

MEMORANDUM

DATE: September 11, 2006

TO: Montgomery County Planning Board

FROM: Catherine Conlon, Supervisor *CC*
Development Review Division
(301) 495-4542

SUBJECT: Informational Maps and Summary of Record Plats for the Planning Board
Agenda for September 28, 2006

The following three record plats are recommended for APPROVAL, subject to the appropriate conditions of approval of the preliminary plans and site plans, if applicable, and conditioned on conformance with all requirements of Chapter 50 of the Montgomery County Code. Attached are specific recommendations and copies of plat drawings for the record plats. The following plats are included:

22006079 to 220060810 James Creek

PLAT NO. 220060790 - 220060810

James Creek (Preliminary Plan: Tong Property)
Located on Spartan Road, approximately 160 feet west of Snowberry Way
RE-2C/TDR zone, 13 lots and 3 Parcels
Community Water, Community Sewer
Master Plan Area: Olney
Magruder/Reed at Forest Crossing, LLC, Applicant

These record plats have been reviewed by MNCPPC staff and other applicable agencies as documented on the attached Plat Review Checklist. Staff has determined that these plats comply with Preliminary Plan No. 120050240 (formerly 1-05024) and site plan No. 820050170 (formerly 8-05017), as approved by the Board; and that any minor modifications reflected on the plat do not alter the intent of the Board's previous approval of the preliminary plan.

RECORD PLAT REVIEW SHEET

Plat Name: James Creek **Plat File Number:** 220060790-20810
Submission Date: 10/7/05 **Due Date:** _____
DRD Plat Reviewer: TA/PW **DRD Prelim. Plan Reviewer:** Richard Weaver

Initial DRD Review:

Signed Preliminary Plan: Date 5/18/05 Checked: Initial TA Date 10/12/05
Planning Board Opinion: Date 5/16/05 Checked: Initial TA Date 10/12/05
Site Plan Required For this Development? Yes No _____ Verified By: TA (Initial)
Site Plan Name: Forest Crossing Subdivision **Site Plan Number:** 8-05017
Planning Board Opinion: Date 5/16/05 Checked: Initial TA Date 10/12/05
Site Plan Signature Set: Date 9-2-06 Checked: Initial PAW Date 6-8-06
 Lot #'s & Layout Lot Area Zoning Bearings & Distances Coordinates Plan #
 Road/Alley Widths Easements Open Space Non-standard BRLs NA Adjoining Land
 Vicinity Map Septic/Wells NA TDR note Surveyor Cert. Owner Cert. Tax Map
 Child Lot Note _____
Site Plan Reviewer Plat Approval: Checked Initial PAW Date 9-8-06

Agency Reviews Req'd	Reviewer	Date Sent	Date DUE	Date Rec'd	Comments
Envir.	(specify by plan)	10/10/05	10/24/05	10/11/05	Datum not stated properly
Research	Bobby Fleury	"	"	10/10/05	OK
St. Hwy.	Doug Mills	"	"	N/C	N/C
DPS	Granville Campbell	"	"	N/C	N/C
PEPCO	Jose Washington	"	"	N/C	OK
Parks	Doug Powell	"	"	N/C	OK
DRD	Steve Smith	"	"	10/19/05	see plat

Final DRD Plat Review:

DRD Review Complete: Initial TA Date 10/14/05
 (All comments rec'd and incorporated into mark-up)
Engineer Notified - (Pick up Mark-up): Initial TA Date 1/26/06
Final Mylar w/Mark-up & PDF Rec'd.: Initial TA Date 9/17/06
Board Approval of Plat:
Plat Agenda: Initial TA Date 9/28/06
Planning Board Approval: _____
Chairman's Signature: _____
DPS Approval of Plat:
Engineer Pick-up for DPS Signature: _____
Final Mylar for Reproduction Rec'd: _____
Plat Reproduction:
 Addressing: Initial _____ Date _____
 File Card Update: _____
 Final Zoning Book Check: _____
 Update Address Books with Plat #: _____
 Update Green Books for Resubdivision: _____
 Notify Engineer to Seal Plats: _____
 Engineer Seal Complete: _____
 Complete Reproduction: _____
 Send to Courthouse for Recordation: _____

