



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JUN 16 2010

MCPB No. 10-52
Preliminary Plan No. 12005020A
Fairland Park Community
Date of Hearing: April 22, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on December 10, 2009, Fairland Development, LLC/Fairland Development II, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 247 lots on 130.45 acres of land in the PD-2 zone, located in the southeast quadrant of the intersection of Cedar Tree Drive and Islewood Terrace ("Property" or "Subject Property"), in the Fairland master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 12005020A, Fairland Park Community ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated April 8, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on April 22, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

Approved as to
Legal Sufficiency:

Christina Sorrento 5/26/10
M-NCPPC Legal Department

WHEREAS, on April 22, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley; with a vote of 5-0, Commissioners Alfandre, Dreyfuss, Hanson, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 12005020A to create 247 lots on 130.45 acres of land in the PD-2 zone, located in the southeast quadrant of the intersection of Cedar Tree Drive and Islewood Terrace ("Property" or "Subject Property"), in the Fairland master plan area ("Master Plan"), subject to the following conditions:

1. Approval under this Preliminary Plan limits the Applicant to:
 - a. A maximum of 248 lots for 247 residential dwelling units, including 216 one-family detached units and 31 one-family attached and semi-detached units.
 - b. A minimum of 12.5% of the residential dwelling units must be Moderately Priced Dwelling Units (MPDUs). MPDUs must be constructed in accordance with the phasing schedule approved by the Department of Housing and Community Affairs.
 - c. A swimming pool and clubhouse facility with associated parking.
2. The Applicant must comply with the conditions of approval of the Amendments to the Preliminary and Final Forest Conservation Plans as conferred in the revised Environmental Planning staff approval letter as modified on April 22, 2010 by the Planning Board, unless otherwise amended, provided those amendments do not conflict with other conditions of the Preliminary Plan approval. The Applicant must meet all conditions and requirements prior to recording of plat or MCDPS issuance of sediment and erosion control permit(s) as applicable.
3. All areas identified as forest retention, forest planting, or environmental buffers must be placed in Category I conservation easements, or within M-NCPPC park dedication areas for conservation use. Conservation easements must be shown on record plats.
4. The Applicant must dedicate and show on the final record plats the following rights-of-way and Public Improvement Easements (PIE):
 - a. Cedar Tree Drive - full width dedication of 70 feet between existing terminus and proposed Public Road "A".
 - b. Saddle Creek Drive - full width dedication of 70 feet, with appropriate transition between existing terminus (right-of-way dedication of 60 feet) and proposed Public Road "A"/Saddle Creek Drive cul-de-sac.
 - c. Public Road "A" - full width dedication of 70 feet between Saddle Creek Drive and Prince George's County line.
 - d. Public Road "B" - full width dedication of 50 feet.

- e. Public Road "C" - full width dedication of 50 feet, with three-foot wide PIE to accommodate bike path connections as shown in the amended Preliminary Plan.
 - f. Public Road "D" - full width dedication of 50 feet.
 - g. Public Road "E" - full width dedication of 50 feet.
5. The Applicant must construct the following roads per Montgomery County Department of Transportation (DOT) requirements. All of the following roadway sections must be open to traffic prior to issuance of the 176th building permit:
 - a. Cedar Tree Drive - as a 70-foot wide primary residential street, with five-foot wide sidewalks on both sides along the entire length.
 - b. Saddle Creek Drive - as a 60-foot wide secondary residential street for approximately 250 feet transitioning to a 70-foot wide primary residential street, with an eight-foot shared-use path to the east side and a five-foot wide sidewalk to the west side along the entire length.
 - c. Public Road "A" - as a 70-foot wide primary residential street, with an eight-foot shared-use path and a five-foot wide sidewalk along the entire length.
 - d. Public Road "B" - as a 50-foot wide tertiary residential street, with five-foot wide sidewalks on both sides along the entire length.
 - e. Public Road "C" - as a 50-foot wide tertiary residential street, with five-foot wide sidewalks on both sides along the entire length and eight-foot wide shared-use paths with three-foot wide PIEs as necessary.
 - f. Public Road "D" - as a 50-foot wide tertiary residential street, with five-foot wide sidewalks on both sides along the entire length.
 - g. Public Road "E" - as a 50-foot wide tertiary residential street, with five-foot wide sidewalks on both sides along the entire length.
6. The Applicant must extend off-site the five-foot wide sidewalk proposed along the east side of Cedar Tree Drive approximately 100 feet to the north to Islewood Terrace and the five-foot sidewalk along the west side of Cedar Tree Drive approximately 250 feet to the north to Crosswood Drive.
7. The Applicant must meet DPS requirements at the time of record plat to ensure the Applicant's extension of the off-site, eight-foot wide, shared-use path proposed along the east side of Saddle Creek Drive approximately 100 feet to the north to McKnew Local Park southern entrance and a 5-foot sidewalk along the west side of Saddle Creek Drive approximately 100 feet to the north to Bender Court.
8. The Applicant must provide a 20-foot-wide Public Access Easement (PAE) on HOA Parcel B between Lots 23 and 24 of Block H and construct a 5-foot-wide paved pedestrian connection located in the middle of the PAE from Saddle Creek Drive to the point shown on the Certified Site Plan.
9. All handicapped ramps that accommodate crossing of the proposed shared-use path across Public Roads "A", "B", "C", "D", and "E" must be eight feet wide.
10. The Applicant must convey approximately 22.93 acres that lie in the northern portion of the Subject Property, identified as "Parcel G" on the Preliminary Plan,

