

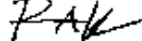
**Agenda Date: May 2, 2013**

**Agenda Item: 12**

April 30, 2013

**MEMORANDUM**

**To:** Montgomery County Planning Board

**From:** Robert A. Kronenberg, Acting Chief, Area 1 

**Re:** Rural Open Space Policy Discussion

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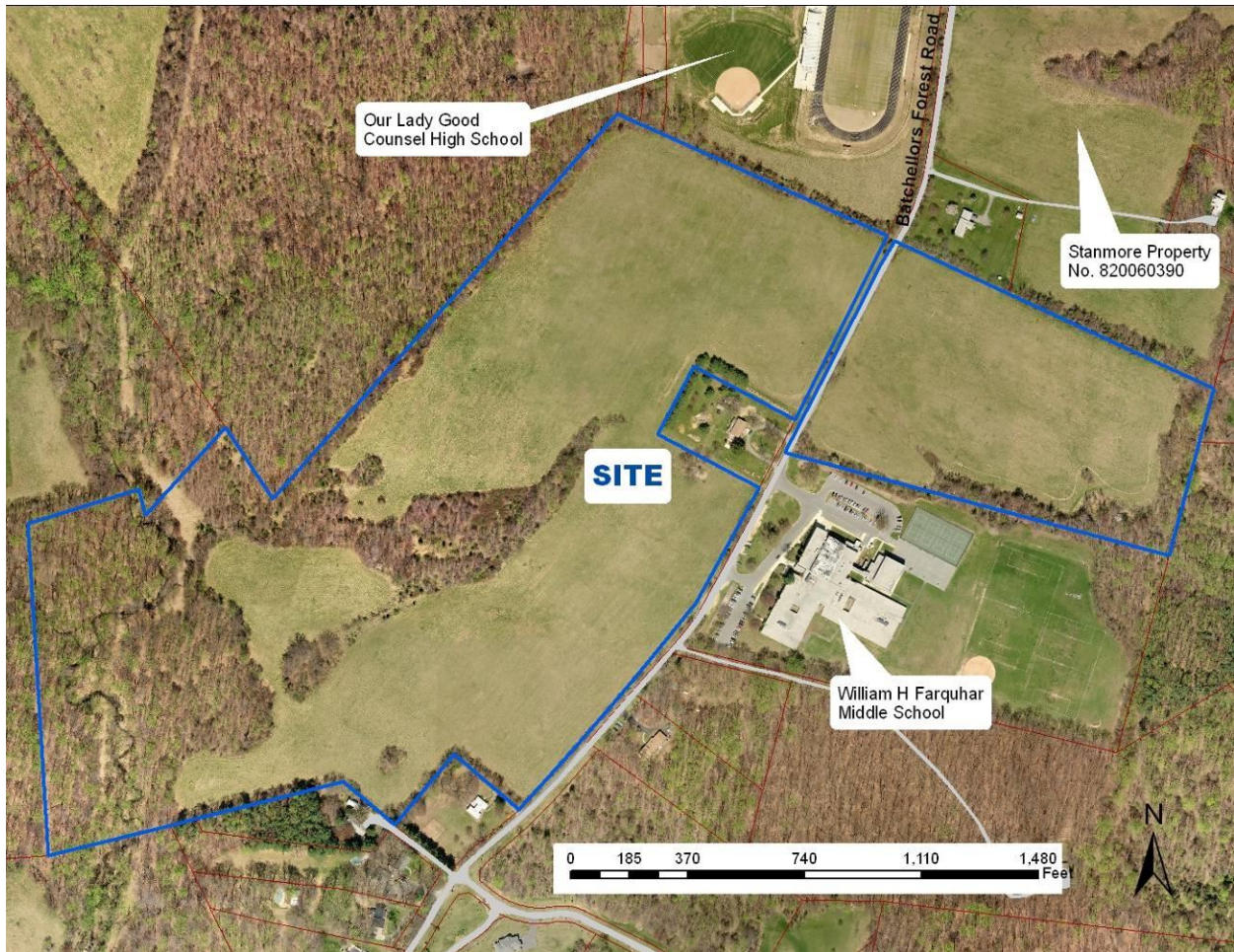
**Introduction**