No. _____

NOTES

1. ALL TERMS, CONDITIONS, AGREEMENTS, LIMITATIONS, AND REQUIREMENTS ASSOCIATED WITH ANY PRELIMINARY PLAN, SITE PLAN, PROJECT PLAN OR OTHER PLAN ALLOWING DEVELOPMENT OF THE PROPERTY APPROVED BY THE MONTGOMERY COUNTY PLANNING BOARD ARE HEREBY INCORPORATED BY REFERENCE AND NOT BE CONTRADICTED BY THE RECORDATION OF THIS PLAN. UNLESS OTHERWISE SPECIFIED BY THE PLAN OR APPROVED, THE OFFICIAL PUBLIC PLANS FOR ANY SUCH PLAN ARE AUTHORITY OF THE PLANNING BOARD AND AVAILABLE FOR PUBLIC REVIEW DURING NORMAL BUSINESS HOURS.
2. THE PROPERTY SHOWN HEREON IS TO BE SERVED BY PUBLIC WATER AND SEWER SERVICES ONLY.
3. THE PROPERTY SHOWN AS THE SUBJECT OF THIS PLAN IS IN THE RELECTOR ZONE, AS OF THE DATE OF THIS PLAN.
4. THE LOTS SHOWN HEREON ARE LIMITED TO LOTS AND CONDITIONS AS REQUIRED BY PRELIMINARY PLAN FILE NO. 14888A. DEVELOPMENT IS SUBJECT TO THE TERMS OF AN APPROVED SITE PLAN FILE NO. 14888A.
5. THE SUBDIVISION RECORD PLAN IS NOT INTENDED TO REPLACE OR SUPPLEMENT ANY TITLE OR TO IMPACT OR AFFECT ANY RIGHTS EFFECTIVE THERE.
6. THE PROPERTY SHOWN HEREON IS CONTROLLED BY THE MARYLAND FOREST CONSERVATION ACT, WHICH PROVIDES FOR THE ESTABLISHMENT OF A FOREST CONSERVATION PLAN AND APPROPRIATE ADMINISTRATION THEREOF BY A FOREST CONSERVATION PLAN. A COPY OF THE APPROVED PLAN MAY BE OBTAINED AT THE PLANNING BOARD, 3000 SPRING GATE.
7. THE LAND SHOWN HEREON IS SUBJECT TO THE TERMS AND CONDITIONS OF A PUBLIC IMPROVEMENTS AGREEMENT RECORDED IN LIBER 2188 AT FOLIO 382.
8. THE PRIVATE DRAINAGE SYSTEM SUBJECT TO THE PRIVATE STORM DRAINAGE RUNNING THROUGH LOT 7 HEREON IS SUBJECT TO CONDITIONS RECORDED IN LIBER 2188 AT FOLIO 382.
9. ALL EXISTING AND PROPOSED DEVELOPMENT ON THE PROPERTY IS SUBJECT TO THE ZONING UNDER MONTGOMERY COUNTY ZONING ORDINANCE, SECTION 20-1-101 AND 20-1-102 AND TO ALL ORDINANCES AND REGULATIONS OF THE PLANNING BOARD.
10. FOR (E) TRANSFERABLE DEVELOPMENT RIGHTS HAVE BEEN PROVIDED FOR THIS PLAN 2885 FOR TABLA HEREDIA, WHICH IS THE PROPORTIONATE SHARE OF THE TOTAL REQUIRED FOR (E) TRANSFERABLE DEVELOPMENT RIGHTS WITH PLAN SPINCH LETTER FOR SITE PLAN FILE NO. 14888A, AND (E) SHARE OF THE TOTAL FOR REQUIREMENT 2885 PRELIMINARY PLAN SPINCH LETTER FOR PRELIMINARY PLAN NO. 14888A.

OWNER'S CERTIFICATE

WE, THE UNDERSIGNED, OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON, HEREBY ADOPT THE PLAN OF SUBDIVISION AND ESTABLISH THE MINIMUM BUILDING RESTRICTION LINES AND DEDICATE THE STREET TO PUBLIC USE.

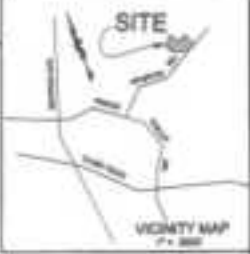
WE HEREBY GRANT TO THOSE PARTIES LISTED IN THAT CERTAIN DECLARATION RECORDED IN LIBER 2884 AT FOLIO 487 AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND, TWENTY (20) FEET WIDE PUBLIC UTILITY EASEMENTS, DESIGNATED HEREON AS "U.L.E.", SUBJECT TO THE TERMS AND PROVISIONS FOR PUBLIC UTILITY EASEMENTS INDICATED WITH SAID DECLARATION.

