

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

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**OFFICE OF  
THE GENERAL COUNSEL**

**Agenda Date: March 4, 2010  
Item # 11  
Reconsideration Request**

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February 23, 2010

**REQUEST FOR RECONSIDERATION**

**MEMORANDUM**

TO: Montgomery County Planning Board

FROM: Christina Sorrento, Associate General Counsel   
301.495.4646

RE: Reconsideration Request for Chevy Chase View,  
Preliminary Plan No. 120070520

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With this memorandum we forward for the Board's review a request for reconsideration of the Chevy Chase View Preliminary Plan approval filed by Mr. John Witmer.

**I. BACKGROUND**

On October 8, 2009, the Planning Board voted to deny the Chevy Chase View Preliminary Plan on a vote of 4-1 with Commissioners Cryor, Hanson, Presley, and Wells-Harley voting in favor of the denial and Commissioner Alfandre voting against the denial. The resolution memorializing the Board's denial was mailed on October 28, 2009 and is attached as Attachment 1.

The Preliminary Plan application was for a resubdivision of property that would create 3 lots on .96 acres of land located at 4311 Clearbrook Lane, 125 feet west of Cedar Lane in the Kensington-Wheaton master plan area. The Board denied the application because the Preliminary Plan did not comply with the lot size criteria under Section 50-29(a)(1) and the resubdivision criteria under Section 50-29(b)(2) of the Montgomery County Code.

Specifically, the Board found that the orientation of lot 10 would result in a new dwelling unit being located behind dwelling units on lots 9 and 11 and would face the rear yards of those lots. The Board found that this orientation is inappropriate for the

location of the subdivision where the other lots in the area conform to a grid pattern. Additionally, the Board found that lot 10 did not meet the frontage or shape factors of the resubdivision criteria. The frontage of lot 10 is the minimum required as a result of a pipestem and only two other lots in the neighborhood have the minimum frontage but do not have a pipestem. There is only one other pipestem lot in the neighborhood and the Board found that its existence did not warrant another. Therefore, the Board determined that lot 10 would not be in character with the shape and frontage of the existing lots in the neighborhood.

On November 10, 2009, Mr. Witmer filed a request for reconsideration of the Preliminary Plan resolution, which is attached as Attachment 2.<sup>1</sup> Mr. Witmer cites one main ground for his reconsideration request, which is discussed below.

## **II. APPLICABLE RULES**

A reconsideration request must “specify any alleged errors of fact or law and state fully all grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause.” The Board is responsible for determining if the grounds stated in support of the reconsideration request are sufficient to merit reconsideration.

Only a Board member who voted in the majority of the decision that is the subject of the request for reconsideration can move to reconsider the decision. In this case, Commissioners Hanson, Wells-Harley, and Presley are eligible to move for reconsideration. If there is no motion for reconsideration, the request for reconsideration is denied. Any motion to reconsider must be supported by a majority of the Board members present who either participated in the previous decision or read the record on which it was based.

## **III. RECONSIDERATION REQUEST**

In his request for reconsideration, Mr. Witmer argues that his clients proceeded to take the application to the Planning Board on a recommendation of denial because they were informed that the case was a close call and they expected the Board to have a discussion on the application. When a motion to deny the application was made, Mr. Witmer attempted to ask for a deferral but was unable to speak until after the Board voted to deny the application. Mr. Witmer asserts that based on the Board’s comments and further discussions with Staff, there are minor modifications that need to be made to the Preliminary Plan. Mr. Witmer would like to be able to make these modifications without beginning the application process over again. Therefore, Mr. Witmer asks for a reconsideration of the Planning Board’s decision to allow the applicant to obtain a deferral from the October 8, 2009 Planning Board hearing and make these modifications to the Preliminary Plan.

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<sup>1</sup> Under the Board’s Rules of Procedure, a petition for reconsideration must be filed within 10 days of the date of mailing of the Board’s resolution. However, on February 22, 2010, in accordance with Rule 4.12.1 of the Planning Board’s Rules of Procedure, Chairman Hanson waived the 10 day filing deadline due to an administrative error in mailing the resolution to the applicant.

**IV. RECOMMENDATION**

Staff does not have objections to Mr. Witmer's request for a deferral to make modifications to the application without beginning the application process over again. If the Board agrees that reconsideration is appropriate based upon a finding of mistake, inadvertence, surprise, fraud, or other good cause, the Board should grant the reconsideration request for the limited purpose of allowing the applicant a deferral from the October 8, 2009 hearing. If the Board grants this reconsideration request, the Board should also make a motion to defer the hearing to allow the applicant time to make the necessary plan modifications. A motion for deferral must be approved by the majority of the Board members present. However, if the Board determines that Mr. Witmer's request is not a good cause for reconsideration then the Board may deny the reconsideration request.

