

R E S O L U T I O N

WHEREAS, Nazim and Cathy Kahn are the owners of a 2.20-acre parcel of land known as Lot 2, Cedar Lawn Subdivision (04/81), said property being in the 5th Election District of Prince George's County, Maryland, and being zoned R-R; and

WHEREAS, on February 7, 2006, Nazim and Cathy Khan filed an application for approval of a Preliminary Subdivision Plan (Staff Exhibit #1) for 4 lots; and

WHEREAS, the application for disapproval of the aforesaid Preliminary Subdivision Plan, also known as Preliminary Plan 4-05119 for Lynn's Cove 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 June 15, 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 DISAPPROVAL of the application with conditions; and

WHEREAS, on June 15, 2006, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

*WHEREAS, on June 15, 2006, the Planning Board disapproved Preliminary Plan of Subdivision 4-05150; and

*WHEREAS, on September 7, 2006, the Planning Board approved a request to reconsider the action of denial for Preliminary Plan of Subdivision 4-05119 based on the furtherance of substantial public interest; and

*WHEREAS, on December 14, 2006, the Planning Board reconsidered the Preliminary Plan of Subdivision and approved the subject application with all new findings and conditions.

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 *[DIS]APPROVED the Type I Tree Conservation Plan (TCPI/94/04), and further *[DIS]APPROVED Preliminary Plan of Subdivision 4-05119, Lynn's Cove for Lots 1-4 *[due to inadequate fire and rescue staffing levels pursuant to Section 24-122.01(e) of the subdivision regulations.] *with the following conditions:

- *1. Development of this site shall be in conformance with the Stormwater Management Concept Plan CSD 45540-2005 and any subsequent revisions.

*2. 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/94/04), 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 and Tree Preservation Ordinance. This property is subject to the notification provisions of CB-60-2005.”

*3. The 40-foot landscape buffers along Beale Hill Road shall be shown on the final plats as a scenic easement 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, or trunks is permitted."

*4. The woodland strips remaining in the 40-foot scenic buffers along Bealle Hill Road shall be re-evaluated at the time of the Type II TCP with specific recommendations for controlling invasive and noxious plants within them.

*5. Prior to signature approval of the preliminary plan, the Type I Tree Conservation Plan, TCPI/94/04, shall be revised to:

- a. Calculate the entire site as cleared, except for the 40-foot buffers along Bealle Hill Road.
- b. Change the legend for the pattern from “Saved But Not Counted” to “Calculated As Cleared.”
- c. Revise the worksheet as needed.
- d. Provide all required additional woodland conservation as fee-in-lieu.
- e. Have the revised plan signed and dated by the qualified professional who prepared the plan.

*6. 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. The plan shall be revised to show a note to this effect.

*7. Prior to the issuance of permits, a Type II Tree Conservation Plan shall be approved.

*8. The site shall be subject to a detailed site plan to address the location and configuration of driveways serving the site from Bealle Hill Road.

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, *[does not] meet 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 east side of Bealle Hill Road, just south of its intersection with Accokeek Road. The site is undeveloped and predominately wooded. The surrounding properties are zoned R-R and are developed with single-family residences.
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
Uses	Vacant	Single-Family Residences
Acreage	2.2	2.2
Lots	1	4
Parcels	0	0
Outlots	0	0
Dwelling Units	0	4
Public Safety Mitigation Fee		No

- *4. **Environmental**—There are no streams, wetlands or 100-year floodplain on the property. The site eventually drains into Mattawoman Creek in the Potomac River watershed. According to the “Prince George’s County Soils Survey” the principal soils on this site are in the Beltsville series. Marlboro clay does not occur in the area. According to information obtained from the Maryland Department of Natural Resources Natural Heritage Program publication titled “Ecologically Significant Areas in Anne Arundel and Prince George’s Counties,” December 1997, rare, threatened, or endangered species do not occur in the vicinity of this property. Beale Hill Road is a designated scenic road. There are no nearby sources of traffic-generated noise. The proposal is not expected to be a noise generator. This property is located in the Developing Tier as reflected in the adopted General Plan.

