

SAVAGE MILL REMAINDER, LLC (Jay Winer) and * **BEFORE THE**
HOWARD COUNTY GOVERNMENT * **PLANNING BOARD OF**
(DEPARTMENT OF REDCREATION AND PARKS) * **HOWARD COUNTY, MD**
(John Byrd, Director) *
PLANNING BOARD CASE NO. 424 *
* * * * *

DECISION AND ORDER

The Planning Board of Howard County, Maryland (“the Board”), held a public hearing on March 16, 2017 (and continued on June 15, 2017, August 29, 2017, October 19, 2017 and November 21, 2017) in accordance with Section 107.0.F., 108.0.G.2., 108.0.G.3 and 111.1.F. of the Howard County Zoning Regulations, to consider the petition of Savage Mill Remainder, LLC (references herein to “Petitioner” are to Savage Mill Remainder, LLC alone) and Howard County Government, Department of Recreation and Parks for approval of a Preliminary Equivalent Sketch Plan (SP-15-017, The Settlement at Savage Mill) for a total of six (6) single-family detached (SFD) lots, twelve (12) duplex units, seventeen (17) townhouse units and five (5) open space lots to be developed by Petitioner, consisting of 7.85± acres of land zoned Business: General (B-2), Residential: Historic- Environmental Development (R-H-ED) and residential: Single (R-20) The subject site is located on 8400, 8550 and 8554 Fair Street in the Sixth Election District of Howard County, Maryland, identified as Tax Map 47, Grid 11, Parcels 92 and 93. Adjoining properties are zoned R-20 and B-2.

The notice of the public 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 Board’s Rules of Procedure, the reports and official documents pertaining to the Petition were incorporated into the record of the hearing, including the Preliminary Equivalent Sketch Plan, Certificate of Advertising, Certification of Posting of the property, the Fifth Edition of the Howard County Subdivision and Land Development Regulations, the Howard County Zoning Regulations, effective October 6, 2013, the Adequate Public Facilities Ordinance, the Howard County Design Manual, the Howard County Forest Conservation and Landscape Manuals, the Technical Staff Report of the Department of Planning and Zoning, and the Reports of the responding reviewing agencies.

The Department of Planning and Zoning (“DPZ”) in its Technical Staff Report recommended approval of the Preliminary Equivalent Sketch Plan, SP-15-017, subject to the remaining comments from reviewing agencies, the Subdivision Regulations, Alternative Compliance approvals, approval of the Land Swap, and any Conditions of Approval by the Board. It was indicated in the Technical Staff Report that all requirements for subdivision of the site in accordance with the R-20/R-ED and R-H-ED Zoning Regulations had been met, environmental resources would be protected to the extent possible, certain areas of forest were preserved, and all building and project boundary setbacks were met.

PRELIMINARY MATTERS

1. Mrs. Susan Garber, representing the Savage Community Association (“the Association”), asked that the case be delayed. Based, arguing that the R-H-ED Zoning District is not found in the Planning Board’s Rules and Procedures Manual. Petitioner responded that the Board has jurisdiction to make a decision under the Howard County Code and that the procedural rules outlined in the Rules and Procedures Manual are non-substantive. A motion to deny the request for delay was made by Jacqueline Easley and seconded by Ed Coleman. The motion carried.
2. The Association, asked that the case be delayed until the Historic Preservation Commission (“HPC”) can make a decision on the proposal. Petitioner responded that the HPC would make a decision after the Board’s review. A motion to deny the request for delay was made by Ed Coleman and seconded by Jacqueline Easley. The motion carried.
3. The Association, asked that the case be delayed or dismissed because a parcel identified “Parcel 87” was not included as part of the Staff’s Technical Report nor was this parcel number indicated on the Preliminary Equivalent Sketch Plan. The Association contends that the road bed underneath the proposed extension of “Washington Street” is part of Parcel 87.

Petitioner responded that the County, most specifically the Department of Public Works, Real Estate Services, would conduct a deed and title search at Final Plan stage to confirm the parcel numbers involved. This procedure to review deeds and titles was confirmed by DPZ Staff.

A motion to deny the request for delay or dismissal was made by Ed Coleman and seconded by Jacqueline Easley. The motion carried.

4. The Association asked that the case be delayed until all remaining Subdivision Review Committee (SRC) comments have been addressed, clarification on the alternative compliance request has been provided, and further details on the processes involving approvals of the land swap have been provided. Petitioner responded that it was not untypical for the Board to review and approve projects subject to remaining SRC comments and other related Matters be addressed. This was confirmed by DPZ Staff. In addition, the items listed by the Association as issues are not part of the criteria being considered by the Board, according to DPZ Staff.

A motion to deny the request for delay was made by Ed Coleman and seconded by Jacqueline Easley. The motion carried. The motion carried.

OPENING STATEMENTS

1. The Petitioner waived their right to opening statements.
2. The Association gave an opening statement.

PETITIONER'S TESTIMONY

1. Mr. Peter Stone of Pennoni Associates, Inc. testified first for the Petitioner. He presented an overview of the history, evolution and environmental design of the Preliminary Equivalent Sketch Plan testifying how the Preliminary Equivalent Sketch Plan meets each of the three Criteria for Planning Board Approval per Sections 107.0.F., 108.G.2, 108.G.3 and 111.1.F. of the Zoning Regulations.
2. Mr. Ed Coleman, Planning Board member, asked Mr. Stone about the genus and species of the specimen trees on site. Mr. Stone confirmed that the majority of the specimen trees were Tulip Poplar. Mr. Coleman also asked if a gravel parking lot that is proposed to be graded and reforested is used for overflow parking by The Mill. Mr. Stone responded, "it is not".
3. Ms. Jacqueline Easley, Board member, asked Mr. Stone if the County or Petitioner was going to restore the existing gravel parking area. Mr. Stone responded that the Petitioner would restore the parking area as part of the land swap agreement. Ms. Easley then asked if any environmental features would be disturbed if the land swap was not approved. Mr. Stone replied that certain areas of steep slopes would be disturbed if they were to use the alternative design that did not involve the land swap. Ms. Easley asked if the State Department of Natural Resources ("DNR") had taken into account the land swap in their Heritage Letter. Mr. Stone explained that DNR does not review any specific subdivision proposals, but instead looks only at the parcel or parcels of land involved.
4. Chairman Engelke asked Mr. Stone to indicate the location of the Storm Water Management ("SWM") devices and to explain how bio-retention facilities and level spreaders functioned.
5. Mr. Stuart Kohn, Laurel resident, on his own behalf, asked Mr. Stone to explain the definition of "successional forest".

Mr. Kohn asked Mr. Stone about the necessity of the land swap to the proposed subdivision layout and he inquired if density increased with the proposed layout. Petitioner objected to these questions on the grounds of relevance to the criteria. Mr. Kohn asked Mr. Stone to indicate exactly how many trees were being removed with the project. Mr. Stone responded that he was unsure as to the exact number of trees; he stated that the County only required overall acreage of clearing and the number of specimen trees proposed for removal. Mr. Kohn asked how the proposal would limit the extent of clearing and grading. Mr. Stone stated that the project was a more compact project than might otherwise be proposed, and is to be located on the more level portion of the property, thus reducing the amount of cut and fill. Mr. Kohn inquired about the land gained and given regarding the land swap. Mr. Stone responded that the developer was proffering 2.77 acres in return for 2.73 acres from the County. Mr. Kohn again inquired if the use of park land resulted in a gain of units. Petitioner objected based on relevancy to the criteria at issue before the Board. Mr. Kohn asked about required landscaped buffers and the height of said landscaping and how it would protect against visual impacts. Mr. Stone reviewed the various required buffers and the type of planting material that would be used.