**IV. ATTACHMENTS**

Attachment 1 - Planning Board Resolution dated October 28, 2009

Attachment 2 - Preliminary Plan reconsideration request dated November 10, 2009



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

OCT 28 2009

MCPB No. 09-131  
Preliminary Plan No. 120070520  
Chevy Chase View  
Date of Hearing: October 8, 2009

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

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 October 8, 2009, Frederick Gore ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 3 lots on 0.96 acres of land located at 4311 Clearbrook Lane, 125 feet west of Cedar Lane ("Property" or "Subject Property"), in the Kensington-Wheaton master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070520, Chevy Chase View ("Preliminary Plan" or "Application"); and

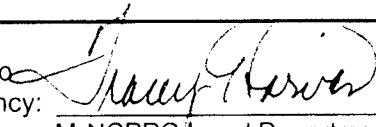
WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated September 24, 2009, setting forth its analysis, and recommendation for denial, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on October 8, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

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Approved as to  
Legal Sufficiency:

  
M-NCPPC Legal Department

WHEREAS, on October 8, 2009, the Planning Board denied the Application on motion of Commissioner Wells-Harley; seconded by Commissioner Cryor; with a vote of 4-1, Commissioners Cryor, Hanson, Presley and Wells-Harley voting in favor of the denial, with Commissioner Alfandre voting against.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board denied Preliminary Plan No. 120070520 to create 3 lots on 0.96 acres of land located at 4311 Clearbrook Lane, 125 feet west of Cedar Lane ("Property" or "Subject Property"), in the Kensington-Wheaton master plan area ("Master Plan").

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS that:

1. *The Preliminary Plan fails to comply with Section 50-29(a)(1) of Chapter 50, the Subdivision Regulations.*

Section 50-29(a)(1) of the Subdivision Regulations states, with respect to lot dimensions, that: *Lot size, width, shape and orientation shall be appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated in order to be approved by the board.*

The Planning Board finds the subdivision does not result in lots that have appropriate sizes, shapes, widths and orientations for the area in which they are located. For this application, the Planning Board believes the orientation of proposed lot 10 is inappropriate for the location of the subdivision. The orientation of lot 10 is such that a new dwelling unit on the lot will be behind and face the rear yards of proposed lots 9 and 11. Other lots within the area conform to a grid pattern of development or were created in such a way that dwelling units on the lots have a direct relationship to the street on which they front. While lots 29, 3C and 7 to the north of proposed lot 10 have similar lot frontages, these lots directly front Puller Drive without obstruction.

2. *The Preliminary Plan fails to comply with Section 50-29(b)(2) of Chapter 50, the Subdivision Regulations.*

In order to approve an application for resubdivision, the Planning Board must find that each of the proposed lots complies with all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states that: *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.*

For this preliminary plan application, the Planning Board finds the proposed lots are not of the same character as to street frontage and shape as other lots within the existing neighborhood ("Neighborhood"), as delineated by Staff in the Staff Report, and as analyzed below:

**Size:**

Lot sizes in the Neighborhood range from 6,000 square feet to 18,877 square feet. Proposed lot 9 is 16,043 square feet in size, proposed lot 10 is 16,504 square feet and proposed lot 11 is 9,369 square feet. **The proposed lot sizes are in character with the size of existing lots in the Neighborhood.**

**Width:**

Lot widths in the Neighborhood range from 60 feet to 133 feet. The three proposed lots are subject to an established building line for measuring width. Proposed lot 9 has a lot width of 65.82 feet, proposed lot 10 a width of 78.26 feet and proposed lot 11 a width of 60 feet at the Established Building Line. Three lots in the Neighborhood have a lot width of 60 feet and a total of eight lots in the Neighborhood range from 60 feet to 65 feet in width. **For these reasons, the three proposed lots will be in character with existing lots in the Neighborhood with respect to width.**

