



Pre-Preliminary Plan 720120060: Burning Tree Estates

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Staff Report Date: 11/8/13

Description

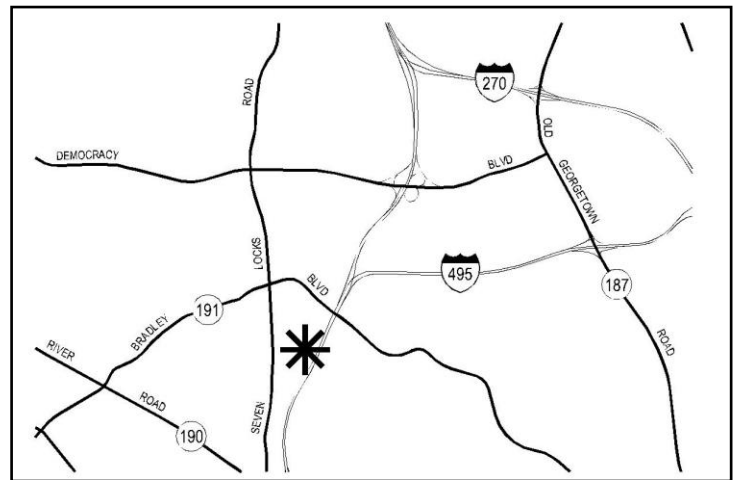
Pre-Preliminary Plan 720120060: Burning Tree Estates
Resubdivision of a lot approved under the R-200 Density Control Method of development Located at 7610 Cataret Road Bethesda MD, 2.44 acres, R-200 Zone, Potomac Subregion Master Plan.

Staff Recommendation: Denial

Submittal Date: June 19, 2012

Applicant: UM08 LLC, Edward S. & Celia Chang

Review Basis: Chapter 50, Chapter 59



Summary

This Application was submitted by the Applicant to determine the Planning Board’s position on Section 59-C-1.429 of the Zoning Ordinance. This Section provides guidance on the circumstances by which existing lots that were originally approved using the Density Control method of development, may be resubdivided. Staff holds the position that the plain reading of this section prohibits resubdivision of Density Control lots *if it would result in a decrease in the average net lot areas of all lots within the Density Control development containing the lot.* The Applicant contends that resubdivision is only *prohibited if it would result in a reduction in the average net lot areas of all lots to less than the minimum average lot area required by the zone.*

For purposes of this discussion, this Staff Report focuses on the interpretation of Section 59-C-1.429 rather than the analysis of the resubdivision of the Applicant’s property. To date, this particular issue has not been brought to this, or any previous Planning Board for discussion. The Staff interpretation presented herein has historically been accepted and has likely dissuaded potential applicants to make similar resubdivision requests. This Application was submitted so that the matter could be presented to the Planning Board for discussion. As a Pre-Preliminary Application, the interpretation provided by the Planning Board will be a determining factor in the Applicant’s decision on whether to proceed with a formal Preliminary Plan application to resubdivide the property.

DISCUSSION of DENSITY CONTROL DEVELOPMENT

The Density Control method of development was an optional development method available in the R-200, R-150, R-90 and RMH-200 zones. The use of the Density Control option was discontinued as of September 23, 1986 (59-C-1.44), with some exceptions that are not germane to this discussion. Density Control was akin to a Cluster development method which remains available in current residential zones. The purpose of Density Control was *to allow homebuyers a choice in lot size according to their needs, to preserve open space, tree cover, scenic vistas, and outstanding natural topography, to provide recreational areas and to prevent soil erosion*. This purpose was to be fulfilled by *permitting variations in lot sizes without an increase in overall density of development within a subdivision*.

Section 59-C-1.429 of the Zoning Ordinance is the focus of the discussion in this Staff Report and reads as follows:

“59-C-1.429. Resubdivision Controlled. Resubdivision of land subdivided under this method is prohibited if it would result in a reduction in the average net lot areas, except for any land which has been reclassified to a different zone. Record plats shall bear the notice “Density Control Development – Resubdivision Strictly Controlled,” and an indication of the zone in which the land is classified.”

This discussion focuses on the phrase... “prohibited if it would result in a reduction of the average net lot areas,...”. Density Control developments were required to meet the standard method zoning requirements unless modified by Section 59-C-1.43 (Density Control Development Standards). This section provides for smaller lot sizes than allowed under the standard method, but it also requires that lots meet certain *average lot size requirements*. As previously mentioned, there was no increase in density provided by the Density Control option above the standard development requirements. In the case of R-200 Density Control for example, density remained at no more than 2 units per acre (assuming no MPDU bonus).

For purposes of this discussion, this Staff Report will use the R-200, Density Control development standards as the example and analyze a hypothetical development to help illustrate the issues being presented. See Section 59-C-1.4 *Density Control* (Attachment A) for reference.

