

PGCPB No. 06-18

File No. 4-05075

R E S O L U T I O N

WHEREAS, a 40.98-acre parcel of land known as Silver Farm, said property being in the, 5th Election District of Prince George's County, Maryland, and being zoned R-E; and

WHEREAS, on November 16, 2005, Silver Farm, LLC. filed an application for approval of a Preliminary Subdivision Plan (Staff Exhibit #1) for Lots 23, Outlots 1, and Parcels 2; and

WHEREAS, the application for approval of the aforesaid Preliminary Subdivision Plan, also known as Preliminary Plan 4-05075 for Silver 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 January 19, 2006, 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 of the application with conditions; and

WHEREAS, on January 19, 2006, 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 (TCP I/56/04), and further APPROVED Preliminary Plan of Subdivision 4-05075, Silver Farm, Lots 1-23 and Parcels A and B, and Outlot A, including a Variation from Section 24-130, and DISAPPROVAL of a Variation to Section 24-121 of the Subdivision Regulations for Lot 22 with the following conditions:

1. Prior to signature approval of the preliminary plan of subdivision the plan shall be revised as follows:
 - a. Label Parcel A and B to be conveyed to the HOA.
 - b. Remove Parcel 13 (Lot 23) from the limits of the preliminary plan, and adjust necessary general notes.
2. Prior to signature approval of the preliminary plan, Outlot A (8,497 square feet) and Lot 22 (40,000 square feet) shall be combined and either one of the following shall occur:
 - a. Label as Parcel C to be conveyed to the HOA. If conveyed to the HOA, the parcel may be utilized for reforestation/afforestation including the area of the scenic and historic road easement, with the exception of the area of the existing access easement (Liber 3541 Folio 975).

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- b. If conveyed to the owner of Parcel 10, the applicant shall submit a deed executed by the property owner of Parcel 10 and the applicant at the time of submittal of the final plat. The final plat shall label that area of land as Outlot A. Prior to the approval of the first building permit the applicant shall submit a copy of the recorded deed of conveyance.
 - c. Create an outlot to be retained by the owner.
3. A Type II Tree Conservation Plan shall be approved with the limited detailed site plan.
4. Development of this site shall be in conformance with the Stormwater Management Concept Plan, #19329-2004-00 and any subsequent revisions.
5. Prior to the issuance of grading permits the applicant shall demonstrate that any abandoned well or septic system has been pumped, backfilled and/or sealed in accordance with COMAR 26.04.04 by a licensed well driller or witnessed by a representative of the Health Department.
6. Prior to the issuance of grading permits the applicant shall submit evidence from the Health Department that the tires found on the property have been hauled away by a licensed scrap tire hauler to a licensed scrap tire disposal/recycling facility.
7. The final plat shall denote denied access from this site to MD 223, except the frontage provided to Parcel 10 via access easement (Liber 3541 Folio 389) and the primary entrance road.
8. Prior to signature approval of the preliminary plan or the TCPI, an approved 100-year floodplain study shall be submitted.
9. At time of final plat, a conservation easement shall be described by bearings and distances. The conservation easement shall contain the expanded stream buffers, except for areas where impacts have been approved, and be reviewed by the Environmental Planning Section prior to certification. In addition, 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 are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed.”
10. Prior to the issuance of any permits which impact jurisdictional wetlands, wetland buffers, streams or Waters of the U.S., the applicant shall submit copies of all federal and state wetland permits, evidence that approval conditions have been complied with, and associated mitigation plans.
11. Prior to signature of the preliminary plan, the TCPI shall be revised to:
 - a. Remove the proposed planting from Lots 4-7.

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- b. Remove proposed grading into the expanded stream buffer for the grading of Lot 4.
 - c. Provide a minimum of 20-foot-wide cleared side yards and 40-foot deep cleared rear yards on each lot.
 - d. Remove the off-site clearing from the worksheet.
 - e. Realign Silver Farm Drive, in accordance with the DPW&T recommendations.
 - f. Provide all woodland conservation on-site.
 - g. Revise the worksheet as needed.
 - h. Have the revised plan signed and dated by the qualified professional who prepared the plan.
12. 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 (TCPI/56/04), 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.”
13. Prior to final plat approval, a limited detailed site plan shall be approved by the Planning Board or its designee for Lots 1 and 2. The limited detailed site plan shall:
- a. Show house siting and the landscaping in the 40-foot-wide scenic easement adjacent to the 10-foot public utility easement parallel to the land to be dedicated for Piscataway Road. The landscaping shall be sufficient to preserve the historic character of Piscataway Road and shall meet the stocking level of the Woodland Conservation Ordinance so that it can be used to meet the requirements of the Woodland Conservation Ordinance.
 - b. Address house siting and mitigation measures for traffic-generated noise. A Phase II noise study shall be submitted with the limited detailed site plan. The DSP and TCPII shall show all proposed site features.
14. A minimum 40-foot-wide easement adjacent to the 10-foot public utility easements parallel to the land to be dedicated for Piscataway Road, shall be shown on the final plats as scenic easements and the following note shall be placed on the plats:
- “Scenic easements described on this plat are areas where the installation of structures and the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches,

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or trunks is permitted.”

