

The subject property is located within the Burtonsville Elementary School and Banneker Middle School service areas, and is in the Paint Branch "base area" of the Northeast Consortium, which is made up of Blake, Paint Branch and Springbook high schools. All of the schools in the service area and in the Northeast Consortium are projected to be over capacity in coming years. Technical Staff estimates that the proposed development would generate approximately 99 elementary, 42 middle and 57 high school students. The school site shown on the Land Use Plan for the proposed development could help alleviate overcrowding at the elementary level if funds are appropriated to construct a school. Moreover, school capacity is considered adequate for anticipated growth in all high school clusters at all grade levels under the current AGP, and under new the AGP policy element taking effect on July 1, 2004, the school clusters that would serve development on the subject property are expected to have adequate capacity to support subdivision approval.

The Hearing Examiner's Report and Recommendation contains a discussion of other public interest issues, on pages 49 through 53, which is incorporated herein by reference. Golfers who enjoy the existing Gunpowder Golf Course object to seeing it replaced with a new course that would be more expensive and less convenient to play on foot. They also argue that the market for golf courses in this area will not support another upscale golf course, and therefore the MNCPPC's participation in the proposed golf course community would be fiscally irresponsible. Evidence presented by the Applicants indicated that many golfers would prefer the proposed golf course to the existing Gunpowder Golf Course, and that questions such as the fees to be charged and financial feasibility would be addressed during lease negotiations between the MNCPPC and the intended golf course operator. Moreover, the evidence established that the private developers would bear the entire cost of developing the golf course, ownership of which would revert to the MNCPPC at the end of the anticipated 40-year lease.

#### **J. Community Support**

The Hearing Examiner's Report and Recommendation contains a discussion of community support, on pages 53, 55 and 56, which is incorporated herein by reference. The *Fairland*

*Master Plan*, which specifically recommends the type of development proposed here, was the product of a long planning process with significant community participation. A Citizens' Advisory Committee ("CAC") with broad membership played an important role in crafting the plan and has remained involved in its implementation. Members of the CAC report that there were extensive opportunities for public involvement in the Master Plan process, and that no serious opposition to the concept of a golf course community was voiced.

#### **K. Applicants' Authority to Pursue LMA**

The contention by the Opposition that the State of Maryland should be a party to these proceedings because of its approval authority over disposal of property purchased with Program Open Space funds must be refuted. No legal authority was presented to support this contention, and it fails on its face. The Zoning Ordinance specifies that an application for a local map amendment may be made by "any governmental agency or a person with a financial, contractual or proprietary interest in the property. . . ." Code § 59-H-2.1. The MNCPPC qualifies as an applicant for a local map amendment in both categories – as a governmental agency and as a party with a proprietary interest in the property in question. The District Council finds that the record supports an expectation that the necessary state approvals will be obtained in the normal course of events.

#### **L. Development Plan Findings**

The District Council finds that the Development Plan submitted with these applications satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

**§59-D-1.61(a): master plan consistency.** The purpose clause for the PD Zone establishes consistency with the master plan as an important factor in applying the zone:

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional district and the area master plans by permitting unified development consistent with densities proposed by master plans. . . . it is intended that the zoning category be utilized to implement the general plan, area master

plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

Code § 59-C-7.11.

In the present case, both the Planning Board and Technical Staff opined that the proposed Development Plan is consistent with the goals and objectives of the *Fairland Master Plan*, and the District Council agrees. The Master Plan specifically recommends development of the subject property, under the PD Zone, with the land uses proposed in the present applications: a golf course community with primarily single-family detached homes, arising out of a public/private partnership. See Master Plan at 47. The Master Plan also lists a series of specific elements to be considered at zoning. See *id.* at 48. The proposed Development Plan would satisfy all of these elements at least in substantial part, and many of them completely: the number of units would be limited to the maximum stated in the Master Plan, with a mix of units that corresponds appropriately to the priorities stated in the Master Plan; MPDUs would be distributed in three locations in the development and designed in a manner likely to facilitate their integration into the community; Cedar Tree Drive would be extended to connect with Old Gunpowder Road in Prince George's County, providing improved access for the existing Saddle Creek community as well as the new development; substantial areas of no disturbance would be preserved; trails and sidewalks would provide non-vehicular access to Fairland Park for both the new development and the existing Saddle Creek community; common open space for residents of the new development would include tot lots, a swimming pool, tennis courts and a community building; and an 11-acre site would be provided for a public elementary school, a size that MCPS considers adequate for that purpose.