R-200 Density Control Development Standards

59-C-1.431 Net Lot Area (Square Feet)

No lot shall be less in area than:	15,000
The average area of all lots in any subdivision shall be at least:	20,000

In the hypothetical 40 acre, Density Control subdivision outlined in red on the following page, the assumption is that the subdivision was approved in accordance with the R-200 Density Control standards, and that it was properly platted. In addition, these other assumptions are made:

- 1) On the 40 acre property, the Planning Board approved 60 one-family lots for a density of 1.5 units per acre (Below the 2.0 units per acre allowed)
- 2) 10 acres were dedicated to roads leaving 30 acres available for development
- 3) The smallest lot is 15,000 square feet in area and the largest lot is 100,000 square feet in area. (15,000 square feet is the minimum lot area allowed)
- 4) Within the 30 acres of developable area, the average area of the 60 lots is 22,000 square feet. (Above the 20,000 square foot minimum)

Staff Position

Any resubdivision of a lot(s) in this 60 lot subdivision that results in creating an additional lot(s) is prohibited because the addition of even one lot to the 60 lot subdivision reduces the average net lot area of the (now 61) lots. Staffs' historical reading of Section 59-C-1.431 has been that a resubdivision to create additional lots in an approved and platted Density Control subdivision is prohibited because it mathematically must decrease the average lot area. Refer to the following calculations using the hypothetical subdivision provided:

Total Area of all Lots = 30.30303 acres or 1,320,000 square feet

Number of Lots = 60

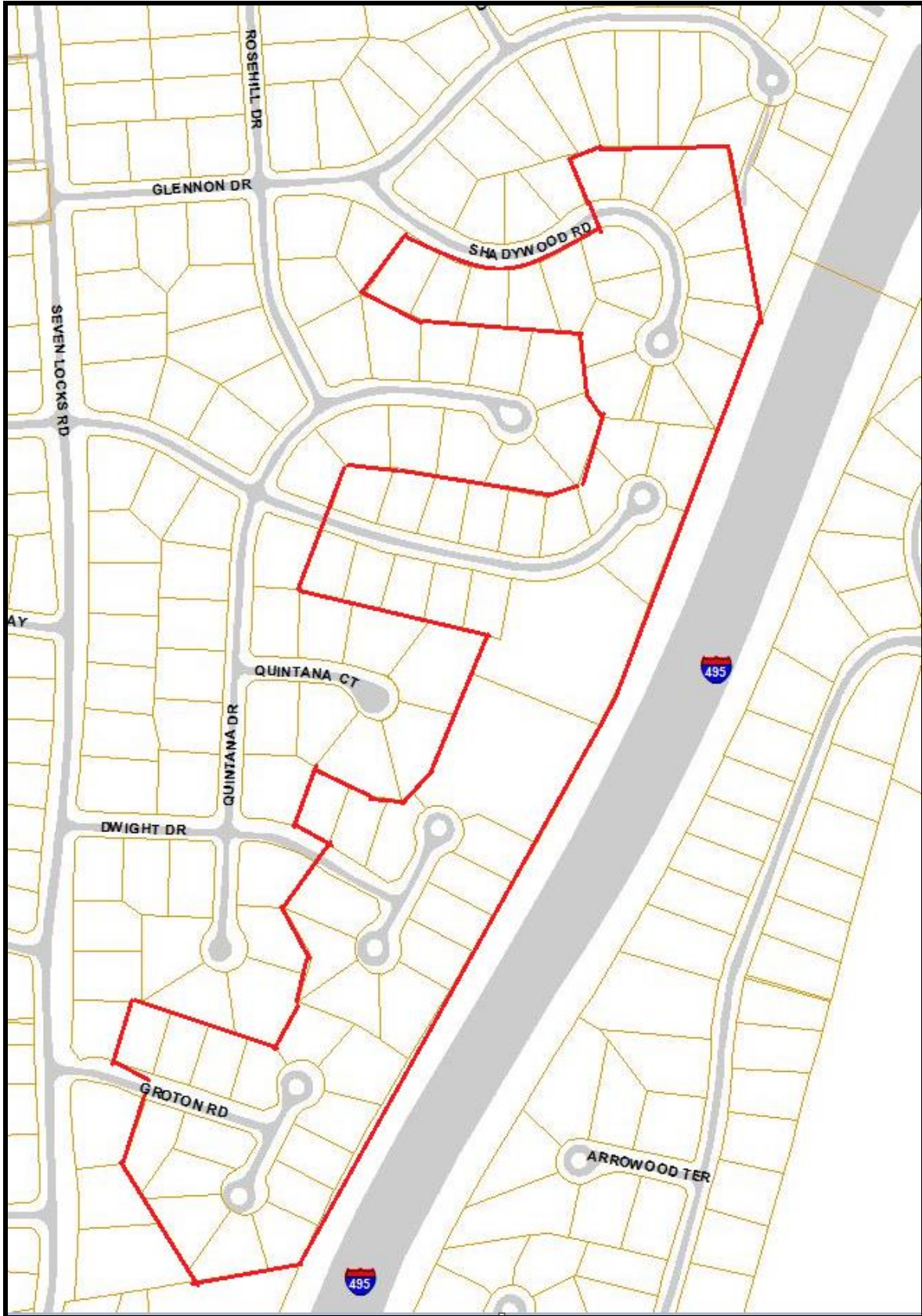
*1,320,000 square feet / 60 = **22,000 square feet average net lot area***

