

RESOLUTION

WHEREAS, the Prince George's County Planning Board is charged with the approval of Detailed Site Plans pursuant to Part 3, Division 9 of the Zoning Ordinance of the Prince George's County Code; and

WHEREAS, in consideration of evidence presented at public hearings on April 17, 2008 and April 24, 2008 regarding Detailed Site Plan DSP-07012 for Livingston Forest, the Planning Board finds:

1. **Request:** The subject application proposes three multifamily buildings containing a total of 72 condominium units. As a companion to this case, a variance to Section 27-442(f) of the Zoning Ordinance is requested to allow an increase in the building heights for each of the structures.
2. **Development Data Summary**

	<b>EXISTING</b>	<b>PROPOSED</b>
Zone	R-30C & R-55	R-30C & R-55
Use(s)	Vacant	72 Multifamily units
Gross tract area	8.57	8.57
R-30C Zone	8.09	8.09
*R-55 Zone	0.47	0.47
Area within the 100 year flood plain	0.46	0.46
	0.13	0.13
Area to be dedicated to public R/W	7.5	7.5
Net tract area	90	72
Density permitted		
Parcel	1	1

\*The area of the detailed site plan includes 0.47 acre of land in the R-55 Zone; however, density calculations do not include the R-55 zoned land, as multifamily dwellings are not permitted in the R-55 Zone per Section 27-441(b).

**Parking Data**

	<b>REQUIRED</b>	<b>PROPOSED</b>
Parking Spaces:		
2 spaces per 1-bedroom unit	48	
2.5 spaces per 2-bedroom unit	120	
Total parking spaces	168	168

Handicap spaces (included in the above)	6	6
Loading spaces	0	0

3. **Location:** The site is located in Planning Area 76A, Council District 8. The property is located on the east side of Livingston Road approximately 700 feet south of its intersection with Indian Head Highway (MD 210).
4. **Surrounding Uses:** The property to the north is zoned R-18 and is developed with the Northbridge Garden Apartments. To the east is land zoned R-O-S, owned by M-NCPPC, known as the Glassmanor Park. To the south is one single-family dwelling fronting Livingston Road and another undeveloped acreage parcel 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.
5. **Previous Approvals:** The property was the subject of Preliminary Plan 4-05055 and Type I Tree Conservation Plan TCPI/24/94-01 for the subject site, as stated in Prince George's County Planning Board Resolution No. 06-55, approved February 23, 2006.
6. **Design Features:** The site is served by two access points, one from Livingston Road, a public right-of-way, the second from the Northbridge Gardens complex to the north. The driveway skirts around the front of the buildings from Livingston Road and connects to the Northbridge Gardens apartment complex. The change in topography from the point of access on Livingston Road to the point of access to Northbridge Gardens apartment complex is approximately 80 vertical feet. The three buildings are set into the hillside, as the site is very steep. Parking is primarily located in structured parking beneath the buildings, except for nine surface parking spaces located at the front of Building No. 1.

A playground is located across the driveway from Building No. 1, within a designed plateau surrounded by fencing for safety purposes. This facility is required by the approval of the preliminary plan of subdivision.

The proposed architectural elevations depict three identical buildings with brick as the exterior finish material in a two-tone color scheme. It appears that balconies will be provided for most of the units. Two stories of parking are proposed beneath the buildings; the parking is exposed on the south side of the buildings, where the main vehicular entrance is proposed. Access into the buildings from the parking spaces in front of the buildings is proposed through the garage entrance to the elevator bank.

**COMPLIANCE WITH EVALUATION CRITERIA:**

7. **Zoning Ordinance:** The subject application has been reviewed for compliance and found to be in conformance with the requirements in the R-30C Zone and the site plan design guidelines of the Zoning Ordinance. The area of land within the R-55 Zone is not proposed for development of any sort.
8. **Preliminary Plan of Subdivision 4-05055:** The following conditions included in this approval are relevant to the subject site and warrant discussion, followed by staff comment.

**3. Development of this site shall be in conformance with the approved stormwater management concept plan and any subsequent revisions.**

**Comment:** The stormwater management concept approval letter, valid until May 13, 2009, was submitted. An approved concept plan is required to ensure there are no conflicts between the proposed woodland conservation areas and required stormdrain easements.

