



**MEMORANDUM**

**DATE:** June 16, 2005

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief *RK*  
Development Review Division

**FROM:** Catherine Conlon, Supervisor (301) 495-4540 *CC*

**REVIEW TYPE:** Preliminary Plan Review

**APPLYING FOR:** Subdivision of Part of Existing Parcel 915  
Subdivision for Six Lots and an Open Space Parcel

**PROJECT NAME:** Patton Property

**CASE #:** 1-04092

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

**ZONE:** RE-2C

**LOCATION:** In the northeast quadrant of the intersection of Norwood Road and Norbeck Road Extended (MD 28 Connector)

**MASTER PLAN:** Cloverly

**APPLICANT:** Mitchell and Best

**ENGINEER:** Gutschick, Little and Weber

**ATTORNEY:** Miller, Miller and Canby

**FILING DATE:** May 28, 2004

**HEARING DATE:** June 23, 2005

**STAFF RECOMMENDATION:** Approval of five (5) lots, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to five (5) one-family detached residential dwelling units.
- 2) Revise the preliminary plan to delineate five lots as shown in Attachment C.
- 3) Compliance with the conditions of approval of the preliminary forest conservation plan as shown in staff's comments dated June 16, 2005. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits. These conditions include, but are not limited to:
  - a. Forest retention areas to be located within common open space or dedicated parkland.
  - b. As part of the final forest conservation plan, the specific location of the proposed sewer line within the environmental buffer to be field located and to be reviewed and approved by M-NCPPC staff.
  - c. The final forest conservation plan must show site conditions, including topography, that have been established on that part of the property where fill has been removed to comply with Maryland Department of the Environment requirements.
- 4) Dedication to M-NCPPC of the approximately 8.53 acres of property identified as "Parcel A" located to the west of Northwest Branch. Dedicated parkland to be conveyed at time of record plat and be adequately staked and signed to delineate between parkland and private property.
- 5) Record plat to reflect a Category I easement over all areas of stream valley buffers and forest conservation not otherwise protected by park dedication.
- 6) Record plat to reflect common ingress/egress and utility easements over the proposed private street and all shared driveways.
- 7) Compliance with the conditions of approval of the MCDPS stormwater management approval dated April 14, 2004.
- 8) Record plat to have the following note: "The land contained hereon is within an approved cluster development and that subdivision or resubdivision is not permitted after the property is developed."
- 9) Record plat to reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
- 10) Access and improvements as required to be approved by MCDPWT prior to recordation of plat(s).

- 11) Place in reservation the area shown on Attachment D, as requested per Maryland State Highway Administration (SHA) letter dated July 15, 2004, ("Reservation Area") until the earlier of (a) September 1, 2005; or (b) a final Record of Decision is issued by the FHWA, and that Record of Decision does not include the Reservation Area, or any portions thereof, within the final Intercounty Connector (ICC) alignment.
- 12) If FHWA issues a final Record of Decision that includes the Reservation Area, the applicant shall submit a revised Preliminary Plan that locates all on-site improvements outside of the Reservation Area, and shall dedicate the Reservation Area as right-of-way.
- 13) If ICC related right-of-way dedication is not required, the applicant shall, consistent with the 1997 Approved and Adopted *Cloverly Master Plan*, dedicate and show on the final record plat right-of-way along:
  - a. Norbeck Road Extended to provide a minimum of either 75 feet from the roadway centerline, or 150 feet from the opposite roadway right-of-way line, and
  - b. Norwood Road to provide a minimum of either 40 feet from the roadway centerline, or 80 feet from the opposite roadway right-of-way line.
- 14) Other necessary easements.

#### **SITE DESCRIPTION:**

The Subject Property, Parcel 915 ("Subject Property"), is an unplatted tract of land containing a total of 51.7 acres. The property is located at the northeastern quadrant of the intersection of Norbeck Road Extended and Norwood Road with a small portion on the south side of Norbeck Road Extended (Attachment A). The mainstem of Northwest Branch (Use IV stream) traverses through the middle of the property and defines the zoning boundary. The property is zoned RE-2C on the west side of the stream and RE-2 on the east side. A landscape contracting business is currently operated by the property owner on the RE-2C portion of the site.

Only the RE-2C portion of the property is proposed for subdivision at this time. This portion consists of 15.1 acres of land on the west side of Northwest Branch. About 6.07 acres of this land is in forest cover. All of this forest lies within an environmental buffer that is associated with the Northwest Branch and a small tributary. A 100-year floodplain also covers 5.95 acres of the site.

#### **PROJECT DESCRIPTION:**

This is an application to subdivide 15.1 acres of the Subject Property into six clustered residential lots with an open space parcel that would be dedicated for parkland (Attachment B).

The environmental buffer areas (including floodplain) and forest conservation areas would lie within the dedicated parkland. The applicant has stated that the property owner intends to relocate the landscape contracting operation on the property south of Norbeck Road Extended, which is not land that is included in this subdivision application.

