

**THE MARYLAND-NATIONAL CAPITAL PARK AND
PLANNING COMMISSION**

Department of Park & Planning, Montgomery County, Maryland
8787 Georgia Avenue, Silver Spring, Maryland 20910

MEMORANDUM

TO: Mary Beth O'Quinn, Planning Coordinator, Development Review

FROM: Mark Pfefferle, Planning Coordinator, Environmental Planning *MP*

DATE: July 22, 2004

SUBJECT: Site Plan 8-04031, Kakar Property

The Environmental Planning staff has reviewed the site plan referenced above. Staff recommends approval of the site plan with the following conditions.

- Compliance with the conditions of the final forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits
- Record plat to reflect a Category I forest conservation easement over all areas of retained forest.
- The applicant to install a permanent split rail fence at the rear of area to be cleared and along the forest conservation easement area.

Background

The 1.75-acre property is located along Bailey's Lane and is within the Northwest watershed a use IV-P watershed. The property is zoned RE2/TDR2.

Environmental Guidelines

A natural resource inventory/forest stand delineation (NRI/FSD) was prepared for this site and approved in September 2002. The NRI/FSD was revised in June 2004 because the tract area on the site plan application was greater than the area included in the NRI/FSD. There are no environmental buffers on the site, but the site does include 1.25 acres of existing forest.

Forest Conservation

The plan is subject to forest conservation law. Since the applicant is proposing an optional method of development the applicant must meet the forest conservation threshold onsite. The

applicant is proposing to meet their forest conservation obligations by the retention of 0.54 acres of forest onsite and 0.27 acres of off-site planting. At this time the applicant has not identified the off-site planting location. In similar, non-optional method of development, Environmental Planning would recommend the applicant not encumber the proposed lots with forest conservation easements and request the applicant meet all their forest conservation requirements off-site. However, since the applicant is proposing an optional method of development by utilizing a TDR, the applicant is required to meet the conservation on site. In order to clearly delineate and protect future homeowner encroachment into the forest conservation easement, Environmental Planning is requesting the installation of a split rail fence on the forest conservation easement line.



Date Mailed: August 5, 2003

Action: Approved Staff Recommendation
Motion of Comm. Wellington, seconded by
Comm. Robinson with a vote of 5-0;

Comms. Berlage, Bryant, Perdue,
Robinson and Wellington voting
in favor

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-03071

NAME OF PLAN: KAKAR PROPERTY

On 3/10/03, DEVINDER KAKAR submitted an application for the approval of a preliminary plan of subdivision of property in the RE-2/TDR-2 zone. The application proposed to create 3 lots on 1.96 acres of land. The application was designated Preliminary Plan 1-03071. On 7/03/03, Preliminary Plan 1-03071 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-03071 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended). The construction of an off-site sidewalk between Norbeck Road and the subject property would most likely require the applicant to obtain right-of-way, inconsistent with Section 50-35 (n), and therefore, the Planning Board finds that no off-site sidewalks are required and approves Preliminary Plan 1-03071.

Approval, Under the DeMinimis Provisions of the FY 2003 Annual Growth Policy, Subject to the Following Conditions:

- (1) Compliance with the conditions of approval of the preliminary forest conservation plan. The applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit, as appropriate
- (2) Access and improvements as approved by MCDPW&T letter dated June 19,2003 or as otherwise amended
- (3) Conditions of MCDPS stormwater management approval
- (4) All road right of ways shown on the approved preliminary plan shall be dedicated by the applicant, to the full width mandated by the master plan, unless otherwise designated on the preliminary plan
- (5) Prior to recordation applicant to verify that two (1) TDR have been obtained for the development. Record plat to reflect the TDR easements
- (6) Final building locations to be determined at site plan
- (7) No clearing, grading or recording of plat prior to site plan signature set approval

