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NORMAN G. KNOPF

November 13, 2013

Delivery by Hand

Patrick Butler
Senior Planner, Area 2 Division
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Re: **EYA – Grosvenor Project**

Dear Patrick Butler:

Thank you for agreeing to meet again with me and community representatives regarding concerns about the above-referenced project. The Fleming Park Citizens Association, representing the closest and most affected community of some 450 homes and the Wildwood Citizens Association, representing some 550 homes strongly urge the staff to recommend **DENIAL** of the project as currently proposed. The Associations support development of this property. However, as outlined below, the current EYA proposal must be rejected for violation of the Zoning Code's density requirements, adverse impacts on the Legacy Open Space area, lack of compatibility with the nearby houses, traffic safety problems on Fleming Avenue and other reasons. Our position is based upon our understanding of EYA's current proposal and the staff's initial reaction to that proposal. Our understanding may be incomplete or inaccurate as at this time we do not have the benefit of the proposed written staff report or all of the details of revisions by EYA to the original application.

1. Code Density Limitation Exceeded

Section 59-C-1.622 permits a maximum density of 4.39 units per acre on R-90 property where there are MPDU's.

a. Approximately 35 acre site x 4.39 = 153 d.u.'s and 153 are being provided. This maximum assumes the entire acreage should be counted as part of the project and has no other development on it. Of the 35 acres, 10 acres are not part of this project, but are part of a special exception for non-profit office use.

35 acres minus 10 acres = 25 acres x 4.39 = 110 d.u.'s
permitted, i.e., 43 less than proposed

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b. Another method of analyzing the proper density is to take into consideration that under this special exception, after the removal of one of the office buildings, there will remain some 32,000 sq. ft. of office use (the Mansion – 8,000 sq. ft., the Carriage House 1,300 sq. ft, and one office building 22,500 sq. ft.). Section 59-G-2.21(a)(2)1(v) provides for an FAR of 0.25 for non-profit office use. Thus, a minimum of 3 acres is required for the 32,000 sq. ft of office use. ($4 \times 32,000 = 128,000$ sq. ft. or approximately 3.0 acres). Three acres \times 4.39 d.u.'s = 14 units.

Under this analysis, a maximum of units permitted would be $155 - 14 = 141$. However, this fails to take into consideration development related to the actual office buildings, i.e., parking lots and roadways which as a practical matter, affects aesthetically the density of development of the property.

c. We understand two separate lots will be created to contain the existing structures and perhaps that is what EYA is relying upon to permit 153 units, i.e., deduct 2 units from the maximum of 155 based upon 2 lots. However, the Development Standards of the Zoning Code define density in terms of dwelling units per acre, not number of lots.

d. As explained below, the extensive density causes numerous problems, including

- Development is placed on LOS land;
- LOS trees and other trees will be destroyed that buffer the existing parking area and the Fleming Avenue houses;
- There is no room for any park amenity on site, resulting in overburdening the existing Fleming Park;
- The number of units is incompatible with the number of existing houses on the opposite side of Fleming Avenue
- A new access road connecting with Fleming Avenue is thought necessary to handle the property traffic creates serious safety concerns for bicyclists and pedestrians.

2. Code Condition For 100% Townhouse Requirement Not Met

Section 59-C-1.621, fn.1, provides that the number of townhouses is limited to 50%. However, it may be increased to 100% only if: (a) the development is environmentally more desirable; and (b) any increase above 50% “must achieve not less than the same level of compatibility” as if only 50% were townhouses.

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a. We understand the purpose of 100% townhouses is to preserve and protect the LOS. Yet, dwelling units and related roadways are being constructed in LOS areas delineated by the Planning Board when so designated.

b. It is incompatible with the character of the neighborhood to remove a large number of trees, some within the LOS, effectively eliminating the buffer near the existing off-site park and the buffer for existing homes on Fleming Avenue.

Incompatible with the existing homes on Fleming Avenue is the proposed row of 18 townhouses, the backs of which will confront 9 existing single family detached homes across the street. These homes are on lots 50' wide, and at least 5,000 square feet. Zone R-90 side yard setbacks are 8' on one side and a total of 25' for both sides.

The community has asked staff and the applicant to single family detached homes fronting along Fleming Avenue totaling no more than 8 homes, so as not to be located on LOS. The detached single homes would be on 50' wide lots. It was thought that detached homes would also permit the saving of many large trees along Fleming Avenue and be more compatible with the existing detached homes.