The proposed Development Plan would not comply fully with the Master Plan's environmental recommendations, particularly the recommendation to develop a new golf course design outside the stream valley. However, the District Council is persuaded that despite incursions into the stream buffers, the environmental benefits provided by the proposed Development Plan constitute substantial compliance with the Master Plan's goal of protecting the sensitive environmental resources

on this site. A number of factors weigh heavily in this conclusion. The area covered by the Development Plan excludes entirely – and thereby protects from development – the Silverwood Tributary and its stream valley, which is the most sensitive and valuable portion of the potential redevelopment area addressed in the Master Plan. Much of the forested portion of the McKnew Tributary is protected. Many of the encroachments on the stream buffer would take place on the fringes of buffer areas that are already degraded, and many of the encroachments for the golf course would preserve shrub/scrub vegetation, which provides better water quality protection than total clearing. The Applicants have proposed environmental restoration and reclamation to offset stream buffer encroachments, including creating additional wetlands on site, restoring stream banks in certain locations, reforesting degraded stream buffers where possible, preserving several tracts of high quality, upland forest outside the stream buffers, and installing a stormwater management facility to capture run-off from the adjacent industrial park in Prince George's County. Carrying out the Development Plan would also accelerate large-scale cleanup of degraded former mining areas, and would likely result in a higher level of environmental reclamation on Parcel X than would otherwise be accomplished.

Opposition evidence made a poignant case for the preservation of all of the environmentally valuable resources on the subject property. It might be possible, as the Opposition's environmental expert suggested, to design a different golf course community that would remove fewer trees and protect more stream buffer, while still meeting most of the Master Plan's land use goals. However, the District Council's responsibility is to fully and fairly evaluate the applications that are before it, not to compare them to theoretical alternatives. Environmental Staff concluded that, on balance, the Development Plan proposed here would result in an environment on this unique site that is superior in many respects to a development plan that strictly complies with all current environmental standards and guidelines, and the District Council agrees.

The Development Plan is also in substantial compliance with the General Plan. For the reasons stated above, on balance the development would serve the environmental preservation goals

stated in the General Plan. Moreover, because the area Master Plan amends the General Plan, compliance with the area Master Plan effectively demonstrates compliance with the General Plan.

Based on the preponderance of the evidence, the District Council concludes that the proposed Development Plan would be in substantial compliance with the use and density indicated in the Master Plan and would not conflict with any other applicable county plan or policy.

**§59-D-1.61(b): purposes of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.**

**1. Purpose Clause**

The purpose clause for the PD Zone contains a number of goals and objectives, all of which are satisfied by these applications. The District Council's findings as to each paragraph of the purpose clause are set forth below.

First paragraph: Master Plan implementation. As discussed under (a) above, the proposed development would be in substantial compliance with the *Fairland Master Plan*. Moreover, testimony from several witnesses demonstrated that the proposed development would allow a higher degree of compliance with the Master Plan than development under the existing zoning: the existing R-200 zoning, with bonus density for MPDUs, would allow development of roughly 80 more homes than the maximum permitted under this Development Plan, would be unlikely to result in dedication of a public school site, and would not provide equivalent opportunities to preserve high-quality environmental resources and promote environmental reclamation. Accordingly, the requested reclassification would comply with the first element of the purpose clause by allowing implementation of applicable Master Plan objectives more closely than the existing zoning would allow.

Second paragraph: social and community interaction, distinctive visual character, balanced mixture of uses. As Technical Staff and the Applicants' land planner testified, the proposed development would achieve these objectives in several ways. It would relieve the isolation of the existing Saddle Creek neighborhood immediately west of the subject property by connecting it to the new development. A network of sidewalks and trails would connect each of the neighborhoods on the

subject property to other neighborhoods, the school site, on-site recreational facilities and Fairland Park. It would provide a vehicular connection across the county line, linking two parts of what is really one community and providing more balanced access options. It would provide the location for a community school that would be within walking distance for many students and would serve as a focal point, bringing the community together. It would increase recreational options for the Saddle Creek community by providing pedestrian linkages to Fairland Park and drawing the golf course amenity up into the community. The character of the development would revolve around the large areas of open space created by the golf course, forested areas, stream valleys and proximity to Fairland Park, all of which would give the community a very distinct visual character and identity. Moreover, analysis provided by Technical Staff and the Applicants' land planner established that in a development of this size, commercial uses would be neither appropriate nor beneficial.

