

R E S O L U T I O N

WHEREAS, TSC/Accokey Associates, LTD Partnership is the owner of a 135.14-acre parcel of and known as Braemar, said property being in the 5th Election District of Prince George's County, Maryland, and being zoned R-S; and

WHEREAS, on August 22, 2000, TSC/Accokey Associates, LTD Partnership filed an application for approval of a Preliminary Subdivision Plat (Staff Exhibit #1) for 44 lots and 2 Parcels; and

WHEREAS, the application for approval of the aforesaid Preliminary Subdivision Plat, also known as Preliminary Plat 4-00045, Braemar was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on November 9, 2000, for its review and action in accordance with Article 28, Section 7-116, Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL, with conditions of the application with conditions; and

WHEREAS, on November 9, 2000, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board APPROVED the Type I Tree Conservation Plan (TCPI/69/94), and further APPROVED Preliminary Plat of Subdivision 4-00045, Braemar for 44 Lots and 2 Parcels with the following conditions:

1. Development of this subdivision shall be in compliance with the approved Type I Tree Conservation Plan (TCP I/69/94). The following note shall be placed on the Final Plat of Subdivision:

"Development is subject to restrictions shown on the approved Type I Tree Conservation Plan (TCP I/69/94), or as modified by the Type II Tree Conservation Plan, and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved Tree Conservation Plan and will make the owner subject to mitigation under the Woodland Conservation/Tree Preservation Policy."

2. Prior to the issuance of building permits, a Type II Tree Conservation Plan shall be approved.
3. At time of final plat, a Conservation Easement shall be described by bearings and distances. The conservation easement shall contain all 100-year floodplain, stream

buffers and wetland buffers, except for approved variation requests, and be reviewed by the Environmental Planning Section prior to certificate approval. The following note shall be placed on the plat:

"Conservation Easements described on this plat are areas where the installation of structures and roads and the removal of vegetation is prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed."

4. Prior to the issuance of any building permit for the subject property, the following improvements shall (a) be fully funded by the applicant, the applicant's heirs, successors, and/or assigns, (b) have been bonded and permitted for construction, and (c) have an agreed-upon timetable for construction with the SHA or the DPW&T:
 - \$ MD 373/Berry Road:
 - Provide a 200 foot southbound right turn lane along Berry Road
 - \$ Berry Road/site entrance:
 - Provide acceleration and deceleration lanes in accordance with DPW&T requirements
5. Prior to the issuance of any building permit for the subject property, the applicant shall pay a pro-rata share of \$9,825 to the DPW&T toward the cost of the following improvements:
 - Livingston/Farmington/Berry Roads:
 - Install a traffic signal
 - Provide a 110 foot northbound left turn lane along Livingston Road
 - Provide a 300 foot southbound left turn lane along Livingston Road
6. Prior to the issuance of the first building permit, the applicant, its successors and/or assigns, shall provide the installation of one AShare the Road with a Bike@ sign in accordance with State requirements, and upon State approval, along Accokeek Road (MD 373). If the State declines the sign, this condition shall be void.
7. Prior to signature approval, the preliminary plat shall be revised to graphically depict the 10-foot Public Utility Easement or to include a note referencing this easement.
8. The final plat shall include the 10-foot wide Public Utility Easements along all rights-of-way.
9. Development shall be in accordance with the approved stormwater concept plan, Concept 8320640-2000-00.
10. A note shall be placed on the final plat that there shall be no direct access to MD 373

from any individual lot.

11. Prior to approval of the final plats, the underlying record plats, VJ 184 @ 34 - 41, shall be vacated.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

1. The subdivision, as modified, meets the legal requirements of Subtitles 24 and 27 of the Prince George's County Code and of Article 28, Annotated Code of Maryland.
2. The property is located in the northwest quadrant of the Berry Road/Accoceek Road intersection in Accoceek.
3. The site is subject to the Woodland Conservation Ordinances because it is more than 40,000 square feet in size and contains more than 10,000 square feet of woodland. A Tree Conservation Plan is required. A Forest Stand Delineation, prepared by Loiederman Associates, Inc. dated February 1994 has been reviewed and determined to be adequate. The site contains many trees over 24 inches in diameter.

A Tree Conservation Plan, TCP I/69/94 (revised), has been reviewed and staff recommends approval. The plan proposes clearing of 0.89 acres of floodplain woodland and 31.09 acres of upland woodland. The minimum required woodland conservation is 71.89 acres. The plan proposes on-site preservation of 65.23 acres and 6.66 acres of on-site reforestation/replacement for a total of 71.89 acres. A woodland buffer 4.88 acres in size along Accoceek Road, a designated Historic Road, is proposed to be afforested.

