



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Item #

**MCPB 03-01-07**

## **MEMORANDUM**

DATE: February 16, 2007  
TO: Montgomery County Planning Board  
VIA: Rose Krasnow, Chief *RK*  
FROM: Michael Ma *Ma*  
Development Review Division  
(301) 495-4523



REVIEW TYPE: **Site Plan Amendment**  
CASE #: **82003005A (Formerly 8-03005A)**  
PROJECT NAME: **Goodwill Property** (a.k.a. Bethesda Crest)  
APPLYING FOR: Approval of site plan amendment to modify building setbacks, landscaping, fence, materials for walls and pathways, and conservation areas.  
REVIEW BASIS: Div. 59-D-3 of Montgomery County Zoning Ordinance  
ZONE: R-60, MPDU development standards  
LOCATION: West side of Wisconsin Avenue, approximately 400 feet north of West Cedar Lane  
MASTER PLAN: Bethesda – Chevy Chase  
APPLICANT: Elm Street Development  
FILING DATE: July 15, 2005  
HEARING DATE: March 1, 2007

## **BACKGROUND**

### Purpose of the Amendment

Elm Street Development filed the subject application to amend the approved site plan for Goodwill Property (a.k.a. Bethesda Crest) to (1) implement changes required by the approved compliance program, (2) reflect field changes and modified site features, and (3) respond to review comments by M-NCPPC staff and other agencies.

### Development Status

Goodwill Property is a 28-dwelling-unit development, which includes 10 semi-detached units, 14 townhouses, and 4 two-over-two moderately priced dwelling units (MPDUs), on 4.97 acres. The Planning Board approved Site Plan 8-03005 for Goodwill Property on April 10, 2003, with conditions. A copy of the Planning Board Opinion for the site plan is attached (Appendix A).

This development has been under construction since July 2004. Twenty-two units have been completed, of which 21 are occupied including the 4 required MPDUs. Two units (Lots 1 and 2) are currently under construction. Lots 19, 20, 23, and 24 are vacant. The proposed playground and sitting area located in the northeastern corner of the site have been installed.

#### Non-Compliance Hearing/Compliance Program

The Planning Board held a hearing on November 17, 2005, to consider if the constructed dwelling units within Goodwill Property conform to the approved site plan with respect to certain building setbacks. The Planning Board made no finding of building setback violation. But the respondent agreed to the following terms as stated in the Planning Board Resolution dated January 12, 2007 (Appendix B):

1. *Respondent shall remit a fine in the amount of \$6,000 for grading prior to site plan signature set approval, within 30 days of the adoption of this Resolution;*
2. *Respondent shall implement the following Plan of Compliance:*
  - a. *Cause the proposed townhouse at Lot 19 (new Lot 28), at 5008 Cedar Croft Drive, to be constructed with a side setback of at least 43.2 feet (an increase of 3.2 feet) and a garage that will contain no more than two cars; and*
  - b. *Construct a more substantial fence along the north border of the site adjacent to the Temple Hills Baptist Church, with a design and dimensions approved by Planning Staff after consultation with the Church; and*
  - c. *Construct a brick masonry or stone fence along the south border of the site, +/- 147 feet in length and 6 feet in height; and*
3. *Proceed with the pending Site Plan Amendment (#82003005A) to incorporate these changes and any others found to be necessary to ensure conformity between the actual site conditions and the applicable Site Plan as approved; and*
4. *Respondent waives its right to appeal the Planning Board decision as set forth in this Resolution.*

The respondent has paid the \$6,000 fine and filed the subject site plan amendment application to implement the agreed terms.

**STAFF RECOMMENDATION:** Approval of amended site plan 82003005A for 28 dwelling units, including 10 one-family semi-detached units, 14 townhouses, and 4 two-over-two moderately priced dwelling units (MPDUs), on 4.97 acres. All site development elements as shown on the site and landscape plans stamped by the M-NCPPC on February 16, 2007, shall be required except as modified by the following conditions:

1. Prior Approval  
The terms and conditions of all applicable prior regulatory approvals and agreements remain in full force and effect, except as affected by this site plan amendment.
2. Record Plat Amendment  
The applicant shall re-record the record plat for Lots 19 and 20 to reflect the revised lot lines (proposed Lots 28 and 29) in accordance with the certified site plan 82003005A prior to the issuance of any building permit for these two lots.
3. Forest Conservation

The proposed development shall comply with the conditions of the final forest conservation plan.

4. Proposed Fence and Wall

- a. A new six-foot-high metal fence with stone piers as shown on the certified site plan shall be constructed along the north property line of the site adjacent to the Temple Hills Baptist Church prior to the issuance of any building permit for Lots 28 and 29 (old Lots 19 and 20) or commencement of any construction on Lots 23 and 24, whichever comes first.
- b. The proposed brick/stone wall along the southwest property line shall be completed prior to the issuance of any building permit for Lots 28 and 29 (old Lots 19 and 20).

5. Street Trees

Street trees located along the Corsica Drive frontage shall be shade trees subject to approval by the Montgomery County Department of Public Works and Transportation.

6. Certified Site Plan

Prior to approval of the certified site plan, the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Revised Development Standard table, inspection schedule, plan index, and Site Plan Resolution.
- b. Shade trees along the Corsica Drive frontage.

**PROJECT DESCRIPTION:** Surrounding Vicinity/Site Description

The subject subdivision is approximately 5 acres in size and located on the west side of Wisconsin Avenue, approximately 400 feet north of West Cedar Lane. It is bounded by the Temple Hill Baptist Church, which was formerly known as the Bethesda Meeting House, on the northeast. The church is on the National Register of Historic Places. To the northwest, west and southwest of the site are the Longmeadow and Maplewood subdivisions, which are R-60 zoned subdivisions with one-family detached homes. Beyond the southeastern boundary of the site is a Boy Scout of America building. It is lower than the site by approximately 30 feet.

The Benton Avenue/Corsica Drive intersection is immediately adjacent to the northwestern edges of the site and provides vehicular access to the subdivision from surrounding neighborhoods. The main access to the development is off Wisconsin Avenue. The site has been developed with 22 attached dwelling units and internal driveways. There are two units, which are currently under construction, and four vacant lots.



**PROJECT DESCRIPTION:** Prior Approvals

The Planning Board approved Preliminary Plan 1-02038 for Goodwill Property on April 10, 2003, with condition.

## PROPOSED AMENDMENTS

The applicant requested the following changes to the approved Site and Landscape Plans:

### A. Changes per the Planning Board Resolution 07-04 for Compliance (dated 11/12/2007)

1. An aluminum fence had previously been installed along the north property line at the request of the Temple Hills Baptist Church. The applicant has updated the plans to replace the existing fence with a new six-foot-high metal fence with piers.
2. The applicant has updated the plans to change the proposed 4-foot-high board-on-board fence along the southwest property line approximately 147 feet in length to a 6-foot-high masonry/stone wall/fence. The proposed landscaping in this area has also been modified to accommodate the wall/fence.
3. The applicant has updated the development data table to reflect final building setback and height dimensions.
4. The building location and design for the unit on lot 19 (new lot 28) at 5008 Cedar Croft Drive has been modified on the plan to have a side setback of at least 43.2 feet (an increase of 3.2 feet) and a 2-car garage in place of the previously approved 3-car garage. Due to this change lot 20 (new lot 29) will shift eastward. This will require a new record plat.
5. The building setback of individual units from the subdivision's north property line was modified to reflect the as-built condition.

