

AUG 12 2011



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**Memorandum**

**TO:** Rollin Stanley, Planning Director

**VIA:** John Carter, Chief *JAC*  
Area 3 Planning Team

**FROM:** Richard Weaver, Supervisor *RAW*  
Area 3 Planning Team

**RE:** Correction of typographical errors on the Preliminary Plan Resolution for the Mess Property, Preliminary Plan No. 120100310

**DATE:** July 21, 2011

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Pursuant to Section 4.11.4 of the Montgomery County Planning Board Regulation on Rules of Procedure (Correcting Errors in Resolutions), the Planning Director may note any error in a Resolution and place the corrected Resolution on the Planning Board's Consent Agenda.

On May 5, 2011, the Planning Board approved Preliminary Plan No. 120100310 for the Mess Property. The Resolution approved by the Planning Board on May 25, 2011, contained typographical errors pertaining to the assigned preliminary plan number. The correct preliminary plan number is 120100310. On a number of instances within the Resolution document, the plan was referred to with the incorrect plan number. Staff recommends correction of these typographical error(s); no further changes are required or recommended.

ACCEPTED & APPROVED BY:

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

Rollin Stanley, Planning Director

*7.21-11*

Date Approved



AUG 12 2011

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

**MCPB No. 11-37**  
**Preliminary Plan No. 120100310**  
**Mess Property**  
**Date of Hearing: May 5, 2011**

**MONTGOMERY COUNTY PLANNING BOARD**

**CORRECTED RESOLUTION**  
(To correct Preliminary Plan No.)

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 June 21, 2010, Charles F. Mess, M.D. ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 5.0 acres of land<sup>1</sup> in the Rural Neighborhood Cluster zone, located at 18420 Brooke Grove Road, on the east side of Old Baltimore Road opposite the intersection with Spartan Road ("Property" or "Subject Property"), in the Olney master plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. ~~120101310~~ 120100310, Mess Property ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated April 22, 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 May 5, 2011, the Planning Board held a public hearing on the Application (the "Hearing"); and

<sup>1</sup> The Staff Report references a 199 acre farm remainder. However, only the 5 acre portion of the 203 acre parent tract of land is included in the Preliminary Plan because the purpose of the subdivision is for estate planning and continued agricultural use.

Approved as to  
Legal Sufficiency:

  
M-NCPPC Legal Department

**MCPB No. 11-37**  
**Preliminary Plan No. ~~120101310~~ 120100310**  
**Mess Property**  
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WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on May 5, 2011, the Planning Board approved the Application subject to certain conditions, 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 with 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 approved Preliminary Plan No. ~~120101310~~ 120100310 to create one lot on 5.0 acres of land on the Property, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to one 5.0 acre lot with the remainder of the Property to remain as an unplatted farm.
- 2) Compliance with the conditions of approval of the Final Forest Conservation Plan. The Applicant must meet all conditions prior to recording of plat. The specific conditions include the following:
  - a. Required site inspections by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
  - b. Category I conservation easements must be placed over all forest conservation areas as shown on the plan, including areas of forest retention, forest planting, and environmental buffers, with the exception of the portion of the environmental buffer that is reserved for septic.
  - c. Conservation easements must be shown on record plats.
  - d. Provide permanent signs along the boundaries of the Category I conservation easement areas.
  - e. Submission of financial security to M-NCPPC for the planting of 1.0 acre of forest.
  - f. Submission and approval of a Maintenance and Management Agreement.
- 3) The record plat must reflect a rural open space easement over all areas of open space on the 5.0 acre lot as shown on the approved Preliminary Plan. Such rural open space easement area must comprise no less than 60% of the lot area.
- 4) The record plat must contain the following note: "No clearing, grading or structures requiring issuance of a building permit may be placed within the rural open space easement area shown hereon."
- 5) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated September 28, 2010. These conditions may be amended by MCDOT 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 Permitting Services (MCDPS), Wells and Septic Section approval dated November 17, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 7) The record plat must show necessary easements.

