameter cul-de-sac as shown on the preliminary plan.
- 5) The Applicant must mitigate one trip and satisfy the Policy Area Mobility Review (PAMR) requirements of the Adequate Public Facilities test with a payment of \$11,000 to Montgomery County Department of Transportation (MCDOT) prior to the release of any building permit for this application.
- 6) Prior to issuance of the 5<sup>th</sup> building permit, the Applicant must construct an 8 foot-wide shared use path from Wexford Drive to the proposed Brandywine Street cul-de-sac built to County standards as shown on the preliminary plan, and the record plat must reflect a public use and access easement over this path. Prior to issuance of the first building permit, the Applicant must provide a bond or letter of credit to MNCPPC to cover the cost of construction of the path.
- 7) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 8) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated August 13, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 9) The Applicant must comply with the conditions of the MCDOT letter dated May 13, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 10) The Applicant must comply with the conditions of the Maryland State Highway Administration (MDSHA) letter dated May 8, 2008. These conditions may be

amended by MDSHA, provided the amendments do not conflict with other conditions of the preliminary plan approval.

- 11) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 12) 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.
- 13) 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 1989 Master Plan for the Communities of Kensington-Wheaton does not make specific recommendations for the Subject Property. The Plan has a primary objective to maintain “the well-established low- to medium-density residential character which prevails over most of the planning area.” The Plan states as a policy that “all infill residential development be similar in character and compatible in density with the immediate neighborhood within which it is contained.” In addition, the Plan recommends that Wexford Drive not be connected to Connecticut Avenue for environmental reasons. The proposed development, on the site of a former swim club, meets the Plan’s definition of infill development and does not extend Wexford Drive. The proposed development places afforestation areas adjacent to the undeveloped Wexford Drive right-of-way, which will help preserve steep slopes and forested areas. For these reasons, the Planning Board finds the preliminary plan substantially conforms to 1989 Master Plan for the Communities of Kensington-Wheaton.

*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. The Property is, however, subject to Policy Area Mobility Review (PAMR) because it is located in the Kensington/Wheaton Policy Area where there is a 10% trip mitigation requirement. Seven new trips are being generated by the proposed development and therefore the Applicant must mitigate one trip to satisfy PAMR. The Applicant has chosen to satisfy this trip mitigation requirement by

making a monetary payment to MCDOT. As discussed below, the Planning Board finds vehicular and pedestrian access for the subdivision will be safe and adequate with the proposed public and private improvements.

#### Vehicular Connections

The Property has frontage on three roadways: Connecticut Avenue, Wexford Drive and Brandywine Street. Connecticut Avenue is a major highway requiring 120 feet of right-of-way. The right-of-way for Connecticut Avenue is currently adequate along the Property frontage and no additional dedication is necessary. MDSA will not allow access to Connecticut Avenue in this location. One hundred feet of dedicated right-of-way for Wexford Drive exists along the southern boundary of the Subject Property from the current termination of Wexford Drive to Connecticut Avenue. The existing portion of Wexford Drive was built in a stream valley that extends along the front of the Subject Property. There is a grade differential of 28 feet from Brandywine Street to Wexford Drive and a 60 foot drop from Connecticut Avenue to the low point in the unbuilt Wexford Drive right-of-way. Any extension of Wexford Drive would require substantial engineering activities that would greatly disturb the existing above-ground stream and environmentally sensitive areas located within this portion of unbuilt right-of-way. Therefore, Wexford Drive is not being extended and Brandywine Street, an existing secondary residential street, is proposed to be extended by the Applicant as the point of access for all proposed lots. Sixty feet of right-of-way is currently provided for Brandywine Street north of the Subject Property with a 26-foot paved roadway and 5-foot wide sidewalks on both sides of the street. The Applicant, with concurrence from MCDOT and M-NCPPC Transportation Planning Staff, proposes to dedicate 50 feet of right-of-way for the extension of Brandywine Street into the Property but will maintain 26 feet of pavement width and 5 foot-wide sidewalks that will connect to existing sidewalk north of the site. Brandywine Street will terminate in a standard, 90-foot diameter paved cul-de-sac and will not connect to Wexford Drive.

