

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

**Staff Report: Leaman Farm  
Preliminary Plan Amendment 12004060A and  
Site Plan Amendment 82005040A**

**ITEM #:** \_\_\_\_\_

**MCPB HEARING**

**DATE:** October 23, 2008

**REPORT DATE:** October 13, 2008

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief *RK*  
Robert Kronenberg, Supervisor *SK*  
Development Review Division

**FROM:** Cathy Conlon, Supervisor *CC*  
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**APPLICATION  
DESCRIPTION:**

Modification of the impervious surface calculations on the preliminary and site plans, and revisions to the site plan to remove the reference to stories from the data table, modify street trees and lights per County approvals, amend the impervious reports condition, and correct minor plan notations; located at the southwest quadrant of the intersection of Clopper Road (MD 117) and Schaeffer Road; Germantown Master Plan.

**APPLICANT:** Leaman, L.C.

**FILING DATE:** April 3, 2008

**RECOMMENDATION:** Approval of the preliminary and site plan amendments with conditions.

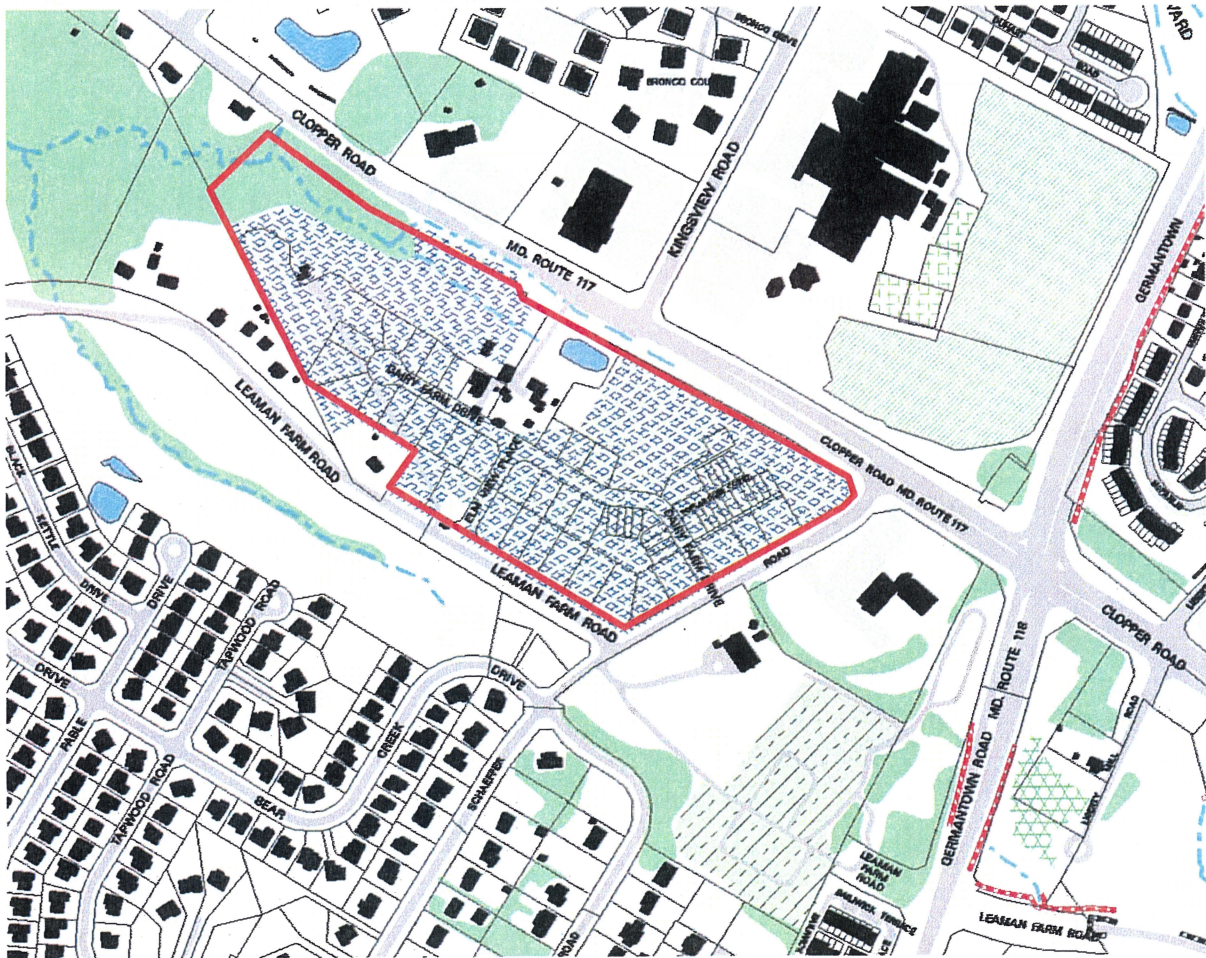
**EXECUTIVE  
SUMMARY:**

The most significant request of the amendment is to add a small off-site area to the total area on which the impervious calculation of the development is based. This affects the preliminary and site plan. The other minor modifications only affect the site plan; they alter some street light and street tree locations to reflect changes required by the County, modify some plan notations, remove one stage of the required impervious reports, and clarify the height requirements on the data table.

## SITE DESCRIPTION

### Vicinity

The subject property consists of 29.3 acres located within the Germantown Master Plan area in the southwest quadrant of the intersection of Clopper Road (MD 117) and Schaeffer Road.



*Vicinity Map*

### Site Analysis

The subject site is currently being improved per Preliminary Plan 120040600 and Site Plan 820050400. There are no known rare, threatened, or endangered species on site. There are no known historic properties or features on site.

The property is located within the KI-2 analysis area identified in the Germantown Master Plan. This analysis area is subject to special environmental protection measures because of the high sensitivity and high water quality conditions of the portion of the Little Seneca Creek stream to which it drains. The special environmental protection measures recommended by the master plan are set forth in Appendix D of the Master Plan. These measures include an imperviousness cap of 20 percent. The total amount of impervious surfaces for the Leaman Farm tract was restricted to 252,775 square feet by the previous approvals to comply with this requirement.

## **AMENDMENT DESCRIPTION**

### **Previous Approvals**

#### Preliminary Plan

Preliminary Plan 120040600 was approved for 69 dwelling units, including 10 MPDUs on February 23, 2005. See Appendix A.

#### Site Plan

Site Plan 820050400 was approved for 69 dwelling units, including 10 MPDUs on 29.30 gross acres in the R-200 zone on October 12, 2006. See Appendix B.

### **Description of Amendments**

The Applicant requests the following modifications to the Preliminary Plan:

1. Add 24,306 square feet of protected non-impervious area to the total area allowed for the Leaman Farm impervious surface calculations.