Two projects have been presented to Planning Staff regarding the potential transfer and development of property currently protected by Rural Open Space (“ROS) easements, which would require the Planning Board to approve release of the ROS Easements: 1) the “Park Property” for redevelopment/modernization of Farquhar Middle School, and 2) the Montgomery County Hospice (“Hospice”) site for expansion of that facility. Each project is proposing to exchange the protected property with adjacent properties that are not part of the original application, release the existing ROS easements, and place an ROS easement on the exchanged property. Staff is not presenting these proposals to the Board for a decision at this time, but they are presented in order to establish the context for the Board to consider and adopt a policy to guide the release of certain ROS easements by applying the criteria for their replacement/substitution when evaluating developments, plan amendments and circumstances that provide a basis for such release.

**Park Property**

The Park Property involves a 17.4-acre ROS property that was dedicated to M-NCPPC for development to be used an active park in accordance with the Olney Master Plan. The Master Plan, on page 28 of the Land Use Section of the Plan, recommends that “the 17.4-acre portion of the property [located on the east side of Batchellors Forest Road] is appropriate for ball fields and possibly other active recreation [...]” Pulte dedicated the Park Property as part of Preliminary and Site Plans for the Batchellors Forest development (Preliminary Plan #120060850 and Site Plan #820080190/A) and then granted an easement to the M-NCPPC to protect the site as required under §59-C-9.574(h)(4) of the Zoning Ordinance. Batchellors Forest is comprised of 37 one-family detached and attached lots in the Rural Neighborhood Cluster (“RNC”) Zone, located across Batchellors Forest Road from the Park Property. Consistent with the RNC zone, the plan provides approximately 70% of the tract area as Rural

Open Space; a portion surrounding the homes and property owned by the homeowner’s association-protected by an ROS easement granted to the M-NCPPC and Sandy Spring Green Space, and the balance of the dedicated 17.4-acre Park Property. Batchellors Forest is dependent on the Park Property for density purposes and the required ROS easement is consistent with the zoning ordinance and Master Plan. Adjacent to the Park Property is Farquhar Middle School, zoned RE-2, which is slated for reconstruction this year and would require relocation of students for at least two years while the building is razed and then reconstructed. Without the Park Property, the students would be bussed to a holding school in Bethesda. Therefore, at the urging of the parents, and the official support of the Board of Education, the Montgomery County Public Schools (“MCPS”) is proposing to build the new school on the Park Property so that the students could remain at the existing school during construction, after which the students would be relocated to the new school, and the existing school site would be developed into the park contemplated by the Master Plan.