Part of the woodland preservation will be on parkland dedicated by record plat to M-NCPPC. By letter dated October 18, 2000, Helen Asan of the Department of Parks and Recreation indicates the acceptance of this proposal.

According to the Geologic Map of the Mount Vernon and Piscataway Quadrangles the highest elevations of the site are sands and gravels of the Brandywine Formation. Below these are unconsolidated sediments of the Calvert Formation and the Nanjemoy Formation. Marlboro Clay does not occur near the surface in this area. The steep stream valleys are the natural result of stream erosion through the dense diatomaceous clayey silts of the Calvert Formation. Block failure is sometimes a concern with over consolidated layers within the Calvert Formation.

As shown of the Forest Stand Delineation, several soil types occur on the property. Problem areas include the extreme slopes listed as Sandy Land Steep where erosion and sediment control is difficult. Special attention should be placed upon installation of silt fence and other sediment control devices. The plateau of the southern half of the site is underlain by soils in the Leonardtown Series. These soils can have a perched water table

and poor drainage. Care should be taken to assure proper drainage around proposed building foundations.

Proposed Parcel AF, @ a large parcel designated as tree preservation area, has road frontage through an adjoining subdivision. No direct access is available through the proposed subdivision. This situation is acceptable since the parcel will have frontage on a public street. However, staff believes this situation could cause misunderstanding in the future. For the record, this parcel is intended for tree preservation and no structures will be allowed on it.

The site contains significant natural features, which are required to be protected under Section 24-130 of the Subdivision Regulations. At time of final plat, a Conservation Easement shall be described by bearings and distances. The conservation easement shall contain all 100-year floodplain, stream buffers and wetland buffers, except for approved variation requests, and be reviewed by the Environmental Planning Section prior to certificate approval. The following note shall be placed on the plat:

"Conservation Easements described on this plat are areas where the installation of structures and roads and the removal of vegetation is prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed."

The Environmental Planning Section file contains a copy of a Preliminary Wetland Investigation Report prepared by Loiederman Associates, Inc. dated March 16, 1994. The report contains a plan indicating that not all wetlands are restricted to the area of the 100-year floodplain. A formal Jurisdictional Determination from the U.S. Army Corps of Engineers would be helpful in determining the extent of the existing wetlands. Without this information it is assumed that the streams shown on the Tree Conservation Plan are subject to Section 24-130 of the Subdivision Regulations which require the provision of a 50-foot buffer. The revised Tree Conservation Plan and the preliminary plan show all information and buffers related to the streams appropriately.

The applicant has submitted a series of variation requests to allow disturbance to the minimum 50-foot stream buffer and minimum 25-foot wetland buffer for the purpose of building public streets and the installation of sanitary sewer and public water.

Section 24-113 of the Subdivision Regulations sets forth the required findings for approval of variation requests. The Planning Board may approve variation upon making the following findings:

- A. **That the granting of the variation will not be detrimental to the public safety, health or welfare, or injurious to other property.** The granting of the variation requests is for the purpose of providing public health, safety and welfare and will not be injurious to other properties. The topography of the site in relation to existing infrastructure severely

limits the development potential if the Subdivision Ordinance is strictly interpreted. The activities requiring the variation requests follow good planning principles and do not violate any other applicable law, ordinance or regulation

- B. **The conditions of which the variation is based are unique to the property for which the variation is sought and are not applicable generally to other properties.** The streams and wetlands fragment the property into eight pieces. The largest piece fronts onto Accokeek Road, but access to Accokeek Road has been denied because it is a Historic Road. The largest portion with frontage on a public road is about 13 acres or 10% of the total tract. The conditions of the property would result in a hardship to the applicant if the strict interpretation of the Subdivision Regulations regarding stream buffers and wetland buffers is carried out.
- C. **The variation does not constitute a violation of any other applicable law, ordinance, or regulation.** No other laws are violated by the approval of these variations.
- D. **Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out.** Three road crossings have been designed to result in minimal impacts to streams and wetlands. The alignment of the streets is controlled by the topography of the site and proper engineering is required to provide road grades that ensure public safety. Sanitary sewer and public water are being provided for the health, safety, and welfare of the community. The Ten Year Water and Sewer Plan mandates that new systems must tie into the existing infrastructure. The topography of the site, designated points of tie-in and proper engineering restrict the layout and the proposed impacts to the streams and wetlands are temporary. Natural re-vegetation of the areas cleared for construction will replace some of the functions of the buffers. Without the variations, a large portion of the property would be rendered undevelopable.

