

R E S O L U T I O N

WHEREAS, Heather Iliff is the owner of a .3443-acre of land known as Lots 39, 40 and 41, Block 4 within the Berwyn Subdivision, Tax Map 33 in Grid E-2, said property being in the 21st Election District of Prince George's County, Maryland, and being zoned R-55; and

WHEREAS, on February 8, 2007, Jeff Iliff filed an application for approval of a Preliminary Subdivision Plan (Staff Exhibit #1) for 2 lots; and

WHEREAS, the application for approval of the aforesaid Preliminary Subdivision Plan, also known as Preliminary Plan 4-06088 for Addition to Berwyn, Lots 85 and 86, Block 4 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 May 10, 2007, 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 May 10, 2007, 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 Variance Application No. VP-06088, and further APPROVED Preliminary Plan of Subdivision 4-06088, Addition to Berwyn, for Lots 85 and 86, Block 4 with the following conditions:

1. Prior to signature approval of the preliminary plan of subdivision the plan shall be revised as follows:
  - a. Provide the internal distances for each lot.
  - b. Provide a general note that references the variance application, VP-06088, and the purpose of the variance request.
  - c. Provide a general note which provides the TCPI exemption information.
  - d. Provide a general note which indicates that a fee-in-lieu will address the Mandatory Dedication of Parkland requirements.
  - e. Provide the acreage of the property, as well as the square footage within the general notes.

- f. Provide a general note which indicates whether both sheds will remain, or be razed.
  - g. Revise notes 5 and 6 on the stormwater management concept plan to reflect the proper water and sewer categories (W-3, S-3).
2. 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 for Lot 86.
  3. Development of this site shall be in conformance with the Stormwater Management Concept Plan, 30497-2005-00 and any subsequent revisions.
  4. Section 27-548.39(b) requires that every application for permit and preliminary plan shall demonstrate compliance with height restrictions of Section 27-548.42(b). This section restricts the height of residential structures to no greater than 50 feet unless the applicant demonstrates compliance with FAR Part 77, of the Federal Aviation Regulations.
  5. Prior to the approval of the final plat the applicant shall demonstrate conformance to the disclosure requirements of Section 27-548.43 of the Zoning Ordinance regarding the proximity of this subdivision to a general aviation airport.
  6. Prior to the removal of any of the existing structures, a raze permit must be obtained through the Department of Environmental Resources. Any hazardous materials located in the structures must be removed and properly stored or discarded prior to the structures being razed.

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

1. The subdivision, as modified, meets the legal requirements of Subtitles 24 and 27 of the Prince George's County Code and of Article 28, Annotated Code of Maryland.
2. The property is situated along the southeast side of Patuxent Avenue at its intersection with Osage Street.

3. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development.

	<b>EXISTING</b>	<b>PROPOSED</b>
Zone	R-55	R-55
Use(s)	Single-Family	Single-Family
Acreage	.34	.34
Lots	3	2
Parcels	0	0
Dwelling Units:		
Detached	1 (To Remain)	2 (1 New)
Public Safety Mitigation Fee		No

4. **Environmental**—The Environmental Planning Section has reviewed the Preliminary Plan of Subdivision application for 4-06088, stamped as received by the Environmental Planning Section on March 21, 2007. The Environmental Planning Section recommends approval of Preliminary Plan of Subdivision 4-06088 subject to no environmental conditions.

### **Background**

The Environmental Planning Section has no records of any previous applications for this property. The current preliminary plan proposes the re-subdivision of 15,000 square feet of land in the R-55 zone into two building lots.

### **Site Description**

This site is located on the southeast quadrant of the Patuxent Avenue and Osage Street intersection, east of Baltimore Avenue. A review of the available information indicates that there are no streams, wetlands or 100-year floodplain on the property. The site is partially developed and contains less than 10,000 square feet of woodlands on-site, and is less than 40,000 square feet in size. The predominant soil types found to occur on this site according to the Prince George's County Soil Survey is Sunnyside. This soil type has moderate limitations to development with respect to steep slopes, but will not affect the site layout. According to available information, Marlboro clay does not occur on this property. According to information obtained from the Maryland Department of Natural Resources Natural Heritage Program, rare, threatened, or endangered species do not occur in the vicinity of this property. There are no designated scenic or historic roads associated with this site. Patuxent Avenue and Osage Street are both two lane residential streets having a dedicated right-of-way of 30-feet and are generally not regulated for noise. This property is located in the Indian Creek watershed of the Anacostia River basin and in the Developed Tier as reflected in the 2002 General Plan.

