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

MCPB No. 11-111
Preliminary Plan No. 120080150
Ridge View Estates
Date of Hearing: November 10, 2011

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 October 17, 2007, TES Consultants, L.L.C., ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create five (5) lots on 2.53 acres of land in the R-200/TDR zone, located on the west side of Ridge Road, approximately 800 feet south of the intersection with Wacomor Drive ("Property" or "Subject Property"), in the Clarksburg Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120080150, Ridge View Estates ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board, dated October 28, 2011, setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on November 10, 2011, 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

WHEREAS, on November 10, 2011, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Anderson;

Approved as to
Legal Sufficiency:

Christina Sonnet 2/15/12

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seconded by Commissioner Dreyfuss; with a vote of 4-0, Commissioners Anderson, Carrier, Dreyfuss and Wells-Harley voting in favor, with Commissioner Presley absent.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 50 the Planning Board approves Preliminary Plan No. 120080150 to create five (5) lots on the Subject Property, subject to the following conditions as revised and shown herein:

- 1) Approval under this Preliminary Plan is limited to five lots for five detached dwelling units.
- 2) The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan. The Applicant must satisfy all conditions prior to recording of plat(s) or issuance of sediment and erosion control permits by the Montgomery County Department of Permitting Services (MCDPS), as applicable. The conditions are as follows:
 - a. Approval of a final forest conservation plan that is consistent with the preliminary forest conservation plan.
 - b. Approval of a Certificate of Compliance Agreement for reforestation/afforestation requirement by M-NCPPC Staff.
 - c. Required site inspections by M-NCPPC Staff per Section 22A.00.01.10 of the Forest Conservation Regulations
- 3) Prior to issuance of building permits, the Applicant must provide certification from an acoustical engineer that the location of the noise mitigation techniques to attenuate current noise levels to no more than 55 dBA Ldn for the outdoor back yard area of homes and areas of common outdoor activity are adequate.
- 4) Prior to issuance of building permits, the Applicant must provide certification from an acoustical engineer that the building shells for the residential dwellings are designed to attenuate interior levels to no more than 45 dBA Ldn.
- 5) At the time of record plat, the Applicant must dedicate all road rights-of-way as shown on the approved Preliminary Plan.
- 6) The Applicant must construct an eight foot wide shared use bikepath along the Property frontage within the Ridge Road right-of-way as shown on the Preliminary Plan drawing. The shared use path must be completed commensurate with the completion of the new driveway access apron as required by the Maryland State Highway Administration (MDSHA).
- 7) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 8) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated November 22, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.

- 9) The Applicant must comply with the conditions of the MDSHA letter dated November 30, 2007. These conditions may be amended by MDSHA provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 10) The certified Preliminary Plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s), but must be in substantial conformance with that shown on the Preliminary Plan drawing.
- 11) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
- 12) Other necessary easements, including the internal sewer easement, must be shown on the record plat(s).

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and 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 1994 Clarksburg Master Plan placed this Property in the Newcut Road Neighborhood, which envisioned higher density development in the "middle" of the 1,060 acre Neighborhood with lower densities, such as one family detached units, towards the fringes to act as a transition to the rural and agricultural uses to the north and east. This Property is located along the fringe of the Newcut Neighborhood and is recommended for the R-200 Zone, but it is also designated as a Transferable Development Right (TDR) receiving area with a maximum of 3 units per acre. The transportation discussion in the Master Plan recommends that Ridge Road, from Skylark Road to Mid-County Highway (M-83), be a four lane, divided major highway within a 120 foot wide right-of-way. The Master Plan makes no other recommendations that are specific to this Property.

The Property was not included in the much larger and adjacent Clarksburg Village Subdivision, which acquired many TDR's to achieve the density and uses envisioned by the Master Plan. The Subject Property may not be developed under the TDR optional method because it physically cannot provide the 35% open space required for development under the optional method. The

Preliminary Plan provides the one family detached units that are envisioned by the Master Plan to act as a transition to the rural communities to the east.

