

**Town of Cary, North Carolina
Subdivision Plan Staff Report
Sherwood at Regency (14-SB-008)
Town Council Quasi-Judicial Hearing
October 2, 2014**

REQUEST

Bass, Nixon & Kennedy, Inc. is requesting approval of a subdivision plan for 20 lots on approximately 18.5 acres located on Penny Road at the intersection with Killingsworth Drive. The applicant is requesting modifications to the Town's development standards, including a reduction in the amount of right-of-way dedication and infrastructure improvements along Penny Road; a reduction in the connectivity index; and the removal/replacement of two champion trees.

SUBJECT PARCELS

Property Owner	Wake County Parcel Identification Number (PIN) (10-digit)	Real Estate ID Number	Deeded Acreage
Hugh D. Ogburn 11112 Penny Road Cary, NC 27518	0751749979	0197664	3.63
	0751843939	0051890	10.00
	0751847938	0051891	4.75
Hugh D. and Merrill G. Ogburn 11112 Penny Road Cary, NC 27518	0751857286	0206368	0.07
	0751848731	0197663	0.04
Total Area			18.49

BACKGROUND INFORMATION

Applicant's Agent	David Dunn, Project Engineer Bass, Nixon & Kennedy, Inc. 6310 Chapel Hill Road Suite 250 Raleigh, NC 27607 (919) 851-4422 david.dunn@bnkinc.com
General Location	Northeastern quadrant of the Penny Road and Killingsworth Drive intersection
Land Use Plan Designation	Low-Density Residential (LDR)
Zoning Districts	Residential 20 – Conditional Use (R-20-CU) in the Watershed Protection Overlay District (Swift Creek)
Within Town Limits	Yes – Annexation 14-A-07 approved June 26, 2014
Staff Contact	Kevin A. Hales, Senior Planner Town of Cary Planning Department P.O. Box 8005 Cary, NC 27512-8005 (919) 462-3944 kevin.hales@townofcary.org

LIST OF EXHIBITS

The following documents incorporated into this staff report are to be entered into the record for this hearing:

- [Exhibit A](#): Plan Review Application (6 pages)
- [Exhibit B](#): Applicant's Statement of Compliance (3 pages)
- [Exhibit C](#): Subdivision Plan (24 pages)
- [Exhibit D](#): Champion Tree Report (11 pages)

PROJECT DESCRIPTION/SUMMARY OF REQUEST

K. Hovnanian Homes of North Carolina, through their agent, Bass, Nixon & Kennedy, Inc., is requesting approval of a 20-lot subdivision plan located on Penny Road at the intersection with Killingsworth Drive. The proposed development is bounded on three sides (east, north, and west) by the Wyndfall subdivision. Four of the proposed lots will front Royal Glen Drive and five lots will be added to the existing Moreland Court, both of which are part of the Wyndfall subdivision. The remaining 11 lots will be served by a new cul-de-sac off of Royal Glen Drive. Stormwater from the development will be attenuated and treated in two bio-retention areas, one located on the northern side and the other on the southern side of the development.

The subdivision plan includes the required 50-foot, Type A (Opaque) streetscape along Penny Road. No other perimeter buffers are required, because both the proposed and the existing subdivisions consist of residential lots larger than 8,000 square feet. In such cases, the perimeter plantings are permitted to be located in easements on the lots.

The subdivision plan proposes modifications to the Town's connectivity requirements. A stream buffer bisects the property, separating the eastern portion of the site, which abuts Moreland Court, from the larger portion, which abuts Royal Glen Drive. The proposed plan does not include either a vehicular or a pedestrian connection between the two halves of the property.

The Comprehensive Transportation Plan (CTP) identifies Penny Road as a 78-foot street cross-section within a 100-foot right-of-way. The Wyndfall subdivision widened Penny Road to a 60-foot cross-section within approximately 80 feet of right-of-way, pursuant to an earlier version of the CTP. The applicant requests to widen approximately 1,000 feet of Penny Road along the property frontage to match the improvements in place to the east and west of the proposed subdivision rather than meet current CTP requirements.

The Parks, Recreation, and Cultural Resources (PRCR) Facilities Master Plan proposes a 10-foot street-side trail along the northern side of Penny Road. This street-side trail was not required when the surrounding subdivision was developed. The applicant is requesting that Town Council approve the construction of a 5-foot sidewalk along the property frontage in-lieu of the 10-foot street-side trail (formerly known as a "multi-use-trail") called for in the PRCR Facilities Master Plan.

The applicant is also proposing to remove and replace champion trees in the development. The tree survey and a subsequent report provided by an ISA Certified Arborist identify seven champion trees on the property. The subdivision plan includes the removal of two champion trees for development.

This is a subdivision plan; therefore, the architectural design of the homes is not included for consideration. The design of the homes will be required to comply with the Section 8.6.2 (Garagescapes) and 8.6.3 (Slab-on-Grade Construction) at the time of building permit issuance.

MODIFICATIONS TO LAND DEVELOPMENT ORDINANCE (LDO) REQUIREMENTS

Vehicular and Pedestrian Connectivity

Section 7.10 of the LDO supports the creation of a highly-connected transportation system within the Town in order to provide choices for drivers, bicyclists, transit passengers, and pedestrians. Doing so reduces vehicle miles traveled, improves air quality, reduces emergency response times, and increases the efficiency of municipal service delivery. These goals are implemented through the Town's standards for connectivity and circulation between sites, both in vehicular and pedestrian terms.

