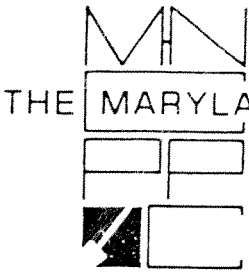


Date of Mailing: November 16, 1999



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: September 28, 1999

Action: APPROVAL SUBJECT TO CONDITIONS. (Motion to approve was made by Commissioner Bryant; duly seconded by Commissioner Perdue; with a vote of 4-0, Commissioners Hussmann Bryant, Perdue and Wellington voting in favor. Commissioner Holmes necessarily absent.)

The date of this written opinion is November 16, 1999. Any party authorized by law to take an administrative appeal must initiate such an appeal as provided in the Maryland Rules of Procedure. If no administrative appeal is timely filed, then this Preliminary Plan shall remain valid as set forth in Section 50-35(h).

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 17, 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 Applicant, neighboring property owners and community and civic organizations, and received evidence into the record on the application. The Planning Board issued a written opinion dated May 6, 1999, approving Preliminary Plan 1-98096, subject to specific conditions. Pursuant to the Planning Board's Rules of Procedure, the Applicant submitted a timely written request seeking reconsideration of Condition No. 12 of the original opinion. The Board on May 27, 1999, granted the request. A de novo preliminary plan hearing was duly noticed, and held on September 28, 1999. The record incorporates all materials contained in the record on the original application and all testimony received and materials submitted with respect to the de novo hearing.

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 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 and multi-age play areas in the center; the stormwater management facility and surrounding landscaped and forest planting areas in the northwestern corner; and the forest save and planting area in the northeastern corner. 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 a street adjacent to an existing driveway that serves the White Oak Public Library, and via a second access connecting the subject site to Milestone Drive, across two abutting properties.

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. 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 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. 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. The project proposed the "cluster" method of development, which allows flexibility in lot layout by allowing the reduction of standard lot sizes in exchange for the preservation of additional community open space and trees. 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; the Applicant has elected to limit development to 49 units.

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. The tree save and planting areas are 50 feet deep along the eastern and northern property lines where the site adjoins existing residences. Staff found the 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 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.

Neighboring property owners and community associations submitted extensive correspondence 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.

SPECIFIC ISSUES

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.¹ The Applicant paid ten 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 to the site via an access road adjacent to the driveway that currently serves the White Oak Public Library. A connecting internal road will provide direct access to 7 lots. In addition, the Applicant proffered an alternative access road connecting the subject site to Milestone Drive. This access would require the Applicant to secure access easements over two abutting properties. The intersection with New Hampshire Avenue will be improved, with a right-in/right-out/left-in configuration. The Applicant testified it does not have access to these easements at this time. Applicant, however, accepted on the record as a condition of approval that it would acquire access easements across the two adjacent properties as detailed in the Condition 3, below.

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, as required by Condition No. 12 of the original Preliminary Plan, but SHA had responded that the location did not warrant signalization. Staff further advised the Planning Board that SHA's denial resulted because the traffic numbers did not meet the warrants. As part of its request for

¹ 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.

reconsideration, the Applicant proffered to escrow \$100,000 to be used for construction of the traffic signal at New Hampshire Avenue and the site access, should SHA determine a need for that traffic signal, as reflected in Condition No. 4.

Regarding the US 29/Stewart Lane interchange, Staff explained that SHA approved the location, but final design and construction of the interchange has not been funded. 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 Applicant's plan allows the road to enter the subdivision at an appropriate grade and curvature. This 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 advised Staff that the Applicant's proposal is acceptable, and 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 PTA of Jackson Road Elementary 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 difficult during rush hour because of traffic congestion and unsafe at other times because of high speeds. 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.

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. Eighteen of the site's 18.5 acres are forested; 16.3 acres will be cleared. Less than two of the 7.6 acres required to be re-forested will be located on-site. In addition, some landscaping trees will be credited toward reforestation, as allowed in the forest conservation law.

Staff found that the Master Plan recommendation for single-family, detached residential development greatly limited 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 classified as Priority I forest for forest preservation because it contains the remnant of a headwater stream, the associated buffer and a concentration of large trees. Staff testified that the value of the stream channel and its buffer 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.

A sewer connection must also be located in this area to connect to the existing sewer line in Kathryn Road. Staff explained that the proposed location of the stormwater management facility within currently forested area will most effectively and efficiently (1) control stormwater runoff from the proposed development; and (2) maintain existing, and perhaps reduce water runoff levels to adjoining houses, many of which currently experience water drainage problems. 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. 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.

