

Date of Mailing: Jul, 6, 1990

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

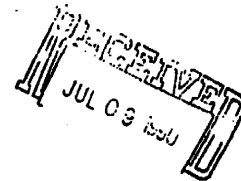
MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-89086
NAME OF PLAN: BURKA/GOLDMAN PROPERTY

On 03-17-89, AVERY HOMES, INC. , submitted an application for the approval of a preliminary plan of subdivision of property in the R200 zone. The application proposed to create 121 lots on 51.00 ACRES of land. The application was designated Preliminary Plan 1-89086. On 06-21-90, Preliminary Plan 1-89086 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing , the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-89086 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-89086, subject to the following conditions:

1. Agreement with Planning Board limiting commercial development to 32,500 square feet with no additional expansion of floor area until further APF review
2. Agreement with Planning Board to construct the necessary road improvements as outlined in Transportation Division memo dated 6/13/90. Prior to site plan approval, submit study for adequacy of traffic control measures to Planning Board staff and MCDOT (per Condition #5 of Transportation Division memo). Prior to applicant receiving any building permits for residential construction, initiate conditions numbered 1-3 of Transportation Division memo
3. Limit the development to a maximum of 48 townhouses and 72 single-family detached, including MPDUs, with number and location to be determined at site plan



4. Submit verification from appropriate state and federal authorities that permits for wetland disturbance have been applied for prior to site plan approval
5. Provide geotechnical study at site plan that describes the necessary site grading, building design and engineering measures necessary to prevent potential damage that may be caused by soil constraints on the property. Study to be certified by a professional engineer, with competency in soils engineering, that these design criteria will adequately resolve soil constraints
6. Address noise mitigation measures for the residential development at site plan
7. Conditions of DEP stormwater management approval dated 8/4/89
8. Dedication of Georgia Avenue (Route 97) 60 feet off center line and 40 feet off center line on Emory Lane
9. No clearing, grading or recording of plat(s) prior to site plan approval
10. All construction traffic to be limited to access site via Emory Lane or Georgia Avenue (Route 97)
11. Required access improvements to Georgia Avenue (Route 97) and Emory Lane to be approved by MDSHA and MCDOT
12. Record plat(s) to reflect delineation of 100-year floodplain and stream buffer
13. Necessary easements
14. Necessity for by-pass lane eastbound Emory Lane opposite proposed street connection to be determined by MCDOT at time of site plan

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ADEQUATE PUBLIC FACILITIES ORDINANCE AGREEMENT

THIS ADEQUATE PUBLIC FACILITIES ORDINANCE AGREEMENT ("APFO Agreement") made this 3rd day of September, 1991, by and between MARVIN J. GOLDMAN and GATEWAY LIMITED PARTNERSHIP, a D.C. limited partnership (together the "Owners"), and A-F ENTERPRISES, INC., a Maryland corporation (the "Developer"), and the MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (the "Planning Board").

R E C I T A L E:

A. Owner and Developer (hereinafter sometimes referred to collectively as, the "Builder") have filed an application for subdivision approval with the Planning Board for 121 lots on approximately 51.00 acres of land located on the west side of Georgia Avenue between Emory Lane and Old Baltimore Road in Olney, Montgomery County, Maryland, such property being more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"), which application was designated as Preliminary Plan 1-89086.

B. Fee simple title to the Property is held by the Owner, and this APFO Agreement shall bind the Owner and all successors and assigns of the Owner.

C. The Maryland-National Capital Park and Planning Commission is a body corporate created by the General Assembly of Maryland, and which, pursuant to Article 28, Section 7-111, Annotated Code of Maryland, administers the Montgomery County Subdivision Regulations, Chapter 50, Montgomery County Code, 1984, as amended, through the Planning Board.

D. Pursuant to Section 50-35(k) of the Montgomery County Subdivision Regulations, as of the date of this APFO Agreement, Preliminary Plan 1-89086 requires review by the Planning Board of the adequacy of public facilities available to serve the Property.

E. In order to find that Preliminary Plan 1-89086 complies with Section 50-35(k), the Planning Board has determined that the size and use of improvements on the Property must be restricted.

F. Pursuant to Section 50-35(k), Builder and the Developer previously agreed that the Property is to be subdivided, provided the necessary restrictions are contained in an agreement which shall bind Builder, its successors and assigns, and which shall be noted on the Record Plat(s) for the Property.

G. By the execution of this APFO Agreement, Builder intends to create a restriction on the Property necessary to meet a condition of subdivision approval, as that condition pertains to the adequacy of public facilities pursuant to Section 50-35(k). The purpose of this restriction is (1) to limit development of the Property to 48 townhouse lots, 72 single-family detached lots (several townhouse lots and single family lots shall be designated for Moderately Priced Dwelling Units ('MPDUs')), and a commercial lot with a limit 32,500 square feet of floor area (the townhouse lots and single-family detached lots shall sometimes hereinafter be referred to collectively, as the "Residential Component" and the commercial lot as the "Commercial Component"); (2) to have Builder construct and/or participate in the construction of road improvements (the "Road Improvements") outlined in the Transportation Division Memorandum dated January 3, 1990, as revised June 13, 1990 (collectively, the "Memorandum"), a copy of which is attached hereto and incorporated by reference into this APFO Agreement as Exhibit "B"; and (3) to require verification of public improvements agreements reflecting the Road Improvements prior to release of

building permits for the Residential Component, so that persons and properties will not be harmed by overburdened public facilities. Builder intends that the restrictions created by this APFO Agreement shall be binding upon Builder, its successors and assigns, until released with the consent of the Planning Board.

