



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

MCPB Item # _____
4/12/07

MEMORANDUM

DATE: March 30, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Catherine Conlon, Subdivision Supervisor *CC*
Robert Kronenberg, Acting Site Plan Supervisor *RK*
Development Review Division



FROM: Richard A. Weaver, Preliminary Plan Reviewer *RAW*
Joshua C. Sloan, Site Plan Reviewer *JS*
Development Review Division

REVIEW TYPE: Preliminary & Site Plan Review

APPLYING FOR: Subdivision to create one lot for a total of 100,094 square feet of mixed use development (including 59,450 square feet of retail, 23,973 square feet of office, 2,730 square feet of restaurant, and 13 residential dwelling units) on 8.10 gross acres. Parking waiver of ten spaces.

PROJECT NAME: Ashton Meeting Place

CASE #: 120050060 (Preliminary) and 820060230 (Site)

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations
Chapter 59, Montgomery County Zoning Ordinance

ZONE: C-1, R-60, and Sandy Spring/Ashton Rural Village Overlay Zone

LOCATION: Located in the southeast quadrant of the intersection of Ashton Road (MD 108) and New Hampshire Avenue (MD 650).

MASTER PLAN: Sandy Spring/Ashton

APPLICANT: Ashton Meeting, LLC

ENGINEER: Macris, Hendricks and Glascock.

ATTORNEY: Miller, Miller and Canby

FILING DATE: July 9, 2004 (Preliminary Plan)
November 9, 2005 (Site Plan)

HEARING DATE: April 12, 2007

RECOMMENDATION: Denial of both the Preliminary Plan and the Site Plan

EXECUTIVE SUMMARY

Staff has concluded that neither the preliminary plan nor the site plan can be supported as submitted for several reasons. Each of these issues will be discussed in detail and should be considered independently and on its own merits. Regarding our analysis and recommendation, the preliminary plan and site plan conclusions are one and the same.

Outline of Denial

- 1) The plan does not comply with Section 59-C-18.18 - Sandy Spring/Ashton Rural Village Overlay Zone, of the Zoning Ordinance. The proposed development includes parking for commercial uses in residential zones. The allowance for such parking is subject to specific conditions, and this project fails to comply with those conditions.
- 2) The plan does not conform to specific language in Section 59-C-4.2 of the Zoning Ordinance related to the use of parking structures in the C-1 Zone. The proposed development includes a parking garage, which is not allowed as a permitted or special exception use in the C-1 Zone.
- 3) The proposed development does not substantially conform to the design guidelines for new development contained in the approved and adopted Sandy Spring/Ashton Master Plan and is not wholly compatible with the Master Plan.
- 4) The locations of buildings, structures, and pedestrian and vehicular circulation systems are not adequately safe and efficient as required by Section 59-D-3.4.(c) of the Zoning Ordinance. There are particular problems with the locations of buildings in relation to vehicular and pedestrian circulation patterns that should be reconsidered and conflicts between vehicular and pedestrian circulation patterns that should be avoided.
- 5) The plan fails to adequately protect environmentally sensitive areas as prescribed in Section 50-32(c) of the Subdivision Regulations. Structures, parking facilities, and storm water management facilities encroach into a wetland, wetland buffers, and stream buffers. Staff believes the encroachment is avoidable and unnecessary.

This staff report describes the existing site, the proposed development, and provides an analysis of the reasons for denial. It concludes with the necessary findings for both the preliminary and site plans.

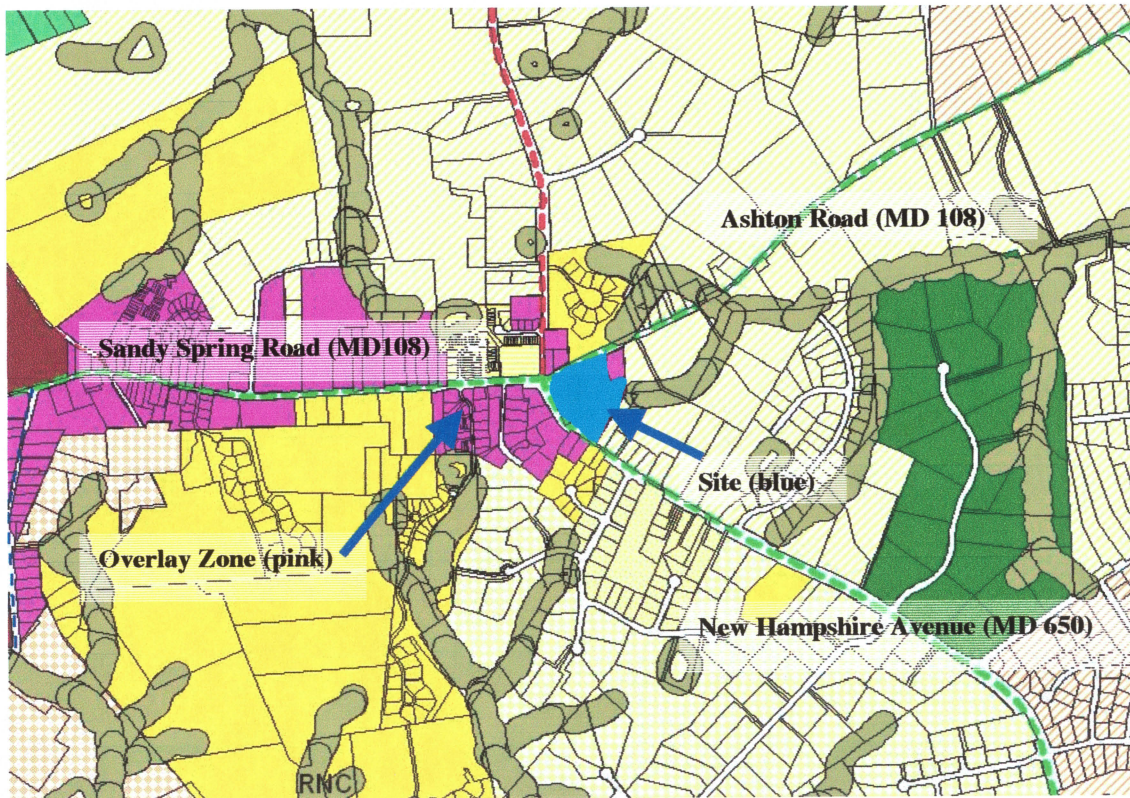
SITE DESCRIPTION

Attachments

- A. Vicinity Map
- B. Site Photos

Location, Adjacent Uses, & Site Features

The Subject Property (Property) is located in the southeast quadrant of the intersection of New Hampshire Avenue (MD 650) and Ashton Road (MD 108). This site is located in the easternmost area of the Sandy Spring/Ashton Rural Village Overlay Zone (SSARVOZ).



The Property is comprised of four platted properties identified as Parcel "F", Parcel "A", Outlot "A", Lot 1, and seven unplatted parcels (P456, P509, P457, P454, P411, P357 and P356) all shown on Tax Map page JT42. The total acreage of the Property is 8.1 acres of which 4.7 acres are zoned C-1 and 3.4 acres are zoned R-60; the net site area is 7.0 acres after right-of-way dedication. The Property is currently occupied by a Sandy Spring Bank located at the intersection of the two state highways; there is a small utility shed of unknown use located to the east of the bank. Three other structures were recently razed on the site.

Uses surrounding the site area as follows: to the north across MD 108 is a closed convenience store and gas station that dates back to the 1930's; to the west is a gas station at the intersection, the Cricket Book Store, and the Alloway office building. Directly south are scattered residential units, some of which house special exception uses; to the east is a PEPCO substation with low density residential beyond. In the northwest quadrant of the intersection of MD 650 and MD 108 there is a strip shopping center.

The Property's highest point is at the intersection of the two state highways. The grade then slopes downward towards the wetland and stream in the eastern corner. Most of the site is

mowed lawn with scattered trees. The wetland and environmental buffers are associated with a headwater Use IV-P stream that connects to the Patuxent River watershed. The Patuxent is a tributary to the Triadelphia and Rocky Gorge Reservoirs, which supply drinking water for parts of Montgomery, Howard, and Prince George's counties. A Category I conservation easement located on Outlot "A" protects a portion of the site's environmental buffer (28,110 square feet out of square feet 66,860 of onsite buffer area) and was created as part of a previous preliminary plan approval.



Aerial view of site looking southeast.

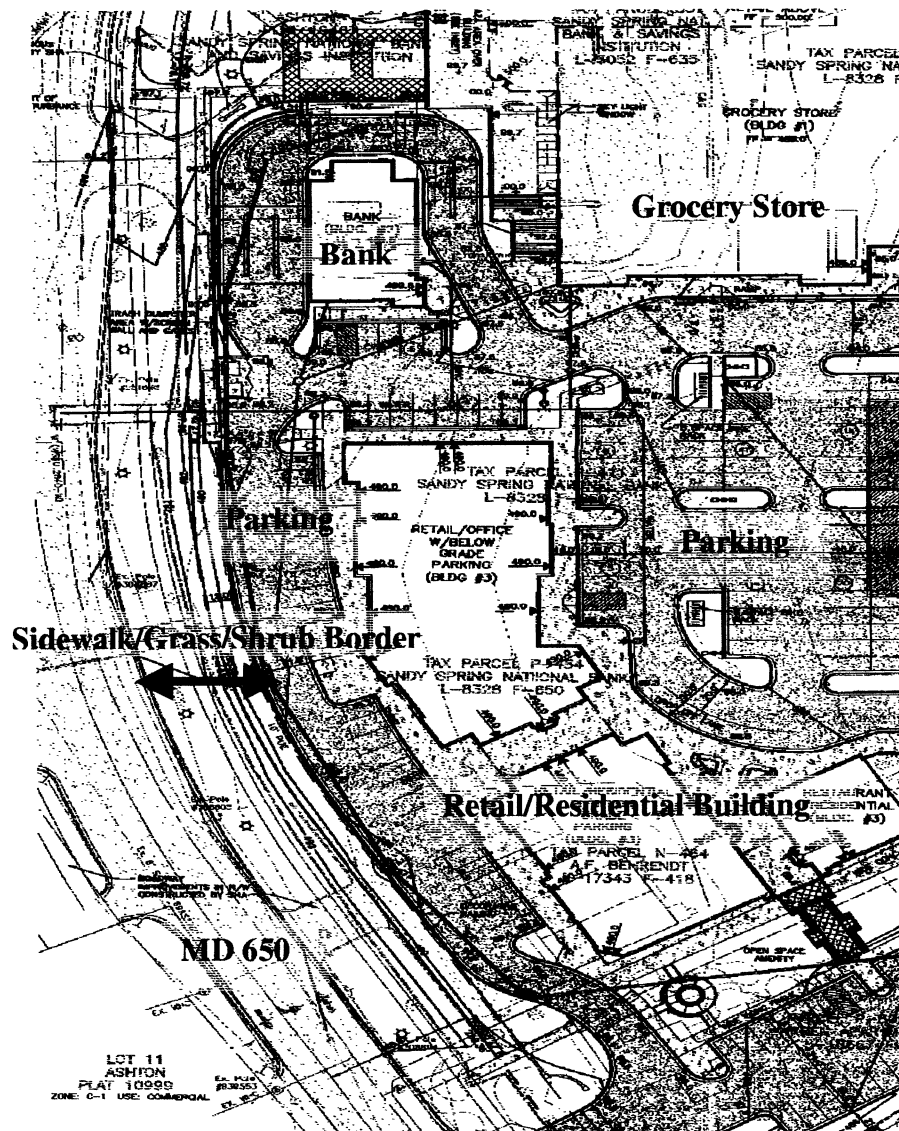
PROJECT DESCRIPTION

Attachments

- C. Preliminary Plan
- D. Site Plan

Proposed Development

The application proposes to create one lot to accommodate 54,450 square feet of retail space (including 33,120 square feet for a grocery store); 23,973 square feet of office space; 2,730 square feet for restaurant use; and, 13 residential dwelling units (condominiums). The total floor area ratio (FAR) for the project is 0.49. The Maryland State Highway Administration (MDSHA) has approved access to the site at two locations: one on MD 650 and one on MD 108. The existing branch of the Sandy Spring Bank is to be rebuilt at the intersection of the two state highways as a separate, freestanding building with a below-grade, drive-through access. The grocery store is to be located to the east of the bank with its façade to the interior of the site. To meet certain master plan goals a strip of retail and office space was added along the back of the grocery store to activate the street front along MD 108. On-street parking was also added along MD 108 and has been approved by the MDSHA.



Detail of Site Plan Along MD 650

Along the MD 650 frontage there is a strip of retail, office, and restaurant space; this building is terminated by a community open space at its southern end. The 13 residential units will be located on the second and third floor of this structure. The building does not front directly on MD 650 - instead, a single loaded parking area with two-way traffic, a shrub border, grass strip, and sidewalk separate it from the road. The remainder of the surface parking is provided in the interior of the Property and is generally hidden from view from the adjacent roads. The plan also proposes 49 parking spaces in a subsurface structure under the retail/residential building along MD 650. This parking structure is to be used primarily by the residents of the 13 units and the owners or lessees of the retail stores but is open to the retail patrons. Access to the underground parking is immediately to the south of the restaurant.

The plan proposes significant dedications to the two adjacent state highways. The MDSHA has a design and funding in place for a significant upgrade to the intersection of MD 650 and MD 108 that is inextricably bound to this project. The applicant is required to provide certain improvements including left, through, and right-turn lanes on both eastbound and westbound MD108 and MD650. Sidewalks will also be required on both roads.

The landscape is enhanced with street trees along MD 650 and MD 108. The northwest corner of the property, directly on the intersection, is designed as a large green space with a small plaza connecting the bank and grocery store buildings as requested by members of the community. Two existing trees within this open space area will be saved. The green space adjacent to the retail/residential building is designed to provide passive recreational opportunities for residents and patrons. It will contain a fountain, pergola, plantings, and a lawn. Numerous plant beds and screening plants are used throughout the site to add visual interest and block views from the residential neighborhoods and into the parking lots.

Lighting is provided along both street fronts and throughout the site to ensure that the site provides safe and functional space at night. There will be no glare or excessive illumination on adjacent residential areas.

Most of the pedestrian paving is concrete or scored and tinted concrete. Stone benches are provided in the open space amenity area. The parking lot contains an area of permeable paving to mitigate some run-off. Stormwater management facilities are primarily housed under the parking lot and on an adjacent facility that SHA will construct.

ANALYSIS

The following section describes the rationale for denial based on Zoning Ordinance requirements, Master Plan compliance, and Subdivision Regulations. It should be stated that this is an unusually complex case due to the difficulty of interpreting the particulars of the Zoning Ordinance, the Sandy Spring/Ashton Master Plan and the Rural Village Overlay Zone. For purposes of this report staff has concentrated primarily on an analysis of the issues that lead us to our recommendation of denial.

■ Zoning Ordinance Requirements

Attachments

- E. Letter from Miller, Miller & Canby
- F. Letter countersigned by the Department of Permitting Services

The Sandy Spring/Ashton Rural Village Overlay Zone (SSARVOZ) was established in the Zoning Ordinance to ensure compliance and consistency with the recommendations of the Sandy Spring/Ashton Master Plan. Although the plan complies with some of these recommendations, it does not comply with two specific Zoning Ordinance stipulations.

1. Parking for Commercial Uses in the R-60 Zone

The plan proposes parking for commercial uses in the R-60 zoned portion of this property. In virtually all circumstances “Parking of automobiles, off-street, in connection with commercial uses” is allowed in the R-60 zone if approved by special exception (59-C-1.31(b)). In the cases where that commercial use is on land zoned C-1, however, section 59-C-4.345 states, “The off-street parking required by Article 59-E must be provided on land which is in the C-1 zone, except as required in the special exception provisions of section 59-G-2.39 or 59-G-2.40.” Section 59-G-2.39 describes the findings and requirements necessary to grant a special exception for off-street parking in zones where it is not permitted by right. Section 59-G-2.40 has no bearing on this case.

Section 59-G-2.39(b) requires that “the commercial uses to be served by the [parking] facility are not in the C-T or the C-1 zone unless the land in the C-1 zone complies with the exceptions to this provision stated in either subparagraph (h) or subparagraph (i)”. Neither subparagraph applies to this case. Consequently, if there were no further complications, parking in connection with the C-1 zoned uses on the R-60 zoned portion of the subject site would not be allowed.

Notwithstanding the requirements of the underlying zones, the Sandy Spring/Ashton Rural Village Overlay Zone (SSARVOZ) does, under specific circumstances, allow for parking related to commercial uses in the R-60 zone without the need to obtain a special exception. In particular, there are two sections of the Zoning Ordinance that make reference to parking “in connection with” or “for” commercial uses in residential zones. The first is in the section on Commercial development: Development standards, 59-C-18.182(b)(2)(D):

In areas recommended in the Sandy Spring/Ashton Master Plan for mixed use development, development should [be] consistent with the recommendation of the master plan. In the residential portions of the mixed-use areas, off-street parking for commercial uses is allowed without a requirement for approval of a special exception.

The second is in the section on Off-street parking and loading, 59-C-18.185(b):

Properties in a residential zone that are designated in the Sandy Spring/Ashton Master Plan as suitable for mixed use or non-residential use may be utilized for off-street parking in connection with commercial uses without the necessity for approval of a special exception under Sec. 59-G-2.39.

The relevant question is whether the subject property is in an “area recommended...for mixed use development” and/or whether it is a “property in a residential zone that [is] designated...as suitable for mixed use or non-residential use.” The latter question is easier to answer than the first.

Although the entire southeast quadrant of the intersection of MD 108 and MD 650 is mentioned with respect to the type of residential development that should occur, the properties on the subject site, including those in a residential zone, are not designated as suitable for mixed use or non-residential use in the Sandy Spring/Ashton Master Plan (SS/AMP). Therefore, section 59-C-18.185(b) cannot apply to this project. The question could be raised as to whether this section is thus rendered meaningless or can be applied to other properties. In fact, page 34 of the SS/AMP designates three properties as suitable for parking in connection with commercial uses.

To allow better design, incorporate the village green and accommodate the new fire station, this Plan recommends allowing parking in connection with the commercial uses on the properties east of Brooke Road, which also front on MD 108, where properties are zoned commercial and residential.

So, section 59-C-18.185(b) of the zoning ordinance can be applied to certain properties in the SSARVOZ but cannot be applied to the subject property.

The former question relating to whether the subject site is an area recommended in the Sandy Spring/Ashton Master Plan for mixed use development is harder to answer, but there are several sections of the master plan that have been analyzed. The only mention of anything akin to “mixed use” is on page 31 in the section on development guidelines that apply to both village centers: “Encourage a land-use mix of stores and homes by maintaining the existing mix of commercial and residential zoning within the village centers.” This implies that businesses should or could be next to homes next to institutional uses, etc. according to the existing zoning pattern. But does this also imply that the entirety of both village centers is to be considered “mixed use”? If this is the case, then any “residential portion” of the village centers is open to parking for commercial uses without the need for a special exception and staff does not believe this to be the intent of the master plan.

Further, it seems illogical to say, “in areas recommended in the SS/AMP” if the entire area is thus recommended. It can be argued that the village centers are such areas and are distinct from other areas of the overlay zone but there is no such designation of a mixed-use project for this site to take advantage of the parking provision within the master plan. In fact, prior to approval, the Montgomery County Council removed language such as “flexibility in siting commercial and residential uses on adjacent properties in designated areas” and more

importantly modified the second bullet under the Recommendations for the Ashton Village Center as follows:

Limit residential development in the southeast quadrant to single-family detached homes only, rather than townhouses. This plan recognizes that special exception uses may be appropriate as well. ~~This plan recommends that there be flexibility in placement of commercial uses in the southeast quadrant to encourage design that better integrates residential and commercial uses. This flexibility is allowed through the proposed Sandy Spring/Ashton Rural Village Overlay Zone.~~ The existing zoning should be confirmed. (Page 20 of the Resolution, Page 39 SSAMP)

By removing the third and fourth sentences of the recommendation, the Council directly addressed this area of the Overlay Zone and removed any recommendation for mixed use on the Property and thereby removed any designation that would allow parking for commercial uses in the residential zones. Due to an unfortunate editing error, the text remains in the master plan as originally written, not as amended and approved by the Resolution.

