



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

**MCPB**  
**Item #3**  
**7/29/10**



**MEMORANDUM**

**DATE:** July 16, 2010

**TO:** Montgomery County Planning Board

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

**FROM:** Erin Grayson, Senior Planner *EG*  
[erin.grayson@mncppc-mc.org](mailto:erin.grayson@mncppc-mc.org) (301-495-4598)  
Development Review Division

**REVIEW TYPE:** Preliminary Plan of Subdivision

**APPLYING FOR:** 2 lots for 2 one-family detached residential dwelling units

**PROJECT NAME:** Brooke Park  
**CASE #:** 120080190  
**REVIEW BASIS:** Chapter 50, Montgomery County Subdivision Regulations

**ZONE:** R-90  
**LOCATION:** on Brookes Lane 70 feet southeast of Locust Lane  
**MASTER PLAN:** Bethesda-Chevy Chase

**APPLICANT:** Hanna and Chung Shin  
**ENGINEER:** PG Associates, Inc.  
**ATTORNEY:** Miles & Stockbridge

**FILING DATE:** November 7, 2007  
**HEARING DATE:** July 29, 2010

**RECOMMENDATION:** Denial of the preliminary plan of subdivision.

**SITE DESCRIPTION**



*Exhibit A: Aerial Image of Subject Property*

The site of this Brooke Park preliminary plan application, “Property” or “Subject Property”, is located in the Bethesda-Chevy Chase master plan area in the Palisades-Western Bethesda Chevy Chase section of the plan. More specifically, the Property is located on Brookes Lane 70 feet southeast of Locust Lane. The rear of the Property has frontage on Maryland Avenue which intersects with MacArthur Boulevard.

The Property is an unrecorded parcel 0.44 acres in size and contains a recently constructed one-family detached residential dwelling unit with access to Brookes Lane. The Property is zoned R-90 and was rezoned from R-60 to R-90 in 1990. Unrecorded, developed parcels are located to the north and east of the Subject Property. A lot recorded by plat in 1975 abuts the Property to the west and lots recorded in 1987 under the previous R-60 zoning classification are located across Maryland Avenue to the south of the site.

The site does not include any forested areas, streams, wetlands or associated buffers. Highly erodible soils are mapped less than 100 feet towards the west, but are not present on the Subject

Property. The slope on the rear portion of the Property is approximately 15%. The site contains one significant tree, a 26" ash apparently in good health, and one specimen sized tree, a 36" Siberian elm which has been impacted by recent construction activity. Additionally, there are 2 other specimen trees in the vicinity including a 52" silver maple on the adjacent property to the east of the proposed development. The Property is located within the Little Falls Watershed.



*Exhibit B: 2008 photograph of Subject Property looking north from Maryland Ave*

### **PROJECT DESCRIPTION**

The Applicant proposes to subdivide the Property and record 2 lots for 2 one-family detached dwelling units. The existing house is shown to remain on proposed lot 11, which will be 9,117 square feet. Right-of-way dedication for Brookes Lane is provided along the frontage of lot 11, so that 25 feet of right-of-way from the centerline would be dedicated. The existing house, which was built to the zoning standards in effect when the existing parcel was created, will not meet the side setback requirements for R-90 zoned lots (8.2 feet short on one side) or the front setback requirement (5 feet short), but would be permitted to remain as a nonconforming structure. A new dwelling unit is shown on proposed lot 12, which will be a 9,071 square foot lot. Approximately 218 square feet of right-of-way dedication is proposed for Maryland Avenue in the southwest corner of the Subject Property, located tangent to a proposed cul-de-sac. As a result of this dedication, lot 12 is proposed to have 25 feet of frontage on Maryland Avenue. The Montgomery County Department of Transportation and the Montgomery County Fire Marshal's office have accepted future construction by the Applicant of a sub-standard cul-de-sac with a 50 foot diameter cul-de-sac bulb as an acceptable means to accommodate emergency, service, and

other vehicle turnaround movements. A number of significant and specimen trees are affected by the existing and proposed construction impacts.

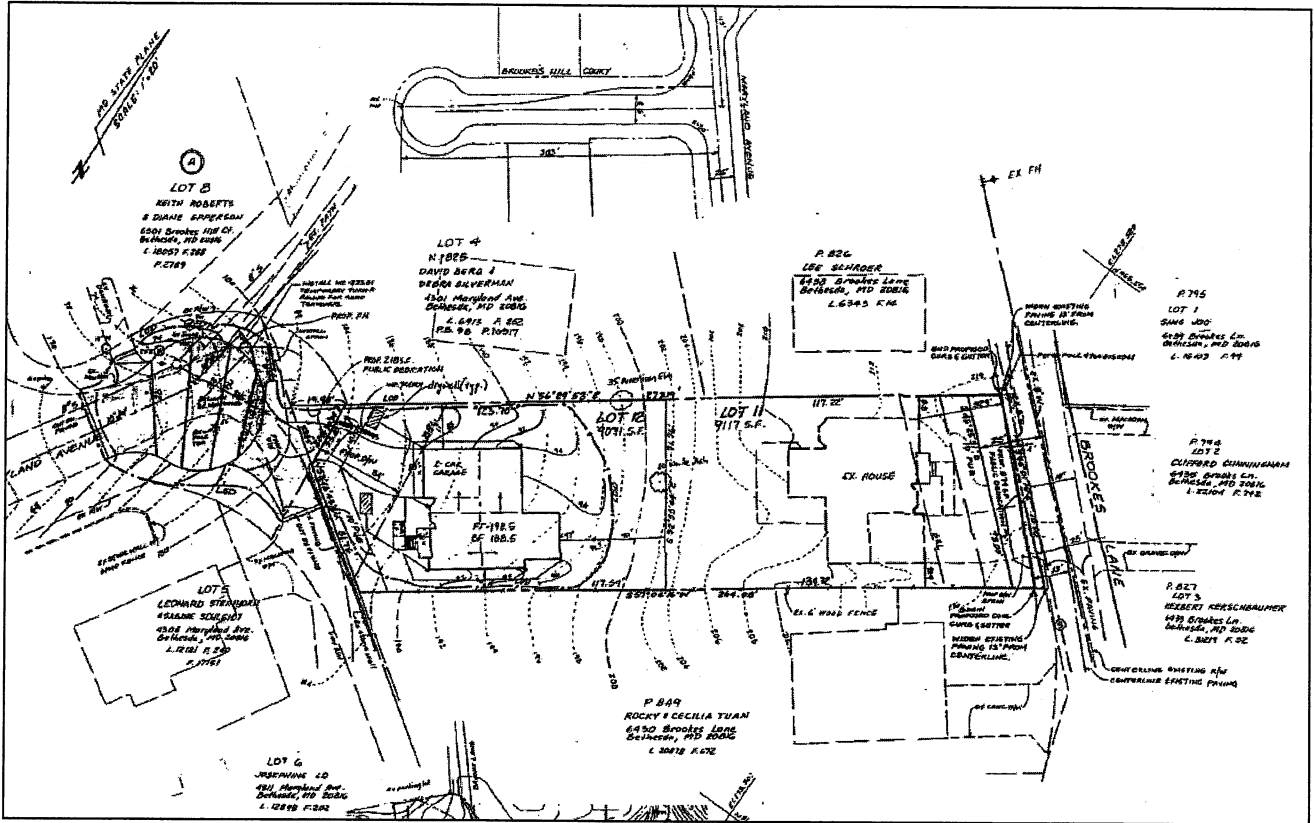


Exhibit C: Preliminary Plan

**DISCUSSION OF ISSUES**

**Relationship to Previous Subdivision**

A preliminary plan application for the 4 lots directly south of the Subject Property (#119871280 also named Brooke Park) was approved by the Planning Board in an opinion dated September 23, 1987. This plan proposed 4 lots on 41,869 square feet of land, zoned R-60 at the time. At the public hearing, the issue of access to the potential lots from a driveway that might become a public road along the rear yards of unrecorded parcels along Brookes Lane was discussed extensively. The opinion directly addressed the issue and stated “the Planning Board determined that it is appropriate to require street dedication that provides the possibility for the future extension of Maryland Avenue to the north and east of the subject property. This future extension would serve unrecorded parcels to the north of the subject property that could be subdivided to create new lots if street frontage were available.” The first condition of approval included in the opinion required dedication along Maryland Avenue for a 50 foot right-of-way transitioning to a 28 foot right-of-way. The record plat, pictured below, shows the approved 4 lots ranging in size from 7,560 square feet to 11,810 square feet. Dedication was provided as required for Maryland Avenue, including half of a reduced-width tertiary street totaling 13.8 feet.

Per the assumptions of the previous approval, a subdivision of the Subject Property would include lots fronting on the other half of a dedicated road right-of-way. Many of the existing residents of Maryland Avenue were expecting any future subdivision to occur in this way, and they are opposed to the proposed cul-de-sac termination at the end of the existing road pavement. In Staff's opinion, however, the extension of the existing road is no longer feasible because the area has been rezoned to R-90. Under the R-90 standards, only the Subject Property has enough acreage to create 2 lots; and it can't meet the standards if additional street frontage is required. Alternatively, it might be possible to combine the parcel with others and create one or two lots with a portion of the road extension, but proper termination of the road would not be possible because there is insufficient area to create a cul-de-sac or connect to another existing road. It is Staff's determination that both the access and circulation provided by Maryland Avenue are currently insufficient and must be improved if any other lots are created. Absent the previously-planned extension of the road, the cul-de-sac shown on the preliminary plan is necessary.

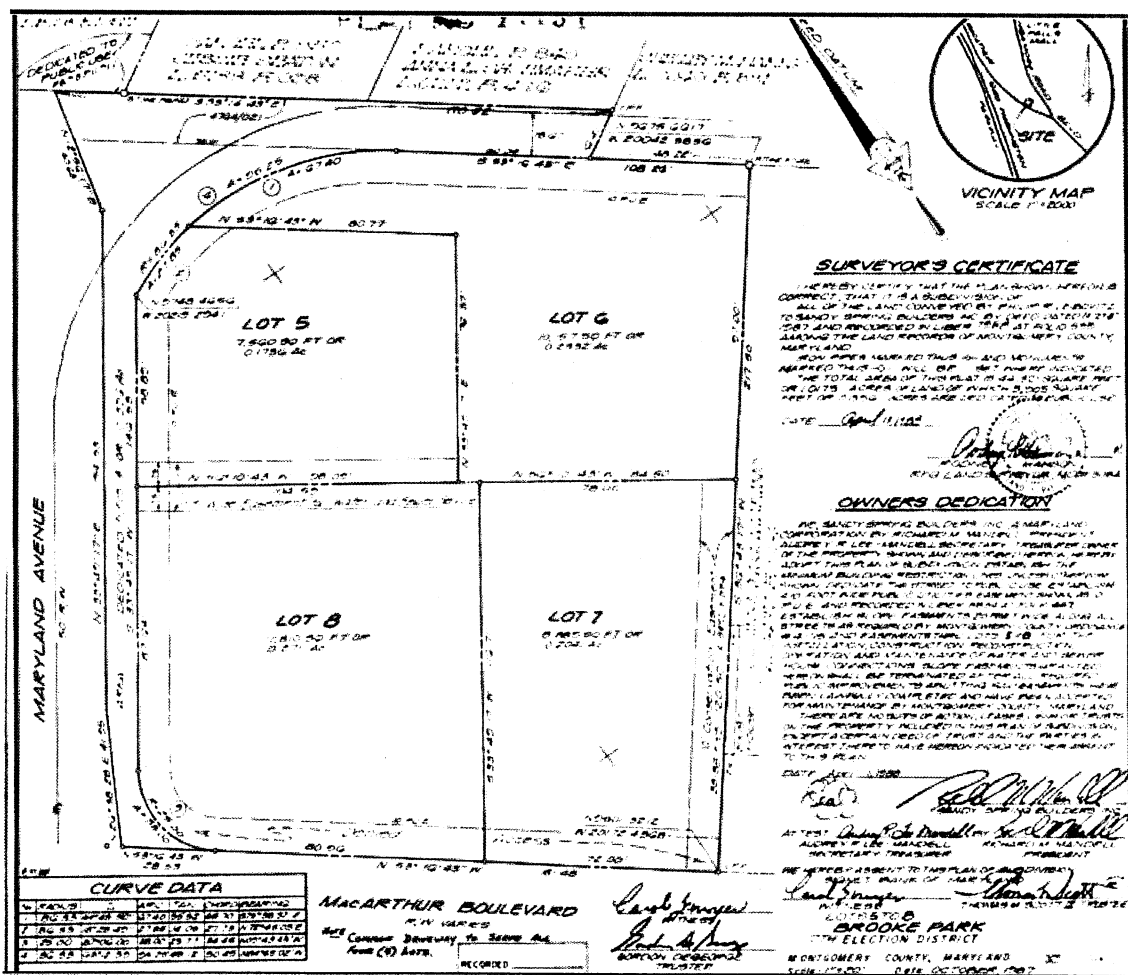


Exhibit D: 1987 Record Plat

## **Conformance to the Subdivision Regulations and Zoning Ordinance**

### **Section 50-29(a)(1)**

Section 50-29 of the Subdivision Regulations identifies criteria for lot design. Specifically, Section 50-29(a)(1) states that for lot dimensions, the *“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 orientation of proposed lot 12 is not appropriate for the location of the subdivision.**

The angled orientation of the front building restriction line for proposed lot 12, created by dedication for the proposed Maryland Avenue cul-de-sac, is out of character with other lots along Maryland Avenue, as well as with lots fronting Brookes Lane. Such orientation permits a calculation of lot width at a point where the corner of the proposed structure meets a line running parallel to the angled front lot line for the proposed cul-de-sac, or on a tangent to the cul-de-sac itself. Measurement in this manner is the only way the proposed lot meets the required 75 feet of lot width at the front building restriction line but it results in the line following the actual front of the building being less than 75 feet. Furthermore, the point at which the 75 foot requirement is met falls 34 feet back from the angled front lot line rather than at the 30 foot required front setback, which creates a more restricted building envelope for lot 12. Proposed lot 11 also meets the minimum required lot width as a result of an angled front building restriction line, however, that line is contiguous with the road right-of-way along its entire length. All other lots in the area also have front building restriction lines that are parallel with the road rights-of-way. The proposed orientation and width of lot 12 are not appropriate in this location given how all other lots are measured.