- for use as parkland. The land must be dedicated to M-NCPPC through notation on the plat and by conveyance at the time of record plat in a form of deed approved by the Office of General Counsel. At time of conveyance, the Property must be free of any trash and unnatural debris. Boundaries must be staked and signed to designate dedicated parkland.
11. Prior to approval of plat(s), the Applicant must provide funding in a form acceptable to M-NCPPC, in the amount of \$20,000.00, for construction of a stream crossing bridge within Parcel G in order to facilitate construction of a 4-foot wide, natural surface trail.
 12. The Applicant must convey approximately 2,770 square feet located off of Public Road C, identified as "Parcel B" on the Preliminary Plan, for use as public access to natural surface trails located within Fairland Recreational Park. The land must be dedicated to M-NCPPC through notation on the plat and by conveyance at the time of record plat in a form of deed approved by the Office of General Counsel. "Parcel B" must be 15 feet wide and signed to identify it as public access to parkland. The Applicant must construct a 4' wide natural surface trail within Parcel B from Public Road C to the natural surface trail system. At time of conveyance, the Property must be free of any trash and unnatural debris.
 13. The Applicant must convey approximately 10.95 acres with access from Saddle Creek Drive, identified as "Parcel E" on the Preliminary Plan, for use as an elementary school campus. The land must be dedicated to the Board of Education, at no cost, in fee simple, free and clear of any encumbrances or covenants. At time of conveyance, the Property must be free of any trash and unnatural debris. Prior to conveyance of the school site to the Board of Education, the Applicant must:
 - a. rough grade the site to grades as shown on the Certified Site Plan and in accordance with Montgomery County Public Schools earthwork and grading specifications;
 - b. release MCPS from responsibility for future costs associated with HOA and/or Montgomery County modification and/or maintenance of Pond "F"; and
 - c. provide sufficient off-site forest conservation and maintenance thereof attributable to the school site and as required to accommodate development of the school site.
 14. Public land conveyance must occur at the time of recordation of plat(s) for the first residential lot(s).
 15. The Applicant must identify lots affected by the rubble fill/stump dump area on the certified set of the site plan. Prior to release of building permits for affected lots, the Applicant must remove the rubble fill/stump dump materials (manmade and natural) that are not suitable for compaction, and provide fill and compaction suitable to meet MCDPS structural standards.
 16. The Applicant must comply with the conditions of the MCDPS stormwater management approval dated July 22, 2009. These conditions may be amended

