

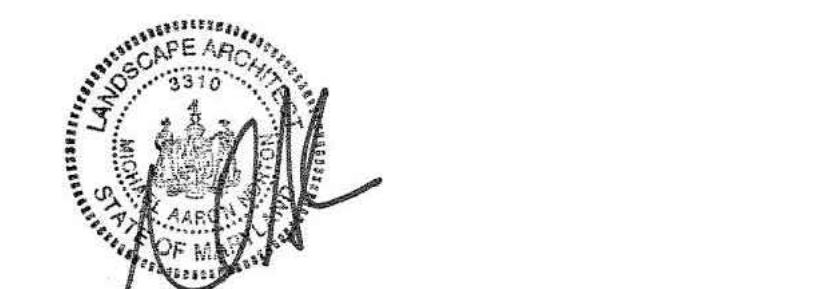
GENERAL NOTES:

- 1) ZONE: R60
- 2) WATER CATEGORY - W-1 SEWER CATEGORY - S-1
- 3) SUBJECT PROPERTY TOPOGRAPHY INFORMATION BASED ON A SURVEY PERFORMED BY: APEX LAND SOLUTIONS JULY, 2017
- 4) BOUNDARY INFORMATION BASED ON A SURVEY PERFORMED BY: MERIDIAN SURVEYS, FREDERICK, MD FEBRUARY 2023
- 5) ADJACENT CONTOURS & PROPERTY BOUNDARY INFORMATION BASED ON MNCPPC GIS DATA.
- 6) TOTAL TRACT AREA = 25,532 SF OR 0.59 AC.
- 7) PROPERTY SHOWN ON TAX MAP GNS1.
- 8) PROPERTY SHOWN ON WSSC 200' SHEET 209N06.
- 9) PROPERTY SHOWN ON MONTGOMERY COUNTY SOILS SURVEY MAP No. 26 SOIL TYPE(S): 2B GLENELG SILT LOAM 3-BX SLOPES, 2C GLENELG SILT LOAM 8-15% SLOPES
- 10) THERE IS NO 100 YEAR FLOODPLAIN ASSOCIATED WITH THE PROPERTY ACCORDING TO THE FEMA FLOOD MAP COMMUNITY PANEL #24031C0435D
- 11) SITE IS LOCATED IN THE POTOMAC WATERSHED USE I-P.
- 12) LOCAL UTILITIES INCLUDE:
 - SEWER - WASHINGTON SUBURBAN SANITARY COMMISSION
 - WATER - WSSC
 - ELECTRIC - PEPCO
 - TELEPHONE - VERIZON
- 13) THERE ARE NO WELLS WITHIN 100 FEET OF THE PROPERTY.
- 14) PROPERTY ADDRESS:
 - 6535 ELGIN LANE
 - BETHESDA, MD 20817
 - TAX ACCOUNT # 0024423
 - FOREST CONSERVATION PLAN EXEMPTION #420182022

Table 1: R-60 Zone, Standard Development Standards			
1. Lot and Density (59.4.4.9.B.1)	MNCPPC REQUIRED/PERMITTED	Proposed Lot 101	Proposed Lot 102
Lot (min)			
Lot area	6,000 SF	15,492 SF	10,040 SF
Lot width of front building line	60'	71'	88'
Lot width at front of lot	25'	66.1'	78.4'
Frontage on street or open space	Proposed except as exempt under Chapter 59		
Density (max)			
Density (units/acre)	7.26		7.10
Coverage (max)			
Lot	35%	20%	15%
Specification for Lot and Density			
a. Lot width at the front building line and setback requirements may be reduced under Section 59.4.4.9.B.2.			
b. Development with a detached house building type may have to satisfy Section 59.4.4.9.B.2. Residential Infill Compatibility.			
2. Placement (59.4.4.9.B.2)			
Principal Building Setbacks (min)			
Front setback	25'	25'	25'
Side street setback, abutting lot fronts on the side street and in a Residential Detached zone	25'	N/A	N/A
Side street setback, abutting lot fronts not front on the side street or in a Residential Detached zone	35'	N/A	N/A
Side setback	8'	8' & 10'	8' & 12'
Side of side setbacks	18'	18'	20'
Rear setback	20'	VARIABLE, MIN 25'	VARIABLE, MIN 20'
Specification for Principal Building Setbacks			
a. Development may have to satisfy Section 59.4.4.9.B.2. Established Building Line.			
3. Height (59.4.4.9.B.3)			
Principal building			
Maximum height, point of roof surface, regardless of roof type, or	30'	≤ 30'	≤ 30'

- NOTE: THE PROPOSAL IS FOR THE STANDARD METHOD OF DEVELOPMENT.
- THE APPROVED LOTS WILL EXCEED THE MINIMUM REQUIREMENT FOR THE R-60 ZONE, LOT SIZE MAY BE ADJUSTED DURING FINAL RECORD PLAN REVIEW.
 - SUBJECT TO DPS ESTABLISHED BUILDING RESTRICTION LINE. BUILDING COVERAGE SCALED PER LOT SIZE AND IS SUBJECT TO CHANGE PENDING ARCHITECTURAL FOOTPRINTS.

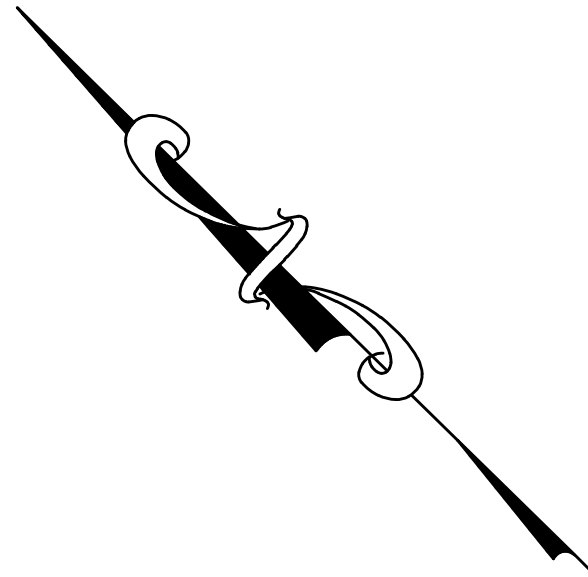
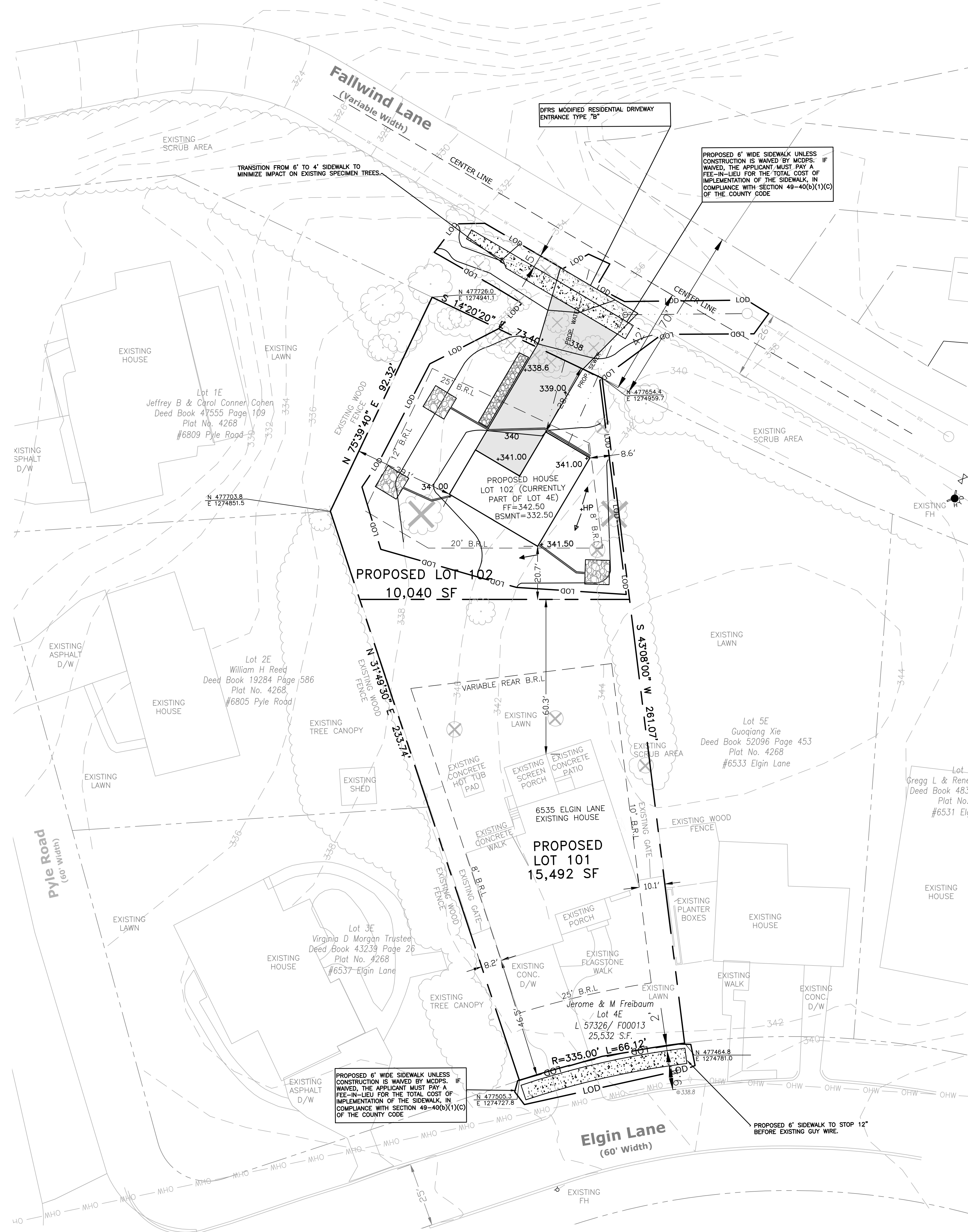
SURVEYOR'S CERTIFICATION
 I HEREBY CERTIFY THAT THE INFORMATION RELATING TO THE BOUNDARY FOR THE SUBJECT PROPERTY INCLUDED IN THIS ADMINISTRATIVE SUBDIVISION PLAN IS CORRECT, THAT IT IS THE RESULT OF A FIELD SURVEY PERFORMED UNDER MY DIRECT SUPERVISION IN ACCORDANCE WITH THE LAWS REGULATING LAND SURVEYING IN THE STATE OF MARYLAND.
 STEPHEN WENTHOLD DATE: 02.15.2023
 MARYLAND PROFESSIONAL LAND SURVEYOR #10767
 RENEWS/EXPIRES 02.10.2024



LANDSCAPE ARCHITECT CERTIFICATION:
 I HEREBY CERTIFY THAT THESE CONTRACT DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED REGISTERED LANDSCAPE ARCHITECT UNDER THE LAWS OF THE STATE OF MARYLAND.
 LICENSE #: 3310
 EXPIRATION DATE: 9.7.2023

LIST OF DRAWINGS	
SHEET #	DESCRIPTION
L-1.1	ADMINISTRATIVE SUBDIVISION PLAN
L-1.2	ADMINISTRATIVE SUBDIVISION PLAN - APPROVAL SHEET
L-3.1	TREE SAVE PLAN
L-3.2	TREE SAVE MITIGATION AND PLANTING PLAN

NOTE
 UNLESS SPECIFICALLY NOTED ON THIS PLAN DRAWING OR IN THE PLANNING BOARD CONDITIONS OF APPROVAL, THE BUILDING FOOTPRINTS, BUILDING HEIGHTS, ON-SITE PARKING, SITE CIRCULATION, AND SIDEWALKS SHOWN ON THE ADMINISTRATIVE SUBDIVISION PLAN ARE ILLUSTRATIVE. THE FINAL LOCATIONS OF BUILDINGS, STRUCTURES AND HARDSCAPE WILL BE DETERMINED AT THE TIME OF ISSUANCE OF BUILDING PERMIT(S) APPROVAL. PLEASE REFER TO THE ZONING DATA TABLE FOR DEVELOPMENT STANDARDS SUCH AS SETBACKS, BUILDING RESTRICTION LINES, BUILDING HEIGHT, AND LOT COVERAGE FOR EACH LOT. OTHER LIMITATIONS FOR SITE DEVELOPMENT MAY ALSO BE INCLUDED IN THE CONDITIONS OF APPROVAL.



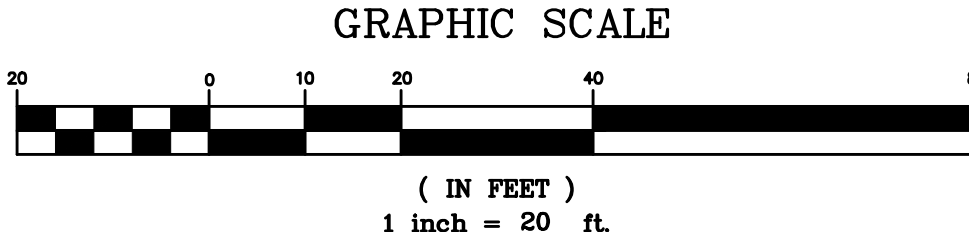
LEGEND	
	SUBJECT PROPERTY BOUNDARY
	ADJACENT PROPERTY BOUNDARY
	EXISTING 2' CONTOURS
	PROPOSED CONTOURS
	SOIL TYPE BOUNDARY
	LIMITS OF DISTURBANCE
	EXISTING HOUSE
	EXISTING ROAD
	BUILDING RESTRICTION LINE
	PROPOSED HOUSE
	PROPOSED DRIVEWAY
	PROPOSED SIDEWALK
	PROPOSED DRYWELL
	PERF. SCHEDULE 40 6" PVC
	SOLID SCHEDULE 40 6" PVC
	PROPOSED UTILITIES
	EXISTING TREE
	TREE REMOVAL
	EXISTING TREE CANOPY (NONFOREST)
	TREE REMOVED DURING RECONSTRUCTION OF EXISTING HOUSE

- NOTES:**
- EXISTING UTILITY LOCATIONS ARE APPROXIMATE. THEY ARE BASED UPON AVAILABLE RECORDS AND ARE SHOWN TO THE BEST OF OUR ABILITY. ALL UTILITY LOCATIONS MUST BE FIELD LOCATED.
 - RESIDENTIAL DRIVEWAY TO COMPLY TO MONTGOMERY COUNTY STANDARD NO. MC-301.01.