The proposed development is bounded on the north, east, and west by streets in the Wyndfall subdivision. In addition, a 100-foot stream buffer divides the eastern third of the property from the larger portion west of the stream buffer. Moreland Court, which defines the eastern boundary of the project, provides vehicular access to the eastern portion of the property. The western portion of the property would be accessed via Royal Glen Drive and a new cul-de-sac proposed with the subdivision plan. The applicant does not propose to provide either a vehicular or a pedestrian connection across the stream buffer.

Connectivity in residential development is evaluated using a connectivity index, or the ratio between street links (lengths of street) to street nodes (intersections or cul-de-sacs). Section 7.10.3(A) of the LDO requires a connectivity index of 1.2 or greater. The proposed subdivision plan contains one link and two nodes, resulting in a connectivity index of 0.5, which does not satisfy the Town's requirement. The existing street network, which the developer intends to use to serve portions of the property, makes the provision of vehicular connections to satisfy the required connectivity index impractical.

Pedestrian connectivity within and between developments is also a goal of the Town's connectivity requirements. This pedestrian connectivity is especially important when modifications are proposed to the vehicular connectivity within a development. Section 7.10.3(A) of the LDO requires that a 6-foot pedestrian trail be provided to link any cul-de-sacs within residential developments in which the connectivity index has been modified. The applicant does not propose to provide any additional connectivity between the proposed cul-de-sac and the existing road network. A pedestrian connection between the proposed cul-de-sac and Greyfriars Lane would provide convenient access to the future street-side trail that is planned along Ederlee Drive, leading north into Regency Park and to the larger greenway network in the Town. Such a connection would save more than one-third of a mile of walking distance to access Ederlee Drive.

The applicant indicates that the provision of a pedestrian connection is not feasible given the existing topography and the presence of the stream buffer on the site. The bulb of the proposed cul-de-sac is approximately 23 feet higher than the stream and Greyfriars Lane is approximately 15 feet above the stream on the opposite side. This grade differential does present challenges in providing an accessible pedestrian connection between the cul-de-sac and Greyfriars Lane. However, Section 7.10.1 specifically exempts any additional pedestrian connections required under Section 7.10 from having to address handicap accessibility. While an accessible route would be preferable, the provision of a non-accessible route across the stream buffer would be consistent with the Town's requirements under Section 7.10.3(A). There is a proposed sanitary sewer easement connecting the proposed cul-de-sac to Greyfriars Lane, which will be cleared of vegetation to install and maintain the proposed sewer line. This easement may provide an opportunity to minimize the environmental impacts of providing a pedestrian connection to Greyfriars Lane. The stream crossing itself will be required to be outside of the easement; however, any non-structural segments of the pedestrian connection could be located within the sewer easement.

In summary, council may find that, given the constraints of the surrounding development pattern, there is no reasonable way to improve the vehicular connectivity on the site to achieve the connectivity index required by the LDO. However, council may also find that the LDO requires an additional pedestrian connection to Greyfriars Lane, even if said connection is not handicap accessible. There is precedent for non-accessible pedestrian connections from recent subdivision approvals, such as Wedgewood Subdivision on Evans Road, where stairs were provided to address 18 feet of grade change between the cul-de-sac and Evans Road.

Improvements to Penny Road

Section 8.1.3(A) of the LDO requires that developments dedicate rights-of-way and easements necessary to achieve the width required by the Town's CTP, PRCR Facilities Master Plan, and public utility plans. It further requires the developer to install curb and gutter, sidewalk, and pavement on all streets adjoining the property to comply with the cross-sections required by the CTP.

Penny Road, along the property frontage, is a variable-width, three-lane cross-section. The CTP identifies Penny Road as a 4-lane thoroughfare with an 18-foot landscape median. The LDO requires the proposed development to widen Penny Road to a 78-foot street cross-section within a 100-foot right-of-way. Wyndfall subdivision, located to both the east and the west of the proposed subdivision, widened to comply with an earlier version of the CTP, providing a 60-foot street cross-section. The right-of-way provided by Wyndfall varies from 79 feet on the western side to 84 feet on the eastern side.

The applicant requests that the proposed subdivision dedicates right-of-way to match the 79-foot right-of-way provided by Wyndfall at Killingsworth Drive. In addition, the plan proposes to widen Penny Road to match the 60-foot street cross-section provided at both ends of the property. The applicant's team indicates that this modification is intended to provide harmony with the adjacent subdivision.

We note that the 79-foot right-of-way proposed in the subdivision plan is of insufficient width to include either the required street-side trail or the sidewalk proposed by the applicant in-lieu of the street-side trail along the northern side of Penny Road, though the applicant is proposing an access and maintenance easement to account for the deficiency. The additional right-of-way provided outside of the road cross-section, which the applicant is not proposing to provide, is customarily used to house non-governmental utilities such as power, cable, telephone, fiber optic, and gas. This area is also often necessary for the long-term maintenance of the storm drain system associated with the roadway.

