

R E S O L U T I O N

WHEREAS, DIF Joint Venture is the owner of a 39.60-acre parcel of land known as Parcels 256 and 261, and Tax Map 114, Grid F-2, said property being in the 5th Election District of Prince George's County, Maryland, and being zoned R-E; and

WHEREAS, on February 27, 2003, J.B. Nagle filed an application for approval of a Preliminary Subdivision Plan (Staff Exhibit #1) for 26 lots and 3 parcels; and

WHEREAS, the application for approval of the aforesaid Preliminary Subdivision Plan, also known as Preliminary Plan 4-03009 for Birdlawn was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on July 3, 2003, for its review and action in accordance with Article 28, Section 7-116, Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application with conditions; and

WHEREAS, on July 3, 2003, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board APPROVED the Type I Tree Conservation Plan (TCPI/18/03), and further APPROVED Preliminary Plan of Subdivision 4-03009, Birdlawn for Lots 1-26 and Parcels A-C with the following conditions:

1. Prior to signature approval of the preliminary plan, a stormwater management concept plan shall be approved and the approval number and date shall be included in the notes on the preliminary plan.
2. At the time of final plat, the applicant, his heirs, successors and/or assignees shall dedicate to M-NCPPC approximately 4.00 acres shown on Department of Parks and Recreation Exhibit "A" and shown on the preliminary plan as Parcel "C." This dedication shall be subject to the following:
  - a. An original, special warranty deed for the property to be conveyed, (signed by the WSSC Assessment Supervisor) shall be submitted to the Subdivision Section of the Development Review Division, The Maryland-National Capital Park and Planning Commission (M-NCPPC), along with the Final Plat.
  - b. M-NCPPC shall be held harmless for the cost of public improvements associated with land to be conveyed, including, but not limited to, sewer extensions, adjacent road

improvements, drains, sidewalls, curbs and gutters, and front-foot benefit charges prior to and subsequent to Final Plat.

- c. The boundaries and acreage of land to be conveyed to the M-NCPPC shall be indicated on all development plans and permits, which include such property.
  - d. The land to be conveyed shall not be disturbed or filled in any way without the **prior written consent** of the Department of Parks and Recreation (DPR). If the land is to be disturbed, DPR shall require that a performance bond be posted to warrant restoration, repair or improvements made necessary or required by M-NCPPC development approval process. The bond or other suitable financial guarantee (suitability to be judged by the General Counsel's Office, M-NCPPC) shall be submitted to DPR within two weeks prior to applying for grading permits.
  - e. Storm drain outfalls shall be designed to avoid adverse impacts on land to be conveyed to or owned by M-NCPPC. If the outfalls require drainage improvements on adjacent land to be conveyed to or owned by M-NCPPC, DPR shall review and approve the location and design of these facilities. DPR may require a performance bond and easement agreement prior to issuance of grading permits.
  - f. All waste matter of any kind shall be removed from the property to be conveyed. DPR shall inspect the site and verify that it is in acceptable condition for conveyance, prior to Final Plat approval.
  - g. No stormwater management facilities, or tree conservation or utility easements shall be proposed on lands owned by or to be conveyed to M-NCPPC without the **prior written consent** of DPR. DPR shall review and approve the location and/or design of these features. If such proposals are approved by DPR, a performance bond and an easement agreement may be required prior to the issuance of grading permits.
3. No building permits shall be issued for this subdivision until the percent capacity, as adjusted pursuant to the School Regulations, at all the affected school clusters, are less than or equal to 105 percent or 6 years have elapsed since the time of the approval of the preliminary plan of subdivision; or pursuant to the terms of an executed school facilities agreement where by the subdivision applicant, to avoid a waiting period, agrees with the County Executive and County Council to construct or secure funding for construction of all or part of a school to advance capacity.
4. Prior to approval of the final plat, the applicant shall submit to the Health Department evidence that the discarded tires on the site have been removed in accordance with Health Department requirements.
5. At time of final plat, a conservation easement shall be described by bearings and distances. The

conservation easement shall contain the expanded stream buffer, excluding those areas where variation requests have been approved, and be reviewed by the Environmental Planning Section prior to certification. The following note shall be placed on the plat:

"Conservation easements described on this plat are areas where the installation of structures and roads and the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed."

