



FREDERICK COUNTY PLANNING COMMISSION
June 9, 2021

TITLE: Days Range Preliminary Plan

FILE NUMBER: S-1113 (PP262869, A262875, F262870)

REQUEST: **Preliminary Plan Approval**
The Applicant is requesting Preliminary Plan and Adequate Public Facilities approval for 15 single family residential lots, to complete a 123.54-acre subdivision.

PROJECT INFORMATION:

ADDRESS/LOCATION: Located on the south side of Windsor Road, and Oriole Drive extended.

TAX MAP/PARCEL: Tax Map 97 & 106, Parcels 1 & 114

COMP. PLAN: Rural Residential

ZONING: R-1 Residential

PLANNING REGION: Urbana

WATER/SEWER: W-NPS/S-NPS

APPLICANT/REPRESENTATIVES:

APPLICANT: Days Range, LLC

OWNER: Days Range, LLC

ENGINEER: Fox & Associates, Inc.

ARCHITECT: N/A

ATTORNEY: N/A

STAFF: Graham Hubbard, Principal Planner I

RECOMMENDATION: Conditional Approval

ATTACHMENTS:
Exhibit #1- Preliminary Plan Rendering
Exhibit #2- APFO Letter of Understanding

STAFF REPORT

ISSUE

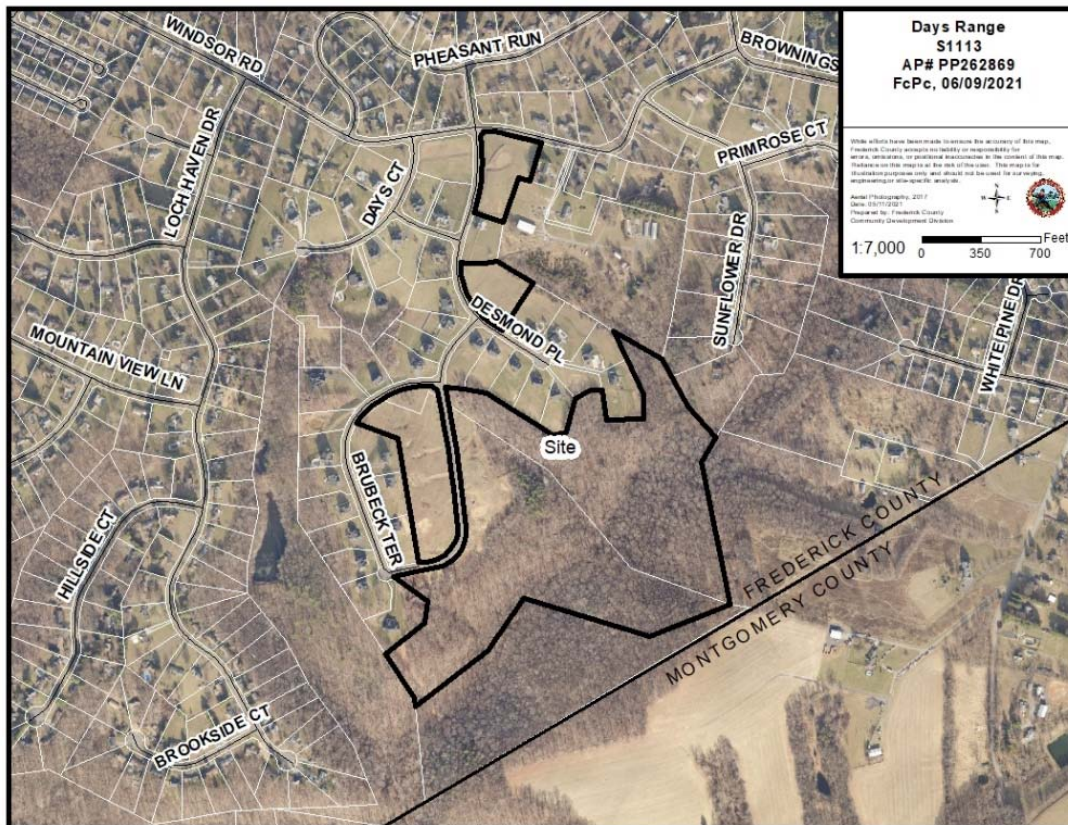
The Applicant is requesting Preliminary Plan and Adequate Public Facilities approval for 15 single family residential lots, to complete a 123.54-acre subdivision. These 15 lots (Lots 1, 2, 25-35, 45-46) were previously approved on September 13, 2013 under a Preliminary Plan for 45 single family residential lots (AP 12995) and expired on September 13, 2016. Thirty lots (Lots 3-24, 36-44) were recorded and are not subject to re-approval. The remaining 15 single family lots will be served by existing public streets which were constructed by the Developer and have been dedicated to and accepted for maintenance by Frederick County.