If one of the 60 lots is resubdivided into two lots:

Total Area of all Lots = 30.30303 acres or 1,320,000 square feet

Number of Lots = 61

*1,320,000 square feet / 61 = **21,639.344 square feet average net lot area***



So as to not confuse the issue, this Staff Report intentionally avoids analyzing the detail of a resubdivision for the Applicant's Density Control lot. This Report focuses on the Applicant's interpretation of Section 59-C-1.429 which is used as the justification for his resubdivision application.

Applicant's Position

In the Statement of Justification Letter dated, June 18, 2012, (Attachment B) the Applicant argues the basis for their support of a resubdivision of a specific property at 7610 Carteret Road, which is a Density Control lot. In general terms, the Applicant contends that lots within a Density Control development may be resubdivided as long as the average net lot area does not fall below the *minimum average lot area required by the zone*. In the hypothetical R-200 subdivision presented above, the Applicant suggests that one of the 60 lots could be resubdivided into two lots as long as the average net lot area of the (now) 61 lot subdivision does not fall below 20,000 square feet. The Applicant believes that the result of this hypothetical resubdivision is allowed since the average net lot area is only reduced from 22,000 square feet to 21,639.344 square feet, which remains above the 20,000 square foot minimum prescribed by the Zoning Ordinance.

The Applicant cites inconsistent terminology within successive sections of the Zoning Ordinance for the terms "net lot area" (59-C-1.431), "average net lot areas" (59-C-1.429), and "average net area" (Section 59-C-1.427) and believes that Staff has incorrectly interpreted these inconsistencies and that this forms the basis of Staffs' *incorrect* position on this issue.

Staff Response and Conclusion

The terms used to describe *average net lot area* within the Zoning Ordinance do perhaps change from section to section; however, it is Staffs' opinion that they do not confuse the issues. Following is the historical Staff interpretation of Sections 59-C-1.427, 59-C-1.428, and 59-C-1.429.

59-C-1.427. Maintenance of Average Area

The average net area of all of the lots in any record plat, together with all record plats previously recorded in the same subdivision, shall at no time be less than the average required for the zone.

Staff: This section required that at no time may the average net lot area for all lots within a density control subdivision be less than the minimum average lot area required by the zone. This section appears to recognize the fact that lots within the same subdivision may not be platted at the same time or that a subdivision may be phased over a number of years and that continuous monitoring of the minimum average lot area is required as approved lots are recorded.

59-C-1.428. Transfer of Excess Area

The planning board may approve the transfer of area from a subdivision to an adjoining subdivision in the same zone if both are subdivided under this method and the combined development will have an average lot area no smaller than required for the zone.

Staff: This section allowed for new density control subdivisions to “connect” to existing density control subdivisions as long as the combined average net area for the lots in both subdivisions did not fall below the minimum average lot area required for the zone.

59-C-1.429. Resubdivision Controlled

Resubdivision of land subdivided under this method is prohibited if it would result in a reduction in the average net lot areas, except for any land which has been reclassified to a different zone. Record plats shall bear the notice “Density Control Development – Resubdivision Strictly Controlled,” and an indication of the zone in which the land is classified.

Staff: As opposed to the previous two sections, this section uses the term “Resubdivision” and therefore, only refers to changing the configuration of a lot or parcel shown on a record plat. The previous two sections, discussed above, refer only to “Subdivisions” and they provide guidance on adding new lots to those already approved or platted.

Section 59-C-1.429 prohibits increasing the number of lots by resubdividing existing lots by making it technically impossible to meet the requirement to maintain the average net lot size for the approved subdivision. The language in this section gives backbone to the required plat notice, “Density Control Development – Resubdivision Strictly Controlled.” To quote from the Applicant’s letter... “Mathematically, one simply cannot increase the number of lots in a defined area without reducing the average size of the lots.” Staff agrees with this statement and it is intentionally restrictive. Staff notes that this language does not preclude all resubdivisions in Density Control, for instance; two Density Control lots may be resubdivided by minor subdivision for a minor lot line adjustment, or to combine two lots into one by minor subdivision. Neither of these two resubdivisions increase the number of lots, but they are technically, resubdivisions.

STAFF RECOMMENDATION

Staff recommends that the Planning Board endorse the Staff position on the Resubdivision of Density Control Lots as presented by this Staff Report. The effect of this endorsement will result in advice to the Applicant that the Planning Board will oppose the resubdivision of the property located at 6710 Cataret Road in Bethesda, MD. The Planning Board’s endorsement will also confirm Staffs’ long held stance that resubdivision in density control developments, under similar circumstances, conflict with Section 59-C-1.429 of the Zoning Ordinance.