***Scenic and Historic Roads**

*Beale Hill Road is designated in the Subregion V Master Plan as a scenic road. No visual inventory was in the review package. Because of the limited nature of the proposed development, a visual inventory will not be required. The plan shows the required 40 foot-wide landscape buffers adjacent to the 10-foot public utility easements parallel to the land to be dedicated for Beale Hill Road.

***Natural Resources Inventory**

*A signed Natural Resources Inventory (NRI), NRI/097/05, was submitted with the application. There are no streams, wetlands or 100-year floodplain on the property. A simplified forest stand delineation (FSD) was submitted with the NRI. The FSD, based upon three sample points, describes a single forest stand of 2.18 containing no specimen trees. The woodland is mostly immature sweetgum, scarlet oak and red maple. The 1938 and 1965 air photos show that the property was an open field.

*There are no sensitive environmental features on the site and there are no priority woodlands as defined in the "Prince George's County Woodland Conservation and Tree Preservation Policy Document". According to the Green Infrastructure Plan, none of the property is near or contains and regulated area or evaluation area. Based upon this analysis, there are no priority woodlands on-site. No impacts to any sensitive environmental features are proposed.

***Woodland Conservation**

*This property is subject to the provisions of the Prince George's County Woodland Conservation Ordinance because the gross tract area of the property is greater than 40,000 square feet and there are more than 10,000 square feet of existing woodland.

*The Type I Tree Conservation Plan, TCPI/94/04, has been reviewed and was found to require revisions. The plan proposes clearing 1.76 acres of the existing 2.12 acres of woodland. The woodland conservation threshold is 0.44 acres. Based upon the proposed clearing, the woodland conservation requirement has been correctly calculated as 0.92 acres. The plan proposes to meet the requirement by providing 0.17 acres of on-site woodland conservation and retain 0.20 acres on-site but not part of any requirement.

*Although the proposed woodland conservation areas meet all dimensional requirements, the areas are contrary to the intent of the Woodland Conservation and Tree Preservation Ordinance because they only serve to create isolated forest fragments. The proposed woodland conservation areas do not protect sensitive environmental features, do not create large contiguous woodlands and contain no specimen trees. Additionally, the FSD notes that all of the woodland is a low priority because it is dominated by very small trees that have overgrown a field since 1990 and the quality of invasive and noxious plants, including honeysuckle and poison ivy, is high.

*Except for the 40-foot buffers along Bealle Hill Road, the plans should be revised to calculate the entire site as cleared. By calculating the woodlands as cleared, a future homeowner may treat the woodland areas remaining on their lots in any fashion they deem appropriate without violating the Woodland Conservation Ordinance. The 0.17 acre woodland strips remaining in the 40-foot buffers will be re-evaluated at the time of the Type II TCP with specific recommendations for controlling invasive and noxious plants within them.

***Soils**

*According to the Prince George's County Soils Survey the principal soils on this site are in the Beltsville series. Beltsville soils are highly erodible, may have a perched water table and are in the C-hydric group. The Prince George's County Department of Environmental Resources will require a soils report in conformance with CB-94-2004 during the permit process review.

***Water and Sewer Categories**

*The water and sewer service categories are W-3 and S-4 according to water and sewer maps obtained from the Department of Environmental Resources dated June 2003 and the property will, therefore, be served by public systems. A change to categories W-3 and S-3 will be required prior to approval of the final plat.

- *5. **Community Planning**—The property is within the limits of the 1993 *Subregion V Master Plan* for Planning Area 84 (Piscataway), which recommends the site for low suburban residential land use. The applicant's proposal for 4 single-family detached lots on this property is consistent with the master plan recommendation.

The 2002 General Plan locates this property in the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low- to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable. This application is consistent with the 2002 General Plan Development Pattern policies for the Developing Tier.

- *6. **Parks and Recreation**—In accordance with Section 24-134 of the Subdivision Regulations, the Park Planning and Development Division recommends that the applicant pay 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 identified in the Adopted and Approved Subregion V Master Plan.

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***Sidewalk Connectivity**

*Roads in the immediate vicinity of the subject site are open section with no sidewalks.

