



MCPB No. 17-028
Preliminary Plan No. 120160140
Deerwood Manor
Date of Hearing: May 11, 2017

MAY 23 2017

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on December 18, 2015, CK Technologies, LLC (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create six (6) lots on 4.26 acres of land in the R-200 zone, located 500 west of the intersection of Riffle Ford Road and Darnestown Road/MD 28 (“Subject Property”), in the North Potomac Policy Area and 2002 Potomac Subregion Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120160140, Deerwood Manor (“Preliminary Plan” or “Application”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board, dated April 28, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on May 11, 2017, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120160140 to create six lots on the Subject Property, subject to the following conditions:¹

¹ 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.

Approved as to
Legal Sufficiency: *Christina Sout* 5/4/17
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1. This Application is limited to six (6) lots for six (6) single family detached homes.
2. The Applicant must comply with the conditions of approval for the Preliminary and Final Forest Conservation Plan No. 120160140, approved as part of this Preliminary Plan:
 - a. Prior to Certified Preliminary Plan, the Preliminary/Final Forest Conservation Plan must be revised to reflect the following:
 - i. The forest conservation worksheet must be revised to remove Outlot A from the Total Tract Area, and to include all of the offsite limits of disturbance in the net tract area, including any required improvements to Riffle Ford Road.
 - ii. All offsite limits of disturbance must be shown on the Preliminary/Final Forest Conservation Plan and the area included in the forest conservation worksheet calculations.
 - iii. Remove the landscape credit area from the plan and adjust the area of forest planting to be satisfied by fee-in-lieu accordingly.
 - iv. Revise the proposed forest planting area on Lot 1 to provide a minimum of 30 feet between the rear building restriction line for the proposed house and the Category I conservation easement, and adjust the area of forest planting to be satisfied by fee-in-lieu accordingly.
 - v. Root pruning along the limits of disturbance for offsite trees E02, E03, E04, E05, and E06.
 - b. The Applicant must record a Category I Conservation Easement over the proposed forest planting area as specified on the approved Preliminary/Final Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any clearing or grading on the Property, and the Liber Folio for the easement must be referenced on the record plat.
 - c. Prior to the start of any clearing or grading on the Property, the Applicant must provide financial surety to the M-NCPPC Planning Department for the forest planting areas, including but not limited to plants, deer protection, fencing, signage, installation costs, and implementation of the maintenance and management agreement.
 - d. Prior to the start of any clearing or grading on the Property, the Applicant must submit for review and approval a two-year Maintenance and Management Agreement for the forest planting areas. The Agreement

- approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records.
- e. The Applicant must complete all forest and tree variance mitigation planting as shown on the approved Preliminary/Final Forest Conservation Plan within one year or two growing seasons after the development project is complete.
 - f. Prior to the start of any demolition, clearing, or grading on the Property, the Applicant must provide fee-in-lieu payment to the M-NCPPC Planning Department for the remaining afforestation planting requirement that is not being met on the Property.
 - g. Mitigation must be provided for the removal of four variance trees. Mitigation must be provided in the form of planting fourteen native canopy trees with a minimum planting stock size of three caliper inches. The trees must be planted on the adjacent Orchard Neighborhood Park property, outside of any existing or proposed rights-of-way, or utility easements, including stormwater management easements. Alternatively, the trees may be planted on the Subject Property, outside of any existing or proposed rights-of-way, utility easements, stormwater management easements, or slope easements. The planting locations of these trees and any substitution of species from what is shown on the approved Forest Conservation Plan are subject to the approval of the M-NCPPC forest conservation inspector and M-NCPPC Parks Department staff.
 - h. The limits of disturbance (LOD) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
 - i. The Applicant must comply with all tree protection and tree save measures shown on the approved Preliminary/Final Forest Conservation Plan. Tree save measures not specified on the approved Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
 - j. Prior to the start of any clearing or grading occurring on the Property, the Applicant must install permanent conservation easement signage along the perimeter of the Category I conservation easement. Signs must be installed a maximum of 100 feet apart with additional signs installed where the easement changes direction, or as determined by the M-NCPPC forest conservation inspector.
 - k. Prior to the start of any clearing or grading occurring on the Property, the Applicant must install permanent 4-foot high, 2-rail, split-rail fencing or equivalent acceptable to M-NCPPC Staff, along the entire conservation easement boundary except where it abuts existing M-NCPPC park property.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letters dated August 18, 2016