WE HEREBY GRANT TO MONTGOMERY COUNTY, THEIR SUCCESSORS AND ASSIGNS, PUBLIC IMPROVEMENTS EASEMENTS, DESIGNATED HEREON AS "P.E." IN ACCORDANCE WITH THE TERMS AND CONDITIONS FOUND RECORDED IN LIBER 2188 AT FOLIO 382.

WE HEREBY ESTABLISH A PRIVATE STORM DRAIN EASEMENT, DESIGNATED HEREON AS "H.O.S.D." EASEMENT, FOR THE USE OF THE HOMEOWNERS ASSOCIATION.

AS OWNERS OF THIS SUBDIVISION, WE, OUR SUCCESSORS AND ASSIGNS, SHALL CHASE PROPERTY CORNER MARKERS TO BE SET BY A REGISTERED MARYLAND LAND SURVEYOR, IN ACCORDANCE WITH SECTION 20-3-101(2) OF THE MONTGOMERY COUNTY CODE. THERE ARE NO SUIUS, ACTIONS AT LAW, LEASES, LIENS OR TRUSTS, ON THE PROPERTY, EXCEPT A CERTAIN DEED OF TRUST, AND ALL PARTIES IN INTEREST HERETO HAVE INDICATED THEIR AGREEMENT BELOW.

PLAT NO.



WITNESSED AT FOREST CROSSING, LLC
[Signature] *[Signature]*
 DATE WITNESS

WITNESSED AT FOREST CROSSING CORPORATION
[Signature] *[Signature]*
 TRUSTEE DATE TRUSTEE

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE PLAN SHOWN HEREON IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF AND INFORMATION AND THAT THE PROPERTY SHOWN HEREON IS ALL OF THE LAND DESCRIBED TO BE SUBDIVIDED BY FOREST CROSSING, LLC BY THESE INSTRUMENTS, AND THAT THE TOTAL AREA OF THE LAND DESCRIBED BY THESE INSTRUMENTS IS 10,314 SQUARE FEET OR A LITTLE MORE AND DEDICATED TO PUBLIC USE AS SHOWN ON THIS PLAN.

I FURTHER CERTIFY THAT, SAID INSTRUMENTS AS DESCRIBED IN THE INSTRUMENTS DESIGNATED HEREON, ALL PROPERTY CORNER MARKERS SHALL BE SET IN ACCORDANCE WITH SECTION 20-3-101(2) OF THE MONTGOMERY COUNTY CODE.

THE TOTAL AREA OF THIS PLAN IS 10,314 SQUARE FEET OR A LITTLE MORE AND DEDICATED TO PUBLIC USE AS SHOWN ON THIS PLAN.

[Signature]
 DATE
 PROFESSIONAL LAND SURVEYOR
 MONTGOMERY COUNTY REG. NO. 2011

CURVE DATA TABLE

Curve	Radius	Length	Delta	Chord	Chord Bearing
C1	186.87'	75.48'	24°32'12"	16.88'	N 82°10'12" W
C2	186.87'	44.84'	28°38'42"	89.82'	N 88°38'42" W
C3	186.87'	21.54'	28°38'42"	90.70'	N 82°10'12" W
C4	44.84'	21.78'	87°17'48"	44.42'	N 73°17'48" W
C5	44.84'	207.48'	272°17'48"	86.88'	N 82°10'12" E
C6	44.84'	21.78'	87°17'48"	21.80'	S 20°17'48" E
C7	186.87'	14.12'	8°12'24"	14.12'	S 42°38'24" E
C8	186.87'	47.58'	87°17'48"	47.58'	S 87°17'48" E
C9	210.87'	186.78'	28°38'42"	107.58'	S 20°38'42" E
C10	210.87'	46.12'	28°38'42"	14.32'	S 20°38'42" E

TDR TABULATION

TDR EASEMENT	TDR TRANSFER	NO. USED	SERIAL NO.
L 12885 P. 379	L 28348 P. 255	8	10-4740 to 10-4753

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

APPROVED: _____
 CHAIRMAN ASST. SECRETARY/TREASURER

W/DC/SPC RECORD PLAT FILE NO.

