



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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PGCPB No. 11-41

File No. CDP-9902/03

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board is charged with the approval of Comprehensive Design Plans pursuant to Part 8, Division 4 of the Zoning Ordinance of the Prince George's County Code; and

WHEREAS, in consideration of evidence presented at a public hearing on May 5, 2011, regarding Comprehensive Design Plan CDP-9902/03 for Oak Creek Club the Planning Board finds:

1. **Location:** Oak Creek Club is located at the intersection of Oak Grove Road and Church Road, directly north of Oak Grove Road and directly east and west of Church Road, approximately 2,800 feet south of the intersection of Church Road and Central Avenue (MD 214). The facilities that are the subject of this application, the golf course clubhouse and its attendant parking, are located east of Church Road in the central northern section of the site and are bounded to their north by open space that is zoned Residential-Agricultural (R-A) and Residential-Estate (R-E), and to their east, west, and south by other portions of the Oak Creek development.
2. **The Subject Development:** The original comprehensive design plans for Oak Creek Club, CDP-9903 and CDP-9902, as approved, include a maximum of 1,148 dwelling units (877 single-family detached and 271 single-family attached) on approximately 923 acres. The residential land use on the site is organized into 11 development pods, which are located on both the east and west sides of Church Road. The R-L-zoned portion of the development, the subject of CDP-9902, CDP-9902/01, CDP-9902/02 and this approval, will consist of 1,096 dwelling units (877 single-family detached and 219 single-family attached) on approximately 890 acres. The L-A-C-zoned portion, the subject of CDP-9903 and its current revisions, will contain the remaining 52 single-family detached units. An 18-hole championship golf course is integrated into the residential communities on the remaining 33 acres. The Permit Review Section has informed staff that 606 building permits have been approved for Oak Creek Club, while 46 are on hold as a result of the comprehensive design plan conditions discussed herein.
3. **Background:** On November 26, 1991, the Prince George's County District Council approved the basic plans for Zoning Map Amendments A-8427, A-8578, and A-8579 (County Council Resolution CR-120-1991) for the subject property. This zoning map amendment rezoned the property from the R-A and R-R (Rural Residential) Zones to the R-L and L-A-C Zones. On July 24, 2000, the District Council approved amended basic plans for Zoning Map Amendments A-8427, A-8578, and A-8579 (Zoning Ordinance No. 11-2000) for Oak Creek Club. The amended basic plans provided for generally the same number of residential units and types of recreational/public amenities, but included an 18-hole golf course. The basic plans are subject to 49 conditions and 10 considerations.
4. **Comprehensive Design Plans:** Comprehensive Design Plan CDP-9902, the subject of this approval, was approved by the Planning Board on September 6, 2001. The Planning Board then adopted PGCPB Resolution No. 01-180 formalizing the approval on December 20, 2001. Subsequently, the

District Council chose to call up the case and approved it with conditions on May 13, 2002. The first revision to that comprehensive design plan, CDP-9902/01, was approved by the Planning Board on June 22, 2006 to reduce the attached single-family dwelling unit side yard setback from five to zero feet. A second revision to that approval, CDP-9902/02, was approved by the Planning Board on September 13, 2007 to combine the community building and golf course clubhouse into a single facility, and to amend the recreational facilities location and schedule. The Planning Board subsequently adopted PGCPB Resolution No. 07-172 formalizing that approval on October 4, 2007.

Comprehensive Design Plan CDP-9903, for the balance of the Oak Creek Club zoned L-A-C and not a part of the subject application, was approved by the Planning Board on December 20, 2001. Subsequently, the District Council chose to call the case up and a hearing was held on April 22, 2002. On May 13, 2002, the District Council approved the application with additional conditions and, on May 24, 2002, the District Council adopted an order affirming the Planning Board's decision with additional conditions. Comprehensive Design Plan CDP-9903/01 was approved by the Planning Board together with CDP-9902/02 to combine the community building and golf course clubhouse into a single facility, and to amend the recreational facilities location and schedule. The Planning Board subsequently adopted PGCPB Resolution No. 07-173 formalizing that approval on October 4, 2007.

In November 2010, the Planning Department became aware that the developer had not complied with the CDP conditions requiring commencement of construction of the golf clubhouse by March 2010. At that point, the Planning Department discontinued approval of any additional building permits at Oak Creek until the situation was rectified.

