



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

**MONTGOMERY COUNTY PLANNING BOARD  
OPINION**

Preliminary Plan No.: 1-98096

Project: Kaufman Property

Date of Hearing: December 10, 1998 (continued on December 17, 1998 for Planning Board deliberation and action)

Action: ***APPROVAL SUBJECT TO CONDITIONS.*** (Motion to approve was made by Commissioner Perdue; duly seconded by Commissioner Holmes; with a vote of 3-1, Commissioners Perdue, Holmes and Hussmann voting in favor. Commissioner Richardson voted to deny. Commissioner Bryant was necessarily absent.)

**INTRODUCTION**

On May 11, 1998, Elm Street Development ("Applicant") filed a preliminary plan application seeking the subdivision of a residentially-zoned 18.5-acre parcel into 49 lots under the optional cluster method of development. The application was designated Preliminary Plan No. 1-98096.

After due notice, the Montgomery County Planning Board ("Planning Board") held a public hearing on the application on December 10, 1998, which was duly recessed to and concluded on December 10, 1998, in accordance with the requirements of Maryland Code Ann., Art. 28 ("Regional District Act"), the Montgomery County Code, Chapter 50 ("Code"), and the Planning Board's Rules of Procedure. At the public hearing, the Planning Board heard testimony from its expert technical staff ("Staff"), the Montgomery County Department of Permitting Services ("MCDPS"), the Applicant, neighboring property owners and community and civic organizations, and received evidence into the record on the application.

In presenting the application to the Planning Board, Staff prepared packets of information including a Staff report and analysis of the proposal, plan drawings and other information supplied by the Applicant, vicinity maps, summaries of traffic accidents on New Hampshire Avenue in the site area, and correspondence between Staff and Montgomery County Council member Marilyn Praisner, the Maryland Department of Transportation State Highway Administration ("SHA") and the community. Staff distributed the information packets to the Planning Board and they are part of the record on the application.

### **THE SUBJECT PROPERTY**

The subject property is located in White Oak on the northeast side of New Hampshire Avenue (MD Rt. 650), approximately 1,800 feet northwest of the intersection with Columbia Pike (US 29). The site is part of the "Milestone Tract" and is zoned R-90 (Residential Zone, with a minimum lot size of 5,000 square feet). The site is wooded and contains the intermittent remnant of an intermittent headwater stream and associated environmental buffer. The property lies within the Paint Branch watershed. The topography is characterized by an abrupt hill along the northern property line, which makes the site significantly higher than many of the adjoining lots.

The site is bordered on the north by the Springbrook Manor subdivision and on the east by 11 single-family residential lots that were developed in the early 1990's. A child day-care facility is located to the southeast. The property located immediately south of the site is undeveloped. On the west, the site is bordered by the White Oak Public Library and a parcel that recently received approval for an elderly care/assisted living center as Preliminary Plan No. 1-98088 ("Heartlands of White Oak").

The subject property is located within the area covered by the 1996 Approved and Adopted Fairland-White Oak Master Plan ("Master Plan"). To provide a compatible transition to the existing residential neighborhoods, the Master Plan recommends single-family, detached dwellings and R-90 zoning for the subject property. The Master Plan also supports a grade-separated interchange at US 29 and Stewart Lane. The Master Plan further recommends that the road network within the Milestone Tract (or Milestone Drive properties) provide access to New Hampshire Avenue and US 29, discourage cut-through traffic, and provide pedestrian and bicycle access to the library. In addition, the Master Plan recommends mitigation of noise impacts from US 29 and New Hampshire Avenue for the group of properties. Finally, the Master Plan identifies this part of the Paint Branch watershed as an Environmental Restoration Area, to which "existing guidelines and regulations for new development shall be applied . . . ."