Attachments


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661, 271 A.2d 174 (1970); in Marathon Builders, Inc. v. Montgomery County Planning Board of the Maryland-National Capital Park & Planning Commission, 246 Md. 187, 227 A.2d 755 (1967); and in Hertelendy v. Montgomery County Board of Appeals, 245 Md. 554, 226 A.2d 672 (1967). Section 59-C-1.3 [formerly §104-5(a)] is quoted in part in Creative Country Day School of Sandy Spring, Inc. v. Montgomery County Board of Appeals, 242 Md. 552, 219 A.2d 789 (1966). Section 59-C-1.3 [formerly §59-44] is quoted in part in Kanfer v. Montgomery County Council, 35 Md.App. 715, 373 A.2d 5 (1977). Section 59-C-1.3 [formerly §§111-5(a) and 111-7(a)] is cited in Montgomery County Council v. Kacur, 253 Md. 220, 252 A.2d 832 (1969). Section 59-C-1.31 is cited in Custer Environmental, Inc. V. 9305 Old Georgetown Partnership, 345 Md. 284, 691 A.2d 1336 (1997). Section 59-C-1.31(d) is cited in Pan American Health Organization v. Montgomery County, 889 F.Supp. 234 (D.Md. 1994). Section 59-C-1.31 is cited in Pan American Health Organization v. Montgomery County, 338 Md. 214, 657 A.2d 1163 (1995)—Certified question to Court of Appeals of Maryland from the Fourth Circuit Court of Appeals inquiring whether Montgomery County had the authority to enact the zoning text amendment that had the effect of prohibiting PAHO from locating its headquarters in a residentially zoned area of the County. The Court of Appeals held that the enactment was within the authority of the District Council to enact under the Regional District Act. The Court further explained that PAHO was not a publicly owned or publicly operated use that would remain exempt from zoning restrictions, despite its status as a public international organization. References to ZTA 93014 appear in the Zoning Ordinance at §§59-A-2.1, 59-C-1.31, 59-C-2.3, 59-C-4.2(e), 59-C-6.22(a) and (e), 59-C-7.5 and -7.52, 59-C-8.1, 59-C-8.3(a) and (d), and 59-G-2.00. Section 59-C-1.39 is interpreted in West Montgomery County Citizens Association v. Maryland-National Capital Park and Planning Commission, 309 Md. 183, 522 A.2d 1328 (1987)—The provision in the Zoning Ordinance delineating the creation of transfer of development rights (TDRs) was analyzed by the Court of Appeals and found to involve an invalid exercise of legislative authority. The provision did not establish the maximum density for the affected properties and violated the division between zoning and planning, procedurally and substantively. The Court of Appeals invalidated the zoning decision concerning density of residential development because that decision was made by the District Council through the planning process, rather than through the zoning process mandated by State law.

See County Attorney Opinion dated 4/26/99 explaining that a transfer of development rights easement continues to restrict development even when the underlying zoning of the property is changed. See County Attorney Opinion dated 10/2/90 explaining that, without a main dwelling or a transferable development right to support it, no farm-tenant house may be constructed.

Montgomery County's TDR program, now covered in §§ 59-C-1.33, -1.39 and also in §§ 59-C-9 and -10 (formerly treated in § 59-A-6.1 and §§ 59-C-11.1 through -11.5) is referred to in connection with a discussion of the County's growth policy in P. J. Tierney, *Maryland's Growing Pains: The Need for State Regulation*, 16 U. of Balt. L. Rev. 201 (1987), at p. 224.



Sec. 59-C-1.4. Density control development.

59-C-1.41. Purpose and description.

The purpose of this method of development is to encourage subdivisions which will allow home buyers a choice of lot sizes according to their needs; to preserve open space, tree cover, scenic vistas and outstanding natural topography; to provide recreational areas and to prevent soil erosion. This purpose is accomplished by permitting variations in lot size without an increase in

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the overall density of development within a subdivision. As of September 23, 1986, no additional record plats may be approved for recordation by the planning board within the provisions of this section 59-C-1.4, subject to the exception stated in 59-C-1.44, below.

59-C-1.42. Special requirements.

In addition to the development standards set forth in section 59-C-1.43, the following regulations shall apply:

59-C-1.421. Development Approval Procedure. The procedure for approval shall be as set forth in the subdivision regulations, being chapter 50 of the County Code.

59-C-1.422. Community Water and Sewer. No land shall be subdivided under this method and no building permit shall be issued unless the resulting development will be connected to community water supply and sewerage systems.

59-C-1.423. Unsuitable Lots. To control what may be included on a plat for the purposes of the average net lot area requirement, the planning board, at its discretion, may exclude from such average any lot or lots which by reason of size, shape, location or for other good cause, are not reasonably suitable for single-family residential development, or the planning board may require replatting of such lots.