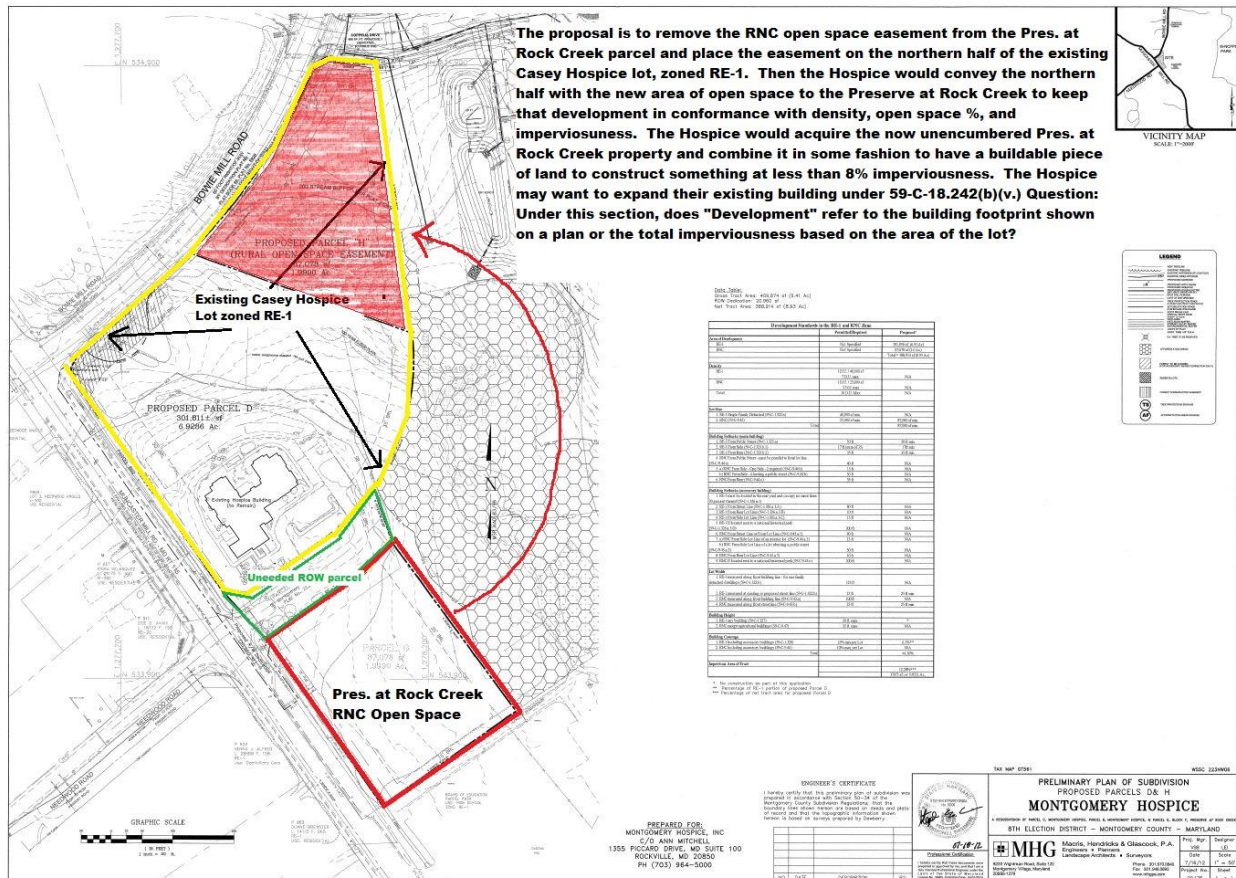
Approved boundaries of Batchellors Forest Development

The process required to exchange properties- the existing school site for the Park Property will be established through a complicated process outlined in separate agreements among MCPS, M-NCPPC,

the County and Pulte, which will be presented to the Planning Board in the near future. The action requested by the Board at this time is approval of the policy to provide guidance to Planning Staff and MCPS to determine, if appropriate, the conditions to release the existing ROS easement from the Park Property – the first step in determining whether, and how the MCPS can move forward.

### Hospice Site

The Hospice site involves amendments that have been filed at M-NCPPC (Preliminary Plans #11994021A and #12006032B, and Site Plan #82006011A) (“Amendments”) for property at the intersection of Bowie Mill and Muncaster Mill Roads. The Casey House at 6001 Muncaster Mill Road is a hospice program providing medical, nursing and other health services in a 14-bed facility that received special exception approval for a Domiciliary Care Home in 1994 and subsequent Preliminary Plan approval in 1995. The Hospice owns four separate parcels of land all located in the RE-1 Zone. The adjoining Preserve at Rock Creek development owned by Stanley Martin is within the RNC Zone and consists of 186 one-family attached and detached residential units. Several parcels, which are privately owned were preserved and protected with ROS easements granted to the M-NCPPC, including a 2 acre tract on Muncaster Mill Road directly adjacent to the properties owned by the Hospice Site.



