



MCPB No. 12-110
Preliminary Plan No. 12006032A
Preserve at Rock Creek
Date of Hearing: September 20, 2012

SEP 26 2012

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on June 6, 2007, the Planning Board, by Resolution MCPB No. 07-62, approved Preliminary Plan No. 120060320, Bowie Mill Estates, creating 186 lots on 467.84 acres of land in the RC zone, located on the northeast side of Muncaster Mill Road opposite the intersection with Needwood Road ("Subject Property") in the Upper Rock Creek master plan ("Master Plan") area; and

WHEREAS, on June 11, 2012, SM Bowie Mill, LLC ("Applicant"), filed an application for approval of an amendment to the previously approved preliminary plan(s) to modify conditions 29 and 30, and remove condition 33 from Resolution MCPB No. 07-62 on the Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12006032A, Preserve at Rock Creek¹ ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated September 7, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 20, 2012, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

¹ The name of the project has changed since the original approval in 2007

Approved as to
Legal Sufficiency

Christina Soma 9/13/12
MNCPPC Legal Department

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NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 12006032A to modify conditions 29 and 30, and remove condition 33 from Resolution MCPB No. 07-62 by modifying the following conditions:²

29. The Applicant must maintain the viewshed as shown on the approved Preliminary Plan and on plats numbered 24252 and 24253. A viewshed to the Historic Setting, as identified on the Preliminary Plan, will be preserved and will be identified on the record plat as a protected area. No building will be allowed on the land located within the identified viewshed. Any new plantings, tree removal, or fences within the viewshed will require approval by M-NCPPC Historic Preservation Section Staff. The historic viewshed contemplated herein shall be limited to the portion of the proposed subdivision that is forward of the former Cashell Farm house (i.e. between Muncaster Mill Road and the former Historic House).

30. Prior to the issuance of the 117th building permit, the Applicant will have obtained Historic Area Work Permits from the Historic Preservation Commission and completed the relocation and stabilization of the historic barn and restoration of the stone tenant house within the Historic Setting as identified on the Preliminary Plan.

BE IT FURTHER RESOLVED, that all other Preliminary Plan conditions of approval for this project remain valid, unchanged and in full force and effect. However all conditions of approval are included below for informational purposes:

1. Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan, and all findings not specifically addressed remain in effect.
2. Approval under this preliminary plan is limited to 186 lots for 186 residential dwelling units, including a minimum of 15% moderately priced dwelling units (MPDUs).
3. No clearing, grading, or recording of plats prior to site plan approval.
4. Final approval of the number and location of buildings, dwelling units, MPDUs, on-site parking, sidewalks, and bikepaths will be determined at site plan.
5. Parcels A and B, Block O, and Parcels D and F, Block N shall be recorded as either public or private rural open space. If these parcels are recorded as private rural open space, the Applicant shall grant a rural open space easement and a public use easement over the entire property to the benefit of M-NCPPC. If these parcels are recorded as public rural open space, they will be subject to a

² For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

covenant in accordance with the requirements of the zoning ordinance at the time of record plat. The determination of whether the parcels shall be held privately or publicly shall be made by the Planning Board as part of site plan review. The parcels shall include all streams, wetlands and buffers, and sufficient area outside the buffers to allow environmentally appropriate construction of the master planned hard surface trail. The parcels shall not include stormwater management ponds or facilities. Parcel A to include all land west of proposed Lot 1 and east of Bowie Mill Local Park, and to include road frontage on proposed Street C and the 8' wide hard surface connector trail to be constructed from Street C through the rural open space.

