

Case No.: SDP-0608-01
The Preserve at Piscataway

Applicant: Woodland Development Group

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ORDER AFFIRMING PLANNING BOARD DECISION,
WITH CONDITIONS

IT IS HEREBY ORDERED, after review of the administrative record, that the Planning Board's decision in Resolution PGCPB No. 13-02, approving with conditions a specific design plan to eliminate the golf course, to revise the recreational amenities, to revise the grading of the site in order to balance the earthwork on the overall property (150,000–300,000 cubic yards), and to revise the tree conservation plan to include additional acreage in tree conservation for the purpose of creating woodland conservation mitigation banks, located north and south of Floral Park Road near and at its intersection with Danville Road, within Planning Area 84, Council District 9, in the Developing Tier, is:

AFFIRMED, pursuant to §§27-132(f)(1), 27-523, 27-528, and 27-528.01 of the Zoning Ordinance.

As the basis for this decision, the District Council adopts and incorporates by reference, as if fully stated herein, the findings and conclusions of the Planning Board in PGCPB No. 13-02, except as otherwise stated in Attachment A.

ORDERED this 4th day of November, 2013, by the following vote:

In Favor: Council Members Campos, Davis, Franklin, Harrison, Lehman, Patterson,
Toles and Turner.

Opposed:

Abstained:

Absent: Council Member Olson.

Vote: 8-0

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON
REGIONAL DISTRICT IN PRINCE GEORGE'S
COUNTY, MARYLAND

BY: _____
Andrea C. Harrison, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

ATTACHMENT A**ORDER OF APPROVAL WITH CONDITIONS SDP-0608-01****PROCEDURAL HISTORY, FINDINGS, CONCLUSIONS, AND CONDITIONS****Procedural History**

This case involves the approval of a specific design plan to eliminate the golf course, to revise the recreational amenities, to revise the grading of the site in order to balance the earthwork on the overall property (150,000-300,000 cubic yards), and to revise the tree conservation plan to include additional acreage in tree conservation for the purpose of creating woodland conservation mitigation banks, located north and south of Floral Park Road near and at its intersection with Danville Road, within Planning Area 84, Council District 9, in the Developing Tier.

On December 10, 2012, and January 10, 2013, the Planning Board considered evidence at public hearings on SDP-0608-01.

On January 31, 2013, the Planning Board adopted resolution PGCPB No. 13-02, and approved SDP-0608-01, with conditions.

On February 5, 2013, the Planning Board transmitted SDP-0608-01, as adopted in PGCPB No. 13-02 to the Clerk of the County Council.

On March 7, 2013, Mr. Nii-Kwashie Aryeetey, pursuant to §27-528.01, appealed the Planning Board's decision, PGCPB No. 13-02, to the District Council.

On April 2, 2013, the Clerk of the Council notified all persons of record of oral argument scheduled on June 10, 2013.

On June 10, 2013, the District Council held oral arguments in SDP-0608-01, and took this matter under advisement.

On July 8, 2013, the District Council referred this matter to Staff for the preparation of an order of remand, which was adopted.

On August 1, 2013, the Chair of the Planning Board, informed the Chair of the District Council of its intention not to comply with the order of remand.

On September 23, 2013, the District Council informed the Chair of the Planning Board of its desire for the Planning Board to comply with its remand order.

On October 21, 2013, pursuant to §27-135(b)(1)(2),¹ District Council Rule of Procedure 8, and County Council Rule of Procedure 9.6, the District Council *sua sponte* reconsidered its prior decision and after testimony from, Stan D. Brown, People Zoning Counsel, vacated its July 8, 2013 Order of Remand (8-0), and referred this matter to Staff for the preparation of an order of approval with conditions.

Questions Presented on Appeal

For clarity, the District Council will restate the questions presented by appellant Mr. Nii-Kwashie Aryeetey and respond accordingly.