The Hospice and Stanley Martin have submitted the amendments to exchange parcels of land, both of which equal 2 acres in size. But like the Park Property, without release of the ROS easement

from the parcel owned by Stanley Martin, the Hospice could not move forward with its expansion plans. Other issues to resolve as part of this proposal will be discussed as part of the Board's consideration of the Amendments at a later hearing. The action requested by the Board at this time is approval of the policy to provide guidance to Planning Staff and the Applicants to determine, if appropriate, the conditions to release the existing ROS easement – the first step in determining whether, and how the Hospice proposal can move forward.

## **Discussion**

### *RNC Zone Criteria*

The purpose of the RNC zone under the provisions in §59-C-9.23.1 is to preserve open land, environmentally sensitive natural resources and rural community character that would be lost under conventional, large lot development. This is accomplished through site design and protection of open spaces and with the provision of public water and sewer to allow clustering of lots. To implement the purposes of the zone, a master plan provides recommendations for vistas, preservation of neighborhood character and environmentally sensitive areas to ensure compatibility with the surrounding community. And more specifically, §59-C-9.571 sets forth certain special regulations for development in the RNC zone, to preserve large areas of contiguous rural open space, consistent with the recommendations and guidelines of the applicable master or sector plan.

Rural Open Space is typically unmanaged land that is contiguous with other open spaces and natural resources; however, it may be managed or modified to improve its appearance, function and overall condition and can include reforestation, woodland, wetlands, agricultural and meadow management, stream bank protection and non-structural stormwater management practices. Or it may be developed and managed consistent with the recommendations and guidelines of the applicable master or sector plan.<sup>1</sup> The RNC zone is silent on whether or not ROS easement area is required to be in RNC zoned land.

### *Perpetuity*

All land designated as the ROS area as part of a development plan, whether developed under the standard or optional method must be *preserved in perpetuity*, either by dedication as parkland (limited to standard method development), or by application of an easement or covenant in a recordable form approved by the Planning Board. However, in *Hyde v. Planning Board*,<sup>2</sup> the Court, although it required the Board to consider how to better protect ROS, agreed that there is no such thing as perpetuity in land use and suggested condemnation and abandonment as ways that the intention of a perpetual covenant might be extinguished. Therefore, although the Zoning Ordinance requires

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<sup>1</sup> In the case of the Park Property, the Master Plan recommended ball fields and possibly other active recreation on the ROS protected land.

<sup>2</sup> *Hyde v. Planning Board* was a challenge in the Batchellors Forest development approval to the park dedication as allowable protection of ROS in an optional method development

preservation in perpetuity, it is clear that even the courts would support release of ROS easement under certain circumstances and conditions.

Therefore, Staff is suggesting the criteria and conditions under which the Board will find it is appropriate to release ROS easements.

### **Recommendation**

Staff recommends that the Planning Board approve the release of certain ROS easements, if and when appropriate as determined by applying the criteria for their replacement/substitution when evaluating developments, plan amendments and circumstances that provide a basis for such release. Staff recommends the following criteria and findings for the release of *ROS Easements*:

- a. The purpose for the release must be to balance another public interest;
- b. The party requesting such release must, at a minimum, provide another property, similarly situated in location (watershed), and size, to be encumbered with the same ROS restriction so that the intention of “perpetuity” as required by the Zoning Ordinance is addressed;
- c. The replacement, or substitute property would have been acceptable as the ROS property in the original development application under which the ROS easement was approved;
- d. The impact of such release cannot place the party who granted the ROS easement as a condition of approval in a position in which its entitlements, such as density may be challenged; and
- e. There must be a finding of conformance with Master Plan for the ultimate replacement of ROS restricted property.

