

R E S O L U T I O N

WHEREAS, Land & Commercial, Alpha is the owner of a 8.56-acre parcel of land known as Parcel 87, Tax Map 96 in Grid A-2, said property being in the 12th Election District of Prince George's County, Maryland, and being zoned R-30 & R-55; and

WHEREAS, on September 27, 2005, Chesapeake Custom Homes filed an application for approval of a Preliminary Subdivision Plan (Staff Exhibit #1) for 2 outlots and 2 parcels; and

WHEREAS, the application for approval of the aforesaid Preliminary Subdivision Plan, also known as Preliminary Plan 4-05055 for Livingston Forest 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 February 16, 2006, 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 DISAPPROVAL of the application with conditions; and

WHEREAS, on February 23, 2006, 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/24/94-01), APPROVED a variation to Section 24-130, and further APPROVED Preliminary Plan of Subdivision 4-05005, Livingston Forest for Parcels, A, B, C and D with the following conditions:

1. Prior to signature approval of the preliminary plan of subdivision the plan shall be revised as follows:
 - a. Revise the net tract area for density calculation purposes, to remove Parcel A (.11 acre) and Parcel B (1.28 acres), which are encumbered by a parking lot associated with the Northbridge Gardens Apartments, and the R-55-zoned portion of Parcel C (.58), resulting in a net tract area of 6.13 and an allowable density of 73 dwelling units.
 - b. Remove yard, parking and lot coverage notes.
 - c. Indicate the conceptual stormwater management plan approval date.
 - d. Reflect Parcel D to be conveyed to the HOA.

- e. Correctly reflect that the applicant is proposing 72 units not 70.
2. A Type II tree conservation plan shall be approved with the detailed site plan.
3. Development of this site shall be in conformance with the approved stormwater management concept plan and any subsequent revisions.
4. Prior to the approval of the final plat the applicant shall submit deeds for Parcel B and C, executed by all parties, for the conveyance to the Northbridge Homeowners Association. If the Northbridge Homeowners Association does not agree to accept the conveyance of Parcels B and C, the land shall be retained by the subject condominium association and be reflected on the final plat as outlots. In that case, the record plat shall carry a note that these outlots are encumbered by existing improvements associated with the Northbridge Homeowners Association.
5. Prior to the issuance of a grading permit for the development, A Public safety mitigation fee shall be paid in the amount of \$272,160 (\$3,780 x 72 dwelling units). Notwithstanding the number of dwelling units and the total fee payments noted in this condition, the final number of dwelling units shall be as approved by the Planning Board and the total fee payment shall be determined by multiplying the total dwelling unit number by the per unit factor noted above. The per unit factor of \$3,780 is subject to adjustment on an annual basis in accordance with the percentage change in the Consumer Price Index for all urban consumers. The actual fee to be paid will depend upon the year the grading permit is issued.
6. Prior to the approval of building permits, the applicant, his heirs, successors and/or assignees shall convey to the condominium association open space land. Land to be conveyed shall be subject the following:
 - a. Conveyance shall take place prior to the issuance of building permits.
 - b. A copy of unrecorded, special warranty deed for the property to be conveyed shall be submitted to the Subdivision Section of the Development Review Division (DRD), Upper Marlboro, along with the final plat.
 - c. 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.
 - d. The conveyed land shall not suffer the disposition of construction materials, soil filling, discarded plant materials, refuse or similar waste matter.
 - e. Any disturbance of land to be conveyed to a homeowners association shall be in accordance with an approved detailed site plan or shall require the written consent of DRD. 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 shall be required to warrant restoration, repair or improvements, required by the approval process.

- f. 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 DRD prior to the issuance of grading or building permits.
 - g. Temporary or permanent use of land to be conveyed to a homeowners association for stormwater management shall be approved by DRD.
 - h. The Planning Board or its designee shall be satisfied that there are adequate provisions to assure retention and future maintenance of the property to be conveyed.
- 7. Prior to the approval of building permits, the applicant, his heirs, successors and/or assignees shall demonstrate that a homeowners association has been established and that the common areas have been conveyed to the homeowners association.
- 8. The applicant, his heirs, successors and/or assignees shall submit three original recreational facilities agreements (RFA) to DRD for construction of recreational facilities on homeowners land, for approval prior to the submission of final plats. Upon approval by DRD, the RFA shall be recorded among the county land records.
- 9. The applicant, his heirs, successors and/or assignees shall submit a performance bond, letter of credit, or other suitable financial guarantee for the construction of recreational facilities on homeowners land, prior to the issuance of building permits.
- 10. Prior to signature approval of the preliminary plan, the applicant shall submit a copy of the approved conceptual stormwater management plan and approval letter.
- 11. The applicant, his heirs, successors and/or assignees shall provide a standard sidewalk along the subject site's frontage of Livingston Road, unless modified by DPW&T.
- 12. Prior to signature approval of the preliminary Plan, the Type I tree conservation plan shall be revised as follows:
 - a. Show all stormwater management outfalls and limits of disturbance in accordance with the SWM Concept Plan;
 - b. Count woodlands located within the right-of-way dedicated for Livingston Road as cleared.
 - c. Revise the Woodland Conservation Worksheet to address changes to the plan; and