15. Prior to approval of the final plat of subdivision the applicant, his heirs, successors and or assignees shall pay a fee-in-lieu of parkland dedication excluding each lot that has a net lot area of more than one-acre.
16. Prior to signature approval of the preliminary plan, the applicant shall determine the extent of the land that should be the subject of a Phase I archaeological investigation with the concurrence of the Development Review Division (DRD). The applicant shall complete and submit a Phase I investigation (including research into the property history and archaeological literature) for those lands determined to be subject. Prior to approval of final plats, the applicant shall submit Phase II and Phase III investigations as determined by DRD staff as needed. The plan shall provide for the avoidance and preservation of the resources in place or shall provide for mitigating the adverse effect upon these resources. All investigations must be conducted by a qualified archaeologist and must follow *The Standards and Guidelines for Archeological Investigations in Maryland (Schaffer and Cole: 1994)* and must be presented in a report following the same guidelines.
17. The applicant, his heirs, successors and/or assignees shall:
 - a. Provide a paved asphalt shoulder along the subject site's entire road frontage of Piscataway Road, unless modified by SHA.
 - b. Provide standard sidewalks along at least one side of all internal roads, unless modified by DPW&T.
18. Prior to the approval of building permits, the applicant, his heirs, successors and/or assignees shall convey to the homeowners association (HOA) 7.51± acres of open space land (Parcel A and B) and any other open space lands pursuant to conditions of this approval. Land to be conveyed shall be subject to the following:
 - a. Conveyance shall take place prior to the issuance of building permits.
 - b. A copy of unrecorded, special warranty deed for the property to be conveyed shall be submitted to the Subdivision Section of the Development Review Division (DRD), Upper Marlboro, along with the final plat.
 - c. All waste matter of any kind shall be removed from the property, prior to conveyance, and all disturbed areas shall have a full stand of grass or other vegetation upon completion of any phase, section or the entire project.
 - d. The conveyed land shall not suffer the disposition of construction materials, soil filling, discarded plant materials, refuse or similar waste matter.
 - e. Any disturbance of land to be conveyed to a homeowners association shall be in accordance with an approved detailed site plan or shall require the written consent of

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DRD. This shall include, but not be limited to, the location of sediment control measures, tree removal, temporary or permanent stormwater management facilities, utility placement and stormdrain outfalls. If such proposals are approved, a written agreement and financial guarantee shall be required to warrant restoration, repair or improvements, required by the approval process.

- f. Stormdrain outfalls shall be designed to avoid adverse impacts on land to be conveyed to a homeowners association. The location and design of drainage outfalls that adversely impact property to be conveyed shall be reviewed and approved by DRD prior to the issuance of grading or building permits.
 - g. Temporary or permanent use of land to be conveyed to a homeowners association for stormwater management shall be approved by DRD.
- 19. Prior to the approval of building permits the applicant, his heirs, successors and/or assignees shall demonstrate that a homeowners association has been established and that the common areas have been conveyed to the homeowners association.
 - 20. MD 223 at Windbrook Drive: Prior to the issuance of any building permits within the subject property, the applicant shall submit an acceptable traffic signal warrant study to SHA and/or DPW&T for signalization at the intersection of MD 223 and Windbrook Drive. The applicant should utilize a new 12-hour count, and should analyze signal warrants under total future traffic as well as existing traffic at the direction of the operating agencies. If a signal is deemed warranted at that time, the applicant shall bond the signal with the appropriate agency prior to the release of any building permits within the subject property, and install it at a time when directed by that agency. Installation shall include the construction of the southbound site access approach to provide an exclusive right-turn lane and a shared through/left-turn lane, along with the provision of left-turn and right-turn lanes along MD 223 to serve the site access.
 - 21. At the time of final plat approval, the applicant shall dedicate a right-of-way along MD 223 of 60 feet from centerline as shown on the submitted plan.
 - 22. Prior to the issuance of a grading permit for the development, a public safety mitigation fee shall be paid in the amount of \$112,200 (\$5,100 x 22 dwelling units). Notwithstanding the number of dwelling units and the total fee payments noted in this condition, the final number of dwelling units shall be as approved by the Planning Board and the total fee payment shall be determined by multiplying the total dwelling unit number by the per unit factor noted above. The per unit factor of \$5,100 is subject to adjustment on an annual basis in accordance with the percentage change in the consumer price index for all urban consumers. The actual fee to be paid will depend upon the year the grading permit is issued.
 - 23. The Final Plat shall provide a note that building permits shall demonstrate driveways with

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turnaround capabilities to each lot that has sole vehicular access to Silver Farm Drive in order to minimize the need for vehicles backing into traffic from these lots.

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 site is located on the west side of Piscataway Road (MD 223), opposite its intersection with Windbrook Drive.
3. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development.

	EXISTING	PROPOSED	APPROVED
Zone	R-E	R-E	
Use(s)	Single-family dwelling	Single-family dwelling	
	units	units	
Acreage	40.98	40.98	
Lots	0	23	21
Outlots	0	1	1 or 0
Parcels	2	2	2 or 3
Dwelling			
Units:			
Detached	1 (to be removed)	23	21
	1 (to remain Lot 23)		

4. **Environmental**—The Environmental Planning Section has reviewed the Preliminary Plan of Subdivision for Silver Farm, 4-05075, and the Type I Tree Conservation Plan, TCPI/56/04, stamped as accepted for processing on November 16, 2005. The Environmental Planning Section supports the variations requests for impacts to sensitive environmental features and recommends approval of 4-05075 and TCPI/56/04 subject to conditions.

The Environmental Planning Section previously reviewed Preliminary Plan 4-04061 and TCPI/56/04 for the subject property. Those applications were withdrawn before being heard by the Planning Board. The proposal is for 23 lots, one outlot and two parcels in the R-E Zone.

The 40.98-acre property in the R-E Zone is located on the west side of Piscataway Road and northwest of its intersection with Windbrook Drive. Current aerial photos indicate that more than half of the site is wooded. This site contains streams, 100-year floodplain, a manmade pond and wetlands associated with Tinkers Creek in the Potomac River watershed. The Subregion V Master Plan indicates that there are substantial areas designated as Natural Reserve on the site. The Green Infrastructure Plan identifies regulated areas, evaluation areas, and network gaps on the property.

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According to information obtained from the Maryland Department of Natural Resources Natural Heritage Program publication entitled "Ecologically Significant Areas in Anne Arundel and Prince George's Counties," December 1997, there are no rare, threatened, or endangered species found to occur in the vicinity of this property. Piscataway Road is designated in the Subregion V Master Plan as a historic road. Piscataway Road is an adjacent source of traffic-generated noise. The proposed development is not expected to be a noise generator. According to the "Prince George's County Soil Survey" the principal soils on the site are in the Beltsville, Croom, Ochlockonee and Sassafras series. Marlboro clay does not occur in this area.