6. Ms. Marie Raven, Laurel resident, on her own behalf, asked for clarification on the removal of tulip poplar trees which are known to have "fast growth but weak wood" and the replanting of those types of trees again on site. Mr. Stone explained the difference between landscape and forest conservation

requirements noting that Tulip Poplars are native trees and are favored trees to be used in reforestation projects. Ms. Raven asked about the SWM facilities and their setback from the stream versus proposed dwellings and their required setback from the stream. She questioned if the SWM outfall was considered a structure and if it had to respect the same setback. Mr. Stone replied that outfalls are not structures. Ms. Raven asked how a level spreader would help to prevent washouts in relation to the existing park trails. Mr. Stone explained how a level spreader works. She asked about the final destination of the runoff from the project. Mr. Stone explained how runoff is treated and then ultimately exits in the area of the level spreader. Ms. Raven asked about the height and scale of trees shown in the detailed site section, "North and South". Mr. Stone said the detail was based on site visits and indicates a 60' tree based on height at maturity.

7. Ms. Victoria Laidler, resident on Fair Street, on her own behalf, inquired about the rate of water flow from a level spreader versus a pipe. Mr. Stone responded that both dissipate the energy of the water flow but that at this point in the process there has not been enough engineering to determine the exact rate of flow. Ms. Laidler asked about snowmelt and its treatment, especially in the alleys. Mr. Stone stated that all water flowing from the site would be treated in one of the SWM facilities before discharge. Ms. Laidler asked for clarification on what existing trails would be impacted by the proposal. Mr. Stone indicated the access to the gravel parking area would be removed and restored with forest. Mr. Stone stated that a trailhead would be developed at the end of the extension of Washington Street and residents could access this from the use of the new public road section. He also stated that there has not yet been any discussion about linking the pathway instead behind the proposed single family residents to avoid the use of the new sidewalk system through the proposed development.
8. Mr. Dale Fixsen, resident of Commercial Street, on his own behalf, inquired about the amount of water the large SWM pond can capture. Mr. Stone said less than half of the 19,000 total cubic feet that runs off from the property would be captured by this pond. The main purpose of the large pond is to treat runoff from Washington Street. There are also 24 smaller facilities proposed. Mr. Fixsen asked about the slope from the outfall of the pond. The minimum slope that the Soil Conservation District permits from an outfall is 10%. This project is less than 10% at that location. Mr. Fixsen then asked about the scale and elevation of the river and building site. Mr. Stone responded that the site is generally 100 feet above the river and the nearest structure is about 300 feet from the river, on a 3:1 slope.
9. Mr. Brent Loveless, Savage resident, on his own behalf, had several questions concerning the proposal in relation to the Savage National Register Historic District. Petitioner objected to his questions, stating his questions were not relevant to the Board criteria. Mr. Loveless was told by the Board that his questions would be better suited for an expert witness. Petitioner indicated it would call later in the proceedings.
10. Mr. Jervis Dorton, Columbia resident, on his own behalf, expressed concerns with the proposed evergreen buffer and survivability of these trees adjacent to the established deciduous forest. Mr. Stone responded that the intent was year-round screening as requested by the Design Advisory Panel (DAP) and members of the community. Mr. Dorton then inquired as to why the street scape and layout were not discussed. Petitioner objected based on relevancy to criteria. Mr. Stone clarified that the project is designed to be a compact development, with internal open space.

11. Mr. Kevin Burke, Savage resident, on his own behalf, inquired regarding the ability of the proposed SWM to handle something larger than a 10-year storm. Petitioner objected on relevancy and Chairman Engelke indicated that the only requirement is for SWM to address a 10-year storm. Mr. Burke then asked about the maintenance of the facilities. Mr. Stone briefly explained maintenance procedures and indicated that the maintenance plan would be reviewed at Final Plan stage. Mr. Burke asked about provisions for neutralizing road salt on impervious surfaces. Mr. Stone stated that salt would be treated in the micro-biorentention facilities. Mr. Burke asked Mr. Stone to explain how a level spreader gets integrated into the design of the project and would it be contained within private or County property. Mr. Stone indicated that the level spreader would be concealed and would probably be located within County owned land with an established maintenance agreement. Mr. Burke then inquired about the restoration process of the gravel parking area and the cubic yards that would be removed. Mr. Stone indicated that the gravel would be removed and then topsoil would be placed over top. Mr. Stone did not know the cubic yards involved because an earthworks analysis has not been completed at this point. Mr. Burke asked about the existing forest conservation easements both in and adjacent to the site and if they will be impacted. Mr. Stone replied that most of those easements would be retained and not disturbed. A small area would be impacted and then replaced. All easements would be protected during clearing and grading activities. Mr. Burke then asked about sediment and erosion control measures. Mr. Stone stated that this issue would be reviewed in further detail at Final Plan stage and soil control measures would be reviewed by the Soil Conservation District.

12. The Association asked Mr. Stone to point out areas of pervious pavement and to explain why it was being used only in limited areas. Mr. Stone explained that the Department of Public Works (DPW) has restrictions on pervious pavement in rights-of-way and that there are increased maintenance obligations with maintaining pervious pavement correctly. The Association then asked Mr. Stone to indicate areas of proposed clearing, the Limit of Disturbance (LOD), and those specimen trees proposed to be removed, and to explain the difference between "area of development" and LOD. Mr. Stone explained these topics. The Association then asked Mr. Stone to point out areas of erodible soils on the plan and to explain why the townhome in the southern portion of the project, located in an area of erodible soils, wasn't moved elsewhere. Mr. Stone explained that these soils were stable and mostly covered by asphalt and there was no substantive benefit for townhouse relocation. The Association then inquired about steep slope regulations and how steep slopes are defined by different reviewing agencies. Petitioner objected on relevancy. The Association asked Mr. Stone to explain the environmental benefits between a compact vs. non-compact project. Mr. Stone complied. The Association then had questions about open space requirements. Mr. Stone explained that open space requirements are being exceeded by this project overall, noting that the R-H-ED Zoning District has no open space requirement. However, open space for the project would be spread throughout the project, in both the R-20 and R-H-ED portions of the project. He pointed out the areas of open space and what each open space would be used for, including passive and active recreational opportunities. The Association asked if there was a reason that the developer did not proceed with the initial Environmental Concept Plan (ECP-14-029). Mr. Stone explained that a councilperson and members of the community approached the developer to consider a land swap and the design shown under ECP-15-053, which incorporates the land swap.

13. Mr. John Garber, Laurel resident, on his own behalf, asked Mr. Stone to confirm that the initial ECP did not involve a land swap and to confirm that additional right-of-way would be required to complete the extension of Washington Street. Mr. Stone confirmed. Mr. Garber then wanted explanation of SWM facility locations, layout involving public property, and density differences permitted between the two ECPs. Petitioner objected on grounds of relevancy. Mr. Engelke reminded those present that questions must be specific to the current proposal and not a previous ECP. Mr. Garber asked Mr. Stone to explain how the R-20 portion of the property can use the R-ED zoning guidelines and import density. Mr. Stone complied. Petitioner objected to any questions regarding density, based on relevancy to criteria. Mr. Garber then asked for clarification on setbacks. He asked if Washington Street always occupied the zoning line between R-20 and R-H-ED zoning district and if all setbacks were being adhered to. Mr. Stone indicated that the setback that Mr. Garber was referring to does not apply to rights-of-way, only to adjoining properties that are in different zoning districts.