- d. Have the revised plan signed and dated by the qualified professional who prepared the plan.
13. 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/24/94-01), 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.”
14. At time of final plat, a conservation easement shall be described by bearings and distances. The conservation easement shall contain the expanded stream buffer, except for areas of approved variation, and shall be reviewed by the Environmental Planning Section prior to approval of the final plat. 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.”
15. At the time of building permit the applicant shall be required to provide improvements at the intersection of MD 414 and Livingston Road. These improvements include:
 - a. Modify the eastbound approach of MD 414 from one left turn lane, one through lane, and one shared through/right turn lane to one left turn lane, one through lane, and one right turn lane.
 - b. Modify the westbound approach of MD 414 from one left turn lane, one through lane, and one right turn lane to one left turn lane, two through lanes, and one right turn lane.
 - c. Modify the traffic signal phasing at MD 414 and Livingston Road by removing the north/south split phasing and adding concurrent north/south phasing with exclusive left turns.
 - d. The applicant will be responsible for any additional signage, pavement markings, and traffic signal modifications at the intersection of MD 414 and Livingston Road.
 - e. The applicant will be responsible for any additional physical road widening at MD 414 and Livingston Road including the lane approaches and receiving lanes as required by the State Highway Administration.
16. Prior to the approval of the detailed site plan within the subject property, the applicant shall conduct a traffic signal warrant study at the intersection of Livingston Road and the Site Access Road and submit it to the Prince George’s County Department of Public Works and

Transportation. If a traffic signal is deemed warranted by the Prince George's County Department of Public Works and Transportation, the applicant shall bond the signal prior to the release of any building permits within the subject property, and install the signal at a time when directed by DPW&T. The applicant will be responsible for any additional pavement markings and signage at the intersection.

17. The applicant shall dedicate 40 feet of right of way from the master plan centerline of Livingston Road at the time of final plat.

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 on the east side of Livingston Road approximately 700 feet south of its intersection with Indian Head Highway (MD 210). The property to the north is zoned R-18 and is developed with the Northbridge Garden Apartments. To the east is R-O-S-zoned land owned by M-NCPPC, known as the Glassmanor Park. To the south is one single-family dwelling unit fronting Livingston Road and other undeveloped acreage parcels in the R-55 Zone. The properties directly southwest across Livingston Road from the subject property are zoned C-S-C and C-O and are generally developed with commercial retail and office uses.
3. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development.

	EXISTING	PROPOSED
Zone	R-30C/R-55	R-30C (7.98 acres) R-55 (.58 acres)
Use(s)	Vacant	Multifamily dwellings
Acreage	8.56	8.56
Parcels	1	2
Oulots	0	2
Dwelling Units:		
Multifamily	0	72
Public Safety Mitigation Fee		Yes

4. **Environmental**—The Environmental Planning Section has reviewed the revised preliminary plan and Type I tree conservation plan for Livingston Forest, stamped as received by the Countywide Planning Division on February 3, 2006. The Environmental Planning Section recommends approval of Preliminary Plan 4-04055 and Type I Tree Conservation Plan TCPI/24/94-01 subject to the conditions.

The Environmental Planning Section has previously reviewed the subject property as Preliminary Plan 4-94037, in conjunction with TCPI/24/94, which were approved with conditions. This preliminary plan expired prior to platting. In 1996, Type II Tree Conservation Plan TCPII/29/96 was approved for rough grading of the access road and was later revised in 2003. This work was never completed. The site was again reviewed in 2004, as Preliminary Plan 4-04015, but was withdrawn prior to the Planning Board hearing. The subject property was last reviewed as Preliminary Plan 4-04191, in conjunction with TCPI/24/94-01, which were withdrawn. The current application requests the subdivision of an 8.56-acre parcel in the R-30C and R-55 Zones to allow the development of 72 residential dwelling units in three multifamily buildings.

Site Description

The site is characterized with terrain sloping toward the north of the property and drains into unnamed tributaries of the Oxon Run watershed in the Potomac River basin. The predominant soil types on the site are Sassafras, Beltsville, Iuka, Aura and Croom. These soil series generally exhibit slight to moderate to severe limitations to development due to steep slopes, impeded drainage, high water table and flood hazard. The site is currently undeveloped and fully wooded for the most part, except for the clearing that has occurred along the northern boundary of the property, due to the incursion of a parking lot constructed with the adjacent Northbridge Gardens project.

Based on information obtained from the Maryland Department of Natural Resources, Natural Heritage Program, within the sensitive species project review area layer there are no rare, threatened or endangered species found to occur in the vicinity of this site. There is a 100-year floodplain and a stream on and adjacent to the site. There are no Marlboro clays or scenic or historic roads located on or adjacent to the subject property. The subject property is located on Livingston Road, a collector roadway generally not regulated for noise. This property is located in the Developed Tier as delineated on the approved General Plan. The site contains network gaps identified on the Countywide Green Infrastructure Plan.

