



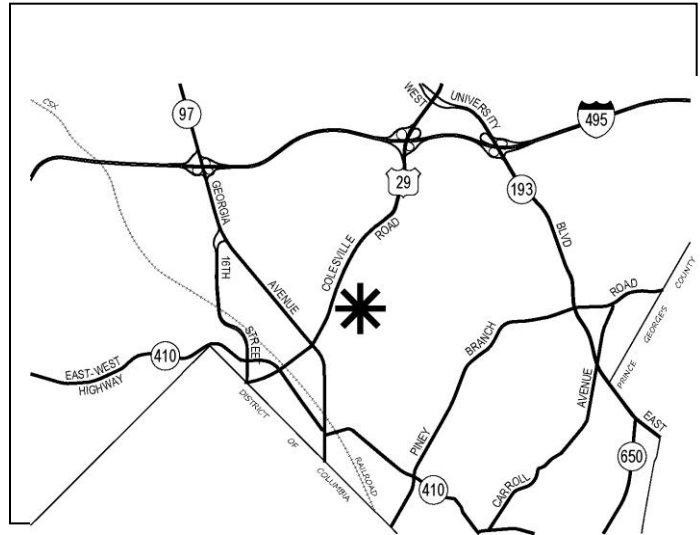
Chelsea Court, Preliminary Plan 120130060, Site Plan 820130040

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Staff Report Date: 4/12/13

Description

- Subdivision to create 63 townhouse lots and one one-family residential lot; construction of 63 townhouses on a new private street.
- 5.25 acres gross tract area
- RT-12.5 zone
- Located at 711 Pershing Drive, south of Springvale Road
- North and West Silver Spring Master Plan
- Preliminary Plan Submitted: 9/27/12
- Site Plan Submitted: 10/23/12
- Applicant: Chelsea Residential Associates, LLC & EYA



Summary

- **Staff recommendation: Approval of the preliminary plan and site plan with conditions**
- A waiver of Section 50-29(b)(2) for resubdivision analysis is supported by staff.
- The applicant requested a waiver of the requirement that the Planning Board find that the proposed private street has attained the status of a public road, but staff finds that the waiver is not necessary and recommends that the Planning Board make the necessary finding.
- Considerable citizen correspondence has been received in opposition to the application. Issues of concern include Steep slopes, tree preservation, through traffic, provision of green area on proposed Lot 64, density, size of proposed Lot 64, and parking. Many of these issues were discussed during the review of the rezoning case.

PRELIMINARY PLAN RECOMMENDATION AND CONDITIONS

Staff recommends approval of the preliminary plan subject to the following conditions:

- 1) This Preliminary Plan is limited to 64 lots for 63 townhouses and one one-family detached dwelling unit, including at least 12.5% moderately priced dwelling units (MPDUs).
- 2) 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 approval. 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.
- 3) The Applicant must comply with the conditions of approval for the final forest conservation plan, approved as part of this Preliminary Plan, subject to the following:
 - a. Revise the mitigation planting tables for variance trees to specify only canopy trees.
 - b. Revise the variance tree table on sheet 5 of the final forest conservation plan to clearly identify the trees that are subject to the variance.
 - c. Ensure that the limits of disturbance include all areas of sidewalk construction on Ellsworth Drive.
- 4) Prior to demolition or any land disturbing activities occurring onsite, the Applicant must submit to Staff and obtain M-NCPPC Associate General Counsel Office approval of the certificate of compliance for the off-site forest mitigation bank providing an equivalent credit of 1.86 acres.
- 5) The record plat must contain a note extinguishing the existing Category II Conservation Easement on the subject property.
- 6) The Applicant must provide certification by a qualified expert that the existing onsite grotto is structurally unsound and in need of removal prior to disturbing the grotto.
- 7) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 7, 2013, as amended by its correspondence dated March 18, 2013, 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 MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 8) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 9) The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated October 24, 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 – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 10) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the design standards imposed by all applicable road codes.

- 11) Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of a five-foot wide sidewalks and five-foot wide green panels along the property frontage on Ellsworth Drive, Springvale Road, and Pershing Drive, unless construction is waived by MCDPS. The green panel may be omitted on the Ellsworth Drive frontage between the proposed crosswalk across Ellsworth Drive and the southern limit of the property frontage.
- 12) Prior to certification of the Preliminary Plan, the plan drawing must be revised to show the proposed sidewalk on Ellsworth Drive extended along the entire subject property frontage.
- 13) The record plat must reflect a public use and access easement over all private streets and adjacent parallel sidewalks.
- 14) The record plat must reflect a public use and access easement over open space areas as required by Binding Element No. 2, as stated in County Council Resolution 17-471, dated June 12, 2012.
- 15) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 16) The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). The Applicant must provide verification to Staff prior to release of the final building permit that the Applicant's recorded HOA Documents incorporate the Covenant by reference.
- 17) Prior to recordation of the plat, the Applicant must record a restrictive covenant for the open space area around the 37,056 square-foot environmental setting for the Riggs-Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable the Applicant to complete all work approved by the Planning Board as part of the site plan approval. Following completion of those improvements, the covenant will require advice from the Historic Preservation Commission to the Planning Board for any site plan amendment to the area subject to the covenant.
- 18) The Applicant must comply with the binding elements of County Council Resolution No. 17-471 approving Local Map Amendment G-892.
- 19) The final number of MPDUs as per condition #1 above will be determined at the time of site plan approval.
- 20) The subject property is within the Northwood High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the single-family attached unit rates for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
- 21) Prior to recordation of any plat, Site Plan No. 820130040 must be certified by Staff.
- 22) No clearing, grading or recording of plats prior to certified site plan approval.
- 23) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan.
- 24) The record plat must show necessary easements.
- 25) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.

SITE PLAN RECOMMENDATION AND CONDITIONS

Staff recommends approval of Site Plan 820130040, Chelsea Court, for 63 townhouses and one existing one-family detached dwelling on 5.25 gross acres. All site development elements shown on the site and landscape plans stamped “Received” by the M-NCPPC on February 13, 2013, are required except as modified by the following conditions.

Conformance with Previous Approvals

1. Development Plan Conformance
The Applicant must comply with the binding elements of the Development Plan G-892.
2. Preliminary Plan Conformance
The Applicant must comply with the conditions of approval for Preliminary Plan No. 120130060 as listed in the Planning Board Resolution, unless amended.

Historic Preservation

3. Historic Preservation
Prior to issuance of the 54th building use and occupancy, the Applicant must fully reverse any modifications made to the historic Riggs-Thompson House as part of a temporary sales center use approved by the Historic Preservation Commission. This reversal will involve reinstalling the triple hung windows in the south chapel elevation, removing any temporary ADA access ramping, and repairing any related damage to the siding, decking or railing of the house. The Applicant must contact in writing Historic Preservation Commission staff to document the modifications. The Applicant must provide the Historic Preservation Commission documentation to MCDPS – Site Plan Enforcement.

Parks, Open Space, & Recreation

4. Recreation Facilities
 - a. The Applicant must provide the following recreation facilities:
 - i. Picnic/sitting area
 - ii. Open play area
 - iii. Pedestrian walkway system
 - b. The Applicant must 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.
5. Maintenance of Publicly Accessible Amenities
The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to, landscaping, walkways, lighting, and benches.

Transportation & Circulation

6. Transportation

- a. The development is limited to a maximum of 63 townhouse units and retention of the one existing one-family unit.
- b. The Applicant must install the signs shown on the "Dimension and Signage Plan" (Sheet C5.00) of the Site Plan. In addition, the Applicant must install a sign at the intersection of the proposed private street and Ellsworth Drive that states "No through traffic to Springvale Road" and a sign at the intersection of the proposed private street and Springvale Road that states "No through traffic to Ellsworth Drive." The Applicant must not install any sign that restricts access to the private street to residents or guests only.

7. Pedestrian Circulation

The Applicant must provide five-foot-wide sidewalks and five-foot wide green panels along the property frontages on Ellsworth Drive, Springvale Road, and Pershing Drive, as shown on the Certified Site Plan. The five-foot-wide green panel may be omitted on the Ellsworth Drive frontage between the proposed crosswalk across Ellsworth Drive and the southern limit of the property frontage.

Density & Housing

8. Moderately Priced Dwelling Units (MPDUs)

- a. The development must provide 12.5% percent MPDUs on-site in accordance with the letter from the Department of Housing and Community Affairs dated January 4, 2013.
- b. The MPDU agreement to build must be executed prior to the release of any building permits.
- c. All of the required MPDUs must be provided on-site.
- d. The Planning Board has accepted the recommendations of the Montgomery County Department Housing and Community Affairs ("MCDHCA") in its letter dated January 4, 2013, and does hereby incorporate them as conditions of the Site Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDHCA provided that the amendments do not conflict with other conditions of the Site Plan approval.

Site Plan

9. Site Design

- a. The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Sheet A.1, A.2, A.1a, A.1b, and A.1c of the submitted architectural drawings, as determined by Staff.
- b. All units with sides facing Springvale Road must have fenestrations as typically found on the front facades, including window treatments, color and fascia materials. Prior to the release of any building permits for the Springvale-Road-facing units, the Applicant must provide architectural drawings and elevations to Staff, indicating compliance with the façade treatments.

10. Private Lighting

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

11. Surety

Prior to issuance of the first building permit within each relevant phase of development, the Applicant must provide a performance bond(s) or other form of surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a. The Applicant must provide a cost estimate of the materials and facilities, which, upon Staff approval, will establish the initial surety amount.
- b. The amount of the bond or surety shall include plant material, on-site lighting, recreational facilities, site furniture, the street and alleys, sidewalks, and entrance piers within the relevant phase of development.
- c. Prior to issuance of the first building permit, the Applicant must enter into a Site Plan Surety & Maintenance Agreement with the Planning Board in a form approved by the Office of General Counsel that outlines the responsibilities of the Applicant and incorporates the cost estimate.
- d. The bond/surety must be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety for each phase of development will be followed by inspection and reduction of the surety.

12. Development Program

The Applicant must construct the 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. Street lamps and sidewalks must be installed within six months after street construction is completed. Street tree planting may wait until the next growing season.
- b. On-site amenities including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of the 54th building permit.
- c. 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.
- d. The development program must provide phasing for installation of on-site landscaping and lighting.
- e. Community-wide pedestrian pathways and recreation facilities, including benches, landscaping, and hardscape, must be completed prior to issuance of the 54th building permit.
- f. Landscaping associated with each building must be completed as construction of each building is completed.

- g. The development program must provide phasing of stormwater management and sediment and erosion control.

13. Certified Site Plan

Prior to approval of the Certified Site Plan the following revisions must be made and/or 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 as needed.
- d. Ensure consistency off all details and layout between Site Plan and landscape plan.
- e. Revise the Site Plan drawing to show the provision of a sidewalk along Ellsworth Drive from the point where the Site Plan shows a proposed crosswalk across Ellsworth Drive to the southern limit of the subject property frontage on Ellsworth Drive, pursuant to condition 7 above.
- f. Revise sheet C5.00 of the Site Plan to include a sign at the intersection of the proposed private street and Ellsworth Drive that states “No through traffic to Springvale Road” and a sign at the intersection of the proposed private street and Springvale Road that states “No through traffic to Ellsworth Drive.”

SITE DESCRIPTION

The subject property, shown below and in Attachment A, is located on the block bounded by Ellsworth Drive, Springvale Road, Pershing Drive, and Cedar Street. The subject property occupies the majority of that block. The site consists of one platted lot measuring 4.85 acres in area. The gross tract area, including previous right-of-way dedications attributable to the site, is 5.25 acres. The subject property is within the RT-12.5 zone.

The site is developed with a private school, the Chelsea School. The school consists of several buildings, paved parking lots, athletic fields, and a grove of trees and open green areas. One existing building, the Riggs-Thompson House, is listed in the Master Plan for Historic Preservation, and will be retained on the site. The remainder of the buildings and other improvements on the site will be removed to accommodate the proposed development.

Surrounding properties to the north, south, and east are developed with one family detached dwellings in the R-60 zone. The properties to the south are a single row of one-family lots fronting on Cedar Street, primarily being used as commercial businesses. The Silver Spring Central Business District is located on the opposite side of Cedar Street, with a mix of residential, office, retail, and entertainment uses. A multi-family senior housing community is located across Pershing Drive to the east. Nearby properties to the west include the Silver Spring library and Ellsworth Urban Park in the R-60 zone and a multi-family building in the C-O zone.

The property is located in the Sligo Creek watershed. No forests, wetlands, streams, or associated buffers occur on or near the property. Areas of steep slopes occur on the site; most of the

slope areas are manmade, and there are no areas of highly erodible soils mapped in the vicinity. There are 11 trees with a diameter of 30 inches or larger on the site.



PROJECT DESCRIPTION

Previous Approvals

Preliminary Plan 12000130 was approved by the Planning Board on June 14, 2001, for creation of one lot and expansion of the school. A plat was recorded that implemented creation of the lot, but the school expansion did not take place. The lot that was created encompasses the entire site, and it is now the subject property of the current preliminary plan and site plan.

Local Map Amendment G-892 was approved by the County Council on June 12, 2012, changing the site's zoning from R-60 to RT-12.5 (Attachment D). Approval of the local map amendment included approval of a schematic development plan (SDP), which contains illustrative and binding elements. Compliance with the binding elements is addressed later in this report.

The local map amendment initially requested the RT-15 zone, and the Planning Board recommended approval. However, the Hearing Examiner found that the density and massing of the development was incompatible with the surrounding land uses, the applicant failed to meet its burden of proof that the three road alignments which were supportable by staff were viable and would not adversely impact the community, the density proposed was inconsistent with the Master Plan, and the environmental setting shown on the SDP was inconsistent with the Master Plan. Because the R-T Zone did further some aspects of the Master Plan's goals, the Hearing Examiner recommended remanding the

case to permit the applicant to revise the SDP to reduce the density and massing, address the open issues on the potential road alignments, and revise the SDP to be consistent with the environmental setting for the Riggs-Thompson House designated in the Master Plan.

The County Council remanded the local map amendment to the Hearing Examiner, as the Hearing Examiner recommended. The Planning Board also reconsidered the local map amendment, and recommended approval of the RT-12.5 zone and determined that the density, circulation, and use were appropriate and compatible with surrounding development and uses.

Proposal

The applicant proposes to construct a townhouse community consisting of 63 townhouses in 11 rows separated by the private street, landscaped mews, and the alleys to serve the units. Eight of the proposed units (12.5%) will be moderately priced dwelling units (MPDUs). The spaces between the rows alternate between landscaped mews, which provide pedestrian access to front doors, and alleys, which provide vehicular access to garages. The historic Riggs-Thompson house will be retained in a separate lot, and converted to use as a one-family detached dwelling. Access to the townhouses will be provided by a private street, with one access point from Ellsworth Drive and one from Springvale Road. Access to the one-family detached dwelling will be provided by an existing driveway from Pershing Drive. The proposal includes an approximately 20,000 square-foot publicly accessible green area that will serve as a recreational amenity to the future residents of the project as well as those of the surrounding neighborhood.

Subdivision of Land

The preliminary plan proposes to subdivide the existing lot into 63 townhouse lots and one lot for the existing one-family detached dwelling (the Riggs-Thompson House). In addition, the preliminary plan proposes three open space parcels and one parcel to contain the proposed private street and associated alleys.



Preliminary Plan



Illustrative Site Plan



Illustrative Rendering – Entrance to mews as seen from Springvale Road

ANALYSIS AND FINDINGS

Preliminary Plan

Conformance to the Master Plan

At its hearing of May 19, 2011, the Planning Board determined that the proposal is in substantial conformance with the North and West Silver Spring Master Plan. The Planning Board's determination was based on the following analysis:

The neighborhoods of North Silver Spring are predominantly comprised of one-family detached homes, with a limited number of townhomes and apartments. On page 20, the Master Plan states that the preservation of residential character and the stabilization of the neighborhood edge along major highways and the Central Business District perimeter are of major concern to North Silver Spring. In this light, the Master Plan reconfirms the existing R-60 Zone for virtually all of North Silver Spring with a few exceptions for specific locations that were in discussion at the time of the Master Plan's publication.

The Master Plan gives extensive guidance for an area along Georgia Avenue where there was particular interest in potential townhomes during the time of the master planning process. On page 21, among the many guidance points for this stretch of Georgia Avenue, the Master Plan states, "limit the development of townhomes to the blocks along Georgia Avenue and do not encroach into the interior blocks." This language, when read on its surface, may appear to recommend an absolute prohibition on townhouse development anywhere in the planning area except along Georgia Avenue. However, when the language is read in its entirety, it becomes apparent that the Master Plan was providing specific guidance solely for the area along Georgia Avenue where there was a current interest in applying the townhouse zones. The language is

recommending against the development of townhomes in the interior blocks along Georgia Avenue. To read the language in the alternative would lead to the conclusion that the drafters of the Master Plan analyzed each of the hundreds of properties in North Silver Spring for its suitability for townhouses and only this one area along Georgia Avenue was deemed appropriate. This is an unrealistic interpretation. Therefore, the Master Plan does not provide specific recommendations for the subject property's suitability for townhomes.

While the Master Plan doesn't provide specific guidance for the subject property's suitability for townhomes, the Master Plan does reconfirm the existing R-60 zoning for the entire North Silver Spring area and does specifically acknowledge the institutional school use on the site. Additionally, the Master Plan provides guidance for the one-family houses along Cedar Street directly south of the subject property on page 44. The Master Plan designates the entire row of homes as suitable for professional office special exceptions because the homes will provide a transition between the Silver Spring Central Business District and the one-family neighborhoods of North Silver Spring. In its reasoning, the Master Plan states that the homes are "somewhat isolated from other [one]-family homes in the neighborhood by the Chelsea School." Because the Chelsea School is not a residential use, this language indicates that the drafters of the Master Plan envisioned the entire block – both the special exception-designated homes along Cedar and the Chelsea School – as a transitional block that buffers the North Silver Spring residential neighborhoods from the Silver Spring Central Business District. Given that townhomes are inherently one-family residential homes, just like detached houses, and that the zoning ordinance intends the townhouse zones for transitional areas between commercial districts and one-family detached neighborhoods, it is likely that a townhouse development at this location will serve as a more appropriate transition, with better compatibility, than the existing school on the property.

While the Master Plan does not provide specific guidance on the development of townhomes at this particular location, the proposal substantially conforms to the Master Plan's general guidance of preserving the residential character of North Silver Spring and stabilizing the edge along the Central Business District perimeter. By replacing an institutional use with a residential one-family development, the residential character of North Silver Spring is enhanced and the transitional block between the Silver Spring Central Business District and the North Silver Spring residential neighborhoods is improved.

After the County Council remanded the application, the applicant reduced the number of townhouse units from 76 to 63. At a public hearing on January 26, 2012, the Planning Board once again determined that the proposal is in substantial conformance with the Master Plan.

The Council, in its resolution, requested that the applicant provide a revised schematic development plan "with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan." In its resolution, the Council found that the applicant's initial proposal for townhomes at the subject property was an appropriate use, and compatibility with the surrounding area can be furthered with a lower density and slight revisions to the layout and design of the site.

The Hearing Examiner and the County Council agreed with the Planning Board's determination, stating that the density and massing of the development would be compatible with the surrounding land uses, the applicant adequately demonstrated that the alignment of the internal private road would operate compatibly with the neighborhood and in a manner consistent with the Master Plan, the density and massing proposed was consistent with the Master Plan, and the environmental setting for the Riggs-Thompson House shown on the revised SDP was also consistent with the Master Plan.

The previous analysis of master plan conformance, which was accepted by both the Planning Board and the Hearing Examiner, and the finding of master plan conformance made by the County Council remain valid. Therefore, staff recommends that the Planning Board find that the preliminary plan is in substantial conformance with the North and West Silver Spring Master Plan.

Public Facilities

Roads and Transportation Facilities

The subject property is located just north of the Silver Spring Central Business District. The property is bordered by Springvale Road to the north, Pershing Drive to the east and Ellsworth Drive to the west. Access to the townhouses will be via a right-in right-out private street from Springvale Road and an entrance on Ellsworth Drive. Access to the single family unit will be via a driveway from Pershing Drive.

A series of traffic restrictions exist on the streets in the surrounding neighborhood, such as prohibitions against turns at certain intersections and one-way street segments. The purpose of these restrictions is to discourage through traffic between the Silver Spring central business district and the Capital Beltway from using the neighborhood streets as an alternative to Colesville Road. The proposed development includes a new private street that will intersect Ellsworth Drive at one end and Springvale Road at the other, creating a new connection between these two streets. Citizen correspondence on the application has raised the concern that the proposed new street will allow drivers to circumvent the existing traffic restrictions, which would cause adverse impacts on the neighborhood from a large increase in through traffic. However, The staff recommendation includes a condition that requires the applicant to install similar traffic restriction signs on the proposed private street, which will prohibit through traffic from using the new street between Ellsworth Drive and Springvale Road. Staff does not expect a lower level of compliance for the proposed signs than for the existing signs. Thus, the proposed subdivision will not cause an increase in through traffic in the neighborhood.

The applicant considered a dead-end street with an intersection on Ellsworth Drive in order to eliminate the potential for through traffic, but the idea was rejected because the required cul-de-sac turnaround occupied a large area of the site, resulting in a significant reduction in the number of townhouses that could be built on the site. Staff also suggested that the proposed private street be completely one-way, with traffic entering on Springvale Road and exiting on Ellsworth Drive, in order to strengthen the prohibition of through traffic in the outbound from the CBD direction. This idea was also rejected by the applicant, because it would result in inconvenient vehicular access to the townhouses.

Master/Sector-Planned Roadways and Bikeways

Springvale Road is a tertiary residential street not listed in the North & West Silver Spring Master Plan. Pershing Drive is also a tertiary residential street not listed in the Master Plan, but it has a designated bikeway (either bike lanes or a signed shared roadway); PB-17. This section of Ellsworth Drive is a secondary residential street not listed in the Master Plan, but it has a signed shared roadway, SR-31.

Available Transit Service

Although transit service is not available on Springvale Road, Pershing Drive or Ellsworth Drive, there are existing bus stops located on nearby Wayne Avenue. These bus stops are within a quarter-mile walking distance of the proposed townhouses and are served by Ride-On routes 12, 15 and 19. The proposed townhouses are located less than a mile from the Silver Spring Metrorail station.

Pedestrian Facilities

There is currently a sidewalk and green panel along Pershing Drive on the east side of the property. There are, however, no sidewalks along the property's frontage on Springvale Road and Ellsworth Drive. The applicant proposes to provide a five-foot wide sidewalk and five-foot wide green panel along the property frontage.

The sidewalk along Ellsworth Drive is proposed to be constructed along the property frontage from the intersection of Springvale Drive to a point approximately 65 feet north of the southern property line. This 65-foot segment of the Ellsworth Drive frontage was excluded from the frontage to be improved with a sidewalk because sidewalk construction would result in the loss of three trees. The applicant is proposing to provide a crosswalk to connect the proposed sidewalk to the existing sidewalk on the opposite side of the street. Staff believes that number of proposed dwellings and the close proximity to the Silver Spring Central Business District and Silver Spring Metrorail Station will result in a large number of pedestrians on Ellsworth Drive. Therefore, the staff recommendation includes a condition that requires the applicant to continue the construction of the sidewalk and green panel along Ellsworth Drive to the intersection with Cedar Street.

The applicant is also proposing to provide three bike racks on the site. Two will be located adjacent to the open space area on Chelsea Court and one will be near the intersection of Ellsworth Drive on Chelsea Court.

Local Area Transportation Review (LATR)

A traffic study is required to satisfy the LATR component of the adequate public facilities (APF) test when a proposed land use generates a total of 30 or more peak-hour trips within the weekday morning peak period (6:30 to 9:30 a.m.) or evening peak periods (4:00 to 7:00 p.m.). Table 1 below shows the net new number of weekday peak-hour trips generated by the proposed redevelopment of the school into 63 townhouses and one single-family unit during the weekday a.m. and the p.m. peak periods.

Table 1: Net Site-Generated Peak-Hour Trips

<i>Proposed Land Use Redevelopment</i>	<i>AM Peak Hour</i>			<i>PM Peak Hour</i>		
Existing Chelsea School	In	Out	Total	In	Out	Total
Estimated Trips (86 Students) ^{1, 2}	40	27	67	6	9	15
Driveway Counts	33	17	50	7	12	19
Difference (Actual minus Estimated)	-7	-10	-17	1	3	4
Proposed Redevelopment						
Townhouse (63 D.U.)	5	25	30	35	17	52
Single Family Home (1 D.U.)	0	1	1	1	0	1
Total	5	26	31	36	17	53

1. MNCPPC Trip Generation Rates
2. PM Peak hour (ITE Trip Generation Manual 8th ed.)

Table 2 below shows that the critical lane volume (CLV) values at all analyzed intersections during the weekday morning and evening peak-hours will be less than their applicable congestion standard of 1,600 for the Silver Spring/Takoma Park Policy Area or 1,800 for the intersections located within the Silver Spring CBD Policy Area. Based on the analysis presented in the traffic study, it is concluded that the subject application will satisfy the LATR requirements of the APF test.

Table 2: Calculated CLV Values at nearby Intersections

Analyzed Intersection	Weekday Peak Hour	Congestion Standard	Traffic Condition		
			Existing	Future w/o Development	Total
Dale Drive & Colesville Road	Morning	1,600	1,361	1,440	1,440
	Evening		1,289	1,375	1,377
Dale Drive & Wayne Avenue¹	Morning	1,600	862	892	892
	Evening		988	1,021	1,023
Springvale Road & Ellsworth Drive	Morning	1,600	70	70	70
	Evening		60	60	65
Springvale Road & Pershing Drive	Morning	1,600	47	47	50
	Evening		36	36	39
Site Driveway & Springvale Road	Morning	1,600	N/A	N/A	16
	Evening		N/A	N/A	16
Site Driveway & Ellsworth Drive	Morning	1,600	N/A	N/A	78
	Evening		N/A	N/A	75
Site Driveway & Pershing Drive	Morning	1,600	N/A	N/A	24
	Evening		N/A	N/A	11
Spring Street & Colesville Road¹	Morning	1,800	1,015	1,175	1,185
	Evening		1,148	1,246	1,250
Cedar Street & Ellsworth Drive	Morning	1,800	299	314	314
	Evening		517	544	544
Cedar Street & Pershing Drive	Morning	1,800	168	176	177
	Evening		369	380	380
Cedar Street & Wayne Avenue	Morning	1,800	625	662	662
	Evening		772	811	812

¹ These CLV values were incorrectly entered in the Traffic Study, and have been corrected.

Policy Area Mobility Review (PAMR)

Pursuant to Paragraph AP2, Transition, of the 2012-2016 Subdivision Staging Policy, the applicant has selected to use the PAMR test in lieu of the Transportation Policy Area Review (TPAR) test to satisfy the policy area requirements of the APF test. The PAMR Guidelines require a 5 percent mitigation of base trips in the Silver Spring/Takoma Park Policy Area. The required number of trips to be mitigated is two peak hour trips (34 X 0.05 = 2), as shown in Table 3. The applicant proposes to pay a mitigation fee of \$23,400 (2 X \$11,700), which will pay for improvements located in the immediate neighborhood. With the proposed mitigation, the application thus satisfies the PAMR requirements of the APF test.

Table 3: PAMR Calculation

	<i>AM Peak Hour</i>	<i>PM Peak Hour</i>
Proposed Trips	31	53
Existing Trips	50	19
New Trips	-19	34
Trips to be Mitigated (5%)	0	2

Conclusion

Proposed vehicle and pedestrian access for the subdivision will be adequate with the proposed improvements.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The property is proposed to be served by public water and public sewer. The application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Subdivision Staging Policy resolution currently in effect and will be adequate to serve the property. The subject property is within the Northwood High School cluster area, which is currently operating between 105-120% of capacity at the high school level, and a school facilities payment is required. Electrical, telecommunications, and gas services are also available to serve the property.

Environment

Natural Resource Inventory/Forest Stand Delineation

Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 419981560 was approved for the subject property on January 28, 1998. A revised NRI/FSD 420121810 was submitted by the applicant and approved on July 16, 2012. The NRI/FSD identifies a number of significant and specimen trees which occur on the site. No forest areas, wetlands, streams or associated buffers occur on or near the subject property. Areas of onsite steep slopes are identified by the NRI/FSD; most of the slopes areas are manmade and there are no areas of highly erodible soils mapped in the vicinity.

Forest Conservation Plan

A Final Forest Conservation Plan (FFCP) was approved on September 20, 2001, with the approval of Preliminary Plan 120000130 for a proposed school expansion. The FFCP included a substantial development envelope for the construction of building additions, new school buildings, parking, and access drives. The forest conservation requirements for the school were met through a combination of credited tree preservations and supplemental plantings. A Category II Conservation Easement was established over the entirety of the property as recorded in plat 22270, protecting the onsite trees and the associated forest conservation credits. The plan for the school expansion was not implemented except for the installation of a driveway and parking area off of Pershing Drive.

Local Map Amendment G-892 for the project was not subject to a formal forest conservation review. However, a preliminary forest conservation plan (PFCP) associated with the proposed rezoning was submitted on May 4, 2011. The PFCP showed that the forest conservation requirements could be achieved, although the PFCP did not address the potential forest conservation variance issues. Ultimately, the project was remanded to decrease the density. The revised schematic development plan included greater setbacks, lower density, more green space, and less overall disturbance; indicating that the forest conservation and tree save requirements could be satisfied.

Revised NRI/FSD 420121810 was submitted by the applicant and approved on July 16, 2012. During the review period, a severe storm had occurred in the area, which felled or damaged a number of the trees within the study area. Prior to approval, the forest conservation plan was updated to reflect the felled and damaged trees.

The formal submission of the final forest conservation plan (FFCP) and associated forest conservation variance request have been included for review during the current preliminary plan and site plan review. The current FFCP shows some additional tree impacts and removals beyond the levels previously approved on the FFCP for the school expansion. The additional impacts and removals trigger forest conservation variance requirements which are discussed further below. Onsite mitigation plantings for the variance trees are included on the FFCP and are generally located behind the residences along Cedar Street, within the boundary of the subject property.

The existing Category II Conservation Easement already established over the entire property was suitable for an institutional, owner-occupied use, such as the school. However, the same easement would not be appropriate for a residential, multi-owner townhouse community. Additionally, current practice is to avoid overlap of conflicting easements such as the storm water management and public access easements within the site. As a result of these circumstances, staff supports abandonment of the existing Category II Easement. Mitigation of the easement area is proposed to be satisfied by use of an offsite forest conservation bank. The standard policy adopted by the Planning Board for off-site mitigation of conservation easement abandonment is to provide replacement at a 2:1 ratio. However, the Category II Easement associated with the project covers the entire site, which includes substantial areas of buildings, parking lots, driveways, and turf fields in addition to the protected trees and plantings. The blanket easement was established to avoid a complex easement description that would have only included the particular areas of interest such as the plantings and tree cover (which are interspersed throughout the site). Therefore, in this case staff recommends that the easement mitigation be satisfied by a 2:1 mitigation ratio of the forest conservation credits provided by the original plan (rather than a 2:1 ratio of the easement area). Since the original forest conservation plan provided 0.93 acres of forest credit, a mitigation requirement of 1.86 acres is proposed to be satisfied by the applicant's purchase of equivalent credits from an offsite conservation bank. No forest conservation easements are proposed with this application.

Forest Conservation Variance

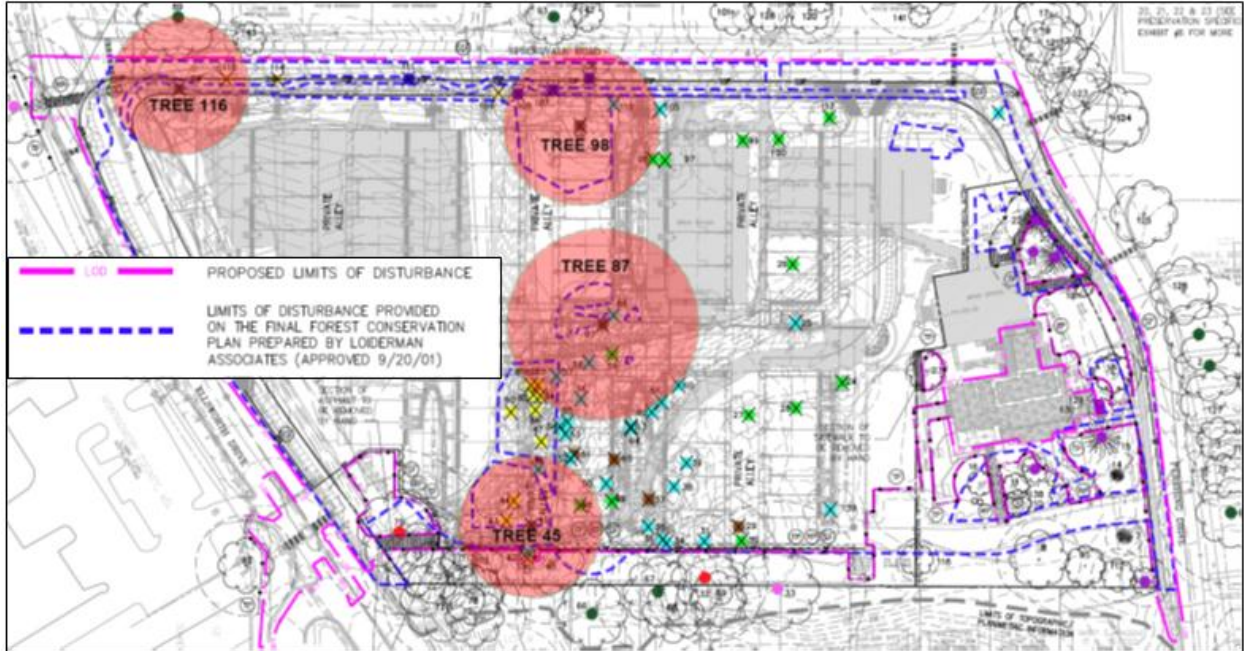
Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ), requires approval of 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 diameter at breast height (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 are designated as Federal or State rare, threatened, or endangered species.

The forest conservation variance provisions became effective on October 1, 2009. A variance for disturbance or removal of the specified vegetation was not required previously; therefore, the impacts and removals approved before the effective date of the variance requirement are grandfathered from the variance provisions. Some of the trees that are subject to the variance (based on newly proposed impacts beyond the original approval) were not specifically shown on the previously approved FFCP; however, the trees would have been preserved based on the previously approved limits of disturbance (LOD).

Since the project proposes impacts to and removal of trees, beyond the previous approvals granted prior to the October 1, 2009 effective date, that are 30 inches DBH or greater and proposes new and additional impacts to trees associated with the historic site, approval of a forest conservation variance is required. The applicant submitted a variance request on February 13, 2013, and provided supplemental justifications and exhibits on March 20 and 21, and April 12, 2013, for the impacts to and removal of trees as a result of the improvements (see Attachment E for variance request).

The applicant's written request and associated forest conservation variance table on the FFCP identify the trees subject to the variance but also include some trees that were potentially affected but are not actually subject to the variance. However, staff has assessed the variance request and compared it with the previous approvals and the currently proposed impacts. Four trees that are 30 inches DBH or greater are proposed for removal beyond the original approval of the September 20, 2001, FFCP, and 21 trees are proposed to be impacted but not removed. No trees associated with the historic setting are proposed for removal, although some are subject to impacts. In total, twenty-five 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. In all cases where CRZ impacts are proposed to saved trees, appropriate tree preservation and/or stress reduction measures will be performed under the direction of a licensed tree care professional. Refer to the tree tables in the applicants' forest conservation variance request (Attachment E) for additional information.



Trees subject to the forest conservation variance that are proposed for impact or removal

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:

- Two of the four trees proposed for removal under the variance (trees 98 and 116) are in poor condition and retention of those trees would create a maintenance burden and potential hazard and liability.
- Removal of the two other trees (45 and 87) and the impacts to trees that will be retained are related to the following design considerations and site constraints:
 - The desire to minimize massing along Springvale Road resulting in the orientation of units perpendicular to that road as approved in the SDP.
 - Tree 45 (proposed for removal) is currently where an alley is proposed. The applicant looked at revised layouts that flipped the orientation of the units and placed courtyards where the alleys are and alleys where the courtyards are. That alternative, however, also would not enable preservation of tree 45 because utility easements in the courtyard would preclude it.
 - The applicant examined unit widths but cannot reduce the widths because the proposed combination of 14, 16, 19, and 24-foot wide units is already, on average, narrower than the industry standard for townhouses in Montgomery County. Further, the RT-12.5 zone has a maximum building height of 35 feet and requires parking for two cars per unit. Given the grades in the middle of this site, where the binding elements have

directed development, the 24-foot wide units cannot be built with the proposed four levels (via a buried basement) that are standard in many townhouses. These 20 units are a maximum of three levels because of the 35-foot height limit, and the first level includes a parking garage. The grade, the 35 foot height limit, and the requirement in the RT-12.5 zone for two parking spaces for each unit force the unit widths to stay as proposed in order to develop townhouses that meet market demand for a mix of sizes and price points in this location.

