

## **DEVELOPMENT PLANS FOR KATHERINE PROPERTIES SHOULD BE REJECTED AND NOT FURTHER CONSIDERED BY THE CITY UNTIL ISSUES BELOW ARE RESOLVED**

The new filings submitted to the City on July 25, 2017 for the development of Crystal Spring and other land at Mas Que Farm (collectively known as Katherine Properties) include not only the Forest Conservation Plan (FCP) as in the past, but also applications for a Special Exception (for an institution for the care of the aged), a Subdivision Plan, a Site Design Plan Review, and three Variance Applications for the clearing of 27.5 acres of priority forest, 65 trees of significance (24" dbh and larger), and for setback requirements.

The overall development plan goes well beyond a senior living development and flouts the Office of Planning and Zoning's repeated suggestions to meet City Code requirements, basic professional planning standards, and environmental protection including of the forest and for stormwater.

On August 11, the Office of Planning and Zoning sent all of the voluminous filings and plans to develop the Crystal Spring and Mas Que Farm properties back to the developers and property owners for major revisions before the City would process the inadequate plans. The Office of Planning and Zoning cited numerous and substantial "deficiencies in the applications [that] must be corrected before the Department is able to send them [for] agency review." The Planning Office professionals noted: "Overall the applications are inconsistent, incomplete, lack analysis and detail. Further, the plans are difficult to read and understand." To review the many changes and corrections ordered by Planning and Zoning see the last section of this Memo.

Some of our major concerns for rejecting the plans also were cited by the City. The following list expresses our concerns and suggestions for Crystal Spring and Mas Que Farm:

### **1. NLCS HAS INCREASED THE PROJECT'S SCALE BOTH IN HOUSING UNITS AND FOOTPRINT.**

The newly filed plans for the National Lutheran Community Services (NLCS) project would increase the size, both the footprint and number of units, from their last senior living plan filed with the City on December 31, 2014 as part of a mixed-use development. The housing units go up from 362 to 383 and they expand their footprint and the loss of forest by reducing the main 6 story CCRC 305 apartment building to 4 stories. They also propose a 48 suite health care center, a chapel, parking for at least 500, and a new road through the project.

The NLCS plan would cover 73 acres and take down 27.5 acres of priority forest along with 65 large specimen trees. NLCS has refused to comply with P & Z's admonition to increase the CCRC building's height and eliminate or move the 18 "cottages" from the southern end of their plan closest to the stream. These cottages are 2,240 sq. ft. single-family buildings with two-car garages that spread out with their driveways, roads, and footprints to take down acres of priority forest. NLCS would sell these units for \$1.177 million if the buyer wanted 90% back on resale with a monthly fee of \$7,632 for a couple. The cheapest apartment unit at 922 sq. ft. would be \$651,000 with 90% back on resale and a monthly fee for two of \$4,136.

The subdivision plan also would include other developable lots owned by Janet Richardson including at least one lot of 18 acres. This lot borders Forest Drive in the far NW corner of the property bordering Crystal Spring Farm Road and Forest Drive. The lot is zoned R 3, allowing 8 units per acre—up to 144 homes for any age. This appears to foster the stripping of another 12 acres of priority forest. Under the FCP filing, of the 39.5 acres of priority forest to be destroyed, only 16.45 acres would have to be replanted because of the credit for forest left intact, including forest at Mas Que Farm.

### **2. FSD IS OUTDATED FOR CRYSTAL SPRING ACREAGE SO THE PFCP SHOULD BE SENT BACK.**

A critical defect exists in that the FSD is outdated for the forests and specimen trees at Crystal Spring. The field work forming the basis for the Crystal Spring FSD was conducted by Ken Wallis in 2010 and 2011.

Their July 25 filings list the exact same 40 specimen trees as delineated by Wallis and included in the approved FSD of 2013. In reality, all of these trees would have grown and others not yet at 24" or 30" dbh in 2010 are likely to have attained this measurement by now. The only disparity is number 38, a Virginia Pine, which is marked at 34" under the original FSD and 24" in 2016. A typographical error is the only possible explanation for this disparity as it is impossible that the tree would have lost 10 inches in DBH. In their filing, the applicants erroneously single out this tree as being 24" and needing to be cleared for safety reasons.

Under the City's FCA, "An approved forest stand delineation is valid for five years except that the Department may require submission of a revised forest stand delineation if site conditions change during the five-year period." Of course, site conditions have changed in 7 years with trees growing larger, the derecho blow down, and perhaps the extent of the forest and the health of the forest experiencing some changes as well.