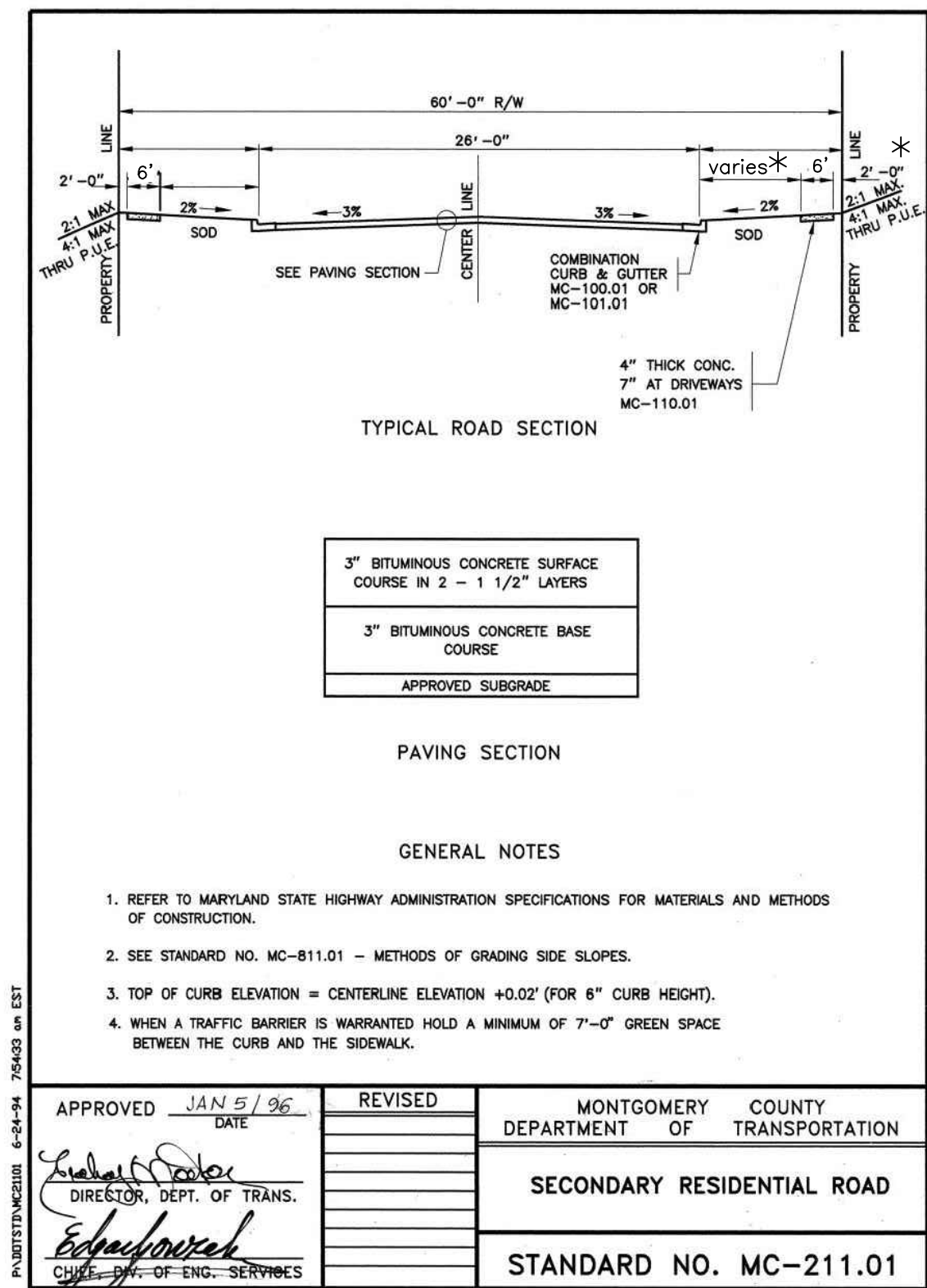
CONCEPTUAL LIMITS OF DISTURBANCE:
 LOD = 10,600 SF

SEQUENCE OF CONSTRUCTION:

1. CONSTRUCT ON LOT 102.
2. CONSTRUCT SIDEWALK AND INSTALL STREET TREES
3. INSTALL LANDSCAPING



NOTE:
 EXISTING UTILITY LOCATIONS ARE APPROXIMATE. THEY ARE BASED UPON AVAILABLE RECORDS AND ARE SHOWN TO THE BEST OF OUR ABILITY. ALL UTILITY LOCATIONS MUST BE FIELD LOCATED.



*PROPOSED MODIFICATION FOR FALLWIND DRIVE:
 PROPOSED SIDEWALK ON FALLWIND LANE TO BE 5' FROM ROAD TO AVOID SPECIMEN TREE IMPACTS. SIDEWALK WILL ALSO TRANSITION TO 4' WIDTH AS SHOWN TO MINIMIZE IMPACTS.

NOTE: FALLWIND LANE IS A VARIABLE WIDTH ROAD

TITLE ADMINISTRATIVE SUBDIVISION MNCPPC 620210080	
PROJECT JEROME FREIBAUM LOT 4 6535 ELGIN LANE, BETHESDA MD 20817 LOT 4, BLOCK E MERRIMACK PARK L 57326/F 013 7TH ELECTION DISTRICT	
PREPARED FOR JEROME FREIBAUM LIVING TRUST MAURA FREIBAUM LIVING TRUST C/O ROBERT FREIBAUM 6607 LADOGA LANE NEW MARKET, MD 21774	
PREPARED BY nld LAND DESIGN LANDSCAPE ARCHITECTURE & ENVIRONMENTAL PLANNING 5146 DORSEY HALL DRIVE 2ND FLOOR ELLICOTT CITY, MD 21042 0.433.542.9199 NORTONLANDDESIGN.COM	
REVISIONS VICINITY MAP 1"=2,000' 	
WATER CLASS I-P WATERSHED POTOMAC FLOODPLAIN MAP PANEL # 24031C0435D	TAX MAP GNS1 200' SHEET 209N06 ADC MAP PAGE 35 GRID E-13
SCALE AS SHOWN DATE FEBRUARY 2023	PROJ. NO. 22-148 SHEET NO. L-1.1



DEPARTMENT OF PERMITTING SERVICES

Marc Elrich
County Executive

Mitra Pedoeem
Director

August 8, 2022

Mr. Mike Hicks, PE
BPR Land Surveying and Civil Engineering
150 Airport Drive, Suite 4
Westminster, MD 21157

Re: Combined **STORMWATER MANAGEMENT CONCEPT/SITE DEVELOPMENT STORMWATER MANAGEMENT PLAN** for Elgin Road/Fallswind Lane
Preliminary Plan - 620210080
SM File #: 288527
Tract Size: 0.5868 ac.
Total Concept Area: 10,400 sq ft
Type of Development: New Development

Dear Mr. Hicks:

Based on a review by the Department of Permitting Services Review Staff, the revision to the stormwater management concept for the above-mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via Environmental Site Design measures such as drywells.

The following items will need to be addressed during the detailed sediment control/stormwater management plan stage:

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.
3. SWM measures should maximize treatment of vehicular areas.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. The detailed plan must utilize the latest DPS guidance.



2425 Reedie Drive, 7th Floor, Wheaton, Maryland 20902 | 240-777-0311
www.montgomerycountymd.gov/permittingservices

Mr. Mike Hicks, PE
August 8, 2022
Page 2 of 2

6. Provide computations to demonstrate that the volume to be treated in each facility is able to enter the facility without bypassing.
7. This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required** when full stormwater management compliance is achieved.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Mary Fertig at 240-777-6202 or at mary.fertig@montgomerycountymd.gov.

Sincerely,



Mark C. Etheridge, Manager
Water Resources Section
Division of Land Development Services

MCE: MMF

cc: N. Braunstein
SM File # 288527

ESD: Required 619 cf /647 cf
PE: Target/Achieved: 1.8" / 0.1.8
STRUCTURAL: N/A
WAIVED: N/A



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**Department of Permitting Services
Fire Department Access and Water Supply Comments**

DATE: 16-Mar-23
TO: Shawn Benjaminson - SBenjaminson@adtekengine
ADTEK Engineers
FROM: Marie LaBaw
RE: Jerome Freibaum Lot 4
620210080

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **16-Mar-23**. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.



DEPARTMENT OF TRANSPORTATION

Marc Elrich
County Executive

Christopher Conklin
Director

March 17, 2023

Mr. Adam Bossi, Planner III
Down-County Division
The Maryland-National Capital
Park & Planning Commission
2425 Reedie Drive
Wheaton, Maryland 20902

RE: Administrative Plan No. 620210080
Jerome Friebaum Lot 4

Dear Mr. Bossi:

We have completed our review of the administrative plan uploaded to Eplans on March 16, 2023. A previous version of this plan was reviewed by the Development Review Committee (DRC) at its meeting on April 26, 2022. We recommend approval of the plan subject to the following comments:

Significant Plan Review Comments

1. The applicant shall construct a six (6) foot wide, concrete sidewalk with a nine (9) foot buffer within the right-of-way along the Elgin Lane frontage as shown on Sheet 1.
2. The applicant shall construct a six (6) foot wide, concrete sidewalk with a five (5) foot buffer within the right-of-way along the Fallwind Lane frontage as shown on Sheet 1.

Standard Plan Review Comments

3. All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to the Montgomery County Department of Permitting Services in the package for record plats, storm drain, grading or paving plans, or application for access permit. This letter and all other correspondence from this department should be included in the package.
4. The storm drain analysis was reviewed and is acceptable to MCDOT. No improvements are needed to the downstream public storm drain system for this plan.

Office of the Director

101 Monroe Street 10th Floor · Rockville Maryland 20850 · 240-777-7170 · 240-777-7178 FAX
www.montgomerycountymd.gov

Located one block west of the Rockville Metro Station

5. The sight distance study has been accepted. A copy of the accepted Sight Distance Evaluation certification form is enclosed for your information and reference.
6. Relocation of utilities along Elgin Lane and Fallwind Lane to accommodate the required roadway improvements shall be the responsibility of the applicant.
7. Trees in the County rights-of-way – spacing and species are to be in accordance with the applicable MCDOT standards. Tree planning within the public right of way must be coordinated with DPS Right-of-Way Plan Review Section.
8. Posting of a right-of-way permit bond is a prerequisite to DPS approval of the record plat. The right-of-way permit will include, but not necessarily be limited to, the following improvements:
 - A. Sidewalk and street trees along Elgin Lane and Fallwind Lane.
 - B. Permanent monuments and property line markers, as required by Section 50-4.3(G) of the Subdivision Regulations.
 - C. Erosion and sediment control measures as required by Montgomery County Code 19-10(02) and on-site stormwater management, where applicable, shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.

Thank you for the opportunity to review this administrative plan. If you have any questions or comments regarding this letter, please contact me at william.whelan@montgomerycountymd.gov or (240) 777-2173.

Sincerely,

William Whelan

William Whelan
Development Review Team
Office of Transportation Policy

Mr. Adam Bossi
Administrative Plan No. 620210080
March 17, 2023
Page 3

Enclosures (1)

Sight Distances

Sharepoint/transportation/director's office/development review/WhelanW/620210080 Jerome Friebaum Lot 4-MCDOT
Review Letter 031723.docx

cc: Sharepoint Correspondence 2023

cc-e: Michael Norton	Norton Land Design
Katie Mencarini	MNCP&PC
Sam Farhadi	MCDPS RWPR
Marie LaBaw	MCFRS



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

October 18, 2018

Robert Freibaum
6607 Ladoga Lane
New Market, MD 21774

Re: Forest Conservation Exemption Request and Simplified NRI/FSD No. 42018202E
Property Name: Freibaum Addition to Merrimack Park (Merrimack Park Lot 4, Block E)
Action: Exemption Confirmed & Simplified NRI/FSD Approved on 10/18/2018

Dear Robert Freibaum:

On October 16, 2018, Montgomery County Planning Department Staff received a revised Simplified Natural Resource Inventory / Forest Stand Delineation "Simplified NRI/FSD" for an existing Lot, Merrimack Park Lot 4, Block E. This Simplified NRI/FSD is part of a Chapter 22A-5(s)(2) Exemption Request for an activity on a small property. A Preliminary Plan of Subdivision is being filed in conjunction with this forest conservation exemption request.

A Chapter 22A-5(s)(2) Exemption Request is for an activity on a tract of land of less than 1 acre that will not result in the clearing or more than a total of 20,000 square feet of existing forest, or any existing specimen or champion tree, and not result in reforestation requirements more than 10,000 square feet.

The project's tract area is approximately 0.62 acres. The proposed construction limits of disturbance area is less than 1 acre. No forest or champion trees exists on the property. There are specimen trees within the limits of disturbance. This activity does not trigger reforestation. As specimen trees are to be impacted by the proposed project confirmation of the exemption request requires approval of a Tree Save Plan pursuant to Chapter 22A-6 of the Forest Conservation Law. The revised Simplified NRI/FSD notes that a Tree Save Plan will be submitted for approval at the time of Preliminary Plan of Subdivision.

The Forest Conservation Exemption Request No. 42018202E for the Freibaum Addition to Merrimack Park is confirmed on the condition that a Tree Save Plan is submitted for approval with the Preliminary Plan of Subdivision. The Simplified NRI/FSD submitted on October 16, 2018 for the project is approved.

Any changes from the confirmed Forest Conservation Exemption Request may constitute grounds to rescind or amend any approval actions taken.

Sincerely,

Stephen Peck
Senior Planner
Development Applications and Regulatory Coordination
M-NCPPC - Montgomery County Planning Department

CC: Michael Hicks P.E., Eco Land Solutions LLC

Jerome Friebaum Lot 4 Administrative Subdivision OPPOSITION RECEIVED:

From: Jo-Ann Harrison <joannaharr@gmail.com>
Sent: Monday, May 2, 2022 3:41 PM
To: Graham, Tamika <tamika.graham@montgomeryplanning.org>
Subject: Request for information about plan 620210080

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Ms. Graham,

Laura Bradshaw, Senior Permitting Specialist, referred Kenwood Park Citizens Association to you for more information regarding the Plan 620210080. Particularly we are interested in how this plan impacts the access to the park . Please send us a copy of the documents that bare on the design and how it may impact the access to the park.

Sincerely,

JoAnn Harrison KCPA Chair Community Issues

From: Sklarew, Peter A. (TAX) <Peter.A.Sklarew@usdoj.gov>
Sent: Tuesday, April 26, 2022 6:17 PM
To: Bossi, Adam <Adam.Bossi@montgomeryplanning.org>
Cc: Christina Sklarew <sklarewc@gmail.com>
Subject: RE: [EXTERNAL] Application No. 620210080 -- 6535 Elgin Lane, Bethesda

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Mr. Bossi – just a quick question. While as a board member I am copied below on the MPHOA objection, my wife and I may want to submit one of our own and, if so, we would of course want it to be timely. Someone on our street suggested that there might be some kind of 15-day deadline to object to the subdivision that has already started running. On the other hand I understand that the Planning Board meeting on this is not likely to take place until close to the end of June. Can you let me know if there is already a set deadline for objecting?

Thanks,
Peter Sklarew
6521 Fallwind Lane

From: Christopher Weals <caweals@gmail.com>
Sent: Monday, April 25, 2022 6:34 PM
To: Adam.Bossi@montgomeryplanning.org
Cc: Jeff Cohen <jeffreybcohen@verizon.net>; Elsie Weinstein <elsie.weinstein@hocmc.org>; Sklarew, Peter A. (TAX) <Peter.A.Sklarew@usdoj.gov>; Andrew Karron <karronat@gmail.com>
Subject: [EXTERNAL] Application No. 620210080 -- 6535 Elgin Lane, Bethesda

Dear Mr. Bossi: The attached letter, with exhibits, is submitted on behalf of the Merrimack Park Homeowners' Association, Inc. in opposition to the referenced application. Please let me know if you have any questions. Thank you.