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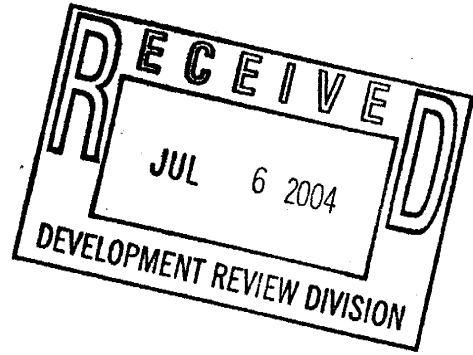


DuFour & Orens

C H A R T E R E D

June 29, 2004

Jeffrey I. Riese
Development Review Unit
Department of Public Works & Transportation
101 Orchard Ridge Road
Gaithersburg, Maryland 20878



Re: Kakar Subdivision – Preliminary Plan No. 1-03071
Request for Waiver of Sidewalk Standards

Dear Mr. Riese:

On behalf of Devinder Kakar we hereby request a waiver of the DPWT standards that would require the construction of a sidewalk along the Baileys Lane frontage of the above referenced property. The Kakar property is the only remaining undeveloped land on the west leg of Baileys lane. The National Organization of the New Apostolic Church of North America owns the Baileys Lane frontage between the Kakar Property and Norbeck Road.

At the present time there are no curbs, gutters or sidewalks on Baileys Lane. The entire length of Baileys Lane is an open section roadway with drainage swales for the conveyance of stormwater. The Kakar Property is zoned RE-2/TDR and was master planned to develop with single family homes on lots that are similar to those that had developed in the 1970's and earlier. As recently as 1990 additional development on Lots 93, 94 and 95, south of the Kakar Property was approved and homes constructed without a requirement that sidewalks be installed along that property's Baileys Lane frontage.

In order for a sidewalk that would begin and end along the frontage of the Kakar Property to be constructed, that sidewalk would have to be located outside of the dedicated right of way of that road because of the existence of the drainage swale that must be preserved to convey storm water along the roadway. The relocation of the drainage swale or its replacement with a pipe along the Kakar frontage and the grading that would be required for a sidewalk in the public right of way cannot be done except at an excessive cost that is not justified in the absence of any other sidewalk along the entire length of Baileys Lane.

The chain of title for the Kakar Property dating back to 1939 reveals that Baileys Lane existed at that time as a county road. Originally this area was classified in the RE-2 Zone and the existing roadway remains today as it has always been.

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Bethesda, MD 20814
Phone: 301-986-4142
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G. Michael DuFour, Esquire
Stephen J. Orens, Esquire
Jennifer Swanhart Murphy, Esquire
Kinley R. Durías, Esquire
David T. Wagner, Esquire
Rebecca D. Willens, Esquire

DuFour & Orens

C H A R T E R E D

The question of locating a sidewalk along Baileys Lane beginning at the Kakar Property and extending northward to Norbeck Road was considered by and rejected by the Planning Board in its deliberations that resulted in the approval of Preliminary Plan No. 1-03071. The Planning Board Opinion specifies that "The construction of an off-site sidewalk between Norbeck Road and the subject property would most likely require the applicant to obtain right-of-way, inconsistent with Section 50-35(n), and therefore the Planning Board finds that no offsite sidewalks are required and approves Preliminary Plan 1-003071."

Coupled with the excessive cost involved in reconstructing the drainage conveyance system, the alternative of being forced to locate the sidewalk on private property beyond the Master Planned Right-of-Way of Baileys Lane, we submit justifies a waiver of the requirements of Chapter 49 of the Montgomery County Code.

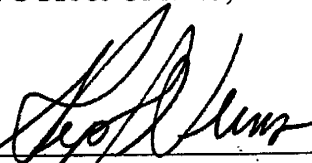
Should DPWT deem it appropriate, we would recommend to Mr. and Mrs. Kakar that they agree to a covenant that would obligate the property owners of the three lots to participate on an equitable pro-rata basis with other property owners in the event the County ever constructs a sidewalk along the full length of Baileys Lane as a Front Foot Benefit Project.

