



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

MCPB
Item #
12/20/07



MEMORANDUM

DATE: December 3, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Catherine Conlon, Supervisor *CC*
Development Review Division

FROM: Erin Grayson, Planner (301-495-4598) *EG*
Development Review Division

REVIEW TYPE: Pre-Preliminary Plan of Subdivision, Resubdivision of existing Lot 10

APPLYING FOR: 2 Residential Lots

PROJECT NAME: Burnt Mills Village
CASE #: 720060600
REVIEW BASIS: Chapter 50, including Sec. 50-29(b)(2), Montgomery County Subdivision Regulations

ZONE: R-90
LOCATION: In the southeast quadrant of the intersection of Southwest Drive and Oakwood Street
MASTER PLAN: White Oak

APPLICANT: Igor Zayets
ENGINEER: Macris, Hendricks & Glascock, P.A.

FILING DATE: June 1, 2006
HEARING DATE: December 20, 2007

RECOMMENDATION: Objection to the submittal of a preliminary plan.

I. SITE DESCRIPTION

The Subject Property, pictured below and in Attachment A (Vicinity Map), consists of 0.44 acres (19,166 square feet) within the Burnt Mills Village Subdivision. The Burnt Mills Village Subdivision was platted in 1948 and 1950 and is included in the White Oak Master Plan area. The Subject Property is zoned R-90 and is located in the southeast quadrant of the intersection of Southwest Drive and Oakwood Street. The Property contains an existing residential dwelling which is accessed by private driveway from Oakwood Street. Surrounding land use is residential in the same zone.



There are no streams, wetlands, floodplains, or environmental buffers on the property. There are 3 specimen trees located in the eastern portion of the property and several individual existing yard trees. If the plan proceeds to the preliminary plan stage, the applicant will be required to submit a tree save plan for approval.

II. PROJECT DESCRIPTION

This pre-preliminary plan is being presented to the Planning Board at the request of the Applicant to obtain the Board's advice. The Applicant proposes to resubdivide the 0.44 acre Subject Property into two residential lots which would be 9,533 square feet (Lot 16) and 9,600

square feet (Lot 17) in size. The proposal includes modification and retention of the existing dwelling on Lot 16 and construction of a new one-family detached dwelling on proposed Lot 17 (Attachment B). The modification to the existing dwelling would involve removing the portion of the building that would be within the side yard setback of the new lot being proposed by this resubdivision.

III. RELATIONSHIP TO THE MASTER PLAN

The White Oak Master Plan does not specifically identify the subject property for discussion but does give general guidance and recommendations regarding zoning and land use. The plan recommends that this area maintain the existing zoning as adopted and maintain the residential land use consisting of one-family detached homes.

IV. DISCUSSION OF ISSUES

The Applicant is seeking the Board's support for the future submission of a preliminary plan to resubdivide the subject property. To justify that support, the Applicant has presented an analysis of the proposal under the statutory review criteria. In the Applicant's opinion, as summarized in the attached October 24, 2007 letter (Attachment E), the analysis demonstrates that the resubdivision meets the requirements. In Staff's opinion, that is not the case. The discussion below summarizes the basis for both positions. The Applicant is also requesting the Board's opinion on two waivers they would be applying for as part of a future subdivision. These issues are also discussed below.

Statutory Review Criteria

In order to approve an application for resubdivision, the Planning Board must find that proposed lots are in character for the neighborhood with respect to seven resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations. For the Board's reference, this section states:

Resubdivision. Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.

ISSUE #1: Neighborhood Delineation

In administering Section 50-29(b)(2), the Planning Board must determine the appropriate block, neighborhood or subdivision for evaluating the application. In this instance, two neighborhoods were proposed by the Applicant. In the original submission of the application, the neighborhood ("Neighborhood #1") consisted of 69 lots, excluding the subject property and any parts of lots. Neighborhood #1 (shown on the following page) includes all lots that abut or



confront the proposed lots, lots along streets on which the Subject Property has frontage (Southwest Drive and Oakwood Street), and lots along Northwest Terrace which is a continuation of Southwest Drive and intersects Oakwood Street.

A second neighborhood ("Neighborhood #2) submitted by the Applicant after staff's initial review of the application includes a total of 92 lots located along Southwest Drive and



Oakwood Street and along Burnt Mills Avenue to Columbia Pike. Neighborhood #2 is pictured on the previous page. The most significant changes in this Neighborhood are the addition of all the lots fronting on Burnt Mills Avenue, and the exclusion of the lots on Northwest Terrace.

Applicant's Position

In the Applicant's opinion, all of the lots in Neighborhood #2 should be used in the analysis of this resubdivision because this Neighborhood includes the houses along the primary driving routes to the proposed lots. This takes into account that vehicles traveling south on Columbia Pike would likely use Southwest Drive to reach the proposed lots, but vehicles traveling north would use Burnt Mills Avenue to Oakwood Street because there is a median break and signal at Burnt Mills Avenue.

Staff's Position

In Staff's opinion, the lots included in Neighborhood #1 provide a logical basis for comparison of the character of the proposed lots to those existing lots that will be most impacted by the proposed resubdivision, while omitting lots that have little or no rational relationship to the subject property. Staff does regularly include lots along the main travel route in a Neighborhood reviewed for resubdivision, but not without considering the length of the route and changes in lot character along it. In this case, Staff believes there is an existing subdivision boundary that defines a more logical resubdivision Neighborhood. The lots along Burnt Mills Avenue vary greatly from lots along Southwest Drive. Moreover, lots along Burnt Mills Avenue were originally platted in 1954 as part of the Burnt Mills Manor Subdivision and not as part of the Burnt Mills Village Subdivision that the Subject Property is included in. Staff would include lots in the first block along Oakwood Street that were platted in 1954 because as a corner lot, the Property also has frontage on Oakwood Street and lots along Oakwood Street would be impacted by the proposed resubdivision.

ISSUE #2: Conformance with the Resubdivision Criteria

To resubdivide the Subject Property, a finding must be made that the proposed lots are of the same character as lots in the designated Neighborhood based on the seven resubdivision criteria. Since the Applicant is requesting the Board's opinion on whether the proposed lots meet this requirement, a preliminary analysis of the proposed resubdivision has been done. In performing the analysis, the resubdivision criteria included in Section 50-29(b)(2) were applied to both of the delineated neighborhoods. When lots in Neighborhood #1 are evaluated, the proposed lots are at the bottom of the range of lots in the neighborhood for overall size and buildable area. When the additional lots in Neighborhood #2 are evaluated, the number of lots with smaller overall size and buildable area increases, and the proposed lots fit much better within the Neighborhood range. Tabular summaries of both neighborhoods based on the resubdivision criteria are included in Attachments C and D, respectively.

Frontage: The existing lots in Neighborhood #1, the neighborhood deemed most appropriate by Staff, range in frontage from 53.95 feet to 182.26 feet. Proposed Lot 16

has a lot frontage of 77.73 feet on Southwest Drive and proposed Lot 17 has a lot frontage of 80 feet on Oakwood Street. The proposed lot frontage for Lot 17 lies below the median of the Neighborhood range, which is 94, but is not as small as several other lots that share frontage along Oakwood Street and in Block J on Northwest Terrace. Although the frontage for proposed lot 16 would be reduced if the existing road right-of-way is truncated as part of a resubdivision, its frontage would not visually change along Southwest Drive. The proposed frontage of lot 17 does not compare well with the majority of lots on Southwest Drive, but it would be in character with other lots on Oakwood Street where it would front. **Therefore, staff finds the proposed lots would be of the same character as existing lots in Neighborhood #1 with respect to lot frontage.**

In the Applicant's preferred Neighborhood #2, lot frontages range from 66 feet to 147.6 feet. The median is 86.7 feet. **The proposed lots would be of the same character as existing lots with respect to frontage in Neighborhood #2.**

Alignment: The majority (31) of lots in Neighborhood #1 are perpendicular in alignment. Twenty-five are radial and thirteen lots are corner lots. Proposed Lot 16 is a corner lot and Proposed Lot 17 is perpendicular in alignment. **The proposed lots would be of the same character as existing lots in Neighborhood #1 in terms of the alignment criterion.**