The Applicant proposes the creation of 49 lots on 18.5 acres under the optional "cluster" method of development to allow the construction of 49 detached single-family houses. The proposed lot sizes range from 8,000 square feet to 20,000 square feet. Common open space is provided in three locations on the site: the forest save, open and recreational areas in the center; the landscaped area surrounding the stormwater management facility in the northwestern corner; and the forest save and planting area in the northeastern corner. A Category I Conservation Easement will be placed over the forest-save areas located in common open space, approximately 1.5 acres. In addition, linear

strips of mixed tree-save and planting areas are located along the eastern property line and part of the northern property line. These areas are not counted as forest preservation areas, but will be placed under a modified Category II Conservation Easement. Additional forest planting will be required as provided for in the final forest conservation plan at an off-site location, if possible within the Paint Branch watershed. Stormwater management and storm drain systems consist of a dry pond, a sand filter and a network of small earth berms, swales and yard inlets for on-site water quantity and quality control. Access will be provided from New Hampshire Avenue via an extension of the driveway that currently serves the White Oak Public Library. The plan also provides a connection for future alternative access to Stewart Lane and US 29 if further development occurs on the adjoining properties to the south.

### **THE SUBDIVISION CRITERIA**

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act and the Code. The Planning Board administers Chapter 50 of the Code, the Subdivision Regulations. The application must also meet the requirements of Chapter 59 of the Code, the Zoning Ordinance.

Section 50-35 of the Code provides the approval procedure for preliminary subdivision plans. After presentation of the plan to the Planning Board, the Planning Board must act to approve or disapprove the plan, or to approve the plan subject to conditions and/or modifications necessary to bring the plan into accordance with the Code and all other applicable regulations.

The general provisions for lot design for a subdivision are set forth in Section 50-29 of the Code. Lot size, width, shape and orientation must be appropriate for the location of the subdivision and for the type of use contemplated in order to be approved by the Planning Board. Lots must also abut a dedicated street or public road.

Section 50-35(k) also requires the Planning Board to determine "that public facilities will be adequate to support and service the area of the proposed subdivision . . . [including] roads and public transportation facilities . . . in accordance with the guidelines and limitations established by the County Council in its Annual Growth Policy."

The record on the subject application includes information about the lot size, width, shape and orientation of the proposed 49-lot subdivision and the relationship of the lots to public roads. The record also contains information as to the Preliminary Plan's conformance with the development standards for the R-90 Zone. In addition, the Applicant has submitted a traffic study that analyzes the existing conditions in the vicinity of the site and the traffic impacts and transportation needs that will be generated by the proposed development.

## DISCUSSION OF ISSUES

In its report and through testimony at the public hearing, Staff described the subject property, the proposal, the surrounding neighborhood, existing traffic conditions and planned road improvements. Staff testified that it conducted a comprehensive review of the development of the entire northeast quadrant of the intersection of New Hampshire Avenue and US 29 during the recent review of the preliminary plan for Heartlands of White Oak. Staff also worked with the Applicant and adjoining property owners to develop a coordinated circulation pattern and concept for the Milestone Tract and the US 29/Stewart Lane interchange. Staff stated that all of the development proposals for the Milestone Tract have been and will be reviewed in the context of the Master Plan.

Staff explained that the "cluster" method of development provides for flexibility in lot layout by allowing the variation of lot sizes and encourages the provision of community open space and tree preservation. The cluster method permits the same density as ordinarily allowed in the R-90 Zone. For the subject property, the maximum density allowed under the cluster provisions of Section 59-C-1.53 of the Zoning Ordinance is 66 dwelling units. However, if the Applicant proposed more than 49 units, the moderately-priced dwelling unit ("MPDU") provisions of Section 59-C-1.61 would apply. The MPDU provisions would allow a maximum of 81 dwelling units, of which 13 would be MPDUs. Because the Applicant has elected to limit development to 49 units, the MPDU provisions do not apply to the subject Preliminary Plan.

Staff testified that its comparison of the proposed 49-lot cluster plan with a 49-lot standard method plan, showed that development under the cluster method would provide larger and better protected forest and tree save and planting areas. Nevertheless, because of concerns that the plan did not provide enough open space in the northeastern corner of the site, Staff originally recommended approval of only 47 lots (deletion of two lots), subject to conditions. In response to Staff's concerns, the Applicant modified the plan to increase the open space in the northeastern corner of the site and to minimally reduce the central open area without loss of lots. To address additional concerns raised by the community, the Applicant also increased the width of the tree save and planting areas from 35-40 feet to 50 feet along the eastern and northern property lines where the site adjoins existing residences. Staff reviewed the modifications and found the revised Preliminary Plan, including setbacks and buffering, to be compatible with surrounding development and in conformance with the Subdivision Regulations and the Zoning Ordinance. Staff recommended approval of the modified plan, subject to conditions.