Cris Weals
President, Merrimack Park HOA
caweals@gmail.com
202.255.0961

From: Harleybillreed <harleybillreed@aol.com>
Sent: Sunday, April 24, 2022 8:09 PM
To: Bossi, Adam <Adam.Bossi@montgomeryplanning.org>
Subject: Opposition to Application No. 620210080 (6535 Elgin Ln.)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Mr. Bossi,

My name is William Reed and I own the property at 6805 Pyle Road, which is contiguous to a significant portion of the subject property at 6535 Elgin Lane. I have lived at this property for 21 years. My property is directly next door to the property owned by Jeffrey Cohen and Carol Connor Cohen at 6809 Pyle Road. Mr. and Mrs. Cohen submitted an emailed letter, dated April 20, 2022, in opposition to Application No. 620210080, for the compelling reasons stated therein.

I wholeheartedly agree with the reasons delineated in the Cohens' opposition to the Application. I am concerned about the loss of tree canopy that also provides a buffer against the noise on nearby River Road, a busy thoroughfare. Because my property is at a lower elevation than the proposed lot to be subdivided, my property will be negatively impacted by the storm water runoff and drainage from the undoubtedly large house and impervious surface that would be constructed on that subdivided lot.. Having a new house looming over my yard would have a negative effect on my property value, not to mention the loss of privacy and enjoyment I will experience if a subdivision of the lot behind my fence and overlooking my yard is allowed. These are all concerns I share with my neighbors. One of the reasons I purchased a home in the Merrimack Park/Bannochburn neighborhood is that the houses here were constructed on lots that did not allow for overcrowding homes. Allowing this subdivision to occur would detract from the beauty of our neighborhood and the value of our homes. Subdivision of lots, to my knowledge, has not before taken place in this neighborhood.

Thank you for time and consideration in this matter. If you have any questions, I can be reached at (301) 404-7092.

Sincerely,
William Reed
6805 Pyle Road
Bethesda, MD 20817

From: virginia morgan <virginiamorgansmail@gmail.com>
Sent: Saturday, April 23, 2022 1:40 PM
To: Bossi, Adam <Adam.Bossi@montgomeryplanning.org>
Subject: Subdivision plan 620210080

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Montgomery County Planning,

Re: Application 620210080.

Dear Mr. Bossi,

I reside at 6537, next to the property requesting subdivision. I do not believe that anyone in the Merrimack Park neighborhood should be subject to a subdivision allowing additional construction that results in reducing the

enjoyment or value of an existing property. This application would do both for my neighbors at 6805 and 6809 Pyle Road. I support all of the objections Mr. Cohen has submitted to you. Therefore, I strenuously object to Subdivision 620210080.

A previous action of the Planning Board rejected an application to subdivide 3 lots into 2 at 6526 Elgin and 6713 Pyle, just across the street from 6535. The decision was for Merrimack Park to have only one house on one lot. I believe this decision should be upheld by the county and maintained by the Planning Board.

Thank you,
Virginia Morgan
6537 Elgin Ln
Bethesda, MD 20817

From: Jeff Cohen <jeffreybcohen@verizon.net>
Sent: Wednesday, April 20, 2022 4:07 PM
To: Bossi, Adam <Adam.Bossi@montgomeryplanning.org>
Cc: carolconnorcohen@gmail.com
Subject: Application No. 620210080 (6535 Elgin Lane, Bethesda)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Mr. Bossi:

Thank you for explaining the application process in our telephone call earlier this afternoon.

We are the owners of the property at 6809 Pyle Road, Bethesda, MD 20817, which is contiguous to the subject property at 6535 Elgin Lane. In fact, the proposed sub-divided lot is directly behind our house.

We strenuously oppose the application to sub-divide the existing single lot at 6535 Elgin Lane. The reasons for our opposition include, but are not limited to, the following, and we reserve our rights to augment these reasons as the process goes forward.

1. The proposed subdivision would negatively impact our use and enjoyment of our property. The proposed new lot, and the house contemplated to be built on that lot, would be immediately behind our house, and at a higher elevation. As a result, the new house would have a direct line of sight into the rear windows of our home, and onto our patio, where we regularly entertain. We have a fence on our rear property line, but given the difference in elevation, residents of the proposed new house would easily be able to look over the fence into our yard and home. We also anticipate that there would be considerably more noise.
2. We are concerned about the loss of tree canopy that will likely occur. Indeed, the current owners of the lot have already removed a number of trees from the portion of the lot behind our home, some very large, presumably in anticipation of building the planned new house.
3. We are extremely concerned about the changes in water run-off and drainage – and how that might adversely affect our property – if a house commensurate with the neighborhood is built on the sub-divided property. We are considering hiring an expert to assess this issue.
4. When we purchased our property in 2007, it was our understanding that the deed to 6535 Elgin contained a covenant not to sub-divide and/or not to build a dwelling on that portion of the property that abuts ours.
5. Although the proposed new lot may, as a technical matter, be of sufficient size to meet legal requirements, a house of a size commensurate with our neighborhood is likely to have relatively little green space surrounding it, especially given the size of the house currently being built on the front section of the lot at 6535 Elgin Lane.
6. For all of these reasons, the proposed subdivision would have an adverse impact on the fair market value of our property.

Thank you for your consideration of our comments.

Carol Connor Cohen
Jeffrey B. Cohen
6809 Pyle Road
Bethesda, MD 20817
301-312-6960

April 25, 2022

Via Email

Adam Bossi
Planner II, DownCounty Planning Division
Montgomery County Planning Department
2425 Reedie Drive, Wheaton, MD 20902
adam.bossi@montgomeryplanning.org

Re: Application No. 620210080 – 6535 Elgin Lane, Bethesda

Dear Mr. Bossi:

I am writing on behalf of the Merrimack Park Homeowners' Association, Inc. (HOA), a homeowners' association on Fallwind Lane in Bethesda. The HOA's membership consists of 13 private homeowners and the Montgomery County Housing Opportunities Commission (HOC), which owns and manages 12 townhouse units on the street. I understand that you are the lead reviewer on the above-referenced application by Jerome Freibaum to subdivide the property at 6535 Elgin Lane, the street adjacent to Fallwind Lane. As explained in detail below, the HOA opposes the application and over the past few years has repeatedly conveyed that position to the Freibaum family.

By way of background, the houses and townhouses on Fallwind Lane are part of a development that the Maryland-National Capital Parks and Planning Commission approved in the early 1990s. The approved site plan (# 8-92016) called for homes to be built on one side of the street, with the other side (which backs onto Elgin Lane) maintained as an undeveloped buffer zone to shield the Elgin Lane homeowners' backyards. As part of the site plan, the developer was required to plant hundreds of trees and shrubs in the buffer zone, and over the years the HOA has paid a private landscape company to maintain the buffer zone. Documents related to the approved site plan are attached to this email as Exhibit A. It should be noted that Mr. Freibaum was an active member of a group of Elgin Lane residents who insisted that the buffer zone be created and trees planted to block their view of the new homes and townhouses on Fallwind Lane.

In 2018, a homeowner at 6521 Elgin Lane (not Mr. Freibaum) asked the County for permission to build a driveway through the buffer zone onto Fallwind Lane as part of a new home construction. The HOA opposed that request, and the permit application was either denied or withdrawn. I've attached correspondence related to that earlier dispute (Exhibit B).

In 2019, Mr. Freibaum, through his son, Rob, notified the HOA of his father's desire to subdivide the lot at 6535 Elgin Lane and install a driveway onto Fallwind Lane. HOA board members met with Rob Freibaum in August 2020, and again in November 2020, and conveyed the HOA's opposition to the proposed driveway, citing various reasons. At some point, the HOA was informed that Mr. Freibaum had filed, or was attempting to file, an application with the M-NCPPC (No. 62021000) to subdivide the lot into two parcels. The HOA has been monitoring

that application for some time, but until now nothing substantive has occurred with respect to that initiated application.

In the meantime, the HOA learned in early 2021 that Mr. Freibaum had filed a construction permit application with the Department of Permitting Services (DPS) to "restore and/or repair" the driveway at 6535 Elgin Lane. The application, however, was not limited to the existing driveway fronting Elgin Lane. It also included the construction of a driveway onto Fallwind Lane, which would have been a new driveway – although the application did not disclose this fact. Mr. Freibaum made this request even though his application to subdivide the lot was still awaiting action by your Department. Moreover, Mr. Freibaum failed to provide any notice of the permit application to the HOA, despite knowing that the HOA opposed the construction of a new driveway on Fallwind Lane. Apparently unaware of the pending application with your Department, DPS granted the permit (# 378872). Immediately upon learning of the permit, the HOA contacted DPS by telephone and in writing to reiterate the HOA's objection to the Fallwind Lane driveway and the apparent attempt by Mr. Freibaum to do an "end run" around the subdivision process by building the new Fallwind driveway via the DPS "restore and/or repair" permit application. See Exhibit C. DPS subsequently amended the permit to exclude the rear driveway onto Fallwind Lane.

We understand that the County's Development Review Committee will be meeting on April 26, 2022 to review Application No. 620210080. The HOA opposes that application. Our reasons are set forth in the enclosed documents and are summarized briefly here:

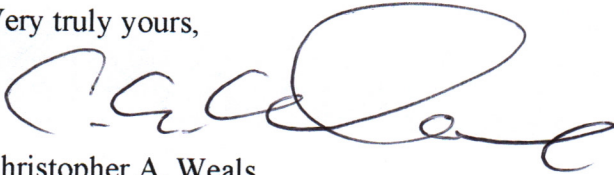
- The original buyers of the Fallwind Lane homes were told by the developer that there could never be driveways on the side of the street with the buffer zone. In fact, for nearly 25 years the HOA believed it owned the buffer zone and took care of it, though we later learned the strip is actually a right of way controlled by the County.
- The buffer zone was part of the original site plan and was included at the insistence of the Elgin Lane homeowners who wanted a barrier of trees and shrubs between them and the HOC townhouses. The proposed driveway would cause the removal of the very trees the Elgin Lane homeowners (including Mr. Freibaum) insisted be planted.
- The County did not allow the owner of the property at 6521 Elgin Lane to put a driveway through the buffer zone in 2018, thereby establishing a precedent to preserve the buffer zone and its plantings.
- The driveway being proposed in Application No. 620210080 would open onto a curve in Fallwind Lane, where cars coming around the curve would not be able to see cars exiting the driveway. This is a safety concern that weighs against allowing the driveway.
- The HOA told Mr. Freibaum that it would consider not opposing the driveway onto Fallwind Lane if he would agree to require the purchaser of the proposed rear lot of 6535 Elgin Lane, which would now face Fallwind Lane and have a Fallwind Lane address, to become a member of the HOA and to contribute to the upkeep of the buffer zone and other common areas on Fallwind Lane. All other homes and townhomes on

Fallwind Lane are members of the HOA and pay dues for the upkeep of common areas associated with Fallwind Lane. Mr. Freibaum has repeatedly rejected this proposal. The HOA believes it is unfair for a homeowner to have the benefit of a Fallwind Lane address but not share the costs maintaining the street, including the costs of private snowplowing in the winter.

- When Mr. Freibaum began rebuilding the house at 6535 Elgin Lane in 2021 (the prior dwelling was destroyed in a fire), the HOA asked him to consider building a pipestem driveway off Elgin Lane that would provide access to both the front house and the proposed new subdivided rear lot. Instead, Mr. Freibaum chose to situate the new house so that it takes up the entire width of the lot, thereby making it impossible to put in pipestem driveway as suggested. The HOA wrote a letter to DPS and M-NCPPC in September 2021 pointing out Mr. Freibaum's decision not to build a pipestem driveway, in the event Mr. Freibaum would later try to claim that the rear lot was "landlocked" and therefore needed a separate driveway. See Exhibit D.

For all these reasons, the HOA opposes the application and requests that it be denied. If this matter proceeds to a public hearing, the HOA asks that it be provided notice and an opportunity to be heard at such a hearing. If you have questions or would like to discuss this further, please feel free to contact me at 202.255.0961 or caweals@gmail.com.

Very truly yours,



Christopher A. Weals
President, Merrimack Park Homeowners' Association, Inc.

Enclosures

Cc: Elsie Weinstein, HOC
Jeffrey B. Cohen

MCPB

9/24/92

Item #21

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
501 Georgia Avenue • Silver Spring, Maryland 20910-3760

MEMORANDUM

DATE: September 21, 1992

TO: Montgomery County Planning Board

FROM: Staff, Urban Design Division

SUBJECT: Site Plan Review #8-92016
MERRIMACK PARK
R-60 Zone - Cluster Option
12 townhouses and 13 single-family detached units
600 feet southeast of the intersection of River Road and Pyle Road
Bethesda, Bethesda-Chevy Chase and Vicinity Planning Area

APPLICATION

On July 2, 1992, Charles P. Johnson and Associates filed Site Plan #8-92016 for 12 townhouses and 13 single-family detached units on 9.63 acres of property in the R-60 zone, located on a residential street that runs parallel to River Road near Pyle Road, in the Bethesda-Chevy Chase and Vicinity Planning Area. Previous Planning Board action has been to approve Preliminary Plan #1-91043 on September 12, 1991. Citizens have expressed concern about the following: tree preservation, exacerbation of existing stormwater runoff problems, screening with landscaping for compatibility, minimizing light trespass and glare and tree loss due to the location of the sewer line and hiker/biker path.

STAFF RECOMMENDATION

Staff recommends APPROVAL of 12 townhouses and 13 single-family detached homes subject to the following conditions:

1. Submit a Site Plan Enforcement Agreement, Development Program, Homeowners Association Documents and Forest Conservation Bond, prior to approval of the initial building permit and include Forest Conservation Plan maintenance agreement.

2. Homeowners Association Documents to allow incorporation of development into adjacent association if agreed to by that association.
3. Incorporate the following items into the landscape plan prior to approval of the initial building permit:
 - a. Trees and dense planting of shrubs on disturbed areas around hiker/biker path subject to MCDOT approval.
 - b. Street trees 40 feet on-center.
 - c. To define the open play area; three trees and twenty shrubs near the street and trees and shrubs to screen the salt storage facility.
 - d. Evergreen trees 8-10 feet in height behind townhouse lots 9-12.
 - e. Evergreen trees 6-10 feet in height, of a variety of species, along the northwestern boundary line, to be field located and to number 120. A reduction in number may be made by staff in the field. Trees may be placed off site with property owners' permission.
 - f. Approximately 25 percent of the 120 evergreen trees are to be 8-10 feet in height and are to screen the townhouses.
 - g. Shrubs to ensure screening along northeastern boundary to supplement new evergreen trees and existing trees.
 - h. A mix of evergreen and deciduous trees along the southeastern boundary to supplement the buffer of existing trees.
 - i. Any additional tree planting to meet reforestation requirements.
4. Street lights are to be selected that minimize the impact of light trespass and glare on the existing neighborhood.
5. Provide final Forest Conservation Plan and final worksheet for staff review and approval.
6. Tree preservation areas within private lots and common open space are to be placed in conservation easements. Such easements to be shown on record plats.
7. Provide noise attenuation for townhouse Lot 3 with a 9-foot tall fence or the equivalent combination of a wall and fence for staff review and approval.
8. For cul-de-sac Lots 24 and 25:
 - a. Direct a minimum of 3/4th of roof drainage of houses to Street A.
 - b. Locate house 35 feet from rear lot line on Lot 24.
 - c. Locate house 38 feet from rear lot line on Lot 25.
9. Provide a tot lot and two benches near the townhouses and a seating area along the hiker/biker path subject to staff approval.
10. Rear and side yard setbacks are to be no less than those shown on Site Plan Exhibit dated 9/21/92 unless approved by staff.