59-C-1.424. Limitation on Size of Certain Lots. The planning board may require that lots have an area no smaller than the average net lot area required for the zone, if they adjoin any of the following:

- (a) Major highways;
- (b) Limited-access highways;
- (c) Railways;
- (d) Land zoned for multiple-family, commercial or industrial use; or
- (e) Lots developed within the standard development provisions of section 59-C-1.32.

59-C-1.425. Land Dedicated to Public Use. Land to be dedicated on the subdivision record plat for recreation, parks, school sites or other public use and approved by the planning board, may be included in the calculation of the average net lot area.

59-C-1.426. Public Rights-of-Way. Areas dedicated for public roads, streets, sidewalks, crosswalks, utility and storm drainage rights-of-way and for the location of other

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necessary facilities appurtenant thereto, shall not be included in the calculation of the average net lot area.

59-C-1.427. Maintenance of Average Area. The average net area of all of the lots in any record plat, together with all record plats previously recorded in the same subdivision, shall at no time be less than the average required for the zone.

59-C-1.428. Transfer of Excess Area. The planning board may approve the transfer of area from a subdivision to an adjoining subdivision in the same zone if both are subdivided under this method and the combined development will have an average lot area no smaller than required for the zone.

59-C-1.429. Resubdivision Controlled. Resubdivision of land subdivided under this method is prohibited if it would result in a reduction in the average net lot areas, except for any land which has been reclassified to a different zone. Record plats shall bear the notice "Density Control Development—Resubdivision Strictly Controlled," and an indication of the zone in which the land is classified.

59-C-1.43. Development standards.

All requirements of the standard method of development in the respective zones, as set forth in subsections 59-C-1.31 and 59-C-1.32, shall apply except as specifically modified in this section 59-C-1.43.

	R-200	R-150	R-90	RMH 200
59-C-1.431. Net Lot Area (Square Feet).				
(a) No lot shall be less in area than:	15,000	10,500	8,000	15,000
(b) The average area of all lots in any subdivision shall be at least:	20,000	15,000	9,000	20,000
59-C-1.432. Minimum Lot Width (in Feet).				
(a) At front building line:		80		
(b) At existing or proposed street line:		25		
59-C-1.433. Yard Requirements for a Main Building (in Feet). Each lot shall have building lines parallel to each of its boundaries and so located as to provide front, side and rear yards as specified in this section.				

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	R-200	R-150	R-90	RMH 200
(a) Setback from street:		30		
(b) Setback from adjoining lot,				
Either side:		10		
Rear:		25		
59-C-1.434. Maximum Building Height (in Feet). For a main building in the R-150 zone, the height shall not exceed 2 ½ stories nor 35 feet; except, that if each side yard is increased by one-half foot for each additional foot of height, this may be increased to not more than 3 stories nor 40 feet.				
For an accessory building which shall not exceed 2 stories:		25		
59-C-1.435. Building Coverage. Maximum percentage of net lot area that may be covered by buildings, including accessory buildings:		30		
59-C-1.436. Yard Requirements for an Accessory Building (in Feet). An accessory building shall be located only in a rear yard and shall occupy not more than 25 percent thereof. It shall be set back at least as follows:				
—from the front lot line or proposed street line:	60	60		
—from a rear lot line of an interior lot:		2		
—from an alley line:		5		
—from a side lot line of an interior lot:		2		
—on a corner lot:				
(a) If the adjoining lot on the side street is in a residential zone and has frontage on that street, the setback from the side street line shall be:		30		
and the setback from the rear lot line shall be:		10		
(b) If there is no residentially zoned lot on the side street fronting on that street in the same block, the setback from the side street line shall be:		15		

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59-C-1.44. Discontinuance.

The density control method of development is discontinued. No record plats pursuant to this method of development may be approved for recordation by the planning board on or after September 23, 1986, with one exception. If the subject property is less than 5 acres, and if it is part of a density control subdivision that was previously approved by the planning board but expired without recordation of a plat for the subject property, the planning board may approve a preliminary plan of subdivision and approve a plat for recordation after September 23, 1986. Lots recorded prior to September 23, 1986, pursuant to this method of development and included in record plats containing the notice concerning control of resubdivision specified by section 59-C-1.429, above, are not nonconforming. Development on such lots must be in accord with the provisions of this section 59-C-1.4.

(Legislative History: Ord. No. 8-81, §§ 10, 11; Ord. No. 10-53, § 5; Ord. No. 10-81, § 1.)