BE IT FURTHER RESOLVED, that having given full consideration to 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 Montgomery County Planning Board FINDS, with the conditions of approval, that:

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

The single lot proposed in this Preliminary Plan does not conflict with future development of the remainder of the Mess Property in accord with the Master Plan recommendation for cluster development in the RNC zone. The overall Mess property (the "Parent Tract") contains significant acreage, a portion of which is identified as future stream valley parkland. The acquisition of the parkland will await the ultimate development of the farm remainder under the RNC zoning standards. The Board finds that the proposed subdivision substantially conforms to the recommendations adopted in the 2005 Olney Master Plan.

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

The new lot accommodates an existing house with no new development, therefore; it does not generate any new trips and is not subject to Local Area Transportation Review or Policy Area Mobility Review. All Master Plan roadway dedications have been made along the lot's frontage with Old Baltimore Road and the road is complete. Although a portion of the lot frontage has a sidewalk, a complete sidewalk will not be required at this time. As a condition of their review of the record plats, the Department of Transportation is requiring that a participatory covenant be recorded on the Property that requires future participation in a sidewalk when the Parent Tract

is subject to development approvals. A complete sidewalk exists on the opposite side of Old Baltimore Road, and in conjunction with the partial sidewalk along the Property frontage, safe pedestrian access will be provided. The Board finds vehicle and pedestrian access for the lot will be safe and adequate.

All existing public utilities to the residence are adequate, a new septic reserve area and well locations have been approved. Fire and Rescue Service finds that the Application meets their standards for access and has submitted a letter of approval dated December 10, 2010. 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 adds no new homes and is not subject to payment of School Facilities Payment. The Planning 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.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections including those which require that the proposed lot's size, shape, width and orientation are appropriate for the location within the subdivision. This lot is located at a transition from higher density, transferable development right receiving area to the west, to the Rural Neighborhood Cluster (RNC) densities to the east. The lot, at 5.0 acres supports the rural character that the Olney Master Plans recommends for the RNC zoned properties in this portion of Olney. The Board finds that size, shape, width and orientation of the lot is appropriate for its location given the language in the Olney Master Plan.

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

### Environmental Guidelines

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420100720 for the Parent Tract that identifies the environmental constraints and forest resources was approved on March 17, 2010. A full NRI/FSD was prepared for the proposed 5-acre lot and a simplified NRI/FSD was prepared for the remaining area that will remain in agricultural use. The Parent Tract contains approximately 100.3 acres of forest, with 1.2 acres of forest located on the proposed lot. There are fifteen specimen trees and nineteen large trees ( $\geq 24$  inches DBH) located on or adjacent to the proposed 5-acre lot. The site's topography includes steep slopes ( $>25\%$ ). The Parent Tract includes several streams, wetlands, a 100-year floodplain, and the associated environmental buffer. The proposed 5-acre lot includes a stream that runs parallel to the proposed eastern property line, a pond, and some wetland areas along the perimeter of the pond.

The Property is located within the Patuxent River watershed, and the entire Parent Tract is in the Patuxent River Primary Management Area (PMA). The PMA includes the area within 1,320 feet of the main stem of the Patuxent and Hawlings Rivers, and 660 feet of all tributaries. The land area in the PMA that is not within the environmental buffer is managed as a *transition area*. The PMA guidelines recommend that the impervious area within the transition area not exceed ten percent; however, if it is desirable to maintain community character, achieve compatibility, or accomplish master plan goals the guidelines also allow for the overall imperviousness to be averaged so long as it does not exceed ten percent over the Parent Tract. The impervious area within the transition area is 10.6%. The Board determined that there is an objective on this Property to maintain the rural character and that preservation of the house on this farm within the confines of a record lot will help meet that objective, therefore, the Board did not oppose averaging the amount of imperviousness. The overall imperviousness for the proposed lot is 5.3% of the Parent Tract and, therefore, meets the imperviousness goals of the PMA.

The PMA guidelines also recommend a minimum 200-foot septic setback requirement from all tributaries to the Patuxent River. This plan contains an existing single family home with an existing septic reserve area that extends from the PMA transition area and into the stream valley buffer, to within 100 feet of the stream. Because this septic reserve area was approved in 1981, prior to the adoption of the *Environmental Guidelines* and the Patuxent River Primary Management Area, it was grandfathered by the County and State as a pre-existing condition. The existing septic trench field is approximately 180-

feet from the nearest tributary and the approved septic reserve area is shown to be no closer than 100-feet from the nearest tributary. While this distance is closer than would be allowed for new development in the Patuxent, the Board is afforded the ability to provide a variance to the 200 foot septic setback on a case-by-case-basis.