### **Langley Park, College Park, Greenbelt Master Plan Conformance**

The subject property is located within Analysis Area C-1 of the Langley Park, College Park, Greenbelt Master Plan. There are no specific environmental recommendations or design standards that require review for master plan conformance. The environmental requirements for woodland conservation, stormwater management and noise are addressed in the Environmental Review section below.

### **Countywide Green Infrastructure Plan Conformance**

The site is not within the designated network of the approved Countywide Green Infrastructure Plan.

### **Environmental Review**

The preliminary plan application has a signed Natural Resources Inventory (NRI/147/06), dated November 11, 2006 that was included with the application package. The preliminary plan shows all the required information correctly in conformance with the NRI. No revisions are required for conformance to the NRI.

This property is not subject to the provisions of the Prince George's County Woodland Conservation Ordinance because the site is less than 40,000 square feet in size, has less than 10,000 square feet of woodlands, and there is no previously approved Tree Conservation Plan which affect the property. The Environmental Planning Section, Countywide Planning Division, issued a Standard Letter of Exemption from the ordinance, on November 28, 2006. No further action is needed as it relates to the Woodland Conservation Ordinance requirements. The Letter of Exemption should accompany all future applications for plans and permits.

A Stormwater Management Concept Approval Letter (30497-2005-00), dated September 16, 2007, was submitted with the subject application. The conditions of approval within the stormwater management concept plan will be addressed through subsequent reviews by the Department of Public Works and Transportation at the time of building permit. No further action is required at this time with regard to stormwater management.

### **Water and Sewer Categories**

The water and sewer service categories are W-3 and S-3 according to water and sewer maps obtained from the Department of Environmental Resources dated June 2003, and the site will therefore be served by public systems.

5. **Community Planning**—The property is located in Planning Area 66 within the College Park Community, and is within the limits of the 1989 *Approved Master Plan for Langley Park-College Park-Greenbelt and Vicinity*. The master plan land use recommendation is for a medium-suburban residential land use. This application proposes a medium-suburban residential land use, and is

therefore consistent with the land use recommendation within the 1989 *Approved Master Plan for Langley Park-College Park-Greenbelt and Vicinity*.

The 2002 General Plan locates the subject property within the Developed Tier.

The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium-to-high-density neighborhoods. This application proposes a medium-to-high density neighborhood, and is therefore consistent with the 2002 General Plan Development Pattern policies for the Developed Tier.

The 1989 *Approved Master Plan for Langley Park-College Park-Greenbelt and Vicinity* retained the subject property within the R-55 Zone.

## PLANNING ISSUES

This application is located under the traffic pattern for a small general aviation airport (College Park Airport) and is subject to Aviation Policy Area regulations in Sections 27-548.32 through 27-548.48 of the Zoning Ordinance. The proposed development is located approximately 3,000 feet northwest of the runway, and is located in Aviation Policy Area APA-6. In particular, the applicant should be made aware of height and purchaser notification requirements contained in these regulations.

Residential land uses are allowed in this aviation policy area in accordance with standard zoning regulations. The APA regulations contain additional height requirements in Section 27-548.42 and purchaser notification requirements for residential property sales in Section 27-548.43 that are relevant to the evaluation of this application. In APA-6, no building permit may be approved for a structure higher than 50 feet unless the applicant demonstrates compliance with FAR Part 77.

6. **Parks and Recreation**—In accordance with Section 24-134(a) of the Subdivision Regulations the Park Planning and Development Division recommends that the applicant pay a fee-in-lieu of parkland dedication for Lot 86 because the land available for dedication is unsuitable due to its size and location. Lot 86 is exempt from the requirement because the existing dwelling is to remain.
7. **Trails**—There are no master plan trails issues identified in the Adopted and Approved Langley Park-College Park-Greenbelt Master Plan that impact the subject property. Existing roads are open section in the vicinity of the subject site. There are no master plan trails recommendations.
8. **Transportation**—The following are the Transportation Planning Section's comments concerning site access, geometric design and traffic impact for Preliminary Plan of Subdivision application, 4-06088.

