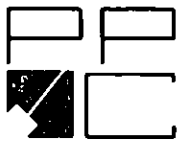


**MN**  
**THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**



PGCPB No. 11-38

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File No. 4-10004

R E S O L U T I O N

WHEREAS, Mark 5 Development, Inc is the owner of a 6.24-acre parcel of land known as Tax Map 142 in Grid A-1 and is also known as Parcel 199, said property being in the 5<sup>th</sup> Election District of Prince George's County, Maryland, and being zoned One-Family Detached Residential (R-80); and

WHEREAS, on December 2, 2010, Mark George filed an application for approval of a Preliminary Plan of Subdivision for 6 lots; and

WHEREAS, the application for approval of the aforesaid Preliminary Plan of Subdivision, also known as Preliminary Plan 4-10004 for Fort Riverdale was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on May 5, 2011, for its review and action in accordance with Article 28, Section 7-116, Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application with conditions; and

WHEREAS, on May 5, 2011, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board APPROVED the Type 1 Tree Conservation Plan (TCP1-012-10), and further APPROVED Preliminary Plan of Subdivision 4-10004, Fort Riverdale, including a Variation from Section 24-130(b)(5) and a Variance from Section 25-122(b)(1)(G) for 6 lots with the following conditions:

1. Prior to signature approval of the subject preliminary plan of subdivision, the following technical corrections shall be made:
  - a. Revise Note 12 to reflect "Dormant—Water and Sewer Category 3."
  - b. Label the primary management area (PMA).
  - c. Show the acreage of the gross area and the contiguous land area outside the PMA on Lot 5.
2. Prior to signature approval of the preliminary plan and Type 1 Tree Conservation Plan TCP1-012-10, a revised natural resources inventory (NRI) shall be approved to show the correct stream buffer width, include all regulated environmental features in conformance with County Council Bill CB-26-10, and correctly delineate the primary management area (PMA), including all appropriate features.

3. Prior to signature approval of the preliminary plan, the preliminary plan and TCP1-012-10 shall correctly reflect the information shown on the revised approved NRI.
4. Prior to signature approval of the preliminary plan, TCP1-012-10 shall be revised as follows:
  - a. Show the standard line-type for the delineation of the PMA and add the standard symbol for the PMA to the legend.
  - b. Remove the soils symbol from the legend.
  - c. Provide the Preliminary Plan number in Note 1.
  - d. Revise Note 7 to indicate the correct location in the "Developing" Tier.
  - e. Re-number Note 6 and Note 7 to Note 11 and Note 12 to be in sequence with the preceding notes.
  - f. Add a clear readable copy of the woodland conservation worksheet to the plan.
  - g. Add the correct qualified professional certification to the plan.
  - h. Revise the Specimen Tree Table to add a disposition for the trees identified.
  - i. Replace the wording "Waters of the U.S." with "Regulated" stream in the legend.
  - j. Add the 75-foot regulated stream buffer symbol to the legend.
  - k. Revise the plan and the worksheet to reflect the clearing of woodlands within the proposed right-of-way.
  - l. Remove the letters "BRL" from the symbol for the 1.5 safety factor line in the legend.
  - m. Have the revised plans signed and dated by the qualified professional who prepared them.
5. Prior to signature approval of the preliminary plan, TCP1-012-10 shall be revised to show any existing storm drain easements, the proposed culvert, the ultimate right-of-way improvements including storm drainage, off-site grading, and the proposed construction of a closed drain system. The TCP1 shall contain the following note:

"The limits of disturbance shown on this plan shall be revised as needed on the TCP2 to address additional clearing required by the Department of Public Works and Transportation for the construction associated with Old Fort Road and the required stormwater management facilities."

6. Development of this subdivision shall be in compliance with approved Type 1 Tree Conservation Plan TCP1-012-10. The following note shall be placed on the final plat of subdivision:

"This development is subject to restrictions shown on the approved Type 1 Tree Conservation Plan (TCP1-012-10 or most recent revision), or as modified by the Type 2 Tree Conservation Plan, and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved Tree Conservation Plan and will make the owner subject to mitigation under the Woodland and Wildlife Habitat Conservation Ordinance. This property is subject to the notification provisions of CB-60-2005. Copies of all approved Tree Conservation Plans for the subject property are available in the offices of the Maryland-National Capital Park and Planning Commission, Prince George's County Planning Department."

7. At the time of final plat, a conservation easement shall be described by bearings and distances. The conservation easement shall contain the delineated primary management area (PMA) and be reviewed by the Environmental Planning Section of The Maryland-National Park and Planning Commission (M-NCPPC) prior to approval of the final plat. No impacts to the PMA were approved with this preliminary 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."