- by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
17. The Applicant must comply with the conditions of the MCDOT letters dated March 24, 2010 and March 26, 2010. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
 18. Site Plan Amendment No. 82005006A must be approved by the Board and signed by the Development Review Staff prior to the approval of the record plat.
 19. The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
 20. The record plat(s) must reflect a public use and access easement over all private alleys.
 21. The record plat(s) must reflect common ingress/egress and utility easements over all shared driveways.
 22. The record plat(s) must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
 23. The record plat(s) must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). The Applicant must provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate the Covenant by reference.
 24. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for one hundred forty-five (145) months from December 4, 2004 (date of the original Preliminary Plan approval by the Planning Board), plus an automatic two (2) year extension pursuant to Ordinance No. 16-35 or until January 4, 2019.
 25. This Preliminary Plan will remain valid for seventy-three (73) months from the date of mailing of the Planning Board Resolution. Record plat(s) must be recorded in three phases:
 - a. Phase I (expires 37 months from the date of mailing of the Planning Board Resolution) - 75 dwelling units.
 - b. Phase II (expires 55 months from the date of mailing of the Planning Board Resolution) - 100 dwelling units.
 - c. Phase III (expires 73 months from the date of mailing of the Planning Board Resolution) - 72 dwelling units.
 26. Other necessary easements must be shown on the record plat.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Montgomery County Planning Board **FINDS**, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The Fairland Park Community site is located within the *1997 Approved and Adopted Fairland Master Plan*. The subject site is located in the Oakfair-Saddlecreek Community. The Master Plan made specific recommendations for this Property, designated as Area 2 on page 49 of the Master Plan. The recommendations are accompanied by guidelines for development to be applied to this Property. The Master Plan's primary recommendation was that development on Area 2 could be best accomplished under the provisions of the Planned Development Zone (PD-2) because the zone addresses the appropriate mix and size of units, issues related to public uses, and protection of environmental features.

The recommendations in the Master Plan also support a residential community that could be developed around the existing public golf course. The Master Plan states that Area 2 "has the potential for adding detached units to the housing mix...improving the road network including a possible extension of roads to Old Gunpowder Road in Prince George's County...and (providing) a hiker/biker access to the Fairland Recreational Park." In addition to a new school site and street network, the Master Plan envisioned the community as a new development with connected trails and open space.

The Planning Board finds the Preliminary Plan amendment satisfies the following eight criteria, outlined on page 48 in the Master Plan:

1) *A density cap of 396 units in Montgomery County with an appropriate mix of housing types including single-family detached and attached units.*

The revised Preliminary Plan proposes a total of 247 units. The housing mix includes 216 one-family detached units and 31 one-family attached or townhouse units and semi-detached units. The Fairland Master Plan recommends new developments contain predominately one family detached units. The Master Plan highlights that other communities in the county contain far fewer numbers of attached units and multifamily units. Providing single family detached units will help balance the housing mix in the Master Plan area (p. 18). By proposing that 87% of the total number of units be one-family detached residences, the Preliminary Plan meets this objective.

2) *MPDUs to be distributed throughout the development.*

The Fairland Master Plan encourages a wide choice of housing types for people of all incomes (p. 18). While the Preliminary Plan proposes the minimum required 31 lots (12.5% of the total) for MPDU units, they will be located in three areas throughout the development.

3) *Extension of the existing road network.*

The Transportation section of the Master Plan recommends an interconnected road system that creates a connection between Cedar Tree Drive and Gunpowder Road

to access the existing golf course and proposed community. The Master Plan also recommends bikeways and sidewalks to connect the new community to the existing communities along McKnew Road, Cedar Tree Drive, Saddle Creek Drive and Gunpowder Road, and to existing parks. Saddle Creek Drive and Cedar Tree Drive will be extended through the new community via proposed Public Road "A" and connect with Old Gunpowder Road in Prince George's County, as well as McKnew Road and ultimately MD 198 in Montgomery County. A bikeway along the west side of Public Road "A" and a sidewalk along the east side of Public Road "A" will extend beyond the site to connect to existing communities and to McKnew Park.

4) Areas of no disturbance or environmental impact (reference to Page 119 of the Master Plan).

The Preliminary Plan meets the environmental protection objectives of the Master Plan through forest conservation and wetland protection. Moreover, the PD Zone requires 45% green space and the Fairland Park Community is preserving 76.81%, or over 100 acres, as green space. Over 22 acres of quality forest, originally slated for residential development, will be dedicated to M-NCPPC. Environmental Planning Staff has reviewed and is satisfied with the Applicant's mitigation plans for filling in two small isolated wetlands, which may have been an outgrowth/remnant of previous sand and gravel extraction operations. The Applicant is voluntarily removing the existing road crossing over the right fork of the Little Paint Branch main stem and creating a new high quality wetland (.39 acres) that will connect the two existing large wetlands to the north and south. This will improve the water quality and restore the natural habitats and forest of the area.