6. Prior to the issuance of any permits which impact jurisdictional wetlands, wetland buffers, streams or Waters of the U.S., the applicant shall submit copies of all Federal and State wetland permits, evidence that approval conditions have been complied with, and associated mitigation plans.
7. The following note shall be placed on the Final Plat of Subdivision:  
  
"Development is subject to restrictions shown on the approved Type I Tree Conservation Plan (TCPI/18/03), or as modified by the Type II Tree Conservation Plan, and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved Tree Conservation Plan and will make the owner subject to mitigation under the Woodland Conservation/Tree Preservation Policy."
8. A Type II Tree Conservation Plan shall be approved prior to the issuance of permits.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

1. The subdivision, as modified, meets the legal requirements of Subtitles 24 and 27 of the Prince George's County Code and of Article 28, Annotated Code of Maryland.
2. The property is located at the northern terminus of Cricklewood Drive and Nancy Lane.

3. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development.

	EXISTING	PROPOSED
Zone	R-E	R-E
Use(s)	Undeveloped	Single-family detached homes
Acreage	39.6	39.6
Lots	0	26
Parcels	1	3
Detached Dwelling Units:	0	26

4. **Environmental**— There are streams, wetlands, and 100-year floodplain associated with Henson Creek in the Potomac River watershed, and the site's topography contains expanses of severe slopes and steep slopes on highly erodible soils. According to current air photos the site is completely wooded. The *Subregion VII Plan* indicates that there is an area of Natural Reserve on the site. No designated scenic or historic roads are affected by this proposal. There are no nearby sources of traffic-generated noise. The proposed use is not expected to be a noise generator. According to information obtained from the Maryland Department of Natural Resources Natural Heritage Program publication titled "Ecologically Significant Areas in Anne Arundel and Prince George's Counties," December 1997, there are no rare, threatened, or endangered species found to occur in the vicinity of this property. According to the *Prince George's County Soils Survey* the principal soils on this site are in the Aura, Beltsville, Bibb, and Marr soils series. Marlboro Clay does not occur in this area. The site is in the Developing Tier according to the adopted General Plan.

#### **Woodland Conservation**

This site is subject to the provisions of the Woodland Conservation Ordinance because the entire site is more than 40,000 square feet in size and has more than 10,000 square feet of woodland. A Forest Stand Delineation showing nine sample areas, four forest stands and no specimens trees has been reviewed and was found to meet the requirements of the Woodland Conservation Ordinance.

The revised Type I Tree Conservation Plan, TCPI/18/03, has been reviewed. The plan proposes clearing 11.75 acres of the existing 34.14 acres of upland woodland and clearing 1.06 acres of the existing 5.27 acres of floodplain woodland. The woodland conservation requirement has been

correctly calculated as 12.58 acres. The plan proposes to meet the requirement by providing 22.08 acres of on-site preservation. The proposed woodland conservation is along a major stream valley and preserves most of the expanded stream buffer. Although woodland conservation is proposed on lots, the plan allows for cleared 40-foot-deep rear yards and 20-foot-wide side yards on most of the lots that provide adequate usable outdoor areas for each lot.

### **Natural Reserve Area**

This site contains natural features that are required to be protected under Section 24-130 of the Subdivision Regulations. The Subregion VII Master Plan indicates that there are substantial areas designated as Natural Reserve on the site. As noted on page 42 of the Subregion VII Master Plan:

“The Natural Reserve Area is composed of areas having physical features which exhibit severe constraints to development or which are important to sensitive ecological systems. Natural Reserve Areas must be preserved in their natural state.”

For the purposes of this review, these areas include all of the expanded stream buffer and any isolated sensitive environmental features.

### **Wetlands, Streams, Floodplain and Buffers**

A wetlands study including a Jurisdiction Determination was recently submitted. The wetlands, minimum 25-foot wetland buffers, streams, minimum 50-foot stream buffers, the 100-year floodplain, all areas with severe slopes and all areas with steep slopes containing highly erodible soils are now correctly shown on the revised Preliminary Plan and the revised Type I Tree Conservation Plan. The expanded stream buffer as defined in Section 24-130 of the Subdivision Regulations is correctly shown.

