

Charles T. Lacey, Sr., Trustee \* BEFORE THE  
 Karlos Lacey, Trustee \* PLANNING BOARD OF  
 Charles T. Lacey, Jr, Trustee \* HOWARD COUNTY, MARYLAND  
 Petitioners and Owners \*  
 PLANNING BOARD CASE NO. 418 \*

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**DECISION AND ORDER**

The Planning Board of Howard County, Maryland held a public hearing on May 19, 2016 (and continued on July 21, September 15 and November 17, 2016), in accordance with Section 107.0.F. of the Howard County Zoning Regulations, to consider the petition of Charles T. Lacey, Sr., Karlos Lacey, and Charles T. Lacey, Jr., Co-Trustees, Owners, to approve a Preliminary Equivalent Sketch Plan, SP-15-013, for 13 single-family detached lots and 5 open space lots. The 8.55 acre Lacey Property subdivision, located on Church Road is approximately one-half a mile north of Main Street in Ellicott City, and identified as Parcel 13 on Tax Map 25, in the Second Election District of Howard County, Maryland. The property is zoned R-ED (Residential Environmental Development).

The Notice of Hearing was published and the subject property was posted in accordance with the Planning Board’s requirements, as evidenced by certificates of publication and posting, all of which were made a part of the record of the case. Pursuant to the Planning Board’s Rules of Procedure, the reports and official documents pertaining to the petition, including the Technical Staff Report of the Department of Planning and Zoning, the Howard County Code, the General Plan of Howard County, the Howard County Subdivision and Land Development Regulations, the Howard County Zoning Map and Regulations, the Howard County Landscape and Forest Conservation Manuals, the DPW Design Manual, the Adequate Public Facilities Ordinance, and comments from the Subdivision Review Committee agencies were made part of the record in this case.

The Department of Planning and Zoning in its Technical Staff Report recommended approval of the Preliminary Equivalent Sketch Plan, SP-15-013, subject to comments from reviewing agencies, the Subdivision Regulations and the Design Manual waiver approvals and any

Conditions of Approval by the Planning Board. It was indicated in the Technical Staff Report that all requirements for subdivision of the site in accordance with the R-ED Zoning Regulations had been met, environmental resources would be protected, areas of forest were preserved, all building and project boundary setbacks were met and that the character of the scenic road shall be protected with a 35 foot buffer from Church Road.

The Petitioner was represented by William Erskine, Esq. There were several area residents and organizations who appeared in opposition to the Petition, some of whom were represented by F. Todd Taylor, Esq., and some of whom represented themselves.

After careful evaluation of all the information presented, the Planning Board makes the following findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. Mrs. Stephanie Tuite, P.E., RLA, with Fisher, Collins and Carter, Inc., testified that the Petitioner held three community meetings with the public between April, 2013 and June, 2014 to get their input on the proposed plan in connection with applications for approval of certificates of compliance from the Howard County Historic Preservation Commission and the application which is presently before the Planning Board for approval of a Preliminary Equivalent Sketch Plan in the R-ED District.

Ms. Tuite testified that Mr. Gary Maule, a community resident with planning experience, and Steve Stannard helped to gather input from the community and also presented changes to the original design of the proposed subdivision, many of which the Petitioner adopted in the revised plan presented to the Planning Board. Ms. Tuite testified that Petitioner's original design had multiple access points off of Church Road with 14 proposed lots, the maximum allowable density but that after receiving the community input the Petitioner changed the design of the subdivision to have one consolidated public local road access off Church Road with driveway access off the public road to the 13 proposed lots. The evolution of the proposed development's layout is fully shown in Petitioner's (though marked as Applicant's Exhibits, they will be referred to herein as Petitioner's Exhibits) Exhibit 1, the "Community Work Sessions Summary", otherwise referred to as "the Workbook". Ms. Tuite indicated that what is presented on page 14 of the Workbook is similar to the plan presented in this case to the Planning Board.

Ms. Tuite testified that the Petitioner had been before the Historic Preservation Commission multiple times for both advisory comments on the proposed subdivision and for a decision on three applications for certificates of approval for the demolition of the structures on the subject property, approval of a retaining wall on the subject property and for the removal of trees. Ms. Tuite testified that the Historic Preservation Commission had approved these certificates of approval. A summary of the proceedings before the Historic Preservation Commission (HCP) regarding these certificates of approval and its overall recommendations are provided in the Department of Planning and Zoning's Technical Staff Report. Ms. Tuite testified that she was familiar with the R-ED Zoning District criteria in Section 107.0F.6.a. through c. of the Howard County Zoning Regulations that the Planning Board was required to consider in evaluating the proposed plan, namely:

a. The proposed lay-out of lots and open space effectively protects environmental and historic resources.

b. Buildings, parking areas, roads, storm water management facilities and other site features are located to take advantage of existing topography and to limit the extent of clearing and grading.

c. Setbacks, landscaped buffers, or other methods are proposed to buffer the development from existing neighborhoods or roads, especially from designated scenic roads or historic districts.

The testimony from the Petitioner and the information presented by the Department of Planning and Zoning (DPZ) regarding each of these criteria is set forth below.

**a. The proposed lay-out of lots and open space effectively protects environmental and historic resources.**

Ms. Tuite testified that she agreed with DPZ's Technical Staff Report findings that the proposed subdivision lot and open space layout effectively protects the environmental and historic resources. The Department of Planning and Zoning indicated in its Technical Staff Report that 55% of the subject property would be in open space, that the proposed lots, roads, storm water management and drainage systems are proposed to be located outside the forested conservation areas, wetlands, streams and buffers, and that environmental areas are proposed to be located in

open space lots. DPZ found that these open space areas, located within the environmental areas, provided contiguous forest conservation areas.

DPZ also found that the proposed residential lots are standard in size, shape and layout with eight of the lots concentrated at the highest elevation near the location of the existing house approved for demolition while the five remaining proposed lots are located in the northeast portion of the site where the land gradually slopes down to the stream valley. DPZ indicated that the proposed layout located development in the developable areas of the subject property while protecting environmentally sensitive areas as open space is in accordance with the objectives of the General Plan and the Subdivision Regulations.