**The size of proposed lot 12 is not appropriate for the location of the subdivision.** The orientation of proposed lot 12 allows the 2 lots to narrowly meet the size requirements of the Zoning Ordinance, however, existing lots and grandfathered parcels in the neighborhood are generally larger. The proposed lot sizes of 9,117 and 9,071 square feet meet the minimum 9,000 square foot lot size for the zone, but most of the houses in the same block are on larger parcels (10,000sf or larger) that cannot be resubdivided without the previously discussed extension of Maryland Avenue. In Staff's opinion, subdivision of the existing Subject Property should occur in combination with one or more adjacent properties to the east so that the resulting lot(s) are consistent with the larger size of most other lots in the neighborhood.

### **Compliance with Section 50-2 of the Subdivision Regulations**

Section 50-2 of the Subdivision Regulations states the purposes of Chapter 50, which includes 50-2(a), *The harmonious development of the district*. The Bethesda-Chevy Chase Master Plan specifically identifies the environmentally sensitive nature of the Palisades area. The proposed subdivision will create a lot that must be served by a newly configured roadway for the Maryland Avenue cul-de-sac which requires grading on a small portion of steep slopes (25% or greater), although these are man-made. Furthermore, significant grading to accommodate a house on proposed lot 12, where slopes approach 15%, and frontage created through an irregular shaped lot to achieve width compliance will, perhaps, establish a threshold to encourage a second lot that might be created adjacent to this subdivision as another lot that has the same problems with

size and relationship to abutting properties and homes. Citizen concerns, which are addressed on page 10 of this report, were strongly expressed by neighbors of the Subject Property. The majority are firmly opposed to the plan because they believe it fails to achieve greater sensitivity to the erosion and run-off issues associated with the steep slopes of the Palisades and it sets a dangerous precedent for future development. Staff agrees with residents of the area that the problems associated with this application result in a preliminary plan that fails to achieve harmonious development of the district.

## **OTHER ANALYSIS AND FINDINGS**

### **Substantial Master Plan Conformance**

The Subject Property is located within the 1990 Approved and Adopted Bethesda Chevy-Chase Master Plan within the Palisades-Western Bethesda-Chevy Chase section of the Plan. The Plan requires protection of the existing residential character and the preservation of the Palisades' unique environmental features. These unique features include steeply wooded slopes, wooded bluffs, rivers, cliffs, and mature trees.

In order to preserve these features, the Master Plan downzoned the area from Massachusetts Avenue to the Potomac River and west of Sangamore Road to Goldsboro Road from R-60 to R-90, implemented in 1990. On page 69, the plan identifies that "the established pattern of development in the Palisades area has resulted from average lot sizes larger than the minimum 6,000 square feet required for the R-60 zone. These larger lots have allowed for less intrusion on the steeply sloped wooded topography characteristic of this area. Rezoning to the R-90 Zone will increase the minimum new lot size to 9,000 square feet and thus allow for greater sensitivity to the erosion and run-off issues associated with the steep slopes of the Palisades." The Master Plan has more specific environmental recommendations to protect the Palisades' steep slopes requiring "preservation of steeply sloped areas of 25 percent and greater by strict adherence to the criteria established in the 'Staff Guidelines for the Protection of Slopes and Stream Valleys'." These guidelines were written to minimize the erosion and stream degradation that occurs when development occurs on steep slopes.

In Staff's opinion, the Brooke Park preliminary plan substantially conforms to the Bethesda-Chevy Chase master plan with regards to land use and zoning recommendations, however, the site conditions do pose challenges for meeting the goals for minimizing the impacts of grading and runoff. The proposed subdivision creates a lot that must be served by a newly configured roadway for the Maryland Avenue cul-de-sac which requires grading on a small portion of steep slopes (25% or greater) and grading to accommodate a house on proposed lot 12, where slopes approach 15%. Therefore, development on the Subject Property would need to include sufficient sediment and erosion control.

### **Forest Conservation/Tree Save**

The Applicant was conditionally granted an exemption from submitting a forest conservation plan when the building permit was issued for the house that would be on proposed lot 11. Exemption #42008062E was confirmed on October 8, 2007 (with a condition requiring a tree save plan). The submitted exemption plan showed an existing house to be removed and a new house to be built in the same location (fronting Brookes Lane). The Applicant, however,

demolished and then re-constructed the home without submitting or receiving approval of the required Tree Save Plan, constituting a violation. The ultimate limits of disturbance (LOD) used for the construction activity far exceeded the LOD shown on the conditionally approved exemption. Photographs and site visits have confirmed that a sediment control fence had been trenched immediately upslope of the 26" ash (tree #1). A retaining wall with substantial fill has been constructed very near the same tree. The Sediment control fence was later removed and reset (also with trenching) in close proximity to the 36" Siberian elm (tree #2). A layer of fill has been placed approximately 1 to 3 feet deep on the subject property throughout the Critical root zones of trees #1 and 2 in addition to the offsite 52" maple (tree #3). The LOD for the work encompassed approximately 80% of the site (the conditionally approved exemption showed approximately 40% disturbance to the site, with work located away from the larger trees). The proposed development of the site will include the previously undisturbed areas, causing nearly 100% disturbance to the Subject Property.

The violation of the previously approved exemption became apparent to staff when the subject application was filed. A determination was made at that time, to address the impacts to existing trees, and any necessary mitigation/replacement, as part of this application. The arborist report and recently submitted tree save plan, pictured on the following page, reflect that the 26" ash tree has been resilient and is not yet showing signs of stress. However, the 36" elm is currently

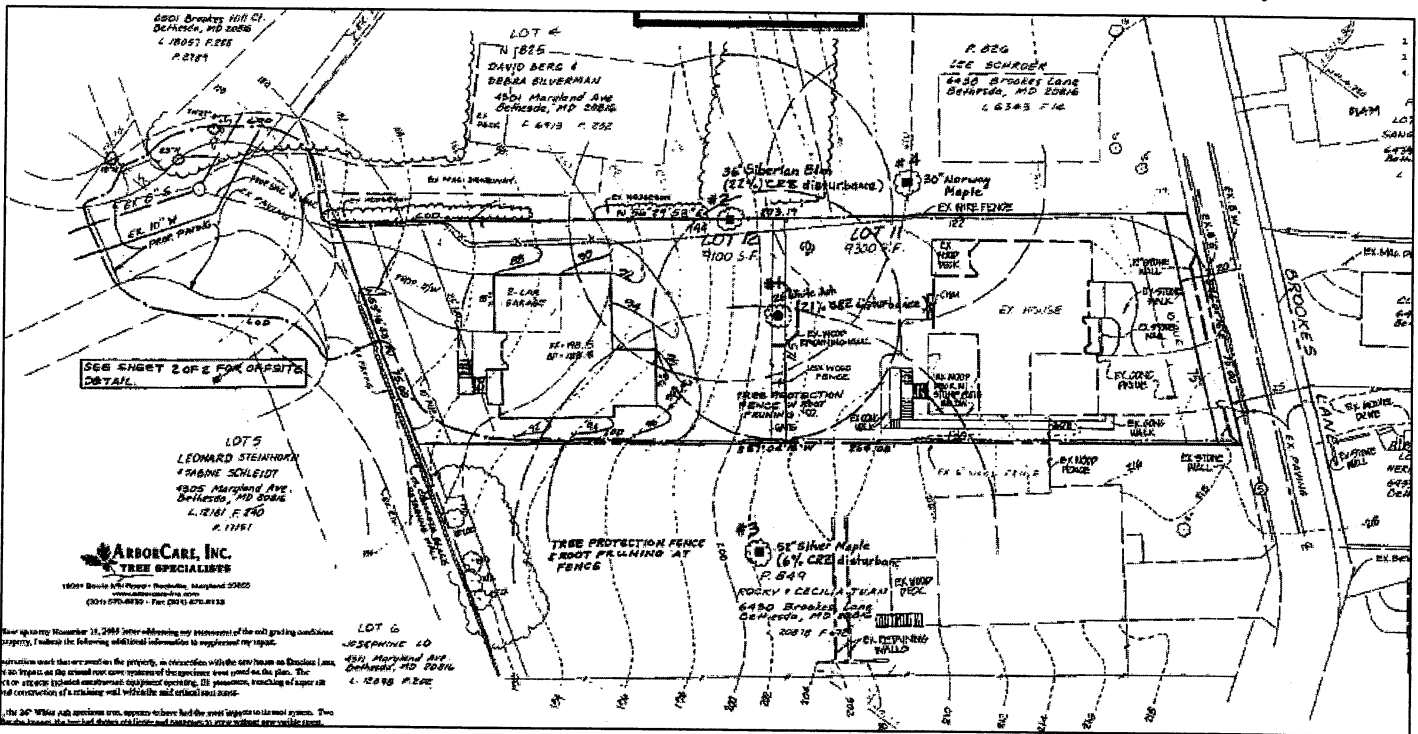


Exhibit E: Tree Save Plan

showing die back in its canopy. The arborist has recommend treatments and further monitoring and assessment of the declining elm tree. Based on the recommendations of the arborist, Environmental Planning staff is prepared to approve a tree save plan that would include conditions for replacement of trees if the measures taken to save the trees are not successful.



A few pockets of steep slopes occur south of the property within and along the Maryland Avenue right-of-way. The areas of steep slopes are a result of manmade grading and earthwork associated with previous roadway construction. The slopes affected by the proposed roadway reconstruction presently have a variety of stabilizing cover such as manicured lawn, landscape, or stands of minor trees. As aforementioned, the Bethesda-Chevy Chase master plan recommends preservation of steeply sloped areas of 25 percent and greater by strict adherence to the criteria established in the 'Staff Guidelines for the Protection of Slopes and Stream Valleys', and on page 6 is a recommendation that "In general, clearing or grading on slopes in excess of 25 percent is strongly discouraged. However, development of these areas may be approved on a case-by case basis where the developer can demonstrate that safety, County road standards, storm drainage/stormwater management, erosion and sediment control, engineering, design, and planning issues are satisfactorily addressed." Environmental Planning staff does not believe the manmade areas of steep slopes affected by the proposed cul-de-sac significantly contribute to the character defining the Palisades. The slope areas are of short durations and are not associated with wooded bluffs, river vistas, or large stands of mature trees. Environmental Planning staff believes the environmental concerns can be appropriately addressed and would recommend approval with conditions of the proposed tree save plan. If the Planning Board recommends the preliminary plan application proceed for approval, mitigation for the violation will be required as part of any future approval process.

### **Environmental Guidelines**

There are no specific environmentally sensitive areas requiring additional protection on the Subject Property. As a result, the environmental guidelines do not apply to this site.

### **Public Facilities**

#### **Roads and Transportation Facilities**

The proposed lots do not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the application is not subject to Local Area Transportation Review. The application was submitted for review prior to Policy Area Mobility Review requirements, which are, therefore, not applicable. Brookes Lane is a tertiary residential street where 50 feet of right-of-way is required. Along the property frontage of proposed lot 11, 25 feet of dedication from the centerline of Brookes Lane is shown to accommodate the necessary right-of-way. A sidewalk along the Brookes Lane frontage of lot 11 is required. The Applicant has requested a waiver (Attachment A) from the Planning Board that would allow a payment into the DOT sidewalk fund in lieu of constructing the sidewalk, however, according to the County Code, this waiver may be granted at the discretion of the Department of Permitting Services as part of their review of the right-of-way permit, not the Planning Board.

Maryland Avenue is also a tertiary residential street where 50 feet of right-of-way is required. Maryland Avenue was originally extended along the site frontage as part of the 1987 subdivision south of the Property. This subdivision established 13.8 feet of dedication in anticipation of a 27-foot wide, reduced-width, tertiary street extending in the future. In 1990, however, the zoning classification of the area changed from R-60 to R-90 which significantly limits the potential number of lots that might be created on the anticipated extension and, therefore, calls into question whether a public street is needed to serve these lots. After considering this question as

part of the review of this application, MNCPPC Transportation Planning Staff, MCDOT and MCFRS have determined that extension of the public road is not necessary. In their opinion, the proposed lot, and any others that might be sought in the future, can be adequately served by a private driveway. And, instead of recommending dedication of the other half of a reduced-width tertiary roadway, they are requiring construction of an adequate turnaround that will terminate the public portion of Maryland Avenue and safely accommodate the circulation of emergency and service vehicles. The Applicant has provided this termination by proposing construction of a cul-de-sac with a substandard 50-foot wide bulb and subsequent right-of-way dedication tangent to the bulb.

#### Other Public Facilities and Services

The existing house on proposed lot 11 is served by public water and sewer and any new dwelling on proposed lot 12 could also be served by WSSC for both water and sewer. The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles to maneuver once a cul-de-sac is constructed for Maryland Avenue. Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The application is subject to a school facilities payment because schools are operating over-capacity at the middle school level in the Whitman school cluster in which the Subject Property is located.

#### Community Correspondence and Concerns

The Applicant notified adjacent and confronting property owners and applicable citizens associations of the preliminary plan submission and re-noticed these parties when a revised plan was submitted to MNCPPC. Staff has received numerous letters in opposition to the application and one letter of support, included in Attachment D. The letter of support was sent by Mr. Clifford Cunningham, a resident on Brookes Lane, who expressed his opinion that homes should be located in closer proximity to jobs, and that those opposing the subdivision are living in homes that other people did not likely want built 15 years ago. A summary of the concerns of other community residents as expressed to Staff in writing is included below:

- 1) Subdivisions of this nature will further environmental degradation of the area, particularly via runoff to Little Falls Branch, one of the county's most polluted streams.

