



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

CORRECTED OPINION

**MONTGOMERY COUNTY PLANNING BOARD
OPINION**

Preliminary Plan No.: 1-00065
Project: Panagos Property
Date of Hearing: July 27, 2000

Action: **APPROVAL SUBJECT TO CONDITIONS.** (Motion to approve was made by Commissioner Bryant; duly seconded by Commissioner Holmes; with a vote of 4-0, Commissioners Bryant, Holmes, Hussmann and Perdue voting in favor; Commissioner Wellington necessarily absent.)

INTRODUCTION

On March 13, 2000, John and Mary Ann Panagos ("Applicant") filed a preliminary plan application seeking the creation of thirteen (13) lots on 11.89 acres of land in the RE-1 and R-200 (Residential) Zones under the optional cluster method of development. Pursuant to Section 59-C-1.532, footnote 6, of the Montgomery County Code, Chapter 59 ("Zoning Ordinance"), the application also requests a Waiver of the 50-acre minimum area of development required to use the cluster option in the RE-1 Zone. The application was designated Preliminary Plan No. 1-00065.

After due notice, the Montgomery County Planning Board ("Planning Board") held a public hearing on the application on July 27, 2000, in accordance with the requirements of Maryland Code Ann., Art. 28 ("Regional District Act"), the Montgomery County Code, Chapter 50 ("Subdivision Regulations"), and the Planning Board's Rules of Procedure. At the public hearing, the Planning Board heard testimony from its expert technical staff ("Staff"), the Applicant, neighboring property owners and community organizations, and received evidence into the record on the application.

In presenting the application to the Planning Board, Staff prepared packets of information including a Staff report, plan drawings, vicinity maps, aerial photographs and correspondence from the community. Staff distributed the information packets to the Planning Board and they are part of the record on the application.

THE SUBJECT PROPERTY

The subject property is located on the south side of Bells Mill Road, west of Great Arbor Drive, east of Cambridge Manor Court and abutting the Master Planned alignment of Willowbrook Drive. The site is split-zoned, with approximately 3.7 acres of the net tract area remaining after dedication located in the R-200 Zone (minimum lot size of 20,000 square feet) and approximately 7.4 acres of the net tract area located in the RE-1 Zone (minimum lot size of 40,000 square feet). The R-200-zoned property located to the northern, fronting on Bells Mill Road.

The property is improved with an existing house and outbuildings, located in the center of the site. Existing forest covers approximately 1.53 acres of the R-200 portion and 2 acres of the RE-1 portion of the property. Two intermittent streams originate in the southern portion of the site. The property lies within the Cabin John watershed.

To the north, across Bells Mill Road, the site is bordered by an existing community of single-family detached dwellings, which was constructed in the 1980s as an R-200/R-150 Zone combined cluster development. On the east, the site is bordered by another cluster development of single-family detached homes, which are zoned R-200 and were constructed on 10,000- to 14,000-square foot lots in the late 1960s and early 1970s. "Kentsdale Estates," a community of single-family detached dwellings zoned RE-2, is located south of the subject property. The master-planned alignment for Willowbrook Drive constitutes the western border of the site. West of the Willowbrook Drive alignment, the site is bordered by another split-zoned subdivision of single-family detached dwellings, with the lots along Bells Mill Road developed under the standards of the R-200 Zone and the lots to the interior along Cambridge Manor Court developed under the standards of the RE-1 Zone.

The subject property is located within the area covered by the 1980 Approved and Adopted Master Plan for the Potomac Subregion ("Master Plan"). The Master Plan identifies the property as single-family residential, split-zoned RE-1 and R-200. The Master Plan proposes Willowbrook Drive as a primary residential street connecting Democracy Boulevard with Bells Mill Road and, ultimately, with Tuckerman Lane, with the proposed right-of-way forming much of the western boundary of the subject property. The Master Plan is under review for revision. The Potomac Master Plan Advisory Group, which is reviewing the current draft Master Plan recommendations, has evaluated Willowbrook Drive, and supported continuation of the current Master Plan recommendation that Willowbrook Drive be extended.