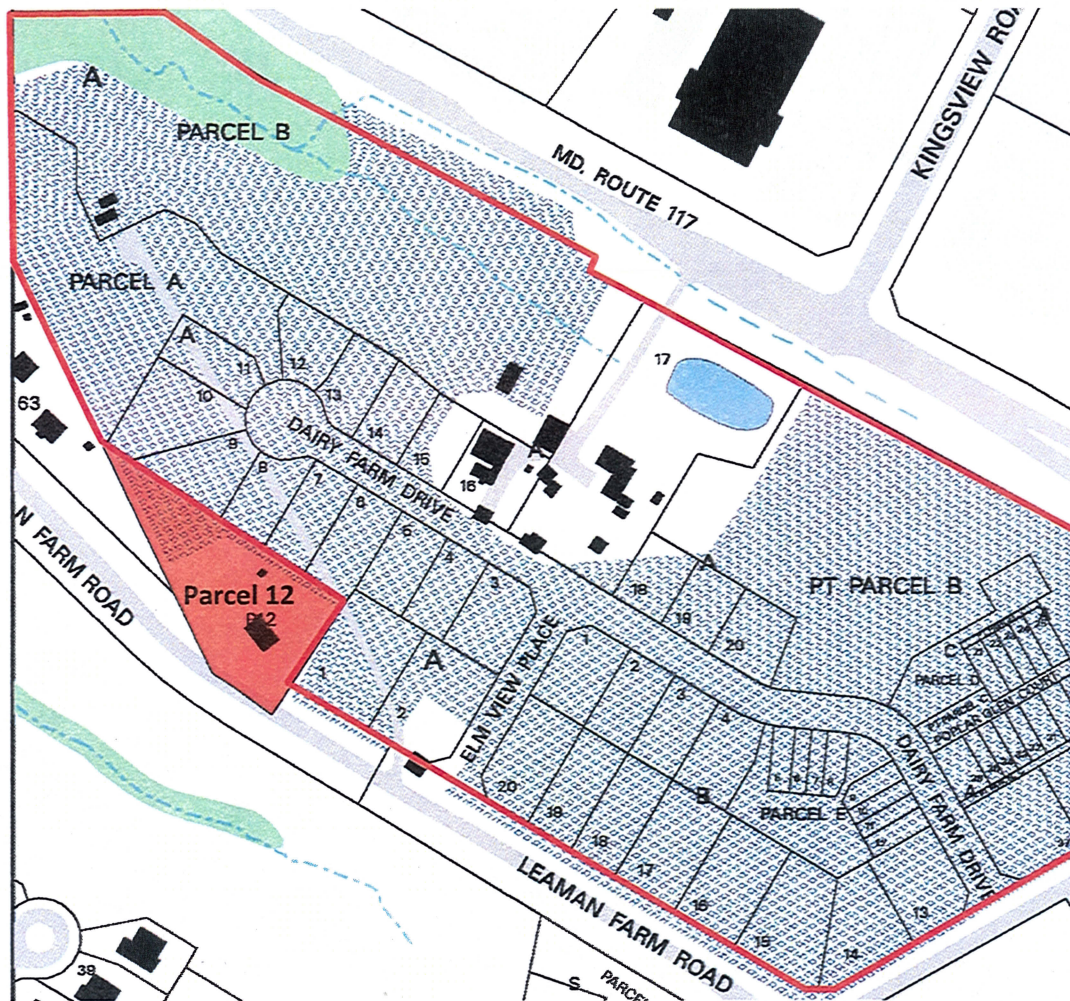
The Applicant requests the following modifications to the Site Plan:

1. Add 24,306 square feet of protected non-impervious area to the total area allowed for the Leaman Farm impervious surface calculations.
2. Correct street tree locations per Montgomery County DOT approved plans.
3. Correct street light locations per Montgomery County DOT approved plans.
4. Correct photometric plan.
5. Correct select bearings, distances, and square footages.
6. Remove the reference to "stories" from the height requirements in the data table.
7. Remove the requirement for an impervious report at the 30<sup>th</sup> building permit to be consistent with similar approvals and to allow for the proper staging of MPDU and market-rate units.

## **ANALYSIS**

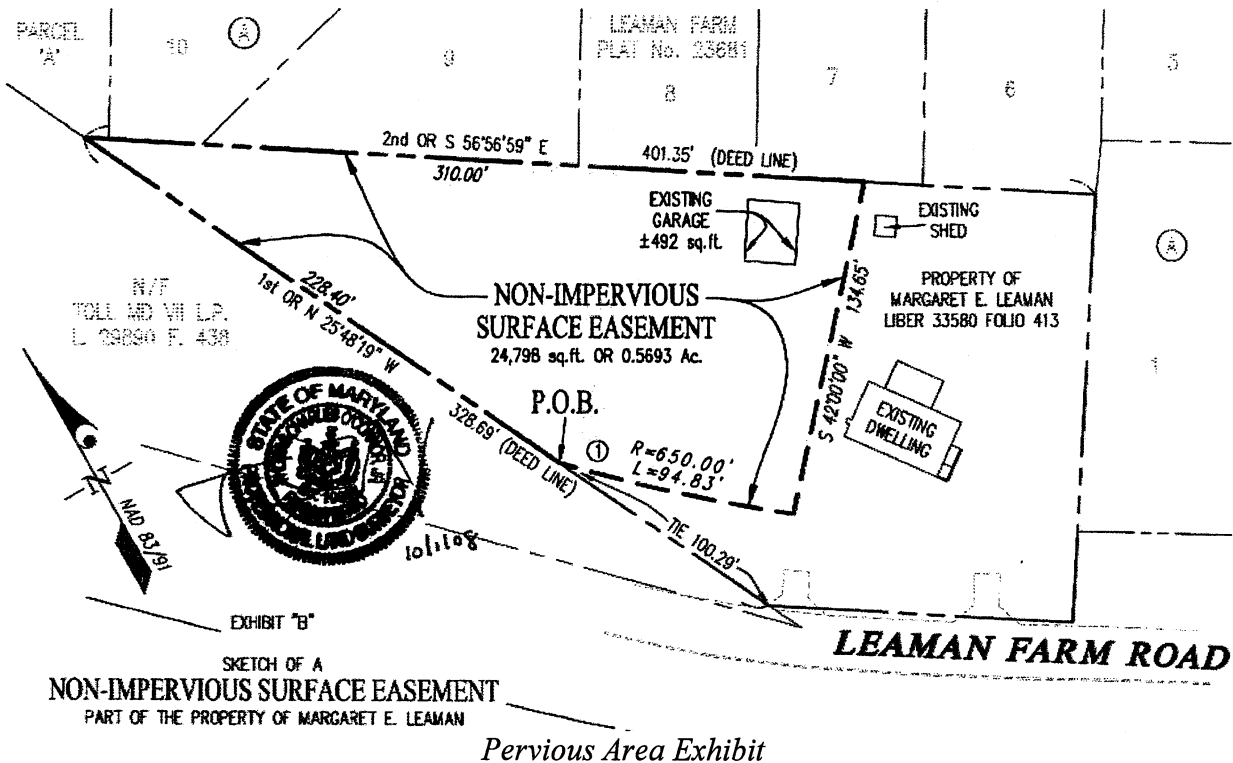
Leaman, L.C. (the "Applicant") purchased 29.3 acres of property from the Idella J. Leaman Trust to develop as the Leaman Farm site. It also purchased an adjacent property, Parcel 12 consisting of 1.02 acres. This adjacent parcel, containing an existing dwelling and accessory structures, was not included in the Leaman Farm subdivision and was eventually sold to Margaret Leaman, a daughter of Idella Leaman. That sale included an agreement on the part of Margaret Leaman to restrict impervious surfaces on Parcel 12 so that pervious area credit from this parcel could eventually be applied to the adjacent Leaman Farm subdivision tract. The proposed amendment to the Preliminary Plan requests approval to add 24,306 square feet of pervious area from Parcel 12 to the total area of the Leaman Farm subdivision for the sole purpose of including the area in the impervious surface calculations. The Applicant is requesting the additional impervious credit to allow customers to purchase homes and options larger than shown on the approved imperviousness plan and table. To support this pervious area credit, the owner of Parcel 12 will