11. The following information must be clearly shown on the signature set of site and landscape plans and must be incorporated into the sediment and erosion control plan for staff review prior to approval by MCDEP:

- a. Limit of disturbance line.
- b. Methods of tree protection.
- c. Note stating that M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading in conformance with County Tree Technical Manual.
- d. The development program inspection schedule.

12. No clearing or grading prior to Planning Department approval of signature set of plans.

BASIS FOR REVIEW

The optional method of cluster development is being used; therefore, site plan review is required.

SUMMARY OF ISSUES

Issues are: tree preservation, exacerbation of existing stormwater runoff problems, screening with landscaping for compatibility, minimizing light trespass and glare, tree loss due to the location of the sewer line and hiker/biker path, and hiker/biker path ownership and maintenance.

EXISTING CONDITIONS

The site consists of 9.63 acres of R-60 zoned land located southeast of the intersection of Pyle Road and River Road, in the Bethesda-Chevy Chase and Vicinity Master Plan Area. The site is served by a residential road running parallel to River Road.

Property surrounding the site is zoned for single-family residential and is so developed. The site is bounded on the south, east and west by property zoned R-60. The site is bounded on the north by River Road and a State Highway Administration salt storage facility/construction staging area located within the River Road right-of-way. On the opposite side of River Road is property zoned R-90.

The site is rolling woodland. There are two high points on the site which drop to three low points. The change in elevation from high to low points ranges from 20 to 40 feet. Areas with slopes exceeding 25 percent occur in the southern portion of the site.

PROPOSED SITE PLAN

The proposal consists of 25 single-family units of which 12 are townhouses and 13 are detached units. The townhouses are part of a Housing Opportunities Commission affordable housing program. There is one street which ends in a cul-de-sac. There are over two acres of preserved woodland in the southern portion of the site. Most of the units are on the southeastern side of the street. Two homes are on the south side of the cul-de-sac and back onto the woodland. A hiker/biker path leads from this cul-de-sac through the woodland, south to Gold Leaf Drive. The townhouses are located at the north end of the site, near River Road. A large open play area is provided near them.

EXISTING REQUIREMENTS

1. Master Plan

The Bethesda-Chevy Chase Master Plan includes recommendations intended to meet housing goals; provide transit serviceable housing; ensure neighborhood compatibility; and protect and enhance the environmental character of the site.

The Plan recommends this site for townhouses and single-family detached units with a zone of R-60 suitable for cluster. It also recommends public acquisition of the site and encourages use for affordable housing either through a Housing Opportunities Commission (HOC) program or an alternative affordable housing project. The Plan states that site plan review would be required if an optional method of development were used and encourages interagency and citizen participation in the site plan review process. Although the Plan identifies 49 dwelling units as the maximum potential yield for the site it also states the fact that density may be reduced due to environmental constraints.

The Plan includes more specific recommendations about the development of the site. Development on the site should be sensitive to the single-family detached abutting neighborhoods. Higher density, such as townhouses, should be located near River Road. Access should be provided via River Road or Pyle Road. As much of the existing tree cover as possible should be preserved.

2. Requirements of Preliminary Plan Approval

On September 12, 1991, the Planning Board approved the preliminary plan of subdivision for the property, Preliminary Plan #1-91043, with a waiver of the length restrictions on cul-de-sacs and with the following conditions:

- a. Agreement with Planning Board to limit development to a maximum of 12 single-family attached and 13 single-family detached dwelling units.

- b. Incorporate into the Site Plan Enforcement Agreement a tree preservation plan including provisions for on-site inspections prior to, during, and after construction.
- c. Submit detailed landscape plan for the area northwest of the proposed right-of-way adjacent to existing Merrimack Park Subdivision.
- d. Provide final grading plan for the two lots located at the end of proposed cul-de-sac to ensure no additional stormwater runoff will affect properties along Kenhowe and Pyle Roads.
- e. Conditions of Department of Environmental Protection stormwater management approval dated June 27, 1991.
- f. Construct bike path and dedicate the area necessary along bike path to Montgomery County Department of Transportation.
- g. Access and improvements to be approved by Montgomery County Department of Transportation.
- h. No direct access to River Road (Route 190).
- i. Number and location of units to be determined at site plan.
- j. No clearing, grading, or recording of lots prior to site plan approval.
- k. Final area of tree preservation shall be identified on plat(s) by a recorded conservation easement note.
- l. Other necessary easements.

STAFF FINDINGS

1. Conformance with Standards of R-60 Zone with the Cluster Option

Conformance with Standards of the R-60 Zone with the Cluster Option, as follows:

SITE PLAN DATA TABLE

<u>Development Standard</u>	<u>Permitted/Required</u>	<u>Proposed</u>
Max Height	35 feet	35 feet
Density maximum	5 du/acre	2.6 du/acre
Detached Dwelling Units:		
- net lot area	4,000 s.f. min.	8,250 s.f. (Lot 23)
- width at streetline	25 feet min.	25 feet min.
Setbacks:		
- street	15 feet	22 feet (Lot 24)
- lotline	0 feet	3 feet (Lot 22)
- side yard/boundary		
match R-60	8 feet	22 feet (Lot 25)
- Rear yard/boundary	30 feet	32 feet (Lot 23)
Townhouses:		
- net lot area	2,000 s.f. min.	2,000 s.f.
- width of each lot	18 feet min.	18 feet min
- average frontages	20 feet	20 feet
- Setback- boundary	30 feet min.	32 feet
Parking - 13 Single-family Detached Units:		
Total (spaces)	26	52
- Garage	none	26
- Driveway	none	26
Parking - 12 Townhouses:		
Total (spaces) (all Driveway)	24	24
- Guest	none	on-street

2. Meeting the Intent of the Cluster Option

This site plan meets the intent of the cluster option through the provision of over two acres of woodland in common open space in the southern portion of the site.

3. Location of Buildings, Circulation, Open Space, and Landscaping

a. Location of Buildings

The location of buildings is adequate safe, and efficient. Due to the fact that the site is quite narrow, the single-family units and townhouses are arranged along only one side of the street. This is

a reasonable configuration. One row of three townhouses is angled toward Pyle Road, creating an attractive entrance to the site.

b. Vehicular and Pedestrian Circulation

Good vehicular and pedestrian circulation is achieved. There is a sidewalk on one side of the street and a hiker/biker path through the woodland. The sidewalk on only one side allows all the houses to be served while leaving additional space on the northwestern side for landscaping. The hiker/biker path links this neighborhood with the adjacent neighborhood and public park beyond. The hiker/biker path runs through the woodland to Gold Leaf Drive. Vehicular circulation and parking are adequate. Guest parking is plentiful since one entire side of the street can be used.

c. Open Space and Recreation

The open space and recreation systems will be adequate, safe, and efficient when conditions are met. There is open space provided in the woodland and near the townhouses. Recreation facilities include a large open play area near the townhouses, the woodland with the hiker/biker path and a pedestrian system. A seating area for the woodland and hiker/biker path is recommended as well as a tot lot and seating area near the townhouses. These additional facilities are needed for diversity and to provide adequately for young children in the townhouses who cannot go to the park on their own. The tot lot and seating area also provide a gathering place for the residents.

d. Landscaping, Screening, and Lighting

When conditions are met, the landscaping, screening and lighting will be adequate, safe and efficient, providing for compatibility and an attractive neighborhood. Landscaping on the site will consist of street trees, trees and shrubs to stabilize disturbed areas around the hiker/bike path, trees and shrubs to define the open play area near the street, trees for screening, and any additional trees needed to meet reforestation requirements on site.

There will be evergreen trees to provide screening between existing and proposed development. Evergreen trees 8-10 feet in height will be behind townhouse lots 9-12 to screen the backs of the units from existing homes on Tone Drive and Tone Court. Along the northwestern boundary line, staff recommends 120 evergreen trees between 6 and 10 feet in height of a variety of species to provide for screening for rear yards of existing homes on Elgin Lane. There is very little space on the site to fit both street trees and evergreen trees for screening along the northwestern boundary line. There are also existing off-site trees to be protected. Therefore, these evergreen trees are to be field located. A reduction in the total number may be made by staff in the field. The trees may be placed off-site if appropriate and with property owners' permission. Approximately

25 percent of the trees are to be 8-10 feet in height and located to screen the townhouses.

Along the southeastern boundary where single-family detached homes will back onto existing rear yards of homes on Tone Drive, a variety of evergreen and deciduous trees are being provided to enhance the buffer where tree preservation is occurring.

Street lights will be located on the southeastern side of the street with the sidewalk. Selection of these lights will be from among those acceptable to MCDOT. They will be chosen to minimize the impact of light trespass and glare on existing homes. The applicant has agreed to involve the existing community in the selection process.

e. Environmental Issues

The environmental issues have been studied in detail and have been adequately addressed. They include stormwater management in general; sediment and erosion control to protect existing homes during construction; noise mitigation for the townhouses near River Road; tree preservation, particularly in the woodland; protection of steep slopes; and ensuring that existing off-site stormwater management problems on Kenhowe Drive and Pyle Road are not exacerbated. Tree preservation will be adequately ensured by a tree preservation plan, conservation easements, and measures required by the forest conservation law.

Stormwater Management Waiver - A stormwater management waiver was granted requiring payment of a stormwater management contribution and fulfillment of conditions. A waiver for water quantity (flow rate) for the entire site was granted subject to conditions along with water quality for the 13 proposed single-family homes. A letter from MCDEP dated June 27, 1992 outlines the conditions as follows and has since been revised to eliminate the requirement for an oil and grit separator due to the elimination of the parking lot for the townhouses:

- 1) Provide a detailed study on the safe conveyance of all runoff leaving the site.
- 2) Regrade the two proposed lots at the end of the proposed cul-de-sac to redirect most of the runoff to the proposed street.
- 3) Install a combination swale/storm drain system along the east property line to safely convey runoff into the existing stormdrain inlet in the area of existing Lot 18/B.
- 4) Provide spot rip-rap or gabions and check dam structures for SVI at Minnehaha Branch, not to exceed 500 cubic yards.

Environmental Impact of Sewer Line and Hiker/Biker Path - A major concern has been the environmental impact of the sewer line and hiker/biker path. Based on studies of alternative sewer and path locations, staff recommends that the hiker/biker path run on top of the proposed sewer line and that both be located in the eastern portion of the woodland. This places almost one third of the path and sewer line out of the drainage area that is now experiencing so many problems. The following discussion of sewer line location and stormwater runoff summarizes the basis for the staff recommendation.

Sewer Line Location - Staff recommends that the sewer line run south through the woodland and connect to an existing sewer system in Goldleaf Drive. Alternatives to this alignment were considered but are not feasible. Three existing sewer lines in the vicinity were studied: Elgin Lane, Tone Drive and River Road (Attachment #3 illustrates the alternatives). There is no direct access to the existing sewer lines that lie to the east and west of the site under Elgin Lane and Tone Drive. The only access is between existing single-family homes. While there is an existing 15-foot wide drainage easement between lots 18 and 19 on Tone Drive, this easement already contains a 24 inch storm drain pipe. There is not sufficient space between the houses to also locate a sewer line.

The sewer line on River Road is further away than the other lines, and a pump would be required. The nearest sewer lines on River Road lie roughly 550 feet to the northwest and 900 feet to the southeast. According to WSSC, a sewer connection to one of the lines in River Road would require the use of grinder pumps. However, WSSC strongly discourages the use of grinder pumps because of high maintenance, if gravity sewer options are available.

Stormwater Runoff - Stormwater runoff from the site will be adequately managed. The overriding stormwater management concern has been the protection of homes on Kenhowe Drive and Pyle Road from any additional flow. The residents are already experiencing serious problems. A variety of measures will be taken including careful siting of houses, the sewer line and hiker/bike path.

Most stormwater from this site will flow to a storm drain connecting to a system under Tone Drive. Both the cul-de-sac and the impervious areas on the last two lots on the cul-de-sac, 24 and 25, have been carefully designed to drain primarily to the Tone Drive system and not to Kenhowe Drive and Pyle Road. The Tone Drive system is capable of handling this flow via an existing 24 inch storm drain pipe that runs between lots 18 and 19 on Tone Drive.

To avoid stormwater management problems that might be created by the sewer line and hiker/biker path, several measures will be taken. First, the hiker/bike path will be within the sewer line easement to minimize disturbance. In addition as much of the sewer/path as possible will be located outside the Kenhowe Drive-Pyle Road drainage area. This has been achieved by moving the sewer/path

uphill closer to the eastern property line. As a result, almost one third of the length of the hiker/biker path will drain to the storm drain system in Goldleaf Drive, approximately 215 feet of the 680-foot long path. There will also be a small swale on the down-slope side of the hiker/biker path which will help direct runoff to Gold Leaf Drive. Disturbed area along the hiker/biker path will be replanted with shrubs and trees to slow the rate of surface flow and increase infiltration. An additional short term benefit will be the gravel bed for the sewer line. This bed will intercept some subsurface flow, functioning as a french drain until the gravel fills in.

Steep Slopes - Steep slopes will be adequately protected on the site. Areas on the southern part of the property will lie within the woodland in common open space. A conservation easement on Lot 24 will protect nearby steep slope areas in the common open space and provide for tree preservation.

f. Ownership of Hiker/Biker Path

A preliminary plan condition currently requires dedication of the hiker/biker path to the Montgomery County Department of Transportation (MCDOT). MCDOT will accept the hiker/biker path only if there will be no adverse drainage impacts on the homes on Kenhowe Drive and Pyle Road on Lots 23-27 west of the woodland. With this in mind, MCDOT has requested that an on-site stormwater management pond be built.

A stormwater management pond does not seem appropriate for several reasons. First, the sewer line and hiker/biker path, as configured in the site plan, should not increase existing drainage problems. Moreover, although a stormwater management pond may help solve existing surface runoff problems, it would not help solve existing problems due to groundwater flows on existing lots. A pond would also require removal of a significant number of trees from this woodland preserve. Therefore, provision of a stormwater management pond is not recommended. The Montgomery County Department of Environmental Protection (MCDEP) has not required an on-site stormwater management pond for this project.

Staff will be working with MCDOT and MCDEP on this matter. At the Public Hearing, Staff will report to the Board on the status of this issue and present alternatives if necessary.