MONTGOMERY COUNTY, MARYLAND
 DEPARTMENT OF PERMITTING SERVICES

RECORDED: _____
 DATE _____
 BY: _____
 DIRECTOR

Dewberry
 203 Ferry Parkway, Suite 1
 Gaithersburg, MD 20877-2169
 (301) 948-8300 Fax: (301) 258-7607

SUBDIVISION RECORD PLAT

JAMES CREEK
 LOTS 6 THROUGH 11, BLOCK G
 OLNEY (88) ELECTION DISTRICT - MONTGOMERY COUNTY, MARYLAND
 SCALE 1" = 30' DATE: MAY 2006



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Date Mailed: MAY 06 2005

Action: Approved Staff Recommendation

Motion of Commissioner Wellington,
seconded by Commissioner Bryant, with
a vote of 5-0;

Chairman Berlage and Commissioners
Bryant, Perdue, Robinson, and
Wellington voting in favor.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-05024
NAME OF PLAN: Tong Property

The date of this written opinion is MAY 06 2005 (which is the date that this opinion is mailed to all parties of record). 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).

On 08/10/04, Magruder/Reed @ Christie Estates, LLC ("Applicant"), submitted an application for the approval of a preliminary plan of subdivision of property in the RE-2/TDR(2) and RE-2/TDR(4) zones. The application proposed to create 13 lots on 9.1318 acres of land located on the north side of Spartan Road, approximately 175 feet west of Snowberry Way, in the Olney & Vicinity master plan area ("Subject Property"). The application was designated Preliminary Plan 1-05024 ("Preliminary Plan"). On 2/17/05, the Preliminary Plan was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-

generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

THE SUBJECT PROPERTY

The Subject Property contains two tributaries to James Creek and their associated stream buffers. The majority of the site is forested and contains numerous specimen and mature trees, with the exception of the southeastern boundary abutting the existing lots in the Christie Estates subdivision. The property contains two existing 1-story brick houses; one of which is located with direct access to Spartan Road in the southeastern corner of the site. The other house and associated sheds are located in the northern part of the site with access to Spartan Road, via a gravel and asphalt drive. Many of the adjacent properties in Christie Estates are fenced at the property line.

The property falls in elevation from Spartan Road and on the southwestern perimeter toward the north to the two tributaries by approximately thirty feet. The existing house and sheds in the center of the site are located on a knoll with the existing grades dropping to the two streams. Steep slopes exist to the north, east and west of the house and sheds, and at the base of the streams.

PROPOSED DEVELOPMENT

The Applicant is proposing to develop the 9.13-acre site into 13 lots with one-family detached dwelling units, including one existing house that will remain. The Subject is split-zoned as an RE-2/TDR (2) and RE-2/TDR (4) site in Olney, Maryland.

A major portion of the Subject Property is encumbered by two stream valley buffers, limiting the developable area of the site to the southeastern and southwestern boundaries of the site. This area backs up to the James Creek subdivision and Christie Estates subdivision, each developed with one-family detached lots that range in size from 8,000 square feet to over 10,000 square feet, and 6,000-8,000 square feet, respectively.

Given the significant environmental constraints on the Subject Property and compatibility concerns with the surrounding neighborhood, density has been limited to 13 single-family dwelling units. As a result, the Applicant requested a waiver of the two-thirds TDR requirement and Staff recommended approval of the waiver request.

SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

Development Review Staff ("Staff") recommended approval, with conditions, in its memorandum dated February 11, 2005 ("Staff Report"). Staff testified at the hearing consistent with the findings and recommendations of the Staff Report.

The Applicant appeared at the hearing with legal counsel and stated that it agreed with Staff's recommendations and proposed conditions.

At the public hearing, two speakers representing the adjacent communities of James Creek and Christie Estates presented testimony with regard to 1) compatibility of the proposed dwelling units to the existing one-family detached homes; 2) separation of the units; 3) the Applicant's request for a reduced width tertiary road; and 4) preservation of the existing trees on the boundary. Jerry Strasbaugh, representing the James Creek Homeowners Association, also requested that the Planning Board consider reducing the width of the proposed stream buffer on the property to allow the proposed homes to be pulled back further from the existing homes. The Planning Board received testimony from Staff on how the stream buffer was established consistent with the various stream classifications, according to the Forest Conservation regulations and the Forest Conservation Guidelines. A definition of the streams located on the site was also presented at the hearing.

The Planning Board also received testimony from Staff on the separation of the existing units throughout the community, in addition to the adjacent dwelling units to the subject property. Staff testified that the average depth of the back yards of the existing homes on the Christie Estates side is 25 to 30 feet, consistent with the separation of the proposed dwelling units adjacent to the community. Michael Sullivan, who represented Christie Estates, discussed the width of the modified tertiary road, in relation to the pavement width. Staff testified that the right-of-way for the modified tertiary road is proposed to be reduced from 50 feet to 27.33 feet, however, as the Applicant noted, the pavement width will be 26 feet, which is the same as a standard tertiary road. The reduction in the right-of-way only reduces the area available for a sidewalk but does not affect the width of the pavement. No sidewalk is proposed for the side along the stream buffer since that side of the right-of-way will not access any homes or other walkways.