create a non-impervious surface easement on her property by recording an agreement in the land records.



Parcel 12 Exhibit

This easement was proposed by the Applicant as an alternative to the Staff-preferred approach of incorporating the entire Parcel 12 into the Leaman Farm subdivision by record plat. The proposed compromise addresses the Parcel 12 property owner's desire to avoid the required dedication and associated road and sidewalk construction that would need to occur along the Leaman Farm Road frontage if the parcel was platted. The location of the existing house on Parcel 12 is within the front yard setback of the future road and, although this would not affect the conformity of the existing structure, it places the new road and associated sidewalk very close to the dwelling.



In Staff's opinion, the proposed non-impervious surface easement is acceptable in this specific circumstance for several reasons:

- The easement is located directly adjacent to the subject property on land that was once in common ownership.
- The easement is located directly adjacent to property which is permanently protected as forested open space within a Category I conservation easement.
- The easement is located in the same sub-watershed as the subject property.
- The easement will be physically demarcated for easy inspection and enforcement.
- The property (Parcel 12) cannot be further subdivided regardless of the easement because the dedication required at time of subdivision would cause the total lot to be less than the minimum lot area required by the zoning ordinance for two lots in the R-200 zone.

## PUBLIC NOTICE

A written notice regarding the subject preliminary and site plan amendment was sent to all parties of record by the Applicant on March 26, 2008. Signs were also posted on the property on March 14, 2008. The notice informed interested parties of their opportunity to review and comment on the contents of the amended plans, and that there would be a public hearing scheduled. Written notice of the public hearing was sent by staff to the same individuals on October 9, 2008. Staff has not received any written comments from the parties of record for the proposed application.

## RECOMMENDATION

The proposed modifications to the preliminary and site plans will not alter the overall character or impact of the development with respect to the original findings of approval. Further, these modifications will not affect the compatibility of the development with respect to the surrounding neighborhood.

### Preliminary Plan

Staff recommends approval of the proposed amendment to Preliminary Plan 120040600 for revisions to impervious surface calculations. All previously approved conditions of Preliminary Plan 120040600 as contained in the Planning Board Opinion dated February 23, 2005, remain in full force and effect except as modified by the following conditions:

1. Replace previous condition 4 in full with the following:
  - 4) Total impervious surfaces associated with development of the preliminary plan shall not exceed 20 percent of the tract area. The tract area upon which impervious surface is calculated for this application may include the 24,798 square foot non-impervious surface easement on adjacent Parcel 12, as shown on the amended preliminary plan.
2. Prior to certification of the amended preliminary plan and corresponding site plan, a Non-impervious Surface Easement Agreement between MNCPPC and the owner of Parcel 12 must be recorded in the land records of Montgomery County.

### Site Plan

Staff recommends approval of the proposed amendment to Site Plan 820050400 for revisions to impervious surface calculations, street tree and light modifications, photometrics, plan notations, and data table modifications as shown on the plans stamped as received by M-NCPPC on October 9, 2008. All previously approved conditions of Site Plan 820050400, as contained in the Planning Board Opinion dated October 12, 2006, remain in full force and effect except as modified by the following conditions:

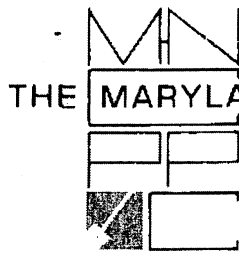
1. Replace previous condition 3.a. in full with the following:

“Impervious surfaces within the proposed development shall not exceed 257,735 square feet.”
2. Replace the first sentence of condition 3.d. in full with the following:

“The developer/builder shall submit an impervious surface report to M-NCPPC Environmental Planning staff prior to issuance of building permits for the 55<sup>th</sup> and 65<sup>th</sup> dwelling units.” [All additional language remains.]

## **APPENDICES**

- A. Preliminary Plan 120040600 Opinion
- B. Site Plan 820050400 Opinion
- C. DRAFT Non-Impervious Surface Easement Agreement between Margaret Leaman and the Montgomery County Planning Board



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

**Date Mailed:** FEB 23 2005

**Action:** Approved Staff  
Recommendation

**Motion** of Commissioner Bryant,  
seconded by Commissioner Perdue,  
with a vote of 5-0;  
Chairman Berlage and Commissioners  
Perdue, Bryant, Wellington, and  
Robinson voting in favor.

## MONTGOMERY COUNTY PLANNING BOARD

### OPINION

Preliminary Plan 1-04060  
NAME OF PLAN: Leaman Farm

The date of this written opinion is FEB 23 2005 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court - State).

On 2/06/04, Elm Street Development submitted an application for the approval of a preliminary plan of subdivision of property in the R-200 zone. The application proposed to create 69 lots on 29.3 acres of land located at the northwest corner of Leaman Farm Road and Schaeffer Road, in the Germantown master plan area. The application was designated Preliminary Plan 1-04060. On 1/13/05, Preliminary Plan 1-04060 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application;



all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

The applicant testified at the public hearing, was in agreement with the staff recommendation and concurred with all of the conditions as proposed by staff. Nobody presented written evidence or testimony at the public hearing in opposition to the plan, and the record of this application does not contain any contested issues.

### **FINDINGS**

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies<sup>1</sup>; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that, with the conditions of approval:

- a) Preliminary Plan No. 1-04060 substantially conforms to the Germantown master plan.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision.
- c) The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.
- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.