4. Compatibility

When conditions are met, this site plan design will provide for compatibility both within the site and with adjacent residential development. The most sensitive compatibility issues concern integration of the townhouses into the existing community of single family homes and screening of the rear yards of existing homes on Elgin Lane which open onto the new street. Compatibility will be achieved in a variety of ways;

through screening with landscaping, provision of adequate rear and side yard setbacks and buffers of trees, rows of townhouses no longer than 5 units and street light selection to minimize light trespass and glare.

The spacing of the twelve single-family detached homes is comparable to that of the adjacent homes on each side of the site. The rear and side yard setbacks in combination with the tree save area and additional planting provide for compatibility with the existing homes on Tone Drive. The evergreen trees along the northwestern boundary will provide screening for the rear yards of homes on Elgin Lane. As stated earlier in the section on landscaping, these trees will be field located due to the limited space available on the site and can be placed off-site with the permission of property owners. Shrubs will supplement existing trees and new evergreen trees as needed to provide for screening.

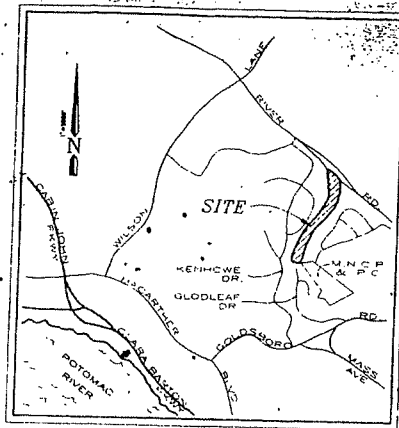
Street lights will be located on the southeastern side of the street, furthest from the rear yards of the Elgin Lane homes. They will be selected to minimize light trespass and glare.

Landscaping to screen the townhouses and define the open play area will contribute to compatibility. The open play area is defined by evergreen trees which separate it from the private rear yards of homes on Tone Court. Additional planting and a grade change will clearly separate the open play area from the SHA salt storage facility and construction staging area. Townhouses will be screened by evergreen trees 8-10 feet in height in the back and along the northwestern boundary.

The applicant has consistently worked with the community to address issues of concern. When conditions are met, this new development will be compatible with the existing community and will provide the benefit of an attractive area of woodland, affordable housing, and a more direct pedestrian and bike route between neighborhoods and to the nearby park for everyone.

Attachments

1. Local Vicinity Map
2. Site/Landscape Plan
3. Sewer Line Study
4. Preliminary Plan Opinion
5. Parks Department Memo
6. Correspondence:
 - a. Levine 7/24
 - b. Cantfil 8/1
 - c. Merrimack Park p. 7
Committee-Freibaum 8/7
 - d. Concerned Families
- Gori et al 8/8
 - e. Merrimack Park Citizens
Association - Meisner 8/26



VICINITY MAP

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring Maryland 20910-3760

Date of Mailing: December 2, 1991

MONTGOMERY COUNTY PLANNING BOARD
OPINION

Preliminary Plan Number 1-91043
Project: Merrimack Property

Action: Approval of preliminary plan with conditions noted below. Commissioner Floreen moved approval; Commissioner Bauman seconded. Commissioners Floreen, Bauman and Richardson voted in support of the motion; Commissioners Keeney and Baptiste voted against.

Introduction and Site Orientation

River Glen Limited Partnership ("Applicant") submitted an application for approval of a preliminary plan of subdivision ("Plan") to the Montgomery County Planning Board ("Board").¹ The subject property ("Property") formerly was owned by Maryland's State Highway Association which acquired the property with the expectation that Massachusetts Avenue would be developed through to River Road. As a result, the 9.08-acre Property is a long, narrow piece of land running almost directly north-to-south, with the northern boundary fronting toward River Road. (See Attachment One.) The Applicant acquired the Property after the State abandoned its plans to develop this portion of the roadway. The Property (zoned R-60 before the State's ownership) was redesignated for residential use in the 1990 Bethesda-Chevy Chase Master Plan.

Applicant's Plan proposed 25 lots on 9.80 acres of land located within the R-60 zone, with the lots designed under the cluster method of development. Twelve of these proposed lots are designated for townhome units, which Montgomery County's Housing Opportunities Commission ("HOC") testified that it expects to purchase and make available as affordably priced rental housing. The remaining thirteen lots are proposed to be developed as market-rate single-family homes.

¹Applicant submitted the Plan on April 4, 1991, and the Board reviewed and approved the Plan after a duly noticed public hearing held on September 12, 1991.

PP. OPINION Attachment 4

Proposed Site Layout

The Plan provides for twelve townhomes to be located near the northern portion of the site (which places the affordable housing portion of the project near public transit). The thirteen single-family units are situated along the remaining length of the upper two-thirds of the property. The lot lines for these single-family properties essentially coincide with the boundaries of abutting lots facing on Tome Drive (which share rear property lines with the proposed new lots). The proposed single-family lots have a minimum lot size of 7,500 square feet. (Under the cluster method of development they could be as small as 4,000 square feet; the lots fronting on Tome Drive contain about 9,000 square feet, although some have slightly more square footage.)

All of the proposed units front on a cul-de-sac that connects with Pyle Road. A proposed bike path will link the southern end of the proposed cul-de-sac with an existing bike path "stem" that ties into Goldleaf Drive. The proposed bike path will provide the final section of a network of public streets and easements that will allow access from River Road into Merrimack Local Park.²

Approximately half of the site will be preserved as green space (about four and one-half acres). Approximately one-third of the site (the portion that will have the bike path) will be dedicated to Montgomery County Department of Transportation.³

²A bicyclist will be able to turn off River Road and ride through the proposed Merrimack Subdivision (on the public road and proposed bike path), then over the existing bike path "stem" to Goldleaf Drive. From Goldleaf a bicyclist could turn onto Mountain Branch Court, which connects with a public easement that provides access into Merrimack Local Park.

³There was extensive discussion between Planning Board members regarding proper disposition of the southern portion of this property (which will contain the bike path). The Board also heard testimony on this issue submitted by Planning Board and Parks Department staff, the Applicant, HOC and citizens regarding proper long-term ownership of this parcel. The Department of Parks testified that it was reluctant to accept the property for various policy reasons, including the fact that the relatively small parcel is not contiguous to an existing or proposed park; because it is heavily treed and could require intensive maintenance; and because the parcel has little (if any) viable development potential for additional recreational use.

On the other hand, HOC and the Applicant testified against homeowner association ownership and maintenance of the property because it would impose additional costs (maintenance and insurance) on a very small homeowner's association. This

Additional green space will be protected by conservation easements imposed on individual lots and common areas to be placed under homeowner association control. The southern portion of the site will remain undeveloped except for a bike path and a probable underground sewer connection.

Site and Master Plan Constraints on Development of Property

The highest point of this heavily wooded Property is located near River Road. The Property slopes downhill toward the back of the Property - the southernmost third has a very steep incline which precludes development. Additionally, the Property's long, narrow configuration restricts access within the property. The Plan proposes an elongated cul-de-sac running the length of the developed portion of the Property to serve as access to the residential units.

The Master Plan for the Bethesda-Chevy Chase Planning Area contains specific recommendations for this Property. It restricts development to a maximum of 25 dwelling units and recommends that the project include an affordable housing component consisting of townhomes. The Master Plan requires the townhomes to be concentrated near River Road to allow for transit accessibility for the occupants of the affordable housing and to allow for preservation of more of the environmentally sensitive southern portion of the site. Finally the Master Plan requires that a hiking and/or biking trail be provided through the site as an approach to the nearby Merrimack Neighborhood Park, provided its inclusion does not require a reduction in the number of housing units.

Site Plan Considerations

The Planning Board staff recommended approval of the Plan, subject to recommended conditions including a requirement that the project undergo a site plan review. In particular, the staff suggested that specific issues be reviewed at site plan, including the need to (1) review a landscaping plan designed to minimize visual impact of the proposed development on adjacent homes fronting on Elgin Lane; and (2) review the impact of two proposed

argument was underscored by the fact that these costs would have a detrimental effect on the affordable housing aspect of the project by raising the maintenance fees for those units.

Commissioner Keeney made a motion that conditioned approval of the Application on dedication of this parcel to the Department of Parks, giving as his reason the fact that the Department was better suited to assume this responsibility than a small homeowners' association consisting of a significant percentage of affordable housing. That motion failed for lack of a second.

homes located at the end of the cul-de-sac to ensure that the new development will not exacerbate an existing stormwater management problem for adjacent existing properties.

The Applicant testified at the hearing that the cul-de-sac was specially designed to divert stormwater runoff on the Property from the adjacent neighborhood, and that swales along rear property lines on the eastern side of the Property would divert water runoff into the proposed sewer system. If necessary, however, additional mitigation measures may include reduction of the lot sizes abutting the cul-de-sac to ensure that all runoff generated by construction grading is directed to public stormwater facilities, and not the adjacent property owners.

The Plan proposed providing sewer service to the new subdivision by running a sewer line under the internal roadway, through the southern portion of the site (ideally under the proposed bike path) and connecting with the existing line in Goldleaf Drive which, according to testimony presented at the hearing, has adequate capacity to serve the new homes. None of the parties offered testimony at the hearing regarding the engineering feasibility and capacity of other potential sewer hookups. Sewer development on the southern portion of the site, however, probably will require the loss of more trees than construction of only a bike path. In an effort to avoid this result, the Board requested that staff explore alternative sewer links both within Elgin Lane and River Road prior to the time of site plan review.

Public Hearing Testimony

Planning Board staff recommended approval of the Application as submitted with several conditions presented at the public hearing (and incorporated in relevant part in this opinion). The Applicant requested approval of the Plan, and testified that it was willing to accede to the conditions recommended by Board staff. Additionally a representative from HOC testified in support of the Plan, noting that it will enable the HOC to provide affordable housing in an area of the County that has a particular need for additional housing of this type.

The President of the Merrimack Park Citizen Association and neighbors of the proposed development generally voiced support for the Plan, tempered by extensive and detailed testimony about two primary areas of concern. First, several residential neighbors testified that the proposed development will detract from the views that they now have from their properties because the proposed development will necessitate removal of almost all of the existing trees within the developed portion of the site and because the project includes townhomes (which will be taller than the surrounding predominantly one-story and split-level single-family

homes). The neighbors requested an extensive landscaping plan be implemented to minimize the visual impact of the development on the surrounding homes.'

Second, neighboring property owners testified that they have existing water problems with their homes, and asked that the Board ensure that the new development would not increase the volume of stormwater runoff affecting their properties. Testimony presented at the hearing stipulated that the proposed stormwater management plan will not increase water run-off to adjacent properties; as an added precaution this issue will be reviewed in detail at the time of site plan review.

Findings

After review and consideration of the record, Planning Board staff recommendations and testimony presented by the Applicant and other speakers, the Board finds that:

1. The location and configuration of the site pose unique environmental and compatibility issues which necessitate that the project undergo site plan review.
2. Based upon the comments and recommendations provided by Planning Board staff, Washington Suburban Sanitary Commission, Montgomery County Department of Education, Montgomery County Department of Transportation, Montgomery County Department of Environmental Protection and Maryland State Highway Administration the Board finds that public sewerage and water service, schools, roads and transportation and other public facilities are adequate to serve needs of the proposed development. The comments and recommendations provided by staff and these agencies was uncontroverted by any professional testimony at the public hearing or in the record.

The testimony regarding landscaping was quite specific, noting species and size of trees desired, etc. Planning Board staff and the Planning Board will consider these recommendations when they review, in detail, Applicant's proposed landscape plan at the time of site plan review. The same detailed site plan review will apply with respect to other issues raised at the hearing, including size and location of housing units, location of driveways and parking areas, and placement of lighting.

Speakers also presented testimony expressing concern about the effect of introducing rental housing into the neighborhood. This is an issue beyond the Board's purview, as HOC has sole discretion to determine whether affordable housing within its program is maintained as rental or owner-occupied housing.

3. The development as proposed (subject to site plan review) substantially conforms with the conditions and requirements contained within the Master Plan for the Bethesda-Chevy Chase Planning Area.
4. The unusual shape, size and topography of the site justify use of an overlength cul-de-sac to minimize environmental impact on the site and to most efficiently serve the proposed residential units.

Based upon these findings, the Planning Board approves the Application, including a waiver of the length restriction on cul-de-sacs, subject to the following conditions:

1. Agreement with Planning Board to limit development to a maximum of 12 single family attached and 13 single-family detached dwelling units.
2. Incorporate into the site plan enforcement agreement a tree preservation plan including provisions for on-site inspections, prior to, during and after construction.
3. Submit detailed landscape plan for the area northwest of the proposed right-of-way adjacent to existing Merrimack Park Subdivision.
4. Provide final grading plan for the two (2) lots located at the end of proposed cul-de-sac to ensure no additional stormwater runoff will affect properties along Kenhowe and Pyle Roads.
5. Conditions of Department of Environmental Protection stormwater management approval dated 6-27-91.
6. Construct bike path and dedicate the area necessary along bike path to Montgomery County Department of Transportation.
7. Access and improvements to be approved by Montgomery County Department of Transportation.
8. No direct access to River Road (Route 190).
9. Number and location of units to be determined at site plan.
10. No clearing, grading or recording of lots prior to site plan approval.
11. Final area of tree preservation shall be identified on plat(s) by a recorded conservation easement note.
12. Other necessary easements.

MCPB, 9-24-92, APPROVED

Chairman said the proposed location was determined to be the best alternative because it would not disrupt existing homes and because the bikepath can be accommodated on top. As to the bikepath, the Chairman said he thinks in time it will be seen by both new and long-time residents as a wonderful additional feature of living in this community, adding that there are many locations in the County where hiker/biker connections are street to street. He thanked the community for all the time and effort that went into this process and, noting a comment in a letter from an area resident welcoming additional neighbors to the enjoyment of Merrimack Park, said he thinks it has been a worthwhile experience.

Staff and Mr. Les Powell, engineer for the applicant, responded to questions from Commissioner Baptiste about the alignment of the sewer line through the open space area, and Mr. Powell confirmed that WSSC has verified that the location is acceptable.

In making the motion, Vice Chair Floreen endorsed the Chairman's comments. She also suggested, and the Board concurred, that staff draft letters to SHA and MCDOT relaying the concerns identified by Mr. Freibaum.

Items 22, 24, and 25 are reported on the attached agenda. Item 23 was withdrawn.

ITEM 26. PRELIMINARY PLAN NO. 1-92031 - HARTWIG PROPERTY - RE-2 ZONE, 4 LOTS REQUESTED, 9.47 ACRES, NORTH SIDE OF GLEN ROAD, 800 FEET WEST OF GLEN MILL ROAD, TRAVIAR PLANNING AREA

ACTION: Motion of Floreen
Second by Aron
5-0 Approved staff recommendation for approval subject to the seven conditions on the revised agenda sheet, with additional amendments to Nos. 3 and 5 as follows:

3. Record plat to reflect delineation of conservation easement over the areas of the stream valley buffer, tree preservation, 100-year floodplain, and building restriction line. Conservation easement to make allowance for WSSC to do reforestation in open meadow area at no cost to the applicant or homeowners.

