



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

MCPB
Item #
7/19/2007



MEMORANDUM

DATE: July 6, 2007

TO: Montgomery County Planning Board

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

FROM: Richard A. Weaver, Coordinator *RAW* (301) 495-4544
 Development Review Division

REVIEW TYPE: Preliminary Plan Amendment

APPLYING FOR: Revision to Conditions Pertaining to Path Construction

PROJECT NAME: Colesville Farm Estates

CASE #: 12005004A

REVIEW BASIS: Chapter 50

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: June 27, 2007

HEARING DATE: July 19, 2007

STAFF RECOMMENDATION: Amend Condition #8 to read as follows:

- 8) The fifteen-foot wide pedestrian right-of-way shall be dedicated and shall include appropriate signage at both points of access on the subject property. The pathway on the subject property shall be graded but remain unimproved in grass cover. Modest delineation of the pathway is required. The applicant must construct an offsite, four-foot wide asphalt path in the Somerset Lane right-of-way connecting Berkeley Road to the southwest corner of the subject property.

SITE DESCRIPTION and PREVIOUS PLANNING BOARD ACTION:

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 identified as Somerset Lane. 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)¹. 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.

On June 2, 2005, Preliminary Plan 120050040 (formerly 1-05004) was heard by the Planning Board at a regularly scheduled public hearing. The request involved resubdividing Lot 1 and Lot 10 into 3 residential lots for the construction of one new single-family structure, while retaining the two existing structures on the property (Attachment B). The Planning Board also considered the applicant's request to abandon a portion of the unimproved Somerset Lane right-of-way that bisected the Property. The Planning Board approved the resubdivision request pursuant to Section 50-29 (b)(2) of the Montgomery County Subdivision Regulations (Attachment C). In a separate action, the Planning Board supported the abandonment of the right-of-way, and forwarded that recommendation to the Montgomery County Department of Public Works and Transportation for an ultimate decision by District Council.

As part of the abandonment, the Planning Board supported the concept of a dedicated 15-foot wide public right-of-way to provide pedestrian access via a path constructed by the applicant through the Subject Property. The concept envisioned ultimate County maintenance of the dedicated right-of-way and path. The Board considered the imperviousness cap of 10% for the Environmental Overlay Zone of the

¹ 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.

Upper Paint Branch SPA and questioned whether a paved path would conflict with the impervious limits. Staff determined that a paved path would push the impervious limits of the project beyond 10%. The Board discussed alternative pervious pavement methods and suggested Environmental Planning staff work with the applicant and MCDPWT to find a solution to the apparent problem of impervious coverage. Ultimately, a condition was added to the approval requiring that a "Pathway Plan" be submitted to staff for review and approval that identified, among other things, pathway composition.

DISCUSSION OF AMENDMENT:

In a letter dated June 26, 2007 (Attachment D) the applicant requests Planning Board assistance in resolving what has become a stalemate in the pathway discussion. In their deliberations, MCDPWT determined that a path built in a County right-of-way must meet specific standards for pavement and lighting. The County is unable to accept wood chips or other pervious surfaces for safety and maintenance reasons. The placement of any impervious surfaces in this right-of-way would raise the impervious surface coverage to over 10% and, therefore, conflict with the Environmental Overlay Zone of the Upper Paint Branch SPA. Environmental Planning staff does not support a waiver of the imperviousness limits in this sensitive watershed.

The applicant in their letter has suggested three options available to the Planning Board to resolve this issue. They are summarized below:

- 1) Allow the applicant to dedicate the fifteen-foot wide right-of-way without a requirement to improve the right-of-way with any type of surface treatment; leaving the path as grass cover. MCDPWT staff have stated they will accept this option, as long as there are no improvements to maintain. Some modest delineation of the path, perhaps with occasional landscape ties, would be required.
- 2) Waive the 10% impervious cap limit to a point where the applicant could pave the right-of-way with a five-foot wide path. MCDPWT would require lighting, which may prove undesirable to the community.
- 3) Delete the pathway requirement for the approval. Some in the neighborhood have argued that this path connection is not currently needed nor will it ever be desirable. Staff and the Board supported this connection as an important community feature.

Of the three options, staff concurs with the recommendation of the applicant, that option #1 would accommodate most of the goals of the original preliminary plan approval. Option #1 provides dedication and grading of the fifteen-foot wide right-of-way, but allows it to remain as grass cover. MCDPWT would accept the right-of-way, however, since it is not improved, the county would have no obligation to maintain it in any way. By dedicating to the County, the applicant is relieved from any liability issues with the path. The grass cover is pervious, and would allow the project to continue to

meet the impervious cap limits. Under this proposal, the applicant proposes to pave an off-site portion of the Somerset Lane right-of-way with a four-foot wide path. This path would connect the southern terminus of the delineated grass path with Berkley Road to the west. The impervious surface for this short path connection is compensated for by the remainder of the Somerset Lane right-of-way through which it passes, which is in natural ground cover. With this option, the project will meet the SPA impervious limits.

The two other remaining options require either a waiver of a zoning ordinance requirement or eliminating a pedestrian connection that staff and the Board strongly supported for this neighborhood. In staff's opinion, Option #1 provides the best overall way to provide a pedestrian connection through the development, without having to compromise on the necessary imperviousness limit.

