Patapsco Associates, LP		
c/o Simon Rosenberg,	*	**BEFORE THE**
Petitioner and Owner	*	**PLANNING BOARD OF**
	*	**HOWARD COUNTY, MD**

PLANNING BOARD CASE NO. 403

* *

DECISION AND ORDER

On January 16, 2014, the Planning Board of Howard County, Maryland, in accordance with Section 107.E.6 of the Howard County Zoning Regulations, held a public hearing to consider the petition of Patapsco Associates, LP, c/o Simon Rosenberg, Petitioner and Owner, for approval of a Preliminary Equivalent Sketch Plan, SP-13-012, for 195 single family detached lots and two open space lots at the Estates at Patapsco Park, consisting of 122.79 acres of residential land use zoned R-ED (Residential Environmental Development) and R-20 (Residential- Single). The Estates at Patapsco Park is bounding on the north side of Rogers Avenue, east of Mt. Hebron Drive and west of Patapsco Valley Drive and identified as Parcel Nos. 1 to 4 on Tax Map No. 17, in the Second Election District of Howard County, MD.

The Notice of Hearing was published and the subject property was posted in accordance with the Planning Board's requirements, as evidenced by certificates of publication and posting, all of which were made a part of the record of the case.

Pursuant to the Planning Board's Rules of Procedure, the reports and official documents pertaining to the petition, including the Technical Staff Report of the Department of Planning and Zoning, the Howard County Subdivision and Land Development Regulations, the Zoning Regulations, the Howard County Code, the Landscape and Forest Conservation Manuals and the Adequate Public Facilities Ordinance were made part of the record in this case.

PLANNING BOARD HEARING

The Chairperson opened the public hearing at approximately 8:00 p.m. Brenda Barth presented the Technical Staff Report for the Department of Planning and Zoning which recommended approval to the Preliminary Equivalent Sketch Plan, SP-13-012, subject to comments from reviewing agencies and any Conditions of Approval by the Planning Board.

PETITIONER'S TESTIMONY

Mr. William Erskine, Esq., represented the petitioner and was sworn in. Mr. Erskine indicated that a traffic expert and the engineer for the project were in attendance and that he would be cross-examining these witnesses. Mr. Paul Woodburn, P.E., with Ben Dyer Associates, Inc., was sworn in as first witness and responded to questions by Mr. Erskine. Mr. Erskine displayed a power point presentation which showed a series of aerials, street views and cross sections of the site and surrounding properties. Mr. Woodburn explained traffic problems that exist along Rogers Avenue and at the intersection of Route 29 and Rogers Avenue and described proposed road improvements advised by the State Highway Administration. These improvements would consist of two left turn lanes onto Route 29 going west on Rogers Avenue, right lane upgrades onto Route 29 going east on Rogers Avenue and a deceleration lane into the subject development traveling west on Rogers Avenue, as well as, bike lanes on both sides of Rogers Avenue. Mr. Woodburn described the elevation and topography of the site, explaining that the subdivision would be at a lower grade than Rogers Avenue and that a strip of existing vegetation along the frontage would adequately screen the development from traffic. In addition, a State Forest Conservation easement and open space containing environmental features located in the western portion of the property would totally surround the proposed lots and would buffer the development from surrounding neighborhoods. It was of his professional opinion that the development would be well buffered and environmental features would be protected.

Mr. Erskine questioned Mr. Woodburn as to whether the proposed lay-out of lots and open space would effectively protect historic structures and environmental resources on site. Mr. Woodburn responded that yes, the development would preserve trees, place forest into easements and that all environmental features would be located on open space lots. The lots were at the minimum size allowed and were centered on the property so as to limit the area of disturbance and no historic structures were located on the site.

Mr. Erskine questioned Mr. Woodburn as to whether buildings, parking, roads, storm water management and other features were located to take advantage of topography and limit the extent of grading. Mr. Woodburn responded that yes, the development took advantage of the existing topography by clustering the lots along a ridge and away from the environmental features and that proposed grading was at a minimum.

