



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

ITEM# 11

DATE: 07/24/03

**MEMORANDUM**

**DATE:** July 18, 2003

**TO:** Montgomery County Planning Board

**VIA:** Joseph R. Davis, Chief Development Review Division

**FROM:** A. Malcolm Shaneman, Supervisor (301) 495-4587  
Richard A. Weaver, Senior Planner (301) 495-4544  
Development Review Division

**REVIEW TYPE:** Preliminary Plan Review

**APPLYING FOR:** Resubdivision of Lot 1, Moyers Subdivision

**PROJECT NAME:** Allanwood

**CASE #:** 1-02088

**REVIEW BASIS:** Chapter 50, Sec. 50-29 (b)(2), Montgomery County Subdivision Regulations, and Resubdivision Criteria

**ZONE:** R-200

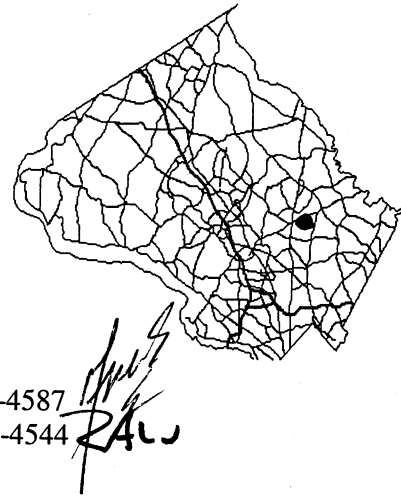
**LOCATION:** On the South Side of Norbeck Road (MD 28), Approximately 240 feet Northeast of the Intersection with Drury Road

**MASTER PLAN:** Aspen Hill

**APPLICANT:** James Dayhoff

**FILING DATE:** February 27, 2002

**HEARING DATE:** July 24, 2003



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**STAFF RECOMMENDATION:** Approval, Pursuant to the De Minimus Provisions of the FY 2004 Annual Growth Policy, Pursuant to Section 50-29 (b)(2), Montgomery County Subdivision Regulations and Subject to the Following Conditions:

- (1) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits

- (2) All road rights-of-way shown on the approved preliminary plan shall be dedicated, by the applicant, to the full width mandated by the Aspen Hill Master Plan unless otherwise designated on the preliminary plan
- (3) Record plat to provide for dedication of 120 feet of right-of-way (60ft. from centerline) for Norbeck Road
- (4) Record plat to reflect common ingress/egress and utility easements over all shared driveways
- (5) Compliance with the conditions of approval of the MCDPS stormwater management approval
- (6) Prior to issuance of building permits, applicant to submit an engineered sediment and erosion control plan to MCDPS for review and approval
- (7) Compliance with conditions of MCDPWT letter dated, July 7, 2003 unless otherwise amended
- (8) Access and improvements as required to be approved by MDSHA prior to issuance of access permits
- (9) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be filed
- (10) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion
- (11) Other necessary easements

## **DISCUSSION OF ISSUES**

### **Conformance to Chapter 50-29(b)(2)**

In order to approve an application for Resubdivision, the Planning Board must find that the proposed lot(s) must comply with all seven of the "Resubdivision Criteria" as set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

"Resubdivision. Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision."

### **Defined Neighborhood**

In administering the Resubdivision section, the Planning Board must delineate an area within which it conducts its lot character analysis. In this case, staff recommends a neighborhood delineation that will enable the Board to effectively determine whether the proposed lots comply with the resubdivision criteria with respect to the character of those existing recorded lots most impacted by the proposed Resubdivision. Below, staff has provided a description of the area analyzed under the resubdivision criteria and has also attached to this staff report an illustration, which delineates the neighborhood.

In defining the appropriate neighborhood for lot character comparison purposes, it has been long-standing Planning Board practice, facts and circumstances permitting, to limit the neighborhood to include only lots within the same zone and developed under the same standards as the subject property. Therefore, in this case, ordinarily the lots in the subdivision abutting the subject property to the south along Norbeck Road would be excluded from the analysis because they were developed under an R-200,

density control development standard.<sup>1</sup> For this application, however, staff has determined that excluding the subdivision to the south would provide only two existing lots with which to compare the three proposed lots (abutting Lot 2, to the north of the subject property, and Lot 1, to the northeast of the subject property, both with frontage on Norbeck Road). Staff is of the opinion that by limiting the Board's analysis to only two existing lots, a meaningful determination cannot be made under § 50-29(b)(2); and, consequently, the intent of that section and the larger purpose of the Subdivision Regulations, that of promoting harmonious development, would not be achieved.

