

CLARKSVILLE CROSSING, NL, LLC	*	BEFORE THE
PETITIONER	*	PLANNING BOARD OF
PLANNING BOARD CASE NO. 452	*	HOWARD COUNTY, MARYLAND

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DECISION AND ORDER

In accordance with State Senate Bill 236, Section 5-104 of the Land Use Article of the Maryland Annotated Code, the Planning Board of Howard County, Maryland, held a public hearing on June 3 and June 17, 2021, to consider the petition of Clarksville Crossing, NL, LLC, Petitioner, to approve a Preliminary Equivalent Sketch Plan, SP-20-001, for 8 single-family cluster lots and 2 non-buildable preservation parcels. The 20.85-acre parcel is located on the west side of Maryland Route 108 and the east side of Prestwick Drive and identified as Parcel 301, Lot 3, on Tax Map 34, in the Fifth Election District of Howard County, Maryland, is in the Growth Tier III residential land use category and is zoned RR-DEO (Rural Residential – Density Exchange Option).

The notice of hearing, which is required by Section 5-104(d)(1) of the Land Use Article of the Maryland Annotated Code, was published and the subject property was posted in accordance with the Planning Board's requirements, as evidenced by certificates of publication and posting, all of which were made a part of the record of the case. Pursuant to the Planning Board's Rules of Procedure, the reports and official documents pertaining to the petition, including the Technical Staff Report of the Department of Planning and Zoning, the Howard County Subdivision and Land Development Regulations, the Howard County Zoning Map and Regulations, the Howard County Design Manuals, the Howard County Landscape and Forest Conservation Manuals, and the Adequate Public Facilities Ordinance were made part of the record in this case.

Mr. Thomas Coale, Esquire and Mr. John Carney, P.E. represented the petitioner.

Ms. Gina Gulliford, Ms. Simona Suci, Mr. John Taylor, Ms. Jenny Castellano and Ms. Susan Gray appeared in opposition.

Based on all the information presented, the Planning Board makes the following findings of fact and conclusions of law:

DEPARTMENT OF PLANNING AND ZONING'S TECHNICAL STAFF REPORT

Anthony Cataldo presented the Technical Staff Report for the Department of Planning and Zoning. The Technical Staff Report found that there are two criteria for the Planning Board to review, pursuant to Section 5-104(e) of the Land Use Article of the Maryland Annotated Code for a proposed major subdivision on a Tier III property; only the second of which is applicable:

1. The cost of providing local government services to the residential major subdivision unless a local government's adequate public facilities law already requires a review of government services; and
2. The potential environmental issues or a natural resources inventory related to the proposed subdivision.

As to criterion 1 above, Howard County has an adequate public facilities law, which already requires a review of government services and, therefore, this requirement has been met.

As to criterion 2 above, the Department of Planning and Zoning found that placement of the environmental features, stream, wetlands, wetland buffers, and stream buffers within non-buildable preservation parcels protected and preserved these environmental resources.

Mr. Thomas Coale, legal counsel for the petitioner asked Mr. John Carney, P.E. with Benchmark Engineering, Inc. to explain the plan before the Board. Mr. John Carney testified the plan was a resubdivision of Lot Three of the Clarksville Crossing, Phase One development, which was a previous minor subdivision. He identified the boundary of the parcel and described the proposed subdivision as eight residential cluster lots, and two non-buildable preservation parcels containing floodplain, streams, (perennial stream, and intermittent) stream buffers and wetland buffers. He testified the existing forest conservation easements (shown in honeycomb symbol) were recorded under phase one and the two non-buildable preservation parcels were intended as environmental preservation parcels. He testified that proposed Lots 5 and 6 would use a common driveway to Route 108. Lots 7 through 12 would be served by the shared driveway to Prestwick Drive. He further testified there are numerous specimen trees on the property and identified their critical root zone. He explained in detail the subdivision plan including the location of the floodplain, streams, wetlands their buffers and the forest conservation easement areas. He testified that an alternative compliance was approved to remove 13 of the specimen trees for which mitigation will be provided. He testified that there are no impacts to the floodplain, wetland, perennial stream, intermittent stream or their buffers. He further testified that the environmental features and the forest conservation areas would be located within the non-buildable preservation parcels. He listed the trees species proposed within the reforestation area, and stated these trees were selected because of the soils types located on the site. He concluded by stating that Phase Two met the criteria before the Board.

Board Member Adler stated that written testimony was submitted which questioned how one can make a statement that there are no impacts to environmental features; therefore, no environmental impacts associated with the subdivision. But, does developing and adding pavement have an impact on the environment. She asked Mr. Carney to explain the difference between these environmental impacts.

