

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

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**MCPB  
ITEM #4  
7/14/05**



**MEMORANDUM**

**DATE:** July 6, 2005

**TO:** Montgomery County Planning Board

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

**FROM:** Catherine Conlon, Supervisor (301) 495-4542  
Development Review Division *CC*

**REVIEW TYPE:** Preliminary Plan Review

**APPLYING FOR:** Resubdivision of Existing Parcel "A", Block 75, Brookhaven Subdivision  
Subdivision for Six (6) Residential Lots

**PROJECT NAME:** Aspen Hill Swim Club Property

**CASE #:** 1-05033

**REVIEW BASIS:** Chapter 50, the Montgomery County Subdivision Regulations

**ZONE:** R-60

**LOCATION:** Located in the southwest quadrant of the intersection of Connecticut  
Avenue (MD 185) and Independence Street

**MASTER PLAN:** Aspen Hill

**APPLICANT:** 13210 Beaver Terrace LLC

**ENGINEER:** Gutschick, Little & Weber, P.A.

**ATTORNEY:** Holland & Knight

**FILING DATE:** September 2, 2004

**HEARING DATE:** July 14, 2005

**STAFF RECOMMENDATION:** Approval pursuant to Section 50 of the Subdivision Regulations, and subject to the following conditions:

- 1) Approval under this preliminary plan is limited to six (6) one-family detached residential dwelling units.
- 2) A 59-D-3 site plan approval is required.
- 3) No clearing, grading or recording of plats prior to site plan signature set approval.
- 4) Compliance with the conditions of approval for the preliminary forest conservation plan, including construction of a split rail fence along the rear boundary of lots adjoining the Category I forest conservation easement areas and along newly planted areas adjacent to Turkey Branch Parkway. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 5) Record plat to reflect a Category I conservation easement over the entirety of open space Parcel "C" as shown on the preliminary plan.
- 6) Applicant shall plant the unforested portions of the Category I forest conservation easement with 1.5-2 inch caliper tree stock.
- 7) Applicant to develop and implement an invasive species management plan for all areas included in the forest conservation easement. Invasive management plans must be incorporated into the final forest conservation plan.
- 8) Applicant to complete required stream restoration projects prior to the release of the 6<sup>th</sup> building permit. Onsite final inspection and acceptance of the stream restoration areas by Montgomery County Department of Environmental Protection, in coordination with the applicant and the M-NCPPC inspector, must occur prior to the release of the 6<sup>th</sup> building permit.
- 9) Prior to any clearing and grading on the site, applicant shall provide a performance bond covering the stream restoration projects. This bond shall remain in effects for 2 years after the issuance of the 6<sup>th</sup> building permit.
- 10) The applicant shall dedicate the right-of-way for the extension of Beaver Terrace as a reduced-width tertiary as shown on the preliminary plan.
- 11) The applicant shall construct the extension of Beaver Terrace as a reduced-width tertiary road to the design standards imposed by all applicable road codes.
- 12) Compliance with the conditions of approval of the MCDPS stormwater management approval dated January 31, 2005.
- 13) Compliance with the conditions of the MCDPWT letter dated March 8, 2005 unless otherwise amended.
- 14) Record plat to reflect a permanent stream improvement easement for Montgomery County Department of Environmental Protection along the onsite stream.
- 15) Record plat to reflect "denial of access" along the Connecticut Avenue (MD 185) site frontage.
- 16) Other necessary easements.

## **SITE DESCRIPTION**

The subject property consists of a 5.06 acre parcel of land recorded on May 14, 1963 (Parcel "A", Brookhaven). The property is located in the southwest quadrant of the intersection of Connecticut Avenue and Independence Street (Attachment A) and is zoned R-60. The site is the former location of Aspen Hill Swim Club, which operated up until the summer of 2004. Existing improvements on the site include a large asphalt parking area, basketball and volleyball courts, in ground swimming pools, change room, and sheds to support the swimming pool use. The existing buildings are in disrepair. The asphalt parking area is currently being used as a staging area for a WSSC potable water improvement project in the surrounding neighborhood.

There is a heavily eroded tributary to the Turkey Branch within the Rock Creek watershed (Use Classification I) on the subject property. The site includes 3.19-acres of stream buffer. Within the stream buffer is 2.13-acres of existing forest.

## **PROJECT DESCRIPTION**

This is an application to resubdivide the 5.06 acre subject property into six residential lots (Attachment B). The proposed lots range in size from 6,910 square feet to 9,509 square feet. The lots would be accessed by extension of existing Beaver Terrace into the site as a public roadway built to reduced-width tertiary standards. All existing improvements associated with the pool operation are proposed to be removed. In order to construct the proposed six houses, the applicant is requesting a waiver from the Planning Board's *Environmental Guidelines* to permit permanent encroachment into a portion of an onsite stream buffer.

## **DISCUSSION OF ISSUES**

### **Master Plan Compliance**

The Aspen Hill Master Plan does not specifically identify the subject property for discussion but does give general guidance and recommendations regarding zoning and land use. The plan recommends that this area maintain the existing zoning as adopted and maintain the residential land use consisting of one-family detached homes. The proposed resubdivision complies with the recommendations adopted in the Master Plan in that it is a request for residential development and is consistent with the Zoning Ordinance development standards for the R-60 zone.