In Neighborhood #2, 51 lots are perpendicular in alignment. Twenty-one are radial, and twenty lots are corner lots. **The proposed lots would be of the same character as existing lots in the Neighborhood #2 in terms of alignment.**

Size: Lot sizes in Neighborhood #1, consisting of 69 lots, range from 9,436 square feet to 23,360 square feet in size. The median lot size in Neighborhood #1 is 12,861 square feet. Proposed Lot 16 is 9,533 square feet and proposed Lot 17 is 9,600 square feet. The smallest lot size is 9,483 square feet. Lot 16 would have the second smallest lot size in Neighborhood #1. Lot 8, Block 7 is also 9,600 square feet, making existing Lot 8 and proposed Lot 17 the third smallest lots in Neighborhood #1. Both proposed lots are at the very bottom of the Neighborhood range of lot sizes. **Proposed Lots 16 and 17 are not in character with the size of the lots in the delineated Neighborhood.**

In Neighborhood #2, lot sizes range from 9,000 square feet to 19,402 square feet. The median lot size in this neighborhood is 10,460 square feet. Several lots along Burnt Mills Avenue in Block 13 are 9,000 square feet in size. **When data from Neighborhood #2 is applied, the two proposed lots are in character with the size of existing lots.**

Shape: There are 29 rectangular, 28 trapezoidal, 3 triangular and 9 irregular lots in Neighborhood #1. Proposed lot 16 is irregular in shape after dedication for truncation and Proposed Lot 17 is rectangular. **The proposed lots are in character with existing lots in Neighborhood #1 with respect to shape.**

In Neighborhood #2 of 92 lots, 58 lots are rectangular in shape, 22 are trapezoidal, 11 are irregular and 1 lot is triangular. **The proposed lots are in character with existing lots in Neighborhood #2 when evaluating shape.**

Width: Lots in Neighborhood #1 range in width at the building line from 62 feet to 107 feet. The median is 92 feet. Proposed Lot 16 would have a lot width of 82 feet and Lot 17 would have a lot width of 80 feet. **The proposed lots would be in character with existing lots in Neighborhood #1 with respect to width.**

The range in lot width is 70 feet to 153 feet in Neighborhood #2. The median lot width at the front building line in this neighborhood is 90 feet. **The proposed lots would be in character with existing lots in Neighborhood #2 with respect to width.**

Area: The buildable areas of lots in Neighborhood #1 range from 2,483 square feet to 17,600 square feet. The Neighborhood #1 median is 4,900 square feet. Proposed Lots 16 and 17 will have buildable areas of 2,232 square feet and 3,185 square feet, respectively. The buildable area of Lot 16 would be the smallest in the 69 lot neighborhood. The buildable area of Lot 17 would be the fifth smallest in the 69 lot neighborhood. Smaller buildable areas are not uncharacteristic for corner lots which have to meet two front yard setbacks, however, only proposed Lot 16 is a corner lot. Proposed Lot 17, which is not a corner lot, would have a smaller area than all lots in Neighborhood #1 except for 3 corner lots and Lot 1, Block 7 which is triangular in shape. **Proposed Lots 16 and 17 would not be of the same character as other lots in Neighborhood #1 with respect to buildable area.**

In the Applicant's Neighborhood #2, the buildable areas of lots range from 1,816 square feet to 8,890 square feet. Six lots are smaller in buildable area than Proposed Lot 16, which has 2,232 square feet of buildable area. Like proposed Lot 16, these six lots are corner lots. **Proposed Lots 16 and 17 are of the same character as the existing lots in Neighborhood #2.**

Suitability for Residential Use: The existing and the proposed lots are zoned residential and the land is suitable for residential use.

In Staff's opinion, the proposed lots are not in character with respect to lot size and buildable area, and therefore fail to meet the resubdivision test. Staff also finds that the alignment of these two lots along the street opposite the one lot on the confronting corner is out of character with the typical relationship of corner lots on Southwest Drive in the original subdivision. The Applicant argues that two-to-one alignment relationships exist throughout the Burnt Mills Village and Burnt Mills Manor subdivisions, and specifically believes the two proposed lots "mirror" Lots 23 and 24 in Block G and their alignment to Lot 13, Block K across Oakwood Street. When closely examined, the relationship is actually not two-to-one and both Lots 23 and 24 are deeper and larger in size than the two proposed lots.

ISSUE #3: Waiver of the Requirement for street truncation

By letter dated June 27, 2007 (Attachment F), the Applicant is requesting a waiver of dedication of truncation at the southeast quadrant of the intersection of Southwest Drive and Oakwood Street as part of a future preliminary plan. The Applicant's justification is that the subdivision was platted without truncated corners and there is little potential for additional development within the subdivision due to the majority of the lots being near the minimum lot size for the zone. The Applicant also believes a single truncated corner will be unsafe and confusing to drivers.

This waiver request would have to be granted by the Planning Board under the general waiver provisions of Section 50-38 of the Subdivision Regulations. The Applicant must provide justification "that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved" as outlined in 50-38(a)(1). In staff's opinion, the Applicant has not made the case that there are practical difficulties or unusual circumstances that prevent meeting the requirement for corner truncation. The Board regularly requires truncation to be dedicated for projects that occur within existing neighborhoods where other such dedication has not already been made. Truncation would not change the configuration of existing roadways and therefore, circulation at the corner would not become unsafe. In fact, truncation could increase safety of the existing intersection by preventing any future structures or planting at the street corner that could inhibit site distance.

If a waiver of dedication for truncation is granted, the overall lot size and buildable area of proposed Lot 16 would increase. With truncation, proposed Lot 16 is 9,533 square feet in overall size and contains 2,232 square feet of buildable area. If dedication is not required, proposed Lot 16 would be 9,760 square feet in size and contain 2,863 square feet of buildable area. This would prevent it from having the smallest buildable area in Staff's Neighborhood, but it would remain in the bottom of the range.

ISSUE #4: Waiver of sidewalks

Per Section 49-35(e) of the Montgomery County Code, the Applicant is required to construct a 4-foot sidewalk along the Southwest Drive and Oakwood Street property frontages. By letter dated April 20, 2007 (Attachment F), the Applicant is requesting a waiver of the construction of sidewalks for this subdivision based upon their being out of character for the existing neighborhood since no sidewalks currently exist. Both Southwest Drive and Oakwood Street are built to tertiary street standards but the Department of Public Works and Transportation (DPWT) indicated that the subject streets are deemed secondary streets since they were platted prior to 1974. A waiver request of sidewalks is under the purview of DPWT. Therefore, the request to waive sidewalks will be addressed by DPWT. DPWT now has the authority to waive sidewalk construction and require a fee in lieu.

V. CITIZEN CORRESPONDENCE

This application predated specific requirements for meetings between the applicant and interested parties, however, written notice of the application and public hearing date was given to

adjacent and confronting property owners, and local civic and homeowners associations. As of the date of this report, one citizen letter has been received from Mr. Mark Stein, the property owner of Lot 5, Block A of the Burnt Mills Village Subdivision, located at 530 Northwest Drive. Mr. Stein opposes the plan because, among other reasons, the proposed lots would be the smallest in the neighborhood and would negatively impact the architectural integrity of the neighborhood. His letter is included in Attachment H.

CONCLUSION

Section 50-29(b)(2) of the Subdivision Regulations specifies seven criteria with which resubdivided lots must comply. They are street frontage, alignment, size, shape, width, area and suitability for residential use within the existing block, neighborhood or subdivision. As set forth above, Staff does not agree with the Applicant's Neighborhood for comparison purposes. Staff also finds that when the proposed lots are compared with an appropriate Neighborhood, they would not be of the same character as the existing lots since the buildable area of Lot 16 is the smallest in the neighborhood, and both lots 16 and 17 are at the bottom of the range for lot size. Therefore, the proposed lots do not comply with Section 50-29(b)(2) of the Subdivision Regulations and submission of a preliminary plan is not recommended.

