

**MEMORANDUM**

DATE: November 22, 2005

TO: Montgomery County Planning Board

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

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

REVIEW TYPE: Preliminary Plan Review

APPLYING FOR: Subdivision of Part of Existing Parcel 915 and Lot 5, Block A, Peterson's Subdivision
Subdivision for Six Lots and Open Space Parcels

PROJECT NAME: Patton Property, Phase I

CASE #: 12004092R (formerly 1-04092)

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RE-2C and RE-2

LOCATION: In the northeast quadrant of the intersection of Norwood Road and Norbeck Road Extended (MD 28 Connector)

MASTER PLAN: Cloverly

APPLICANT: Mitchell and Best

ENGINEER: Gutschick, Little and Weber

ATTORNEY: Miller, Miller and Canby

FILING DATE: May 28, 2004

REVISION DATE: October 20, 2005

HEARING DATE: December 8, 2005

STAFF RECOMMENDATION: Approval of six (6) lots, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to six (6) one-family detached residential dwelling units.
- 2) Compliance with the conditions of approval of the preliminary forest conservation plan. These conditions include, but are not limited to:
 - a. Final forest conservation plan for the Phase I portion of the site shall include the following:
 - i. Final locations of proposed sewer and water lines through environmental buffer. Plans for sewer and water line locations to be reviewed and approved by M-NCPPC Environmental Planning staff. Sewer and water line locations must avoid or minimize disturbance of wetlands and large trees. A tree survey and a critical root zone analysis shall be submitted for trees along the sewer/water line limits of disturbance.
 - ii. Re-planting plan for sewer and water line construction areas through environmental buffer area. Plan to be reviewed and approved by M-NCPPC Environmental Planning staff.
 - iii. Detailed configuration of forest retention areas. A tree survey and a critical root zone analysis shall be submitted for trees along the forest retention area limits of disturbance.
 - b. No clearing, grading or tree removal outside the Phase I portion of the site without prior Planning Board approval of a revised preliminary forest conservation plan.
- 3) Applicant shall construct proposed Private Court A and the shared driveway for proposed Lots 1 and 2 to meet Montgomery County Fire and Rescue standards. Minimum width shall be 20' with appropriate turn-around. The cul-de-sac on Private Court A shall be 90' in diameter. The preliminary plan drawing must be revised to meet these requirements prior to signature.
- 4) Revise the notes on the preliminary plan to reflect the water and sewer category change approval.
- 5) Dedication to M-NCPPC of the approximately 9.6 acres of property identified as Outlots A through D located to the west of Northwest Branch. Dedicated parkland to be conveyed at time of record plat and be adequately staked and signed to delineate between parkland and private property.
- 6) Record plat to reflect a Category I easement over all environmental buffer and forest conservation areas not included in the park dedication.
- 7) Record plat to reflect common ingress/egress and utility easements over the proposed private street and all shared driveways.
- 8) Compliance with the conditions of approval of the MCDPS stormwater management approval dated April 14, 2004.
- 9) Record plat to have the following note: "The land contained hereon is within an approved cluster development, and subdivision, or resubdivision, is not permitted after the property is developed."
- 10) Record plat to reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to Commission staff

- prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
- 11) Compliance with the conditions of approval of the MCDPWT letter dated September 9, 2005.
 - 12) Place in reservation the area shown on Attachment D, as requested per Maryland State Highway Administration (SHA) letter dated July 15, 2004, ("Reservation Area") until the earlier of (a) February 1, 2006; or (b) a final Record of Decision is issued by the FHWA, and that Record of Decision does not include the Reservation Area, or any portions thereof, within the final Intercounty Connector (ICC) alignment.
 - 13) If FHWA issues a final Record of Decision that includes the Reservation Area, the applicant shall submit a revised Preliminary Plan that locates all on-site improvements outside of the Reservation Area, and shall dedicate the Reservation Area as right-of-way.
 - 14) If ICC related right-of-way dedication is not required, the applicant shall, consistent with the 1997 Approved and Adopted *Cloverly Master Plan*, dedicate and show on the final record plat the right-of-way along:
 - a. Norbeck Road Extended to provide a minimum of either 75 feet from the roadway centerline, or 150 feet from the opposite roadway right-of-way line, and
 - b. Norwood Road to provide a minimum of either 40 feet from the roadway centerline, or 80 feet from the opposite roadway right-of-way line.
 - 15) Other necessary easements.

