

Case No. SP-03035

Applicant: Lake Marlton Ltd.
Partnership

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ORDER AFFIRMING PLANNING BOARD DECISION

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 03-277(C)(A)/2, to approve with conditions a detailed site plan for 100 single-family, detached residential lots, on remand from the District Council, on property described as approximately 98.85 acres of land in the R-P-C, R-80, and R-R Zones, known as East Marlton, Sections 19 and 20, located one-half mile southeast of the intersection of Croom Road and Mt. Calvert Road, Upper Marlboro, is hereby:

AFFIRMED, for the reasons stated by the Planning Board, whose decision is hereby adopted as the findings of fact and conclusions of law of the District Council in this case.

Affirmance of the Planning Board's decision is subject to the following conditions:

1. Prior to the issuance of any grading permits, the approved sediment and erosion control plan and the proposed technical stormwater management plans for East Marlton, Sections 19 and 20, shall be submitted to confirm conformance with the approved detailed site plan and Type II tree conservation plan.
2. Prior to signature approval of TCP II/143/03, the following revisions shall be made:
 - a. The TCP II shall be revised to show the conceptual limits of the 100-acre linear park and to clearly label the site proposed to be dedicated to the Department of Parks and Recreation.
 - b. The DSP and TCP II shall be revised to delineate the Patuxent River Primary Management Area on the proposed park site where grading impacts are proposed, so the extent of impacts can be evaluated.

- c. The TCP II shall be revised to show all grading proposed for the purpose of implementing Heathermore Boulevard and East Marlton Avenue onto the park site so impacts can be assessed. This shall include the proposed limits of disturbance, proposed stormwater management facilities, sediment and erosion control facilities, outfalls, and proposed public utility easements.
 - d. The Department of Parks and Recreation (DPR) and Environmental Planning Section shall review the design and location of storm drain outfalls, stormwater management facilities and/or utility easements associated with the implementation of Heathermore Boulevard and East Marlton Avenue to ensure that they have been designed to avoid adverse impacts to the Patuxent River Primary Management Area and sensitive environmental areas on land to be conveyed to or owned by M-NCPPC. DPR shall give final approval for the location and design of these facilities.
 - e. Any woodland conservation to be proposed on lands owned by or to be conveyed to M-NCPPC shall receive written approval from DPR.
3. Prior to certificate approval of the Detailed Site Plan, the TCP II and DSP shall be revised as follows:
- a. The plans shall show 40 feet of right-of-way dedication from the centerline of Croom Road.
 - b. The plans shall show a 10-foot utility easement adjacent to the right-of-way, if required by the utility companies.
 - c. No woodland preservation shall be credited in the right-of-way or public utility easement.
 - d. The plans shall delineate and label the “undisturbed buffer zone” in accordance with the previously approved Preliminary Plan.
 - e. A note shall be added to the plan stating that Croom Road is a designated historic road.
 - f. The plans shall be revised to remove all grading from the “undisturbed buffer zone.”
 - g. Lot design shall be revised so that all house pads shall be located a minimum of 40 feet from the “undisturbed buffer zone” in order to provide an active rear yard area. In the event that a 40-foot rear yard is not provided, then a split rail fence or equivalent shall be provided along the conservation easement.

- h. The PMA shall be delineated for the wetlands located on the adjacent site to the west of the subject property.
- i. Grading impacts onto adjacent property shall be labeled and quantified. A note shall be added to the plans which states:

“Off-site impacts to woodland, nontidal wetlands and wetland buffers are proposed as part of this plan. Grading into this area will require: Permission of the property owner; submittal of a TCP II or Letter of Exemption from Woodland Conservation; and wetlands permits as required by federal and/or state permitting authorities.”

- 4. Prior to certificate approval of the detailed site plan (DSP), an approved existing 100-year floodplain study shall be submitted and delineated on the plans, including the TCP II.
- 5. Prior to certificate approval of the DSP, a jurisdiction determination or a copy of the surveyed nontidal wetlands submitted to the U.S. Army Corps of Engineers for approval of a jurisdictional determination shall be submitted. If a jurisdictional determination is not available prior to certificate approval, it shall be submitted prior to any grading permits that affects wetlands.
- 6. Prior to certificate approval of the detailed site plan, revise the TCP II to delineate the Patuxent River Primary Management Area, per Section 24-101 of the Subdivision Ordinance, where no PMA was delineated at time of preliminary plan and/or where new grading impacts are now proposed. All other areas of PMA shall be delineated as shown on the previously approved preliminary plan.
- 7. Prior to certificate approval of the detailed site plan, revise the TCP II and detailed site plan to minimize impacts, to the extent possible, to the Patuxent River Primary Management Area resulting from the extension of Logging Trail Way between Section 18 to Section 19.
- 8. Prior to the approval of the final plat, conservation easements shall be described by bearings and distances. The conservation easements shall contain the delineated Patuxent River Primary Management Area except for areas of approved impacts shown on the preliminary plan, or as amended by the approval of the detailed site plan. The following note shall be placed on the plat:

"Conservation easements described on this plat are areas where the installation of structures and roads and the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed."

9. Prior to the delineation of woodland preservation areas or grading outside of Sections 18 through 22, or grading approved for roadway construction as part of those approvals, a detailed forest stand delineation (FSD) shall be submitted for the remainder of TCP II/143/03, or as revised and expanded in the future.
10. Prior to certificate approval of the detailed site plan, revise TCP II/143/03-01 to use a phased woodland conservation worksheet that covers the entire area of the TCPII. Woodland conservation areas will be designated within the limits of individual detailed site plans as specific development plans allow the clear delineation of where preservation is desirable and feasible. TCP II/143/03-01 shall also be revised to be at a consistent scale of 1 inch equals 30 feet.
11. Prior to certificate approval of the TCP II, the following revisions shall be made:
 - a. Provide a legend on each plan sheet that includes all graphic symbols used on that sheet.
 - b. Revise each sheet to be a defined polygon (or polygons) with a specific area and provide match lines to indicate how the polygons fit together to cover the entire area of the TCP II.
 - c. Clearly delineate and emphasize the outside boundary of the TCP II.
 - d. Provide a woodland conservation summary chart on each sheet that shall include the following information:
 - (1) The total area of the sheet and the total area inside and outside the 100-year floodplain.
 - (2) The net tract area.
 - (3) The existing woodlands inside and outside the 100-year floodplain.
 - (4) Clearing proposed inside and outside the 100-year floodplain.
 - (5) Woodland conservation provided by methodology (preservation, afforestation or reforestation).
 - (6) Total woodland conservation provided.
 - (7) Off-site woodland clearing impacts.
 - e. Provide a note which indicates the source of the 100-year floodplain acreage.

- f. Add all applicable “Required Type II Tree Conservation Plan Notes” as determined by the Environmental Planning Section.
- g. Add the “Woodland Conservation Area Management Notes” related to “Removal of Hazardous Trees or Hazardous Limbs by Developers or Builders,” and “Woodland Areas NOT Counted as Part of the Woodland Conservation Requirements.”
- h. An existing tree line and all other graphic elements used on the plan shall be added to the legend.
- i. The 15 to 25 percent slopes identified on the site shall be limited to those on highly erodible soils.
- j. All individual parcels within the limits of the TCP II shall be identified and labeled.
- k. All adjacent ownerships (including Conrail, Board of Education, PEPCO) shall be identified and labeled.
- l. A conceptual limit shall be provided for the 100-acre linear park, and the park site shall be labeled.
- m. All public utility easements and connections shall be shown.
- n. The location of all stormwater management facilities, outfalls, and grading or clearing required for their construction shall be shown.
- o. All grading proposed to occur in the first phase of development (associated with Section 18 development) shall be included on the plans.
- p. Show a single graphic symbol for “woodland preservation” and eliminate the two types of woodland preservation currently shown.
- q. Appropriate tree protection devices (TPDs) shall be provided adjacent to all clearing and/or grading proposed.
- r. All woodland preservation areas and labels shall be removed from the conceptual park site until such time as these areas have been approved for use by the Department of Parks and Recreation.
- s. The woodland preservation area labels shall be revised to only include the area of woodland preservation included on the TCP II plan sheet.
- t. Woodland preservation areas shall only include areas within the delineated proposed tree line.