8. Prior to signature approval of the preliminary plan, the preliminary plan and TCP1-012-10 shall be revised to extend the 1.5 safety factor line to the eastern disturbance limit of the slope using data generated in the slope stability analysis for Profile No. 3, shown on Sheet 12 of the soils report.
9. Development of this site shall be in conformance with Stormwater Management Concept Plan 9966-2010-00 and any subsequent revisions.
10. The applicant and the applicant's heirs, successors, and/or assignees shall provide the following:
- a. A four-foot-wide sidewalk along the subject site's entire frontage of Old Fort Road, unless modified by the Department of Public Works and Transportation (DPW&T);
  - b. A financial contribution of \$210 to DPW&T for the placement of bicycle signage. A note shall be placed on the final record plat for payment to be received prior to the issuance of the first building permit.
11. The driveway to each of the proposed lots shall be designed with a turnaround capability in order to minimize the need for vehicles accessing these lots to have to back onto Old Fort Road. The design of the driveways to each lot shall be verified prior to M-NCPPC approval of building permits.

12. At the time of final plat approval, the applicant shall demonstrate dedication of right-of-way along Old Fort Road of 40 feet from the master plan centerline, as shown on the approved preliminary plan of subdivision.
13. At the time of final plat, the applicant shall dedicate a ten-foot public utility easement (PUE) along the public right-of-way as delineated on the approved preliminary plan of subdivision.
14. Prior to approval of the final plat of subdivision, the applicant and the applicant's heirs, successors, and/or assignees shall pay a fee-in-lieu of parkland dedication.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

1. The subdivision, as modified, meets the legal requirements of Subtitles 24 and 27 of the Prince George's County Code and of Article 28, Annotated Code of Maryland.
2. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development.

	EXISTING	APPROVED
Zone	R-80	R-80
Use(s)	Vacant—Undeveloped	Residential (SFD)
Acreage	6.24	6.24
Lots	0	6
Outlots	0	0
Parcels	1	0
Dwelling Units	0	6
Public Safety Mitigation Fee	No	No
Variance	No	Yes (Section 25-122(b)(1)(G))
Variation	No	Yes (Section 24-130(b)(5))

Pursuant to Section 24-119(d)(2) of the Subdivision Regulations, this case was heard before the Subdivision and Development Review Committee (SDRC) on December 27, 2011. The requested variation to Section 24-130(b)(5) was accepted on April 5, 2011, as discussed further in the Variation section of this report, and was heard on April 15, 2011 at SDRC as required by Section 24-113(b).

3. **Community Planning**—The 2002 *Prince George's County Approved General Plan* designates the subject property within the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low- to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable. Specifically, this

application is consistent with Developing Tier goals to “Maintain low- to moderate-density land uses (except in Centers and Corridors)” and to “Reinforce existing suburban residential neighborhoods” (p. 37). The preliminary plan is consistent with the 2002 General Plan Development Pattern policies for the Developing Tier by maintaining a pattern of low-density development through the proposed six single-family residential lots at a density of one dwelling unit per acre. The approved development will not violate the General Plan’s goal of limiting residential growth in the Developing Tier to 66 percent of the County’s total by the year 2025.

The 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac* classifies the subject property in the R-80 Zone. The master plan recommends residential low-density land use up to 3.5 dwelling units per acre. The preliminary plan conforms to the low-density land use recommendations of the Henson Creek-South Potomac Master Plan and Sectional Map Amendment by proposing a six residential lot subdivision at a density that is consistent with the plan recommendations.

4. **Environmental**—A Type 1 Tree Conservation Plan (TCP1-012-10), signed Natural Resources Inventory (NRI-090-07), and other supplemental materials have been received and reviewed.

The site is mostly wooded. According to the *Prince George’s County Soils Survey*, the principal soils on this site are in the Aura and Croom, Chillum, Beltsville, and Westphalia soil series. Aura and Croom soils are only problematic when associated with extensive areas of steep slopes. These soils exist in the central portion of the site where there are some areas of steep slopes; however, these areas are all proposed to be preserved as part of the primary management area (PMA). Beltsville soils are highly erodible and may have areas with perched water tables and impeded drainage. An area of Marlboro clay occurs on the site. This information is provided for the applicant’s benefit. No further action is needed as it relates to this preliminary plan of subdivision review. A soils report may be required by Prince George’s County during the permit review process.

Two regulated streams exist in the central portion of the site that discharges into an unnamed tributary of Piscataway Creek in the Piscataway Creek watershed. The unnamed tributary of Piscataway Creek is designated as a secondary corridor in the approved Henson Creek-South Potomac Master Plan. There are no nearby noise sources that would generate noise levels above 65 dBA Ldn on the subject property. The proposal is not expected to be a noise generator.

The site is located in the Developing Tier as reflected in the adopted General Plan. According to the *Approved Countywide Green Infrastructure Plan*, the site contains areas within the network designated as regulated areas, evaluation areas, and network gap areas. According to information obtained from the Sensitive Species Review GIS layer provided by the Maryland Department of Natural Resources, Natural Heritage Program, no rare, threatened, or endangered species are known to occur in the vicinity of this property. No designated scenic or historic roads will be affected by the proposed development.