**Frontage:**

Lot frontages for the 21 lot Neighborhood range from 19 feet to 111.55 feet. The minimum lot frontage permitted in the R-60 zone is 25 feet. Lot 7, block 16 has nonconforming lot frontage of 19 feet and lots 3C and 29 in the Neighborhood have 25 feet of street frontage. While these three lots have minimal lot frontage, all three lots directly front the substandard termination of Puller Drive. Proposed lot 9 has 63.73 feet of frontage and proposed lot 11 has 60 feet of frontage. Proposed lot 10 has 25 feet of frontage to accommodate a pipestem lot. **Given that only lot 3C and lot 29 have 25 feet of frontage in the Neighborhood, the Planning Board finds that an established pattern of lots with minimum lot frontage is not present within the Neighborhood. As a result, Proposed lot 10 fails to be of the same character as existing lots in the Neighborhood with respect to lot frontage.**

**Area:**

Buildable area calculations for the Neighborhood range from 1,995 square feet to 10,728 square feet. The three proposed lots have buildable areas of 9,956

square feet for lot 9, 7,493 square feet for lot 10 and 4,710 square feet for lot 11. **The proposed lots will be of the same character as other lots in the Neighborhood with respect to buildable area.**

**Alignment:**

Within the resubdivision Neighborhood, 18 lots have a perpendicular alignment to the street and 3 lots are corner lots. The three lots as proposed will also align to Clearbrook Lane in a perpendicular fashion. **The proposed lots are of the same character as existing lots with respect to the alignment criterion.**

**Shape:**

Of the 21 lots in the Neighborhood, 13 lots are rectangular in shape, 7 lots are irregular in shape and one lot, lot 3C, is a pipestem lot. Proposed lots 9 and 11 are rectangular and proposed lot 10 is configured as a pipestem lot. Staff does not believe the existence of one other pipestem lot in the Neighborhood warrants another. In fact, lot 3C is pipestem in shape due to a part of lot that was created for lot 7, block 16. The dwelling unit on lot 3C does not face the rear yards of adjacent lots and does not have a pipestem appearance from the street. **The Planning Board finds proposed lot 10 will not be in character with the shapes of the existing lots in the Neighborhood.**

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

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 28 2009 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

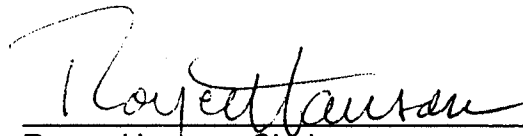
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**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Wells-Harley, seconded by Commissioner Alfandre, with Chairman Hanson, Commissioners Wells-Harley and

MCPB No. 09-131  
Preliminary Plan No. 120070520  
Chevy Chase View  
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Alfandre present and voting in favor of the motion, and Commissioners Cryor and Presley absent at its regular meeting held on Thursday, October 22, 2009, in Silver Spring, Maryland.

  
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Royce Hanson, Chairman  
Montgomery County Planning Board



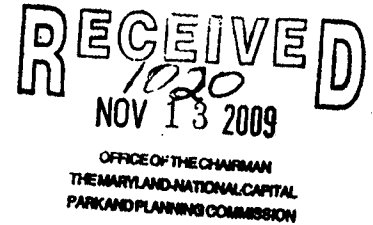


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November 10, 2009

Royce Hanson, Chairman  
Montgomery County Planning Board  
The Maryland National Capital Park  
and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910



Re: MCPB Np. 09-131  
Chevy Chase View  
Application No. 120070520

Dear Chairman Hanson:

On behalf of W. Frederick and Jean Gore, applicants in the referenced subdivision application, I submit the following request for reconsideration of the Planning Board opinion dated, October 28, 2009.

After nearly four years of coordination and plan modifications, the Development Review Staff's final report and recommendation for a denial was issued. During a meeting with Development Review staff to discuss their findings, in what they presented to the Gore's as a close call, it was suggested that the Gore's could take the matter on to the Board for their review and analysis. At that point, this was how the Gore's decided to proceed.

At the hearing, some Board discussion was expected. The only comment was from Commissioner Alfandre, indicating his support of the plan on the basis of the testimony presented. Immediately following his comment, the motion to deny was made. I attempted to interrupt to express the Gore's desire to request a deferral, but I was not allowed to speak.

At this point, based on further discussion with staff, the Gore's need only to make a few modifications to their plan to bring it into conformance with staff's opinion. The revised plan will require some minor technical reviews of one or two other agencies before it would be ready to come back before the Board. As they have been done through the process, the Gore's will share their revised plan with their neighbors prior to returning to the Board.

On behalf of Mr. and Ms Gore, we would appreciate consideration and approval of a minor procedural deviation, permitting this matter to be referred back to staff, for intake and review of a plan modification, to then be returned to the Board for review and approval.

Sincerely,

John R. Witmer

cc Mr & Ms. Gore  
MNCP&PC - Development Review Staff