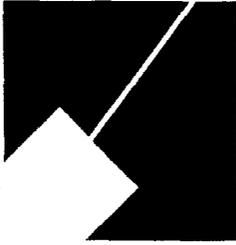


ITEM # 9

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

MCPB

Item # _____

January 19, 2006



MEMORANDUM

DATE: December 30, 2005

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Catherine Conlon, Supervisor *CC*
Development Review Division

FROM: Dolores M. Kinney, Senior Planner (301) 495-1321 *DMK*
Development Review Division

REVIEW TYPE: Preliminary Plan Review

APPLYING FOR: Resubdivision of Existing Lot 10

PROJECT NAME: Edgemoor

CASE #: 12006015R (formerly 1-06015)

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

ZONE: R-90

LOCATION: Located in the northwest quadrant of the intersection of Fairfax Road and the unimproved Elm Street right-of-way

MASTER PLAN: Bethesda Chevy Chase

APPLICANT: Sandy Spring Builders

ENGINEER: CAS Engineering

ATTORNEY: Lerch, Early and Brewer

HEARING DATE: January 19, 2006

STAFF RECOMMENDATION: Approval, pursuant to Section 50-29 (b) (2), Montgomery County Subdivision Regulations subject to the following conditions:

ITEM # 9

- 1) Approval under this preliminary plan is limited to one (1) residential lot and one (1) outlot.
- 2) Compliance with conditions of MCDPWT letter dated December 29, 2005, unless otherwise amended.
- 3) Other necessary easements

SITE DESCRIPTION:

Lot 10, referred to as the "Subject Property", is part of the Edgemoor Subdivision, which was originally recorded by plat in 1939. The Subject Property is located in the northwest quadrant of the intersection of Fairfax Road and the unimproved Elm Street right-of-way (Attachment A). The property contains 17,031 square feet and is zoned R-90. A one-family detached residential dwelling unit is under construction on the Subject Property. The property was originally zoned Residential "A" which became the R-60 zone in 1954. In 1990 SMA G-666 rezoned the property to R-90 and the Zoning Ordinance was amended to create a grandfathering clause (59-G-4.27) as discussed below. In November 2004, the Subject Property was part of a minor subdivision with adjacent Lot 9 to adjust a shared western property line.

PREVIOUSLY SUBMITTED PLAN AND CONFORMANCE WITH CHAPTER 59, ZONING ORDINANCE:

The subject application was originally filed as a request to reconfigure both existing Lot 10 and adjacent Lot 9 and create two rectangular shaped lots. However, existing Lot 9 does not, and could not, meet the minimum width requirements of the R-90 zone after subdivision. The Applicant based their request to resubdivide Lot 9 on grandfathering pursuant to Sections 59-B-5.1, 59-B-5.3 and 59-G-4.27 of the Zoning Ordinance. These sections are discussed below.

Section 59-B-5.1 Buildable Lot Under Previous Ordinance

Section 59-B-5.1 states any lot that was recorded by subdivision plat prior to June 1, 1958, or any lot recorded by deed prior to June 1, 1958 that does not include parts of previously platted properties, and that was a buildable lot under the law in effect immediately before June 1, 1958, is a buildable lot for building a one-family dwelling only, even though the lot may have less than the minimum area for any residential zone. Any such lot may be developed under the zoning development standards in effect when the lot was recorded.

Section 59-B-5.3 One-family Dwelling

Section 59-B-5.3 of the Zoning Ordinance states any one-family dwelling in a residential zone or agricultural zone that was built on a lot legally recorded by deed or subdivision plat before June 1, 1958, is not a nonconforming building. The dwelling may be altered, renovated, or enlarged, or replaced by a new dwelling, under the zoning development standards in effect when the lot was recorded.

ITEM # 9

Section 59-G-4.27 Residential Lots Reclassification from R-60 to R-90 Zone

Section 59-G-4.27 states any lot in the R-90 zone that was recorded by deed or subdivision plat in the R-60 zone before June 26, 1990, may be developed with a one-family dwelling and accessory structures in accordance with the development standards of the R-60 zone that were in effect when the lot was recorded.

While staff acknowledges that creation of two rectangular shaped lots in this location would bring the lots closer to the minimums of the R-90 zone, we do not believe such a resubdivision is permitted under the provisions cited by the applicant, or any other current provisions of the Zoning Ordinance. Pursuant to Section 59-C-1.32 of the Zoning Ordinance, a lot created in the R-90 zone must be a minimum of 75 feet in width. Lot 9 currently has a lot width of 60 feet; this dimension will not and cannot change as a result of this preliminary plan. Although Sections 59-B-5.1, 59-B-5.3 and 59-G-4.27 each grandfather certain existing lots and/or the houses created on them, these sections don't apply to newly created lots which would be the case if these lots were allowed to record new plats. In fact, staff's interpretation of the language in these sections is that a lot would lose its grandfathered status if it is changed. Based on this interpretation of the Zoning Ordinance, staff advised the applicant to revise their plan and resubdivide only existing Lot 10 with the creation of an outlot to permit the overall goal of this plan which is to transfer ownership of that portion of the property to adjacent Lot 9.

Applicant's Position

The Applicant believes that Lot 9's non-conforming, but grandfathered status, should not be changed by resubdividing, because the proposed reconfiguration would not result in greater non-conformity with the existing zone, but rather bring it more into conformance. In support of this position, the Applicant's attorney submitted the attached Maryland Court Appeals case (Attachment F) and contends that it supports a finding in this case that public policy is served by permitting resubdivision that would have the effect of reducing the nonconforming nature of a lot and make it closer to a conforming lot.