**Master Plan Conformance**

The current master plan for this area is the Henson Creek-South Potomac Master Plan and Sectional Map Amendment. The sectional map amendment (SMA) retained the subject property in the R-80 Zone. The following policies and strategies from the Environmental Infrastructure section of the Henson Creek-South Potomac Master Plan are applicable to the subject application:

**Policy 1: Protect, preserve and enhance the identified green infrastructure network within the Henson Creek planning area.**

**Strategies:**

1. Use designated green infrastructure network to identify opportunities for environmental preservation and restoration during the review of land development proposals.
2. Protect primary corridors (Henson/Broad Creek and Tinkers Creek/Piscataway Creek) during the review of land development proposals to ensure the highest level of preservation and restoration possible, with limited impacts for essential development elements. Protect secondary corridors (tributaries to the Potomac River and wooded corridors not necessarily associated with stream valleys) to restore and enhance environmental features, habitat and important connections.
3. Target public land acquisition programs within the designated green infrastructure network in order to preserve, enhance or restore essential features and special habitat areas.
4. Preserve unique habitat areas to the fullest extent possible during the land development process.
5. Develop flexible design techniques to maximize preservation of environmentally sensitive areas.

**Policy 2: Restore and enhance water quality in areas that have been degraded and preserve water quality in areas not degraded.**

**Strategies:**

1. Identify opportunities for restoration within the primary corridors (Broad Creek/Henson Creek and Piscataway Creek/Tinkers Creek) and target mitigation efforts in these areas.
2. Restore stream and wetland buffers to the fullest extent possible during the land development process.

3. **Ensure the use of Low Impact Development (LID) Techniques to the fullest extent possible during the development process.**
4. **Address existing flooding concerns in conformance with the County Code on all new development.**
5. **Consider the existing conditions of the watershed and strictly adhere to the requirements of the Stormwater Management Ordinance as new development proposals are submitted.**

Two regulated streams exist in the central portion of the site that discharges into an unnamed tributary of Piscataway Creek in the Piscataway Creek watershed, and are the primary management area (PMA). The subject application proposes no impacts to the PMA located on the site. In addition, the proposed lots are well above the minimum lot size for the R-80 Zone, resulting in a reduction in the amount of impervious surfaces that could have been developed given the zoning. This project also proposes to meet the entire woodland conservation requirement on-site, whereas, in many R-80-zoned developments, at least a portion of the requirement is met off-site. Overall, the development proposal is in conformance with the Henson Creek-South Potomac Master Plan by preserving the significant environmental features that exist on-site in their entirety by proposing a development that results in a significant reduction in the amount of impervious surfaces that could be constructed, and by meeting the entire woodland conservation requirement on-site.

#### **Conformance with the Green Infrastructure Plan**

The green infrastructure network, identified in the *Approved Countywide Green Infrastructure Plan*, is a comprehensive framework for conserving significant environmental ecosystems in Prince George's County. The network is divided into three categories: regulated areas, evaluation areas, and network gaps of countywide significance.

The overall property contains regulated features of countywide significance identified within the designated network of the Countywide Green Infrastructure Plan, and regulated features of local significance located within the PMA. Preservation of resources within this corridor is critical to the long-term viability and preservation of the overall green infrastructure network and is critical to preserving the subregion's water quality.

The preliminary plan is in conformance with the Countywide Green Infrastructure Plan by preserving the significant environmental features that exist on-site.

#### **Environmental Review**

A signed Natural Resources Inventory, NRI/090/07, was submitted with the original review package. The NRI indicates that there are two regulated stream systems located in the middle portion of the property. The forest stand delineation (FSD) report notes one forest stand totaling 5.74 acres with 27 specimen trees. The streams were shown correctly on the original NRI submittal at the time of signing. County Council Bill CB-26-10, effective September 1, 2010,

revised the minimum stream buffers and PMA requirements. This application was reviewed for conformance with the current expanded stream buffers and PMA. The previously signed NRI does not meet the current requirements and must be revised. A revised NRI is required to show the 75-foot-wide minimum stream buffer required in the Developing Tier, the location of all slopes 15 percent or greater, and the delineation of the PMA to include all appropriate features. The preliminary plan and TCPI show the regulated environmental features correctly, but do not label the outer limits of the PMA.

The property is subject to the provisions of the Woodland and Wildlife Habitat Conservation Ordinance because the site is greater than 40,000 square feet in area and contains more than 10,000 square feet of woodland. A Type 1 Tree Conservation Plan (TCPI-012-10) was submitted.

The subject site has a total woodland conservation requirement of 1.68 acres, which is proposed to be satisfied with 1.75 acres of on-site woodland preservation. To meet the woodland conservation requirements, a hierarchy of priorities has been established in Division 2 of Subtitle 25, in Section 25-121(b). The site contains an area of PMA that is required to be preserved to the fullest extent possible in Section 24-130 of the Subdivision Regulations. The TCPI shows no disturbance to the delineated PMA. The 1.75 acres of on-site preservation proposed is located totally within the PMA, which is a high priority for preservation.

The Department of Public Works and Transportation (DPW&T) is requiring that the applicant construct the relocated section of Old Fort Road along the frontage of the development. Section 25-122(b)(1)(N)(v) of the Woodland and Wildlife Habitat Conservation Ordinance requires that land areas to be dedicated for future road construction be counted as cleared if the associated development is required to construct the road. The TCPI does not show the areas within the proposed right-of-way as being counted as cleared. The plans and worksheet should be revised to reflect the clearing of these areas.