The Applicant proposes the creation of thirteen (13) lots on 11.89 acres under the optional "cluster" method of development to allow the construction of twelve (12) new detached single-family dwellings. The proposal also includes the dedication of 0.73 acre along the western boundary of the subject property for the extension of Willowbrook Drive to Bells Mill Road. The existing home will be situated on an "estate lot" of 1.6 acres. Nine (9) proposed lots fronting on Bells Mill Road will range in lot size from 14,190 square feet to 28,095 square feet. The three (3) lots in the southwestern portion of the site each will exceed 20,000 square feet. Common open space will constitute approximately one-third of the property, including the forest conservation, reforestation and stormwater management areas. An additional 0.9 acre of reforestation will be located off-site. An on-site stormwater management facility, including a retention pond, will provide water quantity and quality control. Access will be provided via one individual and two common driveways connecting with Willowbrook Drive and one common driveway connecting with Bells Mill Road.

On November 11, 1999, the Planning Board considered a Pre-Preliminary Plan application for the subject property (No. 7-98039). The issues of concern raised at that hearing included the use of the cluster method of development, the dedication of the Willowbrook Drive right-of-way, forest preservation, stormwater management and driveway access to Bells Mill Road. The Planning Board agreed to the Applicant's submittal of a preliminary plan under the cluster option

and directed the Applicant to take the issues discussed at the hearing into account in preparing the Preliminary Plan.

THE SUBDIVISION CRITERIA

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act and the Subdivision Regulations. The application must also meet the requirements of the Zoning Ordinance applicable to the subject preliminary plan.

Section 50-35 of the Subdivision Regulations provides the approval procedure for preliminary subdivision plans. After presentation of the plan to the Planning Board, the Planning Board must act to approve or disapprove the plan, or to approve the plan subject to conditions and/or modifications necessary to bring the plan into accordance with the Montgomery County Code and all other applicable regulations. The general provisions for lot design for a subdivision are set forth in Section 50-29 of the Subdivision Regulations. Lot size, width, shape and orientation must be appropriate for the location of the subdivision and for the type of use contemplated in order to be approved by the Planning Board. Lots must also abut a dedicated street or public road.

Section 59-C-1.5 of the Zoning Ordinance sets forth the purpose, description and requirements of the Optional Cluster Method of development and requires Planning Board approval of its use. According to Subsection 59-C-1.51, the purpose of the Optional Cluster Method of development is to encourage "the provision of community open space for active or passive recreation as well as the preservation of trees. The cluster method provides for flexibility in lot layout . . . while preserving the same limitations on density of dwelling units per acre as normally permitted in the respective zones; protecting the character of existing neighborhoods; and providing open space for common use."

The Planning Board may also approve the combination of two or more cluster developments pursuant to Section 59-C-1.526. Generally cluster developments must be in one zone, although the Board can allow two zones to be combined in a cluster application. Code § 59-C-1.526(b). The Code further requires that the total area of the two different zoned tracts meet the minimum acreage requirements for the largest minimum zone (Code § 59-C-1.526(b)(2)). In this case that minimum is 50 acres – however the Code allows the Board to waive that acreage minimum "upon a finding that the cluster development is more desirable for environmental reasons." Code § 50-C-1.532, footnote 6.

At the public hearing, Staff recommended approval of the Preliminary Plan and Waiver of the 50-acre minimum tract size, subject to conditions. Staff advised the Planning Board that the subject application conforms with the development standards for cluster development in the RE-1 and R-200 Zones, with the exception of the minimum area requirement for which a waiver is requested. Staff further advised the Planning Board that the subject application is consistent with the recommendations of the Master Plan and complies with the provisions of the Subdivision Regulations. The record on the subject application also includes uncontested information about the lot size, width, shape and orientation of the proposed thirteen-lot subdivision and the relationship of the lots to public roads. Finally, Staff noted that there is adequate road capacity for

the subdivision in this policy area, and the Local Area Transportation Review guidelines do not require a traffic study of a thirteen-lot subdivision generating fewer than 100 trips.

