



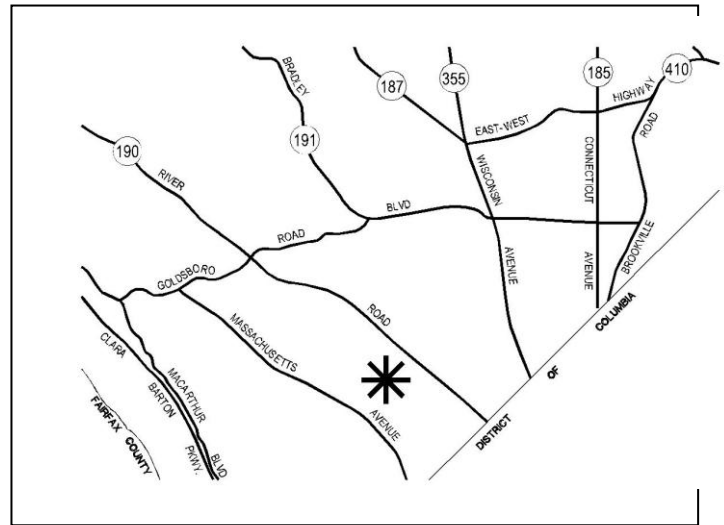
**Hoyt Property, Preliminary/Site Plan, 120120140/820120070**

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Date of Report: 5-25-12

**Description**

- Preliminary Plan 120120140
- Site Plan 820120070
- Location: 5400 Butler Road, Bethesda, MD
- Zone: RT-15
- Master Plan: Westbard Sector Plan, 1982
- Property size: 1.81 acre site (78,935 sq.ft.)
- Proposal: Construct 30 townhouse lots, including 5 MPDUs including waivers to building setbacks and row design
- Applicant: EYA Development, LLC
- Filing Date: February, 27, 201



**Summary**

- Staff Recommendation: **Approval with conditions** of the Preliminary Plan, Site Plan, and Forest Conservation Plan. The Applicant proposes to redevelop an industrial site into 30 three-story townhouses with 5 moderately priced dwelling units (MPDUs) under the optional method. The property was rezoned from the I-1 to the RT-15 zone by a local map amendment approval by the Montgomery County District Council pursuant to Resolution 17-261 on September 27, 2011.
- The townhomes will be arranged along both sides of a private drive that will access the site from Little Falls Parkway, as recommended in the Westbard Sector Plan. Primary access was achieved through a Park easement from Little Falls Parkway, a private Park road. Little Falls Parkway prohibits commercial vehicles thus a secondary access off of Butler Road will solely be for commercial vehicles and the residents. A sensory gate and signage will restrict through-passers. The development will provide a public connection from Little Falls Parkway to the adjacent Capital Crescent Trail (CCT).
- The Preliminary and Site Plan conforms to all binding and nonbinding elements required by the Hearing Examiner under Section §59-D-1.64.
- The Applicant is requesting two waivers for a reduction in the property line setbacks (§59-C-1.732) and to the row design standards for the maximum number of townhouse units in a row (§59-C-1.722). Staff supports both waiver requests.

## TABLE OF CONTENTS

### SECTION 1: CONTEXT & PROPOSAL

Site Description	3
Vicinity	3
Site Analysis	4
Project Description	5
Previous approvals	5
Proposal	5
Community Outreach	7

### SECTION 2: PRELIMINARY PLAN REVIEW 7

Analysis and Findings	8
Recommendation and Conditions	17

### SECTION 3: SITE PLAN REVIEW 19

Findings	19
Recommendation and Conditions	29

### APPENDICES 33

## ILLUSTRATIONS & TABLES

<i>Vicinity Map</i>	3
<i>Aerial Photograph</i>	4
<i>Illustrative Site Plan</i>	6
<i>Preliminary Plan</i>	7
<i>Site Plan Data Table</i>	24
<i>Illustrative rendering of the open spaces and amenity areas</i>	26
<i>Recreation Calculations Tables</i>	27

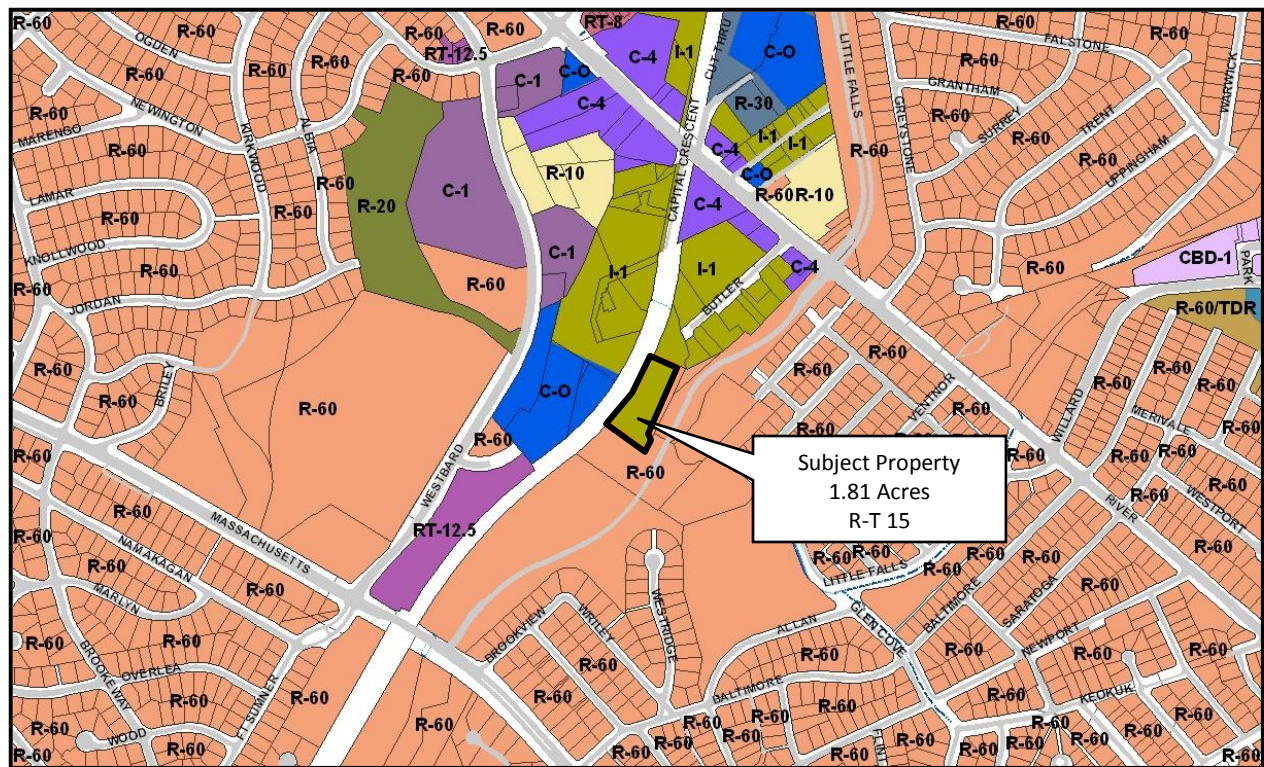
## SECTION 1: CONTEXT AND PROPOSAL

### SITE DESCRIPTION

#### Vicinity

The subject property is located just outside the Westbard commercial area in close proximity to the Friendship Heights Central Business District. The 1.81-acre site adjoins the Capital Crescent Trail to the west (elevated above the site), and Euromotors Car Center and Martin's Volvo dealership to the north. To the south and east is Little Falls Stream Valley Park. Approximately 90 feet east of the site is Little Falls Parkway. The Westbard commercial area is generally located west of the site, while an area of one-family detached homes is generally located east of the site. The site is currently classified in the RT-15 residential townhouse zone, and is identified as P513 on Tax Map HM 123.

The land use and zoning pattern of the surrounding area is diverse. The Westbard commercial area is to the north and west of the site. Here, land uses are mixed, with higher density residential buildings and commercial shopping venues in place under C-0, C-1 and C-4 zoning. Many industrial uses under the I-1 Zone line Butler Road to the north of the site. Parkland immediately surrounds the remaining three sides of the site, all within the R-60 Zone. One-family residential homes are further east, also in the R-60 Zone. A generalized outline of the surrounding area is shown below.



## Vicinity Map

### Site Analysis

The subject property is located at 5400 Butler Road, Bethesda, Maryland. The property was recently rezoned from the I-1 to the RT-15 zone.

The site is surrounded by Montgomery County M-NCPPC parkland to the east, south and west, and is adjacent to industrial land to the north. The site is relatively flat with retaining walls and steep slopes along the periphery. The property is at the extreme down-slope of the Willet Branch of the Little Falls watershed, which is classified by the State of Maryland as Use I waters and has a two square mile drainage area covering portions of Bethesda. The 2003 update of the *Countywide Stream Protection Strategy* (Montgomery County Department of Environmental Protection) identifies the property as “poor” water quality. The site will be served by municipal water and sewer. The stream runs adjacent to the western boundary of the site; the associated stream valley buffer encompasses a large portion of the property and includes a 100-year floodplain.

The Property currently houses the BETCO block plant which consists of a complex of buildings comprising about 29,370 square feet and a large paved area for parking and storage which virtually covers the site.

There is significant encroachment from the existing concrete block factory onto the adjacent parkland. In addition to tree and slope impacts, rubble has been disposed of onto parkland. Groundwater monitoring was performed by Apex Companies, LLC to determine if contaminants were found on and off-site. Laboratory data indicate that total petroleum hydrocarbons and diesel range organics (TPH-GRO/DRO) were discovered on parkland and within the project boundaries.

*Aerial Photo with approximate site boundary outlined in red*



The present Federal Emergency Management Area (FEMA) 100-year floodplain line now traverses a small portion of the property along the western border. The floodplain buffer crosses over the proposed stormwater management facility and a corner of townhouse #21. The Applicant contests that floodplain line is confined to the existing trapezoidal concrete channel within parkland, and not within the Applicant's property. A revision to the existing FEMA 100-year floodplain map has been initiated but as of the date of this report has not yet been granted by FEMA. Prior to FEMA approval, the Department of Permitting Services (DPS) must find the new floodplain line acceptable, which it did on April 16, 2012. FEMA approval is anticipated and must be granted prior to the record plat.

## **PROJECT DESCRIPTION**

### **Previous Approvals**

The property was rezoned from the I-1 to the RT-15 zone by a local map amendment approved by the Montgomery County District Council pursuant to Resolution 17-261 on September 27, 2011. The District Council found that the Schematic Development Plan proposal was consistent with the September 1982 Westbard Sector Plan and provided an appropriate transition which was compatible with the adjacent neighborhood. The binding elements are outlined in Section 2: Site Plan Review, on page **XXX**.

### **Proposal**

The Applicant intends to raze the existing cinder block plant and replace it with a townhouse community of 30 units, including 5 MPDUs (16.6%). The townhomes will be arranged along both sides of the private driveway that accesses the site from Little Falls Parkway. Once developed, approximately 38% of the site will be green area, as contrasted from today's existing condition of complete impervious cover.

The lot layout shown on the preliminary and site plan drawings nominally differs from the layout which was shown on the Schematic Development Plan and conforms to all the binding elements.

The Hoyt property is adjacent to Parkland on three sides (east, west, and south). There is no public access the site, therefore, access had to be granted through a Park easement. Along with the easement other conditions include enhancing the existing park setting by providing shared amenities with the proposed development, removing existing encroachments and associated contamination while minimizing natural resource impacts, managing long term maintenance of shared amenities on parkland, minimizing disturbance on parkland, and eliminating potential hazards created by the proposed development in close proximity with natural resources.

Access to the site for the residents will be chiefly provided from Little Falls Parkway in accordance with an access easement from the Parks Department. Access for commercial vehicles is restricted on Little Falls Parkway and will be provided via Butler Road. Just after crossing the park easement, a landscaped open space with an outdoor eating area and benches near the entry. A 5-foot wide sidewalk/trail connection will be provided as a direct connection from the Little Falls Parkway to the Capital Crescent Trail (CCT). The street network and associated sidewalk and trail system will provide adequate vehicular and pedestrian circulation.

There will be sufficient parking on the site. The applicant provides the necessary parking consistent with the zoning ordinance and exceeds the number of parking spaces provided in the zoning case. Parking is further evaluated in the finding section of the site plan.

The project has a contemporary, urban flavor with large glass windows and balconies to take advantage of the views to parkland. The façade will be stone, wood and glass to add a modern flair. The townhomes will be three stories with a maximum height of 35-feet, with front loading garages onto Private Street A and B.

The streetscape will be modern but quaint with pavers and lanterns. The chosen native plant material will provide seasonal interest in both color and texture complimenting the building facades as well as providing privacy screening and accenting various site amenities. A live privacy wall is proposed to help screen the adjacent commercial property o the north.

**Green Area**

The green area provided is thirty eight (38) percent exceeding the minimum thirty (30) percent requirement by eight (8) percent. A park picnic bench and lawn is combined with the biofiltration facility area. Two benches will be located to the northwest of the stormwater management facility within a vegetated sitting area with views to the Willett Branch stream valley buffer and parkland. Another seating area is proposed at the base of the stairs leading to the CCT. A planted stream valley buffer on Parkland abuts the seating area to provide additional offsite green area.



*Illustrative site plan*

An important subject of the application has been the Easement Agreement with the Parks Department that allows access to the site across parkland from Little Falls Parkway. The Agreement included various public amenity projects such as a stream buffer planting, encroachment mitigation, channel restoration, geotechnical monitoring, retaining wall construction, and a few other outstanding Conditions outlined in appendix 1.

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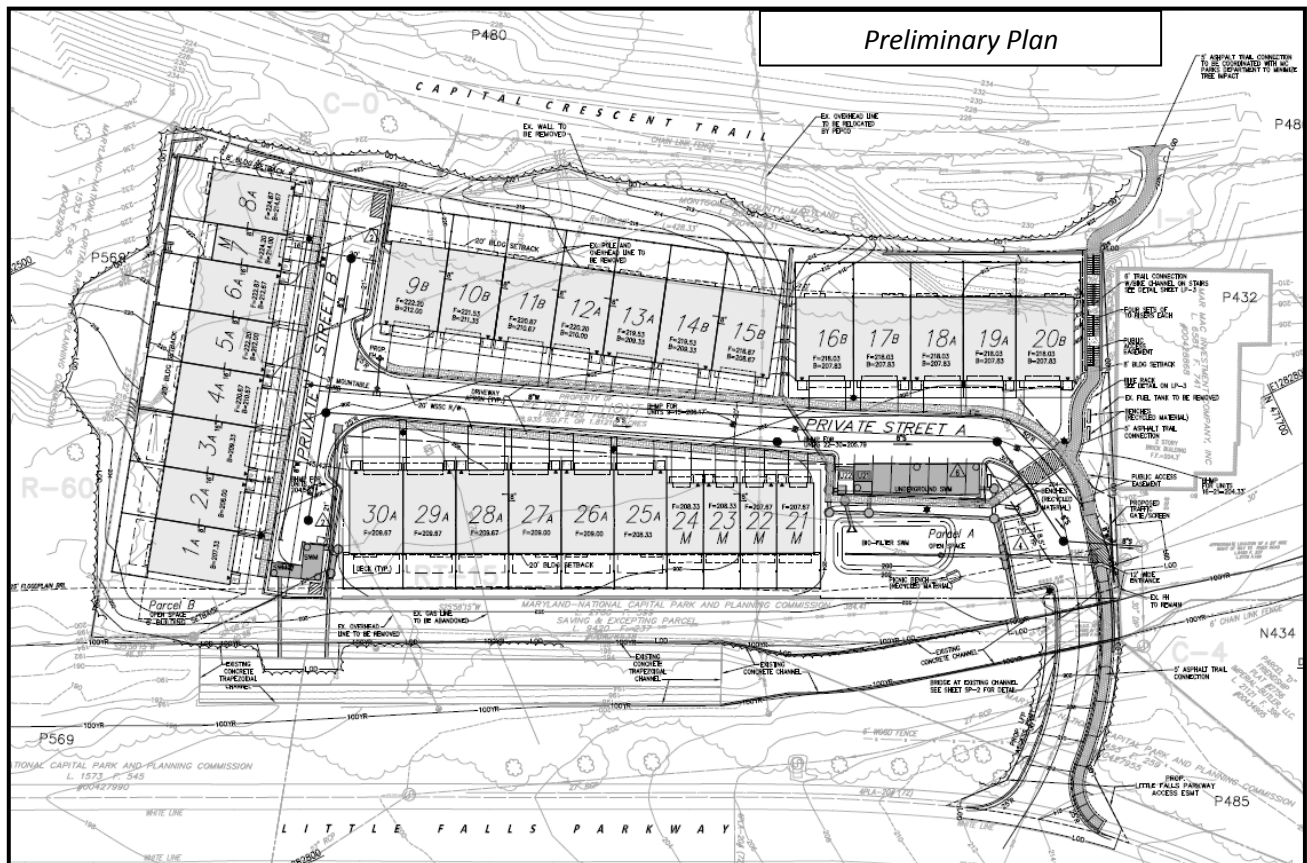
FEMA approval of the changes to the 100-year floodplain line is needed prior to the Planning Board approval of the record plat.

The Applicant is also requesting a waiver to the minimum setbacks and to the row design standards for townhouses. Both waivers are discussed in detail in the Site Plan findings section and supported by Staff.

### Community Outreach

The Applicant held several public meetings in connection with the rezoning. The Applicant also held the required pre-submission meeting at the Little Falls Community Library on November 15, 2011. Staff has not received any correspondence from the public.

## SECTION 2: PRELIMINARY PLAN REVIEW



## ANAYSIS AND FINDINGS

### Master Plan Conformance

- The preliminary plan for the Hoyt Property conforms to the recommendations in the September 1982 Westbard Sector Plan. The Sector Plan makes specific recommendations for a townhouse development on this Property. On September 27<sup>th</sup>, 2011, with a unanimous Board approval, the Montgomery County District Council (Resolution 17-261) approved rezoning the property to an R-T 15 Zone. Although exceeding the recommendation in the sector plan, it was granted in part due to the surrounding land uses and large amounts of nearby parkland, the transitional nature of this project in relation to the higher residential densities to the west. The furtherance of County planning policies such as the redevelopment of brownfield sites, the removal of environmental encroachments, contamination clean up, and the provision of affordable housing above the requirement, also contributed to the rezoning of the property.
- Many secondary recommendations for the site are discussed throughout the Sector Plan and listed point-by-point below:
  - *On pages 104-107, the Sector Plan recommends the improvement of stormwater management on the site.* The site presently consists of impervious surfaces and steep slopes on the adjacent Parkland with no stormwater management. Currently, all stormwater discharge flow is untreated into Willett Branch. Therefore redevelopment under current stormwater management regulations will readily achieve the master plan recommendations for this project related to storm water management. The applicant will be required to provide modern stormwater facilities using best management practices.
  - *On pages 98-102, the Sector Plan identifies excessive noise levels generated from numerous sources reaching within the property.* Noise levels from the proposed residential uses are anticipated to be lower than the current noise levels from the present industrial land use. A noise study was submitted and reviewed indicating impacts above the 65 dBA for the rear of units 1 and 21-30. The applicant is requesting that the Board find that the noise levels for impacts above the 65 dBA (projected to be at 66 dBA) are minimal and not necessary given the proximity to a parkway setting, current restriction for commercial vehicles on the parkway and residential use that is proposed to replace the current industrial operation.
  - *On page 107 of the Sector Plan construction on excessively steep slopes is discouraged.* The original topography was altered creating walls and even steeper slopes than those that existed previously. Redevelopment of the site and removal of encroachments will provide an opportunity to stabilize the slopes along the eastern and western property boundaries where the slopes are the steepest and impacts are significant.
  - *On page 107, the Plan recommends minimizing the extent of impervious areas.* Currently, the site is ninety-four (94) percent impervious. The proposed plan reduces impervious to sixty-four (64) percent. Open space will be thirty-eight (38) percent.
  - *On numerous pages throughout the Plan (see pages 21, 24, 28, and 52), the Plan articulates that site redevelopment for townhomes is appropriate provided that a separate entrance to the site can be achieved via Little Falls Parkway.* A conceptual illustration of suggested approaches on



page 24 furthers the Plan's narrative, showing access to the site from Little Falls Parkway, with Butler Road truncating before reaching the subject property. The Sector Plan narrative and illustration provides a basis to interpret that the intent of the Plan for the proposed development scenario included the option of restricting access to the site from all roads except Little Falls Parkway. However, given the prohibition that is in place for commercial vehicles on Little Falls Parkway, the applicant is proposing secondary access to the site from Butler Road. The Applicant is proffering to restrict this access for the exclusive use of commercial vehicles serving the development.

Given the above analysis, the proposal substantially conforms to the Plan's guidance of replacing the existing industrial brownfield site with a residential townhouse community. By replacing the brownfield site with a residential, one-family development, the residential character of the area is enhanced and a transition between the Westbard commercial area and the residential one-family detached neighborhood to the east is provided.

## **TRANSPORTATION**

### **Circulation**

The roadway network has been evaluated by Staff and the Montgomery County Department of Fire and Rescue Services (MCFRS). The Montgomery County Department of Transportation (MCDOT) was included in the Development Review Committee (DRC), however, access to the site through both Little Falls Parkway and Butler Road are private roads not under the jurisdiction of MCDOT. The private roads associated with the site are determined adequate and sufficient.