Sec. 59-C-1.5. Cluster development.**59-C-1.51. Purpose and description.**

The purpose of the cluster method of development is to provide an optional method of development that encourages the provision of community open space for active or passive recreation as well as the preservation of trees. The cluster method provides for flexibility in lot layout and for variety in the types of residential buildings while preserving the same limitations on density of dwelling units per acre as normally permitted in the respective zones; protecting the character of existing neighborhoods; and providing open space for common use. In order to accomplish this purpose certain changes in lot areas and dimensions are permitted, a greater variety of building types is introduced in certain zones, and the use of this method of development and site plan approval for portions of such development are subject to approval by the Planning Board.

59-C-1.52. Special requirements.

In addition to the development standards set forth in section 59-C-1.53, the following regulations shall apply:

59-C-1.521. Development Approval Procedure. The procedure for approval of one-family detached dwellings and one-family semi-detached dwellings shall be as set forth in section 50-39 of the Subdivision Regulations, being chapter 50 of the Montgomery County Code. At the time of preliminary subdivision plan approval, the planning board may require that, in order to resolve specific environmental, transportation or compatibility issues, certain of the detached and semi-detached dwellings shall be subject to site plan approval as set forth in division 59-D-3 and shall not be included in an application for record plat until a site plan is approved for those portions of the



ATTORNEYS

PATRICK L. O'NEIL
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June 18, 2012

BY HAND DELIVERY

Mr. John Carter
Area 3 Chief
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: **Statement of Justification**
Pre-Preliminary Plan No. 720120060
7610 Carteret Road, Bethesda, Maryland

Dear Mr. Carter:

On behalf of our client, Edward and Celia Chang c/o UMO8, LLC (the "Applicant"), we are submitting this Pre-Preliminary Plan Application to seek the Planning Board's determination on whether the Applicant's property, located at 7610 Carteret Road in Bethesda, Maryland (the "Property") may be resubdivided. The Property is 106,174 square feet within a density controlled area of the R-200 Zone, which requires the maintenance of an average area of 20,000 square feet for each lot within the underlying subdivision. This Application seeks the Planning Board's authorization to resubdivide the Property as long as the resulting lots maintain the 20,000 square foot threshold for the density control subdivision.

Property Information

The Applicant's property was recorded in 1963 on Plat No. 7204. A copy of the Plat is attached. The Property was originally zoned R-R (Rural Residential) and was subdivided pursuant to the density control provisions of the zone.¹ The applicable density control provisions require that the net area of all the lots in any record plat, together with all the lots in other record plats in the same subdivision, must be at least 20,000 square feet. This

¹ The R-R Zone was redesignated to the R-200 Zone in 1973. Notwithstanding the redesignation, the relevant development standards and density control provisions for the R-200 Zone are essentially the same as the R-R Zone.



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allows lots in density controlled areas to be as small as 15,000 square feet, even though the minimum lot size for the zone is 20,000 – as long as the average area of all the lots meets the 20,000 square foot zoning minimum. For purposes of net lot area calculations, certain public dedications are automatically excluded from the calculations.

Planning Staff provided a copy of the preliminary plan for the underlying density control subdivision. A copy of this plan is attached. The approved plan of subdivision was comprised of 55 lots and 2 parcels, including the Property. Somehow the area of the original subdivision yielded 2 additional lots at the time of recordation and resulted in 57 recorded lots and 2 recorded parcels. The lots/parcels were recorded in the Land Records of Montgomery County within six plats from 1963 to 1964. A map depicting the recorded lots/parcels that comprise the subdivision is attached. Applicant's engineer consultant, Site Solutions, Inc., has determined that the average net area for the lots/parcels in the subdivision is 20,784 square feet. A document showing Site Solutions' calculations, along with its net lot area calculations regarding the proposed resubdivision, is attached.

The subdivision is directly adjacent to the Capital Beltway and to the east of Seven Locks Road, between Shadywood Road to the north and Groton Road to the south. The subdivision parcels are located in the center of the subdivision, with Applicant's Parcel "B" immediately north of the other parcel, Parcel "A". As the map shows, the two parcels are distinctly larger than the lots in the subdivision. Applicant's property is 106,174 square feet and Parcel "A" is 108,403 square feet. The record is otherwise unclear why the parcels were not platted as lots.²

Applicant surmises that the parcels were originally distinguished from the lots in the subdivision because they were unbuildable due to their steep topography. The parcels sloped steeply toward the Beltway before leveling off. Applicant understands from a long-time resident in the area that, because of the parcels' unique topography and proximity to the Beltway, they were used as a dumping area for excess dirt as the Beltway was being

² For purposes of resubdivision, the Applicant and Staff find no distinction between a parcel and a lot. Indeed a "resubdivision" contemplates the further subdivision of a "recorded lot or parcel of land" pursuant to Section 50-1 of the Subdivision Regulations.



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constructed. Indeed, the topographical information provided by Planning Staff shows that the parcels' topography has changed considerably since they were recorded in 1963 – lending credence to the Applicant's understanding. Site Solutions has determined from Staff's information that the changed topography can accommodate the additional housing contemplated in the resubdivision, whereas the previous topography could not. A copy of the proposed resubdivision plan is attached.