DISCUSSION OF ISSUES

Neighboring property owners and community groups submitted extensive correspondence and petitions into the record in opposition to the subject application. Several neighbors also testified at the public hearing. The neighbors contended that the cluster method of development is inappropriate for the site and that the extension of Willowbrook Drive to Bells Mill Road is unnecessary and inappropriate. They also expressed concerns about compatibility, access, destruction of forest and wildlife habitat, inadequate stream buffers and stormwater runoff. These issues are discussed in detail below.

Cluster Method of Development and Compatibility

At the public hearing, Staff testified that it had reviewed plans using the cluster and standard methods of development for the subject property. Staff testified that the proposed cluster plan would best serve the community interest because it achieves greater forest preservation, provides additional open space area to accommodate a more expansive Stormwater Management facility to address the communities concerns with water control problems and less grading and disturbance in environmentally sensitive areas. Staff explained that the cluster method of development provides greater control over the environmentally sensitive areas of the site, the tree save and reforestation areas, by placing them in common ownership rather than in private lots. Staff further testified that the proposed cluster development is compatible with surrounding existing development. Accordingly, Staff advised the Planning Board that the proposed combined cluster and the requested waiver of the minimum acreage requirement for the RE-1 Zone are appropriate for the development of the subject property.

The Applicant testified that it compared the type of development that could be achieved under the standard method in the R-200 and RE-1 Zones with development under the cluster method and concluded that use of the cluster method best addresses environmental concerns, that the proposed development makes a compatible transitions with surrounding neighborhoods and complements the existing estate on the site. The Applicant explained that development under the cluster method will allow greater tree preservation in both common areas and in Category I easements, and further provides for stream buffers and an environmentally sensitive Stormwater Management Plan. The Applicant characterized the subject property as an in-fill site that transitions between R-150, R-200, RE-1 and RE-2 Zones and is bordered on two sides by existing cluster subdivisions. In addition, the Applicant testified that the sizes of the lots in the northern and eastern portions of the site complement neighboring properties.

The Applicant further testified that, although the three lots in the southwestern portion of the site are smaller than the one-acre lots located across Willowbrook Drive, the proposed lots meet the RE-1 (Cluster) size requirements and back up to the landscaped and forested common area. Accordingly, the Applicant could have created three deeper one-acre lots, but believed that smaller private lots with a dedicated separate parcel for the common open space and forest areas are preferable for tree preservation purposes. Moreover, the proposed plan retains a significant

amount of forest in the southern portion of the property and provides additional buffering along the eastern border.

Neighboring property owners and community organizations submitted extensive correspondence into the record and testified in opposition to the use of the cluster method for the proposed development. They contended that combining the cluster developments is inappropriate because the tracts do not share a common boundary sufficient to provide a unified development. They testified that use of the cluster method would not be more desirable for environmental reasons, but would be worse in terms of loss of trees and animal habitat, grading in and disruption of sensitive areas and stormwater runoff. They testified that the use of the cluster method allows smaller lots which provide less absorption area and require construction of a larger stormwater retention pond, which in turn requires more grading and causes greater tree loss. In addition, the neighbors questioned whether the proposed plan provides the common areas required in cluster developments for aesthetic and recreational purposes.

The neighbors also disagreed with the Applicant as to the compatibility of the proposed development with nearby and adjacent existing development. They testified that the adjoining neighborhoods to the southeast are distinguished by their forested character and the way the modest houses are nestled into the woods. They testified that the size of the footprints and the height of the proposed houses are not compatible with the size and height of the existing houses. They also expressed concern about the disproportionality between the size of the proposed houses and the lots. The neighbors further testified that some of the houses are located so close to the stormwater retention pond, stream buffers and property lines that there is not enough room for sufficient buffering, especially along the southeastern boundary of the property. In addition, the neighbors testified that the proposed ½-acre lots are not compatible with the one- and two-acre existing development to the west and south. They are concerned that the proposed development will adversely affect their views, security and property values and the character of the surrounding neighborhoods. Finally, one neighbor requested that, if the subdivisions are combined to meet the cluster minimum area requirement, the Forest Conservation and reforestation area be made accessible to the adjoining community.