Mr. Erskine questioned Mr. Woodburn as to whether setbacks, landscape buffers and other methods would buffer the development from existing neighborhoods or roads and from scenic roads or historic districts. Mr. Woodburn indicated that all setbacks were met, landscape buffers would be provided by existing and proposed plantings and that this site did not contain any historic structures nor was it located on a scenic road or in an historic district.

Mr. Josh Tzuker, Planning Board Chairperson, asked Mr. Woodburn as to whether the development would consist of adequate access to the adjoining Hollifield Station Elementary School campus and the extent of the bike lanes. Mr. Woodburn explained that a sidewalk would be provided along the development's frontage to the west and east and would cross onto the elementary school property at the point where a steep slope and culvert existed on Rogers Avenue. Also, a pathway from within the development would be constructed and would follow a water line eastward through the open space area to a ravine. A bridge would be constructed and the pathway would continue onto the open space area of the Hollifield Subdivision. The bike lanes would only be along the frontage of the subdivision, but were proposed on both the north and south sides of Rogers Avenue.

The south side of Rogers Avenue consisted of a shoulder and if the road right-of-way were wide enough, the bike lane would be installed on the south side.

Mr. Bill Santos, Planning Board Member, asked Mr. Woodburn as to when road improvements would begin. Mr. Woodburn responded that the developer would be filing for an access permit with the State Highway Administration and at that time, road upgrades could start along Rogers Avenue and at the Route 29 intersection.

Mr. Tzuker questioned the need to provide a payment for a fee-in-lieu of reforestation to the Forest Conservation Fund rather than maintaining more trees. Mr. Woodburn indicated that more preservation than required would be provided but that there was not enough area for reforestation on site and easements were not allowed on individual lots. Therefore, a payment to the forest conservation fund would be made and the money would be utilized to benefit County projects.

Mr. Santos asked Mr. Woodburn as to how close the eastern lots were to the project boundary which seemed very near to the Hollifield subdivision. Mr. Woodburn replied that the lots met the required project boundary setback, stream bank buffer requirements and building setbacks.

At this time Mr. Tzucker announced that opposing testimony would be accepted.

OPPOSING TESTIMONY

Mr. Daniel Stewart was sworn in. Mr. Stewart indicated his concerns regarding water run-off and drainage onto the surrounding wetlands, streams and the Patapsco River. Mr. Stewart questioned Mr. Woodburn regarding the direction drainage would take and gave his opinion that the development proposed an abundance of roofs and driveways with no consideration of where the water run-off would go. Mr. Stewart also voiced his opinion that the development would have an adverse effect on the Patapsco River and to 100 year-old trees. Mr. Woodburn replied that water run-off would go where it does today regardless of the proposed development; to the wetlands, then drain into the streams and finally into the Patapsco River. The State had environmental mandates which the

project met or exceeded.

Mr. Jeff Fein was sworn in. Mr. Fein indicated his concerns regarding traffic and the congestion at Rt. 29. Mr. Fein had questions regarding proposed road improvements. Mr. Woodburn replied that the impact of development would require certain road upgrades along the frontage of the development. He pointed out that the developer was aware of the backup on Rogers Avenue during high peak hours. Mr. Fein voiced his opinion that he hoped improvements would be addressed beyond the road frontage of the proposed development and that considerations should be made for safety of pedestrians and vehicular traffic to the Patapsco Middle School and the church on the south side of Rogers Avenue. Mr. Woodburn replied that the developer's responsibility for road improvements were along the frontage of the site, but that upgrades would also be made to alleviate congestion at the Route 29 intersection.

Ms. Camille Stewart was sworn in. Ms. Stewart questioned the estimated population growth of the area and what impact the development would have on the neighborhood and school system. Ms. Stewart testified that she attended Mt. Hebron High School and that the school campus currently had numerous portables to handle the student population.

Mr. Tzuker explained the open and closed school testing proceedure and stated that the elementary and middle schools were open at the present time.

Ms. Amanda Deering was sworn in. Ms. Deering questioned Mr. Woodburn about specimen tree removal, tree types, critical root zones, where reforestation would take place and pathway green materials. She also asked if Maryland Department of the Environment (MDE) permits had been applied for, if an in-field meeting had taken place and the size of the wetlands. Mr. Woodburn replied that the developer had applied for MDE permits, a meeting had taken place, he did not know the exact size of the wetlands which was not a requirement, but that streams and wetlands were contained within the existing floodplain which totaled 8.4 acres.