The Applicant testified that his landscape architect was coordinating with the adjacent property owners to establish a rear-yard-buffer planting plan. A condition was added to the staff recommendations to provide buffer planting that would be acceptable to the adjacent property owners as part of the signature set of site plans.¹

¹ The Preliminary Plan and Site Plan applications for this development were heard in one hearing and, thus, testimony before the Planning Board on the Preliminary Plan included discussions related to buffer planting which apply to the Site Plan approval. This proffered condition related to buffer planting does not relate to the Planning Board's approval of this Preliminary Plan.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies²; the Applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds, with the conditions of approval, that:

- a) The Preliminary Plan No. 1-05024 substantially conforms to the Olney and Vicinity Master Plan.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision. The Planning Board approves the reduced width tertiary road finding that it is necessary given the environmental constraints on the property. The Planning Board further approves the waiver of sidewalks on the north side of the right-of-way finding that pedestrians will be able to safely use the roadway and the sidewalk on the south side of the road.
- c) The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision. The Planning Board finds that the setbacks of the proposed homes are, at least, equivalent to those of the existing homes. The Board further notes that, since the Subject Property is in a transferable development rights ("TDR") zoning area, any reduction in environmental buffers on the property would most likely translate into additional lots rather than increasing the area between the proposed lots and the existing lots. The Planning Board approves the waiver of the two-thirds TDR requirement, finding (based on uncontested evidence) that it is necessary to accommodate the environmental buffers on the Subject Property.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.
- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.

² The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-05024 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-05024, subject to the following conditions:

1. Approval under this preliminary plain is limited to (13) thirteen one-family detached dwelling units.
2. Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- *3. The applicant shall dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan unless otherwise designated on the preliminary plan.
4. The applicant shall construct all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan and to design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By _____" are excluded from this condition.
- *5. Record plat to reflect a Category I easement over all areas of stream valley buffers and forest conservation Category II easement over proposed Lot 13.
- *6. Record plat to reflect common ingress/egress and utility easements over all shared driveways.
- *7. Record Plat shall reflect all areas under Homeowners Association and stormwater management parcels.
- *8. Record plat to reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
9. Compliance with the conditions of approval of the MCDPS stormwater management approval dated November 1, 2004 and reconfirmed February 3, 2005.
10. Compliance with conditions of MCDPWT letter dated, January 30, 2005 or as amended.
11. No clearing, grading or recording plats prior to signature set approval.

12. Final approval of the number and location of dwelling units, and sidewalks will be determined at site plan.
13. The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
14. Other necessary easements.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

• • • • •

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

APPROVED AND FORWARDED:
DJP 04/22/05
MONTGOMERY COUNTY DEPARTMENT

CERTIFICATION OF BOARD VOTE ADOPTING OPINON

At its regular meeting, held on Thursday, April 28, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent, ADOPTED the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan No. 1-05024.



Certification As To Vote of Adoption
Technical Writer



Date Mailed: **MAY 06 2005**

Action: Approved Staff Recommendation
Subject to Conditions

Motion of Commissioner Wellington,
seconded by Commissioner Bryant, with a
vote of 5-0.

Chairman Berlage and Commissioners
Robinson, Wellington, Bryant and Purdue,
voting in favor.

MONTGOMERY COUNTY PLANNING BOARD OPINION

Site Plan No.: 8-05017
Project: Tong Subdivision, Lots 1-13, Parcels A-C
Date of Hearing: February 17, 2005

The date of this written opinion is **MAY 06 2005** (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules, thirty days from the date of this written opinion. This site plan shall remain valid as provided in Section 59-D-3.8.

INTRODUCTION

On February 17, 2005, Site Plan Review No. 8-05017 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Planning Board heard testimony and received evidence submitted in the record on the application.

PROPOSED DEVELOPMENT

The applicant, Magruder/Reed @ Christie Estates, LLC ("Applicant"), is proposing to develop the 9.13-acre site into 13 lots with one-family detached dwelling

units, including one existing house that will remain. The Subject is split-zoned as an RE-2/TDR (2) and RE-2/TDR (4) site in Olney, Maryland.