and April 5, 2017, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

4. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated August 10, 2016, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
5. Prior to submittal of Certified Preliminary Plan, the Applicant must label the proposed public street as "Public Street A".
6. Prior to submittal of Certified Preliminary Plan, the Applicant must modify the rear building restriction line on Lot 1 to setback 232 feet from the rear property line.
7. The Applicant must dedicate and show on the record plat the rights-of-way for the following roads as well as construct the roads to the design standards specified in a. and b. below.

For dedication and construction of public streets:

- a. Riffle Ford Road: Dedicate a minimum of 40 feet of right-of-way from its centerline and construct to MCDOT Road Code Standard MC-213.02: Arterial Road Open Section, as shown on the Certified Preliminary Plan.
 - b. Public Street A: Dedicate a minimum of 44 feet of right-of-way and construct to MCDOT Road Code Standard MC-2001.01: Tertiary Residential Street with sidewalk on one side, as shown on the Certified Preliminary Plan.
8. The existing house on the Subject Property must be razed prior to the recording of a record plat.
 9. Prior to the submittal of Certified Preliminary Plan, the Applicant must modify the Public Utility Easement (PUE) and Public Improvement Easement (PIE) along Riffle Ford Road to show a 20-foot PUE from the right-of-way line with an overlapping 10-foot PIE starting from the right-of-way line.
 10. The Applicant must construct a five (5) foot wide sidewalk along Riffle Ford Road.

11. The Applicant must construct a five (5) foot wide sidewalk along Public Street A.
12. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
13. The Applicant must provide access/frontage to Orchard Neighborhood Park from Riffle Ford Road from the proposed development via easement or public road with sidewalk and apron to Orchard Neighborhood Park.
14. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated December 7, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
15. 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, 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 permits. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."

16. Record plat must show all necessary easements.
17. The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution.

BE IT FURTHER RESOLVED that having considered 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 Planning Board FINDS, with the conditions of approval, that:

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

The Planning Board finds that Application is consistent with the 2002 Potomac Subregion Master Plan's general recommendations to provide a transition between the suburban areas to the east and the prime agricultural areas to the west. The Preliminary Plan achieves these recommendations by proposing a density of 1.41 units per acre and lot patterns that are similar to adjacent properties.

The Subject Property is located in the Darnestown Planning Area. The Master Plan does not specifically identify the Subject Property. The Master Plan recommends to preserve, protect, and enhance Darnestown's unique residential and community character and to review major undeveloped sites for their potential to contribute to park land and open space (p. 94). This Application achieves these goals via it's lot pattern and density of the R-200 zone while enhancing access to the adjacent M-NCPPC Parks property.

The Master Plan also reconfirms the R-200 zone for the Subject Property and the surrounding area.

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

Adequate Public Facilities

The Planning Board finds that transportation Adequate Public Facilities (APF) test is satisfied under the 2012-2016 Subdivision Staging Policy since the application was submitted prior to January 1, 2017. The Property is located in the North Potomac Policy Area which is subject to the APF's Transportation Policy Area Review (TPAR) test.

Local Area Transportation Review

A traffic study is not required to satisfy the APF's Local Area Transportation Review (LATR) test because five new single-family detached units (1 unit exists already) do not generate 30 or more peak-hour trips within the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods.

Transportation Policy Area Review

While the Subject Property is located within the North Potomac Policy Area for the Transportation Policy Area Review ("TPAR") test and is subject to the 2012-2016 Subdivision Staging Policy, TPAR payment will not apply in this particular case because, as of March 1, 2017, the Department of Permitting Services ("MCDPS") stopped collecting TPAR payments. Instead, MCDPS collects impact fees for all building permits as adopted by the County Council under the current Subdivision Staging Policy. Because the Applicant has not received a building

permit before March 1st, 2017 the Applicant will pay the impact fees based on the Subdivision Staging Policy currently in effect rather than the Subdivision Staging Policy in effect at the time of Application submission.