**Staff/Agency response:** A stormwater management concept was approved by the Department of Permitting Services on June 4, 2008. The concept consists of on-site water quality control and recharge via roof top and non-roof top disconnect. An engineered sediment control plan will be required prior to any construction on the site or for construction of the cul-de-sac. The measures required by DPS are meant to control water quality as it leaves the site.

- 2) The application is adverse to the intentions of Bethesda-Chevy Chase master plan because it will increase density in the form of 2 nonconforming lots, and construction of the cul-de-sac will increase the area of impervious surfaces, setting a precedent of widespread applicability.

**Staff/Agency response:** Staff has outlined in the Discussion of Issues section on page 4 of this report that the master plan goals are not fully achieved by the proposed subdivision.

- 3) The application violates the Zoning Code and Subdivision Regulations. Proper measurement of width is the shortest distance between 2 points which is used to measure the width of streets. Proposed lot 12 would not have enough square feet for a buildable lot if dedication for Maryland Ave is required as it was for preliminary plan #11987128. The existing house on proposed lot 11 fails to meet side yard requirements.

**Staff/Agency response:** The Department of Permitting Services has found that lot width can be measured parallel to the right-of-way dedication line, or tangent to the cul-de-sac. As a result, the proposed widths meet the Zoning Code requirement of 75 feet in the R-90 zone. Staff does find that the application fails to comply with Sections 50-29(a)(1) and 50-2(a) of the Subdivision Regulations.

- 4) Preliminary plan #11987128 extended Maryland Ave to guide orderly development in the area and protect the property rights of a series of parcels fronting on Brookes Lane so that these property owners could combine and subdivide rear portions of their land.

**Staff/Agency response:** As previously discussed, redevelopment of existing parcels along an extension of Maryland Avenue may have been a feasible option when the area surrounding the Subject Property was zoned R-60, but the rezoning to R-90 that occurred as part of the last Master Plan has severely limited these opportunities. In Staff's opinion, creation of only one or two lots may now be possible through combining the parcels. Given these circumstances, the extension of Maryland Avenue becomes infeasible for both economic reasons and due to the space limitation for its proper termination that have been previously discussed.

- 5) A cul-de-sac in this location will be unsafe because additional runoff from proposed lot 12 will exacerbate icy conditions and there will be too many driveways converging at the bulb of the cul-de-sac. Access to driveways will be challenging and dangerous during construction of the cul-de-sac, and the cul-de-sac will ultimately worsen erosion because trees, bushes, and critical areas of grass will be eliminated. A cul-de-sac in this location will be harmful to property values by making driveways from it extremely steep and by creating strange property lines that will be difficult to maintain.

**Staff/Agency response:** MCDOT, MCFRS, and MNCPPC Transportation Planning Staff have found that a cul-de-sac in this location is a safe means for termination of Maryland Avenue. Automobile and emergency and services vehicles will be able to maneuver more easily than if the road was left in its current state. Curb and gutter construction will more adequately capture stormwater runoff than the present open section roadway without swales. Driveways, however, may be steeper at their entrances as a result of previously man-made slopes.

## **CONCLUSION**

In conclusion, Staff recommends that the Planning Board deny the Brooke Park preliminary plan application. Staff finds the preliminary plan fails to comply with all of the applicable sections of Chapter 50, the Subdivision Regulations. The proposed size, width and orientation for lot 12 is not appropriate for the location of this subdivision per Section 50-29(a)(1) and the preliminary plan application does not promote harmonious development of the district as stipulated in Section 50-2(a). Staff finds the preliminary plan does meet the development standards of Chapter 59, the Zoning Ordinance, for R-90 lots; albeit, through an unusual lot configuration. The preliminary plan substantially conforms with the recommendations in the Bethesda-Chevy Chase master plan. Environmental requirements can be satisfied, but if the Board should choose to approve the plan, mitigation for the Tree Save Plan violation as a result of previous construction on the Property must be provided by the Applicant. If the Board disagrees with Staff's overall recommendation for denial of this application, Staff will bring this and other recommended conditions for an approval, back to the Board for the next available public hearing.

## **Appendices**

Appendix A – Applicant Justification Statement

Appendix B – Basis for Opposition

Appendix C – Agency Correspondence

Appendix D – Citizen Correspondence

Table 1: Preliminary Plan Data Table and Checklist

<b>Plan Name: Brooke Park</b>				
<b>Plan Number: 120080190</b>				
<b>Zoning: R-90</b>				
<b># of Lots: 2</b>				
<b># of Outlots: 0</b>				
<b>Dev. Type: Standard, Residential</b>				
<b>PLAN DATA</b>	<b>Zoning Ordinance Development Standard</b>	<b>Proposed for Approval by the Preliminary Plan</b>	<b>Verified</b>	<b>Date</b>
Minimum Lot Area	9,000 sq. ft.	9,071 sq. ft. is min. proposed	EG	7/16/10
Lot Width	75 ft.	75 ft. is min. proposed	EG	7/16/10
Lot Frontage	25 ft.	52 ft. is min. proposed	EG	7/16/10
Setbacks				
Front	30 ft. Min.	Must meet minimum <sup>1</sup>	EG	7/16/10
Side	8 ft. Min./25 ft. total	Must meet minimum <sup>1</sup>	EG	7/16/10
Rear	25 ft. Min.	Must meet minimum <sup>1</sup>	EG	7/16/10
Height	35 ft. Max.	May not exceed maximum <sup>1</sup>	EG	7/16/10
Max Resid'l d.u. or Comm'l s.f. per Zoning	2 dwelling units	2 dwelling units	EG	7/16/10
Lot Coverage	30%	23%	EG	7/16/10
Site Plan Req'd?	No		EG	7/16/10
<b>FINDINGS</b>				
<i>SUBDIVISION</i>				
Lot frontage on Public Street		Yes	EG	7/16/10
Road dedication and frontage improvements		Yes	Agency letter	4/21/08
Environmental Guidelines		N/a	Staff memo	7/12/10
Forest Conservation		Exempt	Staff memo	7/12/10
Master Plan Compliance		Yes	Staff memo	7/12/10
Other (i.e., parks, historic preservation)				
<i>ADEQUATE PUBLIC FACILITIES</i>				
Stormwater Management		Yes	Agency letter	6/4/08
Water and Sewer (wssc)		Yes	Agency comments	12/17/07
10-yr Water and Sewer Plan Compliance		Yes	Agency comments	12/17/07
Well and Septic		N/a	EG	7/16/10
Local Area Traffic Review		N/a	Staff memo	12/17/07
Policy Area Mobility Review		N/a	Staff memo	12/17/07
Transportation Management Agreement		No	Staff memo	12/17/07
School Cluster in Moratorium?		No	EG	7/16/10
School Facilities Payment		Yes	EG	7/16/10
Fire and Rescue		Yes	Agency letter	3/21/08
Other (i.e., schools)				

<sup>1</sup> As determined by MCDPS at the time of building permit.

**APPENDIX A:**  
**APPLICANT JUSTIFICATION**  
**STATEMENT**

# MILES & STOCKBRIDGE P.C.

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

**Rebecca D. Walker**  
301-517-4830  
rwalker@milesstockbridge.com

September 24, 2009

Cathy Conlon, Supervisor  
Subdivision Review  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Erin Grayson  
Subdivision Review  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Brooke Park Subdivision- 6434 Brookes Lane, Bethesda, Maryland  
Preliminary Plan Application No. 120080190  
Proposed Lots 11 and 12

Dear Cathy and Erin:

Pursuant to your request, we are submitting the following justification for the above referenced preliminary plan of subdivision application for the property currently known as Parcel 850 on Brookes Lane in Bethesda. As you know, this property lies within the boundaries of the Bethesda-Chevy Chase Master Plan and the existing zoning is R-90. Parcel 850 is a "through" parcel with frontage on two public roads. It contains 19,285 square feet. The application proposes to subdivide the existing through parcel into two single family lots each fronting on separate streets.

The proposed "Lot 11" fronts on Brookes Lane and is currently improved with an existing single-family dwelling. We are proposing to create a second lot, which will front on Maryland Avenue, and a new single-family dwelling on proposed "Lot 12". Lot 11 is proposed to be 9,117

Client Documents:4843-7838-5668v1|19478-000000|9/16/2009

11 N. Washington Street, Suite 700, Rockville, MD 20850 • 301.762.1600 • Fax: 301.762.0363 • [www.milesstockbridge.com](http://www.milesstockbridge.com)

Baltimore, MD • Cambridge, MD • Columbia, MD • Easton, MD • Frederick, MD • McLean, VA • Towson, MD

square feet and Lot 12 will be 9,071 square feet. Both meet the requisite 9,000 square foot minimum lot size in the R90 zone.

The proposed subdivision is an original subdivision to be reviewed under section 50-35 of the Montgomery County Code. The subdivision, as proposed, meets all applicable dimensional requirements specified in the Code. Specifically, the minimum lot area, lot width<sup>1</sup> - both at the building restriction line and the street, the setbacks, and lot coverage all comply with the R-90 Zone standards.

Further, the proposed lot design meets the criteria specified in Section 50-29(a) of the County Code. The lot size, width, shape, and orientation are appropriate for the location of the subdivision. Although not required to delineate a "neighborhood" and conduct a detailed analysis for compatibility purposes, as one would do in a resubdivision application, we did conduct a similar review with a focus on the "appropriate for the location of the subdivision" portion of section 50-29(a). In reviewing the delineated neighborhood, we looked to properties that immediately surround the Subject Property, which included record lots in both the Brookes Hill and Brooke Park Subdivisions. Many of the properties in the surrounding neighborhood have irregular angled street alignments, similar buildable areas, sizes and shapes as the proposed lots. Notably, many of the surrounding subdivisions were developed when the land was zoned R-60<sup>2</sup>.

The Bethesda Chevy Chase Master Plan does not specifically mention the Subject Property, but does give general guidance and recommendations to retain the medium density, residential character of the area. Additionally, particular attention is paid to environmental matters in this planning area, the subdivision of the Subject Property into two single frontage lots will not impede the recommendations in the master plan. The applicant has submitted a forest conservation exemption request that was approved by the environmental planning division, and a tree save plan has also been submitted.

The proposed subdivision is compliant with the master plan recommendations. Further, the proposed subdivision will be served by public facilities that are adequate to support and service the area of the proposed subdivision.

Finally, proposed Lot 11 will continue to have access from Brookes Lane and proposed Lot 12 will have access from Maryland Avenue. The preliminary plan provides for the requisite dedications along both Maryland Avenue and Brookes Lane to facilitate any future improvements. Per the DRC Committee comments, and follow up discussions with the Department of Transportation, the applicant has complied with the request by the Department of

---

<sup>1</sup> M-NCPPC Staff questioned the calculation of the lot width associated with proposed Lot 12. Correspondence from the Department of Permitting Services has been forwarded to MNCPPC Staff; a copy has also been included herewith, indicating that preliminary plan complies with the 75 foot width requirement at the front building line.

<sup>2</sup> The 1990 Bethesda-Chevy Chase Master Plan recommended rezoning of the property to the R-90 zone which was instituted through a comprehensive map amendment following the adoption of the master plan.



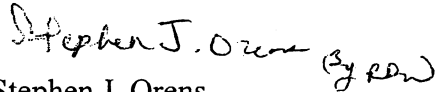
Transportation to design a cul-de-sac at the termination of Maryland Avenue, and that plan has been approved by the Department.

The only waiver associated with this project is a request for a sidewalk waiver along the Brookes Lane frontage. A four (4) foot sidewalk is required by Code. The Applicant is requesting that the Planning Board grant a waiver conditional on a payment into the DPWT sidewalk CIP project in lieu of construction. The character of the neighborhood and the lack of existing sidewalks and insufficient opportunities for dedication from adjoining owners justify the requested waiver.

We ask that you review the application as well as this justification and schedule the application for a hearing as soon as the Board's schedule permits.

As always, if we can provide any additional information, please do not hesitate to contact us.

Sincerely,

 Stephen J. Orens (by EDW)

Stephen J. Orens



Rebecca D. Walker

cc: Chan Shin  
Dean Packard, P.E.

# MILES & STOCKBRIDGE P.C.

RECEIVED  
DEC 1 2008  
DIV. OF CASEWORK MGMT

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

Rebecca D. Walker  
301-517-4830  
rwalker@milesstockbridge.com

November 26, 2008

Susan Scala-Demby, Zoning Manager  
Department of Permitting Services  
255 Rockville Pike, 2<sup>nd</sup> Floor  
Rockville, Maryland 20850

Robin Ferro, Plan Review  
Department of Permitting Services  
255 Rockville Pike, 2<sup>nd</sup> Floor  
Rockville, Maryland 20850

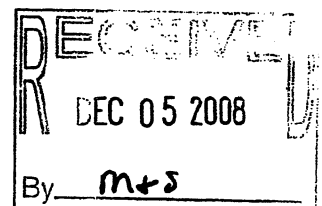
Re: Brooke Park Subdivision  
Parcel 850/R90 Zone  
Preliminary Plan No. 120080190- Proposed Lots 11 and 12.

Dear Susan and Robin:

Thank you for taking the time to meet with us earlier this week to discuss the above referenced property. As we discussed, our client has submitted an application to the Maryland-National Capital Park and Planning Commission (M-NCPPC) seeking to subdivide the existing 19, 285 square foot parcel into two recorded lots.

During the development process a question arose from M-NCPPC as to the width of proposed Lot 12 at the front building line. The Zoning Ordinance defines a building line as "A line, parallel to a lot line, creating an area into which a structure must not project, except as provided in article 59-B of this chapter." See 59-A-2.1. Pursuant to 59-C-1.322 of the Zoning Ordinance, seventy-five (75) feet of width is required in the R90 zone. The preliminary plan, as currently depicted, complies with the 75 foot width requirement, thereby meeting the Zoning Ordinance standard.