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<sup>1</sup> The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

- f) The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

### **CONDITIONS OF APPROVAL**

Finding Preliminary Plan No. 1-04060 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-04060, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 69 dwelling units.
- 2) No clearing, grading, or recording of plats prior to site plan approval.
- 3) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
- 4) Total impervious surfaces associated with development of the preliminary plan shall not exceed 20 percent of the tract area.
- 5) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 6) Applicant to construct a permanent split rail fence at the rear of proposed lots 14 through 20 to protect the afforestation area.
- 7) Applicant to prepare and submit a noise analysis, as part of the site plan submission, indicating the location of existing 60 and 65 Ldn dBA noise contours, 20-year future noise contours, and methods to minimize exterior and interior noise levels if the noise analysis determines a need for mitigation.
- 8) Compliance with the conditions of the MCDPS stormwater management approval dated January 3, 2005.
- 9) The applicant shall dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Germantown Master Plan unless otherwise designated on the preliminary plan.
- 10) The applicant shall construct all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By \_\_\_\_\_" are excluded from this condition.
- 11) Applicant shall construct an eight-foot bike path along Clopper Road (MD 117) and Leaman Farm Road, and a five-foot sidewalk along Schaeffer Road, as shown on the preliminary plan.
- 12) Record plat to reflect a Category I easement over all areas of stream valley buffers and forest conservation.
- 13) Record plat to reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.

- 14) Record plat to reflect common ingress/egress and utility easements over all shared driveways.
- 15) Record Plat to reflect all areas under Homeowners Association ownership and stormwater management areas.
- 16) Compliance with conditions of MCDPWT letter dated, November 16, 2004 unless otherwise amended.
- 17) Access and improvements, as required, to be approved by MCDPWT prior to recordation of plat(s).
- 18) Access and improvements, as required, to be approved by MDSHA prior to issuance of access permits.
- 19) The term "denied access" is to be placed on the final record plat along the property that abuts MD 117. Access to existing lot 21 shall remain as it currently exists until such time as lot 21 is redeveloped. All new access shall be via the new internal public road.
- 20) Other necessary easements.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

\* \* \* \* \*

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

DMD      2/11/05

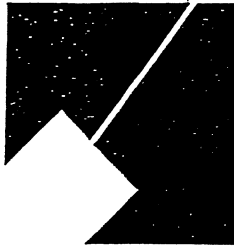
**CERTIFICATION OF BOARD VOTE ADOPTING OPINON**

At its regular meeting, held on **Thursday February 17, 2005**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of **Commissioner Wellington, seconded by Commissioner Bryant, with Chairman Berlage, Vice Chair Perdue, and Commissioners Bryant, Wellington, and Robinson** voting in favor of the motion, **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Preliminay Plan 1-04060, Leaman Farm.**



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Certification As To Vote of Adoption  
M. Clara Moise, Technical Writer

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, [www.mncppc.org](http://www.mncppc.org)

**OCT 12 2006**

**MCPB No. 06-14**

**Site Plan No. 820050400**

**Leaman Farm**

**Date of Hearing: July 27, 2006**

**RESOLUTION**

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

WHEREAS, pursuant to Montgomery County Code § 59-D-3.4(b), following a public hearing on the application, the Planning Board must, by resolution, approve, approve with conditions or disapprove a proposed site plan; and

WHEREAS, the Planning Board, in reaching its decision on a site plan, must determine that the site plan meets all the requirements of Code Section 59-D-3.4(c); and

WHEREAS, on June 13, 2005, Elm Street Development ("Applicant"), filed an application for approval of a Site Plan for 69 dwelling units, including 10 MPDUs, on 29.3 gross acres of R-200 zoned land in the southwest quadrant of the intersection of Clopper Road (MD 117) and Schaeffer Road in Germantown, consisting of Parcel 18, an unrecorded lot ("Property" or "Subject Property"); and

WHEREAS, on January 13, 2005, the Planning Board approved Preliminary Plan No. 120040600 (formerly 1-04060) for the proposed development; and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820050400, Leaman Farm (the "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staffs of other governmental agencies, on July 27, 2006, Staff presented the Application to the Planning Board at a public hearing for its review and action (the "Hearing"); and

WHEREAS, on July 14, 2006, prior to the Hearing, Staff had issued a memorandum to the Board, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record ("Record") on the Application and approved the Application subject to certain conditions on Motion of Commissioner Purdue; duly seconded by Commissioner Berlage; with a vote of 4-0, Commissioners Berlage, Purdue, Wellington, and Robinson voting in favor (Commissioner Bryant necessarily absent).

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 820050400 for 69 dwelling units, including 10 MPDUs, on 29.3 gross acres in the R-200 Zone, subject to the following conditions:

1. Preliminary Plan Conformance

The proposed development shall comply with the conditions of approval for Preliminary Plan #120040600 (formerly 1-04060) as listed in the Planning Board opinion dated February 23, 2005.

2. Lighting

- a. All light fixtures shall be full cut-off fixtures.
- b. Deflectors shall be installed on all fixtures that cause potential glare or excess illumination, especially on the perimeter fixtures abutting the adjacent residential properties.
- c. Illumination levels shall not exceed 0.5 footcandles (fc) at any property line abutting public roads or adjacent to residential properties.

3. Environmental

- a. Impervious surfaces within the proposed development shall not exceed 252,775 square feet.
- b. Applicant shall enter an agreement with M-NCPPC for the purpose of withholding building permits for four (4) one-family detached residential dwelling units to ensure compliance with the impervious limitations. The 4 lots shall be graphically denoted on the certified site plan. A note shall be placed on the record plat restricting issuance of last 4 building permits pending approval from M-NCPPC Environmental Planning staff. Building permits for the 4 lots shall be released one at a time, based upon availability of impervious surfaces.
- c. Applicant shall place impervious coverage limitations and information pertaining to the above agreement on the record plat.

- d. The developer/builder shall submit an impervious surface report to M-NCPPC Environmental Planning staff prior to issuance of building permits for 30<sup>th</sup>, 55<sup>th</sup> and 65<sup>th</sup> dwelling unit. The applicant shall submit an impervious report for each of the remaining building permits after the 65<sup>th</sup> dwelling unit. The impervious reports shall include: surveyed 'as-builts' drawings which include dimensions and impervious areas for buildings, driveways, sidewalks, leadwalks, porches, patios, chimneys, welled exits, rear exits and any building feature that is two feet or less from the ground. If at any time the impervious area limit is reached before building permits for all approved lots have been issued, the lots for which building permits have not been issued shall be re-recorded as non-impervious Homeowners Association open space parcels prior to issuance of the building permit for the last dwelling unit allowed under the impervious surface limit.

#### 4. Forest Conservation

The applicant shall comply with the following conditions of approval from M-NCPPC-Environmental Planning in the memorandum dated June 14, 2006 .