### **On-Site Parking**

As stated above, there will be ample parking on the site. The Applicant included a binding element in the rezoning committing to *2 garage spaces per unit for market rate units and 1 space for MPDUs, plus an additional dedicated parking space for at least two of the MPDUs, as well as a minimum of 8 additional non-driveway parking spaces to be located on the site.* The site plan proposes 55 garage spaces to serve the 30 units, two dedicated parking space for 2 MPDU units, and 14 visitor parking spaces for a total of 71 spaces. The site plan is consistent with the Schematic Development Plan for the unit parking and provides 15 additional visitor parking spaces on Private Street A and parallel spaces on Private Street B. In addition nine (9) units can accommodate additional standard parking space in the driveway. This surpasses the two parking spaces for each dwelling unit required under Section 59-E-3.7 of the Ordinance.

### **Available Transit Service**

The immediate area is served by metro bus route T2 (along River Road) and Ride-On route 23 (along River Road and Westbard Avenue).

**Pedestrian and Bicycle Facilities**

The applicant is proposing to install a 5-foot wide stamped sidewalk along the east, west, and south sides of the interior private streets (streets A & B). The walkway connects to a 5-foot asphalt trail that starts at Little Falls Parkway and leads through parkland to the CCT. The Park property has a severe slope of 25 percent requiring stairs. The stairs will have a hand rail on both sides of the steps with a center bicycle channel for porting bicycles up or down the steps. There will be two (2) benches at the base of the stairs and a bicycle rack.

**ADEQUATE PUBLIC FACILITIES REVIEW**

A traffic statement and Policy Area Mobility Review (dated March 9, 2011; Revised May 11, 2012) prepared by the traffic consultant for the Applicant and was submitted for the subject application per the *LATR/PAMR Guidelines* since the proposed development was estimated to generate less than **30** 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.

**Trip Generation**

The peak-hour trip generation estimate for the proposed development was based on trip generation rates included in the *LATR/PAMR Guidelines*. A site trip generation summary is provided in Table 1, which shows that the development would generate 14 peak-hour trips during weekday morning peak period and 25 peak-hour trips during the weekday evening peak period.

**Local Area Transportation Review (LATR)**

Since the proposed development will not generate 30 or more peak-hour trips during the weekday morning and evening peak periods, a traffic study is not required for the application. With documentation of site trip generation as above, the application satisfies the LATR requirements of the APF test.

Table 1: Summary of Site Trip Generation Proposed

Trip Generation	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
30 single-family attached (townhouse) units	2	12	14	17	8	25

Wells and Associates, Inc. Hoyt Property, Traffic Statement and Policy Area Mobility Review; March 9, 2011; Revised May 11, 2012.

**Policy Area Mobility Review (PAMR)**

To satisfy the PAMR requirements of the APF test, a development located within the Bethesda/Chevy Chase Policy Area is required to mitigate 25% of “new” peak-hour trips generated by the development. The site trip generation summary presented above shows that the development will generate 25 peak-hour trips during the weekday evening peak period (highest of the peak-hours). With credit for two (2) peak-hour trips at the existing block manufacturing plant and the PAMR requirement to mitigate 25% of

the “new” trips, the development is therefore required to mitigate six (6) peak-hour trips (i.e.,  $(25 - 2) \times 0.25 = 6$ ).

The Applicant is proposing to satisfy the PAMR mitigation requirements of the APF test by paying \$70,200.00 to MCDOT (to mitigate six weekday peak-hour trips at \$11,700.00 per peak-hour trip).

### **Other Public Facilities**

Public facilities and services are available and will be adequate to serve the proposed development. The property will be served by public water and sewer systems. The application has been reviewed by the Montgomery County Fire and Rescue Service and they have determined that the property has appropriate access for fire and rescue vehicles. Electrical and telecommunications services are also available to serve the Property. Washington Suburban Sanitary Commission recommends approval based upon the local lines that exist, and are of adequate size to serve the proposed number of homes.

Montgomery County Public Schools estimates the impact of the proposed development to be approximately eight elementary school students, four middle school students, and four high school students. Enrollments at Westbrook Elementary School, Westland Middle School, and Bethesda Chevy-Chase High School are all over capacity. In accordance with the 2012 Subdivision Staging Policy a school facilities payment will be required at all three levels.

## **ENVIRONMENTAL GUIDELINES**

### **Natural Resources Inventory**

The Hoyt Property site has a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) plan #420111520, which was approved on June 30, 2011. Forest area is located within the parkland, immediately adjacent to the site along the southern boundary. Tree stands not meeting forest definition have established along and within the site perimeter. However, no forest area and no significant or specimen trees are located on the site. The NRI/FSD and associated documents can be view at the link below:

<http://www.daicsearch.org/imageENABLE/search.asp?Keyword=420111520>

The site is adjacent to a perennial stream within the Little Falls Use I-P watershed. A stream valley buffer (SVB) is located on approximately half of the property. An area of highly erodible soils occurs along the Capital Crescent Trail and within portions of the site and within other areas of the adjacent parkland. The site is not within a Special Protection Area (SPA).

Based on the Environmental Guidelines the areas within the SVB are typically placed within protected Category I conservation easements. Given the existing impervious surfaces, the approved Sector Plan recommendations for townhouse development of the subject property, and the existing and proposed access which must occur through the SVB, staff supports the redevelopment within the SVB.

A minor area of Category I conservation easement is proposed at the southern end of the property. Staff has included a recommended condition to modestly expand the easement area while still allowing free

and clear maintenance/access around the adjacent lot, leaving a comparable access to those proposed in other portions of the site.

### **Forest Conservation Plan**

This property is subject to the Chapter 22A Montgomery County Forest Conservation Law and a Final Forest Conservation Plan has been submitted for approval (stamped received on May 22, 2012). The townhouse development will require that the afforestation requirements are met onsite [under 22A-12(f)(2)(D) of the forest conservation law]. The onsite boundary area is 1.81 acres in size and contains no forest. However, there is an afforestation requirement of 0.27 acres which will be met onsite by a combination of canopy credit for various plantings and the credit for the Category I conservation easement area. Staff has included recommended conditions to ensure the forest conservation requirements are appropriately satisfied.

### **Tree Save Plan**

There are seven trees measuring  $\geq 30''$  DBH identified within the study area for the project. Numerous trees *not subject to the forest conservation variance*, such as those within the  $24'' < 30''$  size class and smaller also occur within the study area. Some of these smaller trees are also affected by the work. The current plans include provisions for tree preservation measures. A condition is recommended that an International Society of Arboriculture (ISA) certified arborist sign the plans to ensure the tree save component is feasible. In all cases where impacts are proposed, appropriate trees preservation/stress reduction measures will be performed under the supervision an appropriate tree care professional. Refer to the variance section below for further information.

### **Forest Conservation Variance**

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ), requires a variance. An Applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. Unless the variance is granted, the law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Since the project boundary affects trees that are  $\geq 30''$  DBH, a variance is required. The Applicant submitted a variance request on May 23, 2012 for the impacts to, and removal of trees as a result of the proposed project (see Attachment B-2 for variance request). The applicant proposes to remove five trees that are  $\geq 30''$  DBH, and to impact, but not remove, two other subject trees. In total, seven trees are that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law are proposed to be affected. Potentially, two of the specimen trees identified for

removal (9V & 10V) may be retained; further evaluation and possible field adjustments may result in the preservation of the trees. In all cases where CRZ impacts are proposed to save trees, appropriate tree preservation and/or stress reduction measures will be performed under the supervision and direction of a licensed tree care professional. Refer to tree tables in the Applicants' forest conservation variance request (Attachment B-2) for additional information.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. In addition to the required findings outlined numerically below, staff has determined that the Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship for the following reasons:

- Most of the impacts to the subject trees are triggered by the removal of encroaching structures and dumped debris within the adjacent parkland. The Westbard Sector Plan specifically recommends removal of encroachments and dumped debris.
- Some of the tree impacts and one of the removals are directly related to the proposed trail connection through the subject property. The community and Parks Department have requested a trail connection from Little Falls Parkway to the Capital Crescent Trail (CCT) to Little Falls Parkway through the subject property.

Staff has reviewed this application and based on the existing circumstances and conditions on the property, staff agrees that there is an unwarranted hardship.

**Variance Findings** - Staff has made the following determination based on the required findings that granting of the requested variance:

1. *Will not confer on the Applicant a special privilege that would be denied to other Applicants.*  
The Westbard Sector Plan specifically recommends removal of encroachments and dumped debris. The restoration of the parkland could have been performed by the existing owner, or by the Parks department independent of the redevelopment activity. Therefore, the variance request would be granted to any Applicant in a similar situation.
2. *Is not based on conditions or circumstances which are the result of the actions by the Applicant.*  
The encroaching structures and dumped debris within the adjacent parkland were placed long before the Applicant became involved with the property. The proposed trail connection is not based on results of actions by the Applicant. Furthermore, measures have been taken to avoid and minimize impacts as much as possible, and replanting to reduce the effects of the impacts/removals of subject trees has been included.
3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*  
Since the park property containing the encroaching structures, dumped debris and trail connection area is part of the subject application, the requested variance is a result of the proposed restoration work and trail connection on the subject property, and not as a result of land or building use on a neighboring property.
4. *Will not violate State water quality standards or cause measurable degradation in water quality.*  
Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. Conversely, when completed the project should provide an improvement to water quality over the existing conditions due to the reduction of

impervious surfaces, installation of storm water management and treatment facilities (the current site has none), by the installation of buffer strip on the parkland and by remediation of contaminated soils which possibly leach pollutants into the stream. Furthermore, the work will proceed under the direction of the Maryland Department of the Environment and the Department of Permitting Services to ensure appropriate standards will be implemented related to the soil remediation, sediment control and storm water management. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

### **County Arborist Recommendations**

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on May 23, 2012. The County Arborist issued a response to the variance request on May 24, 2012 and recommended the variance be approved with the condition that appropriate mitigation is provided for the resources disturbed (Attachment B-2). Additionally, the County Arborist provided general recommendations on calculating mitigation plantings and providing tree preservation measures.

### **Mitigation for Trees Subject to the Variance Provisions**

No additional planting mitigation for impacts or removal of subject trees is recommended by staff since the disturbed forest areas and tree stands (not meeting forest definition) will be replanted. However, there are numerous stress reduction / impact mitigation techniques which are incorporated into the proposed work. Two of the five specimen size trees identified for removal (9V & 10V) may conceivably be retained. There will also be some disturbance within the CRZ of another two subject trees, but they are excellent candidates for retention and will receive adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

### **Staff Recommendation on the Variance**

As a result of the above findings, staff recommends the Board approve the Applicant's request for a variance from Forest Conservation Law to remove five subject trees and also impact, but retain two subject trees associated with the site, affecting a total of seven subject trees. The variance approval is assumed into the Planning Board's approval of the Forest Conservation Plan.

### **Stormwater Management**

The proposed stormwater management concept approved on February 3, 2012, meets the required stormwater management goals by the use of environmentally sensitive design (ESD) measures to the maximum extent practicable (MEP). Treatment is provided by a biofilter stormwater management facility.



Similarly, Little Falls Parkway has a maximum speed limit (30 mph) and a prohibition against truck traffic. As such, noise levels are limited. The impacted units are approximately 100 feet from the road edge. Additionally, the project is located in a down-county, urbanized area where residents anticipate somewhat higher sound levels overall than in rural areas.

For the reasons approval should be granted for this project with no additional exterior sound mitigation measures.

### **Compliance with the Subdivision Regulations**

Section 50-29(a)(2) of the Subdivision Regulations requires "...that individually recorded lots shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road." The 30 townhouse units will be on individually recorded lots, and will front onto a private street. Therefore, if the Planning Board approves the preliminary plan, it must also find that the proposed private street has acquired the status of a public road. This finding must be based upon the proposed road being fully accessible to the public; accessible to fire and rescue vehicles, as needed; and designed to minimum public road standards, except for right-of-way and pavement widths.

In the case of this subdivision, the proposed streets which provide frontage to the proposed individually recorded lots can meet the minimum standards necessary to make the finding that it has the status of a public road. The road will also be placed within an easement that ensures it remains fully accessible to the public.

A private street is proposed to provide access to and frontage for the 30 townhouse lots. Section 50 29(a)(2) of the Subdivision Regulations requires that lots must front on a street that has been dedicated to public use or that has acquired the status of a public street. The proposed private street meets the minimum standards necessary to make the finding that it has acquired the status of a public street. These standards, as previously applied by staff for townhouse lots, include a 20-foot pavement width, five-foot sidewalk width, an appropriate circulation pattern, and an appropriate paving cross-section. The road will also be placed within an easement that ensures it remains fully accessible to the public. Staff recommends, therefore, that the Planning Board find that the proposed private street has acquired the status of a public street.

The application has been reviewed for compliance with the Montgomery County Code, Chapter 50, and the Subdivision Regulations. The application meets all other applicable sections. The size, width, shape and orientation of the lots are appropriate for the location of the subdivision, given the recommendations of the Westbard Sector Plan. Little Falls Parkway provides adequate access even though it is a private access road but serves as a public road.



## PRELIMINARY PLAN RECOMMENDATION AND CONDITIONS

The Preliminary Plan meets all requirements established in the Subdivision Regulations and it is in substantial conformance with the recommendations of the September 1982 Westbard Sector Plan. Staff recommends approval of the Preliminary Plan, subject to the following conditions:

1. Total development is limited to thirty (30) lots for thirty (30) townhouses with five (5) MPDUs as shown on the preliminary plan.
2. Prior to the release of any building permit for the proposed development, the Applicant must pay \$70,200.00 to Montgomery County Department of Transportation (MCDOT) to satisfy the Policy Area Mobility Review (PAMR) requirement of the APF test (to mitigate 6 net “new” weekday site-generated peak-hour trips at \$11,700.00 per peak-hour trip).
3. The Applicant will restrict commercial traffic to the entrance from Butler Road as no commercial vehicles are allowed on Little Falls Parkway.
4. The Applicant must provide the liber/folio reference for the recorded access easement agreement (“Agreement”) regarding the use of Butler Road on the record plat, certified preliminary plan and certified site plan.
5. The Applicant must provide an effective access control to and from the development through design features at the Butler Road connection to ensure that the connection will only serve its intended purpose (i.e., exclusive in/out access for commercial vehicles serving the development and residents of the development).
6. Applicant must submit a revised final forest conservation plan and obtain staff approval prior to certified site plan and the commencement of any clearing, grading, demolition, or construction activity within the project boundary. The revised plan shall address the following items:
  - a. Revise plan notes, LOD, and associated reforestation and tree save items as applicable, to reflect the actual extent of park access and restoration work (to be determined by Parks staff). If applicable, a new/revised forest conservation variance must also be obtained.
  - b. Revise all plan figures notes and tables to correctly show how the forest conservation requirements will be met and use consistent/correct references for all associated figures.
  - c. Expand the proposed Category I conservation easement five feet toward Lot 1A.
  - d. Provide plantings for the proposed Category I conservation easement which meets the recommendations of the Westward Sector Plan.
  - e. Revise the floodplain notes to reference *conditional* approval from DPS.
  - f. Clearly show an “X” over trees 9V & 10V.
  - g. Revise the new note 16 to reference trees 9V & 10V.
  - h. Provide the raised sidewalk/aeration details on the FFCP.
  - i. The Final Forest Conservation Plan must also be signed by an International Society of Arboriculture certified arborist.
7. The sediment and erosion control plan and stormwater management plan must be submitted with the revised Final Forest Conservation Plan to ensure consistency with the Limits of Disturbances (LODs) and the associated tree/forest preservation measures.

8. Applicant must appropriately record the required Category I Conservation Easement. Recordation must occur prior to any clearing, grading demolition, or construction activity within the project boundary.
9. Applicant to obtain services of an ISA certified arborist, or a Maryland Licensed Tree Expert, to perform the required tree preservation measures and appropriately protect the saved trees.
10. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service (MCDPS) – Stormwater Management Plan in its letter dated February 3, 2012, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
11. Comply with the conditions of the Parks Department letter May 24, 2012. These conditions may be amended by Parks, provided the amendments do not conflict with other conditions of the preliminary plan approval. (Appendix 1)
12. Satisfy provisions for access and improvements as required by Parks prior to recordation of plat(s).
13. No plats may be recorded prior to certification of the site plan.
14. Final approval of the number and location of buildings, on-site parking, site circulation, and sidewalks will be determined at site plan.
15. The record plat must show necessary easements.
16. The certified preliminary plan must contain the following note: “Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the preliminary plan are illustrative. The final locations of buildings, structures, and hardscape will be determined at the time of site plan review. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”
17. The record plat must reflect a public use and access easement over all private streets and adjacent parallel sidewalks.
18. Prior to certification of the preliminary plan revise the preliminary plan drawing to show a separate parcel for the proposed private street.
19. Before any building permit is issued, the Applicant must make school facilities payments to MCDPS at the elementary, middle, and high school levels.
20. The applicant shall install a "No Parking" signs along the portion of Little Falls Parkway that confronts the development site. The location and design of the sign shall be reviewed and approved by the Department of Parks staff at the time of Park Construction Permit.

## SECTION 3: SITE PLAN REVIEW

### FINDINGS

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.*

2.

Below is a graphic depicting the changes made to the schematic plan since the Local Map Amendment G-907 was approved by the Planning Board on 20<sup>th</sup>, 2012. The primary difference between the two plans include: final alignment of the CCT connection, alignment of the vehicular access to Little Falls Parkway, location of the floodplain limits, visitor parking and location of MPDUs. These modifications are relatively minor in nature and are consistent with the overall layout and approval by the District Council.



Schematic Development Plan: July 2011

Proposed Site Plan: May 2012

### BINDING ELEMENTS

- (1) *Density will be limited to no more than 30 townhomes, of which no more than 5 will be MPDU's.*

The proposal is for 30 townhomes, including 5 MPDUs.

- (2) *Green space will be a minimum of 30% of the gross tract area.*

The green space provided on the site is 38%.

- (3) *Building height will be limited to 35 feet.*

The proposed final building heights will be no more than 35 feet.

- (4) *The impervious area of the site will be reduced significantly from the current condition with the final reduction determined at Site Plan.*

The impervious area on the site will significantly be reduced from ninety-four (94) percent to sixty-four (64) percent impervious.

- (5) *Market rate units will provide garage parking spaces for at least 2 cars, moderately priced dwelling units will provide garage parking spaces for at least 1 car, and at least 2 of the MPDU units will also have a dedicated second parking space. A minimum of eight (8) additional non-driveway parking spaces will be provided on the site.*

The Applicant has met the binding elements. The site plan proposes 55 garage spaces to serve the 30 units, two dedicated parking space for 2 MPDU units, and 14 visitor parking spaces for a total of 71 spaces. The site plan is consistent with the Schematic Development Plan for the unit parking and provides 15 additional visitor parking spaces on Private Street A and parallel spaces on Private Street B. In addition nine (9) units can accommodate additional standard parking space in the driveway. This surpasses the two parking spaces for each dwelling unit required under Section 59-E-3.7 of the Ordinance.

- (6) *Subject to approval of the Maryland National Capital Park and Planning Commission ("M-NCPPC"), Applicant will install "no parking" signs along that portion of Little Falls Parkway that confronts the site. Applicant also will include in its HOA documents a confirmation that parking is prohibited on and along Little Falls Parkway.*

The Applicant will seek approval from M-NCPPC to install no parking signs as described above and will include the parking prohibition along Little Falls Parkway in its Home Owners Association documents.

- (7) *Prior to Site Plan approval for the project, Applicant shall execute, and thereafter comply with all terms and conditions of the easement agreement with M-NCPPC, (the "Easement Agreement"), set forth as Exhibit 43A in the record of Case No. G-907, approved by vote of the M-NCPPC on June 16, 2011.*

The Applicant has executed the easement agreement specified in this condition and a copy is included with this Application. The Applicant will comply with its terms and conditions.

- (8) *Access to the site will be provided via an easement and bridge connection to Little Falls Parkway pursuant to the Easement Agreement with M-NCPPC (the "Easement"), limited to passenger vehicles, bicycles and pedestrians traveling to and from the townhouse dwelling units, and for pedestrians and bicycles traveling to or from the Capital Crescent Trail. Vehicular use of the Easement is not permitted by trucks or vehicles prohibited from using Little Falls Parkway by*

*Commission Rules or Regulations. The Easement will not be open to vehicular use until one or more townhouse units on the site are available for sale.*

Access to the site for non-truck vehicular, bicycle and pedestrian traffic is being provided via the easement and bridge shown on the site plan as allowed by the executed easement included in this Application. This access point shall not be utilized until one or more townhouse units are available for sale.

- (9) *Truck ingress to and egress from the site will be solely via a connection to Butler Road, with such connection having a traffic control mechanism(s) restricting through traffic from Butler Road to Little Falls Parkway and Little Falls Parkway to Butler Road, so as to prevent cut-through traffic by any vehicle use not associated with the development.*

The primary vehicular access is from Little Falls Parkway. Commercial vehicle access will be prohibited from Little Falls Parkway. A secondary access from Butler Road is restricted to emergency vehicles, commercial trucks and Hoyt Property residents and visitors. A sliding screen gate with a weighted sensor will visually deter cut-through movement from Butler Road to Little Falls Parkway. At the entrance to the property off Butler Road, there will be a sign stating "Residents, Commercial and Emergency Vehicles Only". At the entrance off of Little Falls Parkway, a sign will show a truck with a bulls-eye circle on it that reads "No Commercial Vehicles. See appendix **XX** in the attachments.