Here's the relevant City Code:

21.71.060 - Forest stand delineation.

A. Criteria.

7. An approved forest stand delineation is valid for five years except that the Department may require submission of a revised forest stand delineation if site conditions change during the five-year period.

### **3. TRAFFIC ISSUES AND RELIEF ROAD IGNORED.**

NLCS notes that there will be 500 new residents (perhaps 250 more once other lots are developed), 200 full time or part time employees, trucks servicing the project and there will be garbage and recycling trucks they will contract with. They choose to avoid any traffic improvements and simply allude to a required traffic study in lieu of making any intersection or other traffic improvements. Their filings state: "The Project will generate more than 250 trips per day. Therefore, in connection with Code, 22.21.010, Traffic impact analyses, and as related to the Applicant's simultaneously filed Adequate Public Facilities Certificate Application, the Applicant will facilitate the Department of Planning and Zoning's commissioning of a traffic impact study to determine the impact of the proposed Project on the surrounding road network. It is anticipated that site access will be included in DPZ's traffic analysis, and any deficiencies that may be noted in the subsequent report will be addressed and improvements, if needed, will be provided."

This is unacceptable. They are submitting plans for 189 acres of land with a huge development and yet do not include any new plans for traffic improvements including new intersections. Note that the Spa Road and Forest Drive intersection is rated an F during rush hours. Compounding this, for the first time they are alleging they have no responsibility for planning or even showing the route of the relief road required under the annexation agreement which P & Z has been insisting run from Skipper Lane to Gemini Drive. They refused P & Z's requirement that they show this relief road in their filings. The July 25 filings provide:

The Plan's third goal on page 30 relates to transportation issues but the reference to the Forest Drive relief road has been superseded by specific language in the 2009-2014 Comprehensive Plan's five year update. See Part Three Implementation Table, Chapter 4, Transportation, Policy 5, p.32, which reads, "At this time it has been determined that the Forest Drive Relief Road is not feasible...."

However, the Comp Plan is clear a relief road is still required as noted in pp. 32-33: "...the City still seeks to provide some measure of redundancy through improving interconnectivity, especially in the lower part of Forest Drive/Bay

Ridge Road....6.3 Forest Drive Opportunity Area: Network improvements are needed to tie the development into the surrounding road network, including the conceptual Forest Drive Relief/Service Route (see Policy 5). Gemini Drive should cross Forest Drive (MD 665), and a road should be constructed parallel to Forest, extending Skipper Drive, to provide redundancy and enhance connectivity. A road linkage is also recommended from the Safeway Food & Drug parking lot to the Opportunity Area such that there is a continuous side street from Chinquapin Round Road to Spa Road....Fully Implemented at time of new development in Opportunity Areas.

And yet, they have unilaterally decided to eliminate any responsibility for a relief road or show any traffic improvements in their new filings. Further, the annexation agreement condition 15 gives the P & Z Director the authority to require road improvements before any development approvals on the annexed land. Condition 16 includes a bike/pedestrian trail as part of the relief road providing a connection across the peninsula. Condition 17 states “During the development phase, every effort should be made to provide both vehicular and pedestrian connections to the surrounding residential neighborhoods.”

Their filings propose none of these required traffic and transportation improvements.

#### **4. STORMWATER PLANS ARE INADEQUATE.**

The developers have pledge that 100% of stormwater would be managed/treated on site so that there would be no increase in rate, volume, or pollutant loads from what leaves the site. P & Z has repeatedly acknowledged this pledge.

In their filings they state:

21.62.080 Surface Water Drainage. The Project will provide 100% of the required Environmental Site Design (ESD) volume of stormwater runoff. The existing drainage divides are also maintained so the surface water drainage will replicate the pre-development conditions to the maximum extent practicable. See page 10 of their application under the Hyatt letter.

This plan is not as pledged. They plan 57 separate facilities throughout the project to capture stormwater and mimic and maintain existing drainage patterns and hydrology but have shown a stormwater retention “wetland” on Mas Que Farm property if necessary for the 10 year storm. They all have abandoned Green Roofs except for one on a smaller roof and one-half of one on another smaller roof. It is anticipated that all surface parking areas will be bituminous concrete surfaces.

At this stage to file such minimal stormwater plans after years of admonitions by DNEP, P & Z, the AEC, and us is unbelievable! Plans for a 20 year storm event to achieve their pledge should be clearly shown. Crab Creek is already severely degraded primarily from stormwater runoff.

