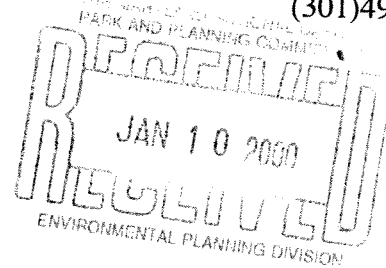


THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760
(301)495-4617



**APPROVED
MINUTES**

The Montgomery County Planning Board met in regular session on Tuesday, September 28, 1999, at 7:35 p.m. in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 10:30 p.m.

Present were Chairman William H. Hussmann, and Commissioners Allison Bryant, Wendy Collins Perdue, and Meredith Wellington. Vice Chairman Arthur Holmes, Jr., was necessarily absent.

ITEM 1. PRELIMINARY PLAN NO. 1-98096 - KAUFMAN PROPERTY; R-90 ZONE; FORTY-NINE (49) LOTS REQUESTED (SINGLE FAMILY DETACHED); 18.5 ACRES; EAST SIDE OF NEW HAMPSHIRE AVENUE (MD 650), APPROXIMATELY 1,400 FEET NORTH OF THE INTERSECTION OF COLUMBIA PIKE (US 29), BEHIND THE WHITE OAK LIBRARY; FAIRLAND - WHITE OAK POLICY AREA

ACTION: Motion of Bryant
Second by Perdue
4-0 (Holmes absent)

Approved staff recommendation to approve subject to conditions, modifying the conditions to require binding agreements securing the right-of-way through intervening properties to Milestone Drive; increased buffering of the Library and additional review of the design of the stormwater management facility with a view to creating a larger buffer area; and six acres of off-site replacement of trees, as stated in the attached Opinion.

In opening remarks, Development Review staff noted that the Board first took action on this preliminary plan in December 1998. Subsequently, the applicant requested reconsideration of a condition placed on the approval of the plan that required the applicant to install a traffic signal at the intersection of the access road and New Hampshire Avenue. In requesting reconsideration, the applicant reported that State Highway Administration will not allow the traffic signal to be installed because it does not meet the warrants for a signal. The Planning Board agreed to reconsider its action, noting that the entire action, rather than just one condition, would be reconsidered. Tonight's hearing is the reconsideration of the preliminary plan. Staff noted that State Highway Administration continues to object to the installation of a traffic signal.

Staff noted that the Planning Board's information packet includes the staff reports and citizen correspondence from the previous hearing and a cover memorandum that highlights the major issues at the previous hearing and conditions placed on the approval of the plan to address those issues. In addition, staff noted that additional correspondence received has been distributed separately.

Staff presented the proposal to create 49 lots under the optional cluster method of development on property in the northwest quadrant of the intersection of US 29 and New Hampshire Avenue, abutting the White Oak Library, as detailed in the staff report. Staff described the surrounding development, pointing out an exhibit GIS map that included a wider area than the maps in the information packets, south past Lockwood Drive and north past Jackson Road. Staff described the surrounding development, noting that the lot sizes in the Springbrook Manor subdivision to the north range from 8,000 to 15,000 square feet, with the abutting lots in the 8,000 to 11,000 square foot range. The lots on Caplinger Court to the east are 10,000 to 13,000 square feet. Staff reported that the proposed lots are comparable in size to the surrounding lots and the house setbacks on the proposed lots are the same or greater than the setbacks on the abutting lots. In addition, there is a daycare facility to the southeast. Pending adjacent development, staff said, includes the Constellation elderly housing and care facility across the access road from the Library, which has an approved special exception and preliminary plan; and the pending Sunrise assisted-living and day care facility to the south at the intersection of US 29 and New Hampshire Avenue.

Staff pointed out various features of the preliminary plan, noting particularly a 50-foot buffer area along the north and east property lines that abut existing homes to address concerns about compatibility. Staff also noted the relocation of two units from the northeast corner of the site to create more open space and tree preservation in that area.