DPZ also found that Open Space lot 15, which is the open space lot to be dedicated to the Department of Recreation and Parks, contains most of the environmental resources on the subject property, including steep slopes, a stream, a stream buffer, forested area and 17 of the 43 specimen trees. Four smaller open space lots, to be dedicated to the future homeowner's association, will be utilized for storm water management, recreational open space and to act as a buffer to Church Road.

Ms. Tuite indicated that a minimum 35 foot buffer area of open space was provided along Church Road, a scenic road, and that additional trees were proposed to enhance the buffer provided by the existing trees in order to make it thicker.

DPZ also noted that proposed Public Road A and the use-in common driveways off that public road are designed to avoid disturbing environmental features.

Ms. Tuite testified that there were no historic resources on the subject property because the HPC had approved the demolition of the house on the subject property.

Ms. Tuite also testified that the driveway proposed near lots 12 and 13 was designed to be "sunken down" directly adjoining the property to the east of the driveway to eliminate car headlights from shining onto the property directly to the east, the Taylor property.

Ms. Tuite also testified that open space located on the north, east and south of the subject property, along with an additional tree on a berm would further buffer the development from properties to the east.

**b. Buildings, parking areas, roads, storm water management facilities and other site features are located to take advantage of existing topography and to limit the extent of clearing and grading.**

Ms. Tuite testified that she also agreed with DPZ that the design of the proposed subdivision provided for the houses, roads, parking, and storm water management facilities to be located to take advantage of existing topography and limit the extent of clearing and grading. Ms. Tuite agreed with DPZ that grading would be limited along Church Road except for the necessary entrance to the development by proposed Road A, and that grading will not take place in the 35 foot scenic road buffer. As indicated above, the proposed subdivision locates lots, roads, storm water management and drainage systems outside of forested conservation areas, wetlands, streams and buffer areas. Mrs. Tuite further testified that construction of a proposed retaining wall would require extensive grading in open space lot 14 but that it is necessary to provide enough storage area for the storm water management facility because this development is located in the Tiber Branch watershed and, therefore, is required to manage the 100 year storm. As indicated above, the retaining wall has been approved by the HPC and DPZ. Ms. Tuite testified that she agreed with DPZ that any tree clearing was limited to what was needed for the residential lots and storm water management. She indicated that the only grading proposed to be done around the proposed lots would be to provide swales for drainage. She also indicated that the dwelling units would utilize basement-loaded garages to take advantage of the existing topography. As to the need for the retaining wall, Ms. Tuite testified that the design of the storm water management facility wasn't necessarily only related to the proposed number of lots to be developed because the zoning of the property was also involved in that determination. Ms. Tuite testified that fewer lots proposed on the subject property wouldn't necessarily result in the lack of a need for a retaining wall.

DPZ indicated that 4.65 acres of the proposed development, or 54% of the site's gross area, would be disturbed in developing the site. This would include the clearing of 2.02 acres of forest in the northcentral and eastern portion of the site, mainly for the lots and roads. The remaining 2.37 acres of forest would be retained, protected by Forest Conservation Easements and located on an open space lot to be owned by the Howard County Department of Recreation and Parks. Ms. Tuite indicated that clearing and grading is minimized by limiting it to what is necessary for the lots, roads and storm water management.

Ms. Tuite testified that the amount of forest conservation retention exceeded what was required by law and that all of the retention was being done on-site. She also testified that though the buffer area was required to be 35 feet from scenic roads, that in some instances it was greater, up to a 50 foot buffer.

**c. Setbacks, landscaped buffers, or other methods are proposed to buffer the development from existing neighborhoods or roads, especially from designated scenic roads or historic districts.**

Ms. Tuite testified that she agreed with DPZ that this subdivision will provide open space buffers, along with additional tree plantings, from existing neighboring properties and roads. As noted above, Ms. Tuite indicated that a minimum 35 foot buffer area of open space was provided along Church Road, a scenic road, and that additional trees were proposed to enhance the buffer provided by the existing trees in order to make it thicker. Ms. Tuite agreed with DPZ that five open space lots surrounding the development to the north, east and south provide a buffer on three sides of the subject property.

Ms. Tuite indicated that Petitioner's Exhibit 2, a series of aerial photos of the subject property from 1943-2015, showed that the subject property was a farm from 1943 until about 1977 and that there were very few trees until farming was abandoned and trees began growing sometime after 1977. Ms. Tuite indicated that the forest being retained is principally what has grown on the subject property since 1977.

As indicated above, Ms. Tuite also testified that the driveway proposed near lots 12 and 13 was designed to be "sunken down" directly adjoining the property to the east of the driveway to eliminate car headlights from shining onto the property directly to the east, the Taylor property.

Also as indicated above, Ms. Tuite also testified that open space located on the east and south of the subject property, along with an additional tree on a berm would further buffer the development from properties to the east.

2. Mr. Charles Lacey, Jr. and Mr. Gary Maule testified in favor of the petition. Mr. Lacey testified that his parents were getting old and needed to sell and develop the property for income. Mr. Lacey testified that change had already occurred in the neighborhood with the development

of the Woods at Park Place development and that his family had worked with the community to provide an acceptable development. Mr. Lacey noted that they could have proposed a townhouse development on the subject property but had not done so.

Mr. Maule, a Church Road resident, testified that he did not want to look at a bad development so he decided to participate in the process that led to the changes made to the proposed development as outlined in Ms. Tuite's testimony. He indicated that he supported the proposed development now that it had been modified to eliminate the multiple driveways, to move the flag lot to the center of the property, to eliminate a lot and enlarge the open space and provide access to it for the community. Mr. Maule testified that he believed the proposed development took into consideration the environmental setting, buffered the development from the neighborhood and was overall a much stronger plan than the one originally proposed.

3. Several witnesses testified in opposition to petitioner's proposed subdivision.

Mr. Allan Shad testified that the proposal was too dense based on the surrounding property; that there were too many units proposed on the site. He indicated that fewer lots would improve the plan but that he would leave the question of how many lots was appropriate to the planners.

Mrs. Marydele Donnelley also opposed the project based on her belief that the plan is too dense, is a detriment to the natural and historic setting, and is not in keeping with the historic nature of upper Church Road and the significance of preserving existing forest resources on the Lacey Property.