- *8. **Transportation**—The application is a preliminary plan of subdivision for a residential development consisting of 4 single-family residential lots to be created within an existing platted lot. The proposed net development of three net lots would generate 2 AM and 3 PM peak hour vehicle trip as determined using *Guidelines for the Analysis of the Traffic Impact of Development Proposals*.

*The site is within the developing 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.

***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 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.

***The traffic generated by the proposed preliminary plan would impact the intersection of Livingston Road and Bealle Hill Road.**

***Recent planning-level analyses suggest that the intersection of Livingston Road and Bealle Hill Road operates unacceptably as an unsignalized intersection. In similar circumstances, the Planning Board has generally required that more detailed studies be done to determine the need for signalization or other traffic control improvements, and that such signals or improvements be installed by the applicant. Nonetheless, due to the limited trip generation of the additional development proposed for the site, the Prince George's County Planning Board could deem the site's impact at this location to be de minimus. Staff would therefore recommend that the Planning Board find that 2 AM and 3 PM peak hour trips will have a de minimus impact upon delay in the critical movements at the Livingston Road and Bealle Hill Road intersection.**

***It is noted that Bealle Hill Road is a master plan primary residential facility, with right-of-way that is slightly offset from the existing centerline. The plan reflects correct right-of-way of 30 feet from baseline along Bealle Hill Road.**

***Transportation Staff Conclusions**

***Based on the preceding findings, the Transportation Planning Section concludes that adequate transportation facilities would exist to serve the proposed subdivision as required under Section 24-124 of the Prince George's County Code if the application is approved with a condition requiring the applicant to dedicate right-of-way along Bealle Hill Road of 30 feet from the master plan baseline as shown on the submitted plan.**

***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.

***Impact on Affected Public School Clusters**

<u>Affected School Clusters</u>	<u>Elementary School Cluster 6</u>	<u>Middle School Cluster 3</u>	<u>High School Cluster 3</u>
<u>Dwelling Units</u>	<u>4 sfd</u>	<u>4 sfd</u>	<u>4 sfd</u>
<u>Pupil Yield Factor</u>	<u>0.24</u>	<u>0.06</u>	<u>0.12</u>
<u>Subdivision Enrollment</u>	<u>0.96</u>	<u>0.24</u>	<u>0.48</u>
<u>Actual Enrollment</u>	<u>3946</u>	<u>5489</u>	<u>9164</u>
<u>Completion Enrollment</u>	<u>121</u>	<u>64</u>	<u>127</u>
<u>Cumulative Enrollment</u>	<u>16.80</u>	<u>108.12</u>	<u>216.24</u>
<u>Total Enrollment</u>	<u>4084.76</u>	<u>5661.36</u>	<u>9507.72</u>
<u>State Rated Capacity</u>	<u>4033</u>	<u>6114</u>	<u>7792</u>
<u>Percent Capacity</u>	<u>101.28%</u>	<u>92.60%</u>	<u>122.02%</u>

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

*These figures are correct on the day the referral memo was written. They are subject to change under the provisions of CB-30-2003 and CR-23-2003. Other projects that are approved prior to the public hearing on this project will cause changes to these figures. The numbers shown in the resolution will be the ones that apply to this project.

*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 \$7,671 and \$13,151 to be 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 & 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)(1)(B)-(E) of the Subdivision Ordinance.

*The Prince George's County Planning Department has determined that this preliminary plan is within the required 7-minute response time for the first due fire station Accokeek, Company 24, using the Seven-Minute Travel Times and Fire Station Locations Map provided by the Prince George's County Fire Department.

*Pursuant to CR-69-2006, Prince George's County Council and the County Executive suspended the provisions of Section 24-122.01(e)(1)(A, B) regarding sworn police and fire and rescue personnel staffing levels.

*The Fire Chief has reported that the department has adequate equipment to meet the standards stated in CB-56-2005.

*11. **Police Facilities**—The preliminary plan is located in Police District IV.

*The standard for emergency calls response is 10 minutes and 25 minutes for non-emergency calls. The times are based on a rolling average for the proceeding 12 months. The preliminary plan was accepted for processing by the Planning Department on February 7, 2006.

