


**MEMORANDUM**

**DATE:** October 15, 2004

**TO:** Montgomery County Planning Board

**VIA:** Richard Hawthorne, Acting Chief  
Catherine Conlon, Acting Supervisor   
Development Review Division

**FROM:** Richard Weaver, Planning Coordinator (301) 495-4544 *Rw*  
Dolores M. Kinney, Senior Planner (301) 495-1321 *DK*

**REVIEW TYPE:** Preliminary Plan Review

**APPLYING FOR:** Resubdivision of Existing Lot 48, Deer Park Subdivision

**PROJECT NAME:** Deer Park

**CASE #:** 1-01064

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

**ZONE:** R-90

**LOCATION:** Located at the southeast quadrant of the intersection of Marlow Road and Musgrove Road.

**MASTER PLAN:** Fairland

**APPLICANT:** Southwind Properties, LLC

**FILING DATE:** April 9, 2001

**HEARING DATE(S):** July 22, 2004 (deferred)  
October 21, 2004

**STAFF RECOMMENDATION:** Approval, pursuant to Section 50-29 (b) (2), Montgomery County Subdivision Regulations, including a waiver of Section 50-26(h)(3) to permit sidewalk on one side only of proposed Penny Lane, and subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 12 single-family dwelling units.
- 2) Compliance with the conditions of approval for the preliminary forest conservation plan to provide for off-site reforestation and a tree protection plan for specified trees as stated in the Environmental Planning letter of approval dated October 11, 2004. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 3) Record plat to reflect common ingress/egress and utility easements over all shared driveways.
- 4) Record Plat to reflect all areas under Homeowners Association ownership and stormwater management areas.
- 5) Satisfy the Policy Area Transportation Review (PATR) component of the Adequate Public Facilities (APF) test by entering into a Traffic Mitigation Agreement (TMA) with the Montgomery County Planning Board (MCPB) and the Department of Public Works and Transportation (DPWT), to make a one-time lump sum payment of \$31,200 to support transit use within the Policy Area.
- 6) Consistent with the 1997 Approved and Adopted Fairland Master Plan, dedicate required right-of-way along Musgrove Road to provide 40 feet of right-of-way from the centerline.
- 7) Dedicate required right-of-way along Marlow Road to provide 30 feet of right-of-way from the centerline.
- 8) Dedicate required right-of-way (50 feet) and construct Penny Lane within the site as closed section tertiary residential street with a cul-de-sac at the end.
- 9) Reconstruct/relocate existing sidewalk along the east side of Musgrove Road between Marlow Road to the north and Hawkshead Terrace to the south, as necessary, to provide a five-foot wide sidewalk and a minimum eight-foot wide tree panel.
- 10) Construct a four-foot wide sidewalk and a minimum eight-foot wide tree panel along Marlow Road, offset two feet from the property line, along the entire property frontage.
- 11) Construct a four-foot wide sidewalk on only one side of Penny Lane (east side), extending the sidewalk around the cul-de-sac to the driveway for Lot 12.
- 12) Coordinate with DPWT and the Department of Permitting Services (DPS) on design requirements for the proposed Penny Lane, and on the recommended Musgrove Road/Marlow Road sidewalk improvements.
- 13) Coordinate with the Maryland State Highway Administration (SHA) on the ongoing preliminary planning/design studies for the proposed interchange(s) at Fairland Road and Musgrove Road intersection with US 29.
- 14) Compliance with the conditions of approval of the MCDPS stormwater management approval.
- 15) Full execution of Public Improvement Agreement (PIA) with DPWT required prior to the application for building permit.

- 16) 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.
- 17) Record plat to reflect a 40 foot building restriction line from Marlow Road for proposed Lots 3 and 4 and a 50 foot building restriction line from Marlow Road for proposed Lots 1 and 2.
- 18) 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.
- 19) Other necessary easements.

#### **SITE DESCRIPTION:**

The subject property, Lot 48 ("Subject Property"), is part of the Deer Park Subdivision, which was originally recorded by plat in 1925. The Subject Property is located on the south side of Marlow Road at the intersection with Musgrove Road and is among the largest lots in the subdivision, presently improved with a single-family detached dwelling. The property contains 4.5 acres and is zoned R-90.