5) Non-vehicular access to Fairland Recreational Park.

A future trail connection to Fairland Recreational Park will be provided from the new community via a natural surface trail from proposed Public Road "C" to an existing natural surface trail located northwest of the site that connects to Fairland Recreational Park.

6) Connect road(s) to Old Gunpowder Road in Prince George's County, if desirable.

The Preliminary Plan proposes extending both Saddle Creek Drive and Cedar Tree Drive to connect to proposed Public Road "A". Public Road "A" will connect to Old Gunpowder Road in Prince George's County.

7) Common open space for residents of the new community.

The recreational amenities will be private, including a community building and a pool of appropriate size serving Fairland Park Community residents within the Montgomery County portion and Prince George's County portion. Community open space is also provided in open play areas and playgrounds as well as a hiker/biker trail network that meanders around an existing lake, and several stormwater management ponds as well as connecting residents to the elementary school, McKnew Park and natural surface trails northwest of the site.

8) A 12-15 acre site for a new elementary school.

The Fairland Master Plan discusses a school site in the area covered by the Preliminary Plan noting that it would serve a large number of existing and future

households and provide a high potential for children to walk to school. According to the 1997 Master Plan, the school will provide a "centrally located community focal point" (p. 47). The Applicant has worked with Montgomery County Public Schools (MCPS), and an acceptable elementary school site has been identified and will be dedicated to the Board of Education as a part of this Preliminary Plan. MCPS has noted in their March 31, 2010 letter accepting the proposed site that, since it is less than the desired 12 acres in size, the Applicant should provide forest conservation and stormwater management quantity control areas to serve the school off-site. Other MCPS requirements are specifically detailed in the conditions of approval.

The Planning Board finds the amended Preliminary Plan is in substantial conformance with the *1997 Approved and Adopted Fairland Master Plan*.

2. Public facilities will be adequate to support and service the area of the proposed subdivision.

Roads and Transportation Facilities

The previous Adequate Public Facilities approval for transportation facilities remains valid and is applicable to this Preliminary Plan. Since this amendment to the previously approved preliminary plan proposes a reduction in density, a new LATR test is not required, and a PAMR test is not applicable because the previously approved application pre-dates the PAMR requirement. The proposed development will generate 174 peak-hour trips during the weekday morning peak period and 224 peak-hour trips during the weekday evening peak period.

The total number of units proposed in the Preliminary Plan amendment in comparison to the approved preliminary plan (247 vs. 396 total trips generated) and (174 morning peak-hour and 224 evening peak-hour vs. 289 morning peak-hour and 368 evening peak-hour trips generated) is less than that included in the previously approved Adequate Public Facilities finding for Fairland Park Community under Preliminary Plan No. 120050200. The Planning Board finds the Preliminary Plan satisfies previously approved findings of the Adequate Public Facilities test.

Other Public Facilities

The Planning Board finds public facilities and services are still available and will be adequate to serve the proposed development. The Property will be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Property has appropriate access for fire and rescue vehicles under the current proposal. Other public facilities and services, such as police stations, firehouses, schools, and health services, are operating according to the Growth Policy resolution in effect when the original application was approved and will remain adequate to serve the Property.

Electrical, telecommunications, and natural gas services are also available to serve the Subject Property.

3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Planning Board finds the size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision in accordance with Chapter 50.

4. The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.

From the forest conservation perspective, the subject site includes portions of the M-NCPPC Old Gunpowder Golf Course because the subdivision's proposed sewer lines cross through the golf course site. In May 2009, an amendment to the Preliminary Forest Conservation Plan (FCP) was reviewed and approved by the Planning Board as part of the review of a Development Plan Amendment for Fairland Park Community (DPA 09-01). The DPA and associated Amendment to the Preliminary FCP excluded public lands from the application and covered 183.33 acres of land.