This application proposes to re-subdivide three existing and recorded smaller lots into two residential building lots. Both lots proposed will have a net lot area slightly larger than the 6,500 square foot minimum net lot area as required in the R-55 Zone. An existing one story dwelling will remain on the property, and be located within proposed Lot 85.

### **Site Access Evaluation:**

Access to both the existing and proposed dwelling will be via Patuxent Avenue, an existing two lane residential street constructed within a 30 feet of dedicated rights of way. The site access is acceptable as shown.

### **TRANSPORTATION STAFF FINDINGS**

The preliminary plan application proposes the creation of two lots, one of which is already improved with an existing dwelling. Therefore, the proposed subdivision is expected to generate one additional vehicle trip during the AM and PM peak commuting hours. The Guidelines state that the Planning Board may find that the traffic impact of a very small development is de minimus. De minimus, as defined within the Guidelines, is any development which generates five or fewer peak hour trips.

### **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.

9. **Schools**—The Historic Preservation and Public Facilities Planning Section have 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.

Impact on Affected Public School Clusters

Affected School Clusters #	Elementary School Cluster 7	Middle School Cluster 4	High School Cluster 4
Dwelling Units	2du	2du	2du
Pupil Yield Factor	0.24	0.06	0.12
Subdivision Enrollment	0.48	0.12	.24
Actual Enrollment	33,058	13,385	17,855
Completion Enrollment	215.76	52	104
Cumulative Enrollment	0.48	0.12	0.24
Total Enrollment	33,274.24	13,237	17,959.24
State Rated Capacity	39,187	11,256	16,332
Percent Capacity	84.91	117.6%	109.96%

Source: Prince George's County Planning Department, M-NCPPC, January 2007

County Council bill CB-31-2003 establishes a school facilities surcharge in the amounts of: \$7,000 per dwelling if a building is located between interstate highway 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 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 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 have reviewed this residential subdivision plan for 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 Branchville, Company 11, using the *7 Minute Travel Times and Fire Station Locations Map* provided by the Prince George's County Fire Department.

Pursuant to CR-69-2006, the 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 property is located in Police District I. 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 8, 2007.

Reporting Cycle	Date	Emergency Calls	Non-emergency
Acceptance Date 2/8/07	1/06-1/07	10.00	17.00
Cycle 1			
Cycle 2			
Cycle 3			

The response time standards of 10 minutes for emergency calls and 25 minutes for non-emergency

calls were met on February 8, 2007.

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

Pursuant to CR-69-2006, the 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.

12. **Health Department**—The Environmental Engineering Program has reviewed the preliminary plan of subdivision for the addition to Berwyn and has the following comments to offer.

Prior to the removal of any of the existing structures, a raze permit must be obtained through the Department of Environmental Resources. Any hazardous materials located in the structures must be removed and properly stored or discarded prior to the structures being razed.

13. **Stormwater Management**—The Department of Public Works and Transportation has determined that on-site stormwater management is required. A Stormwater Management Concept Plan, 30497-2005-00, 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**—A Phase I archeological survey is not recommended for this property. A search of current and historic photographs, topographic and historic maps, and locations of currently known archeological sites indicates the probability of archeological sites within the subject property is low. Aerial photographs indicate that the extant house on the property was built between 1938 and 1965, indicating that any archeological sites that may have been present on the property have already been adversely impacted. However, the applicant should be aware that there are numerous National Register properties, Historic Sites, and Historic Resources related to the town of College Park within a one-mile radius of the subject property. There are also sixteen historic and prehistoric archeological sites located within a one-mile radius of the subject property.

Moreover, Section 106 review may require archeological survey for state or federal agencies. Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties, to include archeological sites. This review is required when state or federal monies, or federal permits are required for a project.