Since our first request for single family homes, we have learned that the applicant's proposal for detached homes would include:

- 10 homes with 4' side yard setback;
- Very tall homes;
- Homes on very small lots;
- Not aligned with the existing houses;
- Would require the grading of the entire area leaving no existing growth along Fleming Avenue; and
- Require an access road to Fleming Avenue.

This is obviously unacceptable and has raised sufficient concern so that the community wishes to evaluate whether townhouses might provide more compatibility. This however depends upon information we do not have and it is essential to obtain and be made certain:

1. How many townhouses would be built and whether located on LOS;
2. What would be the maximum height compared to detached houses since a rooftop structure would be built on townhouse roofs for outdoor facilities and other uses;

3. Would townhouses permit the saving of more existing trees, or provide more area to replant an effective buffer; and what would that look like;
4. Would townhouses eliminate the need for an access road to Fleming avenue or permit it to be limited to emergency access, etc.?

The community has no meaningful site plan showing the essential details such as design/height/actual buffering to permit a comparison of single family homes with townhouses. Whether detached homes or townhouses are constructed, it appears, the current proposals are incompatible with existing houses on Fleming and the existing park.

3. Roads/Safety. The original proposal did not require an access road to Fleming Avenue as the traffic data submitted by the applicant showed the existing Grosvenor access road was sufficient. The access road to Fleming Avenue now proposed creates several safety and compatibility problems.

- a. It crosses a bike path;
- b. It greatly increases traffic on Fleming Avenue which has numerous children and other pedestrians accessing the local park;
- c. It greatly increases traffic on a quiet residential street, including not only the townhouse traffic but traffic generated by the office use;
- d. Access road will require widening of the narrow residential Fleming Avenue, another change of character of the neighborhood in addition to removal of the tree buffer; and
- e. A widening of Fleming Avenue will achieve no purpose as the roads it connects with are also substandard.

If an access road is essential for emergency purposes, the community requests:

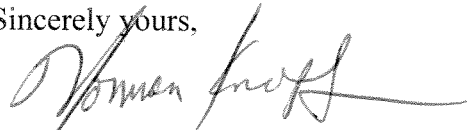
- a. The road be designed and signed for emergency use only;
- b. Whether only for emergency use or otherwise, the townhouses tiers should be located so there is no "straight shot" from the townhouse development and for the office employees to Fleming Avenue. To reach the access should be a more circuitous route;
- c. The existing office building parking lot should be redesigned and/or limited by a gate as to make it more difficult for cars to access Fleming avenue compared to Grosvenor Lane;
- d. Any widening of Fleming Avenue should be at the minimum permitted by the Code. Section 49-31 provides that a secondary residential street may have a 24' road width with parking on both sides.

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4. **Lack of Amenities.** The project provides no park amenities on site such as required by the Board's guidelines. The existing neighborhood park will be used by townhouse residents, their children and grandchildren. The existing park's playground is already overcrowded and this will exacerbate the situation. The community found totally unacceptable that the developer may be able to buy its way out of providing needed on-site facilities by making "improvements" to the existing park. The Board's financial problems in maintaining the existing park should not be the basis for imposing yet another adverse effect upon the community.

Thank you for considering our views.

Sincerely yours,

A handwritten signature in cursive script that reads "Norman Knopf". The signature is written in black ink and is positioned above the printed name.

Norman G. Knopf
Attorney for Fleming Park CA and
Wildwood Citizens Association

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MEMORANDUM

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Staff, Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

FROM: Norman G. Knopf *NK*

DATE: August 16, 2013

RE: Grosvenor – EYA Development

Thank you for meeting on July 31, 2013 with me, representatives of the Fleming Park Community Association, and the Wildwood Manor Citizens Association. We explained why the communities believe the project, as currently proposed, may not lawfully be approved, and is otherwise not proper. You requested that we provide you with an outline of the concerns we expressed.

1. **Density.** The project exceeds the density permitted by the Zoning Code. §59-C-1.622 permits a density of 4.39 townhouses per acre – which on this approximately 35 acre site would yield a maximum of 155 dwelling units, and 153 are proposed. Obviously, this density applies to undeveloped land that is part of

the project. If the 4.39 townhouses per acre were applied to land already developed with buildings, it would exceed the lawful density limit.