In rebuttal, the Applicant showed a Standard Method Plan with the same number of lots and contended that the proposed cluster development is far superior in environmental protection. The Applicant testified that the cluster development has less impervious area, saves more trees, includes Stormwater Management and mitigates other impacts as much as possible. Regarding the setbacks from the houses on the adjoining properties to the east, the proposed houses will be set back further than the existing houses.

In response to a question from the Board about the need for the waiver request, Legal Staff explained that the Zoning Ordinance allows the combination of cluster developments in different zones, but then requires that the total area meet the largest minimum area requirement for cluster development in those zones. In this case, the RE-1 Zone has the larger minimum area requirement, which is 50 acres. However, in Section 59-C-1.532, footnote 6, the Zoning Ordinance also allows the Planning Board to waive the minimum area requirement "upon a finding that the cluster development is more desirable for environmental reasons." In response to additional

questions from Commissioners, Legal Staff advised the Planning Board that cluster developments separated by a street may be combined. Staff noted that the subdivisions located directly north and east of the subject property are cluster developments. Staff further explained that it viewed the subject plan as a continuation of the adjoining cluster development to the east, which it used for comparison purposes. Staff also used the subdivision to the north for comparison, but only as to setbacks from Bells Mill Road.

Extension of Willowbrook Drive

Staff testified that the subject application includes the dedication of the Willowbrook Drive right-of-way from just north of Cambridge Manor Court to Bells Mill Road, consistent with the Master Plan recommendation. Staff further testified that the Montgomery County Department of Public Works & Transportation ("MCDPW&T") has conditioned its approval of the subject plan on a requirement that the Applicant institute an escrow agreement covering the construction of the adjacent portion of Willowbrook Drive (prior to which it may obtain only three building permits). Staff explained that Willowbrook Drive currently is a discontinuous street with two segments missing between Democracy Boulevard and Bells Mill Road. The right-of-way dedication for one of the missing segments is included in the subject application. The dedication for the other remaining right-of-way, the segment connecting with Democracy Boulevard, was included in Preliminary Plan Application No. 1-97056 (Kentsdale Estates), which was approved by the Planning Board in 1997 and revisited in June 2000.

Staff advised the Planning Board that the residents of the neighborhoods surrounding the subject property disagree as to whether the right-of-way should be extended. Staff further explained that, in preparation for the pending Master Plan update, the Potomac Master Plan Advisory Group has discussed this issue and concluded that the Master Plan recommendation should not be changed.

In addition, in response to inquiries received by Staff and flyers distributed in the community, Staff advised the Planning Board that the subject application does not deal with Willowbrook Drive north of Bells Mill Road. Staff further noted that there are no plans to widen Bells Mill Road to a four-lane highway. Instead, Staff has sought improvements along the Bells Mill Road right-of-way, which may include a sidewalk or a demarcation for a sidewalk or bikepath.

Several neighbors and community groups testified and submitted petitions into the record in opposition to the extension of Willowbrook Drive from Cambridge Manor Court to Bells Mill Road. They described Willowbrook Drive as a quiet, narrow residential street with frequent turns and elevation changes. They expressed concern that if Willowbrook Drive becomes a through street, it will also become a short cut, which will change the character of the road and the neighborhood and adversely affect the safety of pedestrians and children. They contended that although the Master Plan recommends the connection of Willowbrook Drive from Democracy Boulevard through to Tuckerman Lane, the neighborhood has developed differently than anticipated and events have occurred to render that recommendation no longer appropriate. They explained that Willowbrook Drive is discontinuous north and south of Bells Mill Road and is likely to remain discontinuous to the north. Construction of one of the northern segments of the road requires an expensive bridge

to cross a stream valley at Buck Branch Park and Montgomery County has no plans to build that bridge. Another segment of the road must cross a culvert. The neighbors also testified that the existing sections of Willowbrook Drive have not been improved to Montgomery County's standards for a primary residential road. Moreover, they contended that the Willowbrook Drive connection from Democracy Boulevard to Bells Mill Road is unnecessary because there are already three connecting roads in the site vicinity (Stapleford Hall Drive, Democracy Court and Gainsborough Road).