Attachments

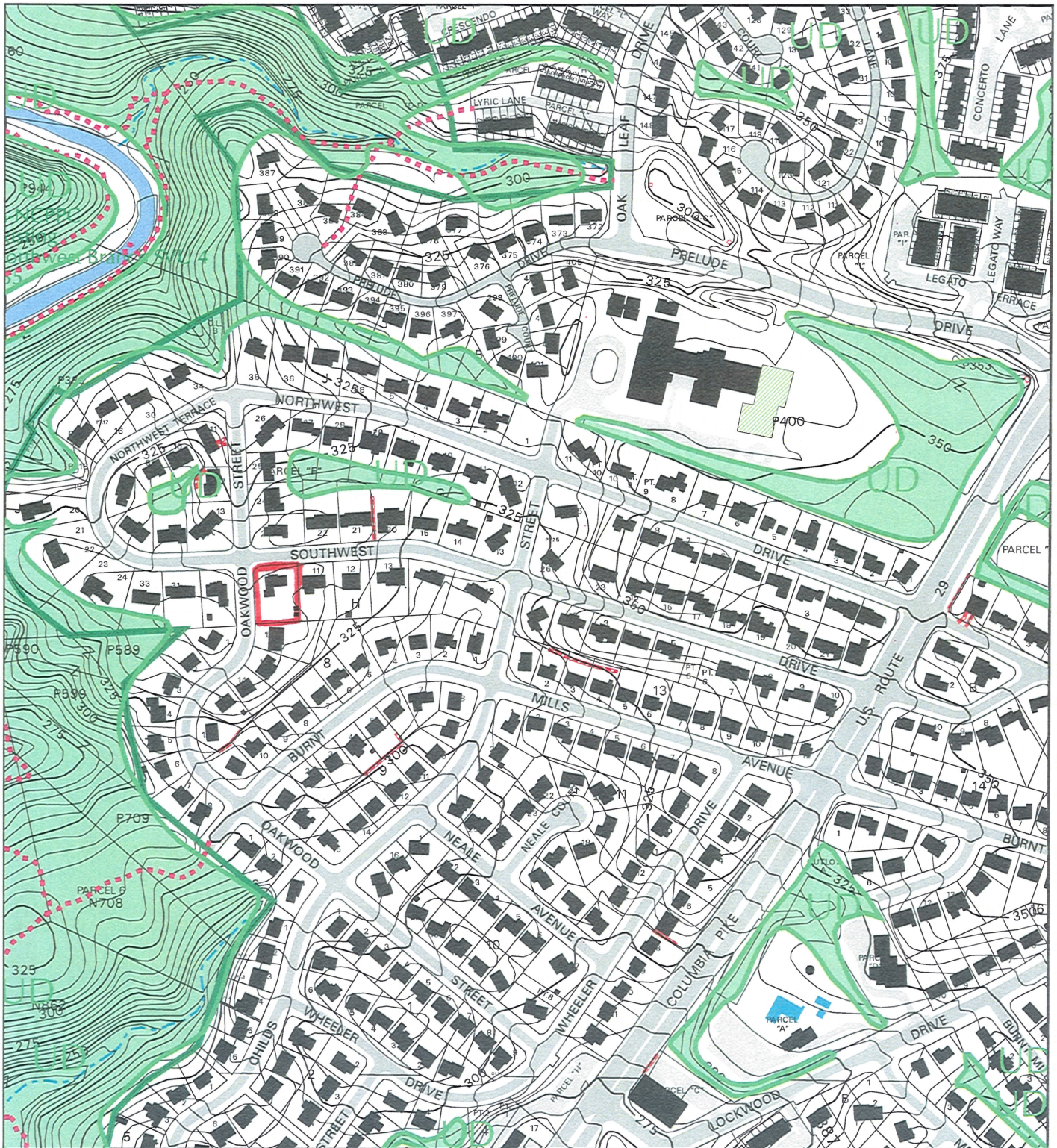
Attachment A – Vicinity Development Map
Attachment B – Proposed Development Plan
Attachment C – Map of Staff's Neighborhood & Tabular Summary
Attachment D – Map of Applicant's Neighborhood & Tabular Summary
Attachment E – Background to Applicant's neighborhood selection
Attachment F – Sidewalk Waiver Request & Truncation Waiver Request
Attachment G – Agency Correspondence
Attachment H – Citizen Correspondence

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Burnt Mills Village				
Plan Number: 720060600				
Zoning: R-90				
# of Lots: 2				
# of Outlots: 0				
Dev. Type: Single Family Detached				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	9,000 sq. ft.	9,533 sq. ft. is min. proposed	EG	9/28/07
Lot Width	75 ft.	80 ft. is min. proposed	EG	9/28/07
Lot Frontage	25 ft.	77.73 ft. is min. proposed	EG	9/28/07
Setbacks				
Front	30 ft. Min.	Must meet minimum ¹	EG	9/28/07
Side	8 ft. Min./25 ft. total	Must meet minimum ¹	EG	9/28/07
Rear	25 ft. Min.	Must meet minimum ¹	EG	9/28/07
Height	35 ft. Max.	May not exceed maximum ¹	EG	9/28/07
Max Resid'l d.u. or Comm'l s.f. per Zoning	2 dwelling units	2 dwelling units	EG	9/28/07
MPDUs	No		EG	9/28/07
TDRs	No		EG	9/28/07
Site Plan Req'd?	No		EG	9/28/07
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street		Yes	EG	9/28/07
Road dedication and frontage improvements		Yes	Agency letter	6/26/06
Environmental Guidelines		Yes	Staff memo	6/19/06
Forest Conservation		Yes or Exempt	Staff memo	6/19/06
Master Plan Compliance		Yes	EG	9/28/07
Other (i.e., parks, historic preservation)				
ADEQUATE PUBLIC FACILITIES				
Stormwater Management		Required at Preliminary Plan	EG	9/28/07
Water and Sewer (WSSC)		Yes	Agency comments	6/19/06
10-yr Water and Sewer Plan Compliance		Yes	Agency comments	6/19/06
Well and Septic		N/a	EG	9/28/07
Local Area Traffic Review		N/a	Staff memo	6/19/06
Fire and Rescue		Yes	Agency letter	6/19/06
Other (i.e., schools)				

¹ As determined by MCDPS at the time of building permit.

BURNT MILLS VILLAGE (720060600)



Map compiled on December 10, 2007 at 12:41 PM | Site located on base sheet no - 214NE01

NOTICE

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MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue - Silver Spring, Maryland 20910-3760

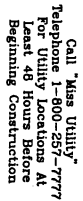
Key Map



Research & Technology Center

0 400

1 inch = 400 feet
1 : 4800

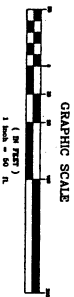


SURVEYOR'S CERTIFICATE

I hereby certify that the boundary shown herein is defined by an existing ditch and point monument among the Land and Water Survey of the State of California, and that the Successors of Montgomery County, Maryland, subject to change upon completion of a third survey, occupy their interest under the same.


Date 5/30/06

B. C. H.
B. C. H.
Professional Land Surveyor
License No. 21125
Accepted Reg. No. 21125



PREPARED FOR:
Mr. Jerry Zayets
85 South Bragg St.
Suite 600
Alexandria, VA 22312
Phone 703-270-2951
Fax 703-750-1158

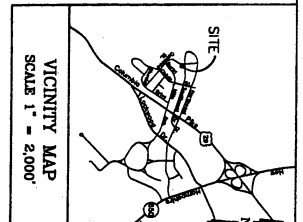
**PRE-PRELIMINARY CONCEPT PLAN
RESUBDIVISION OF LOT 10, BLOCK H
BURNT MILLS VILLAGE**

 MHG 8223 Midway Road, Suite 120 Montgomery Village, Maryland 20886-1170 Phone: 301.912.0240 Fax: 301.912.0241 www.mhgpa.com	Macaris, Hendricks & Glascock, P.A. Attorneys & Financial Consultants Landmark Architects & Surveyors		Proj. No. 102	Dr. 1	Date 8-1-08	Project No. 3

Proj. Mgr. JCB	Design JCB
Date 6-1-06	Scale 1"=50'
Project No. 06-103	Sheet 1 of 1

AREA TABULATION	
TOTAL SITE AREA	0.44 AC.
PROPOSED ROAD DEDICATION	0.00 AC.
NET SITE AREA	0.44 AC.