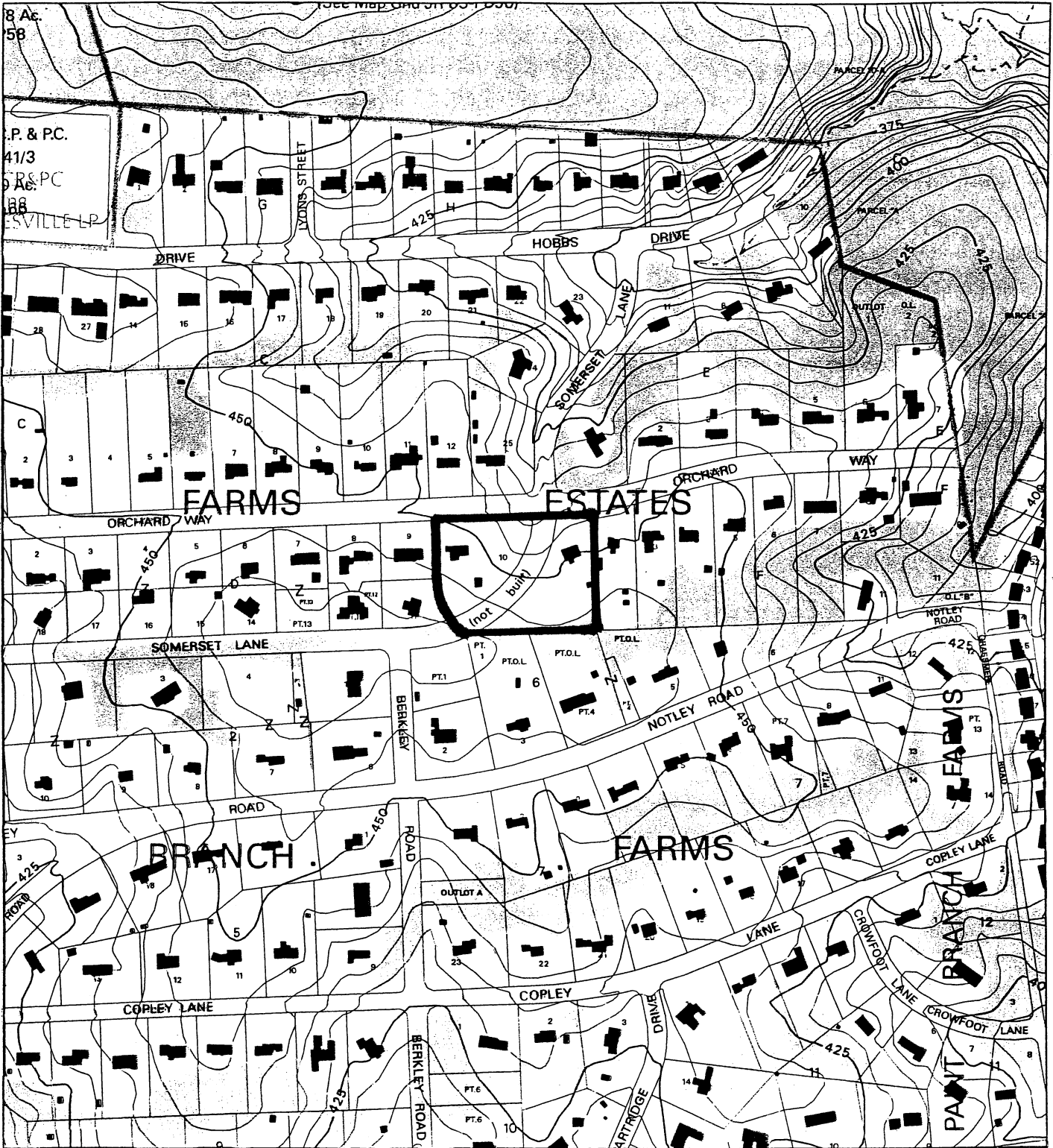
CONCLUSION

After many months of debate and negotiations, staff supports dedication of the fifteen-foot wide pathway area with the requirement that it be graded and seeded to remain in grass cover. Staff also supports the off-site four-foot wide asphalt pathway connection in the Somerset Lane right-of-way and finds that it complies with the Upper Paint Branch SPA impervious cap of 10 percent.

Attachments

- Attachment A - Vicinity Map
- Attachment B – Approved Preliminary Plan
- Attachment C – Planning Board Opinion
- Attachment D – June 26, 2007 Applicant Letter

COLESVILLE FARM ESTATES (1-05004)



Map compiled on July 19, 2004 at 10:09 AM | Site located on base sheet no - 218NE01