#### **5. THEY FAIL TO DELINEATE WHERE THE MAS QUE FARM 75-ACRE CONSERVATION EASEMENT WILL BE LOCATED AND ITS TERMS.**

Under Annexation Condition 19, 75 acres “in the general vicinity of the equestrian center” and “in the area adjacent to Spa Road” shall be placed under a conservation easement once a development plan for the annexed property is approved. The NLCS web site promoting the senior living facility noted that: “The land known as Mas-Que Farm along Spa Road will be part of a total of 75 acres that will be preserved as open space.” Under the terms of Condition 19 of the Annexation Agreement, the Director of Planning and Zoning is given the authority to approve the location and terms of the conservation agreement once proffered by the owner. P & Z in a recent meeting with NLCS insisted that the exact location to achieve the 75 acres be delineated and the terms of the easement be included, neither of which has been done.

It appears from their filings that they may be trying and end run by designating 74 acres of remaining forest land throughout Crystal Spring and Mas Que farm as the easement properties leaving much of Mas Que Farm open to development.

Also, the terms of the conservation easement should be established and must prohibit any further development on this acreage as well as any forest clearing whether for agricultural or other purposes. The City has ordered them to show the location of the 75 acres and the terms of the easement.

#### **6. REFORESTATION WILL BE MUCH LESS THAN THE 100% PLEDGED.**

The developers consistently pledged early on that they would reforest/afforest trees cleared by doing the plantings on site to the extent they could and offsite on nearby properties so as to plant one acre for every acre of forest cleared. This pledge was changed despite the NLCS web site pledge as recently as the end of 2016 that “Crystal Spring will provide off-site reforestation of one acre for every acre of forest developed on site with priority given to reforestation within critical areas abutting waterways.” NLCS has completely abandoned this pledge and their filing notes only that of the 39.5 acres of priority forest to be cleared, only 16.45 acres would be reforested on site with no off site reforestation or payments in lieu of. So how does this work to achieve the City’s 50% canopy goal and minimizing stormwater runoff?

To achieve 100% replacement of all forest cleared on or adjacent to the site, the 13.3 acre meadow at the southern end of Crystal Spring could be used to support reforestation and other areas of Crystal Spring or adjoining Mas Que Farm could be used to achieve this 100% reforestation at the site.

Under City law, NLCS may only have to reforest 6.8 acres of the 27.5 acres to be cleared. This is because they get a credit for forest left above the minimum threshold of 20% X 74 acres = 14.8 acres of forest must remain. Since they will leave 35.5 acres = 20.7 acre credit toward 27.5 = 6.8 acres of reforestation required.

#### **7. APPLICANT HAS FAILED TO DOCUMENT HOW THEY HAVE EXHAUSTED TECHNIQUES FOR FOREST RETENTION.**

In addition to the variance requirements noted below, under 21.71.070 - Forest conservation plan, “the applicant shall give priority to techniques for retaining existing forest on the site.” This means for all forest.

For Priority forest, which includes all forest at CS, “There is a rebuttable presumption that priority retention areas shall be retained...5. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Department:

- i. How techniques for forest retention have been exhausted; and
- ii. Why the priority forests and priority areas...cannot be left in an undisturbed condition.

In examining the filings one can readily see why they are far from establishing this. Their FCP filing questions whether a variance is needed to clear priority forest. Our position is that it is.

#### **8. VARIANCE APPLICATIONS TO CLEAR 27.5 ACRES OF PRIORITY FOREST AND MORE THAN 60 TREES OF SIGNIFICANCE OR SPECIMEN TREES ARE FAR SHORT OF STATUTORY REQUIREMENTS.**

The variances are each applied for separately. The City’s new FCA ordinance at 21.71.170 details the requirement for variances.

Section A. of the variance requirements states that:

A. An applicant may request a variance from this chapter or the requirements of Natural Resources Article, §§ 5-1601—5-1612, Annotated Code of Maryland, if the applicant demonstrates that enforcement would result in unwarranted hardship to the applicant.