Mr. Carney testified that he reviews Section 16.120 of the Subdivision Regulations which lists the environmental features. He added lots of activities that happen every day have a lot of impact throughout the world, but as far as what he deemed an impact to environmentally sensitive area on this project, he references items addressed under Section 16.120.

Board Member Engelke asked Mr. Carney to identify the reforestation area.

Mr. Carney presented an exhibit showing four yellow polygons representing the forest conservation areas. He explained in detailed the forest conservation area proposed near Route 108.

Board Member Roberts asked Mr. Carney to explain how the removal of trees and replacement of trees will affect the floodplain area.

Mr. Carney testified that the planting of trees within the floodplain is a positive impact, thus is the reason, the floodplain is listed as a priority area for planting in the Forest Conservation Manual. There are several small pockets of existing trees within the reforestation area. The planting should provide a nice forested floodplain and forested wetlands which would be a positive gain for the environment. In addition, he explained the mitigation for the removal of the specimen trees.

Vice Chairperson McAliley asked Mr. Carney to identify the driveway in relationship to the existing home. In addition, he asked if trees would be removed to accommodate the driveway, if there were changes to the tree canopy, and if stormwater management would be management on site with no impacts to the neighboring community.

Mr. Carney explained that Lot 19 has an existing circular driveway with two entrances onto Prestwick Drive and a flag with a parking pad at the rear of the house. The portion of the driveway closer to adjacent Lot 18 will no longer serve Lot 19. This portion of the driveway will be used by the six lots from

Clarksville Crossing Phase Two. There will be minimal visual impact along Prestwick Drive because the existing access into this road will not change. No specimen trees are being removed for the driveway. He added that once the reforestation has grown, there would be a greater canopy. Studies have been performed and the project is below the 10-year and 100-year discharge for stormwater management.

Chairperson Coleman asked if Recreation and Parks or Planning and Zoning approved the mitigation trees for specimen trees removal.

Mr. Carney testified the plan was reviewed and approved by the County.

Miss Fitzgerald asked about the plans for pond and its maintenance. And, she asked about the responsibility for the maintenance of the replanting areas, and the ensure that the site becomes a forest in the future.

Mr. Carney testified the pond will be located on the non-buildable preservation parcel and will be maintained by the homeowners association. And, an MDE permit has been approved for rebuilding the embankment. He further testified the developer would be on a bond for two or three-year growing review cycle. At the end of the cycle, the bond will be released, or additional maintenance or planting may be required.

Ms. Jenny Castellano expressed concern about flooding along Route 108. She asked if an analysis was conducted along Route 108 and Prestwick Drive. Mr. Carney testified there is a substantial problem along Route 108 which is mostly associated with the culvert that goes underneath Route 108. He testified that the analysis of Route 108 identified no significant change associated with the proposed subdivision. He added the impervious areas are minimized by using the two use-in-common driveways. He testified that the stormwater management would include micro bioretention facilities or disconnection of non-rooftop runoff, dry wells and a larger micro bio facility for the road.

Mr. John Taylor questioned why Lot 7 was not included on the minimum lot size chart, how density was calculated, and how the environmental impacts associated with WP-14-053 were related to the plan before the Board. Mr. Taylor asked if any environmental regulations (stream buffer, wetlands) were waived as part of the preliminary equivalent sketch plan. Mr. Carney demonstrated that Lot 7 did not have a pipestem area, and therefore should not be included on the minimum lot size chart. He testified that the overall acreage for the site is 24.55 acres and the floodplain is 2.10 acres which allows the 11 units. He further testified that WP-14-053 had been voided and is no longer pertinent to the subdivision. The file was listed on the plan because it was required by the County. Mr. Carney testified a waiver for the removal of the specimen trees was requested. No waiver for environmental impacts was requested for the resubdivision of Lot 3.

Ms. Suciú asked if specimen trees would be removed for the driveway on Lot 19. She specifically asked about specimen tree number 31. Mr. Carney testified that the specimen tree 31 was not located on Lot 19, but on Lot 3 of Clarksville Crossing. He further testified that specimen tree 31 was in poor condition, as determined by the environmental consultant, and mitigation for its removal would be provided.

Ms. Susan Gray asked how density was calculated, if the 24.55 acres was the net acreage of overall acreage for the site, and she asked Mr. Carney to identify this area on the plan. Mr. Carney testified the 24.55 acres was the net area of the overall site and identified this acreage on the plan.