The provision of a median along this 1,000-foot length of Penny Road is expected to serve limited transportation purposes. However, the inclusion of landscape medians in the CTP was, at least in part, driven by aesthetic considerations along larger road corridors. With the majority of Penny Road between Ten Ten Road and Kildaire Farm Road already developed, the future installation of landscape medians along the corridor would be anticipated to be a Town capital project and not developer-driven as might be the case elsewhere in the Town. However, the applicant's request to provide less than the required right-of-way exposes the Town to additional right-of-way acquisition costs on top of other construction costs should the Town decide to move forward with the installation of landscape medians along this corridor in the future.

In addition to the CTP requirements, the PRCR Facilities Master Plan indicates a proposed street-side trail along the northern side of Penny Road west of the intersection with Ederlee Drive. The developer, pursuant to Section 7.10.4(C) of the LDO, is required to construct the 10-foot street-side trail in-lieu of the sidewalk that would otherwise be required along Penny Road. A public greenway easement is also required, per the LDO, for portions of the street-side trail that are located outside of the right-of-way. As with the CTP modifications, the applicant indicates the desire to match the existing conditions to the east and west of the proposed development. The subdivision plan proposes to construct a standard 5-foot sidewalk along Penny Road in-lieu of the required 10-foot street-side trail. It also proposes that no greenway easement be provided along the property's frontage.

Street-side trails are intended to provide supporting linkages to the Town's off-road greenway system and are intended to support pedestrians, as well as cyclists and other users. The street-side trail along Penny Road would provide convenient access to Penny Road Elementary (a proposed site for shared recreational facilities per the PRCR Facilities Master Plan), which is located approximately one-third of a mile east of the subject property. The street-side trail would also tie into the Ederlee Drive street-side trail, opening up the Regency Park area and its greenways to the wider community. The Penny Road street-side trail will further connect to Camp Branch Greenway, Dutchman's Branch Greenway, and the larger greenway system to the east. In the 1990s, development to the east and west of the proposed subdivision provided a 5-foot sidewalk along Penny Road, so the 10-foot, meandering street-side trail would not be consistent with the existing conditions to either side until the street-side trail is continued. However, the applicant's request does expose the Town to additional easement acquisition costs on top of construction costs should the Town move forward with construction of a street-side trail along this corridor in the future. The use of pedestrian facilities by young cyclists is not uncommon, especially in proximity to schools. Wake County guidelines for bus eligibility (<http://www.wcpss.net/parents/transportation/guidelines.html>) state that children located within 1.5 miles of the school are not eligible for bus service under normal circumstances. The additional width provided by the street-side trail would mitigate some anticipated conflicts between pedestrians and cyclists along this corridor.

In summary, council may find that sufficient right-of-way dedication is required to encompass the 5-foot utility strip, 5-foot sidewalk, and 1-foot shoulder behind the sidewalk. This area is used by many non-governmental utilities (e.g., gas, electric, fiber optic, telephone, etc.), the installation of which would represent an encroachment into the required streetscape without sufficient area being provided in the right-of-way. Additionally, the 11 feet of right-of-way outside of the curb allows sufficient width to maintain the storm drain system along the roadway.

Council may further find that the developer is required to install the 10-foot street-side trail per the PRCR Facilities Master Plan and dedicate a public greenway easement for the portions of the street-side trail that are located outside of the right-of-way. The construction of the envisioned street-side trail will facilitate multi-modal users in close proximity to a school and the larger greenway network, and will serve as a key link in the future completion of the street-side trail along this corridor.

Removal and Replacement of Champion Trees

The LDO, in Section 7.2.5, promotes the protection of existing vegetation during development to enhance the visual character of the community, preserve wildlife habitat, control surface water run-off, and moderate temperatures. Section 7.2.5(C) specifically protects large, healthy trees on developing sites, known as “champion trees.”

The tree survey identified 10 potential champion trees (larger than 32 inches in diameter) on the property. The applicant had an arborist evaluate six of these trees (the other four were intended to be retained on site) and the attached arborist report indicates that three of them exhibit signs of decay and/or disease with signs of advanced decline in vigor, resulting in their disqualification as champion trees. The applicant requests to remove two of the remaining seven champion trees from the site. These trees, discussed individually in detail below, are numbered 2 and 9 in the arborist’s report and on the site plan.

Tree number 2 is a 32-inch white oak that forks above breast height (four and a half feet). The tree is in good health, with no signs of disease or decay present at the time of the inspection. Minor damage to branches in the canopy could be mitigated through corrective pruning. The tree is located in the northern portion of the site, at the end of the proposed cul-de-sac. The tree is categorized as a Tier 1(iii) priority for preservation as a small champion tree located adjacent to the local street internal to the subdivision.

The northern end of the site naturally falls toward the point where the stream buffer crosses the northern property line, making it a topographically ideal location for the proposed stormwater device. The cul-de-sac and stormwater pond are located approximately six feet lower than the existing grade. The tree is proposed for removal under Section 7.2.5(D)(1)(a) of the LDO, allowing removal of champion trees that are adversely impacted by “required stormwater treatment devices located in geographically and topographically appropriate areas.” Preservation of this tree would be impractical without forcing the applicant to design a stormwater device attempting to “buck” the natural fall of the site’s topography.