- [illegible]



Tabular Summary of Staff's Neighborhood
ATTACHMENT C

LOT	BLOCK	FRONTAGE	SIZE	AREA	WIDTH	SHAPE	ALIGNMENT
Proposed Lot 16	H	77.73	9,533	2,232	82	Rectangular	Corner
Proposed Lot 17	H	80	9,600	3,185	80	Rectangular	Perpendicular
1	7	142.51	10,460	3,142	82	Triangular	Radial
2	7	72.86	11,263	4,672	86	Trapezoidal	Radial
3	7	67	12,861	5,657	77	Trapezoidal	Radial
4	7	67	13,087	5,820	77	Irregular	Radial
5	7	67	9,724	3,532	77	Trapezoidal	Radial
6	7	67	10,201	3,822	77	Trapezoidal	Radial
7	7	68.43	10,518	4,106	77	Trapezoidal	Radial
8	7	76.33	9,600	2,483	80	Rectangular	Corner
11	8	111.65	9,780	2,708	95	Trapezoidal	Corner
12	8	139.28	9,436	3,348	112	Irregular	Radial
13	8	110.02	9,696	3,261	90	Trapezoidal	Radial
14	8	69.94	9,927	3,846	77	Trapezoidal	Radial
15	8	66	12,396	5,574	81	Trapezoidal	Radial
16	8	66	16,418	7,835	74	Trapezoidal	Radial
15	E	90	10,933	4,290	90	Rectangular	Perpendicular
16	E	91	10,839	4,224	91	Rectangular	Perpendicular
17	E	91	10,622	4,026	91	Rectangular	Perpendicular
18	E	92	10,519	3,953	92	Rectangular	Perpendicular
19	E	92	10,298	3,786	92	Rectangular	Perpendicular
20	E	94	10,292	3,726	94	Rectangular	Perpendicular
21	E	96	10,273	3,692	96	Rectangular	Perpendicular
22	E	74.39	10,083	3,050	80	Trapezoidal	Corner
23	E	112	13,901	5,885	112	Rectangular	Perpendicular
26	E	142.39	19,402	6,450	135	Rectangular	Corner
1	F	96.93	12,221	3,876	90	Rectangular	Corner
2	F	95	11,890	4,900	95	Rectangular	Perpendicular
3	F	95	11,791	4,850	95	Rectangular	Perpendicular
4	F	95	11,683	4,800	95	Rectangular	Perpendicular
5	F	95	11,576	4,725	95	Rectangular	Perpendicular
7	F	95	11,359	4,480	95	Rectangular	Perpendicular
8	F	95	11,251	4,410	95	Rectangular	Perpendicular
9	F	95	11,144	4,340	95	Rectangular	Perpendicular
10	F	98.98	10,636	3,843	90	Trapezoidal	Corner
13	G	108.61	14,259	4,875	105	Trapezoidal	Corner
14	G	100	13,443	5,925	100	Rectangular	Perpendicular
15	G	89.13	14,834	7,200	100	Trapezoidal	Radial
20	G	90.17	16,942	8,560	95	Trapezoidal	Radial
21	G	95	17,188	8,830	95	Trapezoidal	Perpendicular
22	G	95	17,572	8,890	95	Rectangular	Perpendicular

23	G	85.71	13,414	6,175	90	Rectangular	Corner
24	G	90	13,500	6,175	90	Rectangular	Perpendicular
25	G	90	11,908	4,875	90	Trapezoidal	Perpendicular
26	G	132.54	15,536	5,910	120	Trapezoidal	Corner
11	H	105	17,015	8,564	105	Rectangular	Perpendicular
12	H	100	16,205	8,030	100	Rectangular	Perpendicular
13	H	101.15	16,662	7,705	96	Rectangular	Perpendicular
14	H	147.6	18,357	8,480	130	Irregular	Radial
15	H	135	18,314	8,690	125	Rectangular	Corner
16	J	82.51	17,328	8,780	90	Trapezoidal	Radial
19	J	55.02	18,726	10,015	63	Trapezoidal	Radial
20	J	53.95	21,602	12,170	62	Trapezoidal	Radial
21	J	53.95	23,279	13,450	62	Trapezoidal	Radial
22	J	55.02	23,360	13,530	63	Trapezoidal	Radial
23	J	55.02	22,257	12,765	63	Trapezoidal	Radial
24	J	55.02	17,216	8,715	63	Trapezoidal	Radial
30	J	120	22,204	12,350	120	Rectangular	Perpendicular
31	J	100	16,205	8,030	100	Rectangular	Perpendicular
32	J	105	16,929	6,690	105	Rectangular	Corner
33	J	64.75	16,182	8,150	79	Trapezoidal	Radial
34	J	168.78	30,103	17,600	177	Irregular	Perpendicular
35	J	81.93	25,038	14,750	88	Irregular	Perpendicular
5	K	87.55	15,155	7,420	83	Irregular	Perpendicular
6	K	182.26	13,417	4,890	145	Triangular	Radial
7	K	182.26	12,255	4,275	142	Triangular	Radial
8	K	88.41	12,336	4,674	80	Trapezoidal	Perpendicular
10	K	90	12,088	5,130	90	Trapezoidal	Perpendicular
11	K	130.86	14,718	4,250	160	Irregular	Corner
12	K	95	11,412	4,070	95	Irregular	Perpendicular
13	K	138.64	18,621	8,090	143	Irregular	Corner

Tabular Summary of Applicant's Neighborhood

ATTACHMENT D

LOT	BLOCK	FRONTAGE	SIZE	AREA	WIDTH	SHAPE	ALIGNMENT
Proposed Lot 16	H	77.73	9,533	2,232	82	Rectangular	Corner
Proposed Lot 17	H	80	9,600	3,185	80	Rectangular	Perpendicular
1	6	86.68	10,941	2,527	115	Rectangular	Corner
2	6	80	9,630	3,141	77	Rectangular	Perpendicular
1	7	142.51	10,460	3,142	82	Triangular	Radial
2	7	72.86	11,263	4,672	86	Trapezoidal	Radial
3	7	67	12,861	5,657	77	Trapezoidal	Radial
4	7	67	13,087	5,820	77	Irregular	Radial
5	7	67	9,724	3,532	77	Trapezoidal	Radial
6	7	67	10,201	3,822	77	Trapezoidal	Radial
7	7	68.43	10,518	4,106	77	Trapezoidal	Radial
8	7	76.33	9,600	2,483	80	Rectangular	Corner
1	8	78.25	9,732	2,197	113	Rectangular	Corner
2	8	70	10,702	3,628	75	Trapezoidal	Radial
3	8	70	10,899	3,628	75	Trapezoidal	Radial
4	8	70	13,310	5,064	75	Trapezoidal	Radial
5	8	71.35	16,511	7,516	75	Irregular	Radial
6	8	75	12,358	4,320	71	Trapezoidal	Perpendicular
7	8	75	10,232	3,504	73	Rectangular	Perpendicular
8	8	75	9,697	3,264	73	Rectangular	Perpendicular
9	8	75	9,318	2,976	74	Rectangular	Perpendicular
10	8	75	9,165	2,994	71	Rectangular	Perpendicular
11	8	111.65	9,780	2,708	95	Trapezoidal	Corner
12	8	139.28	9,436	3,348	112	Irregular	Radial
13	8	110.02	9,696	3,261	90	Trapezoidal	Radial
14	8	69.94	9,927	3,846	77	Trapezoidal	Radial
15	8	66	12,396	5,574	81	Trapezoidal	Radial
16	8	66	16,418	7,835	74	Trapezoidal	Radial
1	9	118.85	9,483	2,181	113	Rectangular	Corner
2	9	80	10,515	3,760	73	Rectangular	Perpendicular
3	9	75	10,320	3,834	74	Rectangular	Perpendicular
4	9	75	10,086	3,585	73	Rectangular	Perpendicular
5	9	75	9,852	3,581	73	Rectangular	Perpendicular
6	9	87.02	9,401	3,105	79	Rectangular	Radial
7	9	126.02	10,241	3,271	104	Irregular	Radial
8	9	103.53	9,135	1,816	102	Trapezoidal	Corner
16	9	88	9,568	2,853	83	Rectangular	Perpendicular
1	11	77.8	9,171	1,909	111	Rectangular	Corner
2	11	76	9,533	3,197	74	Irregular	Perpendicular
3	11	76	9,120	2,999	75	Rectangular	Perpendicular
4	11	76	9,120	2,869	72	Rectangular	Perpendicular
5	11	76	9,120	2,873	72	Rectangular	Perpendicular

