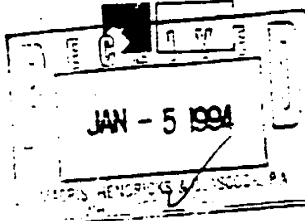


THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Date of Mailing: January 4, 1994



MONTGOMERY COUNTY PLANNING BOARD
OPINION

1-4-94

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DAC
Preliminary Plan No. 1-92091 (Resubdivision)
Project: Brookdale

Action: APPROVAL of a preliminary plan of subdivision for 2 lots on September 30, 1993. Motion of approval by Commissioner Floreen, seconded by Commissioner Richardson with a vote of 3-2. Commissioner Aron joined in the favorable motion. Commissioners Bauman and Baptiste opposed.

On December 11, 1992, Mr. Roy D.R. Betteley (Applicant) submitted an application for the approval of a preliminary plan of subdivision of property located within the R-60 residential zone (Property). The proposed plan, captioned Preliminary Plan 1-92091, sought to resubdivide an existing 20,678 square foot single lot site into 2 new lots of 11,650 square feet and 9,028 square feet (Preliminary Plan) (see Exhibit 1). The larger of the two lots, proposed lot 1, would encompass the already existing house. The property is located on the southwest side of Murray Road and Harrison Street in the Brookdale subdivision in Bethesda-Chevy Chase (see Exhibit 2).

Background

On September 30, 1993, the Preliminary Plan was brought before the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (Planning Board) for a public hearing upon due notice pursuant to Article 28 of the Annotated Code of Maryland (Regional District Act) and in accordance with the Montgomery County Code, Chapter 50 (Subdivision Regulations). During the public hearing, the Planning Board heard testimony and received into the record evidence from its expert technical staff, the Applicant's representative and various citizens and representatives of community groups.

In reviewing a proposal to resubdivide property, the Planning Board must determine, based upon the evidence of record, whether the plan comports with all the relevant sections of the Subdivision Regulations. One particular section, known as the "Resubdivision Criteria, "Section 50-29(b)(2) of the Montgomery County Code, provides that:

"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, alignments, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision".

The purpose of the Resubdivision Criteria is to ensure no further division of land which has been the subject of an approved and recorded subdivision application unless the Planning Board is able to determine that, based upon the evidence of record, the proposed new lots conform with the character of lots in the surrounding defined neighborhood and, in particular, the original subdivided lots as depicted on the record plat(s).

In applying the Resubdivision Criteria, the Planning Board must first determine the appropriate neighborhood within which the character of the area is established and compared. To this end, the Planning Board agreed with staff that the geographic neighborhood encompassed the adjacent lots on either side of Murray Road and Harrison Street ending with Andover Road (see Exhibit 2). The lots located behind the Property on Westport Road and River Road were not included for consideration in the geographic neighborhood given the significant separation of the existing homes from the Property. Additionally, the properties on Westport Road and River Road were discounted in that they are not part of the original 1938 subdivision. The houses located on Merivale Road and Harrison Street were excluded given their orientation to the street and each other.

Discussion

The Planning Board concludes that the proposed new lots would conform with the character of the existing recorded lots within the defined geographic neighborhood. The proposed lots meet or exceed every standard set forth in the Resubdivision Criteria including the frontage requirement. Proposed lot 2 street frontage, although 10 feet less than the average 60 foot frontage of the existing lots is acceptable, given its location where the road curves. The Board found that this difference was not significant enough to deny the resubdivision especially when the sizes of the proposed new lots, 11,650 square feet and 9,028 square feet, were significantly larger than the average 7,000 - 8,000 square foot size of the existing lots in the neighborhood.

Some concerns were raised about the placement of a house upon proposed lot 2 and the impact that its location would have upon the adjoining properties and character of the neighborhood. The Applicant proposed proceeding through the site plan review process as a way of ensuring that compatibility will be suitably addressed, for which the Planning Board concurred.

On the testimony and evidence presented, the
finds preliminary plan 1-92091 to be in accordance
with the provisions and requirements of the Subdivision Regulations
and the plan subject to the following conditions:

1. In accordance with the Environmental Planning Division
approval regarding the requirements of the forest
preservation legislation. Applicants shall satisfy all
conditions prior to recording of plats or MCDEP
approval of the sediment and erosion control permit, as
appropriate.