Client Documents:4820-2915-6611v1|19478-000000|11/25/2008

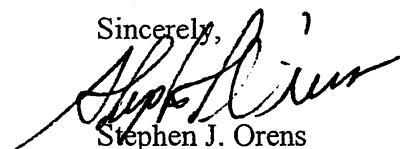


11 N. Washington Street, Suite 700, Rockville, MD 20850 • 301.762.1600 • Fax: 301.762.0363 • [www.milesstockbridge.com](http://www.milesstockbridge.com)

Baltimore, MD • Cambridge, MD • Columbia, MD • Easton, MD • Frederick, MD • McLean, VA • Towson, MD

Please evidence your confirmation that the width of proposed Lot 12 is adequate at the front building line, pursuant to 59-C-1.322 of the Zoning Ordinance, by counter-signing this letter for transmittal to M-NCPPC.

Sincerely,

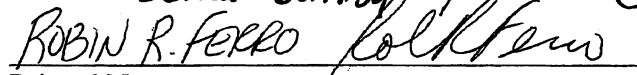
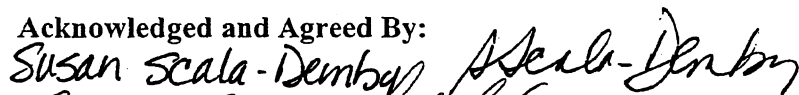


Stephen J. Orens



Rebecca D. Walker

Acknowledged and Agreed By:



Printed Name:

Department of Permitting Services

12-3-08

12-03-08

Date

**APPENDIX B:**  
**BASIS FOR OPPOSITION**

LAW OFFICES OF

**KNOPF & BROWN**  
401 EAST JEFFERSON STREET  
SUITE 206  
ROCKVILLE, MARYLAND 20850  
(301) 545-6100

FAX: (301) 545-6103

E-MAIL [KNOPF@KNOPF-BROWN.COM](mailto:KNOPF@KNOPF-BROWN.COM)

WRITER'S DIRECT DIAL

(301) 545-6104

NORMAN G. KNOPF

July 16, 2010

Via Email

c/o [Erin.Grayson@mncppc-mc.org](mailto:Erin.Grayson@mncppc-mc.org)

Françoise M. Carrier, Esq., Chair  
and Members of the Board  
Maryland National Capital Park  
& Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: **Brooke Park Subdivision Preliminary Plan No. 120080190**

Dear Chair Carrier and Members of the Board:

This letter is submitted in opposition to the proposed subdivision on behalf of the following adjoining, confronting and neighboring property owners: David Berg, Debra Silverman, Jack and Talat Diamond, Marsha and Michael Edwards, Mary Kearney, Peter and Josephine Lo, Katherine Scott, Leonard Steinhorn and Sabin A. Schleidt. *The reasons for the opposition outlined below are set forth in more detail in my letter of January 25, 2010 to Erin Grayson and will be explained further at the hearing on July 29, 2010.* A copy of that letter is attached for your convenience.

1. **Inconsistent with Master Plan.**

- a. The land is located in the Palisades portion of the BCC Master Plan. The Master Plan down-zoned this area from R-60 to R-90 to reduce density to preserve the "unique environmental features of steeply wooded slopes and vistas and the perpetuation of open space character established in the area." BCC MP, Section 3.41.
- b. This parcel is already substantially developed as the applicant demolished a smaller house, and built a very large non-conforming house, relying upon "grandfathering" provisions, that does not comply with current setback requirements.

- c. By misinterpreting the law, applicant now seeks to “shoehorn” in a second lot, with neither lot meeting the Zoning Code and Subdivision Code requirements.

**2. Lots Fail To Meet Zoning Code Width Requirements.**

- a. The R-90 zone requires a lot width of 75’ at the front building line. §59-C-1.322(b).
- b. The width of the proposed lots are less than 72’.
- c. The applicant argues the width is 75’ if measured **diagonally** between the side lot lines. As any mathematician or dictionary will advise, width is a **horizontal** measurement taken at right angles to the length. The Zoning Code defines “width” for street purposes as “the distance between street lines measured at right angles to the center lane of the street.” §59-A-2.1. Similarly, the Subdivision Code defines “street width” as the “shortest distance between street lines, measured between the edges of pavement or curb faces as appropriate.” §50-1. Only television screen width is measured diagonally!
- d. To permit width measurement based upon a diagonal line is to effectively gut the R-90 requirement for lots being 75’ in width and establishes a precedent without limitation as to how narrow a lot could be created irrespective of the zone’s requirement for a specific width as commonly understood.
- e. It is particularly improper here to play such games with width measurements so as to permit the creation of another lot where the Master Plan down-zoned the area with the express purpose of lessening development and preserving open space.
- f. We are aware that on lots that involved curved front property lines (frontage on a cul-de-sac or fronting on the existing curved street) in which DPS permitted the measurement of lot width measurement not at right angles to the side lot line due to the curvature of the front lot line. This Board has not had to take a position as to the correctness of what DPS has permitted. In any event, Lot 12 does not involve a cul-de-sac or a curved front property line. Rather, it involves a contrived diagonal front property line so as to allow the applicant to argue width should not be measured at right angles to the side property lines.
- g. The applicant fails to meet the requirement of 75’ in width at the building line even under the applicant’s own system of measuring. A building line is the line beyond which a structure may not project. §59-A-2.1. For R-90 lots, the

building may not be closer than 30' to the front lot line. §59-C-1.323. The applicant, even measuring diagonally, had to go 34' back from the front lot line to reach this width.

3. **Lots Fail To Meet Subdivision Code Requirements.**

- a. Section 50-29(a)(1) confers upon the Board the *exclusive* obligation to determine that the "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...."
- b. The parcel is regularly shaped. However, the applicant seeks to create a lot very irregularly shaped to permit it to argue it meets the Zoning Code requirement of width.
- c. The applicant takes the existing 4-sided parcel, with the front side having adequate frontage and road access, conjures up a contrived dedication of a portion of the property for road access to create a 5-sided lot, solely to make an argument that the 75' width requirement is met.
- d. The fifth side of the lot, which is the front yard, is 25' in width which is less than the frontage of all surrounding lots.
- e. The proposed lot sizes are lower in square footage than almost all of the surrounding lots.
- f. The widths of the lots as discussed above are less than the Zoning Code requires.
- g. The contrived 5-sided shape of Lot 12 is unusual and results in an unusual orientation of Lot 12, with its artificially created front lot line, which would be difficult for a house to face.
- h. Applicant's extraordinary Code interpretation and lot design in an effort to squeeze in another lot in an area which the Master Plan down-zoned are obviously inconsistent with the Master Plan.

4. **Contrary to Board's 1987 Decision**

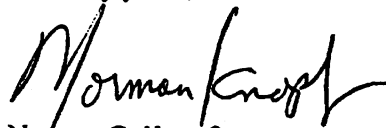
- a. In 1987 this Board approved a subdivision to the south of the property involved here, Preliminary Plan 1-87128, requiring applicant to dedicate land for a future extension of Maryland Avenue. "This future extension should serve unrecorded

parcels to the north and east of the subject property that could be subdivided to create new lots if street frontage were available. The Board concluded that not requiring dedication now would almost certainly foreclose the possibility of future street extension and thereby deprive adjoining owners of the opportunity to subdivide." (Opinion, p.1).

- b. Plat 17151, implementing that Preliminary Plan, dedicates for the right-of-way, a width of 14', or ½ of the 28' right-of-way the Board wished to create. It was envisioned that the owners of parcels to the north, including the property involved in the instant subdivision, would dedicate the other half of the right-of-way. (7/10/87 Tr., at p.9, Board Hearing).
- c. The instant proposed subdivision fails to dedicate land for this extension of Maryland Avenue and therefore precludes the extension envisioned. The applicant substitutes construction of the substandard modified cul-de-sac to provide access to the applicant's property and is opposed by all adjoining property owners.
- d. By not extending Maryland Avenue as required by the Board's 1987 opinion, the proposed pending subdivision deprives the parcels to the east of road access to permit the opportunity to subdivide.
- e. While these parcels are not all large enough to be subdivided individually into two lots, the parcels could be combined and subdivided to form additional lots that meet current zoning requirements. It would be particularly easy to create more lots if the applicant's measurement of width "diagonally" is permitted.

For the above stated reasons, to be further explained at the public hearing, we request that the preliminary plan of subdivision be denied.

Sincerely yours,



Norman G. Knopf

On behalf of adjoining and confronting property owners



LAW OFFICES OF

**KNOPF & BROWN**

401 EAST JEFFERSON STREET  
SUITE 206  
ROCKVILLE, MARYLAND 20850  
(301) 545-6100

FAX: (301) 545-6103

E-MAIL [KNOPF@KNOPF-BROWN.COM](mailto:KNOPF@KNOPF-BROWN.COM)

WRITER'S DIRECT DIAL

(301) 545-6104

NORMAN G. KNOPF

January 25, 2010

Via Email and Regular Mail

[Erin.Grayson@mncppc-mc.org](mailto:Erin.Grayson@mncppc-mc.org)

Erin Grayson, Planner  
Subdivision Review Section  
Montgomery County Planning Department  
Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: **Preliminary Plan 120080190 Brooke Park**

Dear Erin:

This law firm represents the following neighboring property owners in opposition to this proposed preliminary plan of subdivision:

David Berg and Debra Silverman  
4301 Maryland Avenue

Jack and Talat Diamond  
4307 Maryland Avenue

Marsha and Michael Edwards  
6505 Brookes Hill Court

Mary Kearney  
6500 Brookes Hill Court

Peter and Josephine Lo  
4311 Maryland Avenue

Catherine F. Scott  
4309 Maryland Avenue

Leonard Steinhorn and Sabine Schleidt  
4305 Maryland Avenue

*We request that this letter be made part of the record before the Planning Board.*

1. The Proposed Subdivision Is Contrary To The Planning Board's 1987 Decision. The Planning Board approved a subdivision to the south of Parcel 850 in an opinion dated September 23, 1987. In that opinion, the Planning Board required that applicant to dedicate land for a possible future extension of Maryland Avenue, for use should any of the parcels to the north of it be subdivided:

In approving this plan the Planning Board determined that it is appropriate to require street dedication that provides the possibility for the future extension of Maryland Avenue to the north and east of the subject property. This future extension would serve unrecorded parcels to the north and east of the subject property that could be subdivided to create new lots if street frontage were available. The Board concluded that not requiring dedication now would almost certainly foreclose the possibility of a future street extension and thereby deprive adjoining owners the opportunity to subdivide. [Opinion, Preliminary Plan 1-87128.]

The dedication the Board required of the applicant, as shown on Plat 17151, is approximately 14' wide, or half of the 28' right-of-way the Board wanted to make possible. It was envisioned that the owners of the parcels to the north, should they ever subdivide, would dedicate the other half of the right-of-way. Transcript of Sept. 10, 1987.

The proposed subdivision of parcel P850 not only neglects to provide for this extension of Maryland Avenue, but it also (a) precludes it, by not dedicating land where an extension would be located, and (b) instead includes construction of a substandard modified cul-de-sac to provide access to the applicant's property that is opposed by all adjoining property owners. By not extending Maryland Avenue, as required by the Board's 1987 Opinion, the proposed pending subdivision would deprive the parcels to the east of P850 of any road access and thus the opportunity to subdivide. Although there has been a downzoning in this area from R-60 to R-90 since the 1987 decision, these parcels may still be subdivided into additional lots. While these parcels are not all large enough to be subdivided individually into two lots, these parcels could subdivide and combine to form additional lots that met current zoning requirements. This possibility of combining was expressly mentioned by Commissioner Floreen in 1987. 9/10/87 Tr. at 31. As Chairman Christeller summarized before the Board's vote requiring dedication of half of the right of way for the future road, "Either it's dedicated or we have concluded that those other lots can't be subdivided ever." 9/10/87 Tr. at 38.

2. The Proposed Subdivision Is Inconsistent With The Bethesda-Chevy Chase Master Plan. The Planning Board is obligated to take into account master plan recommendations when approving subdivisions, Montgomery County Code § 50-29(a)(1), and the approved plan must substantially conform to the master plan. § 50-35(l). This parcel is in the Palisades, which has been given special protections by the B-CC Master Plan, because of its environmental features. The B-CC Master Plan at § 3.41 states, "This Plan recommends preservation of the Potomac Palisades' unique

environmental features of steeply wooded slopes and vistas and the perpetuation of the open space character established in the area." To preserve the open space and environmental features, the B-CC Master Plan required less density of development by downzoning the area from R-60 to R-90.

This subdivision greatly increases the density of development, contrary to the intent and purpose of the B-CC Master Plan. As described below, the proposed lots do not meet the normal development standards for width for R-90 lots. By unusual interpretations of the Zoning Code standards, the applicant seeks to "shoehorn" two lots onto property that does not meet normal R-90 standards. It is particularly inappropriate, in this area where the Master Plan seeks to lessen density, to go to extraordinary (and we believe unlawful) measures to create another buildable lot. Further compounding the density of development on this property is the fact that there is a large existing house, newly built by the applicant, which does not meet the R-90 setback standards but was permitted under a "grandfathering" provision. In addition, the proposed modified cul-de-sac would be built at the sacrifice of three mature trees.

3. The Proposed Subdivision Does Not Meet The R-90 Development Standards. Neither proposed Lot 11 nor Lot 12 meets the width requirements of § 59-C-1.322(b), which requires a lot width of 75' at the front building line of an R-90 lot. Properly measured, as the distance between the side lot lines, these lots are less than 72' wide, as can be seen from the length of the line separating the two lots on the plan. The plan shows a 75' lot width for Lot 11 only by measuring along a line that is diagonal to the side lot lines and to lot length. This is contrary to the normal meaning of width, which is taught in school (including in Montgomery County) and as defined in the dictionary: "the horizontal measurement taken at right angles to the length." Merriam-Webster Online. Legally, the meaning of lot width is consistent with the normal meaning: "To determine if a lot conforms to the minimum lot width requirement, the width must be measured from side to side at right angles to length." 83 Am. Jur. 2d § 132 (2003). The applicant's measurement is also contrary to how street width is defined in § 59-A-2.1, which is the "distance between street lines, measured at right angles to the centerline of the street." See also § 50-1, defining street width as the "shortest distance between street lines, measured between the edges of pavement or curb faces, as appropriate." Only television screen width is measured diagonally.