About 10 acres of the property are not part of this project. This acreage is a special exception for non-profit office use. The special exception area is owned and we understand will continue to be owned and occupied by the Society of American Foresters and their non-profit tenants. The site currently contains the following development – a mansion of 8,000 sq. ft., a carriage house of 1,300 sq. ft. used by the Society of American Foresters, a caretaker house of about 1,000 sq. ft., an office building of about 22,500 sq. ft., and a second office building of about 22,500 sq. ft. which will be demolished. There are also parking lots to accommodate the office personnel. Thus, approximately 33,000 square feet of buildings on the site will remain and will be used for the special exception by the Society of American Foresters and other non-profits.

The 10 acres would accommodate approximately 44 townhouses if the land were undeveloped. Under the current proposal, the 10 acres of the special exception land are used to calculate the amount of townhouses proposed to be built. The 44 townhouses which would occupy the special exception 10 acres need to be deleted. Otherwise, the density specified in the Zoning Code is exceeded.

Additional considerations demonstrating the inappropriateness of this double counting is that we understand the special exception buildings/property will be required to be platted with separate lots. It is our understanding that EYA and the successor EYA Homeowners Association will not own or control of the property encompassed by these lots or most, if not all, of the property that is part of the special exception area.

We understand there have been situations in which the Planning Board has allowed an existing historic building to be considered part of the overall new development project in order to permit the new project to fund an existing historic property. The Grosvenor Mansion is an historic property but it has already been so designated and is already being funded by permitting its use for offices by non-profits, as well as use of other buildings on the site for offices. Permitting an historic building to be part of a townhouse project is quite a different situation than permitting some 33,000 sq. ft. of existing development essentially used for offices not to be considered as part of the density calculations.

2. **Inconsistent With Legacy Open Space Designation and Other Environmental Harm.** The development is proposed for 100% townhouses which is extraordinary but permitted only where it is determined such townhouse development would be more desirable from an environmental perspective than the maximum 50% townhouses. §59-C-1.6 fn.1, Zoning Code p.C-1-43. The purported purpose of 100% townhouses is to be preserve the legacy open space designated area which contains forested areas/numerous significant and specimen trees. As we discussed, the proposed development actually locates numerous

townhouses and a street and parking spaces to service those townhouses within the area designated by the Planning Board as legacy open space to the north of Fleming Park. This encroachment is not only inconsistent with the purpose to preserve the legacy open space area but changes the character of the park from one containing a forested, shaded buffer along the playground, tennis courts, etc. This results in the destruction of most of the buffer including numerous specimen and significant trees.

Further, the current design and location of the project, such as a solid flank of townhouses along Fleming Avenue, necessarily results in the destruction of many large trees outside of the LOS area. The community views what is happening as “bait and switch” as construction of an incompatible 100% townhouse development in a single family detached neighborhood is said to be required for environmental reasons to save the LOS area. Then the environmental protection rationale is ignored/negated by placing houses and related development within the LOS.

The Planning Board’s actions approving the LOS designation makes clear that development on the site was to enable the preservation of the LOS site, and its valuable large trees.

- The Montgomery County Planning Board's January 17, 2008, approval of the Legacy Open Space nomination for Wild Acres is posted on the Planning Board's website; the Planning Board's action/decision is documented on its agenda for that date, consistent with M-NCPPC staff's January 11, 2008, memorandum. The entire approved area is to be protected through dedication through the development review or special exception process (if a new development or special exception use is proposed).
- At the January 17, 2008, Planning Board meeting, a Planning Board member said that they didn't want an unclear LOS decision, and they approved an LOS area with clear boundaries, consistent with staff's January 11 memo. At this meeting, LOS staff cited the "moderate to high quality forest" and the perennial and intermittent streams on the site, and stated that the forested LOS area just north of Fleming Park is important for buffering and maintaining Fleming Park. (We understand that the intermittent stream is largely in the LOS area that EYA proposes to build on; we're waiting for current confirmation of the location of the intermittent stream.)
- See the M-NCPPC/Montgomery County Department of Parks' November 9, 2007, and January 11, 2008, memos to the Planning Board for background and rationale for designation of Wild Acres -- an environmentally and culturally significant property -- as a Legacy Open

Space Natural Resources Site. These memos are posted on the Planning Board's website.