A major portion of the Subject Property is encumbered by two stream valley buffers, limiting the developable area of the site to the southeastern and southwestern boundaries of the site. This area backs up to the James Creek subdivision and Christie Estates subdivision, each developed with one-family detached lots that range in size from 8,000 square feet to over 10,000 square feet, and 6,000-8,000 square feet, respectively.

THE SUBJECT PROPERTY

The property contains two tributaries to James Creek and their associated stream buffers. The majority of the site is forested and contains numerous specimen and mature trees, with the exception of the southeastern boundary abutting the existing lots in the Christie Estates subdivision. The property contains two existing 1-story brick houses; one of which is located with direct access to Spartan Road in the southeastern corner of the site. The other house and associated sheds are located in the northern part of the site with access to Spartan Road, via a gravel and asphalt drive. Many of the adjacent properties in Christie Estates are fenced at the property line.

The property falls in elevation from Spartan Road and on the southwestern perimeter toward the north to the two tributaries by approximately thirty feet. The existing house and sheds in the center of the site are located on a knoll with the existing grades dropping to the two streams. Steep slopes exist to the north, east and west of the house and sheds, and at the base of the streams.

SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

Development Review Staff ("Staff") recommended approval, with conditions, in its memorandum dated February 11, 2005 ("Staff Report"). Staff testified at the hearing consistent with the findings and recommendations of the Staff Report.

The Applicant appeared at the hearing, with legal counsel, and testified that it agreed with Staff's recommendations and proposed conditions.

At the public hearing, two speakers representing the adjacent communities of James Creek and Christie Estates presented testimony with regard to 1) compatibility of the proposed dwelling units to the existing one-family detached homes; 2) separation of the units; 3) the Applicant's request for a reduced width tertiary road; and 4) preservation of the existing trees on the boundary. Jerry Strasbaugh, representing the James Creek Homeowners Association, also requested that the Planning Board consider reducing the width of the proposed stream buffer on the property to allow the proposed homes to be pulled back further from the existing homes. The Planning Board

received testimony from Staff on how the stream buffer was established consistent with the various stream classifications, according to the Forest Conservation regulations and the Forest Conservation Guidelines. A definition of the streams located on the site was also presented at the hearing.

The Planning Board also received testimony from Staff on the separation of the existing units throughout the community, in addition to the adjacent dwelling units to the subject property. Staff testified that the average depth of the back yards of the existing homes on the Christie Estates side is 25 to 30 feet, consistent with the separation of the proposed dwelling units adjacent to the community. Michael Sullivan, who represented Christie Estates, discussed the width of the modified tertiary road, in relation to the pavement width. Staff testified that the right-of-way for the modified tertiary road is proposed to be reduced from 50 feet to 27.33 feet, however, as the Applicant noted, the pavement width will be 26 feet, which is the same as a standard tertiary road. The reduction in the right-of-way only reduces the area available for a sidewalk but does not affect the width of the pavement. No sidewalk is proposed for the side along the stream buffer since that side of the right-of-way will not access any homes or other walkways.

The Applicant testified that his landscape architect was coordinating with the adjacent property owners to establish a rear-yard-buffer planting plan. A condition was added to the staff recommendations to provide buffer planting that would be acceptable to the adjacent property owners as part of the signature set of site plans.

FINDINGS

Based on all of the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan is consistent with the approved development plan or a project plan for the optional method of development, if required.

An approved development plan or a project plan is not required for the subject development.

2. The Site Plan meets all of the requirements of the RE-2/TDR2 and RE-2/TDR4 Zone as demonstrated in following Project Data Table:

PROJECT DATA TABLE (RE-2/TDR-2 and RE-2/TDR-4 Zone)

Development Standard	Permitted/ Required	Proposed
Min. Tract Area (ac.):	N/A	9.13
Max. Density of Development (d.u.):		
RE-2/TDR-2 (1.52 ac.)	3	
RE-2/TDR-4 (7.62 ac.)	30	
Total Density Permitted:	33	13
Min. Building Setbacks (ft.)*		
from street	20	25
rear yard	15**	25***
side yard	0	5
Min. Lot Area (sf.):	N/A for SFD	7,626
Min. Green Area (%)	35%	81%
Max. Impervious Area (%/ac.):	Not specified	20%/1.83 ac.
Max. Building Height (ft.):	Not specified	40
Parking Spaces		
Detached units (2 spaces per unit)	26	26

- * Section 59-C-1.394, Development Standards Applicable to the Optional Method of Development using the R-60/MPDU Development Standards
- ** Section 59-C-1.624, Yard Requirements. For a side or rear yard that abuts a lot not developed under the provisions of this section 59-C-1.6, the setback must be equal to that required for the abutting lot, provided that no rear yard is less than 15 feet.
- *** Condition 2(a) of the site plan is requiring a 25-foot minimum rear yard setback to address compatibility with the adjacent existing lots.