The Preliminary Plan is also in compliance with the transportation discussion in the Master Plan. The Preliminary Plan drawing shows the required dedication for Ridge Road, 60 feet from the existing centerline of the highway, except for a small section in front of the existing house that is shown as an easement for future dedication. This section cannot be dedicated at this time because it would make the house non-conforming with the R-200 front setback standards of 40 feet. When the right-of-way is needed, the easement area will be conveyed to the State. As a public taking, the house and remainder of the lot will be afforded certain exemptions under Chapter 50 and will remain as a grandfathered non-conformance with zoning setbacks. An eight foot wide shared use path will also be constructed along the Ridge Road frontage. This path will connect to the shared use path that is to be built by the developers of Clarksburg Village abutting the Property to the south.

For these reasons, the Planning Board finds that the Preliminary Plan is in substantial conformance with the 1994 Clarksburg Master Plan.

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

A. Transportation Facilities

The proposed lots will not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the Application is not subject to Local Area Transportation Review (LATR). The Policy Area Mobility Requirement (PAMR) guidelines for the Clarksburg Policy Area require mitigation of 10% of new peak hour trips. This project, with four new homes, generates 4.4 new peak hour trips; ten percent of which is 0.44 trips which is rounded down to zero. Thus, the Applicant will not be required to mitigate any PAMR trips. Therefore, the Application satisfies LATR and PAMR requirements.

The Application provides for adequate, safe and efficient access. Dedication of the right-of-way will provide the necessary space for the eventual widening of Ridge Road in accordance with the Master Plan recommendations by developers of adjacent subdivisions. In the interim, the subdivision will have adequate access using existing Ridge Road. A site distance evaluation was performed for the new driveway access point, and it was found to be a safe location to build the new driveway. The design of the driveway at the right-of-way and internally to the site was reviewed by the Department of Fire and

Rescue Services. The driveway was found to be sufficient for maneuvering the County's largest emergency vehicles in a safe and efficient manner.

Pedestrian access will be accommodated with the construction of the eight foot wide, shared use path along the Property's frontage. This path will connect to the extensive pathway system built by the developers of Clarksburg Village and give future residents access to all of the amenities within the Newcut Road Neighborhood. The Board finds that all proposed vehicular and pedestrian access for the subdivision will be safe and adequate.

B. Other Facilities and Services

The Planning Board finds that all other public facilities and services are available and will be adequate to serve the proposed dwelling units. Water mains abut the site and sewer lines will be constructed by other developers and will be available to serve the subdivision. The Washington Suburban Sanitary Commission has determined that local transmission and treatment capacity is adequate to serve the proposed units. All utilities, including Verizon, Washington Gas, Potomac Edison, and cable providers have indicated that local service is available and adequate for the proposed units. Other public facilities and services, such as schools, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy currently in effect. The Application is not within a school moratorium area and it is not subject to a School Facilities Payment.

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

The Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The proposed lots' size, width, shape and orientation is appropriate for the location of the subdivision as discussed in the Staff Report and conforms to the Master Plan. The lots are designed in such a way to meet all other requirements of the Subdivision Regulations, including access, frontage, dedication for public uses and adequacy of public facilities.

The lots were reviewed for compliance with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in

that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

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

A. Forest Conservation

The Preliminary Forest Conservation Plan (PFCP) proposes to clear all 0.35 acres of existing forest on-site which generates a 0.73 acre planting requirement. The Applicant proposes to meet the planting requirement through an off-site forest conservation bank.

B. Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection (Protected Trees). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone (CRZ), requires a variance under Section 22A-12(b)(3) of the County Code. Otherwise such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will require removal of two (2) Protected Trees, 30 inches and greater DBH. Therefore, a variance is required.

The Board made the following findings necessary to grant the Tree Variance:

- i. *Granting the Tree Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The Subject Property is zoned for residential. Five (5) buildable lots are approved under this Application. The project meets all applicable requirements for zoning and forest conservation. Multiple approvals from various regulatory authorities were obtained to proceed with the proposed subdivision. The request for removal of two specimen trees is not unusual for a project of this size and does not confer a special privilege on the Applicant. Tree ST-1 will have significant impacts to nearly 25% of its roots from the required sewer extension, which cannot be relocated because of the lot layout. Tree ST-6 is located in the public utility easement (PUE) along Ridge Road. Under the conditions of the utility easement, utility providers may clear any encroachments in the easement area when utilities are buried. The long term survivability of this tree cannot be assured.