Environmental Review

The conceptual grading shown on the Type I Tree Conservation Plan shows extensive areas with proposed cut and minimal areas with proposed fill. The pattern is strongly suggestive of a surface mining operation for the extraction of sand and gravel resources. A Special Exception is required for surface mining; however, if the grading is determined to be necessary for the development of a subdivision, a Special Exception is not required. It is not possible to determine if the grading is necessary based upon the information submitted.

A calculation of the volume of material that is proposed to be cut and the volume of material to be used on-site for fill is essential for evaluating whether this is grading to accomplish the layout of the subdivision or if a substantial volume would need to be removed from the site. If a significant volume is to be removed from the subject property, then the proposed disposition of the material needs to be indicated because the Natural Resources Conservation Service will require an erosion/sediment control plan for the receiving site and the receiving site will need to be evaluated with regard to the Woodland Conservation Ordinance.

Prior to signature of the Preliminary Plan, a calculation of the volume of material that is proposed to be cut and the volume of material to be used as on-site fill should be submitted. If a significant volume is to be removed from the subject property, then the proposed disposition of the materials needs to be indicated and associated plans shall be submitted.

A signed Natural Resources Inventory (NRI), NRI-86-05, was submitted with the application. The NRI contains a Forest Stand Delineation and a wetlands report.

The FSD is based on seven sample areas, identifies three forest stands totaling 24.88 acres and 14 specimen trees. The plan clearly shows soils boundaries that conform to the "Prince George's County Soils Survey." The soils chart indicating the erodibility and hydric characteristics of each soil type is correct. All wetlands, streams, 100-year floodplain and areas with severe slopes and areas with steep slopes containing highly erodible soils are correctly shown.

Forest Stand "A" covers an area of about 2.59 acres in the eastern portion of the site. From a review of aerial photos it is apparent that this woodland has naturally generated since 1965. No specimen trees are within this stand and the majority of trees are small boxelder and cherry. Because of low species diversity, presence of invasive plants and lack of sensitive environmental

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features, Stand "A" is a very low priority area for preservation.

Forest Stand "B" covers approximately 17.91 acres and flanks the stream valley in the center of the site. This woodland contains American beech, red maple and tulip poplar with American holly in the understory. Ten specimen trees are located in this stand. The area is mostly steep slopes with highly erodible soils and severe slopes associated with the streams on the property. Stand "B" is a high priority woodland for preservation.

Forest Stand "C" contains about 4.36 acres and is associated with the floodplain and stream bottomland in the center of the property. The principal trees are yellow poplar and sweet gum. The location of this woodland within the core of the stream valley causes Stand "C" to be a high priority area for preservation.

This site contains streams, 100-year floodplain and wetlands associated with Tinkers Creek in the Potomac River watershed. These natural features are required to be protected under Section 24-130 of the Subdivision Regulations. The Subregion V Master Plan, adopted in 1993, indicates that there are substantial areas designated as Natural Reserve on the site associated with the stream valleys. The Green Infrastructure Plan identifies regulated areas, evaluation areas and network gaps on the property. Proposed impacts to regulated areas are discussed below.

The plan clearly delineates wetlands, streams and other regulated waters of the US. The pond is within the regulatory authority of the US Army Corps of Engineers, the Maryland Department of the Environment and the Prince George's County Department of Environmental Resources and the Subdivision Regulations. The minimum 25-foot wetland buffers required by Section 24-130(b)(7) of the Subdivision Regulations are shown on the Preliminary Plan and the Type I Tree Conservation Plan. A 100-year floodplain is shown on the plans; however, it is not clear if the delineation is from a study approved by the Prince George's County Department of Environmental Resources. The minimum 50-foot stream buffers required by Section 24-130(b)(6) of the Subdivision Regulations are shown. The expanded stream buffers are correctly shown. The plan proposes impacts to wetlands and wetland buffers. Impacts to these buffers are prohibited by Section 24-130 of the Subdivision Regulations unless the Planning Board grants a variation to the Subdivision Regulations in accordance with Section 24-113. Four variation requests, dated November 7, 2005, have been submitted.

The proposed impacts are (1) the grading for the stream crossing of Silver Farm Drive, (2) grading to retrofit the existing outfall of the pond to meet county standards, (3) the grading for the intersection of Silver Farm Drive and Rose Glen Court and (4) grading for the relocation of an existing sewer line. The justification statement clearly addresses the required findings of Section 24-113 of the Subdivision Regulations for each impact.

The plan also shows an impact for grading on Lot 4 that was not part of the variation request. Clearing for lot grading is an avoidable impact that staff will not recommend that the Planning Board approve. This impact should be removed and does not appear to result in a loss of the lot.

The Department of Public Works has recommended that the proposed stream crossing be

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relocated slightly to the north to provide a better alignment for safety purposes. This re-alignment must be reflected on a revised stormwater management plan, preliminary plan and Type I Tree Conservation Plan.

Impacts to the expanded buffers are restricted by Section 24-130 of the Subdivision Regulations unless the Planning Board grants a variation to the Subdivision Regulations in accordance with Section 24-113. Even if approved by the Planning Board, the applicant will need to obtain federal and state permits prior to the issuance of any grading permit. Each variation is described individually above. However, for purposes of discussion relating to Section 24-113(a) of the Subdivision Regulations the impacts were discussed collectively.

Section 24-113(a) of the Subdivision Regulations sets forth the required findings for approval of variation requests. Section 24-113(a) reads:

Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle; and further provided that the Planning Board shall not approve variations unless it shall make findings based upon evidence presented to it in each specific case that:

The approval of the applicant's request does not have the effect of nullifying the intent and purpose of the Subdivision Regulations. In fact, strict compliance with the requirements of Section 24-130 could result in practical difficulties to the applicant that could result in the applicant not being able to develop this property.

