

PLAT NO. 220060770

Deer Park at Fairland

Located on the southwest corner of Musgrove Road and Marlow Road

R-90 Zone, 12Lots, 1 Outlot

Community Water, Community Sewer

Master Plan Area: Fairland

Penny Musgrove, 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. 12001064R formerly 1-01064R, 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

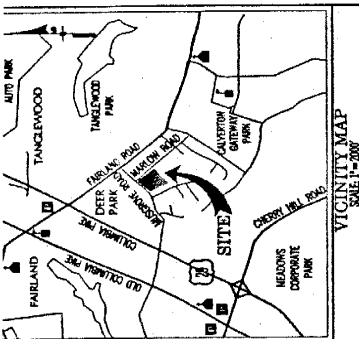
Site Name: DEER PARK Plat File Number: 2-06077
 Submission Date: 10/4/05 P.P.# 1-010642
 DRD Plat Reviewer: Dolores Kinney DRD Prelim. Plan Reviewer: Dolores Kinney

Initial DRD Review:
 Signed Preliminary Plan: Date 3/8/05 Checked: Initial Dmk Date 10/7/05
 Planning Board Opinion: Date 3/9/05 Checked: Initial Dmk Date 10/7/05
 Site Plan Required For this Development? Yes No Verified By: Dmk (Initial)
 Site Plan Name: N/A Site Plan Number: N/A
 Planning Board Opinion: Date _____ Checked: Initial _____ Date _____
 Site Plan Signature Set: Date _____ Checked: Initial _____ Date _____
 Lot #'s & Layout Lot Area Zoning Bearings & Distances Coordinates Plan #
 Road/Alley Widths Easements Open Space Non-standard BRLs Adjoining Land
 Vicinity Map Septic/Wells N/A DR note N/A Surveyor Cert. Owner Cert. Tax Map
 Child Lot Note N/A
 Site Plan Reviewer Plat Approval: Checked _____ Initial _____ Date _____

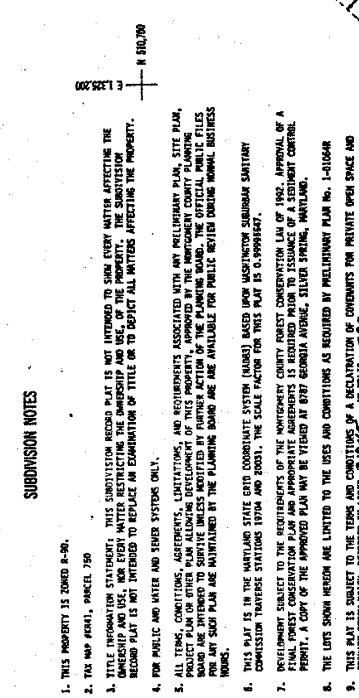
Agency Reviews Req'd	Reviewer	Date Sent	Date DUE	Date Rec'd	Comments
Envir.	(specify by plan)	10/10/05	10/24/05	11/9/05	OK
Research	Bobby Fleury	"	10/24/05	10/11/05	NO comments
St. Hwy.	Doug Mills	"	"		
DPS	Granville Campbell	"			
PEPCO	Jose Washington	"			
Parks	Doug Powell	"			
DRD	Steve Smith	"	10/24/05	10/18/05	

Final DRD Plat Review:
 DRD Review Complete: Initial Dmk Date 10/7/05
 (All comments rec'd and incorporated into mark-up)
 Engineer Notified - (Pick up Mark-up): Initial Dmk Date 10/8/05
 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: Initial _____ Date _____
 File Card Update: _____
 Final Zoning Book Check: _____
 Update Address Books with Plat #: _____
 Update Green Books for Resubdivision: _____
 Notify Engineer to Seal Plats: _____
 Engineer Seal Complete: _____
 Complete Reproduction: _____
 Send to Courthouse for Recordation: _____

No. _____



PLAT No.