There are no significant noise impacts from highways or aircraft. Accokeek Road is a designated Historic Road and subject to the guidelines of the Prince George's County Department of Public Works and Transportation. A Historic Road Report, Accokeek Road (MD Rt.373) prepared by Loiederman Associates, Inc. and dated October 13, 1997, is in the Environmental Planning Section file. The report contains an inventory of scenic and historic features, pictures, and maps which illustrate the significant visual features of Accokeek Road. The Tree Conservation Plan proposes an area of afforestation not less than 50 feet deep along the entire right-of-way of Accokeek Road. This measures

adequately maintains the Historic and Scenic Character of the road.

The property is in water and sewer category 3 and will be served by public systems.

4. The *1993 Master Plan for Subregion V* recommends Suburban Estate/Low Density Planned Neighborhood land use at a density of up to 1.5 DU/acre. The Plan states (p.49) that these areas are located along the edges of the identified suburban corridor communities, where they function primarily as a transition to the rural living areas. This site is at the eastern edge of the Accokeek suburban community, adjacent to the Piscataway-Danville rural living area located across Berry Road and Accokeek Road to the east and south. Either large lot estate or smaller lot, neighborhood cluster development is appropriate at such locations.

The proposed large lot, estate residential development generally conforms with the range of Master Plan land use recommendations for this location, which is at a point of transition between a suburban community and a low density rural living area. To the north, the Plan recommends Suburban Estate/Low Density Planned Neighborhood land use for undeveloped land in the R-E Zone. To the east and south, the Plan recommends Rural or Semi-Rural living areas in the R-A Zone; undeveloped land, several rural home sites, a plant nursery/garden center, and a privately owned golf course are developed in these areas. Along the southwest boundary, a small (undeveloped) M-NCPPC neighborhood park property is recognized. To the west, Low Suburban residential land use is recommended in recognition of existing, small lot subdivisions in the R-R Zone.

The *1993 SMA for Subregion V* retained this property in the R-S Comprehensive Design Zone. The property had been classified in the R-A Zone by the 1979 Accokeek-Piscataway-Tippett SMA prior to approval of rezoning application A-9804 for the R-S Zone on September 6, 1991. The subject development proposal follows the regulations of the R-A Zone pursuant to CB-11-2000, which revised Section 27-477(c) of the Zoning Ordinance.

5. The property is exempt from the requirements of Section 24-134 of the Subdivision Regulations for mandatory park dedication because the lots are larger than one acre in size. The applicant deeded to M-NCPPC, a large parcel of land in conjunction with previous final plat approvals for Berry Woods. This land is to be used to satisfy tree conservation requirements.
6. The ***Adopted and Approved Subregion V Master Plan***, designates MD 373 as a public bikeway. The classification of this bikeway depends on which type of road section the State Highway Administration (SHA) requires. In any case, the applicant should provide a *AShare the Road With a Bike@* sign along Accokeek Road
7. No traffic study was requested of the applicant nor was one submitted for review in support of the preliminary plat. The findings and recommendations outlined below are based upon a review of relevant materials and analyses conducted by the staff of the

Transportation Planning Section, consistent with the *Guidelines for the Analysis of the Traffic Impact of Development Proposals (Guidelines)*.

The application is a proposal to resubdivide the existing Berry Woods subdivision, which was the subject of Preliminary Plat of Subdivision 4-94138 and has since been fully recorded but not built. The original preliminary plat considered 222 lots; the subdivision was platted with 212 lots. The applicant proposes to develop the site under R-A regulations.

Because the existing parcel has been previously subdivided, the proposed subdivision would generate no net trips as a result of the resubdivision. There would be no resulting impact on traffic operations at the development's critical intersections, which were determined to be the following in 1994:

- \$ MD 210 and Farmington Road (signalized)
- \$ MD 210 and MD 373 (signalized)
- \$ Livingston Road and Farmington/Berry Roads (unsignalized)
- \$ MD 373 and Livingston Road (unsignalized)
- \$ MD 373 and Berry Road (unsignalized)

Notwithstanding the finding of no net impact above, the original development had a number of transportation-related conditions. Dedication conditions were satisfied at the time of Final Plat/Record Plat. Signals were determined not to be warranted at the MD 373/Berry Road and the MD 373/Livingston Road intersections. Therefore, the following conditions are considered to still be in effect, and will remain as a part of the staff recommendation for this application:

- A. Prior to the issuance of any building permit for the subject property, the following improvements shall (a) be fully funded by the applicant, the applicant's heirs, successors, and/or assigns, (b) have been bonded and permitted for construction, and (c) have an agreed-upon timetable for construction with the SHA or the DPW&T:

\$MD 373/Berry Road:

- Provide a 200 foot southbound right turn lane along Berry Road

\$Berry Road/site entrance:

- Provide acceleration and deceleration lanes in accordance with DPW&T requirements

- B. This memorandum is a supplement to the October 19, 2000 memorandum. At that time, the transportation staff was not aware of the status of a traffic signal at the Livingston/Farmington/Berry Road

intersection. Since that memorandum was prepared, the applicant has supplied staff with findings from the Department of Public Works and Transportation (DPW&T) regarding the signal. DPW&T determined that the signal at this location was not warranted when the signal warrant study was done in 1998. DPW&T did find that the signal would be warranted in the future, however, and indicated the required contribution of the applicant toward the signal and related improvements should be \$9,825. A copy of DPW &T=s memorandum is attached.

Previous dedication has provided adequate right-of-way along MD 373 and Berry Road in support of Master Plan recommendations. MD 373 is a Master Plan arterial, and Berry Road is a Master Plan collector. A note should be placed on the final plat that there shall be no direct access from any lot to MD 373. The Transportation Planning Section concludes that adequate access roads will exist as required by Section 24-124 of the Prince George's County Code. This finding of adequacy is subject to the following included in this report.

8. Schools - The Growth Policy and Public Facilities Planning Section has reviewed the subdivision plans for adequacy of public facilities in accordance with Section 24-122.01 and 24-122.02 of the Subdivision Regulations and the *Regulations to Analyze the Development Impact on Public School Facilities* (revised July 2000) (CR-4-1998).

Projected Impact on Affected Public Schools

School Name	D.U. by Type	Pupil Yield Factor	Development Pupil Yield	5- Year Enrollment	Adjusted Enrollment	Total Projected Enrollment	State Rated Capacity	Percentage of Capacity
G. Ferguson Elementary School	44 SFD	0.22	9.68	801	0	810.68	444	182.59%
ne Burroughs Middle School	44 SFD	0.08	3.52	903	0	906.52	999	90.74%
n Park High School	44 SFD	0.13	5.72	1627	0	1632.72	1274	128.16%

Source: Prince George's County Planning Department, M-NCPPC, July 2000

The subject application is a proposed resubdivision of previously approved project known as Berry Woods. The Berry Woods project was approved pursuant to the regulations pertaining to the R-S Comprehensive Design Zone and has completed all the plan review applications necessary to obtain building permits. The Final Plats of Subdivision were approved on March 5, 1998 and recorded on September 3, 1998. These plats created a total of 212 building lots for single-family detached dwelling units served by public water and sewer systems. The next step in the development process for this platted subdivision is the filing of building permits.

On May 2, 2000 The District Council approved CB-11-2000. This legislation permits any Comprehensive Design Zone project that was approved on land previously in either the R-E, R-A or O-S zones, in essence, to revert back to the previous zoning standards for the purpose of a new development proposal. While the Comprehensive Design Zone is still the official zoning for the property, an owner may propose a new Preliminary Plat of Subdivision that conforms to the standards of the previous zone. Upon approval of a new preliminary plat in accordance with the previous zoning of the property, all approvals and conditions associated with the Comprehensive Design Zone A...shall be null and void. @ In the case of the subject application, the property was previously zoned R-A. The R-A Zone has a conventional minimum net lot area requirement of 2 acres. The current R-S zoning permitted lots to be created that are as small as 8,400 square feet in size.

The review process for the subject preliminary plat identified that one of the three affected schools (Henry G. Ferguson Elementary School) has a current 5-year projected enrollment of over 130%. The strict application of the current school APF test would require that a condition be placed upon the subject application that would establish a potential maximum 4-year wait on the issuance of building permits. The only reduction of this 4-year wait would be if all the affected schools had attained a 5-year projected enrollment that was equal to or lesser than 130%. The applicant has indicated that if the subject preliminary plat is approved with a 4-year wait condition, the applicant will consider developing the existing 212-lot subdivision that currently stands approved and ready for permitting.

