

July 30, 2009

MEMORANDUM

TO: Prince George's County Planning Board

VIA: Steve Adams, Urban Design Supervisor

FROM: Susan Lareuse, Urban Design Coordinator

SUBJECT: Reconsideration of Conditions 2 and 3 of PGCPB Res. No. 95-358
Comprehensive Design Plan, CDP-8908/01
Perrywood

FINDINGS

1. In letters dated April 27, 2000 and April 28, 2000, Michele La Rocca of Meyers, Rodbell & Rosenbaum, P.A., on behalf of the Dee Corporation, requested the Planning Board reconsider Conditions 2 and 3 of Planning Board Resolution No. 95-358 approved on October 19, 1995. The applicant requests modifying the timing of the payment of the fee-in-lieu for the Largo-Kettering Library. The Planning Board, at the May 11, 2000 hearing, granted the request to reconsider their decision on Comprehensive Design Plan CDP-8908/01.
2. The disclosure statement dated May 24, 2000 for the current property owners indicates that the applicant, William F. Chesley, Dee Corporation, no longer holds an interest in the property. The new owners of the property are Perrywood Partners, LLC, made up of the following individuals:

Michael R. Chesley, 2200 Defense Highway, Crofton, MD 21114
Dennis Danner, 1006 Parrs Ridge Drive, Spencerville, MD 20868
Albert G. DeCesaris, 4305 Northview Drive, Bowie, MD 20716
Thomas Vendemia, 4305 Northview Drive, Bowie, MD 20716

Each of the new owners of the property was notified of the public hearing date. Also, all previous parties of record were notified of the public hearing. Signs were posted on the property a minimum of 15 days prior to the Planning Board hearing.

3. The original Comprehensive Design Plan, CDP-8708, approved on April 14, 1988, awarded a 10 percent density increment (70 dwelling units) for the provision of a public benefit feature for a fee-in-lieu for the Largo-Kettering Branch Library. The following condition was attached to the approval of the CDP-8708:

The fee-in-lieu for the Largo-Kettering Branch library (CIP #HL711410) in order to obtain the 10% density increment factor, shall be paid prior to the approval of the Final Plat of Subdivision for 695 lots or the life care facility, whichever occurs first. The dollar amount for the fee-in-lieu shall be determined prior to the approval of the Preliminary Plat of Subdivision in accordance with the departmental practice established by the Prince George's County Planning Department. [underlining added]

The condition above of CDP-8708 deferred the determination of cost to the time of the Preliminary Plat of Subdivision. The Preliminary Plat, 4-88020, required the amount of payment to be determined prior to signature approval of the Preliminary Plat. In memorandum dated December 7, 1988, from Eileen Kao, Development Review Division, to John Rhoads, Planning Board Chairman, the fee-in-lieu was established in the amount of **\$320,864.26**. No interest rate or inflation factor was included in the established amount of the fee-in-lieu.

4. In 1995, the applicant submitted a revision to the Comprehensive Design Plan CDP-8908/01, for the purpose of revising the timing of the payment of the fee-in-lieu. An excerpt of the applicant's justification, as stated in letter dated June 20, 1995 from Paul B. Rodbell of Meyers, Billingsley, Shipley, Rodbell and Rosenbaum, P.A., to Roy I. Dabney, Acting Chairman of the Prince George's County Planning Board, is provided below:

"When the subject CDP was approved, the Largo Lottsford Branch Library was contained within the then approved Prince George's County Capital Improvement Program and applicant's 'fee-in-lieu' was designated as a contribution toward construction funding. The recessionary period which followed applicant's CDP approval has resulted in the delay of Perrywood's development. Furthermore, as a result of the restructuring of financing practices in the area of land development, the financing of this type of contribution is no longer available. The applicant, had he known or anticipated this eventuality, would most certainly have requested some type of pro-rate payment. During this same period of time, Prince George's County was able to acquire a new/vacant building at the northwest corner of Harry S Truman Drive and Prince Place and opened the new Largo-Kettering Branch Library.....

".....Accordingly, applicant proposes that Condition Number 1 of CDP-8709 be modified in a manner as to require applicant, prior to signatural approval of any final plat of subdivision for lots encompassed by SDP-9411, to make a partial payment of the \$320,864.26 fee-in-lieu, with the remaining amount to be paid no later than two (2) years thereafter. Applicant further proposes that the exact pro-rata amount be determined with the applicant and technical staff for recommendation to the Planning Board. Applicant's total contribution shall include its fee-in-lieu obligation plus an additional sum which shall result in an 'interest/carry' factor. . . .• [underlining added]

Comment: It should be noted that the applicant made a commitment to pay the remaining amount due of the fee-in-lieu no more than two years later, which was November 9, 1997. However, no payment was made by the applicant.