Tree 9 is a 38-inch white oak in good health with no signs of disease or decay present at the time of inspection. It also has minor damage to branches in the canopy that could be mitigated with corrective pruning. This tree is located at the southern end of the site adjacent to Penny Road. The tree’s critical root zone (CRZ) extends into the existing pavement section (the area under existing pavement is not considered actual CRZ for purposes of measuring impacts to the tree). This tree is categorized as a Tier 1(iii) priority for preservation as a small champion tree adjacent to a thoroughfare or collector.

The widening of Penny Road, as required by the LDO, will require the removal of this tree. The applicant’s requested widening, which is less than the CTP width requirement, locates the proposed curb immediately adjacent to the trunk of this tree. The proximity of the curb to the tree, coupled with the additional grading necessary to tie the road improvements into the existing grade, makes preservation of this tree impractical without entirely waiving improvements to Penny Road adjacent to this tree. This tree is proposed for removal pursuant to Section 7.2.5(D)(1)(a) of the LDO, allowing the removal of champion trees that are adversely impacted by required public infrastructure improvements.

In summary, council may find that neither tree 2 nor tree 9 are viable candidates for retention on the site given their location and the proximity of required improvements to the trees.

SUMMARY OF PROCESS AND ACTIONS TO DATE

Pre-application Meeting

The applicant attended a pre-application meeting for the site plan on February 12, 2014.

Plan Submittal and Review

The site plan was submitted for its initial review on March 30, 2013, and has been reviewed by the Development Review Committee (DRC) through four review cycles.

Notification and Property Posting

The Planning Department provided notification of the public hearing and posted the property in accordance with local and state regulations.

**SITE PLAN WORKSHEET
AND
SUGGESTED MOTIONS**

A subdivision and/or site plan may be approved by the Town Council only if it satisfies the six approval criteria listed in Section 3.9.2(l) of the LDO. As part of determining whether the first criterion is satisfied, council must determine whether to grant the requested modification(s) to the Town's development standards. A roadmap of the decisions council must make is provided below:

WORKSHEET 1

- 1. Does the plan comply with all applicable requirements of the LDO, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as all applicable Town specifications?**

As indicated in the staff report, the applicant has requested that council grant several modifications to the Town's development standards. These are detailed further in the attached Worksheet 1.

Once the council has made a decision on the modification requests, it may then turn to the remaining site plan approval criteria.

WORKSHEET 2

- 2. Does the plan adequately protect other property, or residential uses located on the same property, from the potential adverse effects of the proposed development?**
- 3. Does the plan provide harmony and unity with the development of nearby properties?**
- 4. Does the plan provide safe conditions for pedestrians or motorists and prevent a dangerous arrangement of pedestrian and vehicular ways?**
- 5. Does the plan provide safe ingress and egress for emergency services to the site?**
- 6. Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?**

1. Does the plan comply with all applicable requirements of the LDO, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as all applicable Town specifications?

Applicant’s Statement: The improvements contemplated as part of the proposed subdivision plan consist of 20 single-family homes on 17.88 acres of land, which results in a development density of 1.19 dwellings per acre. The site is bounded on the south by Penny Road, to the west by Killingsworth Drive and Royal Glen Drive, to the north by Greyfriars Lane, and to the east by Moreland Court. All of the adjacent properties along the north side of Penny Road are built-out single-family communities, and this proposed subdivision is consistent with the styles, density and overall layout of those subdivisions. The property is zoned R-20 Conditional Use, which requires minimum 20,000 square-foot lots. Internal streets will consist of public streets, including cul-de-sacs consistent with the adjacent built environment. The streets have been located so as to minimize impacts to the environmentally sensitive features on the site, including the creeks that essentially bisect the property. Consistent with the adjacent low density residential communities, sidewalks are provided on one side of the roads within the community. And, at the request of the staff, a sidewalk connection to Penny Road is being provided from Moreland Court. Finally, the plan has been designed to preserve the existing single-family home on the site, which was built in 1960. As indicated on the proposed plan and other materials submitted, with the aforementioned minor modifications, the improvements have been designed in compliance with the requirements of the Town’s Land Development Ordinance, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8.

Staff Observations: The Development Review Committee has reviewed the proposed sketch plan for compliance with the LDO and all other applicable regulations through four review cycles. There are 26 remaining review comments.

TEST SATISFIED? __ YES __ NO

1. The applicant requests that the connectivity index required for the proposed development be reduced from 1.2 to 0.5.

Town Council should consider this modification request pursuant to Sections 3.19 and 7.10.3(A) of the LDO.

Section 3.19.1(C)(2) of the LDO reads as follows:

“The Town Council may initiate or approve a minor modification allowed under this section at any time before it takes action on a development application. The Town Council may approve the minor modification only if it finds, after conducting a quasi-judicial hearing, that the modification advances the goals and purposes of this Ordinance and either results in less visual impact or more effective environmental or open space preservation, or relieves practical difficulties in developing a site. In determining if "practical difficulty" exists, the factors set forth in Section 3.20.5, "Approval Criteria" (for Variances) shall be considered. In granting a minor modification allowed under this section, the Town Council may require conditions that will secure substantially the objectives of the standard that is modified and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or buffering.”