Another example of the Council's intent is seen in their editing of the third sub-bullet in the development guidelines of the Recommendations for the Village Centers:

Encourage a land-use mix of stores and homes by maintaining the existing mix of commercial and residential zoning within the village centers together. ~~A mix should be combined within sites and buildings to increase activities.~~ (Page 16 of the Resolution, Page 31 SSAMP)

The underlined section was added by the Council and the strikethrough was removed. Thus, we conclude that the "land-use mix" is in relation to separate but adjacent uses as reflected by the zoning patterns and the parking in connection with this C-1 property is not allowed on this portion of R-60 land.

2. Parking structures in the C-1 Zone.

As mentioned in the project description, a below-grade parking structure takes up the entire cellar area of the retail/residential building. There are six reasons that the Zoning Ordinance does not allow such a parking garage on the is particular site and C-1 Zones in general. But first we provide a synopsis of the applicant's line of reasoning; the full explanation is in their attached letter, which is countersigned by the Department of Permitting Services.

The applicant argues that structured parking is allowed on the subject site because it is part of the off-street parking requirements for the site. The first premise of this argument is that Section 59-C-4.2, Land Uses, which are allowed in commercial zones, states that, "Parking of motor vehicles, off-street, in connection with any use permitted," is permitted in all of the commercial zones. The second premise is that "Off-street" parking is interpreted to allow surface parking and/or structured parking that supports any use permitted on site. To support this interpretation, the applicant references section 59-E-1.2, which states, "All garage or other

structured space allocated for the parking of vehicles in basements, on the roofs of buildings, or otherwise within buildings shall be considered part of the required off-street parking facilities.” Thus, the term, “off-street parking facilities”, is partially defined through section 59-E-1.2 to include garages, structures, rooftop parking, and in fact, any parking on or within a building. Therefore, the conclusion is that parking structures are allowed in connection with any use permitted.

Staff strongly disagrees, finding six reasons that the Zoning Ordinance does not allow such a parking garage on this particular site and C-1 Zones in general. These reasons are enumerated below.

- 1) *If parking garages are allowed everywhere off-street parking in connection with permitted uses is allowed, parking garages would be permissible in virtually every zone.*

For example, Section 59-C-1.13, Land Uses, for residential zones, includes the same text: “Parking of motor vehicles, off-street, in connection with any use permitted in the zone.” And, as in the commercial zones, this use is permitted for all residential zones. Thus, under the logic of the applicant’s argument, one could argue that “structured parking” is allowed in any residential zone. An identical argument and inference can be made in every industrial zone and every agricultural zone. These are zones that do not offer any garage parking as a possible permitted use and for good reason because parking structures allow more vehicles to take up less land area. This, in turn, impacts how much density can be placed on any given site. Clearly, limiting parking to surface parking is one means to limit the density allowed in those zones - especially in zones where there is no development standard concerning floor area ratio or dwelling units per acre.

- 2) *If we follow the logic of the applicant’s argument further, several sections of the Zoning Ordinance are rendered meaningless.*

Most notably, the several definitions of “Automobile, Garage, Group/Private/Public” in section 59-A-2.1 are rendered meaningless. In fact, the entire row of the land use table for “Parking garages, automobile” becomes meaningless. This is implied by the fact that we now have a definition of off-street parking, which includes “garages, structures, etc.” and it is used to infer an allowed use through the “Parking, off-street...” land use. Thus, we circumvent the land use restrictions on parking garages, which is limited to several specific zones, such as C-P, C-2, most CBD, and several MX zones. Also, because there is not a definition of “Parking Structure”, we should instead look to the specific provisions in the Zoning Ordinance as is and not create new terms and definitions or render existing ones meaningless.

- 3) *The provision for off-street parking is for permitted uses, not those allowed by special exception.*

Even if one were to accept the Applicant's position that the "off-street" use controls, its argument still would not endure. Section 59-C-4.2, Land Uses., which are allowed in commercial zones, states that, "Dwellings" in the C-1 zone may be allowed only by special exception. Dwellings are not a "permitted" use, and, consequently, parking for dwellings is not a permitted use and it doesn't seem that the use, "Parking of motor vehicles, off-street, in connection with any use permitted," applies to this set of facts, namely, the parking is for dwellings which are allowed only by special exception.

4) *This parking structure is not an accessory use or accessory building.*

Commercial and multi-family parking garages, in particular garages or structures with more than six (6) spaces, are not accessory buildings: they are built only when the subject site does not allow for surface parking due to area or aesthetic/compatibility constraints. An accessory building is "A building subordinate, and located on the same lot with, a main building, the use of which is clearly incidental to that of the main building or the use of the land, and which is not attached by any part of a common wall or common roof to the main building". (Section 59-A-2.1.) ("Subordinate means that the footprint of the accessory building is smaller than the footprint of the main building". (ibid)) Meeting the required parking standards for commercial or multi-family use of the land is not an incidental matter. Nor are they an accessory use when they are provided for uses that would not be viable without them. In that case they become necessary and, thus, are not "incidental" to the development.

5) *The Zoning Ordinance uses limitations on parking to limit density.*

In the specific case of the C-1 zone, the distinct purpose of the zone, which has no FAR limit - only height, setbacks, green area and land use restrictions, is to "provide locations for convenience shopping facilities in which are found retail commercial uses which have a neighborhood orientation and which supply necessities usually requiring frequent purchasing with a minimum of consumer travel. Such facilities should not be so large or so broad in scope of services as to attract substantial amounts of trade from outside the neighborhood." Limiting parking by prohibiting parking garages is one way to limit these larger scales.

6) *Last, there is a more reasonable interpretation of Section 59-E-1.2.*

Although parking is allowed for any permitted use, and garages or other structures are considered part of the required off-street parking facilities, this does not mean that garages are permitted anywhere off-street parking is required. This logic would suggest that garages are allowed in the residential, agricultural, and industrial zones, among others, because they also allow, "parking of motor vehicles, off-street, in connection with any use permitted", even though the table is silent on garages. With respect to the land use sections for most zones, the ordinance states, "No use is allowed except as indicated in the following table,"

but the logic stated above would allow garages. The intention of Section 59-E-1.2 is simply that parking within buildings or on their roofs must be considered by the reviewing agency when analyzing a plan for compliance with section 59-E provisions. Further, that section requires that even if there is a garage or structure, one must submit a parking facilities plan in conformance with section 59-E; it doesn't permit the construction of a garage or structure to meet minimum parking requirements. This section does not deal with permitting uses - it is concerned with the standards and requirements for all off-street parking, regardless of type.

The proposed structure is a parking garage and is subject to the land use table for commercial zones. It is Staff's position that, on this issue, the zoning ordinance as it currently stands is unambiguous and does not allow parking garages as a permitted use in the C-1 zone.

■ Master Plan Compliance

Attachments

G. Memorandum from Community Based Planning

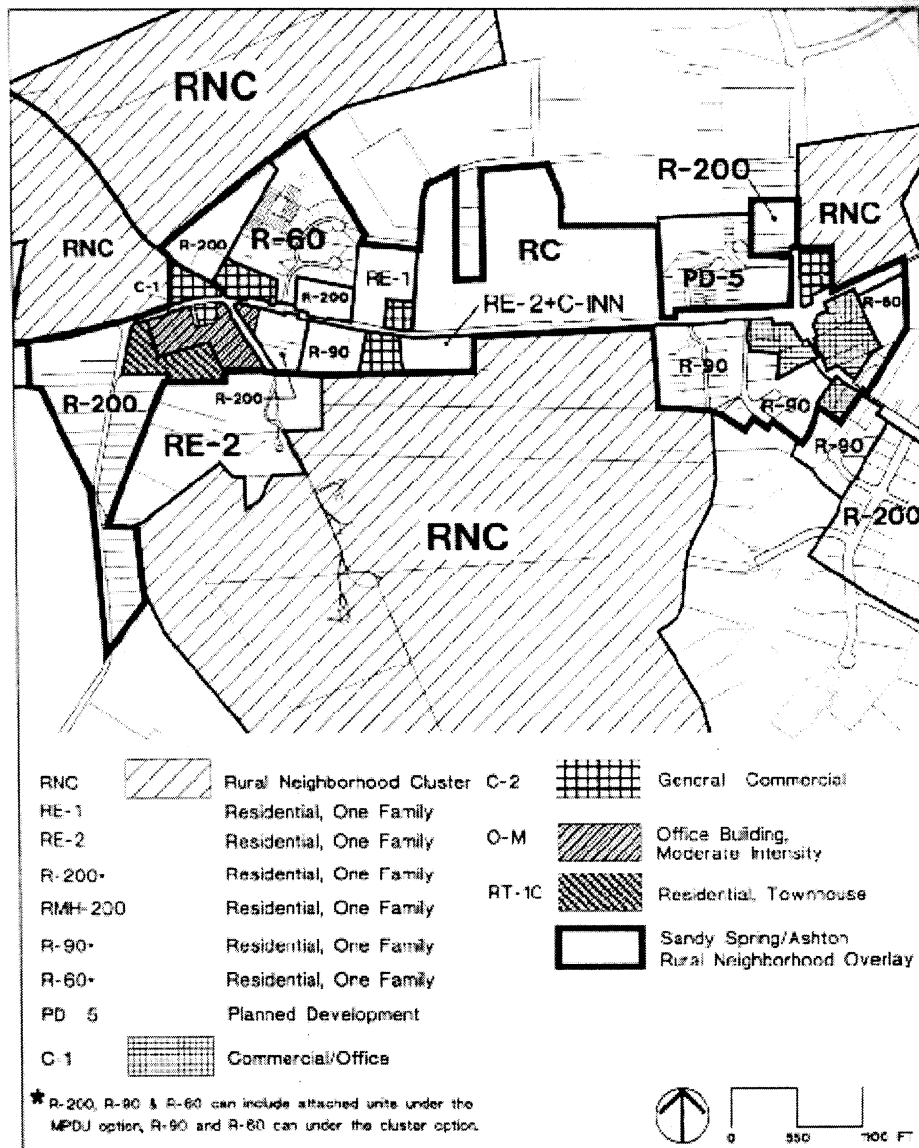
Consistency with the Master Plan and Compliance with Design Guidelines

The Sandy Spring/Ashton Master Plan was approved and adopted in 1998 and is the basis of two findings that are required by the Sandy Spring/Ashton Rural Village Overlay Zone (SSARVOZ). Community Based Planning (CBP) has done an excellent job in depicting the struggles the applicant, the community, and staff have had in trying to decipher the various pertinent issues. Their full memorandum is attached.

In brief, staff is of the opinion that the proposed development complies with the larger land use vision of the master plan and is consistent with many of its goals and recommendations. As CBP has noted, the recommendations of the master plan "are at best ambiguous and at worst contradictory and inconsistent". With respect to Zoning Ordinance section 59-C-18.186(a) that states that the site plan must be found to be "consistent with the recommendations" in the master plan, we find this to be generally true regarding land use and redevelopment issues. There are other issues of consistency, however, that are not met by this project including scale, functional design, and regulatory concerns.

ZONING PLAN FOR THE VILLAGE CENTERS

FIGURE 13



SANDY SPRING/ASHTON MASTER PLAN

- 33 -

APPROVED AND ADOPTED

There is a more substantial problem with Zoning Ordinance section 59-C-18.184(b), which requires that any proposed development must “substantially conform with the design guidelines” in the master plan. In this case, there are several reasons why this finding cannot be made. There are several design guidelines specifically mentioned in the master plan:

- Provide attractive rural entries along roads leading to Sandy Spring and Ashton village centers. (Pg. 9).
- Ensure that the villages of Sandy Spring and Ashton maintain separate and distinct identities. (Pg. 29)

- Balance the need for increased road capacity along portions of MD 108 with the need to maintain a “main street” character on MD 108 within the village centers. (Pg. 31)
- Balance increased commercial density with the intent to maintain the small scale of the existing village centers. (Pg. 31)
- Use traditional village design. (Pg. 31)
- Encourage active fronts on buildings, such as porches and street entrances. (Pg. 31)
- Create pedestrian traffic with uses and designs that invite frequent visits by all members of the community. (Pg. 32)
- Encourage stores and other uses that provide services for local residents and are at a compatible scale. (Pg. 32)
- Create small parking areas that are well landscaped, preserve trees, and compatible with nearby uses both day and night. Place most off-street parking out of view of common space and active fronts, rather than between buildings and the street. (Pg. 32)
- Maintain the existing scale of Ashton village center and encourage improvements to its character. (Pg. 38)
- Exclusion of new auto-oriented or typically large-scale uses that are inconsistent with traditional rural development patterns. (Pg. 81)

The proposed development provides the architectural character and interest appropriate to a village center and creates a separate and distinct aesthetic for Ashton. It does not, however, provide the recommended scale and active main-street the master plan envisions. In particular, the mass of the grocery store is inconsistent with the “small scale of the existing village centers”. Further, the separation of the buildings along MD 650 from the street does not provide “active fronts” or “street entrances” that would help “create pedestrian traffic”, whereas these exact features are provided along MD 108. And while the architectural details may improve the character of the village center and are based on traditional design motifs, the layout and massing is not in keeping with traditional rural development patterns. This is especially true with regard to the large-scale, auto-oriented nature of the project. Last, the parking in front of the buildings along MD 650 minimizes street activity and cuts pedestrians off from the site.

■ Environmental

Attachments

- H. Memorandum from Environmental Planning
- I. Biota Environmental Resource Functional Assessment Report

Compliance with Environmental Guidelines & Regulations

Environmental staff recommends denial due to the avoidable and unnecessary encroachments into the wetland, wetland buffers, and stream valley buffers on the Property based on the provisions of Section 50-32(c) of the Montgomery County Subdivision Regulations. Despite the fact that the proposed development has an underground parking facility, parking in the residential portion of the site, and requests a waiver of the required number of parking spaces, the project continues to rely on excessive grading, fill, and paving in the environmentally sensitive areas. This, in concert, with the design guideline concerns discussed above, reinforces

our position that the scale of the proposed development is inconsistent with contextual and site constraints.

The applicant maintains that the encroachment of the building and parking facilities into the wetland and its buffer are necessary and that they have exhausted all efforts to completely avoid the environmentally sensitive areas. Staff contends that the encroachments are avoidable and can be eliminated, with the realization that it may have significant implications for the viability of the grocery store and perhaps the economic viability of the project as a whole. Throughout the review of this plan, Environmental Planning staff has been involved in numerous meetings and negotiations with the applicant and concerned citizens. Their memorandum with detailed analyses and conclusions is attached.

In their assertion that the encroachments are necessary and unavoidable, the applicant has proposed a plan to mitigate the encroachment. The mitigation plan includes the revitalization of wetland areas and buffers, considerable afforestation, and improved water quantity and quality control. The applicant's consultant provides the following summary to the attached report:

In summary, the results of this environmental functional assessment reveal that the proposed improvement of the property will not have any adverse environmental impact upon the primary functions the existing wetlands provide. Through sound site design and the incorporation of innovative stormwater management practices, the ability of the wetlands to be retained on-site to provide a groundwater recharge functional benefit during small rainfall events, as well as their ability to provide groundwater discharge during larger rainfall events has been preserved and enhanced. In addition, the wetlands ability to provide sediment retention and pollution filtering, natural flood control and water quality improvements has been persevered [sic] and enhanced. The streambank stabilization, wildlife habitat and recreational amenities the existing wetland provide are generally characterized as of low value and will not be adversely impacted in association with the proposed site improvements. The proposed management of off-site stormwater run-off in combination with forested wetland mitigation and off-site reforestation serves to significantly enhance these functional benefits and, thus, provides full mitigation for all jurisdictional impacts associated with the project.

Staff respectfully disagrees with the proposal to mitigate the impacts. Based on the importance of the on-site headwaters, the uncertainty as to whether groundwater recharge will be sufficiently maintained by the proposed mitigation, and due to the amount of imperviousness proposed we believe that the recommendations of the relevant environmental regulations and guidelines should be strictly upheld.

■ Citizen Correspondence and Issues

Staff has provided the Planning Board with a comprehensive set of emails and letters on the proposed development. Given the volume of the correspondence it is not possible to address each and every concern. The Community Based Planning memorandum, attached to this report,

provides a very good synopsis of the evolution of this plan. The community has been extremely active in the review and involvement of this property. It is exceedingly clear that the citizens believe this property to be the cornerstone of the Ashton Village Center and that the form of its development is important to the success of “downtown” Ashton as a livable and economically viable community. To summarize, the citizens that we have heard from come from three camps:

- 1) Oppose the proposal citing that it is too big for the site and does not live up to the vision of the master plan as local service, rural village.
- 2) Support the concept of a mixed use, village center with a grocery store but at an appropriate size and scale that protects the environmental resources.
- 3) Support the plan as proposed.

It is difficult to give the Planning Board a sense of the degree of support from each camp. Suffice to say that staff has heard from a critical mass from each perspective, some camps having swapped members as the plan has evolved. It is safe to conclude that through the efforts of the applicant, they have seemingly won over more citizens than they have lost. In the numerous meetings with citizens on the plan, it is a rare occurrence to have ever made any one group entirely happy, but most understand that the Property does have some level of development potential and that if this plan is, in fact, denied, a new plan will be submitted possibly for something other than what is now proposed.

■ Transportation

Attachments

J. Memorandum from Transportation Planning

A traffic study was required for the subject development since it would generate 30 or more peak hour trips. The Transportation Planning Section of the County-Wide Planning Division evaluated the preliminary plan and traffic study. The recommendation for the project is conditional approval.

■ Concurrent Review

Special Exception

There is a current application for a Special Exception (S-2683) submitted for review. The special exception is a request to allow residential dwellings in the C-1 zoned land on the subject site. The applicant has decided to withhold pursuit of this approval due to the staff recommendations of denial of the Preliminary and Site Plans. If the Preliminary and Site Plans are ultimately approved, the Planning Board will need to hold a hearing on this Special Exception use.

FINDINGS

■ Preliminary Plan Review

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, including Chapter 59, the Zoning Ordinance and Chapter 50, the Subdivision Regulations. As detailed and discussed in this staff report, there are significant inconsistencies between the plan and the County Code.

1. *The proposed development does not comply with Section 59-C-18.18. Sandy Spring/Ashton Rural Village Overlay Zone of the Zoning Ordinance.*

The proposed development includes parking for commercial uses on residential zones. The allowance for such parking is subject to specific constraints and this project fails to meet those constraints.

2. *The proposed development does not comply with Section 59-C-4.2. Land Uses of the Zoning Ordinance*

The proposed development includes a parking garage, which is not allowed as a permitted or special exception use in the C-1 Zone.

3. *The preliminary plan does not meet all of the applicable environmental requirements as stipulated in Section 50-32(c) of the Subdivision Regulations.*

The plan fails to adequately protect environmentally sensitive areas including wetlands, wetland buffers, and stream buffers.

■ Site Plan Review

Compliance with the Zoning Ordinance, Master Plan, & Applicable Environmental Requirements

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. A special exception is required to permit residential dwellings on the C-1 area of the subject site according to section 59-C-4.2.

2. *The Site Plan does not meet 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.*

The site plan meets many of the development standards for density, setbacks, building heights, and green space of the C-1, R-60, and Sandy Spring/Ashton Rural Village Overlay zones. The site plan does not, however, meet all of the requirements of these zones as we discussed in the Analysis section of the Staff Report. A statement of our findings regarding the overlay zone is provided below.

The site plan does not comply with certain land use requirements of the underlying C-1 or R-60 zones. In this instance, the proposed development includes a parking garage, which is not allowed by permit or by special exception in the C-1 zone. The detailed explanation of this issue is in the Analysis section of the Staff Report.

3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are not adequate, safe, and efficient.*

a. Locations of Buildings and Structures:

The locations of the building and structures along MD 108 are adequate, safe, and efficient with respect to basic design parameters. With respect to their mass and the consequent impacts on village character and wetland encroachments, however, the location is incompatible with the site context.

The locations of the buildings, structures, and pedestrian and vehicular circulation systems along MD 650 are neither safe nor efficient. The duplication of streetlights and pedestrian sidewalks as well as the single-loaded parking in front of the storefronts are an inefficient use of resources and space. This design unnecessarily adds to impermeable surface and decreases the main street “walkability” of the site. This is especially true on a site with related environmental constraints.

