ATTN: HOLLI
727-6072

(6 PAGES TOTAL)

Form 140
(Revised 03/15/02)

Case No. 17276

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GOVERNMENT OF THE DISTRICT OF COLUMBIA

PARTY STATUS APPLICATION

Notice.

Name:*	Friends of Whitehaven, Kent Slowinski, Chairman						
Address:*	c/o 4595 Dexter Street, NW	City:*	Washington	State:*	DC	Zip:*	20007
Phone:*	(202)338-9534	Fax:		Email:	wishq@aol.com		

I hereby request to appear and participate as a party. Signature: Date:* 02/01/05

Will you appear as a:	☑ Proponent	☑ Opponent	Will you appear through legal counsel	☑	Yes	☐	No

If yes, please enter the name and address of such legal counsel.

Name:	Providing assistance is William J. Snape, III, Attorney at Law						
Address:	5268 Watson Street, NW	City:	Washington	State:	DC	Zip:	20016
Phone:	(202)537-3458	Fax:		Email:	billsnape@earthlink.net		

Please answer all of the following questions referencing why the above person should be granted party status.
(If you require additional space, please attach an additional sheet.)

1). How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Board?*

As public interest defenders of the Whitehaven national parkland at Glover-Archbold, Friends of Whitehaven is a D.C. non profit association created in 2002 and is substantially concerned about the inter-related environmental and conservation issues facing this important parkland; including but not limited to clean water, wetlands, forest/tree canopy, migratory birds, wildlife and biodiversity, open space, and public education and recreation. Without modifications, the current plan seeking a special exception could needlessly harm national parkland resources, particularly those related to clean water, migratory birds, wildlife and open space.

2) What legal interest does the person have in the property? (i.e. owner, tenant, trustee or mortgagee)*

Friends of Whitehaven's legal interest is that of *[illegible]*-injured party with constitutional and charter standing. Association is solely dedicated to protection of this parkland. Its members spend hours every week enjoying the parkland, studying the parkland, writing about the parkland, educating about the parkland, relying upon the parkland, and the like. Association, thus, is empowered by law to protect parkland as legal "trustee." See also expanded answer in number 4.

3). What is the distance between the person's property and the property that is the subject of the appeal or application before the Board? (Preferably no further than 200ft.)*

On the northside of the national parkland border running roughly perpendicular to Glover-Archbold, the two properties are adjacent for most all of the applicant's southern border.

4) What are the environmental, economic or social impacts that are likely to affect the person and/or the person's property if the action requested of the Board is approved or denied?*

While are not presently seeking to have this special exception rejected, we would like to see some aspects of the proposal modified in order to eliminate, reduce and/or ameliorate environmental and natural resource damage to the parkland; wetlands, clean water, migratory bird conservation, national historic preservation compliance, need for an environmental assessment and the like. We believe a relatively short time to work out these details is appropriate and desirable at this point.

5). Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Board is approved or denied.*

N/A

[illegible]

Friends of Whitehaven is an association of individuals like no other in that it literally exists to protect the particular national parkland parcel under potential threat. Under the test laid out by the U.S. Supreme Court in Lujan v. Defenders of Wildlife (1992), and associated federal and D.C. administrative law, Friends of Whitehaven possesses standing to substantially participate in this BZA hearing on a matter so integrally involved in our mission and reason for existence. We will be injured professionally, aesthetically, spiritually, educationally, and personally by any decision by this body that would cause harm to the Whitehaven national parkland. We are genuinely

BZA Case No. 17276 Exhibit No. 23

Board of Zoning Adjustment
District of Columbia
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to offer affidavits to this effect. In addition, Friends of Whitehaven reserves its right to bring a citizen suit action to protect the parcels to from development that would harm it in violation of 16 U.S.C. Section 1 et seq

attachments: (1) January 21, 2005 Letter to National Park Service from Friends of Whitehaven; and

(2) Modification proposal by Friends of Whitehaven.

January 21, 2005

Mr. Joe Lawler
Regional Director, National Capital Region
National Park Service
1100 Ohio Drive, SW
Washington, DC 20242

Ms. Adrienne Coleman
Superintendent, Rock Creek Park
National Park Service
3545 Williamsburg Lane, NW
Washington, D.C. 20008

Re: Present Threats to Whitehaven National Parkland

Dear Mr. Lawler and Ms. Coleman:

On behalf of Friends of Whitehaven, a non-profit association created in the District of Columbia, I hereby petition you under the Administrative Procedure Act, 5 U.S.C. § 553(e), to initiate compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 – 4331, and other environmental and natural resource laws including the National Park Organic Act, to begin the environmental review process regarding current severe threats to the Whitehaven National Parkland. We define the Whitehaven National Parkland to be the valuable four-acre strip of property bounded by Whitehaven Parkway to the west and Glover-Archbold National Park to the east.