Ms. Donnelly further stated that the Petitioner had proposed a plan which will adversely affect the Church Road community and the Ellicott City historic district rather than proposing a plan that would work in harmony with the area's history and historic resources. A resolution from the Friends of the Patapsco Female Institute opposing the Petitioner's proposed plan was introduced into the record as Protestant's Exhibit No. 4. This resolution echoed Ms. Donnelly's reasons for opposing the plan- the development was stated to be too dense and would be detrimental to the Church Road neighborhood in the Historic District.

Ms. Elizabeth Walsh testified in opposition to the petition. Ms. Walsh provided a number of reasons for opposing the proposed development, including that the proposed plan was not compatible with the neighborhood, that over four acres of trees, 132 in number, were proposed for clearing for the development, that the protection of environmental resources was pushing development to the front of the subject property too close to a scenic road, Church Road, that the proposed development violated a covenant on the subject property, and that the proposed development violated or required waivers from a number of development regulations administered by the Department of Planning and Zoning through the Subdivision and Land development Regulations, including Sections 16.114, 16.116, 16.117(a), 16.125 and 16.1205 of the Howard County Code.

Ms. Walsh also testified that the Petitioner's proposed 35 foot buffer from Church Road only met the minimum buffer requirements and that the minimum was inappropriate in this case due to the environmental and historical resources on the property and in the surrounding neighborhood.

Ms. Walsh also testified that the Historic Preservation Commission advised that the proposed development was too dense, that the proposed lots were too small and that the proposed setbacks were insufficient to be consistent with the surrounding historic properties.

Ms. Walsh introduced into the record Protestant's Exhibit 2, a Forest Resource Management Plan, which Mr. Charles Lacey submitted to the Maryland Department of Natural Resources in order to qualify for a "tax privilege" which was in effect from 2003 until July 1, 2016, when Mr. Taylor, who represents several parties in opposition to the petition, conceded that the tax benefit to the Laceys would expire. This plan detailed the natural resources on the subject property in 2003, including a variety of trees. Ms. Walsh testified that the Plan devised a way for these resources to be protected, while the proposed development would eliminate 4 ½ acres of those resources for the houses on lots and roads. Ms. Walsh testified that the Petitioner was saving 34 of 42 specimen trees on the property but that three of these trees, black walnuts, were being saved only because the Historic Preservation required them not to be destroyed, which the Petitioner easily accommodated by adjusting proposed lot lines.



Ms. Walsh also introduced into the record Protestant's Exhibit 3, which consisted, in part, of a series of photographs of views of various historic houses on Church Road in the vicinity of the subject property. Ms. Walsh testified that these homes have a minimum acreage of 1 acre, and are part of an 1888 15 lot subdivision. Ms. Walsh testified that this subdivision subjected all the lots, including the subject property, to a covenant limitation of just one house per lot. Ms. Walsh opined that the proposed 13 lot subdivision was not compatible with this historic subdivision in the historic district.

Ms. Walsh also presented the evolution of the proposed development from the 14 lot subdivision with multiple driveways to the 13 lot subdivision with one access point off of Church Road, which is presently before the Board, as part of Protestant's Exhibit 3. This exhibit is similar to Petitioner's Exhibit 1 in terms of showing the modifications made by Petitioner of its proposed development.

Ms. Walsh also presented a chart, also part of Protestant's Exhibit 3, which showed all the characteristics of the 13 lots in the proposed subdivision in terms of either requiring variances from the County or violating the covenants burdening the subject property. Ms. Walsh indicated that these characteristics showed that the proposed subdivision was not consistent with the surrounding neighborhood, and had to violate the County's development regulations and the covenants in order to achieve the desired density.

Ms. Walsh also testified that Mr. Maule, the Church Road resident who testified in support of the petition, testified on his own and was not selected by the Church Road community to speak for the community or to work with the developer to develop modifications to the proposed subdivision.

Mr. Gary Segal testified, with the aid of a PowerPoint presentation, Protestant's Exhibit 5, that water flows down Park Drive from the Lacey Property causing erosion problems.

Ms. Candace Taylor testified in opposition to the petition. Ms. Taylor's presentation, Protestant's Exhibit No. 6, was introduced into the record.

Some of Ms. Taylor's testimony echoed that of Ms. Walsh- Protestant's Exhibit 6 was partly comprised of a series of photographs of views of the historic homes on Church Road from

Church Road, which Ms. Taylor indicated showed the wide yards, large trees and attractive older homes which needed further protection from the proposed too dense, incompatible development.

Also like Ms. Walsh, Ms. Taylor cited numerous sections of County law, including Section 16.1401(b) and Section 16.1402 of the Howard County Code (Scenic Roads), Section 16.118(b)(2) and (6) of the Subdivision and Land Development Regulations, and even the definition of “Historic District” in the National Register, to support her contention that the Planning Board, in the decision on this proposed development plan, was required to maintain the “continuity” of the Church Road neighborhood, to protect the character of scenic roads, to minimize development impacts on scenic roads, to “integrate” historic resources into the design of the subdivision plan”, and to not allow “adverse impacts” on historic resources based on non-guaranteed density.

Ms. Taylor also submitted, as part of Protestant’s Exhibit 6, a comparison of the existing “original” homes on Church Road (Ms. Walsh’s 1888 15 lot subdivision), the homes on Woods of Park Place (actually called the Woods at Park Place referred to hereafter in this decision as “the Woods”) and the Petitioner’s proposed development in terms lot size and lot width.

Ms. Taylor’s comparison concluded that the average lot size for the “original” Church Road homes was 2.6 acres overall and 2.3 acres for lots seen on Church Road, while “the Woods” average lot size was .4 acres overall and .64 acres for lots seen on Church Road, while Petitioner’s lots averaged .27 acres for all lots, whether visible from Church Road or not..

Ms. Taylor also compared lot width on Protestant’s Exhibit 6- which showed the range of lot widths was 130 to 350 feet for the “original” homes, 141 feet average lot width for just the four homes that are visible from Church Road in “the Woods”, while the 6 homes proposed to be visible in the Petitioner’s development would average 94 feet in lot width.