Staff recommends that the buildings be pulled up to the street to provide a more efficient and safe pedestrian and vehicular environment as well as a safer, more efficient and more adequate in terms of environmental and site context.

b. Open Spaces:

The plan proposes 21% of the site to be dedicated green space. This space is composed primarily of the open-space amenities at both ends of the buildings along MD 650 and the wetland and stream areas.

c. Landscaping and Lighting:

The proposed landscaping on the site consists of street trees along MD 650 and MD 108; shrub borders along the parking lots adjacent to these roads; interior

landscape beds; trees and shrubs within the parking lot islands; and various deciduous and evergreen border plantings around the perimeter of the site.

The lighting plan consists of streetlights along MD 650 and MD 108; interior lamps and fixtures along all of the pedestrian paths; and parking lot fixtures on 25-foot poles. The streetlights are colonial in style, while the parking fixtures are standard commercial box fixtures. As noted in the Analysis section, the lighting will not produce excessive glare or illumination on adjacent residential areas.

d. Recreation Facilities

Recreation facilities are not required for the proposed development.

e. Pedestrian and Vehicular Circulation Systems

Access points to the site are to be provided from MD 650 and MD 108. These have been negotiated with SHA and are adequate, safe and, efficient.

The internal pedestrian and vehicular circulation is not adequate, safe, and efficient. There are two safety issues that are not resolved. The first is that pedestrians and bicyclists must cross traffic twice – across MD 650 and the internal parallel drive aisle – to get to the retail and residential building. Potential conflicts between pedestrians, bicyclists, and vehicles could be avoided by removing the access road and locating the buildings directly along MD 650. There are further complications with the proximity of the drive aisle to the drive-through egress, two dumpsters and a handicapped access ramp. The second safety issue is that traffic turning into the shopping center from MD 650 can immediately turn left into a parking area potentially backing traffic up into the state road as well as creating potential conflicts with pedestrians and vehicles coming in into and out of the various parking drive aisles and sidewalks at this point. Given the amount of traffic on MD 650 and the projections for trips in and out of the center, we recommend that this area be reconfigured to direct traffic further into the site to avoid such conflicts.

The associated bike paths and sidewalks that will be undertaken by SHA and DPWT are discussed in the Transportation Planning Memorandum. Interior sidewalks around the perimeters of the retail and residential buildings provide an adequate, safe, and efficient pedestrian environment with the notable exception of the problems in front of the buildings along MD 650.

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

The structures and uses proposed by the subject site plan are larger in scale and mass and have proposed uses that are not compatible with the rural village context and the existing small scale of the village center. A future plan that is less dense

could comply with the parking limitations and may well be able to avoid the environmentally sensitive wetlands and buffers on the site.

5. *The Site Plan does not meet all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

As the discussion above and the detailed memorandum from Environmental Planning Staff make clear, the site plan does not comply with the applicable environmental requirements and guidelines for Montgomery County. Specifically, the proposed development does not provide adequate mitigation measures to protect environmentally sensitive areas as recommended by Section 50-32(c) of the Subdivision Regulations. Additionally, it is inconsistent with the Planning Board's Environmental Guidelines and the Functional Master Plan for the Patuxent River Watershed.

The proposed stormwater management concept consists of (1) on-site channel protection measures via underground storage and surface ponds; (2) on-site and off-site water quality control via stormfilter and a water quality inlet pretreatment. The stormwater management concept was approved by the Montgomery County Department of Permitting Services on December 22, 2006.

6. *The proposed development does not substantially conform with the design guidelines for new development contained in the approved and adopted Sandy Spring/Aston Master Plan as required by Section 59-C-18.184(b).*

The proposed development does not maintain a "main street" character along MD 650 as it does along MD 108. Instead the land use pattern is more suburban than village oriented in nature. The commercial density is out of balance with the small scale of the existing village center. While providing aspects of traditional village design, the lack of active fronts and street entrances diminishes the rural village character emphasized by the master plan. The pedestrian environment, although adequate internally, could be more inviting from the perspective of the surrounding village. Also, the services provided are much more regional in their purpose than local. This auto-oriented large-scale use is specifically excluded by the master plan due to its inconsistency with traditional rural development patterns. Finally, the parking areas are quite large and are placed adjacent to or in front of storefronts rather than behind the buildings.

7. *The site plan is not wholly consistent with the recommendations in the approved and adopted Sandy Spring/Ashton Master Plan.*

The site plan is generally consistent with the land use recommendations of the master plan, but fails to satisfy other recommendations, such as the design guidelines, parking restrictions, and the village scale as we have detailed in the Analysis.

8. *The site plan does not meet all of the requirements of the Sandy Spring/Ashton Rural Village Overlay Zone as well as the applicable requirements of the underlying zones.*

As detailed in the Analysis section of the Staff Report, while most of the requirements of the overlay zone and underlying zones are met, the proposed development includes two uses that do not comply with the Zoning Ordinance. As we discussed above, the proposed development includes a parking garage in the C-1 Zone, which is not permitted by right or special exception. Also, the proposed development includes parking for commercial uses on the R-60 Zoned portion of the subject site. This is not allowed because the property is not designated by the master plan as appropriate for such a use and because the area of the overlay zone is not recommended as a mixed-use area. That is, because the master plan specifically indicates separate land use mixes according to the standards of the existing zoning, the recommendations of flexible uses do not apply to this site.

CONCLUSION

Staff concludes that preliminary plan 120050060 does not comply with certain sections of the Montgomery County Zoning Ordinance and sections of the Subdivision Regulations. Specifically, the plan fails to comply with Sections 59-C-4.2 and 59-C-18.18 of the Zoning Ordinance, both of which affect the ability to provide adequate parking on the project. Because the project continues to encroach into wetlands, wetland buffers, and stream buffers with what staff believes to be otherwise avoidable encroachments, staff contends that the plan does not comply with Section 50-32(c) of the Subdivision Regulations which require protection of environmentally sensitive areas.

Staff also concludes that site plan 820060230 does not substantially conform with the design guidelines for new development contained in the approved and adopted Sandy Spring/Aston Master Plan and is not wholly consistent with the Master Plan recommendations. The location of the buildings and structures is not safe and efficient and the plan as proposed is not compatible with the rural village concept.

For all of these reasons, the development shown on the plan is too intense for this property and is recommended for denial. A future plan with less density should be able to comply with the parking limitations, avoid the environmentally sensitive wetlands and buffers on the site, and be more in keeping with the intent of the Rural Village Overlay Zone.

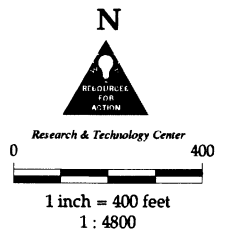
Attachments

- A. Vicinity Map
- B. Site Photos
- C. Preliminary Plan
- D. Site Plan
- E. Letter from Miller, Miller & Canby
- F. Letter countersigned from the Department of Permitting Services
- G. Memorandum from Community Based Planning
- H. Memorandum from Environmental Planning
- I. Biota Environmental Resource Functional Assessment Report
- J. Memorandum from Transportation Planning

ASHTON MEETING PLACE (1-05006)



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue - Silver Spring, Maryland 20910-3760



B. Site Photos





PRELIMINARY PLAN FOR THE SUBDIVISION OF LOT 11, PARCEL P-442, ASHTON, MARYLAND

VICINITY MAP
SCALE 1" = 2,000'

Legend

EXISTING

PROPOSED

Lot 11, Parcel P-442
ASHTON, MARYLAND
JULY 1, 1994
THOMAS J. HENSON, P.E.

PROPERTY	LOT 11	LOT 12	LOT 13	LOT 14	LOT 15	LOT 16	LOT 17	LOT 18	LOT 19	LOT 20	LOT 21	LOT 22	LOT 23	LOT 24	LOT 25	LOT 26	LOT 27	LOT 28	LOT 29	LOT 30	LOT 31	LOT 32	LOT 33	LOT 34	LOT 35	LOT 36	LOT 37	LOT 38	LOT 39	LOT 40	LOT 41	LOT 42	LOT 43	LOT 44	LOT 45	LOT 46	LOT 47	LOT 48	LOT 49	LOT 50	LOT 51	LOT 52	LOT 53	LOT 54	LOT 55	LOT 56	LOT 57	LOT 58	LOT 59	LOT 60	LOT 61	LOT 62	LOT 63	LOT 64	LOT 65	LOT 66	LOT 67	LOT 68	LOT 69	LOT 70	LOT 71	LOT 72	LOT 73	LOT 74	LOT 75	LOT 76	LOT 77	LOT 78	LOT 79	LOT 80	LOT 81	LOT 82	LOT 83	LOT 84	LOT 85	LOT 86	LOT 87	LOT 88	LOT 89	LOT 90	LOT 91	LOT 92	LOT 93	LOT 94	LOT 95	LOT 96	LOT 97	LOT 98	LOT 99	LOT 100	LOT 101	LOT 102	LOT 103	LOT 104	LOT 105	LOT 106	LOT 107	LOT 108	LOT 109	LOT 110	LOT 111	LOT 112	LOT 113	LOT 114	LOT 115	LOT 116	LOT 117	LOT 118	LOT 119	LOT 120	LOT 121	LOT 122	LOT 123	LOT 124	LOT 125	LOT 126	LOT 127	LOT 128	LOT 129	LOT 130	LOT 131	LOT 132	LOT 133	LOT 134	LOT 135	LOT 136	LOT 137	LOT 138	LOT 139	LOT 140	LOT 141	LOT 142	LOT 143	LOT 144	LOT 145	LOT 146	LOT 147	LOT 148	LOT 149	LOT 150	LOT 151	LOT 152	LOT 153	LOT 154	LOT 155	LOT 156	LOT 157	LOT 158	LOT 159	LOT 160	LOT 161	LOT 162	LOT 163	LOT 164	LOT 165	LOT 166	LOT 167	LOT 168	LOT 169	LOT 170	LOT 171	LOT 172	LOT 173	LOT 174	LOT 175	LOT 176	LOT 177	LOT 178	LOT 179	LOT 180	LOT 181	LOT 182	LOT 183	LOT 184	LOT 185	LOT 186	LOT 187	LOT 188	LOT 189	LOT 190	LOT 191	LOT 192	LOT 193	LOT 194	LOT 195	LOT 196	LOT 197	LOT 198	LOT 199	LOT 200	LOT 201	LOT 202	LOT 203	LOT 204	LOT 205	LOT 206	LOT 207	LOT 208	LOT 209	LOT 210	LOT 211	LOT 212	LOT 213	LOT 214	LOT 215	LOT 216	LOT 217	LOT 218	LOT 219	LOT 220	LOT 221	LOT 222	LOT 223	LOT 224	LOT 225	LOT 226	LOT 227	LOT 228	LOT 229	LOT 230	LOT 231	LOT 232	LOT 233	LOT 234	LOT 235	LOT 236	LOT 237	LOT 238	LOT 239	LOT 240	LOT 241	LOT 242	LOT 243	LOT 244	LOT 245	LOT 246	LOT 247	LOT 248	LOT 249	LOT 250	LOT 251	LOT 252	LOT 253	LOT 254	LOT 255	LOT 256	LOT 257	LOT 258	LOT 259	LOT 260	LOT 261	LOT 262	LOT 263	LOT 264	LOT 265	LOT 266	LOT 267	LOT 268	LOT 269	LOT 270	LOT 271	LOT 272	LOT 273	LOT 274	LOT 275	LOT 276	LOT 277	LOT 278	LOT 279	LOT 280	LOT 281	LOT 282	LOT 283	LOT 284	LOT 285	LOT 286	LOT 287	LOT 288	LOT 289	LOT 290	LOT 291	LOT 292	LOT 293	LOT 294	LOT 295	LOT 296	LOT 297	LOT 298	LOT 299	LOT 300	LOT 301	LOT 302	LOT 303	LOT 304	LOT 305	LOT 306	LOT 307	LOT 308	LOT 309	LOT 310	LOT 311	LOT 312	LOT 313	LOT 314	LOT 315	LOT 316	LOT 317	LOT 318	LOT 319	LOT 320	LOT 321	LOT 322	LOT 323	LOT 324	LOT 325	LOT 326	LOT 327	LOT 328	LOT 329	LOT 330	LOT 331	LOT 332	LOT 333	LOT 334	LOT 335	LOT 336	LOT 337	LOT 338	LOT 339	LOT 340	LOT 341	LOT 342	LOT 343	LOT 344	LOT 345	LOT 346	LOT 347	LOT 348	LOT 349	LOT 350	LOT 351
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RECEIVED

LAW OFFICES

E. Letter from Miller, Miller & Canby

MILLER, MILLER & CANBY

DEVELOPMENT REVIEW DIVISION

CHARTERED

200-B MONROE STREET
ROCKVILLE, MARYLAND 20850

(301) 762-5212
FAX (301) 762-6044

April 7, 2006

Ms. Laxmi Srinivas
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

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**Licensed in Maryland and Florida*

RE: Preliminary Plan No. 1-05006;
Site Plan Review No. 8-20060230;
"Ashton Meeting Place"

Dear Ms. Srinivas:

We are writing to address certain master plan and zoning issues relating to the proposed "Ashton Meeting Place" project. The area proposed for redevelopment consists of 7.4 acres of C-1 and R-60 zoned properties located in the southeast quadrant of the intersection of New Hampshire Avenue and Maryland Route 108, a cross roads area commonly known as the "Ashton Village Center". The properties are covered by the Sandy Spring/Ashton Rural Village Overlay Zone. The project seeks to redevelop the subject site with a mix of retail goods and services, office space and residential units, and proposes to locate 144 parking spaces for the commercial uses on the residentially zoned portions of the site without special exception approval, in accordance with Sections 59-C-18.182(b)(2)(D) and 59-C-18.185(b) of the Montgomery County Zoning Ordinance.

In preparing the site plan and preliminary plan applications, we have relied on certain provisions of the Sandy Spring/Ashton Master Plan (hereinafter referred to as the "1998 Plan") and the Sandy Spring/Ashton Rural Village Overlay Zone (hereinafter referred to as the "Overlay Zone") that allow the project to utilize the above referenced off-street parking provisions of the Overlay Zone. This letter provides a summary of our analysis of both the 1998 Plan and the Overlay Zone, as well as our research of the legislative histories of each, which confirm that the parking for Ashton Meeting Place is permitted as proposed in Site Plan No. 8-20060230 and Preliminary Plan No. 1-05006.

I. EXECUTIVE SUMMARY

To facilitate your understanding of the research described in this correspondence, the information contained herein is organized in the following manner with conclusions for each subsection of the Analysis summarized as follows:

- A.** The 1998 Sandy Spring/Ashton Master Plan and the Sandy Spring/Ashton Rural Village Overlay Zone were simultaneously reviewed and were adopted together, with the Overlay Zone being the principal tool for implementation of the 1998 Plan's land use recommendations to preserve rural village character and to encourage revitalization of the village centers.
 - 1.** The intent of the Overlay Zone was to encourage "design flexibility" in development of the two village centers within the planning area, including parking of vehicles in conjunction with commercial uses on residentially zoned land without special exception approval in areas recommended for mixed use development in the 1998 Plan.
 - 2.** The application of the Overlay Zone to specific properties via Sectional Map Amendment confirmed the County Council's desire to see the "design flexibility" provisions applied to the two village center areas, including the Ashton Meeting Place property.
- B.** The 1998 Plan does not use the specific phrase "mixed use development" prescribed in the Overlay Zone for locations where parking for commercial uses on residentially zoned land was appropriate without special exception approval.
 - 1.** However, the Plan provides specific development guidelines for the village centers that encourage "a land-use mix of stores and homes" or mixed use development for the centers. It proposes maintaining the existing commercial and residential zoning while applying the Overlay Zone to promote flexibility in design.

2. In addition, the 1998 Plan and the legislative history of both the Plan and the Overlay Zone text amendment are replete with references to the fact that the properties that comprise the “Ashton Meeting Place” project were intended to be developed as “mixed use”.
- C. The 1980 Sandy Spring-Ashton Special Study Plan recommended the subject properties for a mixed use form of development and that recommendation was restated and confirmed in the 1998 Plan amendment.
 - D. The changes to the text of the 1998 Plan by the County Council prior to the Plan’s adoption eliminated the ability to place commercial buildings and structures on residentially zoned land but preserved the Plan and the Overlay Zone’s intent to allow commercial parking on residentially zoned land without special exception approval.

II. LEGISLATIVE BACKGROUND

The Montgomery County Council, sitting as the District Council, approved with revisions the Planning Board (Final) Draft Master Plan for Sandy Spring/Ashton on July 7, 1998. On the same date (in back-to-back actions), the Council also adopted Zoning Text Amendment No. 98002, which created the Sandy Spring/Ashton Rural Village Overlay Zone (codified in Section 59-C-18.18 of the Montgomery County Zoning Ordinance). (Exhibit 1). Sectional Map Amendment G-770 was adopted on October 13, 1998, placing the Overlay Zone over a select number of properties in the Sandy Spring/Ashton area (including properties in the southeast quadrant of Ashton Village Center that make up the “Ashton Meeting Place” project). This action created a second layer of zoning intended "to address issues related to enhancing rural village character and providing design flexibility". (1998 Plan, pg. 80; Exhibit 2).

The off-street parking provision of the Overlay Zone, which allows parking for commercial uses to be sited on adjacent residentially zoned land without special exception approval, is one of six provisions intended to provide "design flexibility" for commercial properties located within the

Overlay Zone. The following is a summary of the six "design flexibility" provisions of the adopted Overlay Zone for commercial properties that are listed on page 81 of the 1998 Plan: (Exhibit 2).

1. Require site plan review to encourage flexibility in creating better design and to ensure that adherence to design guidelines in the Plan have generated new development with rural village character.

2. Allow flexibility in the siting of parking in conjunction with commercial uses on certain adjacent properties, to the most desirable locations on the site, where recommended for mixed use development in the master plan. (Emphasis added).

3. Allow flexibility for Planning Board to approve building heights of up to 30 feet at site plan review and impose an FAR limit of 0.75 for the size and scale of the village centers.

4. Exclude new auto-oriented or typically large-scale uses and certain additional uses that are inconsistent with traditional rural development patterns with flexibility to ensure the continuation of existing uses through grandfathering.

5. Allow flexibility for on-street parking to count toward meeting the parking requirement for new development if so determined by the Planning Board at the time of site plan review.

6. Allow flexibility to allow a waiver of the minimum acreage requirement for special exception uses, where recommended in the master plan.

The planning principles embodied in Provision #2 above are codified in Sections 59-C-18.182(b)(2)(D) and 59-C-18.185(b) of the Zoning Ordinance which reads: (Exhibit 1).

Section 59-C-18.182(b)(2)(D): "In areas recommended in the Sandy Spring/Ashton Master Plan for mixed use development, development should [be] consistent with the recommendations of the master plan. In the

residential portions of the mixed-use areas, off-street parking for commercial uses is allowed without a requirement for approval of a special exception."

Section 59-C-18.185(b): "Properties in a residential zone that are designated in the Sandy Spring/Ashton master plan as suitable for mixed use or non-residential use may be utilized for off-street parking in connection with commercial uses without the necessity for approval of a special exception under Sec. 59-G-2.39."

III. ANALYSIS

A. The 1998 Plan Recommended the Creation of the Overlay Zone in order to Provide Design Flexibility in the Development of the Sandy Spring and Ashton Village Centers

One of the key recommendations made in the 1998 Plan relates to the creation of the Overlay Zone for the purpose of allowing design flexibility to encourage/facilitate revitalization of the two village centers in the planning area. The 1998 Plan first discusses the overall concept of "village centers", their importance to the Sandy Spring/Ashton area, and their geographic location beginning on page 29. (Exhibit 2). Figure 14 depicts the planning area and the properties that comprise the two village centers. (1998 Plan, pg. 30; Exhibit 2). The Plan encourages development and revitalization of the village centers with "a land-use mix of stores and homes" through use of the design flexibility provisions of the Overlay Zone. (1998 Plan, pg. 31, bullets 3-5; Exhibit 2).