SITE DESCRIPTION:

The property subject to this application consists of an unplatted parcel of land containing a total of 47.7 acres (Parcel 915, Liber 14000, Folio 623), and an adjacent 2 acre recorded lot (Lot 5, Block A, Peterson's Subdivision). The tract is located at the northeastern quadrant of the intersection of Norbeck Road Extended and Norwood Road with a small portion on the south side of Norbeck Road Extended (Attachment A). The mainstem of Northwest Branch (a Use IV stream) traverses through the middle of the property and defines the zoning boundary. The property is zoned RE-2C on the west side of the stream and RE-2 on the east side. A landscape contracting business is currently operated by the property owner on the RE-2C portion of the site.

Only the RE-2C portion of the property is proposed for subdivision at this time. This Phase I portion of the site consists of 15.1 acres of land on the west side of Northwest Branch plus the abutting 2-acre recorded lot. About 7 acres of the tract is in forest cover. Most of this forest lies within designated environmental buffer that is associated with the Northwest Branch and a small tributary. A 100-year floodplain also covers 5.95 acres of the site.

PROJECT DESCRIPTION:

This is an application to subdivide the 15.1 acre Phase I area of the subject property into six clustered residential lots, including transferring density from the abutting existing lot, with dedication of several open space parcels for parkland (Attachment B). The environmental buffer areas (including floodplain) and forest conservation areas would lie mostly within the dedicated parkland. The applicant has stated that the property owner intends to relocate his existing landscape contracting operation to the south side of Norbeck Road Extended, on land that will be included in the Phase II subdivision application.

DISCUSSION OF ISSUES

Master Plan Compliance

The RE-2C zone allows the Phase I portion of the site to develop either as a cluster or non-cluster subdivision. The Cloverly Master Plan recommends the use of cluster to protect environmentally sensitive areas:

“Encourage clustering of development to provide open space that protects natural resources, provides recreation, and contributes to the rural and residential atmosphere. Cluster subdivisions should be configured to protect environmentally sensitive areas, provide forested stream buffers and forested open space along arterial and major highways, provide access and views of parkland and open space and provide a transition to similar lot sizes of adjacent subdivisions. However, there may be individual properties where cluster development does not adequately address environmental or compatibility issues and would be inappropriate.” (Cloverly Master Plan, pages 31-32)

In addition, the Master Plan recommends acquisition of parkland within this property that generally includes the floodplain and environmental buffers of Northwest Branch and enough land to “permit trail construction outside the stream buffer” (Cloverly Master Plan, page 66). The proposed parkland on this site is part of the Rachel Carson Greenway Corridor that stretches from the Prince Georges County boundary to Sandy Spring. The subject plan meets the Master Plan goals for protection of environmentally sensitive areas and protection of those areas within parkland by clustering lots.

Water and Sewer Category Change

The RE-2C portion of the site received a water and sewer category change (application no. WSCCR 03A-CLO-13) through a MCDEP Administrative Delegation Approval Action on August 25, 2004. The MCDEP action approved W-3 and S-3 with an advisory note: “The applicant is encouraged, but not required, to seek Planning Board approval of the RE-2C cluster development option for this site.”

Revised Preliminary Plan

The original preliminary plan application for this case was revised to include Lot 5, Block A within the adjacent Peterson's Subdivision. This lot was created in 2001 and shares the same boundary and RE-2C zoning as the unsubdivided parcel that makes up the remainder of the tract. The applicant owns this adjacent, undeveloped lot and proposes to relocate the dwelling unit which could be constructed, and convert the lot to an outlot which will be dedicated for parkland. M-NCPPC Parks staff have reviewed the proposal and agree that it is a desirable option since the lot abuts existing parkland and would add valuable forested buffer area to the stream valley park.

Findings for Cluster Development

A. Excessive Floodplain Deduction to Define Usable Area in a Cluster Subdivision

The zoning ordinance includes a provision to deduct "excessive" floodplain land from the density calculation of a residential cluster subdivision. If a residential subdivision does not propose the use of cluster, the excessive floodplain provision does not apply. Section 59-C-1.523 of the zoning ordinance states:

"Usable Area. The usable area upon which the density of development is calculated, as set forth in subsection 59-C-1.533, shall be determined by deducting from the gross area of the tract the following:

- a. All land indicated on the master plan of highways as right-of-way with a width of 100 feet or more, and
- b. All 100-year floodplain areas which, in the opinion of the Planning Board, would constitute an excessively high percentage of the total area of the tract."

