

PLAT NO. 220060900

Brookhaven

Located on the south east corner of Independence Street and Turkey Branch Park Way

R-60 Zone, 6Lots, 3 Parcels

Community Water, Community Sewer

Master Plan Area: Aspenhill

Beaver Terrace, LLC, Applicant

The record plat has been reviewed by MNCPPC staff and other applicable agencies as documented on the attached Plat Review Checklist. Staff has determined that the plat complies with Preliminary Plan No. 120050330 formerly 1-05033, as approved by the Board; and that any minor modifications reflected on the plat does not alter the intent of the Board's previous approval of the preliminary plan.

RECORD PLAT REVIEW SHEET

Plan Name: ASPEN HILL SWIM CLUB Plan Number: 1-05033
 Plat Name: BROOKHORN Plat Number: 2-06090
 Plat Submission Date: 10/25/05
 DRD Plat Reviewer: Debra Kinney / PWL 3/29/06
 DRD Prelim Plan Reviewer: Cathy Carlson

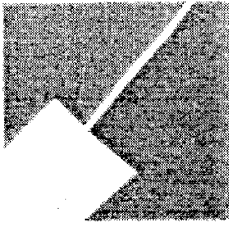
Initial DRD Review: - 1-05033 w/ legal 2/12/05
 Signed Preliminary Plan - Date 2/27/06 Checked: Initial DML Date 3/10/06
 Planning Board Opinion - Date 1/20/06 Checked: Initial DML Date 3/10/06
 Site Plan Req'd for Development? Yes No Verified By: DML (initial)
 Site Plan Name: _____ Site Plan Number: _____
 Planning Board Opinion - Date _____ Checked: Initial _____ Date _____
 Site Plan Signature Set - Date _____ Checked: Initial _____ Date _____
 Site Plan Reviewer Plat Approval: Checked: Initial _____ Date _____

Review Items: Lot # & Layout Lot Area Zoning Bearings & Distances
 Coordinates Plan # Road/Alley Widths Easements Open Space
 Non-standard BRLs N/A Adjoining Land Vicinity Map Septic/Wells
 TDR note N/A Child Lot note N/A Surveyor Cert Owner Cert Tax Map

Agency Reviews Req'd	Reviewer	Date Sent	Due Date	Date Rec'd	Comments
Environment		<u>10/21/05</u>	<u>11/14/05</u>	<u>3/31/06</u>	<u>no comments</u>
Research	Bobby Fleury	<u>"</u>	<u>"</u>	<u>11/1/05</u>	
SHA	Doug Mills	<u>"</u>	<u>"</u>		
PEPCO	Jose Washington	<u>"</u>	<u>"</u>		
Parks	Doug Powell	<u>"</u>	<u>"</u>		
DRD	Steve Smith	<u>"</u>	<u>"</u>	<u>10/10/05</u>	

Final DRD Review:
 DRD Review Complete: Initial DML Date 3/10/06
 (All comments rec'd and incorporated into mark-up)
 Engineer Notified (Pick up Mark-up): Initial DML Date 3/10/06
 Final Mylar w/Mark-up & PDF Rec'd: _____
Board Approval of Plat:
 Plat Agenda: Initial TA Date 4/13/06
 Planning Board Approval: Initial TA Date 4/13/06
 Chairman's Signature: _____
DPS Approval of Plat:
 Engineer Pick-up for DPS Signature: _____
 Final Mylar for Reproduction Rec'd: _____
Plat Reproduction:
 Addressing: _____
 File Card Update: _____
 Final Zoning Book Check: _____
 Update Address Books with Plat #: _____ No. _____
 Update Green Books for Resubdivision: _____
 Notify Engineer to Seal Plats: _____
 Engineer Seal Complete: _____
 Complete Reproduction: _____
 Sent to Courthouse for Recordation: _____

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

Board Approval Date: July 14, 2005

Date Mailed: **MAR 06 2006**

Action: Approved Staff Recommendation.