Staff's Position

There has been some precedent set in support of the applicant's position in this case by past approval of numerous minor subdivision record plats which permitted grandfathered lots to be changed (mostly by minor lot line adjustments) into lots which still did not meet the requirements of zoning at the time of the change, while maintaining their grandfathered status. In fact, existing Lot 9 was created through the minor subdivision process in 2004 by minor lot line adjustment with Lot 10. Despite the change, the Department of Permitting Services (DPS) determined that both Lots 9 and 10 in this case were eligible for new home construction. However, it should be mentioned that the building permits were applied for before the lot lines were adjusted.

ITEM # 9

Staff is unaware of any actions taken by the Planning Board as part a preliminary plan which supports creation of non-standard lots, despite past actions on minor subdivisions record plats. Therefore, this case calls into question how this, and future actions, should be taken. In re-thinking the issue as part of the current review, staff decided not to support the further use of the past interpretation and is not prepared to support the applicant's position on the attached court case without Planning Board direction. Should the Board decide to support the Applicant's justification for resubdividing both lots, the two-lot plan, as submitted with the application and noticed to the public, is attached to this report along with the resubdivision analysis for reconfigured Lot 9 (Attachments G and H).

REVISED PROJECT DESCRIPTION:

This revised plan is a preliminary plan of subdivision application to reconfigure the boundary lines of existing Lot 10 and create an outlot so that a portion of the property can be transferred to the owner of adjacent Lot 9 (Attachment B). The Subject Property currently fronts on Fairfax Road, extends west, and wraps around the rear of the adjacent property to the north (existing Lot 9) creating an "L" shaped lot. The proposed preliminary plan modifies the "L" configuration into a rectangle, similar in shape with the surrounding properties. Access to the site will be directly from Fairfax Road.

DISCUSSION OF ISSUES

Master Plan Compliance

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

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

Statutory Review Criteria

In order to approve an application for resubdivision, the Planning Board must find that the proposed lot complies with all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

Resubdivision. Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.

ITEM # 9

Neighborhood Delineation

In administering the Resubdivision section, the Planning Board must determine the appropriate "neighborhood" for evaluating the application.

The applicant has proposed a neighborhood of 20 lots for analysis purposes (Attachment C). The neighborhood extends north of Hampden Lane, east of Fairfax Road, south of Elm Street and west to Glenbrook Road. Staff is of the opinion that the applicant's neighborhood delineation is appropriate because it provides an adequate sample that exemplifies the lot and development pattern of the area. The applicant has provided a tabular summary of the area based on the resubdivision criteria, which is included in the staff report.

ANALYSIS

Comparison of the Character of Proposed Lots to Existing

In performing the analysis for resubdivision of Lot 10, Staff applied the resubdivision criteria to the delineated neighborhood. Based on the analysis as set forth below, Staff finds that the proposed resubdivision will be of the same character as the existing lots in the neighborhood. The attached tabular summary (Attachment D) and graphical documentation also support this conclusion.

Frontage: In a neighborhood of 20 lots, lot frontages range from 57 feet to 197 feet and one lot has a frontage of 360 feet. The proposed Lot 11 has a lot frontage of 195 feet on Elm Street. **Therefore, Staff finds that the proposed lot will be consistent in character with other lots in the neighborhood.**

Area: In a neighborhood of 20 lots, lot areas range from 2,664 square feet to 16,787 square feet and one lot has an area of 68,527 square feet. **The proposed Lot 11 has an area of 7,128 square feet and will be consistent in character with the existing lots in the neighborhood with respect to area.**

Lot Size: The lot sizes in the delineated neighborhood range from 6,473 square feet to 30,000 square feet and one lot has a lot size of 97,264 square feet. The proposed Lot 11 will have a lot size of 14,412 square feet. **Therefore, the lot size of the proposed lot will be of the same character as the existing lots in the neighborhood.**

Lot Width: The lot widths range from 52 feet to 196 feet and one lot has a width of 275. **The proposed Lot 11 will have a lot width of 195 feet and have a high correlation to the other lots in the neighborhood.**

Shape: There are two (2) square lots, seven (7) irregular lots and 11 rectangular lots in the neighborhood. **The proposed lot will be a rectangular lot and will**

ITEM # 9

be consistent in character with the overall pattern of differently shaped lots in the neighborhood.

Alignment: There are eight (8) corner lots in the neighborhood and 12 perpendicular lots in the neighborhood. **The proposed Lot 11 is also a corner lot and will be of the same character as the other existing corner lots in the neighborhood.**

Residential Use: The existing lots and the proposed Lot 11 are residential in use.

CONCLUSION

Section 50-29 (b) (2) of the Subdivision Regulations specifies seven criteria with which resubdivided lots must comply. They are street frontage, alignment, size, shape, width, area and suitability for residential use within the existing block, neighborhood or subdivision. The proposed resubdivision will create a lot that will have a high correlation with all of the lots in the existing neighborhood based on the resubdivision criteria. Staff finds that the proposed resubdivision is of the same character of existing lots in the neighborhood therefore, it complies with Section 50-29(b)(2) of the Subdivision Regulations.

Staff also finds that the proposed preliminary plan complies with Chapter 50 of the Montgomery County Code, Subdivision Regulations, in that public facilities will be adequate to support and service the area of the proposed subdivision and Chapter 59, the Zoning Ordinance, as summarized in the attached data table (Attachment E). As such, Staff recommends approval of the preliminary plan.

Attachments

Attachment A Vicinity Development Map
Attachment B Proposed Development Plan
Attachment C Neighborhood Delineation Map
Attachment D Tabular Summary
Attachment E Data Table
Attachment F Maryland Court Appeals Case
Attachment G Original Plan Submission
Attachment H Lot 9 Resubdivision Analysis