In determining whether floodplains on a site are excluded from a cluster subdivision's usable area to calculate development density, staff's practice has been to define excessive floodplain as any floodplain area that is greater than 15 percent of a site's gross tract area. Staff has applied this threshold to proposed residential cluster subdivisions since 1996. The Planning Board has supported staff's application of this definition where excessive floodplains have been an issue in past subdivision plans.

For this site, the 100-year floodplain covers about 39.4 percent of the 15.1 acres of land within the RE-2C zoned portion of the unsubdivided parcel. Using 15 percent of the tract area as the threshold for excessive floodplain, this site has 3.68 acres¹ of excessive floodplain. The usable area to calculate the potential yield for a cluster subdivision is 11.42 acres (15.1 acres - 3.68 acres). This would generate four residential units (11.42 acres x 0.40 units/acre) under the cluster option.

¹ 39.4 % (percentage of tract area that is floodplain) - 15 % (threshold for defining excessive floodplain) = 24.4% (percentage of tract area that is within floodplain and is defined as excessive floodplain)

Area of excessive floodplain = 24.4% of 15.1 acres (site area) = 3.68 acres

The applicant proposes a total of six clustered lots on the proposed subdivision plan. One lot results from the relocation of existing Lot 5. The density for the other five lots must be calculated from the remaining 15.1 acres of the Phase I property. According to the definition of usable area for development using the cluster option, a total of four lots are permitted due to presence of excessive floodplain. However, Staff believes that modification of the normal practice of applying the excessive floodplain definition (i.e., any floodplain land over 15% of the tract area) could be modified to permit the fifth lot for this site for the following reasons:

- 1) The water and sewer category change allows the site to use public sewer and water whether or not the cluster option is used. This is atypical. It is more common for a water and sewer category change to be granted with a condition to use the cluster option for development if the zone allows for that option.
- 2) Based on the availability of public sewer, a five-lot subdivision could be created on this property without need for application of the excessive floodplain provisions of the cluster zone. However, the environmental buffer on this site is designated as a major county greenway corridor and use of the cluster option creates private lots and protects environmentally-sensitive areas and land proposed for the greenway. Acquisition or dedication of land to add to the greenway, as recommended by the master plan, is more easily achieved with such a layout than a layout where several private lots encompass the land that the master plan has identified for a greenway.

B. Waiver of the Minimum Area of Development for Cluster

Section 59-C-1.532 of the zoning ordinance specifies that the minimum area of development needed for a property developing under the RE-2C cluster option is 50 acres, unless the requirement is waived by the Planning Board upon a finding that the cluster development is more desirable for environmental reasons. Staff believes that such a finding can be made for the subject development. Staff strongly believes that a clustered subdivision is consistent with master plan recommendations for protecting environmentally-sensitive areas and provides a better opportunity to create parkland. Staff further believes that although clustering of lots was not required as part of the sewer and water category change for the site, it was clearly intended by the master plan designation of RE-2C zoning.

The use of the cluster option triggers the excessive floodplain provision in determining the lot yield. Although the deduction of excessive floodplain land from the tract area would result in a four-lot yield, staff supports a fifth lot which could be achieved without use of the cluster option, for the reasons discussed above. Staff also supports the relocation of existing Lot 5 because it avoids the crossing of existing streams and associated wetlands that would be necessary to extend sewer to the lot. It also results in greater width and the addition of forested buffer to the designated greenway corridor. Staff believes the combined six-lot cluster plan provides an overall more environmentally compatible development than would result from a standard method development.

Frontage on a Private Road

Three proposed lots will have frontage and be accessed from a private cul-de-sac. The zoning ordinance, in Section 59-C-1.527 provides that:

“In the RE-2C zone, lots may front on a private cul-de-sac if the Planning Board finds, as part of the subdivision plan approval process, that the private cul-de-sac:

1. provides safe and adequate access;
2. has sufficient width to accommodate the dwelling units proposed;
3. will better protect significant environmental features on and off site than would a public road; and
4. has proper drainage.”