<u>*Reporting Cycle</u>	<u>*Date</u>	<u>*Emergency Calls</u>	<u>*Non-emergency</u>
<u>Acceptance Date</u>	<u>01/05/05-01/05/06</u>	<u>10.00</u>	<u>24.00</u>
<u>Cycle 1</u>			
<u>Cycle 2</u>			
<u>Cycle 3</u>			

*The response time standards of 10 minutes for emergency calls and 25 minutes for non-emergency calls were met on 01/05/2006.

*Pursuant to CR-69-2006, Prince George's County Council and the County Executive suspended the provisions of Section 24-122.01(e)(1)(A, B) regarding sworn police and fire and rescue personnel staffing levels.

*The Police Chief has reported that the department has adequate equipment to meet the standards stated in CB-56-2005.

*12. **Health Department**—The Health Department has reviewed the application and has no comments to offer.

*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, CSD 45540-2005, 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 or any approved revisions thereto.

*14. **Historic**—Phase I archeological investigations were recommended for this property in a referral

dated February 17, 2006. The reasons were as follows:

- a. Mattawoman Creek is located just to the south of the property. Numerous prehistoric archeological sites have been located in similar settings.
- *b. Eleven prehistoric archeological sites are located within one mile of the subject property, to the south, the west, and the northeast of the property. These are sites 18PR98, 18PR141, 18PR147, 18PR172 18PR288, 18PR289, 18PR290, 189PR441, 18PR442, 18PR540, and 18PR541.
- *c. The 1861 Martenet map shows a structure labeled 'Clemens' to the southeast of the property.
- *d. n accordance with Subtitle 24-104, 121(a)(18), and 24-135.01, the subject property shall be the subject of a Phase I archeological investigation to identify any archeological sites that may be significant to the understanding of the history of human settlement in Prince George's County, including the possible existence of slave quarters and slave graves, as well as archeological evidence of the presence of Native American peoples.

*A Phase I report was submitted to the Historic Preservation Section of the Planning Department on April 11, 2006. The field investigation recovered no cultural material. The report was reviewed by staff who concurred in a letter dated May 1, 2006, that additional archeological investigation is not required.

- *15. **Public Utility Easement**—The preliminary plan shows a 10-foot-wide public utility easement (PUE) adjacent to and contiguous with Bealle Hill Road. The plan must be revised to show the flagstems for the two proposed flag lots as PUEs.
- *16. **Flag Lots**-The applicant proposes two flag lots in the subdivision. The flag lots are shown as Lots 2 and 3.

Flag lots are permitted pursuant to Section 24-138.01 of the Subdivision Regulations. Staff supports these flag lots based on the following findings and reasons.

- *a. A maximum of two tiers is permitted. Each of the flag lots is a single tier. The houses would be sited such that each would have a private rear yard area.
- *b. The flag stem is a minimum width of 25 feet for the entire length of the stem.
- *c. The net lot area for the proposed lots exclusive of the flag stem exceeds the minimum lot size of 20,000 square feet in the R-R Zone.
- *d. The proposal includes no shared driveways.
- *e. Where rear yards are oriented toward driveways, an "A" bufferyard is required. This

orientation does not occur in this instance.

- *f. Where front yards are oriented toward rear yards, a “C” bufferyard is required. This occurs in this instance, with ample area for the required bufferyards as shown on the flag lot sketch.

*Prior to approval of a flag lot, the Planning Board must make the following findings of Section 24-138.01(f):

- *A. **The design is clearly superior to what would have been achieved under conventional subdivision techniques.**

Comment: The proposed flag lot yields a superior design to that which would be allowed conventionally. This recorded lot, at 2.2 acres in area, is more than four times the minimum lot size required in the R-R Zone. Allowing the flag lots to be accessed via driveways on a flagstem would negate the need for a short 50-foot-radius cul-de-sac to serve development at the rear of the site. Such a cul-de-sac would be out of character with the surrounding development, the historic character of Bealle Hill Road and would be an unnecessary expanse of impervious surface.