6. Applicant to construct the master planned 8' wide, hard surface trail from the northeast corner of the property in Parcel D to the northeast corner of Parcel F. Trail to include all necessary bridges and boardwalk as determined to be necessary by M-NCPPC staff. Alignment to be as agreed and approximately as set forth on the Preliminary Plan as revised on October 13, 2006. Final details regarding grading and alignment and design of the trail, and timing for construction of the trail, to be determined by time of site plan and to be acceptable to M-NCPPC staff.
7. Applicant to construct sufficient hard surface connector trails, and loop natural surface trails, for access by the community to the master planned hard surface trail. Trail locations and details to be determined by time of site plan and be acceptable to M-NCPPC staff.
8. Trails to be constructed to park standards and specifications, and adequate trail signage to be provided by Applicant. Design and location of signage to be coordinated between Applicant and M-NCPPC staff.
9. Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable. Conditions include:
 - a. Applicant to construct a split rail fence along all lots that back or side a reforestation area.
 - b. Applicant shall develop and implement a non-native and invasive management plan for the newly planted areas within proposed Parcels A and B, Block O, and Parcels D and F, Block N. The management plan must include supplemental planting and run concurrently with the forest planting maintenance and management agreement.
 - c. Applicant to plant the afforestation area with a combination of ¾ to 1 inch caliper and 1 ½ to 2 inch caliper stock.
 - d. Applicant to plant all unforested stream buffers and place a Category I conservation easement on all retained and planted forested areas.
 - e. Applicant to begin reforestation of unforested stream buffers in the first planting season after issuance of the first sediment control permit in accordance with staff approved phasing of the planting plan.

10. Imperviousness for the 439-acre net tract not to exceed 8 percent of the gross tract area.
11. Applicant to enter into an agreement with M-NCPPC for the purpose of withholding building permits for nineteen (19) single-family detached residential lots to ensure compliance with the impervious limitations. The 19 lots shall be graphically denoted on the certified site plan. A note shall be placed on the record plat restricting issuance of building permits for the 19 lots pending approval from M-NCPPC Environmental Planning. Building permits for the 19 lots to be released one at a time.
12. The certified site plan shall denote the order of the last 5 lots to be released.
13. Applicant to place impervious coverage limitations and information pertaining to the agreement noted in Condition #10 above, on the record plat.
14. All driveways must be designed as double car width at the public right-of-way. M-NCPPC Environmental Planning Staff on a case-by-case basis may approve alternative driveway design provided any additional impervious surface is accounted for as part of the overall impervious limit.
15. The developer/builder must submit an impervious surface report to M-NCPPC Environmental Planning staff prior to issuance of the 100th, 140th, 160th, and 171st building permits. The applicant must submit an impervious report for each of the remaining building permits after the 171st building permit. The impervious reports must include: surveyed 'as-built' drawings which include dimensions for buildings, driveways, sidewalks, leadwalks, porches, patios, chimneys, welled exits, rear exits and any building feature that is two feet or less from the ground. M-NCPPC staff must review the information prior to the release of the next building permit.
16. If at any time the impervious area limit is reached before building permits for all approved lots have been issued, the lots for which building permits have not been issued must be re-recorded as non-impervious, Homeowners Association open space parcels. All pending use and occupancy permits shall be held until such time that the open space plats are recorded.
17. Upon recordation of the plat, applicant shall record in the land records a disclosure of the imperviousness limits and monitoring requirements to subsequent homebuyers. This disclosure shall be reviewed and approved by Commission legal staff before recordation.
18. Prior to approval of the certified site plan, the applicant must revise the submitted noise analysis to take into consideration the final grades for the ICC that were not previously known when the noise analysis was completed.
19. Applicant to replace the proposed board-on-board noise fence with an earthen landscape noise berm wherever possible. Locations to be determined as part of the site plan review.
20. Prior to release of the first building permit for the subdivision, the following items must be met:

- a. There shall be certification from an acoustical engineer that the building shell for residential dwelling units are designed to attenuate projected exterior noise levels to an interior level of no more than 45 dBA, Ldn. Any subsequent changes in building shell materials or coverage that may affect acoustical performance shall be approved by an acoustical engineer prior to implementation.
 - b. The builder shall, in writing, commit to construct the residential units in accordance with the acoustical specifications identified by the acoustical engineer.
21. Conformance to the conditions as stated in the MCDPS letter dated November 21, 2006 approving the elements of the SPA water quality plan under its purview.
 22. Compliance with the conditions of the MCDPS stormwater management approval dated November 21, 2006.
 23. The Applicant shall revise the preliminary plan drawing to remove any realignment of existing Bowie Mill Road.
 24. The applicant shall satisfy Local Area Transportation Review as follows:
 - a. If full funding for constructing the Intercounty County Connector (ICC) between Georgia Avenue (MD 97) and I-370 (known as Contract A) is not approved in the Maryland State Highway Administration (SHA) Consolidated Transportation Program (CTP) prior the release of 50th building permit, the Applicant shall construct a separate right-turn lane on the Needwood Road approach to the intersection of Muncaster Mill Road (MD 115) opposite the Casey House-Montgomery Hospice driveway.