An evaluation of specimen, champion, and historic trees on the site was also required to conform to the requirements of the Environmental Technical Manual. A specimen tree condition analysis report was stamped as received March 24, 2011 and was found to be acceptable. A total of 27 specimen trees were identified, located, and evaluated on the overall site. Specimen trees are defined as trees having a diameter at breast height (DBH) of 30 inches or more; trees having 75 percent or more of the DBH of the current champion of that species; or a particularly impressive or unusual example of a species due to its size, shape, age, or any other trait that epitomizes the character of the species. None of the trees on the site are considered "champion trees" because they are not the largest of their species in the country, state, or county. A request for a variance to Section 25-122(b)(1)(G) to remove nine specimen trees, in accordance with Section 25-119(d), has been submitted.

The subject property must demonstrate compliance with the tree canopy coverage (TCC) requirements of Division 3 of Subtitle 25. The requirement in the R-80 Zone is 15 percent of the gross tract area. The subject property is 6.24 acres resulting in a tree canopy requirement of 0.94 acre. The property will be able to meet the tree canopy requirement through the preservation



of the PMA. At the time of permit issuance, the property will be required to demonstrate compliance with Subtitle 25, Division 3: Tree Canopy Coverage Ordinance by the addition of a TCC schedule to the landscape or grading plan.

A soils report and slope stability analysis was submitted with the application, stamped as received by the Environmental Planning Section on December 2, 2010. The soils report and the revised TCPI dated March 24, 2011 were forwarded to the DPW&T for review of the location of Marlboro clay and the associated 1.5 safety factor line depicted on the revised plan on Lot 6. A site visit was conducted with staff from The Maryland-National Capital Park and Planning Commission (M-NCPPC) and DPW&T to evaluate the on-site conditions. In a memo dated March 30, 2011, DPW&T requested that the 1.5 safety factor line shown on the plan be revised to extend to the eastern disturbance limit of the slope based on data generated in the slope stability analysis for Profile No. 3, shown on Sheet 12 of the soils report.

The memorandum from DPW&T also stated that:

- the revised house pad shown on the TCPI is in an acceptable location; however, additional stability analyses may be required at the time of permit review.
- if the area between the ravines (within the PMA) remains undisturbed, there will be no slope stability issues with this area.
- the footings and basement for Lot 6 are of concern and will need to be evaluated in detail at the time of permit review.

With regard to the preliminary plan of subdivision that is the subject of this application, sufficient information has been provided and sufficient analyses have been conducted to conclude that proposed Lot 6 is a buildable lot and provides a sufficient building envelop for construction.

5. **Variance to Section 25-122(b)(1)(G)**—A variance request to Section 25-122(b)(1)(G) of the Woodland and Wildlife Habitat Conservation Ordinance was received on March 24, 2011 for the removal of nine specimen trees located on the subject property. The variance application did not address Specimen Trees 5 and 6 that are within the proposed right-of-way, along with Specimen Tree 14, which was part of the variance application. Specimen Trees 5 and 6 were included in the evaluation below, the same as Tree 14, because they are within the proposed right-of-way of Old Fort Road and will be removed when the future road construction is conducted. Therefore, the total specimen trees to be removed of the 27 which exist on-site is 11.

Specimen trees were evaluated whether they were located in a high priority area for preservation and whether their condition warranted a redesign of the site to ensure their preservation. The table below summarizes the recommendations.

In summary, the removal of **11 specimen trees** should be approved based on the required findings below.

Tree(s) for which Variance for Removal is Requested (As numbered on NRI-090-07)	Comment	Recommendation
Tree #3 and 4	Within the development envelope for Lot 5	Support variance for removal
Tree #5, 6, and 14	Within the proposed ROW	Support variance for removal
Trees #12, 13, 17, 18, 19, and 20	Within the development envelope for Lot 6	Support variance for removal

Section 25-119(d) contains six required findings, listed in bold below, to be made before a variance from the Woodland and Wildlife Habitat Conservation Ordinance can be granted. An evaluation of this variance request with respect to the required findings is provided below.

**(A) Special conditions peculiar to the property have caused the unwarranted hardship;**

The property is of a highly irregular configuration, which is not shared by surrounding properties, being both very long and very narrow. The configuration limits the developable area of the property and renders the creation of lots conforming to development criteria very difficult.

The property is bifurcated by the PMA containing two streams and their associated buffers. This area is located at the widest portion of the property and includes 14 of the 27 specimen trees identified on the site. The plan shows the preservation of two specimen trees outside the PMA on proposed Lot 6.

Three of the specimen trees proposed to be removed are within the proposed right-of-way of Old Fort Road. Two are within the building envelop of Lot 5. Six of the trees proposed to be removed are on proposed Lot 6 within the building envelop. The plan shows the preservation of two specimen trees on proposed Lot 6 (Specimen Trees 15 and 16), which is a lot approximately 25,000 square feet in size.

In order to provide for reasonable development on the developable portions of the property and to provide for reasonable building envelopes for the new homes, preservation of these trees would represent an unwarranted hardship. Preservation of the three specimen trees within the proposed right-of-way would not be possible because of other regulations in the County Code.

**(B) Enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;**

The applicant wishes to develop the property consistent with the adjoining properties in the area. The property has a density potential of 28 lots and, due to the development and physical restrictions of the site, the applicant is proposing 21 percent of the available density potential of the property. If other constrained properties encounter trees in similar conditions and in similar

locations on a site, the same considerations would be provided during the review of the required variance application.

