

JUN 28 2011



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

**MCPB No. 11-48**  
**Preliminary Plan No. 120050740**  
**Hilltop Farm**  
**Date of Hearing: May 26, 2011**

**RESOLUTION**

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is authorized to review preliminary plan applications; and

WHEREAS, on February 23, 2005, Hilltop Farm, Ltd. ("Applicant") filed an application for approval of a preliminary plan of subdivision of property to create eight (8) lots on 232.7 acres of land located on the south side of West Old Baltimore Road, the west side of Slidell Road, the north side of Barnesville Road and the east side of Peach Tree Road ("Property" or "Subject Property") in the Agricultural and Rural Open Space master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120050740, Hilltop Farm ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") provided the Board with a memorandum dated May 26, 2006, setting forth its analysis and recommendation for approval of the Application subject to certain conditions; and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, the Planning Board held a public hearing on the Application on June 8, 2006 and, in response to a request from the applicant deferred action on the Application to allow additional time to provide information to clarify certain issues raised by the Board; and

WHEREAS, Staff provided the Board with an updated memorandum dated June 18, 2007 containing its further analysis and recommendation for approval of the Application subject to certain conditions; and

WHEREAS, on July 19, 2007, following review and analysis of the Application by Staff and the staff of other governmental agencies, the Planning Board held a public hearing on the Application, and

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Approved as to  
Legal Sufficiency:

A handwritten signature in black ink, appearing to be 'M. ...', written over a horizontal line.

8787 Georgia Avenue, Suite 200, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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WHEREAS, on July 19, 2007, the Planning Board voted to deny the Application;  
and

WHEREAS, the Applicant sought judicial review of the Board's denial in the Circuit Court for Montgomery County; and

WHEREAS, the Circuit Court found that the Board's denial of the proposed subdivision was improper, and ordered the Board to approve the plan with certain conditions; and

WHEREAS, the Board appealed the Circuit Court's decision to the Maryland Court of Special Appeals, which affirmed the Circuit Court's determination that the Board had improperly denied the proposed subdivision but reversed the portion of the Circuit Court's order that dictated the conditions of approval; and

WHEREAS, the Court of Special Appeals remanded the Application back to the Board with an order to approve the proposed subdivision with such conditions that the Board deems appropriate; and

WHEREAS, on May 13, 2011, Staff provided the Board with a revised memorandum containing further discussion of the Staff's analysis setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions; and

WHEREAS, on May 26, 2011, following review and analysis of the Application by Staff and the staffs of other governmental agencies, the Planning Board held a public hearing on the Application; and

WHEREAS, on May 26, 2011 the Planning Board approved the Application, on motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley, with a vote of 3-0, Commissioners Carrier, Dreyfuss, and Wells-Harley voting in favor and Commissioners Alfandre and Presley absent;

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board APPROVES Preliminary Plan No. 120050740 to create 8 lots on 232.7 acres of land located on the south side of West Old Baltimore Road, the west side of Slidell Road, the north side of Barnesville Road and the east side of Peach Tree Road, in the Agricultural and Rural Open Space (AROS) Master Plan area; subject to the following conditions;

- 1) Approval under this preliminary plan is limited to eight lots for eight one-family residential dwelling units.