For the above reasons, development of the property would require impacts to and/or removal of trees that are subject to a forest conservation variance. Staff has reviewed this application and, based on the existing circumstances and conditions on the property, 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.*

Trees 98 and 116 are both in poor condition and would be removed independent of the proposed development activity. Furthermore tree 116 is located within the existing Springvale Road right-of-way; the MCDOT arborist was consulted on the condition of the tree and agrees that the tree warrants removal. The other removals (trees No. 45 and 87) and impacts are within the buildable area established by the setbacks and other site constraints. 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 requested variance is based on proposed development allowed under the existing zoning. The variance can be granted under this condition if the impacts are avoided or minimized and that any necessary mitigation is provided. Design changes were incorporated to reduce tree disturbance and removals. A variety of alternative townhouse configurations and roadway alignments were explored, but none of those configurations resulted in fewer impacts to or removals of trees that would be subject to the variance. Additionally, mitigation is provided to reduce the effects of the trees to be removed.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed site design and layout 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. MCDPS approved the stormwater management concept for the project on October 24, 2012. The MCDPS review and ultimate approval of the sediment and erosion control and storm water management plans will ensure that appropriate standards are met. The property is not directly associated with any steams, wetlands, or related buffers. Additionally the

mitigation plantings will help provide shading and water retention and uptake. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

County Arborist's 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 supplemental justifications and exhibits provided by the applicant were forwarded on March 20 and 21, and April 12, 2013, respectively. The County Arborist issued a response to the variance request on April 15, 2013 and recommended that the variance be approved with the condition that mitigation is provided. (Attachment F). Additionally, the County Arborist provided general recommendations on calculating mitigation plantings and providing tree preservation measures.

Mitigation For Trees Subject To The Variance Provisions

Generally, Staff recommends that replacement plantings for variance purposes occur at a ratio of approximately one inch DBH for every four inches of DBH removed, using onsite native canopy tree plantings that are a minimum of three-inch caliper. No mitigation is recommended for trees that are impacted but retained. This means that for the 151 diameter inches of trees removed, the applicant will provide a minimum amount of 38 inches of caliper replacements. The 38 inches of caliper for this project is comprised of 14 two-inch caliper trees and three 3.5-inch caliper trees. In this case, some of the mitigation plantings are proposed to be planted among the roots of existing trees to be preserved. In order to minimize the impacts to the saved trees, the two-inch caliper tree plantings are specified for certain locations (instead of three-inch caliper trees). Planting the smaller trees will minimize the disturbance to the existing trees. Furthermore, the smaller trees would be more adaptable to the shadier locations underneath of the existing trees.

Stormwater Management

The MCDPS Stormwater Management Section approved the stormwater management concept on October 24, 2012. According to the approval letter, the stormwater management concept meets stormwater management requirements using environmental site design to the maximum extent practicable. The full volume of environmental site design is provided using permeable pavement, micro-bioretenion, planter boxes, bio-swales, and dry wells.

Staff has received correspondence from the Seven Oaks Evanswood Citizen Association, the Audubon Naturalist Society, and nearby residents that raises the concern that the stormwater management concept is not in compliance with state and county laws that require the use of environmental site design to the maximum extent practicable and that MCDPS inappropriately approved the stormwater management concept (Attachment G – correspondence on stormwater management issues, and Attachment H – citizen correspondence). In support of those concerns, the correspondence argues that preservation of the existing steep slopes and an existing grove of trees on the subject property are necessary in order to determine that the stormwater management concept uses environmental site design to the maximum extent practicable.

Rick Brush of MDPS responded to these concerns in an email dated October 11, 2012. The email provides a detailed response to each of the concerns that were raised, and states that the stormwater concept is fully in compliance with the requirement to implement environmental site design. A March 14, 2013 letter from Diane Schwartz Jones, Director of MCDPS, to the Audubon Naturalist Society and the Seven Oaks Evanswood Citizen Association reiterates that the stormwater concept meets the requirements for use of environmental site design, and confirms that approval of the stormwater management concept was appropriate. Both Mr. Brush's and Ms. Schwartz Jones's responses on the issue also address the concerns raised with respect to retention of the existing steep slopes and grove of trees.

With respect to steep slopes, Ms. Schwartz Jones states:

The intent of the requirement to protect steep slopes is not based on any intrinsic value concerning hydrology. In fact, steep slopes tend to limit the infiltration of runoff. The intent is to limit development on steep slopes which may cause or exacerbate erosion and sedimentation within the stream system. That is not a factor in this case due to the location of the steep slopes and the proposal to remove them. In addition, these existing steep slopes are not a part of or associated with a stream valley buffer. In this case the removal of these slopes poses no significant erosion or environmental hazard. Preservation of the slopes reaps no significant hydrologic benefit.

With respect to the removal of trees, Ms. Schwartz Jones states:

Where forested areas are preserved within conservation easements or stream valley buffers, they may provide some Environmentally Sensitive Design (ESD) credit. Credit can also be given using the "Sheet Flow to Buffer" ESD standard. However, that is not the case for this project. Therefore, no ESD credit can be given for saving the grove of trees. Although a reduction in the proposed impervious area may occur if the requirement is to keep these trees, the MDE [Maryland Department of the Environment] design manual does not specify the preservation of existing trees as an ESD practice.

Ms. Schwartz Jones's response with respect to removal of the grove of trees is making the distinction between removal of forest, per the definition in the Forest Conservation Law, and a grove of trees that does not meet that definition. While the preservation of forest is eligible for ESD credit, preservation of trees that are not in a forest is not eligible.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the RT-12.5 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in Table 4, below. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

Table 4: Preliminary Plan Data Table

PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan
Minimum Tract Area	20,000 sq. ft.	5.25 acres gross
Green Area	50% Min.	51%
Building Coverage	35% Max.	30%
Setbacks		
From Any Public Street	25 ft. Min.	Must meet minimum ¹
From Any Land in a One-Family Detached Residential Zone	30 ft. Min.	Must meet minimum ¹
Maximum Residential Dwelling Units per Zoning	80 ^{2,3}	64
MPDUs	12.5%	12.5%
TDRs	N/a	N/a
Site Plan Required	Yes	Yes

¹ As determined by MCDPS at the time of site plan.

² Including a 22% density bonus for providing 15% MPDUs.

³ Limited to 64 dwelling units by a binding element of the schematic development plan.

Resubdivision

The application is a resubdivision of a platted lot. Resubdivision of residential lots is subject to review criteria specified in Section 50-29(b)(2) of the Subdivision Regulations. The review requires the comparison of proposed lots with existing lots in the surrounding neighborhood to ensure that they are of the same character with respect to street frontage, alignment, size, shape, width, area, and suitability for residential use. However, in the case of this application, a comparison with surrounding neighborhood lots is not possible because this subdivision is to be developed under the development standards of the RT-12.5 zone, but the surrounding neighborhood has been developed under the development standards of the R-60 zone for standard method development. The RT-12.5 zone allows unit types, such as townhouses and duplexes, that are not permitted in the R-60 zone with standard development. In addition, the RT-12.5 zone allows significantly smaller lot sizes than the R-60 standard method of development.

Because of these differences between the RT-12.5 and the R-60 zones, a meaningful comparison between the proposed lots and the existing lots in the neighborhood cannot be made. Therefore, the applicant has requested a waiver of the resubdivision analysis required by Section 50-29(b)(2) (Attachment I). The Planning Board has the authority to grant such a waiver pursuant to Section 50-38(a)(1) of the Subdivision Regulations, provided that certain findings can be made. The section states:

The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide

relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.

The fact that the required analysis cannot be made presents a practical difficulty for this application. In addition, this is an unusual circumstance because no preceding subdivisions in the neighborhood have been developed in the RT-12.5 zone. Granting a waiver of the requirements of Section 50-29(b)(2) is the minimum waiver necessary to provide relief from the requirements. The waiver is not inconsistent with the purposes and objectives of the General Plan and is not adverse to the public interest because the waiver is needed in order to develop the subject property in accordance with a local map amendment to change the zone of the site from R-60 to RT-12.5. This local map amendment was found by the County Council to be consistent with the purposes and objectives of the General Plan and to be in the public interest.

Lot Frontage on a Private Street

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 townhouse lots will be on individually recorded lots and will front onto private alleys, which will be accessed via a private street. Therefore, in order to approve the preliminary plan, the Planning Board must also find that the proposed private alleys and street have 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, it is staff's opinion that the proposed street and alleys that provide frontage to the proposed individually recorded townhouse lots can meet the minimum standards necessary to make the finding that it has the status of a public road. These standards, as previously applied by staff, include 20-foot pavement width, 25-foot or larger curve radii, 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 carefully considered the issue of public accessibility. A series of traffic restrictions exist on the streets in the surrounding neighborhood, such as prohibitions against turns at certain intersections and one-way street segments. The purpose of these restrictions is to discourage through traffic between the Silver Spring central business district and the Capital Beltway from using the neighborhood streets as an alternative to Colesville Road. Residents of the neighborhood expressed concerns at the time of the special exception hearing that the proposed private street, which will create a connection through the subject property from Ellsworth Drive to Springvale Road, will allow drivers to circumvent the one-way restrictions on Ellsworth Drive and Pershing Drive. The residents were (and still are) concerned that this would create unacceptable traffic impacts in the neighborhood.

Several binding elements were applied to the schematic development plan that relate to reducing through traffic. Among those, binding element No. 10 states:

The internal private road will be restricted to use by residents and visitors of Chelsea Court and will include design features to avoid cut through traffic such as limited roadway width, on-street

parking, special paving at each of the two ingress/egress points, signage prohibiting cut through traffic, and other control measures, to be finalized at the time of site plan approval.

A contradiction appears to exist between the requirement that the Planning Board must make a finding that the private street has attained the status of a public road, including that it be fully open to the public, and the requirement of the binding element that the street be restricted to use by residents and visitors only. Because staff did not believe that the required finding could be made, the applicant was asked to submit a request to waive the requirement of Section 50-29(a)(2) with respect to the private street attaining the status of a public road. Staff was specifically concerned that proposed signage limiting the street to “residents and guests,” or similar language, would not be consistent with the requirement for public access.

The applicant submitted a waiver request letter dated October 31, 2012, and a supplementary letter dated December 5, 2012 (Attachment I). The December 5 letter, in particular, clarifies that the intent is to install signs that prohibit through traffic or non-local traffic, without mention of residency status. The letter further points out that Section 31.69.01 of the code of Montgomery Regulations allows MCDOT to install, at the request of residents, traffic control measures that restrict access into or through a neighborhood. This includes signage to discourage non-local traffic in a particular neighborhood or on a particular neighborhood street. Through such measures, the regulations define a permissible access restriction as a prohibition or barrier preventing full or directional entry into or through a particular street, and through traffic is defined as vehicular traffic entering or exiting a neighborhood without origin or destination in that neighborhood. The applicant argues that if such restrictions can be applied to public streets, then they should also be permissible on private streets.

Staff finds this argument persuasive, not only as justification for a waiver of Section 50-29(a)(2) with respect to the private street attaining the status of a public road, but as justification for making the required finding without the need to waive that requirement. Traffic control measures that restrict non-local traffic can be applied to public streets without jeopardizing their status as public roads; applying the same restrictions to a private street will not prevent the Planning Board from finding that it has attained the status of a public road. Therefore, it is staff’s opinion that there is no need to waive Section 50-29(a)(2).

Avoiding signage that makes reference to visitors and guests is essential to making this required finding. By using signs that specifically prohibit through traffic from Ellsworth Drive to Springvale Road and vice versa, the restrictions apply to all drivers equally, and, therefore, the proposed private street will be accessible to all members of the public. At the same time, the restrictions will accomplish the desired outcome of discouraging through traffic on the proposed street.

However, the use of signs that do not specifically make reference to visitors and guests may be considered to be not in compliance with the binding element. After all, the binding element requires that “the internal private road will be restricted to use by residents and visitors of Chelsea Court.” But the binding element contains a non-exhaustive list of means by which to accomplish this, which includes “signage prohibiting cut through traffic.” Staff believes that the proposed signage, which prohibits through traffic between Ellsworth Drive and Springvale Road, will have the practical effect of limiting traffic to residents and guests of the townhouses. Further, the County Council gave the Planning Board some flexibility in implementing this binding element, by stating that the traffic control measures are to be finalized at the time of site plan approval. Therefore, staff believes that the proposed signage and

the finding that private street has attained the status of a public road are not in conflict with the binding element.

The applicant's waiver request of October 31, 2012, also includes a request to waive the required finding that the private street and alley network has attained the status of a public road with respect to the layout of the proposed alleys. The waiver request was submitted in response to the fact that the proposed alleys are designed without turnarounds at their ends. However, staff does not believe that a waiver is required. The Planning Board has approved numerous townhouse subdivisions where alleys without turnarounds provide lot frontage and access to the townhouses. Moreover, in this specific case, the proposed street and alley network will have an appropriate circulation pattern as designed, without turnarounds. Turnarounds are not needed because the only users of the alley are those directly accessing the garages along the alley. The alleys and connecting driveways are wide enough for vehicles to turn around, if needed. Visitor parking, deliveries, and emergency access will take place on the proposed private street and not in the alleys. Therefore, staff advises that the requested waiver is not necessary and recommends that the Planning Board find that the proposed private street has attained the status of a public road.

Steep Slopes

The subject property contains several areas of man-made steep slopes (some in excess of 25% slope). These generally occur in the form of straight, graded slopes that were created when the site was graded to create flat areas for the school's buildings, sports fields, and parking areas. The proposed development will result in regrading of the subject property and, consequently, removal of these steep slopes.

Section 50-32 of the Subdivision regulations addresses special controls for environmentally sensitive areas. Paragraph (b) of the section states that the Planning Board must restrict subdivision of any land that it finds to be unsafe for development because of unstabilized slope or fill, among other reasons. To address the requirements of this section, the applicant has provided a letter from a geotechnical engineering firm that states that the proposed development will not result in unsafe conditions, as defined by Section 50-32 (Attachment J).

Paragraph (c) of Section 50-32 states that the Planning Board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to the conservation of environmentally sensitive land. For purposes of the subsection, environmentally sensitive land is defined to include slopes over 25% or over 15% with highly erodible soils. The subject property does not contain any erodible soils. As mentioned above, the slopes that exceed 25% have been artificially created. They are not adjacent to any streams or stream buffers, and they are not within a forest. Thus, they are not inherently environmentally valuable. Further, regrading of the subject property will eliminate the steep slopes, so that a potentially erosive condition will not be created after development of the property. (See also Mr. Brush's and Ms. Schwartz Jones's letters in Attachment G). For these reasons, staff recommends that the Planning Board not restrict development based on Section 50-32.

Historic Resources

The County Council designated the Riggs-Thompson House (MPHP #36/8) in the Master Plan for Historic Preservation in 2000, as part of the North and West Silver Spring Amendment to the Master

Plan for Historic Preservation. The environmental setting was established as 37,056 square feet upon approval of the special exception for the Chelsea School, reduced from the entirety of the Riggs-Thompson House's 1.4 acre parcel, P73. Included within the environmental setting are the historic house and non-contributing later additions.

The original brick, T-shaped house was constructed in 1859 and expanded with frame construction in 1866. The Sisters of the Holy Names purchased the property in 1933, adding a non-contributing, two-story, frame addition connecting to the rear of the historic building and a brick building fronting Springvale Road. This brick building is outside the environmental setting, with the exception of a small portion of a one story walkway connecting this building to the non-historic frame addition.

Under Section 24A-6 of the County Code, the Historic Preservation Commission must approve a Historic Area Work Permit for any exterior alterations to the buildings or the environmental setting. The Historic Preservation Commission has approved the applicant's Historic Area Work Permit to demolish nonhistoric buildings, rehabilitate the Riggs-Thompson House, and make hardscape and greenscape alterations within historic site's environmental setting. The approved Historic Area Work Permit is consistent with the preliminary plan.

The applicant proposes to subdivide the property and create a stand-alone lot for the Riggs-Thompson House. This new lot, Lot 64, will be 37,088 square feet in area, nearly equal in size to the historic site's existing environmental setting (which is 37,057 square feet, per this application). However, the lot as proposed would not be coterminous with the Riggs-Thompson House's environmental setting.

The Planning Board may reduce an environmental setting at the time of subdivision, but enlarging or moving the boundaries of the environmental setting would require an action of the council to amend the Riggs-Thompson House designation. The application does not proposing to alter the environmental setting's size or boundaries.

At the time of the Riggs-Thompson House's designation in 2000, consideration was given to a special exception allowing the Chelsea School to further develop its campus. As a result, the environmental setting was established as 37,056 square feet, rather than the 1.4 acre lot on which the house sat, with an irregular shape to accommodate existing buildings.

Proposed Lot 64, while not coterminous with the environmental setting, is nearly equal to it in area. The proposed lot includes the historic house, front (south) yard, existing (nonhistoric) driveway, and small side (east and west) and rear (north) yards. The size of the front yard and east side yard remain unchanged. The west side yard would extend at least 57 feet from the house to the proposed lot-line. The rear yard would extend 20 feet from the rear elevation of the rehabilitated rear ell of the house, and approximately 48 feet from the rear elevation of the main mass of the house, to the proposed lot-line. Beyond the rear yard, the applicant proposes the creation of publicly accessible open space, which extends the sense of green space behind the historic house. The applicant proposes to fence the Riggs-Thompson lot to provide physical separation between the Riggs-Thompson lot and remainder of the development.

The Montgomery County Historic Preservation Commission, in exercising its powers and duties established in Section 24A-5(j) of the Montgomery County Code, reviewed the proposed subdivision and recommended that the Planning Board support the proposal, having found that the proposed subdivision creating the lot for the Riggs-Thompson House is sufficient for preservation of the historic resource (Attachment K). While finding the proposal to be sufficient, the Commission suggested that moving the rear (north) lot line ten or twenty feet further from the rear of the house would improve the proposal.

In reviewing the proposed subdivision, staff was unable to conclude that, given the shape of the existing environmental setting, there would be additional benefit for the preservation of the Riggs-Thompson House if its environmental setting and lot were coterminous. Staff considers the proposed lot, which is nearly equal in size to the environmental setting, to be an appropriate solution to balance the desire of the applicants to market the Riggs-Thompson House as a one-family dwelling with the interests of the County in preserving the historic Riggs-Thompson House through the administration of the historic preservation ordinance. Staff concurs with the Historic Preservation Commission that shifting the north lot line farther north would enlarge the size of the rear yard of the historic resource and buffer between the house and park, to the benefit of the Riggs-Thomson House, but does not find that such a change is necessary for the preservation of the resource, given the proximity to open space immediately north of the proposed Lot 64. In addition, the publicly-accessible open space provides a benefit to the residents of the neighborhood and the future residents of the subdivision, and a reduction in its area would reduce that benefit.

Compliance with Prior Approvals

The application complies with all applicable binding elements of County Council Resolution No. 17-471 approving Local Map Amendment G-892, which rezoned the property from the R-60 zone to the RT-12.5 zone. The following binding elements were applied to the schematic development plan:

1. The maximum number of units will be 64 (63 townhomes and 1 single family detached).

The preliminary plan proposes 64 lots for 63 townhouses and one one-family detached dwelling.

2. The Applicant, its successors and assigns will record a public access easement allowing public use of the designated public green space along Ellsworth Drive, Springvale Road and Pershing Drive, with the specific size, configuration and location of this easement subject to final site plan approval.

The preliminary plan shows a public access easement over the public green space as required, and a recommended condition of approval requires the easement to be granted and shown on the plat.

3. The project will provide green area of at least 50% of the net tract area. The townhouses will be located in a manner that will provide green areas along Pershing Drive and Ellsworth Drive and a linear green area along Springvale Road, all generally consistent with the schematic development plan with the specific size, configuration and location subject to final site plan approval.

The preliminary plan proposes a green area that comprises 117,414 square feet, which is 51.3% of the gross tract area and 55.6% of the net lot area. The townhouses are located in such a way that provides green areas along Pershing Drive and Ellsworth Drive and a linear green area along Springvale Road.

Citizen correspondence has raised the concern that a portion of the green area should not count towards the required 50% minimum because it is located on proposed Lot 64, which will be a privately-owned one-family lot. The correspondence argues that this arrangement is contrary to the definition of green area which states that the space must generally be available for entry and use by the occupants of the buildings or area involved. However, green area may also include "a limited proportion of space so located and treated as to enhance the amenity of the development by providing landscaping features or screening for the benefit of the occupants or those in neighboring areas, or a general appearance of openness." The Zoning Ordinance does not define what a limited proportion is. In the case of this application, the green area that is located on Lot 64 is 24% of the total green area that is being provided. Staff believes that this is a limited proportion, and that provision of green area on proposed Lot 64 is in compliance with the requirements of the zoning ordinance. In addition, the binding element specifically states that the provision of green area must be generally consistent with the schematic development plan, which showed green area on proposed Lot 64.

4. The Applicant, its successors or assigns, will preserve the Riggs-Thompson House.

The Riggs-Thompson House is proposed for retention and conversion to a private one-family dwelling.

5. The Applicant, its successors and assigns shall abide by the existing traffic restrictions on Springvale Road, Ellsworth Drive and Pershing Drive so long as those restrictions remain in effect.

No aspect of the preliminary plan would prevent compliance with the existing traffic restrictions on Springvale Road, Ellsworth Drive, and Pershing Drive. Compliance by the future residents of the subdivision is subject to police enforcement.

6. The maximum building height will be 35 feet.

The townhouses are proposed to be a maximum of 35 feet in height.

7. The project will provide a minimum of two parking spaces per unit plus additional spaces for guest parking.

The preliminary and site plans propose two parking spaces per dwelling and 12 additional on-street parking spaces. 140 parking spaces are proposed in total.

8. The historic setting for the Riggs-Thompson House will remain at a minimum of 37,056 square feet.

The preliminary plan shows a historic environmental setting of 37,057 square feet.

9. The setback along Springvale Road shall be a minimum of 25 feet, and, subject to site plan approval, will include a double row of trees.

The setback along Springvale Road is 25 feet, and a double row of trees is provided.

10. The internal private road will be restricted to use by residents and visitors of Chelsea Court and will include design features to avoid cut through traffic such as limited roadway width, on-street parking, special paving at each of the two (2) ingress/egress points, signage prohibiting cut through traffic, and other control measures to be finalized at the time of site plan approval.

As discussed in detail above in the analysis of the application's compliance with the subdivision regulations and zoning ordinance, the proposed signs prohibiting through traffic between Ellsworth Drive and Springvale Road will comply with this binding element. In addition, the proposed private street will be 20 feet wide, on street parking is provided, and special paving is provided at the ingress/egress points.

11. The townhouse units confronting Springvale Road will be designed to have their fronts facing Springvale Road.

The townhouses fronting on Springvale Road have been architecturally designed for front-facing units along Springvale Road.

12. The internal private Road shall include signage and channelization measures to prohibit left turning movements from the private street onto Springvale Road, subject to approval by MCDOT, as part of the site plan approval process.

The proposed private street is designed with channelization that prevents left turns onto Springvale Road, and a right-turn-only sign is proposed for traffic approaching Springvale Road on the private street.

13. At the time of record plat, the Applicant will record a restrictive covenant for the open space area around the 37,056 square foot environmental setting for the Riggs Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable Applicant to complete all work approved by the Planning Board as part of the site plan approval. Following completion of those improvements, the covenant will require advice from the Historic Preservation Commission to the Planning Board for any site plan amendment to the area subject to the covenant.

The staff recommendation includes a condition that requires the applicant to record a restrictive covenant for the open area around the environmental setting for the Riggs-Thompson House.

14. The homeowners association documents for the project will provide authorization for police enforcement of all traffic restrictions and related signage regarding entry to and exist from the site and, upon site plan approval, Applicant will request an Executive Order (formal traffic order) for County police enforcement of entry and exit restrictions.

Compliance with this binding element will take place after approval of the preliminary plan and site plan.

15. At the time of site plan, the Applicant will propose for Planning Board approval, a double row of trees along Springvale Road and landscaping combined with decorative walls at the ends of the alleys facing Springvale Road to screen the view down those alleys.

A double row of trees is proposed along Springvale Road and decorative walls are proposed at the ends of the alleys facing Springvale Road.

Site Plan

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.*

The application complies with all applicable binding elements of County Council Resolution No. 17-471 approving Local Map Amendment G-892, which rezoned the property from the R-60 zone to the RT-12.5 zone. The following binding elements were applied to the schematic development plan:

1. The maximum number of units will be 64 (63 townhomes and 1 single family detached).

The site plan proposes 63 townhouses and one one-family detached dwelling.

2. The Applicant, its successors and assigns will record a public access easement allowing public use of the designated public green space along Ellsworth Drive, Springvale Road and Pershing Drive, with the specific size, configuration and location of this easement subject to final site plan approval.

The accompanying preliminary plan shows a public access easement over the public green space as required, and a recommended condition of approval requires the easement to be granted and shown on the plat.

3. The project will provide green area of at least 50% of the net tract area. The townhouses will be located in a manner that will provide green areas along Pershing Drive and Ellsworth Drive and a linear green area along Springvale Road, all generally consistent with the schematic development plan with the specific size, configuration and location subject to final site plan approval.

The site plan proposes a green area that comprises 117,414 square feet, which is 51.3% of the gross tract area and 55.6% of the net lot area. The townhouses are located in such a way that provides green areas along Pershing Drive and Ellsworth Drive and a linear green area along Springvale Road.

4. The applicant, its successors or assigns, will preserve the Riggs-Thompson House.

The Riggs-Thompson House is proposed for retention and conversion to a private one-family dwelling.

5. The Applicant, its successors and assigns shall abide by the existing traffic restrictions on Springvale Road, Ellsworth Drive and Pershing Drive so long as those restrictions remain in effect.

No aspect of the site plan would prevent compliance with the existing traffic restrictions on Springvale Road, Ellsworth Drive, and Pershing Drive. Compliance by the future residents of the project is subject to police enforcement.

6. The maximum building height will be 35 feet.

The townhouses are proposed to be 35 feet in height maximum.

7. The project will provide a minimum of two parking spaces per unit plus additional spaces for guest parking.

The site plan proposes two parking spaces per dwelling and 18 on-street parking spaces. 140 parking spaces are proposed in total.

8. The historic setting for the Riggs-Thompson House will remain at a minimum of 37,056 square feet.

The site plan shows a historic environmental setting of 37,057 square feet.

9. The setback along Springvale Road shall be a minimum of 25 feet, and, subject to site plan approval, will include a double row of trees.

The setback along Springvale Road is 25 feet, and a double row of trees is provided.

10. The internal private road will be restricted to use by residents and visitors of Chelsea Court and will include design features to avoid cut through traffic such as limited roadway width, on-street parking, special paving at each of the two (2) ingress/egress points, signage prohibiting cut through traffic, and other control measures to be finalized at the time of site plan approval.

The proposed signs prohibiting through traffic between Ellsworth Drive and Springvale Road will comply with this binding element. In addition, the proposed private street will be 20 feet wide, on street parking is provided, and special paving is provided at the ingress/egress points.

11. The townhouse units confronting Springvale Road will be designed to have their fronts facing Springvale Road.

The townhouses fronting on Springvale Road have been architecturally designed for front-facing units along Springvale Road.

12. The internal private Road shall include signage and channelization measures to prohibit left turning movements from the private street onto Springvale Road, subject to approval by MCDOT, as part of the site plan approval process.

The proposed private street is designed with channelization that prevents left turns onto Springvale Road, and a right-turn-only sign is proposed for traffic approaching Springvale Road on the private street.

13. At the time of record plat, the Applicant will record a restrictive covenant for the open space area around the 37,056 square foot environmental setting for the Riggs Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable Applicant to complete all work approved by the Planning Board as part of the site plan approval. Following completion of those improvements, the covenant will require advice from the Historic Preservation Commission to the Planning Board for any site plan amendment to the area subject to the covenant.

The staff recommendation includes a condition that requires the applicant to record a restrictive covenant for the open area around the environmental setting for the Riggs-Thompson House.

14. The homeowners association documents for the project will provide authorization for police enforcement of all traffic restrictions and related signage regarding entry to and exist from the site and, upon site plan approval, Applicant will request an Executive Order (formal traffic order) for County police enforcement of entry and exit restrictions.

Compliance with this binding element will take place after approval of the preliminary plan and site plan.

15. At the time of site plan, the Applicant will propose for Planning Board approval, a double row of trees along Springvale Road and landscaping combined with decorative walls at the ends of the alleys facing Springvale Road to screen the view down those alleys.

A double row of trees is proposed along Springvale Road and decorative walls are proposed at the ends of the alleys facing Springvale Road.

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 proposed use is allowed in the RT-12.5 zone. At its hearing on May 19, 2011, the Planning Board made the determination with respect to the original proposal for LMA G-892 that the proposal fulfilled the purposes of the RT zone. The Planning Board determined that 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 characteristics of the specific proposal, which provides parkland buffers on three sides, increased setbacks to the north, comparable building heights, and an architectural design that is complementary to the detached homes along Springvale Road, any intrusiveness that could threaten the integrity of adjacent uses is minimized.

In County Council Resolution 17-286, dated October 18, 2011 (Attachment L), the County Council remanded Local Map Amendment G-892 in order to address issues related to density, site layout, and the environmental setting for the Riggs-Thompson House. But, despite the remand, the County Council found that the proposed development fulfills the purposes of the RT zone. The County Council found that:

The evidence in this case supports the Applicant's contention that an R-T Zone is appropriate at this location, although not at the density proposed [at that time, which was RT-15]. The Applicant's land planner testified that the development of the townhomes confirmed the residential use of the area, and eliminated some of the commercial-type aspects of the institutional use, such as truck traffic and school bus parking. Because the R-T Zone permits more flexibility in design than the underlying R-60 Zoning, the R-T Zone allowed the developer to provide more public access space and green space, and improvements to the existing streets, including sidewalks and landscaping, thus enhancing access to the amenities in the Central Business District. These amenities include access to civic, neighborhood-serving retail uses, and transit.

The finding made by the County Council remains valid. Therefore, staff recommends that the Planning Board find that the site plan fulfills the purposes of the RT zone.

As the project data table below indicates, the site plan meets all of the development standards of the zone.

*Table 5
Project Data Table for the RT-12.5 Zone*

Development Standard	Permitted/Required	Proposed for Approval
Maximum Building Height (feet)	35	35
Maximum Number of Units	80 ^{1,2}	64
Minimum Building Setbacks (feet)		
From Any Land in a One-Family Zone	30	30
Right-of-Way	25	25
Rear – From an Adjoining Lot	20	20
Side – From an Adjoining Lot (end unit)	10	10
Minimum Green Area (% of gross tract area)	50%	51%
Maximum Building Coverage (% of lot)	35%	30%
Minimum Parking Spaces	128	140

¹ Including a 22% density bonus for providing 15% MPDUs.

² Limited to 64 dwelling units by a binding element of the schematic development plan.

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

The proposed townhouses are located in rows that run perpendicular to Springvale Road, in order to present the narrow end to the existing one-family dwellings across the street. The end units will have their entrances on the side facing the street, giving the appearance of one-family detached dwellings facing the street. These locations provide easy access to the buildings via the proposed private street and the pedestrian network, consisting of sidewalks on the private street and walkways in the mews and open space areas. The locations of the buildings are adequate and efficient, while meeting the aesthetic concerns of the area, and do not pose any safety concerns on the site.

Open space areas are provided along the development's edge at Springvale Road, along Ellsworth Drive, and at the intersection of Springvale Road and Pershing Drive. These open space areas will be available for recreation for the residents of the proposed development and the surrounding neighborhood. Street trees and lighting are provided to enhance the pedestrian environment. Interior lighting will create enough visibility to provide safety but not so much as to cause glare on the adjacent roads or properties.

Recreation facilities are required for this site plan and are provided as shown in the following table.

Table 6: Recreation Calculations

RECREATION CALCULATIONS							
CHELSEA COURT							
DEMAND POINTS							
TYPE	CODE	UNITS	TOTS	CHILDREN	TEENS	ADULTS	SENIORS
SINGLE FAMILY	SFD I	1	0.10	0.20	0.22	0.85	0.08
TOWNHOUSE	TH	63	10.58	13.61	5.04	81.14	4.54
TOTAL		64	10.68	13.81	5.26	81.99	4.62
SUPPLY POINTS							
TYPE	CODE	#	TOTS	CHILDREN	TEENS	ADULTS	SENIORS
ON-SITE							
PICNIC/SITTING AREA	4	5	5.00	5.00	7.50	25.00	10.00
OPEN PLAY AREA II	5B	1	3.00	4.00	4.00	10.00	1.00
PEDESTRIAN SYSTEM	21	1	1.07	2.76	1.05	36.90	2.08
ON-SITE TOTAL			9.07	11.76	12.55	71.90	13.08
TOTAL PERCENTAGE			85%	85%	239%	88%	283%
OFF-SITE (ELLSWORTH PARK)							
MULTI-AGE PLAYGROUND	3		9	11	3	7	1
OFF-SITE TOTAL			9	11	3	7	1
TOTAL			18.07	22.76	15.55	78.90	14.08
TOTAL PERCENTAGE			169%	165%	296%	96%	305%
ADEQUATE RECREATION FACILITIES							

The open spaces, landscaping, and site details adequately and efficiently address the needs of the proposed use and the recommendations of the Master Plan, while providing a safe and comfortable environment.

Pedestrian access from adjacent sidewalks adequately and efficiently integrates this site into the surrounding area. Safety is enhanced by the provision of new sidewalks on Ellsworth Drive and Springvale Road, where none exist now. The vehicular circulation design efficiently directs traffic into and through the site with minimal impacts to pedestrian circulation. The proposed traffic restriction signs that prohibit through traffic on the new private street ensure that the development will not create traffic impacts in the surrounding neighborhood from increased through traffic. This balance of design with the site, the recommendations of the Master Plan, and the needs of the use is an efficient and adequate means to provide a safe atmosphere for pedestrians, cyclists, and vehicles.

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

As the Planning Board determined at its public hearing of May 19, 2011, for the original LMA G-892 application, 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 characteristics of the specific proposal, which provides parkland buffers on three sides, increased setbacks to the north, comparable building heights, and an architectural design that is complementary to the detached homes along Springvale Road, any intrusiveness that could threaten the integrity of adjacent uses is minimized.

The approved schematic development plan includes several binding elements that ensure compatibility between the proposed townhouses and the adjacent residential community. Those binding elements are discussed in detail above. As noted in that discussion, the proposed development is in compliance with those binding elements.

The townhouse buildings themselves are arranged so that the narrow ends face the one-family detached dwellings on the opposite side of Springvale Road, in scale with those nearby buildings and are located such that they will not adversely impact existing or proposed adjacent uses. The heights of the townhouses will be compatible with the heights of confronting one-family dwellings. The environmental setting for the Riggs-Thompson House protects the historic resource and green area around the house.

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

The development complies with the applicable requirements of the Forest Conservation Law. The applicant will meet the afforestation requirements through purchase of credits from an off-site conservation bank.

The MCDPS Stormwater Management Section approved the stormwater management concept on October 24, 2012. According to the approval letter, the stormwater management concept meets stormwater management requirements using environmental site design to the maximum extent

practicable. The full volume of environmental site design is provided using permeable pavement, micro-bioretenion, planter boxes, bio-swales, and dry wells.

Under Section 24A-6 of the County Code, the Historic Preservation Commission must approve a Historic Area Work Permit for any exterior alterations to the buildings or the environmental setting. The Historic Preservation Commission has approved the applicant's Historic Area Work Permit to demolish nonhistoric buildings, rehabilitate the Riggs-Thompson House, and make hardscape and greenscape alterations within historic site's environmental setting. The approved Historic Area Work Permit is consistent with the site plan.

CITIZEN CORRESPONDENCE AND ISSUES

The applicant has complied with all submittal and noticing requirements. As of the date of this staff report, staff has received 24 letters from citizens in opposition to the project as submitted and no letters in support of the project (Attachment H). Four additional letters were received specifically on the issue of stormwater management (Attachment G), which were discussed earlier in this staff report.

In addition to stormwater, the concerns raised by the citizen correspondence generally relate to the following issues:

- Steep slopes
- Tree preservation
- Through traffic
- Provision of green area on proposed Lot 64
- Development exceeds the allowed density
- Size of proposed Lot 64 in relation to the environmental setting for the Riggs-Thompson House
- Insufficient parking

With respect to steep slopes, a concern was raised that the proposal to grade in an area that contains steep slopes will create an unsafe condition and will degrade downstream water quality. As discussed page 28 of this report, a geotechnical expert determined that the proposed development will not create an unsafe condition within the meaning of Section 50-32 of the Subdivision regulations. In addition, retention of the existing steep slopes will not provide a significant environmental or hydrologic benefit.

With respect to tree preservation, a concern was raised that proposed tree removal was contrary to the Forest Conservation Law. As discussed on page 22 of this report, the findings necessary for approval of the variance can be made by the Planning Board.

With respect to through traffic, a concern was raised that the proposed new street would cause an increase in through traffic in the surrounding neighborhood. As discussed on page 14 of this report, the staff recommendation includes a condition that requires the placement of traffic control signs that prohibit through traffic on the proposed private street to travel between Ellsworth Drive and Springvale Road. This restriction is similar to existing traffic restrictions in the neighborhood, and is not expected to result in a lower level of compliance than the existing signs.

With respect to green area, a concern was raised that a portion of the required green area is being improperly attributed to Lot 64, which will not be accessible to the public. As discussed on page 31 of this report, green area may include “a limited proportion of space so located and treated as to enhance the amenity of the development by providing landscaping features or screening for the benefit of the occupants or those in neighboring areas, or a general appearance of openness.” The Zoning Ordinance does not define what a limited proportion is. In the case of this application, the green area that is located on Lot 64 is 24% of the total green area that is being provided. Staff believes that this is a limited proportion, and that provision of green area on proposed Lot 64 is in compliance with the requirements of the zoning ordinance. In addition, a binding element specifically states that the provision of green area must be generally consistent with the schematic development plan, which showed green area on proposed Lot 64.

With respect to the allowed density, citizen correspondence raises the concern that the proposed 64 dwelling units on the site exceed the allowed density. The correspondence erroneously reaches this conclusion because the writer calculated the allowable number of units based on the net lot area of the site, which is 4.85 acres. The writer further reduces the allowable density by excluding the 37,056 square feet contained in the environmental setting for the Riggs-Thompson House. Based on this, the writer calculates that the allowable number of townhouses on the site is 49, instead of the 63 that are proposed. However, according to the Montgomery County Zoning Ordinance, density is calculated based on gross tract area, which in this case is 5.25 acres. Further, there is no requirement that the environmental setting of the historic resource be excluded from the gross tract area for purposes of calculating density yield. Therefore, the maximum allowable density is to be calculated as $5.25 \times 12.5 = 65$, and the proposed 63 townhouses are allowable.