Ms. Taylor also testified that in “the Woods” development, there was buffering between all the lots and adjoining properties except for the lot next to the existing adjoining “original” lot (the Peach property) and home but that that lot was the largest lot, while there are three lots with homes bordering her existing “original” home lot. Ms. Taylor did acknowledge that she was not aware that there was no open space parcel buffering “the Woods” lot from Church Road, while the Petitioner did propose such open space lot buffering on his plans. Ms. Taylor also acknowledged

that she did not object to the distance between her house and the closest proposed lot in the Petitioner's proposed development, proposed lot 11.

Ms. Taylor concluded that the proposed development was not compatible with the character and continuity of the Church Road neighborhood and would have an adverse impact on the historic resources on scenic Church Road due to the fact that Petitioner's proposed lots were too small in size, ½ the size of "the Woods" lots seen on Church Road on average, and were too narrow, 2/3 of the lot width on average of "the Woods" lots which are visible on Church Road.

Ms. Denise Cortis, representing the Woods at Park Place Homeowner's Association, testified that she is opposed to the Lacey Property subdivision plan based on the density of housing, the violation of protecting scenic roads and the destruction of mature trees and vegetation. Ms. Cortis also expressed her belief that the additional traffic generated by the proposed development would be dangerous for walkers, bikers and motorists using Church Road. Ms. Cortis statement was introduced as Protestant's Exhibit No. 7.

Mr. F. Todd Taylor, an attorney representing several of the Protestants, introduced into the record several exhibits; a number of exhibits which Mr. Taylor attempted to introduce into the record were not accepted, and those Protestant's exhibits are indicated in the record as marked for "identification purposes only". The Protestant's Exhibits introduced into the record are Protestant's Exhibit 9, the Zoning Board decision in ZB Case No. 762, Protestant's Exhibit 11, a series of documents from the Historic Preservation Commission relating to the subject property, Petitioner's Exhibit 12, an April 6, 2016 letter from four members of the Historic Preservation Commission to Val Lazdins, DPZ Director, and Protestant's Exhibit 13, a document with the heading "Historic Inventory Sites With No Structures". Protestant's Exhibits which were not introduced into the record but which were marked for identification purposes included Protestant's Exhibits 8, 10, 14 and 15. The Howard County Historic Preservation Commission in its April 6, 2016 letter to Val Lazdins, which it formally adopted as its recommendation to the Planning Board on Petitioner's proposed development, advised that Petitioner's 13 lot subdivision was "out of character against the multi acre lots along historic Church Road." Citing Section 16.118(b)(6) of the Howard County Code, the HPC reminded the Planning Board that "achieving maximum possible density is not sufficient justification to allow adverse impacts on historic resources." The HPC advised that the proposed subdivision of the Lacey property "is incompatible with the

Historic District.” It also advised that “the placement of these homes involves major disruption of the natural topography and landscape” and that it “attempts to clear cut the site, instead of working with the grades, topography and natural surroundings.” Finally, the HPC recommended that “the density of the Lacey subdivision needs to be greatly reduced and the size of the lots increased in order to be compatible with the surrounding historic neighborhood.”

Mr. Taylor also introduced the following three documents by reference: Sect. 16.100 - 16.612 of the Howard County Code; the Ellicott City Design Guidelines adopted in 1988 which apply to any activity in the Historic District; and the minutes of the Historic Preservation Commission of April 2013 (this document is the first portion of the last tab in Protestant’s Exhibit 1, a blue binder containing a number of documents that were either introduced into the record as separate exhibits, were offered for introduction into the record but were not accepted or were not offered into evidence).

Mr. Taylor, testifying after the July 30, 2016 flood in Ellicott City, testified that some of the rainwater contributing to that flood drained down to the south of the Lacey property and underneath Courthouse Drive and down Fels Lane to Ellicott Mills. Mr. Taylor testified how the developer’s plan to regrade the area abutting Church Road will be higher and therefore, rainwater will flow towards a neighboring property to the south and could rush down to Park Avenue thus causing erosion. Mr. Taylor testified that storm water management ponds are not designed to control flooding.

Mr. Taylor further testified that the upper Church Road community has historically been comprised of large lots and that the design of the proposed subdivision doesn’t encompass large lots, but smaller ones which is an anomaly for the upper Church Road community. Mr. Taylor agreed that the Lacey property remained zoned R-ED after the 2003 Comprehensive Zoning when the properties to the east of the Lacey property requested and were granted the request to have those properties downzoned to the RR Zoning District, which permits minimum 3 acre lot development.

4. On rebuttal, Mr. William Duffy, who lives behind the Taylors on the existing driveway easement over the Lacey property, testified that he had participated in the community meetings previously referred to in the testimony of Ms. Tuite, Mr. Maule and other witnesses. Mr. Duffy

indicated that most of Mr. Maule's suggestions for modifying the subdivision plan were followed and that he believed the plan was thereby improved significantly. Mr. Duffy opined that the current subdivision design is the best possible plan that would be proposed. Mr. Duffy said that he is not testifying about density when asked if a less dense plan would be a better plan. Mr. Duffy denied having an agreement with Mr. Lacey regarding Mr. Duffy's support for the plan. Also on rebuttal, Ms. Tuite testified that she disagreed with Mr. Taylor that storm water management was not designed to control floods. Ms. Tuite testified that developments that drain into the Hudson and Tiber Branches are required to control 100 year storms, and that constitutes storm water management.

The Petitioner introduced into the record Chapter 5 *Stormwater Management* as Petitioner's Exhibit No. 3.

Ms. Tuite testified that Howard County's storm water management requirements prescribe a more stringent requirement than is generally applicable in the County to control flood water from a 100 year storm, and that those requirements apply to most of the subject property which drains into the Tiber and Hudson Branches above the Patapsco River. Ms. Tuite testified that you cannot control flooding downstream entirely but that storm water management requirements are designed to ensure that post development runoff levels are no more than the levels found in natural, forested conditions. Ms. Tuite testified that the storm water management pond in the central region of the subject property is designed to control the 100 year storm and to meet the above-described standards.

The Petitioner introduced into the record page 61 of the Ellicott City Historic Guidelines, Chapter 8, Subsection D as Applicant's Exhibit No. 4. A highlighted portion of this document, under the heading "Design of New Subdivisions" provided: "Subdivision of land is controlled by county, state and federal regulations that address density, lot size, setbacks, street and parking lot design, storm water management, extension of water and sewer service, floodplain and wetland protection, fire safety and other issues. Subdivision plans do not require approval by the Historic District Commission. However, the improvements constructed after a property is subdivided will require Certificates of Approval."