Environmental Guidelines

It should be noted that the approved NRI/FSD covers more land than the current Preliminary and Final Forest Conservation Plan Amendments. When the NRI/FSD was approved, the purchase of the 52.8-acre portion for parkland had not occurred. So, the NRI/FSD includes information that covers both the portion of the site that is subject to the current Preliminary Plan, site plan, and forest conservation plan amendments and the part of the site that was purchased by M-NCPPC. The NRI/FSD also includes information on the entirety of the M-NCPPC Old Gunpowder Golf Course. But the current Preliminary and Final Forest Conservation Plan Amendments include only the parts of the golf course site where sewer lines to serve the subdivision are proposed.

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD # 420080090) was approved on February 28, 2008. The site lies within the Little Paint Branch watershed (Use I waters). The 2003 update of the *Countywide Stream Protection Strategy* (Montgomery County Department of Environmental Protection) identifies the sub watershed in which this site is located as the McKnew Park Tributary and documents the stream quality as being good. Several streams that are part of the Silverwood Tributary network of Little Paint Branch flow through this site. Wetlands

exist on part of the site. Roughly the northern third of the site has large forest stands. Forest also occurs on the southern half of the site.

Environmental Buffers, Stream Valleys, and Wetlands

The majority of environmental buffers and associated environmentally-sensitive features within them are proposed to be preserved. Placement of Category I conservation easements will occur where environmental buffers are on private HOA land. Features in dedicated parkland will not require conservation easements for long-term protection. There are some environmental buffer areas that have permanent encroachments. These areas include: the re-grading and reconfiguration of the southernmost instream, manmade pond to create a stormwater management facility that meets DPS requirements; the crossing of public road "A" along the upstream edge of the recreated SWM facility as a necessary and unavoidable feature providing a connection between the subdivision east and west of the stream valley; and unavoidable sewer line connections through the stream valleys at the southeastern corner of the site and within the existing Old Gunpowder Golf Course.

Along the southern boundary line of the site, there are three small wetlands that appear to have been created with the significant grading operations associated with the past mining activities. These wetlands do not lie within an environmental buffer associated with a stream or stream valley. The wetlands, which are located within the southern forest area that also encompasses the southern streams and stream valley, provide wildlife habitat function and value since they lie within the same forest complex as the larger stream system and stream valley. However, with the proposed subdivision layout, the southern forest area will be significantly reduced, and there will no longer be a forested connection between the small, created wetlands, and the larger streams and stream valley. Therefore, the wildlife habitat value of these small wetlands will be significantly reduced or eliminated when the forest around them is cleared for the subdivision. There is no objection to the filling of these particular wetlands, since the habitat value of these wetlands will be greatly diminished or lost, and the Applicant will create wetlands within the on-site stream valley as mitigation for their loss, as required by the Maryland Department of the Environment (MDE).

Forest Conservation

The Application is subject to the County Forest Conservation Law (Chapter 22A of the Montgomery County Code). As previously stated, a Preliminary Forest Conservation Plan Amendment was approved with conditions by the Planning Board on May 7, 2009. The current amendments to the Preliminary and Final Forest Conservation Plans exclude the 52.8 acres of the Property that was bought by M-NCPPC in December 2009 for parkland. The amendments include proposed sewer line extensions into M-NCPPC Old Gunpowder Golf Course that were not included in the forest conservation plan associated with the DPA.

The Application retains 37.64 acres and clear 44.03 acres of forest. Retained forest will either lie within HOA parcels or dedicated parkland. The amount of retained forest exceeds the site's conservation threshold of 26.23 acres. Retained forest that meets or exceeds the conservation threshold is consistent with Section 22A-12(f)(2)(B) of the County Forest Conservation Law: "In a planned development or a site development using cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a)." It should be noted that the Applicant is not required to plant forest because 37.64 acres of forest will be preserved, which is slightly more than the site's break-even point of 37.32 acres. Although there is no forest planting requirement, native trees and/or shrubs will be planted in two places: a portion of an unforested environmental buffer that will be adjacent to the community center and pool, and an area at the toe of the created slope of the reclamation area approved by the Maryland Department of the Environment (MDE) that is adjacent to existing wetlands.