BACKGROUND

This property has been the subject of several previous subdivision applications.

- August of 1991, the original 148.33 acres was subdivided into Parcel "A" 77.78 acres and Parcel "B" 70.55 acres.
- In February 2004, Farm Lot 1-R was recorded as the result of a 15.1 acre Remainder being subdivided off of the original 70.5 acre Parcel "B".
- In June of 2004, Lots 1-5 from Parcel "A", Outlot "B" were subdivided and recorded.
- September 2005, Lots 1-4 and Open Space parcels were subdivided off of Farm Lot 1-R.
- September 2013, Preliminary Plan was approved for 45 single family residential lots.
- Multiple Final Plats for a total of 30 lots have subsequently been recorded.

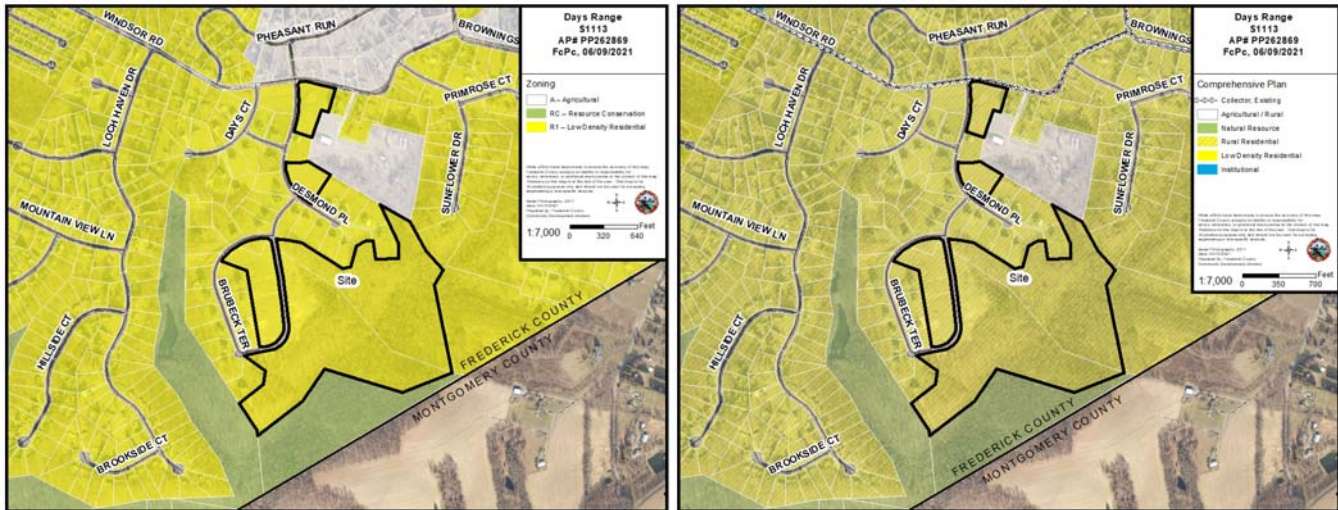
Graphic #1: Site Aerial



Existing Site Characteristics

The site consists of the remaining land from an uncompleted subdivision of single family detached houses. The existing forested corridors along the southern and eastern boundaries are proposed to be platted as HOA Open Space Parcels. The remaining 15 single-family lots will be served by existing private wells and septic fields previously approved by the Frederick County Health Department and installed by the Developer.