Under the definition section of the FCA Ordinance at 21.71.020."Unwarranted hardship" means the applicant has demonstrated that without a variance, the applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

This definition was adopted from Critical Area law as handed down from Maryland's highest court and sets a very high bar for granting variances. In addition to the other requirements listed under 21.71.170, this threshold requirement is a major barrier to allowing the destruction of 27.5 acres of forest, especially a large block of contiguous forest given special protection under the Code. Note that NLCS has spread out the main and huge CCRC building and the 18 large single family homes with 2 car garages and at least 2,600 sq. ft. of one-story living space. The project would have 383 units including two large apartment buildings with 20 large apartments each (Maison Court buildings) at 3 stories, the CCRC building with 315 units, the 18 "single family cottages", 10 more units in 5 duplexes stand alone buildings, the 48 suite health care center, a chapel, new roads, 500 parking spaces, etc.

The Court of Appeals of Maryland has held in the *Belvoir Farms* case that the AA County Board of Appeals applied an incorrect definition of "unwarranted hardship". *Belvoir Farms Homeowners Ass'n, Inc. v. North*, 355 Md. 259, 734 A.2d 227 (1999)). The court remanded the case and defined "unwarranted hardship" as the "denial of reasonable and significant use of the property." In 2002, the legislature amended the Critical Area law to require that an applicant's entire property be considered in determining the "unwarranted hardship" standard. The legislation established that an applicant must meet all of the standards in order to be granted a variance.

The City's new FCA ordinance at 21.71.170 states at B. An applicant for a variance shall:

1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
2. Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
3. Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
4. Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant or by any previous owner of the property;
5. Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
6. Verify that the granting of a variance will not adversely affect water quality.

Mr. Klebasko files the supporting documentation to allegedly allow the variance just for NLCS. Note that the subdivision plan allows Ms. Richardson to clear another 12 acres of forest on her lot and no variance is sought for this clearing. Klebasko states that the retention of forest and some replanting will meet the City's Comp Plan goal of increasing forest canopy by 50% by 2036. This is tortured math. Clearing 39.5 acres total and replanting only 16.45 acres is a net loss of 23.05 acres.

How can you clear 27.5 acres of mature, contiguous forest and 60+ specimen trees and build out the property with acres of impervious surface without adversely affecting water quality especially with their sketchy and incomplete stormwater management plan? Note that this is included in their filing: E. Surface material. It is anticipated that all surface parking areas will be bituminous concrete surfaces. See page 11 of the Hyatt filing. We discussed their minimalist approach to Green Roofs.

How can the applicant demonstrate the denial of reasonable and significant use of the property considering the applicant's entire property in determining the "unwarranted hardship"?

The variance application notes that the applicant has shown that there is "A Reduction in structural footprints." The reverse is true as noted above. This is in number 8 on their list of mitigation efforts in the variance filing..

#### **9. NO MENTION OF CAMP PAROLE 2 SITE NOR OF NEED FOR ARCHAEOLOGICAL STUDY.**

In their filings, they note:

21.62.060 Scenic, Historic, Archaeological and, Landmark Sites and Views There are no known scenic, historical, or archaeological resources, or landmark sites or views, associated with the property. Site Design Plan, page 9 of 13.

They ignore the calls by P & Z and the Annapolis History Consortium for a Phase I archeological assessment of the Crystal Spring/Mas Que Farm site for the Civil War Camp Parole 2 site and any artifacts there. This was an important Civil War site in Annapolis and the evidence is that it was located on or near Crystal Spring. This Phase I assessment will entail research, archaeological work, digging at the site, and analyses before a site plan is approved.

Under the Forest Conservation Law, any trees associated with a historic site or structure are to be noted in a FCP and are considered priority for protection and a variance would have to be obtained to clear these trees. Such a Phase I assessment needs to be done as part of any FCP filed. Further, an archaeologist should be on site during excavation of the site to discover and collect any historical artifacts.

#### **10. DESIGN AND LAYOUT ISSUES ADVERSELY AFFECTING STORMWATER, FOREST COVER, PRIORITY FOREST, AND SPECIMEN TREES.**

P & Z, the AEC, and we have discussed the many problems with layout and design and how it fails to maximize forest protection and minimize stormwater as well as create an integrated community blending with natural features including the forests.

#### **11. NO LARGE DEVELOPMENTS SHOULD BE CONSIDERED UNTIL THE FOREST DRIVE SECTOR STUDY NOW UNDERWAY IS COMPLETED.**

The City's 2009 Comprehensive Plan called for a sector study for the vicinity of the Forest Drive Economic Opportunity Area where Crystal Spring is located. The study was to be completed by 2012 with input from citizens and all stakeholders and was to be used to guide development and other decisions related to the Forest Drive corridor.