- 2) Compliance with the conditions of approval of the preliminary forest conservation plan, including development and implementation of an invasive management control plan for all areas within the proposed forest conservation easement prior to using any forest bank credits. The Applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.
- 3) The lots approved under this application may be recorded by plat(s) individually or simultaneously in the land records of Montgomery County, however, Lot 8, which includes the forest conservation easements established for Lots 1-7, must be platted either prior to or simultaneously with the recording of the first plat for any one of Lots 1-7 as shown on the preliminary plan.
- 4) The record plat(s) must reflect a Category I easement over all areas of stream valley buffers, forest conservation areas and must properly denote any established forest bank.
- 5) The record plat showing Lot 8 must reflect a note as follows, "Lot 8 as shown hereon is limited to agricultural and related uses."
- 6) Prior to recordation of the plat for Lot 8, the tenant trailers shown on Lot 8 must be removed to the satisfaction of MNCPPC technical staff.
- 7) The record plat(s) showing any or all of Lots 1-7 must include a note as follows; "Lots 1 through 7 as shown hereon, are created pursuant to the Preservation Easement Agreement between the Applicant and Montgomery County, Maryland for the sole purpose of constructing dwellings for the personal use of the Applicant or children of the Applicant Partnership's individual partners."
- 8) The deeds conveying ownership of lots 1-7 as shown on the preliminary plan, must be only in the name of the child/owner as required by the Preservation Easement Agreement. A copy of the deed shall accompany the building permit application for each lot.
- 9) Prior to issuance of building permits, the Applicant must enter into a Covenant, to be recorded in the Land Records of Montgomery County, Maryland that restricts the ownership of Lots 1-7 to the Applicant or children of the Applicant Partnership's individual partners. The restriction shall apply for a period of Five (5) Years commencing on the date a building permit is issued to construct a dwelling unit on each such lot. This condition does not modify any stricter limit on the transferability of lots 1-7 that may be contained in the preservation easement granted to the Office of Economic Development.
- 10) Prior to recordation of the initial plat, the Applicant must obtain a release from the Montgomery County Department of Economic Development. Said release shall include a copy of the final plat drawing.
- 11) The septic line to serve Lot 7 must be directionally bored under stream invert at the location shown on the approved preliminary plan. A pre-construction meeting with MNCPPC enforcement staff is required prior to commencement of this activity.

- 12) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated March 30, 2005 and as updated on March 29, 2011. These conditions may be amended by MCDPS provided they do not conflict with other conditions of the preliminary plan approval.
- 13) The Applicant must comply with the conditions of MCDOT letter dated May 8, 2006. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 14) The Applicant must comply with the conditions of the Montgomery County Fire and Rescue Services (MCFRS) letter dated February 6, 2006. These conditions may be amended by MCFRS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 15) The Applicant must comply with the conditions of MCDPS (Health Dept.) septic approval dated May 11, 2005. These conditions may be amended by MCDPS provided they do not conflict with other conditions of the preliminary plan approval.
- 16) The Applicant must dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Functional Master Plan for Rural and Rustic Roads, unless otherwise designated on the preliminary plan.
- 17) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 18) The record plat must reflect a note stating that a TDR is available and has been reserved for each of the lots shown on the plat.
- 19) 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 for this action.
- 20) Other necessary easements shall be shown on the record plat.
- 21) Prior to approval of the Final Forest Conservation Plan, and prior to recordation of the first record plat, the Applicant must recertify the Natural Resources Inventory/Forest Stand Delineation for the property to reflect any changes to the natural features and to look for habitat of rare, threatened, or endangered species. Prior to Staff approving the Final Forest Conservation Plan, the Applicant must apply to DNR and Staff must receive a response indicating whether DNR has determined the existence of any rare, threatened and/or endangered species and/or habitat of endangered species on the property. In the event that DNR does determine such habitat or species exist on the property, the Applicant and Staff shall coordinate with DNR to determine the appropriate buffer to be applied to the property.

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

*1. The Preliminary Plan substantially conforms to the Master Plan.*

The Agricultural and Rural Open Space (AROS) master plan establishes agriculture as the preferred use for land in the Rural Density Transfer (RDT) zone. For this plan, the majority of existing agricultural operations will be maintained on Lot 8, where an existing 207 acre farm operation is located. The seven smaller lots all meet the minimum size allowed by the zone and have been reduced substantially to the minimum size necessary for the house, septic systems, and well. The Board asked for a Staff analysis of the potential to further reduce lot sizes. Staff explained that while it was technically possible to reduce the size of proposed Lots 6 and 7, the resulting lot layout would create areas of property that would not be at all conducive to farming and would likely have to be under control of a homeowners association for maintenance, which would be impractical for such a small subdivision.