- u. All woodland preservation areas within the limits of Sections 19 and 20 shall be set back a minimum of 20 feet from the side and 40 feet from the rear of any single-family detached dwellings.
- v. All woodland preservation areas shall have a minimum width of 35 feet and a minimum area of 2,500 square feet.
- w. All retaining walls shall be set back a minimum of 10 feet from any woodland conservation area in order to provide a construction zone and allow for any future maintenance or reconstruction of the structure.
- x. The location of preservation protection signage shall be shown on the plans and included in the legend.
- y. Remove the floodplain buffer (FPB), which is not pertinent to the TCP II.
- z. Have the revised plans signed and dated by the qualified professional who prepared it.
- aa. TCP II, Sheet 2 of 14, shall be revised as follows:
 - i. The location of all public utility easements and stormwater management elements shall be shown on the plan and labeled.
 - ii. All impacts to the PMA resulting from the extension of River Rock Court shall be eliminated, and a 40-foot-wide active rear yard shall be provided on all lots between the PMA and the rear of the building envelope. In the event that a 40-foot rear yard for Lot 3, Section 20 is not provided, then a split fence or equivalent shall be provided along the conservation easement.
 - iii. Nontidal wetland buffers shall be shown on the plan so impacts can be avoided and/or assessed.
 - iv. The location of the outfall from the cul-de-sac on River Rock Court shall be moved to eliminate new impacts to the PMA, 100-year floodplain and nontidal wetland buffers.
 - v. All clearing and grading impacts proposed to Section 18, and shown as off-site impacts on this TCP II, shall be shown on the approved TCP II for Section 18.

- bb. TCP II, Sheet 3 of 14, shall be revised as follows:
 - i. Woodland preservation areas will be removed from within the limits of disturbance and associated revisions shall be made.
 - ii. Woodland preservation areas less than 35 feet in width may be credited as woodland conservation if the width in combination with adjacent protected trees is a minimum of 35 feet.
- cc. TCP II, Sheet 4 of 14, shall be revised to remove woodland preservation from the 100-year floodplain.
- dd. The TCP II shall be revised to add the following note:

“The delineation of the 100-year floodplain, nontidal wetlands and Patuxent River Primary Management Area (PMA) shown outside of Sections 18-22 is not approved as part of the TCP II. The approval of the PMA outside of sections 18-22 will be based on a detailed forest stand delineation for the remainder of TCP II/143/03, which is required to be submitted with the first new preliminary plan application occurring within the limits of TCP II/143/03 (East Marlton).”
- ee. TCP II, Sheet 7 of 19, shall be revised as follows:
 - i. The limits of the individual DSPs shall be clearly delineated and labeled.
 - ii. Any grading proposed for the extension of Heathermore Boulevard east of East Marlton Avenue and not proposed as part of the current approval shall be removed from the TCP II. The haul road proposed under the current phase of development, with associated grading, limits of disturbance and TPDs shall be shown.
 - iii. The Patuxent River Primary Management Area (PMA) shall be conceptually delineated whenever grading is proposed within 100 feet. The delineation of the PMA outside of Sections 18 and 22 shall be revised in the future, as necessary, to reflect information to be provided on the FSD and future preliminary plans.
 - iv. Show the surveyed location of the cemetery located on the Board of Education property adjacent to Section 18 where grading impacts are proposed in order to construct East Marlton Avenue.

- ff. TCP II, Sheet 10 of 14, shall be revised as follows:
 - i. Identify the status of woodlands remaining on lots under 20,000 square foot in area, as identified in the legend.
 - ii. Identify the purpose of a break in woodland preservation occurring between Lots 56 and 57.
- gg. TCP II, Sheet 13 of 14, shall be revised to remove the label stating: “3.06 acres to be used for future obligations.”
- hh. The TCP II shall be revised as follows:
 - i. The grading for the haul road shall be shown, and the limit of disturbance shall be revised if necessary.
 - ii. The following note shall be added to the plan sheet:

“The delineation of the 100-year floodplain, nontidal wetlands and Patuxent River Primary Management Area shown outside of Sections 18-22 is not approved as part of the TCP II. The approval of the PMA outside of Sections 18-22 will be based on a detailed forest stand delineation for the remainder of East Marlton, which is required to be submitted with the first new preliminary plan application for East Marlton.”
- 12. Prior to the issuance of grading permits for the construction of East Marlton Avenue, an appropriate protective setting shall be determined for the cemetery location on the Board of Education property if grading is proposed within 50 feet of the surveyed limits of the cemetery.
- 13. Prior to certificate approval of the TCP II, the cover sheet shall be revised to include all pertinent information for Sections 19 and 20.
- 14. Prior to the issuance of a grading permit that impacts the stream crossing between Sections 18 and 19 shall be redesigned in a bio-sensitive manner as follows: provide for wildlife passage, minimize the concentration of flow to reduce the potential for future erosion impacts to the stream channel, and reduce the length of the pipe.
- 15. At time of final plat, a conservation easement shall be described by bearings and distances. The conservation easement shall contain the “undisturbed buffer zone” as shown at time of preliminary plan. The following note shall be placed on the plat:

“Croom Road is a designated historic road. Conservation easements described on this plat are areas where the installation of structures and roads and the removal of

vegetation is prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed."