**Recommended Condition:** Prior to certification of the detailed site plan, copies of the approved stormwater management concept letter and plan shall be submitted.

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.**

**Comment:** The parcels of land referred to above are not the subject of the detailed site plan.

8. **The applicant, the applicant's heirs, successors and/or assignees shall submit three original recreational facilities agreements (RFA) to DRD for construction of recreational facilities on homeowner's land, for approval prior to the submission of final plats. Upon approval by DRD, the RFA shall be recorded among the county land records.**

**Comment:** The staff recommends that the recreational facilities agreement include a trigger for the development of the tot-lot, prior to the issuance of the building permit for the third building, as proposed in Condition No. 5 below.

11. **The applicant, the applicant's heirs, successors and/or assignees shall provide a standard sidewalk along the subject site's frontage of Livingston Road, unless modified by DPW&T.**

**Comment:** This requirement is included as a condition of approval. In addition, prior to signature approval the applicant shall submit evidence from DPW&T indicating that the proposed improvements within the right-of-way are in conformance with the DPW&T specifications and standards.

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.**

**Comment:** The applicant has submitted a copy of the traffic signal warrant study and evidence of submittal of the traffic study to the DPW&T.

9. ***Landscape Manual:*** The proposed development is subject to Section 4.1, Residential Requirements, and the schedules on the plan indicate the breakdown of plant types proposed. The application is required to include 197 shade trees for the site. The chart indicates that only 14 shade trees are proposed on the site, yet the landscape plan indicates 25 shade trees. The applicant is asking that the woodland conservation on the site be counted toward the fulfillment of planting shade trees on the site. In practice, the Development Review Division has permitted this type of substitution. In order to do this, staff requires the substitution to be demonstrated on the plans by specifying trees that are being preserved on-site and proposed for substitution, including the type and the size of the trees. In addition, ornamental trees and evergreens can be used to count toward the shade tree requirement, on a two-to-one basis, but this technique has not been employed on the plans. Therefore, the staff recommends that prior to signature approval of the plans, the landscape plans indicate specific trees on-site that will be used to fulfill the requirements of Section 4.1 of the *Landscape Manual* and that the 4.1 schedules be corrected.
10. **Woodland Conservation Ordinance:** The property is subject to the provisions of the Prince George's County Woodland Conservation Ordinance because the site has previously approved tree conservation plans. TCPI/24/94-01 was approved with Preliminary Plan 4-04055. A revised Type II Tree Conservation Plan (TCPII/29/96-02) has been submitted and reviewed.

The woodland conservation threshold for the site is 1.90 acres. There is an additional 0.99-acre replacement requirement for the clearing of woodlands under the current design, and a 0.14-acre replacement requirement for clearing in the 100-year floodplain. The total woodland conservation requirement is 3.03 acres. The plan shows the requirement being met with 2.98 acres of woodland preservation on-site and 0.05 acre of reforestation.

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 mostly on-site preservation. In addition, 1.16 acres of woodlands have been preserved within the floodplain. The limits of disturbance on the TCPII are in conformance with the approved TCPI and consistent with the submitted detailed site plan.

Minor revisions are needed on the TCPII to bring it into full compliance with the Woodland Conservation Technical Manual. There are some areas of proposed off-site clearing that are not reflected in the worksheet that should be included as off-site clearing. Eliminate the proposed tree line from the plan and legend because it adds clutter and is confusing, show the critical root zone for all of the specimen trees on the site, provide a sign detail for the specimen trees that will remain and show a symbol on the plan and legend for each, and show the root pruning detail and edge management notes on the plan.

Because the property has extensive areas of steep and severe slopes, and because the construction sequencing is critical to the successful woodland preservation on this site, the erosion and sediment control plan must be carefully prepared and the construction sequence must match the proposed development. The phasing of building construction must be detailed and the stockpiles shown on the plans. Special notes and details on the plans shall be provided regarding how the down-slope areas will be protected from the disturbed areas during construction.

**Recommended Condition:** Prior to signature approval of the detailed site plan, the Type II tree conservation plan shall be revised as follows:

- a. Calculate all off-site clearing and include the acreage in the TCPII worksheet.
- b. Eliminate the proposed tree line from the plan and legend.
- c. Show the critical root zone for all of the specimen trees on the site.
- d. Provide a sign detail for the specimen trees that will remain and show a symbol on the plan and legend for each.
- e. Show the root pruning detail on the plan.
- f. Show the edge management notes on the plan.
- g. Revise the woodland conservation worksheet to address changes.
- h. Have the revised plan signed and dated by the qualified professional who prepared the plan.