Petitioner introduced into the record a zoning map of the Ellicott City historic district as Applicant's Exhibit No. 5. Ms. Tuite noted that the Lacey property was zoned R-ED, while the property directly adjoining it to the southwest, the District Court building, is zoned Planned Office Research, while the other properties on Church Road are zoned RR. Ms. Tuite agreed that transitions from higher to lower density or intensity was good planning, and that the R-ED District, a zoning District permitting two dwelling per net acre, did act as such a transition between the Planned Office Research District, a non-residential zoning district, and the RR District, which required a three acre minimum lot size.

Ms. Tuite reiterated that a berm has been proposed at the front of Lot 13 to ensure that car lights would not go onto the neighboring properties to the east. Ms. Tuite also reiterated that the reason for having a retaining wall along the proposed lower driveway is to allow the expansion of the storm water management pond to control the 100 year storm. She added that the grading necessary to construct the retaining wall would limit the grading in other locations. Ms. Tuite testified that this development will comply with a minimum 35 foot landscape buffer to retain the scenic character of Church Road and will be buffered with an open space area that includes landscaping.

Petitioner introduced Petitioner's Exhibit No. 6, a document that shows various setbacks in the Church Road neighborhood.

Ms. Tuite testified that Petitioner's Exhibit 6 compared the setbacks from the existing and proposed houses to Church Road and the setbacks between existing and proposed houses along Church Road. Ms. Tuite noted that the three lots in the Petitioner's proposed development east of Proposed Road A (Mill Creek Way on Petitioner's Exhibit 6) were setback 91 feet or 97 feet from Church Road, that the Taylor's house was set back 121 feet from Church Road, that the original house on the property to the east of the Taylor property was set back 106 feet from Church Road, that the houses in "the Woods" were set back 83-91 feet from Church Road, and that the original houses east of "the Woods" on the opposite side of Church Road range from 89 to 109 feet set back from Church Road.

As to the setback distances between houses, Ms. Tuite testified that the Taylor's house was set back 160 feet from the closest house location on lot 11 in the Petitioner's proposed development

and 225 feet and 240 feet from the house locations on lots 12 and 13 on the Petitioner's proposed development. It was noted by Ms. Tuite that the Taylor's house had an 80 and 81 foot setback from the existing original houses to the east of the Taylor property. Ms. Tuite also testified that there was an 84 foot setback between the original house on the Peach property and the closest house in "the Woods" development.

As to the Lacey's original 14 lot subdivision plan submitted before community input, Ms. Tuite testified that the original plan did have two houses closer to the southeast corner of the subject property, and therefore closer to Mr. Duffy's property, than the subsequent version of the proposed subdivision which is presently before the Board.

In response to a question regarding what would happen to water runoff in the instance of a greater than 100 year storm, Ms. Tuite responded that when the pond would fill up, there would be a freeboard that provides additional storage potential, so that up to a certain point it would fill up, then slowly release. Under that scenario, if there would be any additional water, it would go out of the emergency spill way. Ms. Tuite reiterated that under that scenario the volume of water that currently comes off would be the same after the site is developed and that the storm water management is designed in a manner that will not release any more water after development than what is released in the pre-existing pre-development conditions.

Mr. John Canoles, of Eco-Science Professionals, testified that there are 4.4 acres of existing forest on the Lacey Property based on Forest Conservation Act standards and definitions of forest, which are the standards applicable to proposed subdivisions in Howard County. Mr. Canoles testified that the 7.5 acres of forest on the Lacey Property as described in the Forest Resource Management Plan, Protestant's Exhibit 2, was not determined in accordance with the guidelines of the forest conservation act. Mr. Canoles testified that the 7.5 acres referenced in the Forest Resource Management Plan is likely correct in terms of the requirements that applied to the Forest Resource Management Plan, but incorrect in terms of the requirements of the Forest Conservation Act requirements.

5. The Board is persuaded that the evidence, based both on the testimony of Ms. Tuite, Mr. Canoles, and the Department of Planning and Zoning's Technical Staff Report, demonstrates that the proposed layout of lots and open space effectively protects environmental and historic

resources as is required by Section 107.0.F.6.a. of the Howard County Zoning Regulations (HCZR).

In determining which environmental and historic resources are intended in the HCZR to be effectively protected by the subdivision's proposed layout of lots and open space, it is necessary to read the R-ED Zoning District Planning Board decision-making criteria as a whole. Section 107.0.F.3.a. of the HCZR, which indicates what information the Petitioner must present in its application to the Planning Board, requires a petitioner to provide "the existing environmental and historic resources of the site, including streams, wetlands, their buffers, extent and quality of vegetation, especially tree cover, steep slopes; historic structures and their landscape setting; and the scenic qualities of the site." Section 107.0.F.3.h. of the HCZR provides a petitioner shall provide "proposed open space, easements, and other forms of permanent protection for sensitive areas, forest conservation areas, or other on-site resources such as historic structures and settings."

In this case, it was undisputed that the house on the subject property was approved for demolition by the HPC because of its lack of significance historically or architecturally. Therefore, the Board finds that there are no historic structures on the subject property, and with no historic structures, no settings for any structures to protect, and therefore no historic resources to protect in terms of layout of lots or open space pursuant to Section 107.0.F.6.a of the HCZR. The trees and other natural features are to be protected but as environmental, not historic, resources.

As to the environmental resources, based on the testimony of Ms. Tuite, Mr. Canoles and the information presented in DPZ's Technical Staff Report, the Board is persuaded, based on the Board's Findings of Fact 1 and 4, that the proposed layout of lots and open space effectively protects on-site environmental resources. It is undisputed that all of the environmentally sensitive resources to be retained, including wetlands, streams, and buffers and forested areas are located within open space lots, which comprises 55% of the area of the subject property. The Board finds that, under Forest Conservation Act requirements, 2.02 acres of trees will be cleared for the proposed lots, roads, storm water management and drainage systems but that 2.37 acres of trees will be retained on-site and protected in open space lots. The Board finds that this will more than comply with Forest Conservation requirements. The Board notes, that as with all technical requirements involved in DPZ's decisions on proposed subdivisions, DPZ determined that the proposed subdivision had complied with all Forest Conservation requirements prior to transmitting



the proposed subdivision to the Planning Board for its decision, except for the waiver applications pending at the time of the close of the hearing in this case.