With respect to the size of proposed Lot 64, a concern was raised that the rear lot line of proposed Lot 64 should be placed farther away from the Riggs-Thompson House. As discussed on page 30 of this report, staff was unable to conclude that, given the shape of the existing environmental setting, there would be additional benefit for the preservation of the Riggs-Thompson House if its environmental setting and lot were coterminous. Staff considers the proposed lot, which is nearly equal in size to the environmental setting, to be an appropriate solution to balance the desire of the applicants to market the Riggs-Thompson House as a one-family dwelling with the interests of the County in preserving the historic Riggs-Thompson House through the administration of the historic preservation ordinance. Staff concurs with the Historic Preservation Commission that shifting the north lot line farther north would enlarge the size of the rear yard of the historic resource and buffer between the house and park, to the benefit of the Riggs-Thomson House, but does not find that such a change is necessary for the preservation of the resource, given the proximity to open space immediately north of the proposed Lot 64. In addition, the publicly-accessible open space provides a benefit to the residents of the neighborhood and the future residents of the subdivision, and a reduction in its area would reduce that benefit.

With respect to parking, a concern was raised that the proposed project will not provide a sufficient number of parking spaces. The applicant proposes two parking spaces per dwelling, as required by the zoning ordinance, and 12 additional on-street parking spaces. 140 parking spaces are proposed in total, which is more than the number required by the zoning ordinance. Staff also notes that the subject property is located within walking distance of numerous transit options, which further reduces parking concerns.

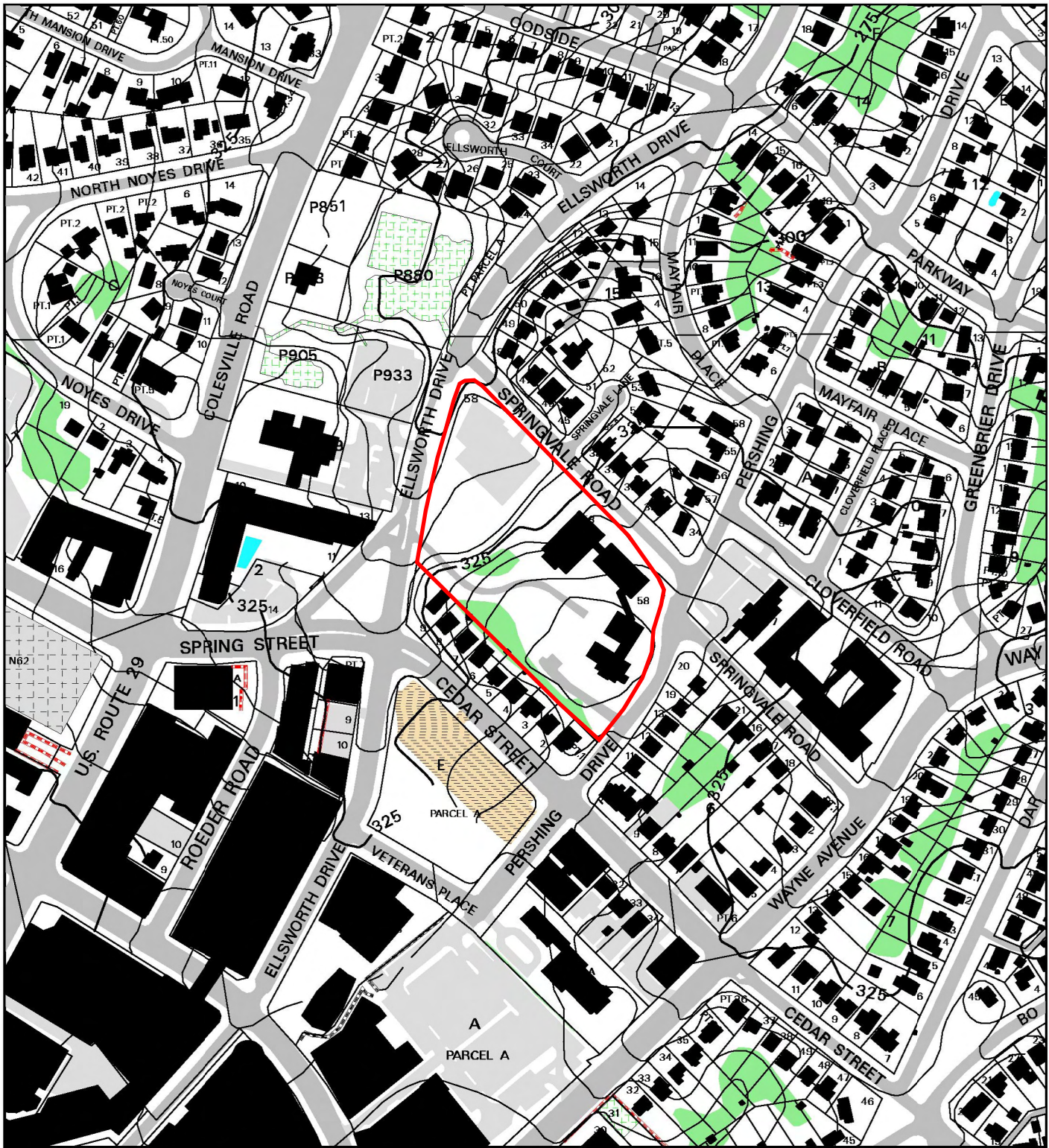
CONCLUSION

The proposed lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the North and West Silver Spring Master Plan. Access and public facilities will be adequate to serve the proposed lots, and the application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, approval of the application with the conditions specified above is recommended.

The site plan and the proposed townhouses meet all of the requirements of the zone, provide building, open space, landscaping, and circulation system locations that are adequate, safe, and efficient, are compatible with existing and proposed adjacent development, and meet all applicable requirements of Chapter 22A regarding forest conservation and Chapter 19 regarding water resource protection.

Attachments

- Attachment A – Vicinity Development Map
- Attachment B – Proposed Preliminary Plan and Forest Conservation Plan
- Attachment C – Proposed Site Plan
- Attachment D – County Council Resolution No. 17-471 Approving Local Map Amendment G-892
- Attachment E – Forest Conservation Variance Request
- Attachment F – County Arborist’s Response to the Variance Request
- Attachment G – Correspondence on Stormwater Management
- Attachment H – Citizen Correspondence
- Attachment I – Waiver Requests
- Attachment J – Geotechnical Letter
- Attachment K – Montgomery County Historic Preservation Commission Letter
- Attachment L – County Council Resolution 17-286 Remanding Local Map Amendment G-892
- Attachment M – Agency Correspondence Referenced in Conditions



Map compiled on April 09, 2013 at 1:38 PM | Site located on base sheet no - 210NW01

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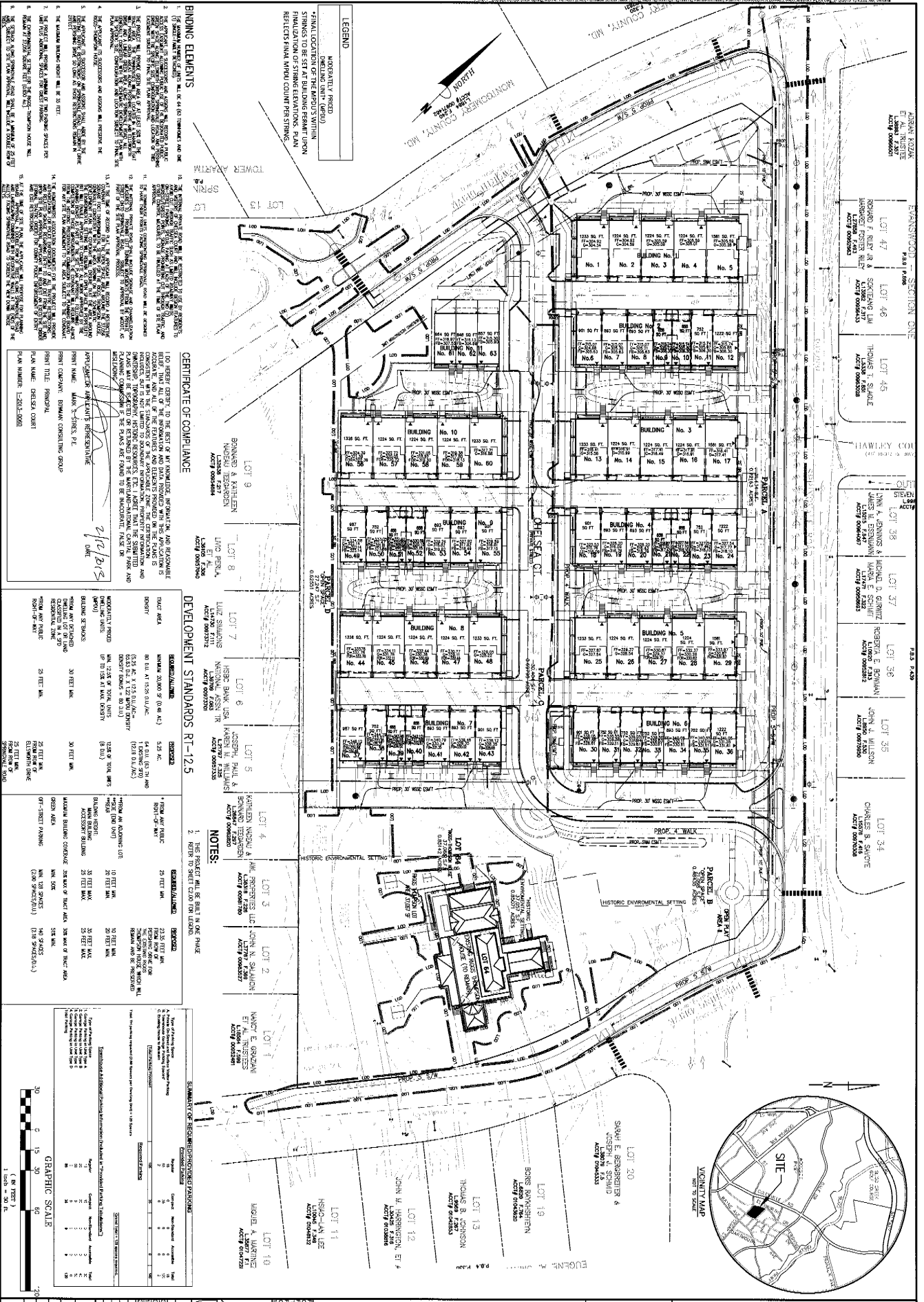
Key Map



Research & Technology Center



1 inch = 300 feet
1 : 3600



BINDING ELEMENTS

1. THE GENERAL LAYOUT OF THE PROJECT AND THE LOCATION OF THE BUILDINGS AND PARKING AREAS SHALL BE AS SHOWN ON THESE PLANS.
2. THE ARCHITECTURAL DESIGN OF THE BUILDINGS SHALL BE AS SHOWN ON THESE PLANS.
3. THE FINISH ELEVATIONS OF THE BUILDINGS SHALL BE AS SHOWN ON THESE PLANS.
4. THE FINISH ELEVATIONS OF THE PARKING AREAS SHALL BE AS SHOWN ON THESE PLANS.
5. THE FINISH ELEVATIONS OF THE DRIVEWAYS SHALL BE AS SHOWN ON THESE PLANS.
6. THE FINISH ELEVATIONS OF THE SIDEWALKS SHALL BE AS SHOWN ON THESE PLANS.
7. THE FINISH ELEVATIONS OF THE CURBS SHALL BE AS SHOWN ON THESE PLANS.
8. THE FINISH ELEVATIONS OF THE STAIRS SHALL BE AS SHOWN ON THESE PLANS.
9. THE FINISH ELEVATIONS OF THE ROOFS SHALL BE AS SHOWN ON THESE PLANS.
10. THE FINISH ELEVATIONS OF THE FLOORS SHALL BE AS SHOWN ON THESE PLANS.
11. THE FINISH ELEVATIONS OF THE CEILING SHALL BE AS SHOWN ON THESE PLANS.
12. THE FINISH ELEVATIONS OF THE WALLS SHALL BE AS SHOWN ON THESE PLANS.
13. THE FINISH ELEVATIONS OF THE DOORS SHALL BE AS SHOWN ON THESE PLANS.
14. THE FINISH ELEVATIONS OF THE WINDOWS SHALL BE AS SHOWN ON THESE PLANS.
15. THE FINISH ELEVATIONS OF THE LIGHT FIXTURES SHALL BE AS SHOWN ON THESE PLANS.
16. THE FINISH ELEVATIONS OF THE VENTILATORS SHALL BE AS SHOWN ON THESE PLANS.
17. THE FINISH ELEVATIONS OF THE MECHANICAL EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
18. THE FINISH ELEVATIONS OF THE ELECTRICAL EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
19. THE FINISH ELEVATIONS OF THE PLUMBING EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
20. THE FINISH ELEVATIONS OF THE GAS EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
21. THE FINISH ELEVATIONS OF THE TELEPHONE EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
22. THE FINISH ELEVATIONS OF THE CABLE TV EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
23. THE FINISH ELEVATIONS OF THE SATELLITE EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
24. THE FINISH ELEVATIONS OF THE SECURITY EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
25. THE FINISH ELEVATIONS OF THE FIRE ALARMS SHALL BE AS SHOWN ON THESE PLANS.
26. THE FINISH ELEVATIONS OF THE SMOKE DETECTORS SHALL BE AS SHOWN ON THESE PLANS.
27. THE FINISH ELEVATIONS OF THE CARBON MONOXIDE DETECTORS SHALL BE AS SHOWN ON THESE PLANS.
28. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE ROUTES SHALL BE AS SHOWN ON THESE PLANS.
29. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE PARKING SPACES SHALL BE AS SHOWN ON THESE PLANS.
30. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE DRIVEWAYS SHALL BE AS SHOWN ON THESE PLANS.
31. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE SIDEWALKS SHALL BE AS SHOWN ON THESE PLANS.
32. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE CURBS SHALL BE AS SHOWN ON THESE PLANS.
33. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE STAIRS SHALL BE AS SHOWN ON THESE PLANS.
34. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE ROOFS SHALL BE AS SHOWN ON THESE PLANS.
35. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE FLOORS SHALL BE AS SHOWN ON THESE PLANS.
36. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE CEILING SHALL BE AS SHOWN ON THESE PLANS.
37. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE WALLS SHALL BE AS SHOWN ON THESE PLANS.
38. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE DOORS SHALL BE AS SHOWN ON THESE PLANS.
39. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE WINDOWS SHALL BE AS SHOWN ON THESE PLANS.
40. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE LIGHT FIXTURES SHALL BE AS SHOWN ON THESE PLANS.
41. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE VENTILATORS SHALL BE AS SHOWN ON THESE PLANS.
42. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE MECHANICAL EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
43. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE ELECTRICAL EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
44. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE PLUMBING EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
45. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE GAS EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
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48. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE SATELLITE EQUIPMENT SHALL BE AS SHOWN ON THESE PLANS.
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50. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE FIRE ALARMS SHALL BE AS SHOWN ON THESE PLANS.
51. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE SMOKE DETECTORS SHALL BE AS SHOWN ON THESE PLANS.
52. THE FINISH ELEVATIONS OF THE HANDICAPPED ACCESSIBLE CARBON MONOXIDE DETECTORS SHALL BE AS SHOWN ON THESE PLANS.

LEGEND

ADJACENT PROPERTY

EXISTING DRIVEWAY

EXISTING SIDEWALK

EXISTING CURB

EXISTING STAIR

EXISTING ROOF

EXISTING FLOOR

EXISTING CEILING

EXISTING WALL

EXISTING DOOR

EXISTING WINDOW

EXISTING LIGHT FIXTURE

EXISTING VENTILATOR

EXISTING MECHANICAL EQUIPMENT

EXISTING ELECTRICAL EQUIPMENT

EXISTING PLUMBING EQUIPMENT

EXISTING GAS EQUIPMENT

EXISTING TELEPHONE EQUIPMENT

EXISTING CABLE TV EQUIPMENT

EXISTING SATELLITE EQUIPMENT

EXISTING SECURITY EQUIPMENT

EXISTING FIRE ALARM

EXISTING SMOKE DETECTOR

EXISTING CARBON MONOXIDE DETECTOR

EXISTING HANDICAPPED ACCESSIBLE ROUTE

EXISTING HANDICAPPED ACCESSIBLE PARKING SPACE

EXISTING HANDICAPPED ACCESSIBLE DRIVEWAY

EXISTING HANDICAPPED ACCESSIBLE SIDEWALK

EXISTING HANDICAPPED ACCESSIBLE CURB

EXISTING HANDICAPPED ACCESSIBLE STAIR

EXISTING HANDICAPPED ACCESSIBLE ROOF

EXISTING HANDICAPPED ACCESSIBLE FLOOR

EXISTING HANDICAPPED ACCESSIBLE CEILING

EXISTING HANDICAPPED ACCESSIBLE WALL

EXISTING HANDICAPPED ACCESSIBLE DOOR

EXISTING HANDICAPPED ACCESSIBLE WINDOW

EXISTING HANDICAPPED ACCESSIBLE LIGHT FIXTURE

EXISTING HANDICAPPED ACCESSIBLE VENTILATOR

EXISTING HANDICAPPED ACCESSIBLE MECHANICAL EQUIPMENT

EXISTING HANDICAPPED ACCESSIBLE ELECTRICAL EQUIPMENT

EXISTING HANDICAPPED ACCESSIBLE PLUMBING EQUIPMENT

EXISTING HANDICAPPED ACCESSIBLE GAS EQUIPMENT

EXISTING HANDICAPPED ACCESSIBLE TELEPHONE EQUIPMENT

EXISTING HANDICAPPED ACCESSIBLE CABLE TV EQUIPMENT

EXISTING HANDICAPPED ACCESSIBLE SATELLITE EQUIPMENT

EXISTING HANDICAPPED ACCESSIBLE SECURITY EQUIPMENT

EXISTING HANDICAPPED ACCESSIBLE FIRE ALARM

EXISTING HANDICAPPED ACCESSIBLE SMOKE DETECTOR

EXISTING HANDICAPPED ACCESSIBLE CARBON MONOXIDE DETECTOR

CERTIFICATE OF COMPLIANCE

I, the undersigned, being duly qualified and licensed as a Professional Engineer in the State of Maryland, do hereby certify that the plans and specifications for the above described project have been prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer in the State of Maryland.

DATE: 2/12/2015

PROFESSIONAL ENGINEER

NAME: [Signature]

ADDRESS: [Address]

CITY: [City]

STATE: [State]

ZIP: [ZIP]

PHONE: [Phone]

FAX: [Fax]

EMAIL: [Email]

PROJECT TITLE: [Project Title]

CLIENT: [Client Name]

DATE: [Date]

DEVELOPMENT STANDARDS RI-12.5

SECTION 1.00

1.01. GENERAL NOTES

1.02. SIGNAGE

1.03. LIGHTING

1.04. LANDSCAPE

1.05. UTILITIES

1.06. ACCESSIBILITY

1.07. SECURITY

1.08. FIRE SAFETY

1.09. ENVIRONMENTAL

1.10. HISTORIC

1.11. ARCHITECTURAL

1.12. MATERIALS

1.13. FINISHES

1.14. MECHANICAL

1.15. ELECTRICAL

1.16. PLUMBING

1.17. GAS

1.18. TELEPHONE

1.19. CABLE TV

1.20. SATELLITE

1.21. SECURITY

1.22. FIRE ALARM

1.23. SMOKE DETECTOR

1.24. CARBON MONOXIDE DETECTOR

NOTES

1. THIS PROJECT WILL BE BUILT IN ONE PHASE.

2. REFER TO SHEET C-020 FOR ELEVATIONS.

SUMMARY OF REQUIRED PERMITS

PERMIT TYPE	ISSUING AGENCY	STATUS	COMMENTS
Building	Montgomery County	Approved	
Electrical	Montgomery County	Approved	
Plumbing	Montgomery County	Approved	
Mechanical	Montgomery County	Approved	
Fire Alarm	Montgomery County	Approved	
Smoke Detector	Montgomery County	Approved	
Carbon Monoxide Detector	Montgomery County	Approved	
Handicapped Accessible	Montgomery County	Approved	
Historic	Montgomery County	Approved	
Architectural	Montgomery County	Approved	
Materials	Montgomery County	Approved	
Finishes	Montgomery County	Approved	
Mechanical	Montgomery County	Approved	
Electrical	Montgomery County	Approved	
Plumbing	Montgomery County	Approved	
Gas	Montgomery County	Approved	
Telephone	Montgomery County	Approved	
Cable TV	Montgomery County	Approved	
Satellite	Montgomery County	Approved	
Security	Montgomery County	Approved	
Fire Alarm	Montgomery County	Approved	
Smoke Detector	Montgomery County	Approved	
Carbon Monoxide Detector	Montgomery County	Approved	

GRAPHIC SCALE

1" = 30'

0 15 30 45 60 75 90 105 120

COMPOSITE PLAN PRELIMINARY PLAN CHELSEA COURT LOT 58 (PLAT NO. 22270)

ELECTION DISTRICT NO. 13 MONTGOMERY COUNTY

Bowman CONSULTING

2121 E. Brentwood Avenue
Suite 300
Alexandria, Virginia 22314
Phone: (703) 548-2168
Fax: (703) 688-5781
www.bowmanconsulting.com

DATE: JUNE 2012

SCALE: 1" = 30'

FILE NO: 7471-D-PR-001

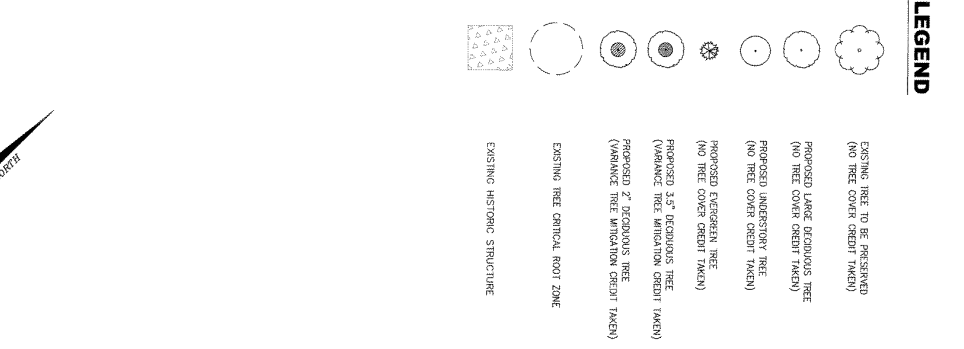
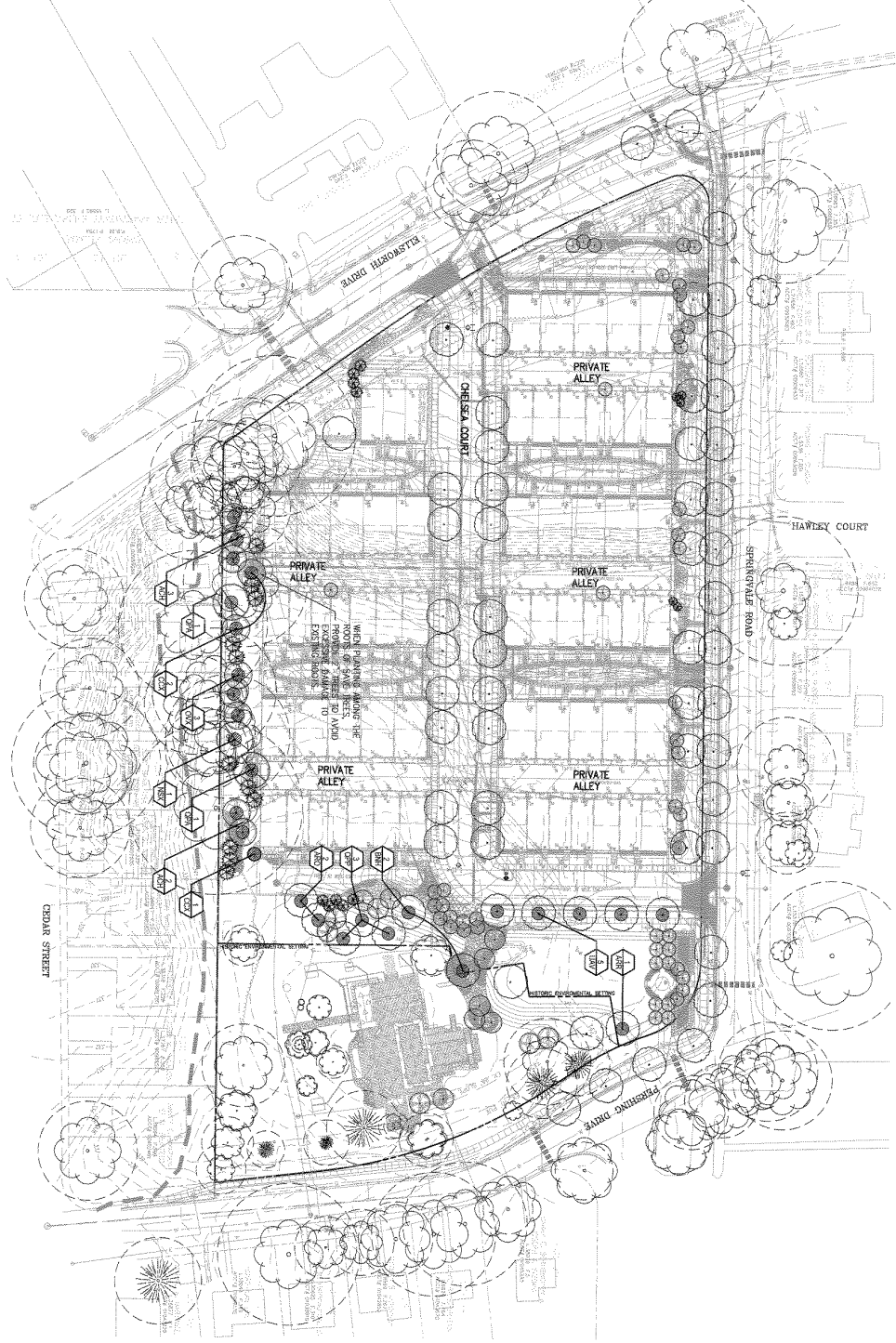
SHEET: C400

KEY	QTY	BOTANICAL NAME	COMMON NAME	SIZE CONDITION	NOTES	COVERAGE
ASHR	1	Acer rubrum 'October Glory'	October Glory Red Maple	8.0x 3.1/2' cal	Nursery general	
BNK	1	Asplenium platyneuron	Blank Gull	8.0x 3.1/2' cal	Nursery general	
OPR	3	Opuntia stricta	Tree Oa	8.0x 2' cal	Nursery general	
UNY	3	Ulmus americana 'Major Foryd'	Valley Forge American Elm	8.0x 3.1/2' cal	Nursery general	

KEY	QTY	BOTANICAL NAME	COMMON NAME	SIZE CONDITION	NOTES	COVERAGE
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OPR	3	Opuntia stricta	Tree Oa	8.0x 2' cal	Nursery general	
UNY	3	Ulmus americana 'Major Foryd'	Valley Forge American Elm	8.0x 3.1/2' cal	Nursery general	

VARIANCE MITIGATION PLANT SCHEDULE

GENERAL NOTES



GENERAL NOTES

- THE EXISTING BLANKET CATEGORY 1 & 2 PLANTING IS NOT COMPATIBLE WITH THE MONTGOMERY DEVELOPMENT. THE CASE STATEMENT AND VARIANCE REQUEST FOR THE 0.93 ACRE REQUIREMENTS PROVIDED IN THE FINAL FOREST CONSERVATION PLAN PREPARED BY BOWMAN CONSULTING GROUP (APPROVED 9/29/20) BE ACCOMMODATED FOR OFFSITE AT A 1:1 RATIO. THE 0.93 ACRE REQUIREMENTS WILL BE SATISFIED BY OFFSITE FOREST CONSERVATION BANK AND/OR TREE-IN-LIEU.
- 13.35" SHADE TREES AND 14.2' SHADE TREES MUST BE PROVIDED AS MITIGATION FOR THE REMOVAL OF A STEPHEN TREES UNDER THE VARIANCE. TREES 29 (32" TULIP POPULAR), 37 (32" TULIP POPULAR), 45 (34" WHITE OAK), 51 (38" TULIP POPULAR), 55 (31" BIRCH), 57 (46" BLACK CHERRY), 58 (38" WHITE MULBERRY) AND 116 (35" SWEET GUM) MUST BE REPLACED AT A 1:1 RATIO. TREES 59 (34" WHITE OAK), 61 (35" SWEET GUM), 62 (34" WHITE OAK), 63 (34" WHITE OAK), 64 (34" WHITE OAK), 65 (34" WHITE OAK), 66 (34" WHITE OAK), 67 (34" WHITE OAK), 68 (34" WHITE OAK), 69 (34" WHITE OAK), 70 (34" WHITE OAK), 71 (34" WHITE OAK), 72 (34" WHITE OAK), 73 (34" WHITE OAK), 74 (34" WHITE OAK), 75 (34" WHITE OAK), 76 (34" WHITE OAK), 77 (34" WHITE OAK), 78 (34" WHITE OAK), 79 (34" WHITE OAK), 80 (34" WHITE OAK), 81 (34" WHITE OAK), 82 (34" WHITE OAK), 83 (34" WHITE OAK), 84 (34" WHITE OAK), 85 (34" WHITE OAK), 86 (34" WHITE OAK), 87 (34" WHITE OAK), 88 (34" WHITE OAK), 89 (34" WHITE OAK), 90 (34" WHITE OAK), 91 (34" WHITE OAK), 92 (34" WHITE OAK), 93 (34" WHITE OAK), 94 (34" WHITE OAK), 95 (34" WHITE OAK), 96 (34" WHITE OAK), 97 (34" WHITE OAK), 98 (34" WHITE OAK), 99 (34" WHITE OAK), 100 (34" WHITE OAK), 101 (34" WHITE OAK), 102 (34" WHITE OAK), 103 (34" WHITE OAK), 104 (34" WHITE OAK), 105 (34" WHITE OAK), 106 (34" WHITE OAK), 107 (34" WHITE OAK), 108 (34" WHITE OAK), 109 (34" WHITE OAK), 110 (34" WHITE OAK), 111 (34" WHITE OAK), 112 (34" WHITE OAK), 113 (34" WHITE OAK), 114 (34" WHITE OAK), 115 (34" WHITE OAK), 116 (34" WHITE OAK), 117 (34" WHITE OAK), 118 (34" WHITE OAK), 119 (34" WHITE OAK), 120 (34" WHITE OAK), 121 (34" WHITE OAK), 122 (34" WHITE OAK), 123 (34" WHITE OAK), 124 (34" WHITE OAK), 125 (34" WHITE OAK), 126 (34" WHITE OAK), 127 (34" WHITE OAK), 128 (34" WHITE OAK), 129 (34" WHITE OAK), 130 (34" WHITE OAK), 131 (34" WHITE OAK), 132 (34" WHITE OAK), 133 (34" WHITE OAK), 134 (34" WHITE OAK), 135 (34" WHITE OAK), 136 (34" WHITE OAK), 137 (34" WHITE OAK), 138 (34" WHITE OAK), 139 (34" WHITE OAK), 140 (34" WHITE OAK), 141 (34" WHITE OAK), 142 (34" WHITE OAK), 143 (34" WHITE OAK), 144 (34" WHITE OAK), 145 (34" WHITE OAK), 146 (34" WHITE OAK), 147 (34" WHITE OAK), 148 (34" WHITE OAK), 149 (34" WHITE OAK), 150 (34" WHITE OAK), 151 (34" WHITE OAK), 152 (34" WHITE OAK), 153 (34" WHITE OAK), 154 (34" WHITE OAK), 155 (34" WHITE OAK), 156 (34" WHITE OAK), 157 (34" WHITE OAK), 158 (34" WHITE OAK), 159 (34" WHITE OAK), 160 (34" WHITE OAK), 161 (34" WHITE OAK), 162 (34" WHITE OAK), 163 (34" WHITE OAK), 164 (34" WHITE OAK), 165 (34" WHITE OAK), 166 (34" WHITE OAK), 167 (34" WHITE OAK), 168 (34" WHITE OAK), 169 (34" WHITE OAK), 170 (34" WHITE OAK), 171 (34" WHITE OAK), 172 (34" WHITE OAK), 173 (34" WHITE OAK), 174 (34" WHITE OAK), 175 (34" WHITE OAK), 176 (34" WHITE OAK), 177 (34" WHITE OAK), 178 (34" WHITE OAK), 179 (34" WHITE OAK), 180 (34" WHITE OAK), 181 (34" WHITE OAK), 182 (34" WHITE OAK), 183 (34" WHITE OAK), 184 (34" WHITE OAK), 185 (34" WHITE OAK), 186 (34" WHITE OAK), 187 (34" WHITE OAK), 188 (34" WHITE OAK), 189 (34" WHITE OAK), 190 (34" WHITE OAK), 191 (34" WHITE OAK), 192 (34" WHITE OAK), 193 (34" WHITE OAK), 194 (34" WHITE OAK), 195 (34" WHITE OAK), 196 (34" WHITE OAK), 197 (34" WHITE OAK), 198 (34" WHITE OAK), 199 (34" WHITE OAK), 200 (34" WHITE OAK).

DEVELOPERS CERTIFICATE

The undersigned certifies to the satisfaction of the features of the approved Final Forest Conservation Plan for the above described parcel, including the proposed mitigation measures, and that the same are being implemented in accordance with the approved plan.

Developer's Name: **BOBROWAN ASSOCIATES, LLC, d/b/a BOWMAN CONSULTING**

Address: 4800 Hampton Lane, Suite 300, Bethesda, MD 20814

Phone: (301) 844-8800

Signature: *[Signature]*

DEVELOPER'S CERTIFICATE

DATE: 11/22/2011

DESIGN: [Signature]

SCALE: 1" = 40'

APP NO.: 7471-01-002

DATE: APRIL 2011

FILE NO.: 7471-D-003

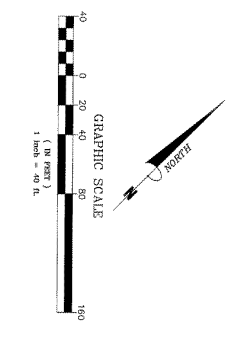
SHEET 3 OF 7



INTERNATIONAL SOCIETY OF ARBORICULTURE

AMERICAN SOCIETY OF CONSULTING ARBORISTS

Gregory M. Hargrove



COUNTY PROJECT NUMBER

MD 20814

DATE OF STATUS

08/16/11

DATE OF SUBMISSION

07/27/11

FINAL FOREST CONSERVATION PLAN (2 OF 2)

SITE PLAN

CHELSEA COURT

LOT 58 (PLAT NO. 22270)

ELECTION DISTRICT NO. 13 MONTGOMERY COUNTY

Bowman Consulting Group, Ltd.

14020 Thunderbolt Place, Suite 200

Charlottesville, Virginia 22911

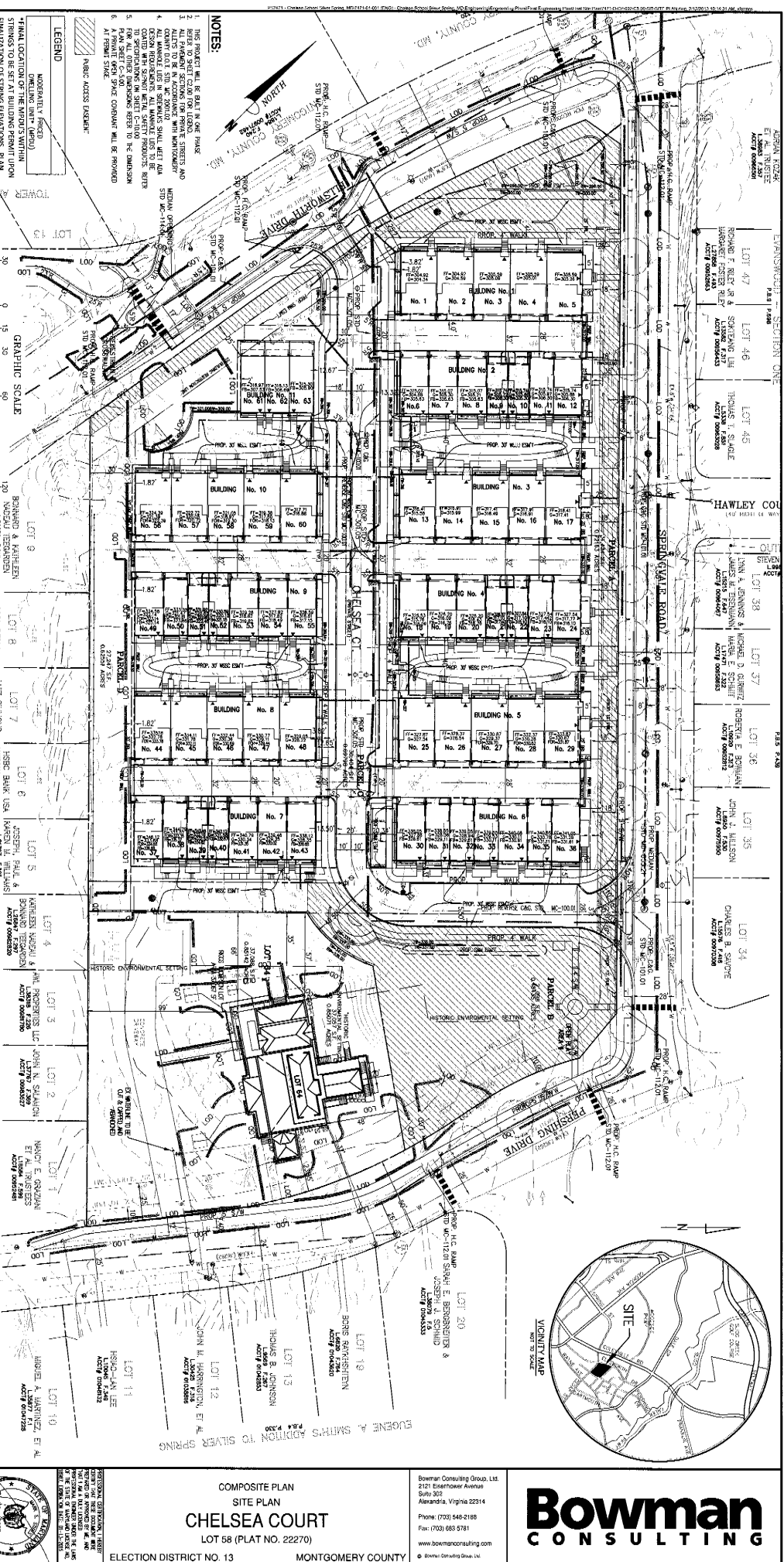
Phone: (703) 484-1000

Fax: (703) 481-6720

www.bowmanconsulting.com

© Bowman Consulting Group, Ltd.