**Recommended Condition:** Prior to approval of any grading permits, the proposed erosion and

sediment control plan shall be submitted to the Environmental Planning Section with the final TCPII for a comparison of the limits of disturbance and for a review of the construction sequence. The construction sequence noted on the erosion and sediment control plan shall detail the order of construction of each underground garage and building, to ensure that the excess soil is properly placed or disposed of off-site. The phasing of building construction must be detailed and the stockpiles shown on the plans. Special notes and details on the plans shall be provided regarding how the down-slope areas will be protected from the disturbed areas during construction. Section drawings shall be added to the erosion and sediment control plans to illustrate how the proposed control methods will function.

11. **Variance:** The applicant is requesting a variance from Section 27-442(f) of the Zoning Ordinance. Section 27-442(f) (Table V) specifically prescribes that each building shall have a maximum height of 45 feet, as defined by Section 27-107.01(B), Height of Building with a Terrace. The subject proposal is for 72 units in three buildings with required parking fully provided. The buildings exceed 45 feet in height with a maximum elevation of 53.4 feet for Building No. 1, 57.6 feet for Building No. 2, and 55.6 feet for Building No. 3. Accordingly, the applicant is requesting a height variance between 8.4 feet and 12.6 feet.

In requesting a variance from Section 27-442(f) of the Zoning Ordinance, the applicant contends that this proposal meets the criteria enumerated in Section 27-230 for granting of variances, specifically:

- a. **The specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographical conditions, or other extraordinary situations or conditions.**

**Applicant's response in statement of justification dated March 17, 2008:** "There are extraordinary situations or conditions existing on the subject property. The property would allow up to 114 units with a maximum of 12 units per acre; however, the subject property is irregularly shaped and has severe environmental and topographic features. Our original proposals had 5–7 buildings and involved much larger disturbances of allegedly sensitive areas. The Environmental Planning Division strongly encouraged us to lessen our building envelope.

"As illustrated by the architectural rendering submitted, three very attractive taller buildings can be accommodated with the requested variances of 8.4 to 12.6 feet. In that the subject property sits at a lower elevation, the additional height will create a finished product that will be entirely compatible with the adjoining Northridge Apartments to the northwest. In fact, our finished elevation will be approximately 15 feet below the adjacent apartments because of the lower topographic setting. We submitted an elevation illustrating that our roofline is below the adjacent apartments."

**Comment:** The applicant's statement above does not correlate with the calculations of staff (see Finding No. 2), which indicates that the maximum density permitted is 90. Further, the applicant

claims that the original approval had 5-7 buildings; however, through the approval of the preliminary plan of subdivision, only three buildings were approved. None of that argument supports the required finding above.

The staff does agree that the specific parcel of land has exceptional narrowness and is oddly shaded, as the property is 2,050 feet long and only 350 feet wide at its widest point. The land has exceptional topographic conditions in that the variation in topography is approximately an 80-foot vertical difference on-site.

**The strict application of this subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property.**

**Applicant's response in statement of justification dated March 17, 2008:** "Unless the variance is granted, the applicant will not be in compliance with the current Zoning Ordinance. Moreover, the applicant contends that practical difficulties exist because compliance with the strict letter of the ordinance would render conformity with the ordinance unnecessarily burdensome due to the fact that the applicant would be required to disturb sensitive environmental areas. Furthermore, the applicant contends that the grant of the requested variance would do substantial justice for the applicant as it will not only validate the current design of the project, but will also alleviate the financial burden associated with leaving the property vacant. Finally, the applicant contends that relief can be granted by this Planning Board in such a fashion that the spirit of the ordinance will still be observed and public safety and welfare still secured. It would not be financially feasible to develop the property with less than 72 units."

"Lastly, the applicant has had numerous meetings with the adjoining owners and their elected representatives. All were supportive of the concept based upon the quality of the proposed and the external appearance in light of the lower topography of the site."