The Board notes that it was also undisputed that 35 of the 43 specimen trees on the subject property were being retained and 17 of those specimen trees, and most of the steep slopes, streams and stream buffers would be located on open space lot 15, the lot to be dedicated to the Howard County Department of Recreation and Parks for perpetual ownership and maintenance. Four smaller open space lots, to be dedicated to the future homeowner's association, will be utilized for storm water management, recreational open space and to act as a buffer to Church Road.

The Board also finds that the proposed lots, especially lots 1-8, are proposed for location in the higher elevations on the subject property, near the location of the former house on the subject property, and the remaining 5 lots are located in the northeast part of the property on land gradually sloping to the south.

The Board finds that the proposed Road A, the entrance to the property, and the use-in-common driveways off that proposed public road are designed to avoid disturbing environmental features.

The Board finds that the Protestants in their cross-examination of Ms. Tuite and Mr. Canoles and the critique of DPZ's Technical Staff Report, did not persuasively challenge much of this above-cited evidence relating to the issue of whether the proposed layout of lots and open space in the proposed 13 lot subdivision effectively protected on-site environmental resources. As will be more completely described below in Finding of Fact 6, the Protestants instead contend first, that the demolition of the house on the subject property did not prevent the trees and other vegetation on the subject property from being considered as historic resources in and of themselves required to be protected as historic resources, not just protected as environmental resources; and second, that a resource- protective lot layout could not be met with a 13 lot subdivision, even though it was acknowledged that the maximum density under the R-ED Regulations would permit a 14 lot subdivision. As stated above, as to the first contention, the Board, having found that there were no remaining on-site historic structures, has therefore found that there are therefore no on-site historic resources on the subject property which must be protected under this first criterion of Section 107.0.F.6.

The Protestants' second and broader contention on this particular criterion, Section 107.0F.6.a of the HCZR, hinges on the Petitioner's alleged failure to meet various criteria perceived and contended by the Protestants to be applicable based on the evidence presented as to those perceived to be applicable criteria; that the development's lack of compatibility with the historic Church Road neighborhood, or the development's adverse impact on that neighborhood, required proposal of a less dense development with fewer lots in order to meet that perceived criteria rather than the criteria specified in Section 107.0F.6.a. of the HCZR. As will also be more completely addressed in Finding of Fact 6 and the Conclusions of Law, the Board finds that the only criteria applicable in this case under the Zoning Regulations are that found in Section 107.0.F.6.

The Protestants also contend that if there were fewer lots were proposed, then environmental resources would be necessarily be more effectively protected. However, the Protestants presented no alternative layout of the subdivision at a lesser density to substantiate this claim, so the Board is unable to make a finding in this regard. Moreover with respect to this criterion, and all three criteria which the Board must apply in making this decision, the Board's responsibility is to determine whether the proposed subdivision meets the criteria in question, not to decide whether a subdivision at lesser density which would produce a better plan in terms of advancing public policy or maximizing the protection of environmental resource. The Board finds that the County Council has determined the maximum density applicable to this property through the HCZR. While the Board notes that maximum density is not guaranteed since a proposal at maximum density may not be found to have met the criteria, the Board finds that it lacks the statutory authority in the HCZR to establish lower densities to maximize compliance with the R-ED criteria. Ultimately, no development, or development on one lot would meet the criteria best but the Board must instead evaluate what is presented to it for criteria evaluation and consequent decision. The Board notes that the Petitioner has not presented a plan at maximum density.

Section 107.0.F.6.b. of the HCZR requires that the Board find that buildings, parking areas, roads, storm water management facilities and other site features are located to take advantage of existing topography and to limit the extent of clearing and grading.

The Board is persuaded, based on the testimony of Ms. Tuite and Mr. Canoles and DPZ's Technical Staff Report information as provided in the Board's Findings of Fact 1 and 4, that the

location of the proposed lots, the proposed roads and driveways and the storm water management facilities and drainage systems are located to take advantage of the existing topography and to limit the extent of clearing and grading.

The Board finds that the grading along Church Road was limited to that which is necessary for the entrance to the development by proposed Road A, and that no clearing and grading would occur in the minimum 35 foot scenic road buffer along the property frontage on Church Road. The Board further finds that, as indicated above, the lots, roads and storm water management facilities and drainage systems are located outside of the forest conservation areas, wetlands and stream buffer areas, and that the only grading proposed to be done around the lots would be to provide drainage swales, and that basement-loaded garages were proposed to take advantage of existing topography.

As to the proposed retaining wall, the Board finds that extensive grading in open space lot 14 was necessary to construct the wall but the Board finds that it was necessary to provide enough storage for the storm water management facility to comply with the requirements in the Howard County Design Manual to manage the 100 year storm so that post development runoff is reduced to levels found in natural, forested conditions. The Board finds that the retaining wall's construction has been approved by the HPC and that its construction will limit additional grading which would be necessary without its construction if alternative storm water measures were taken instead.

As indicated above with respect to the criterion in Section 107.0.F.6.a. of the HCZR, the Protestants also contend that with respect to this criterion (Section 107.0F.6.b.) that the site features' location could better take advantage of existing topography and clearing and grading could be better located if the proposed development was less dense and consisted of fewer lots. The Board repeats its findings as to its limited authority in applying Section 107.0.F.6.b as was found above as to Section 107.0.F.6.a.

6. The last applicable criterion which the Board must apply in Section 107.0.F.6.with respect to the proposed development is subsection c. which provides that setbacks, landscaped buffers, or other methods are proposed to buffer the development from existing neighborhoods or roads, especially from designated scenic roads or historic districts.

Unlike the first two criteria which the Board has applied above, this third criterion examines not just standards applicable to the subject property itself but looks to the possible effects of the proposed development on existing neighborhoods or roads, especially from designated scenic roads or historic districts.

Before the evidence presented as to this criterion is examined in terms of its sufficiency and persuasiveness, the Board wants to revisit the issue of what criterion is actually applicable in terms of the Planning Board's decision-making.