AREA TABLE
 LOTS 1-17 3,281 ACRES OR 142,007 S.F.
 OUTLOT 'A' 0.977 ACRES OR 42,414 S.F.
 AREA OF EASEMENT 0.618 ACRES OR 27,053 S.F.
 TOTAL AREA OF PLAT 4,876 ACRES OR 213,474 S.F.

NO STATE GARD (PAVED)
 N 510.700
 E 1,225.000

N 510.700
 E 910.700
 E 1,225.000

SUBDIVISION NOTES

1. THIS PLAT IS ZONED R-40.
2. TAX MAP REF. PARCEL 790
3. TITLE INFORMATION STATEMENT: THIS SUBDIVISION RECORD PLAT IS NOT INTENDED TO SHOW EVERY MATTER AFFECTING THE OWNERSHIP AND USE, NOR EVEN WATER RESTRICTIONS, THE BOUNDARIES OF THE PROPERTY, THE SUBDIVISION RECORD PLAT IS NOT INTENDED TO REPLACE AN EXAMINATION OF TITLE OR TO DISPECT ALL MATTERS AFFECTING THE PROPERTY.
4. FOR PUBLIC AND WATER AND SEWER SYSTEMS ONLY.
5. ALL THESE ASSUMPTIONS, ASSURANCES, WARRANTIES, AND REPRESENTATIONS ASSOCIATED WITH ANY INSTRUMENTARY PLAT, SITE PLAN, PROJECT PLAN OR OTHER PLAN ALLOWING DEVELOPMENT OF THIS PROPERTY, APPROVED BY THE MONTGOMERY COUNTY PLANNING BOARD ARE INTENDED TO SUPPLEMENT AND NOT REPLACE THE PUBLIC RECORDS. THE OFFICIAL PUBLIC FILES FOR ANY SUCH PLAN ARE MAINTAINED BY THE PLANNING BOARD AND ARE AVAILABLE FOR PUBLIC REVIEW DURING NORMAL BUSINESS HOURS.
6. THIS PLAT IS IN THE MARYLAND STATE GRID COORDINATE SYSTEM (NAD83) BASED UPON WESTMONTON SUBURBAN SANITARY COMMISSION TRUSTEE STATIONS 1074 AND 2001. THE SCALE FACTOR FOR THIS PLAT IS 0.99998449.
7. DEVELOPMENT SUBJECT TO THE REQUIREMENTS OF THE MONTGOMERY COUNTY FOREST CONSERVATION LAW OF 1982, APPROVAL OF A FINAL FOREST CONSERVATION PLAN AND APPROPRIATE ADJUSTMENTS IS REQUIRED PRIOR TO ISSUANCE OF A SUBDIVISION CONTROL PLAT. A COPY OF THE APPROVED PLAN MAY BE VIEWED AT 800 GEORGETOWN AVENUE, SILVER SPRING, MARYLAND.
8. THE LOTS SHOWN HEREON ARE LIMITED TO THE USES AND CONDITIONS AS REQUIRED BY INSTRUMENTARY PLAN No. 1-01048 PRIVATE STORM WATER, RECORDED IN LIBER 3197-05 AT FOLIO 98.

OWNER'S CERTIFICATION

WE, THE UNDERSIGNED, OWNER(S) OF THE PROPERTY DESCRIBED HEREON, ADOPT THIS PLAN OF SUBDIVISION, ESTABLISH THE MINIMUM WIDTHS, RESTRICTIONS, LINES, AND LOCATIONS OF THE STREETS SHOWN TO PUBLIC USE.

FURTHER, WE HEREBY GRANT TO THE PARTIES NAMED IN A DOCUMENT CAPTIONED "DECLARATION OF TERMS AND PROVISIONS OF PUBLIC UTILITY EASEMENT" DATED 12-2-05 AT FAIRLAND, MARYLAND IN LIBER 3197-05, THE PUBLIC UTILITY EASEMENTS BEING SHOWN HEREON AS "P.U.E.", SUBJECT TO THE TERMS AND CONDITIONS CONTAINED THEREIN.