We anticipate that the Site Plan for this property will be heard by the Planning board on July 29, 2004 and accordingly would appreciate action on this request as expeditiously as is possible, practical given your other obligations.

Thank you for processing this waiver request. Should any additional information be required, do not hesitate to contact either Kinley R. Dumas, Esquire or me.

Very truly yours,

DUFOUR & ORENS, CHTD.

By: 

Stephen J. Orens

cc: Devinder Kakar
David Priddy
Kinley R. Dumas, Esquire
Mary Beth O'Quinn ✓

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4. **Preliminary Plan No. 1-03071 – Kakar Property**

RE-2/TDR-2 Zone; Three (3) Lots Requested (One (1) Existing One Family Dwelling Unit, Two New One Family Dwelling Units Proposed); 1.96 Acres
Community Sewer and Community Water

Located on the West Side of Bailey’s Lane, Approximately 400 Feet South of Norbeck Road (MD 28)

Policy Area: Aspen Hill

Applicant: Devinder Kakar
Engineer: Patton, Harris, Rust and Associates
Attorney: Dufour & Kohlhoss, Chtd.

Staff Recommendation: Approval, Under the DeMinimis Provisions of the FY 2003 Annual Growth Policy, Subject to the Following Conditions:

- (1) Compliance with the conditions of approval of the preliminary forest conservation plan. The applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit, as appropriate
- (2) Access and improvements as approved by MCDPW&T letter dated June 19,2003, or as otherwise amended
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- (5) Prior to recordation applicant to verify that two (2) TDRs have been obtained for the development. Record plat to reflect the TDR easements
- (6) Final building locations to be determined at site plan
- (7) No clearing, grading or recording of plat prior to site plan signature set approval
- (8) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed
- (9) Other necessary easements

BOARD ACTION

Motion: WELLINGTON/ROBINSON

Vote:

Yea: 5-0

Nay:

Other:

Action: APPROVED STAFF RECOMMENDATION, WITH THE EXCEPTION OF THE REQUIREMENT FOR THE SIDEWALK AND SIDEWALK EXTENSION.

CONTINUED ON NEXT PAGE

4. Preliminary Plan No. 1-03071 – Kakar PropertyCONTINUED

Development Review staff presented the proposal to create three lots, correcting condition 5 to reflect that one transferable development right (TDR) is required. Staff noted that the improvements required by Department of Public Works and Transportation (DPWT) under condition 2 include sidewalks through the frontage of the property and extending offsite to Norbeck Road. Although there are no sidewalks in this community, staff sees this as a start in constructing sidewalks in the area.

Ms. Kinley Dumas, attorney representing the applicant, introduced Mr. Sonny Kakar, the applicant, and Mr. Scott Wolford, the engineer. Ms. Dumas concurred in the staff recommendation with the exception of the proposed requirement for sidewalks, which she maintained is inappropriate for this development. She distributed photographs of the neighborhood and the subject property showing the open-section road with no sidewalks, and citing several similar subdivisions nearby for which sidewalks were not required. Ms. Dumas noted that there are no existing sidewalks in this small community of approximately 20 lots and, under the staff recommendation, there would be sidewalk only along the frontage of the existing lot and the two new lots and continuing to Norbeck Road. In addition, she noted that this is a small subdivision and the applicant would have to acquire right-of-way to satisfy that requirement.

Commissioner Bryant stated that he would normally concur in the applicant's view, but he noted the location of East Norbeck Local Park at Bailey's Lane and Norbeck Road and expressed support for the sidewalk.

Commissioner Wellington expressed the view that sidewalks built to full County standards will look peculiar in this neighborhood, yet DPWT provides no flexibility in terms of retrofitting sidewalks to less than full County standards, which might be less obtrusive.

Responding to questions from the Board, staff stated that the road is a dead end and there are questions to be resolved about the right-of-way, which may affect the design of the sidewalks.

Commissioner Bryant supported the motion based on his stated reluctance to stop the development because of the sidewalk issue.