2. Obtain MCDEP stormwater management approval.

3. All site improvements as required to be approved by

4. Obtain engineering, grading or recording of plats prior to
plan approval. Final location to be determined at
plan.

5. Obtain necessary easements.

The preliminary plan will remain valid until February 4, 1997.
Prior to the expiration of this validity period, a final record
of the property delineated on the approved preliminary plan
or a request for an extension must be filed.

cc: dal.opn

Mr. Knopf described this community as living "in the shadow of the highrises of Friendship Heights on one side...with GEICO in the Friendship Heights Central Business District on the other side." Given this situation, Mr. Knopf stressed that open space is important to this neighborhood. Mr. Knopf testified that the proposed "... (unbuilt) lot is not compatible because of its small size on the street and its unusual dimensions...because the lines are not parallel, they radiate out." Mr. Knopf supported the "neighborhood" defined by the staff, and, among other testimony, provided additional commentary on his clients' view of the character of the neighborhood. Mr. Knopf asked the Board to apply a very strict standard to the requirements of the resubdivision criteria in the zoning ordinance.

There was considerable public testimony on this application. Property owners testifying in opposition to the proposed resubdivision cited various and numerous reasons. Some of the reasons cited were the shape of the lots, character of the neighborhood, compatibility, and traffic. Speakers included Mr. L. D. Junior of Harrison Street, Ms. Gertrude Delfino of Harrison Street, Ms. Susan R. Shaw of River Road, Mr. James M. Norton of Harrison Street, Mr. Robert Cope of Brookdale Road speaking for the Brookdale Citizens Association, and Ms. Rose Britten Steinbuckl of Harrison Street.

Ms. Beverly Danbo of Falmouth Road, speaking for the Citizens Coordinating Committee on Friendship Heights, a group that represents about 13 civic associations in and around Bethesda, asked the Board to apply strict standards to requested resubdivisions to protect the County's older neighbors.

Ms. Virginia R. Mitz, speaking for the Joint Committee on the Westbard Plan, a group that represents about 13 organizations in the downcounty area, cited, among other things, the need for green space in the downcounty area, and urged the Board to give serious consideration to the question of compatibility.

Mr. Kline offered rebuttal comments to the testimony and, regarding concerns about the uncertainty of the type and location of a house on Lot 2, offered to submit the application to the Site Plan Review process so that details can be publicly reviewed.

In Board discussion, Vice Chair Floreen observed that resubdivision requests are carefully reviewed on an individual application basis, in accordance with §50-29(b)(2), abandoned rights-of-way sometimes are part of proposed reconfigured lots, and the objective is to protect established communities. The Vice Chair said there have been cases where an applicant will tear down an existing house in order to conform to a strict interpretation of lot shape. In this case, the Vice Chair voiced the opinion that the determining factor is the issue of frontage; and, she did not think a 10' difference warrants denial, given the fact that the proposed lot will be somewhat larger than many of the lots on Harrison and Murray. The Vice Chair cited as

persuasive in approving the request, the applicant's offer to submit the application to Site Plan Review, which would allow the neighborhood's concerns to be addressed.

Given the indication that the Board might approve the requested resubdivision, and at the request of the Vice Chair, staff distributed a revised agenda page with recommended conditions. In discussion, staff noted that its recommended Condition 4 could be eliminated and a new condition added that reflects the applicant's offer to go through the Site Plan Review process.

In seconding the motion, Commissioner Aron concurred in the Vice Chair's statement.

In voting to oppose the action, Commissioner Baptiste agreed that this application is a difficult case, but that she had visited the area and finds the proposed shorter frontage to be considerably different than other lots. She alluded to the fact that Lot 2 would disrupt the rhythm of the street that is established by smaller frontages leading to larger frontages on Harrison. The Commissioner also said that the square footage of the new lot is not a highly important factor, having walked the site, because so much of the land is to the rear where the site flares out and is on a very steep slope. She observed there is a retaining wall on the drawing, stating there is an existing retaining wall currently on the site. Standing on the property, she said, one gets the sense that this is a smaller piece of land than any of the surrounding land. The Commissioner acknowledged that the offer to submit to site plan is generous, but noted that choosing an orientation for a new house on Lot 2 is going to be problematic, contending that the orientation will have to either ignore the houses on Harrison Street or the houses facing River Road. The Commissioner said she does not believe it is possible to construct a house on Lot 2 that is appropriate to the sense of existing houses.

Commissioner Richardson agreed the decision is a very close call. Nevertheless, he noted that one lot of 20,000 square feet is three or four times the size of other lots. The Commissioner agreed the main factor is the lot frontage and, in voting for the motion, said he believes that with the condition of Site Plan compatible development can occur.