**Comment:** Financial hardship is generally not admissible as justification for the granting of a variance. However, the reduction of the foot-print of the building envelope that occurred during the review of the preliminary plan, for the protection of the environmental features on the site, forced the increase in height of the buildings. Strict application of the building height requirement would result in more on-site grading of the steep slopes, impact the tree preservation on the site, and ultimately reduce the visibility of the community from surrounding areas. It should be noted that the cross section submitted into the record provides evidence of compatibility in regard to the building height of the adjacent Northbridge Gardens apartment complex. Therefore, staff supports the proposal to allow an increase in the building height for each of the three buildings.

**The variance will not substantially impair the intent, purpose, or integrity of the General or master plan.**

**Applicant's response in statement of justification dated March 17, 2008:** "The 2000 *Approved Master Plan and Sectional Map Amendment for the Heights and Vicinity*

recommends urban density for this site. The subject property is in keeping with the recommendations set forth in the master plan. Allowing the height variance will not substantially impair the intent, purpose, or integrity of the master plan.”

**Comment:** Staff agrees that the variance to the height of the building will not substantially impair the intent, purpose or integrity of the master plan because the buildings will be compatible with the surrounding existing structures, notably the Northbridge Gardens apartment complex immediately to the north.

12. **Referral Comments:** The subject application was referred to the concerned agencies and divisions. The referral comments are summarized as follows:

**Community Planning:** In a memorandum dated March 31, 2007, the Community Planning section offered the following:

This application is not inconsistent with the 2002 General Plan Development Pattern policies for Developed Tier centers. This application is in general conformance with the Urban Land Use recommendation of the 2000 *Approved Master Plan and Sectional Map Amendment for the Heights and Vicinity (Area 76A)*

The Urban Design (pp. 94-105) section of the master plan provides concepts and design guidelines for proposed elements of residential neighborhoods in order to guide development and redevelopment that will be appropriate for the planning area in terms of style, character, composition, scale and proportion and density. The proposed plan for Livingston Forest neglects to include in the plan:

- a. A clear identification of the network of sidewalks for pedestrian circulation
- b. A comprehensive lighting plan for pedestrians
- c. The location and screening of the trash dumpsters

**Comment:** The staff has added conditions to the approval in the recommendation section of this report to address the deficiencies identified by the Community Planning Division.

**Transportation:** In a memorandum dated March 28, 2008, Masog to Lareuse, the Transportation Planning Section offered the following:

Access and circulation are acceptable and consistent with what was conceptually reviewed at the time of preliminary plan. The level of development is also consistent with the findings of transportation adequacy that were made for the preliminary plan.

The subject property was the subject of a 2005 traffic study that was reviewed by the transportation planning staff, and was given subdivision approval pursuant to a finding of



adequate transportation facilities made in 2006 for Preliminary Plan of Subdivision 4-05055. From the standpoint of transportation, it is determined that this plan largely meets the requirements of Subtitle 27 and is consistent with past approved plans.

**Permits:** In a memorandum dated January 3, 2008, Stone to Lareuse, the Permit Review Section offered numerous comments that have either been addressed by revisions to the plans or in the recommended conditions below.

**Environmental Planning:** The Environmental Planning Section recommends approval of DSP-7012 and TCPII/29/96-02 subject to the conditions provided at the end of this memorandum.

The Environmental Planning Section 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 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 again reviewed as Preliminary Plan 4-04191, in conjunction with TCPI/24/94-01, which were withdrawn. On February 23, 2006, the Planning Board approved Preliminary Plan of Subdivision 4-04055 and Type I Tree Conservation Plan TCPI/24/94-01 for the subject site. The current application is a detailed site plan for the construction of residential dwelling units in three multifamily buildings.

The subject property is located east of Indian Head Highway on Livingston Road. The surrounding properties are residentially zoned, except the property to the north, which is zoned Commercial Office (C-O). The site is characterized with terrain sloping steeply toward the south 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, 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 adopted General Plan. The site contains network gaps identified on the *Approved Countywide Green Infrastructure Plan*.

## ENVIRONMENTAL REVIEW

- a. The site has a signed Natural Resources Inventory (NRI/039/05), dated July 13, 2005. The entire site is within the expanded buffer due to the extensive steep and severe slopes on the site. The TCPII and DSP show all the required information correctly. No revisions are required for conformance to the NRI.

**Fire/EMS Department:** The Fire/EMS Department has responded to the referral request stating that all drive aisles must be 22 feet wide, which is shown in the plans.