Therefore, presented with the unusual circumstances of this case, staff has defined the neighborhood to also include the lots that abut the subject property to the south with frontage on Drury Road (Lots 12 through 15, Block Eye – Allanwood), and the lots to the southwest of Drury Road fronting on Norbeck Road, (Lots 27 through 30, Block F – Allanwood). Staff did not include the lots along Woods Center Road because access to this neighborhood is somewhat removed from the subject property. These lots were determined to be within a separate neighborhood from the subject property given the lot patterns that have evolved along Norbeck Road. Furthermore, nearby and confronting unrecorded parcels and parts of lots have been excluded from consideration, consistent with agency practice.

### **Master Plan Compliance**

The property is located within the Approved and Adopted Aspen Hill Master Plan area. The master plan does not specifically identify this property but does give general guidance and recommendations regarding zoning and land use. The master plan recommends that this area maintain the residential zoning as adopted. The proposed resubdivision complies with the recommendations adopted in the master plan.

### **DESCRIPTION**

#### **Vicinity**

The subject properties, along with Lot 2, abutting to the north, were recorded under a single plat in 1955. Lot I of the Ebner Tract Subdivision, located on Norbeck Road to the north and east of the subject property, was platted in 1976. However, the majority of properties along this portion of Norbeck Road have not been recorded by plat and are identified as "deed parcels" by the tax assessment office. Most of the parcels in this vicinity are improved with one family homes.

The Allanwood subdivision to the south of the subject property was recorded by plat in 1968, and again, under the density control development option. No resubdivisions have occurred on any lots within the defined neighborhood presented by staff.

### **PROPOSAL AND ANALYSIS**

This application for resubdivision proposes to create three lots with access to Norbeck Road. The plan shows an area of future dedication for a partial public right-of-way that staff has asked to be established on the plat should it eventually be needed to provide access to any future lots on existing Lot

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<sup>1</sup> The density control option allowed for a variation in lot sizes down to a minimum of 15,000 square feet. Overall lots size using the density control option was required to average 20,000 square feet. The setback standards for density control are similar to the R-200 zone, which is the zoning for the subject property. As of September 1986, the density control is no longer available as an option for the development of land in Montgomery County (see Section 59C-1.41, Zoning Ordinance)

2 of the Moyer Subdivision, which adjoins the subject property. Were Lot 2 to come through the subdivision process, Staff may request dedication for the potential public right-of-way, if needed. were. Any future lots on Lot 2 would need to be reviewed and approved by the Planning Board as part of a preliminary plan (resubdivision) application.

The location and design of any future road would need to be approved by the Montgomery County Department of Public Works and Transportation (DPWT) and the State Highway Administration. If approved, the three lots of this subject application can be accommodated by a private driveway that would be replaced if the public road is ever needed. Lots that have the potential to access the new public road, including the three lots of this application, will have a covenant placed on them requiring the owner(s) to pay a pro rata share of the expenses for road construction should it ever be built.

The plan proposes three comparably **sized** lots: (33,598, 34,030 and 31,004 square feet). As shown on the attached tabular summary, the lots are within the range of lots sizes for the defined neighborhood that range from 15,395 square feet to 2.5 acres. Similarly, the **area** of the proposed lots fall within the range of other lots in the defined neighborhood. Given the variety of lots **shapes** in the neighborhood, staff finds that the proposed lots will meet the shape criteria.

The **width** of the proposed lots range from 170 feet to 100 feet. A number of lots in the defined neighborhood are at the 100-foot width minimum for the R-200 zone. The proposed lots are, therefore, within the range of the defined neighborhood. The proposed lots are **aligned** in similar fashion to all lots in the defined neighborhood. Future homes on the proposed lots will front perpendicularly to the street upon which they access. All lots have been deemed to be **suitable** for residential development.

#### **Waiver of frontage criterion**

The Subdivisions Regulations preclude the dedication of half-streets. Therefore, this plan proposes two lots that will not, at the time of application, have **frontage** on a public right-of-way, but rather on an easement for future dedication.<sup>2</sup> Staff recommends that the Board waive the resubdivision criterion of frontage for these two lots pursuant to its authority under § 50-38 to grant a waiver from the requirements of Chapter 50 of the Montgomery County Code. In Staff's opinion, the absence of frontage creates a practical difficulty; and, moreover, the potential for frontage on a future right-of-way constitutes an unusual circumstance. The waiver is the minimum necessary to provide relief from the requirement of using frontage as a criterion for those two lots; it is not inconsistent with the purposes and objectives of the General Plan; and is not adverse to the public interest.