Third paragraph: broad range of housing types. The proposed development would contribute to providing a broad range of housing types by increasing the proportion of single-family detached housing available in the Fairland area, and by providing four different housing options on-site: single-family detached dwellings, duplexes, detached "villas" and townhouses.

Fourth paragraph: trees and grading. The proposed development would result in substantial forest clearing, an impact that would be practically unavoidable with any development at the density recommended in the Master Plan. The proposed development would comply with the County's forest conservation requirements and would preserve several tracts of high-quality upland forest. Moreover, it would take the greatest possible aesthetic advantage of the trees preserved by building vistas around them for residents and golf course users, and by relocating the paved trail in the southern spike to preserve a forest setting for trail users. The proposed development would minimize the amount of grading necessary by fitting the golf course holes into the existing topography wherever possible.

Fifth paragraph: open space. The Development Plan would preserve substantial amounts of open space as parkland, conveniently located and available to the public. Moreover, the

flexibility of the PD Zone and the design of the Development Plan would result in a very high degree of integration, both physical and aesthetic, between the residential and golf course uses.

Sixth paragraph: pedestrian networks. The Development Plan includes a system of trails and sidewalks that would tend to reduce reliance on the automobile by allowing residents to walk among the residential and recreational areas, and by enabling children who currently are bussed to school from the neighboring Saddle Creek neighborhood, as well as many in the new community, to walk to school.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. Taken as a whole, the Development Plan for both applications covers approximately 314 acres and therefore can be considered large scale.

Eighth paragraph, first part: safety, convenience and amenity. The proposed development would provide a maximum of safety, convenience and amenity for residents and neighbors by providing an improved local road network, a site for a neighborhood elementary school, pedestrian connections to Fairland Park, an enhanced public golf course and, for the new development, on-site recreation facilities.

Eighth paragraph, second part: compatibility. Much of the Saddle Ridge development abutting the subject property to the west, near the proposed school site, is classified under the R-200/TDR Zone. That area was developed at higher density using density transfers from up-county, and primarily contains townhouses. Areas north of the subject property contain large-lot single-family homes. The proposed development would have a small number of duplexes abutting each of these areas, a flexible unit type that can provide a density transition from townhouses to single-family detached homes along Cedar Tree Drive, while preserving visual compatibility with single-family detached homes near MD 198. The higher-density portion of the proposed development, with villas and townhouses, would be surrounded by open space, golf course and recreational facilities, with no contiguous residential areas. In light of the extensive evidence concerning the current degraded environmental conditions on the privately-owned portions of the subject property, the evidence supports

the conclusion that the proposed development would make the subject property more compatible with the surrounding area than it is under current conditions.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

This element underscores the District Council's responsibility to carefully consider whether the PD Zone would be appropriate in the location for which it is requested. Based on the preponderance of the evidence and for the reasons stated above, the District Council concludes that the present applications are proper for the comprehensive and systematic development of the County, in compliance with and capable of accomplishing the purposes of the zone, and in substantial compliance with the General Plan and Master Plan.

## **2. Standards and Regulations of the Zone**

The standards and regulations of the PD-2 Zone are summarized below, together with the grounds for the District Council's conclusion that the proposed development would satisfy each of these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is recommended in the Master Plan (and classified under) the RE-2 and R-200 Zones, both of which provide for development at a density of two dwelling units per acre or greater.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The property included