Motion of Commissioner Robinson, seconded by Commissioner Bryant, with a vote of 4-1; Chairman Berlage and Commissioners Perdue, Bryant, and Robinson voting in favor; Commissioner Wellington voting against.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-05033

NAME OF PLAN: Aspen Hill Swim Club Property

The date of this written opinion is MAR 06 2006 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court - State).

I. INTRODUCTION

On 6/16/04, 13210 Beaver Terrace LLC ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the R-60 zone. The application proposed to create 6 lots on 4.82 acres of land located at in the southwest quadrant of the intersection of Connecticut Avenue (MD 185) and Independence Street, in the Aspen Hill master plan area. The application was designated Preliminary Plan No. 1-05033. On 7/14/05, Preliminary Plan No. 1-05033 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

II. SITE AND PROJECT DESCRIPTION

The subject property consists of a _____ acre _____ parcel of land recorded on May 14, 1963 (Parcel "A", Brookhaven). The property is located in the southwest quadrant of the intersection of Connecticut Avenue and Independence Street and is zoned R-60. The site is the former location of Aspen Hill Swim Club, which operated up until the summer of 2004. Existing improvements on the site include a large asphalt parking area, basketball and volleyball courts, in ground swimming pools, change room, and sheds to support the swimming pool use. The existing buildings are in disrepair. The asphalt parking area is currently being used as a staging area for a WSSC potable water improvement project in the surrounding neighborhood.

There is a heavily eroded tributary to the Turkey Branch within the Rock Creek watershed (Use Classification I) on the subject property. The site includes 3.19-acres of stream buffer. Within the stream buffer is 2.13-acres of existing forest.

The application resubdivides the _____ acre subject property into six residential lots. The proposed lots range in size from 6,910 square feet to 9,509 square feet. The lots are accessed by extension of existing Beaver Terrace into the site as a public roadway built to reduced-width tertiary standards. All existing improvements associated with the pool operation are proposed to be removed. In order to construct the proposed six houses, the applicant is requesting a waiver from the Planning Board's *Environmental Guidelines* to permit permanent encroachment into a portion of an onsite stream buffer

III. DISCUSSION OF ISSUES

A. Master Plan Compliance

The Aspen Hill 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 and is consistent with the Zoning Ordinance development standards for the R-60 zone.

B. Reduced-width Tertiary Roadway

The preliminary plan proposes access to the lots via a reduced-width tertiary roadway with sidewalk on one side. Per Sections 49-34(f) and 50-26(h) of the County Code, the Planning Board has authority to determine when a tertiary street may be used and to establish the right-of-way width. The standard right-of-way width of a tertiary street is fifty (50) feet, however, the Board may approve a lesser width if it can be demonstrated that the lesser width is environmentally better and either improves compatibility with adjoining properties, or allows better use of the parcel under consideration. Section 49-34(f) stipulates that the Planning Board decision with regard to both use and width of a tertiary street may occur at preliminary subdivision or site plan review. Per Section 50-26(h)(2), the Board's approval of a lesser width occurs as part of a Section 59-D-3 site plan review.

Future site plan was included in staff's recommended conditions for approval of the preliminary plan in keeping with the provisions of Section 50-26(h)(2). The written staff report stated that staff believed the appropriate findings could be made for the proposed project. The reduced-width tertiary road is environmentally better than a full-width roadway because it allows the proposed houses to be clustered as close to Connecticut Avenue as possible and contributes to minimizing stream buffer encroachment. Staff also stated that the roadway improves compatibility of the proposed lots with adjoining properties because it allows the proposed lots to have frontage on a public roadway in compliance with the resubdivision criteria. Finally, staff believed a sidewalk on one side of the proposed roadway is appropriate and the road will be safe for pedestrians.