- (10) *Development of the site will include a public access easement, to be constructed by the Applicant and maintained by the Applicant or the successor Homeowners Association for the site, to enable pedestrians and bicyclists to traverse the site for access from Little Falls Parkway to and from the Capital Crescent Trail ("CCT"). Such easement will be a minimum of 5 feet in width through the development site. Development will include, subject to M-NCPPC approval, construction of a connection to the CCT designed to accommodate bicycles and pedestrians in a manner similar to the pedestrian/bicycle connection between the CCT and Bradley Boulevard in Bethesda.*

The site plan includes a 5-foot wide path and public access easement (PAE) as specified in this binding element, which will allow a connection to the CCT to accommodate pedestrians and bicycles. The applicant will construct the path and record an easement allowing perpetual public access to the path shown on the site plan. The path within the subject property boundaries will be perpetually maintained by the HOA.

- (11) *Development of the site will include, at the Applicant's cost, removal of the paving and debris materials from the existing industrial use on the site along Little Falls Branch, on the land of M-NCPPC, that is currently paved or otherwise encroached upon, and the replanting of this area with trees/shrubs, which will assist in screening the site from Little Falls Parkway, as approved by M-NCPPC.*

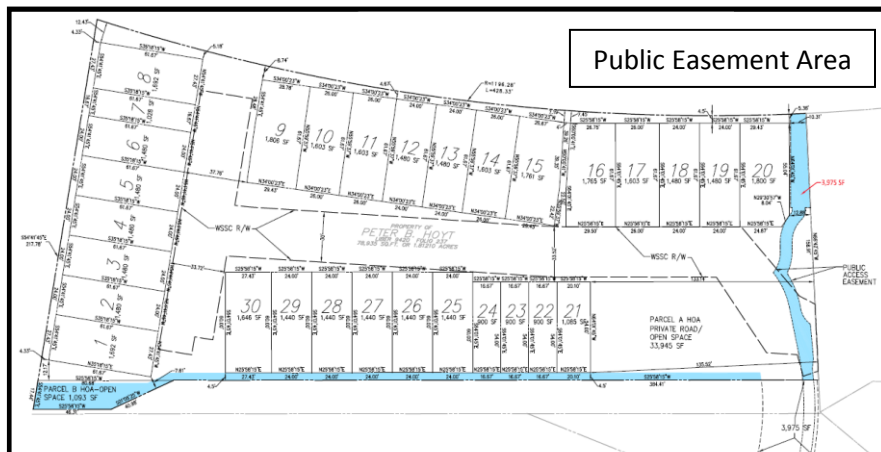
The Applicant will, at its cost, remove the paving and debris materials which encroach on the land owned by the M-NCPPC adjacent to the property and will replant this area as specified in the Forest Conservation Plan and park permit.

- (12) *The Applicant's consideration for the Easement to Little Falls Parkway will be governed by the Easement Agreement between the Applicant and M-NCPPC to implement certain public amenity projects to enhance the surrounding community and parkland which may include but are not limited to, stream restoration, non-native species management, trail renovations/maintenance and/or traffic calming measures as prescribed in the Easement Agreement between the Applicant and M-NCPPC.*

The fully executed easement agreement described in this condition is included in this application and includes public amenity projects to enhance the surrounding community and parkland which may include, but are not limited to stream restoration, non-native species management, trail renovations/maintenance and /or traffic calming measures described in the easement.

- (13) *Consistent with the Easement Agreement with M-NCPPC, in addition to the CCT public access easement, the development also will include a green landscape easement, granted to M-NCPPC, as an aesthetic green space that can be viewed by users of the park and trail. Such easement areas shall be at least equal in gross area to the gross area of the Easement granted by M-NCPPC for access to Little Falls Parkway. To the extent feasible and practical, at the sole discretion of the Applicant, the easement shall be concentrated in the area along the southern property line, adjacent to Little Falls Parkway.*

In addition to the other amenities provided by the applicant, the community did not want to lose public parkland given to the Applicant as a part of the Easement Agreement. As compensation for loss, an easement of the same size as the easement granted by the Parks was provided to the public.



**Non-Binding Elements**

- (1) *Applicant will cooperate with the Capital Crescent Trail Coalition and other civic organizations to urge the appropriate governmental agencies to use the money required to be paid by Applicant pursuant to PAMR and some portion of funds Applicant is paying as consideration for the Easement Agreement for constructing improvements to the Capital Crescent Trail in the vicinity*

*of River Road to facilitate and promote bicycling.*

The Applicant complies with all of the binding and non-binding elements. The Applicant has requested the PAMR money be applied to CCT improvements to facilitate and promote pedestrian circulation and bicycling.

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 intent clause of the RT-Zones, found in Zoning Ordinance §59-C-1.721, will be fulfilled. The first part of that clause notes that it is the intent of the RT-Zones “to provide the maximum amount of freedom possible in the design of townhouses and their grouping and layout within the areas classified in that zone...” That intent is carried out in this townhouse layout with a row design that is a bit longer than usually found in order to design a layout that will fit within the available space. The intent clause also seeks “to provide in such developments the amenities normally associated with less dense zoning categories...” which is accomplished here by access to parkland and to the CCT. The clause continues with the goal of providing “the greatest possible amount of freedom in types of ownership of townhouses and townhouse developments...” In this development, there will be both market rate units and MPDUs, thus fulfilling the statutory goal. Finally, the intent clause seeks “to prevent detrimental effects to the use or development of adjacent properties in the neighborhood and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the County as a whole.” As a whole, this development will not only prevent detrimental effects on adjacent properties, it will remedy the detriments of the current industrial use and will improve the health of the environment.

Under Zoning Code §59-C-1.722, the maximum number of townhouses in a group is eight (8); and three (3) continuous, attached townhouses are the maximum number permitted with the same front building line. It also provides that variations in the building line must be at least 2 feet. However, Zoning Ordinance §59-C-1.74(d)(2) provides that the row design requirements of §59-C-1.722 may be waived if necessary to accommodate increased density because of the inclusion of MPDUs. The Applicant is seeking approval of one townhouse row that contains (10) units. Within this row, six (6) units will be aligned and the four (4) end MPDUs will be recessed by five (5) feet.

Another deviation from development standards pertains to land classified in a one-family detached zone in the Zoning Ordinance §59-C-1.732(a), which requires a 30 foot setback. The applicant proposes a 20-foot setback from the neighboring parkland on the east, south and west, which is classified in the R-60 Zone. Zoning Ordinance §59-C-1.732(a), Note 1, permits a reduction of the setback if “...a more desirable form of development can be demonstrated by the applicant to the satisfaction of the planning board...” At the Planning Board Hearing for the property’s local map amendment (G-907) on July 14<sup>th</sup>, 2011, there was a unanimous vote for the allowance of an RT-15 zone. At the time, the technical Staff recommended approval of the reduced setback noting that the “reduction of the setback to 20 feet is recommended for optimum design since the reduced setback allows a site layout where the townhomes are open to the interior of the community and front to the proposed streets”. It was also indicated that this is a requirement that needs to be evaluated by the

Planning Board with the site plan. The reduction is also sensible because, although zoned one-family detached, the surrounding land is parkland and is undeveloped. Granting this waiver is supported by Staff.

As demonstrated in the Data Table below, the project meets all of the applicable requirements of the RT-15 Zone.

*Data Table for the RT-15 Zone, Optional Method of Development*

<b>Development Standard</b>	<b>Zoning Ordinance Permitted/ Required</b>	<b>Binding Elements per G-907</b>	<b>Proposed for Approval &amp; Binding on the Applicant</b>
<b>Gross Tract Area (GTA)</b> 59-C-1.731(a)	0.91827 acres 40,000 square feet	n/a	1.81 acres 78,935 square feet
<b>Density</b>			
<b>Max. Residential Density (du/acres)</b> 59-C-1.731(b)	15 <sup>(a)</sup>		
-Maximum Density Permitted at 12.5% MPDUs	15 du's/ac.		27 units
-Maximum Density Permitted at 15% MPDUs with 22% density bonus	18.3 du's/ac.		33 units
-Maximum Density Permitted at 13.7% MPDUs with 12% density bonus	16.8 du's/ac.	16.8 du's/ac.	16.8 du's/ac.
-Maximum Number of Units with 13.7% MPDUs	30 units	30 units	30 units
<b>MPDUs (%)</b>	13.7 5 units	13.7 5 units	13.7 5 units
<b>Min. Building Setbacks 59-C-1.732</b>			
(a) From any detached dwelling lot or land classified in a one-family, detached, residential zone.	30	20	20 <sup>(b)</sup>
(b) From any public street	20	n/a	n/a
(c) Front yard	n/a	n/a	
- Side (end unit)	8		8
- Rear	20		20
<b>Max. Building Height (feet)</b> 59-C-1.733			
- For a main building	35	35	35
- For an accessory building	25	n/a	n/a
<b>Min. Coverage and Green Area</b> 59-C-1.734			
Min. percentage of tract that must be devoted to green area (%)	30	38	38
<b>Row Design</b>			



<b>59-C-1.722</b>			
Max. Number of Units in a Row	8	10	10 <sup>(c)</sup>
<b>Parking Spaces (59-E)</b>			
Residential			
One-family attached			
- Market-rate (2 sp/unit)	50	50	50
- MPDUs (2 sp/unit)	10	10	10
- Visitor Parking	n/a	7	16
Total Parking Required	60 space		
Total Parking Provided		67 spaces	76 spaces

(a) The applicant is receiving a 22% density bonus for providing 16.67% MPDUs.

(b) Unless a more desirable form of development can be demonstrated by the applicant to the satisfaction of the planning board using the street, side and rear lot line setbacks as provided in this section.

(c) Consistent with the waiver provisions in Section 59-C-1.74(d)(2), the Board may waive the row requirements in order to accommodate the increased density. Staff supports the waiver for the increase in number of units in the row.

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

The townhomes are laid out in a traditional manner and are served by a private driveway which meets all county standards. Thirty-eight percent of the site will be green area and will include a landscaped picnic and seating area as you enter the site. A stamped asphalt trail connection to the CCT from the Parkway and site will also be provided for bicycles and pedestrians. The site will be served by two access points; non-commercial vehicles, bicycles and pedestrians will use the access point and bridge from Little Falls Parkway. The site distance for this access point is adequate, and it will serve the 30 townhomes. Trucks and commercial vehicles will access the site from Butler Road, an existing access point, which will be controlled to prevent cut-through traffic from River Road and the Parkway. Both access points will operate in a safe, adequate and efficient manner.

a) Locations of buildings and structures

The locations of the proposed buildings and structures are adequate, safe, and efficient. The layout of the proposed development differs little from the schematic layout shown to the Board on July 14<sup>th</sup>, 2011. The townhouse rows abut the perimeter of the property on the east, west, and southern sides where the back of each unit faces parkland. The fronts of the units face the private roadway with a decorative stamped path paralleling the roads and at the end of each driveway.

The plan proposes 30 townhomes including four (4) attached/townhouse rows. Each row contains a different number of individual units: 5, 7, 8, and 10. The architecture has a contemporary, urban flair with walls of glass, wood and stone, and front loading garages. Front facing balconies are provided for many of the units.

The streetscape will be relatively “urban” with pavers and lanterns along the interior streets. The chosen native plant material will provide seasonal interest in both color and texture complimenting the building facades as well as providing privacy screening and accenting various site amenities. A live privacy wall is proposed to help screen adjacent property and soften the view along the portion of the property which borders the commercial use to the north. Supplemental plant material is proposed around the perimeter of the property, enhancing existing woodland area and provided additional wildlife habitat.

b) Open Spaces

The open spaces provided are adequate, safe, and efficient. Once developed, approximately 38% of the site will be green area. The entry to the site from Little Falls Parkway contains a landscaped area with an outdoor eating area and benches. The outdoor eating area affronts the Willett Branch stream buffer which will be planted in a variety of native shrubs, understory, and canopy cover trees. A 5 foot wide sidewalk/trail connection will be located on the right side of the entrance driveway. This will provide a connection from the Little Falls Parkway to the Capital Crescent Trail and is contained within a public access easement.

Other open areas include a small planted garden-like triangular shaped seating area that connects to the trail and main road. Additional seating is offered at the base of the access to the CCT.



*Illustrative rendering of the open spaces and amenity areas proposed*

c) Landscaping and Lighting

The onsite landscaping has an emphasis on native species and is adequate, safe, and efficient. The landscape plan achieves several objectives. It provides an adequate buffer and screening from Little Falls Parkway, the species are similar to those found on the adjacent parkland providing an unbroken ecological network of host plants and habitats. Additionally, the encroachment into the parkland will be mitigated through new plantings of native species approved of by the Parks Department. The internal landscape along street A and B will be lined with understory trees (*Amelanchier Canadensis*) and smaller plant material, such as deciduous shrubs and groundcovers. A live privacy wall is proposed to help screen adjacent property and soften the view along the portion of the property which borders the commercial use to the north.

As proposed, the lighting consists of eight (8) mounted aluminum pole light fixtures uniformly 20 feet height. The first two pole lights will be placed on the property edge after crossing the stream. The lighting proposed will create enough visibility to provide safety but not so much as to cause glare on Little Falls Parkway. To retain the park-like setting no lights are proposed for the Parkway. As conditioned, the lighting recommended is adequate, safe and efficient.

d) Recreation Facilities

The recreation facilities are safe, adequate, and efficient. There are no onsite active recreation facilities. However, the property directly connects to the CCT in which the Applicant will be providing a stairway. Due to the severity of the grade from the CCT to the site, ADA access is not achievable. However, less than 1,000 feet away, at the River Road entrance to the CCT, ADA access is available.

Offsite recreation is locally available based on the nearby Westbrook Elementary School, the CCT, and Little Falls Community Swimming Pool. Facilities include 1 tot-lot, 1 play lot, 4 tennis courts, 1 regulation size soccer field, 1 regulation size baseball field, 1 swimming pool, and a bicycle/pedestrian trail network.

Demand		D1	D2	D3	D4	D5
Housing Type	Number of Units	Tots 0 to 4	Children 5 to 11	Teens 12 to 17	Adults 18 to 64	Seniors 65+
TH	30	5.0	6.5	2.4	38.6	2.2
		5.0	6.5	2.4	38.6	2.2

On-Site Supply		D1	D2	D3	D4	D5
Recreation Facility	Quantity Provided	Tots 0 to 4	Children 5 to 11	Teens 12 to 17	Adults 18 to 64	Seniors 65+
Bike System	1	0.30	0.60	0.40	5.80	0.30

Picnic/Sitting	3	3.00	3.00	4.50	15.00	6.00
Pedestrian System	1	0.50	1.30	0.50	17.40	1.00
	total:	3.80	4.90	5.40	38.20	7.30

Adequacy of Facilities		D1	D2	D3	D4	D5
a.	Gross Total Supply 35% of Total	3.80	4.90	5.40	38.20	7.30
b.	Supply Max Off-Site	1.75	2.28	0.84	13.51	0.77
c.	Supply	0	0	0	0	0
d.	Total Supply	5.55	7.18	6.24	38.20	8.07
e.	90% Demand	15.91	21.04	21.04	51.71	10.26
f.	Adequate?	yes	yes	yes	yes	yes

e) Pedestrian and Vehicular Circulation Systems

The pedestrian and vehicular circulation systems are safe, adequate, and efficient. As mentioned earlier, the subject property is adjacent to parkland on three sides, with Little Falls Parkway to the east and the Capital Crescent Trail to the west. The Maryland-National Capital Park and Planning Commission agreed to an easement over the parkland to the east of the site so that the proposed townhouse residents will be able to access Little Falls Parkway. As part of this development, the Applicant will construct a vehicular bridge through the park. It will be maintained by the Applicant or the successor Homeowners Association to ensure motorists, pedestrians and bicyclists can traverse the bridge safely from Little Falls Parkway to the townhouses and CCT.

Truck ingress to and egress from the site will be solely via a connection to Butler Road, with the connection restricting through traffic from Butler Road to Little Falls Parkway. Signage will be posted so as to prevent cut-through traffic by any vehicle use not associated with the development.

The proposed road infrastructure consists of two roads that “T” at the southern end of the property. The road meets all requirements of the Montgomery County Fire Marshal. Parking is discussed above on page **XXX** and meets all requirements of the County Code.

There are no formal sidewalks, however, above the road curb and at the end of each driveway there is a 4-foot brick and concrete walkway that adds charm and character symbolic of a town community. The public access path from Little Falls Parkway to the CCT is also differentiated from the road with a demarcated stamp pattern. The stamped surfaces will be maintained by the Homeowners Association.

To ensure the development does not create parking congestion on Little Falls Parkway, the Applicant will install “no parking” signs along the portion of Little Falls Parkway that confronts the site.

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

The proposed townhouse development at RT-15 is compatible with the surrounding area, which has a very diverse mix of uses including, with one-family residential uses to the east, and multi-family, retail, industrial and office uses to the north and west. The plan will provide a compatible transition between those uses. The townhouses are compatible with other one-family uses because they are allowed in all one-family zones with MPDU options and cluster method of development. And, there are other townhouses and multifamily developments to the west and northwest, and the one-family detached units to the east are buffered not only by parkland but by distance.

The Sector Plan designated this Property as appropriate for townhouse development, and the Hearing Examiner and District Council found this as an appropriate location for townhomes at the density prepared for this site plan. The proposed development is compatible with surrounding uses at the proposed scale, number of units, and with the proposed landscaping.

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.*

- a. Forest Conservation

This property is subject to Chapter 22A (Forest Conservation Law) of the Montgomery County Code and a Final Forest Conservation Plan (FFCP) has been reviewed and is recommend for approval as part of the Site Plan application. Per Section 22A-21 of the Montgomery County Forest Conservation Law, a variance was granted as part of the FFCP approval.

The proposed development generates a planting requirement of 0.27 acres, which will be met onsite.

- b. Stormwater Management

The Department of Permitting Services approved a Stormwater Management Concept Plan on February 3, 2012. The plan includes biofiltration stormwater management facility.

## **RECOMMENDATION AND CONDITIONS**

Staff recommends approval of the Preliminary Site Plan, 120120140, and the Site Plan 820120070, Hoyt Property, for 30 townhouses (including 5 MPDUs) on 1.81 acres of land. All site development elements shown on the site and landscape plans stamped "Received" by the M-NCPPC on May 15h, 2012 are required except as modified by the following conditions.

## **Conformance with Previous Approvals**

1. Schematic Development Plan  
The proposed development must comply with the binding elements and non-binding elements of the development plan G-907.
2. Preliminary Plan Conformance  
The proposed development must comply with the conditions of approval for Preliminary Plan No. 120120140, or as amended.

## **Environment**

3. Forest Conservation & Tree Save  
The proposed development must comply with the conditions of approval for the Final Forest Conservation Plan dated May 22, 2012. The Applicant must meet all conditions prior to the recording of a plat(s) or the issuance of sediment and erosions control permits by the Montgomery County Department of Permitting Services.
4. Noise Analysis
  - a. Prior to approval of the certified site plan, the Applicant must submit a revised noise analysis prepared by an engineer specializing in acoustics that addresses details and locations of noise mitigation techniques to appropriately attenuate noise levels for the affected dwelling units and areas of common outdoor activity.
  - b. Certification from an acoustical engineer that the building shell for residential dwelling units to be constructed within the projected 65 dBA Ldn noise contour is designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. The certification must be provided to M-NCPPC Area 1 Staff for concurrence prior to issuance of building permits.
  - c. The builder must provide a signed commitment to construct the impacted units in accord with the acoustical design specifications. Any changes to the building shell construction that may affect acoustical performance after issuance of building permit must be approved by an acoustical engineer and M-NCPPC Area 1 Staff prior to their implementation.
  - d. The builder must construct the impacted units in accord with the acoustical design specifications. Any changes to the building shell construction that may affect acoustical performance after issuance of building permit must be approved by an acoustical engineer and M-NCPPC Area 1 Staff prior to their implementation.
5. Stormwater Management  
The proposed development is subject to Stormwater Management Concept approval conditions dated February 3, 2012 unless amended and approved by the Montgomery County Department of Permitting Services.

## **Parks, Open Space, and Recreation**

### **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 24<sup>th</sup> building permit that Applicant's recorded Homeowners Association Documents incorporate by reference the Covenant.

### **7. Recreation Facilities**

- a) Meet the square footage requirements for all of the applicable proposed recreational elements and demonstrate that each element is in conformance with the approved M-NCPPC Recreation Guidelines.
- b) Provide the following recreation facilities: 1 picnic/sitting areas, 4 seating/bench areas, and access to a pedestrian and bicycle trail network.