### B. Changes Per Field Conditions, Site Enhancements, and Agency Comments

The following items have been built or implemented and shown on the amended plan:

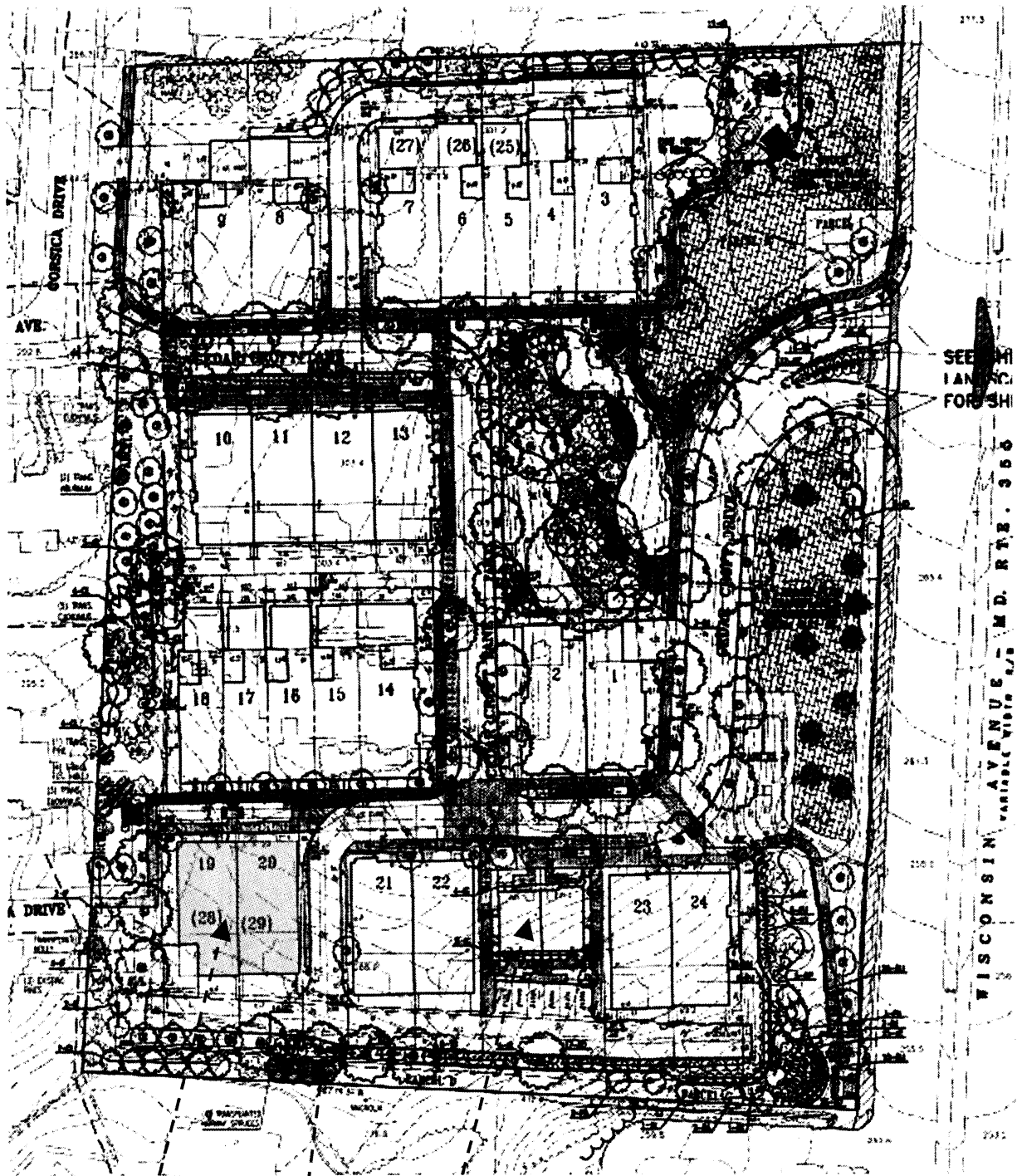
1. The stairway risers, walls and grading at the sidewalk from Cedar Croft Drive to the seating area in Parcel H were modified due to field conditions. The adjacent conservation easements were revised to match the final walkway and seating configuration.
2. Enhancements to the entrance walls, cheek walls and steps in Parcels C and G were added per the final design.
3. The tree save area in Parcel G was revised to reflect the removal of existing black locusts as agreed by MNCPPC staff. Landscaping design within Parcel G was also modified.
4. The landscaping and transplants in Parcels B, G and H have been revised per as-built locations due to field conditions.
5. Certain parcel designations have been changed to reflect the final record plat designations.
6. The material for the sidewalk along the Wisconsin Avenue frontage was changed from brick to concrete, and the concrete retaining wall adjacent to the sidewalk was upgraded to have brick and stone veneer with brick cap.
7. The playground and site furnishings have been updated and approved by MNCPPC staff.
8. The tree wells along the interior streets have been revised to conform to utility house connections.
9. The three street trees along the Corsica Drive frontage were planted with ornamental trees instead of shade trees as specified on the approved site plan to minimize their impact on overhead power lines.

10. Brick pavers have been added along the northern edge of the alley adjacent to the Church property to facilitate pedestrian movement.
11. Due to field conditions, risers have been revised on the following lots: 1, 5, 6, 12, (old lots) 19 and 20, and 24. Lot 23 also has an added ramp in the drive to take up grades between garage doors due to the slope of the alley.
12. Due to field conditions, minor grade elevations have changed to either the house or the garages on the following lots: 3, 4, 6, 10, 11, 12, 13, 23 and 24.
13. The front façade designation/design has been revised on the following lots: 9, 10, 13 (removed secondary stair case and replaced with a planter), 16, 21, and 24.
14. The elevation of the top of patio wall enclosures has been added to the plan for the following lots: 7, 8, 9, 14, and 18.
15. The following lots have had shifts in the locations of buildings (all buildings conform to the setbacks in the data table and as discussed at the November 17, 2005 hearing):
  - Lot 2 (building shifted 1.4' due to PUE and lowered retaining wall).
  - Lot 5 (building shifted 0.4' due to final stoop design)
  - Lot 6 (building shifted 1.1' due to final stoop design)
  - Lot 8 (building shifted back 0.3' due to roofline/architecture)
16. Setback dimensions were added to the plan for lots 21 and 23 per M-NCPPC staff comments.
17. Parcel E (MPDUs) had the following revisions made due to M-NCPPC staff comments:
  - Units were shifted back by approximately 6 feet to allow for larger front yard area to meet the zoning definition of attached units for two-over-two units. This change did not affect setback limits from boundary.
  - Individual outdoor areas for each unit surrounded by a 3-foot-high fence.
  - Building grade elevations were changed when units were shifted back.
  - Steps, wing walls (and they were changed on the adjacent lots 22 and 23) and retaining walls were revised according to the shifted location.
  - Trash and mechanical areas were added.
  - Assigned parking spaces for the individual units.
  - Added detail of Parcel E to Landscape Plans.

The following items have been added to the amended site plan:

1. Additional pavers adjacent to old Lot 20 and Cedar Croft Drive to address the Fire Marshall's comments.
2. Pavers for the existing bus stop area on MD 355 (like those used elsewhere on site) and benches.
3. An entry wall at the end of Acacia Drive.