The Overlay Zone is the primary mechanism to achieve the Plan's goal of promoting design flexibility and enhancing rural village character for both Sandy Spring and Ashton village centers. The 1998 Plan outlined the purpose and the framework for the Overlay Zone and recommended specific "design flexibility" provisions, which, inter alia, included the off-street parking provision, for inclusion in the Overlay Zone. Further, the 1998 Plan repeatedly states that the main goal of the new Overlay Zone should be to provide design flexibility to properties selected for inclusion within the overlay.

Ultimately, the Overlay Zone was applied to various properties in the Sandy Spring/Ashton area under the Sectional Map Amendment process, pursuant to specific guidelines provided in the 1998 Plan. The Implementation Chapter of the 1998 Plan provides that "[o]nce the [Overlay Zone] is adopted, the specific properties where it will be applied will be determined via the Sectional Map Amendment using the following guidelines: commercial properties and adjacent residential uses where design flexibility is recommended in the Plan; residential properties to maintain residential height limits consistent with the neighborhood character; and residential properties where flexibility in lot sizes is desirable." (1998 Plan, pg. 82; Exhibit 2). (Emphasis added). As stated previously, the commercial and adjacent residential zoned properties located in the southeast quadrant of the Ashton Village Center that comprise the Ashton Meeting Place project were included in the Overlay Zone pursuant to the adoption of Sectional Map Amendment G-770 on October 13, 1998. Thus, by Council action, these properties were declared to be appropriate for application of the "design flexibility" provisions set forth in both the 1998 Plan and the Overlay Zone (assuming that other requirements dictated by the Overlay Zone are met).

B. A "Mixed Use" Designation *Per Se* Does Not Exist in the 1998 Plan for Any Property in the Sandy Spring or Ashton Village Center Areas

The Overlay Zone was created to include six "design flexibility" components, one of which is the off-street parking provision codified under Sections 59-C-18.182(b)(2)(D) and 59-C-18.185(b) of the Zoning Ordinance. The only prerequisite for an Overlay Zone property to be able to utilize this parking provision is a designation in the Sandy Spring/Ashton master plan as being suitable for "mixed use development".

Preliminarily, it is interesting to note that the 1998 Plan did not confer a "mixed-use" designation *per se* on any property in the Sandy Spring or Ashton village center areas. Indeed, none of the drafts (Public Hearing (Preliminary) Draft, pgs. 42-62, Exhibit 3; Planning Board (Final) Draft, pgs. 38-49, Exhibit 4), nor the adopted 1998 Plan, ever use the term "mixed use development" even though the Overlay Zone text amendment was in simultaneous development with the language of the 1998 Plan.

Instead, the 1998 Plan spoke in general terms of a mixed use/rural village concept by describing an overall vision for achieving a compatible mix of commercial and residential uses in a rural village setting as opposed to using the phrase "mixed use". The Plan provides development guidelines for the village centers that encourage "a land-use mix of stores and homes" or mixed use development that incorporates "traditional village design" concepts such as "active fronts on buildings", "height limits compatible with the Sandy Spring Historic District" and "buildings facing the main road", etc. (1998 Plan, pg. 31; Exhibit 2). (Emphasis added).

The absence in the Plan of the use of the specific term "mixed use" or the lack of a "mixed use" designation on a map does not undermine what was clearly intended by the Plan's authors. Not only did the Plan itself encourage "a land-use mix of stores and homes" for the village centers, but the legislative history of the 1998 Plan indicates that two groups of commercial and residential properties in the Sandy Spring/Ashton area were commonly understood as possible locations for mixed use type of development. In a memorandum to the Planning Board dated February 27, 1998 regarding the text of the Overlay Zone, staff member Deane Mellander notes: "There are two areas recommended in the final draft master plan for mixed use. These are the three properties in the Sandy Spring village center on the north side of MD 108 east of Brooke Road, and the two properties in the southeast quadrant of the Ashton village center. The plan recommends flexibility of development on these sites, which could include allowing commercial uses on the residentially-zoned portion of the site." (See Memorandum to Planning Board from Deane Mellander re Overlay Zone, dated February 27, 1998, pg. 3; see Exhibit 5). (Emphasis added).

C. The 1998 Plan Specifically Confirms the 1980 Plan's Land Use Recommendation for a Planned Mix of Commercial and Residential Uses in the Southeast Corner of Ashton Village Center

In the case of the southeast quadrant of Ashton Village Center, a general "designation" or land use recommendation for a mixed use type of development first appears in the Sandy Spring-Ashton Special Study Plan adopted in 1980 (hereinafter referred to as

the "1980 Plan"). (Exhibit 6). The 1998 Plan expressly confirmed the land use recommendations for the Ashton Village Center contained in the previous master plan. (1998 Plan, pg. 38; Exhibit 2). A review of the 1980 Plan's overall vision and recommendations for the Sandy Spring/Ashton area is helpful to better understand the evolution of the 1998 Plan and the current planning goals for the two village centers. In comparing the two Plans, it is evident that in 1980 the development potential of properties in Ashton was better established to achieve a rural village center than the properties found in Sandy Spring.

1. First, with regard to the Sandy Spring area, it is interesting to note that the 1980 Plan's focus for this area was not on its development as a "rural village center". The Plan did not contain recommendations encouraging redevelopment of existing commercial uses or design flexibility for local businesses, as later recommended in the 1998 Plan for Sandy Spring. Rather, the 1980 Plan was primarily concerned with residential development in the Sandy Spring area, stating that "[a] major goal of the Plan [for Sandy Spring] is to provide a range of housing types to help meet the different housing needs of residents." (1980 Plan, pg. 33; See Exhibit 6)
2. On the other hand for the Ashton area, the 1980 Plan recommends a mixed use form of development through the use of planned development zones to achieve a rural village concept for the Ashton Village Center. The Plan's description of what it believes a "planned development zone" would achieve is enlightening. It recommends development of the northwest corner of the Ashton Village Center under a planned development zone in order to allow "more site design flexibility than fixed zones." (1980 Plan, pg. 39, footnote 5; Exhibit 6). (Emphasis added). The 1980 Plan further explains that:

"A Planned Development would also encourage an overall plan for both commercial and residential uses at this corner and help assure that future development is compatible with the rural village concept." (1980 Plan, pg. 39; Exhibit 6). (Emphasis added).

3. Significantly, the 1980 Plan specifically discusses the southeast corner of the Ashton Village Center and indicates that a planned development (i.e., mixed use) concept for this corner would be appropriate as well. The Plan notes, however, that:

"Present zoning regulations do not permit planned developments on small tracts of land... [i]f a rural planned development zone is adopted, it should be considered for this corner." (1980 Plan, pg. 40; Exhibit 6).

Therefore, the 1980 Plan's vision for both the northwest and southeast corners of the Ashton Village Center was clear – a compatible mix of commercial and residential uses in a rural village concept.

4. With the above recommendations in the 1980 Plan as background, the 1998 Plan's treatment of the Sandy Spring and Ashton Village Centers becomes more understandable. Unlike the 1980 Plan, the 1998 Plan focuses more attention on developing Sandy Spring as a true "village center" that serves as the "heart of the community in terms of local commerce and community gatherings." (1998 Plan, pg. 32; Exhibit 2). But, for the Ashton Village Center, rather than re-addressing the Ashton area in great detail, the 1998 Plan simply states that it confirms the land use recommendations of the 1980 Plan. In essence, the 1998 Plan's treatment of the Sandy Spring Village Center serves to bring that area "up to speed" with the "rural village concept" originally contemplated for Ashton in the 1980 Plan.
5. The 1998 Plan defers to recommendations made in the previous master plan even further. On page 80, the 1998 Plan indicates that its creation of the Sandy Spring/Ashton Rural Village Overlay Zone was in fact originally recommended in the 1980 Plan (i.e., the rural planned development zone for Ashton) but had never been developed. (Exhibit 2). Again, the text of the

later Plan demonstrates that mixed use development had been considered for the Ashton area as early as 1980 and was being ratified by the 1998 Plan.

Therefore, as confirmed by the 1998 Plan, the 1980 Plan's recommendation for a planned mix of commercial and residential development in a "rural village concept" for the southeast corner of Ashton Village Center continues in force. As such, the Ashton Meeting Place project site meets the Overlay Zone's requirement that "[p]roperties in a residential zone [be] designated in the Sandy Spring/Ashton master plan as suitable for mixed use", in order to locate parking for commercial uses on adjacent residentially zoned properties without a special exception. (Section 59-C-18.185(b); Exhibit 1).

D. The Legislative Histories of the 1998 Plan and Overlay Zone Confirms There was No Intent to Exclude Southeast Corner of the Ashton Village Center from Any of the Design Flexibility Provisions of the Overlay Zone

As stated previously, a fundamental goal of the 1998 Plan and the Overlay Zone was to provide design flexibility for properties located in both the Sandy Spring and Ashton Village Center areas. The 1980 Plan's recommendation for a "rural planned development zone" (in particular for the southeast corner of the Ashton Village Center) (see 1980 Plan, pg. 40; Exhibit 6) and the design flexibility that such a zoning mechanism would allow was finally realized with the creation of the Sandy Spring/Ashton Rural Village Overlay Zone under the 1998 Plan and implemented over commercial and residential properties in both Sandy Spring and Ashton by Sectional Map Amendment.

Nonetheless, it has been suggested that one of the provisions of the Overlay Zone intended to provide design flexibility (specifically, the off-street parking provision) may not be applicable to the southeast corner of the Ashton Village Center based on the fact that certain language (which appears in the published version of the Plan) was actually supposed to have been deleted. (District Council Resolution No. 13-1364, pg. 20; Exhibit 7). The language that was supposed to have been deleted (shown underlined below) appears in the second bullet of the Ashton Village Center section of the published 1998 Plan and states as follows:

"Limit residential development in the southeast quadrant to single-family detached homes only, rather than townhouses. This Plan recognizes that special exception uses may be appropriate as well. This Plan recommends that there be flexibility in placement of commercial uses in the southeast quadrant to encourage design that better integrates residential and commercial uses. This flexibility is allowed through the proposed Sandy Spring/Ashton Rural Village Overlay Zone. The existing zoning should be confirmed." (1998 Plan, pg. 39; Exhibit 2).

We looked to the legislative history of both the 1998 Plan and the Overlay Zone to understand the rationale behind the deleted language and to determine whether the deletion has any relevance to the applicability of the off-street parking provision to the southeast corner of the Ashton Village Center. We find that it does not.

First, we find that the deleted language was in response to a different issue that the County Council and staff were grappling with at the time.¹ That issue involved whether to include provisions in the Overlay Zone that would allow the location of C-1 commercial uses throughout the Overlay Zone area regardless of the underlying base zone, including on residentially zoned land, which was referred to as the "mixed-use provision" of the Overlay Zone. The legislative history of the Overlay Zone indicates that this provision was primarily developed to facilitate achievement of the "village green concept" proposed in the 1998 Plan for the Sandy Spring Village Center area, which in the end was deleted from the Overlay Zone "in favor of other approaches described in the master plan" for implementing that element of the Plan's recommendations for the Sandy Spring area. (See Memorandum to County Council from Ralph D. Wilson re Rural Village Overlay Zone, dated June 30, 1998, pg. 2; Exhibit 8). However, as part of the Overlay Zone, the provision would have applied to the southeast corner of Ashton Village Center as well, and, therefore, the above

¹ We note that although the County Council's review of the 1998 Plan proceeded in advance of the Overlay Zone, the final adoption of both the 1998 Plan and Overlay Zone occurred on the same day (on July 7, 1998) in back-to-back actions. Despite the fact that separate staff analyses/reports and committee recommendations (i.e., legislative histories) were generated relative to the 1998 Plan and the Overlay Zone, it is clear that the Overlay Zone was promulgated to implement key recommendations contained in the 1998 Plan and the review process for both was for the most part contemporaneous.

underlined language was initially included in the second bullet of the Ashton Village Center section of the 1998 Plan.

Council staff had raised concerns about including such a provision in the Overlay Zone. The PHED Committee eventually concurred with staff and decided at its June 11, 1998 meeting to recommend to the full Council that the "mixed-use provision" be eliminated from the Overlay Zone. (See Memorandum to PHED Committee from Ralph D. Wilson re Rural Village Overlay Zone, dated June 10, 1998, pg. 2; Exhibit 9). In the end, the County Council concurred with the PHED Committee recommendation, and the provision was removed from the text amendment enacting the Overlay Zone. (See Memorandum to County Council from Ralph D. Wilson re PHED Committee's Rural Village Overlay Zone Recommendations, dated June 17, 1998, pg. 2; Exhibit 10). The PHED committee further recommended that corresponding language in the 1998 Plan be removed in conformance with the Overlay Zone. (See Memorandum to County Council from Marlene L. Michaelson re PHED Committee's Master Plan Recommendations, dated June 19, 1998, pgs. 3, 4 and 7; Exhibit 11). As a result, any language that had related to the "mixed-use provision" of the Overlay Provision was removed, such as the underlined text above as well as the following text found on page 41 of the Planning Board (Final) Draft (see Exhibit 4): "flexibility in the siting of commercial and residential uses on adjacent properties in designated areas". (District Council Resolution No. 13-1364, pgs. 16 and 20; Exhibit 7).

The decision to remove the "mixed-use provision" from the Overlay Zone and related language from the 1998 Plan, however, did not affect the applicability of the other "design flexibility" components to properties included in the Overlay Zone. In fact, legislative history indicates that at the same time the "mixed-use provision" was deleted, the off-street parking provision, allowing "commercial parking on the residential portion of a subject site without a [] special exception", was specifically included in the Overlay Zone. (See Memorandum to PHED Committee from Ralph D. Wilson re Rural Village Overlay Zone, dated June 10, 1998, pg. 2; Exhibit 9). The day after the PHED Committee's June 11, 1998 meeting at which this recommendation was made, Planning Board staff member, Deane Mellander, sent a memorandum to Senior Legislative Analyst, Ralph D. Wilson, indicating that changes have been made to the text of the Village Overlay Zone based on the

Committee's action. He notes that "[t]he mixed use provisions of subsection (B) are deleted" and a new "[s]ubsection (D) allows for parking without requirement for special exception on sites designated as suitable for mixed use development in the master plan." (See Memorandum from Deane Mellander to Ralph D. Wilson, dated June 12, 1998, pg. 2; Exhibit 12).

IV. CONCLUSION

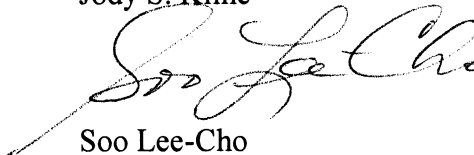
Based on the research and analysis presented above of the Sandy Spring/Ashton master plans, the Rural Village Overlay Zone and their legislative histories, we believe that the off-street parking provision along with the other design flexibility components of the Overlay Zone are applicable to properties located in the southeast corner of the Ashton Village Center and, thereby, may be utilized by the Ashton Meeting Place project.

Very truly yours,

MILLER, MILLER & CANBY

A bold, black, handwritten signature that reads "Jody Kline".

Jody S. Kline

A handwritten signature in black ink, appearing to read "Soo Lee-Chow".

Soo Lee-Chow

cc: Mr. Bill Barron
Ms. Piera Weiss
Tariq El-Baba, Esquire
Mr. Fred Nichols
Mr. Phil Perrine

F. Letter countersigned from the Department of Permitting Services

LAW OFFICES

MILLER, MILLER & CANBY

CHARTERED

200-B MONROE STREET
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SOO LEE-CHO

**Licensed in Maryland and Florida*

February 23, 2007

Dan Janousek
Development Review Division
Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Ashton Meeting Place

Dear Dan:

This is in response to staff's recent inquiry relative to whether structured parking is permitted in the C-1 zone, in light of the fact that "parking garages, automobile" are not permissible in the C-1. Our analysis is as follows:

- 1) First, we find that in the use tables of **Section 59-C-4.2**, "Parking of motor vehicles, off-street, in connection with any use permitted" (emphasis added) is a permitted use in the C-1 zone.
- 2) We interpret the term "off-street" to allow either surface parking or structured parking that supports any use permitted on site, and believe support for our interpretation exists in **Section 59-E-1.2**, which provides that "[a]ll garage or other structured space allocated for the parking of vehicles in basements, on the roofs of buildings, or otherwise within buildings shall be considered part of the required off-street parking facilities."
- 3) For confirmation of our interpretation, we have obtained a counter-signed letter from the Department of Permitting Services, which is attached for your reference.

We hope that the above adequately addresses staff's concerns. Please do not hesitate to contact us if you require any additional information or assistance.

Sincerely yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink, appearing to read "Jody". The signature is stylized with a thick, bold stroke for the "J" and a more fluid, cursive-like script for the "ody".

Jody S. Kline

JSK/dlt

Enclosure

cc: Josh Sloan
Bill Barron
Piera Weiss
Rich Weaver
Fred Nichols
Phil Perrine
Mike Plitt
✓ Soo Lee-Choi, Esquire

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SOO LEE-CHO

**Licensed in Maryland and Florida*

February 23, 2007

Mr. David Niblock
Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, MD 20850

RE: Confirmation of Zoning Ordinance Interpretation re Section 59-C-4.2,
"Parking of motor vehicles, off-street, in connection with any use permitted"

Dear David:

Pursuant to a recent conversation you had with John Reinhard on the subject referenced above, we request confirmation from the Department of Permitting Services that structured parking (located in basements, on the roofs or otherwise incorporated within buildings on a site) is permitted in the C-1 zone to serve any use permitted on the property in accordance with Sections 59-C-4.2 and 59-E-1.2.

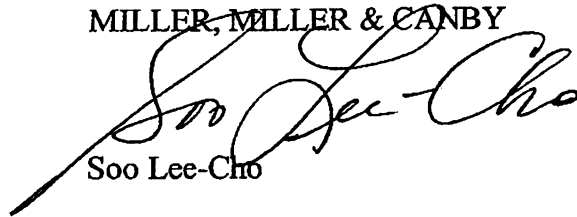
Section 59-C-4.2 provides that "parking of motor vehicles, off-street, in connection with any use permitted" is a permitted use in the C-1 zone. (Emphases added.) We seek confirmation from the Department that the term "off-street" contemplates either surface parking or structured parking that supports any use permitted on site. We believe support for our interpretation exists in Section 59-E-1.2, which provides that "[a]ll garage or other structure space allocated for the parking of vehicles in basements, on the roofs of buildings, or otherwise within buildings shall be considered part of the required off-street parking facilities."

Based on the above, please confirm by counter-signing this letter where indicated below that our interpretation of what constitutes permitted "off-street" parking in the C-1 zone is correct.

We greatly appreciate your assistance. Thank you for your attention to this matter.


Very truly yours,

MILLER, MILLER & CANBY



Soo Lee-Cho

I HAVE REVIEWED THE CONTENTS OF THIS LETTER AND AGREE THAT STRUCTURED PARKING THAT IS INCORPORATED WITHIN BUILDINGS ON A SITE TO SERVE PERMITTED USES IS ALLOWED IN THE C-1 ZONE.



David Niblock
Department of Permitting Services

cc: John Reinhard
Jody S. Kline, Esquire



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

March 20, 2007

MEMORANDUM

TO: Richard Weaver, Development Review-Subdivision
Joshua Sloan, Development Review-Site Plan
Dan Janoushek, Development Review-Zoning/Special Exceptions

FROM: William Barron, Community-Based Planning, Team Leader
Piera Weiss, Community-Based Planning, Eastern County Team

SUBJECT: Ashton Meeting Place
Preliminary Plan 120050060
Site Plan 820060230
Special Exception S-2683

Recommendation: Staff believes that the project complies with the land use vision of the master plan and is consistent with many of the goals and recommendations contained therein, but there are regulatory standards by which this project, as all projects, must be evaluated. If the project can't be found to be in conformance on the basis of regulatory review, then it should be denied.

This project has been all about process. The process of searching for clarity in the ambiguities of a master plan and creating, in three dimensions, a vision for a village center that developer and community could support.

It has taken years to arrive at the current design. But it has become clear during this process that the regulatory standards dictate the form of the project. Perhaps a slightly different project with some of the same elements that distinguish this project would be more successful.

We commend the community and the applicant for trying so hard to develop a design that would make Ashton a special place. The proposed design features residential units over retail in historically styled buildings. There is public green space at the corner and street level retail. The project will provide services and public space for the Sandy Spring/Ashton community, which has grown by three hundred new homes since 1998.