The Applicant testified that the proposed 49-lot plan meets the requirements of the Zoning Ordinance, the Subdivision Regulations, the Master Plan, the cluster method of development and the forest conservation law. The existing adjacent lots to the north and east range in size from 9,000 to



12,000 square feet. The proposed lots that abut existing homes average almost 12,000 square feet. The setbacks for the proposed lots along the northern boundary of the property are comparable to the setbacks of the abutting lots. On the eastern side of the property, the proposed setbacks significantly exceed the setbacks of the existing houses. Thus, the plan provides appropriate and desired detached single-family housing at a reasonable density, which is only 60% of the density allowed by the Zoning Ordinance. To further enhance compatibility, the plan includes a tree-save and tree planting buffer area around the perimeter of the property.

Neighboring property owners and community associations submitted extensive correspondence and a petition into the record detailing their concerns. Several neighbors and representatives of community organizations also testified at the public hearing. Many neighbors stated that they do not oppose residential development of the subject property, but that more consideration must be given to their concerns about traffic and site access, tree removal, wetlands disturbance, buffering, stormwater control and noise. They also contended that there has been insufficient coordination of the development of the subject site with the development of the other properties that comprise the Milestone Tract, as recommended by the Master Plan. Accordingly, the community recommended modifications to the proposed plan, including: (1) retention of a 100-foot tree buffer between existing homes and the new development; (2) relocation of the stormwater management pond away from existing homes; (3) review of the road configuration for this project in conjunction with proposals for development on adjoining properties; and (4) preservation of the most valuable forest and wetlands on the subject property.

These issues were discussed in greater detail, as follows:

### Traffic

#### Adequacy of Public Facilities

Staff explained that a general moratorium exists for residential development in the Fairland/White Oak Policy Area because there is a negative net remaining traffic capacity for housing units. Therefore, the Applicant has requested approval under the FY99 Annual Growth Policy Alternative Review Procedures for Expedited Development Approval ("Pay-and-Go"), which allows the payment of an excise tax to satisfy the adequate public facilities test.<sup>1</sup> The Applicant paid ten

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<sup>1</sup> On May 13, 1998, the Montgomery County Council adopted Resolution 13-1271, which amended Resolution 13-1087, to limit the availability of the Pay-and-Go program to non-residential development. Resolution 13-1271 did not affect the applicability of the Pay-and-Go guidelines to the subject application which had already been submitted for Staff review.

percent of the total excise tax prior to the public hearing. Condition #1 requires payment of the balance of the tax prior to receipt of building permits. The Applicant has identified a potential improvement at the US 29/Oak Leaf Drive intersection, agreed to dedicate right-of-way or easement for the future construction of a grade-separated interchange at the US 29/Stewart Lane intersection, design and construct the extension of the access road, and improve the intersection of the access road and New Hampshire Avenue if that improvement has not been implemented by others prior to construction.

### Site Access

Staff described the current and future circulation patterns for the site vicinity and testified that the subject Preliminary Plan addresses Master Plan concerns about cut-through traffic, provides access to the site from New Hampshire Avenue, provides for a future connection to US 29, and accommodates a proposed future grade-separated interchange at US 29 and Stewart Lane. Staff explained that access will be provided from New Hampshire Avenue via an extension of the driveway that currently serves the White Oak Public Library. Heartlands of White Oak will also access New Hampshire Avenue by way of the existing driveway, which will be widened to 36 feet in conjunction with the development of that facility. The Applicant will extend the access road into the subject subdivision as a 26-foot tertiary street, providing direct access to 42 lots and ending in a cul-de-sac. A connecting internal road will provide direct access to 7 lots and the potential for a future connection, reliant upon further development on the adjoining properties to the south, to Stewart Lane and US 29. In addition, the intersection with New Hampshire Avenue will be improved, with a right-in/right-out/left-in configuration. Staff noted that other access and circulation options were considered, but were not feasible.