The overall layout, street design, and building types remain unchanged.



building location and lot lines were  
modified on Lots 19 and 20

4 two-over-two MPDUs

-- a 6-foot-high masonry/stone wall/fence

# ANALYSIS: Conformance to Development Standards

## PROJECT DATA TABLE

Development Standard	Permitted/ Required	Proposed for Approval
Zone	R-60	R-60 / MPDU
Lot Area (ac.):	n/a	4.97
Net Density (dwelling/acre): 6.10x 4.97 acres	30	28
Number of Dwelling Units:		
One-family attached (the MPDU units)		4
One Family Semi-detached		10
Townhouse		<u>14</u>
TOTAL	30	28
Min. Building Setback (ft)		
from public streets	n/a	35
from north property line		
Lot 3	20	33.3
Lot 4	20	33.3
Lot 5 (new Lot 25)	20	35
Lot 6 (new Lot 26)	20	34.5
Lot 7 (new Lot 27)	20	35
Lot 8	15	39.3
Lot 9	15	40
from west property line		
Lot 10	8	40
Lot 18	8	40
Lot 19 (new lot 28)	8	43.4
from south property line		
Lot 19	20	50
Lots 20 (new Lot 29) through 24	20	40
Yard Requirements for Individual Lots (ft.)		
Front yard	n/a	0
Side yard	n/a	0
Rear yard	n/a	0
Min. Lot area (s.f.)		
One Family Semi-Detached	3,500	3,500
Townhouse	1,500	2,500
One Family Attached	4 units on one lot <sup>1</sup>	5,700
Min. Lot Width (ft)	n/a	24
Max. Building Height	3 stories/40 feet	3 stories/40 feet
Green Space: @ 2,000 s.f. per unit	56,000 sf or 1.28 ac	112,498 sf or 2.58 acres
Number of Parking Spaces:		
Total @ 2 per unit	56	60 in garage <u>16</u> surface pkg 76

1. Per 59-C-1.625 (a)(4) Where an individual lot for each dwelling unit is deemed to be infeasible because of the manner in which individual units are attached to each other, the Board may approve a site plan depicting more than one dwelling unit on a lot.



## **MPDU CALCULATIONS:**

MPDUs required: 12.5% of 28 units = 4 units

MPDUs provided: 4 units

## **FINDINGS: For Site Plan Review**

1. *The site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.*

An approved development plan or a project plan is not required for the subject development.

2. *The site plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

If amended in accordance with recommended conditions, the amended site plan meets all of the requirements of the R-60 zone under the MPDU development method as demonstrated in the Project Data Table above. This amendment revised and clarified building height and setback requirements for individual lots from north, west, and south property lines as presented to the Planning Board at the compliance hearing on November 17, 2005. It also established lot width and yard requirements for individual lots and revised minimum lot area for three building types.

3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

- a. **Locations of buildings and structures**

The overall site layout and general building locations remain unchanged on the amended site plan. Minor building setback modifications were made for units near the north and west property lines to reflect the final location of built units. In the southwestern corner of the site, the proposed semi-detached units on Lots 19 and 20 were moved to provide deeper setbacks from adjacent properties to the west and south as required by the compliance agreement. These changes did not affect the church property to the north, but provided a deeper buffer between the development and adjacent homes to the southwest of the site.

The location of the required four MPDUs were shifted back by approximately 6 feet to allow for larger front yard area to meet the zoning definition of attached units for two-over-two units. This change did not affect setback limits from the

boundary. Enclosed trash and mechanical areas were added at the east and west ends of the building.

b. Open Spaces

The amended site plan did not change the size (2.58 acres) and location of the green space provided throughout the development. The green space serves as buffer areas between the development and adjacent properties. It also provides space for recreation facilities and helps protect existing trees.

c. Landscaping and Lighting

The landscaping design was modified in certain areas to accommodate the added fence/wall near the south property line and the relocated MPDUs, and to reflect the field changes to the tree save areas and entrance areas to individual units. But the overall theme of the design remains the same. There are no changes proposed to the lighting plan.

Three ornamental trees were planted as street trees along the Corsica Drive frontage and reflected on the amended site plan. They should be revised to be shade trees, subject to approval by the Montgomery County Department of Public Works and Transportation.

d. Recreation Facilities

This development provides four sitting areas, a playground, natural areas, and pathways throughout the subdivision as its recreation facilities. The amended site plan did not change the facilities except for the manufacture of the play equipment and benches. The playground and some of the sitting areas and pathways have been installed.

e. Pedestrian and Vehicular Circulation Systems

The plan provides a pathway system to connect individual units with site amenities, the adjacent neighborhood and surrounding streets. The main vehicular access to the development is from Wisconsin Avenue. A secondary access is via Corsica Drive to link the development with the adjacent neighborhood. The amended site plan does not change the circulation system, but proposes to enhance the existing bus stop on Wisconsin Avenue by adding pavers at the stop area (like those used elsewhere on site) and benches.

4. *Each structure and use is compatible with other uses and other site plans, and with existing and proposed adjacent development.*

The amended site plan does not change the land use, building types, and general building locations. With a deeper building setback, modified building design, and a brick/stone

wall/fence near the southwest property line, the proposed units will be compatible with the adjacent homes and uses.

5. *The site plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The amended site plan conforms with the approved Forest Conservation Plan and Stormwater Management concept.

## APPENDIX

- A. Planning Board opinion for Site Plan 8-03005.
- B. Planning Board Resolution 07-04 for Compliance Hearing on November 17, 2005.



Date of Mailing: September 15, 2003

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

## MONTGOMERY COUNTY PLANNING BOARD

### OPINION

Preliminary Plan Review No. 1-02038 and Site Plan No. 8-03005  
Project: Goodwill Property  
Date of Hearing: April 10, 2003

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Action: **PRELIMINARY PLAN: APPROVAL, SUBJECT TO CONDITIONS.** Motion was made by Commissioner Robinson, seconded by Commissioner Bryant, with a vote of 4-1, Commissioners Berlage, Bryant, Robinson and Perdue voting for, Commissioner Wellington voting against.

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Action: **SITE PLAN: APPROVAL, SUBJECT TO CONDITIONS.** Motion was made by Commissioner Robinson, seconded by Commissioner Bryant, with a vote of 4-1, Commissioners Berlage, Bryant, Robinson and Perdue voting for, Commissioner Wellington voting against. All Commissioners were present.

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The date of this written opinion is September 15, 2003, (which is the date that this Opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before October 15, 2003, (which is thirty days from the date of this written Opinion). If no administrative appeal is timely filed, this Site Plan shall remain valid for as long as Preliminary Plan #1-027038 is valid, as provided in Section 59-D-3.8 of the Zoning Ordinance.

#### I. Introduction

On October 11, 2001 and September 28, 2002, respectively, Elm Street Development ("Applicant") submitted applications for approval of a preliminary plan and a site plan ("Applications") for 4.97 acres of land located on the west side of Wisconsin Avenue (Maryland Route 355) north of West Cedar Lane ("Property") in the R-60 zone. The Applications were designated as Preliminary Plan No. 1-02038

("Preliminary Plan") and Site Plan No. 8-03005 ("Site Plan"). The Applicant proposes 28 units for the Property, including 4 moderately priced dwelling units ("MPDUs") under the optional method provisions for development including moderately priced dwelling units of §59-C-1.6 *et seq.* of the Zoning Ordinance. The Applicant seeks a waiver under §59-C-1.621, footnote 1, for environmental and compatibility reasons, to develop 100% semi-detached and townhouse units on the Property.

Following due notice including posting on the Planning Board's agenda and notice mailed to individual property owners pursuant to the Planning Board's procedures, the Montgomery County Planning Board ("Planning Board" or "Board") held a public hearing to consider both Applications in accordance with the requirements of applicable laws and regulations. The Applications included all information required for the Planning Board's consideration.

At the public hearing, the Planning Board considered the Applications concurrently. The Board listened to testimony and received evidence into the record from its technical staff ("Staff"); John M. Clarke, Vice President of Elm Street Development; John Huber of Goodwill Industries, and Tad Baldwin, representing Action in Montgomery and Advocates for Affordable Housing, in support of the Applications; and from Mr. James Gilligan and Mrs. Sarah Gilligan, neighboring property owners, and Mr. Allen Myers, President of Maplewood Citizens Association, in opposition to the Applications. Staff prepared information for the Planning Board's consideration, including a Staff Report. The Staff Report contained Staff's expert analysis of the proposal and several attachments, including a Memorandum dated April 2, 2003 from Countywide Environmental Planning Division ("Environmental Memorandum").

Based upon testimony and evidence presented, which include, without limitation, testimony heard and evidence taken at the public hearing, the Staff Report and attachments thereto, and other documents and correspondence received into the record, the Planning Board finds Preliminary Plan 1-02038 and Site Plan 8-03005 to be in accordance with the purposes and requirements of Chapters 50 ("Subdivision Regulations") and 59 ("Zoning Ordinance"). Therefore, the Planning Board approves Preliminary Plan 1-02038 and Site Plan 8-03005 based on the findings and conditions detailed below.