- a. Applicant shall construct a permanent split rail fence along lot lines that adjoin the forest conservation easement.
- b. The proposed development shall comply with the conditions of the final forest conservation plan. The Applicant shall satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits.
- c. Record plat of subdivision shall reflect a Category I conservation easement over all areas of stream buffers and forest conservation.
- d. A conservation easement must be placed on the stream buffer on Lot 17A only if the existing farmhouse is removed and a new house constructed. The new house shall be located entirely outside of the buffer and access to the new house to be via the street internal to the subdivision. All impervious surfaces in the stream buffer shall be removed and a forest conservation easement placed over the entire stream buffer prior to issuance of a building permit for a new residence.

#### 5. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated January 3, 2005, where revised and approved by MCDPS.

6. Common Open Space Covenant

Record plat of subdivision shall reference the Common Open Space Covenant recorded at Liber 28045, Folio 578 ("Covenant"). Applicant shall provide verification to M-NCPPC staff prior to issuance of the 48th building permit that Applicant's recorded Homeowners Association Documents incorporate by reference the Covenant.

7. Dwelling Unit, One-Family Attached

To meet the definition of "dwelling unit, one-family attached," the proposed one-family attached units (two-over-two units) shall meet all the applicable criteria as follows:

- a. The dwelling units are in a single structure consisting entirely of dwelling units.
- b. Each dwelling units is attached to one or more other dwelling units.
- c. Each dwelling unit has at least one direct entrance from the outside.
- d. Each dwelling unit has an abutting ground level outdoor area for the exclusive use of its occupants.

8. Development Program

Applicant shall construct the proposed development in accordance with the Development Program. The Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of the certified site plan. The Development Program shall include a phasing schedule as follows:

- a. Street tree planting shall progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
- b. Community-wide pedestrian pathways and recreation facilities shall be completed prior to issuance of the 48th building permit.
- c. Landscaping associated with each building shall be completed as construction of each building is completed.
- d. Pedestrian pathways associated with each street shall be completed as construction of each street is completed.
- e. Clearing and grading shall correspond to the construction phasing, to minimize soil erosion.
- f. Provide each section of the development with necessary roads.
- g. Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.

9. Moderately Priced Dwelling Unit (MPDUs)

The proposed development shall provide ten MPDUs on site.



10. Special Exception Use

Prior to record plat, the existing special exception (S-2029) for the cell tower shall be modified as necessary to reflect the proposed development.

11. Clearing and Grading

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

12. Certified Site Plan

Prior to Certified Site Plan approval of site and landscape/lighting plans the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Development program, inspection schedule, and Site Plan Opinion.
- b. Undisturbed stream buffers.
- c. Limits of disturbance.
- d. Methods and locations of tree protection.
- e. Forest Conservation easement areas.
- f. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading.
- g. Location of outfalls away from tree preservation areas.
- h. Revised development standards table including MPDU calculation.
- i. Details for the proposed one-family attached units (two-over-two), to demonstrate that each dwelling unit has an abutting ground level outdoor area for exclusive use of these dwelling units.
- j. Building restriction lines (BRL) for all the units.

BE IT FURTHER RESOLVED, that all site development elements shown on Leaman Farm plans stamped by the M-NCPPC on July 14, 2006, shall be required except as modified by the Planning Board at the Hearing, this Resolution or the above conditions of approval; and

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board FINDS, based on uncontested evidence of record, that:

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, diagrammatic plan, schematic development plan, or a project plan is not required for the subject development.

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

The Planning Board finds that the Application meets all of the standards and requirements of the R-200 Zone, MPDU Optional Method. An urban renewal plan is not applicable for the subject development. In its Staff Report, Staff presented a data table, which listed the Zoning Ordinance development standards requirements for the R-200 Zone and the development standards proposed for approval.

At the Hearing, the Applicant requested that the Planning Board apply Zoning Text Amendment No. 06-12 ("ZTA") to this Application, which ZTA the District Council adopted on July 11, 2006. The ZTA changes the setback standards for corner lots in subdivisions using the moderately priced dwelling unit (MPDU) optional method process. The Applicant requested that the Board approve a modification of the minimum required setbacks for the four (4) proposed corner lots on proposed Public Road 'A'—which are shown at a 25-foot minimum setback standard on the drawing stamped by the MNCPPC on July 14, 2006—consistent with the 15 foot minimum setback standard permitted pursuant to the ZTA. The Board approves the application of the ZTA to the four applicable lots in the instant Application, having confirmed that the ZTA was effective commencing on July 11, 2006, prior to the Hearing; having found that approving the request could result in less impervious surface through the shortening of driveways; and, having determined that the modification will not impact neighboring properties.

The Board finds that the Application meets all requirements of the R-200 Zone, based on the aforementioned data table and other relevant information contained in the Staff Report describing the requirements of the R-200 Zone and Staff and Applicant Hearing testimony. The development standards approved by the Planning Board are set forth below:

APPROVED DEVELOPMENT STANDARDS  
 (R-200 Zone, MPDU Optional Method)

Development Standard	Approved by Planning Board for Site Plan No. 820050400 and Binding on Applicant
Min. Tract Area (ac.):	29.3
Max. Density Allowed:	
(with 15% MPDUs & density bonus - 29.3 ac. x 2.44 du/ac.)	69
MPDU's	10
Type of Dwelling Units (du)	
Detached unit (existing)	1
Detached unit	34
Attached unit	24
Two over Two (MPDU)	10
Min. Building Setbacks (detached) from public street (ft.)	
Main	25
Accessory	25
Corner lots (as applicable, pursuant to revision to § 59-C-1.623, contained in ZTA 06-12 (Ordinance No. 15-75, approved by the District Council and effective July 11, 2006).	15 (as applicable)
Min. Building Setbacks (attached) from private street (ft.)	15
Yard Requirements (ft.) equal to abutting lot or	
SFD side yard minimum	4 <sup>1</sup>
SFD rear yard minimum	20 <sup>2</sup>
SFA & TH side yard minimum (end unit)	4
SFA & TH rear yard minimum	10
Accessory side yard minimum	4
Accessory rear yard minimum	5
Min. Lot Area (sf)	
One-family detached dwelling unit	6,000
Townhouse	1,500
Min. lot width	
One-family detached dwelling unit- street line	25
Max. Building Height (ft.) – (SFD, SFA, TH)	40
Max. Building Height (stories) - (SFD, SFA, TH)	3
Max. Building Height (accessory building)(stories/ft.)	2/25
Green Area (sf per unit)	
Townhouse or single family attached @ 2,000/unit 2,000 sf/unit x 34 units = 68,000 sf =	12.84 (HOA parcels)

<sup>1</sup> 12 feet side yard abutting tract boundary – Lots 1 and 10 Block A

<sup>2</sup> 30 feet rear yard abutting tract boundary – Lots 6,7,8, and 9, Block A

Max. Impervious Area (sf) (20%)	252,775 <sup>3</sup>
Parking Spaces	
Existing Dwelling	2
Detached, Semi-detached (2 per dwelling)	
2 spaces x 58 units =	116 garage + 116 driveway
2 spaces x 10 single family attached (MPDUs)	25 surface spaces (259 total spaces)

Staff informed the Board that the Preliminary Plan for this project (No. 120040600) provided that 36.2% of the proposed dwelling units would be townhouses and one-family attached units. The approved preliminary plan contained 44 one-family detached units (including the existing farm house), 15 townhouses and 10 one-family attached units (MPDU's), for a total of 69 dwelling units.