FURTHER, WE HEREBY ESTABLISH THE CATEGORY ONE FOREST CONSERVATION EXPENDITURES, SHOWN HEREON, SUBJECT TO THE TERMS AND PROVISIONS RECORDED IN LIBER 3197-05 AT FOLIO 411.

FURTHER, WE HEREBY ESTABLISH THE RECREATIONAL INGRESS/EGRESS AND UTILITY EASEMENT, SHOWN HEREON.

AS OWNERS OF THIS SUBDIVISION, WE, OUR SUCCESSORS, AGENTS AND ASSIGNS WILL CAUSE ALL MONEY COMES MATTERS AND ANY OTHER MATTERS TO BE SETTLED IN ACCORDANCE WITH SECTION 56-21(e) OF THE MONTGOMERY COUNTY CODE. THERE ARE NO UNRECORDED SUITS, ACTIONS AT LAW, LEASES, LIENS OR OTHER MATTERS AFFECTING THE PROPERTY.

12-2-05 DATE
 M. Quinn Jr. 12-2-05 DATE
 WITNESS

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF, THAT THIS PLAT IS CORRECT.

THIS IS A PART OF SUBMISSION OF THIS PARCEL OR TRACT OF LAND DESCRIBED IN A DEED DATED 05/04/2005 AND RECORDED IN LIBER 3197-05 AT FOLIO 278 RECORDS OF MONTGOMERY COUNTY, MARYLAND ON MAY 6, 2005 IN LIBER 3197-05 AT FOLIO 278.

THIS DEED RELEASED AS DESCRIBED IN THE COUNTY'S OFFICIAL RECORDS. ALL PROPERTY INTERESTS SHOWN HEREON WILL BE SET AS UNLITIGATED PERSONS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 56-21(e) OF THE MONTGOMERY COUNTY CODE, IF SO FRAGMENTED.

TOTAL AREA OF LAND INCLUDED ON THIS PLAT IS 4,876 SQUARE FEET OR 4.4678 ACRES, WITH 27,053 SQUARE FEET, OR 0.618 ACRES BEING DEDICATED TO PUBLIC USE.

V. JOSEPH WALKER
 PROFESSIONAL LAND SURVEYOR
 MARYLAND REGISTRATION No. 10880

CURVE TABLE

NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	BEARING
1	125.000	13.337	16.165	31.837	31.837	S 84° 58' 59" W
2	30.000	47° 21' 26"	31.411	16.666	30.932	S 11° 52' 53" W
3	30.000	27° 04' 53"	205.711	74.432	65.53377 W	S 82° 53' 07" W
4	30.000	47° 21' 26"	31.411	16.666	30.932	S 84° 58' 59" W
5	125.000	13.337	16.165	31.837	31.837	S 84° 58' 59" W
6	30.000	47° 21' 26"	31.411	16.666	30.932	S 11° 52' 53" W
7	30.000	27° 04' 53"	205.711	74.432	65.53377 W	S 82° 53' 07" W

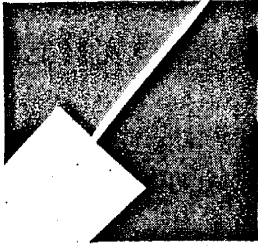
SUBDIVISION RECORD PLAT
 LOTS 141 THRU 152 AND
 OUTLOT 'A', BLOCK E
 DEER PARK
 AT FAIRLAND
 WHEATON (354) ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND

Scale: 1" = 50'
 Recorded
 Plat No.

August, 2005
 Greenhorne & Chmara Inc.
 ENGINEERS-PLANNERS-SURVEYORS
 2040 CENTURY BOULEVARD SUITE 200
 GERMANTOWN, MARYLAND 20874
 (301) 444-9282

Approved: _____ Date: _____
 Department of Permitting Services
 Montgomery County, Maryland

Approved: _____ Date: _____
 MICR/PC File No. _____
 SECURITY CROSSING
 PIA No. _____

**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.orgDate Mailed: **MAR 02 2005**

Action: Approved Staff Recommendation Motion of Commissioner Bryant, seconded by Commissioner Robinson, with a vote of 4-1; Commissioners Berlage, Perdue, Bryant, and Robinson voting in favor of the motion. Commissioner Wellington voting against the motion.