Bowman CONSULTING



NOTES:

1. THIS PROJECT WILL BE BUILT IN ONE PHASE.
2. THE PROJECT WILL BE BUILT IN ONE PHASE.
3. ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON THE RECORD DRAWINGS AND FIELD SURVEY DATA.
4. THE FINAL LOCATION OF THE UTILITIES WITHIN THE PROJECT SHALL BE DETERMINED BY THE FIELD SURVEY.
5. ALL UTILITIES SHALL BE DELETED FROM THE PROJECT PLAN AND SHALL BE REINSTALLED TO THE ORIGINAL LOCATION OR A NEW LOCATION TO BE DETERMINED BY THE FIELD SURVEY.
6. A PERMIT SHALL BE OBTAINED FROM THE UTILITIES PROVIDER.
7. A PERMIT SHALL BE OBTAINED FROM THE UTILITIES PROVIDER.

CERTIFICATE OF COMPLIANCE

TO THE BEST OF MY KNOWLEDGE, OBSERVATION, AND REASONABLE BELIEF, THE SUBMITTED DEVELOPMENT STANDARDS RI-12.5 COMPLIES WITH ALL THE REQUIREMENTS AND CONDITIONS OF THE REGULATIONS OF THE MONTGOMERY COUNTY DEPARTMENT OF PLANNING AND ZONING ADMINISTRATION. I AM NOT PROVIDING ANY GUARANTEE OF THE ACCURACY OF THE INFORMATION PROVIDED IN THIS CERTIFICATE.

DATE: 02/12/2013

MARK S. CHASE, P.E. DEVELOPER'S REPRESENTATIVE

DEVON CONSTRUCTION GROUP

DEVELOPMENT STANDARDS RI-12.5

SECTION	REQUIREMENT	COMPLIANCE
GENERAL	1. GENERAL	COMPLIANT
	2. GENERAL	COMPLIANT
SITING	3. GENERAL	COMPLIANT
	4. GENERAL	COMPLIANT
	5. GENERAL	COMPLIANT
LANDSCAPE	6. GENERAL	COMPLIANT
	7. GENERAL	COMPLIANT
	8. GENERAL	COMPLIANT
SIGNAGE	9. GENERAL	COMPLIANT
	10. GENERAL	COMPLIANT
	11. GENERAL	COMPLIANT
PARKING	12. GENERAL	COMPLIANT
	13. GENERAL	COMPLIANT
	14. GENERAL	COMPLIANT

DEVELOPER'S CERTIFICATE

I, the undersigned, certify that I am the owner of the site and have read the regulations of the Department of Planning and Zoning Administration and that the proposed development complies with the requirements of the regulations of the Department of Planning and Zoning Administration.

DATE: 02/12/2013

MARK S. CHASE, P.E. DEVELOPER'S REPRESENTATIVE

ANNOPTIC APPROVAL STAMP

GENIE SIN PLP
MNS
DESIGN
SCALE: 1" = 30'

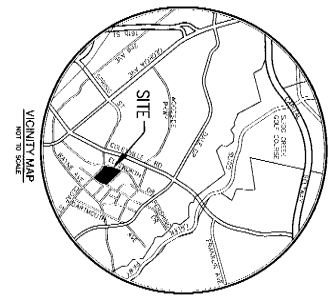
DATE: FEBRUARY 2013

FILE NO: 7471-D-CP-001

SHEET: CA.00

COMPOSITE PLAN
SITE PLAN
CHELSEA COURT
LOT 58 (PLAT NO. 22270)

ELECTION DISTRICT NO. 13 MONTGOMERY COUNTY



Bowman CONSULTING

Bowman Consulting Group, Ltd.
2101 Eisenhower Avenue
Suite 300
Alexandria, Virginia 22314
Phone: (703) 548-2168
Fax: (703) 683-5761
www.bowmanconsulting.com
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Resolution No.: 17-471
Introduced: June 12, 2012
Adopted: June 12, 2012

**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-892 FOR AMENDMENT TO THE ZONING
ORDINANCE MAP (REMAND), Robert R. Harris, Esquire and Cindy Bar,
Esquire, Attorneys for Applicant, Chelsea Residential Associates, LLC,
OPINION AND RESOLUTION ON APPLICATION
Tax Account No. 13-03381404

OPINION

Local Map Amendment (LMA) Application No. G-892, originally filed on January 4, 2011, initially requested reclassification of 5.25 acres of land located at 630 Ellsworth Drive, Silver Spring, Maryland, from the existing R-60 Zone to the RT-15 Zone and, after remand, now requests rezoning from the R-60 Zone to the R-T 12.5 Zone. The property described as Lot 58, Evanswood Section 1, is situated on the south side of Springvale Road between Ellsworth Drive and Pershing Drive. The land is owned by the Chelsea School (Tax Account Number 13-03381404), a private educational institution which desires to relocate its facilities and has entered into a contract of sale with the Applicant. Exhibit 45, p. 3; 5/26/11 T. 71. The Applicant applied under the optional method of development, which requires the applicant to submit a Schematic Development Plan (SDP) containing illustrative as well as binding elements restricting the development of the property.

By Resolution 17-286, adopted on October 18, 2012, the District Council remanded the original application, finding that while the R-T Zone was appropriate for the property, the Applicant had failed to meet its burden of proof that the RT-15 application complied with the Master Plan or was compatible with the surrounding neighborhood. Specifically, the Council concluded that:

Zoning Application No. G-892, requesting reclassification of 5.25 acres of land, described as Lot 58, Evanswood Section 1, and located at 630 Ellsworth Drive, Silver Spring, Maryland, from the existing R-60 Zone to the RT-15 Zone, is hereby remanded to the Hearing Examiner for revision of the Schematic Development Plan (SDP) and consideration by the Planning Board of the intended

size of the environmental setting of the Riggs-Thompson House historic resource, given the language in Appendix D of the North Silver Spring Master Plan. The SDP should be reconfigured to propose residential townhouse (RT) development with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan. The revised SDP should also resolve issues relating to the alignment of the private road to comply with the environmental setting of the historic site as set forth in the Master Plan and its Appendix D.

Resolution 17-286, p. 15.

Pursuant to the Council's action, the Hearing Examiner issued a Remand Order dated November 8, 2012 (Exhibit 274), limiting the issues on remand to the following:

1. The submission of a revised schematic development plan for development in an RT Zone with less density and massing to be more consistent with the character of the transition from the Central Business District to the existing R-60 Zone north of Cedar Street and the recommendations of the 2000 North and West Silver Spring Master Plan. Because it will be a revised plan, this may require review of whether the development meets the required zoning and environmental regulations normally reviewed to the extent the revised plan differs from the plan originally submitted.
2. Reconsideration by the Planning Board of the environmental setting intended by the Master Plan for the Riggs-Thompson House.
3. Resolution of the issues surrounding the alignment of the private road providing access to the property. The issues regarding the road alignments include, without limitation, the relationship between the private road and the environmental setting, the compatibility of alignment (and the resulting traffic patterns) with the surrounding area, and consistency of the alignment with the Master Plan.

The Hearing Examiner also excluded from consideration on remand whether (1) the application fulfills the purposes of the R-T Zone, and (2) whether public facilities are available to serve the development (including Local Area Transportation Review and Policy Area Mobility Reviews). Exhibit 274.

On November 21, 2012, the Applicant submitted a revised SDP and amended its application to request rezoning from the R-60 to the R-T 12.5 Zone. Exhibit 276. A public hearings on the remanded (i.e., RT 12.5) rezoning request was convened on March 23, 2012, March 26, 2012, and March 30, 2012, at which time the Applicant presented testimony from five witnesses, including the Applicant's expert witnesses, in support of the application. Twelve individuals testified in opposition to the application. Some of these individuals appeared on

behalf of civic and community organizations, including the Seven Oaks-Evanswood Community Association (SOECA), and Montgomery Preservation Inc.¹

The Hearing Examiner's Report and Recommendation on the revised RT-12.5 application was filed on May 16, 2012, and is incorporated herein by reference. The Hearing Examiner found that (1) the density and massing of the development would be compatible with the surrounding land uses; (2) the Applicant adequately demonstrated the alignment of the internal private road would operate compatibly with the neighborhood and in a manner consistent with the Master Plan, (3) the density and massing proposed was consistent with the Master Plan; and (4) the environmental setting shown on the revised SDP was also consistent with the Master Plan.

After a careful review of the entire record, the District Council finds that the application be approved for the reasons stated in the Hearing Examiner's Report and Recommendation.

The Property, Surrounding Area and Zoning History

The property, surrounding area and zoning history were all described in detail both in the Hearing Examiner's Report and Recommendation in the pre-remand case and in District Council's Opinion in Resolution 17-286. The subject property is located immediately north of the boundary of the Silver Spring Central Business District, separated by a row of single-family detached homes, designated for non-resident professional office special exceptions by the 2000 North and West Silver Spring Master Plan.

Key characteristics of the property relevant to the remand include (1) a 6% grade which rises from the western boundary along Ellsworth Drive to the eastern boundary fronting Pershing Drive (a increase of approximately 40 feet) (Exhibit 45, p. 3, (2) existing mature trees on the property, clustered primarily in the southwestern corner, but also located along Springvale Road (Exhibit 151), and (3) adjoining the southern property line are a row of single-family detached homes which are recommended to be special exceptions for non-resident professional offices in the master plan, but some of which are still owner-occupied Exhibit 45, p. 3.. The rear yards of the homes along the north side of Cedar Street are adjacent to the southern boundary line of the subject property. Exhibit 45. Ellsworth Park is located immediately to the west of the property and is split-zoned R-60 and RT 12.5.

The "surrounding area" was determined in the first (i.e., RT-15) application, and is bounded by Fenton Street to the south, Wayne Avenue to the east, Dale Drive to the north, and Colesville Road to the west. Resolution 17-286, p. 4. Both the Council and the Hearing Examiner concluded in the original application that the surrounding area is characterized by wide variety of multi-family residential, civic, commercial, and low-density residential uses which

¹ In addition to those organizations represented at the public hearing, six community associations submitted letters into the record opposing the application, including the Woodside Park Civic Association, Park Hills Civic Association, the Lyttonsville Community Civic Association, the East Silver Spring Citizens Association (ESSCA), and the Woodside Station Homeowners Association. Exhibits 283, 284, 294, 329, 330. Seven letters were received in support of the Application. Exhibits 289, 290, 312, 317, 331, 332, 333.

transition gradually from Fenton Street to Cedar Street, with an abrupt transition at Cedar Street to smaller single-family detached homes in the R-60 Zone. These smaller single-family detached homes characterize the neighborhood north to Dale Drive. Resolution 17-286.

Proposed Development and Binding Elements

On remand, the Applicant still proposes to remove the existing school buildings and certain non-contributing additions to the Riggs-Thompson House and renovate it as a single-family dwelling, but now proposes to construct 63 townhouses, resulting in an overall density of 12.19 dwelling units per acre. Of these units, 8 (or 12.5%) will be Moderately Price Dwelling Units (MPDUs). The changes to the SDP to address the Council's directive on remand are summarized below:

1. The total number of units has been reduced from 77 to 64 dwelling units; the prior SDP showed 10 MPDUs, this SDP shows 8 MPDUs. The total density per acre is approximately 12.19 units/acre, a 17% reduction in the density from the original SDP. 3/23/12 T. 56.
2. The strings of town house units have been reduced from rows of 8 and 6 units to 7 and 5 units in this SDP. The strings north of the private street were 132 feet long in the prior application; they now total 120 feet in length.
3. The courtyards (or landscaped areas) between the townhouse strings have been widened from 36 feet (in SDP prior to remand) to 40 feet.
4. One townhouse row has been removed from the southeast corner of the original SDP. There are now five rather than six rows of townhouses south of the private street, increasing the setback from the Riggs Thompson House from 28 feet (before remand) to 92 feet.
5. The current SDP shows 54% open space and they are binding themselves to 50%, compared to the 47 or 48% green space in the prior plan.
6. The private road intersects with Springvale (as opposed to Pershing Drive as shown in the initial SDP) and avoids the environmental setting. 3/23/12 T. 59.

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 346(a)) sets forth the 10 binding elements for the development as follows:

BINDING ELEMENTS

1. The maximum number of units will be 64 (63 townhomes and 1 single family detached).
2. The Applicant, its successors and assigns will record a public access easement allowing public use of the designated public green space along Ellsworth Drive, Springvale Road and Pershing Drive, with the specific size, configuration and location of this easement subject to final site plan approval.
3. The project will provide green area of at least 50% of the net tract area. The townhouses will be located in a manner that will provide green areas along Pershing Drive and Ellsworth Drive and a linear green area along Springvale Road, all generally consistent with the schematic development plan with the specific size, configuration and location subject to final site plan approval.
4. The applicant, its successors or assigns, will preserve the Riggs-Thompson House.
5. The Applicant, its successors and assigns shall abide by the existing traffic restrictions on Springvale Road, Ellsworth Drive and Pershing Drive so long as those restrictions remain in effect.
6. The maximum building height will be 35 feet.
7. The project will provide a minimum of two parking spaces per unit plus additional spaces for guest parking.
8. The historic setting for the Riggs-Thompson House will remain at a minimum of 37,056 square feet.
9. The setback along Springvale Road shall be a minimum of 25 feet, and, subject to site plan approval, will include a double row of trees.
10. The internal private road will be restricted to use by residents and visitors of Chelsea Court and will include design features to avoid cut through traffic such as limited roadway width, on-street parking, special paving at each of the two (2) ingress/egress points, signage prohibiting cut through traffic, and other control measures to be finalized at the time of site plan approval.
11. The townhouse units confronting Springvale Road will be designed to have their fronts facing Springvale Road.
12. The internal private Road shall include signage and channelization measures to prohibit left turning movements from the private street onto Springvale Road, subject to approval by MCDOT, as part of the site plan approval process.

13. At the time of record plat, the Applicant will record a restrictive covenant for the open space area around the 37,056 square foot environmental setting for the Riggs Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable Applicant to complete all work approved by the Planning Board as part of the site plan approval. Following completion of those improvements, the covenant will require advice from the Historic Preservation Commission to the Planning Board for any site plan amendment to the area subject to the covenant.
14. The homeowners association documents for the project will provide authorization for police enforcement of all traffic restrictions and related signage regarding entry to and exist from the site and, upon site plan approval, Applicant will request an Executive Order (formal traffic order) for County police enforcement of entry and exit restrictions.
15. At the time of site plan, the Applicant will propose for Planning Board approval, a double row of trees along Springvale Road and landscaping combined with decorative walls at the ends of the alleys facing Springvale Road to screen the view down those alleys.

Applicant has also filed an executed copy of the Declaration of Covenants in the record of this case as Exhibit 345(e), and it contains the binding elements listed above, 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.

The graphic portion (*i.e.*, site layout) of the revised SDP (Exhibit 346(a)) is illustrative (except as specified in the binding elements). The plan shows 63 townhouses in strings of 5-7 units each (with the exception of a three-unit string along Ellsworth Drive), aligned perpendicular to Springvale Road, as well as preservation of the Riggs-Thompson House as a single-family detached dwelling.

Binding Element Nos. 2, 3, 9, and 15 relate to the green area on the site. Binding Element No. 3 binds the Applicant to provide 50% green space on the property, a portion of which (set forth in Element No. 2) will be permanently devoted to public access space. Binding Element No. 13 requires the Applicant to record a restrictive covenant on the green space surrounding the environmental setting of the Riggs-Thompson House mandating that improvements to the green space will be done as an amendment to the Applicant's site plan with advice from the Historic Preservation Commission. Binding Element Nos. 10, 12 and 14 impose requirements relating to the private road, which include signage limiting access to residents, design improvements to discourage cut-through traffic, and homeowners' association authorization for County enforcement of the private traffic restrictions. Exhibit 346(a).

Standard for Review

A floating zone, such as the RT-12.5 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 RT Zone may be applied if a proposal meets any one of three alternative criteria: (1) it is in an area designated for RT 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 RT 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. Pursuant to Resolution No. 17-286, the District Council found in the original application that RT zoning is appropriate for the subject property, for the reasons set forth therein. These will not, therefore, be repeated here.

Technical Staff, the Planning Board and the Hearing Examiner all found that the Applicant’s proposal complies with all of the development standards and special regulations of the RT-12.5 Zone. Exhibits 282, 304. In the original (i.e., RT-15) application, the Applicant had requested a waiver of minimum 30-foot setback along the southern property line. 5/26/11 T. 244-246. The application on remand meets this setback, and therefore, no waiver is requested or necessary. 3/23/12 T. 119.

Those opposing the application on remand objected to the density of the development proposed on remand partially because it would remove many of the existing mature trees on the site which currently screen the neighborhood from views of the Central Business District and other uses, such as Colesville Towers, within the surrounding area. 3/26/12 T. 277-283, 298-301. Technical Staff reported that the Applicant could meet the requirements of the forest conservation law at the R-T 15 density, although a variance would have been required because of the size of some of the trees on the property and because of their association with the historic site. Exhibit 282, p. 14. The Applicant did not submit a revised Preliminary Forest Conservation Plan for the R-T 12.5 SDP. Technical Staff advises, however, that, “[n]ow with the revised schematic development plan which includes greater setbacks, less density, more green space and less overall disturbance, it appears the forest conservation requirements would be easier to meet.” With regard to the variance, Staff stated, “the increased setbacks and lower density will facilitate the preservation of subject trees, particularly those along the south boundary of the site and those near the Riggs-Thompson house.” Exhibit 282, p. 14. Based on this evidence, the Hearing Examiner agreed that the proposed development is able to comply with the forest conservation law, subject to further review later in the development process.

Section 59-C-1.722 also requires townhouse rows to be staggered so that a maximum of only three townhouses in the same row should have the same frontage. Technical Staff advised that this requirement may be addressed at the time of site plan. Exhibit 282, p. 8. The Applicant testified that this requirement can be met through the use of architectural elements such as recessed entrances and porches. 3/23/12 T. 63. Based on this evidence, the District Council concludes that the Applicant has sufficiently proven that this standard may be met, as did the Hearing Examiner.

Compatibility

An application for a floating zone reclassification must be evaluated for compatibility with land uses in the surrounding area. Regarding the original application, the District Council found that, “[t]he SDP should be reconfigured to propose residential townhouse (RT) development with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan.” Exhibit 267, p. 15. The Council agreed with the Hearing Examiner that a straight line application of the “tent effect” adopted in the Silver Spring Central Business District Sector Plan was not appropriate at this location because of the abrupt change in the neighborhood at Cedar Street from more intense residential, commercial and civic uses in the Central Business District to single-family residential homes in the R-60 Zone. Resolution 17-286, p. 10. The limited issues relating to compatibility within the scope of the remand include the density of the project, its massing, and the impact of the internal private street on the surrounding neighborhood.

A. Density and Massing

The Applicant maintains that the reduced density on remand is compatible with the surrounding area because of the high quality of the green space surrounding the perimeter of the property, the building orientation, revisions increasing the width between and reducing the length of the townhouse strings, landscaping and screening, and the use of architectural elements which simulate single-family homes. According to the Applicant’s land planner, these units will appeal to a lifestyle which “lives to the front” for individuals who do not want the maintenance of a typical single-family detached homes. 3/23/12 T. 149. Technical Staff, the Planning Board, and the Hearing Examiner found this approach sufficient to make the development compatible with the surrounding community. Exhibits 282, 304. In particular, the Hearing Examiner found that the development compatible with adjacent homes because (1) the Ellsworth side of the property faced a public park and had smaller clusters (i.e., 3-5 units), (2) the strings are located perpendicular to Springvale Road and will have functional fronts, (3) the Riggs-Thompson House and a significant amount of open space will buffer the Pershing Drive frontage. Hearing Examiner’s Report and Recommendation, pp. 59-60.

The Applicant also submitted comparables of other RT-15 and RT-12.5-zoned developments near Central Business Districts to support the proposed density of 12.19 dwelling units per acre. 3/23/12 T. 130-135.

Those opposing the Application argue the massing and density are incompatible with the surrounding area, comparing the site layout to World War II “barracks”. Exhibit 314(b). They believe that RT-8 Zoning would be more compatible because it would reduce the length of the townhouse strings into smaller clusters of units. 3/26/12 T. 344-346. They also assert that comparable developments should come only from within the Master Plan area, and submitted several comparables of developments within the area, which were less than 12.5 dwelling units per acre. They further argue that RT-12.5 was not appropriate because comparable developments at a similar density within the planning area were located either on major roads or abutting commercial uses. 3/26/12 T. 154-161.

The Applicant presented evidence that some of the developed densities of the comparable developments cited by the opponents were actually higher than the opponents reported. Because the Applicant’s calculations were taken from the original site plans, rather than M-NCPPC’s website, the Hearing Examiner found that the Applicant’s density calculations were better evidence, as does the District Council. Based on these, the proposed development, at 12.19 units per acre, is well within the densities of other townhouse developments within the planning area, which range between 9.7 to 12.38 dwelling units per acre. The Hearing Examiner found the significant green space surrounding the townhomes sufficient to mitigate the fact that the development is not on a major road, and that other much larger densities within the defined neighborhood justify the higher density on this site. For the reasons set forth, the District Council agrees and so finds.

With regard to massing, the Applicant asserts that revisions to the SDP result in a significant improvement in massing over the original application. The strings are now five to seven units in length as opposed to six to eight units per string; the total length of the northern string has been reduced by 12 feet. Each “courtyard” has been widened by four feet, the townhouse string closest to the Riggs-Thompson House has been removed, there is a significant amount of open space surrounding the historic house, and the strings no longer encroach into the setback at the southern property line. 3/23/12 T. 56-59. Exhibit 327(e). It further states space created by breaking up the townhouse strings with thin bands of open area will result in space which has no useable benefit due to the 6% grade and lack of sunlight. 3/23/12 T. 260. In addition, as described, the site layout avoids having one large string of townhouses confront existing single-family homes.

SOECA and those opposing the application contend that the site layout is still too densely massed on one portion of the site. They argue that, without the green area surrounding the Riggs-Thompson House, the density of the project is 16.36 acres. They also argue that the changes in massing from the original application are nominal because the combined length of the north and south strings is only two feet shorter and the width of the units along Springvale Road have increased. 3/26/12 T. 152-154.

Technical Staff, the Planning Board, and the Hearing Examiner found that the revisions to the SDP do significantly mitigate the massing of the project so that it is compatible with the surrounding community. Exhibits 282, 304. The Hearing Examiner found that, while the combined length of the rows is only two feet less than shown in the original SDP, the shortened length of the rows north of the private street is significant. This is because it reduces the mass

from the only perspective where the townhouse strings actually confront single-family detached homes (i.e., along Pershing Road). The strings south of the private road are now screened by the only single-family home on the site (i.e., the Riggs-Thompson House), and are buffered by new, significant setbacks from both the road and the house itself. The Hearing Examiner also found that the small increase in the width of the fronts along Springvale not a major detriment as the fronts are not dissimilar in width from single-family detached homes. Thus, the widening of the courtyards does function to break up the massing of the units despite the increase in townhouse widths along Springvale Road.

With these changes in massing, the District Council finds, as did the Hearing Examiner, the Planning Board, and Technical Staff, that the building orientation, architectural elements (including varied rooflines and functional fronts) and landscaping and decorative walls to screen the private alleys from Springvale Road achieve compatibility with the surrounding neighborhood.

B. Private Road

In its original application, the Applicant proposed six alternatives for alignment of the private road, several of which had unresolved environmental or traffic impacts. One of the alignments would have circumvented the existing traffic restrictions, thereby creating the potential for cut-through traffic. The District Council remanded the case, in part finding that the Applicant had failed to show that the different alignments would not adversely impact the neighborhood. Resolution 17-286, p. 15.

On remand, the Applicant proposes a single alignment which has received conceptual approval from Technical Staff, the Planning Board, and the Montgomery County Department of Transportation. Exhibits 282, 304, 335. This alignment has one access point on Ellsworth and one on Springvale Road, but further east than the alternative shown in the original application. Evidence in the record reveals that the Planning Board and Technical Staff prefer this dual access to public streets to promote “connectivity” to the existing street network, or in another words, to permit multiple access routes to destinations in the area. Record evidence also shows that dual access is preferred by emergency services for fire and safety purposes. Exhibits 282, 304.

The Applicant acknowledges that the dual connection of the private street creates an opportunity to circumvent the existing traffic restrictions on neighborhood streets. It proposes several measures to prevent potential cut-through traffic, including signage restricting access to residents, narrowing the width of the road, using specialty pavers to denote private property, and channelizing the access point at Springvale Lane to prevent left turns. 3/23/12 T. 78-111. Those opposing the application question the effectiveness of these measures primarily because, in their opinion, they are unenforceable and because the Applicant is permitted to have a single access under the County regulations. 3/23/12 T. 196-247.

The District Council finds, as did the Hearing Examiner, that the proposed signage and channelization of the private road will effectively prevent cut-through traffic because of the significant evidence in the record, both in the original case and on remand, that existing signage

and traffic restrictions have been effective since implemented in the 1990's. The effectiveness of the existing restrictions is also demonstrated by the low traffic volumes evidenced in the first hearing and again in this hearing with respect to Springvale Road. In contrast, the evidence that people will disobey the signs is anecdotal and speculative in comparison with testimony from the opposition, and the Applicant's expert traffic engineer, that volumes in the area have been significantly reduced by the traffic restrictions currently in place.

The Applicant has also proposed a binding element requiring it to seek an Executive Order, pursuant to *Montgomery County Code*, §31-2, permitting the County police to enforce the private signage on the property, which also persuades the Council that the dual access of the private street will not be incompatible with the surrounding area.

The 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. Compliance with the Master Plan recommendations, however, is not mandatory in this case because the RT Zones do not require it; rather, the courts have held that the Master 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 (2008):

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

The subject property lies within the area covered by the 2000 North and West Silver Spring Master Plan. When remanding the original application, the District Council found that RT zoning was appropriate at this location, and would further some goals of the Master Plan, such as creating pedestrian connections, street improvements, and providing public open space. It remanded the case because the Applicant did not provide sufficient evidence that the proposed development conformed to the land use recommendations of the Plan for the transition from the Silver Spring Central Business District at this location, specifically, that the transition be by "use, not by structure type". The Plan recommended the transition to be by single-family homes designated for non-resident professional office special exceptions.

Other questions relating to conformity with the Master Plan included whether the existing environmental setting, created for the current property owner, should be expanded. Extensive testimony was presented on the legislative history of the designation, leading the Council to remand the case for more evidence on this issue.

Finally, the District Council also found that insufficient evidence had been presented on whether the alignment of the private road would undermine the Master Plan's recommendations

against creating a significant amount of cut-through traffic through the community. Resolution 17-286, p. 15.

A. Land Use

In its Resolution remanding this case, the District Council found that, “The SDP should be reconfigured to propose residential townhouse (RT) development with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan.” Resolution 17-286, p. 15.

The Applicant argues that the techniques previously described (i.e., building orientation, varied architectural elements, and significant green space along the perimeter) along with the changes to the length of rows and width of the courtyards, the additional green space surrounding the historic house, and moving out of the buffer along the southern property line, result in general compliance with the Master Plan guidelines for this location.

Those opposing the application disagree vehemently, describing the townhouse strings as “barracks” which are massed at an effective density of 16.36 acres if one ignores the green areas on the site, as already described.

The Council has already determined that R-T Zoning is appropriate at this location, so some level of deviation from traditional detached structures must be presumed. The District Council agrees with the Hearing Examiner, Technical Staff and the Planning Board that the careful site layout, along with the use of varied architectural elements, landscaping and screening, and the reductions in massing sufficiently suggest and compatibly relate to traditional single-family detached homes to comply substantially with the Master Plan.

These townhomes will be, in some respects, different from traditional single-family detached homes. These residents may wish to “live to the front” of the home, without backyards and with large green areas that do not require maintenance by the individual owner typically associated with detached homes. The District Council finds that the potentially incompatible aspects (such as headlights from the private alleys) are effectively mitigated by building orientation, site design, landscaping, and the use of architectural elements. The District Council also finds that other aspects of the development such as provision of public open space, sidewalks, and streetscape, further other goals of the Master Plan.

B. The Environmental Setting of the Riggs-Thompson House

The size of the environmental setting designated by the Master Plan after the Chelsea School leaves the property remains a matter of great debate on remand. The controversy continues to stem from competing language in the body of the Plan stated only that the environmental setting should be 37,056 square feet. An appendix (Appendix D) to the Plan sets forth a dual recommendation:

The environmental setting is 37,056 square feet as shown in the shaded area below pending approval of the Chelsea School special exception by the Board of Appeals. *In the event that the Chelsea School plan is not approved, the designated environmental setting is the entire 1.4-acre parcel (P73) on which the house is located. An important goal of the Chelsea School plan is the integration of the Riggs-Thompson House into the campus.* Appropriate access to the house should be provided. Exhibit 139, Appendix D (emphasis supplied).²

As a result, those opposing the application continue to assert that the Plan intended the environmental setting to be the original 1.4 acre parcel (P73) on which the house was located. 3/23/12 T. 320-348; 3/26/12 T. 3-156.

The District Council found that the evidence presented prior to remand supported a finding that the environmental setting should be the 1.4-acre parcel and remanded the application to the Planning Board for additional consideration on the Master Plan's intent. Resolution 17-286, pp. 13, 15.

On remand, the Applicant, Technical Staff, and the Planning Board continue to maintain that language in the body of the plan stating that the environmental setting consists of 37,056 square feet should "trump" language in an Appendix to the Plan. Exhibits 282, 304, 3/30/12 T. 65-71. In addition, however, Technical Staff has provided new information regarding the timing of the special exception approval in relation to the Master Plan. Staff advises that the Board of Appeals approved the special exception before the Master Plan was adopted. Thus, Technical Staff and the Planning Board concluded that the Council was aware that no dual recommendation was necessary and therefore no need to take a "leap" that the setting should be changed for the future. Exhibit 282, pp. 8-10, Exhibit 304.

Those opposing the application presented evidence that there was testimony before the Historic Preservation Commission and the Planning Board that the smaller environmental setting applied only if the Chelsea School occupied the property and suggesting that the it should revert to the original 1.4-acre parcel (P73) if the property if the Chelsea School special exception was not approved or the property was developed with some other use. 3/26/12 T. 103-104, Exhibit 324(c). They also provided a work session transcript wherein the Planning Board instructed Staff to draft language to this effect. They assert that the Planning Board was unaware of the change to the Plan moving the dual recommendation to an appendix to the Plan. 3/23/12 T. 336, 342-346. According to the opposition, the PHED Committee was presented with a memorandum on the Plan explaining the Plan's alternative recommendation. Exhibit 324(p). Those in opposition feel it important to revert to the 1.4-acre parcel as an environmental setting because of concerns that the HOA is not equipped with the expertise or interest in protecting the historic house. 3/23/12 T. 115-123/ 3/26/12 T. 142-150.

The Hearing Examiner found that the revised SDP continues to meet the legislative intent underlying the Plan's designation. The Hearing Examiner found that the Plan intended to permit

² A complete summary of the arguments on this matter prior to remand is set forth in Council Resolution 17-286, pp. 12-15.

some flexibility to the owner to fulfill its development plans because those plans provided significant protection for the historic resource. The evidence shows that the Chelsea School special exception plan incorporated the Riggs-Thompson House into an “academic quad” including a significant green area. The SDP on remand surrounds the historic house with almost 1.5 acres of green area, a portion of which (i.e., 37,056 square feet) will be the environmental setting and the bulk of the remainder will be permanently dedicated to public access. Exhibit 346(a). Technical Staff found that this combined area provided a better setting for the Riggs-Thompson House because it opened the house up to significant views from the neighboring streets. Exhibit 291(e). In response to the opposition’s concerns regarding HOA ownership, the Applicant submitted a binding element requiring any improvements to the public access space after the initial site plan approval to be accomplished by amendment to the site plan, with advice of the Historic Preservation Commission. Exhibit 346(a). Based upon this evidence, the District Council finds that the proposed SDP complies with the Master Plan.

C. The Private Road

The final issue on Master Plan compliance is whether the proposed private road substantially complies with the Plan’s goal to minimize neighborhood cut-through traffic. For the same reasons it found that the alignment of the private road will be compatible with the neighborhood, the District Council finds that the proposed alignment of the private road substantially complies with the Master Plan.

Conclusion

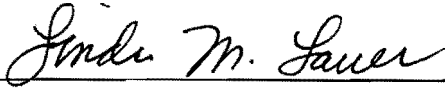
Based on the foregoing analysis and the Hearing Examiner’s Report and Recommendation dated May 16, 2012, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the application, as described in the final version of the SDP, satisfies the requirements of the RT-12.5 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-12.5 Zone is sufficiently related to the public interest to justify its approval. For these reasons and because approval of the instant zoning application, as presently described, will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved.

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-892 (Remand), requesting reclassification of 5.25 acres of land, described as Lot 58, Evanswood Section 1, and located at 630 Ellsworth Drive, Silver Spring, Maryland, from the existing R-60 Zone to the RT-12.5 Zone, is hereby **approved** subject to the specifications and requirements of the revised Schematic Development Plan (Exhibit 346(a)), provided that the Applicant submits to the Hearing Examiner for certification a reproducible and three copies of the Schematic Development Plan approved by the District Council within 10 days of approval, in accordance with Section 59-D-1.64 of the Zoning Ordinance, and that the revised Declaration of Covenants (Exhibit 345(e)) are recorded in the County land records in accordance with Section 59-H-2.54 of the Zoning Ordinance and proof thereof submitted to the Hearing Examiner within the same time frame.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

Submitted February 13, 2013 (Updated April 12, 2013)

Mr. Marco Fuster
Maryland-National Capital Park and Planning Commission
Planning Area 1
8787 Georgia Avenue
Silver Spring, Maryland 20910

**Re: Chelsea Court Tree Variance
Preliminary Plan Application 120130060.**

Dear Mr. Fuster:

As you know, by letter dated September 21, 2012, and supplemented on December 12, 2012, we requested approval of a variance under the provisions of Section 22A-21(b) of the Code in connection with the referenced preliminary plan application. You have asked us to more clearly justify to you why the variance request for the removal of (4) four trees on the site should be approved by demonstrating that there is no feasible alternative plan that could be approved which would save these trees.

The Planning Board has discussed the justification for approving a variance under Section 22A-21(b) of the Code in other cases. The law states that the variance request cannot be based on “conditions or circumstances which are the result of actions by the Applicant”. This has been interpreted by the Board to mean that the Applicant must show that it has looked at alternatives to avoid the need for a variance. However, in making this determination the Board has made clear that it must also be assumed that the Applicant has a right to develop its property as allowed by the zoning ordinance.

Given these parameters, we are providing to you a more complete explanation and additional support information to justify the approval of the variance for (4) four trees on the site in connection with this preliminary plan application. While there are different specific reasons for the request to remove each of the individual trees, we believe it is important for you to consider the overall elements of this plan, as the variance request came as a result of a number of competing factors which the Applicant was required to address.

The preliminary and site plan for the Chelsea School property was the result of several years of work. The plan was developed with major input from staff members from a number of County agencies, each with its own requirements. Input was also solicited from the community and incorporated into the plan. There were numerous public proceedings before the Planning Board, Hearing Examiner and County Council.

Through this process the Applicant was asked to address a number of important objectives with its plan. These included providing a meaningful 1.4-acre historic setting for the Riggs-Thompson house, providing connecting, publically accessible green area along the site frontage, and providing a generous set-back from the rear yards of the single family homes along Cedar Street. Meeting all of these objectives resulted in compressing the available building envelope toward the center of the property.

In developing its plan, the Applicant was also mindful of the location of specimen trees on the site. The plan was developed to require the minimum possible variance request under Section 22A-21(b). This included a reduction in density to 63 townhomes, 17 fewer than the 80 allowed under the RT 12.5 zone, and the reduction in lot coverage to 30%, when the ordinance allows 35% coverage. However, the Applicant's proposal could not avoid all specimen trees on the site and will require approval of a variance for removal of 4 (four) trees. [All trees referenced by number herein refer to the Tree Variance Table submitted as part of the application.](#)

The variance request for removal of each of tree numbers 116, 98, 87 and 45, as shown on the Forest Conservation Plan, is addressed below.

1) Tree 116- Exhibit 1

The removal of this tree, located in the public right of way along Springvale Road, is not only due to the location of the sidewalk along the site frontage, but principally because of the curb, gutter and storm drain improvements that are required by the Department of Transportation (DOT) for the project.