If the TPAR test were implemented, the roadway test for the North Potomac Policy Area is inadequate, and the transit test is inadequate. Therefore, the Applicant would have been required to provide TPAR mitigation payment equal to 50 percent of the General District Transportation Impact Tax for any new square feet, pursuant to the 2012-2016 Subdivision Staging Policy. However, as stated above, because this Application is being reviewed by the Planning Board during the transition between subdivision staging policies, a TPAR payment will not be collected at the time a permit building is submitted.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lots. The Subject Property has W-1 and S-1 water and sewer service categories, respectively, and will utilize public water and sewer.

The Application was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Access Plan was approved on August 10, 2016. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution in effect at that time that the Application was submitted.

The Application is located in the Quince Orchard High School cluster, which is identified as inadequate at the Elementary and High school levels, and would have been subject to a School Facilities Payment under the 2012-2016 Subdivision Staging Policy. However, as mentioned above in the transportation section, as of March 1, 2017 MCDPS stopped collecting School Facilities Payments. Instead, MCDPS collects impacts fees for school facilities based on the current Subdivision Staging Policy for all building permits. The Applicant will pay the fees in place under the current Subdivision Staging Policy at the time of building permit application.

- 3. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

The Planning Board finds that the Preliminary Plan meets all applicable sections of the Subdivision Regulations. The approved lots' size, widths, shapes and orientations are appropriate for the location of the subdivision and building type because the lots adequately accommodate a proposed house and related

infrastructure. The single loaded design of the approved public street is appropriate because of the need to meet intersection separation requirements. As such, the approved street had to line up with the existing Hallman Court on the opposite side of Riffle Ford Road.

The lots were reviewed for compliance with the dimensional requirements of the R-200 zone as specified in the Zoning Ordinance. The lots meet all the dimensional requirements for area, frontage and can accommodate a building which can reasonably meet the width and setbacks requirements in that zone.

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

A. Forest Conservation

The Planning Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by the County Forest Conservation Law (Chapter 22A of the County Code), a Preliminary and Final Forest Conservation Plan (FCP) for the project was submitted with the Preliminary Plan. The net tract area for forest conservation includes the 4.26-acre Property and all areas of offsite disturbance. There is no forest on the Property and the resulting afforestation requirement will be satisfied by planting forest on the Property, and the remaining requirement will be satisfied by fee-in-lieu payment. The forest planting will be accomplished in the northern portion of the Property, which includes the existing area of 15% slopes on highly erodible soils.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law 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) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to nine Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the

Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes the following findings necessary to grant the Variance:

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

Granting the variance will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to the reasonable development of the Property. The Protected Trees are in the developable area of the Property, including along the property lines. The Property is narrow and linear in configuration, requiring the access road to the proposed lots to be constructed along the property line in order to allow the lots to meet the minimum size requirements of the zone. Any residential development considered for this Property, would be faced with the same considerations of locating the development on a Property with relatively narrow frontage along Riffle Ford Road. Granting a variance to allow land disturbance within the developable portion of the Property is not unique to this Applicant and is not a special privilege that would be denied to other applicants.

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

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing Property conditions, including the shape of the Property and the location of the Protected Trees within the developable area of the Property, and the requirements of the zone.

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

The need for a variance is a result of the existing conditions and the proposed design and layout of the Property, and not a result of land or building use on a neighboring property.

4. *Granting the 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. No trees located within a stream buffer, wetland, or Special Protection Area will be impacted or removed as part of this Application. In addition, the MCDPS has found the stormwater management concept for the project to be acceptable as stated in a letter dated December 7, 2016. The stormwater management concept incorporates Environmental Site Design (ESD) standards.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed, using trees that are a minimum of 3 caliper inches in size. No mitigation is required for Protected Trees impacted but retained.

5. *All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on December 7, 2016. The Application will meet stormwater management goals for each new lot via drywells and microbio retention.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), 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 in the Montgomery County Land Records, 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 MAY 23 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 Vice Chair Wells-Harley, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, May 11, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board