## **Density & Housing**

### **8. Moderately Priced Dwelling Units (MPDUs)**

- a) The development must provide a maximum of 13.7 percent of the total number of units as MPDUs on-site, consistent with the requirements of Chapter 25A as referenced in the memorandum dated May 18<sup>th</sup>, 2012, from the Department of Housing and Community Affairs. The Applicant is receiving a 22 percent density bonus for providing more than 15 percent MPDUs on-site.
- b) The MPDU agreement to build shall be executed prior to the release of any building permits.
- c) All of the required MPDUs shall be provided on-site.
- d) As agreed by the Department of Housing and Community Affairs (Appendix B1), the Applicant will have the ability to move the MPDU currently proposed for Lot 7 to Lot 2. The new location will measurably improve the quality of this unit. The relocation of the MPDU will allow a full walk-out at the rear ground floor bedroom allowing for increased light, a view (as opposed to a view of a window well) and an increase in width of approximately six (6) inches.

## **Site Plan**

### **9. Parks**

The design and details regarding tree removal and planting on Parkland shall be finalized at the time of Park Construction Permit Review.

### **10. Lighting**

- a) The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for residential development.
- b) All on-site light fixtures must be full cut-off fixtures.
- c) Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
- d) Illumination levels shall not exceed 0.5 footcandles (fc) at any property line abutting residential properties.

- e) The height of the light poles above grade shall not exceed 20 feet including the mounting base.

11. Landscape Surety

Provide a performance bond in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a) The amount of the surety shall include plant material, on-site lighting, recreational facilities, and site furniture within the relevant phase of development. Surety to be posted prior to issuance of first building permit and shall be tied to the development program.
- b) Provide a cost estimate of the materials and facilities, which, upon staff approval, will establish the initial bond amount.
- c) Completion of plantings by phase to be followed by inspection and bond reduction. Inspection approval starts the 1 year maintenance period and bond release occurs at the expiration of the one year maintenance period.
- d) Provide a Site Plan Surety & Maintenance Agreement that outlines the responsibilities of the Applicant and incorporates the cost estimate. Agreement to be executed prior to issuance of the first building permit.

12. Development Program

Construct the proposed development in accordance with a development program that will be reviewed and approved prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a) Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- b) Private street lamps must be installed within six months after street construction is completed. Street tree planting may wait until the next growing season.
- c) On-site landscaping and lighting must be completed prior to the release of the 24<sup>th</sup> building permit.
- d) On-site amenities including, but not limited to, trail connections, benches, picnic tables and trash receptacles, must be installed prior to the release of the 24<sup>th</sup> building permit.
- e) Community-wide pedestrian pathways including the bike trail connections and stairs from Little Falls Parkway to the CCT trail and the landscaping associated with the stairs must be installed prior to the use and occupancy permit for lot 20.
- f) The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, landscaping on parkland, trip mitigation, and other features.

13. Certified Site Plan

Prior to approval of the Certified Site Plan the following revisions must be made and information provided subject to Staff review and approval:

- a) Include the final forest conservation approval, stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b) Add a note to the site plan stating that “M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading”.



- c) Modify data table to reflect development standards enumerated in the staff report.
- d) Ensure consistency off all details and layout between site plan and landscape plan.

14. Floodplain Map

Prior to the Planning Board signing the Record Plat, an approved CLOMR must be received from FEMA for the re-study of their existing floodplain limits associated with the existing trapezoidal channel adjacent to the subject property and Little Falls Parkway. The Record Plat and Sediment Control Plans must show the 100 year flood plain as established by this analysis, along with the associated 25 foot building restriction line (25 foot floodplain building restriction line [FPBRL]). Any land disturbance within this 25 foot FPBRL will require a Flood Plain District Permit.

**APPENDICES**

- A. Montgomery County Parks Conditions
- B. Reviewing Agency Approvals and correspondence
  - 1. Montgomery County Department of Housing and Community Affairs
  - 2. Tree Variance: County Arborist in the Montgomery County Department of Environmental Protection
  - 3. Transportation
  - 4. Montgomery County Fire Marshal Comments
  - 5. Traffic and Signage
  - 6. Montgomery County Department of Permitting Services\_ Stormwater Management
  - 7. Montgomery County Department of Permitting Services\_ Floodplain Comments
- C. Resolution 17-261(G-907)



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

**MEMORANDUM**

**May 23, 2012**

**TO:** Tina Schneider, Area 1, Planning Department  
Robert Kronenberg, Supervisor, Area 1, Planning Department

**FROM:** Doug Powell, Plan Review Coordinator, Park Planning and Stewardship Division,  
Department of Parks  
Erin Tush, Park Development Division, Department of Parks

**RE:** Site Plan #820120070, Hoyt Property

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Department of Parks staff has reviewed the above-referenced plan and requests the below referenced Conditions of Approval.. These requested Conditions are intended to 1) enhance the existing park setting by providing shared amenities with the proposed development, 2) require removal of existing encroachments and associated contamination while minimizing natural resource impacts, 3) help manage long term maintenance of shared amenities on parkland, 4) minimize disturbance on parkland, and 5) eliminate potential hazards created by the proposed development in close proximity with natural resources. Conditions of Approval requested are as follows:

1. The Applicant must acquire an access easement over Little Falls Stream Valley Park directly off Little Falls Parkway to provide access to the development site. The access driveway, to be located within the access easement area, to be approximately 100 feet in length and include a bridge over the existing concrete channel.
  - a. The access easement must be recorded in the land records prior to issuance of any Park Construction Permit for the proposed work on parkland.
  - b. The bridge must be designed in accordance with AASHTO LRFD Bridge Design Specifications (i.e. 75 year design life) and all applicable local and state design standards.
  - c. As part of the bridge construction, the existing concrete channel below and/or near the bridge must be replaced and/or rehabilitated to have a similar expected design life. The bridge and channel design must be reviewed and approved by the Department of Parks staff (Parks).
  - d. Applicant must have the completed bridge/concrete channel construction certified by a Maryland Professional Engineer and an Operation and Maintenance Manual developed to be provided to the party who will be responsible for future maintenance of the facilities.
  - e. The design of the access driveway and bridge must be in keeping with the park setting and the parkway experience and be approved by Department of Parks staff.

2. All encroachments onto parkland to be completely removed by Applicant and the parkland returned to a natural state, except as allowed otherwise by the Park Construction Permit. Areas which require concrete removal from parkland must be treated as per the "Guidelines for Converting Paved Areas into Pervious Greenspace" (A copy of which will be provided to the Applicant), to encourage infiltration
3. All hazardous remediation work on parkland must be approved by the Maryland Department of the Environment (MDE). and completed by Applicant prior to issuance of the first building permit for the proposed townhouses.
  - a. The Applicant must submit all documentation, including sampling results, risk assessments and work plans, related to contamination on parkland to Parks as part of the Park Construction Permit application.
  - b. Prior to issuance of the first building permit for the proposed townhouses:
    - 1) The hazardous remediation plan must be approved by MDE.
    - 2) The remediation work as required by the approved remediation plan must be completed by the Applicant.
  - c. Prior to issuance of the 15<sup>th</sup> occupancy permit of the proposed townhouses, the Applicant must provide Parks with documentation that MDE has accepted all hazardous remediation work (e.g., No Further Action letter) unless otherwise approved by Department of Parks staff.
4. The Applicant must provide Parks an access easement to the strip of parkland located between the east property line of the development and the existing concrete channel.
  - a. The access easement location shall be approved by the Department of Parks prior to the Certified Site Plan.
  - b. The access easement shall be shown on the Certified Site Plan and record plat of subdivision. This easement shall be recorded in the land records prior to recordation of the access easement over Little Falls Stream Valley Park.
5. Applicant must construct all retaining walls and fences, including footings, fully on the Hoyt Property unless permission is granted to locate them on parkland by the Park Construction Permit.
6. Applicant to construct all utilities fully on the Hoyt Property unless permission is granted for location on parkland by the Park Construction Permit.
7. The Applicant and any future assignees shall be responsible for all maintenance, repair, and replacement of the proposed site features on parkland as shown on the Certified Site Plan.
  - a. The site features include, but not limited to, the access road and bridge, concrete channel below and/or adjacent to the bridge, landscaping, sidewalk, steps, and trails.
  - b. Any work on parkland other than routine maintenance requires a Park Construction Permit.

8. Prior to Certified Site Plan, the Applicant shall provide Parks with a geotechnical study of the slope on the west side of the property. The existing retaining wall shall remain in order to preserve trees on the steeply sloped area unless a professional geotechnical engineer determines that it is not feasible.
9. All required work on parkland must be completed prior to issuance of the first occupancy permit for the proposed townhouses, unless otherwise approved by Department of Parks staff.
10. The design and details regarding tree removal and planting on parkland to be finalized at the time of Park Construction Permit Review. The parkland plantings shown on the approved Site Plan are conceptual and for illustrative purposes only, and may be modified by consent of both parties at time of Park Construction Permit.
11. The applicant shall obtain a Park Construction Permit(s) prior to any work on parkland.
  - a. At the time of Park Construction Permit review, the final design of all aspects of the project affecting parkland including, but not limited to, contaminant removal, encroachments, easements, grading, bridges, trails, limits of disturbance, tree removals, and plantings, must be approved by Department of Parks staff.
  - b. Additional improvements and/or modifications to the site plan may be required as the result of the permit review.
12. Prior to issuance of a Park Construction Permit, all conditions of the Agreement between M-NCPPC and Applicant (dated November 8, 2011) must be fulfilled, including payments and open space requirement.
13. Minor changes may be made to location and construction details of amenities and plantings to be located on parkland during the park permit process without the need to amend the Site Plan.

**Guidelines for Converting Paved Areas into Pervious Greenspace**  
**(To be provided to Applicant)**

These guidelines provide typical practices for the removal of pavements and deconsolidation of underlying soils to promote vegetative growth and infiltration of stormwater. Please note that these procedures may be varied to better match particular conditions at individual sites. For example, areas of soil deconsolidation may be reduced where tree roots extend under pavements in order to prevent impacting roots. Conversely, the area of soil deconsolidation may be expanded to include significantly compacted soils in areas adjacent to pavement. Where uncertainty exists about how to treat a particular condition, please consult with an appropriate professional with experience in this type of construction activity.

1. Prior to starting construction, contact Miss Utility to clear all existing utilities within work area. Please note that a private utility location firm may be required to locate private utilities not marked by Miss Utility. Coordinate any utility disconnections and/or abandonments with appropriate utility company.
2. If SPA imperviousness removal credits are being sought for the project, establish area of pavement to be removed using field measurements. Areas should be certified by a Land Surveyor or Professional Engineer registered in the State of Maryland and submitted to the Environmental Planning Division of M-NCPPC. Note that documentation of soil deconsolidation efforts (i.e. photographs, inspection reports, etc.) may be required for confirmation of completed work.
3. Prior to beginning, ensure all required permits have been obtained. If the disturbed area exceeds 5,000 square feet (SF) or earth movement exceeds 100 cubic yards (CY), a Sediment Control Permit will be required from the Montgomery County Department of Permitting Services (MCDPS). Additional approvals may be required from the Environmental Planning Division of M-NCPPC and/or the Maryland Department of the Environment (MDE) depending on the location of the project relative to streams, wetlands, and other natural resources. Please note, that even when the project does not require formal permitting, standard sediment control and tree protection practices should be used.
4. Conduct a pre-construction meeting with appropriate personnel from the contracting company, owner, and any agency having jurisdiction over the proposed construction activities. The limit of disturbance (LOD) and access routes should be identified, and a final set of plans should be available for review and discussion. The LOD should be field-adjusted to minimize impacts to adjacent natural resources.

5. Field-locate and install Tree Protection Measures and perimeter sediment controls around work area. Schedule work when favorable weather conditions are forecasted over the anticipated period of construction. In the event that poor weather conditions develop or if work is suspended for more than 2-3 days, the work area should be covered or otherwise stabilized with a temporary seed and straw mulching.
6. Remove existing pavements (and sub base), buildings, foundations, and other impervious materials in accordance with project intent and field direction by owner's representative and inspectors. Where deep foundations or footings exist, they should be removed to a minimum depth of 24 inches below proposed finished grade.
7. Rough grade site to proposed grades and smooth transitions into adjacent grades and facilities to remain. Remove all rocky material (stones greater than 2 inches in any direction) from soil within top 12-inches of finished grade.
8. Deconsolidate soils throughout areas of former imperviousness extending 2-feet beyond previous limits where feasible. Use equipment-mounted metal tines (or other approved soil ripping/tilling equipment) spaced at approximately 2 feet and extending a minimum of 12 inches below mounting element to break up upper 12 inches of soil layer. Soil should be ripped with a minimum of three passes of equipment in one direction and three additional passes in an approximately perpendicular direction to ensure soil is thoroughly mixed and friable. Additional passes and other measures may be required if soils fails to break apart. Remove any large chunks of soil/rock that cannot be broken down to pieces less than 2 inches in any direction.
9. Once soil is deconsolidated and approved by owner's representative and inspectors, apply 2 inches of certified compost (i.e. Leafgro, or equal) across entire disturbed area. Mechanically mix compost into top 4 inches of soil to ensure thorough distribution of organic matter. Blade off and/or rake finished materials to reestablish proposed grades taking precautions not to re-compact soils.
10. Once planting bed is prepared, apply approved native seed mix over disturbed area and install/tack straw mulching. Thoroughly water seeded area to establish good stand of vegetation. Note that if project area is on M-NCPPC property (or area to be dedicated to M-NCPPC), establishment of vegetation shall be in accordance with Planting Requirements for Land-Disturbing Activities and Related Mitigation on M-NCPPC Montgomery County Parkland and latest standards of M-NCPPC.

11. Once vegetation is established (and with approval of inspectors) remove sediment controls, tree protection fencing, and any miscellaneous debris throughout site.
12. If SPA imperviousness removal credits are being sought for project, confirm total area of imperviousness removed using field measurements. Areas should be certified by a Land Surveyor or Professional Engineer registered in the State of Maryland and submitted to the Environmental Planning Division of M-NCPPC. Please note that a field visit by M-NCPPC staff may be required to confirm finished condition of created greenspace.
13. Additional native plantings may be installed at direction of owner depending on ultimate desired conditions of greenspace.



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett  
County Executive

Richard Y. Nelson, Jr.  
Director

May 18, 2012

Ms. Tina Schneider  
Montgomery County Planning Department  
Area 1 Division  
8787 Georgia Avenue  
Silver Spring, MD 20910

RE: Preliminary Plan No. 120120149 and Site Plan No. 820120070  
Hoyt Property

Dear Ms. Schneider:

This is to advise you that the Department of Housing and Community Affairs (DHCA) has received and reviewed the letter of May 1, 2012 from the applicant of the above project. The letter satisfactorily addresses DHCA's comments on the project.

Sincerely,

Lisa S. Schwartz  
Senior Planning Specialist

cc: Aakash Thakkar, EYA  
Ian P. Duke, VIKA Maryland, LLC  
Christopher J. Anderson, Manager, Single Family Housing Programs, DHCA

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Division of Housing

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DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
County Executive

Robert G. Hoyt  
Director

May 23, 2012

Françoise Carrier, Chair  
Montgomery County Planning Board  
Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: Hoyt Property - Revised, DAIC 120120140, NRI/FSD application accepted on 3/10/2011

Dear Ms. Carrier:

The County Attorney's Office has advised that Montgomery County Code Section 22A-12(b)(3) applies to any application required under Chapter 22A submitted after October 1, 2009. Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Applying the above conditions to the plan submitted by the applicant, I make the following findings as the result of my review:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this condition.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, is not interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the variance can be granted under this condition, as long as appropriate mitigation is provided for the resources disturbed.

3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this condition.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this condition.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

In the event that revisions to the LOD are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller  
County Arborist

cc: Robert Hoyt, Director  
Walter Wilson, Associate County Attorney  
Mark Pfefferle, Chief

**MEMORANDUM**

May 14, 2012

TO: Tina Schneider

FROM: Cherian Eapen

SUBJECT: Preliminary Plan No. 120120140  
Site Plan No. 820120070  
(Rezoning Application No. G-907)  
Hoyt Property (Parcel P513)  
5400 Butler Road  
EYA Development, LLC (“Applicant”)  
Southwest quadrant of Little Falls Parkway and River Road; east side of Capital  
Crescent Trail  
Westbard Sector Plan and Bethesda/Chevy Chase Master Plan  
Bethesda/Chevy Chase Policy Area

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This memorandum presents the Adequate Public Facilities (APF) review for the subject preliminary and site applications for a 1.8 acre property called “Hoyt Property” located along the west side of Little Falls Parkway between River Road (MD 190) to the north and Massachusetts Avenue (MD 396) to the south. The property is currently developed with the Bethesda Cinder Block Manufacturing Company (BETCO) concrete block plant. Access to the plant is currently via Butler Road, which extends south from River Road to the EuroMotorcars site (Parcel P432) just north of the site and via a perpetual easement into the property through the EuroMotorcars site.

The property was recently rezoned at the request of the Applicant from the I-1 zone to the RT-15 zone to permit construction of up to 30 single-family attached (“townhouse”) dwelling units on the site. Access to the development is proposed via a connection to Little Falls Parkway (via an easement over M-NCPPC owned property) and via a controlled connection to Butler Road (through private property – Parcel P432) to the northeast corner of the site. Additionally, a pedestrian/trail connection is provided through the property between Little Falls Parkway and the Capital Crescent Trail (to the west of the property).

**RECOMMENDATIONS**

The following transportation planning related conditions are recommended to be part of the Planning Board’s approval of these applications, and for the Preliminary Plan application to satisfy the APF requirements.

1. The Applicant must limit future development on the site to 30 single-family attached (“townhouse”) dwelling units.
2. The Applicant, prior to the release of any building permit for the proposed development, must pay \$70,200.00 to Montgomery County Department of Transportation (MCDOT) to satisfy the Policy Area Mobility Review (PAMR) requirement of the APF test (to mitigate six weekday peak-hour trips at \$11,700.00 per peak-hour trip).
3. The Applicant must obtain and record an access easement agreement (“Agreement”) with the property owner for Parcel P432, prior to the release of any building permit for the development, to provide a 20-foot wide access/driveway easement area between the development and Butler Road for the exclusive use of commercial and emergency vehicles serving the development and the residents of the development. The Agreement must ensure that the access easement area between the development and Butler Road will be kept free and clear, and will not be blocked by tractor-trailers or other commercial vehicles servicing the car dealerships and other businesses along Butler Road.
4. The Applicant must provide an effective access control to and from the development through design features at the Butler Road connection to ensure that the connection will only serve its intended purpose (i.e., exclusive in/out access for commercial vehicles serving the development and the residents of the development).
5. The Applicant must provide a pedestrian pathway between Little Falls Parkway and Capital Crescent Trail through the development as shown on the plan.

## **DISCUSSION**

### Recommended Area Roadways and Pedestrian/Bikeway Facilities

The September 1982 Approved and Adopted *Westbard Sector Plan* recommends the following nearby transportation facilities:

1. Butler Road, between River Road to the north and its southern terminus at Parcel P432 (the EuroMotorcars site), as an unclassified roadway with a minimum right-of-way width of 60 feet. It is noted that the *Westbard Sector Plan* also expresses a desire for an unclassified road connection between Butler Road and the B&O Railroad (now Capital Crescent Trail) with a minimum right-of-way width of 60 feet.
2. River Road, between Little Falls Parkway to the east and Brookside Drive/Ridgefield Road to the west, as a six-lane divided major highway (M-2) with a minimum right-of-way width of 128 feet. A dual bikeway (DB-2; an on-road signed-shared bikeway and a shared use path along the north side of River Road) is also recommended for River Road

in the March 2005 Approved and Adopted *Countywide Bikeways Functional Master Plan*.

3. Massachusetts Avenue, between Western Avenue to the east and Sangamore Road to the west, as a four-lane major highway (M-1) with a minimum right-of-way width of 120 feet. An on-road signed-shared bikeway (SR-50) is also recommended for Massachusetts Avenue in the March 2005 Approved and Adopted *Countywide Bikeways Functional Master Plan*.
4. Capital Crescent Trail, a park trail that follows an abandoned railroad right-of-way between Georgetown, in the District of Columbia, and Silver Spring. The trail is adjacent to the proposed development.
5. Little Falls Parkway, a two-lane parkway with bikeable shoulders/bike lanes (EB-42) on M-NCPPC land. Commercial vehicles are prohibited on Little Falls Parkway.
6. Proposed Pedestrian Pathway, a local shared-use path connection between Little Falls Parkway and Crown Street/Westbard Avenue, intersecting the Capital Crescent Trail.

#### Sector Plan Recommendations on Site Access

Under the “Need to Improve Buffers” sub-section of the “Comprehensive Planning Approach”/“Design Concept” section (page 28), the Sector Plan states the following:

“The BETCO concrete block plant should be screened from view. Should the plant go out of operation, redevelopment should be limited to light industrial. Redevelopment in townhouses should be allowed, provided a separate entrance can be achieved on Little Falls Parkway.” (See Attachment 1)

Additionally, under the “Analysis Area K” sub-section of the “Land Use”/“Subarea Alternatives and Proposals” section (page 52), the Sector Plan states the following:

“Under other circumstances, the abutting park suggests townhouse residential as an appropriate use. However, the fact that the only access is through an industrial street clearly rules out that possibility unless access to Little Falls Parkway were to be authorized.