#### **PRIOR CONSIDERATION BY PLANNING BOARD:**

A preliminary plan for resubdivision of the subject property, depicting 14 lots, was presented to the Planning Board on July 22, 2004 ("Original Plan"). In advance of the July 22 hearing, Staff had prepared and issued to the Board a memorandum setting forth and analyzing the Original Plan ("July Staff Report"), which is attached to this Staff Report for the Board's convenience. The Board considered this plan with regard to the design of the lots and the appropriateness of that design for the location of the resubdivision, specifically, the relationship of the proposed lots to existing lots; and, additionally, under the Section 50-29(b)(2) resubdivision criteria, which section requires resubdivided lots to be of the same character as those existing within a delineated area. The Board considered testimony from residents of the existing neighborhood, received at the hearing and in prior letters. A majority of this testimony expressed opposition to the number of lots in the proposed subdivision and to the relationship of the proposed lots to confronting lots existing on Marlow Road. A major concern of the existing neighborhood was maintaining the character of Marlow Road by achieving sizes and setbacks for new homes that are more compatible with existing confronting homes.

Among other views stated, Board members commented that the proposed lots along Marlow Road were not appropriate for their location; and, generally, lots depicted on the plan were not of the same character as lots existing in the delineated neighborhood recommended by Staff. Board members suggested that larger lots would be more in character with the delineated neighborhood; and, further, that the design of the proposed lots with frontage on Marlow Road, and the relationship of those lots to confronting existing lots should be studied further. A majority of Board members stated their common view that the proposed plan would not be in character with the existing

neighborhood. The applicant requested a deferral of the Board's consideration and action on the application in order to consider the Board's stated concerns. The Planning Board voted to grant applicant's request for a deferral.

## **DESCRIPTION OF REVISED PROPOSAL**

Following the July 22 public hearing, the applicant has coordinated with Staff and has submitted a revised proposal ("Revised Plan"), which in Staff's view is responsive to the Board's stated concerns with the Original Plan. A copy of the Revised Plan is included with this Staff Report.

The Revised Plan proposes to: eliminate two lots from the 14 proposed in the Original Plan; provide larger lots generally; orient three lots toward Musgrove Road; re-orient certain lots with frontage on Marlow Road; provide greater depth to lots along Marlow Road; and, additionally, to establish a front yard building setback line for such lots that is, at certain points, twenty feet greater than that required in the Zoning Ordinance. Access to the majority of the proposed lots is still via proposed Penny Lane, a public cul-de-sac from the existing Marlow Road; however, proposed Penny Lane has been realigned in the Revised Plan and the lots with Musgrove Road frontage will be accessed via a shared private driveway from the cul-de-sac .

Included in this application is a request by the applicant that the Planning Board waive the Section 50-26(h)(3) requirement that sidewalks be provided on both sides of a tertiary street. The applicant proposes to provide a sidewalk on only one side of proposed Penny Lane, extending around the cul-de-sac to proposed Lot 12. The distance from the centerline of Marlow Road to the center of the cul-de-sac is 250 feet. In the Revised Plan, only 8 of the 12 proposed lots will have access from the proposed Penny Lane; the remaining 4 lots will have access from Marlow Road. Staff is of the opinion that the construction of a sidewalk on only one (east) side of Penny Lane, extending around the cul-de-sac to the driveway of Lot 12, will not impose a safety hazard and will adequately serve pedestrian usage; and, therefore, Staff recommends that the Board grant the requested waiver upon a finding that pedestrians will be able to safely use the roadway.

## **DISCUSSION OF ISSUES**

### **Master Plan Compliance**

The Fairland Master Plan does not specifically identify the Subject Property for discussion but does give general guidance and recommendations regarding zoning and land use. The plan recommends that this area maintain the existing zoning as adopted and maintain the residential land use consisting of single-family detached homes. The proposed resubdivision complies with the recommendations adopted in the sector plan in that it is a request for residential development.

## Conformance with Section 50-29(b)(2)

### **A. Statutory Review Criteria**

In order to approve an application for resubdivision, the Planning Board must find that each of the proposed lots complies with all seven of the resubdivision criteria, 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.

### **B. Neighborhood Delineation**

In administering the Resubdivision section, the Planning Board must delineate an area within which it conducts its lot character analysis. In its July Staff Report, Staff proposed a neighborhood delineation; and, for reasons set forth in the July Staff Report and stated at the July 22 public hearing, Staff recommend that the previously delineated neighborhood be used for analyzing the Revised Plan.

### **C. Comparison of the Character of Proposed Lots to Existing**

Determinations regarding resubdivision applications are subject to Section 50-29(b)(2) of the Subdivision Regulations. The application must demonstrate a high correlation between the characteristics of the proposed lots and the existing lots in the delineated neighborhood. Staff is of the opinion that the Revised Plan complies with the area, size, frontage, alignment, width, shape and suitability criteria of Section 50-29(b)(2). As set forth below, the attached tabular summary and graphical material support this conclusion:

**Area:** In a neighborhood of 37 lots, the existing lot areas range from 1,925 to 9,760, with the exception of two lots, which are significantly larger. The area of the lots in the Original Plan ranged from 2,488 to 5,485 square feet. The proposed lots in the Revised Plan range from 2,159 to 7,951 square feet, falling well within the range of existing lot areas. **Therefore, with respect to the area criterion, Staff is of the opinion that the proposed lots demonstrate a high correlation to the existing lots in the neighborhood.**