### **Variation Requests**

The plan proposes impacts to stream buffers and wetland buffers. Impacts to these buffers are prohibited by Section 24-130 of the Subdivision Regulations unless the Planning Board grants a variation to the Subdivision Regulations in accordance with Section 24-113. Even if approved by the Planning Board, the applicant will need to obtain federal and state permits prior to the issuance of any grading permit. The additional permit review will assure that the impacts are minimized and that there will be no detrimental effects to public safety, health, or welfare, or be injurious to other property. Staff notes that the subject property is bisected by a major stream, is dissected by tributary streams and for traffic safety is denied access on the east to Branch Avenue. Areas of steep and severe slopes adjacent to the streams increase the total area of sensitive environmental features.

Section 24-113(a) of the Subdivision Regulations sets forth the required findings for approval of variation requests. While they must be accompanied by specific findings, variations are less

strictly enforced than are variances. Section 24-113(a) reads:

**Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle; and further provided that the Planning Board shall not approve variations unless it shall make findings based upon the evidence presented to it in each specific case that:**

- A. That the granting of the variation will not be detrimental to the public safety, health or welfare, or injurious to other property.**
- B. The conditions of which the variation is based are unique to the property for which the variation is sought and are not applicable generally to other properties.**
- C. The variation does not constitute a violation of any other applicable law, ordinance, or regulation.**
- D. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out.**

Variation request #1 is for the construction of a stormwater management pond and will impact 13,985 square feet of expanded buffer. This request is intended to fulfill existing regulations regarding stormwater management. The details of construction will be reevaluated during the review of the Type II Tree Conservation Plan to further reduce impacts. The proposal is not a violation of any other applicable law, ordinance or regulation because state and federal permits are required prior to construction. The Environmental Planning Section supports variation request “1.”

Variation request “2” is for the construction of the terminus of existing Cricklewood Drive, a principal road for the development. Part of this area was previously disturbed during the installation of a sanitary sewer to serve the existing community. The road has been designed to meet reduced standards of the Department of Public Works and Transportation for a standard section residential street in a 50-foot right-of-way in that DPW&T has waived the need for a cul-de-sac. The waiver has reduced the overall impacts. The construction will impact 937 square feet of wetland and 14,705 square feet of expanded buffer. The details of construction will be reevaluated during the review of the Type II Tree Conservation Plan to further reduce impacts. The proposal is not a violation of any other applicable law, ordinance or regulation because state

and federal permits are required prior to construction. The Environmental Planning Section supports variation request “2.”

### **Soils**

According to the Prince George’s County Soils Survey the principal soils on this site are in the Aura, Beltsville, Bibb, and Marr soils series. Aura soils are highly erodible. Beltsville soils are highly erodible and subject to perched water tables and impeded drainage. Bibb soils are associated with floodplains. Marr soils pose no special problems for development. A soils report may be required by the Prince George’s County Department of Environmental Resources during the permit process review.

5. **Community Planning**—The property is in Planning Area 76B/Allentown. The 2002 General Plan placed the property in the Development Tier. The 1981 Subregion VII Master Plan recommends residential land use at the Estate density of up to one dwelling unit per acre. A small portion of Low Suburban Residential density up to 2.6 dwelling units per acre is shown north of the stream. The 1984 Subregion VII Sectional Map Amendment classified the entire property in the R-E Zone.

A large percentage of the property is designated as a Conditional Reserve Area. Hunters Branch runs through the site with associated floodplain or floodplain soils. The master plan also recommends a series of pedestrian connections around this area. A further discussion of this is found in the Trails finding.