We hereby incorporate by reference our comments on the Whitehaven National Parkland as it relates to the former proposal to build the D.C. mayor's mansion on private property to the south of Whitehaven National Parkland, correspondence dated January 16, 2003 by the undersigned, and by others associated with Friends of Whitehaven throughout 2002-2003. Friends of Whitehaven are citizens who enjoy and revere the parkland in question. Just yesterday, the undersigned witnessed a fox darting up a hill, with a deer herd of four to its right and a bevy of mourning doves to its left, centered on a marshy and wet land containing hundreds of different species of birds. There is not much land left like it in the entire region, particularly as a migratory bird fly-way and stopping point along the Potomac and the Chesapeake Watershed.

We are extremely concerned by the immediate prospect of major residential development now slated to the north (i.e., the former Phillips estate, about to be sold to Mr. Ted Visnic and his corporate partners) of the parkland. We are also aware of other potential impacts to the parkland in the medium-term future, including to the south (i.e., the former Brady estate,

FROM : MRSLH/BUW FAX NO. : 2062338534 Feb. 01 2005 04:26PM P2

now owned by a private school consortium). We are concerned not only because the National Park Service, until at least recently, was not aware of some of these impending developments, but also because, more substantively, they pose a potentially major threat to the long-term well-being of the Whitehaven National Parkland, in violation of federal law and the public trust the Park Service is bound by law to uphold. For instance, under the present Visnic et al. proposal, valuable park area and bird-bearing trees would be lost, and wetlands potentially damaged, as a result of a road that would be built immediately adjacent to park property.

This letter and petition hereby requests that you immediately initiate at least an environmental assessment, with a view toward a full environmental impact statement (EIS), regarding the impacts these developments will have, inter alia, upon:

1) the duty of the Park Service to comply with its basic legal duties to uphold parkland for all Americans[1];
2) the duty of the Park Service to comply with the Clean Water Act, see, e.g., 33 U.S.C. § 1344, particularly with regard to the federal wetlands identified by the Army Corps of Engineers on the parkland that could be irreparably damaged;
3) the duty of the Park Service to comply with the Migratory Bird Treaty Act, see, e.g., 16 U.S.C. § 703, so as not to take a protected bird, egg, or nest;
4) the duty of the Park Service to comply with, inter alia, Section 106 of the National Historic Preservation Act, particularly as it relates to native American artifacts and relics; and
5) the duty, consequently, of the Park Service to notice, analyze and mitigate these adverse environmental impacts through NEPA itself.

It is clear that while both these private developments are attempting to comply with local law, the full and complete impact upon federal lands has not been examined in any real fashion. It is more than metaphor to note that these two private developments, as presently configured, could literally strangle the Whitehaven National Parkland. These are precisely the type of cumulative impacts federal agencies must take into account. See, e.g., 40 C.F.R. §§ 1508.7, 1508.25. Of specific concern, again, is a proposed private road that would immediately abut, and negatively impact, the Whitehaven National Parkland from the north. This road, as presently planned, is a common law nuisance that the Park Service must address. As the National Capital Planning Commission's most recent Comprehensive Plan explicitly states:

> The narrow threads of natural green areas throughout the District, like Whitehaven Parkway ... should be protected and maintained to provide green background and open space amenity for the residential areas of the city. These natural areas should be protected from border development that would adversely impact their natural resources and visual quality. The use of generous building setbacks, height controls, the donation of scenic easements or the transfer of development rights from

[1] "(T)he fundamental purpose of the said parks ... is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1.

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adjacent landowners should be pursued to ensure protection. (p.117).

At other points in the comprehensive planning documents cited, supra, the directive is very clear to protect open spaces, scenic views, wildlife corridors, streams, and the overall mosaic of gorges and palisades that marks this particular geographic region. See generally

More generally, we fear the Park Service is losing a golden opportunity to negotiate with all major landowners near and around the Whitehaven National Parkland to come up with a long-term plan that complies with federal law, satisfies legitimate private property rights, and fulfills the public's right to enjoy this special parkland. With just a bit more effort, the Park Service could easily leverage active community participation in the removal of problematic invasive species. We, further, urge the Park Service to work with the developers to gain conservation easements, as well as to work with the public to protect permanently the stream flows under the 44th Street abandoned roadway, and the land associated with this D.C. right-of-way; we are pleased by the early discussion on this latter issue.

We look forward to discussing this petition with you and your staff at your earliest possible convenience. We understand that Mr. Visnic has a hearing date before the D.C. Board of Zoning Adjustment on February 15th, and we would like to avoid the illegal and irretrievable commitment of resources that might flow from that hearing date.

Thank you for the prompt consideration of this petition.