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Key Map



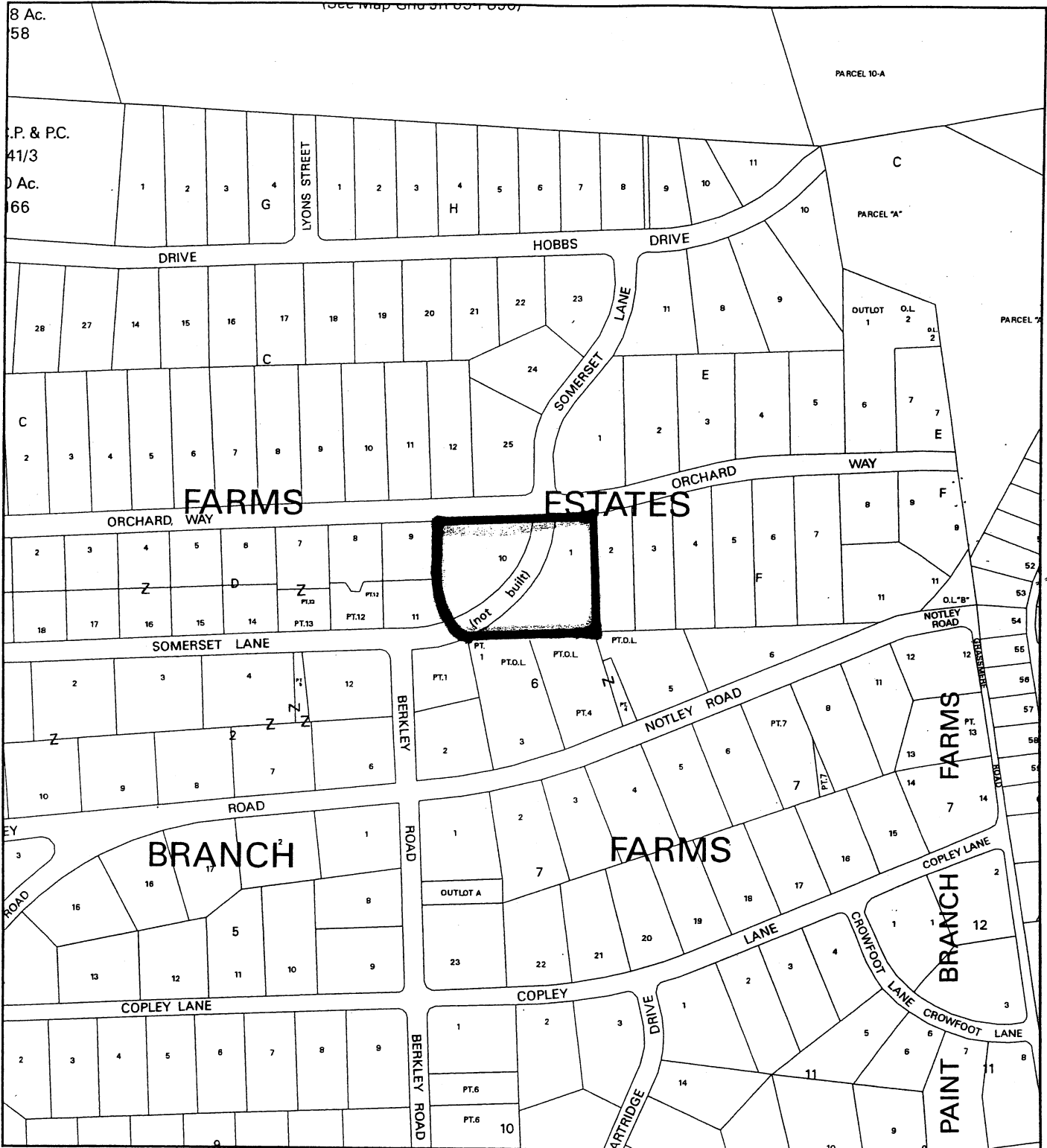
Research & Technology Center



1 inch = 400 feet
1 : 4800

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

COLESVILLE FARM ESTATES (1-05004)



Map compiled on July 19, 2004 at 10:12 AM | Site located on base sheet no - 21BNE01

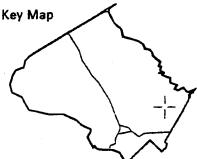
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Key Map



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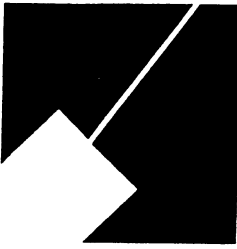


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MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

 THE MARYLAND-NATIONAL CAPITAL
 PARK AND PLANNING COMMISSION

 8787 Georgia Avenue
 Silver Spring, Maryland 20910-3760
 301-495-4500, www.mncppc.org

Date Mailed: OCT 26 2005
Public Hearing Date: June 2, 2005
Action: Approved Staff
 Recommendation
Motion of Commissioner Bryant,
 seconded by Commissioner Robinson,
 with a vote of 5-0;
 Chairman Berlage and Commissioners
 Perdue, Bryant, Wellington, and
 Robinson voting in favor.

RECEIVED

OCT 26 2005

MONTGOMERY COUNTY PLANNING BOARD
OPINION

Preliminary Plan 1-05004

NAME OF PLAN: Colesville Farm Estates (Resubdivision)

The date of this written opinion is OCT 26 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).

INTRODUCTION

On July 7, 2004, Arthur W. Williams, III (“Applicant”) submitted an application for the approval of a preliminary plan of subdivision of property in the RE-1 zone. The Application proposed to create 3 lots on 3.174 acres of land located on the south side of Orchard Way, approximately 2,000 feet east of the intersection with New Hampshire Avenue (“Property” or “Subject Property”), in the White Oak master plan area.¹ The Application was captioned Preliminary Plan 1-05004 (“Application” or “Preliminary Plan”). On June 2, 2005, the Preliminary Plan was brought before the Montgomery County Planning Board for a public hearing concurrently with Applicant’s application to abandon an unimproved portion of Somerset Lane right-of-way between Orchard Way

¹ The Subject Property consists of two previously recorded lots and a portion of unimproved Somerset Lane right-of-way located between those lots.

and Berkley Road.² 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.

SITE DESCRIPTION

Lot 1 and Lot 10 of the 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). Single-family residences exist on each of the two existing lots and are proposed to remain. As is stated above, the Subject Property contains an unimproved right-of-way 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).³ 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

The Application proposed a 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. 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.

² The abandonment application, captioned AB-668, was filed by the Applicant with the County Executive on or about September 24, 2004.

³ 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.

BACKGROUND

Master Plan Compliance

Staff advised the Board that the White Oak Master Plan ("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 Master Plan also recommends building pedestrian walkways, where appropriate to enhance the network of pedestrian ways and to improve access to transit. The Application 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

Pursuant to Section 50-15(a) of the Subdivision Regulations, the heirs or assigns of the individual or entity that originally dedicated land for public use may file a petition to abandon any areas that have been dedicated for public use. Here, the Applicant, is such a successor-in-interest and was, therefore, authorized to apply for abandonment. Pursuant to relevant provisions of Chapter 49 of the County Code, the Planning Board's responsibility in the abandonment application is to forward its recommendation on the application to the Montgomery County Department of Public Works and Transportation. The District Council ultimately decides whether an abandonment application will be granted.

From a transportation perspective, the abandonment of the subject right-of-way would eliminate a potential north/south vehicular and pedestrian connection within the neighborhood. Staff advised the Board of its desire to maintain pedestrian connectivity between Orchard Way and Berkley Road. The Preliminary Plan proposed an unimproved 15-foot right-of-way at the location of the existing alignment of the original Somerset Lane in order to maintain such pedestrian connectivity.

Prior to taking a vote on the instant Preliminary Plan, the Planning Board voted unanimously in a separate action to support Staff's recommendation that the District Council grant Applicant's petition to abandon that portion of the unimproved Somerset Lane right-of-way.