6. **Parks and Recreation**—The property is subject to the mandatory park dedication requirements of Section 24-134 of the Subdivision Regulations. Because the property abuts parkland and can be used to provide access to that parkland, staff recommends the applicant dedicate approximately 4.00 acres for park use. The applicant has shown this area on the preliminary plan as Parcel “C.” Dedication of this land should be subject to standard conditions relating to the state of the land to be dedicated.
7. **Trails**—The Adopted and Approved Subregion VII Master Plan recommends a stream valley trail along the Hunter’s Branch stream valley. However, the Department of Parks and Recreation has determined that this trail is not feasible in the vicinity of the subject site and that park and recreation needs would be better served by land dedication in another portion of the subject property. Therefore, there are no master plan trails recommendations. If a closed cross section is used, standard sidewalks are recommended along one side of all internal roads, per the concurrence of DPW&T.
8. **Transportation**—The proposed 26-lot residential development would generate 20 AM and 23 PM peak-hour vehicle trips as determined using the *Guidelines for the Analysis of the Traffic Impact of Development Proposals*.

The traffic generated by the proposed preliminary plan would impact the intersections of Allentown

Road and Steed Road. This intersection is not programmed for improvement with 100 percent construction funding within the next six years in the current Maryland Department of Transportation Consolidated Transportation Program or the Prince George's County Capital Improvement Program.

The subject property is located within the Developing Tier as defined in the *General Plan for Prince George's County*. As such, the subject property is evaluated according to the following standards: **Signalized intersections:** Level-of-Service (LOS) "D," with signalized intersections operating at a critical lane volume (CLV) of 1,450 vehicles per hour or fewer.

The Steed Road/Allentown Road intersection, when analyzed under existing conditions, was found to operate with a LOS/CLV of A/852 during the AM peak hour, and A/689 during the PM peak hour. Staff anticipates that approximately 60 percent of the site-generated trips will be oriented to and from the east; hence, the subject property will add 12 AM and 14 PM trips to the intersection. With the site-generated trips, plus additional background development, the total future traffic as developed using the Guidelines was found to be operating at A/873 during the AM and A/706 during the PM peak hour. Both levels of service are better than the policy service level defined in the Guidelines.

Based on these findings, adequate access roads will exist as required by Section 24-124 of the Prince George's County Code if the application is approved. No conditions are necessary at this time.



9. **Schools**—The Historic Preservation and Public Facilities Planning Section has reviewed the subdivision plans for adequacy of public facilities in accordance with Section 24-122.02 of the Subdivision Regulations and the *Adequate Public Facilities Regulations for Schools* (CR-23-2001). These findings are subject to change in accordance with the provisions of CR-23-2001 and CR-38-2002.

Impact on Affected Public School Clusters

Affected School Clusters #	Elementary School Cluster 6	Middle School Cluster 3	High School Cluster 3
Dwelling Units	26 sfd	26 sfd	26 sfd
Pupil Yield Factor	0.24	0.06	0.12
Subdivision Enrollment	6.24	1.56	3.12
Actual Enrollment	4651	4598	8393
Completion Enrollment	82	66	132
Wait Enrollment	39	15	29
Cumulative Enrollment	347.76	147.06	294.12
Total Enrollment	5126	4827.62	88512.40
State Rated Capacity	4492	5114	7752
Percent Capacity	114.11%	94.40%	114.18%
Funded School	N/a	N/a	N/a

Source: Prince George's County Planning Department, M-NCPPC, July 2003

These figures were correct on the day the referral memorandum was written. They are subject to change under the provisions of CB-40 and CR-23. Other projects that are approved prior to the public hearing on this project will cause changes to these figures. The numbers shown in the resolution will be the ones that will apply to this project.

The affected elementary and high school cluster percent capacities are greater than 105 percent. There is no Funded School in the affected elementary school cluster. The Surrattsville addition is the Funded School in the affected high school cluster. Therefore, this subdivision can be approved with conditions, including a six-year waiting period, in accordance with Section 24-122.02.

10. **Fire and Rescue**—The Historic Preservation and Public Facilities Planning Section has reviewed the subdivision plans for adequacy of public fire and rescue facilities.

- a. The existing fire engine service at Allentown Road Fire Station, Company 32, located at 8709 Allentown Road, has a service travel time of 3.29 minutes, which is within the 5.25-minute travel time guideline.
- b. The existing ambulance service at Allentown Road Fire Station, Company 32, has a service travel time of 3.29 minutes, which is within the 6.25-minute travel time guideline.
- c. The existing paramedic service at Allentown Road Fire Station, Company 47, located at 10900 Fort Washington Road, has a service travel time of 6.60 minutes, which is within the 7.25-minute travel time guideline.