15. **Variance Request for Section 27-442(e), Table IV—Yards, Front and Side Yard Setbacks (Lot 85, Block 4)**

A variance application, (VP-06088), has also been submitted as part of this preliminary plan application. Section 27-442(e) of the Zoning Ordinance requires that all one-family detached dwellings be setback at least 25-feet from the front street line. In the case of a corner lot, the side yard along the street is also required to be setback a minimum of 25-feet. The variance request is for the existing dwelling, which will remain on the property. This preliminary plan application is not



causing the need for a variance to be approved for the existing dwelling. However, the preliminary plan application does make the property subject to all current zoning regulations, which the nonconforming dwelling is unable to comply with, for the purposes of required setbacks from the street.

Information derived from the Maryland State Tax Assessment office indicates that the existing dwelling was constructed in 1930. The existing dwelling was likely built in accordance with the zoning regulations in effect at the time of construction. Section 27-107.01(134)(C) of the Zoning Ordinance states that for a corner lot, the shortest lot line that abuts a street shall be considered the front lot line. Based on this interpretation, the variance request is for 1.3 feet along the front lot line, abutting Osage Street, and for 4.92 feet, along the side lot line, abutting Patuxent Avenue. An existing covered wooden porch, which extends 5.75 feet from the existing dwelling, prevents the structure from complying with the 25-foot building restriction line along the front lot line, abutting Osage Street. The Subdivision Section does support the requested variance due to this being an existing condition which is not the result of, or effected by, this preliminary plan of subdivision application.

Section 27-442(e), Table IV of the Zoning Ordinance establishes minimum front and side yard requirements for lots within the R-55 Zone. Variances may be granted provided the application meets the following criteria, contained within Section 27-230(a) of the Prince George's County Code.

- (1) **A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographical conditions, or other extraordinary situations or conditions;”**

The variance request is for the existing dwelling, which will remain on the property and be contained within proposed Lot 85, Block 4. The final plat for Addition to Berwyn, (BDS 1 @ 30), was recorded in approximately 1906, and according to information derived from the State Tax Assessment office, the dwelling was constructed in approximately 1930. Zoning regulations came into effect in this area on April 17, 1928. The existing dwelling was built in accordance with the regulations in effect at the time of construction. However, the submission of a preliminary plan of subdivision application makes the entire property subject to all current zoning regulations. The location of the existing dwelling, and the current front and side yard setbacks are not affected by the submission of this preliminary plan application. The location of the nonconforming dwelling and the substandard front and side yard setback provided reflects an existing condition. These factors combine to create an extraordinary situation not generally applicable to other properties in the area.

- (2) **The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property;**

This preliminary plan application proposes the subdivision of the property into two lots. One lot will contain the existing dwelling, with the second lot proposed for a new detached single-family dwelling. The property is considered a corner lot. The existing dwellings’

relationship to both abutting streets is an existing condition that is not affected by this preliminary plan submission. However, the preliminary plan application does subject the existing, nonconforming dwelling to comply with all current zoning regulations. The hardship to the owner would be the loss of an additional building lot that meets all applicable criteria for a residential lot within the R-55 Zone, simply due to the existing dwelling, located on an adjacent lot, which does not conform to current setback regulations. Staff considers this scenario as an undue hardship to the property owner and sees no public purpose being served should the strict application of this Subtitle be required.

**(3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.**

The granting of this variance will not substantially impair the intent, purpose, or integrity of the 1989 *Approved Master Plan for Langley Park-College Park-Greenbelt and Vicinity*. The master plan land use recommendation is for a medium-suburban residential land use, which is what is proposed by the subject application.

Staff supports this variance request for these reasons.

16. **City of College Park**— On May 8, 2007, The College Park City Council voted 8-0-0 to recommend approval of the subject application subject to two conditions.

The two conditions include providing adequate off-street parking for Lot 85 (a minimum of two spaces), and compliance with the APA-6 regulations due to the property being located under the traffic pattern for a small general aviation airport (College Park Airport). Appropriate conditions have been established to require compliance with the APA-6 regulations, and new driveways are proposed on both lots which will provide adequate off street parking in accordance with Part 11 of the Zoning Ordinance.

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 date of notice of 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 Eley, seconded by Commissioner Clark, with Commissioners Eley, Clark, Vaughns, Squire and Parker voting in favor of the motion at its regular meeting held on Thursday, May 10, 2007, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 7th day of June 2007.

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Executive Director

By Frances J. Guertin  
Planning Board Administrator

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