Conformance With Section 50-29(b)(2)

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. In administering the Resubdivision section, the Planning Board must determine the appropriate "neighborhood" for evaluating the application. The Applicant had proposed a neighborhood of forty-five (45) lots for analysis purposes ("Neighborhood"). 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 advised the Board that, in Staff's view, the Applicant's neighborhood delineation is appropriate because it provides an adequate sample that exemplifies the lot and development pattern of the area. The Staff Report included a graphic representation of the Neighborhood and a tabular summary comparing the relevant lot characteristics of lots existing in the Neighborhood to those proposed. Staff informed the Board that it had concluded that the proposed lots were of the same character with respect to the resubdivision criteria as other lots existing within the Neighborhood. The Board's specific findings on the resubdivision are contained below, in the Findings section of this Opinion.

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.⁴ Under the relevant 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 reviewed and approved the elements of the preliminary water quality plan under its purview. The Planning Board's responsibility is to determine whether the combined preliminary and final water quality plan associated with a preliminary plan application conforms with all policies in the Planning Board's Environmental Guidelines that apply to SPAs, including: environmental buffer protection requirements; forest conservation and planting requirements; and site imperviousness limits.

⁴ Section 19-62 (b) of the Montgomery County Code states that

[e]xcept 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: (1) who is required by law to obtain approval of a . . . preliminary plan of subdivision

Site Imperviousness

The Upper Paint Branch SPA 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 level of 10 percent, which will include two existing houses and one new house and associated driveways. Portions of the existing driveways will be removed to ensure 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. Staff advised the Board that it had concluded that the Application conforms to the provisions of environmental overlay zone.

SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

Development Review Staff ("Staff") recommended approval of the Application in its memorandum dated May 20, 2005 ("Staff Report"). Staff testified at the public hearing, presenting its findings consistent with the Staff Report. Staff advised the Board that the Application as conditioned complies with subdivision regulations and recommended approval of the Preliminary Plan.

The Applicant appeared at the hearing represented by legal counsel. Applicant testified that it found the conditions of approval acceptable.

Numerous speakers appeared and testified at the public hearing. A majority of the speakers testified concerning the proposal to abandon the right-of-way and the dedication of a 15-foot wide right-of-way to provide pedestrian connectivity mid-block. The issues addressed by the public speakers and discussed through Applicant's additional testimony and questions posed by the Board to Applicant and Staff included the following:

1. Road Abandonment/Pedestrian Walkway

Speakers expressed different views as to whether there existed a need for a mid-block pedestrian connection. There was also opinion voiced on both sides of the question as to whether a natural or paved surface was desirable.

a. Impact of Proposed Pedestrian Walkway on Neighboring Properties

A letter submitted to the Development Review Division ("DRD"), signed by several residents of the community, expressed support for the proposed resubdivision but opposition to a pedestrian path. The residents in opposition expressed concern for the impact of the pedestrian path on security, safety,

and privacy in the neighborhood. The letter questioned the need such mid-block pedestrian connectivity.

Owners of properties that would abut the proposed pedestrian right-of-way testified against the dedication of land for such a mid-block pedestrian connection. One speaker asked the Board to consider the benefits and burdens on neighbors, the cost to the county to install and maintain the walkway, and other costs, including loss of privacy for two families whose properties would abut the proposed pedestrian walkway. Mirroring arguments presented in the above-mentioned letter, owners of lots that would abut the proposed pathway testified that, among other things, the proposed pedestrian path posed privacy, vandalism, safety, and liability concerns. These owners also testified that they were concerned that pedestrians would cut through private lots instead of remaining on the proposed right-of-way. One speaker sought assurance that the proposed pedestrian right-of-way not be permitted to function as a driveway access to the new lot.

One neighbor who owns a lot confronting the Subject Property expressed support for the pedestrian walkway while stating his preference for green space over the proposed additional lot.

A neighboring lot owner submitted a letter into the record expressing support for a pedestrian path to provide the neighborhood connectivity, which, in this property owner's view, is lacking.

Following consideration of the testimony at the public hearing, the Board suggested that the proposed pedestrian right-of-way should be delineated in a way that would make abundantly clear to all the demarcation line separating the public use right-of-way from privately owned lots. The Board commented that such a clear delineation would minimize the potential for inadvertent trespassing.

During its rebuttal testimony, Applicant proffered adding language to the conditions of approval requiring that Applicant coordinate with Staff and submit for Staff's review a plan that delineates the pathway and a provides a method for delineating the right-of-way from adjoining residential lots. Staff's approval of such a plan would be required prior to recordation of a plat.

b. Type of Proposed Pedestrian Walkway

One neighboring property owner expressed concern regarding the usability by pedestrians of the right-of-way created by abandonment of Somerset Lane, which, as proposed, would not include an improved path. She opined that, without time-specific, concrete action by developers, an unused right-of-way

Another neighbor expressed his concern that the presence of construction crews in the neighborhood would result in inconvenience to neighbors. A speaker questioned whether the subdivision process would allow for further subdivision of the three subject lots, and requested a provision restricting any such further subdivision.

Applicant testified that, given the minimum lot size requirement of 40,000 square feet in the RE-1 Zone, it is unlikely that the three lots would come in for resubdivision. Staff confirmed this, testifying that the current RE-1 zoning would not allow room for resubdivision.

The representative of the Greater Colesville Citizens Association testified that the public speakers at the Hearing represented the diverse nature of opinions in the neighborhoods. He testified that while he did not object to the road abandonment, he did object to the reduction in green space, increase in impervious area, and use for additional housing. He testified that he believed two houses were sufficient for this area and that following the road abandonment, the abandoned area should be retained as green space.

During its rebuttal testimony, and in response to speakers' statements implying that the Applicant would receive the abandoned right-of-way for no consideration, the Applicant discussed the legal status of property that is dedicated. The Applicant pointed out that as the successor-in-interest to the individual or entity that had dedicated the relevant portion of Somerset Lane, the Applicant holds the underlying fee ownership of the land and had a reversionary interest in that land in the event of road abandonment.