Recommendations – ...If access can be gained off Little Falls Parkway, an appropriate zoning classification would be RT-10.” (See Attachment 2)

Similarly, under the “Goals and Guidelines/Residential” sub-section (page 21), the Sector Plan states the following:

“Additional multi-family residential development within the Sector Plan boundary is acceptable wherever little or no conflict with commercial and industrial uses would be expected.” (See Attachment 3)

Finally, the Sector Plan includes a “Design Concept” illustration shown on page 24 (See Attachment 4), which reflects the Sector Plan narrative by showing a terminus for Butler Road generally in the vicinity of its current terminus, a stream protection and buffer for the area between the subject property and the EuroMotorcars property, and access to the subject site exclusively from Little Falls Parkway.

The Sector Plan narrative and illustration thus provide a basis to interpret that the intent of the Plan for the proposed development scenario was to restrict its access exclusively to Little Falls Parkway. However, given the prohibition that is in place for commercial vehicles on Little Falls Parkway, the Applicant is proposing a secondary access to Butler Road from the development through the EuroMotorcars property. The Applicant is proffering to restrict this access for the exclusive use of commercial and emergency vehicles serving the development and residents of the development. The above secondary, restricted access to Butler Road is acceptable to staff.

#### Sector Plan Recommendation on Local Pathway

The “Transportation” section of the Sector Plan includes a “Recommended Roadway Improvements” illustration (page 76; See Attachment 5) that shows a “Proposed Pedestrian Pathway” between Little Falls Parkway and Crown Street/Westbard Avenue. The alignment for the pathway is shown on parkland immediately to the south of the development. However, with the proposed access to the development from Little Falls Parkway over Little Falls Branch, staff recommends that the section of the pathway between Capital Crescent Trail and Little Falls Parkway be provided through the development by the Applicant.

#### Adequate Public Facilities Review

A traffic statement and Policy Area Mobility Review (dated March 9, 2011; Revised May 11, 2012) prepared by the traffic consultant for the Applicant and was submitted for the subject application per the *LATR/PAMR Guidelines* since the proposed development was estimated to generate less than **30** 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.

- **Trip Generation**

The peak-hour trip generation estimate for the proposed Hoyt Property development was based on trip generation rates included in the *LATR/PAMR Guidelines*. A site trip generation summary is provided in Table 1, which shows that the development would generate 14 peak-hour trips during weekday morning peak period and 25 peak-hour trips during the weekday evening peak period.

**TABLE 1  
SUMMARY OF SITE TRIP GENERATION  
PROPOSED HOYT PROPERTY DEVELOPMENT**

Trip Generation	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
30 single-family attached (townhouse) units	2	12	14	17	8	25

Source: Wells and Associates, Inc. Hoyt Property, Traffic Statement and Policy Area Mobility Review; March 9, 2011; Revised May 11, 2012.

- **Local Area Transportation Review**

Since the proposed development will not generate 30 or more peak-hour trips during the weekday morning and evening peak periods, a traffic study is not required for the subject application. With documentation of site trip generation as above, the application satisfies the LATR requirements of the APF test.

- **Policy Area Mobility Review**

To satisfy the PAMR requirements of the APF test, a development located within the Bethesda/Chevy Chase Policy Area is required to mitigate 25% of “new” peak-hour trips generated by the development.

The site trip generation summary presented in Table 1 shows that the development will generate 25 peak-hour trips during the weekday evening peak period (highest of the peak-hours). With credit for two (2) peak-hour trips at the existing block manufacturing plant and the PAMR requirement to mitigate 25% of the “new” trips, the development is therefore required to mitigate six (6) peak-hour trips (i.e.,  $(25 - 2) \times 0.25 = 6$ ).

The Applicant is proposing to satisfy the PAMR mitigation requirements of the APF test by paying \$70,200.00 to MCDOT (to mitigate six weekday peak-hour trips at \$11,700.00 per peak-hour trip).

CE/-

Attachments

mmo to TS re Hoyt Property.doc

## Attachment I

improvements and, therefore, they should not be placed in any zoning category that would result in their becoming nonconforming. Both objectives can be achieved under the recommendation here for a Light Industrial Zone (I-1); all present uses would be conforming and conversion to office use would be permitted.

### 9. Redevelopment Potential

The former Marriott property functioned reasonably well with respect to the surrounding areas. The uses and intensities permitted by the present I-2 Zone, however, are inappropriate. New development must be compatible with surrounding uses and existing traffic constraints.

The Plan recommends that the north end of the property be converted to multi-family use with varying building heights. The south end of the tract should serve as a transition with the adjoining light-industrial uses along Dorsey Lane. That transition could be either moderate office, laboratory or research use. The recommended approach is to authorize a Planned Development (PD) Zone which basically allows for residential use, but which also permits commercial and industrial uses whenever specified in a master plan. This would require approval of a development plan at the time of rezoning. The PD Zone is a floating zone which must be applied for by the owner.

The Plan recommends the PD-28 Zone, recognizing that the density finally approved in a development plan might be less than 28 units to the acre. In addition to a maximum of 353 residential units, the plan would allow office and/or laboratory/research facilities at the south end of the site. Convenience retail to meet the needs of the residents and employees would also be permitted. The purpose is to keep the impact of new development to approximately the same level as the former Marriott operations, with allowance for the

offsetting effects of public transit and intersection improvements.

Granting of the PD Zone should impose operating conditions on the nonresidential uses. Staggered work hours, reserved parking for carpoolers and vanpoolers, and employer-subsized transit fares are among the conditions that might be imposed with the granting of the zone. Because the PD zone is a floating zone that must be applied for by the owner, it cannot be imposed as part of a comprehensive rezoning of the area. Therefore, Commercial Office building zone (C-O) is recommended to be applied to the south part of the tract. If the C-O zoned area is developed separately without applying for the PD zone, the optional method of development of the C-O zone is not permitted by this Sector Plan because it would generate more vehicular trips than are acceptable.

The site has entrances on both Little Falls Parkway and River Road (via Landy Lane). Thus, through traffic has the opportunity to drive through the property and avoid the intersection at Little Falls Parkway and River Road. In spite of adding capacity to this intersection, through traffic can be disruptive to the site occupants. The occupants should retain the choice of entry in order to minimize length of travel and double-hauling through the intersection. Therefore, it is suggested that through travel by outsiders be inhibited by the interior design and operation of the property, while allowing for passage of emergency and service vehicles.

### 10. Need to Improve Buffers

The perimeter transition can be strengthened at several identified vulnerable points. The BETCO concrete block plant should be screened from view. Should the plant go out of operation, redevelopment should be limited to light industrial. Redevelopment in townhouses should be allowed, provided a separate entrance can be achieved on Little Falls Parkway.



## Attachment 2

that the plant does encroach several feet into the park property, and action is being taken to correct this.

The options available are limited. The current use is allowed only in the I-2 Zone. The depth of the abutting parkland is thin, making the block plant quite visible; its appearance is somewhat out of place with nearby residences. Rubble from the plant appears to have been discarded down the stream banks. Noise from the plant has been reported by nearby residents, although investigation by County authorities has revealed no violation of the Noise Ordinance. Moreover, retention of the I-2 zoning classification leaves open the possibility of the property being converted to more objectionable uses allowed in that zone. A change to the I-1 Zone would permit the plant to continue in use but be converted only to office, warehouse, light manufacturing, or similar use. Under other circumstances, the abutting park suggests townhouse residential as an appropriate use. However, the fact that the only access is through an industrial street clearly rules out that possibility unless access to Little Falls Parkway were to be authorized.

Recommendations — The I-2 Zone should be changed to I-1 so that any redevelopment would be to some less intensive and more desirable use. Meanwhile, in order to reduce the effect of noise and to improve the appearance from nearby areas and to improve acoustical fencing should be installed in the area abutting the parkland.

If access can be gained off Little Falls Parkway, an appropriate zoning classification would be RT-10.

### ANALYSIS AREA L

This 2.31-acre site is generally level, with a gentle slope down from River Road towards Willett Branch to the south. The frontage along River Road,

to a depth of about 100 feet, is zoned C-2, General Commercial. Behind the C-2, the rear portion of the Security Storage site is zoned I-2, Heavy Industrial. This analysis area includes the Security Storage buildings near the B&O Railroad tracks, plus several highway oriented businesses such as an auto service station, a 7-11 store, and a dry cleaning establishment. All of these buildings appear to be in very good condition.

Parking is in short supply; the commercial uses between Security Storage and Butler Road (i.e., the 7-11 and the cleaners) require 36 spaces, but only 20 are provided. All uses have direct access to River Road. The auto service station also has access to Butler Road. The commercial uses along River Road appear to be thriving and therefore likely to remain for some time. The Security Storage building appears to be adaptable to other storage or commercial uses. The 7-11, auto service station and cleaners are small lots fronting on River Road and are expected to continue in local service and retail uses.

The Security Storage facility, currently operating as "warehousing and storage services" is allowed in the I-1, 2, and 3 Zones, as well as the C-2 Zone, so that the existing use may continue indefinitely both in the C-2 and I-2 Zones which divide the property. Alternative uses for this property are limited by the lack of additional space for customer parking which would be required for any more intensive uses. This property has several unusual development constraints. First, it is triangular in shape which results in a fair amount of unusable area. Second, one side of the triangle abuts the B&O right-of-way and one of the two buildings is very close to the trackbed. However, the site does have paved access across the tracks via a private road although it does not appear to be in regular use. Finally, the existing buildings cover 60 percent of the lot leaving only a very small area available for parking.

Recommendation — It is recommended that all of

Attachment 3

the properties along River Road. The dilemma is that none of the existing zones is sufficiently limited in scale so as to prevent development, which cannot be accommodated by facilities proposed for the area. Because of this, the County Council has adopted a new Limited Commercial (C-4) Zone.

12. Neighborhood Protection

Parks and institutional uses are important stabilizing features protecting against expansion of the commercial/industrial activities toward surrounding high-quality neighborhoods. Neighborhood preservation must be a foremost consideration in the Sector Plan.

Apart from ensuring that the uses at the perimeter of the Westbard sector are compatible, there are other concerns about adverse influences in the adjoining areas. One is a matter of cut-through traffic. Another is the possibility of overflow parking by employees in the area. A third concern is that of noise emanating from the commercial/industrial area. Finally, the lack of pedestrian walkways to and from shopping areas, office buildings and apartments poses both hazards and inconveniences.

13. Inappropriate Zones

Over the years, since the early development of Westbard, the provisions in the Zoning Ordinance have changed significantly. Thus, many buildings that did conform with the Zoning Ordinance at the time they were built are no longer in conformance. Examples are the Kenwood Condominiums and the Westwood Towers and Building, plus the various light industry uses located in the Heavy Industrial (I-2) Zone.

14. Environmental Protection

An Environmental Analysis, contained as Appendix

A, details the nature of pollution in Willett Branch and Little Falls Branch. Failing sanitary sewer lines in upstream urban areas account for some of the problem. Stormwater runoff carries many urban wastes into the streams: petroleum products, fertilizers, pesticides, road salt, animal wastes, litter, and other matter. Excavation and grading for new development could result in sediment runoff from erosive soils, unless controlled.

Pollution of Willett Branch is apparent from the presence of white foam, discoloration of the water and the bad odor emanating from the stream. Little Falls Branch, which drains from Friendship Heights, has been classified as a "dead stream." Other intrusions include construction materials and cinder block rubble along the stream banks.

Several other kinds of pollution afflict the Westbard area. Noise emanating from heavily traveled arterials and local industries is a source of annoyance and discomfort to area residents and businessmen. Noise levels are often sufficiently high that they interfere with normal work and conversation. Ambient air quality in Westbard, as with other lower County areas, includes significant amounts of hydrocarbons and photo-chemical oxidants, much of which is produced elsewhere in the Metropolitan area. Heavy traffic volumes may produce excessive carbon monoxide concentrations at the major intersections. Some of the industrial uses in Westbard may also contribute to local air pollution.

GOALS AND GUIDELINES

Residential - The character of the surrounding single-family residential development should be preserved and enhanced by appropriate buffers and traffic controls and/or installations. Multi-family residential structures in Westbard should be protected and the quality of life for residents improved. Additional multi-family residential development within the Sector Plan boundary is accept-



able wherever little or no conflict with commercial and industrial uses would be expected.

Commercial - In view of the fact that all areas surrounding Westbard are committed to stable single-family or townhouse uses, parkland, schools, or churches, there should be no further expansion of the activity center nor any merging with the Friendship Heights, Bradley Boulevard, or Bethesda commercial districts. Local commercial services in Westbard should be preserved and improved to increase their attractiveness as well as their convenience and accessibility to the public.

Industrial - The proximity of existing industrial uses to residences implies that there will continue to be some unavoidable conflict between them. The importance of these goods and services to the proper functioning and welfare of the community must be weighed against the appropriateness of their location in a residential area.

Industrial uses should be buffered to prevent or limit adverse impacts on surrounding uses. Where new development is proposed, maximum use should be made of the natural environment, such as terrain and flora, to prevent the intrusion of industrial uses and to avoid mutual conflicts.

Existing industrial uses, which are suppliers of necessary goods and services to this lower County area, should be protected to minimize costs of distribution and to avoid lengthy travel from elsewhere. For example, a fuel oil distributor serves numerous customers in the Bethesda-Chevy Chase area and consumes fewer vehicle-miles of travel because of the location of the oil storage tanks in the Westbard area. Auto repair, furniture storage, service and distribution facilities are examples of other industrial uses able to serve this

lower County area because of their convenient locations in Westbard. However, areas devoted to heavy-industrial purposes should be stabilized or decreased. To the maximum extent possible, their adverse impacts on surrounding neighborhoods should be diminished. Should redevelopment occur, conversion to more compatible uses should be considered.














Much of the present heavy-industrial zoned area should be reclassified to the light-industrial category (I-1). However, because the Westbard area is not suitable for large employment centers, the redevelopment of both I-1 and C-O zoned properties should be limited to the standard method of development which allows building heights no greater than three stories.

Transportation - The walkway, roadway, and traffic management systems should provide for improved access to commercial and industrial parcels with a minimum of conflict and delay. Substandard existing roadways should be improved wherever possible to smooth the flow of two-way traffic. New roadways may be needed to enhance access to certain properties.

The B&O Railroad right-of-way should be considered as a means of access from River Road to interior properties as an alternative to existing substandard roadways. If the use of the B&O Railroad right-of-way proves to be impractical or insufficient, then some or all of the right-of-way for a roadway should be obtained from adjoining landowners.

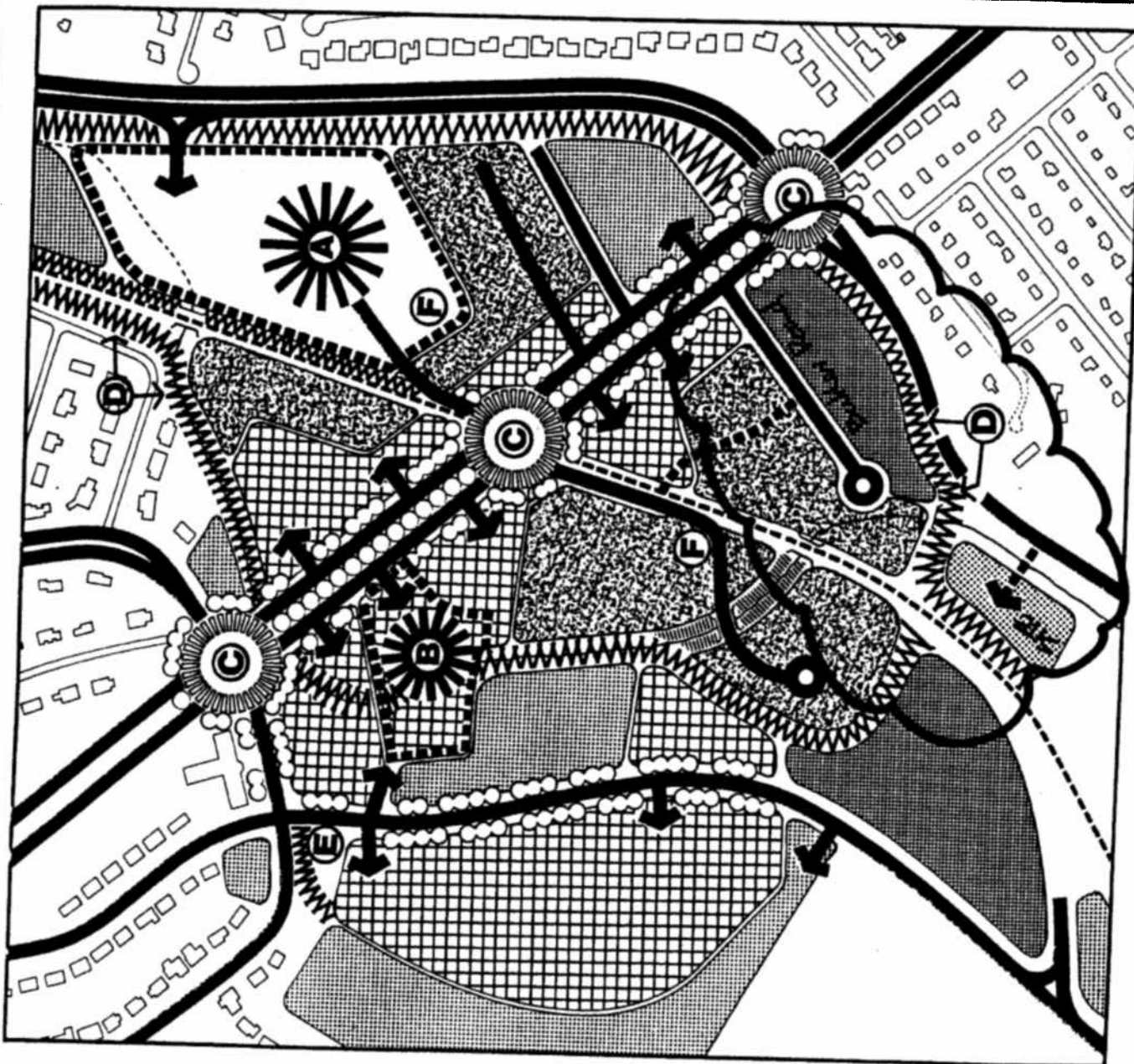
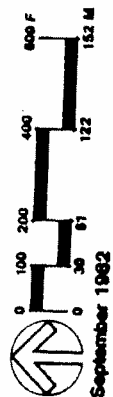
The Man-Made Environment - The appearance of the area as a whole and the inter-relationship among buildings should be improved. Suitable buffers between incompatible uses should be planned. Pedestrian amenities should be planned, particularly separation between pedestrians and vehicles, as well as mini-parks, plazas, protected

# DESIGN CONCEPT

-  Multi-Family Residential
-  Commercial / Retail
-  Office
-  Industrial
-  Mixed Use Planned Development
-  Major Commercial/Retail Development
-  Urban Boulevard and Gateways Concept
-  Street Trees and Street Amenities
-  Stream Protection and Buffering Program
-  WWWW Landscaping and Screening
-  Stream Protection and/or Embankment
-  Urban Park
-  Improved Roadways

Attachment 4

Figure 6  
**WESTBARD SECTOR PLAN**  
 Montgomery County, Maryland

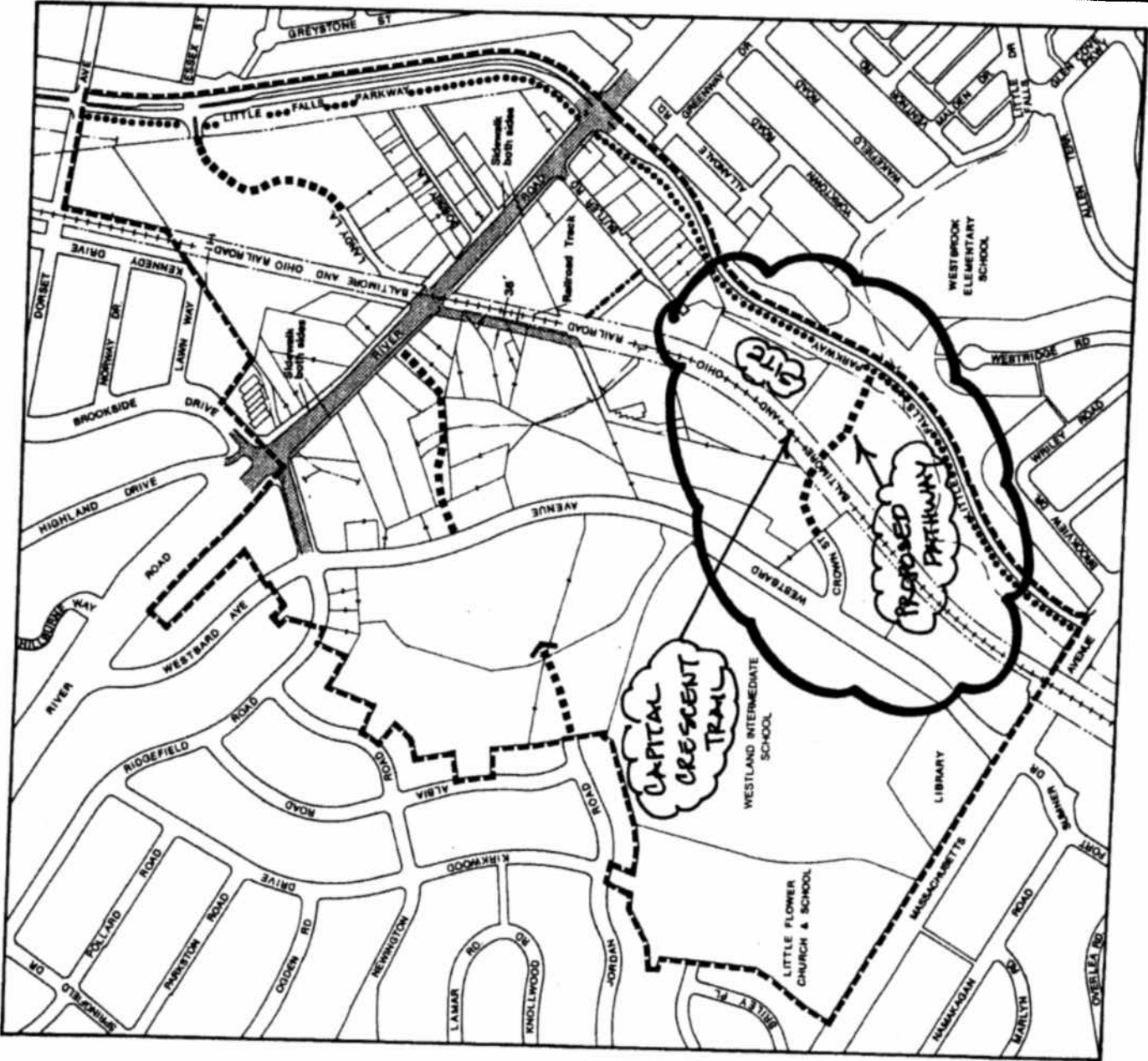
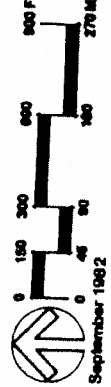


# RECOMMENDED ROADWAY IMPROVEMENTS

- Sector Plan Boundary
- - - - - Desired Roadway Connection
- ===== Proposed Pedestrian Pathway
- ▨ Proposed Paving Width
- ..... Existing Bikeway

Attachment 5

Figure 16  
**WESTBARD SECTOR PLAN**  
 Montgomery County, Maryland





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## FIRE MARSHAL COMMENTS

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**DATE:** 23-May-12  
**TO:** Ghassan Kouri - khouri@vika.com  
VIKA, Inc  
**FROM:** Marie LaBaw  
**RE:** Hoyt Property (5400 Butler Road)  
G-907 120120140 820120070

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### PLAN APPROVED

1. Review based only upon information contained on the plan submitted **23-May-12**. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.