CONTINUATION: JUNE 15, 2017

14. Ms. Lisa Wingate, a historic preservation consultant testified next for the Petitioner. Ms. Wingate gave an overview of the historic district in Savage, explaining the difference between the National Historic Register District and the local Historic District. Ms. Wingate gave an overview of the history of the site and indicated the boundary of the National Register boundary. Only proposed Lot 35 and Open Space Lot 36 fall within the National Register boundary. The proposed "Settlement at Savage Mill" is on the West edge of the National Register boundary. She then overviewed the proposal and its relation to the Mill and other historic structures along Fair Street. She stated that her presentation was not about architecture of the proposed dwellings and indicated she expected that issue to be addressed with the Historic Preservation Commission at a later date. She discussed the criteria in Subsection 111.1.F.a. (sic) of the Zoning Regulations regarding the proposal layout of the lots and the open space and how they protect and do not harm adjacent historic resources. The new lots are concentrated and buffered on the South, West and North and the Northeast corner by the existing forest. The existing Mill parking lot separates the historic Mill and the adjacent historic district housing from the proposed development. The planned street trees and open space landscaping and screening along the East Boundary will buffer visibility of the proposal. The lot patterns and clusters appropriately respect compatibility the historic district.
15. Mr. John Garber asked Ms. Wingate to explain how this project is compatible with the existing historic structure in terms of setbacks. Discussion ensued between the two parties about setbacks, uniformity and building sizes. Petitioner objected to the questions on lot sizes, based on relevancy to criteria. Chairman Engelke asked that Ms. Wingate clarify layout in terms of the historic resource. She responded that, "the layout effectively protects the historic resource and the size and dimension of lots does not adversely affect the historic resource."
16. Ms. Marie Raven asked Ms. Wingate if the subject property could be added to the National Historic District Register. Ms. Wingate responded that this could occur only if the National Historic Register District were expanded and noted that has not been done in over 40 years. In addition, since there are no standing resources on the property currently, adding the property to the Register would be difficult. Ms. Raven then asked if there had been any excavations on site and Ms. Wingate responded that she

did not know of any. Ms. Raven asked Ms. Wingate to expand on the visual effectiveness of the landscaping from the existing historic district. Ms. Raven asked about lot compatibility and how it will protect existing historic buildings and setbacks. Ms. Wingate reiterated that what occurs outside of the Historic District does not affect the size, shape and setbacks of the resources within the District. Petitioner objected to this last question in terms of relevancy to criteria.

17. Mr. Mark Imlay of the Maryland Chapter of the Sierra Club asked about landscaping and use of certain species of trees of historic significance and warned about the use of non-natives. Petitioner objected on the basis that these are questions asked by a previous witness and that this is not Ms. Wingate's area of expertise.
18. The Association asked Ms. Wingate if it was her desire to have the new development to compliment the historic district. Petitioner objected to this question in terms of relevancy to criteria. The Association then asked questions about landscaping, height and elevation compared to the parking lot and buffer efficiency. The Association asked why the property was not included in the National Historic Register. Ms. Wingate responded she did know. She also confirmed that the property owner must be a willing participant to ask that the property be placed on the Register, but that anyone can ask if a certain property could be eligible for the Historic Register. Ms. Wingate was also asked to discuss existing building and housing elevations and the "compactness" of these structures. Petitioner objected to this based on relevancy. The Association asked if lots could be re-designed so that proposed Lot 35 could be shifted out of the Historic District. Ms. Wingate opined that moving that lot would not make a significance impact on the existing district. Ms. Wingate finished with an overview of the orchard and victory gardens that were previously in place in the 1940s, which were then followed by a Christmas tree farm.
19. Mr. Alan Schneider asked if local support was a critical factor for designating a local historic area. Petitioner objected based on relevancy. Mr. Schneider then asked several questions regarding historic designation, the definition of compatibility, relevancy of structures and areas outside of a historic district, identifying areas of historic significance, identifying historical attractions for visitors, and about State and Federal regulations that govern historic areas. Petitioner objected to each of the questions posed by Mr. Schneider based on relevancy.

Chairman Engelke reminded those present that questions must be relevant to the criteria.

20. Ms. Ellen Long, Savage resident, on her own behalf, asked Ms. Wingate to confirm that this property is located outside of the National Historic Register District. Ms. Wingate stated that except for proposed Lot 35, this project is located outside of the National Historic Register. Ms. Wingate again confirmed that she was hired for her background in historic preservation and her background with working with new projects in historic areas and to comment on the three criteria upon which the Planning Board will make a decision. Ms. Wingate also stated it was her opinion that the design is compatible with the surrounding area.
21. Ms. Christine Dietrich, Savage resident, on her own behalf, asked about compatibility. Mr. Engelke stated that this issue had already been discussed. Ms. Dietrich then asked questions about lot size and setbacks. Petitioner objected based on relevancy to the Planning Board criteria. Ms. Dietrich asked

about R-20 and R-H-ED criteria and the differences between them and asked if Historic Preservation Commission (HPC) criteria were different when reviewing projects in the R-H-ED zoning district. Mr. Engelke stated that these questions are not appropriate for the witness. Ms. Dietrich asked if Ms. Wingate found any existing townhomes within the historic district. Ms. Wingate replied that there are multi-family dwellings in this area and she also stated that the river is also found within the confines of the historic district. Ms. Dietrich asked if the development would be visible from the south side of the river. Ms. Wingate stated, "yes, but minimally". Ms. Dietrich asked if the trail on the south side of the river was historic. Mr. Engelke stated the trail is not part of the discussion. Ms. Wingate stated she could not adequately answer the question but it was not listed as a contributing factor in the historic register nomination. Ms. Dietrich asked for an explanation on topography and then asked if the development, based on elevation, would be visible from the historic district. Ms. Wingate replied, "yes, but that does not mean it would adversely affect the district."

22. Mr. Brent Loveless asked Ms. Wingate to explain her definition of the phrase "effectively protects environmental and historic resources". Ms. Wingate responded, "to do no harm to the historic resource". Mr. Loveless asked if the County uses the terms historic resources or historic structures. Ms. Wingate responded, "the County uses the word "resources". Mr. Loveless asked if the HPC would use the national criteria. Petitioner object based on relevancy. Mr. Loveless asked if the nomination as a historic resource is discretionary to the property owner and if Ms. Wingate knew of any undesignated historic resources or structures or sites outside of but near the historic district. Ms. Wingate responded that she did not know of any undesignated areas or features. Mr. Loveless asked if she had looked at any deeds during her investigation, especially those involving Commodore Joshua Barney. Ms. Wingate responded, "no". Mr. Lovelace asked if prior ownership could be a contributing factor to make sure historic resources are adequately protected. Ms. Wingate indicated that this was not considered when designating the adjacent area as a historic district. A discussion of public support and State involvement concerning the historic district then ensued.
23. Mr. Ronald Coleman, Savage resident, on his own behalf, asked Ms. Wingate to clarify what historic resource meant in terms of the Savage Historic District. Ms. Wingate replies that this would be the Mill itself, the bridge, housing associated with the Mill and other structures associated with the Mill village. Mr. Coleman asked if Ms. Wingate considered the river as a historic resource and will the proposal have no effect on the river. Ms. Wingate stated, based on her historic expertise, the proposal would not significantly affect the topography nor affect the flow and fall of the river.
24. Mr. Kevin Burke asked Ms. Wingate for further explanation regarding State recognition of historic resources. Ms. Wingate responded, discussing designated historic resources and the Mill architecture.
25. Mr. Coleman asked Ms. Wingate to clarify the present use of the Manor House. She stated she believed it is used as a function space, but not a residence.
26. Petitioner indicated Ms. Wingate was its final witness in its case in chief. Mr. Engelke indicated that parties that had remaining questions for Mr. Stone could submit their questions in writing to the Board. Any remaining questions must not be questions that had been answered previously with other witnesses.

On July 6, 2017, the Planning Board opened the hearing to indicate the Settlement of Savage Mill would be continued August 29, 2017.

CONTINUATION: August 29, 2017

27. Mr. David Moore, counsel to the Planning Board was directed to and proceeded to read aloud written questions submitted by Ms. Christine Dietrich, pursuant to the Board's Rules, for Mr. Stone of Pennoni Associates, Inc. to answer. The questions covered a range of topics, including lot size, visibility and views, environmental features, sediment and erosion control and storm water management. Mr. Stone responded to each. An unidentified member of the public objected, alleging that Mr. Stone and the petitioners had been given the questions ahead of time, prior to the actual Board hearing (continuation) date.
28. An executive session was called to discuss process, rules and procedures.
29. Mr. Ronald Coleman submitted questions in writing prior to the continuation of the hearing. He was present at the meeting and was given opportunity to ask his questions of Mr. Stone. He asked Mr. Stone to verify his credentials and then asked various questions regarding the DNR Heritage letter and environmental concerns. He also asked about impervious surfaces and impacts of new housing on those surfaces. Mr. Stone emphasized that the project is meeting all County and State stormwater management requirements.
30. Ms. Ellen Long submitted questions in writing prior to the continuation of the hearing. She was present at the meeting and was given opportunity to ask her questions of Mr. Stone. Questions involved topics such as sediment and erosion control, limits of disturbance, forest cover and clearing. Petitioner objected when Ms. Long submitted testimony instead of questioning the witness, Mr. Stone.
31. Mr. Alan Schneider submitted questions in writing prior to the continuation of the hearing. He was present at the meeting and was given opportunity to ask his questions of Mr. Stone. Mr. Schneider asked that Mr. Stone list specific environmental resources that he had studied and the possible impacts on each of those resources.
32. Ms. Christine Dietrich was given opportunity to ask follow-up questions, subsequent to Mr. Moore reading her questions on her behalf at the beginning of the hearing. She asked Mr. Stone to address the dramatic elevation difference between the project and Savage in general. Mr. Stone indicated that he did not believe that it would be a significant impact based on the existing trees and other elements that will obscure the project. He indicated that he did not believe it would visually impact the existing historic district or Savage Mill trail. She asked how the citizens know that the R-H-ED guidelines are being met. Mr. Stone indicated that County Staff will review against current regulations. She asked that Mr. Stone review the overall planning review process, which he did.
33. Ms. Susan Gray, Highland resident, on her own behalf, asked additional questions of Mr. Stone. He briefly reviewed how the project exceeds the current County Regulations. She then asked questions