MONTGOMERY COUNTY PLANNING BOARD**OPINION**

Preliminary Plan 1-01064R

NAME OF PLAN: Deer Park (Resubdivision)

Dates of Hearings: July 22, 2004 (deferred); October 21, 2004

The date of this written opinion is MAR 02 2005 (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

In 2001, the Applicant, Southwind Properties, LLC, filed a preliminary plan of subdivision proposing development of the Subject Property with 16 lots. The proposed access was via a roadway off of Musgrove Road. That initial application was designated 1-01064 and was reviewed by the Development Review Committee ("DRC") at the Maryland National Capital Park and Planning Commission ("M-NCPPC") on May 7, 2001, but was never considered by the Planning Board. However, the Applicant did receive agency comment at the time of DRC that access off of Musgrove Road was unacceptable and that access to the Subject Property would have to be relocated to Marlow Road.

establish an additional building setback from Marlow Road for the homes on proposed Lots 1, 2, 3, and 4 in order to be more sensitive to and respectful of the deeper setbacks of homes located in the R-200 zone on the opposite side of Marlow Road. Homes to be located on proposed Lots 3 and 4 will be set back a minimum of forty (40') feet from Marlow Road (equivalent to the minimum setback required in the R-200 zone) and for proposed Lots 1 and 2 will be set back a minimum of fifty (50') feet from Marlow Road.

Penny Lane will become a dedicated public right-of-way with a sidewalk extending along the west side of Penny Lane for pedestrian usage. The revisions to the layout for the proposed development necessitated a shift in the location of Penny Lane, which is now proposed to be located directly across from Lot 8 in the confronting subdivision.

III. DISCUSSION

1. First Public Hearing – July 22, 2004

Following due notice, the Preliminary Plan was brought before the Montgomery County Planning Board ("Planning Board" or "Board") for a public hearing on July 22, 2004 ("July Hearing"), in accordance with the requirements of the Maryland Code Annotated, Article 28 ("Regional District Act"), and the Planning Board's Rules of Procedure. In accordance with Section 50-34 of the Subdivision Regulations, the Application included all of the information required for the Planning Board's consideration of the Preliminary Plan.

At the July Hearing, the Planning Board heard testimony from its expert technical staff ("Staff"); the Applicant and its representatives; and seven neighboring property owners, all but one of whom testified in opposition to the Application. The Board also received evidence into the record on the application. In presenting the application to the Planning Board, Staff prepared and distributed packets of information in advance of the hearing, including a Staff Report containing, among other things, Staff's expert analysis of the Application and plan drawings including a vicinity development map, neighborhood delineation map, proposed development plan, tabular summary of lots within the neighborhood, and correspondence and a petition in opposition from neighboring property owners. A slide presentation, prepared by Staff, was presented to the Planning Board at the time of the hearing. The information packets and additional materials are part of the record on the Application and are incorporated herein by reference.

The preliminary plan for resubdivision of the subject property that was presented to the Board at the July Hearing depicted 14 lots (hereinafter referred

Board that the setback lines along Marlow Road were analyzed with respect to the nearby existing homes on the west side of Marlow (same side as the subject property), which are set back approximately thirty feet, in contrast to the 90-100 foot setbacks in the R-200 zoned lots on the east side of Marlow Road. Additionally, Staff noted that the both the Montgomery Department of Public Works and Transportation and Transportation Planning Staff were against direct access by Penny Lane onto Musgrove Road, because of a desire to limit access to the arterial road and the fact that such access would place two intersections in too close a proximity.