Reforestation would take place on the open space lots and were contiguous with the retention areas. Due to the regulations, reforestation easements could not be placed on individual lots. Other questions were asked of Mr. Woodburn, but due to time constraints, Mr. Tzuker indicated that the traffic engineer, Mr. Mickey Cornelius, of the Traffic Group would be next to testify. It was pointed out that traffic impact was not part of the Planning Board Criteria considered when evaluating the preliminary equivalent sketch plan, and so the traffic engineer would not be taking questions.

Mr. Mickey Cornelius was sworn in. Mr. Erskine proceeded to ask Mr. Cornelius questions regarding traffic on Rogers Avenue and the congestion at the Route 29 intersection. Mr. Cornelius testified that a traffic study had been made at critical intersections of Rogers Avenue at Route 29, at the proposed development entranceway on Rogers Avenue across from Chapel Avenue and at the intersection of Rogers Avenue and Old Frederick Road. It was determined that the intersection of Rogers Avenue at Route 29 was failing at the present time and would continue to do so even if the proposed development did not occur. Mr. Cornelius explained neighborhood traffic patterns, regional traffic growth and levels of service of the affected roadways. It was indicated that the creation of two left turn lanes traveling west on Rogers Avenue onto Route 29 would significantly reduce delays at this intersection. The developer would also be upgrading a right turn lane going east on Rogers Avenue onto Route 29 and that all proposed road improvements along Rogers Avenue would have a hugh impact on traffic flow.

Mr. Santos asked whether the intersection would drop to a service Level B and grow to a Level C at the Rogers Avenue, Route 29 intersection after improvements. Mr. Cornelius replied that was a future possibility. At this time, Mr. Cornelius concluded his testimony.

Mr. Tzuker announced that general comments would be taken from the audience.

Mr. James Jaecksch spoke about the lack of sidewalks on the south side of Rogers Avenue. He pointed out

that students walked to Patapsco Middle School and safety measures should be installed at the intersection of Patapsco Valley Drive and Rogers Avenue. Mr. Jaecksch also indicated that the shoulder on Rogers Avenue was frequently used by lost drivers from Route 70 who used the Route 29 intersection to turn-around.

Mr. Walter Preissler spoke about traffic congestion and hoped Rogers Avenue road improvements would occur before the Route 29 upgrades.

Mr. Daniel Stewart spoke about his concerns of water run-off and the impact to the wetlands.

Mr. Jeff Fein reiterated traffic problems on Rogers Avenue and that road improvements should be made from the round-about to beyond the Route 29 intersection and westward to Mt. Hebron High School.

At this time, Mr. Tzuker indicated that the closing presentation would be made.

Mr. Erskine emphasized that the developer was aware of and shared the concerns of the community with regard to the traffic problems. The developer was working towards alleviating a difficult traffic situation by making road improvements which would also serve to improve access to his development. It was pointed out that this development met all criteria by which the Board evaluated the preliminary equivalent sketch plan for approval. The development effectively protects environmental resources by lay-out of lots and creation of open space; building, roads and other features were located to take advantage of the topography and grading would be limited; setbacks, landscaping and open space lots would be provided and would buffer the development from surrounding neighborhoods.

Mr. Santos, Planning Board Member, motioned for a work session.

WORK SESSION

Ms. Jaqueline Easley questioned the need for portables at schools if they were not operating at student capacity. The open and closed school testing was explained by the Planning Director.

Mr. Santos indicated that the road improvements would help alleviate the present traffic situation and that in this case, the development actually would serve to mitigate traffic congestion. He was confident that traffic problems would improve and was impressed with the sidewalk system and pathway to the adjoining elementary school. He indicated that this development was in keeping with the R-ED regulations and met the Board's criteria.

Mr. Tzuker stated that not many large tracts of land were left in the County which were fully forested and adjoined a river. He felt that creation of the R-ED clustering subdivision was better for the environment and was appropriate development for this property. Mr. Tzuker agreed that this development met the criteria. However, he felt that the developer should work with the County to consider sidewalks along the south side of Rogers Avenue and that pedestrian safety was of more importance than installing a bike lane.