- (C) Granting the variance will not confer on the applicant a special privilege that would be denied to other applicants;**

If other constrained properties encountered trees in similar conditions and in similar locations on a site, the same considerations would be provided during the review of the required variance application.

- (D) The request is not based on conditions or circumstances which are the result of actions by the applicant;**

The property is unusually long and the specimen trees are concentrated in one portion of the property, the eastern end, where the property narrows significantly. The applicant is making a good attempt to preserve the existing specimen trees by preserving the PMA in its entirety and preserving two of the eight specimen trees on proposed Lot 6.

- (E) The request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and**

The request to remove the trees does not arise from any condition on a neighboring property.

- (F) Granting of the variance will not adversely affect water quality.**

Granting the variance to remove the specimen trees will not directly affect water quality because the specimen trees are not located within or adjacent to regulated environmental features and the reduction in tree cover due to specimen tree removal is minimal. Specific requirements regarding stormwater management for the site will be further reviewed by DPW&T.

#### **Variance Conclusions**

Based on the preceding analysis, the required findings of Section 25-119(d) have been addressed. **The Planning Board approved of the removal of 11 Specimen Trees: 3, 4, 5, 6, 12, 13, 14, 17, 18, 19, and 20.**

6. **Variation to Section 24-130(b)(5)**—The site contains regulated environmental features that are required to be protected under Section 24-130 of the Subdivision Regulations. The on-site regulated environmental features include two stream valleys with their associated 75-foot-wide stream buffer and slopes. Section 24-130(b)(5) of the Subdivision Regulations states:

- (5) Where a property is located outside the Chesapeake Bay Critical Areas Overlay Zones the preliminary plan and all plans associated with the subject application shall demonstrate the preservation and/or restoration of regulated environmental features in a natural state to the fullest extent possible. Any lot or parcel proposed**

**for development shall provide a minimum of one acre of contiguous land area exclusive of any land within regulated environmental features in a configuration that will support the reasonable development of the property. This limitation does not apply to open space and recreation parcels. All regulated environmental features shall be placed in a conservation easement and depicted on the final plat.**

This preliminary plan is preserving the PMA in a natural state to the fullest extent possible by proposing no impacts to the PMA. The TCP1 shows no disturbance to the delineated PMA. The preliminary plan proposes to place the entire PMA on Lot 5 of the subdivision. Lot 5, the largest lot in the subdivision, contains 2.796 acres (121,786 square feet) of land. The PMA contains 2.03 acres (88,621 square feet) or 72.8 percent of Lot 5. The contiguous land exclusive of any land within the PMA is 31,921 square feet (0.7328 acre). Land outside the PMA to the east that is not contiguous with the development area and west of the PMA is 1,244 square feet (0.028 acre). Pursuant to Section 24-130(b)(5) it is required that any lot or parcel proposed for development shall provide a minimum of one acre of contiguous land area exclusive of any land with the PMA. Lot 5 has 31,921 square feet of contiguous land area outside and west of the PMA; therefore, a variation for 11,639 square feet from the requirement is requested, and supported by staff.

Proposed Lot 5 is configured in such a way as to provide a substantial outdoor activity area to the rear of the proposed house footprint and a significant amount of space to relocate the proposed house footprint without impacting the PMA. Standards in the Woodland and Wildlife Habitat Conservation Ordinance for separation from protected areas are 40 feet to the rear and 20 feet on the sides of proposed building footprints. The proposed building footprint and lot configuration meet these standards.

A request was submitted for a variation from Section 24-130(b)(5) to permit a lot with less than one acre of contiguous land area exclusive of any land within environmental features. Section 24-113(a) of the Subdivision Regulations sets forth the required findings for approval of a variation request as follows:

- (a) **Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle; and further provided that the Planning Board shall not approve variations unless it shall make findings based upon evidence presented to it in each specific case that:**

As discussed below, the approval of the applicant's request does not have the effect of nullifying the intent and purpose of the Subdivision Regulations. In fact, strict compliance with the requirements of Section 24-121(a)(3) of the Subdivision Regulations could result in practical difficulties to the applicant in creating a lotting pattern that is not consistent with the surrounding properties.

- (1) The granting of the variation will not be detrimental to the public safety, health or welfare, or injurious to other property.**

The variation request is only for Lot 5 of the subdivision and is entirely internal to Lot 5 and to this particular subdivision. Lot 5 is the largest lot in the subdivision with 2.796 acres. The contiguous developable land outside of the PMA in Lot 5 is 31,921 square feet which is over three times the minimum lot size requirement in the R-80 Zone. The developable land area for Lot 5 is in keeping with the surrounding lots. The shape of the buildable envelope of Lot 5 is well defined and is the largest in the subdivision to ensure the house footprint and substantial outdoor activity area on the lot will not impact the PMA. The TCPI shows the preservation of the PMA in its entirety. Therefore, granting the variation request will not be detrimental to the public safety, health or welfare, or injurious to other property.