in LMA No. G-813 satisfies the first of these criteria, which requires that the land contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted. That standard clearly is met here, where the Land Use Plan provides for the construction of 391 units on the G-813 property. The property included in LMA No. G-814 satisfies the last of these criteria, which requires that the property be recommended for the PD Zone in an approved and adopted master plan and “so uniquely situated that assembly of a minimum gross area to accommodate at least 50 dwelling units is unlikely or undesirable and the development of less than 50 dwelling units is in the public interest.” Code § 59-C-7.122(e). The District Council agrees with Technical Staff that although the G-814 property cannot support 50 dwelling units, because of its unique location separated from the G-813 property by PEPCO power lines, development of the G-814 property as a coordinated part of the overall Development Plan is in the public interest.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A development with 200 to 800 units is required to have a minimum of 30 percent single-family detached units and 20 percent townhouse and single-family attached units. LMA No. G-813 falls within this category but has a mix of 87 percent single-family detached units and 13 percent single-family attached. A development with fewer than 200 units, such as LMA No. G-814, is required to have a minimum of 35 percent single-family detached units and 35 percent townhouse and single-family attached units. G-814 consists of 100 percent single-family detached units.

The Applicants request waivers of the above unit mix requirements pursuant to Code § 59-C-7.131, note 1, which authorizes the District Council to waive the unit mix requirements if it finds that “a proposed development . . . achieves goals, policies or recommendations stated in an approved and adopted master or sector plan.” The District Council finds that the requested waivers should be granted because the proposed development would help achieve the Master Plan recommendation to provide as much single-family detached housing as possible in the Fairland area.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but, as testified by Technical Staff, not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which is limited to residential uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the tot lots, swimming pool, tennis courts and community building shown on the Land Use Plan, are permitted in the PD Zone.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, . . . the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The present applications seek the low-density category of two dwelling units per acre, in keeping with the recommendations of the Master Plan. The maximum number of units permitted under the written binding elements represents an overall density of approximately 1.3 dwelling units per acre, including MPDUs. The District Council concludes, based on the evidence of record, that this low density level is appropriate for the subject property in light of the significant environmental constraints on the site, the recommendations of the Master Plan and the density of existing development in the surrounding area.

Section 59-C-7.15, Compatibility. As discussed above, the District Council finds that the proposed development would be compatible with existing development in the surrounding area. Moreover, the written binding elements on the Land Use Plan show that the development would satisfy the setback specifications set forth in Section 59-C-7.15, which prohibit any building other than a one-family detached residence within 100 feet of any adjoining one-family detached zone. The Development Plan does not include a binding element that responds to the specification in the same section that no building may be constructed to a height greater than its distance from such adjoining land. However, the submitted Land Planning Report states that the development would comply with this requirement. The Land Use Plan shows that only a small number of residential lots would be

adjacent to land that is recommended for single-family detached zoning, and all of the dwellings on those lots would be either single-family detached homes or duplexes designed to have the appearance of single-family detached homes. Under these circumstances, it is reasonable to expect that the building heights would comply with the Zoning Ordinance and that the Planning Board would ensure such compliance at site plan review.

Section 59-C-7.16, Green Area. The PD-2 Zone requires a minimum of 30 percent green area. The Applicants cannot provide a precise calculation of green space at this juncture because the layout of the golf course is illustrative, and minor changes during preliminary plan and site plan review could affect that calculation. However, the golf course use virtually guarantees that open space on the subject property would vastly exceed the required 30 percent.

Section 59-C-7.17, Dedication of Land for Public Use. The Land Use Plan clearly identifies the extensive portions of the subject property to be dedicated to public use: the school site, the golf course property, non-golf-course property within Fairland Park, and property needed for roads.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. The Land Use Plan commits the developer to providing considerably more than the two spaces per dwelling unit (a total of 792 spaces) required on the subject property as a whole: 1,531 spaces for dwelling units plus 234 spaces for the golf course and on-site recreation center.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems. The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient. The extension of Cedar Tree Drive would improve the local road network, benefiting both existing and new residents of the area. Likewise, the network of trails and sidewalks would provide valuable pedestrian connections for both existing and new residents.

§59-D-1.61(d): preservation of natural features. The proposed Land Use Plan has been designed and re-designed several times in an effort to achieve a complex set of environmental

goals, including preventing erosion of the soil and preserving natural vegetation and other natural features of the site. Several witnesses testified that grading would be minimized in both the residential and golf course portions of the development. The Concept Forest Conservation Plan demonstrates that both the residential and the golf course components of the development would satisfy forest conservation requirements. The Land Use Plan and expert testimony establish that the development would satisfy water quality standards by protecting wetlands and many stream buffer areas, and by installing an extensive stormwater management system.