Pursuant to Commissioners' requests, Staff also presented information regarding the number, type and location of accidents on New Hampshire Avenue, from Milestone Drive to Jackson Road (0.68 miles), for 1994, 1995 and 1996. Staff testified that the accident rate for this road segment was significantly lower than the average accident rate for a multi-lane highway with uncontrolled access in an urban area in Maryland for each of the three years studied. In response to Commissioners' questions regarding the safety of 33 additional rush-hour U-turns, Staff noted that only one of the reported accidents involved a U-turn. In addition, Staff advised the Planning Board that the Applicant had requested approval of a traffic signal at the intersection of the access road, New Hampshire Avenue and Quaint Acres Drive, but SHA had responded that the location did not warrant signalization. Staff further advised the Planning Board that SHA's denial did not result from

high-density residential zoning and detached single-family housing for the subject property. However, the forest conservation legislation and Planning Board precedent do not require that the plan achieve the break-even point with tree-save areas on site. Off-site forest planting will be provided as required by the final forest conservation plan. The perimeter tree-save and planting buffer is consistent with previous Planning Board approvals regarding buffering between similar uses.

Several neighboring property owners and representatives of community organizations disagreed with Staff and the Applicant about the plan's compliance with the forest conservation laws. They also disagreed with Staff's conclusion that the intermittent stream valley is the best location for the stormwater management pond and road crossing. They expressed concerns about the destruction of the most densely forested portion of the site and the impact of the forest loss on the restoration of the watershed, animal habitat, erosion and neighboring properties. The neighbors testified that the Applicant has identified 14.8 acres of the site as Priority I and II areas, but only 1.5 acres of existing forest will be retained and a significant number of large trees will be destroyed. The neighbors contend that such extensive clearing is not necessary or in compliance with Section 22A-12 of the Montgomery County Code, the Tree Manual, ("Trees, Approved Technical Manual," 1992 M-NCPPC) which direct developers to retain stream valley buffers and avoid clearing trees from Priority I areas wherever possible and to give consideration to preserving Priority II areas. The Tree Manual also states that developers should strive to reach the "break-even point" on forested sites. The neighbors also expressed concern that the tree-save buffer is not wide enough and trees along the edge may die as a result of disturbance during construction. Therefore, the community recommended increasing the tree-save buffer around the northern perimeter to 100 feet to provide maximum compatibility and on-site tree retention.

### Noise

Staff testified that the Master Plan review process included a noise analysis for the Milestone Tract based on projected Year 2010 noise levels. As a result of the noise analysis, the Master Plan intent is to provide noise buffering for the properties along the perimeter of the Milestone Tract abutting US 29 and New Hampshire Avenue. Staff testified that the recommendation does not apply to the subject property, which is located toward the interior of the quadrant and will contain dwellings located outside the noise impact area of 65 dBA, LDN on lots set back a significant distance from New Hampshire Avenue and US 29. Staff also noted that intervening existing and future development will buffer the subject property. In addition, Staff testified that the subject property will continue to provide some noise mitigation for existing residences because of the setback and berm effect of its size and location on a ridge.

a design or funding problem, but strictly because the traffic numbers did not meet the warrants. Staff also noted that the Applicant had offered to pay a portion of the cost of a new signal.

Regarding the US 29/Stewart Lane interchange, Staff explained that SHA has approved the location, but that the final design and construction of the interchange has not been funded. The proposed Preliminary Plan provides for a future connection to the interchange, but cannot access Stewart Lane or Milestone Drive now without crossing two intervening properties. Moreover, such an access design would be temporary and inconsistent with the Master Plan. Staff advised the Planning Board that the interchange improvements include merging Stewart Lane with relocated Milestone Drive to become a one-way ramp to westbound New Hampshire Avenue. The original plan for the interchange showed a road that would connect the subject property and the future ramp. The Applicant's plan slightly modified the design to allow the road to enter the subdivision at an appropriate grade and curvature. The modified design accommodates all necessary traffic movements and continues to provide a direct connection from the interchange into the community as recommended in the Master Plan. SHA has reviewed the Applicant's proposed modification and will conduct further environmental and operational review during the final design stage. SHA has advised Staff that the Applicant's modification is acceptable, the development will not interfere with or inhibit any options for the interchange, and the proposal is consistent with the Master Plan.