MCPB, 9-24-92, APPROVED

statement Mr. Freibaum raised three remaining areas of concern: traffic flow and safety at River Road and Pyle Road; an apparently temporary but noisy State Highway Administration truck staging area at River Road; and grading and potential tree damage that threaten properties bordering the subject site.

Mr. Gio Gori, a resident of Pyle Road speaking for himself and four other homeowners whose properties are adversely affected by existing drainage problems in this area, referred to his letter dated August 8 and said he and his neighbors continue to feel that their concerns have not been heard. Mr. Gori said the location of the last two lots on the cul de sac, the sewer line, and the bikepath are elements of the plan that he and the other affected families find deeply troubling. He said that the two lots should either be resited away from the slopes or eliminated; the alternative solutions for the sewer line should be pursued more diligently; and that the bikepath should be eliminated because it is undesirable environmentally and serves no useful purpose. He urged the Board not to approve the plan in its present form.

Chairman Bauman responded, noting that the County Council deliberated at length over several different alternative proposals for this infill property before reaching the decision to reduce the density while providing a mix of HOC and market-rate housing.

Mr. Alfred Meisner, president of the Merrimack Park Citizens Association, focused on concerns related to the southern portion of the subject site. He said discussions of potential uses for the property over time have always emphasized the importance of non-disturbance of this environmentally sensitive area. Mr. Meisner supported Mr. Gori's comments concerning the two units at the end of the cul de sac. He also argued against running a gravity sewer line through this area and said he does not believe that the Elgin Lane alternative has been fully explored. In addition, Mr. Meisner asked the Board to rethink its position on the bikepath, particularly if the sewer line is relocated, and that in any event a paved path is not necessary or desirable.

Chairman Bauman recalled previous discussions of the sewer line and hiker/biker path and commented that this property has received a particularly high level of scrutiny with heavy community involvement. He said it is clear the five homeowners Mr. Gori represented have significant existing problems with drainage and with seepage from underground streams. While new development cannot increase the amount of runoff in a given area, there is no requirement to cure existing problems, although in some instances there may be a beneficial effect. Concerning the sewer line, the

MCPB, 9-24-92, APPROVED

dated September 21, with a change to No. 9, so that the condition reads: "Provide a tot lot and two benches near the townhouses and a resting area along the hiker/biker path subject to staff approval"; and subject to two additional conditions recommended by staff. (Note: A copy of the opinion listing all 14 conditions is attached to the minutes.)

Urban Design staff presented an overview of the technical report in connection with the proposal for 25 units, including 13 single-family-detached homes and 12 townhouses. Staff said the main issues raised by residents of the surrounding community were tree preservation, drainage, screening, lighting, and the location, design, and maintenance of the proposed bikepath. Staff believes that all these issues have been adequately addressed. In reviewing the conditions in the report, staff suggested a change in the wording of No. 9 from "seating" area to "resting" area to give the applicant greater design flexibility, and recommended two additional conditions. Finally, staff said that area citizens remain concerned about existing stormwater management problems, the presence of the bikepath, and tree preservation in general. Staff called attention to a hand-out containing an excerpt from the Bethesda-Chevy Chase Master Plan concerning the recommendation for the hiker/biker pathway connection.

Mr. Robert Harris, attorney for the applicant, gave additional background information about the project, commenting that infill developments are always a challenge. While accepting the conditions as proposed, Mr. Harris elaborated on the bikepath issue, which has been a source of considerable debate. He expressed the understanding that some citizens remain opposed to the path and said the Montgomery County Department of Transportation (MCDOT) has only recently, and reluctantly, agreed to accept it in dedication. Mr. Harris said his client is willing to construct the bikeway, with the understanding that it will be accepted by DOT, but wishes to make it clear that he would not object to deleting it from the plan, if the Board so directs.

Chairman Bauman recalled the lengthy discussion of this issue at the time of preliminary plan and noted that construction of the bikepath and subsequent dedication to DOT was one of the conditions of preliminary plan approval.

Mr. Jerry Freibaum, a resident of Elgin Lane speaking on behalf of himself and several neighbors, expressed appreciation to the applicant, Planning staff, MCDOT, and officials of the Housing Opportunities Commission (HOC), for working with the community to resolve a number of concerns. In his prepared

MCPB, 9-24-92, APPROVED

The Board recessed at 12:10 p.m. for lunch and to discuss mid-day agenda items numbered 13 through 16. Actions taken on these items are reported on the attached agenda.

In compliance with Section 10-509(c)(2), State Government Article, Annotated Code of Maryland, the following is a report of the Planning Board's executive session:

The Planning Board convened in Executive Session at 2:15 p.m. in the third floor conference room, on motion of Commissioner Baptiste, seconded by Vice Chair Floreen, with the five commissioners present and voting in favor of the motion. The meeting was closed under authority of Section 10-508(a)(1), State Government Article, Annotated Code of Maryland, to discuss the appointment...of Commission appointees, specifically appointments to the Citizens Advisory Committee for the Transitway and High-Occupancy Vehicle Network Master Plan.

In addition to the five commissioners, also present were: Patricia Goldberg, Legal Office; Robert Marriott, Melissa Banach, Charles Loehr, and Barbara Freller, Planning Director's Office; Perry Berman, Robert Winick, and Jeff Zyontz, Planning Department; Roberta Ehrlich, Mimi Wang Feinstone, Rosemary Krygier, and Ann Shaw, Commissioners' Office.

The Board discussed the Citizens Advisory Committee (CAC) Appointments for the Transitway and High-Occupancy Vehicle Network Master Plan and, by consensus, appointed CAC members.

The Executive Session was adjourned at 2:30 p.m. and the Board reconvened in open session in the third floor conference room.

The Board returned to the auditorium at 2:50 p.m. with all five commissioners present.

Items 17, 18, and 19 are reported on the attached agenda. Item 20 was withdrawn.

ITEM 21. SITE PLAN REVIEW NO. 8-92016 - MERRIMACK PROPERTY, R-60 ZONE, 25 UNITS, 9.63 ACRES, ON RIVER ROAD, 800 FEET SOUTHEAST OF PYLE ROAD, BETHESDA-CHEVY CHASE PLANNING AREA

ACTION: Motion of Floreen
Second by Bauman
5-0 Approved staff recommendation for approval of 12 townhouses and 13 single-family-detached units, subject to the 12 conditions in the staff report

Date: 8/25/92

Subdivision Review Committee Meeting: 8/31/92

TO: MARGARET RIFKIN
Urban Design Division

FROM: *Candy Burton*
Environmental Planning Division

SUBJECT: Review of Site Plan Number 892016
MERRIMACK PARK NORTH (191043)
()
()
()

200 Sheet No: 208NW06
Street Map Number/s: 38C7 38B7

Water Service Category: W-1 Requested:
Sewer Service Category: S-1 Requested:
Category Change Request Number: Date:
MCC/MCPB Action or Recommendation:

We have reviewed the above referral, received , and
wish to make the following recommendations:

- Approval. No adverse comments.
- Conditional approval of plan. (see comments)
- Application submitted is incomplete.
Recommend deferral of action. (see comments)
- Plans submitted are incomplete.
Recommend deferral of action. (see comments)
- Disapproval of plan/request.

see attached sheets.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 George Avenue • Silver Spring, Maryland 20910-3760

August 18, 1992

MEMORANDUM

TO: Margaret Rifkin, Planner
Urban Design Division

VIA: Bud Liem, Coordinator *BL*
Transportation Planning Division

FROM: Dan Walsh, Planner *DW*
Transportation Planning Division
John Loewen, Planner *JL*
Transportation Planning Division

SUBJECT: Merrimack Park North (Lots 1-25)
Site Plan Review No. 8-92016

Staff has given comments and coordinated with SHA on the design of the proposed access road, Street A (see enclosed letter). It appears the site plan addresses all of staff's comments except one. The applicant needs to clarify on the plan whether Street A is to be closed or open section (with or without curb and gutter). Staff prefers that Street A be designed as a closed section road in order to minimize the impacts to the adjacent salt storage site and its associated truck operations.

JL:kcw/s8-92016

cc: Mike Kinney



Charles P. Johnson & Associates, Inc.
1751 Echon Road
Silver Spring, Md. 20903

- Planners
- Engineers
- Landscape Architects
- Surveyors

MEETING MINUTES

SUBJECT : Merrimack Park
DATE : August 13, 1992
ATTENDEES : Candy Bunnag
Margaret Rifkin
LWP
COPIES : attendees
Division Managers, SPS, RKG, JJS

-
- LWP
 - Relocate path to reduce grading and avoid trees.
 - Pull cul-de-sac up 20' to reduce impact on slope.
 - MES
 - Small print out of topo and existing homes to Margaret (8 1/2' x 11').
 - LWP
 - Put in retaining walls along lots backing up to the open space to have downspouts from the rear going to the front of the lots.
 - DWM
 - Show sediment control for path and sewer.
 - RDB
 - Need tree survey ASAP 6" and above for 25' either side of L.O.D.
 - DWM
 - Candy wants 3 more inlets along the rear of the units, angle the line from the street to save the twin sycamore.
 - Check with DOT about grading variance in R.O.W.
 - JJS
 - Re-check reforestation requirements.
 - Show acreages on plan as it relates to forest cover saved. Re-check landscape credits.

Jerry Freibaum
(Merrimack Park P7 Committee)
6535 Elgin Lane
Bethesda, MD. 20817
August 7, 1992

Margaret Rifkin
Urban Design Division
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20907

Reference: Request for comments on Site Development and Landscape Plans (Plan number 8-92016)
Merrimack Park North (lots 1-25)

This is a compilation of comments and concerns expressed at a recent meeting of property owners adjacent to the property to be developed.

CONCERNS:

Street and Parking Lot Lights

A very strong concern was expressed about the potential visual intrusion of tall street and parking lot light lamps. We are requesting that bulbs be recessed so that light is directed downward to minimize horizontal visibility. We realize that this may require a non-standard fixture or reflector.

Height of Townhouses.

What is the planned height of these homes? The concern here is whether the planned landscaping will visually block the view of and the lights of these homes.

Traffic

Buffering of traffic noise and lights is a major concern. It appears that landscaping may alleviate some of this problem. It is particularly important that dense evergreens be planted where the road elevation is at the same elevation of adjacent property owners.

We would like to see or discuss plans for traffic control into and out of the new development particularly at the intersection of Pyle and the new road. Pyle can be very icy in the winter which could make a full stop at this point very difficult.

Responsibilities

Who is responsible for what and in what time frame for all aspects of the new development?

Water Run-off

Some consideration is requested as to how this is to be managed for the East side (Merrimack 1).

Time/Duration of Construction

When can it be built both townhouses and single family homes be constructed at the same time regardless of economic conditions?

We wish to thank the Developers, HOC, Park and Planning and the County Council for, what appears to be, a sincere effort to accommodate our Community's concerns.

Sincerely,

Jerry Freilbaum
Jerry Freilbaum on behalf of concerned
Merrimack Park Residents:

Mr and Mrs Dubester, Mabarak,
Wortman, Yu

River Glen Limited Partnership

Anthony Rakusin
4400 East-West Highway, Suite 211
Bethesda, Maryland 20814
(301) 656-7816; FAX (301) 697-3851

Kenneth H. Becker
4400 East-West Highway, Suite 211
Bethesda, Maryland 20814
(301) 718-6368; FAX (301) 695-8348

August 5, 1992

Mr. Albert Meisner, President
Merrimack Park Civic Association
6503 Majory Lane
Bethesda, Maryland 20817

Re: Former Mass. Ave. Right-of-Way
Parcel P-7 - Merrimack

Dear Mr. Meisner:

As I mentioned when I saw you at Merrimack Park on July 28th, and in a telephone conversation with Jerry Freibaum on this date, a meeting has been scheduled for Thursday, August 27th, at 9:00 AM, at the offices of our engineers, Charles P. Johnson & Associates, P.A., 1751 Elton Road, Silver Spring, Maryland, for the purpose of reviewing with representatives of the Merrimack community our proposed Site Plan for the development of the subject property. As you may recall, you can get to Elton Road by taking the Beltway to New Hampshire Avenue, North, and making a right turn at the first light. I anticipate a representative of HOC and Park and Planning will also be in attendance.

This plan represents our continuing site analysis and engineering, including landscaping and house placement, all of which is based on our approved *Preliminary Site Plan*, which was the focus of our last meeting on March 12, 1991. We have, in this Site Plan, attempted to incorporate many of the comments and suggestions as expressed by the community, the Park and Planning Commission, and others.

In addition to the materials already provided you, it is my understanding that you have also been in touch with our engineers requesting some additional information. Should you or any of your neighbors have any questions prior to this meeting, please don't hesitate to call me.

Sincerely,



Kenneth H. Becker

cc: Jerry Freibaum
Miriam Silver
Patrick Maier, HOC
Margaret Rifkin, MNCPPC

Riber Glen Limited Partnership

Anthony Rakusin
4400 East-West Highway, Suite B
Bethesda, Maryland 20814
(301) 656-7500 FAX (301) 697-3551

Kenneth H. Becker
4400 East-West Highway, Suite 24
Bethesda, Maryland 20814
(301) 718-8505 FAX (301) 652-5545

August 3, 1992

Mr. Albert Meisner, President
Merrimack Park Civic Association
6503 Majory Lane
Bethesda, Maryland 20817

Re: Former Mass. Ave. Right-of-Way
Parcel P-7 - Merrimack

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In addition to the materials already provided you, it is my understanding that you have also been in touch with our engineers requesting some additional information. Should you or any of your neighbors have any questions prior to this meeting, please don't hesitate to call me.

Sincerely,



Kenneth H. Becker

cc: Jerry Freibaum
Miriam Silver
Patrick Maier, HOC
Margaret Rifkin, MNCPPC

**SITE PLAN ENFORCEMENT AGREEMENT
RIVER GLEN LIMITED PARTNERSHIP**

THIS AGREEMENT, made this 15 day of March, 1993, by and between ADC BUILDERS, INC. (hereinafter "Developer"), and the MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (hereinafter the "Planning Board").

WHEREAS, Text Amendment No. 80025, approved July 21, 1981, effective October 15, 1981, amended Section 59-D-3.3 of the Montgomery County Code to require as a part of the site plan review process that applicants enter into a formal agreement with the Planning Board requiring the applicants to execute all features of the approved site plan in accordance with the development program required by Section 59-D-3.2(m) of the Montgomery County Code, 1984 (as amended); and

WHEREAS, on July 2, 1992, pursuant to Section 59-D-3 of the Montgomery County Code, 1984 (as amended), Developer filed with the Planning Board an application for approval of a site plan, denominated Site Plan No. 8-92016; and

WHEREAS, the property which is the subject of Site Plan Application No. 8-92016 consists of approximately 9.63 acres located on a residential street that runs parallel to River Road near Pyle Road in Montgomery County, Maryland (the "Subject Property"); and

WHEREAS, Site Plan No. 8-92016 proposes the construction on the Subject Property of twelve (12) townhouses and thirteen (13) single family, detached dwelling units; and

WHEREAS, attached hereto are copies of the following exhibits:

Exhibit "A" - Planning Board Opinion approving, with conditions, Site Plan No. 8-92016

Exhibit "B" - Development Program

Exhibit "C" - Certified Site Plan

Exhibit "D" - Certified Landscape Plan

WHEREAS, by their prior actions and by filing this Site Plan Enforcement Agreement and attached Exhibits, Developer will be in compliance, and/or has ensured compliance through stipulations

contained in Exhibit "B", with Conditions 1 through 14 of the Planning Board's Opinion; and

WHEREAS, the parties hereto desire to set forth herein their respective requirements and obligations pursuant to Section 59-D-3.3 of the Montgomery County Code, 1984 (as amended).