6	11	76	9,120	2,930	74	Rectangular	Perpendicular
7	11	81	9,584	2886	78	Irregular	Perpendicular
8	11	103.5	10,205	2,107	110	Irregular	Corner
1	12	140.35	12,792	4,100	153	Irregular	Corner
1	13	75	9,811	2,139	117	Rectangular	Corner
2	13	75	9,000	2,920	73	Rectangular	Perpendicular
3	13	75	9,000	2,785	71	Rectangular	Perpendicular
4	13	75	9,000	2,813	73	Rectangular	Perpendicular
5	13	75	9,000	2,805	72	Rectangular	Perpendicular
6	13	75	9,000	2,809	71	Rectangular	Perpendicular
7	13	75	9,000	2,779	72	Rectangular	Perpendicular
8	13	75	9,000	2,874	73	Rectangular	Perpendicular
9	13	75	9,000	2,794	70	Rectangular	Perpendicular
10	13	75	9,000	2,810	75	Rectangular	Perpendicular
11	13	75	9,000	2,810	75	Rectangular	Perpendicular
12	13	121.25	9,149	2,446	120	Rectangular	Corner
15	E	90	10,933	4,290	90	Rectangular	Perpendicular
16	E	91	10,839	4,224	91	Rectangular	Perpendicular
17	E	91	10,622	4,026	91	Rectangular	Perpendicular
18	E	92	10,519	3,953	92	Rectangular	Perpendicular
19	E	92	10,298	3,786	92	Rectangular	Perpendicular
20	E	94	10,292	3,726	94	Rectangular	Perpendicular
21	E	96	10,273	3,692	96	Rectangular	Perpendicular
22	E	74.39	10,083	3,050	80	Trapezoidal	Corner
23	E	112	13,901	5,885	112	Rectangular	Perpendicular
26	E	142.39	19,402	6,450	135	Rectangular	Corner
1	F	96.93	12,221	3,876	90	Rectangular	Corner
2	F	95	11,890	4,900	95	Rectangular	Perpendicular
3	F	95	11,791	4,850	95	Rectangular	Perpendicular
4	F	95	11,683	4,800	95	Rectangular	Perpendicular
5	F	95	11,576	4,725	95	Rectangular	Perpendicular
7	F	95	11,359	4,480	95	Rectangular	Perpendicular
8	F	95	11,251	4,410	95	Rectangular	Perpendicular
9	F	95	11,144	4,340	95	Rectangular	Perpendicular
10	F	98.98	10,636	3,843	90	Trapezoidal	Corner
13	G	108.61	14,259	4,875	105	Trapezoidal	Corner
14	G	100	13,443	5,925	100	Rectangular	Perpendicular
15	G	89.13	14,834	7,200	100	Trapezoidal	Radial
20	G	90.17	16,942	8,560	95	Trapezoidal	Radial
21	G	95	17,188	8,830	95	Trapezoidal	Perpendicular
22	G	95	17,572	8,890	95	Rectangular	Perpendicular
23	G	85.71	13,414	6,175	90	Rectangular	Corner
24	G	90	13,500	6,175	90	Rectangular	Perpendicular
11	H	105	17,015	8,564	105	Rectangular	Perpendicular
12	H	100	16,205	8,030	100	Rectangular	Perpendicular
13	H	101.15	16,662	7,705	96	Rectangular	Perpendicular
14	H	147.6	18,357	8,480	130	Irregular	Radial

15	H	135	18,314	8,690	125	Rectangular	Corner
32	J	105	16,929	6,690	105	Rectangular	Corner
12	K	95	11,412	4,070	95	Irregular	Perpendicular
13	K	138.64	18,621	8,090	143	Irregular	Corner

MILES & STOCKBRIDGE P.C.

Casey L. Moore
301-517-4817
cmoore@milesstockbridge.com

October 24, 2007

Cathy Conlon, Senior Staff
Development Review Division
Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

OCT 26 2007

Re: Burnt Mills Resubdivision
Pre-Preliminary Plan No.

Dear Cathy:

We appreciate you, Rich Weaver and Dolores Kinney taking the time to meet with our client Igor "Jerry" Zayets and us on September 29, 2007 to discuss Staff's recommendation to the Planning Board for the above mentioned Pre-Preliminary Plan application. We also appreciate the opportunity to provide you with this letter that further justifies a recommendation of approval for the proposed two-lot resubdivision of Lot 10, Block H in the Burnt Mills Subdivision.

One of your concerns discussed at our meeting was the proposed resubdivision creating a two to one lot relationship between lots on opposite sides of the street. The two to one relationship is created by the resubdivision of existing Lot 10 into two lots, Lots 16 and 17, which will be confronted across Oakwood Street by the entire width of a single lot, Lot 32. To address this concern we have provided the attached Exhibit A that identifies as outlined in red the two to one lot relationships that already exist in the Burnt Mills Subdivision. As you can see from Exhibit A, one of the characteristics of the Burnt Mills Subdivision, within Applicant's delineated neighborhood, is two to one relationships. Two to one situations also exist outside of the Applicant's delineated neighborhood within Burnt Mills Subdivision. This existing development pattern is a further indication of a policy that permits such relationships. Thus, the proposed resubdivision is in keeping with the existing characteristic of the Burnt Mills Subdivision.

The size of the Applicant's neighborhood delineation was another concern raised at our meeting. The neighborhood delineation that the Applicant proposes is based on the direct travel routes to the proposed lots from nearby Columbia Pike, Maryland Route 29. The lots visible from these direct routes dictate the characteristics of the neighborhood associated with the proposed lots. This is a factor that has been previously considered by the Planning Board as justification for the neighborhood delineations in approving resubdivisions and is appropriate under the facts of this application.

MILES & STOCKBRIDGE P.C.

Page 2

In general, the Applicant's neighborhood delineation includes those lots on either side of Burnt Mills Avenue and Southwest Drive from Route 29 to the west side of Oakwood Street. The defined neighborhood is shaded in yellow on Exhibit A. The neighborhood delineation proposed by the Applicant is the only logical and direct means of access to the proposed lots. Route 29 is a multiple lane road with a cement median divider and a traffic signal at its intersection with Burnt Mills Avenue. Traffic proceeding north on Route 29 will access the proposed lots by turning left onto Burnt Mills Avenue because of the signalized intersection and the inability to turn into the second entrance, Southwest Drive, due to the cement median dividing Route 29. The most direct access route to the proposed lots for southbound traffic on Route 29 is to turn right onto Southwest Drive. Northwest Drive, the first entrance into Burnt Mills Subdivision for southbound traffic, is encumbered by multiple internal stop signs and is indirect access.

The Applicant objects to the neighborhood delineation proposed by Park and Planning Staff because it does not encompass the logical and direct means of access to the proposed lots. Further, the neighborhood proposed by Park and Planning Staff includes the lots along Northwest Terrace. There is no justification for the inclusion of these lots. They are oddly larger than the remaining lots within Burnt Mills Subdivision and are out of character with the more typical lots to which the proposed lots are similar. In fact, there are two sets of two lots (Lots 23 and 24 and Lots 21 and 22) that have been combined under the *Remes* case as a result of houses being built over lot lines. Nor would Northwest Terrace be part of the direct access route to the proposed lots. See Exhibit A.