- (2) The conditions on which the variation is based are unique to the property for which the variation is sought and are not applicable generally to other properties;**

The property is of a highly irregular configuration being both very long and very narrow. Numerous conditions on this property are unique to the property and render its development difficult at best. Topographic conditions and the highly irregular configuration of the subdivision property are the predominate conditions. Further, the bifurcation of the property by a PMA at its widest and otherwise most developable area renders a significant amount of the property undevelopable. The existence of slopes, sensitive environmental features, and Marlboro clays on the property makes the conditions of this site unique, difficult, and warranted for a variation.

- (3) The variation does not constitute a violation of any other applicable law, ordinance, or regulation; and**

The variation is specific to Section 24-130(b)(5) and does not violate any other applicable law, ordinance, or regulation. All requirements of the Woodland Conservation Ordinance have been met and no impacts to the PMA are proposed.

- (4) Because of the particular physical surrounding, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out.**

The property is of a highly irregular configuration, an almost boomerang-like shape, with Lot 5 located at the midpoint in the subdivision at its widest with narrowing of the property to the east and west. The configuration limits the developable area of the property and renders creation of lots conforming to development criteria very difficult, and evidences the fact that the applicant is only realizing 6 of the 28 lot density that is allowable in the R-80 Zone for the site. The property is zoned R-80 where the minimum lot size is 9,500 square feet and the maximum density is 4.5 dwelling units per acre. The proposed lots in this preliminary plan are in keeping with the size and configuration of the surrounding lots in the area and average 19,607 square feet. Lot 5, exclusive of the PMA, contains a total of 31,921 square feet and is configured in such a way as to provide a substantial outdoor activity area to the rear of the proposed house footprint and a significant amount of space to relocate the proposed house footprint without impacting the PMA. In addition, the existence of Marlboro clay along Old Fort Road and the substantial area of the property required to be conveyed to the county as dedicated right-of-way further depletes the developable area of the property. If the strict letter of the regulation is carried out then the proposed subdivision will require the loss of one lot and the creation of a lotting pattern that is less desirable and less in keeping with the surrounding area; therefore, the variation is supported.

Based on the preceding analysis, approval of the variation from Section 24-130(b)(5) is supported to allow Lot 5 to be less than one acre of contiguous land area exclusive of any land within environmental features.

#### **Variation Conclusions**

The applicant has submitted a variation request from Section 24-130(b)(5), however, the variation was submitted on April 5, 2011 less than 30 days prior to the Planning Board hearing, as required by Section 24-113(b) of the Subdivision Regulations. The applicant has requested a one-week continuance by letter dated April 5, 2011 from April 28, 2011 to May 5, 2011 in order for the variation request to meet the 30-day technical requirement of Section 24-113(b). On April 28, 2011, the Planning Board heard the variation requested and granted the one-week continuance. Based on the preceding analysis, the required findings of Section 24-113(a) have been addressed. The Planning Board approved the variation request to Section 24-130(b)(5) of the Subdivision Regulations.

7. **Stormwater Management**—The Prince George's County Department of Public Works and Transportation (DPW&T), Office of Engineering, has determined that on-site stormwater management is required. A Stormwater Management Concept Plan, 9966-2010-00, was approved on April 30, 2010 and is valid until April 30, 2013. The approved concept plan has conditions to ensure that development of the site does not result in on-site or downstream flooding. Development must be in accordance with that approved plan.

The concept approval number is correctly noted on the preliminary plan and the TCP1; however, the required storm drain structures are not shown on the TCP1. These include, as noted in the

stormwater concept approval letter: the existing storm drain easement; a proposed culvert; ultimate right-of-way improvements including storm drainage; off-site grading; construction of a closed drain system; and additional grading that may be necessary for improved sight distance. Because the TCP1 is a concept plan, not all of these elements need to be shown at this time; however, the plans need to generally reflect the amount of clearing proposed.

8. **Parks and Recreation**—In accordance with Section 24-135 of the Subdivision Regulations, staff recommends the payment of a fee-in-lieu of mandatory dedication of parkland for proposed Lots 1 through 6 because the land available for dedication is unsuitable due to its size and location.
9. **Trails**—This preliminary plan has been reviewed for conformance with Section 24-123 of the Subdivision Regulations, the *Approved Countywide Master Plan of Transportation* (MPOT), and the *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area* (area master plan).

The subject property has frontage along Old Fort Road, which is identified in the MPOT as Old Ford Road South/Washington Lane (C-721). This road is recommended for an 80-foot-wide right-of-way and two vehicle travel lanes. There is one master plan trail identified in the area master plan that impacts the subject site, the Potomac Heritage National Scenic Trail. This trail is planned to run on Old Fort Road at the subject property location. This bicycle route was developed by M-NCPPC in cooperation with the community, the Oxon Hill Bicycle and Trails Club, the Southern Prince George's Trails Coalition, and the National Park Service. This bikeway can be accommodated through the provision of bikeway signage and bicycle-compatible road improvements.

The MPOT recommends that Old Fort Road be widened and improved to implement the trail. The MPOT recommends that continuous accommodations for pedestrians and bicyclists are needed along Old Fort Road to improve access to Fort Washington Park from surrounding communities. However, the MPOT also recommends that, if segments of Old Fort Road remain as open section, only safety enhancements for bicyclists may be appropriate.