NOW, THEREFORE, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of Section 59-D-3.3 of the Montgomery County Code, 1984 (as amended), the parties hereto agree as follows:

1. In accordance with approval by the Planning Board of Site Plan No. 8-92016, Developer agrees that, when it commences construction of any phase as set forth in the Development Program attached hereto as Exhibit "B", or any amendments thereto, it will execute and maintain all the features of the site plan as required by Section 59-D-3.3 which are applicable to the approval granting Site Plan No. 8-92016 and any subsequent amendments approved by the Planning Board. Developer agrees to install and construct all features of the site plan in a good and workmanlike manner.

2. Developer agrees that construction of the Subject Property will progress in accordance with the Development Program as set forth in Exhibit "B", or any amendments thereto.

3. Representatives or designees of the Planning Board may enter upon the Subject Property from time to time for the purpose of inspection and enforcement of the terms, conditions and restrictions of this Agreement. Whenever possible, a representative of Developer shall be present at said inspection. In the event that the representative or designee determines on the basis of said inspection that construction is not progressing in accordance with Site Plan No. 8-92016 or the Development Program, the representative or designee shall promptly advise Developer in writing concerning the problem.

4. Representatives or designees of the Planning Board shall inspect each phase and the construction thereon for compliance with Site Plan No. 8-92016 in accordance with the Development Program or any amendments thereto. Inspection of the Subject Property shall be made promptly after receipt of written notice from Developer as

set forth in the Development Program and, whenever possible, a representative of Developer shall be present at said inspection. The Planning Board shall promptly advise Developer in writing concerning the results of said inspection. All reasonable efforts will be made to conduct the inspection and inform Developer of the results within ten (10) working days.

5. The Planning Board shall recommend for issuance within a reasonable time any permits sought by Developer when the Planning Board determines that said permit requests are consistent with the approved Site Plan No. 8-92016 and any amendments thereto. Such approval shall not be unreasonably withheld.

6. In the event any party deems there has been a breach of the terms, conditions and restrictions of this Agreement, an aggrieved party may pursue all remedies provided by Maryland law.

7. Wherever any portion of this Agreement or the Development Program submitted herewith as Exhibit "B", or any amendments thereto are in conflict with agreements pertaining to the Subject Property entered into between Developer and any federal, state and county agency, Developer shall promptly notify the Planning Board concerning such conflict. The Planning Board or its designee will cooperate in attempts to resolve the conflict. Should an unreasonable delay ensue due to the failure to resolve said conflict, Developer shall have the right to seek in a timely manner judicial determination of the rights and obligations of all parties, and the Planning Board, for its part, agrees to cooperate in expediting said judicial determination.

8. If Developer determines, following commencement of construction on the Subject Property that the full Development Program cannot be achieved for any reason, Developer will submit for approval a restoration schedule to the designee of the Planning Board for purposes of amending the Development Program.

9. Approval of a feature of Site Plan No. 8-92016 by the Planning Board after inspection shall not constitute a warranty that the feature is free of latent defects. Therefore, if the Planning Board or its designee approves a feature of Site Plan No. 8-92016 which contains a latent defect which was not readily

apparent at the time of inspection, upon discovery of said latent defect, the Planning Board may avail itself of the remedial steps provided for under the terms of this Agreement.

10. This Agreement may only be modified in a writing signed by the parties hereto, their heirs, successors or assigns.

11. This Agreement shall be binding upon the heirs, successors and assigns of all parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set our hands and seals this _____ day of _____, 1992.

WITNESS:

Robert S. Marshall

ADC BUILDERS, INC.

By: *[Signature]* (SEAL)
Man D. Cohen
President

WITNESS:

Louise K. Lewis
5/25/92

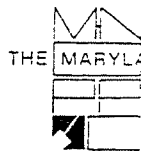
MONTGOMERY COUNTY PLANNING BOARD

By: *Charles R. Loh*

APPROVED AS TO LEGAL SUFFICIENCY

[Signature]
M-NCPPC Legal Department
Date 5/16

EXHIBIT "A"



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

OPINION

RECEIVED
OCT 05 1992

SITE PLAN REVIEW #8-92016 DATE MAILED: October 1, 1992
PROJECT: MERRIMACK PROPERTY

Action: Approval subject to conditions. Motion was made by Commissioner Floreen, seconded by Commissioner Bauman, with a vote of 5-0, Commissioners Aron, Bauman, Bapteste, Floreen, and Richardson voting for.

On July 1, 1992, Charles P. Johnson and Associates submitted an application for the approval of a site plan for property in the R-60 zone. The application was designated Site Plan Review #8-92016.

On September 24, 1992, Site Plan Review #8-92016 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 on the testimony and evidence presented by the staff and on the staff report with modifications to the conditions hereby adopted by the Montgomery County Planning Board, and which is made a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan meets all of the requirements of the zone in which it is located.
2. The locations of the buildings and structures, the open spaces, the landscaping, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.
3. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

The Montgomery County Planning Board approves Site Plan Review #8- as follows:

13 dwellings - one-family detached
12 dwellings - townhouses

subject to the following conditions:

2. Submit a Site Plan Enforcement Agreement, Development Program, Homeowners Association Documents and Forest Conservation Bond, prior to approval of the initial building permit and include Forest Conservation Plan maintenance agreement.
3. Homeowners Association Documents to allow incorporation of development into adjacent association if agreed to by that association.
3. Incorporate the following items into the landscape plan prior to approval of the initial building permit:
 - a. Trees and dense planting of shrubs on disturbed areas around hiker/biker path subject to HCDOT approval.
 - b. Street trees 40 feet on-center.
 - c. To define the open play area; three trees and twenty shrubs near the street and trees and shrubs to screen the salt storage facility.
 - d. Evergreen trees 8-10 feet in height behind townhouse lots 9-12.
 - e. Evergreen trees 6-10 feet in height, of a variety of species, along the northwestern boundary line, to be field located and to number 120. A reduction in number may be made by staff in the field. Trees may be placed off-site with property owners' permission.
 - f. Approximately 25 percent of the 120 evergreen trees are to be 8-10 feet in height and are to screen the townhouses.
 - g. Shrubs to ensure screening along northwestern boundary to supplement new evergreen trees and existing trees.
 - h. A mix of evergreen and deciduous trees along the southeastern boundary to supplement the buffer of existing trees.
 - i. Any additional tree planting to meet reforestation requirements.
4. Street lights are to be selected that minimize the impact of light trespass and glare on the existing neighborhood.
5. Provide final Forest Conservation Plan and final worksheet for staff review and approval.
6. Tree preservation areas within private lots and common open space are to be placed in conservation easements. Such easements to be shown on record plans.
7. Provide noise attenuation for townhouse Lot 3 with a 9-foot tall fence or the equivalent combination of a wall and fence for staff review and approval.
8. For cul-de-sac Lots 24 and 25:
 - a. Direct a minimum of 3/4th of roof drainage of houses to Street A.
 - b. Locate house 35 feet from rear lot line on Lot 24.
 - c. Locate house 38 feet from rear lot line on Lot 25.
9. Provide a tee lot and two benches near the townhouses and a resting area along the hiker/biker path subject to staff approval.

10. Rear and side yard setbacks are to be no less than those shown on Site Plan Exhibit dated 9/21/92 unless approved by staff.
11. The following information must be clearly shown on the signature set of site and landscape plans and must be incorporated into the sediment and erosion control plan for staff review prior to approval by MCDEP:
 - a. Limit of disturbance line.
 - b. Methods of tree protection.
 - c. Note stating that M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading in conformance with County Tree Technical Manual.
 - d. The development program inspection schedule.
12. No clearing or grading prior to Planning Department approval of signature set of plans.
13. Tree preservation plan is to address protection of off-site trees including those recently planted. Grading within the right-of-way near off-site trees is to be minimized, subject to MCOOT approval.
14. Post signs limiting the use of the hiker/biker path to daylight hours by pedestrians and cyclists, and prohibiting motor vehicles. Design the path entrance to impede use by motor vehicles. Both measures are subject to MCOOT approval.

EXHIBIT "B"

DEVELOPMENT PROGRAM

SITE PLAN NO. 8-92016

Phasing

Developer anticipates developing the twenty-five (25) residential units that comprise the subdivision in one (1) phase. Infrastructure, amenities and units to be provided in accordance with the following sequence:

- protection devices around tree-save areas
- sediment control
- clearing and grading
- commence construction of residential units
- commence construction of internal road improvements (including water and sewer, storm drain, curb gutter, base paving), sidewalks and streetlights - to be completed prior to occupancy of units adjacent to those streets
- landscaping associated with each residential unit prior to occupancy, weather permitting, but no later than three (3) months after occupancy
- common area and supplementary landscaping as shown on the Landscape Plan (to be completed prior to 50% of occupancy, weather permitting, but no later than three (3) months subsequent to 50% of occupancy)
- complete internal road improvements and final topping
- street tree plantings shall progress as street construction is completed, but no later than six (6) months after completion of units adjacent to those streets
- removal of sediment control
- The tot lot, open play area and bike path shall be completed by the earlier of December 31, 1997 (the "Completion Date"), or when 70% of the units have been occupied. In addition, all recreation facilities and common areas identified in the site plan must be dedicated to the HOA by the Completion Date.

PAE&L 4/88

Stipulations

In accordance with the conditions set forth in the Montgomery County Planning Board's Opinion approving Site Plan No. 8-92016 Developer agrees to the following stipulations:

1. Prior to release of the initial building permit, Developer shall submit Homeowners Association Documents to M-NCPFC for review.
2. Tree preservation areas within private lots and common open space are to be placed in conservation easements. Such easements are to be shown on the record plats.
3. Developer shall post signs limiting the use of the hiker/biker path to daylight hours by pedestrians and cyclists, and prohibiting motor vehicles. The path entrance shall be designed to impede use by motor vehicles. Both of these measures are subject to MCDOT approval.

Inspection

1. The project shall have three (3) separate inspections by the Montgomery County Planning Board. The first inspection shall occur after placement of protective devices around tree-save areas and before clearing and grading occurs. The second inspection shall occur at seventy percent (70%) occupancy. The third inspection shall occur upon completion of the entire project.

2. Each inspection described above shall be made promptly after receipt of written notice from Developer, and all reasonable efforts shall be made by M-NCPPC to conduct the inspection and inform Developer of the results within ten (10) working days of the date of notice.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

O P I N I O N

SITE PLAN REVIEW #8-92016

DATE MAILED: October 1, 1992

PROJECT: MERRIMACK PROPERTY

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 - i. Any additional tree planting to meet reforestation requirements.
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 - a. Limit of disturbance line.
 - b. Methods of tree protection.
 - c. Note stating that M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading in conformance with County Tree Technical Manual.
 - d. The development program inspection schedule.
12. No clearing or grading prior to Planning Department approval of signature set of plans.
13. Tree preservation plan is to address protection of off-site trees including those recently planted. Grading within the right-of-way near off-site trees is to be minimized, subject to MCDOT approval.
14. Post signs limiting the use of the hiker/biker path to daylight hours by pedestrians and cyclists, and prohibiting motor vehicles. Design the path entrance to impede use by motor vehicles. Both measures are subject to MCDOT approval.

To: Atiq Panjshiri, Javad Shayan, and Carl Fowler

From: Peter & Christina Sklarew (6521 Fallwind Lane 20817)

Date: April 24, 2018

Re: SR No. 200060478.

This is to supplement our on-line complaint, SR No. 200060478, objecting to a permit application for the owner of 6521 Elgin Lane to add a driveway out his backyard onto Fallwind Lane. (I believe it is permit no. 362279, although it might involve 362643.) The text of complaint 200060478 on line was:

Please refer to complaint SR No. 200060117 phoned in on 3/27 by the Merrimack Park Homeowners Assoc, Inc. (MPHOA) by Peter Sklarew as its Secretary. See also emails since that time with Carl Fowler, Javad Shayan, and most recently Atiq Panjshiri. Peter and Christina are submitting this complaint as individual homeowners on Fallwind Lane so that we have separate "standing" to appeal if necessary. About 10 other Fallwind homeowners have filed similar complaints. Thus far, DPS has suggested that MPHOA does not own the strip of land on the northwest side of Fallwind Lane and has not addressed the more important reasons for the complaints. Regardless of ownership, the development was constructed pursuant to a site plan. The plat NOTES state that the plat is subject to that site plan. The plan included preserving a strip of undeveloped land along the northwest side of the street and planting lots of new trees and shrubs. It also included a fence approved by the planning department (after, as we were told, the Elgin owners demanded a barrier). MPHOA has spent thousands of dollars caring for that land for over 22 years. (I will supplement this by email.)

We believe that it would be helpful if the person making the decision about the permit would meet with a couple of homeowners on site and allow us to point out why allowing driveways from the backyards of Elgin Lane lots onto Fallwind Lane would be completely out of character with the development site plan and the expectations that the neighborhood has had since it was constructed in the mid 90s.

We (the Sklarews) expressly asked the developer when we purchased our home if the owners on the other side could build driveways and were told absolutely not, because they did not own land up to the road (we were told it was part of our "common areas") and the county had required the buffer and the fence). Peter Sklarew was on the original board of directors when the developer turned over control of the MPHOA to the residents by giving up his seats on the board after the last house was sold. We were expressly told we had to maintain the fence, which our association has periodically spent funds to repair. We were expressly told that we had to tend the vegetation as common areas of the association.

The MPHOA has included that strip of land in its gardening contracts since the inception of the development, paying to plant trees and shrubs as older ones die, paying for leaf removal, and paying for mulching every spring. (It also included recently paying a considerable sum to take down a large dead tree after an Elgin owner complained it was dangerous to his home.) Is the

county going to start doing all that now? The strip of land runs the entire length of the street and, in spots, is more than 30 feet wide and is probably 20 feet wide at the place where the Elgin owner wants to break through our fence and build a driveway and take down up to 10 trees (according to the permit application). Our gardening service also keeps the bike path clear that runs through our common area woods connection Fallwind and Goldleaf. It would be improper to allow a driveway onto Fallwind without requiring the owner to pay dues to our association that all owners on our street are required to pay. But the Elgin owners are not part of our development or subject to our jurisdiction by our Declaration of Covenants.

The street includes 12 low income housing units owned by the county (Housing Opportunities Commission) that are part of our association. There are often young children playing in the street in front of those townhouses. The HOC pays dues to our association.

