

R E S O L U T I O N

WHEREAS, David Urovsky is the owner of a 1.21-acre parcel of land known as T.B. Middleton Farm, Lot 38 (SDH 4 @ 92) said property being in the 6th Election District of Prince George's County, Maryland, and being zoned R-R; and

WHEREAS, on October 22, 2002, David Urovsky filed an application for approval of a Preliminary Subdivision Plan (Staff Exhibit #1) for 2 lots; and

WHEREAS, the application for approval of the aforesaid Preliminary Subdivision Plan, also known as Preliminary Plan 4-02095 for T.B. Middleton Farm 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 March 13, 2002, 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 DISAPPROVAL of the application; and

WHEREAS, on March 13, 2003, 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/54/02), and APPROVED Variance Application No. VP-02095, and further APPROVED Preliminary Plan of Subdivision 4-02095, Lots 131 and 132 for The T.B. Middleton Farm with the following conditions:

1. Prior to signature approval of the preliminary plan of subdivision the plan shall be revised as follows:
 - a. To provide reference to the variance approval number and the purpose of the variance.
 - b. To demonstrate conformance to the *Landscape Manual* bufferyard requirement.
 - c. To show a new driveway serving Lot 131 and provide a note on the plan that direct and separate vehicular access is required for each lot to Middleton Lane.
2. Prior to the issuance of permits a Type II Tree Conservation Plan shall be approved.
3. Development of this property shall be in accordance with the approved Stormwater Management Concept Plan #5602-2002-00.

4. The Final Plat shall provide a note that the applicant shall provide driveways with turnaround capabilities to each lot in order to minimize the need for vehicles accessing these lots to back onto Middleton Lane.
5. Prior to the approval of the final plat the applicant, the assessors and or assignees shall pay a fee-in-lieu of parkland dedication for Lot 131.
6. Development of this subdivision shall be in compliance with the approved Type I Tree Conservation Plan (TCPI/54/02). The following note shall be placed on the Final Plat of Subdivision:

“Development is subject to restriction shown on the approved Type I Tree Conservation Plan (TCPI/54/02), 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 and Subtitle 25.”

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 subject property is located on the south side of Middleton Lane approximately 1,000 feet west of its intersection with Old Branch Avenue in the Camp Springs community.
3. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development.

	EXISTING	PROPOSED
Zone	R-R	R-R
Use(s)	Residential	Residential
Acreage	1.21	1.21
Lots	1	2
Dwelling Units:		
Detached	1	2 Total

4. **Environmental**—This site is subject to the provisions of the Woodland Conservation Ordinance because it is larger than 40,000 square feet in size and contains more than 10,000 square feet of woodlands. A Tree Conservation Plan (TCP) and Forest Stand Delineation (FSD) were required.

The Type I Tree Conservation Plan proposes clearing 0.25 acre of the existing 0.77 acre of woodland. The amount of woodland conservation required for this project has been correctly calculated as 0.30 acre. The plan further proposes preserving 0.31 acre of woodland on-site to meet

the requirements of the Woodland Conservation Ordinance and preserve an additional 0.21 acre on-site above and beyond that required. The Environmental Planning Section recommends approval of TCPI/54/02.

The soils found to occur on this property include the Beltsville and Sassafras series. The Beltsville soils have a K factor of 0.43 and are considered highly erodible, and steep and severe slopes are located on this property. The Sassafras soils present no special problems for development. A soils report may be required by the Prince George's County Department of Environmental Resources during the permit process review.

A review of the information available indicates that no streams, wetlands, Marlboro clay or 100-year floodplain occur on this property. The site is located in the Henson Creek watershed, which is a tributary to the Potomac River. The site is located approximately 1,700 feet west of Branch Avenue and is not expected to be significantly affected by traffic-generated noise, nor is the proposed use expected to be a noise generator. There are no rare, threatened, or endangered species located in the vicinity of this property based on information provided by the Maryland Department of Natural Resources's Natural Heritage Program. No historic or scenic roads are affected by this proposal. The sewer and water service categories are S-3 and W-3. The site is in the Developing Tier according to the 2002 *General Plan*.

5. **Community Planning**—The subject property is located within the limits of the 1981 *Master Plan for Subregion VII*, in Planning Area 76B in the Camp Springs community. The 2002 *General Plan* locates this property in the Developed Tier. The master plan land use recommendation is for Low Suburban Residential at a density up to 2.6 dwelling units per acre. The proposed preliminary plan is consistent with the land use recommendation contained in the master plan.

There are no historic sites or resources on or adjacent to the subject property. There are no public facilities proposed on or adjacent to the site. There are no parks and trails proposed in proximity to the site. The 1984 *Subregion VII* SMA classified this property in the R-R Zone.

The master plan states, "Application for preliminary plans of subdivision should show all transportation elements including streets, interior trails, proposed connection with the overall trails system, and proposed connections with the public transit system and bus stops, as well as all elements of the transportation system shown on the Master Plan." The preliminary plan is consistent with this recommendation. The plan locates abutting streets. As indicated above, there are no interior trails proposed and there are no master plan trail systems on or in the vicinity of the property. The Department of Public Works and Transportation indicates the sidewalks will be required along Middleton Lane which will provide connection with the public transit systems and bus stops.