Staff advised the Board that the subject Site Plan Application modifies the dwelling unit mix by increasing the number of one-family attached units, which increases the overall percentage of attached units to 49.2%. The site plan proposes 35 one-family detached units (including the existing farm house), 24 townhouses and 10 one-family attached units (MPDU's), for a total of 69 units.

Section 59-C-1.621 of the Zoning Ordinance provides that the maximum percentage of one-family attached dwelling units, semi-detached dwelling units, or townhouses allowed in the R-200 Zone under the MPDU optional method is 40%. The balance must be single-family detached units. However, the Zoning Ordinance provides that the

Planning Board may approve a development in which up to 100 percent of the total number of units are one-family attached dwelling units, one-family detached dwelling units, or townhouses upon a finding that a (1) proposed development is more desirable from an environmental perspective than development that would result from adherence to these percentage limits, or (2) limits on the development at that site would not allow the applicant to achieve MPDU's under Chapter 25A on-site. However, any increase in any dwelling unit type above the standard percentage allowed must achieve not less than the same level of compatibility as would exist if the development were constructed using the standard percentage of that type of dwelling unit. Any development that exceeds the maximum percentage

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<sup>3</sup> The impervious total does not include the existing imperviousness in the prescriptive right-of-way, but shall include any new imperviousness associated with other improvements within the right-of-way.

of allowable dwelling unit types must be compatible with adjacent existing and approved development.

Based on relevant evidence of record and Staff's testimony and recommendations, the Planning Board finds that increasing the attached dwelling unit percentage from 40% to 49.2% will achieve the same level of compatibility as would exist if the development were constructed using the standard percentage. The Application is limited by a 20% impervious cap and provides more MPDU's (14.3%) than the minimum 12.5 required. The Board also finds that the proposed development is compatible with existing and approved development surrounding the subject site, as discussed in greater detail below.

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

a. Buildings

Single-family detached houses front onto Schaeffer Road and Leaman Farm Road as desired. The single-family attached houses (two-over-two units) have an adequate front yard area which will be for the exclusive use of the upper dwelling units. The MPDUs are sited in two locations on the site, separated by market-rate units.

The proposed buildings are located in a manner that is adequate, safe and efficient with the surrounding development. As discussed above, the Planning Board approved the Applicant's request to modify the setbacks for four corner lots on Public Road 'A', shown on the proposed site plan, consistent with recently approved ZTA 06-12.

b. Cell Tower

Access to the existing cell tower on the northwest corner of the site will need to be modified to reflect the proposed development. Currently, a gravel road off of Leaman Farm Road leads to the telecommunications facility. As proposed, a 15-foot wide access easement will extend from the end of the cul-de-sac on Public Road 'B' to the telecommunications facility.

c. Open Spaces

Open space on the site includes a 6.0-acre parcel within the stream valley buffer on the northwest section of the site, and two stormwater

management facility areas comprising 1.9 acres and 4.4 acres. A split-rail fence will be provided to protect the area within the stream valley buffer. Imperviousness on the site is limited to 20%.

d. Landscaping and Lighting

The proposed landscaping on the site consists of street trees in the public right-of-way and ornamental trees along the proposed private street. A variety of shade and ornamental trees are proposed for the recreational areas and in the rear yards between units.

The lighting plan consists of 15 residential, colonial post top light fixtures within the proposed public road right-of-way and on several townhouse lots. The proposed lighting is consistent with Montgomery County standards.

e. Recreation

Recreation demand is satisfied as shown in the recreation calculations table, included on page 10 of the Staff Report. The proposed recreation facilities include a tot lot located near the townhouse units, three sitting areas, and two open play areas. The Germantown Community Center, a multi-purpose recreational facility for all ages, is located directly across from the site on Kingsview Road.

f. Vehicular and Pedestrian Circulation

Vehicular and pedestrian circulation is safe, adequate and efficient.

Access points to the site are to be provided from Schaeffer Road and Leaman Farm Road. A short distance from these two access points are driveways which serve the single-family houses facing Schaeffer and Leaman Farm Roads. A bikeway will be provided along Leaman Farm Road and also along a section of Clopper Road to the Kingsview Road intersection. The existing section of sidewalk along Schaeffer Road will be extended southward to Leaman Farm Road. Internal sidewalks will be provided along one side of the streets, and a pathway will lead to the tot lot

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

The proposed development is compatible with other uses and existing and proposed adjacent development.

The proposed residential units are located in a manner that protects the stream valley buffer area and provides attractive views by having the single-family houses face, rather than back onto, Schaeffer Road and Leaman Farm Road.

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

There are 2.2-acres of existing forest on the Property but only 1.88-acres of existing forest outside of the area dedicated to the State Highway Administration. The development is proposing to utilize an optional method of development and, therefore, must comply with Section 22A-12(f) of the Montgomery County Code. The subject Application proposed the removal of less than 0.05 acres of forest, for the construction of a necessary stormwater outfall, and to plant 2.45-acres of forest. This planting will not result in the entire reforestation of the stream buffer but Staff has advised the Board that it is sufficient to meet the minimum requirements of the forest conservation law.

At the Hearing, the Applicant informed the Board that they had purchased an adjoining one-acre property adjacent to the subject site in the event that the proposed development exceed the 20% impervious cap. The Applicant requested that the Board authorize Staff to include the one-acre parcel in its imperviousness calculations in order that it would not be necessary for the Applicant to come back before the Planning Board for a site plan amendment should it became necessary to meet the 20% impervious cap. Staff advised the Board that it did not support Applicant's request. For reasons articulated by Staff at the Hearing, the Planning Board declines to authorize Staff to include the one-acre property for purposes of calculating imperviousness as a part of the instant Application.

The Department of Permitting Services approved the stormwater management concept on July 15, 2005.

BE IT FURTHER RESOLVED, that this site plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

OCT 12 2006 BE IT FURTHER RESOLVED, that the date of this Resolution is (which is the date that this Resolution is mailed to all parties of record); and

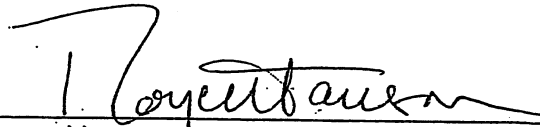
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State).