1. The Board erred in accepting Woodland Development Group's (Developer), position that the substitution of a pavilion, a golf putting green, and 2 miles of trails is sufficient in lieu of a golf course that included a club house and an 18 hole course estimated at \$10.7M.
2. The Developer funded an assessment of the cost of constructing the Preserve at Piscataway Golf Course, which assessment came in as \$10.7M. The total cost for all the amenities the Developer will construct in lieu of the Golf Course amounts to \$1.2M, as estimated by the Developer. To the extent that value can be derived investments, I am at a loss as to how the Planning Board arrived at the decision that the Developer has provided

¹ See Prince George's County Code, Subtitle 27, Zoning Ordinance, (2008-09 ed., as amended) (hereinafter "§27- __").

See §27-141 (The Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision).

adequate amenities in lieu of a Golf Course to the residents and homeowners of the Preserve at Piscataway.

3. A recent meeting of the HOA at the newly opened Recreation Center of the Preserve at Piscataway could not seat 50 people. It can seat fewer than 100 people by the standards of any Fire Marshall's code.

4. Some homeowners received sales material that advertised a Golf Course as a subscription based amenity of the Preserve at Piscataway when they signed contracts.

The appellant has made the following proposition:

Additional amenities like the conversion of the Golf Course club house into a revenue generating Reception Hall much in line with the Golf Course and Club House, and could double as a community meeting place will come closer to meeting the in lieu of definition.

See February 21, 2013 Appeal of Planning Board Decision - SDP-0608-01 by Mr.

Nii-Kwashie Aryeetey.

Response

Pursuant to §27-528.01, an appeal to the District Council by a person of record is required to be noted within thirty (30) days after the date of the notice of the Planning Board's decision. According to the record, the Development Review Division of the Planning Board notified persons of record on February 7, 2013, of the Planning Board's decision. Mr. Nii-Kwashie Aryeetey (Appellant) filed an appeal with the Clerk of the County Council on March 7, 2013.

After reviewing the record, we conclude the Appellant was a party or person of record. We conclude however, after reviewing the questions presented on appeal that the Appellant is without standing to raise the issues before us because he is not an authorize representative of the Preserve at Piscataway Home Owners Association (HOA), and, even if he had standing, those issues are moot because the HOA voted to approve and support SDP-0608-01. A controversy

generally is not justiciable if it is moot. *Stevenson v. Lanham*, 127 Md. App. 597, 612, 736 A.2d 363 (1999). And, “[a] case is moot when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy.” *Coburn v. Coburn*, 342 Md. 244, 250, 674 A.2d 951 (1996); see *Board of Physician Quality Assurance v. Levitsky*, 353 Md. 188, 200, 725 A.2d 1027 (1999); *Atty. Gen. v. Anne Arundel Co. Sch. Bus Contractors Ass’n*, 286 Md. 324, 327, 407 A.2d 749 (1979); *Committee for Responsible Development on 25th street v. Mayor of Baltimore*, 137 Md. App. 60, 69, 767 A.2d 906 (2001); *Piper v. Layman*, 125 Md. App. 745, 749, 726 A.2d 887 (1999).

Pursuant to §27-107.01, a person of record or party of record includes (i) the owner, applicant, and correspondent; (ii) any municipality, civic association, or other person which requests, by writing or testimony, to become a person or party of record on or before the date the Zoning Hearing Examiner takes the case under advisement; and (iii) the Development Review District Commission if the property is located in a Development Review District. *Id.* at (a)(179). And a person of record or party of record may also include, in any Sectional Map Amendment (SMA) or other matter (under this Subtitle) not heard by the Zoning Hearing Examiner, the owner, applicant, and correspondent of a pending application; a municipality, civic association, or other person which, in writing or in testimony before the District Council, Planning Board, or other body, requests to be made a person or party of record, and the Development Review District Commission, if the property is located in a Development Review District, prior to the closing of the hearing record on the matter. A civic association is any organization registered with the Commission to represent the residents of a designated neighborhood or other geographical area of the County. *Id.* at (47.1).