Section 7.10.3(A) of the LDO reads as follows:

“Any residential development shall be required to achieve a connectivity index of 1.2 or greater. In the event that this requirement is modified pursuant to Section 3.19.1, a six (6)-foot pedestrian trail shall be provided to link any cul-de-sacs within a residential development in which the required connectivity index has been modified. A connectivity index is a ratio of the number of street links (road sections between intersections and cul-de-sacs) divided by the number of street nodes (intersections and cul-de-sac heads). The following illustration provides an example of how

to calculate the index. Street links on existing adjacent streets that are not part of the proposed subdivision are not included in the connectivity index calculation.”

Applicant’s Statement: 7.10.3(A) of the Land Development Ordinance contains a mathematical formula that is designed, as the applicant understands it, to measure the strength of the interconnectivity of the site. These mathematical standards require a connectivity ‘rating’ of 1.33. The proposed low density single-family community has only a 1.00 rating. Given the existing built environment, which is completely built out, it is impossible for the applicant to meet this requirement without significantly impacting the streams on the property. Based upon the existing site constraints, including the low density zoning and environmental features, the applicant submits that the requested modification is the least deviation required to make compliance practicable and, therefore, the applicant submits that this minor modification is justified pursuant to the standards of Section 3.19.1 of the Land Development Ordinance.

Further, the connectivity requirements of the LDO require sidewalk connections from the development to Penny Road and Greyfriars Lane. The proposed plan, in fact, requires these connections. However, because there is not a vehicular connection between the internal street and Moreland Court, which would require crossing the streams within the site, the LDO requires that both sides of the plan provide such connections. Based upon the existing site constraints, including the low density zoning and environmental features, the applicant submits that the requested modification is the least deviation required to make compliance practicable and, therefore, the applicant submits that this minor modification is justified pursuant to the standards of Section 3.19.1 of the Land Development Ordinance.

Staff Observations:

- The proposed subdivision is bounded on three sides by an existing residential subdivision and on the fourth side by a thoroughfare. The proposed development proposes to develop lots directly on Killingsworth Drive and Moreland Court. There is limited frontage available along Greyfriars Lane and NCDOT would be unlikely to permit an additional driveway on Penny Road. Connecting the proposed cul-de-sac directly to Moreland Court would improve the connectivity index to 1.0 (one link and one node), which is still not compliant with the LDO requirement of 1.2.
- Elimination of vehicular connectivity between the proposed cul-de-sac and Moreland Court would likely result in the preservation of additional vegetation on the lots and in the stream buffer.
- Section 7.10.3(A) requires that a 6-foot pedestrian trail be provided to link cul-de-sacs within a residential development in which the required connectivity index has been modified.
- There is approximately 23 feet of grade change between the proposed cul-de-sac and the stream, with approximately 15 feet of grade change between Moreland Court and the stream. The LDO (Section 7.10.1) indicates that additional pedestrian connections required in conjunction with 7.10 do not have to meet handicap accessibility standards.
- A pedestrian connection from the new cul-de-sac to Greyfriars Lane would satisfy the requirement of LDO Section 7.10.3(A) to provide a pedestrian trail, would put pedestrians closer to potential destinations than a connection directly to Moreland Court, and thus would offer greater pedestrian access and circulation.
- A sanitary sewer easement is proposed between the cul-de-sac and Greyfriars Lane and any non-structural portions of the pedestrian connection could be located coincidentally with that easement. Locating the pedestrian connection within the sanitary sewer easement provides opportunity to limit the amount of additional clearing that might otherwise be required.

2. The applicant requests that the town accept a 79-foot right-of-way for Penny Road in-lieu of the 100 feet of right-of-way identified in the Comprehensive Transportation Plan.

Town Council should consider this modification request pursuant to Section 8.1.4(A)(10) of the LDO.

Section 8.1.4(A)(10) of the LDO reads as follows:

“Land needed for right-of-way as depicted on the Comprehensive Transportation Plan shall be dedicated at the time of final plat for approval, unless such dedication is waived by the Town Council as part of approving the site plan in a quasi-judicial hearing or the subdivision/site plan is classified as an "exempt" subdivision/site plan. The amount of land to be dedicated shall be based upon the requirements listed in the Comprehensive Transportation Plan.”

Applicant’s Statement: The proposed plan includes modifications from the Comprehensive Transportation Plan Improvements recommended for Penny Road. The CTP Plan calls for Penny Road to be improved as a 4-lane, median-divided highway. However, as can be seen in the plan materials, the areas within approximately a mile of the site on the north side of Penny Road have been built out, and have not been improved to this street section. The proposed plan seeks to improve Penny Road consistent with the adjacent built environment, providing seamless roadway and sidewalk connections. Further, the proposed modification eliminates a conflict with the existing signage located on Killingsworth Drive. There is an existing monument sign on the east side of Killingsworth Drive, along with associated landscaping. The CTP improvements otherwise required for the site, including a meandering street-side trail that exists nowhere else on this stretch of road, would result in this monument sign and landscaping being destroyed and relocated. Because the proposed plan is consistent with all of the properties within the vicinity of the site, the applicant submits that a minor modification from the CTP Plan is warranted under the circumstances.