Several neighboring property owners and representatives of community associations and the PTAs of Jackson Road Elementary School and White Oak Middle School testified regarding their concerns about traffic and the proposed use of U-turns to access southbound New Hampshire Avenue. The community described this portion of New Hampshire Avenue as already overcrowded and dangerous. They testified that the proposed U-turns will be impossible during rush hour because of traffic gridlock and dangerous at other times because of high speeds. The community is concerned that traffic seeking to go south from the subject property will use neighborhood streets in Springbrook Manor to access the traffic signal at Jackson Road or to wind back to Milestone Drive and Stewart Lane rather than attempt U-turns on New Hampshire Avenue. They testified that the neighborhood streets are narrow, curved and hilly and are not capable of handling much additional traffic. They further testified that the increased traffic will be hazardous to children and other pedestrians because the neighborhood does not have sidewalks, commuter vehicles often exceed the speed limit and a very large number of students walk to the schools in this neighborhood because bus service is not available. The residents of Quaint Acres, which is located directly across New Hampshire Avenue, also stated concerns about the increased danger to pedestrians crossing New Hampshire Avenue to access school buses, the library, public transportation and Martin Luther King Park. In addition, several neighbors testified that the Applicant's traffic study significantly underestimated the number of southbound trips that will be generated by the new development.



The community also expressed concerns about the Applicant's changes to the design of the US 29/Stewart Lane interchange. They noted that the Master Plan includes a specific design for the interchange and a connecting road through the subject property.

Several neighbors suggested that installing a traffic signal at the intersection of the site access road, Quaint Acres Drive and New Hampshire Avenue would improve the current situation and provide safe ingress and egress for the new subdivision. Although SHA denied their request for a traffic signal approximately five years ago, the Quaint Acres community believes that changed conditions on New Hampshire Avenue, together with the additional traffic from the subject development proposal, the approved elderly care facility and another potential retirement community on adjoining property, warrant signalization. However, the NWOCA representative testified that SHA must follow federal guidelines and that, even with the proposed development, the intersection will not warrant a light on a six-lane highway. NWOCA suggested that the ingress/egress for the subject property should be limited to a connection through the adjoining property to the south to Milestone Drive and the future interchange at US 29/Stewart Lane. They advised the Planning Board that a proposal for a nursing home on the adjoining property to the south (not yet submitted) includes a road configuration that could connect the subject property with Milestone Drive and the proposed US 29/Stewart Lane interchange.

In response to the community's suggestions, Staff reminded the Planning Board that the subject property cannot access Milestone Drive or Stewart Lane without crossing two intervening parcels. Staff suggested that the Applicant and Staff could pursue SHA approval of a signal based on a combination of existing and future traffic, and other factors, including the particular traffic patterns created by the proximity of the intersection to the US 29 ramps, Milestone Drive and several other roads. Alternatively, Staff suggested that it might be possible to convince SHA to relocate the partial signal that allows left turns from northbound New Hampshire Avenue to US 29 to the subject intersection.

### **Environmental Guidelines and Forest Conservation**

At the public hearing, Staff testified that the proposed Preliminary Plan is in compliance with the Planning Board Environmental Guidelines and the Montgomery County Forest Conservation Law. Staff explained that there are no minimum requirements for on-site forest retention. The conservation thresholds contained in the State and County forest conservation laws are goals for on-site forest retention. Staff further explained that the appropriate amount of on-site preservation is determined as part of the review of a development project and its forest conservation plan, which takes into consideration site-specific conditions including: the zoning; Master Plan

recommendations; the proposed use; the minimum area required for development; the location, configuration, age and character of on-site forest and tree stands; the relationship to any off-site forest areas; other natural features and possible road access points for the site. Staff also explained that the "break-even point" is the amount of forest that must be preserved on-site if the Applicant wants to avoid reforestation requirements.

For the subject site, Staff found that the Master Plan recommendation for single-family, detached residential development and the high-density residential zoning greatly limit the ability to retain forest on the site. Moreover, some disturbance of the intermittent stream channel and associated buffer area, clearing and loss of trees in the northwestern portion of the site is unavoidable for access, stormwater management and a sewer connection. Staff explained that the northwestern portion of the site is technically classified as Priority I for forest preservation because it contains the remnant of a headwater stream, part of the associated buffer and a concentration of large trees. However, Staff testified that the value of the stream channel and its buffer as a functioning part of the natural stream system has been diminished by the use of an enclosed storm drain system in the adjoining subdivisions. The stream channel is an isolated section that is no longer connected to and is significantly separated from other natural components of the Paint Branch ecosystem. The remaining natural stream is located near Paint Branch Stream Valley Park, approximately 3,000 feet from the subject property.

