



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

MAR 11 2014

MCPB No. 14-14
Limited Site Plan Amendment 82007002B
Poplar Run (formerly known as Indian Spring)
Date of Hearing (Consent Item): March 6, 2014

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on February 20, 2008, by MCPB Resolution No. 08-26, the Planning Board approved Site Plan 820070020 for a maximum of 773 dwelling units (471 one-family detached and 302 townhouse units), with supporting infrastructure, recreational amenities and open space on 310.37 acres of R-90 and R-200-zoned land, located on the east side of Layhill Road, approximately 1,300 feet south of the intersection with Middlevale Lane ("Subject Property"), in the 1997 White Oak Master Plan ("Master Plan") area; and

WHEREAS, On October 18, 2011, by MCPB Resolution No. 11-63, the Planning Board approved Site Plan 82007002A, an amendment to the previously approved site plan, to provide for revisions to stormwater management facilities and adjacent lots, building setbacks, recreations areas, landscape, lighting and paving on the Subject Property; and

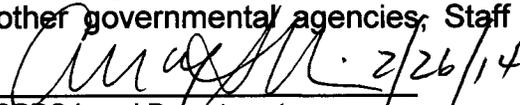
WHEREAS, on March 14, 2013, Winchester Homes ("Applicant") filed a site plan application to amend the Final Forest Conservation Plan approved with the previous site plans for approval of the following modifications:

1. Disturbance within the designated limits of disturbance to allow for changes in the culvert, roadway, and sanitary sewer designs and associated easements.
2. Clearing of 0.13 acres of protected forest to be replaced on-site.

WHEREAS, Applicant's application to amend the site plan was designated Limited Site Plan Amendment 82007002B ("Site Plan," "Amendment" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the

Approved as to
Legal Sufficiency:

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Planning Board dated February 21, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 6, 2014, Staff presented the Amendment to the Planning Board as a consent item for its review and action; and

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby approves Site Plan No. 82007002B.

BE IT FURTHER RESOLVED, unless amended, all other conditions of approval for Site Plan No. 820070020, as amended by Site Plan No. 82007002A remain valid and in full force and effect; and

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference, the Planning Board FINDS:

1. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features:*

A. Forest Conservation

The Applicant is clearing 0.13 acres of forest in order to implement changes to the culvert, roadway, and sanitary sewer designs and associated easements. The Amendment includes a 0.07-acre increase in planting requirements, which will be met by reducing the area used to create the on-site forest planting bank.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's Critical Root Zone ("CRZ"), requires a variance (Tree Variance). The Applicant requested a Tree Variance to remove three Protected Trees and to impact but retain one Protected Trees as identified in the Staff Report, page 4.

The Planning Board found that without the Tree Variance, the Applicant would suffer unwarranted hardship and would deny the Applicant reasonable and significant use of the Subject Property. The Board made the following findings necessary to grant the Tree Variance:

- i. In accordance with Section 22A-21(a), the Applicant has shown that failure to grant the Tree Variance would result in unwarranted hardship due to special conditions peculiar to the property.

Disturbance of the Protected Trees is necessary for the Applicant to meet requirements imposed by various governmental agencies. Therefore, there is reasonable justification for the Board to consider the Tree Variance in order to avoid an unwarranted hardship to the Applicant.

- ii. In accordance with Section 22A-21(e), the Board finds that the Applicant has met all of the following criteria required to grant the Tree Variance.

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

Granting the variance will not confer a special privilege on the Applicant as disturbance of the Protected Trees is necessary for work to restore the streams, and the CRZs lie directly adjacent to the streams. Granting the Tree Variance to allow disturbance to the CRZs of the trees for the purposes of stream restoration would not be unique to the Applicant, as the work is necessary to achieve the County goals of improving water quality.

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

The Variance is required for the redesign of the development's infrastructure as required by governmental agencies.

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

The Variance is needed for residential redevelopment of the Subject Property and not a result of land or building use on a neighboring property.

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

The Variance will not violate State water quality standards or cause a measurable degradation in water quality. All areas of environmental buffer will be replanted with forest and all encroachments removed.

BE IT FURTHER RESOLVED, unless amended, all other conditions of approval for Site Plan Nos. 820070020 and 82007002A remain valid and in full force and effect; and

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, the Montgomery County Planning Board FINDS, with the conditions of approval that this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan, as revised by previous amendments, and that all findings remain in effect; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

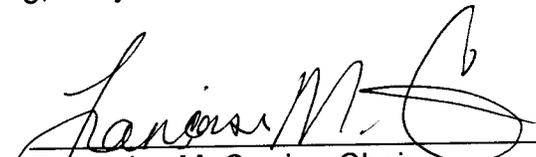
BE IT FURTHER RESOLVED, that the date of this written Resolution is MAR 11 2014 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, March 6, 2014, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board