## II. The Subject Property

### 1. Subject Property and Surrounding Area

The Property consists of 4.97 acres of land located on the west side of Wisconsin Avenue (MD Rte. 355), north of West Cedar Lane. The Property is currently home to Goodwill Industries and is also known as the "Goodwill Property". The Property

contains an existing building with associated parking and a single access drive to Wisconsin Avenue. Northeast and adjacent to the Property is Temple Hill Baptist Church, which is on the National Register of Historic Places. South of the site is Cedar Lane, immediately beyond which is the National Institutes of Health campus. The NIH metro stop is approximately 1,500 feet from the Property. Further west and south beyond the Property are the Longmeadow and Maplewood subdivisions. These are R-60 subdivisions improved with single-family detached homes. Internal streets serve the neighborhood and Acacia Drive and the Benton Avenue/Corsica Drive intersection are immediately adjacent to the western edges of the Property. Beyond the southeastern boundary of the Property is a Boy Scout of America building - an institutional use. Six homes are immediately adjacent to the Property; others confront the Property.

The Property is located within the boundaries of the Bethesda-Chevy Chase Master Plan, adopted and approved in April 1990 ("Master Plan"). The Master Plan confirms the R-60 zoning of the Property but it makes no specific recommendations with respect to its redevelopment. It generally recommends moderately increased housing densities and greater diversity of housing types.

The Property rises high to the west of Wisconsin Avenue, a major highway. The Property is hilly with slopes over 25% in some areas; and it contains many large and specimen native trees. The Property is within the Rock Creek watershed and contains no forest, streams, wetlands or other environmentally sensitive areas. A WMATA air vent is located within the northeastern corner of the Property. There are no rare, threatened or endangered species known to exist on the Property.

## 2. Proposed Development

The development proposed for the Property is a 28-unit townhouse, semi detached and attached home community. The proposal includes 4 MPDUs. The MPDUs are proposed to be located on one lot because of their unique configuration. The proposed townhouse-type units are divided into groups of 2, 4 and 5 units that face an internal private street and mews area. The existing driveway from Wisconsin Avenue will be re-used as the entry drive. A private street that will be open for public use is proposed to connect to the Benton Avenue/Corsica Drive intersection in the adjacent neighborhood.

The market rate and MPDU units will have a similar architectural styling. Sidewalks are proposed on the Property to connect it to Wisconsin Avenue, Benton Avenue, and Acacia Drive. The sidewalks will connect the Property to the bus stop along MD Route 355, the forest preservation area on the Property to Wisconsin Avenue, and the mews in the southwest area of the Property to Acacia Drive. The proposed recreation areas for the Property include outdoor sitting areas, a play area and walk system.

The landscaping proposed for the Property preserves many of the existing mature trees and proposes extensive screening, streetscaping and planting. A six-foot wooden fence has been offered at the common boundary to the north and west. To the south, tiered retaining walls will create a buffer and will be planted with a variety of evergreen plant material. Additional landscaping and buffering will be provided. Lighting will be provided on the Property in accordance with an approved lighting plan.

### III. Summary of Hearing

The record on the subject preliminary plan and site plan application ("Applications") included uncontested evidence about the size, width, shape and orientation of the Subject Property, the relationship of proposed development to public roads and public transportation facilities, and the adequacy of public facilities. The record also contained uncontested information regarding the Applications' conformance with the development standards for the R-60 Zone. No traffic study was required in connection with the Applications because the proposed development will generate fewer than fifty vehicles per hour during peak hours.

There was uncontested evidence from the Technical Staff that the Property is located in an urban environment and that it is appropriate for the application of the principles of "Smart Growth" as an urban center with access to various transit systems. The Staff testified that the proposed development would comply with the general policies contained in the Bethesda-Chevy Chase Master Plan to provide moderate housing densities and greater diversity of housing types.

The Staff and Mr. John Clarke, a representative from Elm Street Development (the Applicant), presented testimony and evidence that the Property contains a permanent tree stand, comprised of large and native specimen trees, that is central to the site. The Staff and the Applicant presented testimony and evidence that the 100% Plan<sup>1</sup> (proposing 100 percent attached and semi-attached units on the Property) was the best plan from an environmental perspective because it complied best with the forest conservation law and because it would be most compatible with the surrounding neighborhood. They testified and presented evidence that the 100% Plan allowed the use of private streets in the proposed development and that private streets allowed more design flexibility. They testified that the use of private streets resulted in a reduction in interior setbacks and an increase in perimeter setbacks, thereby

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<sup>1</sup> As discussed in detail below, the Applicant presented three development scenarios for the Subject Property: the 100% Plan, the 60/40 Plan (containing 60% - 40% single family attached/detached mixed), and the R-60 Plan (containing a standard R-60 single family detached development).

providing a greater perimeter tree buffer area and more compatibility with the surrounding neighborhood than could be provided under the R-60 Plan or the 60/40 Plan. They further testified that the 100% Plan allowed a unit configuration that saved the permanent tree stand central to the site and provided more total green space than either of the other two plans.

Mr. Tad Baldwin, an advocate for affordable housing, testified that the development, as proposed, would be a positive addition to the Bethesda community.

Mr. James Gilligan, testifying in opposition to the Application, objected to the preliminary plan and site plan proceedings before the Planning Board, arguing that the subject hearing was a contested case under Title 10 of the State Government Article of the Maryland Annotated Code and that the hearing was not in accordance with certain provisions of Title 10, including the provision related to the sufficiency of notice, the presentation of evidence and cross-examination of witnesses. He asked that the proceedings be deferred. The Planning Board decided not to defer the proceedings and Mr. Gilligan did not present further evidence nor did he seek to cross-examine any of the witnesses.

Opponents testified regarding the compatibility of the proposed development. Mr. Allen Myers, a representative of a local citizen association, testified that they preferred single family homes on the Property and that they were willing to "sacrifice" the additional setbacks provided for under the 100% Plan. He suggested, however, that certain conditions be incorporated into the Planning Board's decision on the Applications if the Applications were approved. Mr. John Clarke responded that the conditions proposed by Mr. Myers were acceptable. Mrs. Sarah Gilligan objected in general terms to the proposed development on the basis that she did not believe that the 100% Plan would be better environmentally than the 60/40 Plan and that she did not believe the 100% Plan would be compatible with the existing single family homes in the neighborhood.

In response to the concerns raised by those witnesses who testified in opposition to the Applications, and in response to questions from the Board members, the Technical Staff and Mr. Clarke presented additional unrefuted evidence and testimony that the 100% Plan complied best with the forest conservation law and that it was the most compatible with the surrounding neighborhood.

There was uncontroverted evidence that the number of parking spaces under the 100% Plan would be greater than the minimum number required under the Zoning Ordinance. There was also unrefuted evidence that the configuration of



the private road proposed for the development would slow traffic through the neighborhood.

Mr. David O'Brien, an engineer with Charles P. Johnson and Associates, testified on behalf of the Applicant that the stormwater management concept proposed for the Property would improve an existing drainage problem in the neighborhood. His testimony was not refuted.

#### IV. The Preliminary Plan

##### 1. The Subdivision Criteria

The general provisions for lot design are set forth in Section 50-29 of the Subdivision Regulations. In order to be approved by the Planning Board, lot size, width, shape, and orientation must be appropriate for the location of the subdivision and for the type of use contemplated. Lots may abut a private road if allowed under the application provisions of the Zoning Ordinance.

Section 50-35 of the Subdivision Regulations sets forth the approval procedure for preliminary plans of subdivision. The Planning Board approves preliminary plans after finding that public facilities, including the transportation system, will be adequate to serve the proposed subdivision; that the preliminary plan substantially conforms to the Master Plan, and that the preliminary plan satisfies all requirements of the forest conservation law (Montgomery County Code, chapter 22A).