- *B. **The transportation system will function safely and efficiently.**

Comment: The flag lots would each have a driveway to Bealle Hill Road. No significant impact on the transportation system is expected.

- *C. **The use of flag lots will result in the creative design of a development that blends harmoniously with the site and the adjacent development.**

Comment: The flag lot will blend harmoniously with the rest of the development. The homes on the flag lots continue a linear arrangement as if located along a cul-de-sac, without the large and unnecessary impervious surface.

- *D. **The privacy of property owners has been assured in accordance with the evaluation criteria.**

Comment: Given the ability to site the houses, the flag-style development of the lot will not impair the privacy of either the homeowner of these lots or the homeowners of other lots. Ample room exists to provide for the required bufferyards.

- *[4. **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)(1)(B)-(E) of the Subdivision Ordinance. The subject application was accepted on February 7, 2006.]

*[The Prince George’s County Planning Department has determined that this preliminary plan is

within the required seven-minute response time for the first due fire station, Accokeek, Company 24, using the Seven-Minute Travel Times and Fire Station Locations Map provided by the Prince George's County Fire/EMS Department.]

*[The Fire Chief report for adequate equipment is contained in a memorandum dated March 28, 2006. That memorandum states that the "...Department has adequate equipment and has developed an equipment replacement program to meet all the service delivery needs for all areas of the County."]

*[The Fire Chief report for current staffing for the Fire/EMS Department is contained in a memorandum dated March 28, 2006. That memorandum states that the number of "net operational employees" is 672, which equates to 96.97 percent of the authorized strength of 692 fire and rescue personnel.]

*[As previously noted, the subject application was accepted on February 7, 2006. Section 24-122.01(e)(2) of the Subdivision Regulations states: "If any of the required statements in this Subsection are not provided that meet the criteria specified in this Section on the date the application is accepted by the Planning Board or within the following three (3) monthly cycles of response time reports, then the Planning Board may not approve the preliminary pla[n] until a mitigation plan between the applicant and the County is entered into and filed with the Planning Board."]

*[One key element to the ordinance language cited above is the creation of a window for the application of the fire and rescue adequacy test that runs from "...the date the application is accepted by the Planning Board or within the following three (3) monthly cycles of response time reports..." This means that an application is afforded the opportunity to pass the test in a time frame that spans approximately 90 days. With regard to data on fire and rescue staffing levels prior to the receipt of the March 28, 2006, letter from the Fire Chief, some clarity needs to be provided.]

*[Since January 1, 2006 (the beginning of the time frame when the standard of 100 percent of the authorized strength of 692 fire and rescue personnel must be met), staff has received four memorandums from the Fire Chief (January 1, February 1, March 5, and March 28, 2006). The data presented in these four memorandums vary in the description of the personnel being counted as applicable to the percentage of the authorized strength standard. Although the number of personnel presented varies only slightly (694, 694, 696 and 693, respectively), the description of the status of these personnel has changed or been clarified from memorandum to memorandum.]

*[It seems clear to staff that since the beginning of 2006, each reporting of personnel has included certain numbers of trainees and/or recruits that were not intended to be considered applicable to the minimum percentage requirement. This becomes apparent when comparing the January 1 and February 1 memorandums. Both reflect a total authorized strength of 694 personnel, but the February 1 memorandum identifies 46 members of that complement in the training academy. The March 5 memorandum does not provide a breakdown of the 696 personnel total, but the March 28 memorandum identifies 21 recruits as part of the "actual total strength" of 693..

*[Given the totality of the information identified above, staff concludes that since the acceptance of the subject application, the minimum staffing level for fire and rescue personnel, as required by Section 24-122.01(e)(1)(B)(ii), has not been met. Therefore, pursuant to Section 24-122.01(e)(2), staff is compelled to recommend disapproval of the subject application at this point in time.]

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 Squire, seconded by Commissioner Clark, with Commissioners Squire, Clark, Eley, Vaughns and Parker voting in favor of the motion at its regular meeting held on Thursday, December 14, 2006, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 8th day of February 2007.

R. Bruce Crawford
Executive Director

By Frances J. Guertin
Planning Board Administrator

RBC:FJG:TL:bjs