- ii. *The need for the Tree Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions of the Applicant. The variance is based upon existing site conditions and requirements associated with site development.

- iii. *The need for the Tree Variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed development and is not a result of any activity associated with a neighboring property.

- iv. *Granting the Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland or environmentally sensitive area specific to this Property. The Property is within the Clarksburg Special Protection Area (SPA), which is defined by certain portions of the Little Seneca watershed. A Final SPA Water Quality Plan has been approved by the Montgomery County Department of Permitting Services to assure adequate protection of the water resources within the Little Seneca watershed. With the approved Water Quality Plan, the removal of the trees will not cause measurable degradation to water quality.

C. Forest Conservation Variance mitigation

Given the density of development on the 2.53 acres, there are very limited opportunities to mitigate the loss of the two specimen trees. Therefore, consistent with the County Arborist and Staff recommendation, the Board does not recommend variance mitigation.

The Board finds that with the conditions imposed by this Resolution, the Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

5. *The Application adequately protects sensitive environmental features.*

The Planning Board finds that the Preliminary Plan will adequately protect sensitive environmental features on the Property and within the watershed.

A. Natural Resources Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420080220 for this Property was originally approved on August 28, 2007 and was recertified on April 5, 2010. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The Property contains 0.35 acres of forest. There are two trees 30 inches and greater diameter at breast height (DBH) and two trees between 24" and 30" DBH on the Property. The site's topography is generally flat sloping gently from east to west. The Property is within the Little Seneca Creek watershed, a Use IV-P watershed, and a Special Protection Area. The Countywide Stream Protection Strategy (CSPS) rates stream quality in this watershed as good.

B. Special Protection Area requirements

Under the SPA law, a SPA water quality plan must be reviewed in conjunction with a preliminary plan application. Pursuant to Chapter 19-65, MCDPS and the Planning Board have different responsibilities in the review of a water quality plan. MCDPS has reviewed and conditionally approved the elements of the Water Quality Plan under its purview. The Planning Board must determine if environmental buffer protection, forest conservation, planting, and impervious area requirements have been satisfied.

Environmental Guidelines

The Property contains no streams, wetlands or environmental buffers that would require protection under the Environmental Guidelines adopted by the Planning Board.

Forest Conservation

As discussed above, the Board finds that the Application complies with Chapter 22A, the Montgomery County Forest Conservation Law.

Impervious Surfaces

Within this section of the Clarksburg SPA there is no impervious surface cap or limit, however, a main goal of all SPA's is to reduce the overall impervious footprint of new development within SPA boundaries. The Preliminary Plan proposes 0.54 acres (23,321 square feet) of impervious surface area on 2.53

acres of land which results in 20.11% imperviousness. The 20.11% imperviousness level is lower than the average (35% impervious) for developments using the optional R-200/TDR-3 zone method and consistent with standard R-200 zoning (20%-22%). The Applicant proposes a private driveway rather than a public street to serve the five lots. A public street would have required a full cul-de-sac bulb, resulting in considerably more pavement than that proposed by the private driveway shown on the Preliminary Plan. The Preliminary Plan also proposes to construct the minimum amount of pavement required to satisfy fire and rescue requirements for turnarounds and pavement width.

The Planning Board finds that the SPA Preliminary/Final Water Quality Plan complies with all requirements over which the Planning Board has purview.

- 6. 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 approval of the Final Water Quality Plan by MCDPS and the Planning Board's finding that the Final Water Quality Plan complies with the Environmental Guidelines and Chapter 22A, the Montgomery County Forest Conservation Law.

BE IT FURTHER RESOLVED, that for the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successor(s) in interest to the terms of this approval; and

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is July 7, 2017 (which is the date that this Resolution is mailed to all parties of record); and

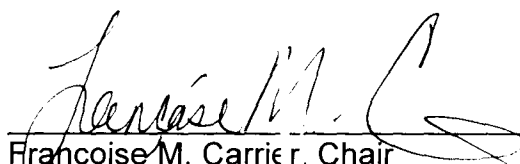
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioner Anderson voting in favor of the motion, with Commissioner Presley abstaining, and with Commissioner Dreyfuss absent, at its regular meeting held on Thursday, February 23, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board

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