

Trinity Quality Homes, Inc. * BEFORE THE
Petitioner * PLANNING BOARD OF
PLANNING BOARD CASE NO. 434 * HOWARD COUNTY, MARYLAND

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DECISION AND ORDER

In accordance with State Senate Bill 236, Section 5-104 of the Land Use Article of the Maryland Annotated Code, the Planning Board of Howard County, Maryland, held a public hearing on December 14, 2017, to consider the petition of Trinity Homes, Inc., Petitioner, to approve a Preliminary Equivalent Sketch Plan, SP-17-007, for 15 single-family cluster lots, one buildable preservation parcel and seven non-buildable preservation parcels. The 42.41 acre Estates at River Hill subdivision, located at the terminus of Allnut Lane and identified as Parcel 389, in the 5th Election District of Howard County, Maryland, is in the Tier III residential land use category, as designated on Howard County’s General Plan, *PlanHoward 2030*, and zoned RR-DEO (Rural Residential Density Exchange Option).

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

PLANNING BOARD HEARING

Department of Planning and Zoning’s Technical Staff Report

Derrick Jones presented DPZ’s Technical Staff Report which recommended approval of Preliminary Equivalent Sketch Plan, SP-17-007, subject to comments from reviewing agencies and any conditions by the Planning Board. The report found that of the two criteria for the Planning Board to consider, pursuant to Section 5-104(e) of the Land Use Article of the Maryland Annotated Code for a Tier III major subdivision, only the second applies:

Criterion I. The cost of providing local government services to the residential major subdivision unless a local government’s adequate public facilities law already requires a review of government services.

Criterion one does not apply because Howard County has an adequate facilities ordinance that requires a review of government services, including the adequacy of public roads and public schools. DPZ noted that the test for adequate public roads was conducted and approved during the review of the preliminary equivalent sketch plan. The test for adequate housing allocations and adequate public schools will be conducted upon approval of the Planning Board’s Decision and Order.

Criterion 2. The potential environmental issues or a natural resources inventory related to the proposed subdivision.

DPZ found that the Natural Resource Inventory indicates two stream systems and areas of non-tidal wetlands:

- The site is bisected by a large perennial stream that flows from south to north through the middle of the site. The stream is well confined by its banks, a 100-year floodplain is associated with the stream and there are areas of non-tidal wetlands.
- A tributary stream enters the property's western boundary and flows across the site before joining the main system. An existing driveway crosses this tributary stream over a twin culvert.
- The two streams combine and flow east to the Carrolls Branch.
- A stream flows south, crosses the eastern most section of the site and is the upstream end of the Carrolls Branch.

The Natural Resource Inventory also indicates 25 specimen trees and two distinct forest stands that encompass approximately 12.6 acres.

- Forest Stand #1 is approximately 9.8 acres and includes all but a 2.8-acre southern portion of the site. The north-south and eastern channels of the perennial stream are within this forest stand. A floodplain is associated with the northern leg of the stream.
- Forest Stand #2 occupies approximately 2.8 acres. It is located at the southern end of the site and contains the southern stream channel. Non-tidal wetlands and floodplain are evident here.

The Natural Resource Inventory and Floodplain report indicates a floodplain along the north-south stream system; however, there are no steep slopes.

The subdivision proposes a bridge crossing along the southern portion of the site to access lots 4-9. The bridge and abutments avoid disturbing the stream and 100-year floodplain; however, the driveway approaches to the bridge will require minor disturbances to the stream buffer. In addition, some minor disturbances to stream buffers are proposed to upgrade an existing driveway (that crosses the northern stream) to a shared (use-in-common) driveway. The remaining natural resources will be protected and preserved within two non-buildable preservation parcels. While the plan proposes removing 5.19 acres of forest and 10 specimen trees, this has been determined to be necessary and reasonable due to poor tree health and to accommodate driveways, houses, private septic systems, and utilities.

Based on the Petitioner's natural resources inventory for the site, the Department of Planning and Zoning recommended approval of preliminary equivalent sketch plan (SP-17-007) because it met the requirements of Section 5-104(e) of the Land Use Article of the Maryland Annotated Code.

PETITIONER'S TESTIMONY

Mr. William Erskine, Esq., represented the petitioner and there was no opposition. Opening statements were waived.

Mr. Erskine called Robert Vogel, of Vogel Engineering/Timmons Group, as his only witness. Mr. Vogel said that he concurred with DPZ's staff report and provided a site overview, including existing conditions, and reasoning for the plan layout. Mr. Vogel highlighted the site's natural resources and noted that streams, stream buffers, wetlands, wetlands buffers, and floodplains would not be disturbed, except for the following: bridge abutments at the southern stream channel crossing would disturb stream buffers, but the bridge itself would not disturb the stream; 5.19 acres of forest and 10 specimen trees would be removed due to poor tree health and to accommodate driveways, houses, private septic systems, and utilities. Mr. Vogel further testified that the plan complies with the state's Forest Conservation Act, by retaining 7.41 acres of existing forest and forest (tree) planting, all of which will be protected in perpetuity through a public forest conservation easement.

In response to a question from Mr. Erskine regarding the stream crossing, Mr. Vogel testified that the proposed bridge crossing will help protect the stream and its buffer by providing a stabilized crossing and eliminate opportunities for horses and others to intrude into environmental areas.

He further testified about the benefits of a bridge rather than a culvert and that the developer did not want to disturb the stream and floodplain. Instead he wanted to maintain the quality of the stream and its buffer. Mr. Vogel stated that the bridge span between the abutments will be 50 to 60 feet and minimize disturbances to the stream channel.