The Environmental Envelope chapter of the master plan states, "Limited development shall be permitted in Conditional Reserve Areas based on the significant physiographic constraints and natural processes of the land." A portion of the Conditional Reserve Area is delineated on the southernmost portion of the site and has been reviewed by the Environmental Planning Section.

The Environmental Planning Section evaluated the extent to which this proposal complies with the guideline referred to above. It was determined that the master plan provides an overall gross evaluation of an area with specific evaluation occurring at the time of site-specific development. The site does contain steep and serve slopes, which are generally located within tree save areas on proposed Lot 132. Development of this property will be required to comply with the grading codes of Subtitle 4, Division 3, of the Prince George's County Code.

The proposed residential subdivision, located in the Camp Springs community, is consistent with the land use policy of the 1981 *Subregion VII Master Plan*.

6. **Parks and Recreation**—In accordance with Section 24-134(a) of the Subdivision Regulations, Lot 131 is exempt from the requirements of mandatory dedication of parkland because the lot is improved with a legally existing dwelling unit at the time of this subdivision.

However, in accordance with Section 24-134(a) of the Subdivision Regulations, proposed Lot 131 is subject to and the Department of Parks and Recreation recommends the payment of a fee-in-lieu of parkland dedication because the land available for dedication is unsuitable due to its size and location.

7. **Trails**—There are no master plan trails issues associated with this application.
8. **Transportation**—The proposed subdivision would create a total two residential lots, one that is improved with an existing residential dwelling unit. Both lots are proposed to have access to Middleton Lane, a planned primary residential street with an ultimate right-of-way of 60 feet as shown on the proposed preliminary plan. The proposed on-site circulation is adequate. The plan shows adequate dedication of 30 feet from existing centerline for Middleton Lane.

The proposed development would generate 2 AM and 2 PM peak hour vehicle trips as determined using *The Guidelines for the Analysis of the Traffic Impact of Development Proposals*. The traffic generated by the proposed preliminary plan would impact the intersection Middleton Lane and Old Branch Avenue. This intersection is not programmed for improvement with 100 percent construction funding within the next six years in the current Maryland Department of Transportation Consolidated Transportation Program or the Prince George's County Capital Improvement Program.

The *Guidelines* states that the Planning Board may find that the traffic impact of a very small development plan, defined as any development which generates five or fewer peak hour trips, is a de minimus, or insignificant, impact. Therefore, the Transportation Planning Section concludes impact to the transportation facilities is de minimus and that adequate transportation facilities will exist to support the development.

9. **Schools**—The Historic Preservation and Public Facilities Planning Section has reviewed the subdivision plans for adequacy of school facilities in accordance with Section 24-122.02 of the Subdivision Regulations and the *Adequate Public Facilities Regulations for Schools*

(CR-23-2001) and concluded that the subdivision is exempt from the APF test for schools because it is located in the Developed Tier.

10. **Fire and Rescue**—The Historic Preservation 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 Silver Hill Fire Station, Company 29, located at 3900 Silver Hill Road, has a service travel time of 4.93 minutes, which is within the 5.25-minute travel time guideline.
- b. The existing ambulance service at Silver Hill Fire Station, Company 29, located at 3900 Silver Hill Road, has a service travel time of 4.93 minutes, which is within the 6.25-minute travel time guideline.
- c. The existing paramedic service at Silver Hill Fire Station, Company 29, located at 3900 Silver Hill Road, has a service travel time of 4.93 minutes, which is within the 7.25-minute travel time guideline.

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*.

The proposed subdivision will be within the adequate coverage area of the nearest existing fire/rescue facilities for fire engine, ambulance and paramedic services.

11. **Police Facilities**—The proposed development is within the service area for the District IV-Oxon Hill police station. In accordance with Section 24-122.01(c) of the Subdivision Regulations, the existing county police facilities will be adequate to serve the proposed T.B. Middleton Farm development. This police facility will adequately serve the population generated by the proposed subdivision
12. **Health Department**—The Health Department has reviewed the proposed preliminary plan and has no comment.
13. **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, #5602-2002-00, 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.
14. **Flag Lot**^{3/4} The proposal includes one flag lot, proposed Lot 132. Flag lots are permitted pursuant to Section 24-138.01 of the Subdivision Regulations in certain circumstances. Flag lots are required to satisfy the following design standards found in Section 24-138.01(d) as follows:

- a. **A maximum of two tiers are permitted.** The applicant is proposing only one flag lot.
- b. **The flag stem has a minimum width of 25 feet for the entire length of the stem.** The applicant is proposing a 25-foot-wide flag stem.
- c. **The net lot area, exclusive of the stem, must meet the minimum lot size standard.** The minimum net lot area for conventional development in the R-R Zone is 20,000 square feet. The net lot area of Lot 132 is 23,400 square feet exclusive of the flag stem that is approximately 7,100 square feet.