In a letter dated March 22, 2011, the developer notified the Oak Creek Board of Directors that it was shutting its offices at Oak Creek at close of business on March 25, 2011.

5. **The Request and Proffered Justification:** In a letter dated March 31, 2011, the applicant requested an amendment to Condition 27 of CDP-9902 as modified in Condition 1 of CDP-9902/02, the subject of this approval and Condition 30 of CDP-9903 as modified in Condition 1 of CDP-9903/01, the subject of the approval, for the balance of Oak Creek Club and zoned R-L, for the Oak Creek Club project regarding the trigger for commencing construction of the golf clubhouse. The condition (identical in both comprehensive design plan approvals) requires in a chart entitled "Oak Creek Club Phasing of Amenities" that the applicant "commence construction" of the golf clubhouse "prior to the 850th building permit or March 2010, whichever is sooner." The applicant seeks to modify the wording of the condition to strike "or March 2010, whichever is sooner," making the trigger only the issuance of the 850th building permit, without reference to any particular date.

The applicant's proffered justification, contained in a letter dated March 31, 2011, for the proposed revision to the conditions is quoted below, followed by Planning Board comment:

"The development is a victim of a harsh economy. To clarify the situation, the Golf Course Owner/Operator is contractually obligated to construct the clubhouse, not the Applicant/Developer. The applicant and community are punished by the Golf Course Owner's inability to perform, through the withholding of building permits. The Applicant's builders have not been able to sell anywhere close to the required amount (number) of homes that would make building the clubhouse financially feasible. To enforce this requirement to build the clubhouse, at this point and in this economy, would place an unreasonable burden on the Applicant, who cannot build the clubhouse unilaterally as it is to be on the golf course, which is not under the Applicant's ownership."

A community building on homeowners association (HOA) land for the exclusive use of the homeowners was required in the original CDP approvals in 2002. In 2007, the applicant received approval of a request to merge the separate community building and the golf clubhouse in a single clubhouse structure of at least 25,000 square feet. At that point, the developer's responsibility for construction of a facility for the homeowners became a contractual obligation of the owner/operator of the golf course.

"If the Golf Course Owner/Operator or even the Applicant were to build the clubhouse at this moment, the maintenance burden on the staff members would be enormous as there are only 40 to 50 members. In order to make the clubhouse financially feasible to maintain, it will require a minimum threshold of golf members. The development has not met the minimum threshold of golf members to make the maintenance of a clubhouse reasonable."

It is reasonable to provide the developer and golf course owner/operator more time to sell additional homes and generate additional golf members to help make construction and maintenance of the clubhouse feasible. It is acknowledged that it will likely take several years even with improving market conditions for this threshold to be met. Therefore, the Planning Board does not feel that placing a date requirement on commencing construction of the golf clubhouse would be wise.

"Cash flow is the lifeblood of residential development. Without access to building permits, the Applicant does not have any cash flow to finish the project. Thus, to ensure the future success of this development, the Applicant's builders need to be able to pull building permits and sell homes."

The applicant's assertion here is accurate and the Planning Board is in sympathy with the need for cash flow to enable completion of the remaining phases of construction of the development. Therefore, the Planning Board hereby approves a revision to the trigger to commence construction of the golf clubhouse until the issuance of the 850th building permit. An adjustment of this type will allow the 46 building permits currently on hold to be released (if no other unresolved issues stand in the way), for new building permits to be applied for and released, for home sales to be completed, and cash flow generated. In order to better assure construction of the

golf clubhouse and its parking, a condition of this approval requires that the golf clubhouse be bonded prior to the issuance of the 750th building permit.

"The sole purpose of this application is to revise the previously mentioned conditions. The revision of these conditions will in no way detract from the Planning Board's previous findings that the required findings in these CDPs have been met. Thus, the Applicant would like to incorporate the relevant portions of the previously approved Statement of Justifications in order to meet the required findings for this revision to the CDPs."

The Planning Board is able to make the required findings for the approval of the subject comprehensive design plan as specified in Finding 6, pursuant to Section 27-521 of the Zoning Ordinance. Therefore, it is not necessary to incorporate "the relevant portion of the previously approved Statement of Justifications."