Staff believes a private roadway designed to the minimum Montgomery County Fire and Rescue (MCFRS) standards will provide safe and adequate access for the proposed lots and will have sufficient width to accommodate the proposed dwelling units. A condition requiring revision of the roadway design shown on the preliminary plan is included in the staff recommendation. Sufficient area is available on the plan to accommodate the necessary changes.

Access via a private road for this subdivision avoids multiple driveways onto Norwood Road in a location that would interfere with the operation of the Norwood Road/Norbeck Road Extended intersection. The private road enhances the ability to cluster the lots and protect the environmental features on the site. The road is required to be constructed to the structural standards of a public tertiary street, and proper drainage will be provided. Therefore, Staff finds that the criteria for frontage of lots on a private cul-de-sac have been met and recommends approval.

Parks

The Patton Property lies on both sides of the Northwest Branch stream which is a master planned trail and greenway corridor that follows the stream valley through Montgomery County from the Prince Georges County border to Sandy Spring. Although the subject Plan includes only the west side of the stream, sufficiently wide parkland will be needed on both sides for protection of the aquatic resources and to accommodate a natural surface trail on the east side.

Forest Conservation

The tract area for this proposed project covers 49.7 acres, but the preliminary forest conservation plan (FCP) covers 47.7 acres. The remaining 2 acres lie on Lot 5 in the Peterson’s subdivision and are covered by an approved forest conservation plan for that subdivision (FCP no. 1-91045). Since only the RE-2C zoned Phase I portion of the plan is being subdivided at this time, staff is considering only this area for final approval with regard to limits of disturbance. The conceptual limits of disturbance shown for the remaining RE-2 zoned portion of the site that will be subdivided in Phase II are generally acceptable and should be used as a basis for future plans. Staff recommends that no clearing, grading, or forest removal occur on the Phase II

portion of the site until the preliminary FCP is revised to include necessary detail, and has been approved by the Planning Board.

One area of the RE-2 portion of the preliminary FCP that should be closely evaluated when the preliminary FCP is revised is the proposed forest retention area on proposed Lots 13 and 14 (on the south side of Norbeck Road extended). As it is configured in this FCP, the retention area is fairly narrow and would be in very close proximity to houses on these lots. Enforcement of such a narrow on-lot forest retention area that is close to houses as an undisturbed natural area would be difficult. In addition, part of the septic field for Lot 13 would lie within the retention area. When the preliminary FCP is revised for these two proposed lots, more information should be available regarding allowable septic areas and proposed grading. If a larger forest area may be protected and it can be well-separated from proposed houses, on-site forest retention may be appropriate on one or both of the proposed lots.

Within the RE-2C (clustered) portion of the site, the preliminary FCP is acceptable. Staff recommends that the proposed water and sewer lines that will be constructed to serve the clustered lots be located as part of the final FCP to avoid or minimize disturbance to wetlands and large trees within the environmental buffer. The applicant proposes to dedicate this land to M-NCPPC as parkland after the utility construction work is completed. To ensure that this construction area is sufficiently restored and replanted prior to its conveyance to M-NCPPC as parkland, staff recommends that the final FCP include location and reforestation plans for the utility construction area that will be reviewed and approved by M-NCPPC Environmental Planning staff.

Environmental Buffers

The majority of the environmental buffers on the site are within forested floodplain. Within the RE-2C portion of the site, the environmental buffers are proposed to lie within land that is to be dedicated to M-NCPPC as parkland. Staff supports this configuration of the park dedication area. As discussed in the "Forest Conservation" section, above, staff recommends that the location and replanting plans of proposed sewer and water lines through the environmental buffers and future parkland be submitted as part of the final FCP.

Illegal Fill in Floodplain and Wetlands

In March 2004, the Maryland Department of the Environment (MDE) identified unauthorized fill within part of the floodplain and wetlands on the subject site. MDE observed that the fill was largely made of brush, but soil, bricks, and metal were also present. MDE required the property owner to remove the fill, restore the area to its original grade, and to stabilize the area with vegetation. In April 2004, MDE re-inspected the site and found that the required fill removal and restoration work had been satisfactorily completed.

Transportation

Proposed Intercounty Connector

As part of its preparation of the *Draft Environmental Impact Statement (DEIS)* for the proposed ICC, SHA has developed detailed engineering mapping for the roadway, which is proposed as a limited-access east-west highway intended to link areas between I-270 and I-95/US 1, through central/eastern Montgomery and western Prince George's Counties.