Ms. Easley also agreed that although traffic was a large concern to the community it was not something the Board reviewed, and that the development did met the criteria.

Mr. Santos moved to approve the plan and all were in favor with Mr. Tzuker conditioning approval that additional sidewalks be installed and/or pedestrian safety measurements be installed on the south of Rogers Avenue.

After careful evaluation of all testimony and information presented, the Planning Board made the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The proposed Preliminary Equivalent Sketch Plan, SP-13-012, is for the creation of 195 single family building lots and two open space lots on land zoned R-20 (Residential-Single) and R-ED (Residential Environmental Development) consisting of 122.79 acres of land.
2. This project is subject to compliance with the Howard County Subdivision and Land Development Regulations including the Forest Conservation Regulations, the Landscape Manual, the Zoning Regulations and Maps, the Design Manual and the Adequate Public Facilities Ordinance.

3. The subject property was properly posted and advertised for this public hearing in accordance with legal requirements.
4. The proposed total area of disturbance will be 54.22 acres.
5. The site does not contain any cemeteries or historic structures and is not located on a scenic road or in an historic district.
6. The proposed subdivision will effectively protect, preserve and minimize disturbance of the environmental resources and that a minimum of 50% of the total land area will be placed into credited open space. Open space areas will contain the flood plain, steep slopes, wetlands, streams, their buffers and existing forest. The environmental resources will be preserved and protected within open space lots that will be dedicated to Howard County. The development plan does not propose disturbance within environmentally sensitive areas except for installation of pathways and public water, sewer and/or utility connections and as considered essential disturbance in accordance with Section 16.116(c) of the Subdivision and Land Development Regulations.
7. The entire proposed subdivision plan accomplishes protection of environmental resources by the following means:

    a. The clustering of residential lots away from the environmental features to further protect these features and existing forest;
    b. Designing the lots to be close in size to the minimum lot size of 6,000 sq.ft. as practical.
    c. Maximizing the amount of environmental open space by establishment of a minimum of 50% open space on the entire subdivision. The subdivision project will provide a substantial environmental buffer from surrounding residential lots.
8. Site plan design takes advantage of the uniqueness of the existing topography by minimizing the limits of clearing to construct roadways, sidewalks, the homes and storm water management facilities.
9. All building setbacks will be met and requirements of the Landscape Manual and Forest Conservation Manual will be met.
10. The proposed development will be served by public water and sewer.
11. This subdivision is being developed in accordance with Section 108.F.3 of the Zoning Regulations as a density receiving parcel for one bonus unit, however, the bonus unit is not being utilized.

CONCLUSIONS OF LAW

The proposed Preliminary Equivalent Sketch Plan, SP-13-012, satisfies all of the standards for approval of a Sketch Plan provided in Section 107.E. of the Zoning Regulations for the reasons stated in the Department of Planning and Zoning Technical Staff Report.

For the foregoing reasons, the petition of Patapsco Associates, LP, c/o Simon Rosenberg, for approval of Preliminary Equivalent Sketch Plan, SP-13-012, for the subdivision of 195 single family building lots and two open space lots on 122.79 acres of land zoned R-20 and R-ED, is this 28th day of February, 2014, **APPROVED** by the Planning Board of Howard County, MD, with the following condition:

1. The developer shall consider a sidewalk and/or pedestrian safety measures along the south side of Rogers Avenue as a substitute for the proposed bike lane.

HOWARD COUNTY PLANNING BOARD:

Josh Tzuker /LB
Josh Tzuker, Chairperson

Bill Santos /LB
William Santos

Jacqueline Easley /LB
Jacqueline Easley

PB Case No. 403
February , 2014
ATTEST:

Marsha McLaughlin
Marsha McLaughlin/Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY
HOWARD COUNTY OFFICE OF LAW
Margaret Ann Nolan, County Solicitor:

Paul T. Johnson
Paul Johnson/Deputy County Solicitor

LIST OF APPLICANT'S EXHIBITS
None were introduced
LIST OF PROTESTANT'S EXHIBITS:
None were introduced

:btb