(1) The granting of the variation will not be detrimental to the public safety, health, or injurious to other property;

The installation of the stormwater management facilities are required by the Prince George's County Department of Environmental Resources to provide for public safety, health and welfare. County Code requires that the proposed development be served by sanitary sewer and public water. The street system is required to serve not only the proposed development, but also property to the west. All designs of these types of facilities are reviewed by the appropriate agency to ensure compliance with the regulations. These regulations require that the designs are not injurious to other property.

(2) The Conditions on 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 specific topography of the site requires the use of the stormwater management facilities shown on the plans to adequately serve the proposed development. The existing

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sanitary sewer is wholly within the expanded stream buffer resulting in the need for impacts in order to tie into it. The stream bisects the property and there is no satisfactory alternative access to the western portion of the property and additional property to the west.

(3) The variation does not constitute a violation of any other applicable law, ordinance, or regulation;

The installation of stormwater management facilities, connection to the existing sanitary sewer, and provision of public streets are required by other regulations. Because the applicant will have to obtain permits from other local, state and federal agencies as required by their regulations, the approval of this variation request would not constitute a violation of other applicable laws.

(4) 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 strict letter of these regulations is carried out;

The topography provides no alternative for the location of the stormwater facilities that are required to serve the development. The only existing sanitary sewer to serve this property is wholly within the expanded stream buffer. The principal stream crossing is required to serve this property and additional land to the west. Without the required stormwater management facilities or sanitary sewer connection, the property could not be properly developed in accordance with the R-E zoning. Without the principal stream crossing, a substantial area of land to the west could not be reasonably developed in the R-E Zone.

The Environmental Planning Section supports the variation requests for the reasons stated above.

This site is subject to the provisions of the Woodland Conservation Ordinance because the entire site is more than 40,000 square feet in area and contains more than 10,000 square feet of woodland. A Type I Tree Conservation Plan is required.

The Type I Tree Conservation Plan, TCPI/56/04, has been reviewed. The plan proposes clearing 11.69 acres of the existing 23.52 acres of upland woodland, clearing 0.52 acres of the existing 1.36 acres of woodland within the 100-year floodplain and clearing 0.22 acres of off-site woodland. The woodland conservation threshold is 8.25 acres. The total woodland conservation requirement has been correctly calculated as 11.91 acres. The plan proposes to meet the requirement by providing 9.00 acres of on-site preservation and 2.91 acres of on-site reforestation/afforestation for a total of 11.91 acres.

Because there are significant regulated areas and evaluation areas as designated by the Green Infrastructure Plan and the property is zoned R-E, all woodland conservation should be provided on-site. Although the plan proposes to meet all of the woodland requirements on-site, the design

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of the plan does not meet the intent of the Woodland Conservation Ordinance. The plan appropriately shows the preservation of the woodlands on natural steep and severe slopes associated with the stream valley and afforestation of areas within the 100-year floodplain to create a contiguous woodland which meets the intent of the Woodland Conservation Ordinance as stated within the "Prince George's County Woodland Conservation and Tree Preservation Policy Document" regarding priority areas. The proposed planting areas on newly created steep slopes in the rear yards of Lots 4-7 do not relate to protection of stream valleys, because the slopes drain back towards the houses, encumber the proposed lots unnecessarily and propose a planting scheme that has typically had a very low success rate. Reforestation of the scenic easement discussed below, and additional areas of reforestation, such as the areas of Lot 22 could be installed to complement the scenic easement and replace the afforestation areas currently proposed on Lots 4-7, and recommended to be removed. Staff recommends that Lot 22 be deleted and the land area be conveyed to the homeowners association.

As noted earlier, the proposed grading of this site should be reevaluated to minimize the need to transport an excessive volume of material off-site. In addition, the plan shows grading into an expanded stream buffer on proposed Lot 4; however, this grading is for the creation of a lot only and no variation request has been submitted. As noted earlier, the Transportation Planning Section has recommended that the proposed stream crossing be relocated slightly to the north to provide a better alignment for safety purposes. Finally, staff has determined that the proposed off-site clearing on this plan has already been accounted for with TCPI/16/05 and does not need to be included in the worksheet. Although these changes will result in slight modifications to the proposed woodland preservation areas, the revised plan will be in conformance with the Woodland Conservation Ordinance.

Piscataway Road is designated in the Subregion V Master Plan as a historic road. While the master plan proposes that the existing rural roadway be upgraded to an arterial roadway with a 120-foot ultimate right-of-way, there are historic characteristics that should be identified and preserved as part of the proposed subdivision.

The "Design Guidelines and Standards for Scenic and Historic Roads" provides guidance for the review of applications that could result in the need for roadway improvements. The manual currently states that when a scenic or historic road is adjacent to a proposed subdivision "...a team (to include M-NCPPC staff) will complete a study of the scenic or historic roads around or within the subject site which will include an inventory of scenic and historic features and an evaluation of features most worthy of preservation." A visual inventory was prepared and submitted with the application. The inventory noted that most of the existing road frontage is currently devoid of trees; however, these areas should be reforested at stocking levels to meet the requirements of the Woodland Conservation Ordinance.

The preliminary plan provides a 40-foot-wide landscape buffer adjacent to the 10-foot public utility easement along Piscataway Road. This area is currently devoid of trees. No specific treatment of this area has been proposed. Staff recommends that a limited detailed site plan (DSP) be required to show house siting and the landscaping in the 40-foot-wide scenic easement adjacent to the 10-foot public utility easement parallel to the land to be dedicated for Piscataway Road for Lot 1 and Lot 2. The landscaping should be sufficient to preserve the historic character

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of Piscataway Road and shall meet the stocking level of the Woodland Conservation Ordinance so that it can be used to meet the requirements of the Woodland Conservation Ordinance. The land area of Lot 22 could be a parcel to be conveyed to the HOA, and used to for reforestation to provide additional buffering from Piscataway Road.