With regard to the access issue, staff pointed out that the applicant is proposing, and has revised the plan to show, an extension of the interior street to provide a second point of access south through two intervening properties to Milestone Drive for access to US 29. That road extension, which will be a 60-foot secondary residential street, will also provide access for the Malasky property, the Sunrise property, and two additional adjoining properties. Staff noted that SHA has reviewed and approved this proposed access in terms of tying into the future Stewart Lane/US 29 interchange.

Concluding, staff briefly reviewed the proposed conditions of approval, noting that condition 4 requires the applicant to post a bond for the future installation of a traffic signal at the intersection of the access road and New Hampshire Avenue, if SHA determines within five years from posting of the bond that the traffic volume warrants a signal. In addition, condition 3 limits building permits to 20 prior to construction of the alternative access to Milestone Drive.

Mr. Steve Kaufman, attorney representing the applicant, introduced Mr. John Clark of the applicant company and Mr. Les Powell, the engineer. He noted for the record that he is no relation to the seller of the subject property. Mr. Kaufman reiterated that SHA has disapproved the installation of the traffic signal required as a condition of the previous approval of the plan,

which is why the applicant requested reconsideration of that condition. The applicant had suggested putting money in escrow to install that signal when it is deemed to be warranted, and is still willing to do so. In addition, he affirmed, the applicant is now proposing the additional access described by staff, and he cited letters in the information packet related to arrangements for crossing the adjoining properties for access to Milestone Drive. Concluding, Mr. Kaufman concurred in the staff recommendation and noted that the applicant has made all the changes to the plan mandated by the previous approval.

Chairman Hussmann raised questions about the alignment of the right-of-way for the future Stewart Lane/US 29 interchange, the impact on the adjoining lots, the tie-in with the proposed new access road, and about whether that access road will have to be closed and regraded when the interchange is built.

Responding, Transportation Planning staff stated that the design of the future interchange is completed enough to ascertain the alignment and a small portion of the Kaufman property will be needed for a grading easement. Development Review staff clarified that the affected lot will still have 55 feet for a rear yard.

Mr. Les Powell, the applicant's engineer, verified that the new access road to the south will tie in to the future interchange at grade and will remain open during construction of the interchange.

The following speakers offered testimony on the proposal: Mr. Neal Fitzpatrick, representing the Audubon Naturalist Society; Mr. Barry Wides, representing the North White Oak Civic Association; Mr. Jim Fary, representing the Sierra Club; Ms. Patricia Brennan, representing the Jackson Road Elementary School Parent-Teachers Association; Mr. Robert Ferraro, representing the Eyes of Paint Branch; and adjacent property owners Ms. Marie Daniele Zartman, Ms. Anne Lucker, Ms. Jane Rising, Mr. Robert Rising, Ms. Kady Burke, Mr. Donald Krizek, Mr. Charles Campbell, Mr. Robert Lynn, Ms. Maria Germany, Mr. Mark Abbruzzese, and Ms. Holly Berardi. The speakers, many of whom distributed written testimony and material, raised concerns about exacerbating existing traffic problems on New Hampshire Avenue, particularly related to U-turns; increased traffic on neighborhood streets with no sidewalks and the safety of children walking to school; the need for a traffic signal at the intersection of the access road and New Hampshire Avenue; the need for guarantees that the alternate access to Milestone Drive will actually be constructed; preservation of all or more of the mature forest on the subject property, including the area abutting the Library property, by decreasing the size or number of lots and increasing to 100 feet the buffer next to abutting homes; the need for protection against increased noise and pollution from US 29 and New Hampshire Avenue; problems with increased flooding caused by loss of trees; and the location of the stormwater management facility too close to abutting homes.

In addition, Mr. Kevin Fay, representing the abutting property owner Dora Malasky, offered testimony about the proposed access through the Malasky property, noting that the property owner supports it, but the property is under contract for sale; any access easement, he stated, will have to be granted by the purchaser of the property.

In rebuttal, Mr. Kaufman addressed the issue of the right-of-way first. He noted that the applicant has an agreement with the contract purchaser of the Malasky property for the right-of-way, and he said that the applicant will accept a condition that the right-of-way must be secured prior to release of building permits. In addition, Mr. Kaufman noted that such an agreement also exists with the Sunrise property owners and the access will be built whether or not the anticipated interchange is ever constructed.