Pursuant to Rule 6.2 of the District Council Rules of Procedures, an individual may represent himself or herself or be represented by an attorney authorized to practice law in Maryland. All other entities shall be represented by an attorney authorized to practice law in Maryland, except that a bona fide civic association or homeowner's association which is a party of record may be represented by any duly elected officer of the association regardless of whether that individual is an attorney. *See* also §25-201 of the Land Use Article, Md. Ann. Code (2012).²

The record confirms that Mr. Larry Mack was the authorized representative for the HOA, not the Appellant. Mr. Larry Mack testified at oral argument before the Planning Board and the District Council, on behalf of the HOA, affirming that the HOA voted for and was in support of SDP-0608-01 despite the concerns raised by the Appellant. *See* PGCPB No. 13-02, at 22-26, (12/10/12 Tr., 1/10/13 Tr., 6/10/13 Tr.), *See also* various emails in the record from Mr. Larry Mack.

Alternatively, if the questions presented are not moot and if Appellant has standing to raise the questions before us, we find them to be without factual or legal merit. The Planning Board and the District Council correctly concluded that the applicant's "request to approve a Specific Design Plan to eliminate the proposed golf course and club house, and to revise the recreational amenities, the proposed grading plan and the tree conservation plan" was supported by testimony and documentary evidence in the record that satisfied the approval criteria of §§27-514.10 and 27-514.10(d). These sections provide, among other things that:

"...an eighteen hole golf course...may be eliminated provided the recreational development is not needed to sustain a density increment granted by the applicable Comprehensive Design

²

§25-201. Association represented by nonattorney.

Notwithstanding any other State law, in its rules of procedures the district council may allow a duly elected officer of a bona fide civic association or homeowners association to represent the association before the county planning board, district council, zoning hearing examiner, or board of appeals regardless of whether that individual is an attorney.

Plan...” and as long as “proper and final preservation, design and access to the former golf course land as permanent open space is approved as part of the Specific Design Plan review; and...it is determined whether or not other recreational facilities in lieu of the golf course are necessary to provide the homeowners with a well-balanced program of recreational facilities.”

See PGCPB No. 13-02, at 22-26, Technical Staff Report, 12/6/12, at 20-24, (12/10/12 Tr., 1/10/13 Tr., 6/10/13 Tr.)

At oral argument, the People Zoning Counsel raised concerns over the applicant’s financial benefit through woodland conservation bank credits from the approximately 98 acres of land area of the former golf course that will be placed in a tree conservation bank, and the potential inequity to the HOA, if the HOA was saddled with ownership liability and maintenance of the golf course land. The Planning Board conditions, to be adopted by the District Council, do provide for easements over the former golf course to preserve it as open space and provide access to this open space to the HOA including a hiker/biker trail to be constructed. Transfer of the golf course to the HOA could potentially be done by the Developer as a result of its ownership of lots within the community and thus a large voting block within the HOA. In order to avoid undue influence in this decision making process of whether the HOA should acquire the former golf course land—and accompanying costs associated with liability and maintenance for nearly 300 additional acres—such a decision should be that of actual resident members of the HOA. By not allowing a transfer of the golf course by the Developer without actual resident approval, the HOA cannot be saddled with unnecessary expenses. This also negates the potential inequity of having the land and costs, but not the potential revenue from woodland conservation bank credits to offset the costs. The District Council therefore resolves any perceived inequity to the HOA, by modification, pursuant to §27-290(d), of Condition 4 (c) as follows:

The golf course property shall not be conveyed or transferred to the HOA so long as any developer owned lots or home builder owned lots have membership in the HOA.