regarding the County parkland and proposed land swap. Petitioner objected based on relevancy to criteria.

OPPOSITION'S PRESENTATION

1. Mr. Stuart Kohn, Laurel resident and President of Howard County's Citizen Association, provided testimony indicating that the proposal does not meet the intent of the R-H-ED Zoning district and does not enhance or contribute to the areas historic character. Mr. Kohn also indicated that he did not believe the project met the requirements of the three Board criteria. The project does not sufficiently protect environmental resources nor does it provide sufficient buffering from the surrounding neighborhood and historic district.

Petitioner asked how long Mr. Kohn had been involved with the project and asked if he was aware that members of the opposition had requested the land swap. Petitioner asked Mr. Kohn if he would concur that all of the bulk Regulations had been adhered to. Mr. Kohn could not confirm or give specific examples of how the project did not meet certain regulations or environmental requirements. Petitioner asked Mr. Kohn to explain his definition of buffering verses the Code definitions of buffering and screening. Mr. Kohn indicated that he believed the criteria and the use of the word "buffering" is "generic and up for interpretation".

The Association asked Mr. Kohn to clarify his definition of landscape buffer and whether the proposed buffer would adequately screen the proposed developed. He answered, "no, it would not".

2. Mr. Kevin Burke testified that he was opposed to the plan as presented and did not believe the proposal adequately protects on-site environmental resources. He indicated that there was too much clearing and grading proposed with impacts to steep slopes. He also stated that he would be more supportive if lower density were proposed with more limited grading.

Petitioner objected to any testimony on the subject of density. He then asked Mr. Burke to explain any experience he might have in environmental law. Mr. Burke responded that he was not an expert in environmental law. Petitioner asked Mr. Burke to clarify which resources he believed were being impacted by the proposal. Mr. Burke concentrated his reply on the clearing of forest and removal of specimen trees.

The Association asked Mr. Burke to clarify the location of the specimen trees. Mr. Burke confirmed that the specimen trees indicated on the plan were mostly outside of the Limit of Disturbance and those seven (7) being removed were located within the Limit of Disturbance.

Petitioner asked that Mr. Burke to confirm that the trees being removed were within the limit of disturbance. Mr. Burke responded in the affirmative, but that it was his belief that some of those trees could be saved by re-review of the design and fewer units. Petitioner asked Mr. Burke to confirm that it was not a requirement that the plan lose units but that it was is personal desire that the proposal decrease in density. Mr. Burke responded in the affirmative.

3. Mr. Brent Loveless testified that he was believed that the Savage Community Association should be permitted to submit an alternative plan for the property. He also stated that he believed the project did

not meet the three (3) Board criteria, for several reasons. The reasons included; the central location of the project does not protect the surrounding historic area that is located within the historic register; development is unable to preserve the historic resource; the proposal did not take into account the history of the site in relation to Commander Joshua Barney; Department of Interior Guidelines have been ignored; there may be remains or ruins buried on site that should be confirmed by architectural studies. Mr. Loveless also indicated that he was dismayed that the County had not approached the land owner with an offer to preserve the land as open space or recreational area.

Petitioner objected to any reference to the Department of Interior guidelines as irrelevant.

Mr. Engelke asked if Mr. Loveless could confirm that there are actual ruins on site. Mr. Loveless said he could not, but that is what an archeological study could determine.

4. Mr. John McMalos testified that he believes it will be difficult to dedicate the proposed streets in the development because of their location and the grading and stormwater management control needed for those streets that he is concerned with the slopes and grading so close to the river and its buffer as water and sediment tends to flow downhill.
5. Mr. Kristine Dietrich testified about school availability. Mr. Engelke indicated that this was an issue to be addressed by other parties and not the Board.
6. Mr. Chris Yates stated his concerns on protecting the historic nature of the property and the need for further investigation into the legacy of the property as associated with Commodore Barney.
7. Ms. Lisa Markovitz indicated that the developers were not meeting the burden of proof in terms of the three (3) Board criteria. She concentrated on the issue of the land swap. She indicated that the land the County is getting in return for the swap is not useable as parkland, because it contains large areas of environmental resources; thus, the County would be losing parkland if the swap is approved.

Petitioner asked Ms. Markovitz if she knew that the land swap idea was initially initiated by the community. She responded, "yes", but she understood that the community has since changed their mind. Petitioner asked if Ms. Markovitz believed this was an equitable trade. Ms. Markovitz responded that she believed there were fewer restrictions with the land the developer was receiving than the area it was giving to the County. Petitioner asked that Ms. Markovitz confirm that the proposed homes would be further away from the river. Ms. Markovitz responded, "yes, but not by much". Petitioner asked Ms. Markovitz to clarify why she was testifying on this proposal. Ms. Markovitz responded that she believes there is very little environmental gain with the swap and that there is not a fair trade between environmental gain and parkland gain.

The Association asked Ms. Markovitz to discuss the area of clearing and to render an opinion on the amount of land involved with the land swap and the amount of clearing proposed.

Petitioner objected to the overall question based on the grounds of leading the witness.

The Association re-phrased its question and Ms. Markovitz responded that if the applicant were granted a land swap for additional land, then yes, more land could be cleared.

The Association asked Ms. Markovitz if it was her opinion that if larger units were proposed, could that result in a larger area of impervious cover. Ms. Markovitz responded, “yes”.

8. Mr. Peter Sola outlined his concerns with the Board review of the three criteria and asked that the Planning Board apply “common sense” when making a final decision on this project.
9. Mr. Hiruy Hadgu, expressed his concerns over the fact that remaining Subdivision Review Committee comments had not been addressed and the associated alternative compliance request had not been approved. He also expressed concern that the proposal was based on the approval of the land swap, which had yet to be reviewed and approved. He stated that Planning Board review at this time created a bias to future decisions on the alternative compliance request and the land swap. He indicated that the developer should own the land that is being developed before the project should be allowed to be reviewed by the Planning Board.

Petitioner objected based on the fact that the land swap was not the issue being discussed and was not part of the Planning Board’s criteria.

The Association asked Mr. Hadgu his opinion on an alternative design and the timing and process of both the proposal being presented and the land swap.

Mr. Phil Engelke, Chair, reminded those present that the land swap was not the issue being discussed and to stay focused on the three criteria at hand and to make attempt to not ask repetitive questions.

10. Ms. Barbara Sollner-Webb stated her concerns with the land swap and conveying useable parkland to a developer. She stated that this proposal was “out of character with the surrounding historic neighborhood”.

Chairman Engelke re-iterated that the issue of the land swap was not to be discussed at this hearing.

Ms. Sollner-Webb then continued and voiced her concerns on tree clearing, impacts to slopes and lack of sizeable landscaping. She also indicated that she believed at least one County Council/Zoning Board member would likely oppose the plan.

Petitioner questioned Ms. Sollner-Webb on her level of expertise on the subject. She responded that she had been part of the Patuxent River Commission for 15 years.

11. Ms. Susan Gray initially submitted a document for Planning Board review and asked that it be accepted as evidence and be marked as an exhibit.