There is a high correlation between the proposed lots and the character of the lots situated along the eastside of Oakwood Street. Proposed Lots 16 and 17 mirror Lots 24 and 23 along Oakwood Street of Block G across Southwest Drive. The characteristic of Oakwood Street is evolving and visually the existing Lot 10, proposed to be resubdivided, appears to already be two lots based on the lots along Oakwood Street.

In response to a question raised at our meeting, proposed Lot 16 will meet the standard lot size required for the R-90 zone if dedication of a truncated corner at the intersection of Southwest Drive and Oakwood Street is required. Although the Applicant has requested a waiver of the requirement to truncate the corner, such a requirement will not prevent the proposed resubdivision from complying with the 9,000 square foot lot size requirement of the applicable R-90 zone. A copy of the waiver request is attached hereto as Exhibit B. Proposed Lot 17 is estimated to be 9,600 +/- square feet. Before dedication Lot 16 is estimated to be 9,760 +/- square feet. The amount of dedication for the truncation of Lot 16 is approximately 227.00 +/- square feet, leaving 9,533 square feet +/-, which complies with the R-90 development standard for lot size.

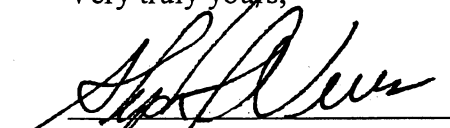
We hope that the information provided herein persuades Staff into recommending approval of the proposed resubdivision, which satisfies all seven resubdivision criteria. We trust that

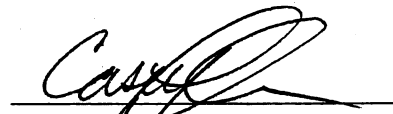
MILES & STOCKBRIDGE P.C.

Page 3

following your consideration of this letter, that the pre-preliminary plan will be scheduled for the first available Planning Board date.

Very truly yours,



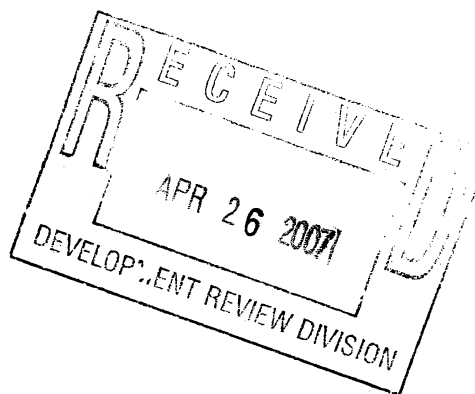
Stephen J. Orens

Casey L. Moore

cc: Rich Weaver, MNCPPC
Dolores Kinney, MNCPPC
Jerry Zayets, Applicant
David Crowe, MHG

MILES & STOCKBRIDGE P.C.

Stephen J. Orens
301-517-4828
sorens@milesstockbridge.com



April 20, 2007

Ms Carla Joyner, Director
Department of Permitting Services
Montgomery County, Maryland
255 Rockville Pike 2nd Floor
Rockville, Maryland 20850

Re: Waiver Requests for Proposed Lots 16 and 17, Block H Burnt Mills Village Subdivision

Dear Ms. Joyner:

We represent Igor "Jerry" Zayets, the owner of the property identified as Lot 10 Block H in the Burnt Mills Village Subdivision (the "Property"). The Property is located at the corner of Oakwood Street and Southwest Drive in Silver Spring, Maryland. A Pre-Preliminary Plan of Subdivision (7-20060600), requesting comments on the proposed resubdivision of the Property into two lots, was considered by the Planning Board's Development Review Committee in June 2006. At that time the Department of Public Works & Transportation, in its letter recommending submission of a Preliminary Plan of subdivision, proposed two conditions from which waivers are hereby requested. One proposed condition, Condition number 2, seeks the dedication of additional right of way for the "truncation at the intersection of" Oakwood Street and Southwest Drive. The second proposed condition of approval, Condition number 10, asks that "sidewalks be provided on both sides of the proposed public streets unless the applicant is able to obtain a waiver from the appropriate government agency."

Please accept this letter as Mr. Zayets' request for waivers of the proposed conditions and the requirements of Section 49-35 (e) of the Montgomery County Code 2004 as amended (the "County Code"). These Waiver Requests are submitted pursuant to County Code Section 49-43. Section 49-43 of the County Code authorizes the Director of the Department of Permitting Services to waive the requirement that a sidewalk be constructed when circumstances are appropriate for such a waiver to be granted. That same provision authorizes the Director of the Department of Permitting Services to grant a waiver from a required right of way width "whenever there is a finding that the proposed right-of-way connects with an existing right-of-way of substandard width which was lawful when established." The two rights of way that constitute the corner for which a truncation is requested are pre-existing and are part of a network of residential streets none of which have truncated corners at any intersection.

The subdivision in which the Property is located was originally platted in 1950. Existing Lot 10 (the Property) is a resubdivision of Lot 1 and part of Lot 2 in the original 1950 subdivision. Oakwood Street and Southwest Drive were both constructed in 1955. There are no sidewalks located on either side of the right of way of either street. Large mature specimen trees are located along the right of way of Oakwood Street just beyond the Property. The residential road

Client Documents:4846-2040-3457v1|18784-000000|4/6/2007

Page 2

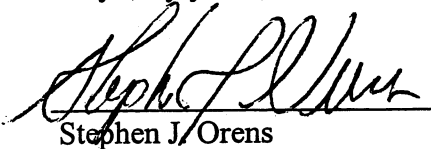
network in the community in which the Property is located consists of nine winding streets, none of which has a sidewalk on either side of their respective rights of way.

Requiring that isolated sidewalk segments be constructed along the Property frontage is neither necessary nor desirable under existing conditions. This is an established and developed community with little opportunity for redevelopment. There is no likelihood that additional sidewalk segments will ever be constructed by private parties on adjacent properties. We recognize that there is always a possibility that the County could initiate a public sidewalk project in this area and if that were to occur, the County has a mechanism for assuring that the current or future owners of the two proposed lots contribute their respective fair share portions of the construction costs by requiring that a covenant be recorded in the land records for future sidewalk improvements. Mr. Zayets would be agreeable to executing such a covenant as a condition of approval of this requested waiver.

Similarly, none of the streets in the community have truncated corners. In addition, it is unlikely that adequate right of way exists elsewhere in the community to accommodate truncations, and no truncations are currently proposed by the County. As with the sidewalk, Mr. Zayets would be agreeable to executing an appropriate covenant as a condition of approval of this requested waiver that would require him or his successors to contribute their fair share of the construction costs if truncated intersections are constructed throughout the community in the future.

We appreciate your consideration of this waiver request. In order to assist in your review, we are enclosing a copy of the Pre Application concept plan, photographs and other site related documents. Should you require anything additional please let us know.

Very truly yours,



Stephen J. Orens

Encls.

cc: Cathy Conlon, Supervisor Development Review Division


David Crowe, Macris Hendricks & Glascock

Jerry Zayets

Aimee Latimer, Esquire

Casey L. Moore, Esquire

MILES & STOCKBRIDGE P.C.

Stephen J. Orens
301-517-4828
sorens@milesstockbridge.com

VIA HAND DELIVERY

June 27, 2007

Ms. Dolores Kinney
Development Review Division
The Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Pre Preliminary Plan 720060600
301 Southwest Drive Silver Spring
Truncation Waiver

Dear Ms. Kinney:

As you know, we represent Igor "Jerry" Zayets, the owner of the above referenced property, also known as Lot 10, Block H in the Burnt Mills Village Subdivision (the "Subject Property"). A Pre-Preliminary Plan application seeking confirmation that the resubdivision of the Property into two lots is appropriate was submitted to the Montgomery County Planning Board in May 2006. Subsequent to that submission, the plan was considered by the Development Review Committee and the applicant and his consultants met with Development Review Division staff.

At the Development Review Committee meeting the Department of Public Works & Transportation requested that a right of way truncation be dedicated at subdivision and we have requested, at your direction, that the condition be waived by the Department of Permitting Service or the Planning Board.