Section 24-138.01(f) establishes specific findings for the approval of the use of flag lots. The Planning Board must find the following:

- a. **The design is clearly superior to what would have been achieved under conventional subdivision techniques.** This property could not be subdivided under conventional development techniques into two lots without the approval of significant variances due to the lot width. The lot width is not adequate to accommodate two lots. The existing lot has 100.36 feet of street frontage. The minimum lot width at the front street line for a lot in the R-R Zone for conventional development is 70 feet. The minimum lot width at the front building line is 80 feet for each lot.
- b. **The transportation system will function safely and efficiently.** Staff recommends that the permit plans for development demonstrate driveways with turn-around capabilities to alleviate the need for vehicles backing out onto Middleton Lane. Access permits will be required from the Department of Public Works and Transportation for proposed Lot 131 ensuring that the transportation system will function safely and efficiently.
- c. **The use of flag lots will result in the creative design of a development that blends harmoniously with the site and with adjacent development; and**

The abutting property to the west was developed by stacking one lot behind the other. The appearance is that of a flag lot; however, both lots meet the minimum standards for development in the R-R Zone and were not subdivided utilizing the flag lot provision of the Subdivision Regulations. The subdivision to the west is a resubdivision of Lot 39 of the T.B. Middleton Farm subdivision. The resubdivision occurred in 1988 and allowed the “flaring” of the lot at the street to meet the minimum street frontage.

Staff has found that creating this relationship between two lots is not beneficial and generally no longer supports this layout. While the subject property is not proposing to flare the lot at the street to meet the minimum development standards, utilizing the flag lot development option with only two lots results in a “stacking” effect similar to the abutting development to the west.

Staff has found that among the best-case scenarios for utilizing the flag lot provision of the Subdivision Regulations is a proposal of four lots that would allow for the creation of

a courtyard effect and flexibility in the orientation of dwellings to ensure a harmonious relationship to one another.

In the subject case, the existing dwelling on Lot 131 faces the street with the rear yard facing the buildable lot area of proposed Lot 132, the flag lot. The options for house siting in the most appropriate manner are limited due to the fact that one of the two dwellings being considered is fixed, being already constructed.

However, the subdivision to the west has been developed by stacking one lot behind the other. That relationship is compatible with the proposed subdivision. Although the dwelling on the rear lot abutting Lot 132 has been developed with its rear facing the dwelling on Lot 132, appropriate landscaping could create a harmonious environment.

- d. **The privacy of adjoining property owners has been assured in accordance with the evaluation criteria established above.**

Section 24-138.01(d)(6) of the Subdivision Regulations required that the preliminary plan demonstrate compliance to the *Landscape Manual* where a rear yard is oriented toward a driveway that accessed other lots, or toward a front or side yard of another lot. The preliminary plan does not demonstrated conformance to the *Landscape Manual* and should be revised to reflect the required bufferyards.

15. **Variance**^{3/4} Section 27-230 of the Zoning Ordinance sets forth the required findings for approval of variance requests. The applicant attempted to address the required findings in the statement of justification. However, the applicant provided further justification for the Planning Board hearing in support of the request for a variance. A variance may only be approved if:

- a. **A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions.**

The Planning Board has found that the topographic conditions of this lot are not shared by the abutting properties and are exceptional in nature to this property. The Conditional Reserve Areas identified in the 1981 *Master Plan for Subregion VI* and discussed in Finding 3 of this report identifies significant physiographic constraints of the land in this area. This feature extends from Old Branch Avenue to the southeast, to Middleton Court to the southwest. However, the steep and severe slopes are a feature of more significance on the subject property.

- b. **The strict application of the Zoning Ordinance will result in peculiar and unusual practical difficulties to or exceptional or undue hardship upon the owner of the property.** Of the seven lots in the block only one lot has been legally subdivided to create an additional lot. The applicant currently does have reasonable use of the property being improved with an existing single-family dwelling unit. However, the denial of a five-foot variance could be viewed by the applicant as unnecessarily burdensome to the property owner.

The approval of a variance could be considered more consistent with the justice given to adjoining property owners. The approval of a subdivision abutting to the west, which provided essentially the same layout as that requested by the applicant, and the appearance that the property to the east is improved with six dwelling units, creates a character that is consistent with the applicant's request. Although to staff's knowledge the improvements on the property to the east do not legally exist, the improvements do exist at this time.

c. **The variance will not substantially impair the integrity of the General Plan or Master Plan.**

It appears that granting relief of 5 feet from the 80-foot lot width at the front building line, in this specific circumstance, would observe the spirit of the Zoning Ordinance and not jeopardize the public safety and welfare and will not substantially impair the integrity of the *General Plan* or master plan.

The Planning Board finds adequate justification for the granting of the requested variance.

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.

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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 Scott, with Commissioners Lowe, Scott, and Hewlett voting in favor of the motion, and with Commissioner Eley in opposition of the motion at its regular meeting held on Thursday, March 13, 2003, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 10th day of April 2003.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

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