Staff Observations:

- The CTP identifies Penny Road as a 4-lane, median-divided roadway, requiring a 78-foot cross-section. A 79-foot right-of-way would not be sufficient to contain the ultimate design of the road inclusive of pedestrian facilities and adequate shoulder.
- Rights-of-way are generally wider than the actual pavement section to allow room for pedestrian facilities, non-governmental utilities, and to allow sufficient room outside of the pavement section to make repairs to the road and associated storm drainage systems.
- The 79-foot right-of-way proposed by the applicant is not sufficient to contain the 5-foot sidewalk proposed by the applicant. The developer is proposing an access and maintenance easement to account for the deficiency.
- The 79-foot right-of-way is consistent with the right-of-way dedicated by the adjacent development to the west. The right-of-way dedicated to the east of this site is five feet wider, at 84 feet.
- Provision of additional right-of-way would result in the loss of additional developable area on the site, shifting the streetscape and everything beyond it approximately 11 feet north into the site.
- The Town of Cary would be required to purchase additional right-of-way from the homeowners association of the development should they desire to widen the road to include a median in the future. Such widening would also reduce the width of the required streetscape for the development.

3. The applicant requests to widen Penny Road to match the existing 60-foot cross-section to the east and west instead of the 78-foot cross-section required in the CTP.

Town Council should consider this modification request pursuant to Sections 3.19.1(C)(2) and 8.1.4(A)(4) of the LDO.

Section 3.19.1(C)(2) of the LDO reads as follows:

“The Town Council may initiate or approve a minor modification allowed under this section at any time before it takes action on a development application. The Town Council may approve the minor modification only if it finds, after conducting a quasi-judicial hearing, that the modification advances the goals and purposes of this Ordinance and either results in less visual impact or more effective environmental or open space preservation, or relieves practical difficulties in developing a site. In determining if “practical difficulty” exists, the factors set forth in Section 3.20.5, “Approval Criteria” (for Variances) shall be considered. In granting a minor modification allowed under this section, the Town Council may require conditions that will secure substantially the objectives of the standard that is modified and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or buffering.”

Section 8.1.4(A)(4) of the LDO reads as follows:

“The pavement width of each street shall meet the minimum width stated in the Town's Standard Specifications and Details Manual.”

Applicant’s Statement: The proposed plan includes modifications from the Comprehensive Transportation Plan Improvements recommended for Penny Road. The CTP Plan calls for Penny Road to be improved as a 4-lane, median-divided highway. However, as can be seen in the plan materials, the areas within approximately a mile of the site on the north side of Penny Road have been built out, and have not been improved to this street section. The proposed plan seeks to improve Penny Road consistent with the adjacent built environment, providing seamless roadway and sidewalk connections. Further, the proposed modification eliminates a conflict with the existing signage located on Killingsworth Drive. There is an existing monument sign on the east side of Killingsworth Drive, along with associated landscaping. The CTP improvements otherwise required for the site, including a meandering street-side trail that exists nowhere else on this stretch of road, would result in this monument sign and landscaping being destroyed and relocated. Because the proposed plan is consistent with all of the properties within the vicinity of the site, the applicant submits that a minor modification from the CTP Plan is warranted under the circumstances.

Staff Observations:

- The CTP identifies Penny Road as a 4-lane, median-divided roadway, requiring a 78-foot cross-section. The proposed 60-foot cross-section would not contain a landscaped median.
- The 60-foot cross-section is consistent with the existing conditions located immediately to the east and west of the proposed development.
- The additional 18 feet of widening associated with providing a landscaped median would impact additional significant trees (18 inches and larger) along the northern side of the Penny Road corridor.
- The median, installed along just this property’s frontage, would provide little to no transportation purpose. It would, however, contribute to the aesthetic value of this road corridor along this property’s frontage.
- Modifications to the physical improvements along roadways are common in the Town. However, they are typically accompanied by a payment-in-lieu pursuant to Section 8.1.5 of the LDO. The applicant for this project is offering no such payment-in-lieu of construction. Therefore, if the Town were to install a median in the future, this development will not have contributed to the cost of that improvement.

4. The applicant requests to neither construct nor provide easement for the street-side trail indicated along Penny Road in the PRCR Facilities Master Plan.

Town Council should consider this modification request pursuant to Sections 3.19.1(C) and 7.10.4(C) of the LDO.

Section 3.19.1(C)(2) of the LDO reads as follows:

“The Town Council may initiate or approve a minor modification allowed under this section at any time before it takes action on a development application. The Town Council may approve the minor modification only if it finds, after conducting a quasi-judicial hearing, that the modification advances the goals and purposes of this Ordinance and either results in less visual impact or more effective environmental or open space preservation, or relieves practical difficulties in developing a site. In determining if "practical difficulty" exists, the factors set forth in Section 3.20.5, "Approval Criteria" (for Variances) shall be considered. In granting a minor modification allowed under this section, the Town Council may require conditions that will secure substantially the objectives of the standard that is modified and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or buffering.”

Section 7.10.4(C) of the LDO reads as follows:

“Multi-use trails are pedestrian trails located adjacent to roadways (on-road) and provide supporting linkage to the off-road greenway system.