Regarding the concerns of Stapleford Hall Drive residents about traffic on their street, the neighbors noted that the pending connection of the southern portion of Willowbrook Drive through to Democracy Boulevard would alleviate some of the traffic on Stapleford Hall Drive. Finally, the representative of the Neighborhood Preservation Group suggested that the subject portion of Willowbrook Drive could be constructed terminating in a cul-de-sac that could later be opened if the northern segment is ever built.

Two neighboring property owners and the Contemporaries-in-the-Park Citizens Association submitted correspondence in support of the extension of Willowbrook Drive. They explained that providing alternative routes is beneficial and, in this case, will reduce traffic on Stapleford Hall Drive and Gainsborough Road.

Access and the Use of Common Driveways

At the public hearing, Staff and the Applicant testified that they, together with MCDPW&T, had reviewed several access alternatives for the subject property, including individual driveways, shared driveways and construction of a new public street interior to the site. They explained that the alternatives were considered with regard to tree preservation, Stormwater Management and road safety. Staff also explained that the use of single-loaded driveways to service individual homes is discouraged and access is restricted along Bells Mill Road, which is a primary street. In addition, although MCDPW&T usually allows only four (4) lots on a private driveway, five (5) lots are permitted in certain circumstances, such as the environmental sensitivity of the subject property. Therefore, they concluded that grouping the five lots in the southeastern portion of the site and combining their access at a properly-sighted driveway location on Bells Mill Road would minimize grading, disturbance and forest clearing and best serve community interests. Access is also combined for the existing house and the three lots located in the northern portion of the site, east of the Willowbrook Drive extension and backing up to Bells Mill Road. These four lots will be serviced by a private driveway leading to Willowbrook Drive. The three homes in the southwestern portion of the site fronting on Willowbrook Drive directly across from Cambridge Manor Court will also share access. The three lots were proposed with individual driveways, but MCDPW&T is requiring the Applicant to combine the driveways to one access point. Finally, the lot on the west side of the Willowbrook Drive extension will be accessed via Willowbrook Drive because it has more frontage along that road and the driveway can be located further from the intersection.

Several neighboring property owners and community organizations submitted correspondence into the record and testified at the public hearing as to their concerns about the proposed use of common driveways. The neighbors testified that Staff and the Applicant had not

given any explanation of the circumstances that would justify making an exception to MCDPW&T policy to allow five lots to share a common driveway. Other neighboring property owners expressed concerns about the proximity of the private driveway in the southeastern corner of the site to the intersection of Bells Mill Road and Great Arbor Drive. They also expressed their opinion that visibility is limited on Bells Mill Road because of a hill just west of the proposed driveway.¹

Forest Conservation and Stream Buffers

At the public hearing, Staff and the Applicant testified that forest conservation was a major consideration in developing and reviewing the subject preliminary plan. Staff explained that the use of the cluster option, common driveways and smaller lot sizes maximizes the forest conservation area. Staff testified that the recommended conditions of approval of the Preliminary Forest Conservation Plan require site inspections prior to, during and after construction to ensure that the areas identified for forest conservation will remain undisturbed. Staff also noted that it will review a supplemental landscaping plan and possible additional plantings. In addition, recommended condition of approval (1)(c) requires the relocation of the stormwater management access road to decrease the road length and allow more area for reforestation.

The Applicant agreed with Staff's recommendation and stated that it is working with the Montgomery County Department of Permitting Services ("MCDPS") to accomplish the relocation of the stormwater management access road. However, the Applicant requested that the recommended condition be modified to add "if acceptable to MCDPS" to enable the Applicant to work out a solution with MCDPS and Staff.