**MONTGOMERY COUNTY FIRE AND RESCUE SERVICE**

Isiah Leggett  
County Executive

Richard Bowers  
Fire Chief

Date: 4/2/2012

**Fire Lane Establishment Order**

Pursuant to Section 22-33, Montgomery County Code, 1971, as amended, you are hereby notified that a Fire Lane has been established as described in this order. You are hereby ordered to post fire lane signs and paint curbs/pavement as identified below. When signs or paint work has been completed, this order will authorize the enforcement of this Fire Lane by appropriate police or fire officials. Compliance with this order must be achieved within 30 days of receipt when any of the following conditions are met:

- One or more structures addressed from the subject road are occupied;
- The road or accessway is available for use and at least one building permit for an address on the subject road has been issued; or
- The road or accessway is necessary fire department access.

LOCATION:    5400 Butler Road, Bethesda, MD 20816

Delineate all areas where indicated by signs and/or paint.

**SIGNS** -- (See attached diagram for location of sign placement)



(Red letters on white background)

Signs must be posted so that it is not possible to park a vehicle without being in sight of a sign. Signs may be no further apart than 100 feet.

**PAINT** -- (See attached diagram when painting is required)

Paint must be traffic yellow with lines of Sufficient width to be readily identifiable/readable by motor vehicle operators.

\_\_\_\_\_  
Signature of Order Writer/I.D. #

Cc: Fire Code Enforcement Section  
Attachment: Fire Lane Diagram

FIRE LANE ESTABLISHMENT FORM

BUILDING OR SUBDIVISION NAME: Hoyt Property

FIRE LANE LOCATION/ADDRESS: 5400 Butler Road, Bethesda, MD 20816

See attached drawing for designated fire lanes:

I have received the drawing and instructions for installing the designated fire lanes on property not owned by state or local government.

NAME AND TITLE OF PROPERTY REPRESENTATIVE

NAME: Stephanie Marcus TITLE: Director of Development Engineering

SIGNATURE: *Stephanie Marcus*

PHONE: (301) 634-8600 DATE: 5/23/2012

ADDRESS (where processed order will be mailed):

4800 Hampden Lane, Suite 300, Bethesda, MD 20814

-----  
The designated fire lanes are the minimum necessary for fire/rescue access and are in accordance with Section 22-33 of the Fire Safety Code.

NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

STA.#: \_\_\_\_\_ I.D.#: \_\_\_\_\_ DATE: \_\_\_\_\_

Comments: \_\_\_\_\_  
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Fire Lane Installed Per Order

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_



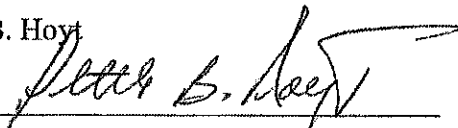
**AUTHORIZATION**

Peter B. Hoyt  
5291 Wellington Branch Drive  
Gainesville, Virginia 20155

As owner of the property identified as 5400 Butler Road, Bethesda, Maryland, and described as Parcel P513 on Tax Map HM13 and recorded in Liber 9420 at Folio 237 (Tax ID 00421993) (the "property"), Peter B Hoyt hereby authorizes EYA Development LLC and its authorized representatives to submit applications for Rezoning, Natural Resource Inventory and Forest Stand Delineation as well as a Preliminary Plan of Subdivision and a Site Plan (the "applications") for a redevelopment project, which will include a new street and separate parcels/lots for a new subdivision and development. EYA Development LLC by and through its authorized representatives and/or any of its affiliated entities, is therefore authorized to execute all necessary application forms, documents, obtain plans and drawings, and act on behalf of Peter B. Hoyt in furtherance of the herein described Applications.

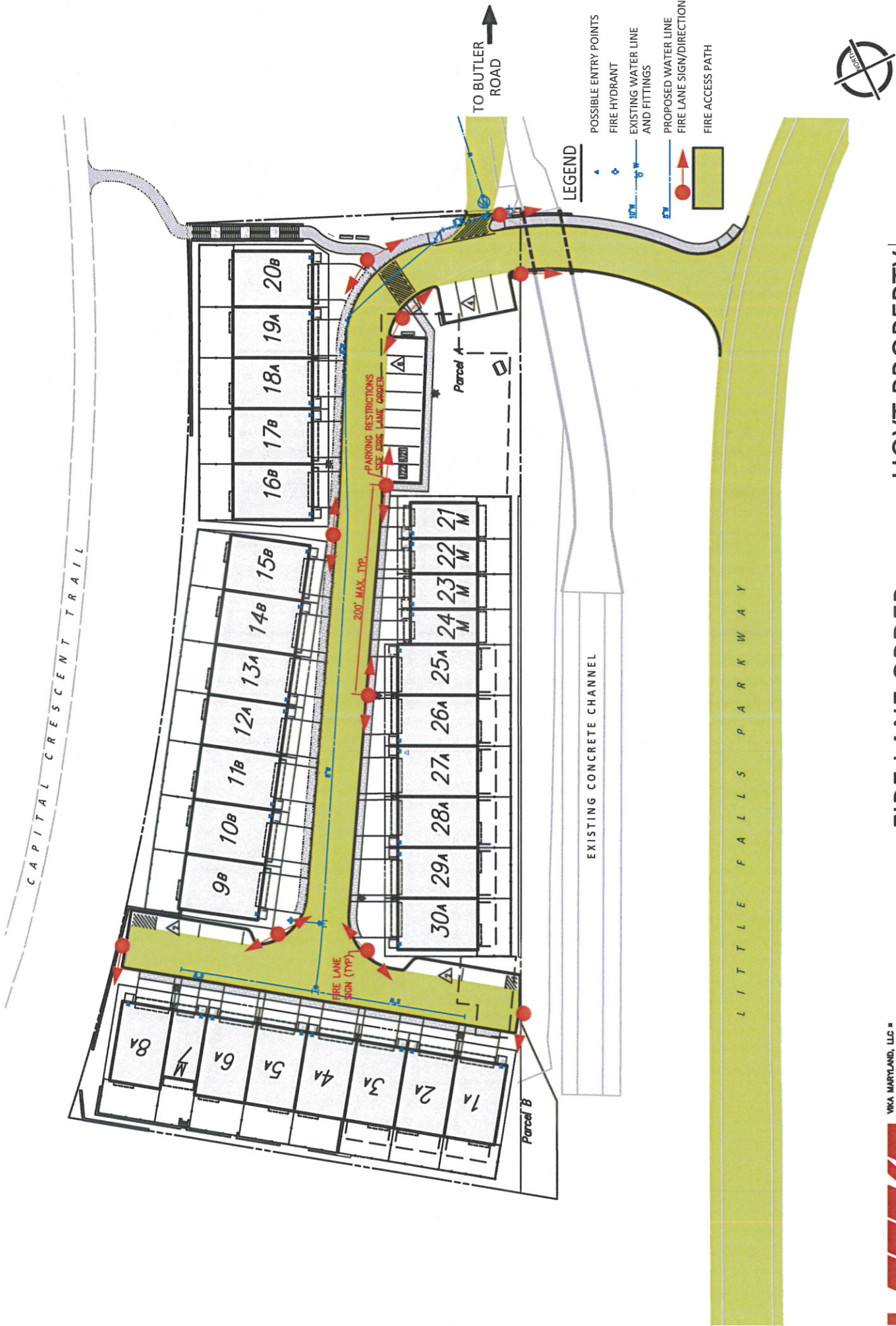
Peter B. Hoyt

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



Date: \_\_\_\_\_

March 7, 2011



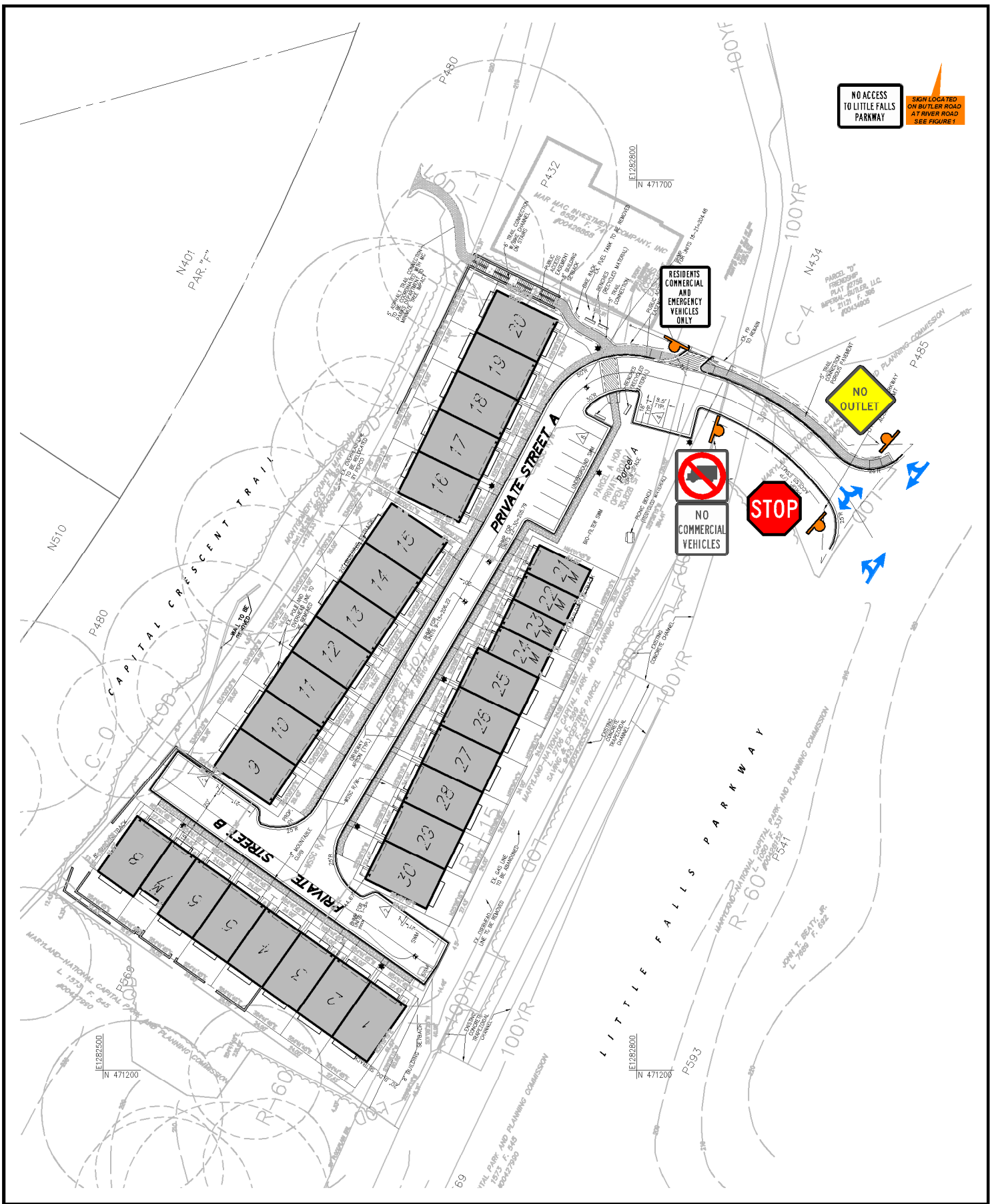
**HOYT PROPERTY**  
**FIRE LANE ORDER**  
**SIGNAGE PLAN**

VKA MARYLAND, LLC ■  
 ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■  
 SURVEYORS ■ SUSTAINABLE DESIGN ■  
 20251 CENTURY BOULEVARD SUITE 400 ■  
 GERMANTOWN, MD 20874 ■  
 (301)916-4100 ■ FAX (301)916-2282 ■  
 WWW.VKA.COM ■



MAY, 2012

BETHESDA, MD



**Figure 2**  
**Sign Plan**

**Hoyt Property**  
**Montgomery County, Maryland**





Isiah Leggett  
County Executive

DEPARTMENT OF PERMITTING SERVICES  
ZONING

Diane R. Schwartz Jones  
Director

February 27, 2012

Project Name: Hoyt Property  
Site Plan # 820120070                      Preliminary Plan #: 120120140  
Applicant: EYA Development, LLC & Peter B. Hoyt  
Engineer: VIKA Maryland, LLC  
Zone: RT-15.0  
Number of Lots (Acres): 30 Lots (1.81 Acres)  
Zoning Reviewer: Mark Beall  
MNCPPC Team # Area 1

The DPS Site Plan Enforcement Inspector is responsible for ensuring that the terms and conditions of the Certified Site Plan Agreement are met. They sign off on Use and Occupancy Certificates and have the authority to trigger the release of performance bonds.

Mandatory addition to all site plans to be placed in the General Notes block or Development Program Notes:

Pre-construction meeting to be held with  
DPS Site Plan Enforcement Inspector. Call  
240-777-6321 to schedule.

Development Standards on Submitted Plan(s):

Standard	Required	Proposed
Front:	20'	20'
Rear:	20'	20'
Sides:	8'	8'
Height:	35'	35'
Building Coverage:	N/A	N/A
FAR	N/A	N/A

- Plan(s) meets zoning requirements.
- Plan(s) meets zoning requirements, but see comments below.
- Plan(s) do not meet zoning requirements. See comments below.

Comments:

Provide sections and details for onsite paving, sidewalks, concrete trail, asphalt trail and bridge.

*Provide accessibility parking for general parking areas  
per county code. MAB 2/27/12*

**\*Note-**When applying for a building permit please identify both the BRL approved on the certified site plan and the dimensions from the structure to the property lines on all four sides.

---

Mark Beall: (240) 777-6298 or Laura Bradshaw: (240)777-6296  
255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850-4166.



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

Diane R. Schwartz Jones  
Director

February 3, 2012

Ghassan Khouri, P.E.  
Vika Maryland, LLC  
20251 Century Boulevard, Suite 400  
Germantown, MD 20874

Re: Stormwater Management **CONCEPT** Request  
for Hoyt Property  
Preliminary Plan #: 120120140  
SM File #: 241329  
Tract Size/Zone: 1.81 Ac/RT-15  
Total Concept Area: 1.81  
Parcel(s): P-513  
Watershed: Cabin John Creek

Dear Mr. Khouri:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via ESD to the MEP with the use of a micro-bioretenention and rooftop disconnect. This is supplemented with two volume based StormFilters.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. This site is considered as redevelopment.
6. Provide easements and covenants for the micro-bioretenention and the StormFilters.
7. Provide pretreatment for the StormFilters.
8. For the parking area that is within the 100 year flood plain, provide signs stating that this area is prone to flooding. Submit wording of signs to MCDPS for approval prior to having them made.
9. **Prior to taking the site plan to the Planning Board you must have an approved flood plain study. Once the study is done submit to us for a reconfirmation or a revision.**

255 Rockville Pike, 2nd Floor • Rockville, Maryland 20850 • 240-777-6300 • 240-777-6256 TTY  
www.montgomerycountymd.gov

montgomerycountymd.gov/311



240-773-3556 TTY

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is not required.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact David Kuykendall at 240-777-6332.

Sincerely,



Richard R. Brush, Manager  
Water Resources Section  
Division of Land Development Services

RRB: da CN241329 Hoyt Property.DWK

cc: C. Conlon  
SM File # 241329

ESD Acres:	0.51
STRUCTURAL Acres:	1.3
WAIVED Acres:	0.0



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

Diane R. Schwartz Jones  
Director

April 16, 2012

Ghassan S. Khouri, P.E.  
Vika, Inc.  
20251 Century Boulevard  
Germantown, MD 20874

Re: Floodplain Study for Hoyt Property 130  
Townhouses, Parcel P-513, 5400 Butler Rd  
Floodplain Number: 242400  
SM No: 241329& MNCPPC: 120120140  
Watershed: Little Falls Branch

Dear Mr. Ghassan:

The Department of Permitting Services (DPS) has reviewed the 100-year floodplain study, received March 15<sup>th</sup>, 2012 and the additional information received April 13<sup>th</sup>, 2012 for the above referenced project and found it is acceptable. The study is conditionally approved. An approved "CLOMR" must be received from FEMA for the Re-study of their existing floodplain limits associated with the existing trapezoidal Channel adjacent to Little Falls Parkway. The 100-year floodplain delineation established by the analysis and its associated 25-ft. building restriction line (25Ft. FPBRL) must be shown on the sediment control plan and the record plat  
Any disturbance within 25 feet of the 100-year floodplain limits will require a Floodplain District Permit (FPDP).

Please provide this office with a copy of the HEC-RAS study data on a CD. If you need additional information, feel free to contact Granville Campbell of this office at (240)-777-6341.

Sincerely,

Richard R. Brush, Manager  
Water Resources Section  
Division of Land Development Services

GLC: Fp242400.HoytPropt.P513doc.

CC: ✓ Mark Pfefferle, MNCPPC  
Granville Campbell, DPS  
FP Study: 242400  
SM: 241329, Dave Kuykendall

255 Rockville Pike, 2nd Floor • Rockville, Maryland 20850 • 240-777-6300 • 240-777-6256 TTY  
www.montgomerycountymd.gov

montgomerycountymd.gov/311



240-773-3556 TTY



Resolution No.: 17-261  
Introduced: September 27, 2011  
Adopted: September 27, 2011

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
IN MONTGOMERY COUNTY**

---

By: District Council

---

**SUBJECT:** APPLICATION NO. G-907 FOR AMENDMENT TO THE ZONING  
ORDINANCE MAP, Robert R. Harris, Esquire and Cindy Bar, Esquire,  
Attorneys for Applicant, EYA Development, LLC, OPINION AND  
RESOLUTION ON APPLICATION Tax Account No. 07-00421993

**OPINION**

Local Map Amendment (LMA) Application No. G-907 was filed on April 6, 2011, and it requests reclassification of 1.8121 acres (78,935 square feet) of land located at 5400 Butler Road, Bethesda, Maryland, from the existing I-1 Zone to the RT-15 Zone. The property, which consists of Parcel 513 on Tax Map HM 13, is situated between Little Falls Parkway and the Capital Crescent Trail, southwest of River Road. The land is owned by Peter B. Hoyt (tax account number 07-00421993), who contracted to sell the land to Applicant. Exhibit 4.

The application was filed under the Optional Method authorized by Zoning Ordinance §59-H-2.5, which permits binding limitations with respect to land use, density and development standards or staging. Applicant proposes to build a development that consists of thirty new townhomes, including twenty-five market-rate units and five moderately priced dwelling units (MPDUs). The proposal is set forth in a revised Schematic Development Plan (SDP), Exhibit 69, which contains an illustrative diagram and a specification of thirteen binding elements, as well as other information regarding the development.

Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) reviewed the plans, and in a report dated July 1, 2011, recommended approval (Exhibit 30). The Montgomery County Planning Board considered the application on July 14, 2011, and unanimously voted to recommend approval, as set forth in a memorandum dated July 20, 2011 (Exhibit 38). The Planning Board agreed with its Technical Staff that the application satisfied all of the criteria for reclassification to the RT-15 Zone. In doing so, the Planning Board also supported the binding elements that addressed concerns raised by members of the community. The Board noted that parking sufficiency would be addressed at site plan review.