Sincerely,



William J. Snape, III
Attorney at Law
D.C. Bar No. 455266
5268 Watson Street, NW
Washington, D.C.
202-537-3458

cc: Mr. Ted Visnic
Mr. Anthony Barnes
Mrs. Katherine Bradley
Mr. John Delaney
Ms. Chandra Hardy
ANC 3D Chair Alma Gates
Ellen McCarthy, D.C. Office of Planning
Doreen Thompson, D.C. Health and Environment
Elizabeth Berry, Mayor's Office
D.C. Board of Zoning Adjustment

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Revised Site Plan

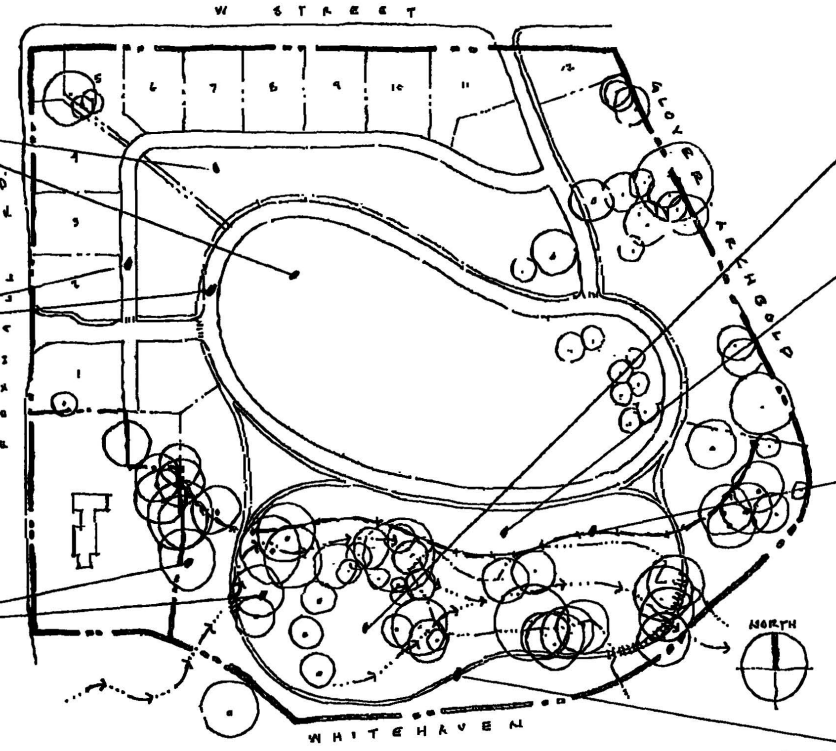
The revised site plan keeps the same number of proposed lots, but reduces the size of the theoretical lots by 2,000-3,000 square feet. The average lot size is 8,000-9,000 square feet, still within the 7,500 square feet zoning requirement.

[redacted] and alleys are realigned to work with the existing topography. The southern road is removed to reduce the negative impact to the parkland and wetland.

Tree Preservation

The plan saves more than 5 mature specimen trees, accounting for more than 00 caliper inches, or 200 eet in circumference.

[redacted]erous smaller trees at make up groves in the etland conservation area e also saved. Although arborist has determined at these trees might be in or condition, many of ese trees provide luable wildlife habitat to igratory bird species. ecaying trees that ovide wildlife habitat are ined, however, any tree at poses a hazard will be moved.



Wetland Conservation

Smaller lots allow the establishment of a 2-3 acre wetland conservation area around the designated wetland, and a 1-2 acre stormwater filtration area.

The stormwater filtration area is more than doubled to increase the stormwater capacity. A stormwater storage cistern provides non-potable water to irrigate the landscaped area.

A perimeter fence, required by NPS, is located between the stormwater filtration area and the wetland to prevent unsupervised access by small children playing in the area, and to allow continued access by wildlife to the wetland.

Wetland trails of woodchips and raised walks, designed for low impact, provide resident access to the wetlands. A bluebird trail, stream monitoring program and wetland displays are set up along the wetland trails. One of the displays describes the work of Rachael Carson and the migratory bird study.

Environmentally Sensitive Development

The designated wetlands on the property, which provides habitat for migratory bird species on the adjacent Whitehaven and Glover-Archbold Parks, make it essential that the development include a basic environmentally sensitive design concept – reduced lot size. By reducing the lot size, it is possible to preserve valuable wetland habitat, reduce infrastructure costs, increase property values, and keep the same number of building lots. This will preserve of 2-3 acres of environmentally sensitive wetland habitat and a 1-2 acre stormwater filtration system to increase stormwater capacity. The National Park Service and Potomac Conservancy could hold a wetland conservation easement, which will provide wetland protection and tax benefits to the owners.