The 1998 Sandy Spring/Ashton Master Plan envisioned improving the “character” of the Ashton village center. The existing crossroads of Ashton, the intersection of MD 108 and MD 650, has a 7 & 11 store, developed under the PD zone, with parking at the front on the northeast quadrant and a closed gas and service station (dating to the 1930s) on the northwest quadrant. The southeast quadrant has a drive-through bank, some homes and a PEPCO substation. The southeast quadrant has the Cricket Bookstore, located in a residential building with parking in the front, a new building built by the applicant (Alloway Building), and at the intersection a green area and parking lot. There are no continuous sidewalks. This is the “character” that the master plan wanted to improve so as to provide a separate and distinct identity for Ashton village center

Background - Ashton Meeting Place

The proposed project is local in many ways. A Sandy Spring resident and developer and the architect who designed the Sandy Spring Fire Station have created a one-of-a-kind colonial-inspired development reminiscent of the brick architecture used in the historic buildings in the Sandy Spring village center. The development group includes long standing members of the business community such as the Derrick Brothers and the eponymous Sandy Spring Bank.

The applicant first met with Community-Based Planning staff in 2003 before submitting any application. At that time the applicant was proposing development on a split zoned (C-1 and R-60) property in the Ashton village center and within the Sandy Spring Ashton Overlay Zone. The proposed development included a grocery store and other retail with parking in the R-60 portion of the site. This parking provision can only be applied to mixed-use development or properties recommended for non-residential uses. In order to use that provision the development needed to have a mix of uses. The master plan contains references to a mix of housing and stores and therefore we told the applicant to add housing. We also expressed reservations regarding the parking in the R-60 provision because there were ambiguities between the language in the master plan and zoning ordinance. We notified legal staff that this zoning issue needed interpretation. Finally, we urged the applicant to meet with the community.

The residents of the Sandy Spring-Ashton community responded in number and energetically to the proposal. Residents of nearby Olney and Howard County have participated. Newer and established members of the community have written hundreds and hundreds of letters and e-mails, held scores of meetings, formed at least two citizen groups and revitalized old groups to make know their concerns. Activities, such as candlelight vigils, web sites, newsletters, newspaper articles, have made it clear that there is both opposition and support for the project.

Although the applicant attended meetings with the residents since 2005, according to members of the community, he was not responsive to making changes to the project. The applicant finally agreed in July 2006 to meet with a group to discuss the design of the project. Legal counsel for some of the opposition submitted documentation stating, among other items, that the parking provision of the overlay zone did not apply to the

subject site. A second issue that neither the applicant nor staff had focused on was if the housing component required a special exception in the C-1 zone. The applicant agreed to file a special exception and did so. We asked the applicant's attorney to prepare documentation regarding the zoning questions.

Much of the community opposition related to the size and scale of the project and details of usable community space, green space and active storefronts. The residential component was one of the elements over which there was general agreement. The two sides met for months and in January 2007, the community group presented the agreed upon changes to the design and layout to the larger community.

The opposition and support can be broken generally into three camps. There are those who are against the project under any circumstances as too big and not serving local residents. There are those who support the concept of a mixed-use commercial center with anchor grocery store and apartment dwelling units, but believe that the layout, scale and function can be improved and question the size of the grocery store. And there are those who support the project and think the grocery store should be as proposed or the development will not be successful.

The Master Plan

As the community has struggled with the project, so has the staff, because the master plan recommendations are at best ambiguous and at worst contradictory and inconsistent. The language of the Sandy Spring/Ashton Rural Village Overlay Zone further underscores the ambiguities and inconsistencies.

The master plan provides limited specific guidance for the "future" with respect to the subject site. It states on page 39:

"Limit residential development in the southeast quadrant to single-family detached only. This plan recognizes that special exception uses may be appropriate as well."

The goal of the master plan, page 39, for the Ashton village center is:

"Maintain existing scale and encourage improvements to its character..."

The following excerpt from the master plan indicate that redevelopment is envisioned in the Sandy Spring and Ashton village centers.

"This Plan emphasizes "rural villages" as one of the important elements of rural character in Sandy Spring/Ashton... There is concern about the future economic and social health of these village centers. This Plan acknowledges and addresses these issues to the extent possible through land use and design recommendations."
(Page 29)

The objective for the village centers is:

“Ensure that the villages of Sandy Spring and Ashton maintain separate and distinct identities.”(Page 29)

“Encourage development and revitalization of the village centers. The Plan recognizes that incentives to property owners are an important part of revitalizing the village centers. **Providing for increases in commercial density** (emphasis added) is one way... in these village centers such increases need to be balanced.” To maintain the small-scale of the existing centers, the plan cautioned “... however, in these village centers such increases need to be balanced with the Plan intent to maintain the small-scale of existing centers. “(Page 31)

There is no specific guidance in the master plan on how to improve the “character” of the Ashton village center. We believe that the master plan envisioned revitalization of the Ashton village center since if applying the overlay zone to the area. We believe a land-use mix of stores and residences is consistent with the land use vision of the master plan and accomplishes its recommendations. The project as submitted is consistent with the land use vision and goals of the master plan.

The Sandy Spring Ashton Overlay Zone

In Ashton and on this property, the master plan’s land use recommendations are implemented through the Sandy Spring/Ashton Village Overlay Zone.

“Apply the new Sandy Spring/Ashton Rural Village Overlay Zone to allow additional flexibility in development while providing the option of design review to ensure conformance with this plan.” (Page 31)

Furthermore, the overlay zone permits an FAR up to .75 and a building height of 24 feet, with the possibility of 30 feet if found compatible with adjoining uses and off-street parking for commercial uses in the residential portions of the mixed-use areas under specific circumstances.

The proposed project depends on parking in the R-60 zone, which is permitted without a special exception in the overlay zone if recommended in the master plan. The overlay zone uses the phrases “mixed-use areas” and “mixed-use properties” in two different paragraphs to describe commercial locations where off-street parking in residential zones could be used. The master plan, however, doesn’t designate any mixed-use properties or mixed-use areas; it doesn’t use the term mixed-use.

The specific language of the overlay zone states:

Sec 59- C-18.182 (b) (2) Development standards at (D)

In areas recommended in the Sandy Spring Ashton Master Plan for mixed-use development, development should consistent (sic) with the recommendations of the master plan. In the residential portions of the mixed-use areas, off street parking for commercial uses is allowed without a requirement for approval of a special exception.

Sec 59-C-18.185 Off Street Parking and loading at (b)

Properties in a residential zone that are designated in the Sandy Spring/Ashton Master Plan as suitable for mixed-use or non-residential use may be utilized for off-street parking in connection with commercial uses without the necessity for approval of a special exception under Sec 59-G 2.39.

The master plan clearly recommends parking on three residential properties that are split zoned C-2 and R-60, but again fails to use the words "mixed-use area" or "mixed-use properties."

The Plan states at page 34:

To allow better design, incorporate the village green and accommodate the new fire station, this Plan recommends allowing parking in connection with the commercial uses on the properties east of Brooke Road, which also front on MD 108, where properties are zoned commercial and residential. These properties ...are identified as the Batheja, Isaacson and Eppard properties.... Under the provision of the Village Overlay Zone, the residential portion of these sites is suitable of parking in conjunction with the current uses in the C-2 zone, without the necessity for obtaining a special exception. At such time as the fire station an village green projects are programmed and funded, the resulting change in the neighborhood will allow for rezoning of the residential portion of the Batheja, Eppard and Isaacson properties to the C-2 zone via a new sectional map amendment (SMA) to be filed by the County. This will permit relocation and redevelopment of the existing commercial uses without a net increase in the overall amount of commercial zoning in the Sandy Spring Village Center. The Village Overlay Zone attempts to address parking concerns of local businesses by providing flexibility where parking can be located. An overall parking scheme for the village should be a product of the design study recommended below.

Conclusion:

While staff believes that the project complies with the vision of the master plan, there are regulatory standards for which this project, as all projects, must be evaluated. There are aspects of design and layout that must be reviewed under the design guidelines contained in the master plan, such as scale and character. There are encroachments to the wetlands resulting from the location of the grocery store and parking areas. The zoning ordinance requires that master plan designate a mixed-use project to take advantage of the parking provision. There is no such language or designated project in the master plan. This is

either a discrepancy or an ambiguity that we are unable to resolve. While staff believes that the project is consistent with many of the goals and recommendations contained in the master plan, we defer to the Development Review, Environmental Unit and legal staff to determine conformance with the regulatory standards.




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

March 26, 2007

MEMORANDUM

TO: Richard Weaver, Planner Coordinator, Development Review Division
Joshua Sloan, Senior Planner, Development Review Division

VIA: Stephen D. Federline, Supervisor 

FROM: Candy Bunnag, Planner Coordinator,
Environmental Planning,
Countywide Planning Division

SUBJECT: Ashton Meeting Place, Preliminary Plan No. 120050060 and Site Plan No. 820060230

STAFF RECOMMENDATION

Staff recommends denial of the preliminary subdivision, site plan, and forest conservation plan.

Rationale:

The proposed encroachments into the environmental buffer, which includes portions of a headwater wetland in a Use IV watershed, its buffer, and part of a forested stream buffer, are inconsistent with Section 50-32(c) of the Subdivision Regulations, the Planning Board's Environmental Guidelines, and the County Forest Conservation Law. Section 50-32(c) of the Subdivision Regulations and the Environmental Guidelines identify stream buffers and wetlands as environmentally sensitive areas which should be protected. Environmental buffers are considered to be the highest priority land for forest retention and forest planting under the County Forest Conservation Law.

The Environmental Guidelines state that no buildings, structures, impervious surfaces, or activities requiring clearing or grading will be permitted in stream buffers/environmentally-sensitive areas except when they are for necessary and unavoidable infrastructure. In limited cases, staff has also allowed encroachments into environmental buffers for non-infrastructure features of a development proposal. However, such encroachments are very small in size and do not involve the loss of an environmentally-sensitive feature, such as a wetland or stream valley forest, that is

connected to or part of a larger naturally-occurring system such as a stream valley. In addition, mitigation for such encroachments usually involves the protection of an area at least as big as the proposed encroachment (usually on a two for one basis); is adjoining and an extension of the impacted buffer; is of equal or greater qualitative value; and is located on the same site as the encroachment.

For the subject project, the larger of the two areas of encroachments is due to encroachments by the proposed driveway through the site, a corner of a proposed grocery store, and part of the loading area for the grocery store. These encroachments are the result of the applicant's desire to locate a grocery store of a certain size at a specific location on the site. The grocery store and its loading area are not infrastructure elements of the project. The internal driveway could be considered part of the infrastructure requirements, but it could be located outside the environmental buffer if the site plan is reconfigured to do so.

The applicant also proposes to meet part of the project's stormwater management requirements by sharing stormwater management (SWM) facilities with State Highway Administration (SHA). These SWM facilities are to be constructed by SHA on property owned by the applicant and adjacent to, but not part of, the subject application. One of these SWM facilities is proposed to lie partly within a forested portion of the environmental buffer. Although SWM facilities are necessary infrastructures of the proposed project, the applicant has not provided any information that the location of part of the SWM facility within the environmental buffer is necessary and unavoidable.

The Functional Master Plan for the Patuxent River Watershed includes several recommendations for controlling runoff from non-agricultural uses. The functional master plan recommends the implementation and enforcement of the Primary Management Area (PMA) concept as identified in the Environmental Guidelines. The PMA is the area that lies within 660 feet from a tributary stream in the Patuxent River watershed. The subject site lies within a PMA. The guidelines recommend that within a PMA, the "stream buffer area must be left undisturbed and in a natural state." In addition, the Functional Master Plan recommends the location of SWM facilities outside buffer areas when feasible to avoid adverse impacts to wetlands and habitat. Staff does not find that the layout, as currently proposed, conforms to the functional master plan recommendations.

Section 50-32(d) of the Subdivision Regulations provides for various measures that may be imposed on a proposed subdivision in order to protect environmentally sensitive areas such as stream buffers and wetlands. Some of these measures include deletion or rearrangement of proposed lots, roads, utilities, and other facilities. Staff finds that the layout proposed by the applicant for this commercial project does not adequately arrange proposed roads, SWM facilities, and buildings to avoid clearing, grading, and permanent encroachments into wetlands and environmental buffer areas.

Staff recognizes that this finding may result in a downsized or resized commercial use, but notes that the site configuration and density forces significant amount of commercial

site uses (e.g., parking, driveway, SWM) onto adjoining R-60 and R-C zoned land, thus expanding the *de-facto* commercial envelope well beyond the C-1 zoned area. This expansion occurs without the corresponding “flexibility in placement of commercial uses” noted on page 39 of the Sandy Spring/Ashton Master Plan to comply with the Environmental Guidelines and other environmental objectives noted herein.

In addition, the Sandy Spring/Ashton Master Plan recommends that only specific areas of the Patuxent River watershed should be more intensely developed. The subject site is not identified by the master plan as one of these areas. Environmental Planning staff finds that the proposed development is of higher intensity than envisioned in the master plan and, as a result, encroaches into the environmental buffer. Although staff is aware that the overlay zone allows for a FAR up to 0.75, the proposed project should not be so large that it results in encroachments into the environmental buffer.

The applicant proposes to mitigate for the environmental buffer encroachments. In staff’s opinion, the proposed environmental buffer encroachments set a damaging precedent, regardless of the ability to compensate. Allowing buffer encroachments for elements of a project that are not necessary or could be reconfigured or relocated will take away the strongest incentive for applicants to thoroughly examine all options to avoid and minimize, and may encourage other projects to propose unnecessary encroachments into environmentally-sensitive areas. If it is acceptable to compensate for an environmental buffer encroachment no matter the purpose of the encroachment, there is no longer any incentive to first preserve environmental buffers as the highest priority land for preservation, reforestation and restoration. This is inconsistent with the Forest Conservation Law, Sections 50-32(a) and (c) of the Subdivision Regulations, and the Environmental Guidelines and severely limits staff’s and the Planning Board’s ability to effectively implement the law and guidelines.

In addition, staff finds that the applicant’s proposed mitigation measures for the encroachments do not sufficiently mitigate the loss of wetlands and their buffers. The applicant proposes to plant forest in excess of that required by the Forest Conservation Law. The proposed planting area is offsite and downstream of the encroachments and would not replace the buffer that is lost through the construction of a road and part of a building. Therefore, the proposed downstream plantings would not provide filtering and screening of stormwater runoff for the wetland nearest the commercial use, would prevent the creation of a high priority forested wetland/buffer area, and would not provide the separation of the wetland from the impervious surface that a buffer would normally provide.

DISCUSSION

The subject site is composed of several properties. The site lies within the Patuxent River watershed, and drain into the reservoirs which provide drinking water for parts of Montgomery, Howard, and Prince George’s counties. Most of the site is in grass cover with scattered trees. A bank and associated parking area and driveway are located in the northwestern portion of the site near the intersection of New Hampshire Avenue/Route

650 and Ashton Road/Route 108. Two other buildings also existed on the site, but they have been recently demolished under demolition permits that did not require review under the Forest Conservation Law because each building was located on property that was under 40,000 square feet in size.

The eastern portion of the site contains a wetland and environmental buffer associated with a headwater stream. A portion of the site's environmental buffer (28,110 square feet out of square feet 66,860 of onsite buffer area) is protected by an existing Category I conservation easement as part of a preliminary subdivision plan (#1-95053, Derrick's Addition to Ashton, approved by the Planning Board on June 1, 1995) which created two lots and an outlot. Forest planting was required under an approved forest conservation plan. Much of the environmental buffer is in grass cover, with forest cover in the southern portion of the environmental buffer.

Section 50-32, Subdivision Regulations

1. ***Trees, Forests, and Environmentally Sensitive Areas.*** The board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources and to protect environmentally sensitive areas. For purposes of this subsection, environmentally sensitive areas are limited to critical habitats for wildlife or plant species, slopes over 25% or over 15% with highly erodible soils, wetlands, perennial and intermittent streams, and stream buffers. Specific measures also may be required to protect any rare, threatened or endangered plants or animals.

The applicant proposes a commercial use with a residential special exception that results in impervious surface of about 10,800 square feet (0.25 acre) within the environmental buffer area, including 2000 square feet (0.05 acre) of wetlands, associated with the headwater stream. In addition, the applicant proposes to share an offsite stormwater management facility with SHA, which will result in about 3950 square feet (0.09 acre) of forest clearing within an environmental buffer. The total proposed encroachments into the environmental buffer are 14,750 square feet (0.34 acre), of which about 2000 square feet (0.05 acre) are encroachments into wetlands.

Staff finds that the locations of the project's proposed internal driveways, grocery store, and the store's loading area are not fixed and could be redesigned to avoid permanent encroachments into the wetland and environmental buffer. Keeping the grocery store fixed on the site results in pushing the driveway, as well as the corner of the store and its loading area, into the wetland and its buffer.

In addition, staff believes that the offsite SWM facility may also be redesigned to avoid forest clearing within an environmental buffer. *DPS has required the applicant to revise the SWM concept to relocate the SWM facility outside the forested environmental buffer, if feasible.*

2. ***Restrictions – general.*** (1) In addition to any requirement imposed under Chapter 22A, the proposed subdivision may be restricted under this Section by:
- a. deletion of or rearrangement of proposed lots, roads, utilities, and other facilities;
 - b. the establishment of building restriction and land disturbance limit lines, and other protective measures or conditions;
 - c. requiring conservation easements, deed restrictions, or covenants over portions or lots or parcels to be recorded.

Staff finds that the proposed project may be revised to protect the entirety of the wetland and environmental buffer on the site. If the grocery store is relocated or reconfigured, then the proposed internal driveway through the site may be located outside the wetland and environmental buffer. The SWM facility may also be relocated outside the forested buffer.

The applicant indicates that a grocery store is a critical element of the project and must be located and configured as it is shown in the proposed preliminary and site plans. The applicant has made some design changes to reduce, but not eliminate, the amount of buffer encroachment attributed to the driveway, grocery store, and loading area. Staff does not agree that the grocery store cannot further change in size or location on the site, or that all options for “flexibility in placement of commercial uses” noted on page 39 of the Sandy Spring/Ashton Master Plan has been fully explored.

Planning Board’s Environmental Guidelines

1. **Wetland buffers based on the State regulations will be incorporated into the stream buffer described in Section B. The State mandates a minimum 25-foot buffer around all wetlands, with expansion up to 100’ where adjacent areas contain steep slopes or highly erodible soils. These guidelines also include a larger minimum buffer for wetlands on small headwater streams in sensitive Use III and IV watersheds (50 foot and 40 foot, respectively). ...**

In the Planning Board’s Environmental Guidelines, the term “stream buffer” is comparable to the term “environmental buffer”. “Stream buffer”, as defined by the guidelines, includes wetlands and their buffers.