NOW, THEREFORE, in consideration of the mutual promises and stipulations set forth, and in accordance with the approval of the subdivision of the Property, the parties covenant and agree as follows:

1. The Recitals set forth above are incorporated by reference and made part of this APFO Agreement.

2. Development of the Property shall be limited to (i) 48 townhouse lots, and 72 single-family detached lots within the Residential Component, and (ii) 32,500 square feet of floor area within the Commercial Component with no additional expansion in floor area until further adequate public facility review.

3. Builder shall construct and/or participate in the construction of the Road Improvements.

4. Builder agrees that construction of all Road Improvements must be initiated prior to receipt of any building permits for the Residential Component. This shall mean that all design for the Road Improvements are approved by the Maryland State Highway Administration, Montgomery County Department of Transportation and The Maryland-National Capital Park and Planning Commission, all rights-of-way are acquired, all permits issued, all bonds posted, and all contracts let with notice to proceed within ninety (90) days given.

5. Builder agrees to limit all construction traffic access to Property to Emory Lane or Georgia Avenue (Route 97).

6. Builder shall notify the Planning Board of an application for a building permit or a use and occupancy permit for the Property. Builder shall not seek or accept a building permit for a structure or a use or occupancy permit for a use on the Residential Component that violates the restrictions contained in this APFO Agreement. In addition to all other remedies provided herein, in the event that a building permit for a structure or use and occupancy permit for a use is sought which violates the restrictions contained in this APFO Agreement, the Planning Board need not recommend issuance of any such permit, and Montgomery County, Maryland may withhold issuance of any such permit.

7. Representatives or designees of the Planning Board may enter upon the Property from time to time for the purpose of inspection and enforcement of the terms, conditions and restrictions contained in this APFO Agreement. Whenever possible, Builder or its representatives shall be present at the inspection. In the event that the representative or designee determines on the basis of the inspection that the restrictions contained in this APFO Agreement are being violated, the representative or designee shall promptly advise Builder concerning the problem. Builder shall have reasonable time to address the problem.

8. The Planning Board shall have the right to bring an action for any legal or equitable relief necessary to enforce the restrictions contained in this APFO Agreement. Upon the request of Builder, the Planning Board shall release the Property from the restrictions contained in this APFO Agreement if it finds that public facilities are adequate pursuant to Section 50-35(k) for additional development of the Property. Such a review shall include the public facilities impact of any existing building or use to remain on the Property, as well as that of the proposed additional development.

9. This APFO Agreement shall bind and inure to Builder, its successors and assigns. Whenever this APFO Agreement refers to the Planning Board, it shall also refer to any successor agency, if any, which shall administer Section 50-35(k).

10. A notation of this APFO Agreement shall be made on the Record Plat(s) for the Property.

11. This APFO Agreement may only be modified in writing, signed by the parties, their successors or assigns.

12. This APFO Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall create one in the same instrument.

13. This APFO Agreement does not create any partnership, joint venture or other legal relationship between the parties, but is merely a means to document the subdivision conditions described in this APFO Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this instrument has been executed by the Owner and the Developer and the Planning Board on the day and year herein-before written.

DATE: 8/22/91 A-F Enterprises, Inc.
ATTEST: Sonja L. Adams BY William H. Avery, Jr. (SEAL)
Sonja L. Adams William H. Avery, Jr., President

DATE: _____ Marvin J. Goldman
Witness _____ By _____ (SEAL)
Marvin J. Goldman

DATE: Aug 26, 1991 Gateway Limited Partnership
Witness Fred Burka BY David L. Burka (SEAL)
David L. Burka, General Partner

DATE: August 28, 1991
Witness Maria K. Burka BY Robert A. Burka (SEAL)
Robert A. Burka, General Partner

DATE: August 30, 1991
Witness Conradette Smith BY Mark S. Burka (SEAL)
Mark S. Burka, General Partner

MONTGOMERY COUNTY PLANNING BOARD
OF THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Charles Loehr 9/16/91 BY: Charles Loehr
Charles Loehr
Deputy Planning Director

APPROVED AS TO LEGAL SUFFICIENCY
J.P.
M-NCPPC Legal Department
Date 9/8

IN WITNESS WHEREOF, this instrument has been executed by the Owner and the Developer and the Planning Board on the day and year herein-before written.

DATE: _____ A-F Enterprises, Inc.,

ATTEST: Sonjia L. Adams By William H. Avery, Jr., President (SEAL)

DATE: _____ Marvin J. Goldman
Witness Margaret Kelly By Marvin J. Goldman (SEAL)
Marvin J. Goldman

DATE: _____ Gateway Limited Partnership
Witness _____ By _____ (SEAL)
David L. Burka, General Partner

DATE: _____
Witness _____ By _____ (SEAL)
Robert A. Burka, General Partner

DATE: August 30, 1991
Witness Bernadette Smith By Mark S. Burka (SEAL)
Mark S. Burka, General Partner

MONTGOMERY COUNTY PLANNING BOARD
OF THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

By: _____
Charles Loehr
Deputy Planning Director