Among other views stated, Board members commented that the proposed lots along Marlow Road were not appropriate for their location; and, generally, that lots depicted on the plan were not of the same character as lots existing in the delineated neighborhood recommended by Staff. Comparisons were drawn to the Marlow Place cul-de-sac subdivision, which is located within the same block as the subject property, with Board members commenting that the lots in that subdivision were larger than those proposed. Board members suggested to the Applicant that larger lots would be more in character with the delineated neighborhood and, further, that the design of the proposed lots with frontage on Marlow Road, and the relationship of those particular lots to Marlow Road, should be studied further. A majority of the Board members stated their shared view that the proposed plan with 14 lots would not be in character with the existing neighborhood. The Applicant requested a deferral of the Board's consideration and action on the application in order to consider the Board's stated concerns. The Planning Board voted to grant Applicant's request for a deferral.

2. Second Public Hearing – October 21, 2004

Following consideration of the Planning Board's comments during the July Hearing and following coordination with Staff, the Applicant filed a revised preliminary plan of resubdivision, which deleted two lots from the Original Plan. This new plan, which proposed 12 lots ("Revised Plan"), represented a significant reworking of the application. In addition to the removal of two lots, which resulted in increased lot sizes, three lots were proposed to have primary frontage on Musgrove and the depth of lots fronting on Marlow Road was increased. A consequence of these revisions to the layout of the subdivision was that Penny Lane was re-oriented and now confronted a different lot existing across Marlow Road. Following due notice, the Revised Plan was brought before the Board for a public hearing on October 21, 2004 ("October Hearing"), in accordance with the requirements of the Maryland Code Annotated, Article 28 ("Regional District Act"), the Montgomery County code, Chapter 50 ("Subdivision Regulations"), and the Planning Board's Rules of Procedure. In accordance with Section 50-34 of

development to the west of the Subject Property to the R-200 zoned lots to the east of the Subject Property. Mr. Liu also suggested that proposed Penny Lane be abandoned in favor of a two-road/shared driveway solution, which would be located between the proposed lots. Other than a passing comment that the proposed lots were "a far cry" from the lot sizes on Marlow Road, Mr. Liu did not challenge the Staff's analysis under Montgomery County Code Sections 50-29(a) or 50-29(b)(2) (resubdivision criteria), either in writing or at the October Hearing.

Three other neighbors spoke in opposition to the application at the October Hearing. These three speakers repeated concerns raised at the July Hearing: increase in traffic; tree loss, specifically along Marlow Road; a reduction of the number of lots to eight; a desire for deeper setbacks for lots along Marlow Road, to match setbacks of homes on the opposite side of Marlow Road; the improvement of Marlow Road with curb and gutter on the west side; and general stormwater management concerns.

On rebuttal, Applicant's attorney commented that an eight lot subdivision on the 4.5 acre Subject Property would yield lots in excess of 20,000 square feet, the minimum size for lots in the R-200 Zone. However, as Applicant reminded the Board, the Subject Property is zoned R-90, which permits a minimum lot size of 9,000 square feet. Applicant's attorney further advised the Board that the removal of trees along Marlow Road was necessitated by the DPWT requirement that Marlow Road be improved along the Subject Property's frontage. In response to a Board member's questions concerning a potential waiver of DPWT's requirement for road improvements, applicant's engineer testified that Applicant had asked if they could deviate from those standards but that the request was rejected. The engineer noted that Applicant would plant new trees along Marlow Road; and, in response to Board member concerns, committed to the planting of large caliper, fast-growing replacement trees along the Marlow Road frontage. Applicant's engineer testified that this development addresses the stormwater management concerns by providing on-site quantity and quality control. Additionally, the engineer testified that extraordinary measures would be taken, including the extension of a storm drain along the back of lots at the shared property line, which would improve drainage characteristics. Responding to Board member questions, the Applicant, through its attorney, agreed to a condition that would require it to provide a reasonable amount of vegetative screening on the lot across Marlow Road that directly faces Penny Lane, should the owner of such lot request that such a screen be provided.