In accordance with the criteria outlined by the Board, the engineers looked at alternative locations for the storm drain facilities to avoid the impact to tree #116. The only feasible alternative is to locate these facilities in the public right of way across the street from the site, as shown on Exhibit 1. However, this would give rise to a different variance request, as tree #89, which is also a specimen tree, would have to be removed instead of tree #116. We submit that it is preferable to keep the storm drain facilities in the right of way along the Chelsea Court site frontage than to impact a specimen tree on the other side of the road in an adjacent property owners yard.

In response to your request we have also shown on Exhibit 1 a termination of the sidewalk and curb and gutter outside the critical root zone of tree #116 in two locations. However, since the only practical location for the storm drain facilities requires the removal of this tree, these changes do not solve the problem. It is the required storm

drain facilities, for which there is no better location, that ultimately give rise to the variance request.

It should also be noted that since 71 % of the root zone of tree #116 is located in the public right of way and/or subject to a public utility easement, the tree could be removed by the County, or the public utilities could impact the critical root zone of tree #116, at any time, regardless of our project. The public utility companies are likely to require upgrades for the project which may well lead to the removal of this tree.

The applicant worked closely with DOT to analyze the alternatives to the right-of-way improvements that impact tree #116. Andrew Bossi (MCDOT Development Review Team) summarized these efforts in an e-mail on February 1, 2013:

We've considered the following:

- *Design per closed section standard 2002.02 (impacts the tree)*
- *Design per open section standard 2002.04 (impacts the tree)*
- *Flip-B Inlets (impacts the tree)*
- *Restricting Parking (still does not provide enough room; impacts the tree)*
- *Leave Springvale as-is*

The only one of those options that saves the tree is to leave the road as it exists today, but that is not in compliance with our safety standards, does not address drainage needs, does not comply with the master plan, and does not conform to the neighborhood's common aesthetic. At this time this is not considered a viable option for DOT.

2) Tree #98-Exhibit 2

The removal of this tree is justified for two reasons. First, Tree #98 is in poor health. You have asked us to give you additional information on the health of the tree. The enclosed Exhibit 2, prepared by an arborist, fully documents the health issues of this tree. As noted in the captions under the photographs, the tree roots have significant mechanical damage and the fungus present on the trunk is a sign of bacterial infection. These elements have contributed to a significant decline in the health of the tree. In the opinion of the arborist the tree is also unstable and prone to failure due to an uneven crown and irregular branching. The central leader of the tree has been taken over by English Ivy, also contributing to its poor health. Finally the trunk of the tree has evidence of advanced tree decay. The tree has wood that is soft and a cavity where wood is missing,

which have led to the decline in the health of the tree, and also make it a hazard due to instability.

The second reason the tree must be removed is due to the storm drain impact on this tree. As they did for tree #116, the engineers looked for an alternative location for the storm drain. Again, the only feasible alternative is to place the storm drain across Springvale in the right of way. As was the case for tree #116 this would impact other specimen trees, in this case trees #93 and # 89. Again we submit locating the storm drain along the Chelsea Court site frontage is the better alternative, particularly given the poor health of tree #98. DOT also does not see a viable alternative to removal of this tree.

Again, it should be noted that 26% of the critical root zone of this tree is in the right of way and the public utility easement and could be impacted by the County and/or utility companies. The public utility companies are likely to require upgrades for the project which may well lead to the removal of this tree.

3. Trees #45 and #87 - Exhibit 3

Tree #45 is located on the northwest side of the site and tree #87 is located in the center of the site. We have prepared Exhibit 3 to show the constraints on the buildable area of the site due to meeting the many objectives desired by the Planning Board, County Council and community during the approval of the Development Plan. In order to save trees #87 and #45, both shown on Exhibit 3, the roadway serving the project would have to be changed completely, the location of units would have to be changed impacting the green areas called for in the approvals, and the entire grading plan would have to be altered resulting in other impacts

It is important to remember that the proposed density for the site is already 21% below the allowed density based on the site acreage and the building coverage is only 30% even though the ordinance allows 35% building coverage. The applicant voluntarily reduced the density and building coverage in order to preserve a large historic setting for the Riggs-Thompson House, save a number of specimen trees on and off the site and accommodate other elements as described above. Further shrinking the developable area by preserving tree #45 and tree #87 would necessarily lead to a further reduction in density and a related reduction in MPDU's. MPDU's suitable for families are in short supply in Montgomery County and the loss of another MPDU or two would significantly the County's objectives related to the redevelopment of the property.

Shrinking the footprints of the units to accommodate the existing unit count while preserving tree # 45 and tree #87 would further compromise the ability to develop on the

site as the existing units have been sized to accommodate the dramatic grade in the middle portion of the site. Any change to the layout of the townhome units to accommodate these two trees would lead to a further loss of density and MPDU's on the property in contravention to another important County goal under "Smart Growth" to provide housing and MPDUs near the CBD.

As you can discern from a review of Exhibit 3, there are no viable alternatives for the relocation of the road and these units. The only area on the site to relocate the townhomes is to the north of the Riggs-Thompson House. However, after months of consideration, it was the opinion of the Planning Board, Historic Preservation staff and the Applicant that the area around the house, and the view shed of the historic house from Springvale and Pershing, should be preserved. Many in the community advocated for a larger historic setting. A revised plan was developed to preserve the historic house and almost 1.5 acres surrounding it, to meet this important objective. We submit that a complete change in the plan in order to save trees #45 and #87 would seriously undermine this important objective of the revised plan and is not feasible.

Exhibits 4, 5, 6 and 7 are being provided to demonstrate other extraordinary efforts the Applicant is engaging in to avoid the need for a variance request for additional trees.

Exhibit 4:

Tree numbers 70, 71, 72, 73, 75, 77, and 79 were identified during the rezoning case as desirable trees to preserve if possible. In order to do so we have:

- 1) Included a retaining wall to preserve a large portion of critical root zone of trees 73 and 75. This retaining wall was not required to make the site grading work. The Applicant could have proposed to remove tree #75 (with variance) and graded this portion of the site, also impacting tree numbers 70, 71 72 and 73, at a significant cost savings. Instead, the Applicant submitted a plan to construct a retaining wall which has allowed it to maintain portions of the existing grade around these trees, saving a significant percentage of the root zone from construction impact and preserving these trees.
- 2) Included special foundation design and construction above and beyond what would normally be required for the building of the townhomes along the southern property line. This foundation design has allowed the Applicant to pull the limits of disturbance to within 5' of the proposed townhomes, significantly decreasing the percentage of root zone that would be impacted for trees 70, 71, 72, 73, 75, 77 and 79. Typical tieback slope construction of the townhomes would result in significantly greater limited of

disturbance than the 5' we are currently proposing, impacting a much greater percentage of critical roots and diminishing the viability of this grove of trees.

- 3) Included phased tree protection fence installation and extraordinary root pruning operations. In the first phase we will install the fence as shown, lining the proposed limits of disturbance and existing asphalt driveway that is to be demolished adjacent to trees. We have recommended that contractors remove all asphalt within the critical root zones of trees 70, 72, 73, 75 and 77 by hand to decrease any impacts large machinery would have on existing roots. After demolition has occurred, tree protection will be moved to enclose the root protection zone for trees. A root pruning trench will then be dug after the tree protection fence has been placed in its final location. Root pruning is a process in which clean cuts are made to allow for the fastest callusing of necessary wounds and healthy re-growth of lost root systems. During development, root pruning is employed in areas where excavation takes place for such purposes as grade changes, utilities installation or foundation digs. In these situations, roots typically are torn and mangled by digging equipment, severely impacting a tree's ability to recover. The proposed operations will avoid this and help ensure that these trees will remain healthy.

Exhibit 5:

Tree numbers 33, 66, 67, 68 and 69 were also identified during the zoning hearing as trees worthy of special protection. Tree # 33 is the only one of these trees for which the applicant is seeking a variance for an increased impact on the critical root zone. The removal of the existing stone grotto, which poses a safety/liability concern on the Property, necessitates a small LOD expansion that increases the percentage of critical root zone impacted under the applicant's plan compared to the prior approved plan (from 24% to 25%). In order to further preserve trees 33, 66, 67, 68, and 69, the applicant has:

- 1) Rather than seeking a reasonable setback variance, the applicant revised the plan from the original, which included only a 20 foot setback from the southern property line, to a 30 foot setback, and included special foundation design and construction above and beyond what would normally be required for the building of the townhomes along this property line. This foundation design has allowed us to push the limits of disturbance to within 5' of the proposed townhomes, significantly decreasing the percentage of root zone that will be impacted for tree numbers 33, 67, 68 and 69. Typical tieback slope construction of the townhomes would have impacted a much greater percentage of critical roots.
- 2) Included tree protection fence installation and extraordinary root pruning operations. Prior to demolition tree protection fence is to be installed along the proposed limits of disturbance as shown on the plan. A root pruning trench will then be dug after the tree

protection fence has been installed. Root pruning is a process in which clean cuts are made to allow for the fastest callusing of necessary wounds and healthy re-growth of lost root systems. During development, root pruning is employed in areas where excavation takes place for such purposes as grade changes, utilities installation or foundation digs. In these situations, roots typically are torn and mangled by digging equipment, severely impacting a tree's ability to recover.

Exhibit 6:

Many of the trees in the Historic setting were identified during the zoning hearing as worthy of preservation. The applicant's plan protects and preserves all of the trees within the historic setting. That said, the applicant is seeking a variance for eight trees within the environmental setting whose root zones will be more greatly impacted by the applicant's plan than by the approved Chelsea School Expansion plan. These Trees are Trees 6, 12, 15, 20, 21, 22, 129, & 130. In addition, the plan also impacts Trees 10, 13, 16, and 18. The disturbances to the critical root zones of Trees 10, 13, 16, and 18 are equal to or lesser than the Chelsea School Expansion Plan, though the disturbances may impact different parts of the trees' critical root zones. The applicant has specified extraordinary measures to ensure the protection of these trees during work in the environmental setting, including sidewalk removal and digging by hand, root pruning trenches, and the extensive use of tree protection fence.

The impact to the critical root zone for Tree # 6 increased from 17% to 27% based on the proposed sidewalk improvements along Pershing Ave. The impact for Tree # 12 increased from 0% to 24% for the installation of roof drain and sump utility line for Riggs-Thompson house as part of the environmental site design measures for historic home. The impact for trees 15, 129, and 130 increased from 25% to 29%, 37% to 100% and 53% to 100% respectively for the installation of building foundation landscaping and the impact for trees 20, 21, and 22 increased from 33% to 44%, 32% to 61% and 31% to 74% respectively for the demolition of existing sidewalks and brick school.

To protect and preserve the trees within the Historic setting, the applicant has:

- 1) Included proposed limits of disturbance to protect and preserve all trees within the historic setting, including Tree # 23, which the Chelsea School Expansion would have removed.
- 2) Included tree protection fence installation and extraordinary root pruning operations. After tree protection fence has been installed, we have recommended that contractors remove sidewalks within the critical root zones of trees 19, 20, 21, 22, & 23 by hand to decrease any impacts large machinery would have on existing roots. A root pruning

trench is proposed adjacent to trees 12, 13, 14, & 15 for the installation of proposed underground utility and adjacent to trees 10, 11, 16 and 138 for the installation of proposed stone sidewalk. These measures will help ensure the health of these trees which are considered an important part of the historic setting.

- 3) The impact to trees 129 and 130 will be from proposed foundation planting in front of the Riggs-Thompson House. Actual plant locations and planting holes for trees, shrubs and groundcovers will be adjusted in the field to minimize impacts to the roots of trees 129 and 130. All planting shall be done by hand and under the supervision of an approved tree care professional to minimize impacts to trees.

Exhibit 7:

The applicant is also seeking a variance for offsite specimen tree #90 located at the corner of Ellsworth Drive and Springvale Road whose root zone will be more greatly impacted by the applicant's plan than by the approved Chelsea School Expansion plan. The impact to tree #90 has increased from 0% to 19% for the installation of a storm drain line and asphalt improvements associated with the required Springvale Road improvements discussed above.

In order to further protect the trees, the applicant has:

- 1) Included tree protection fence installation and extraordinary root pruning operations. Prior to demolition tree protection fence is to be installed as shown on the plan. A small 18" depth section of asphalt adjacent to the proposed storm drain line is to be removed from the area by hand. After the sub-grade in this area has been exposed, a root pruning trench will be dug. Any additional excavation work for the storm drain line that is to occur adjacent to tree save areas shall be monitored by an approved tree care professional. The expert will be present to prune or otherwise treat roots of trees to be saved which are exposed by excavation that occur below the depth attainable by traditional root pruning methods.

(1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship.

Tree #116, which is within the public right of way, is impacted by curb, gutter and most particularly by the required storm drain. Exhibit 1 shows that there is no better alternative location for the storm drain improvements. Tree #98 is in poor health, and is also impacted by these public improvements. Exhibit 2 clearly demonstrates the poor health of this tree, and also

shows that there is no feasible alternative for the storm drain. It should also be noted that the Applicant has included in its landscape plan the planting of a double allee of trees along this street, with sidewalk and seating areas, which will provide a greenway connection from the neighborhood to the CBD.

The removal of tree #45 and #87 is necessary in order to construct the road serving the development and site townhomes. A significant number of townhomes would be lost to avoid impacts to tree #45 and #87. The Applicant fully evaluated alternative locations for the townhomes which, but as can be seen from Exhibit 3, given the site constraints, there are no viable alternatives for relocation of these townhomes. As noted above, the areas on the periphery of the site that provide meaningful green area, and the environmental setting of almost 1.5 acres were important aspects of this plan desired by the County and community and prescribe the buildable area on the site. The Applicant has already reduced the proposed density by 21% and the building coverage from 35% to 30%. Any change to the configuration of the townhome units to accommodate tree #45 and tree # 87 would necessarily lead to a further loss of density and MPDU's on the property in contravention to other County policies.

In summary, the enclosed Exhibits make clear that the Applicant's proposal was developed in order to minimize the number of trees for which a variance is being requested. The variance is justified due to the peculiar conditions described above, and it would be an unwarranted hardship to deny the variance on a site which has already been dramatically shrunk by the political and public process.

(2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas.

The inability to remove/impact the (4) four trees would prevent this Applicant from developing the Property in the manner allowed in the RT 12.5 zone and would deprive the Applicant of opportunities enjoyed by others with similar properties in the RT-12.5 zone and in urban areas like Silver Spring. The proposed preliminary plan already reflects a reduction in density from that otherwise allowed in the zone (reduced from 15.25 to 12.19 units per acre) and coverage (30% rather than 35% allowed in the ordinance) which will reduce the impact on trees.

(3) Verify that State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of the granting of the variance;

The current Maryland Department of the Environment (MDE) Stormwater Management regulations that Montgomery County has adopted require the use of environmental site design (ESD) techniques to treat the runoff from 1 inch of rainfall on all new developments, where

Mr. Marco Fuster – Chelsea School
February 13, 2013
Page 10

stormwater management is required. Per MDE’s 2000 Maryland Stormwater Design Manual, “[t]he criteria for sizing ESD practices are based on capturing and retaining enough rainfall so that the runoff leaving the site is reduced to a level equivalent to a wooded site in good condition[.]” The proposed stormwater management plans for the site will meet and exceed this standard with the removal of and impact to the identified trees. Therefore, the variance will not affect water quality standards and no measurable degradation in water quality will be experienced because effective mitigation measures are being provided.

(4) *Provide any other information appropriate to support the request.*

We believe the foregoing, as well as the information contained in the Preliminary Forest Conservation Plan and Application materials, clearly demonstrate that the grant of the variance pursuant to Section 22A-21(b) of the Code is appropriate in this case. If you have any questions or require additional information for your review of this request, please contact us.

Sincerely,

Gregg D. Eberly – Applicant’s Representative
MD RLA # 3609
Bowman Consulting Group

Agreed and Approved

By: _____
Mark Pfefferle
M-NCPPC

Date: _____

Supplemental Justification (3.20.13)

McLean Quinn

From: Titman, Dorothy R. <dritman@lercheary.com> on behalf of Harris, Robert R. <rrharris@lercheary.com>
Sent: Wednesday, March 20, 2013 2:57 PM
To: Marco.Fuster@mncppc-mc.org
Cc: neil.braunstein@mncppc-mc.org; Robert.Kronenberg@mncppc-mc.org; Bob Youngentob; Aakash Thakkar; Wyndham Robertson
Subject: ON BEHALF OF ROBERT HARRIS/Chelsea Court - Forest Conservation/Tree Variance (Site Plan No. 820130040)
Attachments: Road Designs for Chelsea Court-Forest Conservation_Tree Variance.PDF

This e-mail is being submitted in response to questions that have been raised by members of the community and Staff during the review of this Site Plan and, more specifically the requested tree variance. It focuses specifically on the planned removal of tree numbers 45, 87, 98, and 116 and is a supplement to the Applicant's letter dated February 13, 2013.

TREES 98 AND 116

Subsequent to the initial variance request submitted for this property, there are two important updates. First, MC-DOT has supported removal of these two trees because of the substantial portion of the critical root zone lying within the Springvale Road right-of-way and within the area where utility improvements and roadway improvements are required along Springvale Road. Second, a recent field observation has revealed that tree number 116 is in particularly poor health, even to the point of being a safety hazard. Additionally, EYA plans to plant a double row of trees along the entire Springvale Road frontage which will actually add to the tree coverage.

TREES 45 AND 87

The question has been raised as to whether applicant considered development options for the property, under the RT-12.5 zoning, that might have preserved these two trees. The answer is "yes." In fact, the current Site Plan and the related tree variance request reflect the previous consideration of numerous development options for the property. During the zoning phase of this project, the applicant looked at a variety of configurations for road access, open space, and the units themselves. The current plan was arrived at after extreme study and intensive public comment. While the current plan involves the removal of some trees, it preserves others and includes additional tree planting and generous green area/open space areas supported and approved by Planning Staff, the Planning Board, the Zoning Hearing Examiner and the County Council through their collective approval of the Schematic Development Plan. Among the many options considered were various different road designs (attached to this e-mail) and a variety of alternative townhouse configurations either fronting along Springvale Road or, as reflected in the current plan, aligned in a mews manner with the fronts of units at the ends of townhouse "sticks" oriented towards Springvale Road. During the SDP approval process, the density of the property also was reduced below that in an earlier plan supported by Planning Staff and the Planning Board and the footprint of the original buildings also was reduced by 11%. The resulting configuration, now reflected in the Site Plan and requiring this tree variance, was deemed to be consistent with urban design, smart growth, environmental, historic preservation, and traffic operation objectives. Among the factors considered in reaching this design option and resulting in the necessary removal of tree numbers 45 and 87 were the following:

- The sloping topography of the site and its effect on roadway access and tree number 87. After review of several options, the location of the access points, including a symmetrical access point with the Silver Spring Library across Ellsworth Drive and an appropriate access point on Springvale Road was reviewed and approved by DOT, the Planning Board, the Zoning Hearing Examiner and the Council. Changing the location of the road to save one tree would be very difficult given the series of decisions made by the County with regard to placement of the road.
- The desire to minimize massing along Springvale Road resulting in the orientation of units perpendicular to that road as approved in the SDP.
- Tree 45 is currently where an alley is required. The applicant looked at revised layouts that flipped the units and placed courtyards where alleys are and alleys where the courtyards are. That alternative, however, also would not enable preservation of tree 45 because utility easements in the courtyard preclude it.
- In its original application, the applicant proposed closer location of the units to the southern property line. During the SDP process, the setback was changed to 30 feet enabling applicant to protect more trees on the southern edge of the property but requiring removal of tree 45.
- The applicant examined unit width but cannot reduce the width because its combination of 14', 16', 18', and 24' wide units is already, on average, less wide than the industry standard for townhomes in Montgomery County. Further, the RT.12.5 zone has a maximum building height of 35 feet and requires parking for two cars per unit. Given the grades in the middle of this site, where the binding elements have directed development, the units cannot have the four levels (via a buried basement) that are standard in many townhomes. These units are forced to a maximum of three levels and the first level includes a parking garage. The grade, the 35 foot height limit, and the requirement in the RT-12.5 zone for two parking spaces for each unit force the unit widths to stay as proposed in order to develop homes that meet market demand for a mix of sizes and price points in this location.
- The “benching” of townhouse rows in a stair step fashion reflective of the current site topography with a mews design to reduce the overall area of the site occupied by townhouses (the Zone allows 35% coverage but the Plan ultimately approved limits that to 24%).
- The consent to Binding Elements which removes 39% of the site from the area available for townhouse development, preserving a green ring around the townhouse units and requiring clustering them in the center of the site.
- Utility lines that serve the various units which run within the mews areas and do not allow the preservation of existing trees even if they were to be located within one of the mews areas.
- The agreement to protect a grove of trees in the southwest corner of the property (numbers 32, 40, 70, 71, 72, 73, and 75) and to plant a significant number of trees along Springvale Road as well as elsewhere on the site.

As required by the Zoning Ordinance, this Site Plan is entirely consistent with the Schematic Development Plan approved by the Planning Board, the Zoning Hearing Examiner and County Council. It reflects a balancing of important objectives, including those related to tree preservation and planting, open space and the environment in general. The approval of a variance for the subject trees is entirely consistent with the approval of tree variances in many other cases.

Dorothy R. Titman - Legal Assistant

Lerch, Early & Brewer, Chtd. ideas that work

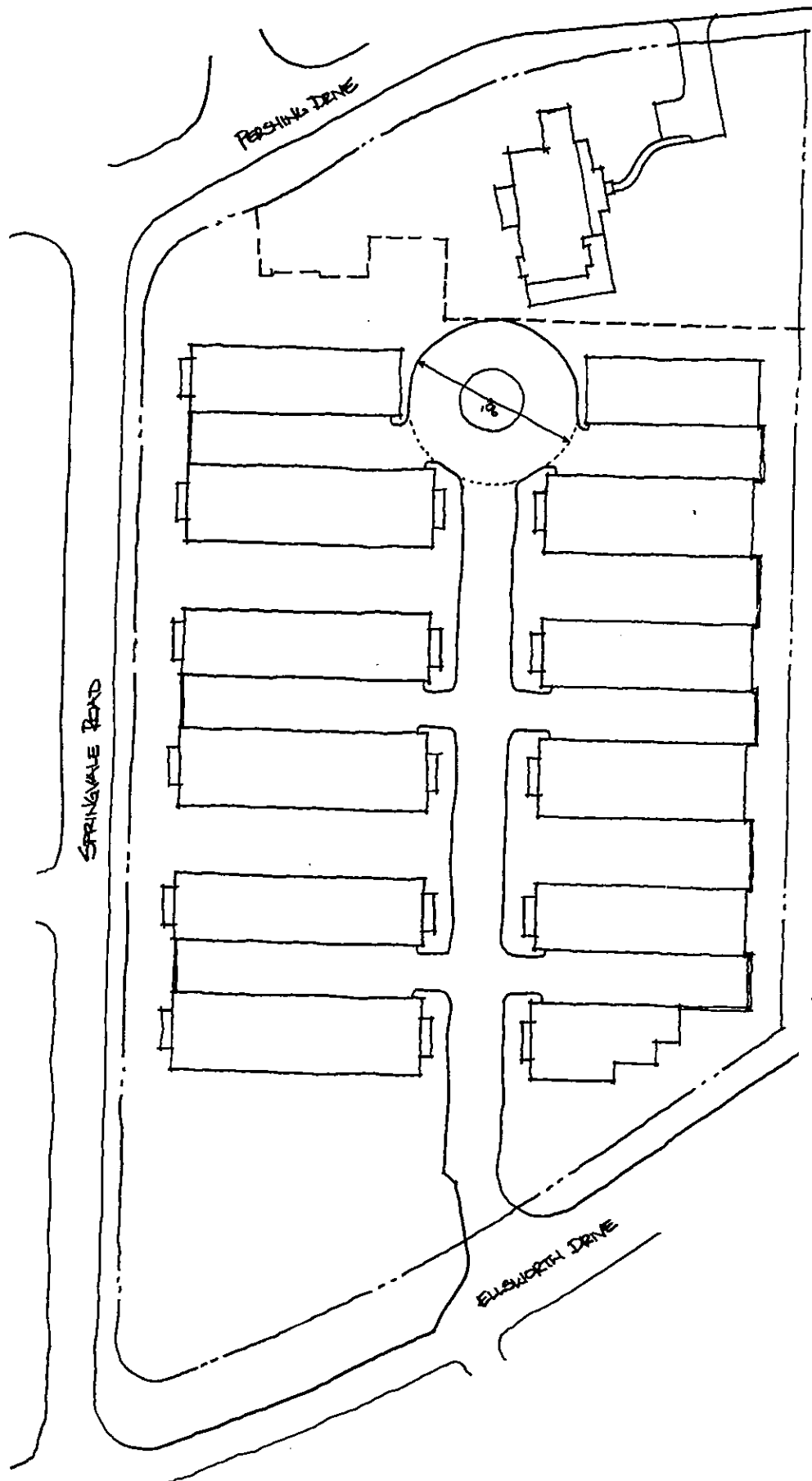
3 Bethesda Metro Center - Suite 460 - Bethesda, MD 20814

Tel: (301) 841-3828 Fax: (301) 986-0332 - Email: drtitman@lercheearly.com

Please consider the environment before printing this message.

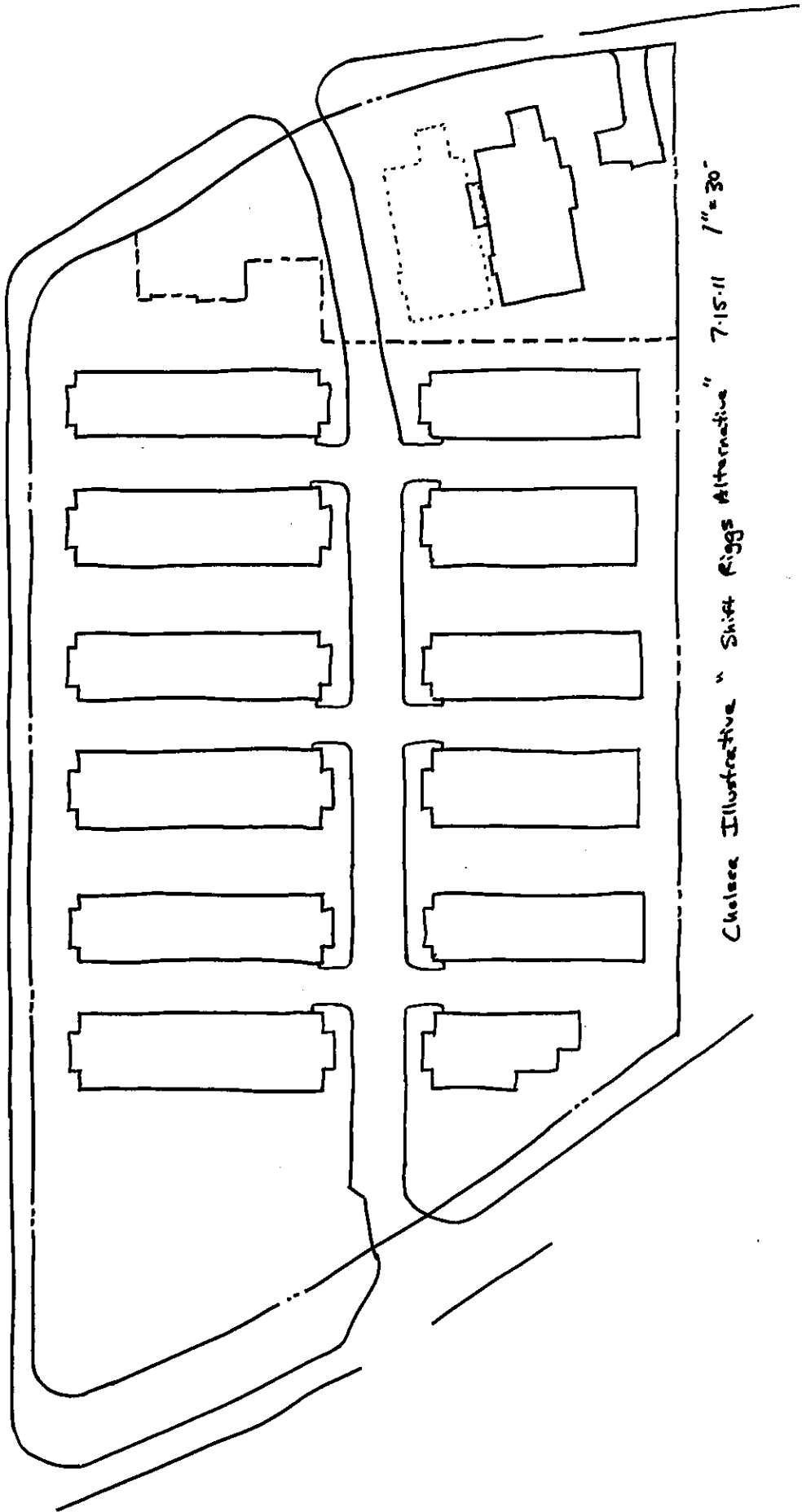
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PK 723



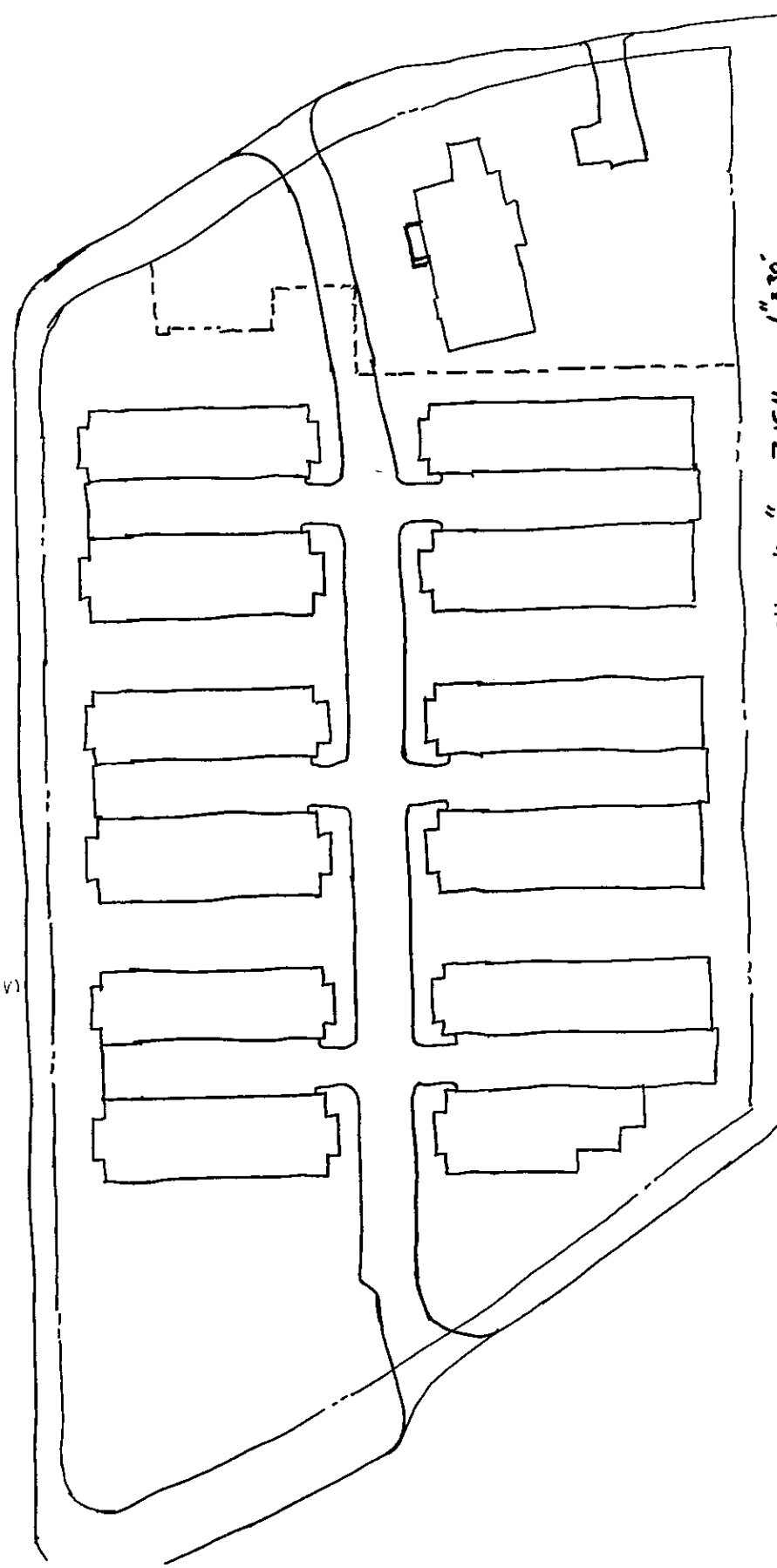
~~CHLSEA ILLUSTRATIVE GUIDE: SAC SKETCH~~
7-15-11
1/4" = 30'

Ex 224



Chelsea Illustrative "Shift Riggs Alternative" 7.15.11 1"=30'

5283



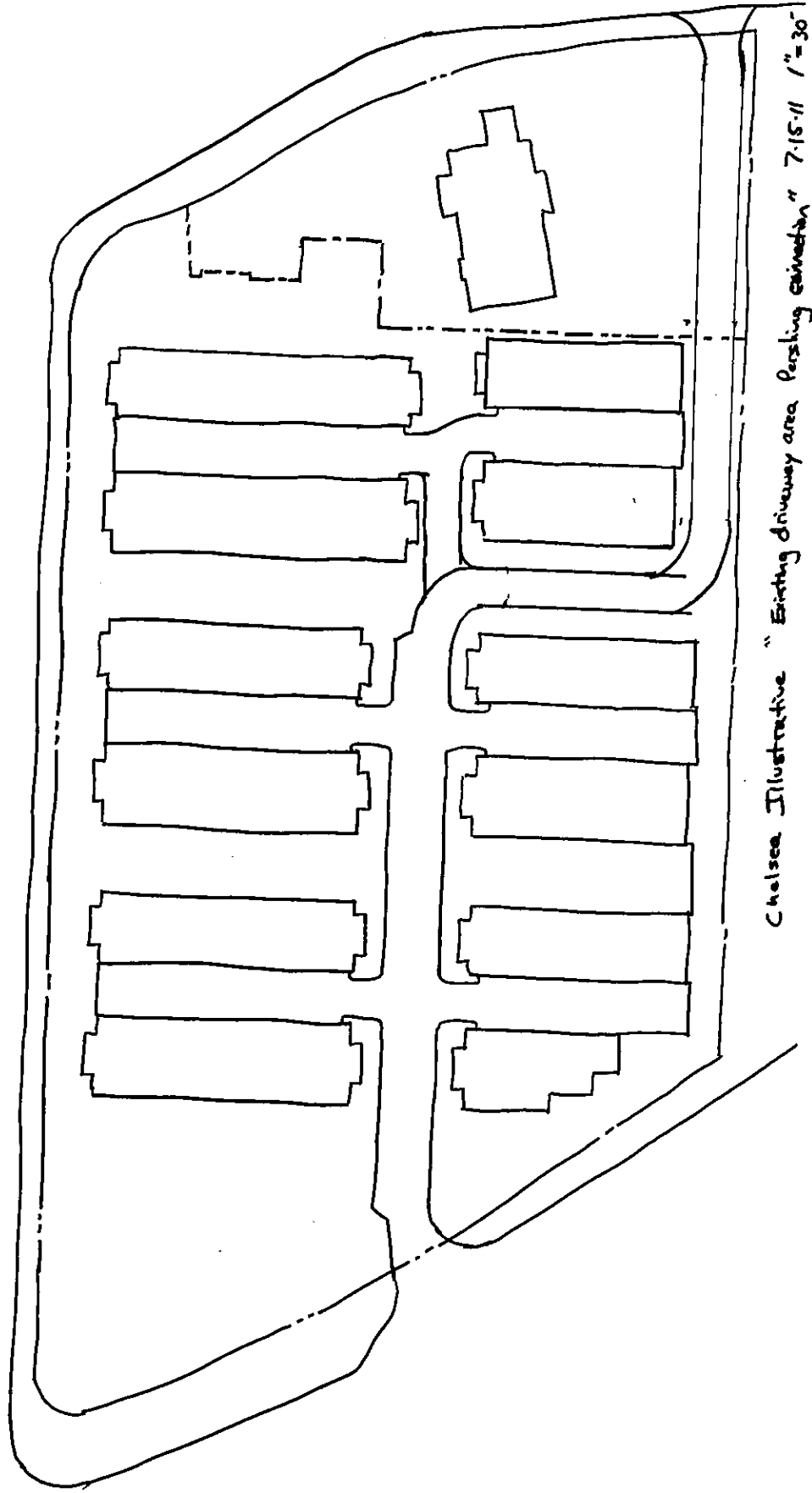
1" = 30'

7-15-11

Chelsea Illustrative "Sixth Road Alternative"

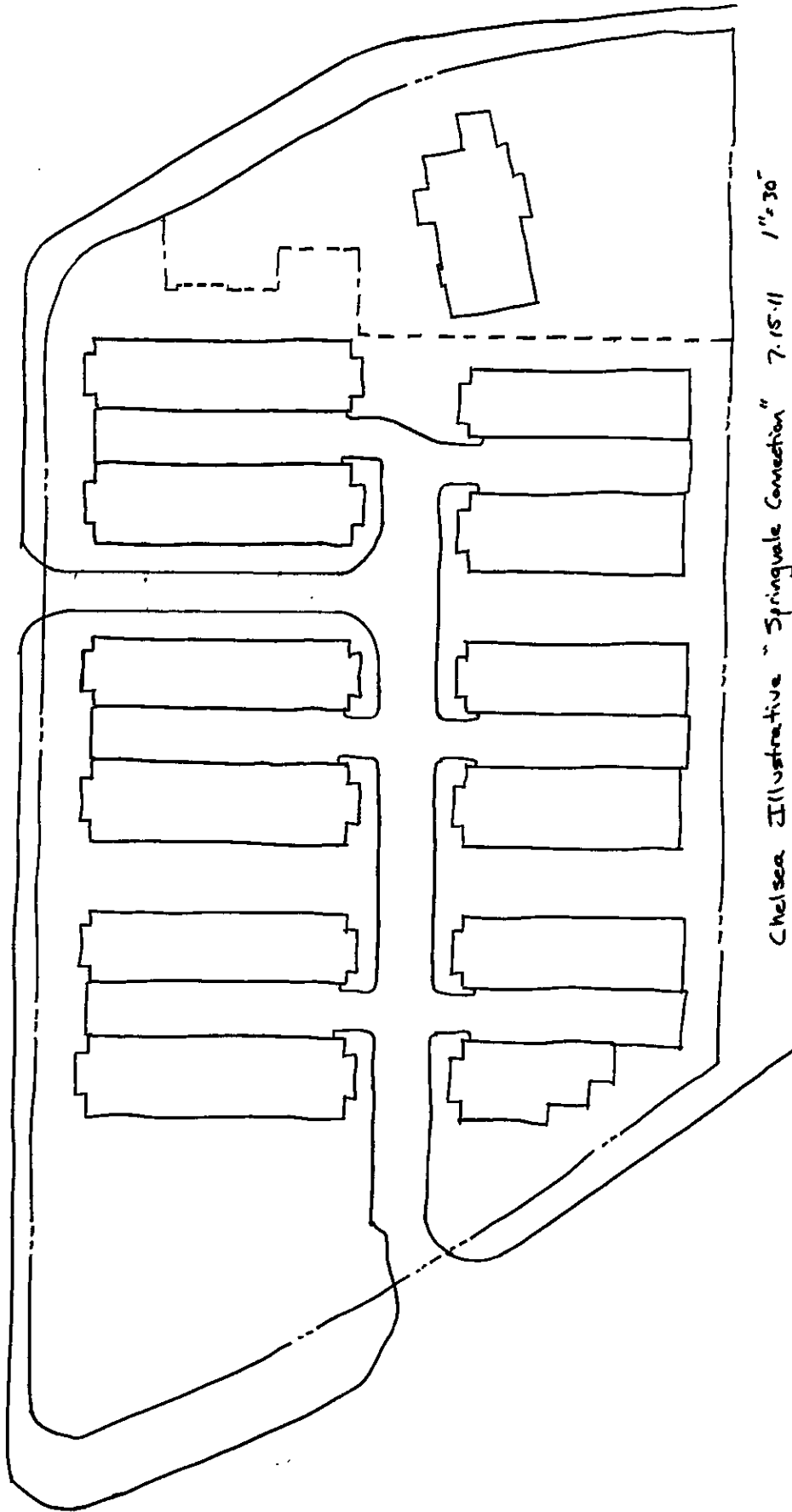
5

Ex 226



Chelsea Illustrative "Existing driveway area parking connection" 7-15-11 1"=30'

Ex 227



Chelsea Illustrative "Springvale Connection" 7.15.11 1"=36"

Correction to Supplemental Justification (3.21.13)

Transmitted by e-mail on March 21, 2013

Re: Chelsea Court – Forest Conservation/Tree Variance (Preliminary Plan Application 120130060)

This e-mail is being submitted in response to questions that have been raised by members of the community and Staff during the review of this Site Plan and, more specifically the requested tree variance. It focuses specifically on the planned removal of tree numbers 45, 87, 98, and 116 and is a supplement to the Applicant's letter dated February 13, 2013.

