



# HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Courthouse Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

Valdis Lazdins, Director

FAX 410-313-3467

April 26, 2016

Kings Arms 6 LLC  
P.O. Box 417  
Ellicott City, MD 21041  
Attn: James R. Moxley III

RE: Kings Arms Section 6, Lots 1-5 & OS Lot 6  
WP-16-120 (ECP-16-021 & S-16-003)

Dear Mr. Moxley:

The Director of the Department of Planning and Zoning considered your request for a waiver from the Howard County Subdivision and Land Development Regulations.

As of the date of this letter, the Planning Director **approved** your request to waive **Section 16.144.(g)** which requires a Preliminary Plan submission and to **Section 16.1205.(a).(7)** which requires retention of trees with a 30" diameter or greater / specimen trees. Approval is subject to the following conditions:

1. The final plan must be submitted for all of the development approved on the sketch plan within 4 months from the date of the sketch plan approval as was noted in DPZ Letter dated March 1, 2016 (**on or before July 1, 2016**). If the final plan is not received by that established milestone date, your plan approval will become null and void and your project will lose its tentative housing unit allocations in accordance with Section 16.144.(g) and/or (k) of the Howard County Subdivision and Land Development Regulations. If you miss the established milestone date, any plans resubmitted must be processed as a new sketch plan or preliminary equivalent sketch plan. You will be required to comply with all plan submission requirements and regulations in effect at the time of re-submission.
2. With the submission of the final subdivision plan, the landscape plan should be designed to include two(2) additional shade trees (or their equivalent) to mitigate the removal of the specimen tree. These replacement trees are to be in addition to the required perimeter landscape plantings. These trees should be strategically located within the open space lot frontage of Whiskey Bottom Road to provide additional screening and should not be located within the residential lots. Compliance with this requirement will be reviewed under the final landscape plan.
3. The final plan submission shall be in compliance with the attached advisory comment from the Development Engineering Division, dated April 6, 2016, and with the attached DLD comments #4, 6 & 7 dated January 29, 2016.

Justification for our conditional approval to waive Section 16.144.(g) was made based on the following:

- Summary of the extraordinary hardship or practical difficulty resulting from strict compliance with the Regulations:

The developer chose to process the initial submission for the proposed development as a Sketch Plan rather than a Preliminary Equivalent Sketch(SP) to avoid the possibility of being placed in the allocation holding bin due to the long review process that the SP takes. The proposed development is five(5) lots total. Three(3) of the lots have access off a common driveway and the other two(2) lots access from a public access street with individual driveways.

- The intent of the Regulations will be served to a greater extent through the implementation of the alternative proposal:

The simplicity of this project's use of a common private driveway, the fact that there is no on-site public infrastructure for roads or storm drainage and the fact that a Sketch Plan and ECP plan have been recently approved, all provide substantial justification to waive the Preliminary Plan process allowing the developer to go directly to the Final Plan design stage.

- Approval of the waiver will not be detrimental to the public interests:

The public's interest will remain intact. The proposed subdivision will be required to go through the final stage plan review cycle with approval required prior to recordation of lots and construction. A community meeting was held to inform the public of the proposed lot layout. The requirement to provide a Preliminary Plan provides no added benefit to the public. Allowing this waiver will save the tax payer dollars by directing time/efforts of the DPZ staff towards more concerning development issues.

- Approval of the waiver will not nullify the intent of the Regulations:

Approval of this waiver will not nullify the intent of the Regulations which is to promote the health, safety and general welfare of the residents of the County by assisting in efficient and integrated development of land. The community meeting plan, ECP and Sketch Plan have all indicated the same number of lots and house orientation; and, the storm water concept has remained the same. Granting this waiver assists in efficient and integrated development of land for the benefit of the County and the surrounding community.