Piscataway Road is a master plan arterial roadway. Section 24-121(a)(4) requires that residential lots adjacent to existing or planned roadways of arterial classification or higher be platted to a minimum depth of 150 feet and that adequate protection and screening from traffic nuisances be provided by earthen berms, plant materials, fencing, and/or the establishment of a building restriction line. The noise model used by the Environmental Planning Section predicts that the 65 dBA Ldn ground level noise contour will be 168 feet from the centerline of Piscataway Road. The centerline of Piscataway and an unmitigated 65 dBA Ldn ground level noise contour are shown on the preliminary plan and the TCPI.

The proposed structures on Lots 1 and 2 will be impacted by traffic-generated noise that exceeds state standards. Because of the depth of Lot 1, the dwelling unit can be sited with the rear yard outside the 65 dBA Ldn noise contour. Staff recommends that a limited detailed site plan be required to address traffic-generated noise and appropriate mitigation measures for Lots 1 and 2, including house siting. A Phase II noise study should be submitted with the limited detailed site plan. The DSP and TCPII should show all proposed site features.

According to the "Prince George's County Soil Survey" the principal soils on the site are in the Beltsville, Croom, Ochlockonee and Sassafras series. Beltsville and Croom soils are highly erodible and pose problems for control of erosion and sediment control when associated with slopes in excess of 15 percent. Ochlockonee and Sassafras soils pose no special problems for development. This information is provided for the applicant's benefit. No further action is needed as it relates to this preliminary plan of subdivision review. A soils report may be required by the Prince George's County Department of Environmental Resources during the permit process review.

An approved Stormwater Management Concept Plan, CSD #19329-2004-00, was submitted with this application. The plan requires the draining and reconstruction of the existing pond and the armoring of the new embankment to meet County Code standards for a stormwater management facility. The Department of Public Works is requiring a minor modification of the alignment of the entrance road. All associated plans including the preliminary plan, Type I Tree Conservation and stormwater management plan should be revised prior to signature approval.

Water and Sewer Categories

The water and sewer service categories are W-4 and S-4 according to water and sewer maps obtained from the Department of Environmental Resources dated June 2003, and will therefore be served by public systems.

5. **Community Planning**—The property is in Planning Area PA 81B/Tippett. The 2002 General Plan places the property in the Developing Tier. The vision for the Developing Tier is to maintain

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a pattern of low- to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable. This application is not inconsistent with the 2002 General Plan Development Pattern policies for the Developing Tier. The 1993 Subregion V Master Plan recommends Suburban Estate/Low-Density Planned Neighborhood residential land use at up to 1.5 dwelling units per acre. This application conforms to the master plan recommendation.

6. **Parks and Recreation**—In accordance with Section 24-134(a) of the Subdivision Regulations, some of the lots shown on the preliminary plan are exempt from the requirement of the mandatory dedication of parkland because they are one-acre or more. Staff is recommending the payment of a fee-in-lieu for the subject lots because the land area available for dedication is unsuitable due to its size, location and topography.
7. **Trails**—There are no master plan trails issues in the Adopted and Approved Subregion V Master Plan that impact the subject site. However, Piscataway Road is utilized for on-road bicycle traffic, and staff recommends the provision of a paved asphalt shoulder along the subject site's road frontage, unless modified by SHA. Staff also recommends standard sidewalks along at least one side of all internal roads.
8. **Transportation**—The Transportation Planning Section has reviewed the subdivision application referenced above. The subject property consists of approximately 40.98 acres of land in the R-E Zone. The property is located on the northwest side MD 223 directly opposite Windbrook Drive. The applicant proposes a residential subdivision consisting of 23 lots with 22 new dwelling units.

Due to the size of the subdivision, staff has not required that a traffic study be done. The staff did have traffic counts and analyses available from a traffic study done for an adjacent property (Bevard West, Preliminary Plan 4-05051). Therefore, the findings and recommendations outlined below are based upon a review of these 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*.

Growth Policy—Service Level Standards

The subject property is in the developed tier, as defined in the General Plan for Prince George's County. As such, the subject property is evaluated according to the following standards:

Links and signalized intersections: Level-of-service (LOS) D, with signalized intersections operating at a critical lane volume (CLV) of 1,450 or better is required in the developing tier.

Unsignalized intersections: *The Highway Capacity Manual* procedure for unsignalized intersections is not a true test of adequacy but rather an indicator that further operational studies need to be conducted. Vehicle delay in any movement exceeding 50.0 seconds is

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deemed to be an unacceptable operating condition at unsignalized intersections. In response to such a finding, the Planning Board has generally recommended that the applicant provide a traffic signal warrant study and install the signal (or other less costly warranted traffic controls) if deemed warranted by the appropriate operating agency.

Staff Analysis of Traffic Impacts

The intersection of MD 223 and Windbrook Drive is determined to be the critical intersection for the subject property. This development's primary access would form a fourth leg of that intersection, and would serve virtually all of the site-generated traffic. The intersection is unsignalized and is, therefore, evaluated according to unsignalized intersection criteria. Available existing counts indicate that the critical intersection operates with a maximum delay of 25.3 seconds during the AM peak hour. During the PM peak hour, the intersection operates with a maximum delay of 37.6 seconds.

There are no funded capital projects at this intersection in either the county's Capital Improvement Program or the state's Consolidated Transportation Program that would affect the critical intersection. The traffic study used in making findings included development for a wide area. With background growth added, the critical intersection would operate as follows: AM peak hour—47.9 seconds of maximum delay, PM peak hour—94.7 seconds of maximum delay.