Conditions of Approval

Affirmance of SDP-0608-01 is subject to the following conditions:

1. Prior to certification of the specific design plan, the following revisions shall be made:
 - a. All proposed recreational facilities shall conform to the *Parks and Recreational Facilities Guidelines*.
 - b. Revise the plans to include a striped crosswalk where the walkway from the traffic circle along St. Mary's View Road intersects with the access road for the recreation center.
 - c. Provide a bicycle rack(s) accommodating a minimum of ten bicycles at a location convenient to the proposed recreation center. The bicycle rack(s) shall be marked and labeled on the approved SDP.
 - d. All trails shall be a minimum of 20 feet from all private lot lines and 25 feet from all dwelling units, excluding where trails intersect with the road network.
 - e. The plans shall be revised to demonstrate conformance to the *Prince George's County Landscape Manual*, Section 4.6, Special Roadways and Section 4.9, Sustainable Landscaping, as appropriate.
 - f. Show the correct boundary of Parcel GC-1 as reflected on approved Preliminary Plan of Subdivision 4-03027.
 - g. Provide a note that the former golf course property shall be encumbered by an easement prior to any conveyance by the applicant that shall ensure the proper and final preservation of the golf course property as permanent open space.
 - h. Revise Specific Design Plan SDP-0318 for the community center and all other SDPs as appropriate to provide for the recreational facilities, including trail connections, as proposed on the exhibits for the twin entry ponds, Edelen Village South, Lusby Village, and Bailey's Village. The revised plans shall be reviewed and approved by the Planning Board or its designee.

2. Prior to the certification of Specific Design Plan SDP-0608-01, the Type II tree conservation plan (TCPII) shall be revised as follows:
 - a. On all applicable sheets:
 - (1) The approval block shall be revised to reflect the correct TCP number format of TCPII-044-07-01.
 - (2) A landscape buffer, exclusive of the public utility easement, shall be delineated and labeled along the special roadways surrounding the site in accordance with Section 4.6 of the *Prince George's County Landscape Manual*. If tree conservation credit is proposed as afforestation or natural regeneration areas within the buffer, the plant material shall be large stock material consistent with the sizes required in the Landscape Manual.
 - (3) Wherever natural regeneration areas are proposed directly adjacent to residential lots, trails, stormwater management facilities, or roadways, a permanent tree protection device shall be provided adjacent to lots and behind the public utility easement along all roadways, and a planted edge of one-inch caliper whips placed 20 feet on-center or similar planting detail acceptable to the Environmental Planning Section (M-NCPPC) shall be provided to define the edge of the natural regeneration area adjacent to lots, trails, stormwater management facilities, and roadways.
 - (4) An area clear of woodland conservation shall be shown ten feet on either side of the centerline of the proposed eight-foot-wide pathway to define a maintenance area and allow for the possible delineation of a recreational use easement free of woodland encumbrance.
 - (5) The plans shall delineate the 8-foot-wide hiker-biker trail placed in a 20-foot-wide clear zone, free and clear of woodland conservation.
 - b. On the coversheet:
 - (1) General Note 13 shall be revised to reflect the correct TCPII number and a new general note shall be added to the plan which indicates that Danville Road, Floral Park Road, and Piscataway Road are designated historic roads in accordance with the 2009 *Approved Countywide Master Plan of Transportation*.
 - (2) A note shall be added under the Specimen Tree Table which

indicates that the specimen trees identified were field located.

c. On Sheet 2 of 15:

- (1) The overall worksheet shall be revised to include a line for “Off-site woodland preservation provided on this property” and “off-site afforestation/reforestation provided on this property” in both the calculation section and the provided sections of the worksheet. Appropriate numbers shall be provided if the TCPII plan includes a proposal for off-site woodland conservation banking.
- (2) The individual worksheet shall be revised to accurately reflect the woodland conservation requirement for the TCPII based on the most current overall worksheet.
- (3) The individual worksheet shall be revised to include a line for “off-site woodland preservation provided on this property” and “off-site afforestation/reforestation provided on this property” in the provided section of the worksheet. Appropriate quantities shall be provided if the TCPII plan includes a proposal for off-site woodland conservation banking.
- (4) On both the overall and individual worksheet, a line shall be provided for “afforestation/reforestation” and a line shall be provided for “natural regeneration” in the provided portion of the worksheet, and the appropriate quantities shall be provided.
- (5) The final calculation shown on the overall worksheet and the individual worksheet shall be the same.
- (6) The custom seed mix proposed for natural regeneration areas shall be revised to eliminate sugar maple, and a fast growing pioneering major shade tree shall be substituted in the mix, such as tulip.
- (7) Additional implementation details shall be provided for the tree protection signage detail, including dimensions and specification of the post material, and specifications for attachment of the signage to the post material in accordance with the Woodland and Wildlife Habitat Conservation Technical Manual.