### **Reduced-width Tertiary Roadway**

The preliminary plan proposes access to the lots via a reduced-width tertiary roadway with sidewalk on one side. Per Sections 49-34(f) and 50-26(h) of the County Code, the Planning Board has authority to determine when a tertiary street may be used and to establish the right-of-way width. The standard right-of-way width of a tertiary street is fifty (50) feet, however, the Board may approve a lesser width if it can be demonstrated that the lesser width is environmentally better and either improves compatibility with adjoining properties, or allows

better use of the parcel under consideration. Section 49-34(f) stipulates that the Planning Board decision with regard to both use and width of a tertiary street may occur at preliminary subdivision or site plan review. Per Section 50-26(h)(2), the Board's approval of a lesser width occurs as part of a Section 59-D-3 site plan review.

Future site plan is included in staff's recommended conditions for approval of this preliminary plan in keeping with the provisions of Section 50-26(h)(2). Subdivision staff believes the appropriate findings can be made for the proposed project. The reduced-width tertiary road is environmentally better than a full-width roadway because it allows the proposed houses to be clustered as close to Connecticut Avenue as possible and contributes to minimizing stream buffer encroachment. Staff also believes the roadway improves compatibility of the proposed lots with adjoining properties because it allows the proposed lots to have frontage on a public roadway in compliance with the resubdivision criteria. Finally, staff believes a sidewalk on one side of the proposed roadway is appropriate and the road will be safe for pedestrians.

## **Environment**

### **Environmental Guidelines**

As previously noted, 3.19 acres of the 5.06 acre subject property fall within a designated stream buffer delineated per the Planning Board's *Guidelines for Environmental Management of Development in Montgomery County* (Environmental Guidelines). The onsite stream is a section of the Turkey Branch tributary to Rock Creek. The drainage area to this stream includes approximately 300 acres of mostly developed area for which limited stormwater management controls exist. As such, the stream itself is highly degraded and eroded. The stream currently functions as storm drain through the property with in-stream water levels that rise and fall very quickly in direct response to uncontrolled stormwater discharges. The previous swim club use on the property encroached into the designated stream buffer by approximately 45,000 square feet for the pool, pool deck, sheds, change room, basketball and volleyball courts, and lawn area. The existing encroachment includes 6,361 square feet of impervious surfaces.

The proposed resubdivision results in buffer encroachment of approximately 13,533 square feet, with approximately 250 square feet of impervious surfaces. The encroachment includes a stormwater management facility, small portions of three of the proposed homes, and rear yards for the proposed homes. There will also be additional unavoidable encroachment for necessary stormwater management conveyances. The designated stream buffer for the onsite stream per the Environmental Guidelines is 100 feet from the stream bank. At its narrowest point, adjacent to the stormwater management facility, the modified stream buffer proposed by this plan would be 60 feet wide. The average stream buffer width on the east side is approximately 73 feet.

The Environmental Guidelines state in Section V.A.1.b that no buildings, structures, impervious surfaces, or activities requiring clearing or grading will be permitted in stream buffers except for uses found to be necessary, unavoidable, and minimized (Pg 17). It is staff's practice when some buffer encroachment is determined to be necessary and unavoidable, and the encroachment has been minimized, to recommend compensation for the encroachment. The

encroachment permitted usually does not include forested buffer, is a small area, and is usually along an edge of the buffer. Where encroachments are considered in these limited circumstances, the compensation is done with the objective of replacing the value and function of the "lost" buffer (i.e., in-kind replacement) as much as possible and as close to the area of impact as possible. Staff usually recommends protecting land that would otherwise not be protected in the same watershed, many times with afforestation also required. On a case-by-case, limited basis, staff has also accepted out-of-kind compensation (e.g., stream improvements).

Staff believes the proposed preliminary plan does minimize buffer encroachment by minimizing proposed rear yard spaces and attempting to locate house footprints that minimize the impervious surfaces within the stream buffer. In this instance, avoidance is not possible because a public road extension is needed to access lots created on the site. Strict application of the buffer on this property severely limits development potential. The proposed encroachment does not involve forested area and affects mostly the edge of the buffer.

Environmental Planning supports the requested waiver of the stream buffer in this instance. The existing stream is in very poor condition. Part of the streambed has been channelized with concrete in response to the existing erosion problems. A small section of the stream bank near the swimming pool has been stabilized with a retaining wall. The applicant proposes 13,533 square feet of permanent encroachment into the stream buffer for parts of two residential buildings, lawn areas, and a stormwater management facility. The proposed permanent encroachment is less than 10 percent of the entire stream buffer or 6.5% of the entire property. Total impervious surface proposed in the stream buffer is approximately 250 square feet. The proposed plan results in overall removal 6,111 square feet of existing impervious surface from the buffer and reduces overall buffer encroachment.