Graphic #2: Zoning Map / Comprehensive Plan



ANALYSIS

A. SUBDIVISION REGULATION REQUIREMENTS

Review and approval of the proposed Preliminary Plan is subject to subdivision regulations as provided in §1-16 of the Frederick County Code.

1. **Land Requirements §1-16-217 (A):** *The land use pattern of the Comprehensive Plan and the district regulations of the zoning ordinance shall form the basic theme of the design pattern of the proposed subdivision.*

The proposed land use is consistent with the existing land use. The subdivision design, which has not changed since the 2013 approval, still complies with the Comprehensive Plan (Livable Frederick Master Plan) and still meets Zoning Ordinance requirements for the R-1 Zoning District.

2. **Land Requirements §1-16-217 (B):** *The subdivision design shall take advantage of the uniqueness of the site reflected by topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.*

The subdivision design has not changed since the 2013 approval. The forested stream valleys and waterbody buffers are now maintained and protected under forest conservation easements. The constructed street network was designed to avoid stream crossings and provide adequate buffers from sensitive areas.

3. **Preliminary Plan, Required Information §1-16-72 (B)(19)(a & b):** *Soil types: (a) Soils type(s) information shall be provided and appropriate boundaries shown on the plan. In the event that*

"wet soils" are located on or within 100 feet of a proposed residential subdivision, a soils delineation report shall be prepared by a licensed soil scientist or professional engineer registered in the State of Maryland. The soils delineation report shall be submitted for review prior to Planning Commission approval of the plan. The Division may waive this requirement if the "wet soils" are located within open space areas. (b) If residential lots are proposed within "wet soils" then a geotechnical report is required to be submitted by a professional engineer registered in the State of Maryland. A note shall be placed on the plan that all construction shall be in conformance with the geotechnical report.

Lots 34 and 35 are the only remaining unrecorded lots that are slightly impacted by wet soils. If the housing sites are impacted by the wet soils, then a geotechnical report will have to be submitted at the building permit stage to ensure that proper construction methods are proposed in order to reduce any negative impacts of the wet soils on the proposed homes.

4. Road Access Requirements. Public Facilities §1-16-12 (B)(3)(b): For major subdivisions; Lots must access a publicly-maintained road with a continuously paved surface that is at least 20 feet in width.

The 15 remaining lots have frontage on and access to 20 foot wide, open section, paved County roads. These existing public streets (Desmond Place and Brubeck Terrace) were constructed by the Developer and have been dedicated to and accepted for maintenance by Frederick County.

5. Other Street Requirements. Development on Dead End Streets §1-16-236 (C) & (K):

(C) Rights-of-way for proposed streets shall be extended to the boundary lines of the proposed subdivision so that a connection can be made to all adjacent properties unless such extension is not feasible because of topography or other physical conditions, or unless, in the determination of the Planning Commission, such extension is not necessary or desirable for the coordination with existing streets or the most advantageous development of adjacent tracts. In any event, no subdivision shall be designed so as to create or perpetuate the landlocking of adjacent undeveloped land.

None of the remaining lots are located on dead end streets.

(K) Subdivisions on cul-de-sac or dead end streets shall be permitted only if approved by the Planning Commission (or county staff) in accordance with this division, the Design Manual, and the following provisions, as applicable:

(1) For proposed development on new or existing cul-de-sac or dead end street(s), except existing dead end streets described in subsection (2) below, the following requirements apply:

(a) Applicant must demonstrate the existence of site specific circumstances that make the design and development of a through street practically infeasible.

(b) In the AG and R-1 zoning district, cul-de-sac or dead end street(s) shall not exceed 1,800 feet in length and shall not serve more than 30 lots, dwelling units, or parcels...

The previously approved and constructed circulation network is comprised of a cul-de-sac and loop system that has been designed to work within the environmental and topographic site constraints.