- (1) Where the Parks, Recreation and Cultural Resources Facilities Master Plan calls for a multi-use trail, a multi-use trail shall be constructed in lieu of sidewalk required in the same location. No park land dedication or payment-in-lieu credit will be granted for multi-use trail construction or easements.*
- (2) All multi-use trails shall be designed and constructed according to Town of Cary standards and specifications as provided by the Parks, Recreation and Cultural Resources Department.*
- (3) A Town of Cary Greenway Easement, centered on the trail (easement width to be determined by Parks, Recreation and Cultural Resources staff), shall be recorded. Multi-use trail locations and the location of the required Town of Cary Greenway Easements relative to current road widths and rights-of-way, shall be determined by the Parks, Recreation and Cultural Resources staff.”*

Applicant’s Statement: The proposed plan includes modifications from the Comprehensive Transportation Plan Improvements recommended for Penny Road. The CTP Plan calls for Penny Road to be improved as a 4-lane, median-divided highway. However, as can be seen in the plan materials, the areas within approximately a mile of the site on the north side of Penny Road have been built out, and have not been improved to this street section. The proposed plan seeks to improve Penny Road consistent with the adjacent built environment, providing seamless roadway and sidewalk connections. Further, the proposed modification eliminates a conflict with the existing signage located on Killingsworth Drive. There is an existing monument sign on the east side of Killingsworth Drive, along with associated landscaping. The CTP improvements otherwise required for the site, including a meandering street-side trail that exists nowhere else on this stretch of road, would result in this monument sign and landscaping being destroyed and relocated. Because the proposed plan is consistent with all of the properties within the vicinity of the site, the applicant submits that a minor modification from the CTP Plan is warranted under the circumstances.

Staff Observations:

- The PRCR Facilities Master Plan identifies a 10-foot street-side trail along the northern side of Penny Road, west of Ederlee Drive.
- The proposed subdivision is located within approximately 1/3 of a mile of Penny Road Elementary School. This is inside the radius to which bus service is not typically provided.
- A larger percentage of elementary-age students are expected to cycle on the sidewalk in-lieu of cycling in vehicle lanes, especially on thoroughfares. This creates conflicts with pedestrians on a 5-foot-wide sidewalk. A 10-foot street-side trail would reduce the number and severity of these conflicts.

- Penny Road Elementary, in addition to student pedestrian and cycle traffic, is identified in the PRCR Facilities Master Plan as a location for shared recreational facilities with the Town. This would be expected to further increase pedestrian and bicycle traffic along the corridor
- The street-side trail would ultimately provide improved access to Camp Branch Greenway, Dutchman’s Branch Greenway, and the larger greenway system to the east.
- The Town would incur additional cost, over and above the construction cost of the street-side trail, to secure an easement from the Homeowner’s Association if the street-side trail is installed as a future Town project.

5. The applicant requests to remove two champion trees from the site:
<ul style="list-style-type: none"> a. Tree 2: 32-inch oak in vicinity of cul-de-sac and stormwater BMP b. Tree 9: 38-inch oak impacted by Penny Road widening

Town Council should consider these modification requests pursuant to Section 3.19.1(C) of the LDO.

Section 3.19.1(C)(2) of the LDO reads as follows:

“The Town Council may initiate or approve a minor modification allowed under this section at any time before it takes action on a development application. The Town Council may approve the minor modification only if it finds, after conducting a quasi-judicial hearing, that the modification advances the goals and purposes of this Ordinance and either results in less visual impact or more effective environmental or open space preservation, or relieves practical difficulties in developing a site. In determining if "practical difficulty" exists, the factors set forth in Section 3.20.5, "Approval Criteria" (for Variances) shall be considered. In granting a minor modification allowed under this section, the Town Council may require conditions that will secure substantially the objectives of the standard that is modified and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or buffering.”

Applicant’s Statement: (The applicant’s provided statement is not applicable in this case, as it addresses only the removal of tree 11, which is now being retained on the site.)

Staff Observations:

- Tree 2 is a 32-inch white oak in good health with no sign of significant disease or decay. It is categorized as a Tier 1(iii) priority for retention on the site.
- Tree 2 is located at the end of the proposed cul-de-sac and adjacent to a required stormwater BMP. The Stormwater BMP is located in a topographically appropriate location to capture and treat the maximum amount of stormwater from its drainage basin as practical.
- The stormwater device and proposed grading for the cul-de-sac result in a lowering of finished grade of approximately six feet where the tree is located. This grading would impact 100% of the tree’s CRZ.
- Tree 9 is a 38-inch white oak in good health with no sign of significant disease or decay. It is categorized as a Tier 1(iii) priority for retention on the site.
- Tree 9 is located adjacent to Penny Road. The applicant’s proposed widening, let alone the CTP required widening, places the back of the northern curb immediately adjacent to the trunk of the tree. Additional grading would be required beyond the trunk to tie the improvement grading into the existing grades. This will result in more than 25% of the tree’s CRZ being disturbed.

SUGGESTED MOTIONS FOR MODIFICATION REQUESTS

MOTION TO APPROVE ALL MODIFICATION REQUESTS

For the reasons discussed, I move that we **APPROVE** the modification requests made by the applicant, as the requests meet all of the approval criteria of the applicable sections of the LDO.

This approval is conditioned upon the following:

1. *[insert any additional conditions necessary to bring the project into compliance with the LDO or other standards]*

OR

MOTION TO APPROVE INDIVIDUAL MODIFICATION REQUESTS:

For the reasons discussed, I move that we APPROVE modification request(s) number(s) _____ made by the applicant as the request(s) meet all the approval criteria of the applicable sections of the LDO.

