
8. **PUBLIC HEARINGS**

Resolution 02-G-129, Subdivision Plan with Waivers, Nash Street Subdivision, Town Plan #02-06.

Certificates of Publication were filed from the Editor of the *Herndon Observer* newspaper showing that notice of said public hearing had been duly advertised in the September 20 and September 27, 2002 issues.

October 8, 2002
(public session)

Mark R. Holland, Planner, presented the staff report dated October 1, 2002, which is on file in the Town Clerk's office. This is an application for a subdivision of one existing residential lot into four proposed residential lots with waivers of Ordinance §70-131. The applicant is proposing to subdivide an existing lot of approximately 64,816 square feet into four parcels with single-family detached dwellings. An existing 1-1/2 story single-family detached dwelling, located on proposed parcel 4, will remain as part of this application and will have vehicular access onto Pearl Street and pedestrian access onto Nash Street. Two of the new dwellings will have vehicular access onto Pearl Street. The third new dwelling will have vehicular access onto Nash Street. The existing dwelling will have vehicular access on Pearl Street and pedestrian access on Nash Street. Curb and gutter is not provided by the applicant along the Nash Street and Pearl Street frontages. It is the policy of the Town not to have curb and gutter in the section of the Historic Preservation District in which this parcel is located.

The properties located to the north, south, and west of this property are zoned R-10 and the property to the east is zoned I-G (Industrial General). The proposed lots on average are similar in square footage to the adjacent residential lots. The average size of the surrounding lots is 15,499.73 square feet. The average size of the proposed lots will be 15,531.75 square feet. The plan meets all of the requirements of the R-10 zoning district.

In summary, Mr. Holland presented the Planning Commission and staff recommendations. At its meeting of September 9, the Commission recommended approval of the subdivision plan with modifications. The Commission stated some concern about the exclusion of sidewalks and streetlights and the applicant's request for a waiver of these improvements. The applicant stated that they are willing to make these improvements and that the waiver was requested only after speaking with the neighbors and finding that they did not want sidewalks and streetlights. Also of concern was the loss of some of the existing trees. As requested by staff, the applicant has agreed to construct a sidewalk, if the waiver is not granted, that will meander around the existing trees in order to save as many as possible. Additionally, the Commission was concerned about the drainage on the site. The applicant met with the Community Development and Public Works staff and discussed the possible control methods for the site drainage. The applicant has proposed a suitable BMP and storm sewer, the details of which will be provided in the plan review process. The property is located in the Heritage District and the construction guidelines as found in the *Heritage Preservation Handbook* will apply. These are guidelines only and the requirements of the Zoning District as stated in the controlling ordinances will apply.

Mr. Holland informed the Council that the applicant made many efforts to preserve as many trees as possible on the site and to provide a good open space for the lots.

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Mr. Holland stated staff recommends approval of the proposed resolution which:

- approves the subdivision of one existing parcel, identified by Tax Map Reference Number 16-2-002 Parcel 133, into four parcels;
- denies the waiver of §70-131, based upon the finding that that the requirement to provide sidewalk and streetlights in accordance with Chapter VI. Overlay Policy: Village Streets of the Town of Herndon Comprehensive Plan is not unreasonable and such waiver will be adverse to the purpose and intent of the ordinance; and
- states the understanding that the developer of the property will design the sidewalk to have it wind around and preserve as many trees as possible.

Mr. William Lange, Representative of the Lawrence Doll Company, stated he was available to answer any questions of the Council on behalf of the applicant.

The public hearing was held and the following individuals presented testimony:

- Mr. Mike Carlson, 635 Wood Street, Herndon;
- Ms. Cari Lyn Pierce, 633 Wood Street, Herndon;
- Mr. Alan Meyers, 640 Spring Street, Herndon; and
- Ms. Mary Smith Burger, 630 Wood Street, Herndon.

Mr. Lange provided a brief rebuttal on behalf of the applicant. He stated the applicant has worked hard to accommodate as many of the neighbors' comments as possible. The applicant is working on the drainage and standing water issues and to address these problems, the applicant plans a minimal clearing of the existing trees and diversion of the water that comes onto the site's low spot to make it flow off the site. He stated the applicant's engineer was available to answer questions.

Mayor Thoesen asked if the applicant was familiar with the new house in Town where the builder hit rock and instead of blasting the rock, built the basement on the rock and moved the house up accordingly. The builder then moved the grade at a sharp incline towards the front door creating both visual and drainage problems.

Mr. Lange responded that he had not seen the house.

Mayor Thoesen asked if the applicant anticipated using the same building techniques.

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Mr. Lange replied the way the houses are currently sited, the basements will be out of the ground a couple of feet but these are going to be in-ground basements. The applicant's soil borings, as provided to staff, show that the bedrock on the site ranges from fourteen feet to eight feet.