The residents on Elgin Lane have no need of a driveway to a second street. Each lot has ample frontage on Elgin Lane. The typical driveway right of way permit includes lot owners who own land abutting a street and the county has an easement and/or right of way on their land for sidewalks and utilities, etc. The Elgin lot property lines end well short of the Fallwind Lane curb. Assuming the county owns the strip of land, it does not have to allow Elgin lot owners to build private driveways across undeveloped county land that was “dedicated to public use” (and that our developer was compelled by the site plan to preserve, fence, and plant trees on) merely to accommodate their wish to have access to a second street. I have searched satellite photos on Google maps and no other homeowners in the area have driveways onto two streets other than sometimes a corner lot. If every Elgin owner built such a driveway, it would completely alter the character of the development from the site plan approved by the planning board.

The development, since it included low income housing, was the subject of considerable controversy when first proposed, and we were told that the Elgin owners demanded a buffer and barrier. This was part of the reason the planning board attached as conditions of approval that the developer situate the road so as to leave a strip of land on the northwest side of the new road; preserve all the larger trees on that side; and plant a slew of new evergreens and shrubs long that side. See condition 3-e and 3-g of the Oct. 1, 1992 Opinion of the Montgomery County Planning Board, Site Plan Review #8-92016. We also understand from the developer that some of the Elgin owners specifically demanded a fence. Note that the former owner of 6521 Elgin is on the service list of those who expressed interest in the planning board’s approval of the development. The Planning Board was very particular about the development. Adding a dozen new driveways from the other side of the street for folks who already have their own street would be completely inconsistent with the site plan.

In sum, please do not limit your review to whether MPhOA or the County owns the strip of land. It is undisputed that the property lines of the Elgin owners do not abut the street. There was a legitimate expectation on the part of those who purchased homes on Fallwind Lane based on a site plan approved by the County that there would not be any driveways on the other side the street coming from what, after all, were *backyards*. In contrast, even a quick visit to the street will confirm that the Elgin owners have no legitimate expectation of entitlement to driveways on a second street. There has been no driveway to Fallwind Lane from any Elgin lot owner since Fallwind Lane was constructed about 25 years ago. There is no reason to suddenly alter the character of the development.

January 22, 2021

Via Electronic Mail

Mr. Michael Knapp
Montgomery County Department of Permitting Services
2425 Reddie Drive, 7th Floor
Wheaton, Maryland 20902
Michael.Knapp@montgomerycountymd.gov

EXPEDITE PLEASE – THIS REQUESTS IMMEDIATE RESCISSION OF AN IMPROPERLY ISSUED CONSTRUCTION PERMIT WITHOUT NOTICE (and/or suspension pending consideration of rescission).

Re: Driveway Application Permit No. 378872, approved 1/20/2021

Dear Mr. Knapp:

The undersigned are members of the Board of Directors of the Merrimack Park Homeowners Association (“HOA”). The HOA membership is comprised of the owners of houses on Fallwind Lane in Bethesda, MD. The HOA was originally established as part of the development plan for Fallwind Lane approved by Montgomery County. There are also low income townhouses on the street owned by the Montgomery County Housing Opportunities Commission (“HOC”), which is a member of the HOA with three of 16 votes.

We write to request that the Department immediately revoke Permit No. 378872 to the extent it would permit construction of a new driveway on Fallwind Lane from the rear of the property at 6535 Elgin Lane (which is the next street over), and/or to suspend the permit pending review of whether to rescind it so that any appeal time is not already running. As explained below, the permit is inconsistent with the county-approved plan for Fallwind Lane, and the permit application did not provide the Department with information required fully and properly to evaluate the permit request. To the extent any formal appeal of Permit No. 378872, or other formal request, is required for such relief, we request that the Department treat this letter as such an appeal. But we also submit that it is more appropriate to start the process over rather than require that an appeal be determined given the lack of notice and failure to follow procedures.

The grounds for the requested relief are as follows:

1. No notice of the requested permit for a driveway on Fallwind Lane was ever provided to the HOA or any Fallwind Lane homeowner, either personally or by sign publication on the street. Thus we only learned of the request on January 22, 2021, after the permit had been approved. Had we been timely informed of the permit request, we would have objected to it, as explained below. Due process requires that we be given an opportunity

to present our position prior to any implementation of the permit.

2. The development plan approved by Montgomery County for the Merrimack Park development on Fallwind Lane provides for houses only on one side of the street and for the other side (which abuts the rear sides of Elgin Lane properties) to have no houses or driveways. Rather, there was to be a conservation easement with trees that screened the Elgin and Fallwind Lane homes.
3. That plan has been consistently honored since it was approved. Indeed, in 2018, Montgomery County rejected a request from another Elgin Lane homeowner to construct a new driveway through the rear of his property onto Fallwind Lane. **That rejection occurred after the county made a considered determination after virtually every single family dwelling owner on Fallwind Lane lodged a formal objection and also after the HOC objected. We can supply names and email addresses for the county officials involved.**
4. Mr. Freibaum, the property owner of 6535 Elgin Lane. was aware long before he filed the permit application with your office both of this history and, more specifically, of the opposition of the HOA membership to the creation of any new driveway onto Fallwind Lane from the 6535 Elgin Lane property. Mr. Freibaum first contacted the HOA in 2019, and again last year, to discuss his family's proposal to subdivide the 6535 Elgin Lane property midway between Elgin Lane and Fallwind Lane, with the new back lot to open onto Fallwind Lane. A copy of the proposed subdivision schematic is attached. HOA representatives met with Mr. Freibaum in August 2020 to learn about his proposal and thereafter communicated with him by email regarding the consensus of HOA members opposing his subdivision proposal. Thereafter, at Mr. Freibaum's request, we arranged for him to make a presentation directly to the HOA members on November 17, 2020. The HOA members' unanimous consensus against the subdivision as proposed, with a driveway and address on Fallwind Lane, remained unchanged and was communicated to Mr. Freibaum by email dated November 20, 2020. Copies of our correspondence with Mr. Freibaum are attached. Further, Mr. Freibaum knew that the objections were not to a subdivision as such, but only to a driveway on Fallwind Lane. He was informed that there would be no objection if he wished to subdivide with twin driveway access to Elgin Lane. Because his home had recently burned and must be torn down and rebuilt, there is no reason he could not have two homes access Elgin Lane. Moreover, when we discussed whether his proposed subdivision opening onto Fallwind Lane would also include the new property's membership in our HOA, which provides maintenance benefits for the entire street (including common areas owned by the HOA) that are paid for by all houses on the street, he refused to agree to such a requirement. Thus, he wants to create a new lot with a driveway on the side of Fallwind Lane with no driveways but

with no obligation to contribute to the costs that every other homeowner on the street is required to finance.

5. The permit application for the 6535 Elgin Lane driveway filed on January 4, 2021 – several weeks after our last communication with Mr. Freibaum – disclosed none of these facts. Indeed, it was characterized as “Restore and/or Repair Driveway” – even though the proposed driveway apron on Fallwind Lane would be **brand new** and create a **new driveway that has never existed**. Nor did the submitted site plan reflect the proposed subdivision of the property. And, since the applicant failed to provide the HOA with any notice of the application, the HOA and all Fallwind Lane owners were deprived of a fair opportunity to set forth their positions and provide the Department with the information required to evaluate the application with a full appreciation of all the relevant facts.
6. In light of these circumstances, we respectfully request that the Department immediately revoke or rescind Permit No. 378872 to the extent it would permit construction of a new driveway on Fallwind Lane from the rear of the property at 6535 Elgin Lane. At a minimum we request that the permit be suspended pending consideration of this request.

Please do not hesitate to contact us if you require further information. Please advise us promptly if the permit will be revoked or at least suspending during consideration of this request. There is no emergency for building a driveway at this time. The existing home is badly burned and uninhabitable presently.

Cc: ADAM CURTIN, Field Inspector
adam.curtin@montgomerycountymd.gov
(w/attachments)

Respectfully submitted,

Christopher Weals
Andrew Karron
Peter Sklarew

September 21, 2021

Via Electronic Mail

Mr. Michael Knapp
Montgomery County Department of Permitting Services
2425 Reedie Drive, 7th Floor
Wheaton, MD 20902
Michael.knapp@montgomerycountymd.gov

Adam Curtin
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
Adam.curtin@montgomerycountymd.gov

RE: Building Permit #951114
Administrative Subdivision Application #620210080

Dear Mr. Knapp and Mr. Curtin:

I am writing on behalf of the Merrimack Park Homeowners' Association (MPHOA), which consists of homeowners on Fallwind Lane, Bethesda. Fallwind Lane is the next street over from Elgin Lane. We have previously been in touch with both your offices regarding two pending matters.

First, the owner of 6535 Elgin Lane, Jerome Freibaum, has submitted an application with M-NCPPC (Application #620210080) to subdivide the lot into two parcels, with the stated intention of adding a driveway onto Fallwind Lane to service one of the lots. We understand that Application #60210080 has not yet been accepted by M-NCPPC.

Second, Mr. Freibaum recently received a construction permit (Permit #951114) to build a single-family home on the lot. (The prior home burned down after the application to subdivide was submitted.)


While the MPHOA does not object to the construction of a single-family home on the 6535 Elgin Lane lot, we have repeatedly expressed to Mr. Freibaum and Montgomery County authorities our objection to Mr. Freibaum's proposed subdivision of the lot to build a second house which would have a driveway on Fallwind Lane. Copies of the relevant correspondence setting forth the history and reasons for the objections are attached and incorporated herein by reference. Among other things, the MPHOA has

suggested that, if Mr. Freibaum wishes to subdivide the lot and build two houses, he should build a shared or pipestem driveway off of Elgin Lane servicing the two houses on the subdivided lot, thereby eliminating the need to put a driveway on Fallwind Lane.

We remain concerned that Mr. Freibaum will continue to pursue his pending Application #620210080 to subdivide the 6535 Elgin Lane lot, including a driveway on Fallwind Lane, and that he may use the construction of the house Permit #951114 to argue that no shared or pipestem driveway is feasible. Clearly, the lot is wide enough to accommodate a shared driveway, and the planned house can be located so as to allow a shared driveway. To the extent the recently-approved construction permit would facilitate the subdivision with a Fallwind Lane driveway by precluding the construction, now or in the future, of a shared driveway to Elgin Lane to service two houses on the lot, we oppose the construction permit. MPHOA is prepared to file a formal appeal of the approval of Permit #951114 if DPS deems that necessary to protect the MPHOA's interests in this matter.

Please feel free to contact us at 202-255-0961 or caweals@gmail.com should you require additional information.

Sincerely,



Christopher A. Weals
President, Merrimack Park Homeowners Association, Inc.

Cc: Jerome Freibaum, c/o Robert Freibaum (rfreibaum@icloud.com)

Enclosures

From: Christopher Weals <caweals@gmail.com>
Sent: Wednesday, March 29, 2023 6:07 PM
To: Bossi, Adam <Adam.Bossi@montgomeryplanning.org>
Cc: Andrew Karron <karronat@gmail.com>; Peter Sklarew <Peter.A.Sklarew@usdoj.gov>; Lawrence Dwight <ldwight@prodigy.net>; Bryan and Liesl <defranco4@verizon.net>
Subject: Re: 6535 Elgin Ln, Administrative Subdivision #620210080

Adam, thank you for the email. I saw your exchange with Peter Sklarew, and reiterate his statement that the HOA remains opposed to the application to subdivide 6535 Elgin Lane. We will review the Freibauts' revised submission and let you know if we have any additional comments. The HOA and one or more residents will likely appear at the April 20 Planning Board meeting. We will be on the lookout for information about how to sign up to testify. Thank you again for your assistance.

Regards,
Cris

From: Sklarew, Peter A. (TAX) <Peter.A.Sklarew@usdoj.gov>
Sent: Wednesday, March 29, 2023 12:20 PM
To: Bossi, Adam <Adam.Bossi@montgomeryplanning.org>; Cris Weals <caweals@gmail.com>; Andrew Karron <karronat@gmail.com>
Cc: Elsie Weinstein <elsie.weinstein@hocmc.org>
Subject: RE: 6535 Elgin Ln, Administrative Subdivision #620210080

Thank you Adam. I'm swamped at the moment and am passing this to the President and VP of the Merrimack Park HOA in the hope they can look at it more quickly. I am 100% confident that our association as well as every homeowner on our street opposes the proposal. The street was deliberately set up to have homes only on one side and every homeowner on the street is required to pay substantial monthly dues to cover not only maintenance of their yards but also of substantial common areas owned by the MPHOA, including the woods at the end of the cul-de-sac and including the bike path through the woods. I have also copied our contact at the Montgomery County Housing Opportunities Commission, which owns the low-income townhouse and which has in the past also expressed opposition to the proposal.

Peter Sklarew
Secretary, MPHOA

From: Andrew Karron <trekarron@gmail.com>
Sent: Friday, March 31, 2023 12:55 PM
To: Bossi, Adam <Adam.Bossi@montgomeryplanning.org>
Subject: Re: 6535 Elgin Ln, Administrative Subdivision #620210080

Hi Adam. Thanks for notifying me. I still oppose the proposal for all the reasons noted in our prior correspondence and the correspondence from Christopher Wales on behalf of the Merrimack Park HOA.

In particular, the revised proposal remains completely inconsistent with the Fallwind Lane Merrimack Park plan, which (at the community's request) called for houses only on one side of the street.

Indeed, the latest submission provides an additional reason for denial: it concedes that the proposed driveway is inconsistent with the secondary road designation of Fallwind Lane and that a variance would be required.

Finally, I note that the history here further supports denial. The proposed auxiliary subdivided lot could have had access for

Elgin Lane but the Freibaums chose not to do that in rebuilding. That is their right, but they should not be permitted to bootstrap that choice into a claim that they now need access via Fallwind Lane.

There is, finally, an additional ground for denial: unclean hands and abuse of the process. As the correspondence record shows, in applying to "rebuild" their driveway, the Freibaums sought to sneak in the new Fallwind Lane driveway without alerting the planning authorities that this would be a new driveway opposed by the neighbors. As you recall, that required emergency correspondence from us and emergency notice from county authorities to prevent building of the new driveway. This sort of conduct should not be tolerated, nor rewarded.

Andrew Karron
Sent from my iPhone

On Mar 29, 2023, at 12:12 PM, Bossi, Adam <Adam.Bossi@montgomeryplanning.org> wrote:

Hi Andrew,

It's been a while since we were in contact about the proposed administrative subdivision at 6535 Elgin Lane. Project plans were revised earlier this year and are available on the [Department's Development Activity Information Center \(DAIC - link here will take you directly to the project files\)](#). The scope of the proposal remains unchanged – the existing single lot is proposed to be subdivided into two lots, with the new lot to front on Fallwind Lane.

This proposal is currently scheduled for a public hearing with the Planning Board on April 20. Our Planning staff report about the proposal is scheduled to publish online on April 10. [Closer to the hearing date, you'll be able to sign up online to testify at the hearing](#), and have another means of submitting

written testimony into the record (the correspondence you already shared last year will be included in the record as an attachment to the staff report).

Leading up to these dates, as you submitted opposition to the application when it was originally filed, please review the latest submission, and let me know if you have any questions. Additionally, please let me know if your opposition to the application remains or if you are no longer opposed to the proposal.

I'd be happy to set up a time to talk through any questions or concerns. Thanks.

Adam

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