5. On October 19, 1995, the Planning Board approved the modification to the original condition for the purpose of revising the timing of the payment of the fee-in-lieu. The Planning Board included the following finding, as stated in PGCPB No. 95-358:

■Revising the timing mechanism to postpone payment is reasonable in light of the hardship stated by the applicant and in light of the numerous amenities already constructed by the applicant, as long as the interest rate is set high enough to make it favorable to the County over the long run. It should be noted that the library has already been built, so this fee will go towards debt service and repairs, not actual construction.• [underlining added]

In addition to the finding above, the following conditions were attached to the approval of the CDP-8908/01:

1. **Of the \$320,864.26 fee-in-lieu payment, \$25,000 shall be paid to Prince George's County for priority repairs required at the Largo Kettering Library. The \$25,000 shall be paid in full prior to the approval of the final plat of subdivision for the 695th lot.**

Comment: The condition above was fulfilled on May 6, 1996. This condition is provided for information purposes only. It is not the subject of the request for reconsideration.

2. **The remaining balance plus interest of 8.00% per annum compounded annually shall be paid not later than two years from the date of the Planning Board's approval of the resolution approving the subject CDP modifications.**

Comment: As stated earlier in this report, the Planning Board's resolution was adopted on November 9, 1995, and two years from the date of the resolution was November 9, 1997. At that time the amount due was \$349,133. No payment was ever made. Based on an eight percent interest rate compounded annually, the amount due in July 2000 is approximately \$428,530. When the applicant is ready to pay the full amount of the payment, the Planning Department will determine the exact amount of the fee-in-lieu and the payment will be remitted to the Prince George's County Office of Finance, as stated in Section 27-483 of the Zoning Ordinance.

3. **No building permits shall be issued for any of the dwellings to be constructed on the Perrywood parcel previously designated for "life care" unless and until the entire fee has been paid in full by the applicant, his heirs, successors and/or assigns.**

Comment: The parcel previously designated for the life care facility is now referred to as Sections Eight and Nine of the Perrywood development. No building permits have been issued for those sections. As of the writing of this report, 103 lots have been approved as final plats and 110 lots are pending final plat approval by the Planning Board within Sections Eight and Nine of Perrywood. It is anticipated that the new owners of the property will be filing for building permits soon in order to avoid the additional school surcharge that will be in effect July 1, 2000.

6. The applicant provides the following justification for the modification of Conditions 2 and 3 above, in a letter dated April 28, 2000, Michelle La Rocca to Susan Lareuse:

■ . . the purpose of the original condition was to provide construction funds for a new library in Largo-Kettering. In actuality, an existing building was ultimately acquired to serve as the library. The decision to acquire the building was made after the original condition was imposed, but before the Perrywood fee-in-lieu became due. The fact of the acquisition of a building for the library has changed the purpose of the condition from a source of construction funding to one of general monetary support. Prior payments have been utilized for ongoing physical plant repairs. Thus, modification of the timing of the additional payments is still in furtherance of the public interest of benefitting the Largo-Kettering library and is needed for the honest ■mistake• of the changed purpose of the original funds. Amendment of the condition will allow the developer to make the remaining payments in an economical and more practical fashion which is, in my view, good cause for the reconsideration request.●

Further, in a memorandum dated May 9, 2000 from Michele La Rocca, Meyers, Rodbell & Rosenbaum, to Chris Izzo and Tiffany Williams, Growth Policy and Public Facilities Planning Section, the applicant proposes modifying the payment schedule as follows:

■At the issuance of the following building permit numbers in Sections 8 and 9:

■#1	\$130,000 is due
■#150	\$150,000 is due
■#250	\$ balance due plus interest●

7. In the review of he applicant's proposal above, the Development Review Division sent referrals to the following:

- a. Robert Hagans, Director, Office of Finance
- b. Stanley A. Earley, Director, Office of Management and Budget
- c. Maralita L. Freeny, Director, Prince George's County Memorial Library System
- d. Stephen Paul, Development Specialist, Office of the County Executive
- e. Chris Izzo, Growth Policy and Public Facilities Planning Section, Countywide Planning Division

8. In a referral from Maralita L. Freeny, Acting Director, Prince George's County Memorial Library System, to Faroll Hamer, Chief, Development Review Division, dated May 31, 2000, the following information was included:

■The Library's immediate priority is improvements to the branch parking lot. Sealing and painting of the lot are immediately needed.