The ICC planning process has concurrence on two alternative alignments called Corridor 1 and Corridor 2. Corridor 1 is the southern alignment that generally follows the alignment incorporated in the area master plans for the ICC, and Corridor 2 is the alignment to the north that is not represented in any area master plans. Of the above two alternative roadway alignments, based on current information available in the ICC *DEIS* and as seen on Attachment C, the Corridor 2 alignment has right-of-way and grading impacts along the frontage of the property.

The ICC study process is currently ongoing following guidelines mandated by Federal agencies that require evaluation of more than one "build" alternative. Transportation Planning staff is of the opinion that placing the Reservation Area in reservation until February 1, 2005 (or until a final Record of Decision is issued, if issued before February 1, 2005), would fully protect the ICC *DEIS* review process and the ensuing final Record of Decision.

Local Area Transportation Review

The subject Preliminary Plan proposing six single-family detached dwelling units will generate less than 50 total peak hour trips during the weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods (6 and 7 total peak hour trips, respectively). Therefore, the subject development is not required to satisfy Local Area Transportation Review.

Policy Area Transportation Review/Staging Ceiling Conditions

Transportation staging ceiling capacity existed for residential development (+1,285 residential units as of June 30, 2004) within the Cloverly Policy Area under the FY 2004 AGP. Therefore, Patton Property Preliminary Plan satisfied the Policy Area Transportation Review test.

CONCLUSION

As set forth above and in the attached Data Table, Staff finds that the proposed six-lot cluster plan meets the applicable requirements of Chapter 50, the Subdivision Regulations, and Chapter 59, the Zoning Ordinance, including the requirements for waiver of the minimum 50-acre development area requirement in the RE-2C zone. As such, Staff recommends approval of the proposed subdivision with the conditions specified above.

Attachments

Attachment A Vicinity Map

Attachment B Proposed Preliminary Plan

Attachment C ICC Reservation Area

Attachment D Citizen Correspondence

Attachment E Agency Correspondence

Preliminary Plan Data Table and Checklist

Plan Name: Patton Property, Phase I				
Plan Number: 120040920				
Zoning: RE-2 and RE-2C				
# of Lots: 6				
# of Outlots: 8 (Open Space)				
Dev. Type:				
PLAN DATA	Required/Permitted	Proposed for Approval	Verified	Date
Minimum Lot Area	25,000 sq.ft.	37,896 sq.ft. is minimum proposed	CAC	11/22/05
Lot Width	N/a	N/a		
Lot Frontage	25 ft.	Must meet minimum	CAC	11/22/05
Setbacks				
Any lot line	15 ft. Min.	Must meet minimum	CAC	11/22/05
Rear yard from any subdivision boundary	50 ft. Min.	Must meet minimum	CAC	11/22/05
Dwelling units from any public street	40 ft. Min.	Must meet minimum	CAC	11/22/05
Height	50 ft. Max.	May not exceed maximum	CAC	11/22/05
Max Resid'l d.u. per Zoning	0.4	May not exceed maximum	CAC	11/22/05
MPDUs	N/a	N/a		
TDRs	N/a	N/a		
Site Plan Req'd?	No	N/a	CAC	11/22/05
FINDINGS				
<i>SUBDIVISION</i>				
Lot frontage on Public Street	Not required	Public road frontage for 3 lots and private street frontage for 3 lots	CAC	11/22/05
Road dedication and frontage improvements	Yes	Yes	DPWT Letter	9/9/05
Environmental Guidelines	Yes	Yes	Staff memo	11/23/05
Forest Conservation	Yes	Yes	Staff memo	11/23/0
Master Plan Compliance	Yes	Yes		
Park Dedication	Yes	Yes	Staff Memo	6/15/05
<i>ADEQUATE PUBLIC FACILITIES</i>				
Stormwater Management	Yes	Yes	DPS Letter	4/14/04
Water and Sewer (WSSC)	Yes	Yes	CAC	11/22/05
10-yr Water and Sewer Plan Compliance	Yes	Yes	CAC	11/22/05
Local Area Traffic Review	Yes	Yes	Staff Memo	6/15/05
Fire and Rescue	Yes	Yes	Staff email	11/23/05