d. On Sheet 11 of 15:

- (1) Temporary fencing shall be shown along the boundary of the cultural resource area.
- (2) Notes shall be added to the Plan that states “No construction,

disturbance or seeding shall occur within cultural resource area.

- e. Have the revised plan signed and dated by the qualified professional who prepared the plan.
3. Prior to certification of the specific design plan and the Type II tree conservation plan, a woodland conservation easement shall be recorded which provides perpetual protection for the woodland conservation areas approved with TCPII-044-07-01 to indicate the area of primary concern related to the Mount Vernon viewshed, and this area shall be shown on the TCPII and the SDP.
4. Prior to approval of the 570th building permit or conveyance of the golf course property, whichever comes first, the applicant and the applicant's heirs, successors, and/or assignees shall do the following:
 - a. Draft an easement to ensure the proper and final preservation of the golf course as permanent open space, to be approved by the Planning Board or its designee.
 - (1) The easement shall allow for appropriate recreational uses as set forth on the approved specific design plan.
 - (2) The easement shall allow for an appropriate access easement to the open space and recreational facilities to the benefit of the homeowners association (HOA) on land currently identified as golf course. The access easement shall contain a reverter clause in the event that the land is conveyed to the HOA.
 - (3) The easement shall set forth the rights, responsibilities including maintenance, and liabilities of the parties.
 - b. The approved easement shall be recorded in Land Records by the applicant.
 - c. The golf course property shall not be conveyed or transferred to the HOA so long as any developer owned lots or home builder owned lots have membership in the HOA.
5. Prior to approval of the 720th building permit, the applicant and the applicant's heirs, successors, and/or assignees shall have installed the recreational facilities identified in Finding No. 6, excluding full completion of the new trail, which amenity, shall be completed prior to the issuance of the 818th building permit.
6. Prior to approval of the 570th building permit, the applicant and the applicant's heirs, successors, and/or assignees shall obtain approval of final plats for the golf course property in accordance with Section 24-119(e) of the Subdivision

Regulations and Specific Design Plan SDP-0608-01, and the final plats shall reflect:

- a. The liber/folio of a document abandoning the covenants for the preferential membership, Liber 15709/Folio 678.
 - b. The liber/folio of an easement to ensure the proper and final preservation of the golf course as permanent open space.
 - c. The liber/folio of the access easement to the open space including the recreational facilities to the benefit of the homeowners association (HOA).
 - d. The liber/folio of the amended or new recreational facilities agreement, with the trigger for construction prior to the issuance of the 640th building permit, with appropriate bonding required.
 - e. Condition 6(c) shall become null and void if an executed deed of conveyance between the applicant and the HOA for all of the golf course land is provided to the Planning Board or its designee, prior to the timeframe indicated above, for review and determination of adequate protection of the open space and access thereto.
7. Prior to approval of the 818th building permit, the trail location shall be posted at 200-foot intervals and inspected by the M-NCPPC trails coordinator. The signage shall be approved by the trails coordinator prior to posting and shall, at a minimum, state "Future location of Pedestrian Trail." The signage shall be of durable materials, colors that will attract attention, and directed toward the lots and public street. The signage height shall be determined by the site grading to ensure visibility. This condition may be partially waived by the trails coordinator, at the request of the applicant, if specific site conditions make the trail posting unwarranted at certain locations.
 8. Prior to issuance of the 818th building permit, Parcels GC-1, GC-2, GC-3, and GC-4 or portions thereof, shall be conveyed to the HOA subject to the following:
 - a. A copy of an unrecorded, special warranty deed for the property to be conveyed shall be submitted to the Subdivision Review Section of the Development Review Division (M-NCPPC) along with the final plat. The Deed of Conveyance shall provide for the proper and final preservation and access to the former golf course land as permanent open space and any reservation of rights necessary for development in accordance with approved plans.
 - b. All waste matter of any kind shall be removed from the property prior to conveyance, and all disturbed areas shall have a full stand of grass or other vegetation upon completion of any phase, section, or the entire project.