With the development of 22 residences, the site would generate 18 AM (4 in and 14 out) and 20 PM (13 in and 7 out) peak-hour vehicle trips. The site was analyzed with the following trip distribution: 5 percent—south along Windbrook Drive; 15 percent—southwest along MD 223; and 80 percent—northeast along MD 223. Given this trip generation and distribution, staff has analyzed the impact of the proposal. With the site added, the critical intersection would operate as follows: AM peak hour—92.6 seconds of maximum delay; PM peak hour—116.1 seconds of maximum delay. Therefore, it is noted that the critical intersection operates unacceptably, in accordance with the Planning Board's guidelines, under background and total traffic.

The State Highway Administration (SHA) and the county Department of Public Works and Transportation (DPW&T) have reviewed these results. In response to a finding of inadequacy at an unsignalized intersection, the Planning Board has generally recommended that the applicant provide a traffic signal warrant study and install the signal if it is deemed warranted by the appropriate operating agency. The warrant study is, in itself, a more detailed study of the adequacy of the existing unsignalized intersection, and it is appropriate that the higher level of analysis be done in order to determine adequacy at this time. This study shall be recommended by the Transportation Planning Section.

In considering this site, it is important to understand that its location is important to another adjacent property that is under review as Bevard West (4-05051). The current plan for Bevard West shows that site's primary access to be coincident with the subject site's access. This makes a future study of possible signalization at the site access onto MD 223 to be very important. Also, it is very important that the access street be adequately sized—a right-of-way with a minimum width of 60 feet, flaring at the MD 223 approach to provide two egress lanes and a single wide

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access lane. The concept shown on the plan is acceptable.

Proposed Lot 22 is shown with access solely via a driveway onto MD 223. Platting a lot with driveway access solely via an arterial facility requires a variation from Section 24-121(a)(3), which limits individual lot access onto arterial facilities. The applicant has filed a variation request, and SHA has stated opposition to the granting of the variation request. In reviewing the subdivision plan as well as the justification, the following determinations are made:

1. Lot 22 has frontage on MD 223, and is somewhat physically separated from the rest of the property by existing homes that are not part of this plan. There is currently a driveway connecting Lot 22 to the area of the proposed street, but the grading proposed by the applicant to construct the public street and the lots along it would obliterate the existing driveway.
2. The use of a public street to serve Lot 22 is impractical, as the public street would have a very detrimental impact on adjacent existing residences that are not part of this plan.
3. The current plan would consolidate the driveway to serve Lot 22 into an easement with an existing driveway that serves one of the adjacent residences. It is not clear that the Planning Board can require this to occur, or that the Board should set up the expectation of such an occurrence.
4. The State Highway Administration (SHA) must approve any access onto MD 223, which is a state facility, and that agency has indicated that they would oppose intensification of use of the existing driveway in this circumstance.

For these reasons, the Transportation Planning Section does not support the creation of the lot that would require the variation from 24-121(a)(3). The existing driveway can continue to exist, and it will not be affected by the Planning Board's action. However, as a matter of principle, there should be a very good reason to approve additional development using an existing driveway. MD 223 is a roadway with a high function, high traffic volumes, and high speeds. Furthermore, it is not clear that the Planning Board can cause a homeowner who is not a part of the subdivision to accept the use of that homeowner's driveway by an additional lott

MD 223 is a master plan arterial facility, and the plan indicates correct dedication of 60 feet from centerline.

Transportation Staff Conclusions

Based on the preceding findings, adequate transportation facilities would exist to serve the proposed subdivision as required under Section 24-124 of the Prince George's County Code.

9. **Schools**—The Historic Preservation and Public Facilities Planning Section has reviewed this preliminary plan for impact on school facilities in accordance with Section 24-122.02 of the Subdivision Regulations and CB-30-2003 and CR-23-2003 and concluded the following:

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Impact on Affected Public School Clusters

Affected School Clusters #	Elementary School Cluster 5	Middle School Cluster 3	High School Cluster 3
Dwelling Units	21 sfd	21 sfd	21 sfd
Pupil Yield Factor	0.24	0.06	0.12
Subdivision Enrollment	5.04	1.26	2.52
Actual Enrollment	4145	5489	9164
Completion Enrollment	97	64	127
Cumulative Enrollment	14.16	5.34	10.68
Total Enrollment	4261.20	5559.60	9304.20
State Rated Capacity	3771	6114	7792
Percent Capacity	113.00%	90.93%	119.41%

Source: Prince George's County Planning Department, M-NCPPC, December 2005

County Council bill CB-31-2003 establishes a school facilities surcharge in the amount of \$7,000 per dwelling if a building is located between I-495 and the District of Columbia, \$7,000 per dwelling if the building is included within a basic plan or conceptual site plan that abuts an existing or planned mass transit rail station site operated by the Washington Metropolitan Area Transit Authority, or \$12,000 per dwelling for all other buildings. Council bill CB-31-2003 allows for these surcharges to be adjusted for inflation and the current amounts are \$7,412 and 12,706 to be a paid at the time of issuance of each building permit.

The school surcharge may be used for the construction of additional or expanded school facilities and renovations to existing school buildings or other systemic changes.

The Historic Preservation and Public Facilities Planning Section staff finds that this project meets the adequate public facilities policies for school facilities contained in Section 24-122.02, CB-30-2003 and CB-31-2003 and CR-23-2003.

10. **Fire and Rescue**—The Historic Preservation and Public Facilities Planning Section has reviewed this subdivision plan for adequacy of fire and rescue services in accordance with Section 24-122.01(d) and Section 24-122.01(e)(B)(E) of the Zoning Ordinance.

The Fire Chief has determined that the travel time from the first due station, Clinton, Company 25 to the site is 7.25 minutes, which is beyond the required seven-minute standard in CB-56-2005.

The Fire Chief has reported that the current staff complement of the Fire Department is 704

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(101.73 percent), which is above the staff standard of 657, or 95 percent of authorized strength of 692 as stated in CD-56-2005.