Staff further explained that part of the buffer area is located on adjoining property and has already been cleared (the library parking area) or approved for clearing (the stormwater management area for Heartlands of White Oak). In addition, the only feasible access for the site requires road construction in the buffer area. A sewer connection must also be located in this area to connect to the existing sewer line in Kathryn Road. Staff further explained that the proposed location of the stormwater management facility will most effectively and efficiently (1) control stormwater runoff from the proposed development; and (2) maintain existing levels, and perhaps reduce water runoff levels to adjoining houses. Therefore, Staff concluded that the proposed disturbance is necessary and appropriate. In addition, Staff compared forest conservation under the cluster and standard plans for the site and found that the cluster plan provides more on-site forest preservation, tree save and tree planting areas (approximately 3 acres compared to 1.5 acres). Staff also noted that the cluster plan locates the forest-save areas on common open space, which allows more effective long-term maintenance and enforcement when compared with forest save areas located on private lots on a standard plan. Finally, Staff has recommended, and the Applicant is pursuing, the location of off-site reforestation within the Paint Branch watershed, if possible.

The Applicant testified that it could not meet all of the requirements of the forest conservation legislation on site because of the combination of Master Plan recommendations for

Regarding the future US 29/Stewart Lane overpass, Staff testified that it does not have enough information on the engineering and design of the overpass to evaluate the potential noise impacts. Staff did note, however, that the ramp to the new interchange will not be elevated where it abuts the subject property. Staff advised the Planning Board that SHA and staff will evaluate any noise impacts and mitigation when the relevant section of US 29 moves into the design phase.

Several neighboring property owners disagreed with Staff's interpretation of the Master Plan and testified that, because of existing problems with noise from US 29 and New Hampshire Avenue, the Master Plan recommends appropriate noise buffering for the entire quadrant. Noting that the noise levels will increase if the overpass is constructed, traffic increases or a bus lane is added, the neighbors stated that additional buffering is necessary to protect the future residents of the subject property and the existing neighborhood. Therefore, the community advocates a 100-foot tree buffer between existing homes and the new development, which it contends will reduce the noise level by 50% by reflecting and absorbing sound energy.

### **Stormwater Management**

Staff testified that the proposed stormwater management plan for the site is designed to maximize the capture of surface water runoff, avoid exacerbation of existing runoff problems and possibly improve existing conditions by reducing stormwater runoff and associated water drainage problems on adjoining lots. On-site stormwater management controls include a dry pond for quantity control, a sand filter for quality control, and a network of small earth berms, swales and yard inlets on lots parallel to the northern and eastern property lines to convey runoff to the facility and away from existing houses. The yard inlets will be located within a stormwater management easement to allow County repair or maintenance, if necessary. The dry pond and sand filter are located in the northwestern corner of the site, which is the low point and the most effective and efficient location. The pond will be excavated and the slight slope will be planted with a double row of evergreens for screening. Stormwater leaving the facility will be conveyed through an enclosed pipe to the existing storm drain system in the unimproved Hedge Road right-of-way. The stormwater management concept and dam breach analysis were approved by MCDPS on December 3, 1998.

Staff also explained that most of the subject property is located in the Tanley Road subwatershed, which the Countywide Stream Protection Strategy (CSPS) identifies as a Watershed Restoration Area. For this area, the CSPS recommends an overall restoration approach because of adverse impacts from past development. The southeastern portion of the site is part of the Middle Mainstem subwatershed, a Watershed Protection Area, for which the CSPS recommends a remedial level of protection to address sediment deposition and erosion problems. Staff stated that the

approved stormwater management concept is consistent with the CSPS designations because it provides for the control of stormwater runoff so that existing downstream, erosion and sedimentation problems are not exacerbated. In addition, the concept will probably improve water drainage problems on some adjoining lots. Finally, because the site is located on a ridge, it does not receive uncontrolled runoff from any existing development and cannot be used for retrofit or restoration purposes.

The Applicant testified that the most significant concern expressed by the neighbors at its initial meeting with the North White Oak Civic Association was that development of the subject property would exacerbate adjacent homeowners' existing stormwater drainage problems. To address the concerns, the Applicant based the site design on controlling the maximum amount of runoff possible. Based on information obtained through borings, monitoring wells and interviews with adjacent residents, the Applicant and MCDPS determined that the maximum amount of runoff could be controlled by locating the stormwater management pond as close to the unimproved Hedge Road right-of-way as possible. The Applicant further testified that the proposed stormwater management concept will eliminate most of the stormwater runoff from the site.

