



**MEMORANDUM**

**DATE:** May 20, 2005

**TO:** Montgomery County Planning Board

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

**FROM:** Dolores M. Kinney, Senior Planner *DMK*  
Development Review Division

**REVIEW TYPE:** Preliminary Plan Review

**APPLYING FOR:** Resubdivision of Existing Lots 10 and 1 of Blocks D and F  
Colesville Farm Estates

**PROJECT NAME:** Colesville Farm Estates

**CASE #:** 1-05004

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

**ZONE:** RE-1

**LOCATION:** Located on the south side of Orchard Way, approximately 2,000  
feet east of the intersection with New Hampshire Avenue

**MASTER PLAN:** White Oak & Vicinity

**APPLICANT:** Arthur W. Williams, III

**FILING DATE:** July 7, 2004

**HEARING DATE:** June 2, 2005

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**STAFF RECOMMENDATION:** Approval, including preliminary and final water quality plan, pursuant to Section 50-29 (b) (2), Montgomery County Subdivision Regulations subject to the following conditions:

- 1) Approval under this preliminary plan is limited to three (3) one-family dwelling units and is contingent upon the abandonment of the unbuilt right-of-way for Somerset Lane.
- 2) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 3) Compliance with conditions of MCDPWT letter dated, February 25, 2004 unless otherwise amended.
- 4) Compliance with conditions of approval of Transportation Planning letter dated May 25, 2005.
- 5) Record plat to reflect common ingress/egress and utility easements over all shared driveways.
- 6) Record plat to depict the abandonment of the unbuilt 60-foot right-of-way for Somerset Lane located on the property.
- 7) Record plat to depict a 15-foot right-of way dedication on the property for internal neighborhood circulation.
- 8) The above right-of-way should be dedicated with proper delineation and should have appropriate landscaped barricades at both accesses.
- 9) Compliance with the conditions of approval of the MCDPS stormwater management approval dated September 8, 2004.
- 10) Compliance with the conditions of approval of the Environmental Water Quality Plan approval dated May 25, 2005.
- 11) Compliance with conditions of MCDPS (Health Dept.) septic abandonment dated July 26, 2004.
- 12) Other necessary easements.

**SITE DESCRIPTION:**

Lot 1 and Lot 10 ("Subject Property") are part of the Colesville Farm Estates Subdivision which was approved in 1946. The Subject Property is located on the south side of Orchard Way, approximately 2,000 feet east of the intersection with New Hampshire Avenue (MD 650) (Attachment A). A one-family detached dwelling exists on each of the two existing lots and will remain. The Subject Property also currently contains an unbuilt right-of-way. The property is zoned RE-1 and is 3.174 acres in size.

The site lies within the Upper Paint Branch Special Protection Area (SPA). Paint Branch and its tributaries upstream of I-495 are Use III streams (natural trout waters)<sup>1</sup>.

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<sup>1</sup> Paint Branch supports a naturally –reproducing brown trout population. This stream system is a unique resource for Montgomery County because it is the only stream system in the county with a proven, consistent long-term self-sustaining trout population.

The site drains to the Good Hope Tributary of Paint Branch. The site is in an upland area and there are no on-site forests, streams, wetlands, or environmental buffers. There are many large and specimen trees on the site.

## **PROJECT DESCRIPTION:**

This is a preliminary plan application of resubdivision to create three (3) residential lots from two existing lots on the south side of Orchard Way in the White Oak Master Planning Area (Attachment B). Approval of the preliminary plan application is subject to the abandonment of an unbuilt, dedicated 60-foot right-of-way portion of Somerset Lane, which is located on the subject site.

## **DISCUSSION OF ISSUES**

### **Master Plan Compliance**

The White Oak 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 single-family detached homes.

The White Oak Master Plan also recommends building pedestrian walkways where appropriate, with community approval, to enhance the network of pedestrian ways and to improve access to transit. The proposed resubdivision complies with the recommendations adopted in the master plan in that it is a request for residential development and proposes to create an opportunity for future pedestrian circulation within the community by dedicating a 15-foot right-of-way on the Subject Property.

