



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #
6/5/08



MEMORANDUM

DATE: May 23, 2008

TO: Montgomery County Planning Board

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

FROM: *NB*
Neil Braunstein (301-495-4532)
Development Review Division

REVIEW TYPE: Pre-Preliminary Plan of Subdivision

APPLYING FOR: Binding Planning Board review of frontage requirements for two lots for two one-family detached dwelling units under Section 50-33A

PROJECT NAME: Black Hills Estates
CASE #: 720060240
REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RE-2
LOCATION: Located on the south side of Ascot Square Court, 370 feet east of Clarksburg Road (MD 121)

MASTER PLAN: Boyds

APPLICANT: Michael Gresalfi
ENGINEER: CAS Engineering

FILING DATE: December 14, 2005
HEARING DATE: June 5, 2008 (previous hearing date May 8, 2008)

This item is continued from the Planning Board hearing of May 8, 2008. The staff report responds to questions raised at the previous hearing and provides the following recommendation:

RECOMMENDATION: Planning Board approval of the following findings:

- 1) A policy change regarding the use of a park road as frontage for subdivision purposes amounts to a loss of previously recognized street frontage on the prescriptive right-of-way for Black Hills Road and constitutes an exceptional circumstance that justifies the proposed lot with inadequate frontage.
- 2) The proposed lots meet applicable frontage requirements, including the frontage criterion of the resubdivision criteria specified in Section 50-29(b)(2) of the Subdivision Regulations, with no objection to submission of a preliminary plan, subject to the following condition:
 - a) Any preliminary plan submitted pursuant to this approval must be substantially similar to the approved pre-preliminary plan with respect to layout, lot size, and lot shape.

ISSUES RAISED AT PREVIOUS HEARING

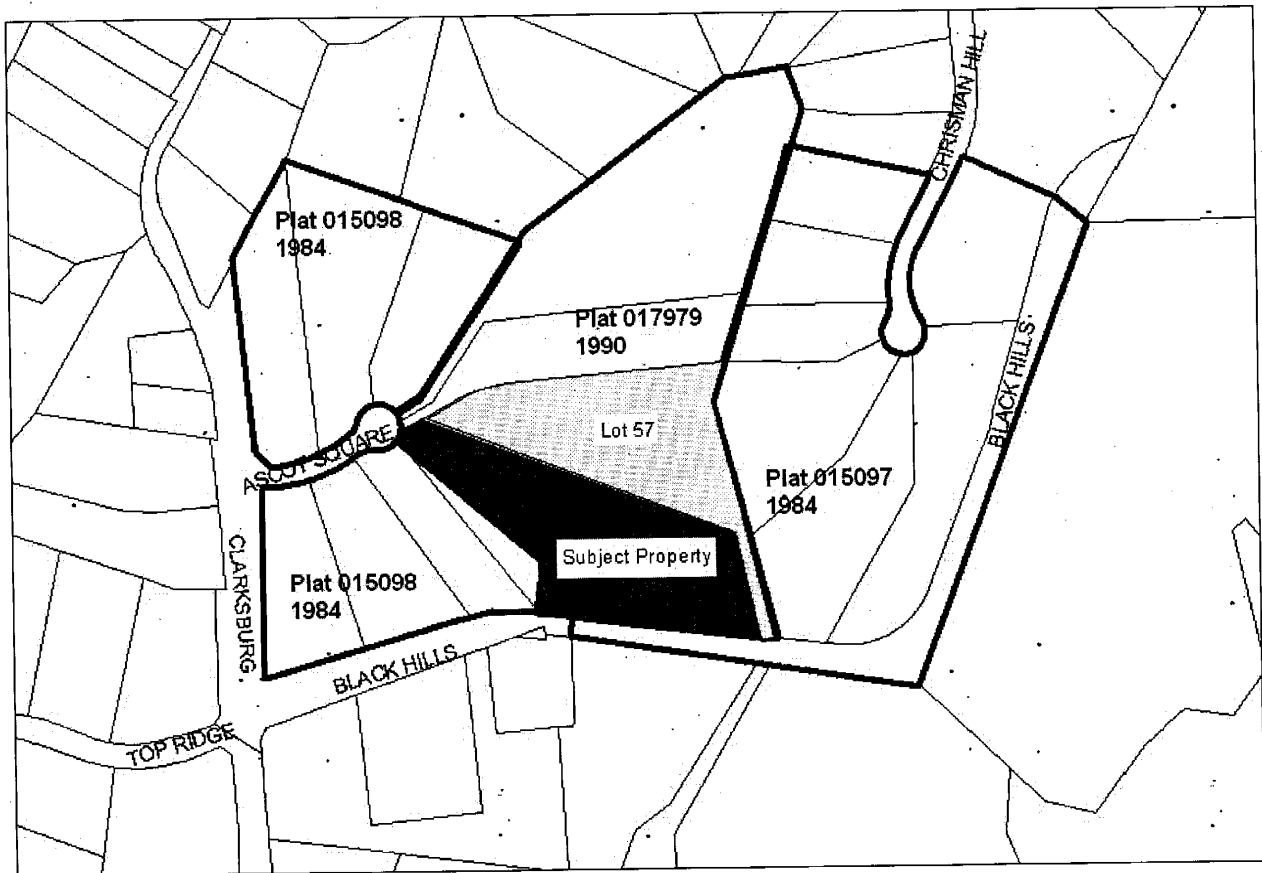
At the previous hearing, staff advised the Planning Board that it could find that an exceptional circumstance existed with respect to approval of a lot without frontage per Section 50-29(a)(2) of the Subdivision Regulations. Staff's recommendation was based on the fact that the subject property had at one time had over 500 feet of street frontage on Black Hills Road which was eliminated when a portion of Black Hills Road was acquired by MNCPPC as an addition to Black Hills Regional Park. The Planning Board continued the hearing to allow staff an opportunity to investigate the timeline of events.