Several neighbors testified regarding their concerns about stormwater runoff. They explained that, because of the steep hill, water from the subject property floods neighboring yards and streets. They further explained that the neighborhood stormwater drainage system has insufficient capacity and the few collection drains already overflow and pond for several days after heavy storms. The neighbors are concerned that the removal of much of the existing forest, the increased impervious surfaces and the regrading on the site will aggravate the runoff problems.

Some of the neighbors also stated concerns about the location of the stormwater management pond only 35 feet from existing homes. They are concerned about the potential flooding of neighboring properties if the drain in the pond gets clogged or if the dam is breached. They are also concerned about the potential danger the pond presents to neighborhood children. Accordingly, the neighbors advocated moving the pond at least 75 feet away from adjoining properties.

In response, Staff and MCDPS explained that the stormwater management pond is located 30 feet from the property line. Relocating the pond further away from the adjoining properties would mean moving it uphill and increasing the height of the berm to maintain the necessary storage volume. The higher berm would be more prominent visually, require the clearing of a larger area and increase the potential for a dam breach. Moreover, relocating the pond would decrease the area of the site from which surface water runoff could be controlled.



## **FINDINGS**

After review and consideration of the evidence of record, including testimony given at the public hearing, the Planning Board finds that: (1) the proposed lots are appropriate with regard to lot size, width, shape and orientation for the location of the subdivision and the contemplated residential use; (2) the proposed lots will abut public roads; (3) the Preliminary Plan meets the development standards of the R-90 Zone; (4) the Preliminary Plan is in accordance with the Master Plan; and (5) the site is adequately served by public facilities under the standards imposed by the FY99 Annual Growth Policy and the Pay-and-Go provisions. The Planning Board also finds that review of the development plans for the subject property and the remainder of the Milestone Tract has been comprehensive and coordinated. The Planning Board further finds that development under the cluster method is appropriate for the subject property and best addresses the goals of stormwater management, traffic safety, forest preservation and buffering on the site. In addition, the Planning Board finds that the proposed conditions, as modified, will ensure the appropriate use of the subject property, and adequate access and road improvements, forest conservation measures, stormwater management and screening.

Regarding the proposed road configuration and improvements, the Planning Board accepts Staff's finding that the proposed access to New Hampshire Avenue is the only feasible site access without further development and road construction on adjoining properties to the south. The Planning Board finds that it would be unreasonable to require the Applicant to obtain access via the adjoining properties to the south because the Applicant does not have any control over the construction of roads on those properties. However, taking existing traffic conditions into consideration, the Planning Board finds that the absence of a traffic signal at the intersection of the site access road and New Hampshire Avenue would create unsafe conditions by requiring drivers to make U-turns on New Hampshire Avenue or cut through neighborhood streets in order to travel south. Therefore, the Planning Board finds that Condition #12 should be added to require the Applicant to pursue SHA approval of a traffic signal at the subject intersection. Commissioner Richardson also acknowledged the traffic safety concerns, but disagreed with the other Commissioners and advocated recommending, rather than conditioning approval upon, the installation of a traffic signal.

Regarding the conflicting goals of stormwater management and forest conservation, both of which are important to the adjoining and future residents and the whole community, the Planning Board accepts the findings of Staff and MCDPS that the proposed location for the stormwater management pond would best mitigate existing runoff problems on adjoining properties and provide

effective stormwater management for the subject site. The Planning Board also accepts Staff's finding that some disturbance of the stream valley and buffer and loss of trees in the northwestern portion of the site would be unavoidable even if the pond were relocated. Moreover, the Planning Board finds that relocating the pond would result in additional tree loss and replanting, decrease the number of lots, and increase the dam breach hazard potential. The Planning Board further finds that it is not necessary nor legally required to preserve every tree on the subject property. Accordingly, the Planning Board finds that the Applicant's compliance with Conditions #2, 3 and 10 will ensure that forest conservation requirements are met. Condition #2 requires compliance with the preliminary forest conservation plan in accordance with the standards of the Forest Conservation Law, including the location of off-site planting within the Paint Branch watershed if possible, and the protection of as much on-site forest area as feasible by inclusion in a Category I Conservation Easement and supplemental planting to achieve buffer objectives. Condition #3 provides for the delineation of the conservation easements on the record plats. Condition #10 requires that the homeowners' association ("HOA") documents describe the restrictions that apply to all common open space and conservation easement areas. The Planning Board therefore adopts Conditions #2, 3 and 10.

