



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

MCPB No. 15-120  
Preliminary Plan No. 12000094B  
Tomahawk Estates, Lots 107, 108 and 113  
Date of Hearing: September 17, 2015

OCT 19 2015

**RESOLUTION**

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

WHEREAS, on August 9, 2001, the Planning Board, approved Preliminary Plan No. 120000940, creating 9 lots on 126.3 acres of land in the RDT zone including 4 child lots pursuant to Section 59C-9.74(b)(4) of the Montgomery County Zoning Ordinance, located 3,750 feet northeast of the intersection of Snowden Farm Parkway and Burnt Hill Road ("Subdivision"), in the Rural East Policy Area, Damascus master plan 1985 ("Master Plan") area, which includes Lots 107, 108, 111, 113, and 114 ("Lots"); and

WHEREAS, on October 31, 2012, in order to Chris Brown (owner of Lot 107), William D. Pleasants III (owner of Lot 108), David Pleasants (owner of Lot 111), David Schellhardt (owner of Lot 113) and Eric Newquist (owner of Lot 114), filed an application for approval of an amendment to the previously approved preliminary plan to remove a total of 2.68 acres of conservation easement from the Lots, to relocate 2.71 acres of forest conservation easement on those Lots, to relocate 0.12 acre of conservation easement to an off-site location at a 2:1 rate, to afforest 2.71 acres of new conservation easement on the Lots, and to afforest 1.63 acres of existing conservation easement on the Lots; and

WHEREAS, the application to amend the preliminary plan was designated Preliminary Plan No. 12000094B, Tomahawk Estates, Lots 107, 108, 111, 113 and 114; and

WHEREAS, on March 30, 2015 the original application was amended to remove Lots 111 and 114 from the preliminary plan application dated October 31, 2012, leaving Chris Brown, William D. Pleasants, and David Schellhardt as the applicants ("Applicants") and Lots 107, 108 and 113 ("Subject Property") as the portion of the Subdivision to be included in the application ("Preliminary Plan," "Amendment," 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

Approved as to  
Legal Sufficiency

 10/7/15  
M-NCPPC Legal Department  
www.montgomeryplanningboard.org

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
E-Mail: mcp-chair@mncppc-mc.org



Planning Board, dated August 28, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 17, 2015, 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, on the motion of Commissioner Presley, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor;

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 12000094B to remove a total of 2.0 acres of conservation easement, to relocate 1.35 acres of conservation easement on the Property, to relocate 0.65 acre of conservation easement to an off-site location at a 2:1 rate, to afforest 0.69 acres of new conservation easement and to afforest 1.50 acres of existing conservation easement on the Subject Property subject to the following conditions:<sup>1</sup>

Conditions Common to all Lots

1. Within thirty (30) days from the mailing date of the Planning Board Resolution approving this amended Preliminary Plan, Applicants must submit, to the Montgomery County Planning Department, Category I conservation easement documents for approval in the standard M-NCPPC approved form, with metes and bounds, describing the location of the new and existing conservation easements to remain on the Property ("Conservation Easement Documents").
2. Within fifteen (15) days from the date that the Montgomery County Planning Department notifies the Applicants that they have approved the Conservation Easement Documents required under Condition 1 (Conditions Common to All Lots), Applicants must record the new conservation easements in the Montgomery County Land Records and provide proof of recording to Staff. The existing easements remain in full force and effect until the new easements are recorded. Applicants must file for release of the existing Category I conservation easement(s) on their respective properties.

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<sup>1</sup> 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.



3. Within ninety (90) days from the mailing date of the Planning Board Resolution, Applicants must either request an amendment to County law, or file an appropriate Complaint against the County that will allow the Applicants to apply serialized and otherwise unrecorded TDRs to the Property. If an amendment either fails to be introduced, or is introduced but fails to pass, Applicant must file the aforementioned Complaint within ninety (90) days of such failure. Within 12 months of the earlier of an amendment to County law that will allow the Applicants to apply serialized and otherwise unrecorded TDRs to the Property, or a Court Order granting Applicants authority to apply serialized and otherwise unrecorded TDRs to the Subject Property, Applicants must:
  - a. Provide evidence to Staff that each Lot has a TDR assigned to it; and
  - b. Submit a complete record plat application(s) that delineates and references the liber and folio of the Category I conservation easements as recorded.

If an amendment to County law fails and a Court Order after all appeals have been exhausted is not granted to resolve the TDR discrepancy related to the Subject Property, Applicant must set up a meeting with Staff to determine an appropriate resolution of the density shortfall on the Subject Property.

4. Within fifteen (15) days from the date that the Montgomery County Planning Department notifies the Applicants that they have approved the Conservation Easement Documents required under Condition 1 (Conditions Common to All Lots) Applicants must delineate all existing and new Category I conservation easement boundaries with permanent easement markers and appropriate signage.
5. Within 12 months from the date of mailing of the Resolution, Applicants must have all required afforestation plantings installed and accepted by M-NCPPC Staff.
6. Prior to the acceptance of the required forest plantings by Staff,
  - a. Applicants must submit financial securities as specified in Forest Conservation Law 22A-12(i) for Staff approval; and
  - b. Applicants must submit Maintenance and Management Agreements as specified in 22A-12(h) for Staff approval.

#### Specific Conditions for Lot 107

1. Within fifteen (15) days from the date that the Montgomery County Planning Department notifies the Applicants that they have approved the Conservation Easement Documents required under Condition 1 (Conditions Common to All Lots) Applicant must install pasture fencing, or Staff approved equivalent, as shown on the amended Final Forest Conservation Plan.



2. Applicant must remove and relocate on-site 0.17 acre of Category I Conservation Easement.
3. Applicant must afforest the newly created 0.17 acre of Category I Conservation Easement in accordance with the amended Final Forest Conservation Plan.

Specific Conditions for Lot 108

1. Within fifteen (15) days from the date that the Montgomery County Planning Department notifies the Applicants that they have approved the Conservation Easement Documents required under Condition 1 (Conditions Common to All Lots) Applicant must install new pasture fencing, or Staff approved equivalent, as shown on the amended Final Forest Conservation Plan.
2. Applicant must remove and relocate on-site 1.18 acres of Category I Conservation Easement.
3. Applicant must afforest the newly created 1.18 acres of Category I Conservation Easement in accordance with the amended Final Forest Conservation Plan.
4. Applicant must afforest 0.65 acre of existing on-site Category I Conservation Easement.

Specific Conditions for Lot 113

1. Within fifteen (15) from the date that the Montgomery County Planning Department notifies the Applicants that they have approved the Conservation Easement Documents required under Condition 1 (Conditions Common to All Lots) Applicant must submit a certificate of compliance to use an off-site forest mitigation bank. The certificate of compliance must provide 1.24 acres (54,014.4 square feet) of off-site forest credit mitigation credits for the removal of 0.62 acre (27,007.2 square feet) of on-site conservation easement.
2. Applicant must afforest 0.85 acre of existing on-site Category I Conservation Easement in accordance with the amended Final Forest Conservation Plan.
3. Prior to the installation of the afforestation material Applicant must remove all turf grass style plant material within the existing conservation easement areas and reseed with an M-NCPPC approved Maryland native meadow seed mix endemic to the Piedmont region of Maryland.

BE IT FURTHER RESOLVED, that all other preliminary plan conditions of approval for the Subdivision remain valid, unchanged and in full force and effect.

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 except as specified 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.


BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is OCT 19 2015 (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 Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor, at its regular meeting held on Thursday, October 15, 2015, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board