In addition to minimizing the lot sizes, the proposed subdivision locates the residential lots where they will least interfere with agricultural activity. The portion of the site allotted for the seven lots is in an area that is currently capable of being farmed, but is separated from the critical mass of the operating farm on proposed Lot 8 and further buffered from the ongoing agricultural activity on Lot 8 by an existing hedgerow. Further, the approval of this preliminary plan and fulfillment of the terms of the Easement will assure that the 208 acre farm lot, or approximately 88% of the existing farmable area, remains available for agriculture. Because this application promotes and protects agricultural opportunities by minimizing the impact of the residential development, the Planning Board finds the proposed preliminary plan conforms to the overriding goals of the Agricultural and Rural Open Space master plan.

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

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 subject site is located in the Rural West Policy Area where there is no trip mitigation requirement for PAMR according to the current Growth Policy. Sidewalks are not recommended along any of the Rustic Roads and traffic volume is sufficiently low where pedestrians can use the road pavement or edge of roadway should they need to. The Applicant will be

required to dedicate the proper master plan and Rustic Road Functional master plan right-of-ways at the time of record plat. Proposed access via private driveways will be safe and adequate as shown on the plan. The local road network will not be overburdened by the additional traffic generated by this development.

Other public facilities and services will be adequate to serve the proposed dwelling units. Local utilities have found that their respective utility, if available in this area, is adequate to serve the proposed subdivision. The Montgomery County Department of Permitting Services (MCDPS) has approved the private well locations and septic systems for all of the proposed lots. Additionally, the two tenant trailers have not passed septic percolation testing as of this date and must be removed prior to recording the plat for Lot 8.

The application has been reviewed by the MCFRS, which has determined that the Property has appropriate access for fire and rescue vehicles. All existing public utilities to the residence are adequate, new septic reserve areas and well locations have been approved. 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. The Application is not subject to the School Facilities Payment because all schools in the local high school cluster are operating at acceptable capacities. The Board finds that all public facilities, utilities, and services are adequate to serve the proposed lot and use.

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

Pursuant to Section 50-29(a)(1) of the Subdivision Regulations, the Board finds that the size, shape, width, and orientation of the lots are appropriate for the location of the subdivision taking into account the recommendations of the AROS master plan and the type of development contemplated, which for this application is both residential and agricultural. The Staff Report illustrates the location of the clustered lots (Lots 1-7) in relation to other existing lots and homesites in the general area defined by the intersection of West Old Baltimore Road and Slidell Road. The pattern of existing lots and parcels varies, but for the most part, many of the lots and their respective house footprints are oriented in close proximity to the roads that serve the area. Some lots are situated so that the homes are removed from the road and served by extended driveways from the nearest road. These characteristics are shared by the proposed lot cluster. Four of the seven proposed lots provide for house locations that are oriented to the street, in close proximity to West Old Baltimore Road. Three of the seven proposed lots provide

for house locations removed from the road, again, a characteristic that can be found elsewhere in the general vicinity.

The AROS master plan makes no specific recommendations as to the appropriate size, shape, width, or orientation of lots, but it does contain the overriding goal to preserve agriculture to the maximum extent possible. This has been interpreted to mean that residential lots, while permitted, are to be sized and located to not unduly infringe on the critical mass of agricultural opportunities that remain in the Agricultural Reserve. The clustering of the seven lots on 25 acres of the 232 acre farm results in preservation of almost 90% of the agricultural opportunities currently available on the Property. The Board finds that proposed Lots 1-7 are appropriate with respect to size, shape, width and orientation and that the location of this cluster optimizes the preservation of the agricultural opportunities on the overall subject property and complies with Section 50-29(A)(2) of the Subdivision Regulations.