Currently, the Property is at even grade along Carteret Road. It gradually slopes southward toward a Class 1-P Stream adjacent to the Beltway. This configuration results in a significant buffer area, comprised of a significant mature forest (approximately 1 acre) and potentially several specimen trees, between an existing house on the Property and the Beltway. According to State Department of Assessment and Taxation records, the house was constructed in 1985.

Resubdivision Issues

Density Control Requirements

The density control provisions of the Zoning Ordinance were designed to ensure that a variety of lot sizes and configurations may be provided in a neighborhood, as long as the average lot area for all the lots is at least 20,000 square feet. Even though density control development has been discontinued for new subdivisions (see Section 59-C-1.44 of the Zoning Ordinance), the applicable density control provisions allow for further development of existing density control areas. In particular, Sections 59-C-1.428 ("Transfer of Excess Area") and 59-C-1.429 ("Resubdivision Controlled") of the Zoning Ordinance clearly anticipate that excess available lot area (above the 20,000 square foot minimum) could be used for additional neighborhood development in appropriate circumstances.

In this context, we discuss the application of the density control requirements to the Applicant's proposed resubdivision. For purposes of this discussion, the relevant density control sections of the Zoning Ordinance are set forth below in an order that is intended to clarify the relevant



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requirements that apply to this Application. The relevant provisions are as follows:

59-C-1.43. Development standards.

All requirements of the standard method of development in the respective zones, as set forth in subsections 59-C-1.31 and 59-C-1.32, shall apply except as specifically modified in this section 59-C-1.43.

	R-200
59-C-1.431. Net Lot Area (Square Feet).	
(a) No lot shall be less in area than:	15,000
(b) The average area of all lots in any subdivision shall be at least:	20,000

59-C-1.429. Resubdivision Controlled. Resubdivision of land subdivided under this method is prohibited if it would result in a reduction in the average net lot areas, except for any land which has been reclassified to a different zone. Record plats shall bear the notice "Density Control Development-Resubdivision Strictly Controlled," and an indication of the zone in which the land is classified. (Emphasis added.)

59-C-1.427. Maintenance of Average Area. The average net area of all of the lots in any record plat, together with all record plats previously recorded in the same subdivision, shall at no time be less than the average required for the zone. (Emphasis added.)

Read together, these provisions ensure that no density controlled lot may be resubdivided if it would cause the average net lot area for all the lots in the subdivision to go below 20,000 square feet. Conversely, a density controlled lot may be resubdivided, as long as the resulting average net lot area stays above the 20,000 square foot threshold.



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Planning Staff has indicated that Section 59-C-1.429 prohibits the resubdivision of density controlled lots, unless the resubdivided lot will not decrease the average net lot area for the subdivision that has been approved – as opposed to the 20,000 square foot average established for the zone. In other words, “average net lot areas” are established once a density control subdivision is approved. The basis for this conclusion is the inconsistent terminology in the density control provisions, which simultaneously describe the required averaging of density controlled lots as follows: “net lot area” (59-C-1.431), “average net lot areas” (59-C-1.429) and “average net area” (59-C-1.427). As a result, Staff surmises that the “average net lot areas” in Section 59-C-1.429, which is not otherwise defined, means something different than “average net area” as defined in Section 59-C-1.427.

This interpretation is unsupportable because it undermines the consistent meaning of “net lot area” set forth in Section 59-C-1.431 and “average net area” in Section 59-C-1.427 of the Zoning Ordinance regarding the requirement for a 20,000 square foot average for density control lots. More importantly, Planning Staff’s interpretation effectively precludes any resubdivision in density control areas because there is no instance in which a resubdivision of a lot in an approved subdivision could stay above the average area for lots in that subdivision. Mathematically, one simply cannot increase the number of lots in a defined area without reducing the average size of the lots.

If Section 59-C-1.429 had intended Staff’s interpretation, it would have stated:

Resubdivision of land subdivided under this method is prohibited if it ~~would result in a reduction in the average net lot areas~~, except for any land which has been reclassified to a different zone. Record plats shall bear the notice "Density Control Development-Resubdivision Strictly Controlled," and an indication of the zone in which the land is classified. (Deletion added)

For purposes of statutory construction, we must assume that the language in Section 59-C-1.429 regarding “average net lot areas” is intended to allow for resubdivision if the minimum “net lot area” is maintained. As a



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practical matter, the “average net lot areas” language in Section 59-C-1.429 appears to awkwardly combine established terms, “average net area” and “net lot area”, both of which mean the same thing. As such, the only applicable resubdivision condition under Section 59-C-1.429 is that the resubdivided lot must maintain the “average net area” of 20,000 square feet that is proscribed in Sections 59-C-1.423 and 59-C-1.431. If a proposed lot meets this threshold, then it may be approved as long as it complies with the other relevant resubdivision criteria.