## **DISCUSSION OF ISSUES**

### **Master Plan Compliance**

The RE-2C zone allows the developing portion of the site to develop either as a cluster or non-cluster subdivision. The Cloverly Master Plan recommends the use of cluster to protect environmentally sensitive areas:

“Encourage clustering of development to provide open space that protects natural resources, provides recreation, and contributes to the rural and residential atmosphere. Cluster subdivisions should be configured to protect environmentally sensitive areas, provide forested stream buffers and forested open space along arterial and major highways, provide access and views of parkland and open space and provide a transition to similar lot sizes of adjacent subdivisions. However, there may be individual properties where cluster development does not adequately address environmental or compatibility issues and would be inappropriate.” (Cloverly Master Plan, pages 31-32)

In addition, the master plan recommends acquisition of parkland within this property that generally includes the floodplain and environmental buffers of Northwest Branch and enough land to “permit trail construction outside the stream buffer” (Cloverly Master Plan, page 66). The proposed parkland on this site is part of the Rachel Carson Greenway Corridor that stretches from the Prince Georges County boundary to Sandy Spring. The subject plan meets the Master Plan goals for protection of environmentally sensitive areas and protection of those areas within parkland by clustering lots. However, as discussed below, staff believes the proposed density does not meet the requirements of the cluster zone and should be reduced by one lot.

### **Water and Sewer Category Change**

The RE-2C portion of the site received a water and sewer category change (application no. WSCCR 03A-CLO-13) through a MCDEP Administrative Delegation Approval Action on August 25, 2004. The MCDEP action approved W-3 and S-3 with an advisory note: “The applicant is encouraged, but not required, to seek Planning Board approval of the RE-2C cluster development option for this site.”

### **Excessive Floodplain Deduction to Define Usable Area in a Cluster Subdivision**

The zoning ordinance includes a provision to deduct “excessive” floodplain land from the density calculation of a residential cluster subdivision. If a residential subdivision does not propose the use of cluster, the excessive floodplain provision does not apply. Section 59-C-1.523 of the zoning ordinance states:

“Usable Area. The usable area upon which the density of development is calculated, as set forth in subsection 59-C-1.533, shall be determined by deducting from the gross area of the tract the following:

- a. All land indicated on the master plan of highways as right-of-way with a width of 100 feet or more, and
- b. All 100-year floodplain areas which, in the opinion of the Planning Board, would constitute an excessively high percentage of the total area of the tract.”

In determining whether floodplains on a site are excluded from a cluster subdivision’s usable area to calculate development density, staff’s practice has been to define excessive floodplain as any floodplain area that is greater than 15 percent of a site’s gross tract area. Staff has applied this threshold to proposed residential cluster subdivisions since 1996. The Planning Board has supported staff’s application of this definition where excessive floodplains have been an issue in the past subdivision plans.

For this site, the 100-year floodplain covers about 39.4 percent of the 15.1 acre land area. Using 15 percent of the tract area as the threshold for excessive floodplain, this site has 3.68 acres<sup>1</sup> of excessive floodplain. The usable area to calculate the potential yield for a cluster subdivision is 11.42 acres (15.1 acres – 3.68 acres). This would generate four residential units (11.42 acres x 0.40 units/acre) under the cluster option.

The applicant proposes six clustered lots on the proposed subdivision plan. According to the definition of usable area for development using the cluster option, a total of four lots are permitted. Staff does not support six lots on this plan, but do believe that a five-lot cluster plan rather than four, is acceptable. Staff believes that the normal practice of applying the excessive floodplain definition (i.e., any floodplain land over 15% of the tract area) could be modified for this site for the following reasons:

- 1) The water and sewer category change allows the site to use public sewer and water whether or not the cluster option is used. This is atypical. It is more common for a water and sewer category change to be granted with a condition to use the cluster option for development if the zone allows for that option.
- 2) The environmental buffer on this site is designated as a major county greenway corridor. A cluster option on this site creates private lots and protects environmentally-sensitive areas and land proposed for the greenway. Acquisition or dedication of land to add to the greenway, as recommended by the master plan, could be more easily achieved with such a layout than a layout where several private lots encompass the land that the master plan has identified for a greenway.

Staff does not support a non-clustered subdivision on this site. Staff strongly believes that a clustered subdivision is consistent with master plan recommendations for protecting

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<sup>1</sup> 39.4 % (percentage of tract area that is floodplain) - 15 % (threshold for defining excessive floodplain) = 24.4% (percentage of tract area that is within floodplain and is defined as excessive floodplain)  
Area of excessive floodplain = 24.4% of 15.1 acres (site area) = 3.68 acres

environmentally-sensitive areas and provides a better opportunity to create parkland. Staff further believes that although clustering of lots was not required as part of the sewer and water category change for the site, it was clearly intended by the master plan designation of RE-2C zoning. The use of the cluster option triggers the excessive floodplain provision in determining the lot yield. Although the deduction of excessive floodplain land from the tract area would result in a four-lot yield, staff supports a five-lot cluster plan.