3. The locations of the buildings and structures, the open spaces, the landscaping, the recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.

a. Buildings

The locations of the existing and proposed buildings on the proposed site are adequate, safe and efficient.

The proposed one-family homes directly relate to the stream valley buffer, which dictates the location of the proposed road, stormwater management facilities, and orientation of the houses. The proposed lot pattern is compatible to the adjacent communities of James Creek and Christie Estates in terms of overall size, depth, and width of the lots. The proposed buildings will incorporate the same 25-foot rear yard setback as the adjacent communities, as conditioned below.

The elevations of the proposed buildings will be sited approximately 4-6 feet below the existing finished floor elevation of the adjacent one-family homes, although final siting of the homes will not occur until building permit, once a prospective homebuyer chooses a model that will be constructed on the proposed lot.

b. Open Spaces

The location of the open space within the proposed development is adequate, safe and efficient.

The plan proposes approximately 7.41 acres of open space, or over 80 percent of the property, primarily within the stream valley buffer and between the units and along the perimeter of the property. The open space, along with existing trees, will provide a significant buffer and natural setting for the proposed homes that front the stream valley. The open space in the rear of the proposed lots will be approximately 25-foot wide in accordance with the location of the adjoining lots in the adjacent communities. The two-stormwater management facilities are located internally at the intersection of the public road and ingress/egress to lots 2-5 and at the terminus of the proposed public road.

The proposed stormwater management concept consists of on-site water quality control and recharge via two surface sandfilters. Hydrodynamic water quality structures are also being provided because a waiver of open section roads was requested. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

c. Landscaping and Lighting

Landscaping proposed within the public right-of-way and evergreen screening around the stormwater management facilities and the lighting proposed within the public right-of-way are adequate, safe, and efficient. The Planning Board accepts the Applicant's proffer to include a condition requiring the Applicant to develop a landscape plan in conjunction with adjacent property owners to address buffering issues as reflected in Condition No. 10(k) below.

d. Recreation

Recreation facilities are not required with this application because the applicant is proposing less than 25 dwelling units.

e. Vehicular and Pedestrian Circulation

Proposed Street A is a modified tertiary street with sidewalks primarily on the southern end of the street due to the location of the stream buffer. A private ingress/egress easement will provide access to four lots approximately 200 feet from the intersection of the public road with Spartan Road. The existing house will be created as a separate lot and gain access directly off the cul-de-sac of the proposed public road.

A waiver has been granted to delete the portion of sidewalk typically required on the north side of the proposed public street due to constraints with the location of the stream buffer and the fact that no houses are proposed on the north side of the street affected by the waiver.

A 5-foot-wide sidewalk will also be provided, to replace the 4-foot-wide sidewalk, on the north side of Spartan Road along the property frontage. The sidewalk will be extended to the intersection with Paradise Cove Terrace for pedestrian continuity. Additionally, a crosswalk is being provided across Spartan Road from the proposed entrance to facilitate safe access to the elementary school.

The vehicular and pedestrian connections associated with this plan are adequate, safe, and efficient.

4. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

The site addresses compatibility by ensuring a more desirable lot-to-lot layout with an equal 25-foot-wide separation between the rear of the units and a comparable lot size as the proposed lots with the existing neighboring communities of James Creek and Christie Estates.

The adjacent lots on James Creek range in size from 8,000-10,000 square feet. The proposed lots (6-12), adjacent to the James Creek homes, range in size from 8,000-10,000 square feet. Alternatively, the existing homes at Christie Estates (lots 19-24) on the southeastern boundary range in size from 6,000-8,000 square feet, which is consistent with the proposed lot size of 7,000-8,000 square feet for lots 1-5, exclusive of the panhandles. The size of the proposed lots, although larger by average, will ensure a more compatible house size with the adjacent communities.

The lots on the Subject Property will also be located at a lower elevation, offsetting the maximum height permitted of 40 feet within the existing and proposed subdivisions.

5. That based on the uncontested evidence of record, the site plan meets all applicable requirements of Chapter 22A regarding forest conservation.