##### 2. Discussion of Issues

###### a. Lot Size, Shape, Width and Depth

The Planning Board finds, based on testimony and evidence in the record that the proposed lot sizes, width, shape and orientation of the proposed subdivision are appropriate for the location of the subdivision and for the proposed use; and, furthermore, that the proposed lots will front on a private road as allowed under the Zoning Ordinance. The Planning Board also finds that the proposed lots will assure the protection of the significant tree cover on the Property and will be compatible with the surrounding community. The Planning Board also finds based on testimony and evidence in the record that the depth and width of the subject lots are adequate for the parking requirements needed by the proposed development. The Preliminary Plan conforms to the development standards of the R-60 zone.

b. Adequate Public Facilities

County Code Section 5-35(k) (the Adequate Public Facilities Ordinance) directs the Planning Board to approve preliminary plans of subdivision only after finding that the public facilities, including the transportation system, will be adequate to serve the subdivision. The record contains uncontested evidence that the proposed development satisfies the Adequate Public Facilities Ordinance.

i. Water and Sewerage

The record includes uncontested evidence that the proposed development has adequate sewerage and water service.

ii. Policy Area Review

The Transportation Planning Memorandum dated June 13, 2003, which is part of the record, affirms that the Property is located within the Bethesda Chevy Chase Policy Area. The Policy Area has a remaining capacity of 479 jobs and 5,881 housing units as of May 31, 2002.

iii. Local Area Transportation Review

The Transportation Memorandum includes uncontested evidence that the proposed development will generate fewer than 50 trips during the peak hours and that these trips will not adversely impact the nearby intersections.

iv. Street Access

The Planning Board finds, based on testimony and evidence in the record, that the proposed street access is adequate. The proposed development will gain primary access from a "right in, right-out only" access from Wisconsin Avenue. A circular private road within the site is designed to provide local interconnectivity between Wisconsin Avenue and Chandler Street to the west. The private road will be open to public use.

c. Stormwater Management

The record includes uncontested evidence that the stormwater management concept for the property is acceptable and that the proposed development will improve an existing drainage problem in the neighborhood.

d. Forest Conservation

The Planning Board finds that the Preliminary Plan complies with the requirements of the Forest Conservation Law. The record reflects that a

prominent tree stand exists on the Property and that several large trees on the Property qualify as specimen trees. The Forest Conservation Law provides that a proposed development should "...make maximum use of any available planning and zoning options that would result in the greatest possible retention..." of specimen trees. It also provides that with an unforested site such as the Property a finding can be made that afforestation is inappropriate because of such a site's location in an urban setting. Under such circumstances, tree cover can be used to satisfy afforestation requirements. Tree cover includes the canopy cover of existing and planted trees.

In order to compare the proposed development, the Applicant presented 3 different scenarios for development of the Property and compliance with the Forest Conservation Law: (1) a standard R-60 single family detached development ("the R-60 Plan"); (2) an R-60 MPDU optional method of development plan with a 60%-40% single family attached/detached mix ("The 60/40 Plan"); and (3) a 100% single family attached and semi-detached dwelling units development, contingent on a finding by the Planning Board that the development is more desirable from an environmental perspective and compatible with existing and approved development ("The 100% Plan"). The evidence in the record is uncontroverted that the "100% Plan" complies best with the forest conservation law<sup>2</sup>. For the reasons stated in the Countywide Environmental Planning Memorandum, the Technical Staff Report, and all the testimony and evidence in the record, the Planning Board finds that the proposed development satisfies the requirements of the Forest Conservation Law.

e. Relation to Master Plan

The Planning Board finds that the Preliminary Plan Application conforms to the Bethesda Chevy Chase Master Plan. The record contains uncontested evidence from the Technical Staff that the proposed development would further the general policies in the Master Plan to provide moderately increased housing densities and greater diversity of housing types.

f. General Items

The subdivision component of the Application was referred to outside agencies for comment and review, including the Washington Sanitary and Sewer Commission, the Department of Public Works and Transportation, the Maryland

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<sup>2</sup> The application of the Forest Conversation Law to the three development scenarios is discussed more fully in the site plan section of this Opinion.

State Highway Administration, the Department of Permitting Services and the various public utilities. None opposed the project.

3. Preliminary Plan Findings

After review and consideration of the evidence of record, including testimony given at the public hearing, and on the Staff Report, including the Environmental Report, the Planning Board finds that Preliminary Plan No. 1-02038 is in accordance with all applicable laws and regulations. The Planning Board further finds, for the

reasons set forth in this preliminary plan section and section 2 of the site plan section of this Opinion, that it would be more desirable from an environmental perspective and more compatible with existing and approved development to develop the Property with 100% attached and semi attached units than to comply with the 60% -40% mix of one-family attached or semi-attached dwelling units, townhouses or combination thereof, and detached single family homes and hereby grants a waiver under §59-C-1.621 of the Zoning Ordinance. The Planning Board further finds that, with the Conditions enumerated below: (1) the proposed development is appropriate with regard to lot size(s), width, shape, and orientation for the location of the subdivision and the contemplated use; (2) the proposed lots abut a private road; (3) the Preliminary Plan meets the development standards of R-60 Zone; (4) the Preliminary Plan conforms to the Master Plan; (5) the site is adequately served by public facilities; and (6) the application complies with the requirements of the forest conservation law. In addition, the Planning Board finds that the proposed conditions will ensure the appropriate use of the Property and will ensure adequate parking, stormwater management, and access. Therefore, the Planning Board adopts Staff's recommendation and conditions.

4. Planning Board Action on Preliminary Plan No. 1-02038

Having considered all of the evidence presented, including the comments of the outside reviewing agencies, and all of the testimony taken, including that contained in the companion Site Plan proceeding, the Planning Board finds Preliminary Plan 1-02038 to be in accordance with all applicable provisions of law and further finds that Preliminary Plan 1-02038 is in conformance with the applicable recommendations of the Master Plan. Therefore, the Planning Board APPROVES the Preliminary Plan, including a Waiver Pursuant to Section 59-C-1.621 of the Zoning Ordinance for 100% Attached Units, subject to the following conditions:

- 1) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 2) Record plat to reflect a Category I or II easement, as appropriate, over areas of forest conservation as identified on final forest conservation plan.

- 3) Record plat to reflect all areas under Homeowners Association ownership and stormwater management areas.
- 4) Compliance with the conditions of approval of the MCDPS stormwater management approval.
- 5) Record plat to reflect an access and utility easement within entirety of private road parcel.
- 6) Access, including road connections and median improvements are to be approved by MCDPWT prior to recording of plats and MDSA prior to issuance of access-permits.
- 7) Record plats shall not be recorded until final site plan enforcement agreement and associated documents are approved.
- 8) Final approval of the number and location of dwelling units, on-site parking, sidewalks and on-site recreation will be determined at site plan. A landscape and lighting plan must be submitted as part of the site plan application for review and approval by technical staff.
- 9) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be filed.
- 10) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
- 11) Other necessary easements.

V. The Site Plan

At the public hearing, the Board considered evidence and heard testimony on Site Plan No. 8-03005. Staff recommended approval of the Site Plan, subject to certain conditions.

1. Site Plan Requirements

In order to approve a site plan, the Planning Board must make the following findings:

- a. The site plan is consistent with an approved development plan or a project plan for the optional method of development, if required.
- b. The site plan meets all the requirements of the zone in which it is located.
- c. The locations of the buildings and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.

- d. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.
- e. The site plan meets all applicable requirements of Chapter 22A regarding forest conservation and Chapter 19 regarding water resource protection.