The Applicant testified that it could not provide all reforestation on site because of the Master Plan recommendation for a high-density detached single-family housing zone.

Stormwater Management

Staff testified that the proposed stormwater management plan for the site is designed to maximize the capture of surface water runoff from the site, 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 land along the property line next to the stormwater management facility 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.

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 effectively control 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.

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 further finds that development under the cluster method is appropriate for the subject property and best addresses the goals of stormwater management, forest preservation and buffering on the site. In light of the Master Plan recommendations highlighting the need to protect the Paint Branch watershed and to meet the goals of the cluster zone (i.e., to preserve trees), the Board further finds that six acres of existing forest that otherwise might be developed must be protected. This requirement is in lieu of the standard off-site reforestation requirement (which allows an applicant to plant young trees on vacant land as a replacement measure). 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 recommendation that the proposed access to New Hampshire Avenue be supplemented with a second access to Milestone Drive. The Board accepts Applicant's proffer to secure the off-site easements necessary to achieve this access. The Board also accepts Applicant's proffer to escrow funds for a traffic signal at the intersection of the site access road, Quaint Acres Drive, and New Hampshire Avenue, as detailed in its letter requesting reconsideration of the original preliminary plan approval.

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 finds that the Applicant's compliance with Condition No. 2 will ensure that forest conservation requirements are met. Condition #2 requires compliance with a final Forest Conservation Plan ("FCP") in accordance with the standards of the Forest Conservation Law, including the preservation of six acres of existing forest, in the Paint Branch watershed, that otherwise would be subject to development. On-site forest area will be protected by a Category I Conservation Easement. Condition #2 also provides for the delineation of the conservation easements on the record plats. Condition #6 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 Condition Nos. 2 and 6.

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. 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 Condition Nos. 7 and 8 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 of a final Forest Conservation Plan ("FCP"). The Applicant must meet all FCP 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. Before going to record plat, applicant must place six acres of off-site existing forest located within the Paint Branch watershed under a Category I Conservation Easement. The six acres must be located on property that otherwise would be subject to the threat of development (e.g., outside of environmental buffers).
 - b. Category I Conservation Easement to be placed over forest preservation and planting areas located on proposed parcels A, B, C, and on lots 8 through 20 (inclusive). Small landscaped areas that are credited in the forest conservation plan (excluding street trees) to be placed in Category II conservation easement. Easements to be shown on record plats.
 - c. Forest and tree-save areas to include supplemental planting of trees and shrubs to achieve forest and landscape buffer objectives, specifically including the property line that abuts the library site. 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 FCP.
- 3) Applicant to submit binding commitments acceptable to legal staff from appropriate representatives of Parcel 725 and Parcel 790, which will provide ultimate access from the Kaufman property to Milestone Drive. Easement acceptable to the Montgomery County Department of Public Works and Transportation (MCDPW&T) or dedication for 60 feet right-of-way across Malasky Property (Parcel 725) and to connect Milestone Drive through the Clark Property (Parcel 790). Coordinate with the Maryland State Highway Administration (MDSHA) and MCDPW&T regarding construction of this additional access. This access road to be constructed and approved/accepted by MCDPW&T prior to the Applicant receiving the twenty-first (21) building permit.
- 4) Applicant to post a bond in the amount of \$100,000 with M-NCPPC, which will expire after five years after the date of issuance, to pay for the installation of a traffic signal at the intersection of New Hampshire Avenue and Heartfield Drive - Quaint Acres Drive should MDSHA determine before the expiration of the bond that the traffic volumes warrant the signal's installation. Bond be posted prior to MCPB release of any building permits.
- 5) No construction traffic shall enter the site via Heartfield Drive once connection is made to Milestone Drive.

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- 6) Prior to recording of plats, submit Homeowner's Association (HOA) documents for review and approval. HOA documents shall describe the restrictions that apply to all common open space areas, conservation easement areas and stormwater management area.
- 7) Prior to ratification of any sales contract, owner/developer shall disclose to all prospective home buyers the location and design of the Stewart Lane/Route 29 interchange.
- 8) Record plat to reference grading easement in the area of Stewart Lane/Route 29 interchange as shown on plan and accepted by MDSHA.
- 9) Dedication of all rights-of-way to occur simultaneously with or after dedication of right-of-way included in Preliminary Plan 1-98088.
- 10) Conditions of MCDPS stormwater management approval dated 12-3-98.
- 11) Terms and conditions of access to be granted by MCDPW&T and MDSHA prior to the release of building permits.
- 12) All common ingress/egress easements to be referenced on record plats.
- 13) Other necessary easements.

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