With regard to tree preservation, Mr. Kaufman cited the staff report and the previous Board opinion, which state that the proposal meets all requirements and, in fact, saves more than twice the number of trees that would be saved under standard development of the property. He added that the proposed density is 60 percent of the possible density under the current zoning.

In terms of stormwater management, Mr. Kaufman stated that the proposed location is the best place on the property for the facility and the existing situation will be significantly improved.

Mr. Les Powell, the applicant's engineer, elaborated on those issues. He noted that the tree buffer area around the perimeter has been increased from 35 to 50 feet and there will be significant replanting in the pond area in addition to other trees being saved on the site. Mr. Powell displayed a cross-section exhibit of the stormwater management pond and discussed the types of planting to be used. Responding to questions from Commissioner Wellington, Mr. Powell pointed out the area that was identified as a priority one forest area and he noted that the priority one status will be lost when the road is constructed.

Responding to questions from Chairman Hussmann, Environmental Planning staff elaborated on the issue of the priority one forest area, verifying that the area is technically priority one because there is the remnant of an intermittent stream and a buffer area. However, staff stated that the construction of the road and installation of the sewer line will fragment the priority one area. Staff also said that if the stormwater management pond is moved to another location on the site, a dam would have to be created and there would be the possibility of dam breach. In addition, more trees would be lost.

Mr. Kaufman contended that the site has been carefully engineered and reviewed, with efforts to balance many different priorities and meet all the requirements. He reiterated that the proposed location for the stormwater management pond is the safest and best place for that facility.

Chairman Hussmann raised concern about clearing the priority one area. He also noted that the area abuts the Library, and he questioned whether there will be adequate buffering. He suggested that the six lots adjacent to that area should be deleted to address the environmental issues and provide greater buffering.

Mr. Kaufman suggested that, rather than reducing the density, it would be more meaningful to the Paint Branch watershed to increase the quality and size of the plantings, phase the grading, and provide a significant off-site preservation or reforestation. Mr. Kaufman said that

the applicant will work with the community about screening for the stormwater pond and the Library. He also suggested that the fact that the property owner previously donated the land for the Library should be taken into consideration.

Mr. John Clark, of the applicant company, noted that they have been working with County Department of Permitting Services (DPS) with regard to where trees can be planted in the area around the stormwater management pond.

Mr. Dave O'Brien, one of the applicant's engineers, provided additional information about the phasing of clearing and grading and about the stormwater management facility. He noted that the Maryland Department of the Environment and the Corps of Engineers have reviewed the proposal and its environmental impact and have granted permission to fill in the intermittent stream area.

At Mr. Kaufman's request, Mr. Powell discussed the connection of the second access to Milestone Drive and verified that access will be provided to US 29 whether or not the future interchange is constructed. Mr. Kaufman reiterated that there is no objection to a condition requiring evidence that the right-of-way is available prior to release of building permits and he added that if additional tree preservation is desired, it can be accomplished in alternate ways rather than redesigning the plan and deleting lots.

There followed additional discussion about the right-of-way through the adjoining properties to the south for the access to Milestone Drive. It was noted that the developers of the Sunshine project do not yet own the property and that project must come before the Board for approval, at which time the alignment through that property will be finalized. It was agreed that a condition should be added that requires the applicant to secure binding letters of agreement demonstrating that the right-of-way will be available for the applicant to construct the road prior to release of the first building permit.

Returning to the forest conservation issues, Chairman Hussmann said he is not convinced that a maximum effort has been made to avoid clearing the priority one forest area. He reiterated the view that if the first five or six lots on the north side of the street were deleted the stormwater management facility could be moved farther from the Library, the priority one area could be retained, and the buffering for the Library increased.

There followed additional discussion of possible relocation of the stormwater management pond. Environmental Planning staff suggested that the sand filter then also would have to be moved into the conservation buffer and, therefore, additional trees in that area would be lost. In addition, staff noted that moving the pond from the lowest point on the property would likely cause less drainage into the pond and more runoff to existing homes.