## 2. Issues Discussed

### a. Waiver of the 60% detached housing requirement.

The Application proposes the voluntary inclusion of MPDUs. Projects containing MPDUs may be filed under §59-C-1.61 of the Zoning Ordinance, which provides for an optional method of development. The optional method allows additional dwelling unit types and a reduction in certain area and dimensional requirements. Under §59-C-1.621 of the Zoning Ordinance, one-family semi-detached and townhouses are permitted under the R-60 Zone in a development containing MPDUs. Pursuant to §59-C-1.621, footnote 1, the maximum percentage of one-family attached or semi-detached dwelling units, townhouses, or a combination thereof, in an R-60 subdivision is 60%. The other 40% must be one-family detached units. A development containing more than 60% attached, semi-detached or townhouse units may exceed this 60% limitation and may contain up to 100% attached, semi-attached or townhouse units, if the project receives a waiver from the Planning Board under §59-C-1.61 footnote 1. §59-C-1.61, footnote 1 allows 100% attached and semi-attached units, townhouses, or a combination thereof to be built upon a finding by the Planning Board that such a development is (1) more desirable from an environmental perspective than a development that would result from adherence to the 60% limit, and (2) compatible with adjacent existing and approved development. The Applications were filed pursuant to this waiver provision.

During the public hearing, the Technical Staff and the Applicant presented evidence and testimony to support the Applicant's request to construct 100% townhouses and semi-detached houses on the Property. The proposed development includes 28 units, including the voluntary inclusion of 4 MPDUs.

### i. Desirability from an environmental perspective

As noted in the discussion above on the Preliminary Plan, the Property is located in an "urban" environment - inside the I-495 Beltway, on a bus route, and within reasonable walking distance of the NIH Metro site. As discussed at the public hearing, the Property is appropriate for the application of the principles of "smart growth" as an urban center

with access to various transit systems. As such, the Property is appropriate for affordable housing units such as MPDUs.

The Property contains a permanent tree stand that is central to the site. The Technical Staff stated in its presentation to the Planning Board that many of the trees are specimen size and that the Forest Conservation Law mandates that a proposed development "make the maximum use of any available planning and zoning options that would result in the greatest possible retention" of specimen trees. As discussed in the Environmental Report dated April 2, 2003, that is part of the record in this matter, and as discussed above in the Preliminary Plan section of the Opinion, the Applicant presented three proposals for development of the Property. The "100% Plan" (proposing 100% attached and semi-attached units) was deemed by the Staff to be the best from an environmental perspective. The configuration of units allowed under this option saves the permanent tree stand central to the site, allows the use of interior private streets (thereby taking advantage of more flexible design standards and reduced building setbacks), and eliminates the space which would otherwise exist between separate units. The Staff noted that the "60/40 Plan" (containing 60% attached or semi-detached units or townhouses and 40% detached units) would require a public roadway with its minimum width right of way, curve radii and housing setbacks. The 60/40 Plan would not retain the central tree preservation area and the setbacks would be smaller. The Staff stated that the R-60 Plan (containing all single family attached units) would not allow adequate protection to the significant tree stands. Staff also noted that the design standards of the R-60 Zone did not have the flexibility necessary to respond to the "needs for protection of randomly located trees" on the Property.

ii. Compatibility

The Technical Staff recommended the 100% Plan as the most compatible with the surrounding community because it preserves existing trees better, because it provides greater unit setbacks and design flexibility, and because it provides more green space than the R-60 Plan or the 60-40 Plan.

The Technical Staff and Mr. Clarke testified regarding the increase in the setbacks from the existing R-60 development (to the west of the Property) that are possible under the 100% Plan. Under the 100% Plan, setbacks from the nearest adjacent homes are a minimum of 35 feet - far greater than the 8 foot side yard and 20 foot rear yard setbacks required under the standard method of development in the R-60 Zone. The resultant perimeter open space increases three fold from

.30 acres in the 60/40 Plan to .95 acres in the 100% Plan. Overall, on-site green space increases from 2.1 acres or 42% under the 40/60 Plan to 2.8 acres or 57% under the 100% Plan. In addition, the evidence showed that increased setbacks would reduce the presence of the proposed homes as viewed from the rear yards of adjacent homes. All open space increases under the 100% Plan create large buffers, thereby benefiting residents of the adjacent homes.

b. Citizen Concerns

i. Procedural issue

Prior to the start of the Opposition testimony, Mr. James Gilligan objected to the preliminary plan and site plan proceedings before the Planning Board. Mr. Gilligan stated his belief that the proceedings were "contested cases" under Title 10 of the State Government Article of the Md. Ann. Code. He requested that the hearings be deferred and that a public hearing be scheduled in accordance with the provisions of Title 10. The Chairman of the Planning Board ruled that the hearing could properly proceed. Mr. Gilligan objected to the Chairman's ruling and the proceedings continued.

The Planning Board has adopted Rules of Procedures ("Rules") establishing notice and hearing procedures to be followed in subdivision and site plan proceedings. These procedures are specifically promulgated to apply to and have been drafted to best meet the circumstances of such proceedings. The Planning Board finds that the procedures followed in this case comply fully with the Rules and the Planning Board's long-standing interpretation and application of the Rules, including those regarding notice, opportunity to present evidence and cross-examination of witnesses.

ii. Compatibility issues

Opponents to the proposal testified in general terms regarding the compatibility of the proposed development. Mr. Allen Myers, President of Maplewood Civic Association, testified that the residents of the existing community preferred single-family homes on the Property. He stated that they were willing to sacrifice the additional setbacks provided under the 100% Plan. He also requested that if the 100% Plan were approved, that conditions be imposed by the Planning Board regarding the landscape plan and construction traffic. Both conditions were acceptable to the Applicant. Ms. Sarah Gilligan, a resident in the surrounding neighborhood, testified that she believed the development "would not be compatible" and that it would not be better



environmentally than the 60/40 Plan. She stated also that the "private street design" may not provide enough parking to handle visitors.

a) Size of units, setbacks and buffers

As noted previously, the Applicant developed three scenarios for the Property. The Technical Staff stated that under the "R-60 Plan," the size of the units allowed would be similar to the size of the proposed units, but that the units would be closer to the adjacent homes. Under the R-60 Plan, the standard setbacks would be 8 feet for the side yards and 20 feet for the rear yard. The Technical Staff stated its expert opinion that under the "60/40 Plan," the size of the units would be similar to the size of the proposed units, but that the setbacks would be smaller. Under the 60/40 Plan, the setbacks would be 12 feet for the side yards and 35 feet for the rear yards. The Technical Staff stated its expert opinion that under the 100% Plan, the increased setbacks provided, which were "equal to the height of the buildings," reduced "the impact of the proposed units on adjacent homes." The Staff testified that the setbacks provided under this Plan were 40 feet in some areas and that a 40-foot setback in an R-60 development was "extraordinary".

In response to questions from Board members, the Technical Staff and Mr. Clarke testified regarding the buffers and green space provided under the 60/40 Plan and the 100% Plan. Under the 60/40 Plan, the total perimeter open space would be .30 acres and the perimeter buffers would range in size from 15 feet on the west side of the Property to 30 feet on the north and south sides. The total green space under the 60/40 Plan would be 2.1 acres (42%). In contrast, the total perimeter open space under the 100% Plan would be .95 acres and the perimeter buffers would range in size from 40 feet on the west to 75 feet on the southwest corner of the Property. The total green space under the 100% Plan would be 2.8 acres (57%). This information is presented more fully in the letter dated April 4, 2003 from Lesley W. Powell of Charles P. Johnson and Associates Inc. to Malcolm Shaneman and is part of the record in this case.

b) Height of Buildings

The Board questioned the Applicant regarding the height of the proposed units. Mr. Clarke testified that the height of the proposed units under the 100% Plan and the units allowed under the R-60 Plan would be the same.

c) Parking and Traffic Circulation

The record reflects that the number of parking spaces provided in the 100% Plan (65 spaces) is greater than the minimum number required (56 spaces) under the Zoning Ordinance. The Staff noted that the private road proposed for the Property, which would be open to public use, would be circuitous -- with three 90 degree turns and a significant change in elevation, both of which would slow traffic. Staff's testimony was unrefuted.