Letter dated July 19, 2012 regarding Hospice Site



SUITE 460 | 3 BETHESDA METRO CENTER | BETHESDA, MD 20814-5367 | TEL 301.986.1300 | FAX 301.986.0332 | WWW.LERCHEARLY.COM

ATTORNEYS

STUART R. BARR  
DIRECT 301.951.6095  
SRBARR@LERCHEARLY.COM

July 19, 2012

**By Hand Delivery**

Mr. John Carter, Chief  
Area 3 Division  
Maryland-National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

**Re:** Letter of Explanation  
Montgomery Hospice and Stanley Martin Homes – Real Estate Parcel  
Exchange and Transfer of Rural Open Space Designation  
Intersection of Bowie Mill and Muncaster Mill Roads, Gaithersburg,  
Maryland  
Preliminary Plan and Site Plan Amendment Numbers 11994021A,  
12006032B, and 82006011A (Limited Plan Amendments under Development  
Review Procedures §8.E.)

**I. Introduction**

On behalf of Montgomery Hospice (a/k/a Casey House) (“Hospice”) and Stanley Martin Homes (“Stanley Martin”), we are submitting Preliminary Plan and Site Plan Amendments for consideration by the Montgomery County Planning Board. The Amendments modify the Montgomery County Planning Board’s resolutions approving Preliminary Plan Numbers 1-94021 and 1-20060320 and Site Plan Number 8-20060110. These Amendment applications have been discussed with Area 3 planning staff over the past several months.

**II. Summary of Prior Plan Approvals and Overview of Proposal**

Hospice is a nonprofit hospice program serving residents of Montgomery County and providing the community with medical, nursing, and other health services during the final stages of life through home or inpatient care during the illness and bereavement period. The Casey House located at 6001 Muncaster Mill Road is a 14-bed facility that is the only all-hospice acute care inpatient medical facility in Montgomery County.



Hospice received special exception approval in 1994 under a Domiciliary Care Home special exception use category under Zoning Ordinance §59-G-2.37 (Case No. S-2045) and received subdivision approval in 1995 (Preliminary Plan Number 1-94021).

Hospice currently owns four parcels of property, all in the RE-1 Zone:

1. Parcel C, Plat 24243 (Parcel N746, Tax Map GT61), Tax Account #08-03683827 – 6.3 acres located at 6001 Muncaster Mill Road.
2. Parcel B, Plat 21269 (Parcel N853, Tax Map GT61), Tax Account #08-03278011 – 0.7 acres located at Muncaster Mill Road.
3. Parcel P748, Tax Map GT61, Tax Account #08-03484382 – 5,882 sf located at Muncaster Mill Road.
4. Parcel P802, Tax Map GT61, Tax Account #08-03124658 – 0.3 acres located at Muncaster Mill Road.

Stanley Martin acquired and is in the process of constructing the optional method development project in the RNC Zone known as The Preserve at Rock Creek (formerly Bowie Mill Estates) that adjoins the Hospice properties. The Preserve at Rock Creek development received preliminary plan and site plan approvals in 2007 for a combination of 186 single-family attached and detached residential units (Preliminary Plan No. 1-20060320 and Site Plan 8-20060110). Several parcels were reserved for rural open space as required by the RNC Zone, including a 2 acre parcel on Muncaster Mill Road identified as Parcel G, Block F.

Hospice and Stanley Martin are under contract to exchange parcels of land of equal square footage (approximately 2 acres each), and the objective of the enclosed Amendments is to accomplish that transaction. Hospice will acquire the entirety of Stanley Martin's Parcel G, Block F (not to be confused with Parcel G, Block N), and Stanley Martin will acquire an equivalent square footage of land on the northern end of the Hospice property (proposed parcel "H" shown on the enclosed preliminary plan). As shown on the enclosed preliminary plan, Hospice proposes right-of-way dedication for Muncaster Mill Road and proposes to consolidate the remainder of its property with Parcel G, Block F (proposed "Lot I" shown on the enclosed preliminary plan). Sami Totah, the original developer of Bowie Mill Estates (Stanley Martin's current development), actually thought of the original idea for the donation of land to Hospice that later evolved into the parcel exchange. This transaction will potentially allow Hospice to use the additional two acres fronting Muncaster Mill Road to further its mission. Hospice does not intend to propose further development at this time in connection with the proposed Amendments.