Petitioner objected on the grounds that it was a Department of Natural Resources Open Space Manual that had no bearing on this proposal. He stated that it should be used for identification only but not be submitted as an exhibit.

Chairman Engelke permitted the document to be submitted as information only.

Ms. Gray indicated that it was her opinion that the developer was not automatically granted 35 units and this was the maximum density permitted for this proposal. Discussion ensued concerning the project meeting minimum County standards and that the Board and County are under Federal

Regulations regarding the portion of the property involved with the land swap and purchased with open space monies.

12. Mr. Russell Donnelly indicated that it was his opinion that because part of the proposal was involved with the Department of Natural Resources parkland, the County must be provided with a federal historic assessment and a federal environmental impact statement of the land.

CONTINUATION: October 19, 2017

13. The Association submitted Opposition's Exhibit #1 "Particularly Pertinent Policies From Plan Howard 2030, The General Plan" and began with a general overview of the General Plan. Petitioner objected that the testimony needed to be specific to the project. Chairman Engelke sustained the objection. The Association then gave an overview of the opposition's concerns and briefly outlined each major bullet in its forthcoming presentation. The Association offered as evidence a letter from The Savage Community Association to the Department of Recreation and Parks dated March 9, 2016 concerning the proposed land swap. Chairman Engelke indicated that the Association could not admit this letter as an exhibit since the land swap was not a permitted topic of discussion.
14. Mr. John Garber submitted as Exhibit #2, his resume. He then presented a birds-eye view of Savage as it exists today as well as topographic information as it pertained to the historic mill. He touched upon Criteria "A" and showed the Board three main areas of the project; the area under contract, the right-of-way and the parkland area. He discussed the extent of proposed clearing, existing and proposed forest conservation easements and the limited area of proposed pervious pavement. Mr. Garber also expressed his concern about obtaining the right-of-way area for the future project. Petitioner objected to any comments regarding forest conservation because this topic is not specifically part of the Planning Board criteria.

The Association asked Mr. Garber to outline the extent of clearing within the project area. Mr. Garber did so and indicated that there would be no environmental features (trees) left within the project area. Mr. Garber then went on to review the proposed stormwater management features and to provide his concerns about erosion and the taxpayer burden for any required upgrades, improvements or emergency repairs.

Mr. Garber then reviewed Criteria "C" and the landscaping of the proposed project. He reviewed the different landscaping arrangements permitted by the Landscape Manual and indicated that he believed the proposed type "A" landscaping did not meet the definition of "buffer". He acknowledged that the developer was proposing additional landscaping but that it would take several years for the landscaping to mature and that it was his belief that even at maturity, the landscape edge would not be a sufficient screen or buffer between the parking lot and proposed development.

Petitioner asked Mr. Garber how he obtained some of the elevations for his presentation. Mr. Garber replied that he got them from the Design Advisory Panel (DAP) submittal. Petitioner asked Mr. Garber to confirm that he did not present any evidence concerning setbacks. Mr. Garber replied that he did not because he felt it was not relevant to his discussion since the only access point to the project would be

from Washington Street extended. Petitioner asked Mr. Garber if he could confirm that no steep slopes were being created with the project. Mr. Garber responded in the affirmative. Petitioner asked Mr. Garber if he believed that trees were environmental features. Mr. Garber responded that “yes, trees are part of the environment and therefore he sees them as environmental features”. Petitioner asked Mr. Garber to explain his comments on “compactness” and proposed density of housing. Mr. Garber responded that there were apartments and townhouses within the periphery of Savage but not within the historic district itself.

Mr. Kevin McAliley, Board member, asked Mr. Garber if he believed the sizes of the trees mattered with regard to the required landscape buffer. Mr. Garber responded that his concern was that the landscape plan indicates the ultimate mature height of trees and shrubs and even at maturity, those trees and shrubs would not be of sufficient height to shield the proposed dwellings. Mr. McAliley then asked Mr. Garber if he believed that if there should be more trees planted along the site line. Mr. Garber responded perhaps it would help if landscaping was added further west.

Mr. Phil Engelke, Chair, asked Mr. Garber if leaving some of the existing trees would result in an adequate buffer. Mr. Garber responded that if existing trees are about 60 feet tall, then that would certainly enhance the buffer planted in front of the existing treeline.

Petitioner asserted that it does not matter if the trees reach the height of the houses, because the buffer is not meant to conceal the housing stock.

Mr. Garber indicated that, in his opinion, the landscaping will never reach a height to provide an adequate buffer.

The Association asked Mr. Garber to explain his concerns with the proposal as it pertains to topography. Mr. Garber explained that it was his opinion that the proposal does not take advantage of existing topography and this site does not exist in isolation. He opined that grading could affect surrounding slopes and topography in a negative way.

Mr. McAliley, Planning Board member, asked Mr. Garber about a rain garden in the northwest corner of the project and Mr. Garber proceeded to give an overview on the project’s erosion control measures and the importance of erosion and sediment control so that the surrounding slopes and trail system are not affected by runoff. Mr. Garber submitted Opposition’s Exhibit #3, a copy of the PowerPoint Slides presented by John M. Garber.

15. Mr. Fred Tutman, Patuxent River Keeper, gave an overview of the Patuxent River, and environmental site design. He indicated that the project is in a “targeted ecological area” per the Department of Natural Resources site map. Petitioner objected to Mr. Tutman’s discussion of DNR regulations, as they have no bearing on the Planning Board criteria. The Association responded that the DNR guidelines concerning the river and it being a “targeted ecological area” have bearing on the criteria. Mr. Phil Engelke, Chair, reminded the Association and Mr. Tutman that they are relegated to the three criteria, as outlined in the Howard County Zoning Regulations.

Mr. Tutman continued to discuss the State Inventory and his belief that the County is required to protect those environmental resources outlined in the Inventory.

Chairman Engelke reminded those present that the Board was unable to issue a decision based upon criteria or material put forth outside what is outlined in the Code.

Petitioner objected that Mr. Tutman is not an expert witness and has no first-hand knowledge on this subject, that he was repeating information he has found on the Internet or read about. Chairman Engelke overruled this objection but warned Mr. Tutman to provide information specific to the site and current proposal in front of the Board.

Mr. Tutman went on to discuss Forest Interior Dwelling Species and the effect of loss of habitat upon these birds. His belief is that the proposal is not effectively protecting the environment, that you cannot remove this amount of forest and put this density of housing on top of a plateau without adversely affecting the river.

The Association submitted Exhibit #4, a Chart entitled "Protecting Aquatic Habitat Supporting Rare, Threatened and Endangered Species". Mr. Tutman gave an overview of the various types of stormwater management tools that could be applied to the project, including rain gardens and other gravel facilities. There was also discussion on staging of sediment and erosion controls. Mr. Tutman confirmed that flooding of the Patuxent is also a concern, especially during major storm events and that there is an increased likelihood of increased flooding and storm events based on climate change and other factors.

Petitioner asked Mr. Tutman to confirm that the "targeted ecological area" is larger than the proposed building site. Mr. Tutman responded in the affirmative. Petitioner asked if Mr. Tutman had ever looked for the Appalachian Snaketail or the Glassy Darter, or Forest Interior Dwelling Birds on this site or the adjacent river. Mr. Tutman responded that he had never looked for them on site but there is habitat on site conducive to supporting these species as notated by The Department of Natural Resources. Petitioner asked what expertise Mr. Tutman had or empirical evidence that he had gathered that proved that stormwater management would be inadequate for the site. Mr. Tutman confirmed he is not an engineer but said he did walk the site and the river, and he believes that building on top of a slope, adjacent to a river is a risk to the health of the river.

Mr. Coleman, Board Planning Board member, asked if anyone could confirm whether the "targeted ecological area" was designated before, on, or after August 4, 2015, the date of the Department of Natural Resources letter. No one could identify the date. Mr. Coleman asked the Association to confirm that the Department of Natural Resources letter did not prohibit development. The Association confirmed this.