- c. The conveyed land shall not suffer the disposition of construction materials, discarded plant materials, refuse, or similar waste matter. The applicant shall certify that the land has been properly inspected and cleaned up.
 - d. Any disturbance of land to be conveyed to a homeowners association shall be in accordance with an approved specific design plan. This shall include, but not be limited to, the location of sediment control measures, tree removal, temporary or permanent stormwater management facilities, utility placement, and stormdrain outfalls. If such proposals are approved, a written agreement and financial guarantee may be required, unless identified in the Deed of Conveyance Reservation of Rights, to warrant restoration, repair, or improvements required by the approval process.
 - e. Stormdrain outfalls shall be designed to avoid adverse impacts on land to be conveyed to a homeowners association. The location and design of drainage outfalls that adversely impact property to be conveyed shall be reviewed and approved by the Development Review Division (M-NCPPC) prior to issuance of grading or building permits, in accordance with the approved specific design plan.
 - f. Temporary or permanent use of land to be conveyed to a homeowners association for stormwater management not otherwise included in the Deed of Conveyance Reservation of Rights shall be approved by the Development Review Division (M-NCPPC) in accordance with the approved specific design plan.
 - g. If the land is not conveyed to the HOA, Conditions 8(a) through (f) become null and void.
9. Prior to signature approval of the plans, one of the following determinations shall be made:
- a. If Sites 18PR470b and 18PR521 are to be preserved in place, the plans shall be altered to avoid the sites completely; or
 - b. If the sites cannot be avoided, a plan for burying the site(s) with fill for protection from construction activities shall be provided by the applicant and shall be reviewed by the Historic Preservation Section of the Maryland-National Capital Park and Planning Commission (M-NCPPC). The eight-foot pathway to the south of Glassford Village shall be shown as an area of fill, rather than cutting into the soil, to avoid disturbance to the Archeological Site 18PR470b.
10. Prior to any ground disturbance or the issuance of grading permits, the applicant

shall meet with the Army Corps of Engineers archeologist and the Prince George's County Planning Department archeologist to coordinate a plan for burying the sites with fill to protect them from construction activities. All parties shall discuss the impact to the site of any heavy machinery to be used in this operation and devise methods to minimize those impacts. An archeologist shall be present at any pre-construction meetings with the Department of Environmental Resources.

11. A note shall be placed on the final plat that Archeological Sites 18PR470b and 18PR521 are located beneath the surface of fill material on this property and shall not be disturbed except with written approval of the Prince George's County Planning Board or its designee and any other legal entity with jurisdiction over these sites. The required note is:
 "Archeological Sites 18PR470b and 18PR521 are located within this Property. These sites shall not be disturbed except with written approval of the Prince George's County Planning Board or designee and any other legal entity with jurisdiction over them."
12. Prior to approval of any ground disturbance within 50 feet of the area of Sites 18PR470b and 18PR521, the applicant shall deliver all artifacts and appropriate associated documentation to the Maryland State Archeological Conservation Laboratory, and shall provide documentation of the state's acceptance of the materials to the M-NCPPC Planning Department's archeologist, unless such delivery is in conflict with any directive of the Memorandum of Agreement between the Army Corps of Engineers, the Maryland State Historic Preservation Office, and the applicant.
13. The applicant shall contact the Army Corps of Engineers, Baltimore District, and advise the Corps of their construction plans. If the Army Corps of Engineers determines that Sites 18PR470b and 18PR521 fall within the area of potential effects, the Corps will become the lead agency on any archeological mitigation of these sites.