The Planning Board further finds that the stormwater management plan and the conditions of the stormwater management concept approval are adequate to protect adjoining properties. The Planning Board accepts MCDPS' determination that the Stormwater Management Concept meets MCDPS' standards and finds that the subject application meets all applicable stormwater management requirements. In addition, the Planning Board accepts Staff's interpretation that the Master Plan recommendation for noise mitigation does not apply to the subject property as the site is outside of the 65 - decibel impact area referenced in the master plan. The Planning Board finds that intervening development will provide sufficient buffering from the highways to the south and west. The Planning Board further finds that the proposed 50-foot wide tree-save and planting area will provide sufficient buffering between the proposed use and the existing houses to the north and east. Finally, the Planning Board finds that Conditions # 6, 10 and 11 will ensure notice to future homeowners of the forest conservation provisions and potential US 29/Stewart Lane interchange improvements. Therefore, the Planning Board adopts Staff's conditions, as modified.

## **CONCLUSION**

Based on the testimony, evidence and exhibits presented, as well as the contents of the Preliminary Plan file, the Planning Board finds Preliminary Plan No. 1-98096, as modified by the Applicant, to be in accordance with the Subdivision Regulations of the Montgomery County Code

and the provisions of the Maryland Code Ann., Art. 28. Therefore, the Planning Board approves Preliminary Plan No. 1-98096, as modified by the Applicant, pursuant to the FY99 Annual Growth Policy Alternative Review Procedures for Expedited Development Approval subject to the following conditions:

- 1) Prior to recording of plats, applicant to enter into an Adequate Public Facilities agreement (APF) with the Planning Board to limit development to a maximum of forty-nine single family detached dwelling units, and to pay to the Montgomery County Department of Finance the balance of the expedited development approval excise tax prior to receipt of building permits, as provided by County law.
- 2) Compliance with the conditions of approval for the preliminary forest conservation plan, dated December 4, 1998. The final forest conservation plan must be approved prior to the recording of plat. The applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit(s), as appropriate. Conditions include, but are not limited to, the following:
  - a. Off-site forest planting to be located within the Paint Branch watershed unless it can be demonstrated to Staff's satisfaction that the Applicant has conducted a reasonable search and cannot find appropriate land areas.
  - b. Category I conservation easement to be placed over forest preservation and planting areas located in proposed parcels A, B, C and part of White Oak library site that is adjacent to Parcel A and contains trees. Easements to be shown on record plats.
  - c. Forest and tree-save areas to include supplemental planting of trees and shrubs, as necessary, to achieve forest and landscape buffer objectives. Number, size and location of trees and shrubs for supplemental planting to be determined by M-NCPPC staff after initial clearing and grading of site and added to the final forest conservation plan.
- 3) Record plat to reflect the delineation of all conservation easements over the areas of tree preservation/landscaping, as stipulated by the forest conservation plan.
- 4) Prior to recording of plats, submit for technical staff approval, a landscape plan for the areas along the northern and eastern property lines.

- 5) Access and improvements to be approved by MCDPW&T prior to recording of plat.
- 6) Record plat to reference grading easement in the area of the Stewart Lane/US 29 interchange as shown on plan and accepted by MDSHA.
- 7) Conditions of MCDPS stormwater management approval, dated 12-3-98.
- 8) Dedication of all rights of way to occur simultaneously with or after dedication of rights of way included in preliminary plan 1-98088.
- 9) Other necessary easements.
- 10) Prior to recording of plats, submit Home Owner's Association (HOA) documents for technical staff approval. HOA documents shall describe the restrictions that apply to all common open space areas and conservation easement areas.
- 11) Prior to ratification of any sales contract, owner/developer shall disclose to all prospective home buyers the location and design concept of the Stewart Lane/RT 29 interchange.
- 12) Construct a traffic signal at the intersection of the site access road and New Hampshire Avenue.
- 13) This preliminary plan will remain valid until June 5, 2002 (37 months from the date of mailing which is May 5, 1999). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.