



Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

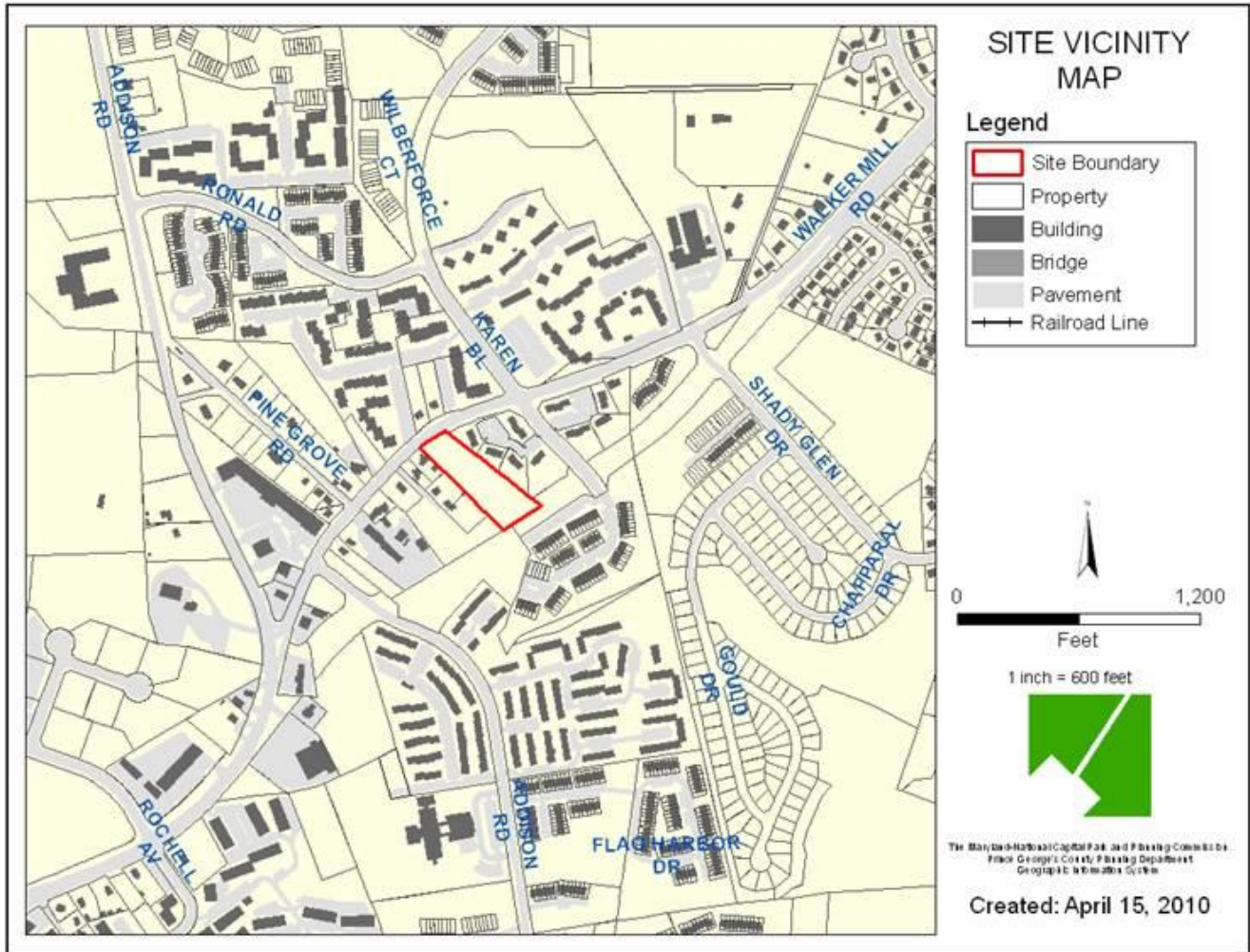
Detailed Site Plan

DSP-10014 (Remanded)

Application	General Data	
Project Name: Forest Oak Property Location: On the southern side of Walker Mill Road, approximately 450 feet southwest of its intersection with Karen Boulevard. Applicant/Address: Birame Kandji 23100 Yellowwood Drive Clarksburg, MD 20871	Planning Board Hearing Date:	07/18/13
	Staff Report Date:	07/01/13
	Date Remanded:	02/11/13
	Planning Board Action Limit:	N/A
	Plan Acreage:	2.558
	Zone:	R-T
	Dwelling Units:	10
	Gross Floor Area:	N/A
	Planning Area:	75A
	Tier:	Developed
	Council District:	07
	Election District	06
	Municipality:	N/A
	200-Scale Base Map:	202SE06