To construct this right-turn lane, a good faith effort shall be made to acquire the necessary additional right-of-way and easements in the south quadrant of the Needwood Road/Muncaster Mill intersection from the landowner of Parcel 927. The applicant shall deal directly and openly with the landowner to ensure full disclosure of the possible impacts to the remainder of the Parcel 927. The County will assist as necessary to obtain the additional right-of-way and easements if the applicant takes the required steps below:

- i. Furnish an appraisal for the necessary right-of-way provided by a County approved appraiser.
- ii. Make a minimum of three written offers to the landowner at or above the appraised value that are documented by certified mail.
- iii. If the applicant fails to come to an agreement with the landowner, the applicant can request County assistance in acquiring the necessary right-of-way and easements using the methods not available to private developers.

- iv. Sign an agreement of understanding with the County specifying that the Applicant shall pay all of the County's costs to acquire the right-of-way.
 - b. If the ICC Contract A is fully funded for construction in SHA CTP prior to release of the 50th building permit, the applicant shall provide other transportation improvements that would account for an equal expenditure of funds (i.e., the Applicant will spend an estimated \$188,000, which is the equivalent amount of funding in 2006 dollars required to acquire the right-of-way and construct the right-turn lane on Needwood Road). The funds will be used by the Applicant to provide one or more of the following transportation improvements, in the priority order given below, until the funds are fully spent:
 - i. Construct a second northwest-bound approach lane on Muncaster Mill Road at the intersection with Needwood Road to provide a separate left-turn lane as part of the Montgomery County Public School's access improvement project for Colonel Zadok Magruder High School.
 - ii. Construct a 6-foot-wide sidewalk along Muncaster Mill Road between Colonel Zadok Magruder High School and Needwood Road to improve the safety of high school students and other pedestrians walking in this area.
 - iii. Construct a shared use path (or portion thereof) along Needwood Road. This shared use path shall run along the south side of Needwood Road from Beach Drive to a point across from Oak Meadow Drive for a length of approximately 4,500 feet within a publicly controlled right-of-way.
 - iv. Contribute to an identified and approved DPWT bikeway project that is fully funded for construction in DPWT Consolidated Improvements Program (CIP) Program No. 507596, Annual Bikeway Program or another CIP Bikeway Project.

This condition shall be satisfied prior to release of the 100th building permit.

25. The applicant shall dedicate the master-planned minimum right-of-way of 300 feet for the Intercounty Connector alignment through the property as the easement/dedication lines are modified by the following plans:
 - a. SHA's July 13, 2006, plans for ICC Contract A Request for Proposals.
 - b. SHA's letter dated May 12, 2006, with an attached plan sealed and signed on September 6, 2005 showing the limits of right-of-way dedication for the ICC.
26. The Applicant shall revise the preliminary plan drawing to reflect the ICC dedication as specified in Condition #24, above.