The subject proposal includes dedication for the widening of Old Fort Road. Currently, a variety of cross sections exist and some areas are open section with no shoulders or sidewalks. Other areas have been improved with standard sidewalks and/or wide curb lanes. It is recommended that one "Share the Road with a Bike" sign along Old Fort Road to alert motorists to the possibility of bicycle traffic and the construction of a standard sidewalk along the site's frontage to safely accommodate pedestrians be provided to fulfill the recommendation of the master plan, which is recommended by DPW&T in this case. Appropriate bicycle compatible pavement markings can be determined by DPW&T at the time of road resurfacing or improvement for the entire road or a segment of the Old Fort Road corridor.

The MPOT and area master plan recommend that Old Fort Road contain bicycle lanes (or safety enhancements for bicyclists) and sidewalks. Based on the preceding analysis, it is concluded that

adequate bicycle and pedestrian transportation facilities would exist to serve the proposed subdivision as required under Section 24-123 of the Subdivision Regulations.

10. **Transportation**—The proposed application is a residential subdivision consisting of six lots for single-family detached dwellings. The lots being created would have direct driveway access to Old Fort Road. In consideration of the current and planned function of the roadway as a collector and given current operating speeds and traffic volumes with existing sharp curves, driveways onto each of the proposed lots should utilize a turnaround capability in order to minimize the need for vehicles accessing these lots to back onto Old Fort Road. The turnaround capability should not hinder the use and size of the front yard of each proposed lots.

The site is adjacent to Old Fort Road, a master plan collector facility with a right-of-way width of 80 feet. Adequate right-of-way in accordance with master plan requirements is shown on the submitted plan. It is noted herein that the master plan centerline is not coincident with the existing centerline of the roadway; this would allow for existing sharp curves along the roadway to be eliminated. In accordance with the submitted plan, the needed right-of-way will be dedicated if this preliminary plan is approved, which will enhance the safety of this right-of-way.

The traffic generated by the proposed preliminary plan would impact the intersection of Indian Head Highway (MD 210) and Old Fort Road. This intersection is signalized.

The subject property is located within the Developing Tier, as defined in the *Prince George's County Approved General Plan*. As such, the subject property is evaluated according to the following standards:

- a. **Links and signalized intersections:** Level-of-service (LOS) D, with signalized intersections operating at a critical lane volume (CLV) of 1,450 or better.
- b. **Unsignalized intersections:** *The Highway Capacity Manual* (Transportation Research Board) procedure for unsignalized intersections is not a true test of adequacy, but rather an indicator that further operational studies need to be conducted. Vehicle delay in any movement exceeding 50.0 seconds is deemed to be an unacceptable operating condition at unsignalized intersections. In response to such a finding, the Planning Board has generally recommended that the applicant provide a traffic signal warrant study and install the signal (or other less costly warranted traffic controls) if deemed warranted by the appropriate operating agency.

The critical intersection of MD 210 and Old Fort Road is not programmed for improvement with 100 percent construction funding within the next six years in the current Maryland Department of Transportation Consolidated Transportation Program or the Prince George's County Capital Improvement Program.



No recent turning movement counts are available at the critical intersection of MD 210 and Old Fort Road. However, due to the limited trip generation of this site, staff recommends that the Planning Board find that 5 AM and 5 PM peak hour trips will have a de minimus impact upon delay in the critical movements at the MD 210 and Old Fort Road intersection, consistent with the "Guidelines for the Analysis of the Traffic Impact of Development Proposals."

Based on the preceding findings, adequate transportation facilities would exist to serve the proposed subdivision as required under Section 24-124 of the Subdivision Regulations.

11. **Schools**—The proposed preliminary plan has been reviewed for impact on school facilities in accordance with Section 24-122.02 of the Subdivision Regulations and County Council Resolution CR-23-2003 and concluded the following:

Impact on Affected Public School Clusters

Affected School Clusters #	Elementary School Cluster 6	Middle School Cluster 3	High School Cluster 3
Dwelling Units	6 DU	6 DU	6 DU
Pupil Yield Factor	.16	.13	.14
Subdivision Enrollment	1.0	0.8	0.8
Actual Enrollment	4,490	3,923	7,081
Total Enrollment	4,491	3,923.8	7,081.8
State Rated Capacity	4,781	4,983	7,792
Percent Capacity	93.9%	78.8%	90.9%

Source: Prince George's County Planning Department, M-NCPPC, January 2007

County Council Bill CB-31-2003 established a school facilities surcharge in the amounts of: \$7,000 per dwelling if a building is located between the Capital Beltway (I-95/495) and the District of Columbia; \$7,000 per dwelling if the building is included within a basic plan or conceptual site plan that abuts an existing or planned mass transit rail station site operated by the Washington Metropolitan Area Transit Authority (WMATA); or \$12,000 per dwelling for all other buildings. County Council Bill CB-31-2003 allows for these surcharges to be adjusted for inflation and the current amounts are \$8,299 and \$14,227 to be paid at the time of issuance of each building permit.

The school facilities surcharge may be used for the construction of additional or expanded school facilities and renovations to existing school buildings or other systemic changes.