#### Pedestrian Connections

As part of the analysis for road extensions for this application, necessary pedestrian and bicycle trails were considered. Although the 1989 Master Plan for the Communities of Kensington-Wheaton recommended a multi-use trail through the right-of-way for Wexford Drive extending across Connecticut Avenue, the 2005 Countywide Bikeways Functional Master Plan does not include this recommendation. .

The Planning Board agreed with MCDOT staff and MNCPPC Transportation Planning staff recommendations that a trail connection across Connecticut Avenue was not feasible because of significant grading and disturbance to the stream, stream valley buffer and forest that would be necessary to address the 40-50% steep slope that exists between flat area within the Wexford Drive unbuilt right-of-way and

Connecticut Avenue at grade. Furthermore, MDSHA would not accept any path that required removing a portion of the retaining wall or guardrail along Connecticut Avenue and was not receptive to connecting to a path that would not meet ADA requirements. The Applicant's proposal to provide an asphalt path utilizing the existing driveway for the swimming pool by connecting Wexford Drive to the Brandywine Street cul-de-sac provides greater mobility options for neighborhood residents to Rock View Elementary School and will best minimize impacts to the stream valley buffer on the site. As a result, the preliminary plan depicts an 8 foot-wide path to be built to County shared use path standards in a 20 foot-wide private path and storm drain easement that connects sidewalk along the Brandywine Street cul-de-sac to existing sidewalk along Wexford Drive. The HOA will own and maintain the path, which, because it is privately owned, does not need to meet ADA standards due to the slope of the Property in this location.

#### Discussion of Construction Access

Although construction access is not within the Board's purview, the Board discussed adequate construction vehicle maneuverability to the Subject Property after hearing testimony from concerned residents of the adjacent neighborhood. Citizens expressed a preference for a Wexford Drive construction vehicle entrance due to potential conflicts with pedestrians on Brandywine Street walking to Rock View Elementary School and with residents of Brandywine Street who must have on-street parking because they are without driveways. The Board considered all points of access and agreed with area residents that a primary construction entrance from Wexford Drive may be preferable, an entrance from Connecticut Avenue should not be ruled out at this time, and Brandywine Street should only be considered as a point of access after all other options are exhausted.

#### 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. Area schools are operating at adequate levels; therefore, the Subject Property is not within a school moratorium area and a school facilities payment is not required. 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 lots.

- 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 and Chapter 59, the Zoning Ordinance. The Planning Board finds the application meets all applicable sections,

including the requirements for resubdivision. The proposed size, width, shape and orientation of the lots are appropriate for the location of the subdivision. The density of the proposed plan is 2.84 units per acre which is significantly lower than R-60 zoning standards allow.

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

The forest conservation plan for this application shows the removal of 0.53 acres of forest for the proposed lots, retention of 0.46 acres, and planting of 0.23 acres. An additional 0.04 acres of forest will be removed for stormwater conveyances and a sewer connection. All forest conservation planting requirements will be met on-site through the planting of all practical areas of stream valley buffer not covered by a stormdrain or sewer easement. There is one small triangle of stream valley buffer between the sewer easement and one of the stormwater outfalls that will not be required to be reforested, as it would create an isolated fragment.

In accordance with Title 5, Section 5-1607 of the Natural Resources Article, Maryland Code, the Applicant filed an application for a variance to remove three trees that are greater than 30" DBH. The trees that were proposed for removal are a 31" tulip tree in good condition, a 36" tulip tree in good condition, and a 31" red oak in good condition.

Although the variance request was referred to the Montgomery County Arborist within MCDEP on September 29, 2009 as required by Section 22A-21(c), the County Arborist elected not to review the variance request.