Mr. Kevin McAliley, Planning Board member, asked about the Department of Natural Resources "toolbox" and asked Mr. Tutman to identify some of the tools in the "toolbox" that he thought might be employed for this project, that would result in better stormwater management control. Mr. Tutman reiterated that he doesn't believe that the letter prohibits development, but it is his opinion that the proposed density is excessive and that the tools outlined in both Chapter 5 of the Stormwater Management Manual and the Department of Natural Resources letter should be re-reviewed and incorporated into the design.

16. Dr. Dale Fixsen, Savage resident, overviewed his concerns particular to the Criteria with regards to highly erodible soils and their disturbance, which could easily wash downhill into the river. Mr. Fixsen

moved on to describe how other, new, steep slopes would be created with this project, and topography would be re-arranged. He pointed out that part of the Criteria requires that grading and clearing be limited. He indicated that in excess of 90% of on-site slopes would be impacted. He also indicated his concern with the 250' setback from the stream. He felt that this setback was a standard condition for this zoning district, but that this site is unique.

Petitioner asked Mr. Fixsen to clarify his statement about 90% of the land being

impacted. Mr. Fixsen confirmed that he was concentrating on the approximate 5 acres within the Limits of Disturbance and did not include the area nearest the river that the developer is pulling away from.

Mr. Ed Coleman, Planning Board member, asked how the 250' environmental setback is measured. The consultant indicated it was a horizontal measurement and that in this case, was measured down the hill.

The Association submitted Exhibit #5, PowerPoint slides from his presentation.

17. Mr. John Garber, standing in for "Pastor Menning," gave an overview of the Pastor's background, including his being a member of the historic society. He indicated that the citizens of Savage believe that the existing features outside of the District are indeed significant and do support the district itself. Mr. Garber, on behalf of Pastor Menning, also gave an overview of the history of the land in Savage. Mr. Garber also indicated that there is a sub-committee working to have the historic district extended to include the parcel of land being developed.

Petitioner objected on the grounds that this information is speculative and is not relevant to the project being presented to the Board, and this is not information that can be used by the Planning Board. Chairman Engelke sustained the objection.

The Association stated that it challenges Ms. Lisa Wingate's (historic preservation consultant) opinion regarding the relationship of the National Historic Register and the County's historic district, indicating Ms. Wingate had down-played the significance of the historic resources in Savage.

Petitioner objected, stating that the Association's interpretation was not an accurate representation of what Ms. Wingate had previously stated and asked that questions be re-phrased without reference to Ms. Wingate's testimony. The Association asserted that that Howard County residents value their historic resources over and above what the Federal Government designates in their register and presented an overview of the historic structures in Savage and their locations. Mr. Garber testified that the reason that more people do not put their homes within the County's Register is due to the fact that they can't afford what the County's designation would require of them in terms of materials required to be used and the tax credits offered by the County are more suited for commercial owners and rental properties. Mr. Garber again indicated that the historic town would not be sufficient buffered from the newly proposed development.

Petitioner asked Mr. Garber to confirm which houses are actually on the County's Inventory and which ones are on the National Register. Petitioner asked Mr. Garber to confirm whether or not he believed the newly proposed dwellings would be injurious to the district. Mr. Garber confirmed that "yes, he believed they would negatively impact the historic nature of Savage and that the purpose of the R-H-

ED zoning district is to contribute to the historic character of the area”. Petitioner objected that this was not part of the criteria under the Planning Board’s discretion.

18. Mr. Jervis Dorton testified that it was his opinion that the proposal does not protect historic or environmental features and that it uses “typical Bozzuto product”, trying to fit it into the environment. He indicated concerns with lot sizes, setbacks, distances between units and overall design. He opined that there are no 3-4 story buildings within the existing neighborhood.

Petitioner objected on the basis that the Planning Board is not an architectural review committee and these issues and topics are not under Planning Board purview. Chairman Engelke sustained the objection.

The Association asked Mr. Dorton to outline aspects that he believed would improve the plan, especially in terms of the criteria. Mr. Dorton indicated that the landscaping as proposed does not constitute a buffer and that a more significant buffer should be provided. He then attempted to review a Powerpoint slide proposing an alternative design.

Petitioner objected on the grounds that the Planning Board was not tasked with review of alternative proposals; they must base their decision on the current proposal put in front of them. Chairman Engelke upheld the objection.

19. Ms. Marie Raven testified that she had recently built her own home on Gorman Road. She gave an overview of the design practices she incorporated into her own home and indicated that she wanted the project to be both aesthetically pleasing and to meet the Planning Board criteria; that it should be altered, as needed, to meet the intent and purpose of the R-H-ED zoning district even at the expense of losing units.

The Association asked Ms. Raven if she believed the current proposal met the Planning Board’s criteria. Ms. Raven answered “no” and outlined her concerns over the adjacent “Riverwalk” community. She outlined her concerns with the erosion and stormwater management issues occurring within the Riverwalk community and her fear that these issues will also occur within “The Settlement at Savage Mill”. She stated that almost all forest would be eliminated in the buildable area and the defined environmental features were not being adequately protected and the project ignored DNR’s recommendations. She also expressed concern over long term protection of adjacent park resources, including pathways. She also presented evidence via slide that the project would indeed be able to be seen from Gorman Road, which is across the river from the proposed project.

The Association asked if Ms. Raven had a recommendation for the Planning Board. Ms. Raven stated this proposal does not meet the 3 Planning Board criteria and achieving maximum permitted density should not guide the design process, but the environmental features and historic nature of the area should.

Petitioner questioned asked Ms. Raven if she thought townhomes should not be permitted in the project area. She stated that although townhomes are permitted, single-family development would be easier.

Mr. Kevin McAiley, Planning Board member, asked if she knew the condition and impacts to existing pathways near the proposal. She had indicated that she had not been on the pathways recently, but root

structures can be seen. Mr. McAliley asked if Ms. Raven's concern is strictly about density. She answered that "no, her concern is more about configuration and massing of the stormwater management devices in one areas, that will result in release of runoff in one area, potentially causing negative impacts to the surrounding environment".

CONTINUATION: November 22, 2017

PETITIONER'S REBUTTAL

1. Ms. Lisa Wingate, historic preservation consultant, was asked by the Petitioner to give a brief overview of the proposal in relation to the historic district and existing historic homes. The presentation included slides of various views of the proposal and pictures of the existing housing stock in the historic district. She indicated that the vast majority of the new construction will occur outside of the historic district and will be separated by a parking lot. The barns and orchard existing in the 20th century are gone and that the current area is not virgin forest.

The Association asked Ms. Wingate how she had determined that the masonic hall was a residence. Ms. Wingate replied that Ms. Beth Burgess from the Department of Planning and Zoning, had supplied that information. The Association asked Ms. Wingate to confirm the location of structures in relation to the entrance to the project and asked about existing trees that will be removed. Ms. Wingate confirmed that new housing would be replacing 42+ year old trees but stated that the removal of trees and location of new housing stock will do no harm to the historic district.

The Association expressed concerns over types of proposed housing types and asked for confirmation about apartment buildings. Ms. Wingate responded that the applicant is not obligated to copy the housing stock that is in Savage, but there are existing multi-family structures within the historic district and there will be townhomes proposed within the new development, but not apartment buildings.

2. Petitioner next recalled Mr. Stone to explain the difference between landscape screening and buffering with reference back to the Howard County Landscape Manual. Mr. Stone confirmed that buffering is required for this project and that the developer will be providing more landscaping than what is required by the Manual. Mr. Stone went on to briefly address previous opposition's concerns on storm water management in the adjacent "Riverwalk" community giving a basic overview of water quality and water quantity requirements and those devices being used in that community. Mr. Stone indicated, based on site visit, that stormwater management was functioning appropriately and there was no significant downstream erosion. Mr. Stone went on the show the various stormwater management devices that would be used for the "Savage Mill" project and how they function. The "Savage Mill" project spreads out the various stormwater management devices whereas "Riverwalk" concentrated them more in fewer locations. Petitioner asked Mr. Stone to confirm that stormwater management requirements were regulated by the Department of Planning and Zoning and the Maryland Department of the Environment, and not the Department of Natural Resources. Mr. Stone confirmed this to be correct. Mr. Stone explained why the "DNR Heritage" letter was generated and that the Department of Natural Resources is offering stormwater management guidelines that are general in nature and not necessarily specific to the project under review. Mr. Stone stated that the Department of Planning and

Zoning have stated that the project have met these guidelines “to the extent possible”. The Department of Natural Resources does not have the regulatory authority to enforce these guidelines. It is Mr. Stone’s belief that this project meets those guidelines “to the extent possible”.