Discussion of forest conservation for future elementary school site

Forest Conservation requirements for the 10.95-acre school site dedicated to the Montgomery County School Board are satisfied under the approved final forest conservation plan. All requirements for afforestation and reforestation related to future tree clearing on the 10.95-acre site have been met as part of the Preliminary Plan amendment. A variance for a small portion of the school site (a 1.88-acre triangular piece at the eastern boundary) may be required by the Department of Environmental Protection and the Planning Board as required under the Natural Resources Article 5-1607 of the Maryland State Code as part of a future mandatory referral application for construction of a school.

Variance Request

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. The law requires no impact to any trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as a county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; trees associated with a historic site or structure; and rare, threatened and endangered species. Although the approval of the first Amendment to the Preliminary Forest Conservation Plan occurred in May 2009, this first Preliminary FCP Amendment did not include the proposed sewer line extensions through the existing Old Gunpowder Golf Course. The current (second) Amendment to the Preliminary Forest Conservation Plan proposes these sewer line extensions, which affect trees at least 30 inches DBH. Therefore, a variance is required for only the part of the Preliminary FCP Amendment which covers the proposed sewer line extensions within the Old Gunpowder Golf Course. The

Applicant has requested a variance for impacts to nine trees that are 30 inches or greater, DBH. The following trees are proposed to be removed: a 31.4" northern red oak, two 30.7" tulip poplars, a 34.3" northern red oak, and a 30.1" tulip poplar. The following trees are proposed to be affected but preserved: a 36.9" beech, a 39.3" chestnut oak, a 37.5" tulip poplar, and a 32.5" northern red oak. The 39.3" chestnut oak that is proposed to be preserved is greater than 75 percent of the size of the existing County champion for that species.

In accordance with Montgomery County Code, Section 22A-21(c), the Planning Board referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. In this case, the variance request was referred to the Montgomery County Arborist on March 23, 2010. The County Arborist has not provided a recommendation for the variance request. By law, the County Arborist's response for the variance request is, therefore, presumed to be favorable. The Planning Board finds, based on the following justifications, that the Applicant has met all criteria required to grant the variance.

The Planning Board finds as follows:

a) The variance will not confer on the Applicant a special privilege that would be denied to other Applicants.

The requested variance will not confer on the Applicant any special privileges that would be denied to other Applicants. The proposed impacts to trees 30 inches and greater, DBH, are due to sewer line extensions to serve the subdivision. These sewer lines are necessary and unavoidable infrastructure elements of the subdivision. The sewer line routes proposed will minimize impacts within environmental buffers.

b) The variance is not based on conditions or circumstances which are the result of the actions by the Applicant.

The proposed sewer line connections are constrained by the existing sewer line locations and the required elevations for the connections. Given these constraints, the sewer alignments minimize impacts to overall forest stands on the golf course.

c) The variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

The requested variance is a result of the proposed site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.

d) The variance will not violate State water quality standards or cause measurable degradation in water quality.

The proposed sewer lines are necessary infrastructure elements of the subdivision. The subdivision, with its proposed stormwater management facilities and stump dump reclamation area, will improve the water quality of the receiving streams, compared to the prior use of the site as a mining operation.

The Planning Board approves the preliminary forest conservation plan and the Applicant's request for a variance from the Forest Conservation Law to remove the five trees subject to the newly enacted provisions of the Maryland Code.

5. The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.

The proposed stormwater management concept, approved on July 22, 2009, consists of on-site channel protection measures via dispersion, and via construction of six wetland ponds and modification of the existing wet pond; onsite water quality control via treatment within the wetland ponds as well as construction of one Montgomery County Sand Filter.

6. A waiver of public street frontage is appropriate for 20 lots containing one-family attached and semi-detached Moderately Priced Dwelling units.

Section 50-29(a)(2) of the Subdivision Regulations states that "except as otherwise provided in the zoning ordinance, every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road." The access to 14 lots that accommodate MPDU one-family attached dwelling units (Lots 16-29, Block B) is from a private alley 14 feet in width that extends along the rear of the units in a loop connecting to Public Road B. While the private alley will provide adequate access to these units, the alley does not hold the same status as a public road as stipulated in the Subdivision Regulations. The pavement width is less than 20 feet, a standard turnaround is not present, and circulation within the private alley to the rear of the units will be private and not open to all traffic. In addition, the access to 6 lots that accommodate MPDU one-family semi-detached dwelling units (Lots 24-29, Block H) is from a private driveway 22 feet in width that terminates in a parking area for the units. Although this access has also been deemed adequate by public agencies, a standard turnaround is not present and circulation within the driveway and parking lot will be for residents and guests and will not attain the status

of a public road at any time. The Applicant requested the Board exercise 50-38(a)(1) and waive the public street frontage requirement for these 20 lots.