The Fire Chief has reported by letter, dated 12/01/05 that the department has adequate equipment to meet the standards stated in CB-56-2005.

In accordance with Section 24-122.01 of the Subdivision Regulations, Preliminary Plan 4-05075 fails to meet the standards for fire and rescue travel times. The Planning Board may not approve a preliminary plan until a mitigation plan between the applicant and the county is entered into and filed with the Planning Board in accordance with the County Council adopted *Guidelines for the Mitigation of Adequate Public Facilities for Public Safety Infrastructure*.

In accordance with CR-78-2005, the applicant has entered into a mitigation agreement dated January 19, 2006 and chosen to pay solely the mitigation fee.

11. **Police Facilities**—The Prince George's County Planning Department has determined that this preliminary plan is located in Police District IV. The response standard is 10 minutes for emergency call and 25 minutes for nonemergency calls. The times are based on a rolling average for the proceeding 12 months beginning with January 2005. The preliminary plan was accepted for processing by the Planning Department on 11/16/05.

Reporting Cycle	Date	Emergency Calls	Nonemergency
Acceptance Date	01/05/05- 10/05/05	11.00	24.00
Cycle 1	01/05/05- 11/05/05	11.00	24.00
Cycle 2	01/05/05- 12/05/05	11.00	24.00
Cycle 3			

The Police Chief has reported that the current staff complement of the Police Department is 1,302 sworn officers and 43 student officers in the academy for a total of 1,345 (95 percent) personnel, which is within the standard of 1,278 officers or 90 percent of the authorized strength of 1,420 as stated in CB-56-2005.

The travel time response standard of ten minutes for police emergency calls and seven minutes for fire and rescue were not met on the date of acceptance or within the following three monthly cycles. In accordance with Section 24-122.01 of the Subdivision Regulations, Preliminary Plan 4-05075 fails to meet the standards for police emergency response times. The Planning Board may not approve a preliminary plan until a mitigation plan between the applicant and the county is entered into and filed with the Planning Board in accordance with the *Guidelines for the Mitigation of Adequate Public Facilities for Public Safety Infrastructure* adopted by the County Council.

In accordance with CR-78-2005 the applicant has entered into a mitigation agreement dated January 19, 2006 and chosen to pay solely the mitigation fee.

12. **Health Department**—The Environmental Engineering Program has reviewed the preliminary plan of

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subdivision for Silver Farm and has the following comments to offer:

Any abandoned wells found within the confines of the above referenced property must be backfilled and sealed in accordance with COMAR 26.04.04 by a licensed well driller or witnessed by a representative of the Health Department as part of the grading permit. The location(s) of the well(s) should be located on the preliminary plan.

Any abandoned septic tank(s) must be pumped out by a licensed scavenger and either removed or backfilled in place prior to final plat approval. The location(s) of the septic system(s) should be located on the preliminary plan.

All trash (cans, bottles, metal debris, and pipe bollards), abandoned vehicles (one car and two lawn tractors), oil storage tanks and other debris (car and truck batteries) found on the property should be removed and properly disposed. Any hazardous materials located on the site must be removed and properly stored or discarded.

Numerous tires (approximately 36) were found on the property and must be hauled away by a licensed scrap tire hauler to a licensed scrap tire disposal/recycling facility and a receipt for tire disposal must be submitted to this office prior to preliminary plan approval. These materials are a cause of pollution within the stream and should be removed to assist in the stabilization of this important protected resource.

A raze permit is required prior to the removal of any of the structures (two barns, one house, one metal shed and one house trailer) on-site. A raze permit can be obtained through the Department of Environmental Resources, Office of Licenses and Permits. Any hazardous materials located in any structures on-site must be removed and properly stored or discarded prior to the structure being razed. The location of the barn found on proposed Lot 11 and Silver Farm Road should be located on the preliminary plan.

The current owner of existing Parcel 13 denied the Health Department access to proposed Lot 23 (Parcel 13); therefore, the site was not investigated. The owner adamantly stated that she did not agree to be a part of this proposed subdivision, as discussed in the overview section of this report.

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, 19329-2004-00 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. **Historic**—Phase I archeological survey is recommended. A branch of Tinker's Creek runs northeast-southwest through the western portion of the property. Numerous archeological sites have been identified along Tinker's Creek, and archeological sites are located in similar settings. A number of structures, including a barn and dwelling with outbuilding are identified on the December illustrative. If these structures are still standing, they should be documented as part of this survey, including photographs, brief description, and approximate date of construction.

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Phase I archeological investigations should be conducted prior to signature approval of the preliminary plan according to Maryland Historical Trust (MHT) guidelines, „*Standards and Guidelines for Archeological Investigations in Maryland*” (Shaffer and Cole 1994) and report preparation should follow MHT guidelines and the *American Antiquity* or *Society of Historical Archaeology* style guide. Archeological excavations shall be spaced along a regular 15-meter or 50-foot grid and excavations should be clearly identified on a map to be submitted as part of the report.

15. **Variation to Section 24-121 for Access to Lot 22**—Section 24-121(a)(3) of the Subdivision Regulations establishes design guidelines for lots that front on arterial roadways. This section requires that these lots be developed to provide direct vehicular access to either a service road or an interior driveway when feasible. This design guideline encourages an applicant to develop alternatives to direct access onto an arterial roadway.

An existing access easement across this property serves the existing dwelling on Parcel 10 and provides for access directly onto Piscataway Road, a 120-foot-wide arterial roadway. The applicant is proposing the creation of Lot 22 along the frontage with Piscataway Road (MD 223) in between Parcel 10 and MD 223. The driveway for Parcel 10 will cross Lot 22, encumbering that lot with the existing access easement. In general staff does not support creating lots of this size that are encumbered by easements to the benefit of other properties, particularly access easements.