The Planning Board approves the forest conservation plan and the Applicant's request for a variance and FINDS as follows:

- a. The requested variance will not confer on the Applicant any special privileges that would be denied to other applicants. All three of the large trees requested to be removed are located interior to the project site, outside of the stream valley buffer. None of the trees are champion trees or 75% of the DBH of the state champion tree for that species. The circumstances related to this variance are not unique, nor avoidable, except by denying development.
- b. The variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based on site layout and design for a single family development in the R-60 zone and the necessary road extension. An alternate lot layout would not alter the need for the removal of these three trees.

- c. The variance is a result of the proposed site design and layout on the subject property and not as a result of land or building use on a neighboring property.
  - d. The variance will not violate State water quality standards or cause measurable degradation in water quality. Under section 22A-16(d) of the County code "*The Board or Director may treat any forest clearing in a stream buffer, wetland or special protection area as creating a rebuttable presumption that the clearing had an adverse impact on water quality.*" In this case, the specimen trees proposed to be removed are not within a stream buffer, wetland or a special protection area and as such it is presumed that the removal of these individual trees would not cause degradation to water quality.
5. *Based upon the Montgomery County Department of Permitting Services ("MCDPS") determination that the Stormwater Management Concept Plan meets MCDPS' standards, the Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on August 13, 2009. The concept consists of on-site water quality control via disconnecting rooftop drains, sheet flow to buffer, a proprietary underground filter, and Filterra(s). On-site recharge is provided by using drywells. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cubic feet per second.

6. *The proposed lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood (as delineated by Staff in the Staff Report) ("Neighborhood"), as analyzed below, and therefore is appropriate for resubdivision in accordance with Section 50-29(b)(2).*
  - a. Frontage: Property frontages at the street line in the 15 lot Neighborhood range from 51.01 feet to 144.11 feet. Street frontages for the 6 proposed lots range from 56 to 76.1 feet. There are 6 existing lots with smaller frontage than the proposed lots and 2 existing lots are only slightly larger than the minimum frontage proposed. Lots with the largest street frontage in the Neighborhood are corner lots. The proposed lots will be of the same character as existing lots in the neighborhood with respect to lot frontage.
  - b. Alignment: Seven lots in the designated Neighborhood have a perpendicular alignment to the street, 3 lots have a radial alignment and 5 lots are corner lots. The proposed lots will have a perpendicular alignment to

Brandywine Street and will, therefore, be of the same character as existing lots with respect to the alignment criterion.

- c. Size: Lot sizes in the Neighborhood range from 5,401 square feet to 9,252 square feet. Four of the 15 lots in the Neighborhood are less than 6,000 square feet because these lots were recorded prior to the R-60 zoning classification. Of the remaining 11 lots, 5 lots are between 6,000 and 7,000 square feet in size. The proposed lot sizes will range from 6,008 square feet to 7,573 square feet, with all but 2 being greater than 6,500 square feet. The seven proposed lots are in character with the size of existing lots in the neighborhood.
- d. Shape: There are 6 irregularly-shaped lots in the Neighborhood, 6 rectangular lots and 3 lots have a trapezoidal shape. Four proposed lots will be rectangular in shape and 3 lots will be irregularly-shaped. The shapes of the proposed lots will be in character with shapes of the existing lots.
- e. Width: Lot widths in the Neighborhood range from 55 feet to 76.8 feet at the building line. Eight lots in the Neighborhood are less than 60 feet in width. Four proposed lots will be 60 feet in width and the remaining proposed lots are 62, 64 and 73 feet in width. The proposed lots will be in character with existing lots in the Neighborhood with respect to width.
- f. Area: The size of buildable areas in the 15 lot Neighborhood range from 795 square feet to 4,553 square feet. Ten lots in the Neighborhood have a buildable area larger than 2,000 square feet. The proposed lots will have buildable areas ranging from 2,081 square feet to 2,802 square feet. The proposed lots will be of the same character as other lots in the Neighborhood with respect to buildable area.
- g. Suitability for Residential Use: The existing and the proposed lots are zoned residential and the land is suitable for residential use.

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.

  
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Royce Hanson, Chairman  
Montgomery County Planning Board