Chairman Bauman, in voting against the motion, observed that infill subdivisions are difficult, and the applicant's offer to submit to site plan is generous. Nevertheless, he believes the balance tips toward disapproval, because he believes the curvature at the front of the lot creates a different sense from other lots that incorporate rights-of-way.

There being no further business, the meeting was adjourned at 6:30 p.m. The next regular meeting of the Planning Board will



July 29, 2004

Mr. Richard R. Brush, Manager
MCDPS - Water Resources Division
255 Rockville Pike, 2nd Floor
Rockville, Maryland 20850

Re: Brookdale – Lot 7
MHG Project No. 90-361

Dear Mr. Brush:

On behalf of our client, Mr. Dale Shields, we hereby request reaffirmation of the Stormwater Management Concept for the above referenced project. A copy of the concept approval letter, dated 9-25-96, is enclosed.

A brief history of this project is as follows:

- The initial development request involved a subdivision of property that incorporated a preliminary plan, a 59D-3 site plan and a record plat.
- House construction never commenced and the site plan expired.
- Presently, a new owner would like to begin construction, albeit with a different house type.
- MNCPPC is requiring a new site plan, which requires a reaffirmation of the approved swm concept.

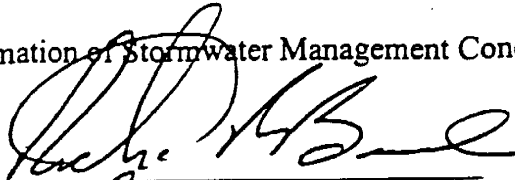
Under the current stormwater management requirements for a recorded residential lot that is less than 10,000 sf (lot 7 is 8,731 sf), stormwater management would be waived. However, we believe that it would be reasonable to abide by the conditions of the approved swm concept, dated 9-25-96.

If you agree, and wish to reaffirm the current approved swm concept, please signify by signing below. If you have any questions or require additional information please do not hesitate to call.

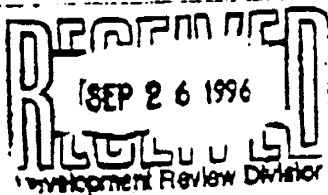
Sincerely,

A handwritten signature in cursive script that reads "Larry Owens".
Larry Owens

Mr. Richard R. Brush
MCDPS-Water Resources Section
July 29, 2004
Page 2 of 2

Reaffirmation of Stormwater Management Concept, dated 9-25-96.
Signed:  Dated: 8/2/04
Title: Manager

Enclosure



APPENDIX D

DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

September 25, 1996

Robert C. Hubbard
Acting Director

Mr. Doug Sievers
March, Hendricks & Glascock, P.A.
9220 Wighman Road, Suite 120
Gathersburg, MD 20878-1279

Re: Stormwater Management CO/C DPT Request
for Brookdale
Preliminary Plan #: 1-82091
Tract Size/Zone: .48 Ac/R-80
Total Concept Area: .48 Ac
Tax Plate: HM 343
Lots/Block: 2/4; Residue of Lot 1/4; Residue of
Keokuk Street
Liber/Folio: Part of 9127/284; 43 19/211;
971/388
Montg. Co. Grid: 58H10
Watershed: Little Falls

Dear Mr. Sievers:

On January 4, 1993, the stormwater management concept for the above mentioned site was approved by staff at DPS. The stormwater management concept consists of a waiver for water quantity and water quality control. However, we have recently received additional information concerning this project and feel the need to amend the waiver as follows:

Based upon Section 2.A.2.e(1) of Executive Regulation 5-90, a conditional waiver of on-site water quantity and water quality control is hereby granted.

The following conditions will need to be addressed during the detailed sediment control/stormwater management plan stage. This list may not be all inclusive and may change based on available information at the time.

1. All roof drains shall be directed to the adjacent underground storm drain system.
2. A berm or a swale at the edge of the disturbed area is needed to direct or retard flow to the existing storm drain inlet.
3. An engineered sediment control plan will be required.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is required. Stormwater management fee computations are to be submitted for verification during the sediment control/stormwater management review process.

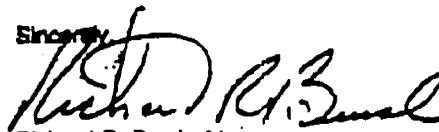
This letter must appear on the sediment control/stormwater management plan at its initial submittal. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute

Doug Stevens
September 25, 1996
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grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Joseph Cheung at (901)217-6326.

Sincerely,



Richard R. Brush, Manager
Water Resources Section

RRS:arm:CN182091

cc: J. Davis
S. Faderline
Michael Ma
SM File # 1-82091

CN - waked; Acres 48
CL - waked; Acres 48