Ms. Gray asked Mr. Carney to review Notes 31, 27, 38, 45 and 56 because based on these notes, it appears that changes could be made to the plan. Mr. Carney testified not everything can change and the plan under review is a preliminary equivalent sketch plan which is not the final engineered document. Any changes from preliminary to final phase, would be reviewed by the appropriate County agencies, such as Development Engineering, Land Development, Soil Conservation, and Health Department.

Ms. Gray asked if the driveway access was not available for at least six of the lots would they be permitted, and how would they obtain their access. Mr. Carney testified I am not prepared to say they cannot be built.

Mr. Coleman asked if there was a problem with the access road would the plan be redesigned and then come back to Planning Board.

Mr. Carney testified that he did not know. If it was a major modification, he thought it would be heard before the Board. He deferred to Planning and Zoning.

Amy Gowan testified that if there was a substantial modification then the plan would come back before the Planning Board. If there is a question on if the modification was substantial or not, the new Planning Board's Rules, which are posted for public review, will allow the petitioner to bring that question for a decision to the Board to determine whether it was, in fact, substantial enough to warrant a rehearing.

Ms. Gray asked Mr. Carney to explain how providing the access from Prestwick Drive for the six lots avoid environmental concerns. Mr. Carney identified Lot 19 and stated there are no floodplain, streams (intermittent or perennial), wetlands or their buffers, or forest conservation easements on Lot 19. He identified Non-Buildable Preservation Parcel B and an intermittent stream, stream buffer, critical root zones of specimen trees and the existing forest conservation easement on this parcel. He stated that as part of the alternative compliance, one of the justifications was the width of this forest conservation easement and creating a wildlife corridor. He stated that the wildlife corridor does not extend into the adjacent Koandah Gardens subdivision because it is mostly cleared, and there are only a small number of trees along the northern portion of the property on the adjacent Greenfield subdivision. He identified Route 108 as a major collector highway, and identified the 100-year floodplain, wetlands, wetland buffer, stream buffer and perennial stream located within Non-Buildable Preservation Parcel A. He stated these features are an obstruction for obtaining access to Route 108. He identified the access restriction along Route 108 and stated that grading would be difficult to get the needed grades up to Route 108. He identified the area to the south of Lot 5 which would require the removal of specimen trees and forested area, if the road was proposed within this area. In addition, the road would go through the environmental features located within Non-Buildable Preservation Parcel B.

Ms. Gray asked Mr. Carney to identify the plan proposed for approval by the Board, and if placing the environmental features within the non-buildable preservation parcels should be considered having no other environmental impacts from this property. Mr. Carney testified the preliminary equivalent sketch plan was before the Board. He further testified the intermittent stream and buffers, perennial stream and buffers, specimen trees, wetlands, the wetland buffers are within environmental preservation parcels, except for the pipestem area approved under Phase One as part of WP-18-089. He was only aware of the environmental features provided under Section 16.120 of the Subdivision Regulations.

Board Member Adler stated some of the testimony reflects that this subdivision is incorporating property that did not require Planning Board approval. She asked Planning and Zoning how irregular is that or explain how the project can move forward.

Anthony Cataldo explained when Phase One was reviewed it was a minor subdivision, four or less lots. We would not have known if the developer intended to pursue additional lots. We are currently reviewing a major subdivision which triggers this review which was focused on the environmental feature protection because of the Tier Three legislation.

Amy Gowan added the legislation only applied to major subdivisions. She stated Phase One has already been approved by DPZ. It was a minor subdivision, so it did not require Planning Board approval. Now, the resubdivision of Lot 3 is a major subdivision what triggers the Planning Board approval.

Ms. Gulliford testified in opposition. She objected because the subdivision proposed the removal of too many specimen trees and related forests, adds unnecessary additional roads and too many houses, fragments existing forests, contributes to soil erosion, add to flooding risks, damages water quality and

quantity and, disrupts the local ecosystem. She testified that she was against the development because it disturbs the habitat for the whole ecosystem in the area, and removes the deer, turtle and snake habitat.

Caroline Fitzgerald testified in opposition. She emphasized that the replanting promised will not replace the existing forest. She referred to the plan which showed the cleared forest and the reforested areas. She testified that a Board member asked a question about replacement canopy, and she testified that she did not think the proposed replacement planting would equal the removed canopy, or certainly not for a very long time in the future. She opposed the removal of the forest.

Simona Suciu testified in opposition. She objected to the subdivision because the property was bisected, trees and vegetation were being removed and 6 lots would be served by a shared driveway with the collection of the trash bins at the end of the driveway. She considered the subdivision a disruption to the ecosystem. She objected to the approval of the waiver and wanted the site developed without the removal of trees. She supported the testimony given by Ms. Gulliford.