**§59-D-1.61(e): common area maintenance.** A homeowners' association declaration of covenants, conditions and restrictions that has been submitted in draft form adequately and sufficiently demonstrates the intended ownership and perpetual maintenance of common areas.

#### **M. Public Interest**

The District Council further concludes that the proposed zoning bears sufficient relationship to the public interest to justify its approval. When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities. As discussed above, the District Council finds that the subject applications would be in substantial compliance with the *Fairland Master Plan*. The preponderance of the evidence also establishes that on balance, the proposed development would have more beneficial than detrimental impacts on public facilities.

The evidence demonstrates that the proposed development would not have any adverse impact on existing roadways in the area. Moreover, it would have a beneficial impact on the local road network by extending Cedar Tree Drive to Old Gunpowder Road in Prince George's County, creating an alternative access point for the existing Saddle Creek neighborhood. The evidence also demonstrates that under the AGP, the proposed development would have no adverse impact on local schools. If the County builds a new elementary school on the site provided on the Land Use Plan, the net result will be a substantial benefit to school conditions, at least at the elementary level. An

elementary school centrally located between two neighborhoods would have additional public benefits, providing a focal point for activity and promoting community involvement.

In addition to providing a public school site, implementation of the Development Plan would result in a net increase in parkland on the subject property. A number of parcels would change hands, and ultimately the County would hold title to all of the land underlying the new golf course, plus its existing property in the southern spike. Moreover, the public would benefit from the environmental restoration and reclamation the private developers would perform on extensive areas of the site, without public financial contribution, including on property that ultimately would be in public ownership.

The Opposition in this case argued, as discussed in Part III.L. above, that the proposed development would adversely affect the public interest by destroying valuable and well-loved park facilities, including trails, the existing golf course and natural areas. While the Opposition raised legitimate concerns, the District Council is persuaded that overall, the public interest favors the requested rezoning. Many fans of Gunpowder Golf Course clearly would be disappointed to see their favorite golf course replaced, but many people – including, hopefully, those who currently play at Gunpowder – would be able to enjoy playing at the new golf course, which too many people would be superior. The evidence showed that important concerns like affordability can appropriately be addressed at later stages of the approval process. Moreover, the private developers would bear the full cost of developing this valuable public amenity.

Similarly, many bikers, hikers and equestrians would miss the existing paved trail and whatever informal trails would be relocated for the proposed development. However, the emphatic testimony of the responsible Trail Planning Supervisor demonstrated that no matter what else happens, the paved trail will be relocated in a way that provides a connection between the Montgomery County and Prince George's County park areas in a pleasant, natural setting. Moreover, MNCPPC staff clearly intend to make every effort to preserve and improve the network of informal trails running through Fairland Park as part of their preliminary plan review.

As the Opposition pointed out, some of the natural features on the subject property would be adversely affected by the proposed development – trees would be cut down and some stream buffers cleared. However, for the reasons stated above, the District Council is persuaded that on balance, the environmental benefits of the proposed development outweigh its adverse impacts.

Accordingly, having carefully weighed the totality of the evidence, the District Council concludes that approval of the requested zoning reclassifications is in the public interest.

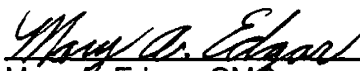
For these reasons and because to approve the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

### **ACTION**

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-813, requesting reclassification from the RE-2 Zone to the PD-2 Zone of 295.94 acres, and Zoning Application No. G-814, requesting reclassification from the R-200 Zone to the PD-2 Zone of 18 acres, all such land being located along the border between Montgomery County and Prince George's County, south of MD 198 and east and north of Greencastle Road in the 5<sup>th</sup> Election District, are hereby granted in the amount requested and the Development Plan submitted therewith is approved, subject to the specifications of the Land Use Plan, Exhibit 95(a), which forms its central component, provided, however, that within ten days of receipt of the District Council's approval resolution, the Applicants must submit a reproducible original and three copies of the approved Land Use Plan, Exhibit 95(a), with the heading "Proposed Binding Elements" changed to "Written Binding Elements," for certification in accordance with § 59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.

  
Mary A. Edgar, CMC  
Clerk of the Council