FINDINGS

Having given full consideration to the recommendations of its Staff, which the Board hereby adopt and incorporate by reference; the recommendations of the applicable public agencies⁵; the Applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board :

- a) Finds, pursuant to MONTGOMERY COUNTY CODE § 50-35(l), that Preliminary Plan No. 1-05004 substantially conforms to the White Oak Master Plan.
- b) Finds, pursuant to MONTGOMERY COUNTY CODE § 50-35(k), that public facilities will be adequate to support and service the area of the proposed subdivision.

⁵ 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.

might become unusable by pedestrians as had been the case with previous road abandonments in the neighborhood. The speaker supported inclusion of a 5-foot paved pedestrian walkway. A representative of the Greater Colesville Citizens Association testifying generally in opposition to the abandonment of right-of-way, commented that if the abandonment were granted, however, the pedestrian walkway should be paved in order that it be accessible to all members of the community.

Recognizing that there exists an impervious limitation for development on the Subject Property, the Board suggested that an alternative to a standard asphalt impervious path be considered. The Applicant's testified that an ADA-compliant, engineered woodfiber material that is used on playgrounds might be one alternative for Staff to consider for the walkway surface. The Board expressed general support for such a product and agreed that coordination would be required with Environmental Planning Staff in order to ensure that the walkway would be sufficiently pervious.

c. Prior Abandonment of Paper Streets in the Neighborhood

The Staff Report included research indicating that there were at least two previous north/south rights-of-way, which were abandoned and 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 Notley Road. The other right-of-way, which no longer exists, was located on the east side of the subdivision at the end of Notley Road. The Staff Report concluded that the abandonment of the previous two rights-of-way could be viewed as a demonstration by the community and the County that these internal vehicular connections are not wanted or needed. However, the Transportation Staff of M-NCPPC advised the Board of its view that the proposed 15-foot right-of-way would provide an opportunity to maintain what appears to be the last existing neighborhood connection that serves to facilitate internal pedestrian circulation where other adequate alternatives for such a right-of-way are unavailable.

Staff provided testimony as to existing paper streets, previous abandonments, and the history of abandonment of such paper streets. Staff expressed its view that no negative impact on the neighborhood would result from the abandonment of Somerset Lane.

2. Other Concerns

One neighbor questioned the amount that the Applicant paid for the Property. She expressed concern that the building of a new home on the proposed lot would prove disruptive to neighbors and constituted an unfair advantage to the Applicant.

- c) Finds, pursuant to MONTGOMERY COUNTY CODE § 50-29(a)(1), that the size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.
- 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.
- f) The application satisfies all the applicable requirements of Montgomery County Code Chapter 19, Article V (Water Quality Review in Special Protection Areas). This finding is subject to any applicable condition(s) of approval.
- g) Finds, pursuant to MONTGOMERY COUNTY CODE § 50-29(b)(2), that the proposed lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood (delineated in the Staff Report), as analyzed below.

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 Board finds that the proposed lots are of the same character, with respect to frontage, as 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 the Board finds is of the same character with respect to area as the existing lots in the Neighborhood.

Lot Size: The lot sizes in the 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 Board finds that the proposed resubdivision will be of the same character as the other lots in the Neighborhood with respect to their relative sizes.

Lot Width: The lot widths in the Neighborhood range from 109 feet to 214 feet. The proposed lots will have lot widths of 125 feet, 141 feet and 170 feet,

which, the Planning Board finds, demonstrates that the widths are of the same character with those of 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 Board, therefore, finds that the proposed resubdivision will have the same character as the existing lots in the Neighborhood with respect to shape.

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; and, therefore, the Board finds that they are of the same character as to alignment as the existing lots in the Neighborhood.

Suitability for Residential Use: The Board finds that the existing and the proposed lots are zoned residential and the land is suitable for residential use.

- h) Finds, based on testimony and evidence presented, that there exists a need to maintain a pedestrian connection between Orchard Way and Berkley Road in the general area of that portion of Somerset Lane that the Applicant has petitioned to abandon. The Board concurs with the conclusion of Transportation Planning Staff, presented at the hearing and in a memorandum dated May 25, 2005, that the dedication of a 15-foot right-of-way on the Subject Property is essential because the only other north-south connection between the two subdivisions is New Hampshire Avenue, which is located approximately 2,000 feet west of the Subject Property; and, moreover, that there exists a need for a local pedestrian connection for the Paint Branch Farms community to reach Upper Paint Branch Park, Colesville Local Park, the Colesville Elementary School, and neighbors in the Colesville Farm Estates community. The Board further finds that, as conditioned, its approval of the Application will: (1) ensure that there exists sufficient delineation of the right-of-way area such that the likelihood of accidental trespassing on abutting residential lots will be very low; and (2) provide a pathway that is accessible to and useable by all members of the community while being sensitive to impervious limitations on the Subject Property. The Board additionally finds that there is insufficient evidence to support claims that the dedication of right-of-way for a pedestrian path will encourage vandalism, and raises safety and liability concerns; and, moreover, that the benefit to the community of such a pedestrian connection outweighs such unsubstantiated concerns.

- i) Finds that any future objection concerning a substantive issue that was not raised prior to the closing of the Record is waived.

CONDITIONS OF APPROVAL

The Board finds, based on evidence of record (including staff memoranda and testimony), that the combined preliminary and final water quality plan associated with Preliminary Plan No. 1-05004 conforms with all policies in the Planning Board's Environmental Guidelines that apply to SPAs, including: environmental buffer protection requirements; forest conservation and planting requirements; and site imperviousness limits. Having so found, the Planning Board approves the combined preliminary and final water quality plan associated with Preliminary Plan No. 1-05004.