As stated above, the Protestants do not confine themselves to the actual words in Section 107.0.F.6.c. of the HCZR in their various contentions as to the applicable criterion in terms of the effect of the proposed development on the areas outside of the subject property. These different contentions as to the applicable criteria will be summarized below.

Based on all of the Protestants' witnesses and the recommendations of authorized commenting organizations, those in opposition contend the following standards to be applicable to the Planning Board's consideration of this proposed development.

- a. Various provisions of Title 16 of the Howard County Code which are applicable to the Department of Planning and Zoning administration and interpretation of the subdivision and land development process, including Sections 16.114(d), 16.116, 16.117, 16.118(b)(2)(6), 16.125, 16.127, 16.1205, 16.1401(b) and 16.1401(b) of the Howard County Code;
- b. The Historic District Guidelines;
- c. Section 100(a) (7) of the Howard County Zoning Regulations;
- d. The Howard County General Plan and the Howard County Historic Preservation Plan;
- e. The definition of "Historic District" in the National Register; and
- f. Covenants restricting the subdivision of the subject property.

Based on these provisions and some unstated provisions, the Protestants contend that the proposed development should be denied based on several similar, overlapping criteria, including

that the development would have an adverse impact on Church Road, a scenic road and/or historic and environmental resources, that the proposed development is not consistent, compatible and/or in continuity with the Church Road neighborhood and the Historic District, that the development would cause traffic hazards, and that the development would violate private covenants.

The Board notes that the Protestants did not produce any evidence to show that any of these standards and criteria are applicable to the Planning Board's review of the proposed subdivision under the R-ED Zoning Regulations, and the Board finds that it could not find any authority that these standards or criteria are applicable to the Planning Board's decision-making responsibilities in this matter. The Board also notes that this proposal is not scheduled for a hearing and decision before the Planning Board until the Petitioner has met all the above mentioned subdivision and land development regulations administered by the Department of Planning and Zoning, pending any waiver matters.

As to the actual applicable criteria in Section 107.0.F.6.c. of the HCZR, which the Planning Boards finds it must apply, the Board is persuaded, based on the testimony of Ms. Tuite and DPZ's Technical Staff Report information as provided in the Board's Findings of Fact 1 and 4, that setbacks, landscaped buffers, or other methods are proposed by the Petitioner to buffer the development from existing neighborhoods or roads, especially from scenic roads or historic districts.

The Board is persuaded, based on the testimony of Ms. Tuite and DPZ's Technical Staff Report information as provided in the Board's Findings of Fact 1 and 4, that the minimum 35 foot buffer from Church Road, which is located in an open space lot to be owned and maintained by the homeowner's association, rather than in a lot to be owned by a private lot owner, along with the 35 foot buffer provided on three sides of the subject property, the existing landscaping, trees and vegetation, additional tree plantings, setbacks and berming would provide a buffer between the proposed development and Church Road and the existing neighborhood in the Historic District. While the Protestants opined that a greater buffer was necessary, the Board notes that the combination of the buffer and setbacks proposed in the petition result in comparable distances between the proposed houses on the Lacey property and Church Road to those which presently exist between other houses in the Church Road neighborhood and Church Road.

While the Board notes the testimony of Ms. Taylor in Finding of Fact 3 that the lot sizes in the proposed development are roughly ½ the size of the lots in the Historic District-designated “Woods” development across Church Road and the lot widths in the proposed development are roughly 2/3 of the lot width of “the Woods” lots, lot size and lot width relate to the Protestants’ inapplicable “compatibility” contentions which the Board has rejected above, but not the setback and buffer criterion of Section 107.0.F.6.c. of the HCZR.

The Board is persuaded that the setbacks from the proposed development’s three lots east of the entrance road to Church Road are substantially similar to the setbacks from the Historic District-designated “Woods” development and Church Road and are comparable to the setbacks from the Historic District-designated “original” homes east of the subject property and Church Road. In fact, the Board notes that with respect to the proposed setbacks from the proposed houses in the Petitioner’s development and the closest home in the Historic District-designated neighborhood, the Taylor property, Ms. Taylor testified that she had no objections to the 160 foot setback between her house and the closest proposed house location in the proposed development, lot 11. The Board notes that the proposed setbacks between the Petitioner’s proposed lots and the Taylor’s home are greater than the setbacks between the Taylor property and its “original” home neighbors to the east, and greater than the setback between the easternmost lot in “the Woods” development and the “original” home to the east across Church Road (the Peach property).

The Board also notes that moving the entrance to the proposed development to a single consolidated location away from the existing driveway serving the Taylor and Duffy Properties provides an additional buffering method for those Historic District-designated properties.

7. At the conclusion of the hearing on this matter, Mr. Taylor contended that the Petitioner did not have a sufficient property interest in the subject property to pursue this proposal before the Planning Board and asked the Board to dismiss the petition for lack of jurisdiction. Mr. Taylor’s contentions were based on two interrelated grounds:

a. Only two of the three Trustees, Charles T. Lacey, Sr. and Karlos Lacey signed one Planning Board application as shown on Protestant’s Exhibit 16, which was introduced into the record, and all three trustees, as owners of the subject property, were allegedly required to sign the application under the Trust; and

b. All three Trustees, Charles T. Lacey, Sr., Karlos Lacey and Charles T. Lacey, Jr. signed another application, as shown on Protestant's Exhibit 17, which was introduced into the record, but the trustees did not sign the application with the allegedly required "Trustee" designation.

Petitioner, through its legal counsel Mr. Erskine, in opposition to the Protestants contentions on this issue, introduced into the record the Revocable Trust Agreement for the Lacey Family Revocable Trust, Petitioner's Exhibit 7, Section 8.05 of which provided that "if in the sole judgment of the other Trustee, any individual Trustee is not readily accessible. . . as to be unable practically to signify approval or disapproval of any proposed action by the Trustees, then the other Trustee may take whatever action such other Trustee considers advisable without obtaining the approval of the individual Trustee. . .". Mr. Charles T. Lacey, Jr. testified that he was on a business trip and could not sign the application (Protestant's Exhibit 16), so that his mother and father as the other two trustees took the action they thought advisable by signing the application.