The Board agreed with two site specific conditions; 1) that the septic reserve area was pre-existing and, 2) that no new development was anticipated by this Application. The Board accepted staff's explanation that there are limited opportunities to locate the septic reserve area elsewhere on the Property and that the Montgomery County Department of Permitting Services, Well and Septic Section, had in fact, adjusted the septic reserve area as far away from the stream as possible to meet the State's minimum standard setback of 100 feet.

The Board finds that the conditions specific to this Application are unique and supported a variance of the 200 foot setback for septic systems in the PMA transition area and allowed the septic reserve area to encroach into the 125 foot wide stream valley buffer by no more than 25 feet. The Board finds that the Application meets the imperviousness limits established by the Patuxent River Watershed Functional Master Plan and adequately protects the environmental resources on the Property.

The Board also allowed the previously approved septic reserve area to be located partially within the 125 foot stream valley buffer established for this USE IV-P stream. The rationale for this allowance was because of the pre-existing nature of the approved reserve area prior to the adoption of stream valley buffers in 1983. The Board also agreed that it was appropriate to remove the existing shed structure located in the stream valley buffer on the lot to help minimize imperviousness. The Board finds that the plan complies with the Environmental Guidelines for the protection of sensitive environmental features.

### Forest Conservation

This application is for the creation of one, 5-acre lot which will contain the existing home on the property. The remaining 198.75 acres of land will remain as a farm. The RNC zone is an agricultural zone and the forest conservation law allows for the areas of the property in agricultural use to be subtracted from the net tract area, provided a Declaration of Intent to farm is submitted

(*Tree Technical Manual*). The applicant has submitted a Declaration of Intent for the farm remainder.

The 1.2 acres of forest located on the proposed 5-acre lot is a single high priority forest stand located in the northern and eastern portions of the lot. The majority of this forest is located within the environmental buffer. There is no land disturbing activity proposed on the site. The Final Forest Conservation Plan will therefore retain all of the forest including all of the significant and specimen trees on site. Therefore, there is no Tree Variance required for this Application. There is no forest planting requirement on the site as per the forest conservation law; however, the Montgomery County Patuxent River PMA guidelines outlined in the *Environmental Guidelines* recommend that a minimum of 50 feet of the environmental buffer be forested. The Final Forest Conservation Plan proposes to reforest 1.0 acre of the environmental buffer in order to comply with these recommendations. All of the retained forest, proposed reforestation and the environmental buffer areas with the exception of the septic reserve area will be protected in a Category I conservation easement.

The Board finds that with the conditions imposed by this Resolution the Final Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law, no Tree Variance is necessary for this Application.

5. *The Application is not required to provide a stormwater management concept because no new construction is proposed. This finding is based upon a confirmatory letter from MCDPS dated December 15, 2009, stating this determination.*

BE IT FURTHER RESOLVED, that 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; and

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; and



BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter; and

BE IT FURTHER RESOLVED that the original mailing date of the Resolution was May 25, 2011, (which is the date that this Resolution was mailed to all parties of record); and

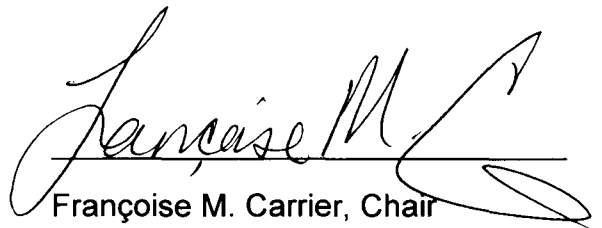
BE IT FURTHER RESOLVED that the mailing date of this Corrected Resolution is AUG 12 2011 (which is the date that this Corrected Resolution is mailed to all parties of record); and

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 the original mailing date, or, if the appeal relates to the corrected portions of this resolution, within thirty days of the mailing date of this Corrected 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 Vice Chair Wells-Harley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley present and voting in favor of the motion, at its regular meeting held on Thursday, July 28, 2011, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board