- 6. Lot Size and Shape. §1-16-219:** *The size, width, depth, shape, orientation and yards of lots shall not be less than specified in the zoning ordinance for the district within which the lots are located and shall be appropriate for the type of development, the use contemplated and future utilities.*

The proposed development is located on property zoned R-1 residential. As provided in Section 1-19-6.100 of the Zoning Ordinance, the minimum design requirements in the R-1 residential zoning district are: 40,000 square foot minimum lot size, 100 foot minimum lot width, 40 foot front setback, 30 foot rear yard setback, and 10 foot side yard setback, 30 foot maximum structure height for single family residential development.

All of the proposed lots meet the minimum 40,000 square foot (0.92 acres) lot size requirement. The remaining 15 lots range in size from 1.0 acre up to 1.8 acres, with an average lot size of 1.25 acres. The required front, rear, and side setbacks are shown on the plan and meet the requirements of the Zoning Ordinance.

- 7. Panhandle Lots §1-16-219 (C)(2):** *Panhandle lots may be approved by modification of the Planning Commission in major subdivisions only when it is determined by the Commission that “excellence of design” will be achieved or that such lots are inaccessible to the road due to odd shape and/or topographical constraints. In each case, the Planning Commission will determine “excellence of design” based on the spatial relationship of the panhandle lot to other lots and the public road. Only physical design criteria such as odd shape and road inaccessibility, topography, existing utilities, proposed and existing well and septic constraints (Health Department criteria) and natural or man-made features shall be used by the Planning Commission in granting modifications for panhandle lots in major subdivisions.*

(None of the remaining lots are panhandle lots.)

- 8 Water and Sewer Facilities. Public Facilities §1-16-12 (C):** *The proposed subdivision shall be disapproved unless each building lot has been approved for individual and/or community sewerage and water facilities by the Health Department.*

The property has a water and sewer classification of No Planned Service (NPS) and must utilize private septic areas and wells. The remaining 15 single-family lots are served by existing private wells and septic fields previously approved by the Frederick County Health Department and installed by the Developer.

9 OTHER APPLICABLE REGULATIONS

Stormwater Management – Chapter 1-15.2: Stormwater management will be provided in accordance with the Maryland SWM Act of 2007. A SWM Concept Plan must be submitted and approved prior to final Preliminary Plan approval.

APFO – Chapter 1-20: This subdivision is subject to meeting APFO requirements for schools and roads.

The following areas are addressed in the APFO Letter of Understanding (LOU) to be signed by the Applicant and the Planning Commission as a condition of approval of this preliminary plan. See attached Exhibit #2.

1. Schools: The Project is projected to generate 4 elementary school students, 2 middle school students and 4 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails at the

elementary school level for Kempton ES and at the high school level for Urbana HS. The Developer has chosen the option to mitigate the school inadequacy by paying the School Construction Fees under Section 1-20-62 of the APFO. This Project is eligible to utilize the School Construction Fee option per the criteria set forth in Section 1-20-62 (C) of the APFO. The School Construction Fees shall be paid prior to plat recordation based on the specific fees required by Section 1-20-62(E) at the time of plat recordation, per unit type and the school level(s) to be mitigated.

2. **Water and Sewer:** The Property has a water and sewer classification of No Planned Service (NPS) in the County’s Water and Sewerage Plan and is therefore exempt from APFO testing for water and sewer.
3. **Road Improvements:** This development met the requirements of APFO (#12997) at previous preliminary plan approval (LOU approved on September 13, 2013), and this application does not increase the density or intensity assumptions confirmed at that time; therefore, it is exempt from further APFO testing (see §1-20-7 (C) and (E)). The previous Letter of Understanding (LOU) has been fully satisfied and all road escrow contributions made. The overall Site (45 single family detached homes) is anticipated to generate 37AM and 41PM peak hour trips.

Period of Validity: The APFO approval is valid for three (3) years from the date of Planning Commission approval; therefore, the APFO approval expires on June 9, 2024.