Mr. Roger Bull, R.C. Fields and Associates, the applicant's engineer, stated the grading of the site is designed to be a minimum of five percent from the house for the first ten feet. The intent is to hold the existing grade as much as possible on the site, except for the area where the natural drainage swale runs diagonally across Lot 2 and parallel between Lots 1 and 2. The applicant plans to redefine the swale, making it deeper and adding gravel with a perforated pipe. There will be grade inlets all the way along. This design should pick up and move water more quickly to mitigate the problems caused by the rocky, clay soils in this area that do not percolate.

Mayor Thoesen asked if the size of the homes would be compatible with the existing homes in the area.

Mr. Lange responded that the average size of the two-story plus basement homes would be 3,500 square feet.

Councilman De Noyer commented that it would be worthwhile for the applicant to look at the house on Austin Lane and Van Buren Street. Placing this very large home in a neighborhood of modest homes has not been satisfactory to the neighborhood. The house also sticks out of the ground to such a height as to visually and functionally overpower the neighborhood. He requested further information on what kind of grid and spacings were used for the soil borings.

Mr. Bull stated the borings were done in the center of the footprints where each of the three houses is sited.

Councilman De Noyer suggested that the applicant also bore at the corners of the houses as well as outside the footprints because Herndon is notorious for having surprises when it comes to rock locations. He requested that the Department of Public Works specifically review the plans at the site plan stage, especially the drainage. He stated the Town has not always been successful in working out effective drainage issues.

Councilman O'Reilly expressed concern regarding the size of the proposed houses. The applicant wishes to build 3,500 square feet homes while Mr. Myers indicated during his testimony that the average home in the surrounding neighborhood is 1,500 to 2,500 square feet.

Following the comments, Mr. Lange confirmed that the applicant has submitted a construction subdivision plan that includes the footprints of the homes to be constructed.

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In response to a query by Councilman Husch, Mr. Bibber confirmed that following Council's approval of the subdivision plan, the construction plan is approved at staff level.

Mr. Bibber provided an overview of the process for approving construction within the Heritage Preservation District. The property under consideration is within the Heritage Preservation District and the houses have to be approved by the Heritage Preservation Review Board (HPRB). The HPRB will notify the adjacent property owners and hold a public hearing. After reviewing staff recommendations and hearing public comments, the HPRB will assess, for example, the elevation of the first floor and the other floors so the houses will be consistent with other homes in the Heritage District. However, the HPRB will not be in a position to say 3,500 square feet is too large. The HPRB could ask the applicant to make these three new homes fit into the variety of the homes in the Heritage District. For example, the applicant proposes to build front-loaded garages. Front-loaded garages are not usually approved by the HPRB since they are not in keeping with the Heritage District. This may lead to a detached garage in the rear yard or rear-loaded garages more in keeping with the Heritage District. This is one of the ways that the HPRB can control the architectural design of the homes and change the visual impact to the neighborhood.

Councilwoman Hutchinson requested clarification regarding the final destination of the water channeled into the drainage swale between Lots 1 and 2 and the Town's policy regarding curbs, gutter, and sidewalks in the Heritage Preservation District.

Mr. Bibber stated the water from the swale will go under the street and travel to the Herndon Lumber site. The Town attempts to make in-fill developments contribute to the solution of drainage problems. In many of the areas of Town, everyone has, and has adjusted to, a bit of a drainage problem so any change to the worse becomes a problem that has to be addressed. Staff knows this and will make every effort to ensure that the applicant follows the regulations. That is not to say that at some time a more comprehensive effort may be needed to solve the existing problems. In the residential portions of the Heritage Preservation District the Town has adopted a policy not to have curb and gutter but sidewalks are required. The Planning Commission and staff are recommending that sidewalks be built for this subdivision.

Councilman Reece expressed his confidence and expectation that staff will deal with the drainage issue effectively. He requested clarification on whether the Town has any leverage to ensure that drainage issues are dealt with effectively (e.g., a performance bond requirement). He also questioned what the required level of performance would be?

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Mr. Bibber stated, while a performance bond is required, the best leverage is to ensure that the plan shows a correct drainage calculated result. The Town's regulation requires that drainage be handled so it causes no adverse impact on adjacent properties.

Mayor Thoesen requested additional information regarding the design of the drainage system and whether the system requires culverts.

Mr. Bull briefly reviewed the drainage system design. The main segment from Lot 3 to Lot 1 is a perforated pipe surrounded in gravel. During small storms, the water goes into the grade inlets at the bends in the pipe. During larger storms that fill up the grade inlets, there is a percolation area that is a gravel and sand bed that can percolate quickly into the ground and then perc into the pipe that is perforated. The drainage system is piped from Lot 3 out to the culvert that runs under Pearl Street.

Main Motion: (Subsequently Substituted)

Councilman O'Reilly moved approval of Resolution 02-G-129, Nash Street subdivision plan with waivers, Town Plan #02-06. This motion was seconded by Councilwoman Hutchinson.