Such a study is even more critical as at least 1,100 more housing units and 190,000 sq. ft. of commercial developments are underway or planned in the City impacting the Annapolis Neck Peninsula.

This spring, the City finally began a Forest Drive / Eastport Sector Study Public "to define a vision for the corridor and identify recommendations to achieve this vision....The Study is to be a mirror image of the expressed concerns and desires of the communities interested and affected by the ensuing document.

To ensure fair and equitable contribution from businesses, residents, organizations, community groups, and other stakeholders, the City of Annapolis has invited representatives of every constituency to attend one of the 21 meetings held to date. Consequently, 1028 individuals have either influenced or provided comment to shape the sector study in a variety of manners." The City has hired a planning consultant to help develop the findings, vision, and recommendations to implement them.

Citizens can respond to an online questionnaire concerning their thoughts on Sector Study issues of concern. Of 1,129 responses reported, the overwhelming majority raised concerns with traffic issues while overcrowding, land use and the environment were next.

The first public meeting to further refine the study and seek more input on the findings was held on September 27 at “an open house-style public meeting” at the Moyer Recreation Center.

It is folly to allow any significant developments to proceed in the Forest Drive corridor until this study is completed. No prospective or pending development is close to the size of Crystal Spring.

**FOR ALL OF THESE REASONS, THE PLANS SUBMITTED TO DEVELOP THE SITE SHOULD BE REJECTED AND THE CITY SHOULD NOT FURTHER CONSIDER THE DEVELOPMENT UNTIL ALL OF THESE CONCERNS ARE ALLEVIATED.**

As noted at the beginning, the Office of Planning and Zoning cited numerous and substantial “deficiencies in the applications [that] must be corrected before the Department is able to send them [for] agency review.” They follow verbatim from the City web site as entered into TrakIt:

.....  
(8/11/2017 1:39 PM ETS)

Providence Point 8/10/17

Application(s) review for completeness. TrakIt No.: SE2017-004 is the parent application for the various applications included with the submittal (special exception, subdivision, adequate public facilities, forest conservation plan & variance).

Deficiencies with the applications are as follows:

Special Exception:

- A complete zoning analysis, in table form, on the site plan is required,
- Plan sheets should be reduced to 24 x 36 for ease of use by all agencies, planning commission and board of appeals,
- All plans require professional seals,
- Provide a copy the application for CCRC to MD Dept. of Aging,

Subdivision:

- Need a subdivision application that conforms with Title 20 of the City Code,
- Application only includes a subdivision concept,
- Please separate out plans that pertain to the subdivision application with existing and proposed lots, with metes and bounds, with conservation easement areas,
- Require a code analysis of how the project complies with the subdivision and zoning regulations,
- Application to include easement documents for the 75 acre conservation area with its restrictions,
- Proposed lots must have buildable area and street frontage,
- Provide deeds, plats, etc. to existing properties and rights-of way,
- Application to include right-of-way dedication for full Skipper Lane connection, with alignment at Gemini Drive,

Forest Conservation Plan:

- Sheet C-5.01 total tract area does not match civil or subdivision plans,

- What does “remainder” stand for within the FCP worksheet? The worksheet should utilize the total site area, not portions,
- Plans are difficult to read and should be in color as was the FSD,
- FCP application to include entire FSD approval,
- Justification shall include entire site and should be updated for the current proposal,
- Tree numbers noted in July 21, 2017 do not correspond to the Removal Table on sheet C-5.02,
- Need to delineate 100 ft. buffer to nontidal wetlands in addition to the intermittent stream,
- In addition to variances for clearing priority forest and significant & specimen trees, the applicant is required to show how techniques for forest retention have been exhausted and demonstrate why priority forests and priority areas... cannot be left in an undisturbed condition,

Variance:

- Application needs to identify which lots are applicable to the variance request, we believe this to be Lots 2 & 3,
- Statement in support shall be directed these two Lots, not the 175 acre site,

Adequate Public Facilities:

- Traffic statement must address the entire proposed subdivision,
- Provide build out scenario for all proposed lots with highest and best use(s),
- What is the purpose of Lots 5, 6 & 7?,

Overall the applications are inconsistent, incomplete, lack analysis and detail. Further, the plans are difficult to read and understand. It would be helpful if the applications were broken into two separate packages; one for the total site, including--subdivision, forest conservation and adequate public facilities and one for the development site, including—special exception, site design & variance.

These deficiencies in the applications must be corrected before the Department is able to send them agency review.