In their written and oral testimony, several neighboring property owners and community groups stated their strong objections to the proposed plan because of the tree loss that will result. They contended that the total of thirteen (13) houses and extensive paving for driveways are too much development for the forested site. They explained that a significant portion of the site contains large stands of mature oak and hickory trees, which provide a forest canopy that must be preserved in compliance with Montgomery County Forest Conservation Law. They further testified that the trees are part of the contiguous forest that joins Buck Branch Park and Cabin John Park and provides much needed wildlife habitat. Some of the neighbors contended that there should be a substantial tree buffer along the eastern boundary of the property to ensure the retention of the mature trees and preserve the wooded character of the adjoining neighborhood. They advocated the extension of the existing 50-foot Category I Conservation Easement that the Planning Board established in 1984 on the two parcels located immediately south of the subject property. Several neighbors suggested that the forest buffer should be 100 feet wide to

¹ Some of the neighbors also testified that Staff and the Applicant had not justified a waiver of the public road frontage requirement. In response to the neighbors' testimony and questions from the Commissioners, the Applicant and Legal Staff explained that a waiver of the frontage requirement was not requested and is unnecessary because all of the proposed lots have frontage on public roads.

compensate for the smaller lots. They testified that it would be difficult to enforce tree preservation on private lots, especially when the new homeowners want to landscape their yards and add amenities. Some neighbors also expressed concern that the Applicant will pay a fee rather than save trees and that part of the reforestation area will be located off-site. They suggested that decreasing the size of the "estate lot" might result in more tree preservation or reforestation on-site.

In addition, several neighbors disagreed with the Applicant's characterization of the two streams on the site as "ephemeral". They explained that the streams are an integral part of the Cabin John Watershed. They also noted that the streams have caused erosion on the site and downstream properties and contain water during even the driest summers. They further contended that the development plan should include 125-foot buffers for the streams.

In rebuttal, the Applicant testified that, although some specimen trees will be lost, the intent is to save as many trees as possible. The Applicant further testified that the stream hierarchy is correct and has been accepted by M-NCPPC, Montgomery County and the Army Corps of Engineers under these agency standards, the streams have been classified as ephemeral where there are white oaks growing because that would not occur in intermittent or perennial streams.

In response to the neighbors' testimony and questions from the Commissioners, Staff explained that the 50-foot forest buffer was included in one of the subdivisions located south of the subject site to ensure tree preservation and compatibility with adjoining properties where side yards abutted rear yards. The 50-foot buffer was included in the other subdivision (Kentsdale Estates) because of concerns about the impact of the proposed sewer and water line extensions and driveway locations on existing trees. Staff testified that extending the 50-foot buffer north through the subject site would impact the two houses in the southeastern corner which abut the 40-foot building restriction line. Staff also noted that the Applicant tried to include all of the reforestation area on the site, but was unable to do so. Moreover, fee-in-lieu of reforestation is not accepted in Montgomery County and the subject application does not include such a fee.

Regarding the adequacy of the stream buffers, Staff testified that the subject plan applies the appropriate buffers. Staff advised the Planning Board that the stream locations and buffer requirements were determined by field evaluation with the Applicant and MCDPS. Existing stream flows, drainage swales, slopes and vegetation were studied to determine where the streams start and where they are ephemeral (carry water only during storm events).

Stormwater

At the public hearing, Staff testified that the proposed plan will not exacerbate existing drainage problems on downstream properties, but is likely to improve existing conditions by reducing stormwater runoff downstream of the subject site. Staff noted that the proposed plan is the result of several site visits and reviews with MCDPS of alternative stormwater management concepts.

The Applicant testified that it worked with Staff and MCDPS to create a stormwater management plan that will provide environmentally sensitive on-site management of water quantity

and quality (with the only stormwater control device in Buck Branch). The MCDPS-approved concept will control stormwater runoff generated by the proposed development, the pre-developed condition and ½ of the contiguous rights-of-way. Therefore, the subject Preliminary Plan will provide additional protection for the stream system and decrease stormwater discharge onto downstream properties that are experiencing erosion under existing conditions.

Several neighbors testified regarding their concerns about stormwater runoff and the proposed Stormwater Management facility. They expressed concern that tree removal and loss, grading, paving for driveways and the inadequate conveyance of stormwater to the retention pond will increase stormwater runoff onto and erosion on adjoining and downstream properties. In addition, they noted that construction of the proposed Stormwater Management facility will destroy over one acre of existing forest. One neighbor also noted concerns about the open culverts and the lack of fencing around the stormwater pond. She suggested that the Planning Board should require underground Stormwater Management.