- Wild Acres' protected/designated Legacy Open Space area is shown in the January 11, 2008, memo to the Planning Board. The same area of designation also is shown in M-NCPPC memorandums of April 16 (to the Historic Preservation Commission), May 22 (to the Planning Board), and July 24 (to the Planning Board), 2008, and the Montgomery County Council's legislative attorney's March 27, 2009, memo (to the County Council). Also, February and August, 2008, e-mails from Dominic Quattrocchi to Ann Bowker include a map of Wild Acres showing the approved LOS area (both the area owned by the Society of American Foresters, and the area that's State Highway property). All of these maps show essentially the same approved LOS area and LOS boundaries. They document what EYA has acknowledged -- that its development as proposed would encroach into the approved LOS area.

3. **Compatibility.** Section 59-C-1.6 fn. 1, requires that the increase in the percentage of townhouses to 100% must achieve not less than the same level of compatibility as would exist if the development were constructed using the standard percentage of that type of dwelling unit (50%). This requirement is clearly not met. As already noted, the location of some of the townhouses proposed will destroy many large trees. If there were single family detached homes, many trees could be saved, since there would be side yards and other various accommodations for the trees. The project proposes a flank of 18 townhouses along Fleming Avenue. In theory, this flank is to be buffered by the existing trees/forest area so that the single family homes on the opposite side of Fleming Avenue, many at a higher elevation, would not be detrimentally aesthetically impacted.

However, an analysis of this so-called buffer shows that it is ethereal. First, almost all the existing tree cover is within the line of disturbance and will be destroyed. Second, 20' is being dedicated for additional right of way width; a pedestrian path/bike lane will be located in this area; the townhouse backyards take up 20'; at least a 4' area behind the back yards must be left unplanted to accommodate lawn mowers servicing the back yards, the developer has advised us. Further, there is to be a 10' PUE. EYA advised that the townhouse rear footprints would start 77' from the existing Fleming Avenue curb located on the project's side of the road. (This distance differs from that shown on the plans). Twenty feet road dedication, 10' PUE, 20' back yard plus 4' leaves a very narrow area in which greenery can be retained or planted. Basically the existing buffer will be destroyed and little can be done to have an effective buffer for the existing single family detached homes on Fleming Avenue. Most importantly, the wonderful forested character of the neighborhood will be destroyed. In place of a green forested buffer will be a row of 18 townhouses, with essentially no effective screening (until the trees planted as part of landscaping mature in 30-40 years).

It is unclear how high the townhouses will be – they are permitted to go 40' high under the Code. EYA has indicated there will be rooftop structures and amenities – e.g., structures to accommodate a barbeque area, roof over the stairway coming from the lower floors, etc. The height/rooftop use make it more essential there be adequate buffering for the homes across the street.

Of course, the LOS problem, the aesthetic problems, the environmental problems, can all be resolved by adhering to the density required by the Zoning Code. The reduction of 44 townhouses, as discussed above, would provide flexibility to mitigate the above concerns.

4. **Insufficient Amenities.** The EYA proposes to use the existing Fleming Park for its park amenity requirements. The community is opposed as this park, particularly the playground for small children, is already overcrowded. Children and grandchildren from the EYA project will exacerbate this situation.

EYA argues there will be few children in these projects. If that is accepted by the Board, the EYA project should at least provide some park amenities on site for the population it serves, such as senior citizens – i.e., a sitting area, a walking trail, or other adult type activities. This could be located along Fleming Avenue to break up the flank of townhouses.

5. **Parking.** The community is concerned that there is insufficient parking for the townhouses proposed along Fleming Avenue. Although EYA argues there are plenty of spaces within the development, including the right to use the parking lot areas associated with the special exception office buildings in off hours, this is not practical. Persons having guests will choose the most convenient and closest parking area, which is along Fleming Avenue since there is a pedestrian path from Fleming Avenue to the townhouses. This will only exacerbate the already undesirable parking situation on this street. Additional parking closer to the townhouses is needed.
6. **Historic Site Impact.** There is concern that the location and density of the proposed development will have negative effects on the historic site. The view shed from the mansion will be a large, densely backed townhouse development, plus an office building and parking lots, rather than a treed/open space setting.

As we advised you from the outset, the Fleming Park and the Wildwood Manor Communities are not opposed to the townhouse development on this site. They are opposed to the project, as presently proposed, because it exceeds the density requirements, it does not preserve the legacy open space areas, which is supposedly the basis for this type of project, and is currently designed in a manner which is not compatible with the existing neighborhood.

Thank you for your consideration of our concerns.