We have been advised that there may be precedent for the Planning Board measuring lot width parallel to a front lot line which is not perpendicular to lot length, in preliminary plan of subdivision 1-05035 in Chevy Chase Section 8 in 2005, and in preliminary plan of subdivision 120070390 in Bannockburn in 2007. However, a review of these opinions reveals that the Board has not adopted such a policy on width measurement and that the measurements were made under very different circumstances than are present in this proposal. In the Chevy Chase case, the Board, at the pre-

preliminary plan stage, “expressly *declined* to act upon the Applicant’s request that the Board consider and approve...the minimum lot width at the front building line,” which was not perpendicular to length. Revised Opinion, Pre-Preliminary Plan 7-04061, 7/29/2004. In the subdivision stage approval, the Board did not expressly address this issue, but merely noted that the Board had “given full consideration to the recommendations...of the applicable public agencies,” one of which was DPS. 1/28/05 Opinion in 1-05035 at 2. In the Bannockburn case, the staff report stated that “for width, the way the measurement is taken...does concern staff, but MCDPS has confirmed that the measurement is being taken correctly.” 4/20/2007 Staff Report at 10. The Board’s Resolution cited DPS’ confirmation of the measurement method without stating a Board opinion on it. 9/26/2007 Resolution at 5. In each of these instances, the width was drawn in relation to a curved, rather than a straight, front property line, which is present here. Furthermore, unlike the present application, both of these cases did not involve an area down-zoned with particular master plan provisions to limit density. As discussed, § 50-29(a)(1) requires that the Board create lots of an appropriate width, taking into account the applicable master plan.

This plan achieves a 75’ lot width for Lot 12 only by creating a contrived dedication of a triangular area to create a new front lot line, and finding adequate “width” at a place 34’ back from the front lot line. The line used for this measurement is not only diagonal to the side lot lines and the length of the lot, but it is also not at the front building line. A building line is defined in § 59-A-2.1, as a “line, parallel to a lot line, creating an area into which a structure must not project.” Under this definition, the front building line is 30’ back from the front lot line. § 59-C-1.323. This dedication is not necessary to achieve road frontage for this property, as a sufficient length of the parcel already adjoins dedicated land. This parcel is not irregularly shaped, but the applicant is seeking to create an irregular shape, in order to meet Zoning Code requirements. To allow the applicant to begin with an area that only has four sides, one of which has frontage, and then dedicate property in order to create a 5-sided lot which (a) has different frontage, and (b) might have its width measured in a way that permits it to argue it meets the Zoning Code, is to allow the applicant to manipulate the subdivision process. It would establish a precedent of wide application, allowing creation of lots that do not meet the width requirements contemplated by the Zoning Code development standards.


4. The Proposed Subdivision Does Not Meet The Subdivision Requirements. Section 50-29(a)(1) confers upon the Board the exclusive obligation to determine that the “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 proposed lots’ sizes are unusual, in that their square footage is lower than that of almost all of the surrounding lots. (We note that a few smaller lots were created when the zoning was R-60.) In addition, the proposed 25’ frontage for Lot 12 is less than

Erin Grayson, Planner  
Subdivision Review Section  
Montgomery County Planning Department  
January 25, 2010  
Page 5

that of surrounding lots. The proposed lots' widths are smaller than those of other lots in the area, and are inconsistent with the Master Plan's concern with environmental protection in this area. The unnecessarily 5-sided shape of Lot 12 is unusual. The orientation of Lot 12, with its artificially-created front lot line, which a house cannot face, is unusual.

We thank you for your consideration of our comments. If you have any questions, please call.

Sincerely yours,



Norman G. Knopf

**APPENDIX C:**  
**AGENCY CORRESPONDENCE**



---

---

## FIRE MARSHAL COMMENTS

---

---

**DATE:** MARCH 21, 2008  
**TO:** DEAN PACKARD; PG ASSOCIATES, INC  
**FROM:** PATSY WARNICK  
**RE:** BROOKE PARK 120080190

---

### PLAN APPROVED

---

1. Review based only upon information contained on the plan submitted **3-20-08**. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

Cc: MC Department of Permitting Services  
Design Professional

Revised: 12/16/2005



## DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION

Isiah Leggett  
County Executive

Arthur Holmes, Jr.  
Director

April 21, 2008

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

RE: Preliminary Plan #1-20080190  
Brooke Park

Dear Ms. Conlon:

We have completed our review of the preliminary plan revised on 04/16/08. This plan was reviewed by the Development Review Committee at its meeting on December 17, 2007. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Right of way dedication for Brookes Lane and Maryland Ave as determined by Transportation Planning Section of MNCPPC.
2. Construct a modified turnaround at the terminus of Maryland Ave as shown on the above preliminary plan. Details of this turnaround will be finalized at the permit stage by MCDPS.
3. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
4. Prior to approval of the record plat by the Department of Permitting Services (DPS), the applicant's consultant will need to obtain the approval of grade establishments for new public streets from DPS.
5. The sight distances study has been accepted. A copy of the accepted Sight Distance Evaluation certification forms are enclosed for your information and reference.
6. 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 along the site frontages according to associated DPWT standard street section unless the applicant is able to obtain a waiver from the appropriate government agency.

**Division of Operations**

---

101 Orchard Ridge Drive, 2nd Floor • Gaithersburg, Maryland 20878  
240-777-6000 • 240-777-6013 TTY • 240-777-6030 FAX  
[www.montgomerycountymd.gov](http://www.montgomerycountymd.gov)



Ms. Catherine Conlon  
Preliminary Plan No. 1-20080190  
Date April 21, 2008  
Page 2

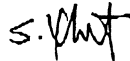
7. A Public Improvements Easement may be necessary along the site frontages, in order to accommodate the required sidewalk construction. Prior to submission of the record plat, the applicant's consultant will need to determine if there is sufficient right of way to permit this sidewalk construction. If not, the applicant will need to either dedicate additional right of way or execute a Declaration of Public Improvements Easement document. That document is to be recorded in the Land Records of Montgomery County, with the liber and folio referenced on the record plat. Unless otherwise noted, the Public Improvements Easement is to be a minimum width of ten (10) feet with the overlapping Public Utilities Easement being no less than twenty (20) feet wide.
8. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
9. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Fred Lees of our Traffic Control and Lighting Engineering Team at (240) 777-6000 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
10. Trees in the County rights of way - species and spacing to be in accordance with the applicable DPWT standards. A tree planting permit is required from the Maryland Department of Natural Resources, State Forester's Office [(301) 854-6060], to plant trees within the public right of way.
11. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:
  - A. Street grading, paving, curbs and gutters, sidewalks and handicap ramps, storm drainage and appurtenances, and street trees along Maryland Ave turnaround as mentioned in item 2 above.
  - B. Improve Brookes Lane along the site frontage from the existing pavement centerline to secondary residential roadway standards.
  - C. We reviewed storm drain capacity/ impact analysis submitted by the applicant's engineer. At this point we are not convinced that the proposed design will not result in future problem with existing downstream system. This issue should be addressed with applicant's engineer and MCDPS during the review of construction drawings.  
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.
  - D. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.
  - E. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the Traffic Engineering and Operations Section.

Ms. Catherine Conlon  
Preliminary Plan No. 1-20080190  
Date April 21, 2008  
Page 3

- F. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.

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](mailto:sam.farhadi@montgomerycountymd.gov) or (240) 777-6000.

Sincerely,

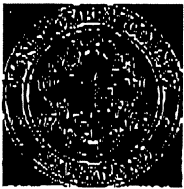


Sam Farhadi, P.E.  
Development Review Group  
Traffic Engineering and Operations Section  
Division of Operations

m:/subdivision/farhas01/preliminary plans/ 1-20080190, Brooke Park.doc

Enclosures (2)

cc: Hanna & Chung Shin  
Dean Packard, PG Associates  
Joseph Y. Cheung; DPS RWPPR  
Sarah Navid; DPS RWPPR  
Henry Emery; DPS RWPPR  
Shahriar Etemadi; M-NCPPC TP  
Gregory Leck, DPWT TEOS  
Preliminary Plan Folder  
Preliminary Plans Note Book



**MONTGOMERY COUNTY, MARYLAND**  
DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION  
DEPARTMENT OF PERMITTING SERVICES

**SIGHT DISTANCE EVALUATION**

Facility/Subdivision Name: Brooke Park

Preliminary Plan Number: 1-20080190

Street Name: Brookes Lane

Master Plan Road Classification: Secondary Tertiary

Posted Speed Limit: 25 mph

Street/Driveway #1 (Driveway)

Street/Driveway #2 ( \_\_\_\_\_ )

Sight Distance (feet) OK?  
Right 310 ✓  
Left 460' ✓

Sight Distance (feet) OK?  
Right \_\_\_\_\_  
Left \_\_\_\_\_

Comments: \_\_\_\_\_

Comments: \_\_\_\_\_

**GUIDELINES**

Classification or Posted Speed (use higher value)	Required Sight Distance in Each Direction*
Tertiary - 25 mph	150'
Secondary - 30	200'
Business - 30	200'
Primary - 35	250'
Arterial - 40	325'
(45)	400'
Major - 50	475'
(55)	550'

Sight distance is measured from an eye height of 3.5' at a point on the centerline of the driveway (or side street) 6' back from the face of curb or edge of traveled way of the intersecting roadway where a point 2.75' above the road surface is visible. (See attached drawing)

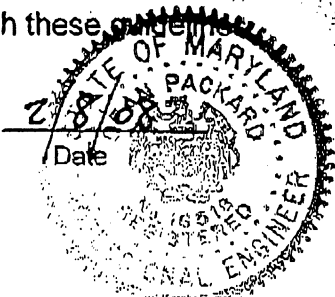
\*Source: AASHTO

**ENGINEER/ SURVEYOR CERTIFICATE**

I hereby certify that this information is accurate and was collected in accordance with these guidelines.

[Signature]

Signature  
16518  
PLS/P.E. MD Reg. No.



Montgomery County Review:

Approved

Disapproved:

By: SF

Date: 4/21/08



**MONTGOMERY COUNTY, MARYLAND**  
DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION  
DEPARTMENT OF PERMITTING SERVICES

**SIGHT DISTANCE EVALUATION**

Facility/Subdivision Name: Brooke Park Preliminary Plan Number: 1-20080190  
Maryland Avenue

Street Name: \_\_\_\_\_ Master Plan Road Classification: Tertiary

Posted Speed Limit: 25 mph

Street/Driveway #1 ( Driveway ) Street/Driveway #2 ( \_\_\_\_\_ )

Sight Distance (feet)	OK?	Sight Distance (feet)	OK?
Right _____	_____	Right _____	_____
Left <u>75'</u>	<u>✓</u>	Left _____	_____

Comments: \_\_\_\_\_  
Left - 75' to end of road  
Right - 300' to intx w/ McArthur Blvd

**GUIDELINES**

Classification or Posted Speed (use higher value)	Required Sight Distance in Each Direction*
Tertiary - 25 mph	150'
Secondary - 30	200'
Business - 30	200'
Primary - 35	250'
Arterial - 40	325'
(45)	400'
Major - 50	475'
(55)	550'

Sight distance is measured from an eye height of 3.5' at a point on the centerline of the driveway (or side street) 6' back from the face of curb or edge of traveled way of the intersecting roadway where a point 2.75' above the road surface is visible. (See attached drawing)

\*Source: AASHTO

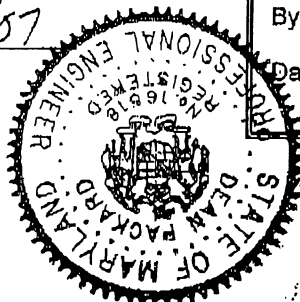
**ENGINEER/ SURVEYOR CERTIFICATE**

I hereby certify that this information is accurate and was collected in accordance with these guidelines.

[Signature]

Signature  
16518

10/11/07  
Date



Montgomery County Review:

Approved

Disapproved:

By: SF

Date: 4/21/08



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

June 4, 2008

Carla Reid Joyner  
Director

Mr. Dean Packard  
PG Associates, Inc.  
16220 Frederick Road  
Gaithersburg, MD 20877

Re: Stormwater Management **CONCEPT** Request  
for Brooke Park  
Preliminary Plan #: 1-08019  
SM File #: 232478  
Tract Size/Zone: 0.44 Ac./R-90  
Total Concept Area: 0.44 Ac.  
Lots/Block: 11 & 12  
Parcel(s): 850  
Watershed: Little Falls Branch

Dear Mr. Packard:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site water quality control and recharge via roof top and non-roof top disconnect. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.

This list may not be all-inclusive and may change based on available information at the time.

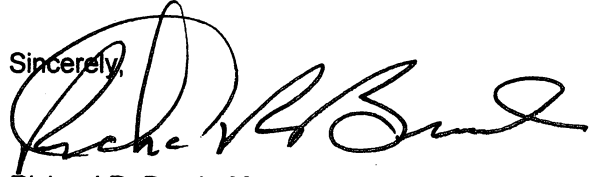
Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is not required.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this

office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact David Kuykendall at 240-777-6332.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard R. Brush". The signature is fluid and cursive, with a large initial "R" and "B".

Richard R. Brush, Manager  
Water Resources Section  
Division of Land Development Services

RRB:dm CN232478 Brooke Park.DWK

cc: C. Conlon  
S. Federline  
SM File # 232478

QN - Onsite; Acres: 0.44  
QL - Onsite; Acres: 0.44  
Recharge is provided

**APPENDIX D:**  
**CITIZEN CORRESPONDENCE**

## Grayson, Erin

---

**From:** David Berg [bergdavidr@gmail.com]  
**Sent:** Friday, July 16, 2010 1:56 PM  
**To:** Grayson, Erin  
**Cc:** 'Norman G. Knopf'; 'Silverman, Debra (NIH/NCI) [E]'  
**Subject:** Brooke Park subdivision preliminary plan #120080190

**Importance:** High

Email to Erin Grayson regarding Brooke Park subdivision preliminary plan #120080190

Dear Ms. Grayson:

The purpose of this email is to supplement the discussion in the letters from Norman Knopf to you and Chairman Carrier of the issue of intensification of development proposed in the subject preliminary plan. I request that the email be made part of the record before the Planning Board.