Purpose of Application	Notice Dates	
Ten single-family attached dwelling units. Additional review required by the District Council's Order of Remand dated February 11, 2013.	Informational Mailing:	05/12/10
	Sign Posting Deadline:	06/18/13

Staff Recommendation		Staff Reviewer: Ruth Grover Phone Number: 301-952-4317 Email Address: Ruth.Grover@ppd.mncppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
	X		



THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

SUBJECT: Detailed Site Plan DSP-10014 (Remanded)
Type II Tree Conservation Plan TCP2-007-12
Forest Oak Property

BACKGROUND:

Detailed Site Plan DSP-10014 for Forest Oak Property was reviewed and approved by the Planning Board on July 12, 2012, and PGCPB Resolution No. 12-71 was adopted on July 12, 2012, formalizing that approval.

On September 24, 2012, the District Council elected to review the case. On November 19, 2012, the District Council heard oral argument on the case and, on February 11, 2013, the District Council voted to remand the case to the Planning Board for an additional evidentiary hearing to address specific issues concerning the detailed site plan (DSP) in accordance with Sections 27-132 and 27-290 of the Zoning Ordinance.

REMAND FINDINGS

1. The District Council remanded the DSP for Forest Oak Property to the Planning Board on February 11, 2013. The following in **bold** is quoted directly from the Order of Remand and is followed by staff comment:

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 12-71, to approve with conditions a detailed site plan for ten single-family attached dwelling units in the Townhouse (R-T) Zone on a 2.558-acre site, located at 6821 Walker Mill Road, on the southern side of Walker Mill Road, approximately 450 feet southwest of its intersection with Karen Boulevard, is;

REMANDED, pursuant to §27-132 and §27-290 of the Zoning Ordinance, to the Planning Board to take further testimony and reconsider its decision as follows:

Applicant

On or about September 21, 2012, a Non-Corporate Applicant Affidavit was filed identifying the applicant as District Property, LLC, located at 6500 Chillum Place, N.W., Washington, DC 20012. Non-Corporate Applicant Affidavit, September 21, 2012. The affidavit was signed by Birame Kandji, the engineer consultant for the applicant. Agent

Affidavit, September 21, 2012. Before doing business in Maryland, a foreign limited liability company—as is the case here—shall register with the State Department of Assessment and Taxation (SDAT). Md. Code Ann., Corps. & Ass’ns §4A–1002, §4A–1009(b) (2012). According to SDAT, the applicant, District Property, LLC, is not a legally registered company in Maryland.¹

- 1. On remand, Planning Board shall take sworn testimony to determine if the applicant, District Property, LLC, is an entity registered and in good standing with the State Department of Assessment and Taxation (SDAT). The applicant shall present, for inclusion into the record, written evidence of its registration and good standing with SDAT. If necessary, pursuant to Section 8 of the Planning Board Rules of Procedure, until the final decision is made, the applicant shall be allowed to present written evidence of its registration and good standing with SDAT. Planning Board Resolution and Staff Report shall be revised accordingly to reflect District Property, LLC as the applicant.**

Comment: In a memorandum dated March 28, 2013, the Office of the General Counsel of The Maryland-National Capital Park and Planning Commission (M-NCPPC) offered the following regarding this Point of Remand:

“The applicant has revised its application to show the signature of the property owner, an individual, and the engineer, as an individual as applicants for the DSP. There is no need for the Applicant to provide testimony regarding registration of a foreign LLC, as all applicants listed on the revised application are now individuals.”

- 2. On remand, the applicant shall be informed of Rule 6.2 of the District Council Rules of Procedure, which states**

6.2. Representation.

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.

Rules of Procedure for the Prince George’s County District Council.

Comment: In a memorandum dated March 28, 2013, the Office of the General Counsel of M-NCPPC offered the following regarding this Point of Remand:

“At a meeting with planning staff on March 12, 2013, both individual Applicants attended, and were informed of the District Council’s Rule of Procedure 6.2. Since then the Applicants have revised the application removing District Properties, LLC from the DSP application, and substituting two individuals, the property owner and the project engineer, as the Applicants.”

¹<http://sdatcert3.resiusa.org/ucc-charter/noRecords.asp?EntityName=district%20property%20llc&domain=Charter>
In January 2012, NOA Group, LLC was also identified as the applicant for DSP–10014. According to SDAT, NOA Group, LLC has been forfeited. http://sdatcert3.resiusa.org/ucc-charter/searchByName_a.aspx?mode=name Last visited 2/9/2013.