■The Library recommends that the remainder of the fee in lieu be placed in an escrow account to be used ultimately to expand the branch. When funding allows the addition of staff to the Largo-Kettering Branch, temporary walls will be removed in order to expose

existing shelving, space for additional computer work stations and additional customer seating space. The fee-in-lieu will be used to pay for any demolition costs and wiring expenses and to purchase additional materials and personal computers. No additional shelving or furniture is needed since these were purchased for future expansion when the branch was built. The Library's budget proposal for FY 2002 will include a request for funds to hire additional staff for the Largo-Kettering Branch.●

9. In a referral from Christopher Izzo and Tiffany Williams of the Growth Policy and Public Facilities Planning Section to Susan Lareuse, Urban Design Section, dated June 15, 2000, the following information was included:

■The original Comprehensive Design Plan (CDP) for the Perrywood development contained a condition that required a fee-in-lieu for the Largo-Kettering Branch Library. The Perrywood development received a 10 percent density increment bonus for this payment. In 1995, the Prince George's County Planning Board revised this condition and the payment schedule at the request of the Perrywood developer. This is a further request to revise the condition concerning the payment of the fee-in-lieu for the Largo-Kettering Library.

■When the original condition was applied to the Perrywood development, the Largo-Kettering Library was an approved item in the adopted Capital Improvement Program (CIP) and had not been constructed. Since that time the County has purchased a building on Harry S Truman Drive and established the Largo-Kettering Library. The Growth Policy and Public Facilities Planning Section has been informed by the Office of Management and Budget that there are outstanding bonds from the purchase of the building. This fee-in-lieu payment could be applied toward retiring those bonds. In addition, the Library System has reported that the present facility will eventually be expanded and these funds could be applied toward the expansion. (See letter from Maralita L. Freeny to Faroll Hamer, dated May 31, 2000.) The Growth Policy and Public Facilities Planning Section recommends that the fee-in-lieu payment be collected in accordance with the existing condition.

10. In a referral from Stanley A. Earley, Director of the Office of Management and Budget, to Faroll Hamer, Chief, Development Review Division, dated June 15, 2000, the following information was included:

■The original Comprehensive Design Plan for Perrywood contained a condition that required a fee-in-lieu for the Largo-Kettering Branch Library. Originally, the CIP contained the proposal to construct a Largo-Kettering Library and the fee-in-lieu for this project was slated to help pay for this library. The County subsequently purchased a building on Harry S. Truman Drive, which was converted into the Largo-Kettering Library. The fee-in-lieu payment from the Perrywood development could be used to help retire a portion of this debt. The Office of Management and Budget supports the original condition that contained a fee-in-lieu payment dedicated toward the Largo-Kettering Library.●

11. The staff does not agree with the applicant's proposal to modify the timing of the payment from the previous Planning Board action on CDP-8908/01. The applicant has not provided sufficient justification for further delay of the payment. As stated in Section 10(e) of the Planning Board's Rules of Procedures, reconsideration can only be granted if in furtherance of substantial public

interest the Board finds that an error in reaching the original decision was caused by fraud, surprise, mistake, inadvertence or other good cause. The staff disagrees with the applicant's argument that amendment of the condition to allow the developer to make the remaining payments in an economical and more practical fashion is cause for approval of the reconsideration. The applicant's convenience does not constitute good cause for modification of the Planning Board's previous action. The staff does not find that an error was reached in the original decision of the Planning Board. There was no fraud, surprise, mistake, or inadvertence in the original decision and therefore, revising the timing of the payment is not justified.

Furthermore, the staff finds that delaying the payment is not in the best public interest. The additional density (70 lots) was granted in the previous approvals of the Comprehensive Design Plan and all of the Specific Design Plans approved for Sections One through Nine of the Perrywood development. In the 1995 decision by the Planning Board, the applicant was given relief from the previous requirements in order to allow the applicant to continue the final plat process beyond the 695 lots as required in the original condition. The fact that the applicant did not make any additional payments after the initial \$25,000, as required by Condition 1, and that the due date for the entire payment has lapsed, indicates that the applicant has not followed through in good faith. There has been no substantial change since the 1995 modification to the timing of the payments. The debt service associated with the Largo-Kettering Library continues to be an outstanding issue as reported by the Office of Management and Budget. For these reasons, it does not appear reasonable for the Planning Board to revise the payment schedule a second time.

RECOMMENDATION

The Development Review Division recommends that the Planning Board DISAPPROVE the applicant's proposal to modify the conditions as contained in the Prince George's County Planning Board Resolution No. 95-358.