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

The application complies with the Planning Board adopted *Environmental Guidelines* and Section 50-32 of the Montgomery County Subdivision Regulations pertaining to preservation of environmentally sensitive areas. The site includes 44.2 acres of environmental buffer, 30 acres of floodplain and 12 acres of wetlands. These environmentally sensitive areas are associated with the Bucklodge Branch, which traverses the site. The preliminary plan depicts only one encroachment into the buffers, that being the septic line for Lot 7. This encroachment is necessary to connect the septic tank to the approved septic drain field and reserve area on Lot 8. The Applicant provided documentation proving that all reasonable efforts to locate alternative septic systems have failed. All percolation test pits on Lot 7 revealed shallow rock and slopes too steep to accommodate septic systems. Based on the test pits and slopes, it was determined that no feasible septic reserve area could be established on Lot 7 and the closest available area for satisfactory percolation was on Lot 8 which necessitates the stream crossing. The APAB notes that the crossing of the stream with the septic line is allowed by the agricultural easement and explains that agricultural activity can continue on top of approved septic reserve areas.

To minimize impact to trees and the stream, MCDPS – has approved pumping the effluent, and the Applicant is required to tunnel this septic line the stream channel. This technique will preserve the stream and its banks. An area has been identified on the Plan along the stream section where the vegetation in the

stream buffer is mostly non-native and invasive shrub species. The septic line will impact no forest within the buffer.

A speaker at the Hearing, Dr. Peter Eeg, testified that he had treated an injured turtle brought to him by a person who had found it on the Subject Property. Dr. Eeg stated that the turtle was a Bog Turtle, a protected species.

The Board accepted suggestions from Staff and Counsel in response to Doctor Eeg's assertion and noted that the Natural Resources Inventory/Forest Stand Delineation was to be re-certified as it was more than 2 years old. This resolution requires the Applicant to submit a recertified Natural Resource Inventory/Forest Stand Delineation to the Maryland, Department of Natural Resources (DNR) for a review and documentation of the existence of any rare, threatened, or endangered species on the Subject Property. DNR is to provide staff with a report as to the existence of any such species on the Property and to recommend any protective measures if such species are found. Condition #21 of this Resolution has been added to address the Board's determination that DNR should provide such an evaluation to Staff. With this requirement, the Board finds that the Plan adequately protects sensitive environmental features on the Property.

#### Forest Conservation

The Application complies with Chapter 22A of the Montgomery County Code, the Forest Conservation Law. Section 22A-5(b) of the Code allows exemptions from the forest conservation requirements for properties that commit to continue commercial agriculture under a Declaration of Intent. Therefore, all but the 25 acres where the residential lots will be located are exempt. To meet forest conservation requirements, the Applicant will preserve 10.4 acres of existing forest on the exempted and farmed portion of the property.

The Applicant's preliminary forest conservation plan shows 58.18 acres of land on proposed Lot 8 to be included in a Category I forest conservation easement. This area includes existing forest within and outside of the approved environmental buffers, plus unforested portions of environmental buffers. It is the Applicant's intent to create a forest conservation bank within this easement area. The area included in the forest conservation bank includes 53.35 acres of existing forest and 4.83 acres of unforested areas. Staff noted the presence of invasive plants in some of the forest stands identified on the NRI/FSD. Therefore, a condition of approval has been included requiring the Applicant to develop and begin implementing an invasive species management control plan on all areas included in the proposed forest conservation easement area before



any forest conservation bank credits can be used. No specimen trees are to be disturbed; no tree variance is required.

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 March 30, 2005 which includes on-site, non structural methods to provide water quality protection. Water quantity controls will be provided using the same non-structural methods. MCDPS has provided an administrative waiver letter dated March 29, 2011, which makes the finding that the stormwater management concept approved in 2005 remains valid with the requirement that quantity control now be provided using the same non-structural methods that are to be used to provide water quality controls. The Board finds that runoff and drainage will be adequately controlled by this proposal.

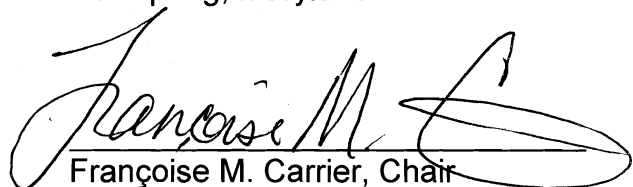
BE IT FURTHER RESOLVED, that the date of this Resolution is JUN 28 2011 (which is the date that this Resolution is mailed to all parties of record); and

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 Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor of the motion, at its regular meeting held on Thursday, June 16, 2011, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board