The 9.37-acre property includes 7.37 acres of existing forest. The existing forest is located away from Spartan Road and includes stream buffers. Since this property is being developed utilizing an optional method of development, the applicant is required to retain 20 percent of the existing forest onsite. The applicant will meet the forest conservation requirements by preserving 4.08 acres of existing forest. Based on the amount of forest that currently exists onsite and the amount of forest cleared, there are no planting requirements for this project.

The house located away from the Spartan Road is entirely within the stream buffer, and will remain with this application. Typically, redevelopment of properties results in the removal of all impervious surfaces and structures within stream buffers and a category I forest conservation easement is placed on the entire buffer area. When structures that are located within the stream buffer are intended to remain, applicants propose modifications to the environmental buffers. Existing encroachments into stream buffers are reviewed on a case-by-case basis. In this application the current owner of the property intends to remain in the existing house. Environmental Planning believes that a category II forest conservation easement, over lot 13, will be sufficient to protect the existing forest and prohibit removal of trees. Environmental Planning recommended the Planning Board approve the permanent encroachment into the stream buffer for this existing structure.

PLANNING BOARD ACTION AND CONDITIONS

The Montgomery County Planning Board APPROVES Site Plan Review #8-05017 for 13 one-family dwelling units, including 1 existing dwelling unit and 10 Transfer Development Rights (TDRs), on 9.13 gross acres in the RE-2/TDR (2) and RE-2/TDR (4) Zone with the following conditions:

1. Preliminary Plan Conformance
The proposed development shall comply with the conditions of approval for Preliminary Plan 1-05024.
2. Site Design
Provide a minimum 25-foot-wide rear yard setback on the proposed lots.
3. Pedestrian Circulation
Provide a five-foot-wide sidewalk along the frontage of Spartan Road, and extend the sidewalk within the public right-of-way to the intersection with Paradise Cove Terrace.
4. Transfer Development Rights (TDRs)
Prior to recording of plat, the applicant shall provide verification that 10 TDRs have been acquired for the proposed development.

5. Forest Conservation

The applicant shall comply with the following conditions of approval from M-NCPPC-Environmental Planning in the memorandum dated February 9, 2005:

- a. The proposed development shall comply with the conditions of the final forest conservation plan. The applicant shall satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits.
- b. Provide a Category I and Category II conservation easement over all areas of stream buffers and forest conservation, as indicated in the memorandum.

6. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated November 1, 2004 and reconfirmed on February 3, 2005.

7. Common Open Space Covenant

Record plat of subdivision shall reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to M-NCPPC staff prior to issuance of the 8th building permit that Applicant's recorded Homeowners Association Documents incorporate by reference the Covenant.

8. Development Program

Applicant shall construct the proposed development in accordance with Development Program. A Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of signature set of site plan. Development Program shall include a phasing schedule as follows:

- a. Street tree planting shall progress, as street construction is completed, but no later than six months after completion of the units adjacent to the street.
- b. Community-wide pedestrian pathways, including the off-site five-foot-wide sidewalk along the frontage of the property from proposed Street A to Paradise Cove Terrace, shall be completed prior to issuance of the 8th building permit.
- c. Clearing and grading shall correspond to the construction phasing, to minimize soil erosion.

- d. Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, landscaping, pedestrian sidewalks, trip mitigation or other features.

9. Clearing and Grading

No clearing or grading prior to M-NCPPC approval of signature set of plans.

10. Signature Set

Prior to signature set approval of site and landscape/lighting plans the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Development program, inspection schedule, and Site Plan Opinion.
- b. Undisturbed stream buffers except for stormwater management outfalls and sewer connections.
- c. Limits of disturbance.
- d. Methods and locations of tree protection.
- e. Forest Conservation easement areas.
- f. TDR calculations.
- g. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading.
- h. Location of outfalls away from tree preservation areas.
- i. All other items specified in the site design, pedestrian circulation and forest conservation conditions of approval above.
- j. Provide the setbacks on the plan for the proposed units.
- k. The applicant shall work with neighboring property owners in the Christie Estates and James Creek communities to develop a landscape plan. Staff must approve landscape plan.

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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

APPROVED AS TO LEGAL SUFFICIENCY
Dyd 4/22/05
M-NCPPC LEGAL COUNSEL

CERTIFICATION OF BOARD VOTE ADOPTING OPINON

At its regular meeting, held on Thursday, April 28, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent, ADOPTED the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Site Plan No. 8-05017, Tong Subdivision, Lots 1-13, Parcels A-C.



Certification As To Vote of Adoption
Technical Writer