Our request for a waiver of the condition to dedicate a truncation at the corner of the southeast quadrant of the intersection of Southwest Drive and Oakwood Street is supported by the character of the Burnt Mills Subdivision. The Burnt Mills Village Subdivision is an existing subdivision, platted between 1948 and 1954 without truncated corners. There exists little potential for additional development within the subdivision due to the majority of the lots being the minimum lot size for the R-90 zone.

There is little or no possibility for the dedication of truncated corners at the intersection of Southwest Drive and Oakwood Street. The intersection is comprised of Lot 13, Block G, Lot 23, Block G, Lot 32, Block J and the Property. The only lot capable of resubdividing based on its lot size is Lot 13, which is 18,621 square feet in size, and the Subject Property. Lot 32 is 16,929

square feet and Lot 23 is 13,414 square feet and would not meet the minimum lot size in the R-90 zone, the zone of the Burnt Mills Village Subdivision.

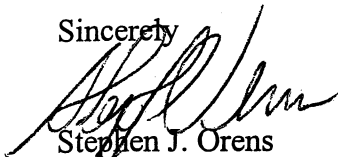
Having a single truncated corner at the intersection of Oakwood Street and Southwest Drive will be unsafe and confusing to drivers. The intersection has a four way stop, which in itself negates the need for truncated corners, but does not have free right or left turns. The coexistence of a four way stop and one truncated corner at an intersection is contradictory and will indicate to drivers turning right off of Oakwood Street onto Southwest Drive that they can maneuver the turn without first stopping, which is contradictory to the stop sign. These mixed signals (no pun intended) are confusing to drivers and unsafe to pedestrians that may be crossing Southwest or Oakwood and relying on traffic to stop at the stop sign.

The operation of the intersection of Oakwood Street and Southwest Drive is not impacted by a lack of truncated corners. The Property is part of the portion of the Burnt Mills Village Subdivision that was platted in 1950. For the last 57 years, the intersection of Oakwood Street and Southwest Drive has been functioning without truncated corners. The addition of a single truncated corner at this time would likely hinder the functioning of the intersection by making it unsafe and confusing, rather than improving it. This intersection is already regulated by a four stop sign, which is suitable for the residential road.

Our request to waive the condition to dedicate a portion of the Property for a truncated corner at the intersection of Southwest Drive and Oakwood Street is supported by the character of the Burnt Mills Subdivision, which has been in existence for about fifty-seven years and has little opportunity for redevelopment, resulting in one truncated corner and three corners that are not truncated at the intersection, which makes no practical sense.

We appreciate your recommending to the Planning Board the waiver of the dedication of the truncation for the Property. Please do not hesitate to contact us with any questions.

Sincerely,



Stephen J. Orens

cc: Mr. Jerry Zayets
Mr. Dave Crowe, MHG
Casey L. Moore, Esquire

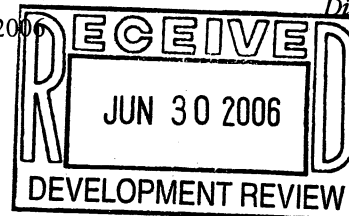


DEPARTMENT OF PUBLIC WORKS
AND TRANSPORTATION

Douglas M. Duncan
County Executive

Arthur Holmes, Jr.
Director

June 26, 2006



Ms. Catherine Conlon, Subdivision Supervisor
Development Review Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Pre-Preliminary Plan No. 7-20060600
Burnt Mills Village

Dear Ms. Conlon:

We have completed our review of the above-referenced pre-preliminary plan. We recommend submission of a preliminary plan, along with appropriate supporting information, which addresses the following comments:

1. The preliminary plan will need to show all existing topographic details (paving, storm drainage, driveways adjacent and opposite the site, sidewalks and/or bikeways, utilities, rights of way and easements, etc.) on the preliminary plan.
2. Necessary dedication for Southwest Drive and Oakwood Street as well as truncation at the intersection of aforementioned streets.
3. Storm drainage and/or flood plain studies, with computations. Analyze the capacity of the existing public storm drain system and the impact of the additional runoff. If the proposed subdivision is adjacent to a closed section street, include spread and inlet efficiency computations in the impact analysis.
4. Necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line. Also show revertible and perpetual easements.
5. Show the location of proposed driveways on the preliminary plan.
6. At the preliminary plan stage, submit a completed, executed MCDPW&T Sight Distances Evaluation certification form for our review and approval.
7. Preliminary plan and record plat to reflect a reciprocal access and public utilities easement to serve the lots served by a common driveway if a common driveway is utilized.
8. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
9. Please coordinate with Department of Fire and Rescue about their requirements for emergency vehicle access.



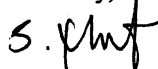
Division of Operations

Ms. Catherine Conlon
Pre-Preliminary Plan No. 7-20060600
Date June 26, 2006
Page 2

10. In accordance with Section 49-35(e) of the Montgomery County Code, sidewalks are required to serve the proposed subdivision. Sidewalks are to be provided on both sides of the proposed public streets unless the applicant is able to obtain a waiver from the appropriate government agency.
11. Permit and bond will be required as a prerequisite to MCDPS approval of the record plat. The permit will include, but not necessarily be limited to the following improvements:
 - A. Improvements to the public right of way, if any are required, will be determined at the preliminary plan stage based on a review of the additional information requested earlier in this letter.
 - B. Improvements to the existing public storm drainage system, if necessitated by the previously mentioned outstanding storm drain study. If the improvements are to be maintained by Montgomery County, they will need to be designed and constructed in accordance with the DPWT Storm Drain Design Criteria.
 - C. Erosion and sediment control measures.
 - D. Street lights.
 - E. Street trees.
 - F. Permanent monuments and property line markers.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at sam.farhadi@montgomerycountymd.gov or (240) 777-6000.

Sincerely,



Sam Farhadi, P.E., Senior Planning Specialist
Development Review Group
Traffic Engineering and Operations Section
Division of Operations

m:/subdivision/farhas01/pre-preliminary plans/ 7-20060600, Burnt Mills Village.doc

cc: Igor Zayets
James Glascock, Macris, Hendricks & Glascock
Joseph Y. Cheung; DPS RWPPR
Christina Contreras; DPS RWPPR
Sarah Navid; DPS RWPPR
Shahriar Etemadi; M-NCPPC TP
Gregory Leck, DPWT TEOS
Preliminary Plan Folder
Preliminary Plans Note Book

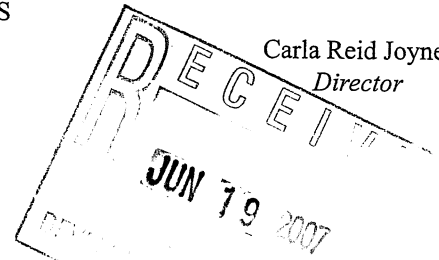


DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

June 18, 2007

Carla Reid Joyner
Director



Mr. Stephen J. Orens
Miles & Stockbridge P.C.
11 N. Washington Street, Suite 700
Rockville, Maryland 20850

Dear Mr. Orens:

I am writing in reply to your letter of May 22, 2007 to Ms. Krasnow and myself requesting a waiver of sidewalks and of truncation for Lots 16 and 17, Block H in the Burnt Mills Village Subdivision.

As indicated in our previous letter, the Department of Permitting Services may consider a sidewalk waiver only after a preliminary plan requiring a sidewalk has been approved by the Planning Board. We cannot waive something in the right-of-way prior to it actually being mandated. We understand that this plan has not yet gone before the Planning Board. As for the corner truncation, this is a subdivision of land requirement, not an item that can be waived by this Department.

Because truncation may cause the resulting lots to fall below the required area for subdivision, we recommend that you provide graphic and written documentation to this effect to the Department of Public Works and Transportation (DPWT) and the Planning Board. Additionally, you will need to demonstrate that a sidewalk could be accommodated within the existing right-of-way or Public Improvement Easement at the corner if no truncation is provided. My staff has had preliminary discussions with Greg Leck, DPWT (240-777-2170) and Delores Kinney, Maryland National Capital Park and Planning Commission (301-495-1321) and they are willing to consider this supplemental information.