3. **On remand, Planning Board shall also consider whether District Property, LLC should be represented by an attorney authorized to practice law in Maryland during its proceedings.**

Comment: In a memorandum dated March 28, 2013, the Office of the General Counsel of M-NCPPC offered the following:

“The Planning Board’s adopted Rules of Procedure do not require entity applicants to be represented by an attorney. Additionally, no local or state law requires entity applicants to be represented by an attorney before the Planning Board², and in practice applicants are often represented before the board by other professionals such as engineers, architects or landscape architects. We are not aware, and planning staff has not made this office aware, of any operational problems stemming from this policy of allowing other professionals or individuals to represent entities before the Planning Board. Further, state law seems to indicate that LLCs which appear before administrative agencies are not considered to be “doing business” for the purpose of requiring foreign entity registration. Md. Corp. & Assoc. Ann. Code §4A-1009. If these entities are not required to register as foreign corporations because they are not considered to be “doing business” before the Planning Board, then it follows, by analogy and without any contrary statutory pronouncement, that they are not required to be represented by an attorney during Planning Board proceedings.

“While the Planning Board may entertain a change to its Rules of Procedure to require attorney representation of entities that appear before it, there is no legal necessity to do so, and there may be practical implications that should be considered prior to approving a revision of this nature. Further, since the DSP application has been revised so that the LLC was removed, and the Applicant is now two individuals including the property owner, the issue as applied to this Application is moot.”

Stormwater Management

4. **In May 2012, Department of Public Works and Transportation (DPW&T) indicated that DSP-10014 was not consistent with the approved Stormwater Management Concept Plan, 45961-2005-01, dated September 2009. PGCPB No. 12-71 at 6, 10-11, Technical Staff Report at 6, 10. There was no testimony from the applicant on this issue. In fact, there was no testimony from the applicant at the public hearing before the Planning Board on July 12, 2012. (7/12/12 Tr. 1-9).**

Comment: In a memorandum dated May 1, 2013, DPW&T updated their comment on DSP-10014 and stated that the proposed plan is consistent with approved Stormwater Management Concept Plan 45961-2005-02 dated April 5, 2013, a revision of the earlier plan. If determined to be appropriate, the applicant could testify as to the consistency of his plan with the relevant approved stormwater management concept plan and the memorandum received by both the applicant and staff attesting to this fact.

²Maryland Rules 2-131 and 3-131 require that “a person other than an individual may enter an appearance only by an attorney” but this provision applies to civil court proceedings within the State, and does not apply to the Planning Board. Md. Rule 1-101 (b) and (c).

5. **On remand, Planning Board shall take testimony from the applicant regarding the status of obtaining written acknowledgment from DPW&T that the subject DSP is in conformance with Stormwater Management Concept Plan, 45961–2005–01 and any subsequent revisions.**

Comment: As stated above, the applicant could testify as to the consistency of his plan with the relevant approved stormwater management concept plan and the memorandum that he received from the DPW&T dated May 1, 2013 attesting to this fact.

REMAND REFERRAL COMMENTS

2. The Office of the General Counsel of M-NCPPC provided a memorandum dated March 28, 2013, which provided the following relevant analysis:

“The District Council remanded DSP 10014 (the ‘DSP’) for consideration of six issues. Three of the six issues are legal in nature, so this memo will cover issues 1 through 3 only.

“Issue 1. Planning Board shall determine if the Applicant, District Property LLC is an entity registered and in good standing in the State of Maryland.

“The applicant has revised its application to show the signature of the property owner, an individual, and the engineer, as an individual as applicants for the DSP. There is no need for the Applicant to provide testimony regarding registration of a foreign LLC, as all applicants listed on the revised application are now individuals.

“Issue 2. Applicant shall be informed of Rule 6.2 of the District Council’s Rules of Procedure.

“At a meeting with planning staff on March 12, 2013, both individual Applicants attended, and were informed of the District Council’s Rule of Procedure 6.2. Since then the Applicants have revised the application removing District Properties, LLC from the DSP application, and substituting two individuals, the property owner and the project engineer, as the Applicants.

“Issue 3. Planning Board shall consider whether District Property LLC should be represented by an attorney authorized to practice law in Maryland during its proceedings.

“The Planning Board’s adopted Rules of Procedure do not require entity applicants to be represented by an attorney. Additionally, no local or state law requires entity applicants to be represented by an attorney before the Planning Board³, and in practice applicants are often represented before the board by other professionals such as engineers, architects or landscape architects. We are not aware, and planning staff has not made this office aware, of any operational problems stemming from this policy of allowing other professionals or individuals to represent entities before the Planning Board. Further, state law seems to indicate that LLCs which appear before administrative agencies are not considered to be ‘doing business’ for the purpose of requiring foreign entity registration. Md. Corp. & Assoc. Ann. Code §4A-1009. If these entities

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are not required to register as foreign corporations because they are not considered to be 'doing business' before the Planning Board, then it follows, by analogy and without any contrary statutory pronouncement, that they are not required to be represented by an attorney during Planning Board proceedings.