TREES 98 AND 116

Subsequent to the initial variance request submitted for this property, there are two important updates. First, MC-DOT has supported removal of these two trees because of the substantial portion of the critical root zone lying within the Springvale Road right-of-way and within the area where utility improvements and roadway improvements are required along Springvale Road. Second, a recent field observation has revealed that tree number 116 is in particularly poor health, even to the point of being a safety hazard. Additionally, EYA plans to plant a double row of trees along the entire Springvale Road frontage which will actually add to the tree coverage.

TREES 45 AND 87

The question has been raised as to whether applicant considered development options for the property, under the RT-12.5 zoning, that might have preserved these two trees. The answer is "yes." In fact, the current Site Plan and the related tree variance request reflect the previous consideration of numerous development options for the property. During the zoning phase of this project, the applicant looked at a variety of configurations for road access, open space, and the units themselves. The current plan was arrived at after extreme study and intensive public comment. While the current plan involves the removal of some trees, it preserves others and includes additional tree planting and generous green area/open space areas supported and approved by Planning Staff, the Planning Board, the Zoning Hearing Examiner and the County Council through their collective approval of the Schematic Development Plan. Among the many options considered were various different road designs (attached to this e-mail) and a variety of alternative townhouse configurations either fronting along Springvale Road or, as reflected in the current plan, aligned in a mews manner with the fronts of units at the ends of townhouse "sticks" oriented towards Springvale Road. During the SDP approval process, the density of the property also was reduced below that in an earlier plan supported by Planning Staff and the Planning Board and the footprint of the original buildings also was reduced by 11%. The resulting configuration, now reflected in the Site Plan and requiring this tree variance, was deemed to be consistent with urban design, smart growth, environmental, historic preservation, and traffic operation objectives. Among the factors considered in reaching this design option and resulting in the necessary removal of tree numbers 45 and 87 were the following:

- The sloping topography of the site and its effect on roadway access and tree number 87. After review of several options, the location of the access points, including a symmetrical access point with the Silver Spring Library across Ellsworth Drive and an appropriate access point on Springvale Road was reviewed and approved by DOT, the Planning Board, the Zoning Hearing Examiner and the Council. Changing the location of the road to save one tree would be very difficult given the series of decisions made by the County with regard to placement of the road.
- The desire to minimize massing along Springvale Road resulting in the orientation of units perpendicular to that road as approved in the SDP.
- Tree 45 is currently where an alley is required. The applicant looked at revised layouts that flipped the units and placed courtyards where alleys are and alleys where the courtyards are. That alternative, however, also would not enable preservation of tree 45 because utility easements in the courtyard preclude it.
- In its original application, the applicant proposed closer location of the units to the southern property line. During the SDP process, the setback was changed to 30 feet enabling applicant to protect more trees on the southern edge of the property but requiring removal of tree 45.
- The applicant examined unit width but cannot reduce the width because its combination of 14', 16', 19', and 24' wide units is already, on average, less wide than the industry standard for townhomes in Montgomery County. Further, the RT.12.5 zone has a maximum building height of 35 feet and requires parking for two cars per unit. Given the grades in the middle of this site, where the binding elements have directed development, the 24 foot wide units cannot have the four levels (via a buried basement) that are standard in many townhomes. These 20 units are forced to a maximum of three levels and the first level includes a parking garage. The grade, the 35 foot height limit, and the requirement in the RT-12.5 zone for two parking spaces for each unit force the unit widths to stay as proposed in order to develop homes that meet market demand for a mix of sizes and price points in this location.
- The “benching” of townhouse rows in a stair step fashion reflective of the current site topography with a mews design to reduce the overall area of the site occupied by townhouses (the Zone allows 35% coverage but the Plan ultimately approved limits that to 24%).
- The consent to Binding Elements which removes 39% of the site from the area available for townhouse development, preserving a green ring around the townhouse units and requiring clustering them in the center of the site.

- Utility lines that serve the various units which run within the mews areas and do not allow the preservation of existing trees even if they were to be located within one of the mews areas.
- The agreement to protect a grove of trees in the southwest corner of the property (numbers 32, 40, 70, 71, 72, 73, and 75) and to plant a significant number of trees along Springvale Road as well as elsewhere on the site.

As required by the Zoning Ordinance, this Site Plan is entirely consistent with the Schematic Development Plan approved by the Planning Board, the Zoning Hearing Examiner and County Council. It reflects a balancing of important objectives, including those related to tree preservation and planting, open space and the environment in general. The approval of a variance for the subject trees is entirely consistent with the approval of tree variances in many other cases.



February 13, 2013

Mr. Marco Fuster
Montgomery County
Planning Department
8787 Georgia Avenue
Silver Spring, Maryland 20910

**RE: Chelsea Court Subdivision
Final Forest Conservation Plan 820130040 and 120130060**

Dear Mr. Fuster:

The following is a summary of the responses to those comments generated from your review dated January 25, 2013 of the above referenced project:

Comment 1: There are numerous issues/concerns with the forest conservation variance request that must still be addressed before staff can support/process the request:

- a. Per the November 5, 2012 DRC comments stronger justifications must be provided before staff can support the request. Refer also to the recent e-mail correspondence dated January 10 through 15 for descriptions of further concerns. Reductions in the LOD, preservation of additional trees and or/supplemental tree save measures may be needed dependent on the revised justifications to be provided for the proposed removal/impacts.

Response: A revised tree variance letter and supplemental exhibits have been provided to justify the approval of the variance for the removal of (4) four trees on the site in connection with the preliminary plan application.

- b. A clear and accurate LOD comparison exhibit is still needed to determine which tree removals and impacts are grandfathered from the variance requirements. A new exhibit was provided however the exhibit does not accurately reflect the areas approved for disturbance/removal on the original 9/20/2001 plan. A more careful analysis of the original tree protection areas is needed.

Response: The limits of disturbance provided on the final forest conservation plan prepared by Loiderman Associates (approved 9/20/01) has been reanalyzed and revised accordingly, see sheet 2.

- c. As previously stated in the DRC comments, some of the trees that are potentially subject to the variance were not specifically shown on the old plan (such as trees behind Cedar Street and the trees on the opposite sides of the roads surrounding the subject property) however they would have been preserved based on the approved LOD. Clarify tables/request accordingly as previously requested. The tables should reflect the impacts based on the current size of the tree overlaid with the old LOD.

Response: **Tables have been clarified accordingly, see tree variance table on sheet 5.**

- d. The trees along Springvale (including Tree #116) were clearly intended to be preserved by the 9/20/2001 FFCP. The sidewalk deliberately weaves through the midpoints between existing trees. The root aeration system details on the plans would have been implemented to protect the trees from the sidewalk installation (a swath of LOD coinciding with the sidewalk would be assumed). Furthermore a tree protection fence was specified on plans to isolate the trees from general onsite construction activity. Adjust LOD exhibit, legend items and notes accordingly. Note: Staff supports/encourages the removal of any remaining ailanthus trees (invasive species) associated with the project.

Response: **The limits of disturbance provided on the final forest conservation plan prepared by Loiderman Associates (approved 9/20/01) shown on sheet 2 has been reanalyzed and revised to include a swath coinciding with the sidewalk that was proposed along Springvale Road.**

- e. As previously requested in the 11/26/13 DRC comments, please address the issues associated with the substantial landscape shown outside of the LOD near trees that are subject to the variance. The beds now have an associated note specify a minimum 12" deep tilling of the areas, yet the beds are not in the LOD and no special notes regarding tree preservation concerns or variance implications are included in submission. Tree #33 which is a 42" white oak is located immediately adjacent to one of the proposed beds and additional trees are also impacted by the beds.

Response: **All landscape beds that were previously shown *outside* the proposed LOD impacting the critical root zones of offsite specimen trees 33, 66, 67 and onsite specimen tree 32 have been removed. Now, only individual trees (2" deciduous and 6' height evergreen) are proposed to be planted adjacent to specified trees, which does not warrant a variance per our conversation 1/29/12. Tree preservation specifications for trees 33, 66, 67 and 32 have been added to sheet 5 describing planting procedures that are to occur within the critical root zones of trees specified. General landscape notes referring to the 12" deep tilling of landscape beds have also been removed.**

All landscape beds that are shown adjacent to trees 15, 18, 21, 23, 129 and 130 within the historic setting are located *within* the proposed LOD. Tree preservation specifications for these trees have been provided on sheet 5 describing planting procedures that are to occur within the critical root zones of trees specified.

- f. Show the existing grotto on the FFCP as previously requested and submit engineers' structural evaluation referenced in the point-by-point response when available. Note: removal of the grotto may trigger a variance for impacts to tree #33 depending on the actual location of the grotto and the LOD that would be needed to remove it.

Response: **The existing grotto has been shown on the plan, see sheet 2. Grotto is to be removed, therefore a variance has been requested for tree #33. A structural evaluation is to be provided.**

- g. Please recheck the CRZs (particularly for the multi-stemmed trees) and adjust plans/tables accordingly. For example tree 26 should have a CRZ radius of 30'.

Response: **All CRZs have been checked and revised accordingly, see sheets 2.**

- h. As previously requested, please add a symbol to the plans and legend to identify the trees which are subject to the variance. Currently only some of the removal trees are clearly associated with a variance based on the plan graphics.

Response: **A symbol has been added to the legend identifying all trees that are subject to the variance (historic and non-historic trees), see sheet 2.**

- i. The second legend item description on Sheet 2 of 7 is not accurate since offsite trees along Springvale were shown on the plans (please delete the reference).

Response: **The second legend item has been revised to include only offsite specimen trees located on adjacent properties along Ellsworth Drive, Springvale Road, Pershing Drive and Cedar Street that were not original shown on the approved NRI/FSD or FFCP. Two legend items (seven and eight) have been added to address offsite trees 100, 107, 108, 109, 111, 114 and 115 along Springvale Road that were/were not shown on the approved NRI/FSD or FFCP, see sheet 2.**

- ii. Additional specimen tree(s) were preserved by the 9/20/2001 plans, please adjust plans/legend and variance request accordingly.

Response: **Specimen tree 87 was preserved by the 9/20/2001 plans. Tree 87 is proposed to be removed therefore a variance will be required. Legend and plan have been revised to reflect changes (see legend item 5). Variance letter has been revised accordingly.**

- i. Revise the tree tables to reflect the comments herein.

Response: **Tables have been revised accordingly, see tree variance table on sheet 5.**

- j. The new mitigation plan (Sheet 3 of 7) has a number of issues:
 - i. The mitigation figures are not based on the actual number of subject removals proposed. Eight removals are mitigated but only three removals are currently requested.

Response: **Four tree removals (45, 87, 98 & 116) are subject to the variance. Mitigation figures have been revised based on the actual number of subject removals proposed, see sheet 3.**

- ii. Please recheck the comparisons to the 9/20/2001 FFCP and revise current plans and variance request accordingly (staff believes four tree removals would be subject to the variance under the currently submitted plans).

Response: **Current plans and variance request have been revised to include 4 trees (45, 87, 98 & 116).**

- iii. Include standard native species only (without the use of ornamental cultivars).

Response: **Variance mitigation planting schedule has been revised using only standard native species, see sheet 3.**

Comment 2: General note #1 on Sheet 3 of 7 needs to identify the proposed mitigation bank as required at FFCP stage.

Response: **General note #1 on sheets 2 and 3 have been revised to identify the proposed mitigation bank to be used to meet forest conservation requirements.**

Comment 3: Revise/expand tree preservation specifications per the following:

- a. Specify/elaborate the careful phasing/special measures needed for demolition and paving work immediately adjacent to save trees (particularly at historic setting and the vicinity of tree #75) as previously requested. Notes were generated for tree #75 regarding phased fencing, however some of the same notes are needed to consistently fence/protect areas after handwork is completed in the historic setting areas as well.

Response: **Notes/specifications have been provided for phased fencing and demolition operations within the vicinity of tree #75 and for trees 19, 20, 21, 22 & 23 within the historic setting, see sheets 2 & 5 and supplemental exhibits 4 & 6.**

- b. Specify backfill material that will be placed in the areas near save trees where pavement/structures will be demolished, such as rich topsoil, compost, mulch etc. Include provision to carefully perform the work in increments so that any equipment used will remain on pavement (demolished material would be hauled out on sound pavement then backfill can be brought in on the same pavement, prior to its demolition, working incrementally away from the save tree. Alternatively long reach equipment can perform the work while stationed a safe distance from the tree).

Response: **Rich topsoil backfill has been specified for areas near trees to be saved where pavement/structures will be demolished, see tree preservation specifications on sheet 5. Additional notes/specifications outlining incremental demolition operations have been provided accordingly, see tree preservation specifications on sheet 5.**

- c. The plans propose extensive plantings and bed preparation in close proximity to a number of save trees including those subject to a variance. Include a general provision for an appropriate tree care expert to direct the work so that it will be performed in manner minimizing impacts to the save trees.

Response: **A general provision has been added to plan, see tree preservation specifications on sheet 5.**

- d. Expand note 7 on sheet 5 to state remaining portions of asphalt drive *outside of tree save areas...*

Response: **Note 7 has been revised accordingly, see sheet 5.**

- e. Consistently reference tree #129 in the notes (rather than tree #29).

Response: **Reference to tree #129 has been revised accordingly, see sheet 5.**

- f. Include a general provision for excavation work near save trees to coincide with monitoring visit by approved tree care professional, so that the tree care expert will be present to prune or otherwise treat roots of save trees which are exposed during excavation. Typically excavation work for foundations, wall footers and utilities encounter significant roots which are below the depth attainable by traditional root pruning.

Response: **Provision has been added to tree preservation specifications for any trees that will be impacted by excavation work, see sheet 5.**

The following items must also be addressed however these items can be conditioned or addressed at time of the ultimate FFCP if necessary:

Comment 4: The requested note regarding minimizing the size of planting pits near the roots of save trees was added to the new plantings detail but should also be added to the original detail (now in upper left corner of Sheet 6 of 7) as previously requested. Consider using an* symbol to more clearly link the note with the 2½ X diameter specification associated with the details. Expand the notes include a provision to shift the location of planting pits if roots are encountered during the installation (as previously requested in 11/26/13 DRC comments).

Response: **Notes have been added to the detail in the upper left corner of sheet 6 accordingly.**

Comment 5: Please add a bold note to Sheet 4 reading “See variance tree tables on following sheet” (or similar).

Response: **Note has been added to sheet 4 accordingly.**

Comment 6: Revise Sheet 7 of 7 per the following:

- a. Restore the full title of the M-NCPPC “Sequence of events for property owners required to comply with forest conservation and/or tree preservation plans”.

Response: **Title has been restored accordingly, see sheet 7.**

- b. The new general landscape note needs revision to more appropriately reflect the scope of the FFCP/mitigation plantings:
 - i. Include provision for coordination with M-NCPPC forest conservation inspector.

Response: **General landscape notes have been removed, see sheet 7.**

- ii. Flexibility/special provision for plantings and bed preparation are needed especially when near save/variance trees.

Response: **General landscape notes have been removed, see sheet 7.**

- iii. The seeding, sodding and lawn area notes are beyond the scope of the FFCP and should be deleted.

Response: **General landscape notes have been removed, see sheet 7.**

- c. Sequential re-number the General Notes.

Response: **General notes have been renumbered accordingly, see sheet 7.**

- d. Clarify/correct the General Notes, note 2 references to “See soils table this sheet” (no table was provided).

Response: **General note #5 has been revised accordingly, see sheet 7.**

- e. Adjust general note #14 to reflect updates to variance trees based on comments herein.

Response: **General note #14 has been revised accordingly, see sheet 7.**

- f. Delete bio-retention notes.

Response: **Bio-retention notes have been removed, see sheet 7.**

Please feel free to contact me at (703) 464-1000 should you have any further questions.

Sincerely,
BOWMAN CONSULTING GROUP, LTD.

Gregg Eberly, RLA
Landscape Architect

ONSITE SPECIMEN TREES TO BE REMOVED - CHELSEA SCHOOL

Tree #	Botanic Name	Common Name	Caliper (Current)	Condition	Current Status	2001 Status	Current % CRZ Impact	2001 % CRZ Impact
29	Liriodendron tulipifera	Tulip Poplar	32	FAIR	Remove	Remove	73	73
37	Liriodendron tulipifera	Tulip Poplar	32	FAIR	Remove	Remove	94	94
51	Liriodendron tulipifera	Tulip Poplar	38	GOOD	Remove	Remove	100	70
65	Quercus alba	White Oak	32	GOOD	Remove	Remove	100	97

- Notes:
- 1) Specimen trees 29, 37, 51, & 65 were approved for removal on the Final Forest Conservation Plan prepared by Loiderman Associates (Approved on 9/20/2001). No variance required.
 - 2) All critical root zone impact percentages have been based on the current tree size.

ADDITIONAL ONSITE SPECIMEN TREES TO BE REMOVED - CHELSEA COURT

Tree #	Botanic Name	Common Name	Caliper (Current)	Condition	Current Status	2001 Status	Current % CRZ Impact	2001 % CRZ Impact
45	Quercus alba	White Oak	34	GOOD	Remove	Preserve	73	45
87	Prunus serotina	Black Cherry	46	GOOD	Remove	Remove	100	89
98	Morus alba	White Mulberry	38	POOR	Remove	Preserve	96	49
116	Liriodendron tulipifera	Tulip Poplar	33	FAIR	Remove	Preserve	75	61

- Notes:
- 1) Specimen trees 45, 87, 98 & 116 (highlighted) are proposed to be removed pursuant to the Chelsea Court Tree Variance (see attached).
 - 2) All critical root zone impact percentages have been based on the current tree size.

OFFSITE SPECIMEN TREE SUMMARY

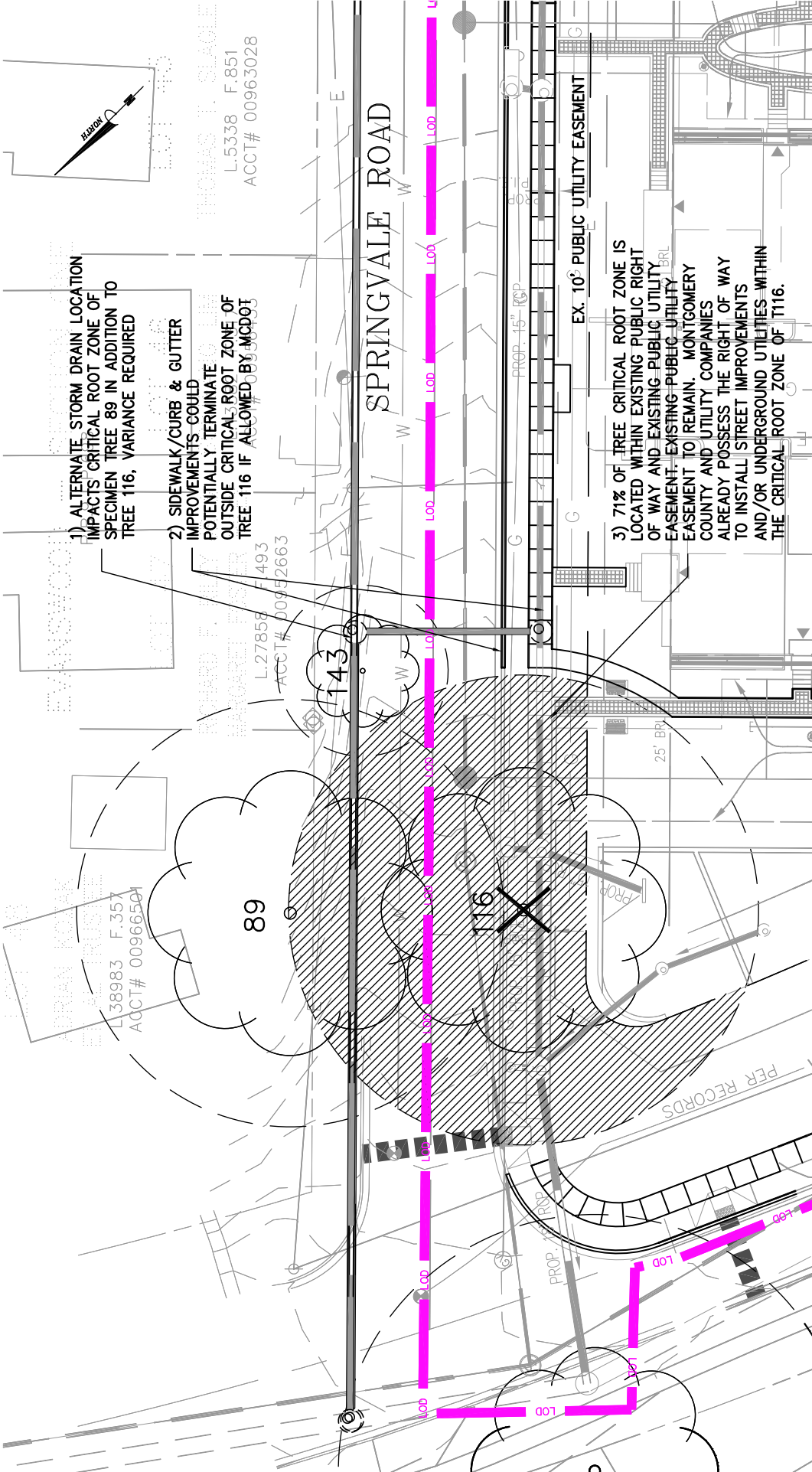
Tree #	Botanic Name	Common Name	Caliper (inches)	Condition	Current Status	2001 Status	Current % CRZ Impact	2001 % CRZ Impact
1	Acer rubrum	Red Maple	30	GOOD	Preserve	Preserve	3	2
2	Acer rubrum	Red Maple	30	GOOD	Preserve	Preserve	1	1
4	Acer saccharinum	Silver Maple	34	GOOD	Preserve	Preserve	3	3
33	Quercus alba	White Oak	42	GOOD	Preserve	Preserve	25	24
66	Quercus alba	White Oak	36	GOOD	Preserve	Preserve	4	7
67	Quercus alba	White Oak	30	GOOD	Preserve	Preserve	12	15
89	Quercus rubra	Red Oak	30	GOOD	Preserve	Preserve	1	1
90	Ulmus americana	American Elm	36	GOOD	Preserve	Preserve	19	0
91	Juglans nigra	Black Walnut	30	GOOD	Preserve	Preserve	8	8
93	Acer saccharinum	Silver Maple	36	GOOD	Preserve	Preserve	2	2

- Note:
- 1) All critical root zone impact percentages have been based on the current tree size.
 - 2) A variance will be required for offsite specimen trees 33 & 90 (highlighted). Based on the proposed limits of disturbance, the current percentage of critical root zone impact has increased compared to the percentage of critical root zone impact shown on the Final Forest Conservation Plan prepared by Loiderman Associates. (Approved on 9/20/2001).

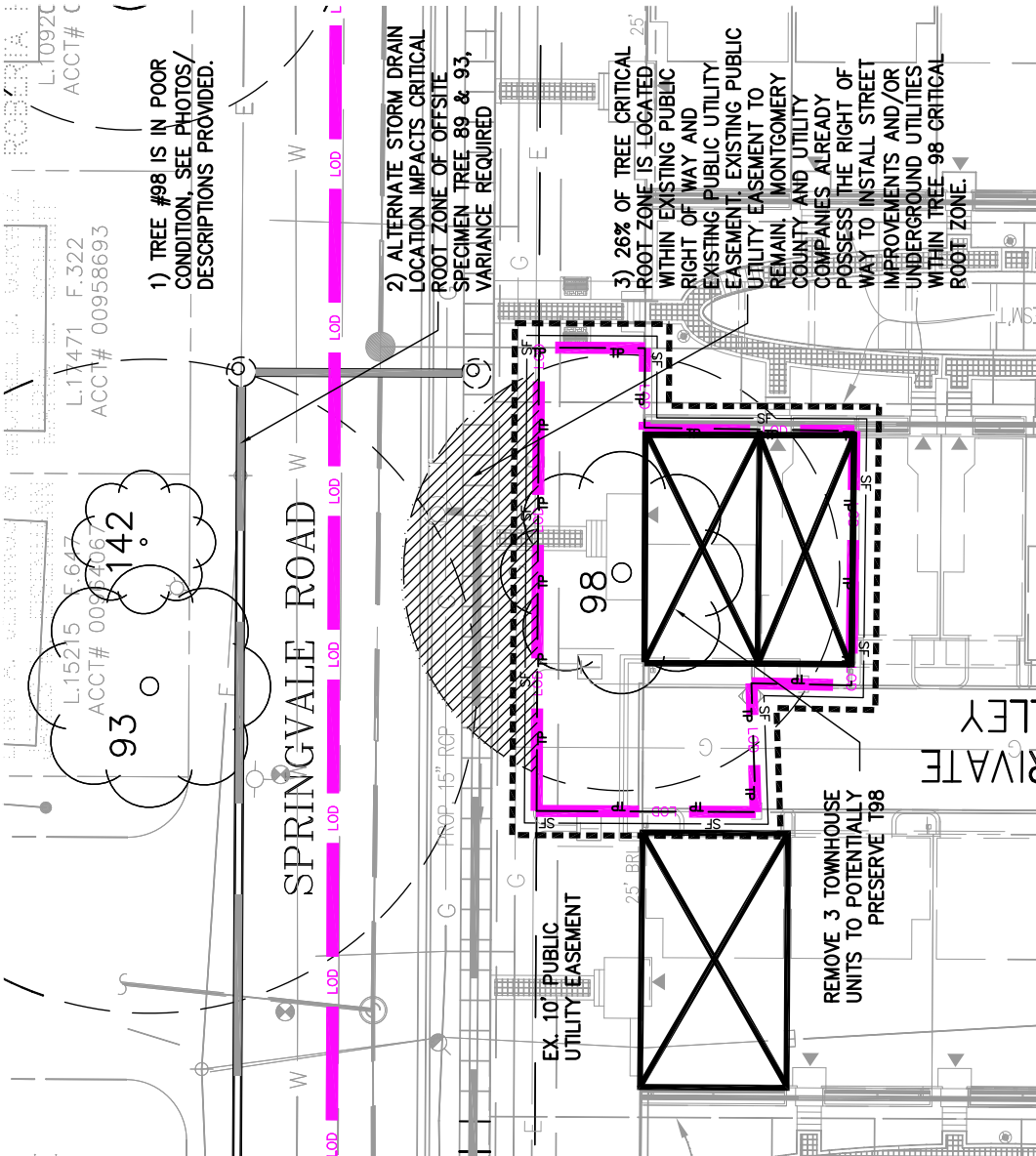
HISTORIC TREE SUMMARY

Tree #	Botanic Name	Common Name	Caliper (inches)	Condition	Current Status	2001 Status	Current % CRZ Impact	2001 % CRZ Impact
6	Acer palmatum	Japanese Maple	12	POOR	Preserve	*N/A	27	17
7	Picea pungens	Colorado Blue Spruce	9	POOR	Preserve	Preserve	0	10
8	Magnolia grandiflora	Southern Magnolia	16,20	GOOD	Preserve	Preserve	0	25
10	Cornus florida	Flowering Dogwood	4,6	GOOD	Preserve	Preserve	2	2
11	Cornus florida	Flowering Dogwood	6,6,5	GOOD	Preserve	Preserve	0	0
12	Cornus florida	Flowering Dogwood	8	GOOD	Preserve	Preserve	24	0
13	Cornus florida	Flowering Dogwood	5	GOOD	Preserve	*N/A	5	27
14	Picea pungens	Colorado Blue Spruce	11	GOOD	Preserve	Preserve	0	7
15	Picea abies	Norway Spruce	18	GOOD	Preserve	Preserve	29	25
16	Pyrus communis	Common Pear	5,6,6,4,4	GOOD	Preserve	*N/A	5	10
18	Magnolia grandiflora	Southern Magnolia	13,13,11	GOOD	Preserve	Preserve	31	49
19	Cornus florida	Flowering Dogwood	4,3,5,3,2	GOOD	Preserve	*N/A	42	90
20	Picea abies	Norway Spruce	17	FAIR	Preserve	Preserve	44	33
21	Acer platanoides	Norway Maple	21	FAIR	Preserve	Preserve	61	32
22	Picea abies	Norway Spruce	15	FAIR	Preserve	Preserve	74	31
23	Malus domestica	Common Apple	10,7,6	FAIR	Preserve	*N/A	38	100
95	Cornus florida	Flowering Dogwood	6,9	GOOD	Preserve	*N/A	0	0
112	Ulmus americana	American Elm	12,5	FAIR	Preserve	*N/A	0	0
118	Ilex opaca	American Holly	10,8,7,9	GOOD	Preserve	*N/A	0	31
129	Juniperus virginiana	Eastern Redcedar	6	POOR	Preserve	*N/A	100	37
130	Juniperus virginiana	Eastern Redcedar	6	POOR	Preserve	*N/A	100	53
138	Cornus florida	Flowering Dogwood	4	POOR	Preserve	*N/A	0	0

- Notes:
- 1) *Trees were not shown on the Final Forest Conservation Plan prepared by Loiderman Associates (Approved on 9/20/2001).
 - 2) A variance will be required for historic trees 6, 12, 15, 20, 21, 22, 129 & 130 (highlighted). Based on the proposed limits of disturbance, the current percentage of critical root zone impact has increased compared to the percentage of critical root zone impact shown on the Final Forest Conservation Plan prepared by Loiderman Associates (Approved on 9/20/2001).
 - 3) All critical root zone impact percentages have been based on the current tree size.



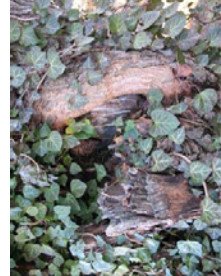
**EXHIBIT 1 - TREE #116
CHELSEA COURT
MONTGOMERY COUNTY, MARYLAND**



TREE ROOTS ALREADY SHOW SIGNS OF SIGNIFICANT MECHANICAL DAMAGE. THE FUNGI ALREADY PRESENT ON THE TREE TRUNK IS A SIGN OF BACTERIAL INFECTION. THE COMBINATION OF MECHANICAL DAMAGE AND BACTERIAL INFECTION HAVE LED TO A SIGNIFICANT DECLINE IN TREE HEALTH.



TREE HAS UNEVEN CROWN AND IRREGULAR BRANCHING HABIT (POOR ARCHITECTURE) WHICH HAS MADE THE TREE UNSTABLE AND PRONE TO FAILURE. IN ADDITION, ENGLISH IVY (UP TO 2" IN DIAMETER) HAS TAKEN OVER ONE OF THE TREE'S CENTRAL LEADERS.



ADVANCED TREE DECAY IS PRESENT. WOOD THAT IS SOFT, CRUMBLY OR A CAVITY WHERE THE WOOD IS MISSING CAN CREATE A SERIOUS HAZARD AND HAS LED TO A SIGNIFICANT DECLINE IN TREE HEALTH.