3. Site Plan Findings

Based on the testimony and evidence presented, including the Staff Report, the Board finds that, procedurally, this hearing is properly held in accordance with the Planning Board's Rules, as set forth above; and, substantively, pursuant to Section 59-D-3.4 of the Zoning Ordinance, with respect to the Site Plan component of the Application, the Board finds as follows:

- a. The site plan is consistent with an approved development plan or a project plan for the optional method of development, if required.

The Property is proposed to be developed in accordance with Section 59-C-1.6 *et seq.* of the Zoning Ordinance governing development including moderately priced dwelling units in residential zones. Therefore, no development plan or project plan is required.

- b. The Site Plan meets all of the requirements of the R-60 zone, and is consistent with an urban renewal plan approved under Chapter 56.

There is no urban renewal plan applicable to the Property.

The Site Plan complies with all applicable provisions of Section 59-C-1.628 as well as all other applicable requirements of the Zoning Ordinance, including the following:

<u>DEVELOPMENT STANDARDS</u>	<u>PERMITTED/REQ'D</u>	<u>PROPOSED</u>
Lot Area (ac):	n/a	4.97 acres
Net Density (dwelling/acre): @6.10x 4.97 acres	30	28
Dwelling Units:		
One-family attached (the MPDU units)	P	4
One Family Semi-detached	P	10
Townhouse	P	14
TOTAL		28
Moderately-priced DU's included -	4	4
Setbacks from street	20 ft.	35 feet @ Corsica Dr.
Yard Requirements		
<i>59-C.1.624 For a side or rear yard that abuts a lot that is not developed under the provisions of section 59-C-1.6 (the MPDU development standards), the setback must be at least equal to that required for the abutting lot with no rear yard less than 15 feet</i>		
Front yard	N/a	35 feet @ Corsica Dr.
Side yard	8 feet	40 feet
Rear yard	20 feet	40 feet
Lot area and width (min)		
One Family Semi Detached	3,500 s.f.	3,503 s.f.
Townhouse	1,500 s.f.	2,278 s.f.
One Family Attached	4 units on one lot	4,851 s.f.
<i>(Per 59-C-1.625(a)(4) Where an individual lot for each dwelling unit is deemed to be infeasible because of the manner in which individual units are attached to each other, the Board may approve a site plan depicting more than one dwelling unit on a lot.)</i>		
Staff recommends the Planning Board allow the MPDUs to be on one lot given the unique assemblage of the units.		
Max Building Height	3 stories or 40 feet	
Provided: 31.5 ft. MPDUs and 30.5 ft. Market Rate Units (not including elevation change for front steps)		
Green Space (%): @2,000 s.f. per unit	56,000 sf. or 1.28 ac	112,498 sf or 2.58 acres
Parking		
Total @ 2 per unit	56	48 in garage 17 surface pkg 65 total
<b>MPDU CALCULATIONS:</b>		
MPDUs required (12.5% of 28 units) = 3.5 or 4	4	4

- c. The locations of the buildings and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe and efficient.

The buildings are arranged on the property with maximum efficiency because the layout of 100% townhouses preserves the greatest amount of open space, tree cover, and existing vegetation. The locations of the buildings also allow adequate access to the proposed housing and sufficient separation from existing adjacent housing to maintain privacy. The orientation of the proposed buildings close to the street allows for direct access to the street, thereby promoting pedestrian use.

The street connections to the Property from Wisconsin Avenue and the adjacent neighborhood provide for an efficient and safe flow of traffic. The private street proposed on the Property is circuitous and contains three 90-degree turns; it is designed to slow traffic. Paved sidewalks will ensure pedestrian safety.

Sidewalks will connect all parts of the Property, thereby promoting safe and efficient pedestrian circulation. The proposed sidewalk connections to Acacia and Benton Avenue/Corsica Drive and to Wisconsin Avenue will extend efficient pedestrian access from adjacent neighborhoods to Wisconsin Avenue.

The proposed development provides adequate and efficient recreation areas, including tot lots, sitting areas and natural areas. In addition, a fence will insure that recreational activity is safely contained on the Property. The adequacy of the recreational facilities is illustrated in the chart below:

**RECREATIONAL CALCULATIONS:**

	TOTS	CHILDREN	TEENS	ADULTS	SENIORS
<b>Demand Points</b>					
For 28 units	4.8	6.2	5.0	36.1	2.0
<b>Supply Points</b>					
Sitting areas (4)	4.0	4.0	6.0	20.0	8.0
Tot Lot (1)	9.0	2.0	0.0	4.0	1.0
Pedestrian System	.5	1.2	1.0	16.2	.9
Natural Area (1)	0.0	0.3	0.5	3.6	0.1
<b>Total Supply Points</b>	13.5	7.5	7.5	43.8	10.0

The proposed landscaping adequately preserves existing mature plant material and provides adequate shade for the streets, play and sitting areas. It also provides screening to adjacent houses. The wide buffer areas and central tree preservation area save many mature trees that maintain the existing character of the Property. Plant material proposed will be adequate for this climate. The plant material proposed for the retaining walls will soften their appearance and provide screening. The plantings proposed adjacent to pedestrian areas will provide shade and seasonal interest.

The proposed lighting will safely direct the public through the Property but will not overpower the residential land uses on and adjacent to the site. Planning Board staff will review and approve the lighting plan prior the release of the signature set of plans. Staff will review and approve the lighting plans for the garage areas next to the adjacent neighborhood.

The stormwater management concept includes on-site water quality control, and a payment for onsite quantity control, as approved by the Montgomery County Department of Permitting Services. Impervious surface runoff will be diverted from the current overland flow condition through adjoining residential lots and directed into the public storm drain system. This diversion improves an existing drainage problem from storm drainage off Acacia Drive affecting residents along Cedar Way.

Any noise impact along Wisconsin Avenue will be mitigated by architectural treatment certified by an acoustical engineer.

- d. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

The proposed buildings under the 100% Plan are compatible with adjacent homes and nearby institutional uses. The setback from adjoining homes is significant and is 4 to 5 times the required setbacks in the R-60 Zone. The proposed tree preservation area, buffering and landscaping ensure adequate tree cover on-site and adequately screen the proposed development from adjacent residential uses. The location of the recreation area away from the adjacent residential homes ensures compatibility between those two uses. The use of identical building materials for the market rate units and the MDPU's creates internal compatibility within the development. The grouping of the MDPU's assures that such units will blend in with the market rate units. The vehicular connections will allow a more even distribution of traffic for the adjacent neighborhood (by providing another point of access) and thereby creating

a more compatible situation. The activity associated with the proposed residential uses will not cause any negative effect on the adjacent uses.

As such, the Planning Board finds that the 100% Plan is more compatible with the adjacent and approved development than the R-60 and 60-40 Plans. Moreover, the Planning Board approves the proposed layout of the MPDUs allowing more than one dwelling unit on one lot and finds that the consolidation of these MPDU lots is necessary and desirable for this development due to the unique assemblage of the proposed units.

- e. The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation and Chapter 19 regarding water resource protection.

The proposed Forest Conservation Plan ("FCP") conforms to the forest conservation law by providing on-site afforestation and the preservation as set forth on the approved final FCP revised March 28, 2003. The 100% Plan is the most effective Plan for achieving the priorities of the forest conservation law. It results in the retention of more mature trees, the provision of greater setbacks, and the provision of more green space and buffer area.

Accordingly, the Planning Board approves the use of 100% attached, semi-detached and townhouse units and finds that the proposed development is (1) more desirable from an environmental perspective than would result from strict adherence to the 60% limit for attached housing and (2) more compatible with adjacent and approved development than the R-60 and 60-40 Plans.

The stormwater management plan, as approved, meets the requirements of Chapter 19.