"While the Planning Board may entertain a change to its Rules of Procedure to require attorney representation of entities that appear before it, there is no legal necessity to do so, and there may be practical implications that should be considered prior to approving a revision of this nature. Further, since the DSP application has been revised so that the LLC was removed, and the Applicant is now two individuals including the property owner, the issue as applied to this Application is moot."

3. The Environmental Planning Section, in a memorandum dated June 12, 2013, provided the following analysis regarding stormwater management design. Specifically, with respect to Points 4 and 5 of the Order of Remand, the Environmental Planning Section offered the following:

The Environmental Planning Section received a copy of the Forest Oak Property plans (site plan, landscape plan, and a Type 2 tree conservation plan) dated May 8, 2013 and a copy of the District Council Order of Remand stamped as received March 5, 2013. An approved Stormwater management concept plan signed April 29, 2013 was included with the set of plans.

The stormwater management concept plan showed a pond adjacent to the western boundary of the site. The Environmental Planning Section finds that the approved concept is correctly reflected on the landscape and tree conservation plans. The Environmental Planning Section suggested that the plans fulfill the requirement of Point 4 of the Order of Remand that the plans for the project be entirely consistent with the requirements of the most recently approved stormwater concept plan for the project. In closing, the Environmental Planning Section suggested that the applicant provide the testimony regarding stormwater management required by the Order of Remand at the time of the Planning Board hearing for the project.

4. DPW&T, in a memorandum dated May 1, 2013, offered the following which responds to Points 4 and 5 of the Order of Remand:

The proposed plan is consistent with approved Stormwater Management Concept Plan 45961-2005-02 dated April 5, 2013.

Comment: Stormwater Management Concept Plan 45961-2005-01, the concept originally submitted for the project, was revised to reflect the replacement of a bioretention area with a stormwater management pond. The revision is Stormwater Management Concept Plan 45961-2005-02. Since receipt of this information from DPW&T, staff is able to definitely make the statement that the project is in conformance with a revision of Stormwater Management Concept Plan, 45961-2005-01.

PROPOSED RECOMMENDATIONS

Based upon the foregoing evaluation and analysis, the Urban Design Section recommends that the Planning Board adopt the additional findings of this report and RE-APPROVE the revised plans associated with remanded Detailed Site Plan DSP-10014, Forest Oak Property, subject to the conditions below. The conditions include all that were previously approved by the Planning Board (PGCPB Resolution No. 12-71) with some modifications of the conditions, as noted below, recommended by staff in response to the Order of Remand.

1. Prior to signature approval of the plans, the applicant shall revise the plans for the project as follows:
 - a. The applicant shall revise the plans for the project to include an eight-foot-wide sidewalk along the subject property's Walker Mill Road frontage and/or in the Walker Mill Road right-of-way, separated from the travel lanes of the road by an eight-foot-wide green strip, unless modified (for a sidewalk in the right-of-way) by the Department of Public Works and Transportation (DPW&T).
 - b. The cover and template sheets shall be provided for the plan set. The template sheet shall include a template for each townhouse stick, including the dimensions of each building and garage and labeling the garage as such, or a "typical" detail shall be provided for an individual townhouse demonstrating that each garage can comfortably accommodate a parking space measuring a minimum of 9.5 feet by 19 feet. The page numbers of the seven current plan sheets shall be corrected after a cover and template sheet are added to the plan set, with the sheet containing the architectural elevations for the project to be included as its final sheet. Final design of the cover and template sheets and organization of the sheets of the plan set shall be approved by the Urban Design Section as designee of the Planning Board.
 - c. The applicant shall revise the plans to relocate the handicapped parking out of the public right-of-way. Additionally, the embarking/disembarking area for the handicapped spaces shall be dimensioned on the detailed site plan or in a "typical" detail provided for the handicapped spaces. Final location and design of the handicapped spaces shall be approved by the Urban Design Section as designee of the Planning Board. The location of the handicapped parking shall also be approved by the Department of Public Works and Transportation (DPW&T).
 - d. If the sign is to be included with the project, the applicant shall:
 - (1) Revise the plans for the proposed sign so that the lettering area (defined to include the soldier course of decorative brickwork at its periphery) is within the maximum limit of 12 square feet. Final design of the proposed sign shall be approved by the Urban Design Section as designee of the Planning Board.
 - (2) Present written approval of the location of the sign from the Department of Public Works and Transportation (DPW&T) stating that clear sight at the intersection of Forest Oak Court and Walker Mill Road is adequate.