\* \* \* \* \*

At its regular meeting, held on **Thursday, September 7, 2006**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Perdue, seconded by Commissioner Wellington, and with Commissioners Perdue, Robinson, and Wellington voting in favor, and with Chairman Hanson and Commissioner Bryant abstaining. This Resolution constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Site Plan No. 820050400, Leaman Farm.**

Adopted by the Montgomery County Planning Board this 7<sup>th</sup> day of September, 2006.

PROVED AS TO LEGAL SUFFICIENCY  
I AB  
M-NCPPC LEGAL DEPARTMENT  
DATE 9/13/06



Royce Hanson  
Chairman, Montgomery County Planning Board



Trudye M. Johnson  
Executive Director



NON-IMPERVIOUS SURFACE EASEMENT AGREEMENT

This AGREEMENT OF NON-IMPERVIOUS SURFACE EASEMENT made this \_\_\_ day of \_\_\_\_\_ 2008, by and between Margaret E. Leaman (“Grantor”); and the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (“Grantee”) and Leaman, L.C., a Virginia limited liability company, formerly known as Sherington, L.C., a Virginia limited liability company (“Developer”).

DEFINITIONS

Grantor: Fee simple owner of 44,317 sq. ft. of real property as described in Liber 33580 Folio 413 (“Property”).

Grantee: Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (“Commission”).

Easement Area: Portion of real property shown on Exhibit A (“property”)

Subdivision: Approximately 29.3 acres contiguous to the Property which has been approved by the Commission to be subdivided according to Preliminary Plan 120040600 and Site Plan 820050400 into 69 buildable lots subject to an impervious surface limitation.

Planning Board:

Director of the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission, Montgomery County, or the Director’s designee.

Developer: Leaman, L.C. formerly known as Sherington, L.C.; fee simple owner of the Subdivision.

WITNESSETH

This Agreement reflects a grant of easement by Grantor to the Grantee.

WHEREAS Developer has obtained authority to develop the Subdivision in accordance with Montgomery County, Maryland laws; and

WHEREAS, the Planning Board or other approving authority approved the Subdivision conditioned upon a requirement that development occur in strict accordance with an impervious surface limitation of 252,775 square feet.

WHEREAS, the parties wish to increase the impervious limitations on the Subdivision to 257,735 square feet by not allowing additional impervious surfaces on the property shown in Exhibit A. (“property”); and

**DRAFT**

WHEREAS, the Planning Board requires an easement not allowing additional impervious surfaces be placed on the property shown in Exhibit A prior to increasing the permitted impervious surfaces of the Subdivision by the desired 4,960 square feet; and

WHEREAS, the location of this easement (“Easement”) is shown on Exhibit A; and

WHEREAS, the purpose is to insure that the combined impervious surfaces of the property and the Subdivision not exceed the master plan guidelines of 20% of their combined land area; and

WHEREAS, the Parties intend for the conditions and covenants contained in this agreement to run with the land in perpetuity and to be binding on all subsequent owners and occupants of the Property; and

WHEREAS, the Parties intend that a servitude be placed upon the Property to increase impervious surface capacity of the Subdivision in favor of the Developer.

NOW, THEREFORE, the Grantor has executed this agreement for no monetary consideration but for the purpose of transferring impervious surface capacity to the Subdivision. The Grantor does hereby grant and convey unto the Planning Board, in perpetuity, an Easement on all of the property described in Exhibit A. This Easement constitutes a covenant real running with the title of the land, and is granted to restrict the impervious surfaces on the property shown on Exhibit A. Grantor, its heirs, successors and assigns covenant to abide by the following restrictions within the Easement:

1. The foregoing recitals are agreed to and incorporated herein and shall be binding upon the parties.
2. The following activities may not occur on property shown on Exhibit A:
  - a. Construction of driveways, sidewalks, leadwalks or patios.
  - b. Erection of any buildings, including (but not limited to) sheds, porches, walled exits, rear exists and any building feature that is two feet or less from the ground.
  - c. Construction of any additional impervious surface. Existing imperviousness is garage of 492 square feet.
3. Grantor authorizes Planning Board representatives to enter the property and Easement at their own risk and at reasonable hours for the purpose of making periodic inspections to ascertain whether the Grantor, its heirs, successors or assigns have complied with the restrictions, conditions, and easements established herein. The Easement does not convey to the

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Developer or the general public the right to enter the property or Easement for any purpose.

4. Upon finding a violation of any of the restrictions, conditions, covenants and easements established by this Agreement, the Planning Board shall have the right to enforce such provisions in accordance with any statutory authority (including, if applicable, the imposition of civil monetary fines or penalties in amounts and by such means as may be promulgated from time to time). The Planning Board also may seek injunctive or other appropriate relief in any court of competent jurisdiction, including the right to recover damages in an amount sufficient to restore the property to its original natural state, the Grantor agrees to pay for court costs and reasonable attorney fees if the Planning Board successfully seeks judicial relief.
5. Grantor further agrees to make specific reference to this Easement in a separate paragraph of any subsequent deed, sales contract, mortgage, lease or other legal instrument by which any interest in the Property is conveyed.
6. No failure on the part of the Planning Board to enforce any covenant or provision herein shall waive the Planning Board's right to enforce any covenant within this agreement.
7. All written notices required by this Agreement shall be sent to the Planning Director, M-NCPPC, 8787 Georgia Avenue, Silver Spring, Maryland 20910.

TO HAVE AND TO HOLD unto the Developer, its successors and assigns forever and the Planning Board, its successors and assigns forever, this Grant shall be binding upon the heirs, successors and assigns of the Grantor in perpetuity and shall constitute a covenant real running with the title of the Property.

Witness:

Date:

Grantor:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Margaret E. Leaman

STATE OF MARYLAND )

) ss:

COUNTY OF MONTGOMERY )

On this \_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared Margaret E. Leaman, known to me to be the person whose name is subscribed

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to the within instrument, who acknowledged the same to be hers act and deed for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission expires:

\_\_\_\_\_

WITNESS:

LEAMAN, L.C.

\_\_\_\_\_

By: \_\_\_\_\_

John M. Clarke  
Manager

COMMONWEALTH OF VIRGINIA

)

) SS:

COUNTY OF FAIRFAX

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared David D. Flanagan, who acknowledged himself to be the Manager of Leaman, L.C., a Virginia limited liability company, and that he, as such Manager being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as Manger.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

\* \* \* \* \*

**DRAFT**

This is to certified that the within instrument has been prepared under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Witness:

Date:

Grantor:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Associate General Counsel  
M-NCPPC