In response to questions from the Association, Mr. Stone confirmed that at this preliminary stage, the Petitioner proposes more landscaping than what is required. The Association asked if Mr. Stone would be presenting the final landscape plan to the Planning Board for their further review. Mr. Stone indicated that the Planning Board has the right to request to see the proposal once again at Site Development Plan stage. Planning and Zoning Staff confirmed that the Planning Board had the right to request to review the proposal again at Site Development Plan stage. The Association asked Mr. Stone about his site visit to “Riverwalk” and how long it had been since it rained at the time of the visit. Mr. Stone responded that he did not know. The Association asked how much pervious pavement was proposed with “The Settlement at Savage Mill” proposal and Mr. Stone replied that there is less proposed than is present at “Riverwalk”. The Association asked Mr. Stone to explain the micro-bioretenion facilities and level spreaders being proposed in the current proposal and asked if a paved pathway was being proposed in the project and how erosion would be addressed for the pathway should it occur. Mr. Stone indicated that stormwater management for any paved pathway would be required and that he believed that erosion issues for “Riverwalk” were not caused by the stormwater devices that were being used on that site. The Association asked who would own the land where the level spreader for “The Settlement at Savage Mill” would be located. Mr. Stone explained he was unsure, but that it would be located in open space, dedicated back to the County or the County could maintain an easement over that device located within the open space. Ownership and easements will be determined at Final Plan stage.

The Association asked about discharge from the bioretention facility. Mr. Stone clarified that the discharge from the bioretention facility would discharged into a storm drain system, and would not be discharged directly form the facility.

The Association asked Mr. Stone to explain the difference between micro bioretention and “regular” bioretention, which he did. Micro bioretention must have a drainage area of no more than ½ acre; beyond that-a bioretention area would be provided.

The Association asked Mr. Stone whether he would confirm the presence of rare, threatened and endangered species on or near the site. Mr. Stone answered that he agreed with the information contained within the Department of Natural Resources letter. The Association asked Mr. Stone to explain what he believed was the difference between practical and practicable as it pertained to the letter. Discussion ensued, with Mr. Stone explaining that minimum standards must be met and explained why certain guidelines were not practicable for “the Settlement at Savage Mill” project.

There were no surrebuttals.

CLOSING ARGUMENT

Criterion “a.” “Setbacks, landscape buffers, or other methods are proposed to buffer the development from existing neighborhoods or roads, especially from designated scenic roads or historic districts”.

Mr. Sang Oh, legal counsel for the Petitioner, reminded the Board that he had provided expert witnesses (and the opposition did not) to address criterion “a”. He indicated that additional buffering will be provided above and beyond what is minimally required and that buffering includes trees, shrubs and distance from project. He stated that there is no empirical evidence that the proposal will destroy or impact existing historic resources.

Criterion “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.”

Mr. Sang Oh stated that the design of the plan is, in part, designed based on a “land swap”, which the community originally supported. The project is consistent with the R-H-ED guidelines. The plan does not grade on steep slopes and the stormwater management devices respect on-site slopes and topography. The swap allows a significant shift of the project to the north, away from environmental features, including the river. The proposal will occur, in part on already disturbed land that includes a parking area and Recreation and Parks ballfields.

Criterion “c”: The proposed lay-out of lots and open space effectively protects environmental and historic resources.”

Mr. Sang Oh pointed out that no other zoning district contains a 250’ stream setback and this proposal exceeds that minimum setback by another 120’ from the Little Patuxent River. The guidelines generated in the DNR Heritage Letter have been met to the “extent possible” and guidelines have been also met to the Department of Planning and Zoning’s satisfaction. The Adjacent “Riverwalk” subdivision is designed per State and County stormwater guidelines and is functioning and the erosion that had been identified was not the result of dysfunctional storm water management. He believes the “Settlement at Savage Mill” project will function better than the “Riverwalk”. It is Mr. Oh’s opinion that his new project will provide a much-needed benefit to Savage in terms of capital investment into the community, is being developed at less than permitted maximum density and has been moved farther from environmental resources with the aid of the previously community supported land swap.

Ms. Susan Garber, representing Savage Community Association, expressed her dismay at Mr. Oh mentioning the land swap when she had been told by the Board that that was not a permitted point of discussion. She stated that it was important for the Board to listen to the people that live in Savage and know the area. There is still some misunderstanding of the density of the project and she believes the project is much closer to 10 units per acre, especially in terms of buildable area. She issued concerns with the intent of the R-H-ED zoning, which she believes was established to protect natural resources located within a historic district. The project is potentially precedent setting, it being the first R-H-ED zoned project and with the possible conversion of federally funded public parkland for residential use. She indicated that sedimentation was still occurring within the river after the completion of “Riverwalk” and this required County intervention, at the public’s expense, to correct. The project lacks direct access to a public road. She reminded the Board that they do have the ability to send back the plan for further review and re-design to decrease density and to better meet all 3 criteria. The Soil Conservation District included information on erodible soils that were not addressed in the Staff Report. An alternative compliance request has been submitted, despite Mr. Stone’s previous comment that no waivers or alternative compliance applications

were required. The Developer has not provided a signed copy of the covenant between the developer and community. She stated that the developer should not be permitted to proceed because they have failed to meet any of the three Planning Board criteria.

Criterion "C": The proposed lay-out of lots and open space effectively protects environmental and historic resources."

Ms. Garber stated that a large area of the property will be removed of vegetation which will have a negative impact on surrounding environmental features. Directing flow of stormwater management onto steep slopes will deposit sediment in the river, affecting rare, threatened and endangered species dependent on the river. A large amount of impervious surface will be dedicated to roads and housing, which will add to the runoff. Her suggestion for improvements included the implementation of more of the stormwater management devices suggested by the Department of Natural Resources, establish redundancy of stormwater management facilities, incorporate more pervious surfaces, reduce density and to leave more land undisturbed.

Criterion "A": "Setbacks, landscape buffers, or other methods are proposed to buffer the development from existing neighborhoods or roads, especially from designated scenic roads or historic districts".

Ms. Garber indicated the proposed development overruns the historic district in terms of density massing, and housing type. It is in sharp contrast to the existing historic character of Savage and will result in a segregated community. She suggests varying setbacks, housing type substitutions, intermixing unit types for more integration, create the feel of an established community, and to require the development to meet the standards and design of the "complete streets" project.

Ms. Garber contended that buffering is not adequate from any direction from the project. Housing will still be visible to existing residents and changing the visible character of the existing neighborhood. Some of the areas proposed for forest conservation are compacted and have been used for many years for storage of equipment and vehicles. According to borings, there is 12 inches of existing aggregate which will need to be removed and the soil aerated and augmented in order to support any type of vegetation.

Ms. Garber suggests that increased buffering should be used, retention of existing vegetation along the eastern boundary should be required in order to address change in elevation and proposed housing height and some decrease in grading, require a Memorandum of Understanding with the Mill owner because portions of the landscaping appear to be on the Mill property, decrease height of proposed units, provide additional evergreen plantings, incorporate beech trees because they lose their leaves later in the Fall and to require extended growth assurances, through a Memorandum of Understanding, on the western side of the public land due to difficult growing conditions.

Criterion "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. Garber indicated that the proposal does not respect existing topography but instead changes it completely. Despite the proposal of a "land swap", the project "almost completely grades and clears everything on site and the developer will actually be creating steep slopes on the west side."

Ms. Garber suggested holding the developer to the legal standard of what is practicable versus what is practical; To decrease the number of units proposed; To require stormwater management devices that require less underground piping; To cluster houses in the flatter portion of the property in order to decrease the amount of fill needed; To retain existing forest conservation easements; to utilize more duplex units.