In rebuttal, the Applicant stated that the proposed dam is necessary to control runoff generated by the site and from adjoining roads. The Applicant also explained that MCDPS has concurred with the Applicant's assessment that a catastrophic dam breach would not impact downstream properties. In addition, Staff testified that underground stormwater storage was investigated, but not recommended, because the adverse impacts caused by the grading and subterranean disruption would outweigh the benefits.

FINDINGS

After review and consideration of the evidence of record, including testimony given at the public hearing, the Planning Board finds that Preliminary Plan No. 1-00065 is in accordance with the Subdivision Regulations, the Zoning Ordinance and the Regional District Act. Based on the testimony and evidence contained in the record, the Planning Board finds that: (1) the proposed lots are appropriate with regard to lot size, width, shape and orientation for the location of the subdivision and the contemplated residential use; (2) the proposed lots will abut public roads; (3) the Preliminary Plan meets the development standards of the RE-1 and R-200 (Cluster) Zones; (4) the Preliminary Plan is in accordance with the Master Plan; and (5) the site is adequately served by public facilities. The Board further notes that its review is premised on the subdivision layout, and that it has no jurisdiction in this case to review house footprints or building size.

The Planning Board further finds that the proposed conditions, as modified, will ensure the appropriate use of the subject property and adequate access and road improvements, forest conservation measures, stormwater management and buffering. Therefore, the Planning Board adopts Staff's recommended conditions, as modified.

Upon consideration of all the evidence presented and Staff's recommendation, the Planning Board finds that use of the Optional Cluster Method of development is preferable to standard method development for the subject property for tree preservation, stormwater management, common open space and buffering purposes. In addition, the Board specifically finds - based on

the Staff and Applicant testimony given and the alternative layouts presented – that the optional method allows for more community open space and clearly enhances tree preservation.

Further, in addition, taking into consideration that the subject property is split-zoned and bordered by cluster subdivisions to the north and east, the Planning Board finds that development as a combined cluster pursuant to Section 59-C-1.526 of the Zoning Ordinance is appropriate. The Planning Board grants a Waiver of the 50-acre minimum area requirement pursuant to Section 59-C-1.532, footnote 6, of the Zoning Ordinance, as requested by the Applicant, because upon consideration of all of the conflicting testimony and evidence presented with respect to environmental considerations, on balance the Board finds that the waiver clearly will allow for more effective protection of the environmentally sensitive areas of the site, particularly of trees.

The Planning Board further finds that the proposed cluster development is compatible with surrounding existing development. The site is bordered by cluster subdivisions with comparable lot sizes and setbacks on the north and east. Regarding the size of the three (3) lots proposed for the southwestern portion of the subject property, the Planning Board agrees with Staff and the Applicant that the lots could have been enlarged by adding part of the adjacent common area to each lot, but finds that the Zoning Ordinance goals are better met by including more of the forested area in common ownership. Based on the testimony from Staff, forested area that remains in common ownership is more likely to be preserved as forested area than forest that lies within the privately owned lots.

In addition, the Planning Board finds that the proposed conservation, reforestation and landscaping areas will provide sufficient buffering between the proposed development and the existing houses to the south and east.

Regarding the proposed extension of Willowbrook Drive from Cambridge Manor Court to Bells Mill Road, the Planning Board has weighed the conflicting testimony from community groups and individuals regarding traffic and safety regarding the extension of Willowbrook Drive through to Tuckerman Lane, and weighed it against testimony from other members of the community who favor the road connection. The Planning Board expressly finds that the proposed Willowbrook Drive extension conforms to the recommendations in the current Master Plan and found no evidence in the record to render the Master Plan recommendation irrelevant. See § 50-35(e) of the Montgomery County Subdivision Regulations. Moreover, the Planning Board has consistently found that connectivity is an essential part of building communities that is desirable even when the immediate residents prefer not to be connected and/or when the proposed road is redundant. Therefore, the Planning Board finds that the right-of-way dedication is appropriate and Willowbrook Drive should be extended to Bells Mill Road.