16. Prior to certificate approval of the detailed site plan, conformance between the limits of disturbance on the Type II tree conservation plan and the detailed site plan shall be found.
17. At time of grading permit application, copies of the approved sediment and erosion control plans shall be submitted.
18. Prior to certification of the detailed site plan, the site/grading, landscaping shall be revised to show the following:
 - a. Cliff Rock Road between Logging Trail Way and White Tail Drive must be revised to the primary residential standard within a 60-foot right-of-way.
 - b. The plans should be revised to include the 50-foot building restriction line as measured from proposed East Marlton Avenue.
19. The applicant, his heirs, successors, and/or assignees shall provide the installation of one "Share the Road with a Bike" sign in accordance with state highway requirements. A note shall be placed on the final record plat that installation will take place prior to the issuance of the first building permit.
20. If improvements are required by the State Highway Administration, the applicant, his heirs, successors, and/or assignees shall construct a seven-to-ten-foot-wide asphalt shoulder along the subject property's entire frontage of MD 382, per the concurrence of SHA.
21. Prior to signature approval of the TCP II, the applicant shall revise the tree conservation plan to show the conceptual boundary of the 100-acre park. The plans shall include a conceptual layout of the 18-acre lake, trails access roads, and parking lots on dedicated parkland prior to approval of the TCP II/143/03. The plans shall be amended to remove the tree conservation on dedicated parkland except the 18 acres as previously agreed upon.
22. Detailed construction drawings for Grandhaven Avenue Park (Brandywine Country Neighborhood Park) shall be submitted to DPR for review and approval prior to signature approval for any of above detailed site plans in East Marlton.
23. The existing "Agreement to Amend Public Recreational Facilities Agreement" signed on October 8, 1996, by the Commission and developer (Lake Marlton Limited Partnership) shall be recorded in Prince George's County Land Records prior to signature approval of above detailed site plan.

24. The recreational facilities agreement recorded in Liber 8036, folio 460, shall be amended to include an additional segment of the trail which will create a loop around the 18-acre lake, address the expansion of the parking lots to accommodate 15 additional parking spaces on each of the two lots (this will provide mitigation for the proposed tree conservation area on dedicated parkland for East Marlton, Sections 18-22 as previously agreed by the DPR staff and the applicant).
25. Prior to certificate approval of the detailed site plan, the plans shall be revised to provide a minimum 15-foot wide undisturbed buffer adjacent to Lots 5 and 6, Block A of the Windy Oaks Subdivision. An evergreen screen shall be provided along the west side of the buffer. In addition, a minimum eight foot wide undisturbed buffer shall be provided adjacent to Lot 4, Block A, with an evergreen screen along the west side of the buffer.
26. Prior to the recordation of the final plat, the applicant shall submit covenants which shall prohibit the use of chain link fence at the perimeter of property except as noted on the Official Plan.
27. Prior to certificate approval of the Detailed Site Plan, the DSP and TCP I shall be revised as follows:
 - a. Lots 38 – 41 fronting on Cliff Rock Road and abutting Croom Road at the rear property line shall be a minimum of 40,000 square feet each.
 - b. The maximum number of lots abutting Croom Road shall be no more than four (4).
 - c. An undisturbed minimum buffer of 100 feet shall be maintained from Croom Road.
 - d. The buffer shall be increased where it does not impact usable rear yard space for the lots abutting Croom Road. Usable rear yard space shall mean forty (40) feet of open area behind the rear of a home.
 - e. Supplemental plantings in the buffer for the purpose of enhancing the retained forest area shall be of indigenous trees and shrubs sufficient to create a visual screen. Supplemental plantings shall not be considered in meeting the woodland conservation requirements of the Tree Conversation Plan (TCP), but be considered in addition to, not in lieu of, said requirements.
 - f. An easement preserving said buffer shall be recorded in the land records of Prince George's County or shown on the final plat of subdivision.
28. At time of final plat, a scenic easement as delineated on the detailed site plan shall be established behind the public utility easement adjacent to Croom Road and a note shall be placed on the final plat as follows:

“Croom Road (MD 382) is a county-designated Historic Road and a state-designated Scenic Byway. The scenic easement described on this plat is an area where the installation of structures and roads and/or the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches or trunks is allowed.”