**EXHIBIT 2 - TREE #98
CHELSEA COURT**

MONTGOMERY COUNTY, MARYLAND

SCALE: 1"=20'

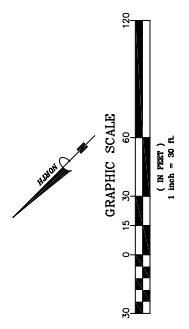
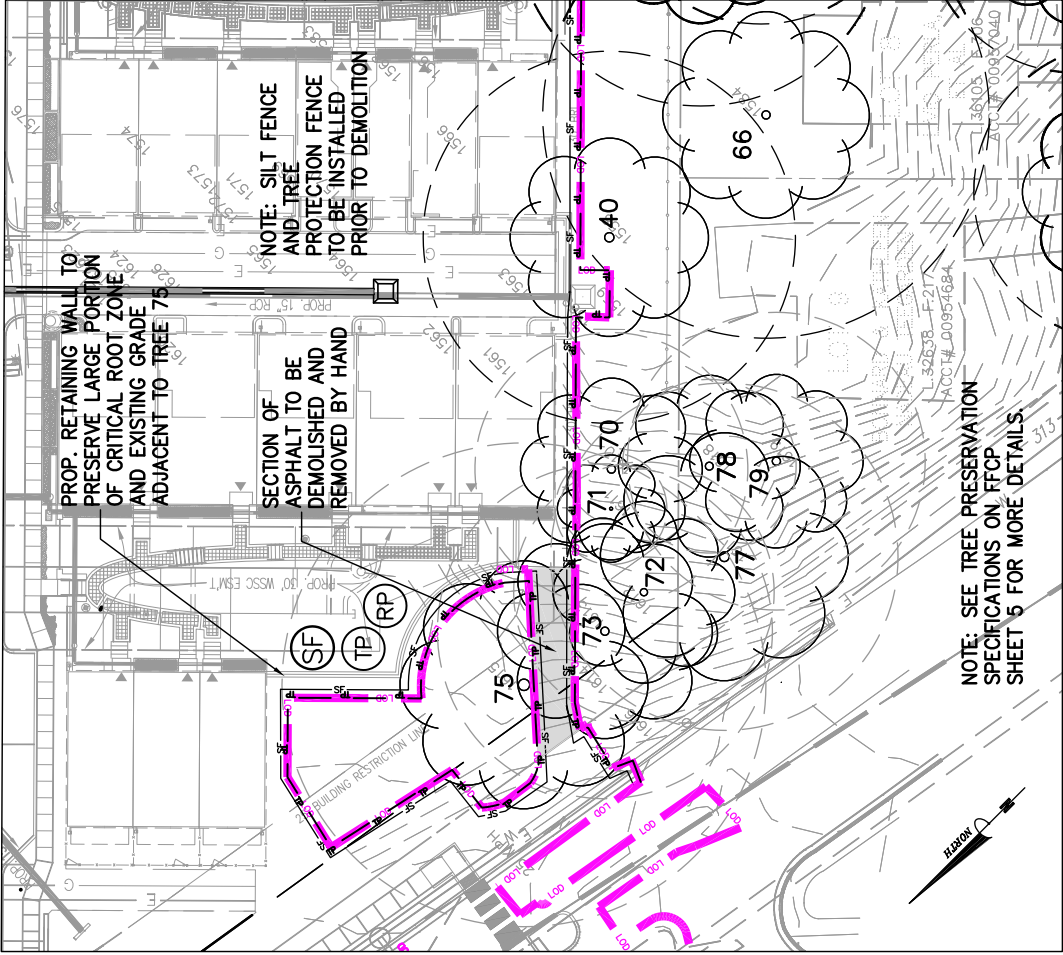
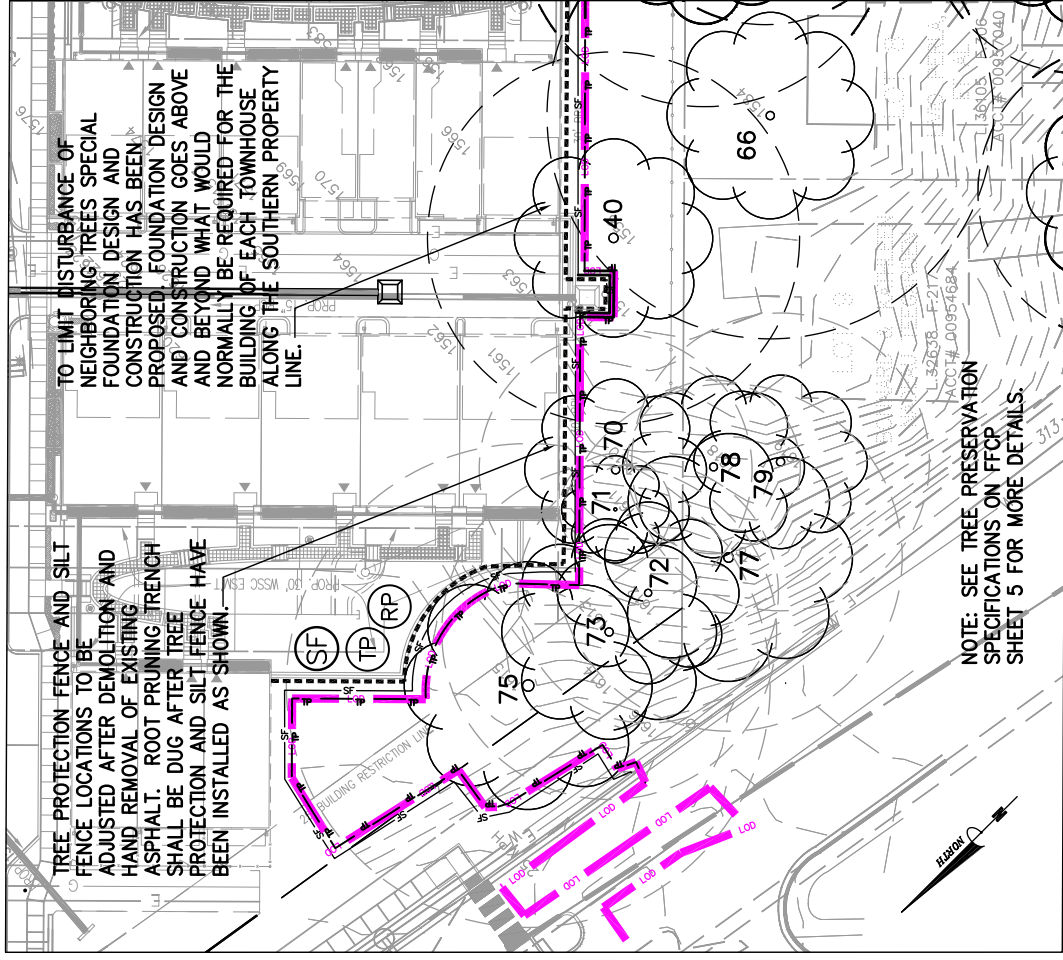


EXHIBIT 3 - NON-BUILDABLE AREA
CHELSEA COURT
 MONTGOMERY COUNTY, MARYLAND



PHASE I PROTECTION



PHASE II PROTECTION

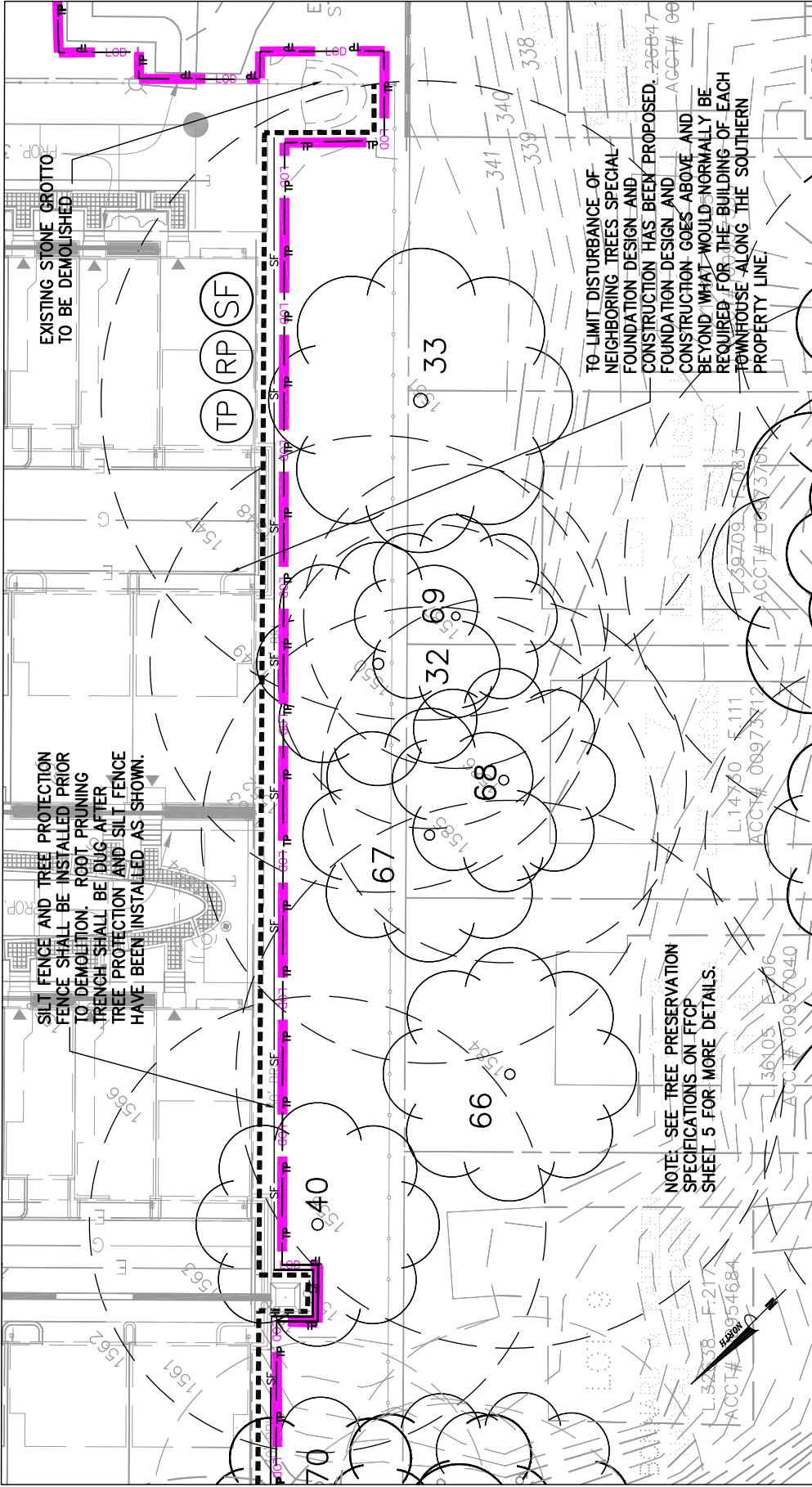
**EXHIBIT 4 – ONSITE SAVED TREES #40, 70, 71, 72, 73, 75
OFFSITE SAVED TREES #66, 77, 78, 79**

CHELSEA COURT

MONTGOMERY COUNTY, MARYLAND



SCALE: 1" = 30'



**EXHIBIT 5 - ONSITE SAVED TREE #32
OFFSITE SAVED TREE #33, 67, 68, 69
CHELSEA COURT**

MONTGOMERY COUNTY, MARYLAND

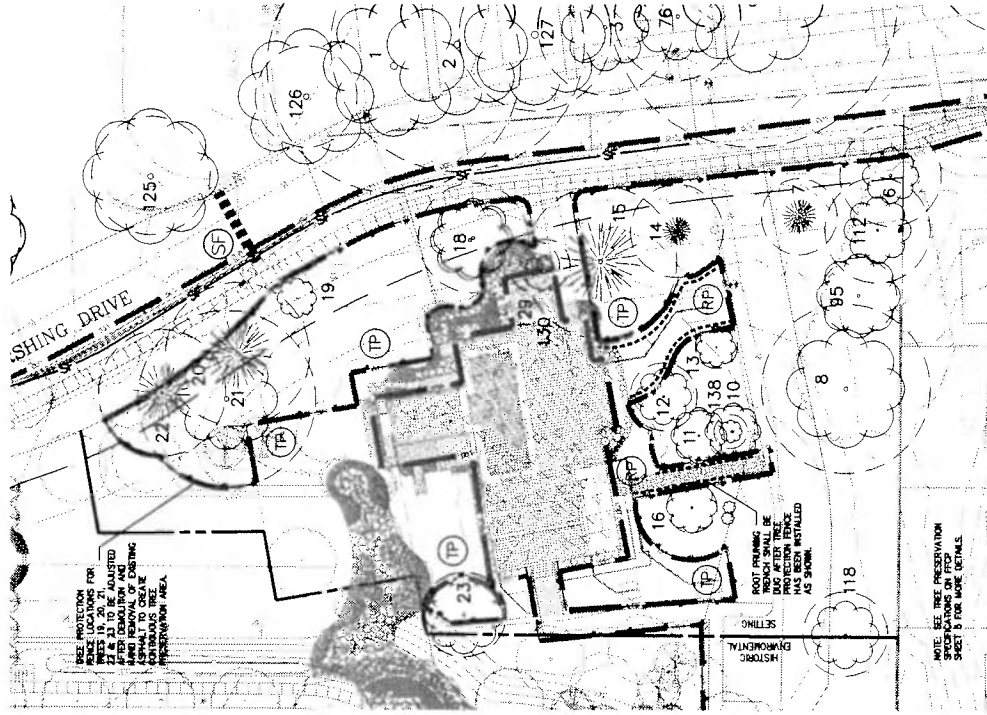
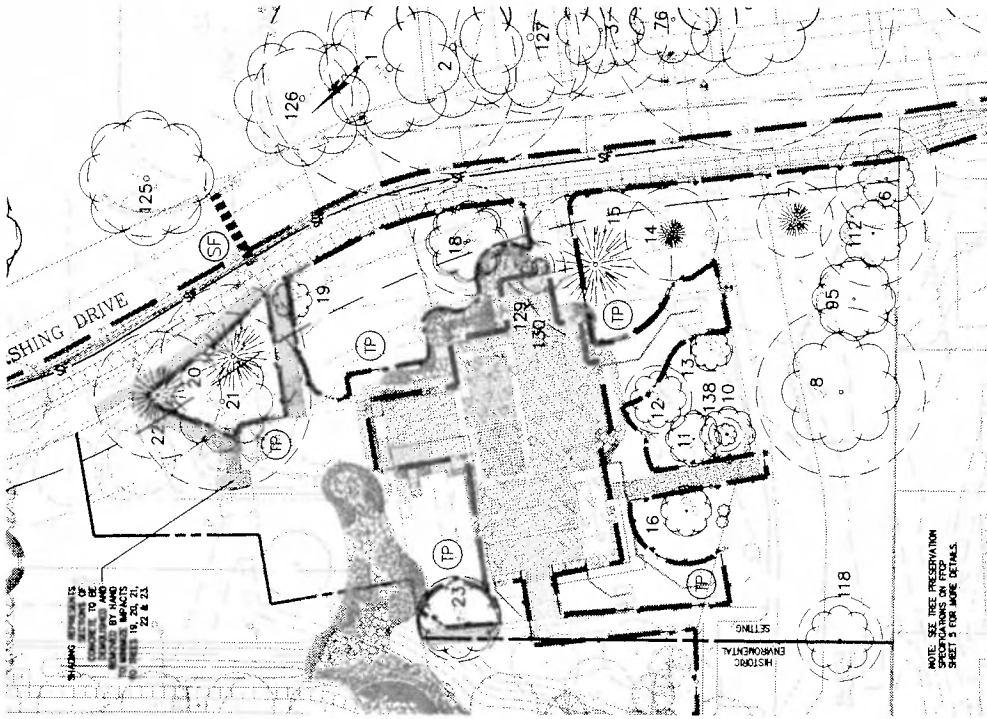
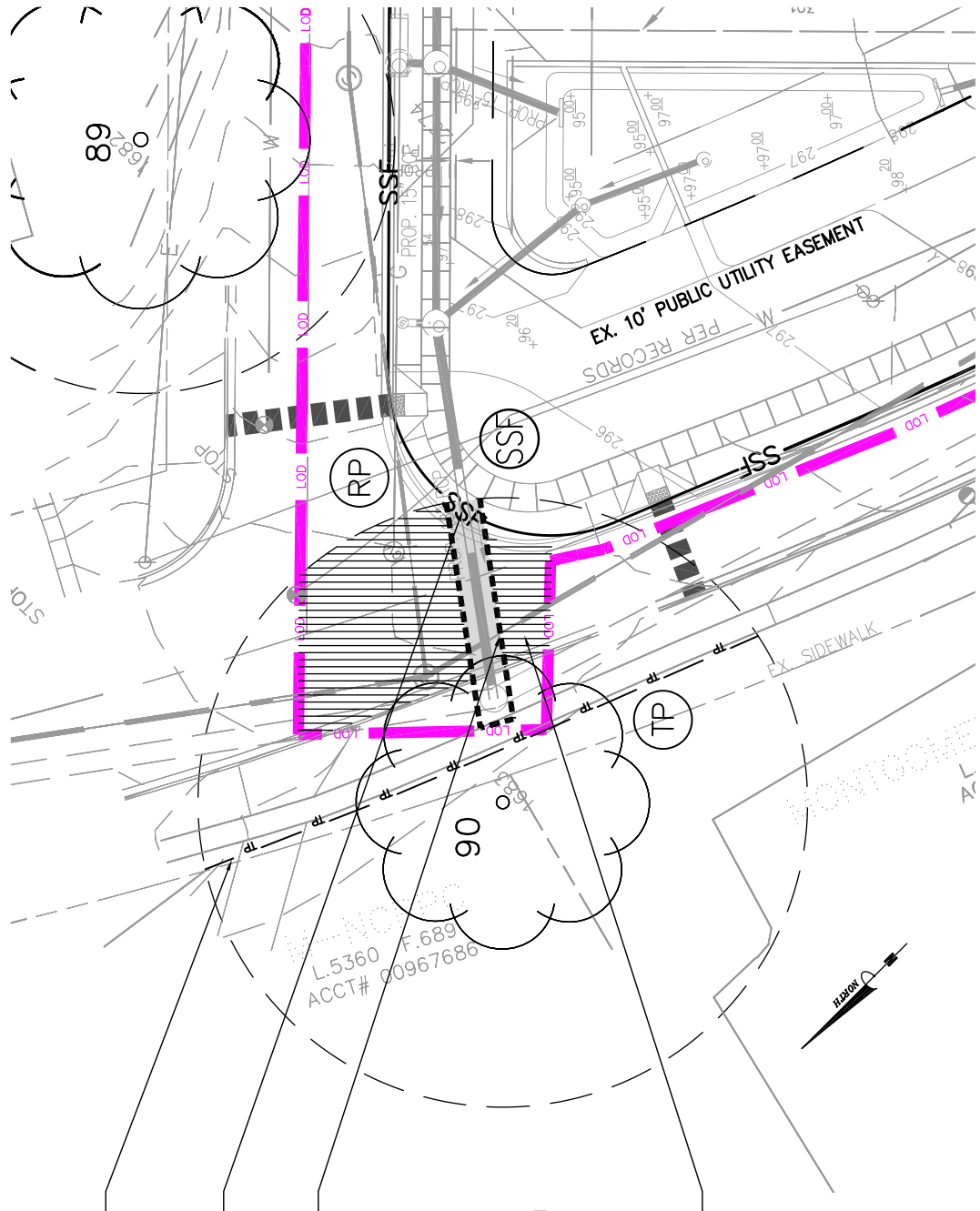


EXHIBIT 6 - HISTORIC SETTING TREES
CHELSEA COURT
 MONTGOMERY COUNTY, MARYLAND



- 1) PRIOR TO ANY DEMOLITION OR UTILITY WORK, TREE PROTECTION FENCE IS TO BE INSTALLED ALONG THE EXISTING AS SHOWN
- 2) 18" DEPTH SECTION OF PAVEMENT AND CURB TO BE DEMOLISHED AND REMOVED FROM AREA BY HAND
- 3) ROOT PRUNING TRENCH IS TO BE DUG IN LOCATION SHOWN
- 4) ANY EXCAVATION WORK FOR PROPOSED STORM DRAIN ADJACENT TO TREE SHALL BE MONITORED BY AN APPROVED TREE CARE PROFESSIONAL. THE EXPERT WILL BE PRESENT TO PRUNE OR OTHERWISE TREAT ROOTS OF TREES TO BE SAVED WHICH ARE EXPOSED BY EXCAVATION THAT OCCUR BELOW THE DEPTH ATTAINABLE BY TRADITIONAL ROOT PRUNING METHODS.
- 5) AREA OF EXISTING PAVEMENT TO BE MILLED. MILL DEPTH NOT TO EXCEED 2".

EXHIBIT 7 – TREE #90
CHELSEA COURT
 MONTGOMERY COUNTY, MARYLAND



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

April 15, 2013

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

RE: Chelsea Court, DAIC 120130060, NRI/FSD plans submitted on 5/24/2012

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 criterion.
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, as a result of development activity is not, in and of itself, 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 criterion, as long as appropriate mitigation is provided for the resources disturbed.

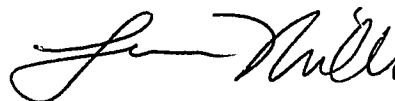
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, 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 criterion.

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

COMMUNITY & ENVIRONMENTAL DEFENSE SERVICES

Richard D. Klein, President
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Owings Mills, Maryland 21117

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September 24, 2012

David Kuykendall
Water Resources Section
Division of Land Development Services
Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, Maryland 20850

**RE: Chelsea Court
SM File #: 239939
Recharge Progress Thank You
Unresolved Issues Still Pose Severe Threat**

Dear Mr. Kuykendall:

On September 5th I wrote to you regarding a number of undue impacts the Chelsea Court project would cause to Sligo Creek and the Anacostia River. These impacts resulted from the applicant's failure to fully comply with Environmental Site Design (ESD) requirements. Principal among these impacts was:

1. Proposed disturbance of steep slopes composed of highly-erodible soils;
2. The most important trees on the site were not being retained;
3. Failure to maintain dry-weather inflow to Sligo Creek and the Anacostia by using groundwater recharge measures on the site; and
4. Lack of ESD measures serving the historic Riggs-Thompson house.

Two of these issues have been resolved over the past three weeks while very serious threats to Sligo Creek and the Anacostia remain. The threat is greatly magnified if other developing sites in these watersheds similarly fall short of ESD requirements. It is for this reason that we seek to clarify inaccurate information you received through these additional comments. It is our hope that these comments will lead to Chelsea Court becoming a model for how growth can benefit the local economy and the aquatic environment.

Groundwater Recharge

The applicant's August 17, 2012, Stormwater Management Concept Report stated that:

"Recharge Volume (Rev) cannot be provided for this site due to a number of factors which include excess cuts below the existing ground surface and native soils of type 'D.'"

Through the e-mails we've exchanged since then it is clear that the applicant has found a way around these numerous factors and is now proposing to fully meet the groundwater recharge requirement. On behalf of the Association I thank you for this step forward.

Riggs-Thompson House

The Riggs-Thompson House is a historic structure which will remain once site development is completed. The plans you provided to me when we met on August 22nd did not show any ESD practices serving the house. However, subsequent plans now show dry wells and other ESD practices. The Association and I also thank you for this second step forward. However, two very serious issues remain.

Steep Slopes/Highly-Erodible Soil Intrusion

In my September 5th letter I pointed out that Section 19-22A, of the Montgomery County Stormwater Management regulations states:

(a) An applicant must use the ESD planning techniques and practices and structural stormwater management measures established in this Article and the Design Manual, either alone or in combination, in a stormwater management plan.

Section 19-21, defines the "Design Manual" as:












The 2000 Maryland Stormwater Design Manual, as revised from time to time, which serves as the official guide for stormwater management principles, methods, and practices in Maryland.

The following text appears page 5-7, of the *Design Manual*:

While it may not be practicable to eliminate earth disturbing activities exclusively on the basis of soil erodibility or slope alone, constraints are warranted when both steep slopes and highly erodible soils occupy the same area within the development footprint. Areas with highly erodible soils and slopes equal to or greater than 25 percent should be incorporated into adjacent buffers, remain undisturbed, protected during the construction process, and/or preserved as open space.

Figure 1, on the next page, is a plan prepared by the applicant's consultant. On Figure 1, slopes 25% or greater have the darkest shading. The soils on the site are listed as Glenelg silt loam and Glenelg-Urban land complex. The Natural Resources Conservation Service *Highly*

LEGEND

-  EXISTING INDIVIDUAL TREE
-  EXISTING INDIVIDUAL ONSITE SIGNIFICANT TREE (24" OR GREATER)
-  EXISTING INDIVIDUAL ONSITE SPECIMEN TREE
-  EXISTING INDIVIDUAL ONSITE SPECIMEN TREE HAVING A DIAMETER OF 75% OR MORE OF THE CURRENT STATE CHAMPION FOR THE SPECIES
-  EXISTING INDIVIDUAL OFFSITE SIGNIFICANT TREE (24" OR GREATER)
-  EXISTING INDIVIDUAL OFFSITE SPECIMEN TREE
-  EXISTING TREELINE
-  EXISTING VEGETATION DESCRIPTION
-  EXISTING SOIL TYPES
-  EXISTING HISTORIC STRUCTURE
-  **SLOPE 25% & GREATER**

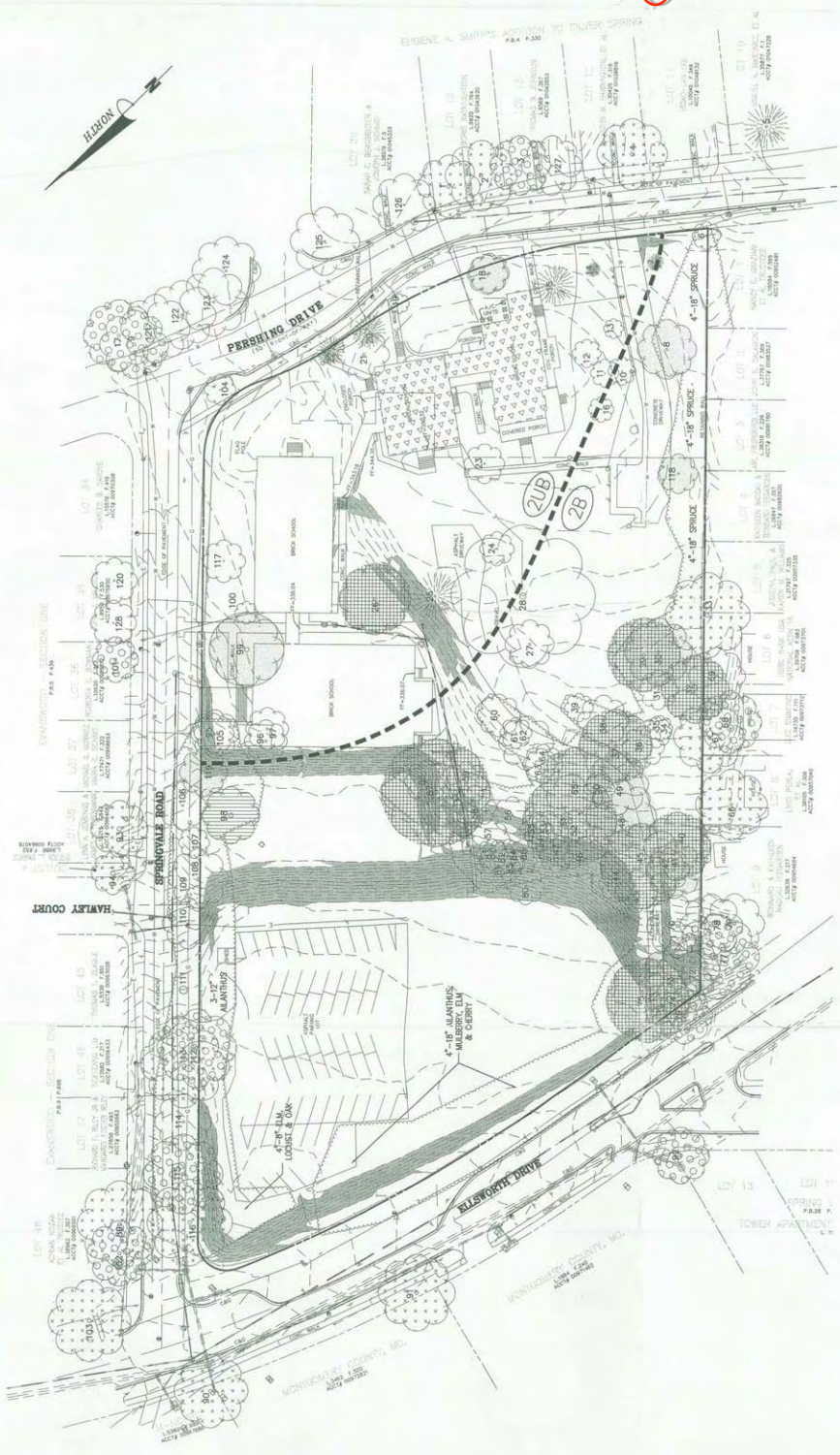
SOILS CHART

SOIL SERIES	EROSION HAZARD	K FACTOR	HYDRIC SOILS	HYDRIC INCLUSIONS
GLENGLE ZUB	SLIGHT	.32	NO	NO
GLENGLE ZUB	SLIGHT	.32	NO	NO



EXHIBIT NO. 17
APPLICATION NO. C-872

Bowman CONSULTING
 2021 Eastonway, Suite 200
 Alexandria, Virginia 22304
 Tel: (703) 688-9791
 Fax: (703) 688-9792
 www.bowmanconsulting.com



NOTES

- TOTAL TRACT AREA: 4.85 AC. (LOT 58, PLAY NO. 22270)
- BOUNDARY SURVEY BY: BOWMAN CONSULTING GROUP, LTD., SEPTEMBER, 2010
- TOPOGRAPHIC SURVEY BY: BOWMAN CONSULTING GROUP, LTD., SEPTEMBER, 2010
- CURRENT ZONING: R-60
- PROPOSED ZONING: RT-15
- WATERSHED: SLUDG CREEK CLASS 1
- THERE ARE NO SPECIAL PROTECTION OR PRIMARY MANAGEMENT AREAS ON THE PROPERTY.
- THERE ARE NO PERENNIAL OR INTERMITTENT STREAMS ON THE PROPERTY.
- THERE IS NO 100-YEAR FLOODPLAIN ON THE PROPERTY.
- THERE ARE NO WETLANDS ON THE PROPERTY.
- BASED ON MARYLAND'S ENVIRONMENTAL RESOURCES & LAND INFORMATION NETWORK (MERLIN), THE SUBJECT PROPERTY IS NOT LOCATED WITHIN A CRITICAL AREA AND THERE ARE NO AREAS OF SPECIAL INTEREST OR OTHER RESOURCES IN THE VICINITY OF THE PROPERTY. DOCUMENTATION FROM THE MARYLAND DEPARTMENT OF NATURAL RESOURCES IS PROVIDED.
- THE ROGGS-THOMPSON HOUSE, LOCATED ALONG PERSHING DRIVE, HAS BEEN IDENTIFIED ON THE LOCAL ATLAS AND INDEX OF HISTORIC SITES. EXISTING HISTORIC STRUCTURE IS TO REMAIN. NO FOREST ON THE PROPERTY.
- PER THE DEFINITIONS SET FORTH IN THE ANNOPOC TREES TECHNICAL MANUAL, THERE IS CURRENTLY NO FOREST ON THE PROPERTY.
- TREE DIAMETERS WERE MEASURED USING A FORESTRY DIAMETER TAPE
- THERE ARE NO KNOWN COUNTY AND/OR STATE CHAMPION TREES ON THE PROPERTY. THERE IS ONE STATE CHAMPION TREE ON THE PROPERTY, HAVING A DIAMETER OF 75% OR MORE OF THE CURRENT STATE CHAMPION FOR THE SPECIES.
- FIELD WORK WAS CONDUCTED ON SEPTEMBER 21, 2010 BY BOWMAN CONSULTING GROUP, LTD.
- THIS DRAWING WAS PREPARED IN ACCORDANCE WITH CHAPTER 22-A OF THE MONTGOMERY COUNTY CODE AND THE TECHNICAL TREE MANUAL, THIRD EDITION 1997.



DESIGNED: GDE	CHECKED: JS
ZONING: RT-15.0	TAX MAP GRID: JN33-343
JOB NO.: 7471-01-001	PROJECT SHEET: 1 OF 2
FILE NO.: 7471-0-PR-001	
REVISIONS	

NRV/FSO
CHELSEA SCHOOL
 LOT 58
 PLAY NO. 22270

Bowman CONSULTING
 2021 Eastonway, Suite 200
 Alexandria, Virginia 22304
 Tel: (703) 688-9791
 Fax: (703) 688-9792
 www.bowmanconsulting.com

Erodible Soils Map Unit List for Montgomery County¹ shows that Glenelg silt loam is a highly-erodible soil when present on slopes steeper than 8%. Therefore, the most darkly shaded portions of the site shown in Figure 1, are steep slopes on highly-erodible soils. The Design Manual text quoted above prohibits disturbance of these areas.

The applicant's plans show that a number of the 63 townhouses and other impervious surfaces are proposed for development on the steep slopes/highly-erodible soils. Again, this is in direct conflict with the Design Manual text quoted above. The Department should direct the applicant to incorporate these steep slopes/highly-erodible soils "*into adjacent buffers, remain undisturbed, protected during the construction process, and/or preserved as open space*" as required by the Design Manual.

In a letter dated September 7th, the applicant's consultant wrote to you regarding our comments. They took issue with our claim that the steep slopes on the site were composed of soils designated *highly-erodible*. They based this position on a 1995 table in *Environmental Guidelines (Guidelines for Environmental Management of Development in Montgomery County)*. It is unclear why the applicant's consultant referenced this publication. Page 5-7, of the *Maryland Stormwater Design Manual*, directs users to the local Soil Conservation District office for **current** lists of highly-erodible soils.

On August 3rd I wrote to Montgomery County District Conservationist John Warfield requesting a copy of the current list of highly-erodible soils. Mr. Warfield directed me to the Natural Resources Conservation Service *Highly Erodible Soils Map Unit List* for Montgomery County² which shows that Glenelg silt loam is a highly-erodible soil when present on slopes steeper than 8%.

Again, the most darkly shaded areas depicted in Figure 1 are steep slopes composed of these highly-erodible Glenelg soils. The *Maryland Stormwater Design Manual* states disturbance of these areas should not occur due to the extremely high sediment pollution volumes which may result. The Montgomery County Stormwater regulations require that these site planning requirements be given the same level of force as the numeric requirements which tend to be the focus of ESD review.

Tree/Forest Preservation

As stated in our September 5th comments, various scientific studies have shown that retention of a minimum amount of forest is essential if a suburban waterway is to be restored to a condition suited for human use. This is why the Design Manual calls for the preservation of existing trees and expansion of forest.

¹ See <http://efotg.sc.egov.usda.gov/references/public/MW/montgomery.pdf>

² See <http://efotg.sc.egov.usda.gov/references/public/MW/montgomery.pdf>

The Chelsea School site has a 45% tree canopy and is surrounded by an old leafy green neighborhood of Silver Spring with a 65% tree canopy that serves as the environmental buffer between the neighborhood and the central business district, which has only a 14% tree canopy. However, current project plans show that most of the largest trees on the Chelsea Court site would be eliminated.

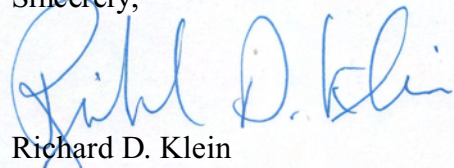
EYA's plan to clearcut 77 mature trees will, in addition to creating a heat island effect, increase polluted runoff, reduce groundwater recharge, and set back Montgomery County's efforts to restore Sligo Creek and the Anacostia River. Conversely, retaining the green-outlined area on Figure 1, in a forest conservation easement would be more consistent with the Design Manual and would alleviate those problems.

In their September 7th response, the applicant's consultant claims there is no forest on the site today. I assume they mean that the 45% of the site occupied by trees lacks the multiple layers typical of undisturbed forest. If this is the case then the applicant is failing to acknowledge one of the most important aquatic resource protection benefits provided by trees - interception storage and reduced runoff volume when compared to an area lacking trees. Table 2-2, in *Urban Hydrology for Small Watersheds*³, shows that a forest with a grass ground cover generates a slightly greater amount of runoff when compared to an undisturbed forest.

Conclusion

We maintain that the applicant has a duty to meet both the letter and intent of the law. However, as detailed above, the applicant's stormwater management plan is seriously deficient and thwarts the very goals of the State and County Environmental Site Design law. It is critical that the applicant be required to address these flaws so that the project fully complies with the law and Montgomery County's efforts to restore vital waterways such as Sligo Creek and the Anacostia River.

Sincerely,



Richard D. Klein

cc: Mike Bolinder, Anacostia RiverKeeper
Dana Minerva, Anacostia Watershed Restoration Partnership
Brent Bolin and Bruce Gilmore, Anacostia Watershed Society
Dolores Milmo, Audubon Naturalist Society
Alison Prost, Chesapeake Bay Foundation

³ See: <http://www.cpesc.org/reference/tr55.pdf>

Jacqueline Sincore Guild, Chesapeake Legal Alliance
Michael Wilpers, Friends of Sligo Creek
Alvin Carlos, Montgomery County Sierra Club
Diane Cameron, Montgomery County Stormwater Partners
Anne Ambler, Neighbors of Northwest Branch
H. Hedrick Belin, Potomac Conservancy
Tom Armstrong, Seven Oaks/Evanswood Citizens' Association
Jean Cavanaugh, Seven Oaks/Evanswood Citizens' Association
Judith Christensen, Seven Oaks/Evanswood Citizens' Association
Kenneth Doggett, Seven Oaks/Evanswood Citizens' Association
Don Grove, Seven Oaks/Evanswood Citizens' Association
Michael Gurwitz, Seven Oaks/Evanswood Citizens' Association
John Millson, Seven Oaks/Evanswood Citizens' Association
Peter Perenyi, Seven Oaks/Evanswood Citizens' Association
Kathleen Samiy, Seven Oaks/Evanswood Citizens' Association
Maria Schmit, Seven Oaks/Evanswood Citizens' Association
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Robert McGaughy, Seven Oaks/Evanswood Citizens' Association
Anne Vorce, Seven Oaks/Evanswood Citizens' Association
Anne Spielberg, Seven Oaks/Evanswood Citizens' Association
David Brown, Knopf & Brown
Robert Harris, Lerch, Early & Brewer

Honorable Valerie Ervin
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

October 8, 2012

Dear Councilmember Ervin:

On Tuesday of last week, the Seven Oaks/Evanswood Citizens' Association (SOECA) had an appointment with you to discuss the Chelsea Court project. We regret you could not attend, but appreciate that you made your aide Richard Romer available. However, the Chelsea Court issue still requires your personal attention.

Given your outstanding environmental record and reputation for protecting our natural resources, as exemplified by your appointment to the Chesapeake Bay Trust and your work to improve roadway stormwater management, we believe you are in a unique position.

With your leadership, you can help resolve the two remaining Chelsea Court environmental issues to ensure that the County reaps maximum benefits from new Environmental Site Design (ESD) requirements. We urge you to initiate an effort that makes clear that the Department of Permitting Services (DPS) has full authority to ensure that ESD is achieved to the Maximum Extent Practicable (MEP) and to create a single, comprehensive review process that fully uses ESD planning techniques. You can chart the path forward for lawful application of new stormwater collection requirements in all County development. Chelsea Court should serve as a model for ESD, a model that captures the upstream pollutants coming from District 5 and other parts of the County that are severely damaging the Anacostia watershed and Chesapeake Bay.

Chelsea Court Environmental Issues: Two Resolved/Two To Go With Your Support

Originally, SOECA had four environmental concerns with regard to the draft plans for Chelsea Court:

1. The applicant's plans failed to show any runoff control measures for the historic Riggs-Thompson House;
2. The applicant's stormwater report stated that they could not meet the groundwater recharge requirement, which is essential to maintaining the dry-weather flow in Sligo Creek;
3. The applicant proposed eliminating almost all of the wooded area on the site; and
4. Development was proposed for the steep, highly-erodible soils on the site, which greatly increases the likelihood that large volumes of eroded soil will enter Sligo Creek and the Anacostia Watershed.

On August 10th we wrote to the applicant - EYA - about meeting to explore opportunities to resolve these and other issues. The applicant responded that they could not address any of the community's concerns and saw no reason to meet. On September 5th we wrote to the DPS about our environmental concerns and started a dialogue between DPS and our consultant.

We ask for your help in resolving the last two environmental issues:

Issue 1: Steep Slopes/Highly Erodible Soil Disturbance

Chapter 5 of the *Maryland Stormwater Design Manual* is the manifestation of the law for Environmental Site Design. The following text appears on pages 5-7 of the manual:

Areas with highly erodible soils and slopes equal to or greater than 25 percent should be incorporated into adjacent buffers, remain undisturbed, protected during the construction process, and/or preserved as open space.

The Chelsea Court site includes steep slopes on highly-erodible soils. We recall that the DPS representatives present at the October 2nd meeting Mr. Romer chaired for you confirmed this.

The concern with regard to these areas is that they generate an unusually large volume of sediment pollution, and it is very difficult to prevent offsite damage given these steep, highly erosion-susceptible soils. There was some discussion of requiring additional control measures, yet it is the very difficulty in achieving effective control that prompted the State to strongly discourage intrusion into these areas.