In our investigation, staff determined that the portion of Black Hills Road that was acquired by MNCPPC was never a dedicated road right-of-way. Apparently, it was a prescriptive right-of-way on private property. It was part of a tract of land that was subdivided into residential lots in 1984 (Plat 015097). Another subdivision at the intersection of Clarksburg Road and Black Hills Road was also created in 1984 (Plat 015098). This is the subdivision that created Ascot Square Court, the street on which the subject property has 14 feet of frontage. Finally, in 1990, a subdivision located between the two previous subdivisions was approved for four lots (Plat 017979), including the subject property. These subdivisions are illustrated in the figure below.

This timeline demonstrates that when the subject property was created in 1990, most of its Black Hills Road frontage was already in park ownership and that MNCPPC had requested that the Montgomery County Department of Transportation formally abandon the portion of Black Hills Road within the park (but there is no record of any response to the request). Despite this, our records of the subdivision approval appear to indicate that at that time, both staff and the Planning Board considered Black Hills Road to be a public street for purposes of street frontage for the subdivision. This can particularly be seen in Lot 57, the lot immediately north of the

subject property. It was created with no frontage on Ascot Square Court, but with a pipestem to the portion of Black Hills Road that is within the park. A pipestem would not have been created to Black Hills Road unless it was considered to be a public street that provided the necessary frontage.

Although in 1990 staff and the Planning Board considered the road within the park to be available as street frontage for the subdivision, staff would not recommend such a finding today. We do not believe that it is appropriate for a road that is not open to general public use and that could not be used as access to the proposed lots to be considered as street frontage. This is a policy change that reduces the effective frontage of the subject property, because, in staff's opinion, most of it should no longer be considered as street frontage for purposes of subdivision. Loss of this previously acceptable 500 feet of street frontage on Black Hills Road is an exceptional circumstance that, in staff's opinion, warrants a finding by the Planning Board to allow proposed Lot A to be created without the sufficient frontage.



Citizen Correspondence and Issues

The applicant has notified adjacent and confronting property owners that Pre-Preliminary Plan 720060240 had been filed with the M-NCPPC and that it was under review. Notification was also sent to surrounding citizens associations. In addition, notice of the public hearing, including the continuance to today, has been sent to the adjacent and confronting property

owners and citizens associations. We have not received any letters of concern regarding the application as of the date of this staff report.

CONCLUSION

The change in policy regarding use of Black Hills Road within the park amounts to a loss of street frontage on Black Hills Road and is an exceptional circumstance that allows the Planning Board to approve a lot without sufficient street frontage. Further, the narrow street frontage is within the range of existing frontages in the neighborhood and is an existing condition that will not be changed by the proposed subdivision. Therefore, staff recommends that the Planning Board find that the proposed lots meet applicable frontage requirements, including the frontage criterion of the resubdivision criteria specified in Section 50-29(b)(2) of the Subdivision Regulations, with no objection to submission of a preliminary plan, subject to the condition stated earlier in this report.