

APR 8 2011



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

**MCPB No. 11-13**  
**Preliminary Plan No. 120100180**  
**Hidden Hill**  
**Date of Hearing: February 10, 2011**

**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 February 19, 2010, Ronald Furman ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create four lots on 9.55 acres of land in the RE-2 zone, located on the in the southeast corner of the intersection of Query Mill Road and Esworthy Road ("Property" or "Subject Property"), in the Potomac Subregion Master Plan area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120101800, Hidden Hill ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated January 21, 2011 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 February 10, 2011, 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 February 10, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Presley; with a vote of 5-0, Commissioners, Alfandre, Carrier, Dreyfuss, Presley and Wells-Harley voting in favor.

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Approved as to  
Legal Sufficiency:

*Chris M. [Signature]* 3/17/11

8787 Georgia Avenue, N.C. 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120100180 to create four lots on 9.55 acres of land in the RE-2 zone, located on the Subject Property, in the Potomac Subregion Master Plan area, subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to four lots for four one-family detached dwelling units.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan prior to recording of a plat or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit, as applicable.
- 3) The record plat(s) must reflect a Category I Conservation Easement over the entire stream valley buffer and the areas of retained forest.
- 4) The Applicant must comply with the conditions of the MCDPS stormwater management concept approval dated July 22, 2010. These conditions may be amended by MCDPS, as long as the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 5) The Applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated January 21, 2011. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated July 30, 2010. These conditions may be amended by MCDOT, as long as the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 7) Record plat to reflect dedication on Query Mill Road and Esworthy Road 35 feet from centerline.
- 8) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat.
- 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 show all necessary easements.

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 Potomac Subregion Master Plan.*

The Approved and Adopted 2002 Potomac Subregion Master Plan does not specifically discuss the Subject Property but does recommend that the RE-2 zoning designation remain on the Property as it was before the master plan update. The Preliminary Plan substantially conforms to the Master Plan because it proposes residential development under the RE-2 standards that conforms to the current development pattern of the area, and it meets the area and dimensional requirements for the RE-2 zone.

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

#### Roads and Transportation Facilities

The lots created by the Preliminary Plan 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. Esworthy Road is a primary residential street and Query Mill Road is a rustic road, however, 70 feet of right-of-way is required for both streets. The Applicant is required to dedicate 35 feet from the centerline along the Property frontage where there is not full right-of-way dedication.

Sidewalks are not required by the road code for lots in the RE-2 zone and no sidewalks exist along Esworthy Road or Query Mill Road. The nearest walkable public amenity is the Muddy Branch Stream Valley Park which abuts the Property to the north and west. Access to the park can be attained by crossing either Query Mill Road or Esworthy Road without the need for sidewalks. Vehicular and pedestrian access for the subdivision will be safe and adequate as proposed.

#### Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the subdivision. The Application meets the Montgomery County Fire and Rescue Service requirements for fire and rescue vehicle access. Other public facilities and services, such as schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. Electrical and telecommunications services are also available to serve the Property. The Subject Property is not within a school moratorium area and is not subject to a School Facilities Payment.

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 Application meets all applicable sections. The lots meet all the dimensional requirements for the area, frontage, width and setback in the zone. Therefore, the Board finds that the proposed lot size, width, shape and orientation 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 and the protection of environmentally sensitive features*

#### Forest Conservation

The Preliminary Forest Conservation Plan (FCP) preserves 1.93 acres of the existing forest on the Property and to clear 0.18 acres of existing forest. The site contains 2.22, acres of forest, however, 0.11 acres has been deducted out as it is within required right-of-way dedication and is not being developed as part of this plan. Therefore, the net tract area of the Property for forest conservation purposes is 2.11 acres. The amount of existing forest is below the conservation threshold of 2.28 so any clearing will require a planting requirement. The 0.18 acres of forest to be cleared generates a 0.36 acre planting requirement. The Applicant will meet the planting requirement on-site within delineated stream buffers.

