

Planning Commission

Staff Report

October 29, 2020



Case No:	20-MSUB-0005/20-VARIANCE-0087
Project Name:	Lyndon Green
Location:	1900 Washington Blvd
Owner(s):	Stephen Zink
Applicant:	GDB Holdings, LLC.
Jurisdiction:	Lyndon
Council District:	7 – Paula McCraney
Case Manager:	Jay Lockett, AICP, Planner I

REQUEST(S)

- **Variance** to allow 25-foot front and street side yards for all lots in the development instead of 30.
- **Major Preliminary Subdivision Plan (Development Potential Transfer)** with review of land disturbing activity on slopes greater than 20%

CASE SUMMARY/BACKGROUND

A major preliminary subdivision plan utilizing development potential transfer for steep slopes is proposed on 14.11 acres of land located adjacent to Goose Creek in the City of Lyndon. The proposal includes 36 buildable lots and 2 open space lots. The majority of the development would be clustered along the southern part of the site, in order to avoid disturbing the majority of the steepest slopes on the subject site. The applicant is requesting a variance in order to allow 25 foot minimum front and street side setbacks.

STAFF FINDING

The requests are adequately justified and meet the standards of review. The areas of disturbance with slopes greater than 20% for the proposed subdivision are minimized in accordance with the comprehensive plan. The applicant has submitted a geotechnical report that indicated only localized potential for slope instability. The report outlined construction guidelines to allow for safe development of the site as proposed.

TECHNICAL REVIEW

The application of development potential transfer on this project allows for the following:

- Lot sizes to be reduced in accordance with the alternative development incentives of the Neighborhood form district.
- Setbacks to be applied as required for standard subdivision development in the R-4 zoning district.
- The transferrable potential is based on the theoretical maximum allowable density of the zoning district containing the preserved slopes; therefore, the development potential of preserved areas is incorporated through reductions in lot sizes across the total area of the subdivision.

- Areas of steep slopes may be present within single-family lots subject to the requirements of Chapter 4, Part 7.5 – Land Disturbing Activity on Slopes Greater than 20%. Areas within lots may not be used for development potential transfer.
- All areas being considered for development transfer potential must be preserved as open space or by other acceptable means.

The proposed subdivision includes disturbance of slopes in excess of 20%. Land Development Code, section 4.7.5 provides that Land disturbing activities on slopes greater than 20% is permitted on lots created by major subdivision after the effective date of this regulation only if the activity is in keeping with the Comprehensive Plan and the proposed activity complies with the provided standards of this part. A staff analysis has been included in this report for the Planning Commission’s consideration.

INTERESTED PARTY COMMENTS

A neighbor, Caitlin Mims, has expressed concerns about the potential for increased traffic on Washington Blvd to impact pedestrian and vehicular safety.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare since homes in the subdivision will still maintain adequate yards and setbacks around structures. All provisions for safe circulation of traffic and access to utility infrastructure will be maintained.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity since the mix of older and newer homes in the area have varied setbacks.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since all appropriate access and utilities will be provided within the subdivision.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations, as the setbacks allowed by the request will encourage flexibility of housing design. The setbacks will allow for more flexibility to help minimize disturbance of environmentally sensitive areas on the subject site.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances, but is rather a design choice.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship, as the subdivision could still be generally developed as proposed with standard setbacks.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions taken subsequent to the adoption of the zoning regulations.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR LAND DISTURBING ACTIVITIES ON SLOPES GREATER THAN 20%

- (a) The Commission finds that the design and configuration of the development results in the minimum disturbance of slopes greater than 20% necessary to accommodate the proposed use of the site; and,

STAFF: A geotechnical analysis was performed and no significant concerns with respect to slope instability or substantial erosion were observed on the site. There are some lots throughout the development that would have portions of slopes greater than 20%, however the geotechnical report found only localized slope instability. The report outlined mitigation and construction procedures to allow for safe development of the site as proposed. There are several karst features identified on the preliminary plan. A geotechnical engineer will evaluate and determine appropriate methods for filling any sinkholes. Overall, the design and layout appears to be the minimum necessary accommodate the proposed use of the site.

- (b) Compatible on-site utilities (electric, phone, cable) are placed in a common trench; and,

STAFF: The final location of all utilities will be determined prior to the recording of the record subdivision plat. The preliminary location drainage features has received approval from the Metropolitan sewer District.

- (c) The Planning Commission may approve the activity if the geotechnical report opines and demonstrates that:

a. The slope's ground surface and subsurface are not unstable;
b. Development of the slope and associated mitigation measures will not increase the degree of risk of slope instability both on- site and on adjacent lands; and,
c. If a geotechnical report is required, the applicant provides a plan, acceptable to the Commission, that specifies how the mitigation measures and construction practices, including construction supervision, necessary to assure the stability of buildings and foundations to be constructed on the site as recommended in the geotechnical report will be implemented.

STAFF: In general, the provided geotechnical report opines that the on-site slopes in the observed areas were stable at the time of observation. It provides that disturbance of slopes should not exceed the limits of evaluation in the report. Construction measures to maintain stability have been provided and should be incorporated into the construction of all new homes and the life of those homes.

(d) The activity is in keeping with the Comprehensive Plan.