Mr. Erskine asked about protecting the natural inventory of the site and Mr. Vogel responded that the plan protects and enhances those features.

Board Chair Phil Engelke asked about importing seven density units. Mr. Vogel testified that maximum density is calculated by dividing the net acreage by 2 and that base density is determined by dividing the gross acreage by 4.25.

Mr. Vogel, in response to a question from Board Member Ed Coleman, confirmed the tree species to be removed and their current health.

In response to a question from Board Member Kevin McAliley, Mr. Vogel explained the practices to manage stormwater runoff and mitigate flooding.

CROSS EXAMINATION

Mr. Ed Record cross-examined Mr. Vogel about an alternate access and traffic entering and leaving the site. Mr. Erskine objected to Mr. Record's question, because traffic is not relevant to this hearing.

No one else cross-examined Mr. Vogel.

OPPOSITION TESTIMONY

There was no opposing testimony.

WORK SESSION

The Planning Board went into work session and agreed that the plan preserves the site's natural resources and complies with the criteria set forth in SB 236. The Board voted 5 to 0 to approve the plan, without any conditions.

FINDINGS OF FACT

1. Preliminary Equivalent Sketch Plan, SP-17-007, contains 15 single-family cluster lots, one buildable preservation parcel and seven non-buildable preservation parcels on 42.41 acres in Tier III and a RR-DEO (Rural Residential Density Exchange Option) zoning district.
2. This project is subject to the Howard County Subdivision and Land Development Regulations, including Forest Conservation Regulations, Landscape Manual, Zoning Regulations and Maps, Design Manual, and Adequate Public Facilities Ordinance.
3. The property was properly posted and advertised in accordance with legal requirements.
4. The Planning Board has authority to review the Preliminary Equivalent Sketch Plan in accordance with the pertinent criteria set forth in Senate Bill 236, codified in Section 5-104 of the Land Use Article of the Maryland Annotated Code.
5. Howard County's Adequate Public Facilities Ordinance (APFO) fulfills the Planning Board's first review criterion under Section 5-104(e)(1) of the Land Use Article of the Maryland Annotated Code, which is to assess the cost of providing local governmental services to a major subdivision on Tier III designated property. Since APFO requires certain government services to be reviewed, the Board agrees with and adopts the Department of Planning and Zoning's analysis, with which the petitioner concurred, that the cost of providing public facilities has already been analyzed and addressed.
6. The only criterion the Planning Board must consider when reviewing a major subdivision in Tier III is "the potential environmental issues or a natural resources inventory related to the proposed residential subdivision." The Petitioner presented a Natural Resource Inventory showing all streams, wetlands, wetland buffers, floodplains, and forested area and trees and the Planning Board finds that the plan will not significantly disturb those, except for a bridge crossing at the southern portion of the site to access buildable lots 4-9 and minor disturbances to stream buffers to upgrade an existing driveway crossing the northern stream. While 5.19 acres of forest and 10 specimen trees will be removed, the Board finds that this is reasonable due to poor tree health and to accommodate driveways, houses, private septic systems, and utilities.

The Board further finds that the proposed subdivision will effectively protect, preserve, and minimize disturbances to environmental resources by placing streams, wetlands, required buffers, floodplains and steep slopes within non-buildable preservation parcels.

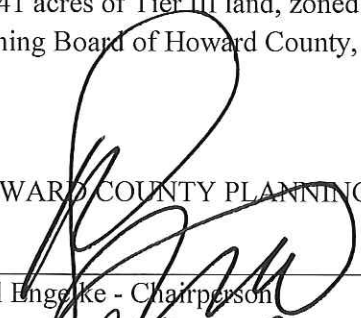
7. The Board notes that no residents from the surrounding community testified for or against this proposal.
8. Based on this information, which the Board finds to be convincing and reliable, the Board agrees with and adopts the Department of Planning and Zoning's recommendation for approval.

CONCLUSIONS OF LAW

Preliminary Equivalent Sketch Plan, SP-17-007, satisfies all of the approval standards for a Tier III major subdivision, according to the pertinent portions of State Senate Bill 236, Section 5-104(e)(2) of the Land Use Article of the Maryland Annotated Code, for the reasons stated in the above findings of Fact and in the Department of Planning and Zoning Technical Staff Report, which the Board finds persuasive and which it adopts as its own in this decision.

For the foregoing reasons, the petition of Trinity Quality Homes, to approve a Preliminary Equivalent Sketch Plan, SP-17-007, to subdivide 15 single-family cluster lots, one buildable preservation parcel and seven non-buildable preservation parcels on 42.41 acres of Tier III land, zoned RR-DEO, on this 25th day of January, 2018 APPROVED by the Planning Board of Howard County, Maryland.

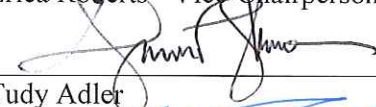
HOWARD COUNTY PLANNING BOARD



Phil Enggeke - Chairperson



Erica Roberts - Vice Chairperson



Tudy Adler



Ed Coleman



Kevin McAliley

PB Case No. 434

ATTEST:



Valdis Lazdins, Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY:

HOWARD COUNTY OFFICE OF LAW

Gary W. Kuc, County Solicitor



Paul Johnson, Deputy County Solicitor

LIST OF APPLICANT'S EXHIBITS:
None were introduced

LIST OF PROTESTANT'S EXHIBITS:
None