### **Right-of-Way Abandonment**

From a transportation perspective, the abandonment of the right-of-way will eliminate the north/south connection within the neighborhood. Attachment E depicts the north/south connection of the Somerset Lane right-of-way. Should the abandonment be approved, in its place, the preliminary plan proposes an unimproved 15-foot right-of-way at the location of the existing alignment of the original Somerset Lane to maintain the potential community connection.

Pursuant to Section 50-15(a) of the Subdivision Regulations, the County is authorized to file a petition to abandon any areas which have been dedicated for public use. The abandonment of the unbuilt right-of-way of Somerset Lane was the subject of a public hearing held by the Montgomery County Hearing Examiner on March 16, 2005. However, the decision of the Hearing Examiner is pending a recommendation from the Planning Board. In cases where the approval of the preliminary plan for the resubdivision is contingent upon the abandonment of the right-of-way, the Planning Board considers both the abandonment and the preliminary plan simultaneously.

Section 49-62(g) of the Montgomery County Code allows the Montgomery County Planning Board sixty (60) days from the date of application of the abandonment request to the Executive to make a recommendation to the Executive. By letter (Attachment F), the applicant has requested the record of the Executive's hearing on the abandonment Case #AB-668 to remain open until May 16, 2005 at which time the Planning Board would make its decision and forward a recommendation pertaining to the abandonment. Due to issues which had not been resolved regarding the abandonment prior to May 16<sup>th</sup>, the applicant has requested to extend the May 16<sup>th</sup> deadline until seven days after the Planning Board simultaneously reviews the preliminary plan and the abandonment case. A copy of the extension is shown in Attachment G.

### **Citizen Correspondence**

A letter was submitted to the Development Review Division (DRD), which was signed by several of the residents of the community expressing support for the proposed resubdivision but opposing a pedestrian path. The residents in opposition are concerned with the impact of the pedestrian path on security, safety and privacy of the neighborhood. According to the letter, internal circulation to facilitate movement from one neighborhood to the other has never been raised as a problem. Two (2) copies of the letter, which include different signatures on each, are depicted in Attachment H)

In contrast, DRD also received a letter from the owner of Lot 12, also shown in Attachment H, expressing support of a pedestrian path to provide the neighborhood connectivity, which in the property owner's view, is lacking.

Research of the subdivision indicates that there were at least two previous north/south right-of-ways, which no longer exist. The Monocacy Drive right-of-way was located on the west side of the subdivision, approximately 1,600 feet east of New Hampshire Avenue (MD 650), between Orchard Way and Notely Road. The other right-of-way, which no longer exists, was located on the east side of the subdivision at the end of Notely Road. Attachment I depicts the location and abandonment of the two (2) subject right-of-ways.

The abandonment of the previous two right-of-ways can be viewed as a demonstration by the community and the County that these internal connections are not wanted or needed, as explained in the citizens' letter shown in Attachment H, pertaining to the proposed 15-foot right-of-way. However, the Transportation Staff of M-NCPPC finds that the proposed 15-foot right-of-way will provide an opportunity to maintain what appears to be the *last existing* neighborhood connection, which can facilitate internal pedestrian circulation. In response to citizen opposition of the proposed right-of-way for the path, Staff has sought other options for its location, but was not successful in securing an adequate alternative.

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

## A. Statutory Review Criteria

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

## B. 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 forty-five (45) lots for analysis purposes (Attachment C). The neighborhood extends west to New Hampshire Avenue (MD 650), east to Grassmere Road, north to the rear property lines of lots fronting on the north side Orchard Way and south to the rear of the lots fronting on the south side of Orchard Way. 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

### A. Review for Conformance to the Special Protection Area Requirements, Including the Environmental Overlay Zone

As part of the requirements of the Special Protection Area law, a preliminary and final water quality plan must be reviewed in conjunction with a preliminary subdivision plan<sup>2</sup>. Under the provision of the law, the Montgomery County Department of Permitting Services (DPS) and the Planning Board have different responsibilities in the review of a water quality plan. DPS reviews and acts on those elements of the water quality plan that relate to water quality protection performance goals, storm water management, sediment and erosion control, and monitoring of best management practices. **DPS has reviewed and approved the elements of the preliminary water quality plan under its purview.**

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<sup>2</sup> Section 19-62 (b) of the Montgomery County Code states that “except as otherwise expressly provided in this Chapter, the requirements for a water quality inventory and a preliminary and final water quality plan apply in any area designated as a special protection area to a person proposing a land disturbing activity on privately owned property:...who is seeking approval of an amendment to an approved development plan, diagrammatic plan, schematic development plan, project plan, special exception, preliminary plan of subdivision, or site plan.