Resubdivision Analysis

As per the proposed resubdivision plan, the Applicant seeks to resubdivide the Property into roughly equal lots of 53,720 square feet and 52,454 square feet.

The Applicant submits, with this Application, an analysis of the average net area of the lots/parcels in the applicable density control subdivision, both before and after the proposed resubdivision. This analysis shows that the current subdivision is over the required 20,000 square foot threshold for average net lot area, excluding public utility right-of-way, and may accommodate the Applicant’s proposed resubdivision. If the Property is further subdivided, the resulting average net lot area for all the lots/parcels in the subdivision would be 20,438 square feet – comfortably above the minimum net lot area.

It is worth noting that, at Planning Staff’s request, Site Solutions has performed multiple calculations of the average net lot area for the subdivision under different scenarios. First, Site Solutions performed a straight calculation of the average net lot area for the 59-lot/parcel subdivision (“59 Lots/Parcels”). Then, Staff asked for average net lot area calculations for 64 lots, which includes 5 additional lots that Staff says were intended to be part of the density control subdivision.³ This calculation also

³ Planning Staff directed the Applicant to include 5 additional resubdivided lots (Lots 11, 12, 13 and 14 in Block 5 and Lot 16 in Block 10) that were originally recorded in 1952 and 1954, respectively, in the average net area calculations. These lots are adjacent to the applicable density control subdivision, but are not included in the underlying preliminary plan. Staff believes that these lots were intended to be part of the density control subdivision because



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excluded utility rights-of-way located on the lots (“64 Lots/Parcels w/o Utilities”). Lastly, Site Solutions prepared net lot area calculations based upon the original 59 lot subdivision, but excluding utility rights of way (59 Lots w/o Utilities”). This is consistent with the “Maintenance of Average Area” provision in Section 59-C-1.427 of the Zoning Ordinance, which requires the averaging of all lots “in the same subdivision”. The results are as follows:

Scenarios	Avg. Net Lot Area (Current)	Avg. Net Lot Area (Resubdivision)
60 Lots/Parcels	21,541 sf	21,182 sf
64 Lots/Parcels w/o Utilities	20,476 sf	20,161 sf
60 Lots/Parcels w/o Utilities	20,784 sf	20,438 sf

In all scenarios, the calculations show that resubdividing the Property will still maintain the requisite average net lot area for the subdivision.

In addition, Site Solutions has done a traditional Section 50-29(b)(2) resubdivision analysis based upon its determination of the resubdivision neighborhood, which is attached. This analysis (attached) shows that the proposed lots are well within applicable neighborhood standards in terms of frontage and lot widths. The analysis further shows that the proposed lots are the largest in the neighborhood in terms of lot size and buildable area.

their lot areas are less than 20,000 square feet. However, without more evidence of a conscious Planning Board decision to incorporate the lots in the underlying density control subdivision, the Applicant has excluded the additional lots in its net lot area calculations. The Applicant nonetheless notes that the additional lots proposed by Staff do not substantially affect the Applicant’s density control calculations, both before and after the resubdivision analysis.



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Community Outreach

The Applicant has canvassed the residences along Carteret Road to let owners know of their proposed resubdivision plans – even though such outreach is not required for a pre-preliminary plan application. A copy of a community outreach package that was delivered to each house on Carteret Road is attached. Applicant discussed the package and their plans with available homeowners and received supportive feedback. Some owners even saw the resubdivision as an opportunity to increase their own property values. As a result, the Applicant is optimistic that a preliminary plan will be well received by neighbors following a positive Planning Board determination on resubdividing their density controlled property.

Application Components

As part of the Pre-Preliminary Plan Application, the Applicant is submitting the following items in addition to this Statement of Justification:

1. Complete application form and checklist;
2. Fee schedule and worksheet;
3. \$4,000.00 filing fee;
4. Applicant's Certificate of Compliance;
5. Notice list;
6. Copy of Plat No. 7204;
7. Copy of original density control preliminary plan of subdivision;
8. Map depicting the recorded lots/parcels in the density control subdivision;
9. Engineer calculations of subdivision net lot area, both before and after resubdivision;
10. Proposed resubdivision plan;
11. Resubdivision neighborhood map;
12. Section 50-29(b)(2) resubdivision analysis; and



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13. Community outreach packet

Conclusion

The Applicant's proposed resubdivision would produce lots that are significantly larger than any other lot in the applicable neighborhood. More importantly, they would not violate the 20,000 square foot average net lot area for the density control subdivision. In addition, the proposed resubdivision provides an opportunity to preserve the forest area on the Applicant's property, establish an environmental buffer between the proposed structures and the adjacent stream, and to improve stormwater management and other environmental features in the area.

We look forward to working with Planning Staff on this Application and receiving a positive determination from the Planning Board regarding the ability to resubdivide the density controlled property. Thank you in advance for your consideration regarding this Application.

Very truly yours,

Patrick L. O'Neil

Enclosures: As stated

cc: Edward and Celia Chang
Richard Weaver