Staff is of the opinion that the subject application is unique and that a 4-year wait condition should not be applicable for the following reasons:

- a. The previous development proposal, while not to the current test standards, passed three school APF determinations at the time of Basic Plan, Comprehensive Design Plan and at Specific Design Plan;
- b. The previous development proposal resulted in the creation of 212 record lots that may be permitted for construction without any restriction pertaining to school APF until September 3, 2004 (CB-15-1999 established a requirement to test for school APF if the lot is A...shown on a record plat that has been recorded for more than six (6) years...@);
- c. Analysis has determined that the current 5-year projected enrollment for the schools that affect the subject property have been developed with the understanding that a substantial amount of the 212 building lots platted in 1998 were factored into that projected enrollment;
- d. The subject preliminary plat proposes 44 building lots for single-family detached dwelling units to be served by public water and sewer systems. If the application is approved, the number of building lots will be reduced by 168 or approximately 80% of the original total. If this reduction of building lots is approved, the corresponding amount of projected pupil yield will also be reduced by the same amount;
- e. A determination not to require a 4-year wait condition is consistent with the longstanding Planning Board policy of determining transportation APF when: 1) A property has been through a previous APF test; 2) The development on that property has been assumed in the background development; and 3) A new application is proposing a new development in place of the previously approved development that has an equal or lesser impact to the public facilities. This policy, as it relates to transportation APF, has been litigated and found to be an appropriate means of determining adequacy when a development proposal changes but the APF impact of the proposal is the same or less;
- f. While not directly related to school APF, the approval of the subject application would correspondingly reduce the impact to all of the other public facilities that are tested and it would provide a lotting pattern (2 acre minimum lot size versus a 8,400 square foot minimum lot size) that is viewed by the surrounding community as being even more consistent with the Master Plan and the general residential character of the area.

9. Fire and Rescue -The Growth Policy and Public Facilities Planning Section has reviewed the subdivision plans for adequacy of public facilities and concluded the following:
 - a. The existing fire engine service at Accokeek Fire Station, Company 24 located at 16111 Livingston Road has a service response time of 6.25 minutes, which is beyond the 5.25 minutes response time guideline.
 - b. The existing ambulance service at Accokeek Fire Station, Company 24 located at 16111 Livingston Road has a service response time of 6.25 minutes, which is within the 6.25 minutes response time guideline for Lots 1-5; Lots 11-18 and Lots 39-44. All other Lots are beyond.
 - c. The existing paramedic service at Allentown Road Fire Station, Company 47 located at 10900 Fort Washington Road has a service response time of 11.51 minutes, which is beyond the 7.25 minutes response time guideline. The nearest fire station Accokeek, Company 24 is located at 16111 Livingston Road, which is 6.25 minutes from the development. This facility would be within the recommended response time for paramedic service.

The above findings are in conformance with the Adopted and Approved Public Safety Master Plan 1990 and the Guidelines for the Analysis of Development Impact on Fire and Rescue Facilities. To alleviate the negative impact on fire and rescue services due to the inadequate service discussed above, the Fire Department recommends that all residential structures be fully sprinkled in accordance with National Fire Protection Association Standard 13D and all applicable Prince George's County Laws. This is a matter of law for residential structures.

10. Police Facilities - The proposed development is within the service area for Police District IV- Oxon Hill. In accordance with Section 24-122.1(c)(1)(A) and (B) of the Subdivision Regulations of Prince George's County, the staff concludes that the existing County police facilities will be adequate to serve the proposed Braemar development. This police facility will adequately serve the population generated by the proposed subdivision
11. Health Department - The Health Department reviewed the application and offered no comments.
12. Stormwater Management - The Department of Environmental Resources (DER), Development Services Division, has determined that on-site stormwater management is required. A Stormwater Management Concept Plan, # 8320640-2000-00, has been approved with conditions to ensure that development of this site does not result in on-site or downstream flooding. Development must be in accordance with this approved plan.
13. Public Utility Easement - The plan does not include the required 10-foot wide public utility easements along all rights-of-way.

14. Underlying Plats -The subdivision is a resubdivision of existing record plats. BerryWoods is made up of Record Plats VJ 184 @ 34 - 41. These plats include dedicated roadways. Prior to the approval of final plats for the subject application, the applicant must vacate the existing record plats.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board=s action must be filed with Circuit Court for Prince George=s County, Maryland within thirty (30) days following the adoption of this Resolution.

* * * * *

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Lowe, seconded by Commissioner Eley, with Commissioners Lowe, Eley, Brown and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, November 9, 2000, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 4th day of January 2001.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:JD:rmk