Forest Resource Ordinance – Chapter 1-21: A Combined Preliminary/Final Forest Conservation Plan was approved in 2015 for the entire 45-lot subdivision. FRO mitigation was provided by the recordation of forest conservation easements. No additional forest clearing or mitigation is required.

Summary of Agency Status / Comments

<i>Other Agency or Ordinance Requirements</i>	<i>Status / Comments</i>
<i>Development Review Engineering (DRE):</i>	Approved
<i>Development Review Planning (DPZ):</i>	Approved
<i>Board of Education (BOE):</i>	Approved
<i>Forest Resource Ordinance (FRO):</i>	Approved
<i>Health Department (EH):</i>	Approved
<i>Office of Life Safety (DOLS):</i>	Approved
<i>Traffic Engineering (DRTE):</i>	Approved
<i>Division of Water and Sewer Utilities (DWSU):</i>	N/A

RECOMMENDATION

Staff has no objection to approval of the Preliminary Plan and Adequate Public Facilities for the remaining 15 lots of Days Range. If the Planning Commission approves the Preliminary Plan and APFO, the approval is valid for three (3) years from the date of Planning Commission approval (June 9, 2024).

Based upon the findings and conclusions as presented in the staff report, the application meets or will meet all applicable Subdivision, Zoning, APFO, and FRO requirements. Should the Planning Commission grant approval of this application (S-1113, AP PP262869), including approval of the APFO (AP A262875), Staff recommends that the following items be added as conditions to the approval:

1. The Applicant shall comply with all Staff and agency comments through the completion of the plan.

PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move that the Planning Commission **APPROVE S-1113 (AP PP262869) with conditions** as listed in the staff report for the proposed Preliminary Plan, and approval of the APFO (AP A2628757), based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.



FREDERICK COUNTY GOVERNMENT

DIVISION OF PLANNING AND PERMITTING

Department of Development Review and Planning

Jan H. Gardner
County Executive

Steve Horn, Division Director
Mike Wilkins, Director

ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Days Range

PP262869, A262875, F262870, File #S-1113

In General: The following Letter of Understanding ("Letter") between the Frederick County Planning Commission ("Commission") and Days Range, LLC ("**Developer**"), together with its/their successors and assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the Days Range Preliminary Plan of Subdivision (the "**Project**"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("**APFO**").

The Developer, its successors and assigns, hereby agrees and understands that unless the required improvements (or contributions to road escrow accounts, as specified below) are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Developer's 148.3 +/- acre parcel of land, which is zoned Low Density Residential (R-1) and located on the north side of the Montgomery County Line with access off and just south of Windsor Road. This APFO approval will be effective for development of 15 new single family detached homes (45 were previously approved but only 30 were platted/built), which is shown on the preliminary plan for the above-referenced Project (previous preliminary plan approval was conditionally granted on September 13, 2013).

Schools: The Project is projected to generate 4 elementary school students, 2 middle school students and 4 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails at the elementary school level for Kempton ES and at the high school level for Urbana HS. The Developer has chosen the option to mitigate the school inadequacy by paying the School Construction Fees under Section 1-20-62 of the APFO. This Project is eligible to utilize the School Construction Fee option per the criteria set forth in Section 1-20-62 (C) of the APFO. The School Construction Fees shall be paid prior to plat recordation based on the specific fees required by Section 1-20-62(E) at the time of plat recordation, per unit type and the school level(s) to be mitigated.

Water and Sewer: The Property has a water and sewer classification of No Planned Service (NPS) in the County's *Water and Sewerage Plan* and is therefore exempt from APFO testing for water and sewer.

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Road Improvements: This development met the requirements of APFO (#12997) at previous preliminary plan approval (LOU approved on September 13, 2013), and this application does not increase the density or intensity assumptions confirmed at that time; therefore, it is exempt from further APFO testing (see §1-20-7 (C) and (E)). The previous Letter of Understanding (LOU) has been fully satisfied and all road escrow contributions made. The overall Site (45 single family detached homes) is anticipated to generate 37AM and 41PM peak hour trips.

Period of Validity: The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on June 9, 2024

Disclaimer: This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

[Signatures Next Page]