27. Applicant shall provide four-foot wide concrete sidewalks on one or both sides of the public residential streets as shown on the preliminary plan.
28. Access and improvements as required to be approved by MCDPWT prior to recordation of plat(s) and MDSHA prior to issuance of access permits.
29. The environmental setting of the J.H. Cashell historic site is reduced to include proposed Lot 1, which is 5.01 acres in size. Lot 1 includes the historic house, the stone tenant house, the proposed location for the barn that is to be relocated, and a number of significant trees to the front and sides of the historic house. This new environmental setting will be clearly identified on the final plan and the record plat.
30. The Applicant must maintain the viewshed as shown on the approved preliminary plan and on plats numbered 24252 and 24253. A viewshed to the Historic Setting, as identified on the Preliminary Plan, will be preserved and will be identified on the record plat as a protected area. No building will be allowed on the land located within the identified viewshed. Any new plantings, tree removal, or fences within the viewshed will require approval by M-NCPPC Historic Preservation Section Staff. The historic viewshed contemplated herein shall be limited to the portion of the proposed subdivision that is forward of the former Cashell Farm house (i.e. between Muncaster Mill Road and the former Historic House).
31. Prior to the issuance of the 117th building permit, the Applicant will have obtained Historic Area Work Permits from the Historic Preservation Commission and completed the relocation and stabilization of the historic barn and restoration of the stone tenant house within the Historic Setting as identified on the Preliminary Plan.
32. The Applicant will come back to the Historic Preservation Commission within six months from the date of Preliminary Plan approval with a study of the structural issues associated with the historic house and with a plan for stabilization of all historic structures to be preserved.
33. Any tree proposed for removal that is located within the environmental setting and that is 6" DBH or greater will require review and approval through the Historic Preservation Commission's Historic Area Work Permit process.
34. Any proposed construction, alterations of existing structures, or grading within the environmental setting will require review and approval through the Historic Preservation Commission's Historic Area Work Permit process.
35. Record plat to reflect delineation of all areas included in rural open space and shall note the Liber and Folio of any easement agreement or covenant over the rural open space required at the time of record plat by the zoning ordinance.
36. The record plat shall have the following note: "The land contained hereon is within an approved cluster development and subdivision or resubdivision is not permitted."

37. The record plat shall reflect delineation of a Category I Conservation Easement over all areas of stream buffer and forest conservation, except those located within any park dedication.
38. Record Plat to reflect all areas under Homeowners Association ownership and specifically designate stormwater management parcels.
39. Record plat to reflect common ingress/egress and utility easements over all shared driveways.
40. The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Opinion.
41. Other necessary easements shall be shown on the record plat.
42. The Applicant shall comply with the conditions of approval of the MCDPWT letter dated March 22, 2006, as modified by letter of December 26, 2006, unless amended by MCDPWT.
43. The applicant shall dedicate 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.
44. The applicant shall construct all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By _____" are excluded from this condition.
45. The Applicant shall enter into an agreement with Stephen and Elizabeth Benedek, owners of Camp Olympia, to convey a portion of land within Parcel B to the Benedeks. This agreement shall include an automatic conveyance to the recipient of the balance of Parcel B in accordance with the site plan approval and the conditions of such conveyance upon the earliest of the following events:
 - a. The time that Camp Olympia ceases to use the property as part of its operations as a commercial riding stable and summer day camp or ceases to operate altogether as a commercial riding stable and summer camp.
 - b. Forty years after the date of the deed.
 - c. At the time that all or part of the property is sold or conveyed by Benedek, other than any transfer or distribution pursuant to the terms of a Last Will or Testament provided the property continues to operate as Camp Olympia.
 - d. If the Special Exception Amendment for the Camp Olympia operation is not approved, exclusive of appeal periods, within two years of the effective date of the settlement for the adverse possession claim (December 20, 2008). This agreement shall be referenced on the record plat.
46. Applicant to construct sufficient hard surface pedestrian connections to, and provide sufficient landscape buffering for, adjacent Sequoyah Elementary School and Magruder High School. Trails and details to be determined by time of site plan and be acceptable to M-NCPPC and MCPS staff.

BE IT FURTHER RESOLVED, that having considered the recommendations and findings of its Staff as presented at the hearing and 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 Planning Board FINDS, with the conditions of approval, that:

All of the findings made during the approval of Preliminary Plan No. 120060320 are still applicable and shall remain in full force and effect.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), 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 in the Montgomery County Land Records, 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 26 2012 (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 Dreyfuss, seconded by Commissioner Presley, with Vice Chair Wells-Harley and Commissioners Dreyfuss and Presley voting in favor, and Chair Carrier, and Commissioner Anderson absent, at its regular meeting held on Thursday, September 20, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board