2. Recommended Guidelines for Stream Buffers

- a) **Streams, natural surface springs, and seeps will be maintained in a natural condition so that the existing hydraulic regimen and State water quality standards can be maintained.**
- b) **No buildings, structures, impervious surfaces, or activities requiring clearing or grading will be permitted in stream buffers, except for infrastructure uses, bikeways, and trails found to be necessary,**

- unavoidable, and minimized by the Park and Planning Department environmental staff working closely with the utility or lead agency.
- c) **Stormwater management (SWM) facilities are generally discouraged within stream buffers since, as a general rule, location of this permanent use within the buffer does not allow maximized accomplishment of all environmental management objectives for the stream buffer. However, maximum long-term effectiveness of SWM facilities is also an important objective of an overall stream protection strategy, and must be considered together with the buffer objectives in siting decisions. As a general rule, minimized buffer intrusions are allowed for construction of suitable SWM facilities or non-erosive storm drain outfalls, and unavoidable and consolidated sanitary sewer connections.**

A SWM facility may be allowed within the stream buffer area on a case-by-case basis. The following factors will be considered by DPS and M-NCPPC staff in the evaluation of which facilities or other Best Management Practices (BMPs) may be appropriate in the buffer:

- (1) Documented and measurable improvement in the effectiveness of the SWM control system if placed in the buffer**
- (2) Minimization of encroachment into the buffer**
- (3) Avoidance of existing sensitive areas (forest, wetlands and their State-designated buffers, floodplain, steep slopes, and habitat for rare, threatened, and endangered species with their associated protection buffers)**
- (4) Extent to which the SWM facility or BMP design is consistent with the preferred use of the buffer (for example, preservation of existing forest and natural vegetation within part of all of the flood pool; naturally contoured and vegetated infiltration areas or filter strips; etc.)**
- (5) Excessive grading caused by an uphill SWM location; and /or the reduction of numerous smaller less efficient structures outside the buffer**
- (6) Existence of severely degraded conditions within the buffer area that could not be improved if the SWM facility is outside the buffer area**
- (7) Presence of man-made structures (e.g., farm ponds) in the buffer area under pre-development conditions that can be converted to SWM use without excessive stream disturbance**
- (8) Ability to provide full or partial compensation for the loss of buffer function from the disturbance and permanent absence of forested areas.**

M-NCPPC and DPS Water Resources staff will evaluate SWM alternatives that provide effective SWM in a manner closest to the preferred use of the buffer as a stable forested area. The two agencies will jointly determine where SWM facilities are appropriate in stream buffers. When a SWM facility is allowed in the buffer, an area that is of comparable or greater environmental benefit than that used for the SWM and not otherwise protected, may be required as a replacement buffer.

e) Small amounts of clearing and grading for other purposes within the stream buffer (such as paving for bikeways) may be recommended for approval by staff on a case-by-case basis so long as the modification is consistent with a comprehensive approach to protecting areas that are critical to preserving or enhancing streams, wetlands, and their ecosystems. The applicant shall provide rationale for stream buffer modifications addressing at a minimum the factors below. The extent to which the proposal meets all the following factors will form the basis for staff recommendations.

- (1) Reasonable alternatives for avoidance of the buffer are not available.**
- (2) Encroachment into the buffer has been minimized.**
- (3) Existing sensitive areas have been avoided (forest, wetlands and their state designated buffers, floodplain, steep slopes, and habitat for rare, threatened, and endangered species and their associated protection buffers).**
- (4) The proposed use is consistent with the preferred use of the buffer (e.g., pervious areas such as tie outs to existing grades, slope stabilizing BMPs, etc.).**
- (5) The plan design provides compensation for the loss of buffer function.**

f) Only unavoidable road and utility crossings will be permitted in the stream buffer when it is clearly demonstrated that no feasible alternatives exist, and every efforts is made to locate road alignment and/or utilities to create the least disturbance to existing vegetation, grade, wetlands, trout spawning areas in Use III watersheds, etc.

Staff finds the proposed encroachments into the environmental buffer to be inconsistent with the Environmental Guidelines. The guidelines do not allow for buildings, structures, or impervious surfaces to be placed in stream buffers unless it is determined that these features are necessary infrastructure elements. Staff finds that the proposed driveway is an infrastructure element of the project, but its location over wetlands and buffer are avoidable if the layout is changed.

In addition, a proposed offsite stormwater management facility, which will provide part of the quality controls for the project and which is proposed to be constructed by SHA, will require clearing roughly 8900 square feet of forest within the environmental buffer. The applicant indicates that the location and design of the SWM facility is determined by SHA and is reviewed by the Maryland Department of the Environment. However, since this SWM facility, as well as other SWM structures and facilities that are proposed to be shared with SHA, is an integral infrastructure element of the project, staff believes the facility's location and design elements must be subject to the Planning Board's Environmental Guidelines and the County Forest Conservation Law. Staff believes it is possible for the SWM facility to avoid encroachment into the forested environmental buffer area, and as stated earlier, *DPS has required the applicant to relocate the SWM facility outside the forested environmental buffer.*

3. **The Planning Department evaluates proposed wetland impacts under the federal and State avoidance guidelines that are listed in order of preference as follows:**
- (1) Avoiding the wetland impact altogether by not taking a certain action or parts of an action**
 - (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation**
 - (3) Rectifying the impacts by repairing, rehabilitating, or restoring the affected environment**
 - (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action**
 - (5) Compensating for the impact by replacing or providing substitute resources or environments**

Wetlands and their associated buffer areas must be maintained in their natural condition unless the proposed disturbance is for a project determined to be necessary and unavoidable for the public good, such as:

- (1) Road crossings, water and sewer lines, and storm drain outfalls for which no alternative exists**
- (2) Stormwater management facilities, when it can be demonstrated that upland areas are infeasible or would severely limit the performance/effectiveness of the facility**
- (3) Park projects for wildlife and habitat enhancement**
- (4) Wetland enhancement projects**
- (5) Bikeways and trails, when it can be demonstrated that a satisfactory connection cannot be made otherwise...**

The proposed project would result in permanent loss of about 10,800 square feet (0.25 acre) of environmental buffer area, including 2000 square feet (0.05 acre) of wetlands, associated with the headwater stream. An internal driveway and part of the grocery store building and its loading area would be located within the wetland and its buffer. Staff believes these encroachments could be avoided if the layout for the project was modified.

In 2005, the applicant submitted a nontidal wetlands permit application to the Maryland Department of the Environment (MDE) showing a wetland impact of 3400 square feet. At the time, the applicant had indicated that the proposed fill of the wetland was necessary and unavoidable, and that the proposed wetland impact had been minimized.

Contrary to the applicant's information for the state wetlands permit application, the plan has been revised to reduce the wetland impact to 2000 square feet. Staff does not agree with the applicant that the proposed project cannot be further modified to completely avoid filling in the wetland and buffer.

3. **The provision of BMPs in the Primary Management Area is required for all areas where zoning densities are higher than RE-2, as previously discussed. The use of BMPs will also be encouraged in lower density areas during the**

development review process to facilitate clustering of development and the maximization of soil infiltration capacities. .

Possible Best Management Practices (BMPs)

- 1. Locating and possibly clustering development to maximize suitable developable land areas and to minimize negative impacts to water quality and other environmental considerations such as tree stands and wetlands.**
- 2. Widening the stream buffer area to ensure increased infiltration of pollutants, nutrients, and sediments over the extended run.**
- 3. Afforestation of more than the required 50-foot minimum of forest cover within the stream buffer.**
- 4. Utilizing more innovative and effective stormwater management. Maximize infiltration and design ponds to effectively mitigate for both temperature and nutrient/sediment removal. Design for the ten-year storm rather than the required two-year storm.**

The Environmental Guidelines include recommendations for land within the Patuxent River watershed that lie within set distances from streams. This land area is known as a Primary Management Area (PMA).

The entire subject site lies within a PMA. The proposed encroachments into the environmental buffers for both the proposed driveway, part of the grocery store and its loading area, and stormwater management facility are inconsistent with the Primary Management Area (PMA) guidelines. The proposed development is not clustered away from forest, tree stands, or wetlands. Contrary to the guidelines, the stream buffer that is proposed for protection is reduced, not expanded .

4. Delineating the Stream Buffer within the PMA

The stream buffer area must be left undisturbed and in its natural state. Land disturbing activities such as clearing and grading will not be permitted in the stream buffer area. Activities that would be encouraged in the stream buffer area include afforestation and, if possible, the implementation of Best Management Practices (BMPs). The control of noxious weed species in the stream buffer area, such as thistles (Asteraceae or compositae), Johnson grass, shattercane and wildcane, and multiflora rose, will be permitted when deemed necessary and when done in a manner that minimizes disturbance to other vegetation. Any disturbance of the stream buffer will require M-NCPPC staff review.

The proposed fill in the wetland and its buffer to locate uses for the commercial project and the proposed clearing of forested buffer to locate a SWM facility are inconsistent with the PMA recommendation to protect the stream buffer area.

County Forest Conservation Law

1. **Section 22A-12(b) states:**
 - (1) **The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition unless the Planning Director finds that:**
 - (A) **the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention;**
 - (B) **reasonable efforts have been made to protect specific areas and vegetation listed in the plan; and**
 - (C) **the development proposal cannot be reasonably altered.**

The proposed loss of 14,750 square feet (0.34 acre) of environmental buffer, including 3950 square feet of forest loss within the buffer, due to the location of avoidable elements of the proposed project is inconsistent with the Forest Conservation Law.

The applicant has not demonstrated that the loss of high priority forest (i.e., forest in an environmental buffer) due to the location of a SWM facility is necessary and unavoidable. As previously noted, DPS has required the applicant to relocate the SWM facility outside the forested environmental buffer, if feasible.

Sandy Spring/Ashton Master Plan

1. **To protect and enhance the water quality within the Patuxent River watershed this plan:**
 - **Continues the predominantly low-density land use pattern established by the 1980 Plan. Currently, the five-acre Rural Cluster zoning covers most of the Sandy Spring/Ashton portion of the watershed. As noted in the Patuxent Plan, this type of land use pattern “is not likely to exacerbate the present situation.”**
 - **Maintains the small amount of more intense land use in the existing village centers and endorses it in other areas to meet other Plan goals. The areas within the Patuxent River watershed where more intense land uses are recommended are discussed below.**

The Sandy Spring Village Center

As noted in the Land Use, Design and Zoning chapter, a small expansion of the Sandy Spring village center is proposed to reinforce its viability by clustering a small amount of housing near existing retail. The scale of the proposed expansion is likely to have only a small adverse impact on the Patuxent River watershed. However, to ensure watershed protection in these areas, this Plan recommends:

- **Montgomery County Department of Permitting Services (MCDPS) maintains stringent sediment control during construction and careful selection of appropriate stormwater management strategies and locations for any stormwater structures.**
- **Encouraging developers to limit impervious surfaces to the minimum necessary.**
- **Maximize stream buffer protection as outlined in the Montgomery County Planning Board's Guidelines for Environmental Management of Development.**

The Brooke Grove Foundation Campus

This campus provides care for the elderly. This Plan recommends no expansion of the Brooke Grove Foundation campus beyond the envelope established by the 1995 Special Exception (SE) approval. To ensure watershed protection on this campus, this Plan recommends:

- **Maintaining a minimum 125-foot non-disturbed stream buffer.**
- **Clustering development and disturbance away from streams and wetlands.**
- **Limiting impervious surfaces within the Primary Management Area to 10 percent and over the entire site to 11 percent.**
- **Phasing development to minimize the amount of construction at any one time.**
- **Accelerated reforestation of stream buffers.**

Brooke Road/Chandlee Mill Road Neighborhood

This Plan confirms the 1980 Plan recommendations of 2 dwelling units per acre for most of the Brooke Road/Chandlee Mill Road Neighborhood to enable this community to continue its current land use pattern. This pattern includes homes and trailers on property handed down by family members. A reduction in recommended density would create a great hardship for the existing residents and undermine the community. Because of the need to reinforce this community, environmental concerns such as failing septic systems and stream valley disturbance will need to be addressed through strategies other than land use changes.

The subject is not identified by the master plan as one of the three areas recommended for more intense land uses. Contrary to the master plan recommendations, staff finds the project proposes uses on the site of such a scale that the internal driveway, the corner of the grocery store building, the store's loading area, and one of the SWM facilities is "pushed" into the environmental buffer.

In addition, for each of these three sites, the master plan includes specific recommendations to "ensure watershed protection in these areas" despite the goal of more intense land uses. These recommendations include clustering development away

from streams and wetlands and maximizing stream buffer protection. Staff finds that the subject project not only is more intense than what the master plan recommends, but it cannot meet master plan recommendations for protecting environmental buffer areas that are intended for sites that are specified for high intensity land uses.

Functional Master Plan for the Patuxent River Watershed

The Sandy Spring/Ashton Master Plan refers to the Functional Master Plan for the Patuxent River Watershed as the basis for its specific recommendations to protect and enhance the water quality within the Patuxent River watershed. The functional master plan contains several general recommendations for controlling “urban¹” runoff. These include, but are not limited to: location of stormwater management facilities outside buffer areas when feasible to avoid adverse impacts to wetlands and habitat and the implementation and enforcement of the Primary Management Area (PMA) concept as stated in the Environmental Guidelines. As discussed above, staff believes the proposed project does not meet the PMA guidelines as set forth in the Environmental Guidelines, nor does it locate a proposed SWM facility outside an environmental buffer where it could be possible to do so.

Applicant’s Proposed Measures to Mitigate Environmental Buffer Encroachments

The applicant proposes to mitigate the environmental buffer encroachments by creating about 9450 square feet (0.22 acre) of wetlands within the environmental buffer (compared to the approximately 2000 square feet (0.05 acre) of wetland that is proposed to be filled and replaced with impervious surfaces), planting 0.67 acre of forest in excess of that required under the Forest Conservation Law, placing a conservation easement on part of the environmental buffer that lies offsite on an already developed residential lot, and planting at a denser rate of trees than that required under the Forest Conservation Law.

Notwithstanding staff’s concerns with allowing unnecessary and avoidable encroachments into environmental buffers, staff does not find that the proposed mitigation measures, in conjunction with the proposed commercial use, will necessarily be environmentally better than a commercial use that protects the full environmental buffer.

The applicant proposes to create additional wetlands, but they would be located within the standard environmental buffer. Not only would the existing natural wetland lose a large part of its buffer and have impervious surfaces located immediately next to it, but there would be no buffer area to help protect the newly created wetland. Also, there is no land area on the subject site that is proposed to be protected as a natural area to offset the permanent loss of land area within the standard buffer. In addition, providing adequate hydrology to preserve the existing wetland conditions will be difficult at best due to the

¹ The Functional Master Plan for the Patuxent River Watershed defines “urban” as “all areas which are not zoned agricultural (agricultural zones include Rural, Rural Cluster, and Rural Density Transfer)” for the purposes of the plan.

upstream imperviousness: providing hydrology to a much larger area to “create” new wetlands will significantly reduce the potential for sustainable wetland conditions.

Forest is proposed to be planted to help mitigate the buffer encroachments, but forest planting is already required for the proposed project to meet Forest Conservation Law requirements. The forest planting that is proposed for mitigating the buffer encroachments would be in excess of the Forest Conservation Law requirements with respect to the total size of the planted area and the number of trees and shrubs to be planted. Although the “excess” planting would establish more forest within and adjoining the buffer, over time most of this area should naturally regenerate into forest, with some measures to controThat is, the same buffer area would revert into forest cover over time with the required forest planting and maintenance measures (i.e., without the proffer of “excess” planting).

It should be noted that forest planting was completed within part of the environmental buffer as part of the forest conservation plan for Preliminary Plan # 1-95053 . However, from records in the forest conservation plan file, the trees that were planted were small and did not have any protection from deer. The planting measures that were implemented for the old preliminary plan did not include measures that are typically required today to help the survival of planted trees and reduce die off due to deer damage or other causes. In addition, it appears that unauthorized mowing occurred within the buffer area. The unauthorized mowing and the lack of current planting practices resulted in an unsuccessful reforestation project for the old preliminary plan.

There is testimony that indicates the existing wetland is not of high quality and does not receive much water in its current condition. This wetland, which is located in the headwater of a stream, was delineated by the applicant’s consultant and has been verified by the Maryland Department of the Environment. In fact, evidence of groundwater flows can be seen on the surface by the presence of a seep/spring near the eastern portion of the on-site environmental buffer. The applicant’s Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) for the subject site states that the wetlands “are supported by seep/spring wetland hydrology.” It is not uncommon in this County to have small, natural wetlands in headwater areas of streams. By definition, a headwater area is the beginning of a stream, and because it is located at the top of a drainage area, it commonly contains wetlands and stream channels that do not receive a large amount of groundwater flows. A buffer of a vegetated or natural area is critical to protect these small wetlands and stream channels.

The applicant proposes to “improve” the wetland by discharging stormwater runoff from the grocery store building into an infiltration structure immediately uphill of the wetland as part of the project’s SWM treatment.

However, staff does not find that the proposed project, even with the proposed SWM facilities, will necessarily provide more surface and groundwater sources to the wetland area. The impervious cover of the drainage area to the wetland will increase from about 15 percent to 68 percent. This will significantly decrease the amount of pervious land that

can act as a natural recharge area for the groundwater that feeds the wetland. In addition, the proposed project will rely on engineering methods to provide water to the wetland area. Whether these proposed engineered structures will mimic natural infiltration and groundwater recharge functions of vegetated land is questionable. DPS recognizes that the proposed infiltration trench and porous pavement areas may fail and requires a formal plan revision if these structures become dysfunctional. The SWM concept approval letter for the project, dated December 22, 2006, states:

“If the proposed bottom grades of the infiltration trench and porous pavement areas are compromised during construction, underground sand filter may possibly substitute as water quality devices, with a formal plan revision.” It should be noted that infiltration trenches and porous pavement are designed to provide water quality controls and help recharge groundwater, but sand filters provide water quality benefits without groundwater recharge functions.

Applicant's Proposals for Changes

On March 15, 2007, a meeting was held with M-NCPPC staff, DPS staff, the applicant, the applicant's engineer and land planning consultant, and SHA. The applicant discussed possible changes to two parts of the project that encroach into environmental buffer areas: the SHA SWM facility to the south of the site, and the part of the commercial project at the eastern end of the proposed grocery store.

The applicant indicated that SHA had recently been provided information on the location of the environmental buffer area. SHA stated that its engineers were re-evaluating the design of the SWM facility to determine if it could be reconfigured to avoid grading into the forested environmental buffer. A week after the meeting, staff received drawings that showed that the SWM facility and associated grading could be located outside the environmental buffer. Staff supports these changes if they meet DPS requirements for SWM facilities.

The second revision presented by the applicant showed a reduced encroachment into the environmental buffer due to the commercial project. The applicant presented a concept sketch of changes to the eastern corner of the proposed grocery store and the access road that avoided filling in the wetland, but still resulted in disturbance and construction within the wetland's buffer. Although the proposed changes are an improvement over the current layout of the commercial project, staff does not support the remaining encroachment within the wetland buffer.

The wetland, which is small by virtue of its location in a headwater area, will be affected by the increase in impervious surfaces of any commercial development on the site, including the currently proposed project. The protection of a vegetated buffer around the entirety of the wetland, in conjunction with a SWM concept that includes recharging of the groundwater source for the wetland, is very important in countering the negative impacts of adding significant impervious surfaces around the wetland.

The applicant proposes to plant forest offsite in excess of that required by the Forest Conservation Law. Staff does not believe that the proposed forest planting would mitigate the loss of wetland buffer because the planting area is downstream of the affected wetland buffer and would not be able to replace the functions of the paved buffer area with respect to protecting the on-site wetland.

Summary

In summary, although the changes proposed by the applicant at the March 15th meeting would reduce the impacts of the proposed project, the changes fall short of full protection of the site's environmental buffer. Staff continues to conclude that the buffer encroachment could be avoided if further changes to the commercial project. Staff also concludes that the location and configuration of the grocery store, free-standing bank building, and access road are could be further modified to protect the full environmental buffer on the site. In staff's opinion, the location and configuration of these features of the commercial project are not set. The grading and fill of the environmental buffer are not necessary or unavoidable.