Pursuant to Section 50-38(a)(1) of the Subdivision Regulations, the Planning Board has the authority to grant a waiver from the requirements of the Subdivision Regulations upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements being achieved, and a finding that the waiver is: (1) the minimum necessary to provide relief from the requirements; (2) not inconsistent with the purposes and objectives of the General Plan; and (3) not adverse to the public interest.

The Planning Board granted the waiver request and found that the waiver of the street frontage requirement is the minimum necessary to provide relief from the requirements. The Planning Board also concluded the 20 lots are adequately dispersed throughout the development, will create private open space of a higher quality, and will contribute to the Master Plan goal of dispersal of MPDUs. Access to the lots will be adequate for vehicles and pedestrians and the layout of the lots is compatible with surrounding lots. The Planning Board finds that the waiver is not inconsistent with the Master Plan and is not adverse to the public interest.

7. A modification of the minimum right-of-way and centerline radius is appropriate for a portion of Saddle Creek Drive.

Section 50-30(c)(1) of the Subdivision Regulations states that "dedication to public use shall be to the full extent of any and all rights-of-way for all roads, ...determined to be necessary and proper and such as would be required by reason of the maximum utilization and development of the subject property in its present zone classification or that higher use shown on any adopted or approved master plan of applicable jurisdiction."

The Master Plan recommends a 70 foot right-of-way width for Saddle Creek Drive, which is the recommended right-of-way for a "Primary Residential Street without a median" under the Road Code. However, the existing Saddle Creek Drive north of the Subject Property was constructed as a secondary residential roadway with a right-of-way width of 60 feet. Given this existing circumstance, the Applicant proposes to continue Saddle Creek Drive as a secondary residential roadway with 60 feet of right-of-way and 26 feet of pavement for the first section of the road up to the curve of the road above Pond F, and then transition into a 70 foot right-of-way with 36 feet of pavement in front and around the elementary school site in order to accommodate MCPS's specific request for 36 feet of pavement in front of the school site. The Applicant is also proposing to maintain a 150 foot centerline curve radius within the 60- foot right-of-way portion into the 70- foot right-of-way portion where

there is 36 feet of pavement. The standard centerline curve radius within a 70 foot right-of-way per Section 50-26(d) of the Subdivision Regulations is 300 feet. A modification of the Subdivision Regulations is required to permit this road design. Section 50-38(a)(2) of the Subdivision Regulations also gives the Planning Board the authority to modify the standards and requirements of the Subdivision Regulations if the Board determines that:

- a. a plan and program for a new town, a complete community or a neighborhood unit will provide adequate public spaces and improvements for the circulation of traffic, recreation, light, air, and service needs of the tract when fully developed and populated, and that legal provisions to assure conformity to the plan are satisfactory;
- or
- b. a variance will promote the preservation or creation of open space, forest and tree conservation, preservation of environmentally sensitive areas, or the prevention of soil erosion in the public interest.

The Planning Board finds that a modification for the road right-of-way and radius is warranted under Section 50-38(a)(2)(a) and (b) of the Subdivision Regulations. Maintaining the 60 foot right-of-way width for a portion of the road would minimize impacts to trees and stream buffer area in the McKnew tributary and providing 36 feet of pavement along the school site frontage will allow for safe access to the elementary school site. Moreover, with the secondary roadway centerline design standard, the travel speed should be decreased in front of the future school.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUN 16 2010 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Wells-Harley, seconded by

MCPB No. 10-52
Preliminary Plan No. 12005020A
Fairland Park Community
Page 16 of 16

Commissioner Alfandre, with Commissioners Hanson, Wells-Harley, and Alfandre voting in favor of the motion, and with Commissioners Dreyfuss and Presley absent, at its regular meeting held on Thursday, June 3, 2010, in Silver Spring, Maryland.


Royce Hanson, Chairman
Montgomery County Planning Board