29. Prior to the issuance of any grading permits, a Phase IB (Identification) archeological investigation shall be completed and evidence of M-NCPPC staff concurrence with the investigations and/or report shall be provided.
 - a. If it is determined that archeological resources exist in the project area, the applicant shall provide a plan for:
 - i. Evaluating the resource at the Phase II level, and, if necessary,
 - ii. Conducting Phase III investigations by avoiding and preserving the resource in place or mitigating through Phase III recovery.
 - b. The investigation should follow the standards and guidelines in the Maryland Historical Trust’s *Standards and Guidelines for Archeological Investigations in Maryland* (Shaffer and Cole, 1994). Archeological excavations shall be spaced along a regular 20-meter or 50-foot grid and excavations should be clearly identified on a map to be submitted as part of the report. The report should follow report and editorial standards in *Standards and Guidelines for Archeological Investigations in Maryland* (Shaffer and Cole, 1994), and the *American Antiquity* or *Society for Historical Archaeology* style guide, and cite whether a submittal is a draft report or final report on the cover and inside cover page of the document, along with the relevant development case numbers.
30. Prior to certificate approval of the plans, the following lots shall be deleted, as stated below:
 - a. Section 19 - Delete lots 16-19, 24, and 25. Lots 19 and 25 may be recovered if resited to the satisfaction of the FOC and the Development Review Division.
 - b. Section 20 - Delete Lots 4 and 5.
31. Prior to approval of any building permits, a revision to the Detailed Site Plan for the approval of architectural elevations shall be reviewed, and the following information shall be provided and/or the plans shall demonstrate the following:
 - a. The applicant shall provide evidence of a meeting with the FOC on the architectural elevation design of houses on Lots 31-37 adjacent to the Windy Oaks subdivision lots, and Lots 38-41 adjacent to Croom Road.

- b. The rear elevations of Lots 31-37 adjacent to the Windy Oaks subdivision shall be enhanced with additional rear architectural features such as shutters, window trim, and/or masonry fireplaces.
 - c. The rear elevations of Lots 38-41 shall be enhanced with additional architectural features such as shutters, window trim, and/or masonry fireplaces.
32. Prior to signature approval, the plans shall be revised to demonstrate the following:
- a. Lots 31 – 37 on Cliff Rock Road adjacent to the Windy Oaks subdivision to M-NCPPC shall be a minimum of 40,000 square feet each.
 - b. Provide a minimum 25-foot wide undisturbed and/or planted buffer adjacent to Lots 1 through 5, Block A of the Windy Oaks subdivision. This buffer shall be maintained as undisturbed for a minimum of 15 feet adjacent to said Windy Oaks. An evergreen screen shall be provided along the west side of the buffer. Supplemental plantings in said buffer areas for the purpose of enhancing the retained forest area shall be of indigenous trees and shrubs sufficient to create a visual screen. An easement preserving said buffer shall be recorded in the land records of Prince George’s County or shown on the final plat of subdivision. Supplemental plantings shall not be considered in meeting the requirements for the Tree Conversation Plan (TCP), but be considered in addition to, not in lieu of, said requirements.
 - c. Provide a minimum 15-foot wide undisturbed and/or planted buffer shall be provided adjacent to Lot 6, Block A of the Windy Oaks subdivision. This buffer shall remain undisturbed for a minimum of eight feet (8’) adjacent to said Windy Oaks. An evergreen screen shall be provided along the west side of the buffer. Supplemental plantings in said buffer areas for the purpose of enhancing the retained forest area shall be of indigenous trees and shrubs sufficient to create a visual screen. An easement preserving said buffer shall be recorded in the land records of Prince George’s County or shown on the final plat of subdivision.

Ordered this 13th day of March, 2006, by the following vote:

In Favor: Council Members Bland, Campos, Dean, Harrington and Peters

Opposed:

Abstained: Council Member Dernoga

Absent: Council Members Exum, Hendershot and Knotts

Vote: 5-0-1

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON
REGIONAL DISTRICT IN PRINCE GEORGE'S
COUNTY, MARYLAND

By: _____
Thomas E. Dernoga, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council