The subject property for nearly 90 years was the site of the one-story, 1,200 square foot Seaton family house. The current developer razed that house recently and, using the grandfather provision, erected a ~6,200 square foot, 2-story house under R-60 standards that contains an undeclared accessory apartment in the walk-out basement. The house has a footprint of more than 2,000 square feet, not including a paved patio and a large driveway. Thus, already the property has five times the square footage of living space of the old house, and two units, rather than one, and several times the impermeable surface.

If MNCPPC authorizes a second lot and the developer constructs a comparably sized house on it, as she has told neighbors she intends to do, it is likely that the total constructed space on the Seaton parcel will exceed 12,000 square feet – ten times the old structure – and that the combined footprints of the two houses will reach nearly 5,000 square feet, up from 1,200 square feet. In addition, there will be two paved driveways, rather than just one. There could be as many as four separate living units.

And, as Mr. Knopf noted in his letters, the new house stands only a small distance (about 8 feet from the property lines on both sides), rather than a total of 25 feet, as would be required under R-90 zoning, and is shoehorned onto a site less than 75 feet in width..

The BCC Master Plan proscribes intense development in the Master Plan area. This property, which lies within the Potomac River Valley area addressed by the Master Plan, should not be subject to such intensification. Surely, replacing one small, single-family home with two large, non-conforming houses containing at least 3—or even 4—units and built on non-conforming lots, would constitute extreme intensification.

Per the Master Plan, the Zoning Code and Subdivision Code requirements should be applied stringently in this situation.

I hope that you also will consider these likely impacts making your recommendations to the Planning Board. Thank you.

David Berg  
301-229-1399

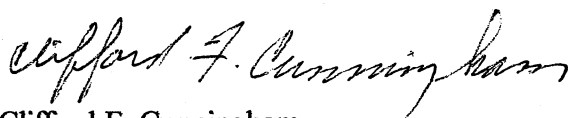


Re: Preliminary Plan/Brook Park  
Plan # 120080190 Current Zoning - R90  
No. Proposed Lots/ Area Included - 2  
Geographical Location - Brooks Lane, Bethesda, Md. 20816

To Whom It May Concern:

I have no problem with an additional home on this site. In fact it is the wise thing to do. Homes should be where jobs are located, thereby eliminating a drives from Frederick or farther north. That is what would be best for the environment.

A few selfish neighbors will disapprove I am sure. Some may be living in houses that are only 15 years old that others did not want built, but then Native Americans did not want change either.



Clifford F. Cunningham  
6435 brookes Lane  
Bethesda, Md. 20816  
301-320-0636



## Conlon, Catherine

---

**From:** David Berg [davidberg969@yahoo.com]  
**Sent:** Tuesday, April 29, 2008 1:02 PM  
**To:** Conlon, Catherine  
**Subject:** Fwd: RE: Brookmont and Maryland Ave culde sac

Ms. Conlon --

Thanks for speaking with me a few minutes ago. I look forward to further dialog with you about the sub-division proposal for 6434 Brookes Lane.

Here is a re-send of my email this morning about the twists and turns in the situation. I didn't realize that your email address uses "Catherine," rather than "Cathy."

David

*David Berg <davidberg969@yahoo.com>* wrote:  
Date: Tue, 29 Apr 2008 09:34:40 -0700 (PDT)  
From: David Berg <davidberg969@yahoo.com>  
Subject: Fwd: RE: Brookmont and Maryland Ave culde sac  
To: cathy.conlon@mncppc-mc.org

Ms. Conlon --

I recently called on behalf of the Civic League of Brookmont and Vicinity and left a voicemail for you at your 301-495-4542 number. Please see the emails below, which concern the proposed sub-division of 6434 Brookes Lane (application #120080190).

Our attorney, Norman Knopf, who has been following this matter since the developer first proposed it, indicated to us that the Development Review Committee several months ago raised a number of significant concerns or issues with the proposed sub-division plan. Among the most important of the issues raised is that the property lacks sufficient dimensions to be legally sub-divided! We understood from our periodic contacts with Park and Planning that the developer has taken no further action and that there has been no further progress. Rumors in the neighborhood suggested otherwise.

Then, recently *and with no notice to the community*, someone staked out a *cul de sac* at the end of Maryland Avenue, which was proposed by the developer to be the point of access for the sub-division. And, now we see that the proposed sub-division is "currently being considered by MNCPPC as part of preliminary plan approval." And, "DPWT wants a cul-de-sac installed and (your) staff felt perhaps a reduce width is more appropriate."

We have made it clear to Park and Planning that the idea of this sub-division and, should sub-division somehow occur, a *cul de sac* are anathema to the neighborhood. The sub-division proposal runs contrary to zoning requirements, as the Planning Review Division previously concluded, and the *cul de sac* is contrary to Park and Planning's own determination more than a decade ago that Maryland Avenue *must be extended* to service any additional development in the area. (This determination was made in conjunction with a previous subdivision, and land was deeded to the county for that purpose at the time.)

Unless the property owner proposing sub-division can somehow remedy the non-conforming dimensions of the property, sub-division should be impossible, and no extension of Maryland Avenue (or, alternatively, no *cul de*

sac would be needed. Again, the neighborhood is strongly opposed to any sub-division of property in the area that does not conform to the zoning rules and Master Plan, as this one does.

Doesn't the developer need to address the non-conforming dimensions of the property before the terminus of Maryland Avenue should be on the table? And, shouldn't the neighborhood be consulted before roadwork is considered and staked out? *Perhaps most importantly, if Park and Planning is again working on this sub-division proposal, isn't it necessary that the neighborhood and neighbors be notified?*

I would appreciate a reply as soon as possible. My phone number is 301-229-1399. Or, you can contact Norman Knopf of Knopf-Brown at 301-545-6100. Thanks in advance --

David

**Keith Roberts** <[keith.roberts.gm@gmail.com](mailto:keith.roberts.gm@gmail.com)> wrote:  
From: "Keith Roberts" <[keith.roberts.gm@gmail.com](mailto:keith.roberts.gm@gmail.com)>  
To: "Williams, Karen" <[Karen.Williams@montgomerycountymd.gov](mailto:Karen.Williams@montgomerycountymd.gov)>  
CC: "David Berg" <[davidberg969@yahoo.com](mailto:davidberg969@yahoo.com)>, "Lenny Steinhorn" <[lsteinh@american.edu](mailto:lsteinh@american.edu)>  
Subject: RE: Brookmont and Maryland Ave culde sac  
Date: Mon, 28 Apr 2008 22:05:28 -0400

Karen,

Very interesting. Didn't your last email say that DPWT claimed they had no idea what this is about?

As for the "preliminary plan approval", the neighborhood has been fighting it tooth-and-nail. The developer purchased a existing home with a steeply sloped back yard, tore down the small existing house on the only flat piece of ground, put up a McMansion, and is now attempting to subdivide the property so that what was the backyard will be filled with another McMansion that has a driveway opening onto the cul-de-sac. The proposed sub-parcel has the necessary square footage, but not the legally requisite frontage.

This isn't a matter of "we don't want it," it's a matter of, "it's illegal, why are you even considering this?"

We will give Ms. Conlon, and our attorney, Norman Knopf, a call first thing in the morning.

Thanks for the information.

Best regards,  
Keith Roberts  
(240) 447-2881 - mobile

---

**From:** Williams, Karen [<mailto:Karen.Williams@montgomerycountymd.gov>]  
**Sent:** Monday, April 28, 2008 5:09 PM  
**To:** Keith Roberts  
**Subject:** Brookmont and Maryland Ave culde sac

I wanted to share with you the following information from DPS about who is in charge on this. I recommend giving Ms. Conlon a call. If you would like my help following up with her, I would be happy to do so.

The plan is currently being considered by MNCPPC as part of preliminary plan approval. we provide some inputs to DPWT but they are the lead agency for preliminary plan review. DPWT wants a cul-de-sac installed and my staff felt perhaps a reduce width is more appropriate. The notification to the neighbors is MNCPPC's requirement and they should contact Cathy Conlon at 301-495-4585 on that. As for the impact of the propose cul-de-sac, they can voiced their opposition thru. MNCPPC to DPWT.

Thanks

Karen B. Williams  
Policy Analyst to Councilmember Roger Berliner  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850  
240-777-7826  
karen.williams@montgomerycountymd.gov

---

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)

---

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)

## Grayson, Erin

---

**From:** David Berg [davidberg969@yahoo.com]  
**Sent:** Monday, May 05, 2008 4:43 PM  
**To:** Grayson, Erin  
**Subject:** Fwd: re 6434 Brookes Lane

2nd try

*David Berg* <davidberg969@yahoo.com> wrote:  
Date: Mon, 5 May 2008 08:34:50 -0700 (PDT)  
From: David Berg <davidberg969@yahoo.com>  
Subject: re 6434 Brookes Lane  
To: [Erin.Grayson@mncppc-mc.org](mailto:Erin.Grayson@mncppc-mc.org)

Ms. Grayson --

The neighbors of 6434 Brookes Lane have renewed concerns about sub-division application #120080189, which involves this property. I understand that there is a new revised site plan which shows a cul-de-sac at the end of Maryland Avenue. We oppose this cul-de-sac, which is highly problematic in many respects. But we are most confused and concerned that there is this flurry of activity when the decision of the DRC determined that the property could not be sub-divided.

I would like to visit you as soon as possible this week to discuss this situation and to get a copy of the revised preliminary plan. Would you be able to meet tomorrow? Please advise.

David

---

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)

---

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)

## Grayson, Erin

---

**From:** David Berg [davidberg969@yahoo.com]  
**Sent:** Monday, May 05, 2008 5:00 PM  
**To:** Grayson, Erin  
**Subject:** Fwd: Seaton Property and Cul de Sac Update

forwarding...

*Leonard Steinhorn* <[lsteinh@american.edu](mailto:lsteinh@american.edu)> wrote:

Subject: Seaton Property and Cul de Sac Update

From: Leonard Steinhorn <[lsteinh@american.edu](mailto:lsteinh@american.edu)>

To: David Berg <[davidberg969@yahoo.com](mailto:davidberg969@yahoo.com)>,  
[keith.roberts.gm@gmail.com](mailto:keith.roberts.gm@gmail.com),

[josephinelo@verizon.net](mailto:josephinelo@verizon.net)>,  
[peterlo@verizon.net](mailto:peterlo@verizon.net),

Jock Diamond <[jockdiamond@aol.com](mailto:jockdiamond@aol.com)>,  
[scottneuner@starpower.net](mailto:scottneuner@starpower.net),

[talatdiamond@aol.com](mailto:talatdiamond@aol.com),

[schleidotimdi@aol.com](mailto:schleidotimdi@aol.com),

[debra.silverman@mail.nih.gov](mailto:debra.silverman@mail.nih.gov)>

[debra.silverman@mail.nih.gov](mailto:debra.silverman@mail.nih.gov)>

[debra.silverman@mail.nih.gov](mailto:debra.silverman@mail.nih.gov)>

[debra.silverman@mail.nih.gov](mailto:debra.silverman@mail.nih.gov)>

Date: Fri, 2 May 2008 10:40:27 -0400

Hi All,

I was out walking Schnoodle and happened upon a conversation on our driveway with two Montgomery County officials who were looking into what they said was a little buzz in their office about a cul de sac on the north part of Maryland Avenue, which is our collective area. The two are Ralph Wolfe, Permitting Services Inspector and Right-of-Way Inspection, and Lou Machetto, Workforce Leader in the Department of Public Works and Transportation Highway Maintenance Section. Both are very nice and smart about these matters.

Bottom line:

1. They had no prior knowledge of anyone putting down stakes from DPWT. If anything, they think it could be coming from Capital Improvements, which to them is a stretch because Capital Improvements usually does major projects like Woodmont or Montrose. But if it is Capital Improvements, they have their own process for approving things that permitting is pretty much excluded from. One reason the developer may have gone to Capital Improvements is because Wolfe last year told the developer last year that the only way he saw her getting access to the second house was through our driveway, which would require our permission. And thus she may be trying to circumvent the process. But still, they can't imagine Capital Improvements getting involved in this. And anyway, they would have to alert us, and usually Capital Improvements shies away if the community is opposed to a project (because Capital Improvements is supposed to help the entire community).

2. From their perspective, and especially if they have anything to do with it, a cul de sac is not going to happen. Besides the grading issues, which are serious, they see no reason to disrupt a neighborhood and create problems for those of us living there. They also see construction problems with the various poles and trees and hills, and they worry about what would happen to access for those of us who need the driveway for emergency services during construction. There's also a problem with cutting into our hill, because they are not allowed to create a hill situation that will be difficult to mow and maintain. Both of them say they would oppose it. And there's a higher up (I don't know where) named Joe Chung who apparently opposes it as well.

## Grayson, Erin

---

**From:** Lenny Steinhorn [lsteinh@american.edu]  
**Sent:** Monday, August 04, 2008 12:26 PM  
**To:** Grayson, Erin  
**Cc:** Lenny Steinhorn; David Berg; Jack Diamond; scottneuner@starpower.net; Josephine Lo; Peter Y. Lo; Talat Diamond; Sabine Schleidt; debra silverman; Keith Roberts; Keith Roberts  
**Subject:** Neighborhood Petition to Oppose Proposed Subdivision Plan Number 120080190 & Proposed Maryland Avenue Cul-de-Sac  
**Attachments:** petition objecting to cul-de-sac 8-08.pdf

Dear Ms. Grayson,

On behalf of all six families in our immediate neighborhood, I am forwarding you a petition expressing our strong opposition to the proposed subdivision plan number 120080190 and the proposed cul-de-sac that developer Hanna Shin is trying to impose on our community.

I've copied all the families on this e-mail, so if you need to get in touch with us regarding any developments, I would appreciate it if you would contact all of us.