The property is subject to the provisions of the Prince George's County Woodland Conservation Ordinance because the site is larger than 40,000 square feet, contains more than 10,000 square feet of woodlands, and is subject to an approved tree conservation plan. A revised Type I Tree Conservation Plan (TCPI-24/94-01) was reviewed and found to require minor revisions to conform to the requirements of the Woodland Conservation Ordinance.

The woodland conservation threshold for the site is 1.62 acres, with an additional 0.95 acre of replacement based on the clearing of woodlands under the current design, for a total woodland conservation requirement of 2.57 acres. The plan shows the requirement being met with 2.65 acres of woodland preservation on-site, which exceeds the requirement.

Because there are extensive areas of expanded buffer on the site, the woodlands are considered a high priority for preservation. The entire woodland conservation requirement has appropriately been met with on-site preservation. In addition, 1.91 acres of woodlands have been preserved

within the expanded stream buffer, which is not part of any requirements. Minor revisions are needed to the TCPI to bring it into full compliance with the Woodland Conservation Technical Manual.

Almost the entire site is located within the expanded stream buffer delineated on the NRI, due mostly to extensive steep and severe slope adjacent to the stream. Section 24-130(b)(6) of the Subdivision Regulations requires that the plat provides a buffer at least 50 feet in width adjacent to any stream, and that the Planning Board may require the expansion of this buffer to include sensitive environmental areas of the site deemed necessary to protect the stream.

The grading plan submitted with the application shows substantial encroachments proposed into the expanded buffer for the construction of three multifamily residential buildings, an access road, parking areas, retaining walls, and a stormwater outfall.

Staff generally recommends approval of variations to impact the expanded stream buffer for the installation of public road and utilities, if they are designed to preserve the expanded stream buffer to the fullest extent possible. Staff generally does not recommend approval of expanded stream buffer impacts for lots, structures, or septic field clearing and grading when alternative designs would reduce or eliminate the impacts.

A variation request was submitted with the review package for the purpose of constructing three multifamily buildings, a private road, a drain outfall, and associated retaining walls with the expanded stream buffer.

Review of the Variation Request Submitted

The variation request proposes the disturbance of 3.54 acres of steep and severe slopes within the expanded stream buffer in order to develop the site in accordance with the grading plan submitted. The Livingston Forest property is located within the Developed Tier of the General Plan, where planning goals include the encouragement of appropriate infill and capitalization on investments in transportation and other infrastructure. Infill development on this property, where transportation and infrastructure are already available, would be impossible without impacts to the expanded stream buffer. The minimum 50-foot stream buffer has been provided in all areas of the site, and an average stream buffer width of 100 feet has been provided in tree preservation.

Minor impacts to the 100-year floodplain are proposed to provide for a stormwater management outfall and for the location of the access road. Retaining walls are proposed to reduce grading impacts to the steep and severe slopes, and underground parking is proposed for each of the three buildings to reduce the amount of clearing and impervious surface related to the development. The TCPI provides all required woodland conservation as on-site preservation and includes an additional 1.91 acres of preserved woodland not part of any requirement.

Impacts to these buffers are restricted 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. Each variation is described individually below. However, for purposes of discussion relating to Section 24-113(a) of the Subdivision Regulations the impacts were discussed collectively. Section 24-113(a) of the Subdivision Regulations sets forth the required findings for approval of variation requests. 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 evidence presented to it in each specific case that:

The approval of the applicant's request does not have the effect of nullifying the intent and purpose of the Subdivision Regulations. In fact, strict compliance with the requirements of Section 24-130 could result in practical difficulties to the applicant that could result in the applicant not being able to develop this property.

- (1) The granting of the variation will not be detrimental to the public safety, health, or injurious to other property;**

The variation requested is not detrimental to the public safety or health, or injurious to any adjacent property. The TCPI proposes to provide all woodland conservation requirements on-site thorough preservation, and additional preservation above requirements. The applicant has proposed significant reductions to the original proposed impacts to assist in the stabilization of the slopes on site while still reasonably developing the property.

- (2) The conditions on which the variation is based are unique to the property for which the variation is sought and are not applicable generally to other properties;**

This property is unique in that the entire site is located within the expanded stream buffer for a stream and 50-foot stream buffer that is located offsite. If this variation were not granted, this infill site within the Developed Tier with existing infrastructure could not be reasonably developed.

- (3) The variation does not constitute a violation of any other applicable law, ordinance, or regulation;**

The variations requested do not constitute a violation of any other applicable law, ordinance or regulation, if approval is obtained from the Department of Environmental Resources for minor impacts proposed to the 100-year floodplain. No federal or state permits must be obtained before the construction can proceed.

- (4) **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;**

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