Sincerely,

Carla Reid Joyner
Director

CRJ:dm

cc: Rose Krasnow, MNCPPC
Delores Kinney, MNCPPC
Greg Leck, DPWT



FIRE MARSHAL COMMENTS

DATE: 6-19-06
TO: PLANNING BOARD, MONTGOMERY COUNTY
VIA:
FROM: JOHN FEISSNER 240 777 2436
RE: APPROVAL OF ~ *BURNT MILLS VILLAGE #720070600*

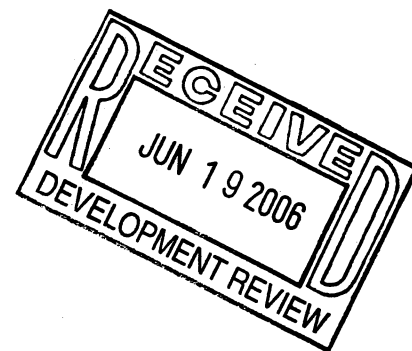
1. **PLAN APPROVED.**

- a. Review based only upon information contained on the plan submitted 6-19-06. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
- b. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

cc: Department of Permitting Services

MARK STEIN
530 NORTHWEST DRIVE
SILVER SPRING, MD 20901-4518

June 16, 2006



Montgomery County Department of Park and Planning
8787 Georgia Ave.
Silver Spring, MD 20910-3760

RE: Name of Plan: Burnt Mills Village
 File Number: 720060600
 Current Zoning: R-90
 Location: Block H, Lot 10 at 301 Southwest Drive
 Proposed Number of Lots: 2
 Type of Plan: Pre-Preliminary Plan

Dear Sir or Madam:

I am writing in reference to the above referenced application for subdivision in Burnt Mills Village. I am resident of Burnt Mills Village and active in our citizens association. The purpose of this letter is to express my opposition to this plan, because of the negative effects on our neighborhood.

Burnt Mills Village was first established in 1948, and is the second oldest development in the Burnt Mills area of Silver Spring. While the development was originally subdivided for lots averaging 10,000 to 12,000 square feet, a significant portion of the development was resubdivided in 1952 to increase lot size, which now averages over 16,000 square feet. The average age of homes in our development is about 53 years.

The structure on this lot was built in 1952. It is one of the oldest homes in the neighborhood, and is exemplary of the unique architecture found in Burnt Mills Village.

The notification I received from your office dated June 12, 2006 only specifies that the lot is to be subdivided, and not what type of construction, if any, is anticipated. Based on the proposed plat drawing, I have drawn the following assumptions:

1. The current lot, at 19,360 square feet, would be divided into two lots roughly the same size, 9,680 square feet.
2. Because the proposed lots bisect the current dwelling constructed on the property, the existing structure would need to be partially or fully demolished.
3. If the property were subdivided differently in order to both spare the existing property and comply with Montgomery County regulations pertaining to subdivision, the resulting new lot would be too small to meet the current R-90 zoning (minimum 9,000 square feet).

I have performed an evaluation of the lots in the development in three different ways. All include the property in question:

A. All 109 homes in Burnt Mills Village. This includes two homes that predate the development of Burnt Mills Village. These homes are located within the original boundaries of the development, and are included as part of Burnt Mills Village on property records.

B. 42 contiguous lots on Southwest Dr., Oakwood St., Northwest Ter. and Northwest Dr. within approximately 6 lots of the intersection where Block H Lot 10 is located. This includes several homes on Oakwood St. in the adjoining Burnt Mills Manor development.

C. 20 corner lots in Burnt Mills Village where two neighborhood streets intersect (Northwest/Oakwood, Northwest/Childs, Southwest/Oakwood, Southwest/Childs, Northwest/Southwest, Northwest/Lockwood). The properties adjoining US 29 are excluded, because they were not developed in a corner lot configuration.

Here are some of the statistics I have derived from property information obtained from the Maryland Department of Assessment and Taxation (Note: a few properties are multiple accounts. In this case, the undeveloped land has been combined with the adjoining developed lot to determine the total lot size that corresponds to each home.)

Percentages are the ratio of the proposed lot size (9,680 sq ft.) to the averages shown.

Lot Size	<u>Average</u>	<u>Median</u>
Burnt Mills Village:	16,078 sq ft. (60%)	13,970 sq ft. (69%)
Contiguous Lots:	17,230 sq ft. (56%)	15,346 sq ft. (63%)
Corner Lots:	19,441 sq ft. (50%)	16,929 sq ft. (57%)

Largest Lot Size:	51,468 sq ft.
Smallest Lot Size:	10,001 sq ft.
Proposed Lot Size:	9,680 sq ft.

Structure Size	<u>Average</u>	<u>Median</u>
Burnt Mills Village:	1,771 sq ft.	1,701 sq ft.
Contiguous Lots:	1,861 sq ft.	1,714 sq ft.
Corner Lots:	1,829 sq ft.	1,739 sq ft.

Structure Footprint*	<u>Average</u>	<u>Median</u>
Burnt Mills Village:	1,006 sq ft.	868 sq ft.
Contiguous Lots:	982 sq ft.	883 sq ft.
Corner Lots:	989 sq ft.	871 sq ft.

*Footprint is estimated by dividing the square footage of the structure by number of floors

	<u>Average</u>	<u>Median</u>
Ratio of Structure to Lot Size:	12.2%	12.4%
Ratio for Corner Lots:	10.5%	10.3%
Average Number of levels:	1.9**	

**There are only five homes (out of 109) with more than two levels, including basement.

Based on the data available, I am requesting a denial of this application for the following reasons:

Lot Size: The proposed lots would be the smallest lots in the development, and would be less than 2/3 the size of the average lot. They would be less than half the size of the average corner lot.

Usable Space: Based the proposed lot size, and the expectation that any new structures would be two-level homes built in approximately the same proportions as the rest of the development, the new homes would need to be approximately 600-1,600 square feet (includes ± 400 sq ft., tolerance based on average structure-to-lot ratio), with a footprint of 350-850 square feet. This is a very small home size, and would be 200-1,200 sq ft. smaller than the average size home in Burnt Mills Village.

Home Destruction: As mentioned earlier in this letter, the property cannot be subdivided in compliance with current zoning and subdivision requirements without tearing down all or part of the existing home. In order to preserve the structure, the lot would have to be subdivided in an irregular shape inconsistent with current subdivision requirements.

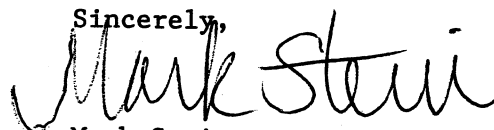
Aesthetics: In order to have a setback consistent with the surrounding homes, two new homes would be squeezed tightly in a small area of frontage. Even if the existing structure is spared by demolishing only the garage and the addition, there would be very little space between the existing structure and the new lot, as well as between the new lot and the next existing structure at 11025 Oakwood St.

The other three corner lots at that intersection average 16,321 sq ft. (median 16,929 sq ft.). Two houses built in roughly the same amount of space would be disproportionately crowded, and would upset the appearance of neighborhood as it was originally intended.

Further, it is not likely that any new home construction will be built in a style compatible with the unique early-1950's architecture found in the development. The last new construction in Burnt Mills Village, with the exception of one home facing US 29 and not visible from within the neighborhood, was in 1963. Most new homes are not constructed from brick or stone, and are typically designed in a more modern style with materials that would be inconsistent with the rest of the neighborhood. The current trend is to build grossly oversize homes on undersize lots.

Precedent: In 2001 (reference Preliminary Plan 1-01090), and previously in 1989 (reference 1-89078), similar requests for a nearby property, Block J, Lot 23, known as 240 Northwest Terrace, were rejected for similar reasons. Although terrain and lot shape may not an issue in this case, the remaining reasons are valid.

Thank you for your time and consideration.

Sincerely,

Mark Stein
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