Finding Preliminary Plan No. 1-05004 in accordance with the purposes and all applicable regulations pursuant to Section 50-29 (b) (2), of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-05004, 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 dated May 24, 2005. 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 ("Pedestrian Right-of-Way") dedication on the property for internal neighborhood circulation.
- 8) The Pedestrian Right-of-Way shall be dedicated with proper delineation and shall include appropriate landscaped barricades at both accesses. Applicant shall submit a plan ("Pathway Plan") to staff for its review and approval. The Pathway Plan must include detailed and specific information concerning (1) proposed measures to delineate the boundary of the Pedestrian Right-of-Way; (2) the dimensions, location, and composition of the pathway to be constructed within the Pedestrian Right-of-Way; (3) any landscaping associated with the Pedestrian Right-of-Way; and (4) such additional information requested by Planning Staff. Staff must approve the Pathway Plan prior to recordation of plat. Applicant shall

- install/construct all landscaping, delineation measures, and the pedestrian pathway required by the approved Pathway Plan.
- 9) Compliance with the conditions of approval of the MCDPS stormwater management approval dated September 8, 2004.
 - 10) Prior to record plat, Applicant to enter into an agreement with the Planning Board to limit impervious surfaces to no more than 10 percent as shown on the revised preliminary plan. Any modifications to these plans that increase site imperviousness may require Planning Board approval.
 - 11) Prior to release of building permits, Applicant to demonstrate conformance to impervious surface limits as shown on the revised preliminary plan. Compliance with conditions of MCDPS (Health Dept.) septic abandonment dated July 26, 2004.
 - 12) Other necessary easements.

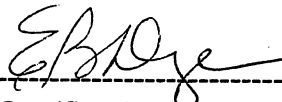
This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among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

APPROVED AS TO LEGAL SUFFICIENCY
LAB
M-NCPPC LEGAL DEPARTMENT
DATE 10/12/05

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

CERTIFICATION OF BOARD VOTE ADOPTING OPINON

At its regular meeting, held on Thursday October 20, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of Commissioner Bryant, seconded by Commissioner Wellington, with Chairman Berlage and Commissioners Bryant, Robinson, and Wellington voting in favor of the motion, ADOPTED the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan 1-05004, Colesville Farm Estates. Commissioner Perdue was absent.



Certification As To Vote of Adoption
Technical Writer

Macris, Hendricks and Glascock, P.A.
Engineers • Planners • Surveyors • Landscape Architects

9220 Wightman Road, Suite 120
Montgomery Village, Maryland
20886-1279

Phone 301.670.0840
Fax 301.948.0693

www.mhgpa.com



June 26, 2007

Maryland National Capital
Park and Planning Commission
Attention: Cathy Conlon
Development Review Division
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Colesville Farm Estates
Amendment to the Preliminary Plan of
Subdivision #1-05004
MHG Project No. 04.104

Dear Ms. Conlon,

With the submission of the Amended Preliminary Plan of Subdivision accompanying this letter, I am requesting on behalf of the applicant, Mr. Arthur Williams, an amendment to Conditions # 7 or # 8 of the Preliminary Plan Opinion 1-05004, dated Oct. 26, 2005.

Plan #1-05004 approved the re-subdivision of two residential lots into three, with one new dwelling to be built. The approval was contingent upon Montgomery County Council approval of the abandonment of the un-built portion of the Somerset Lane right-of-way crossing the new middle lot. Subsequent to Planning Board approval of that Preliminary Plan, the Council voted to approve the abandonment, subject to recordation of plats. A copy of the Council Resolution is included in the submission package.

Based on the recommendation of the Transportation Planning Department, the Board conditioned approval of the abandonment and of the re-subdivision on retention of a 15' wide ROW as a north/south pedestrian connection. Specifically, the Preliminary Plan imposed two conditions relating to a pedestrian connection across the new middle lot.

Condition # 7: Record plat to depict a 15-foot right-of-way- ("Pedestrian Right-of-Way") dedication on the property for internal neighborhood circulation.

Condition # 8: The Pedestrian Right-of-Way shall be dedicated with proper delineation and shall include appropriate landscaped barricades at both accesses. Applicant shall submit a plan ("Pathway Plan") to staff for its review and approval. The Pathway Plan must include detailed and specific information concerning (1) proposed measures to delineate the boundary of the Pedestrian Right-of-Way; (2) the dimensions, location, and composition of the pathway to be constructed within the Pedestrian Right-of-Way; (3) any landscaping associated with the Pedestrian Right-of-Way; and (4) such additional information requested by Planning Staff. Staff must approve the Pathway Plan prior to recordation of plat. Applicant shall install/construct all landscaping, delineation measures, and the pedestrian pathway required by the Preliminary Plan."

The Applicant has tried to comply with these two conditions, but they have proven irreconcilable. DPW&T, the agency which must accept the dedication of the Pedestrian Right of Way, requires that the Pathway be built to County standards for safety and maintenance reasons. These County standards require asphalt or concrete pavement, i.e., an impervious surface path, together with lighting. However, the Environmental Planning Department, which is to approve the pathway plan, requires that the pathway be made of a pervious surface. Such a preference is consistent with the Planning Board views articulated to DPW&T at the time of your review of the related abandonment.

If the path is paved rather than created with wood chips or some other pervious material, the improvement would cause the three lot subdivision to exceed the 10% cap on imperviousness required by the Upper Paint Branch overlay zone. Two of the lots are already improved, with a new dwelling proposed on the third, new lot. Moreover, since there are no existing sidewalks in the community, the requirement for pavement would introduce an uncharacteristic element into the neighborhood.

So the Applicant is caught between two provisions of the subdivision approval. The Applicant cannot effect the terms of the Preliminary Plan approval because DPW&T will not, despite petitions made to it, waive the requirement for a paved pathway in lieu of a pervious one. On the other hand, Environmental staff understandably prefers the pervious path over an imperviousness one, and in any event, without Board approval, cannot waive the 10% cap and allow the paving to be installed--an action only the Board can take.