#### Protection of Environmental Resources and Stream Buffer Mitigation

The Preliminary Plan adequately protects all sensitive environmental features on the site by including them in Category I conservation easement as shown on the FCP. The Applicant requested, and the Board agreed to allow small encroachments into an area that otherwise would be included in the regulatory buffers due to Applicant's plan to mitigate the effects of the encroachments as outlined in the Staff Report. The Board found that the applicant's proposed mitigation plan would provide equal or better protection of the environmental resources on the Property than the protection afforded by the standard buffers. The mitigation plan will be implemented as part of the preliminary and final forest conservation plans.

#### Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone (CRZ), requires a variance under Section 22A-12(b)(3) of the County code. Otherwise such resources must be left in an undisturbed condition..

Since this project will require seven Protected Trees, 30 inches and greater DBH to be removed. Further, the project will impact eleven Protected Trees. Therefore, a variance is required. Although the Applicant proposed tree preservation measures to help ensure the trees with proposed impacts survive construction, the variance is required simply due to the impact.

The Board made the following findings necessary to grant the Tree Variance:

1. *Granting the Tree Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege as the removal and/or disturbance of the Protected Trees noted above are the minimum necessary in order to develop the Property as illustrated on the Plan. Based on the constraints of the Stream Valley Buffers and the topography of the site, the houses are in the only suitable locations. The driveway is being shifted to the east of the current access point to improve sight distance. This driveway shift causes 2 specimen trees to be removed. The remaining five specimen trees to be removed are within the footprint of the house on lot 4.

2. *The need for the Tree Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The variance is based upon site development, required stormwater management best management practices, and the environmentally sensitive areas on the site. Approximately 49 percent (4.43 acres) of the Property will be placed into a Category I conservation area. These easements are a result of the streams and wetlands along the north and south sides of the Property. This distribution of conservation easements only leaves a 4.69 acre wedge (51% of the property) interior to the site as developable area. This concentrated developable area, while unforested, contains specimen trees. The environmental constraints combined with required stormwater management best management practices, and necessary drinking water well locations, dictates the locations of the houses and the impacts to the specimen trees.

3. *The need for the Tree Variance is not based on a condition relating to land or*

*building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed development and not a result of land or building use on a neighboring property.

4. *Granting the Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Stormwater Management Concept Plan has been approved by the Montgomery County Department of Permitting Services.

#### Forest Conservation Variance mitigation

Mitigation should be at a rate that approximates the form and function of the trees removed. The Board agreed with the Staff recommendation to replace trees at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are 1.5" to 2" DBH. This requires that for the 249 caliper inches of specimen trees that will be removed, they must be replaced with 32, 1.5" to 2" DBH native canopy trees in the unforested stream valley buffer ("SVB") area. This is equivalent to 0.32 acres of forest planting. The 32 trees, in conjunction with the SVB encroachment plantings, will create new forest in most of the unplanted SVB on-site. No mitigation is recommended for trees impacted but retained.

The Board finds that with the conditions imposed by this Resolution the Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

5. *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 July 22, 2010. The concept consists of on-site channel protection, on-site water quality control, and onsite recharge via Environmental Site Design using drywells, landscape infiltration micro-bioretenion, rooftop disconnect and flow to conservation areas. The Board finds that the Preliminary Plan adequately addresses the stormwater management from the project.

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

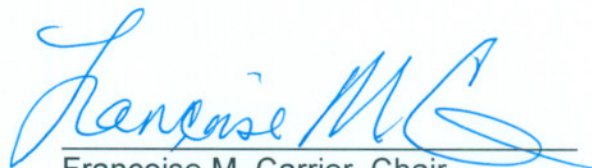
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is APR 8 2011 (which is the date that this Resolution is mailed to all parties of record); and

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 Commissioner Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley present and voting in favor of the motion at its regular meeting held on Thursday, March 31, 2011, in Silver Spring, Maryland.

  
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Françoise M. Carrier, Chair  
Montgomery County Planning Board