You and I had spoken a few weeks ago about the cul-de-sac and subdivision proposals, and in that conversation I voiced the serious concerns of our neighborhood and our determination to oppose these proposals. This petition focuses primarily on the damage the proposed cul-de-sac will do to our community; at a future point, we will be sending additional documentation laying out our concerns with the proposed subdivision.

The petition, which includes photographs, is being sent as a PDF document.

Thank you for your consideration.

Leonard Steinhorn  
4305 Maryland Avenue  
Bethesda, MD 20816-2515  
H: 301-229-1784

Writing on behalf of:  
David Berg & Debra Silverman, 4301 Maryland Avenue, Bethesda, MD 20816 Leonard Steinhorn & Sabine Schleidt, 4305 Maryland Avenue, Bethesda, MD 20816

Jack & Talat Diamond, 4307 Maryland Avenue, Bethesda, MD 20816 Catherine Scott & Tillman Neuner, 4309 Maryland Avenue, Bethesda, MD 20816 Peter & Josephine Lo, 4311 Maryland Avenue, Bethesda, MD 20816 Keith Roberts & Diane Epperson, 6501 Brookes Hill Court, Bethesda, MD 20816

August 4, 2008

TO: Ms. Erin Grayson  
Planner, Subdivision Review Section  
Montgomery County Planning Department

FR: The Six Families Directly Affected by Proposed Subdivision Plan Number 120080190 & Proposed Maryland Avenue Cul-de-Sac:

- ✓ David Berg & Debra Silverman, 4301 Maryland Avenue, Bethesda, MD 20816
- ✓ Leonard Steinhorn & Sabine Schleidt, 4305 Maryland Avenue, Bethesda, MD 20816
- ✓ Jack & Talat Diamond, 4307 Maryland Avenue, Bethesda, MD 20816
- ✓ Catherine Scott & Tillman Neuner, 4309 Maryland Avenue, Bethesda, MD 20816
- ✓ Peter & Josephine Lo, 4311 Maryland Avenue, Bethesda, MD 20816
- ✓ Keith Roberts & Diane Epperson, 6501 Brookes Hill Court, Bethesda, MD 20816

CC: Councilmember Roger Berliner

RE: Neighborhood Petition to Oppose Proposed Subdivision Plan Number 120080190 & Proposed Maryland Avenue Cul-de-Sac

We are the six families directly affected by proposed subdivision plan number 120080190 and the proposed Maryland Avenue cul-de-sac that developer Hanna Shin is trying to impose on our neighborhood, and we are writing to express our strong, united, and categorical opposition to both the subdivision and the cul-de-sac.

For the purposes of this petition, we will focus our concerns on the proposed cul-de-sac, which we believe to be unsafe, disruptive, harmful to our property values, destructive to the character of our neighborhood, and potentially damaging to our surrounding properties. We also have serious concerns about the subdivision proposal itself – indeed without the proposed subdivision, there wouldn't even be talk about a cul-de-sac – but we will address them in a future correspondence. Let us be clear: both the cul-de-sac and subdivision proposals are seriously flawed, and we will do whatever we can to oppose them.

The cul-de-sac proposal itself is extremely troubling, and we will detail our problems with it below, but we are also deeply upset with the process by which the cul-de-sac has received preliminary approval from DPWT – not a single one of us was alerted, no signs were posted, no one consulted us or sought out our opinion, and in effect the developer was using the process and DPWT to make an end run around the neighbors in an attempt to facilitate approval for a project that all of us deeply and justifiably oppose. We are all taxpayers; we have lived here for many years; we shovel the snow, mow the lawn, drive up and down our steep little road, and know that our end of Maryland Avenue has reached its safety capacity in terms of cars, traffic, and driveways; and now we are faced with a developer who, in her determination to make a large profit from a property she bought without doing her homework, is threatening to disrupt a good, cohesive, and livable community with an unnecessary and unsafe cul-de-sac, all to serve her speculative purpose of constructing a second house on that property. For us there's



## Petition Opposing Cul-de-Sac, Page 2

a great irony in the official use of the word “improvement” to describe the cul-de-sac – this is no “improvement” for us, and in fact it risks diminishing our community and the homes we live in.

What follows are specific concerns we have with the proposed cul-de-sac. But please know that the whole of our opposition is far greater than the sum of these concerns in large part because the cul-de-sac threatens to change the character of our neighborhood, all to serve a single developer’s interests.

**1. The cul-de-sac is unsafe.** Each of us has lived here a minimum of 15 years, and we know our street quite well. The driveways serving 4301 Maryland Avenue and 4305, 4307, 4309, and 4311 Maryland Avenue are both extremely steep, as you can see from the accompanying photographs (we measured the incline of both driveways, and they’re a steep 15-20 degrees depending on where we measured). Now let’s say the cul-de-sac is designed to be flat or generally flat, requiring retaining walls to support the surrounding hill; that’s as it should be, as any turning circle or cul-de-sac ought to be flat or generally flat, not on a steep grade. But the only way that could work is for the current two driveways to be made steeper than they already are, because the incline somehow has to be accommodated. In foul weather, that would make both of these driveways almost completely impassable.

Nor is that the only foul weather problem that the cul-de-sac would create. Already in the winter, we have a problem with ice accumulation down Maryland Avenue, which makes for hazardous driving conditions down our driveways and the hill leading to MacArthur Boulevard. With run-off from the proposed subdivision driveway draining down the hill and running right down the cul-de-sac, more water will accumulate on Maryland Avenue, and more ice will build up – there will be no way to avoid it. This situation scares all of us, and we certainly don’t want any of us to end up in an accident.

Of course the county could decide to build the cul-de-sac on the steep hill, which would make no sense – but given the grade of the two driveways, it may be the only way to build it. That scenario would make no difference with the ice problem, which would get worse however the cul-de-sac is built. One thing is clear: by constructing the cul-de-sac, the county would be making our road and ice conditions far more severe than they already are. We certainly are not paying taxes for that.

Whichever way the cul-de-sac is designed – steep or flat – there is another serious problem: the entry point of the proposed new driveway into the cul-de-sac would be *in between* the confluence of the driveway for 4301 Maryland and the common driveway serving the four families living at 4305, 4307, 4309, and 4311 Maryland Avenue. The new driveway would compound the already dangerous situation in which driveways serving five families converge within a matter of several feet, all on a serious slope. Also note that the driveway serving 6501 Brookes Hill Court is only about 20 feet from the driveway serving 4301 Maryland, and the family at 6501 Brookes Hill Court often backs out of their driveway. The increased traffic would jeopardize their safety as well.

There are other safety issues.

By building the cul-de-sac into the hilly common driveway serving four of our houses, the mailboxes for these families will have to be moved, and in all likelihood they will end up perched on the hill

between the cul-de-sac and the beginning of the 4311 property, which will make it quite difficult for all of us – and especially our senior citizens – to get the mail in icy conditions. Similarly, the mailbox for 4301 Maryland Avenue will need to be moved to an equally inconvenient and unsafe location, as its present location – which has not changed for decades – would be paved under the proposal (one of the residents at 4301 Maryland Avenue is a retiree). For all involved, we might slip walking to the mailboxes or getting out of our cars, which themselves would be idling unsafely at an angle because they would be midway up the hill on which our driveways are built, and there's every possibility that they wouldn't gain enough traction on an icy day to make it all the way up the hill.

Few cars now come up our road, but with the cul-de-sac, we may see more traffic and parking, particularly because the new cul-de-sac roadway would give the impression that the driveway to the four houses on the hill is a public street. That would jeopardize the safety of the small children who live here and play on their driveway and property (especially the case with the children at 6501 Brookes Hill Court).

Mowing the lawn at 4305 Maryland Avenue also will be hazardous, particularly if the cul-de-sac is built into the hill and there is no leveled off grass to slow down the momentum of the lawn mower. Imagine if a car is driving up and the person mowing ends up sliding down the hill (it's already hazardous, but currently there's no road abutting the hill). We don't want to see that happen. We also worry about shoveling snow from our driveways, which will now be on a steeper slope; by not ending on a flattened out roadway, the possibility for injury increases.

**2. The cul-de-sac will worsen erosion and eliminate trees.** If the developer's subdivision and cul-de-sac proposals were approved, the resulting new driveway, large new house, and widened street would all significantly increase water run-off and worsen erosion. As is, the large new home that the developer built to replace the one that was torn down has already increased run-off, which our neighborhood now has to deal with every time it rains. Cul-de-sac construction would also eliminate trees, bushes, and critical areas of grass, in one case redirecting water to exactly the same place that one of our homeowners has been working hard to keep from eroding. With the larger houses and all the pavement that would be added to our neighborhood, there would be less soil to absorb rainwater. The result would be far more difficult water management for the current homeowners, and a neighborhood that would have to live with more pavement, less green space, and fewer trees.

For the house at 4301 Maryland Avenue, the cul-de-sac would rip out a dogwood tree and rosebushes that have beautified our neighborhood for three decades and have been essential in the management of water run-off; as is, the homeowners at that property are dealing with a very steep driveway and erosion issues from the slant of the hill leading up to their house, and the cul-de-sac, by increasing run-off and eliminating the dogwood tree and rosebushes, would make things far worse. For the house at 4305 Maryland Avenue, the owner about 13 years ago built a French drain to redirect water run-off that had been eroding soil on the hill next to his current retaining wall, and this solution has worked well; with the cul-de-sac, the French drain could be disrupted, and the very design of the cul-de-sac would direct water to exactly the place that was threatened by erosion. The house at 6501 Brookes Hill Court also faces erosion issues that the cul-de-sac could worsen. For these homeowners, a cul-de-sac might create

major expenses just to keep the erosion problem at its current status, and it could worsen the problem significantly, risking the integrity of their properties. We do not believe that the county should approve an "improvement" that would ultimately worsen erosion, jeopardize our property, diminish the beauty of our neighborhood, and cost us a great deal of money, all to satisfy the profit desires of a single developer.

And there is one other erosion issue worth mentioning: every time there is a rainstorm, mud runs down Maryland Avenue and gathers at the bottom of the street, just as it intersects MacArthur Boulevard. If this mud is not cleaned up rapidly, it creates a hazard for cars that often skid and can't get proper traction turning onto MacArthur Boulevard. We worry that the run-off and mud problem will be worse if a cul-de-sac and new driveway are built onto the hill and there are fewer bushes and less grass to absorb the water and run-off. The result will be more mud and run-off from this new property traveling down Maryland Avenue, creating even more hazardous driving conditions.

**3. Cul-de-sac construction could jeopardize our senior citizens and leave our homes without proper fire or emergency service protection.** If the cul-de-sac were to be built, the actual construction process could limit access to our driveways and homes. We have three elderly citizens – all older than 80 – living up the common driveway, and for them, being unable to drive to their homes and being forced to walk through a road construction site to get their cars could be hazardous and life threatening. It would be especially bad in the icy winter, but even in the hot summer it would create a serious hardship. Moreover, if access to our homes is denied during construction, we run the risk of not gaining access to our cars if, for example, one of us was traveling when construction began and therefore, upon returning, was unable to drive the car out of the garage and down the driveway, which would be under construction. And we worry what would happen if, during construction, a fire truck or ambulance would not be able to make it near one of our houses. Is that type of risk worth it just to satisfy this developer's desires?

**4. Cul-de-sac construction could disrupt Internet, phone and cable service.** A number of our homes are served by cable, phone, and electricity wires that would be seriously disrupted by construction of the cul-de-sac. A few of us conduct tax-generating businesses from our homes, and disruption of this service would create a financial hardship for all involved. These are not numbers that will show up on a developer's financial ledger, yet they are real to all of our families and the county's tax rolls. We are already concerned with the developer's lack of responsiveness to erosion, run-off, and grading issues in building her first house up on the hill (complaints are on record with the county staff in charge of sediment control). We are also concerned that she has failed to maintain her property – cutting the lawn, for example – until complaints came from some of our families (she has cut the grass only twice all year, and that only after complaints and an order from DPWT). And we are troubled by her lack of concern about our neighborhood interests in pursuit of her profits. We are not confident that the developer would be any more responsive in building the cul-de-sac, and thus we fear significant disruption to our lives and the utilities that we pay for and need.

**5. The cul-de-sac would reduce our property values.** All of us believe that the cul-de-sac would diminish the character of our neighborhood, create an odd look to what is now an attractive street, and

potentially reduce our property values. The safety issues alone could seriously threaten property values, as would the steepness of the cul-de-sac and the driveways and also the erosion problem. For the houses at 4301 Maryland Avenue and 6501 Brookes Hill Court, the trees and bushes that would be cut down and paved over will significantly detract from the street appeal of these homes, and by paving over the grass and green space on the current hill to the right of the common driveway, the entire entrance to our little area would become far less attractive. For 4305 Maryland Avenue, a "bulb" cut into a hill would create an odd and bizarre property line, with the curve of the cul-de-sac coming fairly close to the house and a slim "isthmus" of a hill being created between the cul-de-sac and the current retaining wall; indeed in the plans there is no consideration given to the need for a retaining wall that would contain the hill being disrupted by the cul-de-sac, and thus the owners of 4305 Maryland Avenue would end up with a strange looking property that would be extremely difficult to maintain. For the four houses on the common driveway, having a "bulb" that would then lead to a long driveway serving four homes would seem unnatural and odd, considerably detracting from the street appeal of these homes. Given that aesthetics often determine the value of a property, the county's actions would have a deleterious impact on all of our homes.

**6. There is no need for the cul-de-sac.** From a public safety perspective, there really is no need for a cul-de-sac. It would have no meaningful or positive impact on the ability of ambulances or fire trucks to access our properties. The only reason it is being proposed is to help the developer gain access to the property she seeks to subdivide.

**7. The cul-de-sac plan may be illegal.** A cul-de-sac by its very definition means a terminus or end to a road. So if Maryland Avenue were to officially end at the cul-de-sac, then the property at 4311 Maryland Avenue would lose its frontage on Maryland Avenue, potentially making it an illegal property. Moreover, on the cul-de-sac plans submitted by the developer, the property she seeks to subdivide would not have frontage on the proposed cul-de-sac, meaning that hers would be an illegal property as well. We understand that the developer, through sleight of hand, will try to extend the concept of Maryland Avenue beyond the cul-de-sac to serve her frontage interests, but how can the county create a terminus and then say it isn't really a terminus? That would make no sense.