- e. The Type 2 tree conservation plan (TCP2) shall be revised as follows:
 - (1) The reforestation notes shall be removed from the plan.
 - (2) The fee-in-lieu shall be removed and the remaining requirement of 1.43 acres shall be shown to be met with off-site woodland conservation.
 - (3) The plans shall be signed and dated by the qualified professional who prepared them.
- ~~f. The applicant shall submit a current copy of the approved stormwater management concept approval letter and plan for the project.~~
- ~~f.g.~~ The applicant shall revise the plans to correct the name of “Walkermill Road” to “Walker Mill Road,” and the route number from “772” to “367.”
- ~~h. The applicant shall procure from the Department of Public Works and Transportation (DPW&T) and provide to staff as designee of the Planning Board, written confirmation that the area of conveyance designated on the plans for the project is acceptable to them and consistent with their expectations during the preliminary plan approval process.~~
- ~~i. The applicant shall procure from the Department of Public Works and Transportation (DPW&T) and provide to staff as designee of the Planning Board, written confirmation that the subject detailed site plan conforms to the requirements of the approved stormwater management concept for the property or a revision thereto.~~
- ~~g.j.~~ The applicant shall include a note on the plans indicating that the proposed exterior light fixtures will be shielded and positioned so as to minimize light trespass caused by spill light, and shall provide staff with a photometric plan indicating that light levels at residential property lines have been reduced to the degree possible, consistent with safety considerations.
- ~~h.k.~~ The applicant shall include a note on the project plans indicating that, during the construction phases of the project:
 - (1) No dust shall be allowed to cross over property lines and impact adjacent properties as the applicant intends to conform to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.
 - (2) No noise shall be allowed to adversely impact activities on the adjacent properties as the applicant intends to conform to construction activity noise control requirements as specified in Subtitle 19 of the Prince George’s County Code.

- i.~~h~~ The applicant shall make the following modifications to the proposed architecture for the subject project:
 - (1) Include a darker contrasting color of brick on the entire first story, extending it to the roofline on each projecting portion of the buildings that has a garage at its base.
 - (2) Increase the fenestration and architectural detail on the highly visible side elevations (the northwestern side façade of the end unit on Lot 1 and the southeastern side façade of the end unit on Lot 10).
 - (3) All material labeled “stucco” shall refer to traditional stucco, applied on-site or replaced with either cementitious or vinyl siding.
 - (4) Above-ground foundation walls shall be clad with finish materials or textured/formed to simulate a clad material, with final material choice to be approved by the Urban Design Section as designee of the Planning Board.
 - ~~m.~~ ~~The applicant shall redesign the cul-de-sac at the end of Forest Oak Court to conform to Department of Public Works and Transportation (DPW&T) Standard 200.12, with the designated handicapped parking spaces moved out of the right-of-way and the addition of a driveway entrance in the cul-de-sac. The applicant shall provide the Urban Design Section with written approval from DPW&T of the design of the cul-de-sac, with respect to Standard 200.12, and the location of the handicapped parking spaces and driveway entrances.~~
 - j.~~n~~ The applicant shall indicate and label the ten-foot-wide public utility easement on the northern side of Forest Oak Court.
 - k.~~o~~ The applicant shall revise the detailed site plan to indicate the entity to which Parcels B, C, and D will be dedicated.
 - l.~~p~~ The applicant shall revise the plans to include a tot lot adjacent to the currently planned passive recreational area. Final design of the tot lot shall be approved by the Urban Design Section as designee of the Planning Board.
 - m.~~q~~ Two or more dwelling units shall be identified as having the potential to be made accessible through barrier-free design.
2. Prior to issuance of the first building permit for the project, the applicant shall:
- a. If a gateway sign is to be installed, provide evidence to staff as designee of the Planning Board that a maintenance agreement for the sign has been approved by the Department of Environmental Resources (DER).
 - b. Provide evidence to staff as designee of the Planning Board that the applicant has prepared an acceptable color-coded wet and dry utility plan for the subject project.

3. Prior to approval of final plats for the subject property, the applicant shall enter into a Recreational Facilities Agreement (RFA) with The Maryland-National Capital Park and Planning Commission (M-NCPPC) to assure construction of the tot lot and installation of the specified benches. The facilities shall be designed in accordance with the Department of Parks and Recreation's facilities guidelines. The equipment shall be installed prior to issuance of the sixth building permit for the project.