6. **Requirements of the Zoning Ordinance:**

a. **The requirements of the Zoning Ordinance in the R-L Zone**—The proposed revisions are in accordance with the requirements of Section 27-514.09, Uses Permitted in the R-L Zone; Section 27-514.10, Regulations in the R-L Zone.

b. **Findings Required by Section 27-521 of the Zoning Ordinance**—The following findings, required by the Zoning Ordinance to be made prior to Planning Board approval of a comprehensive design plan, were made at the time of the original approval. Each required finding is listed below (in part) in boldface type. Planning Board comment follows, detailing how the subject proposal does not affect such finding.

(1) **The plan is in conformance with the approved basic plan;**

The proposed revision will not affect the previous finding that the subject comprehensive design plan is in conformance with the requirements of the applicable basic plans.

(2) **The proposed plan would result in a development with a better environment than could be achieved under other regulations;**

The proposed revisions will not substantially affect the previous finding that the subject proposed plan would result in a development with a better environment than could be achieved under other regulations.

(3) **Approval is warranted by the way in which the comprehensive design plan includes design elements, facilities, and amenities, and satisfies the needs of the residents, employees, or guests of the project;**

The proposed revisions will not substantially affect the previous finding that approval is warranted by the way in which the comprehensive design plan includes design elements, facilities, and amenities and satisfy the needs of the residents, employees, or guests of the project.

- (4) The proposed development will be compatible with existing land use, zoning, and facilities in the immediate surroundings;**

The proposed revision will not substantially affect the previous finding that the proposed development will be compatible with existing land use, zoning, and facilities in the immediate surroundings.

- (5) Land uses and facilities covered by the comprehensive design plan will be compatible with each other in relation to:**

- (A) Amounts of building coverage and open space;**
- (B) Building setbacks from streets and abutting land uses; and**
- (C) Circulation access points.**

The proposed revision will not substantially affect the previous finding that land uses and facilities covered by the comprehensive design plan will be compatible with each other in relation to amounts of building coverage and open space, building setbacks from streets, abutting land uses, and circulation access points.

- (6) Each staged unit of the development (as well as the total development) can exist as a unit capable of sustaining an environment of continuing quality and stability;**

The proposed revision will not substantially affect the previous finding that each staged unit of the development (as well as the total development) can exist as a unit capable of sustaining an environment of continuing quality and stability.

- (7) The staging of development will not be an unreasonable burden on available public facilities;**

The proposed revision will not affect the previous finding that the staging of development will not be an unreasonable burden on available public facilities.

- (8) Where a Comprehensive Design Plan proposal includes an adaptive use of a Historic Site, the Planning Board shall find that:**

- (A) The proposed adaptive use will not adversely affect distinguishing exterior architectural features or historic landscape features in the established environmental setting;**

- (B) **Parking lot layout, materials, and landscaping are designed to preserve the integrity and character of the historic site;**
- (C) **The design, materials, height, proportion, and scale of a proposed enlargement or extension of a historic site, or of a new structure within the environmental setting, are in keeping with the character of the historic site;**

The proposed revision will not affect the previous finding that no adaptive use of a historic site is proposed in the comprehensive design plan.

- (9) **The plan incorporates the applicable design guidelines set forth in Section 27-274 of Part 3, Division 9, of this Subtitle, and where townhouses are proposed in the plan, with the exception of the V-L and V-M Zones, the requirements set forth in Section 27-433(d); and**

The proposed revision will not affect the previous finding that the plans incorporate the applicable design guidelines set forth in Section 27-274 of Part 3, Division 9 of the Zoning Ordinance and, since townhouses are proposed and the zone is not V-L (Village-Low) or V-M (Village-Medium), the requirements set forth in Section 27-433(d).

- (10) **The Plan is in conformance with an approved tree conservation plan.**

The proposed revisions will have no affect on the applicable tree conservation plan and, therefore, it will not affect the previous finding that the plan is in conformance with an approved tree conservation plan.