These findings are in conformance with the *Adopted and Approved Public Safety Master Plan 1990* and the *Guidelines for the Analysis of Development Impact on Fire and Rescue Facilities*. The proposed subdivision will be within the adequate coverage area of the nearest existing fire/rescue facilities for fire engine, ambulance and paramedic services.

11. **Police Facilities**—The proposed development is within the service area for Police District IV-Oxon Hill. In accordance with Section 24-122.1(c) of the Subdivision Regulations, existing county police facilities will be adequate to serve the proposed Birdlawn development. This police facility will adequately serve the population generated by the proposed subdivision. The Planning Board's current test for police adequacy is based on a standard for square footage in police stations relative to the number of sworn duty staff assigned. The standard is 115 square feet per officer. As of June 30, 2002, the County had 874 sworn staff and a total of 101,303 square feet of station space. Based on available space, there is capacity for additional 69 sworn personnel.
12. **Health Department**—The Health Department notes that there are several discarded tires on the property. These tires must be hauled away by a licensed scrap tire hauler and the receipt for tire disposal should be submitted to the Health Department. Evidence of this shall be submitted to the Subdivision Section prior to final plat approval.
13. **Stormwater Management**—The Department of Environmental Resources (DER), Development Services Division, has determined that on-site stormwater management is required. A Stormwater Management Concept Plan has not yet been approved. To ensure that development of this site does not result in on-site or downstream flooding, a concept plan should be approved prior to signature approval of the preliminary plan. Development must be in accordance with an approved stormwater management plan.
14. **Cemeteries**—The applicant's engineer has certified that there are no known cemeteries located on or adjacent to the subject property.
15. **Lot Size Averaging**—Section 24-121(a)(12) requires that the Planning Board make the following findings in permitting the use of lot size averaging:

- A. The subdivision design provides for better access, protects or enhances historic resource or natural features and amenities, or otherwise provides for a better environment than that which could be achieved by the exclusive use of standard lots.** Larger lots are proposed in areas of the site severely encumbered by natural features. Severe slopes, floodplain and wetlands are protected by locating smaller lots in areas where there is dryer, flatter ground and located large lots nearer the environmental feature.
- B. The subdivision design provides for an adequate transition between the proposed lot sizes and locations of lots and the lots, or lot size standards, of any adjacent residentially zoned parcels.** The property abuts environmentally sensitive land and other R-E-zoned land. The subdivision has been designed to maximize lot size where lots abut these adjoining properties. The property also abuts parkland. Larger lots and a parcel proposed for dedication abut this sensitive land.
- C. The subdivision design, where applicable, provides for an adequate transition between the proposed natural features of the site and any natural features of adjacent parcels.** More floodplain abuts the property to the northeast. The floodplain on the subject property will remain densely wooded and provide an adequate transition and buffer to the adjoining properties.

In addition, Section 27-423 of the Prince George's County Zoning Ordinance sets the zoning requirements for lot size averaging. Specifically, in the R-E Zone

- A. The maximum number of lots permitted is equal to the gross acreage divided by the largest minimum lot size in the zone (40,000 square feet).** In this case, with 39.6 acres and a minimum lot size of 40,000 square feet, the maximum number of lots allowed is 43. The applicant proposes 26 lots.
- B. At least 50 percent of the lots created shall equal or exceed the largest minimum lot size in the zone (20,000 square feet).** As proposed, 13 of the proposed 26 lots exceed 40,000 square feet. Therefore the proposed subdivision meets the minimum Zoning Ordinance standards for lot size averaging.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with Circuit Court for Prince George's County, Maryland within thirty (30) days following the adoption of this Resolution.

\* \* \* \* \*

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Lowe, seconded by Commissioner Scott, with Commissioners Lowe, Scott, Eley, and Vaughns voting in favor of the motion, and with Chairman Hewlett absent at its regular meeting held on Thursday, July 3, 2003, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 24th day of July 2003.

Trudye Morgan Johnson  
Executive Director

By Frances J. Guertin  
Planning Board Administrator

TMJ:FJG:JD:rmk