In summary, Ms. Garber indicated the proposal should be rejected; the review process is not a “points-based system”, but rather a “pass/fail”. The Planning Board should not be constrained when they are creating conditions for improvement to meet the three criteria, and require review of the Site Development Plan.

WORK SESSION

Kevin McAliley, Planning Board member, indicted that his main concern was with Stormwater Management. He asked if the Planning Board had the right to request additional stormwater management devices to help protect the river. Chairman Engelke indicated that would be engineering specifics and beyond their scope of purview. Mr. Ed Coleman, Planning Board member, indicated he was uncomfortable with requiring more than what is required per the standards set forth by the County and State.

Chairman Engelke expressed his concern over adequate buffering of the project. This project is unique in that the proposal is a new community being built adjacent to an existing historic community and proximity could be a concern. Erica Roberts, Vice Chairperson, indicted she would like to see additional buffering of the project, especially near the entrance and would like to see the final landscaping plan again. Chairman Engelke stated that the Code does allow the Planning Board to request to see the Site Development Plan and landscaping proposed with that plan. Mr. Ed Coleman, Planning Board member, reminded the Board that buffering from the parking lot was important to both the existing and proposed community. Kevin McAliley suggested that the Board consider making a recommendation that the Department of Public Works or Office of Transportation to incorporate the “complete streets” project into the new neighborhood. Ms. Roberts brought up the possible swapping of single family unit locations with the townhouse units to help with buffering.

Mr. McAliley suggested the use of more mature trees. Mr. Coleman asked about integration of proposed architecture with the existing historic district.

Mr. Val Lazdins, Executive Secretary to the Planning Board, reminded them that architectural compatibility would be review by the Historic Preservation Committee.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Sang Oh, Esq. represented the Developer, Bozzuto Homes, Inc.

There were several area residents and organizations who appeared in opposition of the Petition and whom represented themselves. After careful evaluation of all the evidence accepted into the record, the Planning Board makes the following findings of fact and conclusions of law:

1. Tanya Krista-Maenhardt, AICP of the Department of Planning and Zoning (“DPZ”) summarized DPZ’s Technical Staff Report, which recommended approval of the Preliminary Equivalent Sketch Plan, subject to compliance with remaining Subdivision Review Committee (SRC) comments, alternative compliance approval, final approval of the land swap and subject to any conditions by the Planning Board. Planning Board had no initial questions of Staff.
2. The Planning Board finds the Department of Planning and Zoning’s evaluations, findings and conclusions to be convincing and persuasive and that the Petitioner met the criteria for approval of the Preliminary Equivalent Sketch Plan pursuant to Sections 107.0.F., 108.0.G.2., 108.0.G.3 and 111.1.F. of the Zoning Regulations. The Board adopts DPZ’s report as its own in making the findings of fact and conclusions contained in this decision.

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

The proposed layout of the subdivision has taken into account the environmental features on this parcel of land. To help facilitate the protection of forest and to fulfill the objectives of the R-ED zoning district, the sizes of the residential lots have been minimized and open space has been provided in excess of the required 50% obligation (1.36 acres required, 1.47 acres credited open space provided). The project is adjacent to the existing Savage Mill and a portion of the property is within the Savage Historic District. The plan has been adjusted in accordance with the comments and recommendations received by the DAP and HPC. The layout of the community provides for a unified streetscape along Washington Street and the design considers and includes the architecture and orientation of the houses, the location of sidewalks and landscaping. The project has no impacts to steep slopes (25% or greater, 20,000 s.f. contiguous), streams, floodplains, wetlands or their buffers. The project has been shifted north to help protect sensitive resources located to the south and west along the Little Patuxent River. The project exceeds the required 250’ stream buffer in accordance with the R-H-ED Zoning Regulations and the distance between the closest house and this buffer is 120’.

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.”

The proposed subdivision plan design takes advantage of the uniqueness of the site’s topography, environmental features and forest by minimizing the limits of clearing and grading necessary to construct houses, roads, stormwater management (swm) facilities and public utilities. The proposed lots, public roads and stormwater management facilities have been designed to minimize grading impacts and other disturbances to environmental features. The project is also located at the edge of the larger forested tract to help minimize impacts to the overall contiguous forest. The majority of the development has been located on the level area of the site-west of the existing parking lot and south of Savage Park. The proposed land swap enables the development to be shifted to the north and east, away from steep slopes. This allows for a decrease in clearing, grading and the

requirement for larger, more extensive retaining walls. Stormwater management facilities are primarily microscale facilities and are situated throughout the community.

- 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 project is located adjacent to and is partially within the Savage Historic District. The project will be setback from existing development on the east side of Fair Street and proposes to maintain a wooded buffer in the area between Fair Street and the development. The project will provide the required Howard County perimeter landscape buffer, through both preservation and planting. In addition, as discussed with the DAP and HPC, additional buffering along the east and south sides of the development will be provided. The eastern buffer will help to shield the existing parking lot from the proposed homes. To the south, the existing woodland edge will be supplemented to provide a year-round buffer from views looking north into the site. The wooded areas south and west of the development will be placed into preservation easements. This site is not located on a scenic road.

3. The Petitioner has satisfied all of the criteria for the consideration of Preliminary Equivalent Sketch Plan petitions to be considered by the Planning Board in accordance with Sections 107.0.F., 108.0.G.2., 108.0.G.3 and 111.1.F. of the Howard County Zoning Regulations based on the Board’s Findings of Fact provided above and as outlined in the Technical Staff Report of the Department of Planning and Zoning. Therefore, in accordance with the testimony given and evidence in the record and based on the Findings of Facts and Conclusions of Law for Planning Board Case No. 424, the petition of Savage Mill Remainder, LLC and Howard County Government, Department of Recreation and Parks for approval of six (6) single-family detached (SFD) lots, twelve (12) duplex units, seventeen (17) townhouse units and five (5) open space lots on 7.85± acres 1st day of March, 2018, **APPROVED** by the Planning Board of Howard County, subject to the following conditions:

1. The Planning Board reserves the right to review the Site Development Plan and associated landscaping.
2. The Department of Public Works, the Development Engineering Division (water and sewer), and the Department of Fire and Rescue pay special attention to access to existing utility lines, sewer lines and existing trail access. The Department of Transportation shall make sure the proposal is compatible with the “complete streets” plan of 2018.
3. Developer shall consider buffering of the entrance in reference to the entrance into the development, address edge conditions in relation to historic district, the adjacent parking lot and existing natural resources.

Attachments

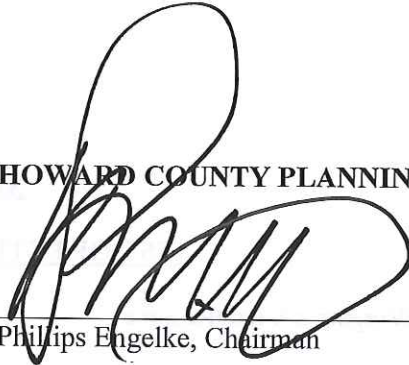
LIST OF PETITIONER'S EXHIBITS


1. Lisa Wingate's Vitae/Resume
2. "Settlement at Savage-State and Federal Historic Preservation Guidelines-Not Applicable"

LIST OF PROTESTANT'S EXHIBITS

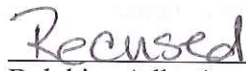
1. "Particularly Pertinent Policies From Plan Howard 2030, The General Plan"
2. John M. Garber Vitae/Resume
3. Powerpoint Slides-John M. Garber
4. "Protecting Aquatic Habitat Supporting Rare, Threatened and Endangered Species" Chart
5. Powerpoint Slides-Fred Tutman
6. Dr. Dale Fixsen-Vitae/Resume
7. Powerpoint Slides-Dale Fixsen
8. Powerpoint Slides-Galen Menee
9. Reference List
10. Lot size and grading drawing

HOWARD COUNTY PLANNING BOARD



Phillips Engelke, Chairman

Erica Roberts, Vice Chairperson
(not present on March 16, 2017)

Ed Coleman

Delphine Adler (recused)


Kevin McAuley

ATTEST:



Val Lazdins
Executive Secretary

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



David Moore
Senior Assistant County Solicitor