**Lot Size:** The neighborhood consists of 37 lots, which range in size from 6,000 square feet to 22,822 square feet with the exception of two lots, which are significantly larger. The lot sizes in the Original Plan ranged from 9,055 to 12,938 square feet. The proposed lot sizes in the Revised Plan range from 9,930 square feet to 15,255 square feet, which is well within the range of existing lot

sizes. As such, with regard to the size criterion, Staff is of the opinion that the lot sizes in the Revised Plan, **exhibit a high correlation to the lots existing in the neighborhood.**

**Alignment:** The existing neighborhood contains a variety of lot alignments: two (2) pipestem lots, four (4) radial lots, five (5) corner lots and twenty-six (26) perpendicular lots. The Revised Plan proposes four (4) perpendicular lots, four (4) radial lots, three (3) corner lots and one (1) pipestem lot. As such, **staff concludes that the variety of proposed lot alignments is consistent with the lot alignments existing in the neighborhood; and, hence, is of the opinion that the proposed lots demonstrate a high correlation, with regard to the alignment criterion, to the lots existing in the neighborhood.**

**Lot Frontage:** The lot frontages in the existing neighborhood range from 25 feet to 302 feet. The proposed resubdivision will have lots with frontages ranging from 77 feet to 130 feet. **Therefore, the proposed lots will have a high correlation with the other lots in the neighborhood with respect to lot frontage.**

**Shape:** The existing neighborhood consists of seven (7) irregular lots, twenty-three (23) rectangular lots, five (5) corner lots, and two (2) pipestem lots. The proposed resubdivision creates one (1) pipestem lot, two (2) rectangular lots, three (3) corner lots, and six (6) irregular lots. It is typical to have irregularly shaped lots on a cul-de-sac. Furthermore, the mix of lot shapes in the Revised Plan is consistent with the variety of lot shapes existing in the delineated neighborhood. **Therefore, Staff is of the opinion that the shapes of the lots in the proposed resubdivision will exhibit a high correlation to the shapes of the existing lots in the neighborhood.**

**Width:** The neighborhood consists of lots ranging from 60 feet to 240 feet in width. The Revised Plan proposes lots that are between 77 feet and 130 feet wide. As such, Staff is of the opinion that **the lots proposed in the Revised Plan demonstrate a high correlation to the existing lots in the neighborhood, with respect to the width criterion.**

**Suitability for Residential Use:** The proposed lots in the neighborhood are zoned residential and are suitable for residential use.

In summation, Staff believes that the Revised Plan proposes lots that have demonstrated a high correlation to the existing lots in the neighborhood with respect to each of the seven (7) resubdivision criteria; and, therefore, Staff concludes that the proposed lots are of the same character as other lots within the existing neighborhood. As such, it is Staff's opinion that the Revised Plan complies with Section 50-29(b)(2) of the Subdivision Regulations.

### **Design of Proposed Lots is Appropriate**

In reviewing preliminary plans of subdivision, including resubdivisions, the Planning Board must find, among other things, that the size, width, shape and orientation of a proposed lot is appropriate for the location of the subdivision.

During the public hearing held on July 22, 2004, certain Board members suggested that the design of the Marlow Road frontage lots proposed in the Original Plan was not appropriate because the design was not sufficiently sensitive to the existing lots across Marlow Road, notwithstanding the fact that the existing lots are situated in the R-200 Zone, which requires a larger lot size than that of the Subject Property. While the Marlow frontage lots in the Original Plan ranged in size from 9,131 – 10,173 square feet, the four Marlow frontage lots in the Revised Plan range from 10,828 – 12,205 square feet, which, in Staff's view, is an appropriate size for their location, considering that the underlying zone permits a minimum lot size of 9,000 square feet. Additionally, the Revised Plan proposes lot orientations that better respect, and, in fact, mirror, those of the confronting lots existing across Marlow Road.<sup>1</sup> Moreover, Staff notes that the applicant has increased the depth of the Marlow frontage lots in the Revised Plan from that depth previously proposed for those lots in the Original Plan; and, in doing so, has modified the shape of those lots to provide a shape that, in Staff's view, can be considered more appropriate for lots fronting on Marlow Road.

Additionally, although house location is not a consideration at the preliminary plan stage, the applicant, in response to neighbor's concerns, proposes certain measures to provide a certain level of assurance concerning the location of any future dwellings relative to Marlow Road. The Original Plan depicted a front building line of 30 feet, which is the minimum setback required under the zone. The applicant proposes to establish greater front building line setbacks than that required by the Zoning Ordinance for the four proposed lots with frontage on Marlow Road, through notation on the record plat. Specifically, as provided in Condition No. 18, the two proposed lots to the north of proposed Penny Lane shall have a front building line of 50 feet and the two proposed lots to the south of proposed Penny Lane will have setbacks of 40 feet from Marlow Road<sup>2</sup>.