Substitute Motion: (Approved)

Vice Mayor Bruce moved to continue the public hearing on Resolution 02-G-129, Nash Street subdivision plan with waivers, Town Plan #02-06, until November 12, 2002. This motion was seconded by Councilman De Noyer.

Councilman De Noyer expressed concern regarding the current proposal. Approval of the plan, as shown, would allow the applicant to go before the HPRB with an approved plan that contains house footprints with front-loaded garages. He commented that he is happy with the subdivision itself but would like to have another opportunity to review the plan.

Mr. Bibber noted that the footprints are not part of the requirement for the preliminary subdivision plan. This was done because the applicant wanted to develop its concept for the homes during the course of the preliminary plan. This helps to visualize the effect of this subdivision. He stated in this situation it might be advisable to put on the record that the footprints are not part of what is being approved with the preliminary plan. He also reconfirmed that the subdivision ordinance does not require bringing the final subdivision/engineering plan back to the Council for approval.

Councilman De Noyer stated the Council should get some idea of footprints and accesses from the preliminary subdivision plan. Erasing them from that plan means the Council would never see that information.

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Mr. Bibber advised that the ordinance would need to be changed to require footprints on the preliminary subdivision plan; however, he stated there is a requirement to show the building envelope.

Mr. Husch briefly reviewed the history of the project. Over a year ago when the discussions first began on this property, the option holder understood that it was in a sensitive area in the Preservation District. The applicant has discussed the drainage problems with the neighbors. However, there are surprises inherent in what is actually being approved. He stated he is not philosophically opposed to the subdivision itself, but it is possible that the applicant is unaware of the requirements for building in the Herndon Preservation District or the plan would not have included front-load garages. He expressed concern regarding the massing of the proposed structures, the fact that these lots are smaller than the surrounding lots, and a general lack of compatibility to the surrounding neighborhood. The ordinances and regulations are more conservative in the Historic Preservation District. He stated he would not support the application in its current form and level of detail. Prior to approval, he would like to see a serious discussion of how drainage is going to be handled and how the houses will be built on the property, not elevations and drawings as will be presented before the HPRB but more information than the plan before Council currently contains.

Vice Mayor Bruce concurred with Councilman Husch's concerns. As everyone knows, she is a strong advocate for the Heritage Preservation Ordinance and she worked with many citizens to see that the ordinance was developed and approved. One of the first statements in the Heritage Preservation Handbook is that front-loaded garages are not appropriate. Other guidelines speak to the size, scale, and mass of in-fill development. She stated she was not comfortable with a situation that may restrict the HPRB's deliberations and recommendations, especially since the houses proposed are much larger than any others in the District. There may be a way to make them compatible in size, scale, and mass but she cannot conceive of how that would be accomplished by reviewing the proposed plan.

Councilman Husch stated his intention to vote against a deferral. There is nothing in the plan that indicates the applicant has done enough research to expect a positive outcome in November.

Councilwoman Hutchinson requested confirmation of the application's timeline, specifically as it applies to the applicant's right to demolish the existing home.

Mr. Holland noted that the date of the appeal before Council was November 27, 2001, and the one-year stay for demolishing the home began on that date. After that one-year period the applicant could demolish the structure by-right.

Richard B. Kaufman, Town Attorney, advised Council that the standards in the ordinance would have to be met before the house could be demolished (e.g., offering the house for sale at fair market value for the requisite time period and making a good faith effort to sell the house).

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Councilman O'Reilly expressed support for the deferral, which will allow thirty days to resolve the issues of drainage and footprints. If the applicant does not develop a footprint that matches the Heritage Preservation District, possibly what may be approved is something that will give the HPRB more authority to determine where the houses will go and what their size will be.

Mr. Kaufman advised that since this is a preliminary subdivision plan, the statute requires the Town's agent, the Town Council in this instance, to act on the preliminary subdivision plan within ninety days of its submission, which has passed. Thus, unless the applicant agrees to the deferral, there is no legal basis for this type of deferral.

Mayor Thoesen asked Mr. Lange if the applicant would agree to the deferral to allow time to clarify the issues.

Mr. Lange stated for the record that the applicant submitted the plan in March. It went before the Planning Commission twice and was deferred twice on drainage issues, tree issues, sidewalks, and curbs and gutters. The applicant has also met on a number of occasions with Town staff and has tried to meet all of the demands of staff and the Planning Commission. The demands of the neighbors have also been taken into consideration. Mr. Lange agreed to the deferral.

Mayor Thoesen thanked Mr. Lange for his agreement. Mayor Thoesen explained that what the applicant faces is a community under siege on in-fill developments. The Town is currently working to develop in-fill ordinances and supporting regulations to protect Herndon neighborhoods. Mayor Thoesen assured the applicant that the Town would work with him on this matter.

Following the comments, the question was called on the substitute motion, which carried by a vote of 6-1. The vote was:

Councilmembers:

De Noyer	yes
Bruce	yes
Husch	no
Hutchinson	yes
O'Reilly	yes
Reece	yes
Mayor Thoesen	yes