A preliminary plan seeking the resubdivision of an existing recorded lot must also comply with the resubdivision criteria set forth in the Subdivision Regulations, which provide in relevant part, that

[l]ots on a plat for the resubdivision of any lot...that is a 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.⁵

The purpose of the resubdivision criteria is to ensure that property, which has already been the subject of an approved and recorded subdivision application, will not be further subdivided unless the proposed new lots conform with the character of the lots in the surrounding area; and, in particular, with the original subdivided lots. The Maryland Court of Special Appeals, interpreting this section of the Montgomery County Code, has held that there must be a high correlation between all seven criteria in the proposed lots and the existing neighboring lots.⁶

IV. DISCUSSION OF ISSUES & FINDINGS

After review and consideration of the evidence of record, including testimony given at the public hearing, the Planning Board finds Preliminary Plan No. 1-01064R to be in accordance with the purposes and requirements of the Subdivision Regulations, the development standards of the Zoning Ordinance, and the Regional District Act. In addition, the Planning Board adopts Staff's recommendations and finds that the proposed conditions, with some modifications, will ensure the appropriate use of the Subject Property and adequate access and stormwater management. Therefore, the Planning Board adopts Staff's recommended conditions with some modifications. Set forth below is a discussion of issues raised during the Board's review of this Application and the Board's findings with respect to each issue.

A. RESUBDIVISION CRITERIA

Staff testified at the October Hearing and concluded, in its Staff Report, that the Application complies with all seven of the resubdivision criteria and a

⁵ MONTGOMERY COUNTY CODE § 50-29(b)(2) (emphasis added).

⁶ See *Lee v. Maryland Nat'l Capital Park & Planning Comm'n*, 107 Md. App. 486, 495, 668 A.2d 980, 985 (1995).

2. Comparison of Proposed Resubdivision to Existing Neighborhood Lots

Determinations regarding resubdivision applications are subject to Section 50-29(b)(2) of the Subdivision Regulations. The application must demonstrate a high correlation between the characteristics of the proposed lots and the existing lots in the Neighborhood. For the reasons set forth below, and those stated in the Staff Report and stated on the record at the October Hearing, the Planning Board finds that the Revised Plan complies with the area, size, frontage, alignment, width, shape and suitability criteria of Section 50-29(b)(2).

a. Area: It is the practice of the Planning Board to consider a lot's useable area (the square footage within building restriction lines) as a measure of its area. In a neighborhood of 37 lots, the existing lot areas range from 1,925 to 9,760, with the exception of two lots, which are significantly larger. The area of the lots in the Original Plan ranged from 2,488 to 5,485 square feet. The proposed lots in the Revised Plan range from 2,159 to 7,951 square feet, falling well within the range of existing lot areas. **Therefore, with respect to the area criterion, the Planning Board finds that the proposed lots demonstrate a high correlation to the existing lots in the Neighborhood.**

b. Lot Size: It is the practice of the Planning Board to consider a lot's gross square footage as a measure of its size. The Neighborhood consists of 37 lots, which range in size from 6,000 square feet to 22,822 square feet with the exception of two lots, which are significantly larger. The lot sizes in the Original Plan ranged from 9,055 to 12,938 square feet. The proposed lot sizes in the Revised Plan range from 9,930 square feet to 15,255 square feet, which is well within the range of existing lot sizes. **As such, with regard to the size criterion, the Planning Board finds that the lot sizes in the Revised Plan, exhibit a high correlation to the lots existing in the Neighborhood.**

c. Alignment. The Neighborhood contains a variety of lot alignments: two (2) pipestem lots, four (4) radial lots, five (5) corner lots and twenty-six (26) perpendicular lots. The Revised Plan proposes four (4) perpendicular lots, four (4) radial lots, three (3) corner lots and one (1) pipestem lot. **As such, the Planning Board concludes that the variety of proposed lot alignments is consistent with the lot alignments existing in the Neighborhood; and, hence, is of the opinion that the proposed lots demonstrate a high correlation, with regard to the alignment criterion, to the lots existing in the Neighborhood.**

d. Lot Frontage: The lot frontages in the Neighborhood range from 25 feet to 302 feet. The proposed resubdivision will have lots with

B. DESIGN OF PROPOSED LOTS

In reviewing preliminary plans of subdivision, including resubdivisions, the Planning Board must find, among other things, that the size, width, shape and orientation of a proposed lot is appropriate for the location of the subdivision.