Please know that we are not opposed to safe and legal development. But this new subdivision proposal and its accompanying cul-de-sac plan are neither safe nor legal. It would simply be the imposition of the will of one developer on six innocent families. If the county proceeds with this cul-de-sac, it would create disruptions, erosion, safety concerns, dangerous circumstances, and property problems for the neighbors who have been living here peacefully and paying our taxes. It would certainly not be an "improvement" as we see it. It would be unfortunate if the taxes we pay would go to the approval of a cul-de-sac that ultimately would make our lives worse and cost us significant amounts of money not only maintaining our properties but in terms of the value we all would lose. Why would the county ever consider approving such a thing?

We would be deeply troubled if our local government, Montgomery County, decided to support a developer's misguided proposals at our expense. Please respect the integrity of our homes, our families, and our neighborhood.

## Petition Opposing Cul-de-Sac, Page 6

Photograph Exhibit 1: On the right is the hill where the much of the proposed cul-de-sac would be built. The proposed cul-de-sac would eliminate considerable green space as well as soil that currently absorbs water run-off. Note the French drain in the hill that would be disrupted by the cul-de-sac, thus leaving the homeowners at 4305 Maryland Avenue with serious water management problems. Also note the proposed cul-de-sac's proximity to the home at 4305 Maryland Avenue. On the left is the hill and driveway leading to 4301 Maryland Avenue; the proposed cul-de-sac cut down the dark green dogwood tree and bushes to the right of the driveway and pave over that entire area.



**Petition Opposing Cul-de-Sac, Page 7**

Photograph Exhibit 2: The convergence of the three driveways, from left 6501 Brookes Hill Court, 4301 Maryland Avenue, the common driveway serving 4305, 4307, 4309, 4311 Maryland Avenue. If a new driveway is added between 4301 and the common driveway, driving could be hazardous for all homes involved. Also, note the mailboxes that would have to be moved.



**Petition Opposing Cul-de-Sac, Page 8**

Photograph Exhibit 3: The steep driveway serving 4305, 4307, 4309, 4311 Maryland Avenue. Note that the mailboxes would have to be moved midway up this driveway if the cul-de-sac is built.



## Petition Opposing Cul-de-Sac, Page 9

Photograph Exhibit 4: The steep driveways serving 4301 and 4305, 4307, 4309, and 4311 Maryland Avenue. Note the trees and bushes in the center of the picture that will be removed if the proposed cul-de-sac is built; also note how that area of the hill would be cut away and paved if the proposed cul-de-sac is built. This not only could make the driveway for 4301 Maryland Avenue steeper, but it will remove the beauty and cooling effect of the large dogwood tree and other bushes in the picture, as well as increase run-off.





Photograph Exhibit 5: The view down the steep driveway of 4301 Maryland Avenue. Note the mailbox that would have to be moved midway up the hill as well as the large dogwood tree that is projected to be cut down.



**Petition Opposing Cul-de-Sac, Page 11**

Photograph Exhibit 6: Series of photographs documenting the steep decline down the common driveway serving 4305, 4307, 4309, and 4311 Maryland Avenue.



## Grayson, Erin

---

**From:** David Berg [bergdavidr@gmail.com]  
**Sent:** Friday, February 12, 2010 1:50 PM  
**To:** Grayson, Erin; Conlon, Catherine  
**Cc:** 'Marcia Wagner'  
**Subject:** letter of opposition  
**Attachments:** Civic League letter re 120080190 0211.10.pdf

Dear Erin and Cathy –

Please find attached a letter signed by Marcia Wagner, Treasurer of the Civic League of Brookmont and Vicinity, to Chairman Hanson. The Civic League strongly opposes the proposed subdivision of the property at 6434 Brookes Lane, Bethesda, MD. The case number is 120080190.

We would appreciate your forwarding a copy of the letter to Chairman Hanson, considering the community's opposition when you develop the staff recommendation on this proposal, and including a copy of the letter in the official record.

In addition, we would appreciate being kept informed of the progress of the MNCPPC on this proposal. We would like to see a copy of the staff recommendation, know when the commissioners will consider the proposal in open hearing, and present one or more statements of opposition to the proposal at that hearing. Thank you.

David  
301-229-1399

February 12, 2010

Royce Hanson, Chairman  
Maryland National Capital Park  
& Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: **Proposed Subdivision Plan - 120080190**

Dear Chairman Hanson:

I am writing on behalf of the officers and board members of the Civic League of Brookmont and Vicinity to inform you of our objections to proposed subdivision plan #120080190, which involves 6434 Brookes Lane, Bethesda. The Brookmont Civic League represents more than 200 homes in our community. We believe that you should not approve this subdivision plan for a number of reasons that we explain in detail below. In overview:

- The plan undermines, and is adverse to the intentions of, the Bethesda-Chevy Chase Master Plan, which was approved after significant public debate nearly a decade and a half ago. The Master Plan down-zoned the property which is the subject of the subdivision, as well as the entire area to lessen intensity of development. The proposed subdivision increases density and sets a precedent of widespread applicability.
- The plan appears to violate Zoning Code and Subdivision Code provisions. While we recognize the right of owners to develop their property within the constraints of the law, we believe it is our responsibility, and yours, to oppose development that infringes on the rules and the established character of the neighborhood. The proposal would exceed the limits of the zoning and subdivision rules by creating two new, non-conforming lots.

We believe that the Commission should reject this subdivision proposal and set a beneficial precedent that will ward off such rule-bending proposals in the future.

Several questionable aspects of the proposed subdivision deserve particular scrutiny. They (and our positions on them) are as follows:

1. **Adherence to the Master Plan.** The proposed subdivision is contrary to the BCC Master Plan that was approved in 1990 to protect the character of the Potomac River Valley, which has steep and wooded slopes. The Master Plan area in question extends from the intersection of Sangamore Road and MacArthur Boulevard to the intersection of MacArthur Boulevard and Goldsboro Lane. The plan included a down-zoning in this area from R-60 to R-90 to sustain green and open space, prevent erosion, protect water quality, and preserve the natural appearance of the Valley as much as possible.

The proposed subdivision would increase development density contrary to the intent of the Master Plan by shoehorning two non-conforming buildable lots into one parcel. Further, the proposed subdivision would add a substantial 45' diameter "modified cul-de-sac." This proposed subdivision would increase the area of impervious surface and the expense of destroying three mature trees, increasing water runoff and exacerbating erosion on this hilly parcel and street. In opposing the proposed subdivision and the modified cul-de-sac, our neighborhood strongly supports continued observance of the Master Plan. The Civic League supports opposition expressed by every affected neighbor in a petition that outlines many of the serious issues associated with the modified cul-de-sac; we do not need the modified cul-de-sac and do not want it to be constructed. **A copy of the petition is enclosed.**

2. **Compliance with R-90 zoning.** The two proposed new lots do not comply with R-90 development standards. The parcel, *measured on the perpendicular* to length, is about 71 feet wide on average, so neither lot would be 75 feet wide, as required under R-90 zoning. The proposal to gerrymander the perimeter of the parcel to create a 75-foot lot with, if measured diagonally, is a complete evasion of the letter and intent of the zoning ordinance. The proper measurement of width is the shortest distance between two points, such as is set forth in the Code provisions governing width of streets. If the Commission approves the applicant's interpretation of lot width, it will set a precedent of applications for subdividing parcels that undermines the Master Plan and the intent of the zoning ordinance. The Commission needs to "draw the line" on this attempt to circumvent the zoning regulations. Common sense dictates that a parcel with a 71-foot width cannot be made 75 feet wide by drawing a diagonal line on a plat and that property owners cannot gerrymander the closest point on their property to a street to create a diagonal building restriction line of sufficient length to justify subdivision.

Specifically, with regard to the proposed lot to be served by Maryland Avenue, the lot lacks the required 75 foot width, as this proposed lot is only about 70.5 feet wide. The developer seeks to gain 75 feet of "width" at the building restriction line only with the advantage of an even more egregious "stretch" definition of "width": The diagonal front property line measures 75 feet. But, the developer has questionable frontage and, so, proposes to gerrymander the parcel by dedicating a triangle at the southwestern corner of the property to create a 25 foot distance facing the *proposed* modified cul-de-sac. This lot may not have the required 9,000 square feet, if the

land were dedicated to the continuation of Maryland Avenue, as required by the Commission in its September 23, 1987, decision on an adjoining property, Preliminary Plan 1-87128.

With regard to the proposed lot adjoining Brookes Lane, the developer already has constructed a 6,200 square foot house. The house on this proposed lot fails to meet the side yard requirements for R-90 zoning, and the proposed lot is only about 71 feet wide, when measured correctly.

We also note that it is not clear whether each of the two new lots will be at least 9,000 square feet in size, as the applicant's reported dimensions of the parcel has varied. For example, the rear property line has changed from 76.26 feet in the first filing to 75 feet today. All of the other dimensions have changed, as well, and the fence that has been erected on the line dividing the two proposed lots is located several feet away from where it is shown on the survey in the developer's filing. (While it may seem obvious, since the developer claims that the parcel measures 19,285 square feet, that two 9,000-square-foot lots could be carved out of the parcel, a large dedication must be made along Brookes Lane and another along Maryland Avenue.) The width (measured on the perpendicular) has ranged from 72 feet to 70.5 feet.

3. **Adherence to the Commission's 1987 decision regarding Maryland Avenue.** The Planning Board required in a 1987 decision, Preliminary Plan 1-87128, that any additional development in this immediate area must be serviced by an extension of Maryland Avenue, and in that decision the Commissioners both required dedication of a portion of the land needed for that purpose and planned the route of Maryland Avenue extended. That decision was made in part to guide orderly development in the area, and it protects the property rights of the owners of a series of parcels fronting on Brookes Lane to subdivide the rear portion of their land, including expressly by combining parts of their properties to create buildable lots which would front on and have access to the extension of Maryland Avenue.

The current proposal provides access to the proposed lot by the modified cul-de-sac to be constructed at the end of Maryland Avenue, rather than over the required extension of Maryland Avenue. In addition to requiring the destruction of at least three mature trees, construction of the modified cul-de-sac and a lack of dedication by this application would preclude access for other Brookes Lane property owners so they could not subdivide their land. And, it would change the character of Maryland Avenue adversely. We believe that the Planning Board's decision in the current proposal should be consistent with the 1987 decision with respect to the terminus of Maryland Avenue and access to it.

4. **Rejection of Strained Interpretation/Loophole Approach.** In support of its proposal, the applicant has asserted a very strained interpretation of provisions of the County Code and/or argues loopholes exist which permit it to make an unusual 5-sided lot, very narrow in width, by measuring diagonally, and that does not comply with the Board's decision in the confronting

Royce Hanson, Chairman  
Maryland National Capital Park  
& Planning Commission  
February 11, 2010  
Page 4

subdivision. The Civic League requests the Commission to reject this "whatever it takes to get approval approach." This policy led to a deterioration of the Palisades area.

In entertaining this proposed subdivision, we hope and trust that you will consider and support our strongly held position opposing the proposal.

Sincerely yours,

By: Marcia Wagner

Marcia Wagner, Treasurer

For the Officers and Board of Directors of the  
Civic League of Brookmont and Vicinity, Inc.

**Grayson, Erin**

---

**From:** robert Bragan [rjbragan@verizon.net]  
**Sent:** Thursday, March 11, 2010 9:11 AM  
**To:** Grayson, Erin  
**Cc:** Shafer Steve; Bragan Lucia; schroer.lee@epa.gov; tomwaldvogel@comcast.net; David Berg  
**Subject:** Preliminary Plan 12080190 Brooke Park  
**Attachments:** Civic League letter re 120080190 0211.10.pdf; Ltr to Park and Planning re pre plan 120080190 dated 1 25 10.pdf

Mr. Grayson:

As a nearby landowner I'm writing to oppose subdivision of Parcel P850 to front on an extended Maryland Avenue for several reasons.

Having lived on Brookes Lane for more than 30 years, I've observed the transformation of a forested, low impervious area neighborhood into a much higher density one despite a down-zoning during that period. The County should be finding ways to reforest this area within the Potomac Gorge rather than disturb it further with outsized houses often occupied by one or two residents.

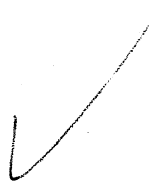
Our neighborhood's runoff pours into Little Falls Branch, one of the County's most polluted streams, which discharges into the Potomac River just upstream of the Corps of Engineers emergency water supply pumping station and so into the top of the Potomac estuary. Government funds have begun to be spent to restore Little Falls Branch, a task that will take decades and be very expensive to accomplish. Impervious area is the primary causal factor for the stream's degradation so going to extraordinary measures to add additional roofs, driveways, and mowed grass would be counterproductive.

Having worked for more than 20 years in environmental education, research, and planning roles in Federal, state, regional, and county agencies I know this issue will be debated on technicalities. It nevertheless will likely be decided on more holistic terms in the minds of those charged with making a final decision. Those decision makers need to see it in the larger context of where this neighborhood and County is headed as it continues to change. They need to plan for the needs of current residents, future generations, and natural systems and residents who all have a stake in how each square foot of our neighborhood's environment is managed.

The attached letters from the Brookmont Civic League and other neighborhood residents provide many additional arguments for why this subdivision should be voted down with which I generally agree. I'm forwarding my letter to other nearby residents as you should receive comments from all of those most directly affected. Please forward our comments to the Planning Board as they review this case.

Sincerely,

Robert J. Bragan  
6431 Brookes Lane  
Bethesda, MD 20816



PS: On a lighter note, while writing this missive a song sparrow outside my window was pleading his case through song for territory and mating rites. While an exotic species, he is nevertheless a neighborhood resident. He was interrupted temporarily by someone's car



alarm. Loss of habitat due to additional development would be a much more grievous insult to this nonvoting but valued resident.