#### **4. Planning Board Action on Site Plan No. 8-03005**

Having considered all of the evidence presented and all of the testimony taken, including that discussed in the companion Preliminary Plan proceeding and Opinion, the Montgomery County Planning Board APPROVES Site Plan 8-03005 which consists of 28 units inclusive of 4 MPDUs, subject to the following conditions:

- 1) The MPDUs will have identical exterior building materials as the market rate units and confirming details shall be submitted to and approved by staff prior to the release of building permits. The units will be constructed of stone, brick and "hardi plank" board or their equivalent and any amendments or refinements to this material will be reviewed and approved by Planning Board staff prior to release of building permits.

2) Landscaping and Lighting Plans shall include the following prior to signature set for staff review:

- a. Staff shall review and approve and the immediate adjacent neighbors shall review plans for the preservation of existing or proposed plant material along the western boundary so as to create a tall vegetative buffer of sufficient width and height within a reasonable time frame for the buffer area. Additional evergreen material shall be used at the end of Corsica Drive.
- b. The driveway trees shall be a native species where feasible.
- c. The understory plantings within the central tree preservation area shall be reduced in quantity and scope and any future landscaping under the tree canopy shall be reviewed by staff prior to installation and phased-in after a 3-year period of adjustment (from the time of construction completion).
- d. Street trees to be located within Corsica Drive right-of-way.
- e. Buffer planting along the Corsica Drive frontage.
- f. All retaining walls shall be stone or masonry units.
- g. Lighting Plans shall be submitted to Staff for review and approval and shall include photometric grid for the entire site and will include all proposed lights on buildings and within streets and driveways. The Developer will meet with adjacent citizens to review the final lighting plan and will seek their consensus prior to Planning Board staff release of signature set.
- h. The project edge along Wisconsin Avenue will include an expanded sidewalk to allow pedestrian movement further from the curb, possible street trees and finish treatment to the adjacent retaining wall. MDSHA, Planning Board staff and the applicant shall coordinate the final details of the treatment prior to the release of signature sets.

3) The Applicant will supply to staff, prior to final site inspection, confirmation that an acoustical engineer has certified that the building shell has been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn for the buildings adjoining Wisconsin Avenue. The Applicant commits to construct the units in accord with these design specifications, with any changes that may affect acoustical performance approved by the acoustical engineer in advance of installation.

4) Applicant will submit a Site Plan Enforcement Agreement, Development Review Program and Homeowner Association Documents for review and approval prior to approval of the signature set as follows:

The Development Program will include a phasing schedule as follows:

- a. Streets tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
- b. Community-wide pedestrian pathways and recreation facilities must be completed prior to seventy percent occupancy of each phase of the development.
- c. Landscaping associated with all buffer areas and buildings shall be completed as construction of each unit is completed.
- d. Pedestrian pathways and seating areas associated with each unit shall be completed as construction of each facility is completed.
- e. Clearing and grading to correspond to the construction phasing, to minimize soil erosion.
- f. Coordination of each section of the development and roads.
- g. Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.
- h. The applicant shall require of all contractors that all construction traffic shall access the site from Wisconsin Avenue only.

5) Signature set of site, landscape/lighting, forest conservation and sediment and erosion control plans to include for staff review prior to approval by Montgomery County Department of Permitting Services (DPS):

- a. Limits of disturbances.
- b. Methods and locations of tree protection.
- c. Forest Conservation areas.
- d. Conditions of DPS Stormwater Management Concept approval letter dated January 26, 2001.
- e. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading.
- f. The development program inspection schedule.
- g. Conservation easement boundary.
- h. Streets trees as shown along all streets and drive streets.
- i. Centralized, screened trash areas for attached housing.

6) No clearing or grading prior to M-NCPPC approval of signature set of plans.

7) The Forest Conservation Plan shall satisfy all detailed conditions of approval prior to recording of plat and DPS issuance of sediment and erosion control permit.





**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Copy in: RESN-2005  
RESN-2007 12/3

RESN ADOPTED 1-4-07  
SPA DATE: 11-17-05

APPROVED AS TO LEGAL SUFFICIENCY  
DYD (TAB)  
M-NCPPC LEGAL DEPARTMENT  
DATE 1/5/07

MCPB Resolution No. 07-04  
Site Plan No. 82003005A  
Goodwill Property  
Hearing Date: November 17, 2005

**JAN 12 2007**  
**RESOLUTION**

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery-County Planning Board ("Planning Board" or "Board") is required to review site plan applications; and

WHEREAS, pursuant to Montgomery County Code § 50-41 and § 59-D-3.6, the Planning Board has the authority to enforce the terms of approval of site plans; and

WHEREAS, on November 17, 2005, the Planning Board held a hearing to consider allegations of setback violations in violation of the terms of approval for Site Plan No. 820030050 ("Hearing"); and

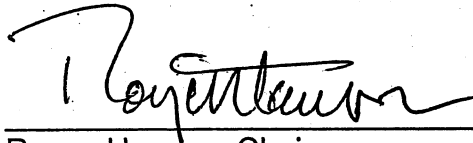
WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted and approved an agreement with Elm Street Development, Inc. (and its affiliate 9200 Rockville Pike, LC) (collectively "Respondent") regarding the terms of compliance on the motion of Commissioner Perdue, seconded by Commissioner Bryant, with Chairman Berlage and Commissioners Bryant, Perdue, Wellington and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapters 50 and 59, the Montgomery County Planning Board APPROVES the following terms of compliance agreed to by the Respondent in connection with the alleged violations for Site Plan No. 820030410:

1. Respondent shall remit a fine in the amount of \$6,000 for grading prior to site plan signature set approval, within 30 days of the adoption of this Resolution;
2. Respondent shall implement the following Plan of Compliance:

MCPB Resolution No. 07-04  
Site Plan No. 82003005A  
Goodwill Property  
Hearing Date: November 17, 2005

Commissioner Robinson, with Commissioners Bryant, Robinson, and Wellington voting in favor, with Commissioner Hanson abstaining and Commissioner Perdue absent, ADOPTED the above Resolution, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Site Plan No. 82003005A, Goodwill Property.

A handwritten signature in black ink, appearing to read "Royce Hanson", written over a horizontal line.

Royce Hanson, Chairman  
Montgomery County Planning Board

MCPB Resolution No. 07-04  
Site Plan No. 82003005A  
Goodwill Property  
Hearing Date: November 17, 2005

- a. Cause the proposed townhouse at Lot 19 (new Lot 28), at 5008 Cedar Croft Drive, to be constructed with a side setback of at least 43.2 feet (an increase of 3.2 feet) and a garage that will contain no more than two cars; and
  - b. Construct a more substantial fence along the north border of the site adjacent to the Temple Hills Baptist Church, with a design and dimensions approved by Planning Staff after consultation with the Church; and
  - c. Construct a brick masonry or stone fence along the south border of the site, +/- 147 feet in length and 6 feet in height; and
3. Proceed with the pending Site Plan Amendment (#82003005A) to incorporate these changes and any others found to be necessary to ensure conformity between the actual site conditions and the applicable Site Plan as approved; and
  4. Respondent waives its right to appeal the Planning Board decision as set forth in this Resolution; and

BE IT FURTHER RESOLVED THAT, that the Planning Board will abide by the following terms as agreed to at the Hearing:

1. The Planning Board makes no finding of violation against the Respondent or Craftmark Homes, Inc. and its LLC affiliate ("Builder");
2. The Planning Board will take no further action against the homeowners, the Respondent, or the Builder with respect to issues identified in the staff report dated November 17, 2005, pertaining to Site Plan No. 82003005A (formerly 8-03005) for Goodwill Property (Bethesda Crest).

BE IT FURTHER RESOLVED, that the date of this written resolution is JAN 12 2007 (which is the date that this resolution is mailed to all parties of record).

\* \* \* \* \*

At its regular meeting, held on Thursday, January 4, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on motion of Commissioner Bryant, seconded by