On the day of the scheduled public hearing for the subdivision plan, the applicant's attorney submitted a written request to the Planning Board for a waiver of Section 50-26(h)(2) of the County Code requiring 59-D-3 site plan approval for use of a reduced-width tertiary street pursuant to Section 50-38.

C. Environmental Guidelines

As previously noted, 3.19 acres of the _____ acre subject property fall within a designated stream buffer delineated per the Planning Board's *Guidelines for Environmental Management of Development in Montgomery County* (Environmental Guidelines). The onsite stream is a section of the Turkey Branch tributary to Rock Creek. The drainage area to this stream includes approximately 300 acres of mostly

developed area for which limited stormwater management controls exist. As such, the stream itself is highly degraded and eroded. The stream currently functions as storm drain through the property with in-stream water levels that rise and fall very quickly in direct response to uncontrolled stormwater discharges. The previous swim club use on the property encroached into the designated stream buffer by approximately 45,000 square feet for the pool, pool deck, sheds, change room, basketball and volleyball courts, and lawn area. The existing encroachment includes 6,361 square feet of impervious surfaces.

The proposed resubdivision results in buffer encroachment of approximately 13,533 square feet, with approximately 250 square feet of impervious surfaces. The encroachment includes a stormwater management facility, small portions of three of the proposed homes, and rear yards for the proposed homes. There will also be additional unavoidable encroachment for necessary stormwater management conveyances. The designated stream buffer for the onsite stream per the Environmental Guidelines is 100 feet from the stream bank. At its narrowest point, adjacent to the stormwater management facility, the modified stream buffer proposed by this plan would be 60 feet wide. The average stream buffer width on the east side is approximately 73 feet.

The Environmental Guidelines state in Section V.A.1.b that no buildings, structures, impervious surfaces, or activities requiring clearing or grading will be permitted in stream buffers except for uses found to be necessary, unavoidable, and minimized. It is staff's practice when some buffer encroachment is determined to be necessary and unavoidable, and the encroachment has been minimized, to recommend compensation for the encroachment. The encroachment permitted usually does not include forested buffer, is a small area, and is usually along an edge of the buffer. Where encroachments are considered in these limited circumstances, the compensation is done with the objective of replacing the value and function of the "lost" buffer (i.e., in-kind replacement) as much as possible and as close to the area of impact as possible. Staff usually recommends protecting land that would otherwise not be protected in the same watershed, many times with afforestation also required. On a case-by-case, limited basis, staff has also accepted out-of-kind compensation (e.g., stream improvements).

Staff believes the proposed preliminary plan does minimize buffer encroachment by minimizing proposed rear yard spaces and attempting to locate house footprints that minimize the impervious surfaces within the stream buffer. In this instance, avoidance is not possible because a public road extension is needed to access lots created on the site. Strict application of the buffer on this property severely limits development potential. The proposed encroachment does not involve forested area and affects mostly the edge of the buffer.

Environmental Planning supports the requested waiver of the stream buffer in this instance. The existing stream is in very poor condition. Part of the streambed has

been channelized with concrete in response to the existing erosion problems. A small section of the stream bank near the swimming pool has been stabilized with a retaining wall. The applicant proposes 13,533 square feet of permanent encroachment into the stream buffer for parts of two residential buildings, lawn areas, and a stormwater management facility. The proposed permanent encroachment is less than 10 percent of the entire stream buffer or 6.5% of the entire property. Total impervious surface proposed in the stream buffer is approximately 250 square feet. The proposed plan results in overall removal 6,111 square feet of existing impervious surface from the buffer and reduces overall buffer encroachment.

Per staff practice, measures to provide compensation for the encroachment are recommended for incorporation into the plan. These measures include:

1. Reforestation of all unforested portions of the stream buffer by the applicant with large tree stock. This is above the requirements of the forest conservation law.
2. Onsite stream restoration, according to Montgomery County Department of Environmental Protection specifications
3. Enhancement of existing onsite forest through development and implementation of an invasive species management plan.