- (11) **The plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible.**

The proposed revisions will have no impact on regulated environmental features. Preservation and/or restoration of all environmental features will continue to be in conformance with regulations in effect at the time of the original approvals.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED the Comprehensive Design Plan CDP-9902/03, Oak Creek Club for the above described land, subject to the following conditions:

- I. That Condition 27 of the approval of CDP-9902, as revised by CDP-9902-02, be amended to read as follows (additions are indicated by underline and deletions by "strike-through"):

OAK CREEK CLUB PHASING OF AMENITIES		
FACILITY	BOND	FINISH CONSTRUCTION
Golf Course	N/A	Complete by 287th building permit
Swim/Tennis Center	Prior to 250th building permit	Complete by 500th building permit
Swimming Pool	Prior to 250th building permit	Complete by 500th building permit
Two (2) Tennis Courts	Prior to 250th building permit	Complete by 500th building permit
8-foot-wide Asphalt Trail System (not on public park land)	Prior to 250th building permit	Complete by 800th building permit
Golf Clubhouse	Prior to 750th building permit	Commence construction prior to the 850th building permit (permits may be suspended for noncompliance)
<p>*It is occasionally necessary to adjust the precise timing of the construction of recreational facilities as more details concerning grading and construction details become available. Phasing of the recreational facilities may be adjusted by written permission of the Planning Board or its designee under certain circumstances, such as the need to modify construction sequence due to exact location of sediment ponds or utilities, or other engineering necessity. The number of permits allowed to be released prior to construction of any given facility shall not be increased by more than 25 percent, and an adequate number of permits shall be withheld to assure completion of all facilities prior to the completion of all the dwelling units.</p>		

The originally recommended community building and the proposed golf clubhouse shall be satisfied by providing a golf clubhouse structure of at least 25,000 square feet on the golf course property.

2. That a condition be added to the approval of CDP-9902 stating the following:

The co-owners of Oak Creek Club, Club Group Inc., Club Group Inc. II, Oak Creek Golf LLC and/or the developer, Montgomery Development, and the heirs, successors, and assigns for the above legal entities, shall provide up to date information in quarterly reports to the Prince George's County Planning Board as an administrative item including, but not limited to, the following items:

1. Information regarding the exact number of building permits issued by the Department of Environmental Resources in the Oak Creek Club development;
2. Information from Oak Creek Golf LLC, as to the total number of golf course memberships sold to date and the balance in the fund established to

collect monetary contributions provided per unit sold toward the construction of the clubhouse. In addition to a reporting of the fund balance, the information shall include the ending balance from the previous reporting along with the amount of money added based on the per unit contribution and the amount of money subtracted with an explanation of the expense.

3. A report on the progress of the phasing of amenities in accordance with the schedule contained in Condition 30 of the approval of CDP-9903/02 and Condition 27 of CDP-9902/03. This report shall also note the relationship of the current permits issued to all of the outstanding triggers for amenities that if reached by the future issuance of permits would result in suspension of the issuance of permits for Oak Creek Club.
4. A schedule of all Oak Creek Club meetings held during the reporting period and tentatively set for beyond the reporting period. This schedule shall include, but not be limited to, meetings for the Golf Course Advisory, Residential Advisory Committee, Covenants and Homeowner's Association Board, a roster of attendees and the minutes from said meetings.
5. Evidence that the Applicant and Owners have provided all residents with up- to-date information regarding all items listed above, including accurate minutes of any meetings held for the purpose of discussing any matters affecting the Oak Creek Club development and/or its residents.
6. An update on the status of the arbitration between Oak Creek Club Corporation (the developer), Club Group, Inc. (owner of lots), Club Group II, Inc. (owner of lots) and Oak Creek Golf, LLC (owner and operator of the golf course and swim/tennis real property and facilities).

Such reporting requirement shall commence six months after the final approval of the case by either the Prince George's County Planning Board or District Council and shall cease when a certificate of occupancy is issued for the golf clubhouse. Proof of issuance of such Certificate of Occupancy shall be furnished to the Prince George's County Planning Board at such time.

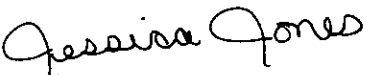
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council of Prince George's County within thirty (30) days following the final notice of the Planning Board's decision.

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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 Cavitt, seconded by Commissioner Vaughns, with Commissioners Cavitt, Vaughns and Parker voting in favor of the motion, and with Commissioners Clark and Squire absent at its regular meeting held on Thursday, May 5, 2011, in Upper Marlboro, Maryland.

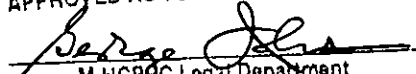
Adopted by the Prince George's County Planning Board this 26th day of May 2011.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Acting Planning Board Administrator

PCB:JJ:RG:arj

APPROVED AS TO LEGAL SUFFICIENCY.


M-NCPPC Legal Department

Date 5/23/11