### **Revised Preliminary Plan**

During discussions of the proposed plan with staff, the applicant submitted a concept plan for a five-lot, non-clustered subdivision as evidence that such a “by right” five lot plan could be created without grading encroachment into the environmental buffer area. Staff used this plan, and the proposed house and grading limits, to develop a revised plan showing cluster of the five lots. This five-lot cluster plan (see Attachment C) has the same outer lot boundaries and open space parcel delineation as the applicant’s proposed six lot plan.

### **Frontage on a Private Road**

Three proposed lots will have frontage and be accessed from a private cul-de-sac. The zoning ordinance, in Section 59-C-1.34.1 provides that:

“In the RE-2 zone, lots may front on a private cul-de-sac if the Planning Board finds, as part of the subdivision plan approval process, that the private cul-de-sac:

1. provides safe and adequate access;
2. has sufficient width to accommodate the dwelling units proposed;
3. will better protect significant environmental features on and off site than would a public road; and
4. has proper drainage.”

Staff believes the proposed road will provide safe and adequate access for the proposed lots and has sufficient width to accommodate the proposed dwelling units. Access via the private road avoids multiple driveways onto Norwood Road in a location that would interfere with the operation of the Norwood Road/Norbeck Road Extended intersection. The private road enhances the ability to cluster the lots and protect the environmental features on the site. Proper drainage will be provided for the proposed road. Therefore, Staff finds that the criteria for frontage of lots on a private cul-de-sac have been met and recommends approval.

### **Parks**

The Patton Property lies on both sides of the Northwest Branch stream which is a master planned trail and greenway corridor that follows the stream valley through Montgomery County from the Prince Georges County border to the Sandy Spring. Although the subject Plan includes only the west side of the stream, parkland will be needed on both sides sufficiently wide for protection of the aquatic resources and to accommodate a natural surface trail on the east side.

## **Forest Conservation**

The applicant proposes to retain about 5.82 acres out of the 6.07 acres of forest. About 0.25 acre of forest is proposed to be cleared to construct a sewer line. This amount of forest retention is above the break-even point, and there would be no reforestation required. The forest retention areas will be located in the parkland dedication area.

## **Illegal Fill in Floodplain and Wetlands**

In March 2004, the Maryland Department of the Environment (MDE) identified unauthorized fill within part of the floodplain and wetlands on the subject site. MDE observed that the fill was largely made of brush, but soil, bricks, and metal were also present. MDE required the property owner to remove the fill, restore the area to its original grade, and to stabilize the area with vegetation. In April 2004, MDE re-inspected the site and found that the required fill removal and restoration work had been satisfactorily completed.

## **Transportation**

### Proposed Intercounty Connector

As part of its preparation of the *Draft Environmental Impact Statement (DEIS)* for the proposed ICC, SHA has developed detailed engineering mapping for the roadway, which is proposed as a limited-access east-west highway intended to link areas between I-270 and I-95/US 1, through central/eastern Montgomery and western Prince George's Counties.

The ICC planning process has concurrence on two alternative alignments called Corridor 1 and Corridor 2. Corridor 1 is the southern alignment that generally follows the alignment incorporated in the area master plans for the ICC, and Corridor 2 is the alignment to the north that is not represented in any area master plans. Of the above two alternative roadway alignments, based on current information available in the ICC *DEIS* and as seen on Attachment D, the Corridor 2 alignment has right-of-way and grading impacts along the frontage of the property.

The ICC study process is currently ongoing following guidelines mandated by Federal agencies that require evaluation of more than one "build" alternative. Transportation Planning staff is of the opinion that placing the Reservation Area in reservation until September 1, 2005 (or until a final Record of Decision is issued, if issued before September 1, 2005), would fully protect the ICC *DEIS* review process and the ensuing final Record of Decision.

### Local Area Transportation Review

The subject Preliminary Plan proposing six single-family detached dwelling units will generate less than 50 total peak hour trips during the weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods (6 and 7 total peak hour trips, respectively). Therefore, the subject development is not required to satisfy Local Area Transportation Review.

## Policy Area Transportation Review/Staging Ceiling Conditions

Transportation staging ceiling capacity existed for residential development (+1,285 residential units as of June 30, 2004) within the Cloverly Policy Area under the FY 2004 AGP. Therefore, Patton Property Preliminary Plan satisfied the Policy Area Transportation Review test.

### **CONCLUSION**

As set forth above, Staff finds that a five-lot cluster plan is the appropriate level of development for the proposed subdivision. Therefore, Staff recommends deletion of one lot from the proposed preliminary plan and reconfiguration per Attachment C. With this revision, staff believes that the subdivision plan meets the applicable requirements of Chapter 50, the Subdivision Regulations and Chapter 59, the Zoning Ordinance. Therefore, staff recommends approval of a five-lot subdivision with the conditions specified above.

### **Attachments**

- Attachment A Vicinity Map
- Attachment B Proposed Preliminary Plan
- Attachment C Revised Development Plan
- Attachment D ICC Reservation Area