In addition, Petitioner's Exhibit 7 also contained a Resolution of Trustees of the Lacey Family Trust, signed on November 8, 2016, after Protestants' made their contentions of lack of property interest by the Lacey Trustees, signed by all three trustees, as Trustees, that confirmed the signing of two of the three trustees to be a binding act of all three Trustees.

Mr. Taylor contended that this Resolution could not relate back to the time of the filing of the application, and that Section 8.05 of the Revocable Trust Agreement did not authorize two of the three Trustees to act on behalf of the Trust.

The Board notes that all three Trustees were present at most, if not all of the hearings on this matter, and none of the Trustees ever objected to the Board's consideration of the petition.

Based on the above, the Board is persuaded that sufficient evidence was produced to show that the Lacey Trust is authorized to pursue this petition to develop the subject property originally and by valid confirmation.

## **CONCLUSIONS OF LAW**

1. Petitioner, as one seeking the Planning Board's approval of its Preliminary Equivalent Sketch Plan for a residential subdivision consisting of 13 single-family detached lots and 5 open

space lots in the R-ED Zoning District, pursuant to Section 107.0.F.b. of the HCZR, has the burden of demonstrating that the criteria of Subsections a. through c. of that section has been met, in order for the Board to approve the above-mentioned Plan.

2. There is sufficient evidence in the record as identified in the Board's Findings of Fact above, for the Board to conclude that the Petitioner has met its burden of demonstrating that it has satisfied the above-cited criteria for approval.

3. For the reasons stated in the above Findings of Fact, the Board concludes that Petitioner has conclusively established through the evidence in the record that the following criteria for approval have been met by its proposal:

a. The proposed layout of lots and open space effectively protects environmental and historic resources.

b. Buildings, parking areas, roads, storm water management facilities and other site features are located to take advantage of existing topography and to limit the extent of clearing and grading.

c. Setbacks, landscaped buffers, or other methods are proposed to buffer the development from existing neighborhoods, especially from designated scenic roads or historic districts.

4. The Board concludes that the Petitioner, the Lacey Property Revocable Trust, through its Trustees, has a sufficient property interest to pursue this proposed subdivision of land, and has sufficiently evidenced that intent for the board to consider and make a decision on this petition.

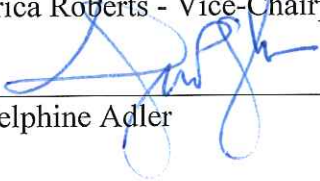
For the foregoing reasons, the petition of Charles T. Lacey, Trustee, Karlos Lacey, Trustee, and Charles T. Lacey, Jr., Trustee, for approval of a Preliminary Equivalent Sketch Plan, SP-15-013, for the subdivision of 13 single-family detached residential lots and 5 open space lots on 8.55 acres of land zoned R-ED, on this 2<sup>nd</sup> day of March, 2017 is APPROVED by the Planning Board of Howard County, Maryland..




HOWARD COUNTY PLANNING BOARD

  
Phillips Engelke - Chairperson

  
Erica Roberts - Vice-Chairperson

  
Delphine Adler

  
Ed Coleman \*

  
Jacqueline Easley\*\*

*\* Ed Coleman was appointed to the Planning Board by County Resolution on October 17, 2016 after this hearing commenced. Mr. Coleman hereby certifies that, prior to participating in this decision, he has listened to all the recorded proceedings for PB 418 and has reviewed all the evidence submitted in the record.*

*\*\*Jacqueline Easley, who was absent during portions of the hearings on this matter, certifies that, prior to participating in this decision, she has listened to a recording of the portion of the hearing for which she was not present and has reviewed all of the evidence submitted for the portion of the hearing for which she was not present.*

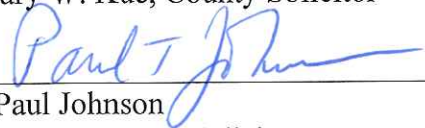
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PB Case No. 418

ATTEST:

  
Valdis Laxdins  
Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY:  
HOWARD COUNTY OFFICE OF LAW  
Gary W. Kuc, County Solicitor

  
Paul Johnson  
Deputy County Solicitor

LIST OF APPLICANT'S EXHIBITS:

- Exhibit No. 1 – *Development Concept for Lacey Property*
- Exhibit No. 2 – *Aerial photos of 3538 Church Road property (1943-2015)*
- Exhibit No. 3 – *Chapter 5 of the DPW Design Manual (stormwater management)*
- Exhibit No. 4 – *Design of New Subdivisions (Historic Commission Criteria)*
- Exhibit No. 5 – *Map of Ellicott City Historic District Boundary*
- Exhibit No. 6 – *Exhibit of location dimensions to and from adjoining properties*
- Exhibit No. 7 - *Lacey Family Revocable Trust*

LIST OF PROTESTANT'S EXHIBITS:

- Exhibit No. 1 – *A notebook of Lacey Property zoning history and plat*
- Exhibit No. 2 – *Forest Resource Management Plan*
- Exhibit No. 3 - *A collage of photos of existing homes on Church Road*
- Exhibit No. 4 – *A letter from Ms. Marydele Donnelly*
- Exhibit No. 5 - *A PowerPoint presentation about environmental issues*
- Exhibit No. 6 – *A PowerPoint presentation about historic Upper Church Rd.*
- Exhibit No. 7 – *Statement from Denise Cortis opposing Lacey subdivision*
- Exhibit No. 8 – *Preservation of Architectural and Visual Quality \**
- Exhibit No. 9 – *ZB Case 762 "Decision and Order"*
- Exhibit No. 10 – *Newspaper article featuring the Woods at Park Place \**
- Exhibit No. 11 – *A letter from Beth Burgess, Exec. Sec. for Historic Commission*
- Exhibit No. 12 – *A letter from the Howard Co. Historic Preservation Commission*
- Exhibit No. 13 – *A list of historic sites without structures*
- Exhibit No. 14 – *A letter from Nicholas A. Redding, Dir. of Preservation Maryland \**
- Exhibit No. 15 – *An email from Fred Dorsey, Pres. of Preservation Howard Co. \**
- Exhibit No. 16 – *Copy of a deed for 3538 Church Road*
- Exhibit No. 17 – *A copy of the Certification of Application filed for SP-15-013.*

**\* Denotes that the exhibit was submitted for identification purposes only.**