This approval is conditioned upon the following:

1. *[insert any conditions necessary to bring the project into compliance with the LDO or other standards]*

OR

MOTION TO DENY ALL MODIFICATION REQUESTS

For the reasons discussed, I move that we **DENY** the modification requests made by the applicant, as they do not meet all of the approval criteria of the applicable sections of the LDO.

2. Does the plan adequately protect other property, or residential uses located on the same property, from the potential adverse effects of the proposed development?

Applicant’s Statement: The proposed development is for an integrated single-family community. Further, this large lot single-family community contains the code required building setbacks, thus ensuring that the homes are located in such a manner as to minimize any potential adverse effect on the residential uses located adjacent to and on the same property. The community will include landscaping as required by the Land Development Ordinance. As a low density, single-family community in an area planned and/or built for other residential uses, the proposed use has no inherent qualities that would adversely impact adjacent properties. The developer submits that the proposed plan adequately protects other property and residential uses on the subject property from the potential adverse effects of the proposed development.

Staff Observations:

- The lot sizes are generally consistent with the lot sizes in the surrounding subdivision.
- The roadway setback and lot width in the proposed subdivision exceed those required by the base Residential 20 zoning district, which is the requirement for the surrounding subdivision.
- The developer proposes to front lots directly on the existing local streets, integrating the proposed lots into the existing subdivision.

TEST SATISFIED? __ YES __ NO

3. Does the plan provide harmony and unity with the development of nearby properties?

Applicant’s Statement: The subject property is surrounded by complimentary uses. As previously mentioned, all of the properties adjacent to the site on the north side of Penny Road are existing single-family communities, and this community will be completely harmonious with those communities. The site includes lot sizes, pedestrian connections and road connections entirely in keeping with the existing built environment. As a result, the proposed low density, single-family community will be in harmony with the development of nearby properties.

Staff Observations:

- The proposed residential subdivision is limited to detached dwelling, which is identical to the use in the surrounding developments.
- The lot sizes are generally consistent with the lot sizes in the surrounding subdivision.
- The roadway setback and lot width in the proposed subdivision exceed those required by the base Residential 20 zoning district, which is the requirement for the surrounding subdivision.
- The developer proposes to front lots directly on the existing local streets, integrating the proposed lots into the existing subdivision.

TEST SATISFIED? __ YES __ NO

4. Does the plan provide safe conditions for pedestrians or motorists and prevent a dangerous arrangement of pedestrian and vehicular ways?

Applicant’s Statement: The plan includes sufficient sidewalks to ensure no conflicts between vehicles and pedestrians, and the street network has been designed in a manner that will result in vehicle speeds that are conducive to a single family community.

Staff Observations:

- The subdivision plan is consistent with LDO requirements for pedestrian accommodations along the proposed streets.

- The proposed plan is consistent with physical design standards for streets and pedestrian connections.
- The plan does not meet the Town's requirements for vehicular connectivity, nor with the requirement that additional pedestrian connectivity be provided where vehicular connectivity modification are granted.
- The applicant has not proposed to provide the 10-foot street-side trail indicated in the PRCR Facilities Master Plan. This trail would provide enhanced facilities for multi-modal users.

TEST SATISFIED? __ YES __ NO

5. Does the plan provide safe ingress and egress for emergency services to the site?

Applicant's Statement: The plan includes connections to public streets via Moreland Court, where multiple homes will front, and Royal Glen Drive. The streets internal to the site have been designed so as to ensure that emergency vehicles have sufficient access to all of the residences. As a result, the plan provides safe ingress and egress for emergency services to the site.

Staff Observations:

- The proposed plan is consistent with physical design standards for streets.
- Many of the proposed lots would be accessed via existing streets, which are currently served by Town emergency services.
- The plan does not meet the Town's requirements for vehicular connectivity, limiting the options for access to the lots internal to the subdivision.

TEST SATISFIED? __ YES __ NO

6. Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?

Applicant's Statement: The proposed plan, as a 20-lot, low-density, single-family residential community, generates a de minimus amount of traffic. As a result, there are no traffic congestion impacts reasonably expected to be generated by the project.

Staff Observations:

- The applicant did not provide any information regarding traffic impacts for his project to staff in advance of the hearing.
- The project will generate approximately 239 daily trips. The peak-hour volumes for 20 detached dwellings would be 24 in the morning and 25 in the evening.
- The proposed plan is consistent with physical design standards for streets.

TEST SATISFIED? __ YES __ NO

SUGGESTED MOTIONS FOR SUBDIVISION PLAN

MOTION TO APPROVE THE SUBDIVISION PLAN

For the reasons discussed, I move that we **APPROVE** the proposed subdivision plan without condition **(ALT: with conditions as stated below)**, as it meets all of the approval criteria set forth in Section 3.9.2(I) of the LDO.

(ALT: This approval is conditioned upon the following:)

1. *[insert any conditions necessary to bring the project into compliance with the LDO or other standards]*

OR

MOTION TO DENY THE SUBDIVISION PLAN

For the reasons discussed, I move that we **DENY** the proposed subdivision plan, as it does not meet all of the approval criteria set forth in Section 3.9.2(1) of the LDO.