DRAFT

# GLWGUTSCHICK, LITTLE & WEBER, P.A.

CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS

**EXHIBIT "A"**

October 1, 2008

Description of a  
**NON-IMPERVIOUS SURFACE EASEMENT**

Part of the Property of

Margaret E. Leaman

Liber 33580 Folio 413

Darnestown Election District No. 6

Montgomery County, Maryland

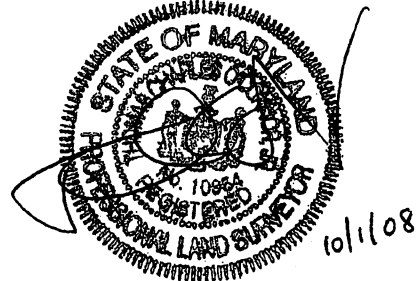
**BEING** a parcel of land hereinafter described in, through, over and across the property conveyed by Daniel L. Leaman and Judith K. Leaman to **Margaret E. Leaman** by deed dated December 15, 2006 and recorded January 4, 2007 among the Land Records of Montgomery County, Maryland in **Liber 33580 at Folio 413** and being more particularly described as now surveyed in the meridian as established by the Maryland State Grid as defined by the North American Datum of 1983 and adjusted in 1991 (NAD 83/91) as follows:

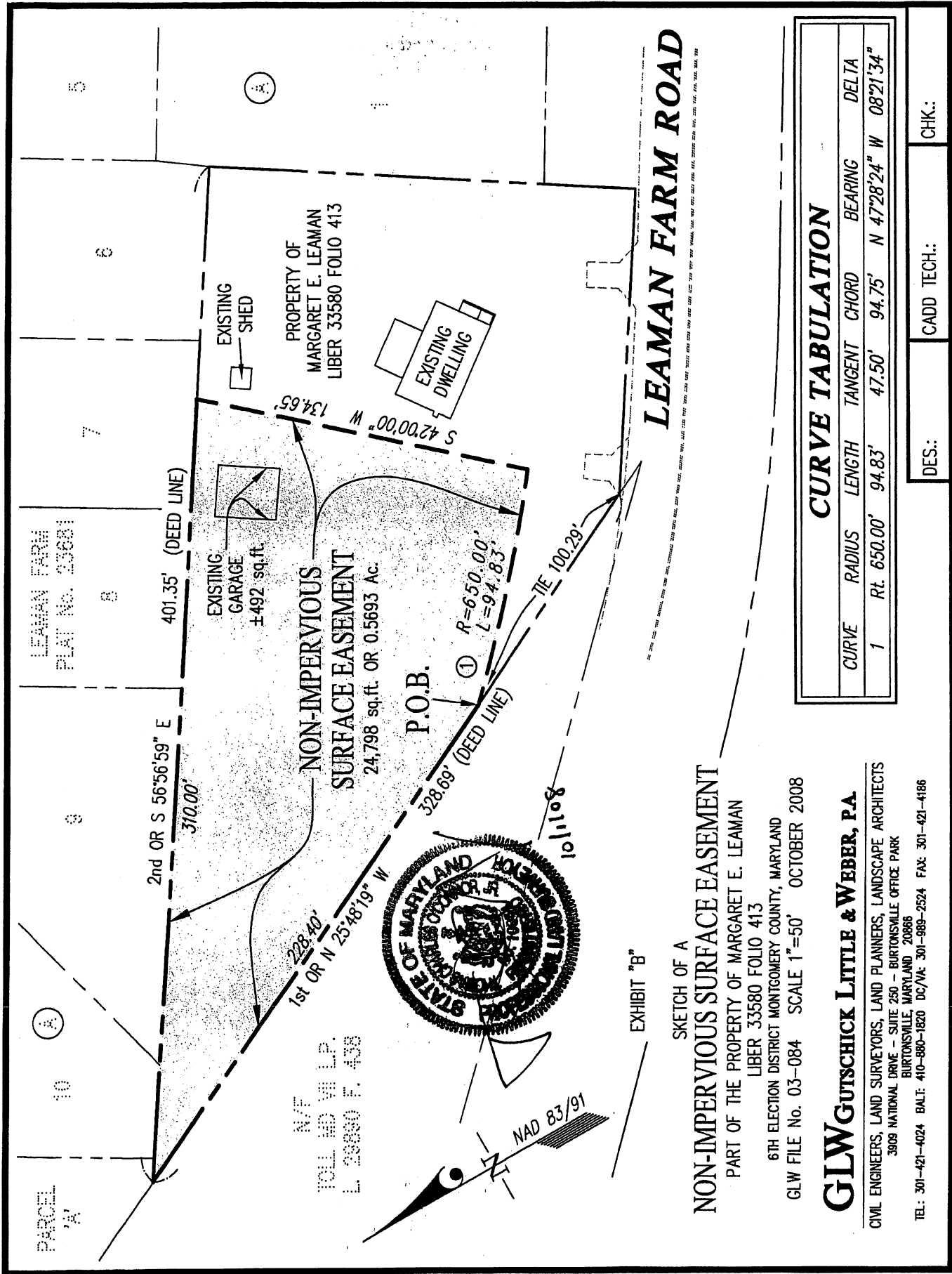
**BEGINNING** for the same at a point on the 1st or North 25°48'19" West, 328.69 foot line of said conveyance to Margaret E. Leaman, 100.29 feet from the beginning thereof; thence running with part of said Deed line and with part of the 2<sup>nd</sup> Deed line of Leaman, the following two (2) courses and distances

1. **North 25°48'19" West, 228.40** feet to a point; thence
2. **South 56°56'59" East, 310.00** feet to a point; thence leaving said 2<sup>nd</sup> Deed line and running in, through, over and across the aforesaid conveyance to Leaman, the following two (2) courses and distances
3. **South 42°00'00" West, 134.65** feet to a point; thence
4. **94.83** feet along the arc of a non-tangential curve to the **right**, having a radius of **650.00** feet and a chord bearing and distance of **North 47°28'24" West, 94.75** feet to the point of beginning; containing **24,798** square feet or **0.5693** of an acre of land.

The licensee below was in responsible charge over the preparation of this metes and bounds description and the surveying work reflected in it, all in compliance with requirements set forth in COMAR Title 09, Subtitle 13, Chapter 06, Regulation .12.

L:\CADD\DRAWINGS\03084\MB\03084 MargLeaman ImpervEsmt.doc





**LEAMAN FARM ROAD**

**CURVE TABULATION**

CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
1	Rt. 650.00'	94.83'	47.50'	94.75'	N 47°28'24" W	08°21'34"

DES.:  CADD TECH.:  CHK.:

**NON-IMPERVIOUS SURFACE EASEMENT**  
 PART OF THE PROPERTY OF MARGARET E. LEAMAN  
 LIBER 33580 FOLIO 413  
 6TH ELECTION DISTRICT MONTGOMERY COUNTY, MARYLAND  
 GLW FILE No. 03-084 SCALE 1"=50' OCTOBER 2008

**GLWGUTSCHICK LITTLE & WEBER, P.A.**

CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS  
 3909 NATIONAL DRIVE - SUITE 250 - BURTONSVILLE OFFICE PARK  
 BURTONSVILLE, MARYLAND 20866  
 TEL: 301-421-4024 BALT: 410-880-1820 DC/VA: 301-988-2524 FAX: 301-421-4186