During the July Hearing, certain Board members suggested that the design of the lots fronting on Marlow Road as proposed in the original Plan was not appropriate because the design was not sufficiently sensitive to the existing lots across Marlow Road, notwithstanding the fact that the existing lots are situated in the R-200 Zone, which requires a larger lot size than that of the Subject Property. While the lots with frontage on Marlow Road, as proposed in the Original Plan, ranged in size from 9,137 to 10,173 square feet, the four lots fronting Marlow Road as proposed in the Revised Plan range from 10,828 to 12,205 square feet, which, in the Planning Board's view, are appropriate sizes for their respective locations, considering that the underlying zone permits a minimum lot size of 9,000 square feet. Additionally, the Revised Plan proposes lot orientations that better respect, and, in fact, mirror, those of the confronting lots existing across Marlow Road.⁷ Moreover, the Planning Board notes that the Applicant has increased the depth of the Marlow frontage lots in the Revised Plan from that depth previously proposed for those lots in the Original Plan; and, in doing so, has modified the shape of those lots to provide a shape that is more appropriate for lots fronting on Marlow Road. The width of the four lots fronting on Marlow Road also closely approximates the width of the lots in the confronting R-200 zone across Marlow Road.

Additionally, the Board notes that, although house location is not a consideration at the preliminary plan stage, the Applicant, in response to neighbors' concerns, proposed certain measures to provide a certain level of assurance concerning the location of any future dwellings relative to Marlow Road. The Original Plan depicted a front building line of 30 feet, which is the minimum setback required under the zone. The Applicant proposed, through notation on the record plat, to establish greater front building line setbacks than that required by the Zoning Ordinance for the four proposed lots with frontage on Marlow Road. Specifically, as provided in Condition No. 17, the two proposed lots to the north of proposed Penny Lane shall have a front building line of 50 feet

⁷ One feature of the Revised Plan, which proposes to orient three lots toward Musgrove Road, adds to the appropriateness of the design of the subdivision because existing lots to the north and south of the Subject Property along Musgrove Road are oriented to that road. By contrast, the Original Plan had no lots fronting on Musgrove.

expense, on the Ni property to provide a reasonable buffer against the perceived negative aspects of headlights from vehicles exiting Penny Lane. Applicant's proffer has been incorporated into the conditions of approval. The Board finds that only reasonable measures need be taken and only with the consent of Mr. and Mrs. Ni.

Density

Citizen testimony, both written and oral, suggested a shared view that the proposed development was too dense. The Planning Board notes, however, that the R-90 zone can accommodate a density of 3.6 dwelling units per acre. The Original Plan showed a density of 3.11 dwelling units per acre with 14 lots, while the Revised Plan shows an even less dense development of only 2.67 dwelling units per acre with 12 lots. Accordingly, the Planning Board finds that the Revised Plan is well below the density that Applicant is entitled to seek and should be approved.

Access to Musgrove Road

Testimony and evidence of record indicates that Montgomery County Department of Public Works and Transportation and M-NCPPC Transportation Planning staff recommended against access to the site from Musgrove Road due to the minimal intersection separation between existing Hawkshead Terrace and existing Marlow Road and the availability of access to a road of lesser hierarchy being Marlow Road classified as Secondary.

Accordingly, the Planning Board finds that access to Musgrove Road is not appropriate and access from Marlow Road is adequately addressed through conditions of approval relating to traffic and roadway improvements.