The Planning Board's responsibility is to determine if environmental buffer protection, SPA forest conservation and planting requirements, and site imperviousness limits have been satisfied.

### **Site Imperviousness**

The Upper Paint Branch SPA is the only SPA that has a ten percent (10%) site imperviousness limit on new development. The imperviousness limit is set forth in the environmental overlay zone for the Upper Paint Branch SPA. The water quality plan proposes a site imperviousness of 10 percent. This consists of two existing houses and one proposed house, with associated driveways. Portions of the existing driveways will be removed so that the subdivision does not exceed the 10 percent imperviousness limit. The site imperviousness also includes a small area of pavement widening along Orchard Way required by DPWT and to be constructed as part of the subdivision. The applicant's proposal conforms to the environmental overlay zone.

### **B. Comparison of the Character of Proposed Lots to Existing**

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

**Frontage:** In a neighborhood of forty-five (45) lots, lot frontages range from 109 feet to 201 feet. The proposed lots have frontages of 125 feet, 141 feet and 170 feet. **Therefore, the proposed lots have a high correlation and will be consistent in character with other lots in the neighborhood.**

**Area:** Neighborhood lot areas range from 10,035 square feet to 43,140 square feet. **The proposed lots have areas of 22,057 square feet, 25,892 square feet and 29,748 square feet, which will be consistent in character and have a high correlation to the existing lots in the neighborhood with respect to area.**

**Lot Size:** The lot sizes in the delineated neighborhood range from 21,178 square feet to 68,640 square feet. The proposed lots will have lot sizes of 41,173 square feet, 46,545 square feet and 50,524 square feet. **As such, the proposed resubdivision will be consistent in character with the other lots in the neighborhood and have a high correlation to the existing lots in the neighborhood.**

**Lot Width:** The lot widths range from 109 feet to 214 feet. **The proposed lots will have lot widths of 125 feet, 141 feet and 170 feet, which demonstrates consistency in character and have a high correlation to the other lots in the neighborhood.**

**Shape:** There are three (3) corner lots in the neighborhood, five (5) irregular lots, and the remaining lots are rectangular in shape. The proposed resubdivision will create two (2) rectangular lots and one (1) irregularly shaped lot. **The proposed resubdivision will have the same character and have a high correlation with the existing lots in the neighborhood.**

**Alignment:** There are three (3) radial lots in the neighborhood, three (3) corner lots and the remainder of the lots are perpendicular in alignment. **The proposed lots are all perpendicular in alignment, which demonstrates a high correlation and consistency in character with the existing lots in the neighborhood.**

**Residential Use:** The existing lots and the proposed lots 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. Staff finds that the resubdivision is of the same character of existing lots in the neighborhood and complies with Section 50-29(b)(2) of the Subdivision Regulations.

Additionally, the Transportation Staff believes that the 15-foot right-of-way proposed with the preliminary plan, facilitates the opportunity for a future pedestrian path in the subdivision, which will enhance pedestrian circulation. Given the plan's compliance with Section 50-29(b)(2) of the Subdivision Regulations and the finding of Transportation Staff pertaining to the proposed path, Staff recommends approval of the preliminary plan subject to the above conditions.

## Attachments

- Attachment A Vicinity Development Map
- Attachment B Proposed Development Plan
- Attachment C Neighborhood Delineation Map
- Attachment D Tabular Summary
- Attachment E Somerset Lane Right-of-Way
- Attachment F Waiver of Section 49-62(g) until May 16, 2005
- Attachment G Extension of Waiver
- Attachment H Citizen Correspondence
- Attachment I Monocacy Drive and Notely Road Abandonments