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Biota

ENVIRONMENTAL DESIGN & RESTORATION

ENVIRONMENTAL RESOURCE FUNCTIONAL ASSESSMENT REPORT

“ASHTON MEETING PLACE”

Montgomery County, Maryland
January 2007

PREPARED FOR:

Ashton Meeting L.L.C.
18623 Brooke Road
Sandy Spring, Maryland 20860

SUBMITTED TO:

M-NCPPC
Montgomery County
Silver Spring, MD 21203-1715

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APPENDIX A: FUNCTIONAL IMPACT ASSESSMENT SUMMARY TABLE

1.0 INTRODUCTION

- 1.1 This Environmental Impact Assessment Report (EIA) has been prepared in support of the construction of a mixed use commercial/residential development at the intersection of Ashton Road and New Hampshire Avenue in northern Montgomery County. The property consists of several parcels and lots of record containing a total of 7.5 acres of land. In order to construct the proposed facility, a Joint Maryland Department of the Environment (MDE)/ U.S. Army Corps of Engineers (COE) Permit has been applied for and conditional approval obtained subject to the preparation of final engineering plans.
- 1.2 An alternatives analysis has been previously submitted providing a detailed evaluation of other properties and development alternatives which Ashton Meeting, L.L.C. has considered as part of the initial site planning process. Based upon this analysis, it was determined that the Ashton Meeting Place property was the only available site suitable for the construction of a mixed use commercial/residential center (Refer Alternative Site Analysis information prepared by Perrine Planning and Zoning and Biota Inc.).
- 1.3 This EIA report provides an assessment of the existing site conditions and the non-tidal wetlands on the Ashton Meeting Place Property. This information has been utilized to assess potential site development alternatives which serve to avoid, minimize and mitigate adverse environmental impacts to the greatest extent possible. Through careful review, it has been established that, due to the size and configuration of the remaining area located beyond the limits of wetlands, impact of jurisdictional wetlands can not be avoided while achieving the project purpose.
- 1.4 Through the incorporation of sound environmental site design principles and innovative best management practices, the primary functional benefits the existing wetlands provide have been preserved and/or enhanced. In addition, by increasing the total amount of existing wetlands located on-site by greater than 50 % and afforesting all of the available open space located on and adjacent to the site, the quality of the wetlands to be retained upon project completion will be significantly improved, thus enhancing the environmental functional benefit provided by the preservation of wetlands (Refer to Forest Conservation & Tree Preservation/Mitigation Plan).
- 1.5 In summary, this EIA report will demonstrate that the proposed improvement of the Ashton Meeting Place Property for a mixed use commercial/residential center is consistent with the Montgomery County Environmental Guidelines. Through the incorporation of innovative environmental site design and best management practices, the construction of the proposed facility has been achieved while preserving the functional benefits the existing waters and wetlands provide. In addition, the design of the project serves to avoid adverse environmental impacts on and adjacent to the property. This in combination with the creation of forested non-tidal wetlands, enhancement of the existing

wetlands to be preserved and the reforestation of the entire stream valley buffer both on-site and adjacent to the property serves to provide full mitigation of all jurisdictional impacts associated with the project.

2.0 EXISTING SITE CONDITIONS

- 2.1** In order to identify those factors which affect the existing site conditions, a historical site evaluation has been conducted considering the land use activities on and adjacent to the property. This has been achieved primarily through the utilization of aerial photographs, topographic field surveys and various other publicly available mapped data and field site inspection.
- 2.2** The Ashton Meeting Place property is 7.5 acres +/- in size, split-zoned Commercial (C-1) and residential (R-60) and is located at the southeast corner of the intersection formed by Ashton Road and New Hampshire Avenue. An existing bank and associated parking area is currently located at the intersection. Several additional buildings and associated paved area located along the site road frontage have recently been removed. The balance of the property is characterized by maintained lawn and fallow field with a small area of scattered trees found in the southeastern most corner of the overall tract. Surrounding land use consisted of existing commercial and residential development to the north and west and low to medium density residential development to the south and east.

2.3 Site Terrain and Soil Mapping

- 2.3.1** The site terrain is characterized by level to gently rolling topography with elevations ranging from 496' at the northwestern corner of the property to 468' at the southeastern corner of the overall tract. A slope analysis has been conducted to determine the extent of steep slopes present on and adjacent to the site. The results of this analysis reveal that slopes in the vicinity of the property are generally 2-8%.
- 2.3.2** The site contains three (3) soil-mapping units, according to the Montgomery County Soil Survey listed as follows:

<u>SYMBOL</u>	<u>MAPPING UNIT</u>	<u>DRAINAGE</u>	<u>CONSTRAINTS</u>
2B	Glenelg Silt Loam	Well Drained	None
1C	Glilia Silt Loam	Well Drained	None
6A	Baile Silt Loam	Poorly Drained	Potentially Hydric

- 2.3.3** Of the soil mapping units identified on-site, both the Glenelg and Glilia soil mapping units are not noted as being associated with potentially erodible or hydric soil conditions. The Baile soil mapping unit is noted as being potentially hydric and is typically associated with high groundwater conditions.

2.4 Site Hydrology

- 2.4.1 An emergent non-tidal wetlands forms in the lower site elevations found in the southeastern portion of the property as result of a groundwater seep and drains easterly through a fallow grassed swale to a clearly defined springhead located off-site. At this point surface and groundwater concentrates forming an intermittent stream system confined within an ensized drainage channel. According to the Maryland Department of the Environment (MDE) Water Quality Regulations, this stream is classified as a Use IV Recreational Trout Stream (Put and Take) waterway. As the downstream resource is not large enough to support recreational trout stream habitat and discharges in such close proximity to the Patuxent Reservoir, this drainage system has little opportunity to provide a significant recreational fisheries habitat benefit.
- 2.4.2 The overall drainage area contributing to the headwaters of this drainage channel above the existing springhead located off-site is approximately 11.0 acres +/- in size. Of this area approximately 3.5 acres +/- is located off-site the majority of which is characterized by impervious paved road surfaces located within State Highway Administration (SHA) right-of ways. The on-site drainage area contributing to this intermittent drainageway is approximately 7.5 acres +/- in size, of which impervious surfaces cover approximately 2.0 acres (25% +/- of the gross tract area). The total existing impervious surface located within this drainage area equals approximately four (4) acre or 36% +/- of the upland drainage area. All of the impervious surface area was created prior to stormwater management regulation, thus neither stormwater quantity nor quality management have been provided to pre-treat surface run-off prior to it's release into the existing wetlands and downstream receiving waters.

2.5 Site Vegetation

- 2.5.1 The central and southeastern portion of the site is characterized by common fescue with scattered deciduous trees ranging from early successional to mature. The understory is dominated by invasive species. The delineated emergent wetlands located on-site are clearly dominated by common fescue as this area has historically been maintain in a lawn condition with scattered common carex and rush species identified in the field. A narrow band of existing riparian deciduous forest is found around the existing springhead located off-site running easterly approximately 100 to 150 wide.
- 2.5.2 Based upon the limited width of the existing forest located off-site this woodland does not provide a significant habitat for forest interior dwelling birds. According to the Maryland Department of Natural Resources (DNR), the site does not contain any known State or Federal rare, threatened or endangered species. Due to the amount of existing developed/maintained site area and the developed nature of the adjacent properties the site supports primarily suburban wildlife.

3.0 PROPOSED LAND USE ASSESSMENT

- 3.1** The proposed Site Plan centers on the creation of an integrated mixed use commercial/residential village center. The layout of the center is predicated upon numerous site design factors essential to the success of the project, which have been briefly summarized as follows:
1. The design of a grocery store building adequate in size to provide those services essential to the project purpose.
 2. The design of entrance roads and internal travel aisles that allow the safe and functional operation of the facility.
 3. The design of an adequate amount of active and passive open space, parking and service area to support a modern integrated mixed use commercial/residential village center.
- 3.2** Utilizing these site design factors, several alternative site plans have been considered to achieve the project purpose. The original Site Plan proposed the impact of approximately 4,000 S.F.+/- of wetlands and 10,700 S.F.+/- of wetland buffer (40' wide) in order to obtain essential access into the site from Ashton Road. Based upon consultation with the Department of Environmental Protection, MDE and SHA, alternative site designs were evaluated to avoid and minimize the extent of impact to non-tidal wetlands. It was determined that the amount of jurisdictional impact could be significantly reduced by shifting the required access from Ashton Road into the site westerly toward the intersection and creating a subtle curve around the top of the delineated emergent wetlands located on-site. This in combination with the construction of a retaining wall behind the proposed improvements served to reduce the amount of wetland impact originally proposed by approximately 2,000 S.F.+/- or 50%.
- 3.3** The current site plan reflects the minimum aerial extent of development necessary to achieve the project purpose. The buildings have been located to comply with both the Montgomery County Development Regulations and provide the minimum square footage, parking and service area necessary to support an integrated mixed use commercial/residential village center.
- 3.4** Stormwater quality and quantity management will be provided for through the creation of a joint use stormwater management facility to be constructed by SHA on the adjacent "Matthews Property" in combination with on-site water quality and quantity facilities. These facilities have been designed to capture a large amount of previously unmanaged surface run-off, as well as the increased run-off created by the proposed site improvements and SHA road improvements. Water quality structures have been incorporated within the interior of the site in order to ensure adequate groundwater recharge to the existing wetlands to be retained on-site.

- 3.5** In order to mitigate for non-tidal wetlands impacted that could not be avoided, forested wetland enhancement and wetland mitigation at a ratio greater than 4.7:1 has been proposed on-site. The proposed wetland mitigation is contiguous to the existing wetlands to be retained and will result in the creation a large woodland capable of supporting a significantly more biological diverse plant and wildlife community by afforesting in excess of the entire 125 foot stream valley buffer extending more than 300 feet off-site down stream.
- 3.6** In summary, through careful consideration to environmental features, site improvements have been clustered in the uplands around the perimeter of the highest quality wetlands minimizing adverse impact to the greatest extent possible. Wetland mitigation has been proposed replacing those wetlands to be impacted with a significantly more biologically diverse ecosystem. This serves to provide full mitigation of all jurisdictional impacts to the natural resources.

4.0 ENVIRONMENTAL RESOURCE FUNCTIONAL IMPACT ASSESSMENT

- 4.1.1 This assessment consists of an evaluation of the pre-development condition, post-development condition and proposed management techniques utilized to avoid, minimize and mitigate potential adverse impacts to non-tidal wetlands. The pre-development drainage area is generally characterized by unmanaged on-site run-off through maintained lawn to the existing wetlands. A considerable amount of the upland drainage area located off-site consists of unmanaged run-off from paved road right-of-ways that has been artificially directed around the wetlands by the existing road grade.
- 4.1.2 The post-development drainage area, similar to that of the pre-development drainage area, is divided into two (2) sub-drainage areas. The stormwater management facility captures the unmanaged run-off from the adjacent paved road right-of-way and the increased surface run-off from the site development active. The stormwater management facility also captures increased run-off from proposed SHA intersection improvements independent of this project. The drainage area to the wetlands to be retained and enlarged consists primarily of the designed stormwater management recharge facilities and the porous pavement parking area.
- 4.1.3 Utilizing the above described drainage areas, an environmental resource functional assessment has been conducted based upon an analysis of seven (7) primary functional benefits wetlands provide. Each wetland functional characteristic assessed has been described as follows:
- 4.2.1 Groundwater recharge is the process where surface water is stored and retained within wetlands and allowed to infiltrate into the groundwater table. The environmental benefit this wetland function provides is to recharge the groundwater table during periods of low annual rainfall. Based upon the existing hydrologic and soil conditions identified on-site, the delineated wetlands are associated with a high groundwater table, which is typically characteristic of groundwater discharge conditions. Due to the level terrain across the existing wetlands and the intermittent nature of the wetland hydrology, however, surface water is retained and allowed to infiltrate during small rainfall events and periods of seasonal low groundwater table elevations (ie. generally between May and October of each year). The pre-development assessment of this environmental functional benefit is moderate.
- 4.2.2 Based upon post-development site conditions, the aerial extent of the existing wetlands located on-site will be reduced by approximately 15% during the initial construction phase of the project and will be increased by greater than 50% once the project has been completed. The proposed stormwater management design has incorporated underground recharge facilities in combination with a large area of porous pavement. This promotes surface water infiltration and increases the amount of water entering the wetlands and

length the residence time before surface run-off is discharged to the down stream receiving waters. These factors serve to enhance the opportunity the wetlands have to provide a groundwater recharge functional benefit. The post-development assessment of this environmental functional benefit is high.

- 4.3.1 Groundwater discharge is the process where water is released from the groundwater table and allowed to filter through wetlands while being conveyed to the down stream receiving waters at a greater rate than infiltration occurs. The environmental benefit this wetland function provides is to maintain the hydrologic characteristics of the down stream receiving waters during periods of low annual rainfall. The existing wetlands are associated with a high groundwater table, however based upon field evaluation the volume of groundwater discharge does not exceed the rate of infiltration. In fact, the upper portion of the existing wetlands area which is the primary subject of this assessment could be considered hydrologically isolated from the down stream receiving waters from an over land surface water prospective. Consequently, this low volume of intermittent hydrology does not directly contribute to ground water discharge. The pre-development assessment of this environmental functional benefit is low.
- 4.3.2 The design of the proposed site improvements around the perimeter of the existing wetlands located on-site serves to retain the majority of lowland surface area permitting groundwater water discharge to occur similar to pre-development site conditions. The placement of compacted fill material in association with these site improvements will force the parabolic water table down, thus raising the groundwater table in the adjacent wetlands to be enlarged and enhanced. This in combination with the designed stormwater recharge facilities serves to provide the necessary hydrology to support the proposed wetland mitigation and enhance the opportunity the wetlands have to provide a groundwater discharge function. The post-development assessment of this environmental functional benefit is moderate.
- 4.4.1 Natural Flood Control occurs when wetlands store and/or detain surface run-off during rainfall events and release it slowly to the down stream receiving waters. The environmental benefit this wetland function provides is to reduce flood elevations and flow velocities protecting down stream properties and reducing stream bank erosion. Due to the level terrain across the existing wetland area and the dense herbaceous vegetation surface water is effectively stored and released to the down stream receiving waters during large rainfall events. The pre-development assessment of this environmental functional benefit is high.
- 4.4.2 Based upon the design of the proposed site improvements, stormwater management has been provided to capture existing and increased run-off during rainfall events and release it slowly to the down stream receiving waters. As the majority of the wetlands are to be preserved on-site, this serves to maintain post development natural flood controls similar

to pre-development conditions. In addition, stormwater management has been provided to detain surface run-off from unmanaged impervious surfaces both on and off site during large and smaller rainfall events which have the greatest impact upon the stability of the down stream receiving waters. The post-development assessment of this environmental functional perimeter is high.

- 4.5.1** Sediment Retention and Pollutant Filtering occurs when wetlands serve to remove and retain nutrients and suspended sediments introduced from upland surface run-off. The environmental benefit this wetland function provides is to reduce nutrient and sediment discharge to the down stream receiving waters, thus maintaining water quality conditions and aquatic resources. The existing wetlands effectively remove both nutrients and suspended sediments through the process of soil de-nitrification and vegetation filtering by retaining a surface run-off for an extended period of time. As the upland drainage area to the wetlands has been partially developed without the benefit of water quality management the existing wetlands effectively provide a sediment retention and pollutant filtering functional benefit. The pre-development assessment of this environmental functional benefit is high.
- 4.5.2** Based upon the design of the proposed site improvements, water quality management has been provided to pre-treat both the existing and proposed run-off from impervious surfaces located within the overall upland drainage area prior to releasing into the down stream receiving waters. This effectively minimizes and mitigates the reduction in the proposed aerial extent of non-tidal wetland area located on-site. Based upon the permitted commercial land use, the management of high density commercial development surface run-off in upland structural facilities is considered a priority, according to the state stormwater management regulations as they effectively remove commercial pollutants and will be maintained over an extended period of time. The post-development assessment of this environmental function benefit is high +.
- 4.6.1** Stream bank stabilization occurs when wetlands provide vegetated stabilization and reduce erosive surface run-off velocities during periods of normal annual stream flow and flood flow events. The environmental benefit this wetland function provides is to maintain natural channel characteristics, supporting aquatic resources and maintain water quality conditions. The wetlands located on-site do not result in the concentration of surface water. The wetlands ability to retain surface run-off, however, does have some beneficial effect upon the stability of the down stream receiving waters. The pre-development assessment of this environmental functional benefit is moderate.
- 4.6.2** The wetlands located on-site are not directly associated with a perennial stream or large overland surface flows, thus have a limited opportunity to provide a significant stream bank stabilization functional benefit. The wetlands to be retained in combination with proposed stormwater management practices and wetland mitigation serves to maintain

and enhance the ability the wetlands have to effectively store and release surface run-off to the down stream receiving waters. The post-development assessment of this environmental function benefit is moderate to high.

- 4.7.1. Wildlife habitat is the ability wetlands have to provide the essential elements to support a unique variety of flora and fauna. Due to the historically maintained condition of the existing wetlands and the developed nature of the surrounding land use, the existing wetlands have limited opportunity to provide food, water and shelter for a diverse range of species. The limited amount of contiguous forested area to down stream environmental resources significant reduces the wildlife habitat benefits these wetlands provide. The pre-development assessment of this environmental functional benefit is low.
- 4.7.2 The post-development site conditions will significant improve upon the existing wildlife habitat through the creation of a larger more biologically diverse wetlands and the afforestation of 1.79 acres of riparian stream buffer. In addition the forested corridor both on-site and extending down stream greater than 500 L.F. will be greater than 300 feet in width, thus providing habitat capable of supporting forest interior dwelling bird species. The cumulative affect will result in a net improvement in wildlife habitat. The post-development assessment of this environmental function benefit is high.
- 4.8.1 Recreational amenities are the values wetlands provide for both active and passive recreational land use. The wetlands located on-site due to their limited size, location and surrounding land use have a limited opportunity to provide a significant recreational land use benefit. The pre-development assessment of this environmental functional benefit is low.
- 4.8.2 Based upon the proposed site design which creates and retains a large, broad-forested non-tidal wetland area, the proposed improvement of the property will marginally improve the recreational amenities the existing wetlands provide. The post-development assessment of this environmental function benefit is low to moderate.

5.0 SUMMARY AND FINDINGS

- 5.1** In summary, the results of this environmental functional assessment reveal that the proposed improvement of the property will not have any adverse environmental impact upon the primary functions the existing wetlands provide. Through sound site design and the incorporation of innovative stormwater management practices, the ability of the wetlands to be retained on-site to provide a groundwater recharge functional benefit during small rainfall events, as well as, their ability to provide groundwater discharge during larger rainfall events has been preserved and enhanced. In addition, the wetlands ability to provide sediment retention and pollution filtering, natural flood control and water quality improvements has been persevered and enhanced. The streambank stabilization, wildlife habitat and recreational amenities the existing wetlands provide are generally characterized as of low value and will not be adversely impacted in association with the proposed site improvements. The proposed management of off-site stormwater run-off in combination with forested wetland mitigation and off-site reforestation serves to significantly enhance these functional benefits and, thus, provides full mitigation for all jurisdictional impacts associated with the project (Refer to Appendix A: Functional Impact Assessment Summary Table).

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- U.S.D.A., 1985. Hydric Soils of the State of Maryland, U.S.D.A. in cooperation with the National Technical Committee for Hydric Soils.
- U.S. Army Corps of Engineers, 1989. Federal Manual for Identifying and Delineating Jurisdictional Wetlands, Ref. No. 024-00-00-00-683-8.

APPENDIX A:

FUNCTIONAL IMPACT ASSESSMENT SUMMARY TABLE

FUNCTION IMPACT ASSESSEMENT SUMMARY TABLE:

<u>FUNCTIONAL CHARARACTERISTIC</u>	<u>PRE-DEVELOPMENT</u>	<u>POST-DEVELOPMENT</u>
Groundwater recharge	Moderate	High
Groundwater discharge	Low	Moderate
Natural Flood Control	High	High
Sediment Retention and Pollutant Filtering	High	High +
Stream bank stabilization	Moderate	Moderate to High
Wildlife habitat	Low	High
Recreational amenities	Low	Low to Moderate



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

March 15, 2007

MEMORANDUM

TO: Cathy Conlon, Supervisor
Development Review Division

VIA: Shahriar Etemadi, Supervisor
Transportation Planning *DKH*

Dan Hardy, Supervisor
Transportation Planning

FROM: Cherian Eapen, Planner/Coordinator *CE*
Transportation Planning
301-495-4525

SUBJECT: Preliminary Plan No. 120050060
Site Plan No. 820060230
Special Exception Case No. S-2683
Ashton Meeting Place
New Hampshire Avenue and Olney-Sandy Spring Road/Ashton Road
Patuxent (Rural) Policy Area



This memorandum presents Transportation Planning staff's Adequate Public Facilities (APF) review of Ashton Meeting Place development to be located within the southeast quadrant of New Hampshire Avenue (MD 650) and Ashton Road (MD 108) in Ashton.

Ashton Meeting Place is proposed with 60,147 square feet of retail (which includes the existing bank on the site), 21,006 square feet of office, and 13 multi-family dwelling units. The development is zoned C-1 near the MD 650/MD 108 intersection, and is zoned R-60 to the rear. The density proposed on the site is placed entirely within the C-1 zoned area. The R-60 zoned area wraps around the C-1 zoned area and has frontage along both MD 650 and MD 108. This area is used to provide access to the site, parking for the uses proposed on the C-1 zoned area, and to provide some open space amenity. The entire site is also within the Sandy Spring/Ashton Rural Village Overlay Zone.