12. **Fire and Rescue**—The proposed preliminary plan has been reviewed for adequacy of fire and rescue services in accordance with Section 24-122.01(d) and Section 24-122.01(e)(1)(C) and (E) of the Subdivision Regulations.

The proposed development is **within the seven minute required response** time for the first due fire station using the *Seven-Minute Travel Times and Fire Station Locations Map* provided by the Prince George's County Fire/EMS Department.

First Due Fire/EMS Company #	Fire/EMS Station	Address
47	Silesia	10900 Fort Washington Road

Pursuant to CR-69-2006, the Prince George's County Council and the County Executive temporarily suspended the provisions of Section 24-122.01(e)(1)(A) and (B) regarding sworn fire and rescue personnel staffing levels.

The Fire/EMS Chief has reported that the Fire/EMS Department has adequate equipment to meet the standards stated in CB-56-2005.

**Capital Improvement Program (CIP)**

There are no public facility projects in the Capital Improvement Program for FY 2011–2016.

The above findings are in conformance with the 2008 *Approved Public Safety Facilities Master Plan* and the "Guidelines for the Mitigation of Adequate Public Facilities: Public Safety Infrastructure."

13. **Police Facilities**—The subject property is located in Police District IV, Oxon Hill. The response time standard is ten minutes for emergency calls and 25 minutes for nonemergency calls. The times are based on a rolling average for the preceding 12 months. The preliminary plan was accepted for processing by the Prince George's County Planning Department on December 2, 2010.

Reporting Cycle	Previous 12 Month Cycle	Emergency Calls	Nonemergency Calls
Acceptance Date	12/2009–11/2010	10.0 Minutes	11.0 Minutes
Cycle 1			
Cycle 2			
Cycle 3			

The response time standards of ten minutes for emergency calls and 25 minutes for nonemergency calls were met December 9, 2010. The Police Chief has reported that the Police Department has adequate equipment to meet the standards stated in CB-56-2005.

Pursuant to CR-69-2006, the Prince George's County Council and the County Executive temporarily suspended the provisions of Section 24-122.01(e)(1)(A) and (B) regarding sworn police personnel staffing levels.

14. **Water and Sewer**—Section 24-122.01(b)(1) of the Subdivision Regulations states that “the location of the property within the appropriate service area of the Ten-Year Water and Sewerage Plan is deemed sufficient evidence of the immediate or planned availability of public water and sewerage for preliminary or final plat approval.”

The 2008 *Water and Sewer Plan* placed the subject property in a “Dormant” water and sewer Category 3, Community System, and will therefore be served by public systems.

A water line in Old Fort Road abuts the property. A sewer line in Old Fort Road is in close proximity. Water and sewer line extensions may be required to service the proposed subdivision, and must be approved by the Washington Suburban Sanitary Commission (WSSC).

15. **Health Department**—The Prince George’s County Health Department has evaluated the proposed preliminary plan of subdivision and has no comments to offer.
16. **Public Utility Easement (PUE)**—In accordance with Section 24-122(a) of the Subdivision Regulations, when utility easements are required by a public utility company, the subdivider should include the following statement in the dedication documents recorded on the final plat:

“Utility easements are granted pursuant to the declaration recorded among the County Land Records in Liber 3703 at Folio 748.”

The preliminary plan of subdivision correctly delineates a ten-foot public utility easement along the public right-of-way as requested by the utility companies.

17. **Historic**—A Phase I archeological survey is not recommended on the above referenced 6.24-acre property located on the north side of Old Fort Road, approximately 2,000 feet from its intersection with Indian Head Highway (MD 210) in Fort Washington, Maryland. A search of current and historic photographs, topographic and historic maps, and locations of currently known archeological sites indicates the probability of archeological sites within the subject property is low. A majority of the property comprises steep slopes over 15 percent. However, the applicant should be aware that there are two previously identified prehistoric archeological sites, 18PR7 (a Late Archaic camp and Woodland period village) and 18PR148 (a prehistoric lithic scatter), located within one mile of the subject property.

Moreover, Section 106 review may require archeological survey for state or federal agencies. Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on historic properties, to include archeological sites. This review is required when state or federal monies, or federal permits are required for a project.

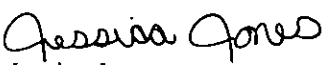
BE IT FURTHER RESOLVED, that an appeal of the Planning Board’s action must be filed with Circuit Court for Prince George’s County, Maryland within thirty (30) days following the date of notice of the adoption of this Resolution.

\* \* \* \* \*

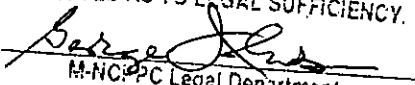
This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Vaughns, seconded by Commissioner Parker, with Commissioners Vaughns and Parker voting in favor of the motion, with Commissioner Cavitt abstaining, and with Commissioners Clark and Squire absent at its regular meeting held on Thursday, May 5, 2011, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 26<sup>th</sup> day of May 2011.

Patricia Colihan Barney  
Executive Director

By   
Jessica Jones  
Acting Planning Board Administrator

PCB:JJ:QN:arj

APPROVED AS TO LEGAL SUFFICIENCY.  
  
M-NCPPC Legal Department  
Date 5/17/11