John Taylor testified in opposition. He expressed concern because the Planning Board did not ask questions about how the density was calculated. He believed it was unclear as to what comprised the 24.55 acres. He expressed concern why Lot 19 was not considered part of the Board's review. He requested that the Department of Planning and Zoning issue a written analysis providing the gross area; the net area, the density calculations, and the correct number of lots allowed in this subdivision.

Jenny Castellano testified in opposition. She testified that Mr. Carney's testimony indicated that a stormwater management analysis for Prestwick Drive had not been completed. She believed there are environmental impacts associated with Prestwick Drive, and asked the Board to defer on their decision until the analysis was available. She testified that some of the testimony presented some inconsistencies regarding acreage sizes, she requested that the Board ask for accurate information before making a ruling.

Susan Gray testified in opposition. She provided a brief history of the properties within the area and identified the area as once pristine farm land. She testified that the Board cannot review this project because the Board was not aware of the environmental impacts. She testified that there are many unanswered concerns, such as the access easement of Lot 19, the notes on the plan which indicate that those impacts will be reviewed later. The impacts of the storm water management system are going to be reviewed later and can change. She testified that the Planning Board is responsible for reviewing the impacts of the entirety of the subdivision. She stated that Mr. Carney has not provided information on any environmental impacts from the development on the site; that he acknowledged there are impacts from addition of impervious surfaces, but he did not state how they are related. He stated there are no impacts because we have taken care of this under the Subdivision Regulations and have all the environmental features that are sensitive in preservation parcels. She suggested to the Board that just because you may comply with some of Howard County subdivision regulations, that is not what this review is about. She testified to some of the offsite flooding which she attributed to development within the area. She requested that the Board review this subdivision based on the intent of the Senate Bill which does not say whether the Subdivision Regulations are followed. She indicated that the Subdivision Regulations are not adequate because of the flooding of her right-of-way and the flooding in downtown Ellicott City. She asked the Board to deny the plan because of lack of information as it relates to density, allowing the inclusion of Lot 19, and the unknown environmental impacts.

SUMMATION

Mr. Coale stated that the criteria before the Board is to evaluate potential environmental issues or natural resources inventory related to the proposed major residential subdivision. Mr. Carney testified that the environmental features are protected and will be placed within the non-buildable preservation parcels. In addition, forest conservation areas would be included on these parcels. One of the protestants observed that in some instances a property owner may cut down their trees. This subdivision will have an additional protection by placing the forest in a forest conservation easement within the preservation parcel. This subdivision preserves these environmental features, by avoiding environmental impacts. In

addition, the subdivision protects a vast majority of the 100 plus specimen trees. This Planning Board has approved PB446, PB429, PB434 and PB438 which are Tier Three developments that were found to meet the standard criteria. The environmental features are very well protected, in perpetuity, because they are located within the preservation parcels. He asked the Planning Board to approve the plan.

Ms. Fitzgerald, Ms. Castellano, and Ms. Sucui did not provide a summation.

Ms. Gulliford asked the Board to deny the plan.

Mr. Taylor requested that the Board require additional information on the density calculations. And, stated the staff report and petition did not provide enough information for the Planning Board to approve the plan.

Ms. Gray stated it was not permissible to combine Lot 19 into the subdivision without considering and reviewing the environmental impacts and stormwater management associated with this lot. Mr. Carney has provided no information on impacts of this subdivision; that his only argument is, all the environmentally sensitive features are in the preservation parcels. This plan does not meet the Board's criteria. The plan is inconsistent, in terms of the process, and allowing decisions to be made that have significant environmental impacts outside this process. The Board must deny the plan because the necessary information has not been provided.