D. Forest Conservation

The applicant is proposing to remove 0.16 acres of the 2.13-acres of existing forest on the property. The forest removal is entirely within the stream buffer and is necessary to provide safe conveyance from the stormwater management facilities into the stream. There are no planting requirements associated with the forest conservation law. The applicant will place all stream buffers not on lots or in stormwater management parcels in a Category I forest conservation easement.

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

1. Statutory Review Criteria

In order to approve an application for resubdivision, the Planning Board must find that each of the proposed lots 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.

2. Neighborhood Delineation

In administering Section 50-29(b)(2) of the Subdivision Regulations, the Planning Board must determine the appropriate "neighborhood" for evaluating the application. In this instance, the Neighborhood selected by Staff and the applicant consists of 79 lots. The lots included in the neighborhood either abut the subject property across Turkey Branch Parkway, or are located along the other roadways that provide primary access to the subject property. All of the lots share the same R-60 zoning. Staff believes the designated neighborhood provides an adequate sample of the lot and development pattern of the area.

3. Comparison of the Character of Proposed Lots to Existing

Staff applied the above-noted resubdivision criteria to the delineated neighborhood. Staff concluded that the proposed lots fall within the neighborhood ranges for the resubdivision criteria and are of the same character with respect to the resubdivision criteria as other lots within the defined neighborhood. Therefore, Staff concluded that the proposed resubdivision complies with the criteria of Section 50-2(b)(2).

Staff notes that 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. As set forth above, the Staff finds that the proposed lots are of the same character as the existing lots in the defined neighborhood with respect to each of the resubdivision criteria. Therefore, Staff recommends that the Board find that the proposed resubdivision complies with Section 50-29(b)(2) of the Subdivision Regulations.

Additionally, staff has concluded that the proposed subdivision to be consistent with the recommendations of the Aspen Hill Master Plan and believes the proposed subdivision meets all other requirements of the Subdivision Regulations (Chapter 50). Staff supports the requested waiver of the onsite stream buffer based on finding that the proposed encroachment has been minimized to the extent possible, and the proposed compensation measures are acceptable. Therefore, Staff recommends approval of the preliminary plan with the specified conditions.

IV. PLANNING BOARD HEARING

Staff presented an overview of the proposed preliminary plan and reviewed with the Planning Board the Applicant's July 14, 2005 letter requesting a Section 50-38

waiver of Section 50-26(h)(2) of the subdivision regulations to permit use of a reduced-width tertiary street without approval of a site plan.

Staff recommended approval of the requested waivers based upon staff's recommendations in its staff report, concluding that the reduced-width tertiary road is environmentally better than a full-width roadway because it allows the proposed houses to be clustered as close to Connecticut Avenue as possible and contributes to minimizing stream buffer encroachment. Staff also stated that the roadway improves compatibility of the proposed lots with adjoining properties because it allows the proposed lots to have frontage on a public roadway in compliance with the resubdivision criteria. Finally, staff recommended to the Board that a sidewalk on one side of the proposed roadway is appropriate and the road will be safe for pedestrians.

Staff also based its recommendation of approval of the requested waivers on the finding that the subject property presented unusual circumstances in that the location of the property and the environmental constraints made it unlikely that site plan review would result in any different plan. Specifically, the staff discussed the fact that lot layout and numbers were driven by the location of the environmental buffer and the desire to minimize impacts to the buffer. Staff pointed out that the proposed lots represented the tightest layout possible without reduction in lot numbers. They also pointed out that the reduced-width tertiary street and reduced curve radii contributed to the maximum buffer protection. Finally, staff pointed out that the location of the proposed lots with green space and/or roads separating them from existing houses, made it possible to make compatibility findings at the preliminary plan stage with an additional condition requiring approval of a landscape and lighting plan prior to record plat.