In response to the Chairman's concerns about buffering for the Library and Commissioner Wellington's questions about a letter in the information packet with concerns from the Library, Mr. Clark provided information about various negotiations with the Library related to screening and access. He noted that an offer was made to the Library to provide a connection to

the interior road for access through the subject site to Milestone Drive, and to provide fencing and plantings on the sloped area next to the parking lot. In addition, he noted that the applicant secured permission to construct a closed-section road into the site, which will save trees adjacent to the Library. Mr. Clark said he will work with the Library and staff to ensure that there is adequate buffering, and Mr. Kaufman suggested a new condition to that effect.

Commissioner Perdue noted that it is unfortunate that the low point of the site is located in that area and said she is convinced by the technical staff testimony that the proposed location is the best for the stormwater management facility and moving it will create other complications. She noted, however, that she would like to see stronger language about better buffering for the Library. In addition, Commissioner Perdue expressed the view that it is not irrelevant that the owner of the property donated the land for the Library and for that reason, because it is a close call, she is willing to shift the equity enough to allow this to move forward with appropriate buffering, rather than penalizing the property owner for the impact on the Library. She also supported requiring evidence of a binding agreement for the right-of-way through both adjoining properties to Milestone Drive.

Commissioner Wellington shared the Chairman's concerns about the location of the stormwater management facility, the priority one area, and buffering for the Library.

Commissioner Perdue raised the question of additional off-site tree save areas, to which Mr. Kaufman responded that the applicant is willing to consider off-site tree save in addition to looking again at the stormwater management facility design to see if additional buffer space can be created.

In making the motion, Commissioner Bryant included modifications to the conditions to address the issues of guaranteeing the right-of-way to Milestone Drive, providing increased buffering for the Library and reviewing the design of the stormwater management facility with a view to creating a greater buffer area, and requiring off-site replacement of trees.

Staff offered wording to insert at the beginning of condition 3 to address the requirement for evidence of right-of-way to Milestone Drive, which was accepted by Commissioner Bryant.

In seconding the motion, Commissioner Perdue clarified her understanding of the element of the motion related to review of the stormwater management facility, noting that she expects it will not create a significant amount of increased buffer, but may create some increase.

There followed some discussion of the proposed off-site planting in the Paint Branch watershed and whether the requirement should be for new plantings or preservation of existing trees through creation of a conservation easement.

Mr. Kaufman spoke in support of additional plantings, although Chairman Hussmann noted that there are often problems with retaining new plantings.

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Staff supported preserving existing trees, particularly in an area that is likely to be threatened by development, although staff noted that a survey has not been conducted to identify potential tree-save areas. Staff suggested a combination of new plantings and preservation of existing trees.

Mr. Kaufman suggested that if there has been a problem with retention of new trees, the applicant could plant more mature stock and guarantee that it will be replaced if it does not survive.

Chairman Hussmann suggested that creating six acres of tree preservation would likely have greater significance than new plantings in the Paint Branch watershed.

The maker and seconder of the motion accepted that proposal to require six acres of tree preservation in an area subject to the threat of development, rather than additional off-site tree plantings.

In conclusion, the Chairman said that he would rather have more on-site tree preservation to address the community concerns, but he acknowledged that the off-site tree preservation will have significance for the watershed. He added that the plan is much improved with the second point of access.

There being no further business, the meeting was adjourned at 10:30 p.m. The next regular meeting of the Planning Board will be held Thursday, September 30, 1999, at 12:00 p.m. in the Montgomery Regional Office in Silver Spring, Maryland.



Ellyn Dye
Technical Writer

**Agenda for Montgomery County Planning Board Meeting
Tuesday, September 28, 1999, 7:30 P.M.**

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

1. Preliminary Plan No. 1-98096 - Kaufman Property

R-90 Zone; Forty-Nine (49) Lots Requested (Single Family Detached); 18.5 Acres
Community Sewer and Community Water

East Side of New Hampshire Avenue (MD 650), Approximately 1,400 Feet North of the
Intersection of Columbia Pike (MD 29), Behind the White Oak Library

Policy Area: Fairland - White Oak

APPLICANT: Elm Street Development
ENGINEER: Charles P. Johnson and Associates
ATTORNEY: Linowes and Blocher

Staff Recommendation: See Conditions of Approval Enumerated in Staff Report.

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: SEE MINUTES.