STAFF: The Comprehensive Plan calls for the integration of natural features into the pattern of development. It also provides that proposals should respect the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems. In general, preliminary soil and slope evaluation demonstrates that the proposal is in conformance with the Comprehensive Plan as construction methods have been provided to minimize property damage and environmental degradation related to disturbance of steep slopes. While some buildable lots are being placed in areas of concern, the majority of home construction will occur outside the areas of steeper slopes. The applicant has shown limits of disturbance and proposed building envelopes to minimize disturbance of sensitive areas.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Variance**
- **APPROVE** or **DENY** the **Major Preliminary Subdivision Plan (Development Potential Transfer)** with review of land disturbing activity on slopes greater than 20%

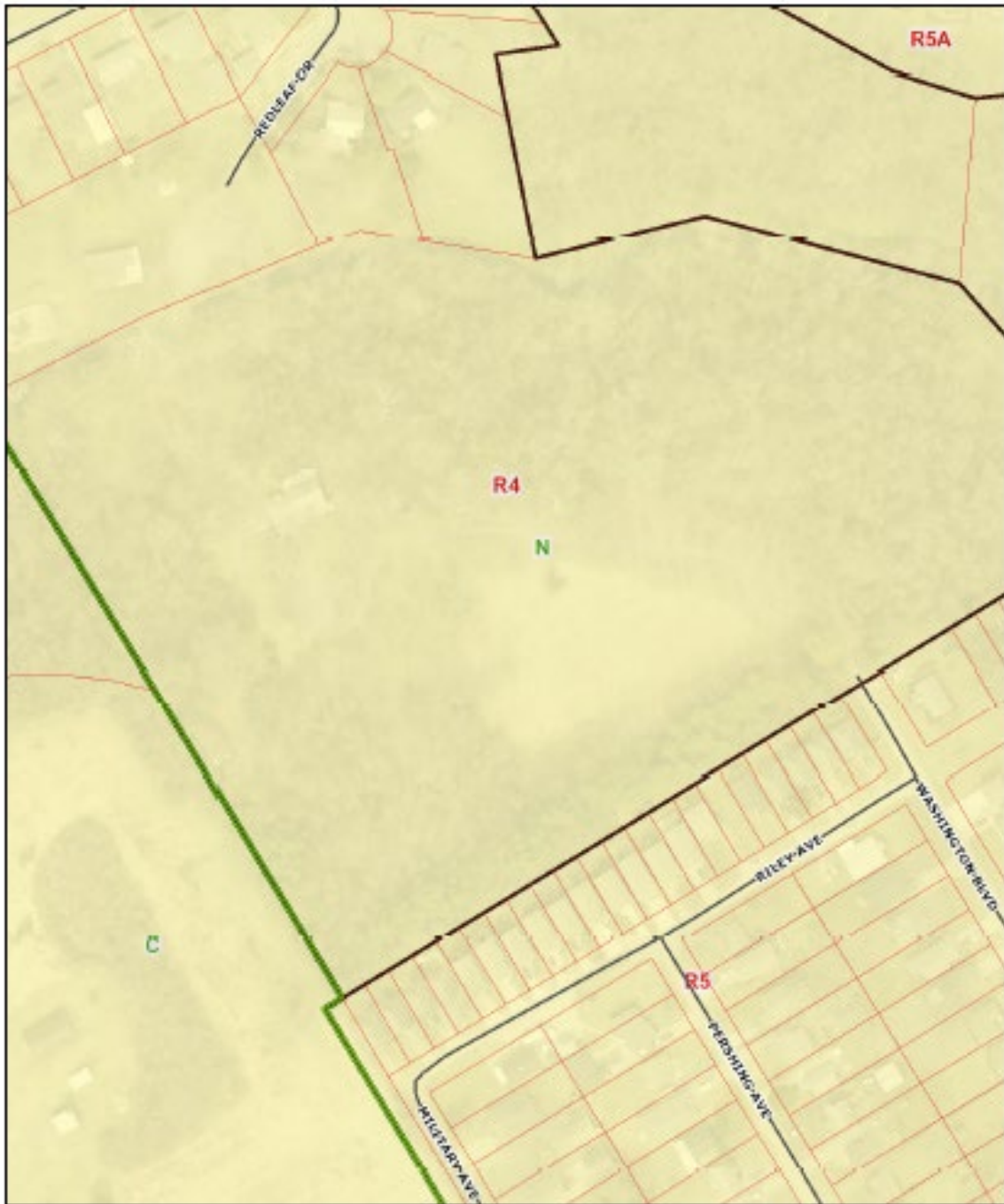
NOTIFICATION

Date	Purpose of Notice	Recipients
10-8-20	Hearing before Planning Commission	1 st tier adjoining property owners Attendants of Neighborhood Meeting Registered Neighborhood Groups in Council District 7

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Proposed Conditions of Approval

1. Zoning Map



20-MSUB-0005

Friday, October 16, 2020 | 11:15:10 AM



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This map is not a legal document and should only be used for general reference and identification.

2. Aerial Photograph



20-MSUB-0005

Friday, October 16, 2020 | 11:14:20 AM



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This map is not a legal document and should only be used for general reference and identification.

3. Proposed Conditions of Approval

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
3. Open space shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
4. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
5. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvicide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
6. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
7. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
8. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs and other issues required by these binding elements / conditions of approval.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.

9. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.