Based on these findings, and the belief that the requested waivers were the minimum necessary to provide relief from the requirements, not inconsistent with the purposes and objectives of the General Plan, and not adverse to the public interest, staff recommended approval of the preliminary plan with revised conditions and the granting of the requested waivers.

The applicant and his attorney were present at the hearing and agreed with staff's revised recommendation and conditions. There was no testimony in opposition to the plan.

VI. FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies; the applicant's position; and other

The application was referred to outside agencies for comment and review, including

evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds based upon the uncontested evidence of record that

- a) The Preliminary Plan No. 1-05033 substantially conforms to the Aspen Hill master plan.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision.
- c) The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision. With regard to the waiver of the environmental buffer requirements, the Board finds that preliminary plan does minimize buffer encroachment by minimizing proposed rear yard spaces and attempting to locate house footprints that minimize the impervious surfaces within the stream buffer. In this instance, avoidance is not possible because a public road extension is needed to access lots created on the site. Strict application of the buffer on this property severely limits development potential. The proposed encroachment does not involve forested area and affects mostly the edge of the buffer.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.

As set forth in detail below, the proposed lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

Commissioner Wellington dissented from the majority's opinion based upon her discomfort with granting waivers based solely on the Preliminary Plan. The Commissioner suggested that it would be more prudent to adhere to the controlling statutory provisions and reserve the issues addressed by the proposed waivers, especially stream buffer encroachment and stormwater management, for further study under the more scrupulous standard of analysis that accompanies a Site Plan review.

residential use as other lots within the existing neighborhood, as delineated in the Staff Report dated 7/6/05 and expressly incorporated herein by reference.

- f) The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

VII. CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-05033 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-05033, pursuant to Section 50 of the Subdivision Regulations, including waivers pursuant to Section 50-38 of Section 50-26(h)(2) to permit a reduced-width tertiary street without approval of a 59-D-3 site plan

and subject to the following conditions:

- 1) Approval under this preliminary plan is limited to six (6) one-family detached residential dwelling units.
- 2) Applicant to submit a landscape, lighting and detailed grading plan for technical staff review and approval prior to recordation of plat.
- 3) Compliance with the conditions of approval for the preliminary forest conservation plan, including construction of a split rail fence along the rear boundary of lots adjoining the Category I forest conservation easement areas and along newly planted areas adjacent to Turkey Branch Parkway. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 4) Record plat to reflect a Category I conservation easement over the entirety of open space Parcel "C" as shown on the preliminary plan.
- 5) Applicant shall plant the unforested portions of the Category I forest conservation easement with 1.5-2 inch caliper tree stock.
- 6) Applicant to develop and implement an invasive species management plan for all areas included in the forest conservation easement. Invasive management plans must be incorporated into the final forest conservation plan.
- 7) Applicant to complete required stream restoration projects prior to the release of the 6th building permit. Onsite final inspection and acceptance of the stream

restoration areas by Montgomery County Department of Environmental Protection, in coordination with the applicant and the M-NCPPC inspector, must occur prior to the release of the 6th building permit.

- 8) Prior to any clearing and grading on the site, applicant shall provide a performance bond covering the stream restoration projects. This bond shall remain in effects for 2 years after the issuance of the 6th building permit.
- 9) The applicant shall dedicate the right-of-way for the extension of Beaver Terrace as a reduced-width tertiary as shown on the preliminary plan.
- 10) The applicant shall construct the extension of Beaver Terrace as a reduced-width tertiary road with sidewalk on one side and to all other design standards imposed by all applicable road codes.
- 11) Compliance with the conditions of approval of the MCDPS stormwater management approval dated January 31, 2005.
- 12) Compliance with the conditions of the MCDPWT letter dated March 8, 2005 unless otherwise amended.
- 13) Record plat to reflect a permanent stream improvement easement for Montgomery County Department of Environmental Protection along the onsite stream.
- 14) Record plat to reflect "denial of access" along the Connecticut Avenue (MD 185) site frontage.
- 15) Other necessary easements.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]