In addition, taking into consideration the findings and recommendations of Staff and MCDPW&T regarding access, the Planning Board finds that the proposed common driveways best serve the goals of tree conservation, stormwater management and road safety. The Planning Board further finds that the combined access for the five lots in the southeastern portion of the site is appropriate. Moreover, the Planning Board finds that the use of combined access driveways does not require a waiver, because all of the lots have frontage on public roads.

Regarding the neighbors' concerns about environmental impacts, the Planning Board recognizes and affirms the important environmental goals of protecting the forest and intermittent stream resources on the site. The Planning Board also agrees with Staff and community testimony that tree conservation easements on private land are difficult to enforce and tend to be less effective than easements held in common ownership. Accordingly, the Planning Board finds it desirable to include as much forest conservation and reforestation area in common ownership as possible. The Planning Board further finds that the designation of the southern portion of the site as a forest conservation area under the control of the homeowners' association will help to preserve much of the existing forest on the site and provide a significant buffer for the RE-2 zoned properties to the south. In addition, the Planning Board accepts the determination of Staff and MCDPS that the stream classifications are correct and the appropriate buffers have been applied. Moreover, the Planning Board finds that the Applicant's compliance with Conditions #1 and 5 will ensure that forest conservation and stream buffer requirements are met. Condition #1 requires compliance with the preliminary forest conservation plan in accordance with the standards of the Forest Conservation Law, and the Board finds that the Forest Conservation Plan as approved meets the standards and requirements set forth in the Forest Conservation Law. Condition #5 provides for the delineation of the conservation easement on the record plats. The Planning Board therefore adopts Conditions #1 and 5 and finds that the proposed plan meets all applicable forest and stream buffer requirements and will provide adequate environmental protection.

Finally, regarding stormwater management, the Planning Board accepts MCDPS' determination that the Stormwater Management Concept meets MCDPS' standards and finds that the subject application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. In addition, based on the information presented, the Planning Board finds that the proposed cluster development will not exacerbate existing stormwater drainage problems on downstream properties, and in fact will provide additional management controls.

CONCLUSION

Based on the testimony, evidence and exhibits presented, as well as the contents of the Preliminary Plan file, the Planning Board finds Preliminary Plan No. 1-00065 to be in accordance with the Subdivision Regulations of the Montgomery County Code and the provisions of the Maryland Code Ann., Art. 28. Therefore, the Planning Board approves Preliminary Plan No. 1-00065, subject to the following conditions:

1) Compliance with the conditions of approval of the preliminary forest conservation plan. The applicant or its successor in title must meet all conditions either prior to recording of the final record plat or prior to MCDPS issuance of sediment and erosion control permit, as appropriate. As part of the final Forest Conservation Plan the Applicant or its successor (as the case may be) must abide by the following:

- a) provision for on-site inspections of the forest retention areas, reforestation areas and limit of disturbance areas prior to, during and after construction.

- b) approval of landscape plan.
 - c) relocation of stormwater maintenance access from Willowbrook Drive to common driveway off Bells Mill Road per Montgomery County DPS approval.
 - d) stormwater maintenance access currently shown on the preliminary plan is to remain undisturbed.
- 2) All road rights of way shown on the preliminary plan shall be dedicated by the applicant, unless designated on the preliminary plan.
- 3) All roads shown on the preliminary plan shall be constructed by the applicant to the full width mandated by the Potomac Subregion Master Plan, and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan "to be constructed by (other)" are excluded from this condition.
- 4) Access and improvements, as required, to be approved by MCDPW&T prior to recording of plats.
- 5) Record plats to reflect delineation of a conservation easement over the stream valley buffer, tree preservation and reforestation areas.
- 6) Common ingress/egress easement for Lots 6-10 to be referenced and noted on record plat.
- 7) Prior to recording of plats, submit for technical staff review and approval, applicable Home Owners Association documents, including reference to "denial of access" along frontage lots not used for access.
- 8) Access to Bells Mill Road and Willowbrook Drive are limited to the areas shown on the approved preliminary plan. Record plat and HOA documents to reference "denial of access" statement along the lot frontage not used for access.
- 9) Other necessary easements.
- 10) This Preliminary Plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.

The Adequate Public Facilities Review for this preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.