RECOMMENDATIONS

Transportation Planning staff recommends the following conditions as part of the transportation-related requirements to approve this application:

1. Limit development on the property to 60,147 square-feet of retail, 21,006 square-feet of office, and 13 multi-family dwelling units.
2. The applicant must dedicate and show on the final record plat the following rights-of-way (according to 1998 Approved and Adopted *Sandy Spring/Ashton Master Plan*):
 - a. Ashton Road (MD 108) – minimum of 40 feet from the roadway right-of-way centerline.
 - b. New Hampshire Avenue (MD 650) – minimum of 60 feet from the roadway right-of-way centerline.

The final record plat shall also reflect dedication of necessary truncation at public street intersection corners.

3. The applicant must meet all Montgomery County Department of Public Works and Transportation (DPWT) requirements enumerated in their letter dated November 1, 2006 (see Attachment No. 1) prior to issuance of any building permit for the proposed development.
4. The applicant must document that Maryland State Highway Administration (SHA) initiated design and funded site frontage/site access improvements for the MD 108/MD 650 roadway/intersection are fully implemented prior to the release of building occupancy permits for the proposed development. SHA improvements must include:
 - Separate left, through, and right turn lanes on the eastbound and westbound approaches of MD 108, and the northbound approach of MD 650, and
 - Minimum five-foot wide sidewalks along both MD 650 and MD 108.

We support approval of the special exception request related to this subdivision case (multi-family residential units within the C-1 Zone) since the application meets the transportation-related requirements of the APF test. The proposed uses will not have an adverse effect on the transportation network in the immediate area.

DISCUSSION

Site Location, Vehicular/Pedestrian Access, Transit and Land Uses

The subject development is located within Ashton Village Center in the southeast quadrant of the intersection of MD 650 and MD 108 in Ashton. The Sandy Spring Village Center is to the west of the site.

Within the study area, both MD 650 and MD 108 are two-lane roadways; with its intersection corners developed with retail/office uses. The site currently has a bank (with drive-through windows) and three single-family dwelling units. Access to the development will be from full-movement driveways on MD 108 and MD 650. As part of SHA's improvements at the intersection of MD 650 and MD 108, SHA will be constructing sidewalks along the MD 650 and MD 108 property frontages. Sidewalks that lead pedestrians/bicyclists from MD 650 and MD 108 to various uses on the site are also provided at several locations. The applicant for Ashton Meeting Place is pursuing redevelopment of the northeast corner of the intersection with an automobile filling station with a car wash and a convenience store, a general retail store, and an office use area.

Metrobus Route Z2 services the south leg of MD 650 and the west leg of MD 108 with a stop in Ashton.

Master Plan Roadway and Pedestrian/Bikeway Facilities

The 1998 Approved and Adopted *Sandy Spring/Ashton Master Plan* includes the following master-planned roadways, pedestrian and bikeway facilities:

1. Ashton Road (MD 108): This is an east-west arterial (A-92) with a minimum right-of-way width of 80 feet between the Howard County line to the east and Dr. Bird Road to the west. The roadway is recommended as the "Main Street" for the Sandy Spring and Ashton village centers. A shared use path (SP-37) is recommended in the *Countywide Bikeways Functional Master Plan* for MD 108 along its north side between Howard County line to the east and Olney Master Plan area to the west.
2. New Hampshire Avenue (MD 650): This is a north-south major highway (M-12) with a minimum right-of-way width of 120 feet to the south of MD 108. The master plan identifies a desire line for a local trail along MD 650 to the south of MD 108. A shared use path (SP-15) is recommended in the *Countywide Bikeways Functional Master Plan* for MD 650 along its west side between MD 108 to the north and Ednor Road to the south.

Nearby Transportation Improvement Projects

DPWT's Capital Improvement Program (CIP) and SHA's current construction program for fiscal years 2007 and 2008 includes the following nearby transportation improvement projects:

1. MD 108 Sidewalk: This DPWT project provides for the construction of a sidewalk along the south side of MD 108 between Hidden Garden Lane to the east and Norwood Road to the west (approximately 4,000 feet), and a sidewalk along the east side of Norwood Road to the south of MD 108 (approximately 350 feet). The eastern limit for this project, Hidden Garden Lane, is also the western limit for SHA's MD 650/MD 108 project, the proposed improvements thereby providing a continuous sidewalk connection along the south side of MD 108 from east of MD 650 to south of Norwood Road, connecting both Ashton and Sandy Spring Village Centers. The project is anticipated to start construction in April 2007, and currently has a finish date of October 2007.

2. Intersection Capacity Improvements at MD 108/MD 650: SHA is jointly working with the applicant to implement capacity improvements at this intersection that was a former Congestion Relief Study (CRS) intersection capacity improvement project (reviewed by Planning Board in 2001). This project is fully funded for construction, and currently has a bid date in March 2007. SHA, though eager to start construction of this project, has delayed the bid date for this project several times in response to delay in reaching a decision on the pending subdivision cases (see letters from SHA – Attachment No. 2 and No. 3).

Though staff has several concerns regarding the limits and quality of SHA's design effort for the intersection improvement project and DPWT's design effort for the MD 108 sidewalk project, it is our opinion that ultimately, these two projects will significantly improve area pedestrian/bicyclist accessibility and safety in Ashton.

SHA's Consolidated Transportation Program (CTP) for fiscal years 2007 and 2008 also has preliminary engineering funding for safety improvements along Sandy Spring Road (at Brooke Road) and along Norwood Road.

Local Area Transportation Review

As part of the APF test, a traffic study was required for the subject development since the development was estimated to generate 30 or more peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods.

The applicant submitted a traffic study dated April 2006 (and a supplementary analysis dated October 26, 2006) that examined traffic-related impacts of the development on nearby intersections and at the site driveways. Staff review of the study indicated that it complied with the requirements of the *Local Area Transportation Review (LATR) Guidelines* and the traffic study scope provided by staff.

The traffic analysis estimated that the density proposed on the site – 60,147 square-feet of retail, 21,006 square-feet of office, and 13 multi-family dwelling units – would generate approximately 208 total peak-hour trips during the weekday morning and 747 total peak-hour trips during the weekday evening. A summary of the above is provided in Table 1.

With credit for trips associated with the existing bank on the site, the development was estimated to generate approximately 203 additional peak-hour trips during the weekday morning (credit of 5 total trips) and 725 additional peak-hour trips during the weekday evening (credit of 22 total trips).

TABLE 1
SUMMARY OF TOTAL SITE TRIP GENERATION
PROPOSED ASHTON MEETING PLACE

Proposed Density	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
Retail – 60,147 SF	90	83	173	361	333	694
“New” or “Primary” Trips – 57% (Evening Peak-Hour Only)	90	83	173	206	190	396
“Pass-by/Diverted” Trips – 43% (Evening Peak-Hour Only)	--	--	--	155	143	298
Office – 21,006 SF	25	4	29	8	39	47
Multi-Family – 13 DU’s	1	5	6	4	2	6
Total “New” or “Primary” Trips	116	92	208	218	231	449
Total “Pass-by/Diverted” Trips	--	--	--	155	143	298
Total Site Trips	116	92	208	373	374	747

Source: Integrated Transportation Solutions, Inc.; Ashton Meeting Place – Supplementary Analysis; October 26, 2006.

A summary of the capacity/Critical Lane Volume (CLV) analysis results for the study intersections for the weekday morning and evening peak-hours within the respective peak-periods from the traffic analysis is presented in Table 2.

As shown in Table 2, the weekday morning and evening peak-hour capacity analysis presented in the traffic study indicated that under Total (or Build) Traffic Conditions, with the state funded roadway improvements, CLV values at the study intersections were below the applicable congestion standards. Therefore, the application satisfies the LATR requirements of the APF test.

TABLE 2
SUMMARY OF CAPACITY CALCULATIONS
PROPOSED ASHTON MEETING PLACE

Intersection	Traffic Conditions					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
MD 108 and MD 650 ¹	1,302	1,334	1,344	1,358	1,251 ³	1,287 ³
MD 108 and Brooke Road/Meetinghouse Road ²	1,334	1,275	1,377	1,339	1,397	1,373
MD 108 and Norwood Road ²	1,328	1,295	1,367	1,363	1,383	1,397
MD 650 and Site Access Driveway ¹	--	--	--	--	700	819
MD 108 and Site Access Driveway ¹	--	--	--	--	836	986

Source: Integrated Transportation Solutions, Inc.; Ashton Meeting Place – Supplementary Analysis; October 26, 2006.

Note: Congestion standard for those intersections that straddle two or more policy areas will be the higher of the respective policy area congestion standard.

¹ FY 2005 Congestion Standard for Rural (Patuxent) Policy Area: 1,400.

² FY 2005 Congestion Standard for Olney Policy Area: 1,475.

³ CLV with SHA intersection improvements.

CE:nm

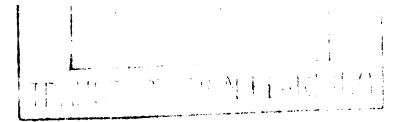
cc: Larry Cole
Candy Bunnag
Joshua Sloan
Dan Janousek
Bill Barron
Piera Weiss
Ray Burns
Greg Leck
C. Craig Hedberg
Jody Kline



Attachment No. 1

Douglas M. Duncan
County Executive

DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION



Arthur Holmes, Jr.
Director

November 1, 2006

Ms. Catherine Conlon, Subdivision Supervisor
Development Review Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan #1-20050060
Ashton Meeting Place

Dear Ms. Conlon:

We have completed our review of the preliminary plan dated 10/26/06. This plan was reviewed by the Development Review Committee at its meeting on 08/09/04. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
2. Record plat to reflect a reciprocal ingress, egress, and public utilities easement to serve the lots accessed by each common driveway.
3. Private common driveways and private streets shall be determined through the subdivision process as part of the Planning Board's approval of a preliminary plan. The composition, typical section, horizontal alignment, profile, and drainage characteristics of private common driveways and private streets, beyond the public right-of-way, shall be approved by the Planning Board during their review of the preliminary plan.
4. The parking layout plan will be reviewed by the Department of Permitting Services at the site plan or building permit stage, whichever comes first. To facilitate their review, that plan should delineate and dimension the proposed on-site travel lanes, parking spaces, curb radii, handicap parking spaces and access facilities, and sidewalks. The applicant may wish to contact Ms. Sarah Navid of that Department at (240) 777-6320 to discuss the parking lot design.



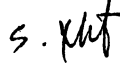
Division of Operations

101 Orchard Ridge Drive, 2nd Floor • Gaithersburg, Maryland 20878
240/777-6000, TTY 240/777-6013, FAX 240/777-6030

Ms. Catherine Conlon
Preliminary Plan No. 1-20050060
Date November 1, 2006
Page 3

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at sam.farhadi@montgomerycountymd.gov or (240) 777-6000.

Sincerely,



Sam Farhadi, P.E., Senior Planning Specialist
Development Review Group
Traffic Engineering and Operations Section
Division of Operations

m:/subdivision/farhas01/preliminary plans/ 1-20050060, Ashton Meeting Place.doc

Enclosures ()

cc: Fred Nichols; Ashton Meeting LLC
Jody Kline; Miller, Miller & Canby
Joseph Y. Cheung; DPS RWPPR
Sarah Navid; DPS RWPPR
Shahriar Etemadi; M-NCPPC TP
Gregory Leck, DPWT TEOS
Raymond Burns, MSHA
Preliminary Plan Folder
Preliminary Plans Note Book



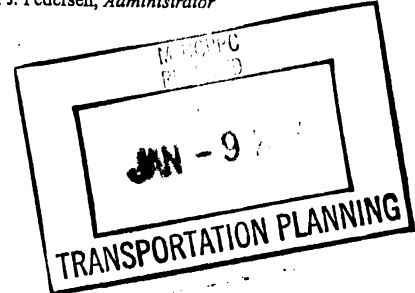
State Highway Administration

Maryland Department of Transportation

Robert L. Ehrlich, Jr., Governor
Michael S. Steele, Lt. Governor

Robert L. Flanagan, Secretary
Neil J. Pedersen, Administrator

January 3, 2007



Royce Hanson, Chairman
Montgomery County Planning Board
Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Dear ~~Chairman~~ ^{Royce} Hanson:

I am writing regarding a matter of significant concern for a State Highway Administration (SHA) project and an adjacent development in Montgomery County. Recent discussions about a potential moratorium on development will have a profound impact on the proposed SHA roadway improvement project at the intersection of MD 650 with MD 108. I would appreciate your assistance to ensure that SHA's project successfully moves forward to advertisement and construction. Here are the details about this important project.

The SHA has partnered with both the Ashton Meeting Place developer and the Ashton community to prepare plans and contract documents for the MD 108 at MD 650 intersection improvement project. The SHA has worked with the Ashton community, the Maryland-National Capital Park and Planning Commission (M-NCPPC), the Montgomery County Department of Public Works and Transportation (MCDPWT) and the developer to make this a better project that is consistent with the Master Plan for this area.

The advertisement of SHA's project has been rescheduled twice, primarily because environmental and miscellaneous site plan issues have delayed the inclusion of the Ashton Meeting Place development on the Planning Board's meeting agenda. Originally scheduled for advertisement in November, 2006, our project was rescheduled to December 19, 2006 and recently slipped again to advertise in February, 2007.

A tentative agreement on the concept and right-of-way dedication was reached with the developer and community. As a result, a draft agreement between SHA and the developer, Ashton Meeting, LLC, was developed in late October, 2006 to protect all parties and formalize the agreement. Under this agreement, the developer will dedicate right-of-way that SHA needs to improve the MD 650/MD 108 intersection and will contribute its share of the construction funding to this very important SHA project. The developer needs to have an approved site plan in hand, before it can sign this agreement; and, based on the efforts of all parties, the developer has been moving forward to gain approval of the new site plan details, which would ultimately allow the SHA project to move forward.

My telephone number/toll-free number is 410-545-0400 or 1-800-206-0770

Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone: 410.545.0300 • www.marylandroads.com

Mr. Royce Hanson

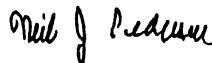
Page Two

It is important to recognize the efforts of the developer, the community, and SHA to arrive at an acceptable solution for everyone. The developer is actually in the process of purchasing land, which SHA needs for the MD 650/MD 108 intersection project and which SHA may not have been able to purchase. These acquisitions and the ultimate right-of-way dedications are crucial for the MD 108 and MD 650 widening and improvements, and the developer's efforts have significantly contributed to SHA's progress on this project.

We understand that M-NCPPC staff has concerns with the wetland mitigation plans, as well as recently discovered concerns with other minor site plan details. These issues may significantly delay the Planning Board's approval of these site plans. Consequently, the schedule for SHA's project will be adversely impacted, and the project's funding status may also be affected. All parties have made concessions so that the MD 650/MD 108 project will be safer and pedestrian/cyclist friendly, and so that the wishes of the Ashton community for a village setting will be respected. Absent an agreement with the developer, SHA will be forced to delay its project. Please let me know what SHA can do to facilitate and expedite the site plan approval process.

Thank you, again, for your consideration. If you have any questions or comments, please do not hesitate to contact Mr. Kirk McClelland, Director of Highway Development, SHA at 410-545-8800, or Mr. Steven Foster, Chief of Engineering Access Permits, SHA at 410-545-5601, toll-free 800-876-4742 or sfoster1@sha.state.md.us. SHA will be pleased to assist you.

Sincerely,



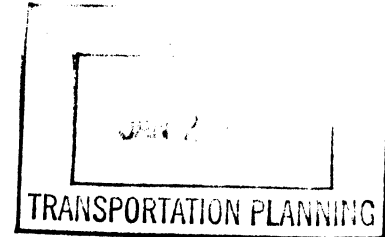
Neil J. Pedersen
Administrator

cc: Mr. Kenneth T. Briggs, Chief, Highway Design Division, SHA
Mr. Raymond Burns, Regional Supervisor, Engineering Access Permits Division, SHA
Ms. Catherine Conlon, Subdivision Coordinator, M-NCPPC
Mr. Shahriar Etemadi, Transportation Supervisor, M-NCPPC
Mr. Steven D. Foster, Chief, Engineering Access Permits Division, SHA
Mr. Glenn Klaverweiden, Agreements Coordination Team, SHA
Mr. Gregory Leck, Planning and Traffic Manager, MCDPWT
Ms. Kate Mazzara, Assistant District Engineer, Project Development, SHA
Mr. Kirk G. McClelland, Director, Office of Highway Development, SHA
Mr. Darrell B. Mobley, Metropolitan District Engineer, SHA
Mr. Fred Nichols, Ashton Meeting LLC,
Mr. Douglas H. Simmons, Deputy Administrator/Chief Engineer for Planning and Engineering, SHA
Mr. Richard Weaver, Planning Coordinator, M-NCPPC

Martin O'Malley, Governor
Anthony Brown, Lt. Governor



John D. Porcari, Secretary Designate
Neil J. Pedersen, Administrator



January 19, 2007

Willard H. Derrick, Managing Member
Derrick Brothers, LLC
1001 Ashland Drive
Ashton, Maryland 20861

Dear Mr. Derrick:

Thank you for the copy of your letter to County Executive Isiah Leggett regarding your pending development and the potential delay to the MD 650/MD 108 roadway improvement project. It is my pleasure to respond to your concerns.

The State Highway Administration (SHA) appreciates your level of commitment and cooperation to reach consensus with the community on a meaningful roadway improvement that will be compatible with proposed developments. Likewise, SHA has a vested interest in meeting the schedule to improve the intersection capacity and pedestrian mobility in this area. The SHA has partnered with the Ashton Meeting Place developer, the Ashton community, the Maryland-National Capital Park and Planning Commission (M-NCPPC) and the Montgomery County Department of Public Works and Transportation (MCDPWT) to ensure proper coordination of the MD 650/MD 108 intersection improvement plan. Your project, along with the Ashton Meeting Place development, is vital to meeting SHA's goals for this project. You may be interested to know that I wrote to Mr. Royce Hanson, Chairman of the Montgomery County Planning Board, on January 3, to outline SHA's issues and request assistance in moving the development process forward. I am enclosing a copy of that letter for you information.

The SHA will continue to work with the developers, the community, and local government agencies in the local land-use-approval process for pending developments in the Ashton area that affect SHA's project. We appreciate your continued interest to make this a better project that is consistent with the master plan for this area.

My telephone number/toll-free number is 410-545-0400 or 1-800-206-0770
Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone: 410.545.0300 • www.marylandroads.com



Mr. Willard H. Derrick
Page Two

Thank you, again, for your letter. If you have any further questions or comments, please do not hesitate to contact Mr. Steven D. Foster, Chief, Engineering Access Permits Division, SHA at 410-545-5601, toll-free 800-876-4742 or via email at sfoster1@sha.state.md.us. SHA will be pleased to assist you.

Sincerely,



Neil J. Pedersen
Administrator

Enclosure

cc: Mr. Steven D. Foster, Chief, Engineering Access Permits Division, SHA
Mr. Royce Hanson, Chairman, Montgomery County Planning Board, M-NCPPC
The Honorable Isiah Leggett, County Executive, Montgomery County
Mr. Darrell B. Mobley, District Engineer, SHA
Mr. Fred Nichols, Ashton Meeting, LLC

Mr. Willard H. Derrick

Page Three

bcc: Mr. Kenneth T. Briggs, Chief, Highway Design Division, SHA
Mr. Raymond Burns, Regional Supervisor, Engineering Access Permits Division, SHA
Ms. Catherine Conlon, Subdivision Coordinator, M-NCPPC
Mr. Shahriar Etemadi, Transportation Supervisor, M-NCPPC
Mr. Glenn Klaverweiden, Agreements Coordination Team, SHA
Ms. Rose Krasnow, Chief, Development Review, M-NCPPC
Mr. Gregory Leck, Planning and Traffic Manager, MCDPWT
Kate Mazzara, P.E., Assistant District Engineer-Project Development, SHA
Mr. Kirk G. McClelland, Director, Office of Highway Development, SHA
The Honorable Marilyn Praisner, President, Montgomery County Council
Mr. Douglas H. Simmons, Deputy Administrator/Chief Engineer for Planning and
Engineering, SHA