Therefore, the Applicant is reluctantly returning to the Board to seek your resolution of this dilemma: The options available to the Board are, we believe, the following:

1. Allow the Applicant to dedicate the 15' ROW without installing a path surface of any type. DPW&T will accept such a dedication so long as it is unimproved. The Applicant would in this option provide landscaped ties periodically along the ROW boundary to delineate the existence of this pedestrian way. The Applicant would avoid liability for the use of the path by virtue of the dedication, and there would be no improvements to maintain.
2. Waive the 10% imperviousness cap by just the amount needed to permit the 5' wide pavement required to meet DPW&T standards for accepting the dedication. In this option, DPW&T would also require the installation of path lighting, an element that may not be desirable in the neighborhood. The amount of impervious surface for the pathway within the subject property is about 2400 sf, almost the footprint of the new dwelling that is to be built on the middle lot.
3. Delete in its entirety a requirement for either the dedication of the ROW or the installation of a path. The connection in the neighborhood does not exist today; neither DPW&T nor DPS desired the path initially, and the Subdivision Review staff has advised the Applicant that it would support relinquishment of the ROW. The path does not make a direct connection to a park or other

recreational use. The community was mixed in its view as to the desirability of the path and, given the problems in establishing it, the Board may wish to revisit its need. Transportation Planning may remain of the view that this connection is desirable.

Of the above options, the first seems best suited to accomplish the original objectives of the Planning Board and the Applicant, which were:

1. Preserve a ROW for a possible neighborhood connection north/south
2. Relieve property owner for liability for a public use.
3. Observe the imperviousness cap and preserve existing trees by leaving the ROW in its natural state.

To meet these objectives, the Amended Preliminary Plan submitted with this application proposes the following changes to the Approved Plan:

1. There is still a 15'-wide parcel to be dedicated to Montgomery County for public access, but it is to remain an un-improved right-of-way; we are no longer proposing a constructed pathway. The right-of-way be marked with signs at either end and delineated by railroad ties installed flush with the ground.
2. A paved path will be constructed within the unimproved right of way adjacent to Berkley Road.
3. The amount of impervious area represented by the proposed house has been increased from 3,200 square feet to 3,400 square feet.

In sum, the Applicant is willing to install either a paved path or an unimproved one appropriately delineated to show its existence to DPW&T and thereby comply with the Preliminary Plan requirement for a dedication. Even though the Applicant is also prepared to install the pervious path with the landscaping and other elements that MNCPPC staff has requested, DPW&T will not accept the ROW so improved for dedication. Unless MNCPPC were to accept the dedication of the ROW with the pervious path (and your Parks Department has declined our offer), then the Applicant either needs relief from 1) the requirement to make the dedication, or 2) the requirement to install a path within the right of way; or 3) the 10% impervious cap, so that the path can be asphalt.

Thank you in advance for your consideration of our request. Please contact me if you have any questions or need additional information.

Sincerely,



George Haskins

ENGINEER'S CERTIFICATE
 I hereby certify that the proposed subdivision shown on this plan was prepared in accordance with the provisions of the Subdivision Control Act, Annotated Code of Maryland, Title 28, Subtitle 1, and the Regulations of the State Board of Public Works, Title 28.01, and that the same conform to the provisions of the said Act and Regulations. I am a duly Licensed Professional Engineer in the State of Maryland, License No. 10000.
 Date: 6/28/07
 Signature: [Signature]
 Name: [Name]
 Address: [Address]
 Telephone: [Phone Number]

Lot No.	Area (Acres)	Area (Sq. Ft.)	Improvements	Notes
1	0.00	0.00		
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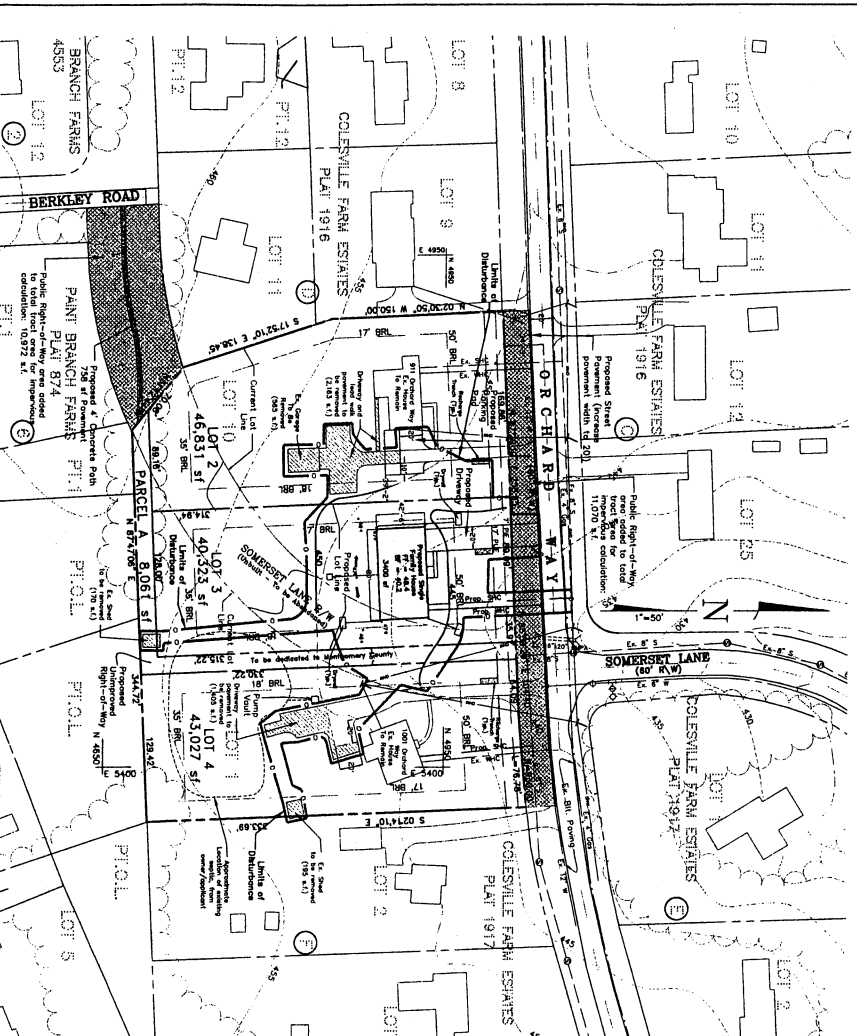
- NOTES**
1. Temporary from MDCR 200 SHEET 218 NE 01 with 5' contour intervals.
 2. Boundary information from Public Utility Commission, Chesapeake Farms Estate, recorded among the land records of Montgomery County, Maryland, as Plats 1916 and 1917.
 3. Water and sewer collection 8'-0" and 5'-0" respectively.
 4. Utility easements for electric, gas, water, sewer, and storm water are shown. The 10' easement for electric utility easement is shown in red. The 10' easement for gas utility easement is shown in blue. The 10' easement for water and sewer utility easement is shown in green. The 10' easement for storm water utility easement is shown in yellow.
 5. The property is zoned R-1. The proposed land use is residential.
 6. Three lots and one parcel are proposed by this plan.
 7. Parcel A is to be dedicated to Montgomery County as Unimproved Right-of-Way.
 8. A Notice of Intention to Dedicate Right-of-Way to Montgomery County has been approved by the Montgomery County Board of Public Works.
 9. A Preliminary Forest Conservation Plan has been approved by the Montgomery County Board of Public Works.
 10. This site is within Planning Area 23, Cambridge/White Oak & Valley.
 11. The site abuts to the east along the 23rd Contour Interval. The State of Maryland has designated this portion of the watershed as a "Critical Area". The site lies within the Upper Point Beach Special Protection Area.
 12. This plan is not for construction purposes.
 13. All areas are to be developed in accordance with the Montgomery County Zoning Ordinance.
 14. All areas are to be developed in accordance with the Montgomery County Subdivision Control Act.
 15. Building locations and grading on individual lots are shown. Final building locations and grading to be completed by building permit process.
 16. Existing easements are shown.
 17. Surveying utility easements are shown.
 18. Electric utility easement is shown.
 19. Gas utility easement is shown.
 20. Water and sewer utility easement is shown.
 21. Storm water utility easement is shown.
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OWNER/APPLICANT
 Mr. Arthur W. Williams, III
 7618 Royal Dominion Drive
 Bethesda, MD 20817-7618
 (301) 236-9299