Traffic

Staff estimated that the potential increase in traffic attributable to the proposed development is be approximately 11.4 trips in the morning peak hour and 13.32 trips in the evening peak hour, a change from previous plan of 13.3 in the morning and 15.54 in the evening. The Board finds that the availability of public transportation will serve to minimize vehicle trips. The Board further finds that trips will be mitigated through the requirement that Applicant enter into a Traffic Mitigation Agreement (TMA) with the Montgomery County Planning Board (MCPB) and the Department of Public Works and Transportation (DPWT) to make a monetary contribution. Accordingly, the Planning Board finds that the proposal, as conditioned, satisfies the transportation component of the adequate public facilities test.

V. ADDITIONAL FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies⁹; the applicant's position; the testimony of the speakers; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds, in addition to the findings above, that:

- a) Preliminary Plan No. 1-01064R substantially conforms to the Fairland Master Plan.

The Fairland Master Plan does not specifically identify the Subject Property for discussion, but does give general guidance and recommendations regarding zoning and land use. The Master Plan recommends that this area maintain the existing zoning as adopted and maintain the residential land use consisting of single-family detached homes. The Board finds that Preliminary Plan No. 1-01064R complies with the recommendations adopted in the Sector Plan insofar as it is a request for residential development.

- b) Public facilities will be adequate to support and service the area of the proposed subdivision.

- i. Water and Sewerage: The record includes uncontested evidence that existing and programmed water and sewerage facilities are adequate to support and service the proposed development. The Subject Property is located within an area in which water and sewer service is presently available.
- ii. Police, Fire, and Health Services: The record includes uncontested evidence that existing and programmed police stations, firehouses, and health clinics are adequate to support and service the proposed development. No agency comments have been received to the contrary and there is no other evidence in the record that a local area problem will be generated by the Board's approval of the instant subdivision application.

⁹ The application was referred to outside agencies for comment and review, including 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.

VI. CONCLUSION

Having considered all of the evidence presented and all of the testimony taken, as well as the contents of the Preliminary Plan file, the Planning Board finds Preliminary Plan No. 1-01064R to be in accordance with the purposes and requirements of the Subdivision Regulations of the Montgomery County Code and the provisions of Article 28 of the Maryland Code Annotated. Therefore, the Planning Board approves Preliminary Plan No. 1-01064R, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 12 single-family dwelling units.
- 2) Compliance with conditions of approval for the preliminary forest conservation plan to provide for off-site reforestation and a tree protection plan for specified trees as stated in the Environmental Planning letter of approval dated October 11, 2004. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 3) Record plat to reflect common ingress/egress and utility easements over all shared driveways.
- 4) Record Plat to reflect all areas under Homeowners Association ownership and stormwater management areas.
- 5) Satisfy the Policy Area Transportation Review (PATR) component of the Adequate Public Facilities (APF) test by entering into a Traffic Mitigation Agreement (TMA) with the Montgomery County Planning Board (MCPB) and the Department of Public Works and Transportation (DPWT), to make a one-time lump sum payment of \$31,200 to support transit use within the Policy Area.
- 6) Consistent with the 1997 Approved and Adopted Fairland Master Plan, dedicate required right-of-way along Musgrove Road to provide 40 feet of right-of-way from the centerline.
- 7) Dedicate required right-of-way along Marlow Road to provide 30 feet of right-of-way from the centerline.
- 8) Dedicate required right-of-way (50 feet) and construct Penny Lane within the site as closed section tertiary residential street with a cul-de-sac at the end.

such landscaping on Lot 8, Block C, as is reasonably required to mitigate the impact of headlights from vehicles exiting Penny Lane. In the event of Applicant and owner(s) of Lot 8 cannot reach agreement as to the quantity and quality of such vegetative screening, M-NCPPC Staff shall determine the amount and type of screening that is reasonably required.

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APPROVED AS TO LEGAL SUFFICIENCY
TAB
M-NCPPC LEGAL DEPARTMENT
DATE 2/18/05