The review of the safety and appropriateness of access for the creation of Lot 22 is the subject of this application and under the jurisdiction of the Planning Board. The applicant argues that because an existing driveway exists onto MD 223 to serve Parcel 10, the use of that driveway to serve Lot 22 is not under the jurisdiction of the Planning Board and not subject to the review and approval of a variation. The creation of Lot 22 is subject to the review and approval of a variation from Section 24-121 of the Subdivision Regulations. While the Planning Board cannot deny the existing use of the access easement for the existing dwelling on Parcel 10, the Board may deny the use of the access for new development and delete Lot 22, in accordance with the findings required in Section 4-113 of the Subdivision Regulations.

Staff is recommending that prior to signature approval of the preliminary plan, Outlot A (8,497 square feet) and Lot 22 (40,000 square feet) should be combined and either one of the following scenarios should occur, at the discretion of the applicant:

- a. Create a new parcel to be conveyed to the HOA. If conveyed to the HOA, the parcel may be utilized for reforestation/afforestation including the area of the scenic and historic road easement, with the exception of the area of the existing access easement (Liber 3541 Folio 975).
- b. Create an outlot and convey the land to the owner of Parcel 10. This will provide for the entirety of the driveway serving Parcel 10 to be located on Parcel 10 and not encumber another property.
- c. Create an outlot to be retained by the owner.

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At the Planning Board hearing of January 19, 2005 the “c” option was added at the request of the applicant. The owners of Parcel 13 have indicated that they may offer Parcel 13 for sale and the applicant indicated that the area of Lot 22 could be combined with Parcel 13 for a future subdivision. The creation of an outparcel to be retained by the owner is based on the fact that no direct access to the area of the outparcel will be permitted from Piscataway Road. In the event that the applicant can not combine properties the outparcel should, in the future, be conveyed to the HOA but is not appropriate for development with direct access to Piscataway based on the Planning Board action in the denial access for Lot 22 to Piscataway Road.

Section 24-113 of the Subdivision Regulations sets forth the required findings for approval of variation requests. Staff does not support the granting of the variation to allow access to Piscataway Road (MD 223) a proposed arterial and makes the following findings:

- (1) **That the granting of the variation will not be detrimental to the public safety, health or welfare, or injurious to other property.**

Comment: One of the purposes of limiting access to an arterial is to enhance public safety, health and welfare. In this case, the applicant is proposing to create a lot that will have driveway access directly to MD-223, which could be detrimental to the public safety, health and welfare.

- (2) **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.**

Comment: The land area of proposed Lot 22 is separated from the remainder of the site, an appendage that is unique generally to other properties.

- (3) **The variation does not constitute a violation of any other applicable law, ordinance, or regulation.**

Comment: This will not result in a violation of other applicable laws, ordinances or regulations. However, the State Highway Administration (SHA) supports the staff recommendation and does not support the granting of the variation.

- (4) **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.**

Comment: Overall the development of this 34.08-acre site into 21 lots is a reasonable use of this property. Approval of a subdivision for 21 lots instead of 22 lots would not result in a particular hardship on the property owner.

At the Planning Board hearing of January 19, 2006 the Planning Board found that creation of a

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new lot with access onto Piscataway Road would be detrimental to the public safety. The Planning Board advised staff that their decision for the denial of the variation was not based on the “intensification” of the driveway but based on the fact that the Planning Board could not find conformance to Section 24-113(a)(1) and (4) of the Subdivision Regulations.

16. **Parcel 13** — The site contains approximately 40.98 acres of land in the R-E Zone. It appears on Tax Map 133, Grid A-2, and is known as Parcels 9 and 13. Preliminary Plan 4-04061 was previously submitted for the subject property but was withdrawn by the applicant on November 4, 2004, prior to the Planning Board hearing. This preliminary plan is identical to that subject application. There were several unresolved issues that caused the applicant to withdraw the plan. One of the issues related to the possibility that an illegal subdivision had occurred in the creation of Parcel 13. The applicant is showing the 6.9-acre Parcel 13 (the Simmons property) as Lot 23, to show the entire property in the same configuration as it existed in 1982.

Section 27-107(c)(9) of the Subdivision Regulations, provides an exemption from the requirement of filing a preliminary plan of subdivision in certain circumstances. Specifically, that the sale or exchange of land between adjoining property owners to adjust a common boundary line is exempt from filing a preliminary plan of subdivision provided that no additional lots are created.

Despite the applicant’s good faith effort at the time of review of Preliminary Plan 4-04061 to remedy what appeared to be an illegal subdivision, by including Parcel 13 (Lot 23) in the application, the owner of Parcel 13 has been clear that she does not wish to be included in this subdivision.

With this application for subdivision, staff has found what appears to be evidence on the 1982 tax map that the area of Lot 23, known as Parcel 13 was created through the lot line adjustment of Parcels 67 and Parcel 9. Parcel 67 no longer appears on the current tax map. Based on that information, it appears that Parcel 13 could have been created through a legal lot line adjustment, and it would therefore not be necessary to include Parcel 13 (Lot 23) in this preliminary plan of subdivision.

Staff would offer that the Subdivision Regulations provide for the adjustment of a property line between two parcels as long as additional parcels are not created. In this case, while a deed has not been provided and may not exist, two parcels existed on 40.98 acres of land in 1982 (Parcels 67 and 9) and today (2006) two parcels exist on 40.98 acres of land (Parcels 9 and 13). Prior to signature approval of the preliminary plan, Parcel 13 (Lot 23) be removed from the area of this preliminary plan. Due to the intransigent nature of the owner of Parcel 13, the proposed development of this property has been evaluated without the acreage of Parcel 13 (Lot 23). The Type I Tree Conservation Plan and density conform to the requirements of the R-E Zone for Lots 1-22, without Parcel 13 (Lot 23).

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 Eley, seconded by Commissioner Squire, with Commissioners Eley, Squire, and Hewlett voting in favor of the motion, and Commissioner Vaughns absent at its regular meeting held on Thursday, January 19, 2006, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 9th day of February 2006.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:WC:bjs