### **III. Montgomery Hospice – Mission and Background Information**

The story of Hospice begins in 1977 when a Montgomery County pastor had a vision. He wanted seriously ill patients in the County to be able to live out their last days in their own homes and to die with dignity. And he wanted their families to have caring support. This vision (along with his research, fundraising and leadership) was the beginning of hospice care in Montgomery County. The vision became official in 1981 when Montgomery Hospice came into existence as a nonprofit organization. In 1986, Montgomery Hospice received certification to be a provider of the Medicare hospice benefit, becoming the first licensed hospice in Maryland.

Montgomery Hospice has been caring for residents of Montgomery County ever since, providing professional medical expertise and personal comfort for terminally ill patients for the past 30 years. Each year, Montgomery Hospice cares for more than 30% of county residents dealing with life-limiting illnesses, and provides bereavement services and end-of-life education to the general public. In 2011, the National Institutes of Health (NIH) recognized Montgomery Hospice's contributions when it selected Montgomery Hospice to represent area charities at its Combined Federal Campaign kickoff meeting.

Montgomery Hospice cared for over 2,000 hospice patients in 2011. The Hospice at Home program made it possible for more than 1,400 patients to remain in their own homes (including private homes, nursing homes and assisted living facilities) while receiving comforting physical, emotional and spiritual care. For the last 12 years, Montgomery County has benefitted from the services of Casey House, the only facility solely dedicated to end-of-life care in the County. Casey House has been described as a "home away from home" because of its warm and supportive atmosphere. In 2011, 581 patients with acute medical needs that could not be managed in their homes received comprehensive end-of-life care from the specialized medical team at Casey House.

Hospice services are covered, but not fully, by Medicare, Medicaid and private health insurance. Under Medicare and Medicaid rules, Montgomery Hospice must provide 100% of the medical needs of its patients, including pharmaceuticals, and is not permitted to invoice patients for any shortfall. Of necessity, Montgomery Hospice actively raises money from the community to be able to care for the uninsured and the underinsured and to fill any gaps in insurance coverage. These community donations also support the Complementary Therapies program, free grief support and education for the community, the Montgomery Kids program and the Montgomery Hospice Center for Learning.





Montgomery Hospice offers free bereavement support to families of patients, as well as others in the Montgomery County community. Master's trained counselors provide grief and loss counseling to family and loved ones of Montgomery Hospice patients for up to 13 months following their death. Grief counseling necessitates making 1,200 phone calls per (typical) month to the bereaved. In addition, Montgomery Hospice annually provides free loss and grief education and leads support groups for approximately 8,000 Montgomery County residents, including programs for employers, faith organizations, high school students and teachers, and young children. During the 2011-2012 school year, more than 3,500 high school students will receive education in dealing with personal grief and loss.

When children need hospice services, they need an expert team of hospice professionals who understand what they and their families have already gone through, and who know how to ensure that their hospice journey is a gentle one. Montgomery Hospice decided that the best way to provide care to the youngest patients was to work collaboratively with other hospices in Maryland. The result was Montgomery Kids, a program begun in late 2011 after several years of diligent work with pediatric experts from hospices, hospitals and palliative care services. Montgomery Kids has a dedicated team of clinicians with pediatric end-of-life expertise.

Montgomery Hospice provides education for community members about serious illness, loss and transition. Recognizing the community's need for more education, the Montgomery Hospice Center for Learning was launched in 2010. The goals of the Center are to teach families in the community about dealing with grief and end-of-life issues and to share clinical expertise with other professionals. In 2011, 157 educational programs were attended by more than 7,000 people. Montgomery Hospice also reaches beyond Montgomery County by hosting attendees from the entire metropolitan area at its annual major conference (attended by approximately 400 professionals in 2011), and recently by the use of online education to reach a national audience.