#### **Exception to frontage criterion**

Staff recommends that the Board approve an exception to the requirement in the Subdivision Regulations that lots abut on a public street.<sup>3</sup> Staff, therefore, recommends, that the Board, pursuant to its authority under § 50-29(a)(2) approve the proposal for a private driveway to serve as the access point for the two lots that do not have frontage. In Staff's opinion, this case presents an exceptional circumstance, where there is the potential for additional lots to share the future public road identified above. The proposal provides for an easement for future dedication. The Department of Fire and Rescue Services does not object to the proposed private driveway with regard to access and safety. Further, the accommodation for the private drive and easement for future dedication is not detrimental, and may, in fact, be beneficial to any future resubdivision of the adjacent lot.

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<sup>2</sup> As noted above, a right-of-way might extend into the property in the future.

<sup>3</sup> See Montgomery County Code § 50-29(a)(2).

## CONCLUSION

The proposal, as submitted complies with all seven of the resubdivision criteria of Section 50-29 (b)(2) of the Montgomery County Subdivision Regulations (with a waiver of the frontage criterion with respect to two of the proposed lots). In this finding, staff acknowledges the potential for future resubdivision of Lot 2, Moyer Subdivision and that it is prudent to establish an easement for future dedication to accommodate those lots along with any lots approved under this application. Given this circumstance, the Planning Board must approve two lots without frontage on a public right-of-way, permitted under Section 50-29(a)(2). If in the future Lot 2 the subject of an application for subdivision, it is likely that the remainder the right-of-way will be required to be dedicated by that applicant. However, this decision will be subject to review by the State Highway Administration and the Department of Public Works and Transportation at that time.

This application proposes three lots that are consistent with the size, area, shape, width, frontage (one lot), alignment and suitability for residential use of the majority of lots within the neighborhood. Staff recommends approval of this application, subject to the conditions cited above


### Attachments

Vicinity and Neighborhood Delineation Map	5
Neighborhood Development Map	6
Proposed Resubdivision Plan	7
Tabular Summary	8

*To date no citizen correspondence has been submitted to the file*

VICINITY MAP FOR

# ALLANWOOD (1-02088)

 - Defined Neighborhood



Map compiled on June 30, 2003 at 11:20 AM | Site located on base sheet no - 221NW02

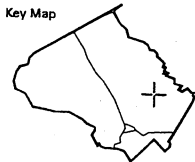
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Key Map



1 : 4800

**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
 8787 Georgia Avenue - Silver Spring, Maryland 20910-3760

VICINITY MAP FOR  
**ALLANWOOD (1-02088)**



Map compiled on June 30, 2003 at 1:37 PM | Site located on base sheet no - 221NW02

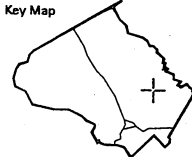
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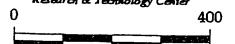
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Key Map



Research & Technology Center



1 : 4800





**Tabular Summary**  
**Allanwood 1-02088**

Lot #	Block	Frontage	Alignment	Size sq. ft.	Shape	Width	Lot Area sq. ft.	Suitability
A		177	perpendicular	33,598	Rectangular	170'	15,119	Yes
B		*	perpendicular	34,030	Irregular	170'	15,313	Yes
C		*	perpendicular	31,004	Irregular	100'	13,951	Yes
2	Moyer Sub	198'	perpendicular	102,714	Rectangular	207'	56,492	Yes
1	Ebner Sub	170'	perpendicular	29,676	Irregular	130'	13,354	Yes
12	F	160'	perpendicular	21,375	Rectangular	160'	9,618	Yes
13	F	114'	perpendicular	15,395	Rectangular	114'	6,927	Yes
14	F	92'	perpendicular	16,707	Rectangular	100'	7,518	Yes
15	F	91'	perpendicular	26,423	Rectangular	100'	11,890	Yes
27	F	96'	perpendicular	17,130	Rectangular	100'	7,708	Yes
28	F	100'	perpendicular	16,500	Rectangular	100'	7,425	Yes
29	F	100'	perpendicular	16,500	Rectangular	100'	7,425	Yes
30	F	98'	perpendicular	19,118	Rectangular	100'	8,603	Yes

\* Frontage requirement waived  
Proposed Lots