Per staff practice, measures to provide compensation for the encroachment are recommended for incorporation into the plan. These measures include:

1. Reforestation of all unforested portions of the stream buffer by the applicant with large tree stock. This is above the requirements of the forest conservation law.
2. Onsite stream restoration, according to Montgomery County Department of Environmental Protection specifications (see Attachment C for detailed discussion).
3. Enhancement of existing onsite forest through development and implementation of an invasive species management plan.

### **Forest Conservation**

The applicant is proposing to remove 0.16 acres of the 2.13-acres of existing forest on the property. The forest removal is entirely within the stream buffer and is necessary to provide safe conveyance from the stormwater management facilities into the stream. There are no planting requirements associated with the forest conservation law. The applicant will place all stream buffers not on lots or in stormwater management parcels in a Category I forest conservation easement.

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

### A. Statutory Review Criteria

In order to approve an application for resubdivision, the Planning Board must find that each of the proposed lots complies with all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

Resubdivision. Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.

### B. Neighborhood Delineation

In administering Section 50-29(b)(2) of the Subdivision Regulations, the Planning Board must determine the appropriate "neighborhood" for evaluating the application. In this instance, the Neighborhood selected by Staff and the applicant consists of 79 lots (Attachment D). The lots included in the neighborhood either abut the subject property across Turkey Branch Parkway, or are located along the other roadways that provide primary access to the subject property. All of the lots share the same R-60 zoning. Staff believes the designated neighborhood provides an adequate sample of the lot and development pattern of the area. A tabular summary of the area based on the resubdivision criteria is included in Attachment E.

### C. Analysis

#### Comparison of the Character of Proposed Lots to Existing

In performing the analysis, Staff applied the above-noted resubdivision criteria to the delineated neighborhood. Staff concludes that the proposed lots fall within the neighborhood ranges for the resubdivision criteria and are of the same character with respect to the resubdivision criteria as other lots within the defined neighborhood. Therefore, Staff concludes that the proposed resubdivision complies with the criteria of Section 50-2(b)(2). As set forth below, the attached tabular summary and graphical documentation support this conclusion:

**Frontage: In Staff's opinion, the proposed lots will be of the same character as existing lots in the neighborhood with respect to lot frontage.**

The existing lots range in frontage from 33 feet to 160 feet with the majority of lots in the designated neighborhood having frontages of less than 100 feet. The proposed lots range in frontage from 40 to 128 feet and fall within the range of frontages for lots within the neighborhood. Proposed Lots 2 and 3 are at the higher end of the range with a frontage of 110 and 128 feet, respectively. These lots are affected by their location along the curving roadway necessitated by the constraints of the site.

**Alignment: The proposed lots will be in character with the existing lots with respect to the alignment criterion.**

All of the proposed lots are radial in alignment, which is consistent with 30 of the 79 lots in the designated neighborhood. The other existing lots are perpendicular in alignment.

**Size: The proposed lots will be in character with existing lots in the designated neighborhood with respect to size.**

The existing lots range in size from 6,104 square feet to 17,314 square feet with the majority of lots in the designated neighborhood being less than 9,000 square feet in size. The proposed lots range in size from 6,910 to 9,509 square feet and fall within the range of lot sizes in the neighborhood.

**Shape: The shapes of the proposed lots are in character with shapes of the existing lots.**

The proposed lots consist of one rectangular, two quadrilateral, and three triangular lots. Lots within the designated neighborhood are mostly rectangular with several lots that are square, triangular, and quadrilateral.

**Width: The proposed lots will be in character with existing lots in the neighborhood with respect to width.**

The existing lots range in width from 51 feet to 145 feet. The proposed lots range in width from 60 to 109 feet with only one lot greater than 100 feet in width.

**Area: Staff finds the proposed lots to be of the same character as other lots in the neighborhood with respect to area.**

The buildable areas of lots in the designated neighborhood range from 1,800 square feet to 10,521 square feet with the majority of the lots having buildable areas less than 4,000 square feet. The proposed lots range in area between 2,710 square feet to 4,525 square feet with one lot being greater than 4,000 square feet.

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

## CONCLUSION

Section 50-29(b)(2) of the Subdivision Regulations specifies seven criteria with which resubdivided lots must comply. They are street frontage, alignment, size, shape, width, area and suitability for residential use within the existing block, neighborhood or subdivision. As set forth above, the Staff finds that the two proposed lots are of the same character as the existing lots in the defined neighborhood with respect to each of the resubdivision criteria. Therefore, Staff

believes the proposed resubdivision complies with Section 50-29(b)(2) of the Subdivision Regulations.

Staff finds the proposed subdivision to be consistent with the recommendations of the Aspen Hill Master Plan and believes the proposed subdivision meets all other requirements of the Subdivision Regulations (Chapter 50). Staff supports the requested waiver of the onsite stream buffer based on finding that the proposed encroachment has been minimized to the extent possible, and the proposed compensation measures are acceptable. Therefore, Staff recommends approval of the preliminary plan with the specified conditions.

### **Attachments**

- Attachment A – Vicinity Development Map
- Attachment B – Neighborhood Delineation Map
- Attachment C – Stream Restoration Project Discussion
- Attachment D – Proposed Development Plan
- Attachment E – Tabular Summary

*No citizen correspondence has been received up to this point.*