A public hearing was duly noticed and convened on July 25, 2011, at which time the Applicant presented testimony from five witnesses in support of the application. Applicant also introduced a copy of its Easement Agreement with the Maryland-National Capital Park and Planning Commission (Exhibit 43(a)), allowing it access to Little Falls Parkway across parkland, and specified additional binding elements for its schematic development plan, negotiated with the community, bringing the total of proposed binding elements to thirteen.

Jim Humphrey testified on behalf of the Montgomery County Civic Federation (MCCF), which opposed the rezoning because it feels that the applicable Sector Plan calls for retention of industrial uses in the County, and that the proposed project would not meet all R-T Zone standards. The only other opposition came from Robert Dyer, a citizen who lives about a half a mile away from the site, outside the defined surrounding area. He opposed the proposal because of the easement over parkland and because he feels that the proposed development will be incompatible with nearby industrial and commercial sites.

The proposed development was supported by the testimony of Dan Dozier, on behalf of the Little Falls Watershed Alliance (LFWA), because eliminating the current industrial use will greatly improve water quality and reduce noise in the area. The proposed rezoning was conditionally supported by testimony from two witnesses on behalf of the Citizens Coordinating Committee on Friendship Heights (CCCFH). CCCFH had been opposed to the granting of an easement across public land to provide access to the proposed development, but that having been agreed to by the M-NCPPC, the group now supports the proposed rezoning if issues relating to the quantity of parking can be resolved.<sup>1</sup>

Jenny Sue Dunner testified on behalf of the Coalition for the Capital Crescent Trail (CCCT). Although her organization takes no position on rezoning applications, she noted that the proposal includes a connection with the Capital Crescent Trail which will result in fewer cars on the roads.

After the hearing was completed, the record was held open for filing, by the Applicant, of the executed covenants and the revised plans, including the agreed-to additional binding elements, and for responses thereto by Technical Staff and interested parties. The Applicant timely filed the proposed covenants and the revised plans on August 1, 2011 (Exhibits 60 - 62), and submitted them for review by Technical Staff. They were thereafter revised, following comments from the community (Exhibit 63) and Technical Staff (Exhibits 68(a) and (c)). The final SDP (Exhibit 69) was filed on August 11, 2011. The executed covenants (dated August 3, 2011) were filed on August 9, 2011. Exhibit 66(a). The record closed, as scheduled, on August 11, 2011.

The Hearing Examiner's Report and Recommendation was filed on September 8, 2011, and it is incorporated herein by reference. The Hearing Examiner recommended approval on

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<sup>1</sup> Two witnesses testified for CCCFH, Ann McDonald, an officer of the organization and Peter Salinger, a member. Their testimony differed as to the impact of the parking issues. Ms. McDonald stated that even if the parking issue could not be resolved at this stage, CCCFH would support the rezoning (Tr. 150-152), while Mr. Salinger, supported by CCCFH's attorney, testified that CCCFH's support was premised upon EYA resolving the parking concerns. Tr. 291-293.

grounds that Applicant's proposal would satisfy the requirements of the RT-15 Zone and its purpose clause; that the planned development will be compatible with the surrounding area; and that rezoning will be in the public interest. While the rezoning will result in the loss of an industrial use in the County, the benefits of the rezoning to nearby parkland and to water quality far outweigh the loss.

After a careful review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner.

### **The Property, Surrounding Area and Zoning History**

The subject property is located about 1200 feet south of River Road, just outside the Westbaird commercial area and in proximity to the Friendship Heights Central Business District and residential areas. The site is bordered on the north by Euro Motorcars dealership and repair shop, and on the west, south and east by parkland (with the Capital Crescent Trail just to the west and Little Falls Parkway 90 feet to the east).

The 1.81-acre site is generally rectangular in shape and has an approximately 50 percent increase in slope from east to west, with the sharp grade differential of around 20 feet occurring largely at the western property line where the site adjoins the Capital Crescent Trail (*i.e.*, the trail is elevated above the site). The subject property is currently zoned I-1 and is developed with the BETCO plant, which distributes cinder blocks. BETCO has been at this location for a number of years, but has recently expressed an intention to relocate. The existing plant consists of multiple buildings and is largely comprised of impervious surfaces. The impervious surfaces encroach into the adjacent parkland in many areas. Exhibit 30, pp. 3-4.

Currently, the only vehicular access to the site is from a private extension of Butler Road, to the north. Tr. 218. The site abuts parkland, and M-NCPPC agreed to an easement over that parkland so that the proposed townhouse residents will be able to access Little Falls Parkway.<sup>2</sup> Exhibits 42-44. A portion of the site is in a stream valley buffer, but there is no forest on site, nor any specimen trees. The site is currently almost entirely impervious, and its soil contains some contaminants, which lead to it being described as a "brownfield site."<sup>3</sup>

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. In general, the definition of the surrounding area takes into account those

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<sup>2</sup> The process for obtaining the Easement Agreement was rather involved. First, it had to be conceptually approved by the Montgomery County Planning Board, which occurred after a public hearing on January 20, 2011 (Exhibit 43). Then the full M-NCPPC had to approve the easement, which occurred on February 16, 2011 (Exhibit 42). On June 16, 2011, after a public hearing, the Planning Board approved the draft Easement Agreement (Exhibit 43). Next, the federal National Capital Planning Commission had to give its approval, which occurred on July 7, 2011 (Exhibit 44). Finally, an Easement Agreement must be executed. Although the final version of the Easement Agreement has been filed (Exhibit 43(a)), it cannot be executed unless and until the rezoning is approved because it requires Applicant to make a substantial payment to M-NCPPC upon execution. Tr. 154-155.

<sup>3</sup> Public Law 107-118, the "Small Business Liability Relief and Brownfields Revitalization Act," signed into law January 11, 2002, defines a "brownfield site" as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."

areas that would be most directly affected by the project. Technical Staff proposed to define the surrounding area as bordered by River Road to the north, the residential homes on the east side of Little Falls Parkway to the east, parkland down to Massachusetts Avenue on the south, and Westbard Avenue to the west. Exhibit 30, p. 5. Applicant's land planner proposed to define the surrounding area with slightly different boundaries, but he indicated that these differences were not significant and would not affect the compatibility analysis. Tr. 236. The Hearing Examiner accepted Technical Staff's surrounding area definition, as does the District Council.

Technical Staff described the surrounding area as follows (Exhibit 30, p. 5):

The land use and zoning pattern of the surrounding area is diverse. The Westbard commercial area is to the west of the site. Here, land uses are mixed, with higher density residential buildings and commercial shopping venues in place under C-0 zoning. Many industrial uses under the I-1 Zone line Butler Road to the north of the site. Parkland immediately surrounds the remaining three sides of the site, all within the R-60 Zone. An existing townhouse community, zoned R-T 12.5, is located further south of the site. One-family residential homes are further east, also in the R-60 Zone.

It is quite clear from both Technical Staff's description of the area and that of Applicant's land planner that the surrounding area is composed of a mixture of residential (multi-family, townhouse and single-family-detached), parkland, commercial and industrial uses.

The zoning history of the subject site was provided by Technical Staff (Exhibit 67). In 1958, when the County was comprehensively rezoned, the subject property was placed in the I-2 Zone. On October 19, 1982, following the recommendations of the 1982 Westbard Sector Plan, the subject property was rezoned from I-2 to I-1 through the G-368 sectional map amendment. The subject property is currently zoned I-1.

### **Proposed Development and Binding Elements**

The Applicant proposes to remove the existing industrial use (BETCO cinder block plant) and construct 30, three-story townhouses, consisting of twenty-five market-rate units and five moderately priced dwelling units (MPDUs). Applicant's vision for the project was discussed by its president, Bob Youngentob, who testified that EYA considers itself a smart growth developer which tries to place its developments in areas that benefit from existing infrastructure, where people have amenities that they can walk to, and therefore can place less reliance on their cars. Tr. 72.

Applicant's proposal calls for the primary access to the proposed townhouses to be off of Little Falls Parkway, and because Little Falls has a prohibition against commercial vehicles, there would be a secondary access off of Butler Road for commercial vehicles, trash pickup, delivery services, and the like. Tr. 76-78. The proposed location is close to the retail available in the Westbard area and even closer to the Capital Crescent Trail, which residents will be able to access by bicycle and foot via a public access easement to be constructed by the Applicant.

Each of the 25 market-rate townhomes will have a two-car garage, and the five MPDUs will each have a one-car garage. Two of the MPDUs will have an additional dedicated parking space on site, and at least eight additional surface parking spaces will be located on the property.

Pursuant to Code § 59-H-2.52, the Applicant in this case has chosen to follow the "optional method" of application. The optional method requires submission of a schematic development plan (SDP) that specifies which elements of the plan are illustrative and which are binding, *i.e.*, elements to which the Applicant consents to be legally bound. Those elements designated by the Applicant as binding on the SDP must be set forth in a Declaration of Covenants to be filed in the county land records if the rezoning is approved. The Applicant's final SDP (Exhibit 69), which was revised after the hearing and approved by Technical Staff (Exhibits 68(a) and (c)), sets forth the thirteen binding elements and one non-binding element, for the development as follows:

### **BINDING ELEMENTS**

1. Density will be limited to no more than 30 townhouses, of which no more than 5 will be MPDU's.
2. Green space will be a minimum of 30% of the gross tract area.
3. Building height will be limited to 35 feet.
4. The impervious area of the site will be reduced significantly from the current condition with the final reduction determined at Site Plan.
5. Market rate units will provide garage parking spaces for at least 2 cars, moderately priced dwelling units will provide garage parking spaces for at least 1 car, and at least 2 of the MPDU units will also have a dedicated second parking space. A minimum of eight (8) additional non-driveway parking spaces will be provided on the site.
6. Subject to approval of the Maryland National Capital Park and Planning Commission ("M-NCPPC"), Applicant will install "no parking" signs along that portion of Little Falls Parkway that confronts the site. Applicant also will include in its HOA documents a confirmation that parking is prohibited on and along Little Falls Parkway.
7. Prior to Site Plan approval for the project, Applicant shall execute, and thereafter comply with all terms and conditions of the easement agreement with M-NCPPC, (the "Easement Agreement"), set forth as Exhibit 43A in the record of Case No. G-907, approved by vote of the M-NCPPC on June 16, 2011.
8. Access to the site will be provided via an easement and bridge connection to Little Falls Parkway pursuant to the Easement Agreement with M-NCPPC (the "Easement"), limited to passenger vehicles, bicycles and pedestrians traveling to and from the townhouse dwelling units, and for pedestrians and bicycles traveling to or from the

Capital Crescent Trail. Vehicular use of the Easement is not permitted by trucks or vehicles prohibited from using Little Falls Parkway by Commission Rules or Regulations. The Easement will not be open to vehicular use until one or more townhouse units on the site are available for sale.

9. Truck ingress to and egress from the site will be solely via a connection to Butler Road, with such connection having a traffic control mechanism(s) restricting through traffic from Butler Road to Little Falls Parkway and Little Falls Parkway to Butler Road, so as to prevent cut-through traffic by any vehicle use not associated with the development.

10. Development of the site will include a public access easement, to be constructed by the Applicant and maintained by the Applicant or the successor Homeowners Association for the site, to enable pedestrians and bicyclists to traverse the site for access from Little Falls Parkway to and from the Capital Crescent Trail ("CCT"). Such easement will be a minimum of 5 feet in width through the development site. Development will include, subject to M-NCPPC approval, construction of a connection to the CCT designed to accommodate bicycles and pedestrians in a manner similar to the pedestrian/bicycle connection between the CCT and Bradley Boulevard in Bethesda.

11. Development of the site will include, at the Applicant's cost, removal of the paving and debris materials from the existing industrial use on the site along Little Falls Branch, on the land of M-NCPPC, that is currently paved or otherwise encroached upon, and the replanting of this area with trees/shrubs, which will assist in screening the site from Little Falls Parkway, as approved by M-NCPPC.

12. The Applicant's consideration for the Easement to Little Falls Parkway will be governed by the Easement Agreement between the Applicant and M-NCPPC to implement certain public amenity projects to enhance the surrounding community and parkland which may include but are not limited to, stream restoration, non-native species management, trail renovations/maintenance and/or traffic calming measures as prescribed in the Easement Agreement between the Applicant and M-NCPPC.

13. Consistent with the Easement Agreement with M-NCPPC, in addition to the CCT public access easement, the development also will include a green landscape easement, granted to M-NCPPC, as an aesthetic green space that can be viewed by users of the park and trail. Such easement areas shall be at least equal in gross area to the gross area of the Easement granted by M-NCPPC for access to Little Falls Parkway. To the extent feasible and practical, at the sole discretion of the Applicant, the easement shall be concentrated in the area along the southern property line, adjacent to Little Falls Parkway.

## NON-BINDING ELEMENT

Applicant will cooperate with the Capital Crescent Trail Coalition and other civic organizations to urge the appropriate governmental agencies to use the money required to be paid by Applicant pursuant to PAMR and some portion of funds Applicant is paying as consideration for the Easement Agreement for constructing improvements to the Capital Crescent Trail in the vicinity of River Road to facilitate and promote bicycling.

Applicant has also filed an executed copy of the Declaration of Covenants in the record of this case as Exhibit 66(a), and it contains the specified binding elements, as required. The legal effect of the covenants is to obligate any future owner of the property to comply with the binding elements specified on the SDP. Thus, the optional method allows an applicant to specify elements of its proposal that the community, reviewing agencies and the District Council can rely on as legally binding commitments. Illustrative elements of the SDP may be changed during site plan review, but the binding elements cannot be changed without a separate application to the District Council for a schematic development plan amendment.

The graphic portion (*i.e.*, site layout) of the revised SDP (Exhibit 69), is illustrative (except as specified in the binding elements). The plan shows 30 townhouses (five of which are MPDUs), arranged along the southern, western and eastern sides of the site, with a central driveway (an upside down "T"), giving access to all of the units and connecting to Little Falls Parkway on the east. Trucks will not be permitted to use the Little Falls Parkway access, but the SDP shows access to Butler Road on the north for trucks and delivery vehicles. In addition to the 13 binding elements and one non-binding element listed above, the SDP also contains General Notes and a Development Program Table.

As mentioned earlier, the subject site is adjacent to parkland on three sides, with Little Falls Parkway to the east and the Capital Crescent Trail to the west. Prior to the hearing, M-NCPPC agreed to an easement over the parkland to the east of the site so that the proposed townhouse residents will be able to access Little Falls Parkway. Exhibits 42-44. Development of the site will also include a public access easement, to be constructed by the Applicant and maintained by the Applicant or the successor Homeowners Association for the site, to enable pedestrians and bicyclists to traverse the site for access from Little Falls Parkway to and from the Capital Crescent Trail. *See* Binding Element 10.

Binding Element 7 requires Applicant to execute the Little Falls Parkway Easement Agreement (Exhibit 43(a)), prior to site plan approval and to thereafter carry out its terms. Those terms include various "public amenity projects," such as a stream restoration plan, a non-native invasive species management program and a trail renovation project. Binding Element 8 limits the use of that access to passenger vehicles, bicycles and pedestrians traveling to and from the townhouse dwelling units, and to pedestrians and bicycles traveling to or from the Capital Crescent Trail. Truck ingress to and egress from the site will be solely via a connection to Butler Road, pursuant to Binding Element 9, with such connection having traffic control mechanisms restricting through traffic between Butler Road and Little Falls Parkway, so as to prevent cut-through traffic by any vehicle use not associated with the development.

Binding Element 5 specifies that each market rate unit will provide garage parking spaces for at least 2 cars, and each MPDU will provide garage parking spaces for at least 1 car. Moreover, at least 2 of the MPDUs will also have a dedicated second parking space, and a minimum of eight (8) additional non-driveway parking spaces will be provided on the site, as shown on the SDP. Thus, assuming a 30 unit development with five MPDUs, the total parking for the site will consist of at least 65 parking spaces (25 X 2 = 50 Market rate garage spaces + 5 MPDU garage spaces + 2 MPDU dedicated spaces + 8 guest spaces). This figure exceeds the number of spaces required for the site by Zoning Ordinance §59-E-3.7, which calls for two spaces per unit (*i.e.*, a total of 60 spaces). The SDP parking table refers to 63 spaces being provided, rather than 65, because Technical Staff has not yet approved the location of the two additional dedicated spaces for the MPDU units.

Nevertheless, the Citizens Coordinating Committee on Friendship Heights (CCCFH) expressed concern that the eight guest spaces proposed by Applicant would not be sufficient. Since there are rarely any parking spaces available on nearby Butler Road, CCCFH fears visitors would end up parking on adjacent parkland. Tr. 133-153; 285-299.

Applicant addressed this concern in two ways. It agreed to a binding element (#6), which specifies that, subject to approval of the Maryland National Capital Park and Planning Commission, Applicant will install "no parking" signs along the portion of Little Falls Parkway that confronts the site. Applicant also will include in its HOA documents a confirmation that parking is prohibited on and along Little Falls Parkway.

In addition, Applicant observed the following, in General Note 15 on the SDP:

15. IN ADDITION TO THE PARKING SPACES PROVIDED FOR IN BINDING ELEMENT #5, NUMEROUS ADDITIONAL PARKING SPACES WILL BE AVAILABLE IN THE MARKET RATE TOWNHOUSE DRIVEWAYS. WHILE THE ACTUAL NUMBER WILL BE ESTABLISHED AT SITE PLAN, THIS ILLUSTRATIVE LAYOUT PROVIDES FOR 10 STANDARD SPACES (8.5'x18') AND 39 COMPACT SPACES (7.5'x16.5'), FOR A TOTAL OF 49 ADDITIONAL GUEST PARKING SPACES.

Although these additional spaces are not part of the binding elements, the fact that the planned driveways may well provide many additional parking spaces should make it much more likely that CCCFH's fears about overflow parking on the site will not become a reality.<sup>4</sup> As noted by the Planning Board in its letter of July 20, 2011 (Exhibit 38), the parking sufficiency issues will be addressed at site plan review. Given that Applicant's plan surpasses the minimum parking required by the Zoning Ordinance, and in fact the available driveway spaces may result in a total far exceeding that minimum, the District Council agrees with the Planning Board and the Hearing Examiner that the details of the parking provided should be left to site plan review.

Applicant's transportation planner testified that sight distances at the possible locations for the proposed access to Little Falls Parkway were adequate, and that the proposed access

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<sup>4</sup> Applicant produced a Parking Exhibit (Exhibit 60(e)) which indicates the possible locations of the additional driveway parking spaces. Applicant also suggested that Butler Road might provide additional spaces (Tr. 172-173), but as testified to by Ann McDonald of CCCFH (Tr. 148-149), parking on Butler Road is very scarce and cannot be relied upon to satisfy the parking needs of the proposed development.



points to the site would be safe, adequate and efficient. Tr. 315. He further testified that the internal circulation would be safe and adequate for vehicles and pedestrians, and would be sufficient for access by fire trucks. Tr. 315-316. There is no contradictory expert evidence on the point, and the District Council therefore finds that the record supports the finding that the planned access locations and circulation are not unsafe.

### **Standard for Review**

A floating zone, such as the RT-15 Zone, is a flexible device. Individual property owners may seek to have property reclassified to a floating zone by demonstrating to the Council that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with the surrounding development, as required by the case law, *Aubinoe v. Lewis*, 250 Md. 645, 244 A.2d 879 (1967). The Council must also find that the rezoning will be in the public interest as part of the coordinated and systematic development of the regional district, as required by the *Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110*.

### **Requirements and Purpose of the Zone**

Under the “purpose clause” set forth in Zoning Code §59-C-1.721, the R-T Zone may be applied if a proposal meets any one of three alternative criteria: (1) it is in an area designated for R-T Zone densities (implying a master plan designation); (2) it is in an area that is appropriate for residential development at densities that are allowed in the R-T Zones; or (3) it is in an area where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.

The Westbard Sector Plan, at p. 52, recommended that the site be reclassified from I-2 to I-1 to reduce the industrial impact on the parkland and the neighbors, but it also specified that the site would be appropriate for townhouse development in the RT-10 Zone, if access to Little Falls Parkway could be achieved. On the other hand, it did not specifically designate the subject site for the RT-15 Zone, and thus the Purpose Clause arguably cannot be satisfied under the designation criterion.<sup>5</sup> However, there are three alternative methods of satisfying the Purpose Clause, and an Applicant is required to satisfy only one of them. Accordingly, the Purpose Clause may also be satisfied by development in areas “*appropriate for residential development at densities allowed in the R-T Zones*” or in areas “*where there is a need for buffer or*

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<sup>5</sup> Applicant argues that its proposal does satisfy the “designated” prong of the statutory test because the Sector Plan recommends a townhouse development, and the RT-15 Zone did not exist in 1982 when the Sector Plan was adopted. Tr. 246-248. Technical Staff agreed with Applicant for the same reasons. Exhibit 30, pp. 1, 12 and 14. While this interpretation is arguable because the language of the statute could be read as applying the term “designated” to any “*residential development at densities allowed in the R-T Zones*,” not just to the specific density mentioned in the Sector Plan, the District Council agrees with the Hearing Examiner that a better interpretation of the term “designated” is that it is referring to the particular RT-Zone density recommended, while the term “appropriate” is referring to any of the densities allowed in the RT Zones. Under Applicant’s interpretation, a Master Plan recommending RT-6 could be considered as designating an RT-15 Zone, and that is a wide disparity in potential densities and impacts on the neighbors. As discussed in the above text, this difference in interpretation of an ambiguous statute does not affect the outcome of the case because the statutory test may be satisfied by meeting any one of the three alternative criteria.

*transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses."*

The evidence in this case supports Applicant's contention that the subject site satisfies both the "appropriateness" and the "transitional" criteria. In this regard, Applicant's land use planner, William Landfair, testified that the development is appropriate at this location for a number of reasons. First of all, the Sector Plan indicated that the site would be appropriate for townhouses. Although the Sector Plan recommended the RT-10 density, Mr. Landfair opined that the specific category of RT-15 is more appropriate, given the site's proximity to Bethesda and Friendship Heights, and given the changes in land planning that have taken place since the original approval of the Sector Plan in 1982. Tr. 243-244.

At the time the Sector Plan was written, the urban row home on compact sites was not a common building type, particularly in places like Montgomery County, and the concept of developing more compact and more sustainable communities in close-in locations was not the prevailing approach. In fact, the RT-15 Zone did not even exist at the time of the Sector Plan's adoption. It was added later in recognition of the changes in urban design and land use concepts.

Since the adoption of the sector plan, the Westbard area has become more urban in character, taking advantage of the development of transit oriented urban destinations in Bethesda and Friendship Heights. The property is adjacent to and will have access from the Capital Crescent Trail. In fact, this trail used to be a railroad serving nearby industrial uses, but now it is a major recreational corridor allowing residents to walk, run and bicycle into Bethesda. Tr. 242-245.

In addition, the RT-15 zone permits a more appropriate density than that allowed by the RT-10 zone or the RT-12.5 Zone because the latter are more suburban in character and require greater open space and setbacks. Given the orientation of the property, surrounded on three sides by parkland, the large setbacks of the other RT zones are simply not needed. Given the size of the property, the RT-10 zone would only yield 18 units, and not require any MPDUs. The RT-15 proposal is providing five MPDUs, which is a large public benefit in an area where there are relatively few MPDUs. Tr. 245.

Mr. Landfair further testified that the proposed development would serve as a transitional use between commercial, industrial, or high density apartment uses, and low density one-family uses. Tr. 246-248. Mr. Landfair also used a comparative density exhibit prepared by Technical Staff (Exhibit 53) to support his opinion that the proposed development would be transitional, as well as compatible with its surroundings. He noted that the proposed development would have a total density of 16.7 units to the acre, while the residential densities transition from the higher densities further to the west, to the lower single-family densities to the east. A multi-family building, which is located in Westbard, has an approximate density of 137 dwelling units to the acre, while a nearby townhouse community further to the south has a density of just under 13 dwelling units to the acre. The single-family residential neighborhood to the east has a density just under five (5) dwelling units to the acre. In his opinion, given these surrounding densities,

as well as the proximity of commercial and industrial uses nearby, the proposed density of 16.7 dwelling units to the acre will provide an appropriate transition.<sup>6</sup> Tr. 238-241.

Technical Staff agreed with Mr. Landfair's analysis. As stated by Technical Staff (Exhibit 30, pp. 15-16),

The subject property is an appropriate site for townhouse development given its location and proposed density. . . .

In looking at the existing and approved developments in the surrounding area, it is readily apparent that residential densities of the area transition from higher density to the west to lower density one-family residential neighborhoods to the east. West of the subject property, within the Westbard commercial area, an existing multifamily building has a density of 137 dwellings per acre in addition to the numerous commercial venues located in the area. South of the site, an existing townhouse community has a density of 13 dwellings per acre. The one-family detached residential neighborhoods to the east have a density of approximately five dwellings per acre.

The density proposed for the subject property fits within a transitional framework for the area given the surrounding densities. At 16.8 dwellings per acre, the proposed density provides a transition from the high density apartment building, commercial establishments, and industrial facilities to the west to the low density one-family neighborhood to the east. Additional factors, such as the site being in close proximity to multiple amenities, help lead to the conclusion that the proposed density is appropriate for the area. Given the nature of the surrounding area, the proposed townhouse development is appropriate for the subject property

The Planning Board concurred as well, stating (Exhibit 38, p. 1),

. . . The application also meets the transitional standard, as the property is located between commercial, industrial, and high-density residential uses and one-family detached homes. Lastly, the proposed density is appropriate given the existing residential densities in the area. The redevelopment of the site will clean up a brownfield site that encroaches onto neighboring parkland, provide substantially more open space than exists today, provide a pedestrian/bicyclist connection between Little Falls Parkway and the Capitol Crescent Trail, and add to housing choice in the area. For these reasons, the Planning Board finds the R-T 15 Zone to be appropriate at this location.

Based on this record, the District Council agrees with the Hearing Examiner's finding that the purpose clause of the RT-15 Zone has been satisfied.

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<sup>6</sup> As noted by the Hearing Examiner, 30 dwelling units on 1.8121 acres results in a density of 16.56 dwelling units per acre.

The intent clause of the R-T Zones, found in Zoning Ordinance §59-C-1.721, will also be fulfilled. The first part of that clause notes that it is the intent of the R-T Zones “to provide the maximum amount of freedom possible in the design of townhouses and their grouping and layout within the areas classified in that zone. . . .” That intent is carried out here with a row design that is a bit longer than usually found in order to design a layout that will fit within the available space. The intent clause also seeks “to provide in such developments the amenities normally associated with less dense zoning categories . . . ,” which is accomplished here by access to parkland and to the Capital Crescent trail. The clause continues with the goal of providing “the greatest possible amount of freedom in types of ownership of townhouses and townhouse developments . . . .” In this development, there will be both market rate units and MPDUs, thus fulfilling the statutory goal. Finally, the intent clause seeks “to prevent detrimental effects to the use or development of adjacent properties in the neighborhood and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the County as a whole.” As discussed below, this development will not only prevent detrimental effects on adjacent properties, it will remedy the detriments of the current industrial use and will improve the healthful environment.

Having addressed the purpose and intent of the RT-15 Zone, we now turn to the statutory requirements of the Zone. Applicant’s proposal complies with all of the development standards and special regulations of the RT-15 Zone, save two which the Zoning Ordinance permits to be varied under specified circumstances.

The first is the requirement of Zoning Ordinance §59-C-1.732(a) for a 30-foot setback from land classified in a one-family detached zone. Applicant proposes a 20-foot setback from the neighboring parkland on the east, south and west, which is classified in the R-60 Zone (*i.e.*, a one-family detached zone). Zoning Ordinance §59-C-1.732(a), Note 1, permits a reduction of the setback if “. . . a more desirable form of development can be demonstrated by the applicant to the satisfaction of the planning board . . . .”

Technical Staff recommended approval of the reduced setback (Exhibit 30, p. 10):

. . . A reduction of the setback to 20 feet is recommended for optimum design since the reduced setback allows a site layout where the townhomes are open to the interior of the community and front to the proposed streets. The reduction also is sensible because, although zoned one-family detached, the surrounding land is parkland and is undeveloped.

The Planning Board unanimously recommended approval of the rezoning “for the reasons stated in the Staff Report.” Exhibit 38, p. 1.

The District Council agrees with the Hearing Examiner’s observation, based on the unrefuted evidence at this stage, that the proposed reduction in the setback will cause no harm in this case, and will result in “a more desirable form of development.” However, the final decision on this matter is expressly left to the Planning Board under the language of the above-quoted footnote 1, and the design and layout of the proposed development will be evaluated by the Planning Board at site plan review.

The second variance from the development standards pertains to the row requirements of Zoning Code §59-C-1.722. That provision specifies that the maximum number of townhouses in a group is eight; and three continuous, attached townhouses are the maximum number permitted with the same front building line. It also provides that variations in the building line must be at least 2 feet. However, Zoning Ordinance §59-C-1.74(d)(2) provides that the row design requirements of §59-C-1.722 may be waived if necessary to accommodate increased density because of the inclusion of MPDUs. Applicant's General Note #13 indicates that it is seeking to apply this waiver provision to allow one of the rows of townhouses to include nine units (*i.e.*, one over the limit of eight) and to eliminate the two-foot variation every three units. The Technical Staff report supported the waiver regarding the row of nine units, but did not address the two-foot variation issue. Exhibit 30, p. 10.

The evidence at this stage supports the granting of such a waiver of the row requirements, but this kind of design detail is a matter best determined at site plan review by the Planning Board. In accordance with the recommendation of the Hearing Examiner, the Council notes that the Planning Board, at site plan review, may determine it is appropriate to reduce the setback requirements of Zoning Ordinance §59-C-1.732(a), as permitted by footnote one to that section, and to waive the row requirements of Zoning Ordinance §59-C-1.722, as permitted by §59-C-1.74(d)(2)).

In sum, the District Council finds that the subject application meets the purpose and requirements of the RT-15 Zone.

### **Compatibility**

An application for a floating zone reclassification must be evaluated for compatibility with land uses in the surrounding area. There was some disagreement on this issue at the hearing.

The Applicant's land planner, William Landfair, opined that the proposed townhouse development, at RT-15 density, will be compatible with the surrounding area, which has a very diverse mix of uses, with single-family residential uses to the east, and multi-family, retail, industrial and office uses to the north and west. He believes that this plan will provide a compatible transition between those uses, as indicated by the gradual decrease in residential densities from west to east in the surrounding area. Mr. Landfair also argued that townhouses are inherently compatible with other single-family uses because they are allowed in all single-family zones with MPDU options and cluster methods of development. Finally, the specific design features, notably the binding elements that have been agreed to, will help to ensure maximum compatibility. Tr. 238-241;251-252.

The opposition disagreed with Mr. Landfair's assessment. Jim Humphrey of the Montgomery County Civic Federation (MCCF) testified that placing a residential development on this site perpetuated the undesirable planning practice of interspersing more multi-family residential units with industrial uses, and thus the development would be incompatible with the surrounding area. Tr. 275. Citizen Robert Dyer opined that the project would not be compatible because it would intrude into parkland which is scarce in this area. Tr. 35-36.

Both Technical Staff and the Planning Board found the proposed development to be compatible with its surroundings. As stated by Technical Staff (Exhibit 30, pp. 16-17):

The proposed townhouse community is compatible with adjacent development in the surrounding area. Both townhomes and detached homes are by nature one-family residential dwellings, which in itself lends to a presumption of de facto compatibility. Furthermore, given the transitional nature of the surrounding area and the characteristics of the specific proposal, which provides comparable building heights and parkland buffers on three sides, any intrusiveness that could threaten the integrity of adjacent uses is minimized.

In addition, as demonstrated by Technical Staff's density comparison exhibit (Exhibit 53), "the density proposed for the subject property fits within a transitional framework for the area given the surrounding densities." Exhibit 30, p. 15.

The Planning Board observed that the binding elements in this case also contribute to the compatibility of the proposed development. As the Board stated in its memorandum of July 20, 2011 (Exhibit 38, p. 3):

. . . With the appropriate textual binding elements reflecting the compatibility of the proposed development, the Board finds the proposal compatible with the surrounding area and considers the R-T 15 Zone suitable at this location.

The Hearing Examiner agreed with the compatibility finding of Technical Staff and the Planning Board, as does the District Council. The District Council also agrees with the Hearing Examiner's observation that townhouses are not always compatible with other single-family uses. Compatibility depends on the height, bulk, density, proximity and buffering of the townhouses when compared to any nearby single-family uses. Nevertheless, the evidence in this case is that the proposed townhouse development will be compatible with other single-family uses in the surrounding area. The proposed townhouses will be no taller than 35 feet pursuant to Binding Element No. 3. There are no residences to the north, and the development will be surrounded by parkland on the south, east and west. There are other townhouses and multifamily developments to the west and northwest, and the single-family detached units to the east are buffered not only by parkland but by distance.

While there is a legitimate question, raised by MCCF, about locating a residential use next to an industrial zone, only one unit (Number 21) will be adjacent to the industrial zone to the north, and it will be separated by the access way to the Capital Crescent Trail and will undoubtedly be screened after review at site plan.

Based on this record, the District Council agrees with the findings made by Technical Staff, the Planning Board and the Hearing Examiner that the proposed reclassification to the RT-15 Zone and the proposed development would be compatible with development in the surrounding area.

## Public Interest

The Applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. When evaluating the public interest, the District Council normally considers Master Plan or Sector Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment, and factors such as provision of affordable housing, location near public transportation, and other public amenities.

As mentioned above, the *1982 Westbard Sector Plan* does not specifically recommend the RT-15 Zone. However, compliance with Sector Plan recommendations is not mandatory in this case because the R-T Zones do not require it; rather, the courts have held that the Master Plan or Sector Plan should be treated only as a guide in rezoning cases like this one. As stated in *Trail v. Terrapin Run*, 403 Md. 523, 527, 943 A.2d 1192, 1195 (2008),

We also acknowledge our statement in *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 530, 814 A.2d 469, 478 (2002) (citing *Richmarr*, 117 Md. App. at 635-51, 701 A.2d at 893-901, [1997] that:

We repeatedly have noted that [master] plans, which are the result of work done by planning commissions and adopted by ultimate zoning bodies, are advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning. . . .<sup>7</sup>

The Sector Plan and the recommendations of the Planning Board and Technical Staff were considered, at length, in Part III.G. of the Hearing Examiner's report. Although the Sector Plan does not specifically recommend the RT-15 sought by Applicant, the requested rezoning is consistent with most of its objectives (with the notable exception of preserving industrially zoned land), and more importantly, is consistent with its specific recommendation for a townhouse development on the site if access to Little Falls Parkway could be attained. The Planning Board and its Technical Staff support the proposed rezoning, believing that the development will be compatible with surrounding uses and compliant with the purposes and standards of the RT-15 Zone.

While MCCF has a point about the Sector Plan's recommendation to retain industrially zoned land in the County, as a matter of statutory interpretation, usually the specific provision governs the general. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384-385 (1992). Although the Sector Plan recommended efforts to retain industrially zoned land in general, it specifically noted that the subject site was appropriate for townhouse development if a connection to Little Falls Parkway could be established. That condition precedent has been met.

Moreover, this particular site, located in the middle of parkland, adjacent to the Capital Crescent Trail and near to residential areas, would seem an odd place to attempt to retain industrially zoned land. It is clear from the language of the Sector Plan that it recommended the

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<sup>7</sup> Because the proposed RT-15 Zone does not require conformance or consistency with the Sector Plan, this case is not affected by legislation aimed at modifying *Terrapin Run's* interpretation of the words, "conformance" and "consistency." See Smart, Green, and Growing - Smart and Sustainable Growth Act of 2009, effective July 1, 2009.

I-1 Zone for the Site to reduce in the severity of the previous I-2 Zone's impact on nearby parkland and residences, and its authors felt that the options for residential zoning were limited at the time in the absence of access to Little Falls Parkway. As stated on p. 52 of the Sector Plan,

The options available are limited. The current use is allowed only in the I-2 Zone. The depth of the abutting parkland is thin, making the block plant quite visible; its appearance is somewhat out of place with nearby residences. Rubble from the plant appears to have been discarded down the stream banks. Noise from the plant has been reported by nearby residents, although investigation by County authorities has revealed no violation of the Noise Ordinance. Moreover, retention of the I-2 zoning classification leaves open the possibility of the property being converted to more objectionable uses allowed in that zone. A change to the I-1 Zone would permit the plant to continue in use but be converted only to office, warehouse, light manufacturing, or similar use. Under other circumstances, the abutting park suggests townhouse residential as an appropriate use. However, the fact that the only access is through an industrial street clearly rules out that possibility unless access to Little Falls Parkway were to be authorized.

Recommendations — The I-2 Zone should be changed to I-1 so that any redevelopment would be to some less intensive and more desirable use. Meanwhile, in order to reduce the effect of noise and to improve the appearance from nearby areas and the Parkway, acoustical fencing should be installed in the area abutting the parkland.

If access can be gained off Little Falls Parkway, an appropriate zoning classification would be RT-10.

The District Council thus reads the Sector Plan the same way that Technical Staff, the Planning Board and the Hearing Examiner did — as a recommendation for townhouse zoning if access could be gained off Little Falls Parkway, not as a recommendation for the I-1 Zone now that access to Little Falls Parkway has been achieved. The general recommendation about preserving industrially zoned land is subsidiary to the specific recommendation for residential zoning. Perhaps more importantly, the townhouse zone makes more sense in this setting, in the middle of parkland, adjacent to the Capital Crescent Trail and near to residential areas. It also will fulfill other objectives of the Sector Plan to reduce impervious areas, improve stormwater management, reduce pollution of the waterways, reduce noise pollution and to provide a pedestrian path connecting Little Falls Parkway with the interior of the sector.

Given this record, the District Council finds that although the proposed development would not comport exactly with the RT-10 zone recommendation for the site, it would accomplish the goals and objectives of the Sector Plan for this area.

The impact on public facilities was discussed in Part. III. H. of the Hearing Examiner's report. As stated there regarding school capacity, the Bethesda-Chevy Chase cluster is currently over capacity, but the Council has budgeted money in its Capital Improvements Program with the express intent of avoiding a residential development moratorium. Attachment to Council



Resolution 17-141, Part II. The net effect is that overcrowding will be kept below 120% of capacity, and Applicant will have to pay a school facilities payment at all three levels.

The evidence also supports the conclusion that the impact on local traffic and transportation facilities from this development would be minimal and will clearly meet Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) standards. In addition, the proposed development would have no adverse effect on utilities or other public services.

The potential for any adverse environmental impact was discussed at length in Part III. I. of the Hearing Examiner's report. As noted there, a forest conservation plan will be required at subdivision to provide for afforestation and to avoid damage to nearby off-site specimen trees, and removal of the brownfield will be supervised by the Maryland Department of the Environment. A stormwater management concept plan will be submitted to the Department of Permitting Services, and it will be reviewed at subdivision. Concerns about the negative effect of losing some parkland to the access easement agreement are more than balanced by the many positive effects on the environment inherent in this project, including removal of a brownfield, significant reduction in imperviousness of the site, new stormwater management, improved water quality, reduction in truck traffic and noise, access to the Capital Crescent Trail, and a variety of public amenity projects. Neither Technical Staff nor the Planning Board noted any adverse effect on the environment.

In addition to the public amenities referenced above, the proposed development will provide five MPDUs in Bethesda, and a residential location with access to public transportation and the Capital Crescent Trail, which should reduce the use of vehicles.

Technical Staff concluded that the proposed development would be in the public interest, stating (Exhibit 30, p. 17):

The applicant proposes a townhouse development, including an affordable housing component, next to existing parkland. A connection to nearby parks is integrated into the townhouse community. Environmental improvements to the site will be provided in the form of updated stormwater management facilities and the removal of encroachments into adjacent parkland. The redevelopment of the site will eliminate an industrial brownfield and replace it with a residential development of appropriate density that fits within the character of the surrounding area and adds to the housing diversity of Bethesda. Additional housing at this location will also provide support for the many businesses near the site in the Westbard commercial area. For these reasons, the application bears a sufficient relationship to the public interest to justify its approval.

The Planning Board indicated that it "was persuaded by the reasoning in the Staff Report that the proposal meets the purpose clause of the R-T 15 Zone and that the proposal is in the public interest." Exhibit 38, p. 3.

The Hearing Examiner found that this proposal will eliminate existing adverse impacts on the community, improve the environment, provide a transition from commercial and industrial development for the nearby single-family detached homes, add affordable housing in the area and establish a residential community with easy pedestrian and bicycle access to the Bethesda CBD and other points.

For all of these reasons, the District Council concludes, based on the preponderance of the evidence, that the proposed reclassification and development would have no adverse effects on public facilities or the environment, and that approval of the requested zoning reclassification would be in the public interest.

### **Conclusion**

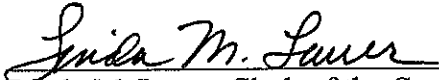
Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the application satisfies the requirements of the RT-15 Zone and its purpose clause; that the application proposes a form of development that would be compatible with land uses in the surrounding area; and that the requested reclassification to the RT-15 Zone bears sufficient relationship to the public interest to justify its approval. For these reasons and because approval of the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

### **Action**

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-907, requesting reclassification of 1.8121 acres (78,935 square feet) of land, known as Parcel 513 on Tax Map HM 13, and located at 5400 Butler Road, Bethesda, Maryland, from the existing I-1 Zone to the RT-15 Zone, is hereby **approved** in the amount requested and subject to the specifications and requirements of the revised Schematic Development Plan, Exhibit 69; provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Schematic Development Plan approved by the District Council within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance, and that the revised Declaration of Covenants (Exhibit 66(a)) is filed in the County land records in accordance with § 59-H-2.54 of the Zoning Ordinance and proof thereof submitted to the Hearing Examiner within the same timeframe. The Planning Board is authorized to determine, at site plan review, whether it is appropriate to reduce the setback requirements of Zoning Ordinance §59-C-1.732(a), as permitted by footnote one to that section, and to waive the row requirements of Zoning Ordinance §59-C-1.722, as permitted by §59-C-1.74(d)(2)).

This is a correct copy of Council action.

  
Linda M. Lauer, Clerk of the Council