TAX MAP AS IS
 AMENDED PRELIMINARY PLAN OF SUBDIVISION
 PART OF LOT 10 - BLK. D & LOT 1 - BLK. F & SOMERSET R/W
 COLESVILLE FARM ESTATES
 Plat No. 1916 & 1917
 5TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

MHG Macris, Handrick & Glascock, P.A.
 Engineers & Planners
 Landmarks Architects
 5000 Montgomery Avenue, Suite 100
 Bethesda, MD 20814
 Tel: 301-462-0000
 Fax: 301-462-0000
 www.mhg.com

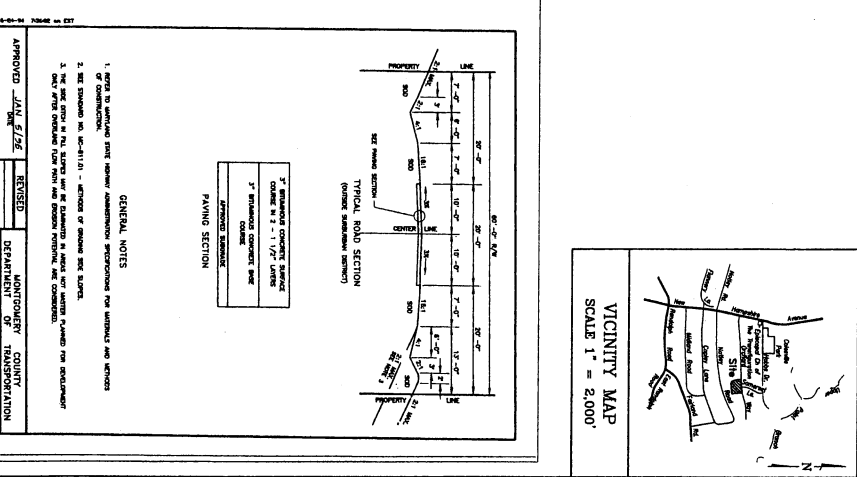
Project No. 2006-0729
 Date: 04-10-07
 Sheet: 1 of 1



REGULATORY STANDARDS (R-1 Development)
 (Compare MDCR 218 NE 01)

Category	Standard	Proposed/Provided	Min. Required
Density of Development per Acre	Units per Acre (R-1-C-120)	40,000 k.t./acre	40,000 k.t./acre
	Lot Area (R-1-C-120)	2,500 sq. ft./lot	2,500 sq. ft./lot
Setback	Front (R-1-C-120)	25 ft.	25 ft.
	Side (R-1-C-120)	25 ft.	25 ft.
Height	Maximum (R-1-C-120)	35 ft.	35 ft.
	Minimum (R-1-C-120)	10 ft.	10 ft.
Building Coverage (R-1-C-120)	Maximum (R-1-C-120)	15%	15%
	Minimum (R-1-C-120)	5%	5%

AREA TABULATION
 Area: 217 ac. (2,342 k.t.)
 Area of Land to be Developed: 200 ac. (2,160 k.t.)
 Area of Land to be Preserved: 17 ac. (182 k.t.)



GENERAL NOTES

1. REFER TO ALL OTHER SHEETS AND SPECIFICATIONS FOR DETAILS AND NOTES.
2. SEE STANDARD SPECIFICATIONS FOR ROADWAY CONSTRUCTION.
3. THE ROAD CROSS SECTION IS SHOWN IN THE ATTACHED DRAWING. ONLY THE ROADWAY CROSS SECTION IS TO BE CONSTRUCTED.

APPROVED: [Signature]
 DATE: [Date]

REVISIONS:
 NO. | DATE | DESCRIPTION