Justification for our conditional approval to waive Section 16.1205.(a).(7) was made based on the following:

- Summary of the extraordinary hardship or practical difficulty resulting from strict compliance with the Regulations:

There is one(1) specimen tree located on this property which will have to be removed for the development of this property. The specimen tree is a 38" Poplar with a split trunk and is in fair condition. The tree is located in the rear yard of Lot 2 within 10' of the proposed house location. Due to the small 6,000 square foot lot sizes, the buildable envelope size is limited. Flexibility with the lot layout design is compromised by the fact that this property has frontage on two roads. The location / orientation of the proposed house on Lot 2 cannot avoid disturbance to the 38-foot critical root zone of this specimen tree. Because the quality of the tree is fair and the fact that the tree is split trunk, leaving the tree would pose an eventual safety threat to the nearby houses. The retention of the specimen tree and protection of its critical root zone would create an unreasonable hardship for the applicant by reducing the development potential for this site by losing a lot. The function/value of specimen trees varies based on their location in the landscape. When standing outside a forest, a specimen tree provides primarily an aesthetic value. Specimens, in general, are prized for their size and spread and overall visual appeal. Standing alone in the landscape, a specimen tree does not provide substantial or unique habitat function. This specimen tree is not located within a forest, thus limiting its overall potential to provide habitat opportunities. Specimen Poplars are subject to storm damage and limb failure and the long term viability of this tree as a visual specimen is likely limited.

- The intent of the Regulations will be served to a greater extent through the implementation of the alternative proposal:

The intent of the Regulation is to protect priority forest while allowing reasonable development of a property. Based on the field analysis for the Simplified Forest Stand Delineation Report which was conducted in September 2015, by Benchmark Engineering, Inc., there are no forest communities and only one(1) specimen tree on this site. The specimen tree is not located within a forest stand. Given its location on the site and its 38-foot critical root zone diameter, reasonable development of this property is not possible while retaining this specimen tree. Under the final subdivision landscape design, the developer will be required to include two(2) additional shade trees (or their equivalent) to mitigate the removal of the specimen tree. These replacement trees are to be in addition to the required perimeter landscape plantings.

These trees should be strategically located within the open space lot frontage of Whiskey Bottom Road to provide additional screening and should not be located within the residential lots. Compliance with this requirement will be reviewed under the final landscape plan.

- Approval of the waiver will not be detrimental to the public interests:

Approval of this waiver request will not be detrimental to the public interest. The tree provides only an aesthetic value to the community. If retained, this tree would be very close to the proposed house on Lot 2 and would have an impacted critical root zone. Requiring the tree to be retained would be creating the potential for an unsafe environment for the surrounding community in the case if the tree was to ever split and fall down on top of the proposed or existing houses. Two(2) additional shade trees (or their equivalent) will be required to mitigate the removal of the specimen tree. These additional trees shall be strategically located within the open space lot frontage of Whiskey Bottom Road to provide additional screening which will provide a benefit the community.

- Approval of the waiver will not nullify the intent of the Regulations:

The Regulations, through the waiver process, allows the County to approve the removal of a specimen tree on a case by case basis. The intent of the Regulations is that specimen trees should be retained unless their retention is not practical within the context of the reasonable development of the site. The retention of this specimen tree would not be practical based on the limitations of this site and its location. Approval of this waiver will not nullify the intent of the Regulations.

Indicate this waiver petition file number, request, section of the regulations, action, conditions of approval, and date on all related plats, and site development plans, and building permits. This requested waiver will remain valid until July 1, 2016 or as long as this subdivision plan remains in active processing.

If you have any questions, please contact Ms. Pat Britt-Fendlay at 410-313-2350 or via e-mail at [pfendlay@howardcountymd.gov](mailto:pfendlay@howardcountymd.gov).

Sincerely,

  
Kent Sheubrooks, Chief  
Division of Land Development

KS/JMF/MPB/  
Attachment: DED & DLD Comments

cc: Research  
Philip M. Thompson, Development Engineering Division  
Real Estate Services Division, DPW  
Marian Honeczy – MD DNR  
Benchmark Engineering, Inc.