In addition, providing comments at the July hearing that were more general to the entire proposed subdivision, certain Board members suggested that the sizes of the proposed lots were not appropriate for the location of the subdivision. The observation was made that the existing Marlow Place cul-de-sac subdivision, which is located on the same block as the Subject Property (and is included within the delineated neighborhood) has relatively larger sized lots. The Original Plan proposed 14 lots, which ranged in size

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<sup>1</sup> In Staff's view, one feature of the Revised Plan, which proposes to orient three lots toward Musgrove Road, adds to the appropriateness of the design of the subdivision because existing lots to the north and south of the Subject Property along Musgrove Road are oriented to that road. By contrast, the Original Plan had no lots fronting on Musgrove.

<sup>2</sup> In Staff's opinion, 40 feet is an appropriate front yard building setback line from Marlow Road, however, given the available depth of proposed lots 1 and 2, the applicant has proffered a 50 foot building setback for these lots.

from 9,055 square feet to 12,938 square feet. In eliminating two lots, the Revised Plan affords larger size lots. The currently proposed twelve lots range in size from 9,930 square feet to 15,255 square feet..

Staff is of the opinion that the increase in lot sizes, reduction in number of lots, and the re-design of the proposed lots fronting upon Marlow Road and Musgrove Road result in lots that are appropriate for the location of the subdivision.

### **Citizen Concerns**

In response to the Original Plan, there were a number of letters received by the Development Review Division from citizens who reside in the vicinity of the Subject Property, expressing opposition to the proposed resubdivision. Their concerns included density, access, increased traffic volumes, limited school capacity, drainage issues, nuisance from headlights at the subdivision's intersection with Marlow Road, and the destruction of rural character along Marlow Road. The July Staff report outlines these issues. Only one additional letter has been received by the Development Review Division since the July 22, 2004 hearing and before issuance of this staff report (letter attached). That letter expressed concern regarding potential increase in traffic and the interference of glare of headlights from oncoming vehicles onto a different property as a result of the plan revision. Staff believes the issues have been addressed by the Revised Plan.

Many of the citizens felt that the plan was too dense. The density requirement for the R-90 zone is 3.6 dwelling units per acre. The previous plan showed a density of 3.11 dwelling units per acre with 14 lots, while the current plan shows an even less dense development of 2.67 dwelling units per acre with 12 lots.

As stated in the previous Staff Report, Montgomery County Department of Public Works and Transportation staff recommended against access to the site from Musgrove Road due to the minimal intersection separation between existing Hawkshead Terrace and what would have been the Musgrove Road intersection. Additionally, there are road improvements planned for Musgrove Road, currently an arterial, which would limit any additional access.

The potential increase in traffic is estimated to be approximately 11.4 trips in the morning peak hour and 13.32 trips in the evening peak hour, a change from previous plan of 13.3 in the morning and 15.54 in the evening. Public transportation is also available to minimize vehicle trips. The applicant is also entering into a Traffic Mitigation Agreement (TMA) with the Montgomery County Planning Board (MCPB) and the Department of Public Works and Transportation (DPWT) to make a monetary contribution as discussed in the attached Transportation Planning staff letter.

The Original Plan proposed storm drainage measures that continue with the Revised Plan. In Staff's view, these measures will minimize any additional run-off from the Subject Property. As to issues raised about maintaining rural character of Marlow



Road, Staff believes that the proposed changes discussed above reasonably and satisfactorily address these concerns.

To address concerns about impacts from headlights, the applicant has stated his willingness to work with impacted neighbors to provide reasonable mitigation measures, such as landscaping, on the affected lots.

#### **CONCLUSION:**

At the Planning Board hearing held on July 22, 2004, the Board suggested that the design of certain lots was not appropriate for the location of the subdivision; and, furthermore, that the proposed lots were not of the same character as the lots existing in the delineated neighborhood. In Staff's view, for the reasons set forth above, the Revised Plan addresses many of the concerns that were raised by the Board during the July hearing, resulting in lot designs that are appropriate for their location and, moreover, lots that are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood. As such, Staff recommends approval of the preliminary plan.

#### **Attachments**

- Attachment 1 Vicinity Development Map
- Attachment 2 Neighborhood Delineation Map
- Attachment 3 Proposed Development Plan
- Attachment 4 Tabular Summary
- Attachment 5 July 22, 2004 Staff Report
- Attachment 6 Transportation Planning Staff memo