FINDINGS OF FACT

1. The proposed Preliminary Equivalent Sketch Plan, SP-20-001, creates 8 single-family cluster lots, and 2 non-buildable preservation parcels on 20.85 acres of Tier III land, zoned RR-DEO (Rural Residential – Density Exchange Option).
2. The Planning Board has the authority to review the Preliminary Equivalent Sketch Plan in accordance with the criteria set forth in State Senate Bill 236.
3. Howard County's Adequate Public Facilities Ordinance (APFO) requires certain government services to be reviewed. Therefore, Howard County's APFO fulfills the requirements of the first Planning Board review criterion under Section 5-104(e)(1) of the Land Use Article, as indicated in the Department of Planning and Zoning's Technical Staff Report. Review by the Planning Board of the cost of providing local government services to the residential subdivision does not apply to a major subdivision in Tier III designated property, such as the proposed development, because Howard County has an APFO law. The Board agrees with and adopts the Department of Planning and Zoning's analysis, with which the petitioner concurred, that the Planning Board's review of public facility costs, based on the language of Section 5-104(e)(1) of the Land Use Article of the Maryland Annotated Code, does not apply. Consequently, the Board did not consider any testimony regarding the adequacy or cost of public facilities related to this subdivision.
4. The only applicable criterion for the Planning Board to consider in its review of this proposed major subdivision in Growth Tier III is "the potential environmental issues or a natural resources inventory related to the proposed residential subdivision." As noted by Mr. Cataldo in DPZ's technical staff report, all environmental features present on site are being placed within non-buildable preservation parcels which serves to protect and preserved these environmental resources. Specimen trees were also considered on site and of the 104 specimen trees present, the petitioner received approval to remove 13 and will be providing mitigation for the removal of those trees. The Petitioner presented a plan that wetlands, wetlands buffers, stream or stream buffers will be protected within the non-buildable preservation parcels. Mr. Carney, witness for the Applicant, testified that there are no impacts to the floodplain, wetland, perennial stream, intermittent stream or their buffers. He further testified that the environmental features and the forest conservation areas would be located within the non-buildable preservation parcels, that forest conservation plantings will be placed on site in conjunction with the development, and that

the access driveway from Prestwick to the eastern portion of the site was designed to further limit any impacts to the existing environmental features that bisect the existing site. Opposition questioned if the totality of the environmental features on site were being considered and argued they were not and that the existing environmental features were not being adequately protected. The Board considered the testimony provided by all parties. Based on the information presented, the Board finds DPZ's and the applicant's testimony to be persuasive, convincing and reliable, and the Board finds that sufficient information has been presented to show that the environmental resources are adequately protected with this proposed plan.

CONCLUSIONS OF LAW

1. Petitioners, as one seeking approval of a major subdivision on a property designated as a Growth Tier III area of the County, has the burden of demonstrating that it has satisfied the only criterion of Section 5-104(e)(2) of the Land Use Article of the Maryland Annotated Code which applies in Howard County - that there are no potential environmental issues related to a natural resources inventory associated with the proposed residential subdivision.
2. There is sufficient evidence in the record, as identified in the Board's Findings of Fact above, for the Board to have considered the testimony of the Petitioner and the Opposition in regard to the major subdivision in Growth Tier III and "the potential environmental issues or a natural resources inventory related to the proposed residential subdivision." The Petitioner's engineer presented the plan which places the existing environmental features and the forest conservation areas within the non-buildable preservation parcels and testified to the details and extent of the protection of the environmental features. The opposition disagreed with the engineer's determination of and evaluation of the environmental features on site and asked the Planning Board to not approve the plan as presented. The Planning Board was persuaded by Petitioner's evidence, including the testimony of its engineer, and concludes that the Petitioner has met its burden of demonstrating that it has satisfied the above-cited criterion for approval.
3. For the reasons stated in the above Findings of Fact and the Department of Planning and Zoning's Technical Staff Report, the Board concludes that the Petitioners have conclusively established, through the evidence in the record that the proposed Preliminary Equivalent Sketch Plan, SP-20-001, has satisfied all the approval standards for a major subdivision, according to State Senate Bill 236, Section 5-104(e)(2) of the Land Use Article of the Maryland Annotated Code.

For the foregoing reasons, the petition of Clarksville Crossing, NL, LLC, to approve a Preliminary Equivalent Sketch Plan, SP-20-001, to subdivide 8 single-family cluster lots, and 2 non-buildable preservation parcels on 20.85 acres of Tier III land, zoned RR-DEO, is this 30th day of June, 2021 APPROVED by the Planning Board of Howard County, Maryland.

HOWARD COUNTY PLANNING BOARD

DocuSigned by:

Edward T. Coleman

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Ed Coleman, Chairperson

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Kevin McAliley

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Kevin McAliley - Vice Chairperson

DocuSigned by:

Delphine Adler

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Delphine Adler

Absent

Phillips Engelke

DocuSigned by:

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Erica Roberts

PB Case No. 452

ATTEST:

DocuSigned by:

Amy Gowan

Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY:

HOWARD COUNTY OFFICE OF LAW

Gary W. Kus, County Solicitor

David Moore

Senior Assistant County Solicitor

LIST OF APPLICANT'S EXHIBITS:

None were introduced

LIST OF PROTESTANT'S EXHIBITS:

None were introduced