From four patients in 1981 to 2,072 in 2011, the demand for hospice services has grown exponentially, and Montgomery Hospice has grown to meet the needs of its community. Starting in 1981 with a handful of dedicated, visionary volunteers, Montgomery Hospice has grown in 2012 to an organization of more than 250 employees and 270 volunteers. Montgomery Hospice's vision for the future now includes building a Hospice Center on Muncaster Mill Road in order to increase the number of beds in Casey House, to have space to continue the educational programs of the Center for Learning, and to consolidate the staff in one building. The residents of Montgomery County will benefit from this Hospice Center for years to come.



#### **IV. Other Considerations Related to the Proposed Project**

After consultation with Area 3 planning staff, we have identified the following matters for consideration in connection with the proposed Amendments:

Rural Open Space Requirements. Stanley Martin's current Parcel G is one of the properties designated as open space under the RNC Zone requirements and is encumbered by a Rural Open Space Easement recorded in Liber 39147 Folio 482. The property that Stanley Martin will acquire from Hospice (proposed parcel "H" shown on the enclosed preliminary plan) will count towards the open space requirements to offset the loss of Parcel G. The Open Space Easement will need to be amended accordingly.

Impervious surface cap. Both the Hospice and Stanley Martin properties are in the Environmental Overlay Zone for the Upper Rock Creek Special Protection Area and are subject to an 8% impervious cap. Planning staff advised Hospice at a meeting in January, 2010 that after the land exchange, in their opinion, the total available impervious surface square footage on the consolidated Hospice property will be the sum of the existing square footage on the Hospice properties plus 8% of the square footage of Parcel G. This total amount can then be applied on the new consolidated Hospice property on either the RE-1 zone or RNC portions, as design preferences dictate.

Upper Rock Creek Master Plan provisions. The Hospice and Stanley Martin properties are in the Upper Rock Creek Master Plan planning area. The Master Plan contains language concerning the preservation of viewsheds along Muncaster Mill and Bowie Mill Roads (page 19) and a potential relocation of Bowie Mill Road (pages 68-69). Hospice will address any viewshed requirements after the consolidation of property and once it proposes further development. The potential realignment of Bowie Mill Road to align with Needwood Road appears to be highly, if not entirely, unlikely given that 1/ the Master Plan recommends retaining the existing configuration of intersections, 2/ the recent Preserve at Rock Creek approvals did not require the necessary dedication of the proposed realignment of Bowie Mill Road, and 3/ the State Highway Administration has determined that it will not study the reconfiguration of the Bowie Mill Road/Muncaster Mill Road intersection. Hospice therefore proposes that all references on existing maps and in existing land use documents to the possible extension of Bowie Mill Road through the Hospice parcel be deleted.

Amendment to Hospice Special Exception approval (Case No. S-2045). Hospice is approved under a Domiciliary Care Home special exception use category (under Zoning Ordinance §59-G-2.37). Hospice intends to submit a modification request to the Board of Appeals reflecting the land exchange at the appropriate time.



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M-NCPPC  
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Adequate Public Facilities. Given that Hospice proposes no additional development at this time, APF review will be conducted in connection with future proposed development (most likely at special exception modification).

Resubdivision Criteria. Resubdivision criteria does not apply in this instance since the lots in question are not residential lots.

#### **V. Application Materials**

As part of this Application, we are submitting the following items, in addition to this Statement of Explanation:

1. Application Forms
2. Fee Schedule and Filing fees
3. Original Certified Plans with Opinion/Resolution
4. Application Notice Letter (Draft)
5. Notice List
6. Amended Plans (redlined and black and white)
7. Certificate of Compliance
8. CD with Amended Plans
9. Signage Information

We look forward to working with you to obtain these limited plan amendment approvals. Thank you very much for your assistance.

Very Truly Yours,

Stuart R. Barr  
Lerch Early & Brewer, Chtd.

cc: Fred Boyd -- MNCPPC, Area 3  
Rich Weaver -- MNCPPC, Area 3  
Cathy Conlon, MNCPPC