**Town of Forest Heights:** A referral request was sent to the above municipality, which is within one mile of the subject site. At the time of the writing of this report, no comment had been received.

13. As required by Section 27-285(b) of the Zoning Ordinance, the detailed site plan represents a reasonable alternative for satisfying the site design guidelines of Subtitle 27, Part 3, Division 9, of the Prince George's County Code without requiring unreasonable cost and without detracting substantially from the utility of the proposed development for its intended use.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED the Type II Tree Conservation Plan (TCPII/29/96-02) and APPROVED Variance Application No. VD-07012, and further APPROVED Detailed Site Plan DSP-07012 for the above-described land, subject to the following conditions:

1. Prior to certification of the detailed site plan, copies of the approved stormwater management concept letter and plan shall be submitted.
2. Prior to signature approval of the detailed site plan, the Type II tree conservation plan shall be revised as follows:
  - a. Calculate all off-site clearing and include the acreage in the TCPII worksheet.
  - b. Eliminate the proposed tree line from the plan and legend.
  - c. Show the critical root zone for all of the specimen trees on the site.
  - d. Provide a sign detail for the specimen trees that will remain and show a symbol on the plan and legend for each.
  - e. Show the root pruning detail on the plan.
  - f. Show the edge management notes on the plan.
  - g. Revise the woodland conservation worksheet to address changes.

- h. Have the revised plan signed and dated by the qualified professional that prepared the plan.
- 3. Prior to approval of any grading permits, the proposed erosion and sediment control plan shall be submitted to the Environmental Planning Section with the final TCPII for a comparison of the limits of disturbance and for a review of the construction sequence. The construction sequence noted on the erosion and sediment control plan shall detail the order of construction of each underground garage and building, to ensure that the excess soil is properly placed or disposed of off-site. The phasing of building construction shall be detailed and the stockpiles shown on the plans. Special notes and details on the plans shall be provided regarding how the down-slope areas will be protected from the disturbed areas during construction. Section drawings shall be added to the erosion and sediment control plans to illustrate how the proposed control methods will function.
- 4. Prior to certificate approval, the following modifications or revisions shall be made to the detailed site plan, or the following information shall be provided:
  - a. The landscape plan shall be revised to add the location of light poles and shall not conflict with proposed tree plantings.
  - b. The details and specifications for lighting shall be added to the plans.
  - c. A photometric plan shall be submitted demonstrating 1.25 foot candles along all pedestrian routes and parking areas.
  - d. The plans shall demonstrate the location of all trash facilities and screening proposed on-site.
  - e. Additional variation in shade tree selection shall provide a variety of trees with good fall color.
  - f. The landscape plans shall be revised to clearly demonstrate conformance to Section 4.1 of the *Landscape Manual*, as stated in Finding No. 9.
  - g. The entrance feature shall be dimensioned on the plans and shall demonstrate conformance to Section 27-624.
  - h. Security access features to the garages and elevators shall be provided on the plan so that only residents may access both facilities.
  - i. The site plan shall demonstrate all drive aisle dimensions.

- j. The details and specifications of the retaining walls and barriers shall be provided on the plans, and reviewed and approved by the Urban Design Section as designee of the Planning Board.
  - k. An additional ten parking spaces shall be added to the plans for guest parking.
- 5. Prior to the issuance of the 49<sup>th</sup> building permit (or the building permit for the third building), the proposed tot-lot shall be completed.
  - 6. The applicant shall submit evidence from the DPW&T that the grading and improvements shown within the dedicated public right-of-way have been reviewed and approved by that office.
  - 7. Prior to certificate of approval, the architectural elevations and floor plans shall be revised to create a pedestrian entrance at the street level and a vestibule within the garage. Pavers and a bulkhead with lighting shall be incorporated into the garage, connecting the vestibule to the elevator lobby on the other side of the garage.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council of Prince George's County within thirty (30) days following the final notice of the Planning Board's decision.

\* \* \* \* \*

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 Cavitt, seconded by Commissioner Clark, with Commissioners Cavitt, Clark, Vaughns, Squire and Parker voting in favor of the motion at its regular meeting held on Thursday, April 24, 2008, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 15<sup>th</sup> day of May 2008.

Oscar S. Rodriguez  
Executive Director

By Frances J. Guertin  
Planning Board Administrator

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