The County officials present at the meeting suggested that the steep slopes may not be natural, and they do not adjoin a stream. Unfortunately, the high sediment pollution potential exists and must be addressed regardless of whether the slopes were created a century ago or are natural. Furthermore, while close proximity to a stream would ensure that a large part of the sediment load would reach the waterway, the nearby storm drain system will result in the same harmful effect.

About 14 of the 63 proposed townhouses would be built on these steep, highly-erodible soils. The Design Manual text quoted above compels the County to explore options for avoiding building on this steep, highly-erodible soil. However, the DPS officials gave us the clear impression that they have been directed not to implement Environmental Site Design in ways that reduce the number of residential units otherwise permitted. Given this restriction, it is no wonder that the applicant does not feel compelled to submit alternative designs. Such a restriction is completely contrary to the law and to what was testified to by the applicant during the rezoning process, and that was held by the hearing examiner in her decisions. The rezoning decision established a **maximum** number of units that can be built on the site. The applicant must still fully comply with the stormwater law and all other laws during the preliminary plan and site plan phases of the approval process, **even if** compliance requires changes in the schematic development plan and results in a reduction in the number of units.

We ask you to explore options for allowing DPS to be more effective in negotiating a reasonable solution, such as eliminating the 14 or so townhouses proposed to be built on these slopes. Doing so would not only prevent the harmful and high levels of sediment pollution into the waterway – a crucial goal of our stormwater laws – but would eliminate or reduce many of the other problems that SOECA has identified with this proposed development.

Issue 2: Wooded Area To Be Cleared; No Consideration Of Watershed Effects

Approximately a fourth of the site is presently wooded. Almost all trees will be clear-cut by the proposed development, including all of the large, mature trees, and replaced with about 8

townhouses. Recent scientific research has shown that a minimum percentage of a watershed must remain in forest if waters such as Sligo Creek and the Anacostia River are to be restored to a condition fit for human use. The applicant has dismissed the value of the wooded area on the site, presumably because the area lacks the understory of a natural forest. However, these woods provide 93% of the benefits of a natural forest and if managed properly could achieve 100% of the benefits in about a decade.

The County officials present claimed the wooded area was not a priority for preservation since they do not adjoin a stream. Achieving the benefits of Environmental Site Design **requires** exploring all the benefits that wooded areas provide. Retaining some of the large, existing trees would provide one of the most effective means of managing stormwater on the site. Retaining at least some of the tree canopy on this site is also critical to efforts that you have championed to reduce carbon emissions and unhealthy urban air. To make Sligo Creek fit as a place where children can wade and explore nature, we must explore every opportunity to retain existing wooded areas, such as those now existing on the Chelsea Court site. The arbitrary and erroneous prohibition on reducing residential units that is being applied makes it just as difficult for DPS to negotiate this issue as in the case of steep, highly-erodible soils.

Minimum Compliance Does Not Equal Maximum Extent Practicable

During the meeting, DPS representatives expressed the belief that Chelsea Court has met the *minimum* requirements. However, this is not the standard set forth in the Design Manual. Instead, the Design Manual **compels** DPS to ensure that the applicant has met all Environmental Site Design to the *Maximum Extent Practicable (MEP)*. Allowing the applicant to meet only “minimum” requirements utterly fails to comply with the requirements of the Design Manual and should properly be rejected.

DPS Is Being Improperly Constrained by a Perceived Lack of Authority To Achieve MEP

It is difficult to envision how DPS could be successful in achieving ESD to the Maximum Extent Practicable without the negotiating leverage attained through the authority to limit development intensity. But, as set forth above, this view of ESD is completely contrary to law. Actually, according to state law, the proposed development must fully meet the requirements of the stormwater law at preliminary and site plan, even if compliance requires a reduction of units from the maximum density permitted by the rezoning decision.

Review Process Disjointed; Cannot Achieve ESD To The MEP

Section 19-22A, of the Montgomery County stormwater regulations requires:

An applicant must use the ESD planning techniques and practices and structural stormwater management measures established in this Article and the Design Manual, either alone or in combination, in a stormwater management plan.

The current Montgomery County process for reviewing projects for compliance with Environmental Site Design is much the same as has existed since the 1990s. DPS reviews ESD concept plans for compliance with numerical standards. Since DPS incorrectly believes that it lacks the authority to limit impervious area through unit reduction, they cannot truly achieve compliance with ESD planning techniques.

The use of ESD planning techniques is currently mostly in the hands of MNCPPC. However, the MNCPPC review of environmental issues appears, oddly, to be limited to compliance with the Forest Conservation Act requirements (dating from the 1990s), such as protection of stream buffers, etc.

In the case of Chelsea Court, communication between DPS and MNCPPC appears to have been nonexistent with regard to ESD planning methods. For example, it is doubtful that anyone at MNCPPC assessed the extent of existing forest in the Sligo Creek watershed, compared it to what is necessary to improve the quality of our stream, then recommended that DPS press for retaining more wooded area. But even if this had occurred, DPS's position is that it cannot press the applicant for alternative designs that preserve more trees.

The law requires that MNCPPC and DPS achieve ESD to the MEP with a comprehensive, integrated approach using ESD planning techniques, not by reliance on numerical standards alone.

Chelsea Court Could Readily Achieve A Net Improvement In Sligo Creek Quality

The Chelsea Court project could, if intelligently modified in accordance with the Design Manual, bring about a net improvement by reducing pollution loads to Sligo Creek and the Anacostia while retaining critical forest and preventing severe sediment pollution. The current plan, in its present form, only achieves half of these goals. In other words, an extremely important opportunity to enhance Sligo Creek and the Anacostia will be missed unless you use your considerable influence to urge the applicant to explore all opportunities to achieve its goals with less impact to forests and steep slopes. We also urge you to take all steps necessary to make clear that DPS has full authority to implement Environmental Site Design to the Maximum Extent Practicable, without regard to the possible loss of development intensity, and to create a review process for applications that is integrated and comprehensive.

Regards,

Jean Cavanaugh
President, Seven Oaks Evanswood Citizens' Association

Cc: Sen. Jamie Raskin, Maryland State Senate
Hon. Tom Hucker, Maryland House of Delegates
Robert Summers, Secretary, Maryland Department of the Environment
Virginia Kearney, Maryland Department of the Environment
Isaiah Leggett, Montgomery County Executive
Diane Schwartz-Jones, Montgomery County Department of Permitting Services
Rick Brush, Montgomery County Department of Permitting Services
Rose Krasnow, Director (acting), Montgomery County Planning Department
Robert Kronenberg, Montgomery County Planning Department

Bob Hoyt, Montgomery County Department of Environmental Protection
Aubin Maynard, Metropolitan Washington Council of Governments
Tara Potter, Chair of the Board, Chesapeake Bay Trust
Caren Madsen, Conservation Montgomery
Mike Bolinder, Anacostia RiverKeeper
Dana Minerva, Anacostia Watershed Restoration Partnership
Brent Bolin, Anacostia Watershed Society
Dolores Milmoie, Audubon Naturalist Society
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Michael Wilpers, Friends of Sligo Creek
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Alvin Carlos, Montgomery County Sierra Club
Diane Cameron, Montgomery County Stormwater Partners
Anne Ambler, Neighbors of Northwest Branch
H. Hedrick Belin, Potomac Conservancy
David Brown, Knopf & Brown
Montgomery County Civic Federation
Presidents Coalition of Silver Spring (Prezco)
Greater Olney Civic Association
Citizens Coordinating Committee of Friendship Heights
Montgomery Countryside Alliance
West Montgomery County Citizens Association
Tom Armstrong, Seven Oaks/Evanswood Citizens' Association
Don Grove, Arborist, Silver Spring, MD
Michael Gurwitz, Seven Oaks/Evanswood Citizens' Association
Kathleen Samiy, Seven Oaks/Evanswood Citizens' Association
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Robert McGaughy, Seven Oaks/Evanswood Citizens' Association
Anne Vorce, Seven Oaks/Evanswood Citizens' Association
Anne Spielberg, Seven Oaks/Evanswood Citizens' Association

Braunstein, Neil

Subject: FW: Chelsea Court and Stormwater Issues

From: Brush, Rick [<mailto:Rick.Brush@montgomerycountymd.gov>]

Sent: Thursday, October 11, 2012 6:24 PM

To: Seven Oaks / Evanswood Citizens' Association; Ervin's Office, Councilmember

Cc: Romer, Richard; Anne Spielberg; Michael Gurwitz; jamie.raskin@senate.state.md.us; tom.hucker@house.state.md.us; Tom Hucker; bsummers@mde.state.md.us; ykearney@mde.state.md.us; Ike Leggett; Jones, Diane; Krasnow, Rose; Kronenberg, Robert; Hoyt, Bob; amaynard@mwcog.org; brown@knopf-brown.com; DGrove@nordhauslaw.com; mariaschmit@hotmail.com; avorce@aol.com; Kathleen Samiy; Robert McGaughy; Vicki Warren; Kuykendall, David

Subject: RE: Chelsea Court and Stormwater Issues

Dear Ms. Cavanaugh;

Thank you for including me in your letter concerning the Chelsea Court Development and stormwater/environmental design challenges. I would like to respond to some of the comments in the letter and clarify comments attributed to Department of Permitting Services in the letter. If acceptable, I will do so using this format, as follows. However, I can send a formal written letter of response if desired.

Issue 1: Steep Slope/Highly Erodible Soil Disturbance

I certainly understand your concerns about the steep slopes and agree that steep slopes in general need to be given special consideration. However, these slopes appear to be artificially created at some time in the past as the property was terraced for use as a school. I assume that play fields and parking lots were created on sloping land. These needed to be relatively flat. However, that meant the intervening areas between the fields and parking lots had been graded to be steeper than what was naturally there.

These slopes are on the interior parts of the property and are not adjacent to a stream valley buffer. The developer intends to remove these slopes during construction to develop the property. Therefore, the slopes will be flattened as the site develops. Therefore, they will no longer meet the definition of being a steep slope as that term has been applied.

While I would certainly have concerns if vegetation was removed from steep slopes that were immediately adjacent to a stream. I would also question the construction of buildings on naturally steep slopes which are to remain as the part of a construction project. However, that is not what is being proposed by the developer in this case. I also need to add that sediment control and stabilization requirements will be changing in January, 2013 to meet new State standards. These changes will result in quicker stabilization of graded land to prevent excessive erosion and sedimentation.

Issue 2: Wooded Area to be Cleared; No Consideration of Watershed Effects

At our meeting I believe we discussed the fact that the Department of Planning was the lead agency for forest conservation and trees on projects going through the preliminary plan and site plan process. I believe Department of Planning staff explained that a forest conservation plan had not yet been given to them for review. I am confident that the Department of Planning will insure that the site meets the requirements of the County's Forest Conservation Law when it makes its recommendations to the Planning Board. I am also confident that the Department of Planning will coordinate its reviews with the Department of Permitting Services if those reviews result in changes to the stormwater management concept plan. The designation of lead agencies is necessary in the planning process to insure smooth coordination of the very complex requirements in the Montgomery County Code. I believe that the Department of Planning has been excellent in its role as the lead agency for forest conservation on these types of projects.

Minimum Compliance Does Not Equal Maximum Extent Practicable/DPS Is Being Improperly Constrained by a Perceived Lack of Authority to Achieve MEP/Review Process Disjointed; Cannot Achieve ESD to the MEP

I lumped all of these together for one response. Hopefully, my response will answer some of your other concerns and questions.

The requirements for stormwater management is to maintain or improve the rainfall and runoff characteristics of a proposed development during a one year storm (i.e. a storm that typically occurs once in any given year – for Montgomery County that amounts to a storm of 2.6 inches of rainfall) to the same level that would achieved if the ground surface would be “woods in good condition” - In other words, completely wooded and undeveloped and not being used for agriculture or any other type of active land use. The requirement is to use a combination of reductions of impervious cover, protection of natural resources, maximizing the use of landscaped areas, promoting sheet flow, and using various alternative surfaces and microscale practices together to provide stormwater management. The recipe for all of this is called Environmentally Sensitive Design (ESD). ESD can be attained by using all of these together or by using various combinations to achieve what is required.

There are times due to site constraints and conditions when the use of ESD measures by themselves will not achieve the requirement of mimicking “woods in good condition”. In those instances the State and County requirement is to use ESD to the Maximum Extent Practicable (MEP) and then to make up the difference using other structural, traditional methods of stormwater management. That is where the term ESD to the MEP originated.

As previously stated, there are times when ESD cannot be used by itself. This is especially true for redevelopment projects where soils have been compacted or otherwise disturbed and where existing storm drains and neighboring development prevents the complete use of ESD to meet total stormwater management requirements. However, that is not what the developer of this property has proposed for this development. He is proposing to use ESD to completely meet the stormwater management requirements. He not just using ESD to the MEP. He has gone beyond that. The preservation or loss of tree cover was not factored into the combination of practices that has been proposed. The requirements have been met with or without using trees in the overall mix of ESD practices to be used.

I hope that I have sufficiently responded to some of your concerns. The Department of Permitting Services fully knows its role and status as the lead agency for stormwater management and sediment control for new developments and redevelopment. It actively works with other agencies to assure compliance with both County and State requirements. The Department of Planning has access to the stormwater management plans which are being reviewed by the Department of Permitting Services. They, along with the Department of Transportation and the Department of Environmental Protection, were notified long ago that the plans were ready of review. I agree that there are various combinations that can be used to meet ESD and full stormwater management requirements. Certainly, other combinations could be used on a site like this. However, the ESD requirements proposed by the developer meet full stormwater management standards as required in laws and regulations of both the State and the County and follows guidance provided by the Maryland Department of the Environment in several documents distributed in 2010.

In closing, I certainly am available to continue discussions on the stormwater management concept plan for this project. I look forward to working with everyone as the plan progresses through the planning process, as permits are issued and during construction. In truth, my door is always open.

Please call me at 240-777-6343 or email me at rick.brush@montgomerycountymd.gov if you have further questions or comments.

Sincerely,

Rick Brush, Chief
Division of Land Development
Department of Permitting Services
Montgomery County



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

VALERIE ERVIN
COUNCILMEMBER
DISTRICT 5

October 22, 2012

Jean Cavanaugh, President
Seven Oaks/Evanswood Citizens' Association

Dear Ms. Cavanaugh,

Thank you for your October 8 letter outlining two environmental issues that Seven Oaks/Evanswood community has regarding the development project at the former Chelsea School site. As you may know, I take environmental stewardship seriously, as evidenced by legislative record and my service on the Chesapeake Bay Trust.

I voted for, and the Council granted, oral arguments on this case on October 18, 2011. I also voted to remand this case to the Hearing Examiner to further evaluate the historic setting of the Riggs-Thompson House, to reconfigure the residential townhome layout with less density and less massing so it would be more compatible with the character of the transition from the central business district to the north of Cedar Street and to be more consistent with the 2000 North and West Silver Spring Master Plans. The Council also directed the resolution of the alignment of the private road to comply with the environmental setting of the historic site.

EYA submitted a revised development plan reducing the number of dwelling units from 77 to 66; created more open space around the historic Riggs-Thompson House; and the private road alignment was identified (out of the 6 options originally proposed) to intersect with Springvale Road to avoid the environmental setting of the Riggs-Thompson House.

The Hearing Examiner conducted a second round of hearings on all of the issues above and recommended approval of EYA's zoning application subject to their revised development plan. As stated in the Council's resolution: the revised version of the plan satisfied the requirements of the RT-12.5 Zone and its purpose; the application proposed a development that would be compatible with the land uses in the surrounding area; and the requested reclassification to RT-12.5 is sufficiently related to the public interest to justify approval. Since EYA addressed the issues that were identified for the remand, the Council did not find a compelling reason to overturn the decision of the Hearing Examiner in this case.

In June, I walked the site with you and other neighbors to hear about the environmental concerns regarding the development project. On October 2, I set up a meeting with the County's Department of Permitting Services (DPS) and Maryland-National Capital Park & Planning Commission's (M-NCPPC) Department of Planning to go over the development process ahead and answer questions.

In your recent letter, you outlined the following issues: 1) steep slopes and erosion, and 2) tree removal and watershed protections. On behalf of the community, I have asked DPS and the Department of Planning to look into these issues. Mr. Rick Brush from DPS has already sent initial feedback to your letter.

As you know, this project is at the Planning Department and is going through the development review process. I encourage you to work with DPS and the Department of Planning since they are the regulatory bodies that will ensure that this development complies with all related environmental laws. By way of this letter, I am alerting the Planning Board Chair to your concerns for background when this project comes before the Planning Board.

Thank you for your continuing interest and advocacy.

Sincerely,



Valerie Ervin
Councilmember – District 5

c: Diane Schwartz-Jones, Director, Montgomery County Department of Permitting Services
Françoise Carrier, Chair, M-NCPPC Planning Board
Rose Krasnow, Acting Director, Montgomery County Planning Department
Bob Hoyt, Director, Montgomery County Department of Environmental Protection



October 25, 2012

Mr. Rick Brush
Department of Permitting Services
Montgomery County
Rockville, MD

Dear Mr. Brush,

We were greatly disappointed to read your letter dated October 11, 2012, below. We firmly believe that the current plan for the Chelsea Court development runs afoul of the County's stormwater law, which incorporates the Environmental Site Design requirements of the Maryland Stormwater Design Manual, and poses an unacceptable threat to the environmental health of Sligo Creek and the Anacostia Watershed.

Allow us to respond briefly to your points:

Issue 1: Steep Slope/Highly Erodible Soil Disturbance (your response below)

I certainly understand your concerns about the steep slopes and agree that steep slopes in general need to be given special consideration. However, these slopes appear to be artificially created at some time in the past as the property was terraced for use as a school. I assume that play fields and parking lots were created on sloping land. These needed to be relatively flat. However, that meant the intervening areas between the fields and parking lots had been graded to be steeper than what was naturally there.

Our response:

You have not cited any legal authority that differentiates between natural and artificial steep slopes in the State and County's stormwater laws, particularly regarding building on steep slopes and highly erodible soil disturbance. Your distinction appears to be arbitrary and not based on the requirements of the law. We also note that historic records show that these steep slopes were present at least as early as 1917 (see <http://botany.si.edu/dcflora/mcateemaps/>, 1917 National Geological Survey, Map; the Chelsea site is at NE quad, No 346). After almost 100 years, the soil has settled and any possible distinction, if relevant, has disappeared.

It is important to recognize that the prohibition against developing steep, highly erodible slopes is driven by the high erosion and resulting sediment pollution so, in the end, it is academic whether they are artificial or natural. Furthermore, it is instructive that wetlands created artificially are given the same protection as natural wetlands. The same principle should apply to steep and highly erodible slopes.

These slopes are on the interior parts of the property and are not adjacent to a stream valley buffer.

Our response:

The Chelsea Court property is in the Sligo Creek sub-watershed of the Anacostia watershed as evidenced by this Historic Wetlands Map of Sligo Creek: <http://www.fosc.org/HistoricalWetlandsMap.htm>. The Map was created by the Metropolitan Washington Council of Governments Department of Environmental Programs in November 2004. It clearly shows the "Ellsworth Tributary" running parallel to

Colesville Road, from what is now City Place Mall in Downtown Silver Spring, to Bennington Drive and the main branch at Sligo Parkway. The 'Ellsworth tributary" shown, is directly adjacent to the Chelsea Property and the current Silver Spring Library.

Within the watershed, the property's special features of location and slope raise immediate stormwater management challenges for the nearby community, including those downstream from the property. More specifically, the property slopes down to an historic stream (now buried), which abuts the property on the Ellsworth side. Stormwater runoff from it – and by "it," we are talking now of 63 townhouses and up to the 126 cars that will most certainly continue to travel its historic route in this stream valley -- will continue flowing down Ellsworth and across Dale, continuing down Ellsworth, and turning down Bennington, where the stormwater emerges from underground pipes at the Bennington Outfall. A short distance downstream, the Bennington Tributary empties into Sligo Creek itself. In other words, any stormwater management problems stemming from the property will show up fairly quickly in the Bennington Tributary and then Sligo Creek. We have been very surprised that the implications of the adjacent stream valley and its flow through our neighborhoods are not being recognized in the stormwater discussion.

The developer intends to remove these slopes during construction to develop the property. Therefore, the slopes will be flattened as the site develops. Therefore, they will no longer meet the definition of being a steep slope as that term has been applied.

As you know, chapter 5 of the *Maryland Stormwater Design Manual* is the manifestation of the law for Environmental Site Design. The following text appears on pages 5-7 of the manual:

*Areas with highly erodible soils and slopes equal to or greater than 25 percent should be incorporated into adjacent buffers, remain **undisturbed, protected during the construction process, and/or preserved as open space.** (Emphasis added).*

If you allow the developer EYA to flatten the slopes, you will be allowing EYA to violate this provision of the manual, contrary to the requirements and purpose of the law and its implementing regulations.

While I would certainly have concerns if vegetation was removed from steep slopes that were immediately adjacent to a stream. I would also question the construction of buildings on naturally steep slopes which are to remain as the part of a construction project. However, that is not what is being proposed by the developer in this case.

Our response:

To repeat: the developer is proposing, and you are apparently endorsing, the leveling of steep slopes which have been in existence for at least 100 years in direct violation of Chapter 5 of the *Maryland Stormwater Design Manual*.

I also need to add that sediment control and stabilization requirements will be changing in January, 2013 to meet new State standards. These changes will result in quicker stabilization of graded land to prevent excessive erosion and sedimentation.

Our response:

If the standards are changing, then how can you possibly approve a plan now for standards that are not yet in place? Your approval is premature and accordingly, should be withdrawn. The language of the State design manual remains clear on not disturbing steep slopes with highly erodible soil.

Issue 2: Wooded Area to be Cleared; No Consideration of Watershed Effects

At our meeting I believe we discussed the fact that the Department of Planning was the lead agency for forest conservation and trees on projects going through the preliminary plan and site plan process. I believe Department of Planning staff explained that a forest conservation plan had not yet been given to

them for review. I am confident that the Department of Planning will insure that the site meets the requirements of the County's Forest Conservation Law when it makes its recommendations to the Planning Board. I am also confident that the Department of Planning will coordinate its reviews with the Department of Permitting Services if those reviews result in changes to the stormwater management concept plan. The designation of lead agencies is necessary in the planning process to insure smooth coordination of the very complex requirements in the Montgomery County Code. I believe that the Department of Planning has been excellent in its role as the lead agency for forest conservation on these types of projects.

Our response:

Trees play a crucial role in stormwater management. In fact, according to stormwater management "best practices," existing vegetation does a superior job of managing stormwater run-off. As you know, the developer EYA intends to clear cut 77 mature trees from the property. In so doing, they will irreparably damage the environment of this site and locales downstream from this site. Ornamental trees are no substitute for the benefits provided by the trees currently onsite. DPS is shirking its duty by passing the buck to the Department of Planning and only agreeing to look at this issue in the event there are changes in the plan. You have a responsibility to address this issue now as part of your evaluation of stormwater compliance; you have a responsibility to save as many of these trees as possible.

Minimum Compliance Does Not Equal Maximum Extent Practicable/DPS Is Being Improperly Constrained by a Perceived Lack of Authority to Achieve MEP/Review Process Disjointed; Cannot Achieve ESD to the MEP

I lumped all of these together for one response. Hopefully, my response will answer some of your other concerns and questions.

The requirements for stormwater management is to maintain or improve the rainfall and runoff characteristics of a proposed development during a one year storm (i.e. a storm that typically occurs once in any given year – for Montgomery County that amounts to a storm of 2.6 inches of rainfall) to the same level that would be achieved if the ground surface would be "woods in good condition" - In other words, completely wooded and undeveloped and not being used for agriculture or any other type of active land use. The requirement is to use a combination of reductions of impervious cover, protection of natural resources, maximizing the use of landscaped areas, promoting sheet flow, and using various alternative surfaces and microscale practices together to provide stormwater management. The recipe for all of this is called Environmentally Sensitive Design (ESD). ESD can be attained by using all of these together or by using various combinations to achieve what is required.

There are times due to site constraints and conditions when the use of ESD measures by themselves will not achieve the requirement of mimicking "woods in good condition". In those instances the State and County requirement is to use ESD to the Maximum Extent Practicable (MEP) and then to make up the difference using other structural, traditional methods of stormwater management. That is where the term ESD to the MEP originated.

As previously stated, there are times when ESD cannot be used by itself. This is especially true for redevelopment projects where soils have been compacted or otherwise disturbed and where existing storm drains and neighboring development prevents the complete use of ESD to meet total stormwater management requirements. However, that is not what the developer of this property has proposed for this development. He is proposing to use ESD to completely meet the stormwater management requirements. He not just using ESD to the MEP. He has gone beyond that. The preservation or loss of tree cover was not factored into the combination of practices that has been proposed. The requirements have been met with or without using trees in the overall mix of ESD practices to be used.

Our response:

As we have detailed repeatedly, DPS is neglecting its duty to apply the legal standard for ESD of "Maximum Extent Practicable" in favor of minimum compliance. By failing to hold EYA to the obligations identified in our communications, DPS is ignoring the requirements of the Design Manual and the steps needed to ensure full compliance with the stormwater law.

I hope that I have sufficiently responded to some of your concerns.

The Department of Permitting Services fully knows its role and status as the lead agency for stormwater management and sediment control for new developments and redevelopment. It actively works with other agencies to assure compliance with both County and State requirements. The Department of Planning has access to the stormwater management plans which are being reviewed by the Department of Permitting Services. They, along with the Department of Transportation and the Department of Environmental Protection, were notified long ago that the plans were ready of review. I agree that there are various combinations that can be used to meet ESD and full stormwater management requirements. Certainly, other combinations could be used on a site like this. However, the ESD requirements proposed by the developer meet full stormwater management standards as required in laws and regulations of both the State and the County and follows guidance provided by the Maryland Department of the Environment in several documents distributed in 2010.

Our response:

DPS has failed to apply and enforce the law with regard to the Chelsea Court development. DPS, under your guidance, is allowing the developer to violate stormwater management requirements that were designed to protect the environment of Montgomery County and the health and well-being of its citizens. We will continue to pursue this matter to ensure that the law is appropriately implemented.

Regards,

Jean Cavanaugh
President, Seven Oaks Evanswood Citizens' Association
Soeca.board@gmail.com
Tel 240-338-7319

Cc: Sen. Jamie Raskin, Maryland State Senate
Hon. Tom Hucker, Maryland House of Delegates
Robert Summers, Secretary, Maryland Department of the Environment
Virginia Kearney, Maryland Department of the Environment
Isaiah Leggett, Montgomery County Executive
Diane Schwartz-Jones, Montgomery County Department of Permitting Services
Rose Krasnow, Director (acting), Montgomery County Planning Department
Robert Kronenberg, Montgomery County Planning Department
Bob Hoyt, Montgomery County Department of Environmental Protection
Aubin Maynard, Metropolitan Washington Council of Governments
Tara Potter, Chair of the Board, Chesapeake Bay Trust
Caren Madsen, Conservation Montgomery
Mike Bolinder, Anacostia RiverKeeper
Dana Minerva, Anacostia Watershed Restoration Partnership
Brent Bolin, Anacostia Watershed Society
Dolores Milmo, Audubon Naturalist Society
Alison Prost, Chesapeake Bay Foundation
Jacqueline Sincore Guild, Chesapeake Legal Alliance

Michael Wilpers, Friends of Sligo Creek
Ed Murtagh, Friends of Sligo Creek
Alvin Carlos, Montgomery County Sierra Club
Diane Cameron, Montgomery County Stormwater Partners
Anne Ambler, Neighbors of Northwest Branch
H. Hedrick Belin, Potomac Conservancy
Mike Smith, Friends of Sligo Creek
Lori Lilly, Center for Watershed Protection
David Brown, Knopf & Brown
Montgomery County Civic Federation
Presidents Coalition of Silver Spring (Prezco)
Greater Olney Civic Association
Citizens Coordinating Committee of Friendship Heights
Montgomery Countryside Alliance
West Montgomery County Citizens Association
Tom Armstrong, Seven Oaks/Evanswood Citizens' Association
Don Grove, Arborist, Silver Spring, MD
Michael Gurwitz, Seven Oaks/Evanswood Citizens' Association
Kathleen Samiy, Seven Oaks/Evanswood Citizens' Association
Maria Schmit, Seven Oaks/Evanswood Citizens' Association
Victoria Warren, Seven Oaks/Evanswood Citizens' Association
Thomas DeCaro, Seven Oaks/Evanswood Citizens' Association
Robert McGaughy, Seven Oaks/Evanswood Citizens' Association
Anne Vorce, Seven Oaks/Evanswood Citizens' Association
Anne Spielberg, Seven Oaks/Evanswood Citizens' Association



Mr. Bob Hoyt
Director
Department of Environmental Protection
255 Rockville Pike, Suite 120
Rockville, Maryland

December 19, 2012

Dear Mr. Hoyt,

On behalf of the Seven Oaks-Evanswood Civic Association (SOECA), I'd like to thank you and your colleagues for meeting with us and representatives of the Audubon Naturalist Society and Stormwater Partners Network on December 7 regarding serious concerns we have, particularly for stormwater management, in the site plans for the Chelsea Court project in the Sligo Creek sub-watershed in Silver Spring. We urge you to work closely with DPS, Planning staff and Planning Board, and developer EYA to help them understand the primacy and value of utilizing on site natural resources to manage stormwater, absorb noise, and clean air from the dense Silver Spring central business district next door. Chelsea Court *could* be a County model of Environmental Site Design, and we stand ready to work with you and the County Executive to make that happen.

As it stands now, developer EYA proposes to clear cut the Chelsea property, reducing tree canopy from 45% to nearly zero, and increasing impervious surfaces from 21% to almost 80%. The latest proposed site plan shows townhouses packed so tightly, almost no replacement or variance mitigation trees can be planted due to utility ROWs and other limiting factors, creating an impervious heat island inside our community.

Applying legally mandated and appropriate environmental site design on this property is particularly important to the Anacostia watershed because of the site's features and location. The property drains naturally along a 126 foot drop from downtown Silver Spring into Sligo Creek within the Silver Spring - Sligo Creek sub-watershed in what appears to be an old stream valley. What happens on the Chelsea site will emerge in our neighborhood's waterways first, and in the Chesapeake Bay later. The downstream stormwater pipe under Ellsworth Drive, one of the bordering roads for the property, emerges above ground at the Bennington outfall and flows into Sligo Creek some fifty yards later. Flow from the site then heads downstream into the rest of the Anacostia watershed.

We are fortunate that until now considerable natural resources in the form of vegetation including mature trees have been in place for years on the Chelsea site to manage stormwater, absorb noise and clean air from downtown Silver Spring. Developer EYA plans eliminate these longstanding natural resource managers, counter to the requirements spelled out in the MDE Stormwater Design Manual.

Developer EYA plans will clear-cut and regrade steep slopes with highly erodible soil, natural formations MDE's design manual directs to leave alone. Disturbing these slopes greatly increases the

likelihood that large volumes of eroded soil will enter Sligo Creek and the Anacostia watershed during the construction phase. As you know better than we do, large volumes of eroded soil can destroy qualities of our waterways that may never be restored in our lifetimes, despite our best efforts and the outlay of extensive fiscal resources to try to reverse the damage. We fear that these points are not well understood by many others involved in the approval process.

We are also very concerned about the likely deterioration of neighborhood air quality from the introduction of up to 65 new households on top of the scores of new apartment buildings being built in downtown Silver Spring. Trees help to cool the air coming from these heat islands and serve as a natural filtration system to help clean air that is already, according to the American Lung Association, among the worst in the country.

DEP has a responsibility to educate, inform and assist all development players, in this case DPS, EYA and the Planning Board and staff, to implement the requirements of the MDE Stormwater Design Manual and preserve and utilize the natural resources on the Chelsea site to manage stormwater.

If legal and sound stormwater management and other environmental site design basics are ignored for the Chelsea Court project, we will all miss an opportunity to improve water quality in the Anacostia Watershed. From a fiscal perspective, our political leaders should be aware that meeting one agency's interpretation of "minimum requirements" as opposed to complying with state mandated "maximum extent practicable" will mean taxpayers will be slapped with the high cost of mitigating related and avoidable downstream water quality problems. Failure to act now will also reverberate far beyond this specific site.

County Executive Leggett, with every "minimum" effort accepted and every waiver granted through his executive agencies, sends a message to Montgomery County developers and to Annapolis that the county is not serious about improving water quality in Maryland. It is not enough to have good laws and regulations on the books - they must be fully implemented and enforced.

Our community offers to work closely with DEP and other agencies to make the Chelsea site plan a model in Montgomery County for legal and best practice implementation of environmental site design with particular emphasis on stormwater management and mature tree preservation. As you know, this is a community that is very dedicated to clean water practices and we value our strong partnership with DEP. Thank you for your consideration.

Sincerely,

Jean Cavanaugh
President, Seven Oaks-Evanswood Civic Association (SOECA)

Cc: Dolores Milmo, Audobon Naturalist Society
Diane Cameron, Stormwater Partner Network
Councilmember Valerie Ervin
Councilmember Marc Elrich
Diane Schwartz-Jones, Director, DPS
Rose Krasnow, Interim Director, Planning Department



January 31, 2013

Diane Schwartz-Jones, Director
Rick Brush, Acting Chief of Land Development
Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, Maryland 20850-4166

Dear Diane and Rick,

Thank you for meeting on Monday, November 19th, with leaders of Audubon Naturalist Society and Seven Oaks- Evanswood Citizens Association, along with Councilmember Ervin and Planning Department staff regarding the Chelsea Court project. The meeting helped to clarify County policies regarding trees and stormwater management, and gave an opportunity for us to discuss Environmental Site Design (ESD) implementation methods and policy at greater depth. We encourage all County elements to work closely together, and with us, to make Chelsea Court a model of ESD, fully utilizing the site's natural features, design elements and lastly engineered solutions in that order.

Our discussion on November 19th highlighted our deep concern that under current County policy, trees and steep slopes are largely unprotected, and engineered and structured solutions take priority over using site planning and natural features to reduce stormwater runoff, contrary to current law. Since the current Chelsea Court site plan does not accomplish Environmental Site Design to the Maximum Extent Practicable according to our review of the site plan and applicable state and local law and code (cited below and in our 11/19 meeting discussion), we request that you revoke your agency's approval of the Chelsea Court Stormwater Management Concept Plan based on new information received, and require the applicants to submit a new proposed SWM Concept Plan that will protect and incorporate into the stormwater design, the existing tree grove and steep slopes.

Zoning defines maximum density possible. It is not an entitlement to that maximum. The number of units that fit on a site should be determined *after* the developer complies fully with all laws, regulations, utility and other rights of way, and green space. The developer must first comply to the maximum extent practicable with all laws and regulations that the county and state have put in place to protect the environment.

The Chelsea Court project is located in the Sligo Creek tributary of the Anacostia watershed and has a sizable grove of mature trees on steep, erodible slopes. It is directly adjacent to a stream under Ellsworth Drive that feeds directly into Sligo Creek. The applicant for this project has not shown that they have used clustering of the built environment on this site, nor have they demonstrated exhaustion of all reasonable opportunities for meeting stormwater requirements by using ESD through use of natural areas and landscape features to manage runoff from impervious

surfaces. This exhaustion of ESD opportunities using natural areas and landscape features is required by both Montgomery and State stormwater regulations (citations are given below).

The natural area and landscape features that are present at the Chelsea Court site, and that the Seven Oaks-Evanswood Citizens Association has requested be preserved and used as part of the site's ESD stormwater management plan, are its small grove of mature trees. Additionally, the steep slopes with highly erodible soil must remain undisturbed, per MDE's Stormwater Design Manual. The current stormwater management concept plan for this project proposes to destroy rather than preserve and utilize these natural areas and landscape features, without any showing that the ability to use such preservation and utilization was exhausted by the applicant. Our analysis shows that the site's Stormwater Management Concept Plan is out of compliance with these requirements in the Stormwater Design Manual and in Montgomery's stormwater code.

Rick stated during Monday's meeting that the Chelsea Court project's current design is in the view of DPS in full compliance with the mandatory provisions of the state stormwater regulation and manual. In particular, Rick stated that in the state stormwater manual, Chapter 5 (the so-called ESD chapter), the sole mandatory requirements are to utilize one or more of the stormwater management practices, such as micro-bioretenion, permeable pavement etc., and to meet the numeric stormwater management requirements for groundwater recharge, ESD and Channel Protection volumes.

In response to our specific request for site planning and design-level stormwater management approaches at Chelsea Court, including the so-called "non-structural" stormwater management approach of preservation and utilization of the existing tree grove and steep slopes at the site, Rick stated that such site planning and design approaches for non-structural stormwater management are merely options in the manual but are not mandatory. This conclusion of DPS is counter to our reading of Chapter 5 of the MDE Manual and counter to various provisions of County stormwater code.

Below we quote the relevant portions of the state and local code, and briefly discuss them. (While we find these to be pertinent code sections, this is in no way an exhaustive review of the relevant state and local codes.)

MDE's stormwater design manual, Chapter 5, Part 5.1, states that clustering, and exhaustion of opportunities for natural resource preservation and utilization, are mandatory provisions for stormwater management concept plans.¹

We refer here to: MDE's Stormwater Design Manual, Chapter 5, Part 5.1 Design Process and Planning Techniques, page 5.4. The quote from this Part 5.1 is copied below and the italics are in the original. As noted on page 5.1 of the MDE Design Manual, italics indicate mandatory criteria.

> Minimizing total site imperviousness by implementing clustered development and other better site design techniques.

¹ Maryland Department of the Environment, *Maryland Stormwater Design Manual*, Chapter 5, page 5.4. See also page 5.1.

> Demonstrating that all reasonable opportunities for meeting stormwater requirements by using ESD have been exhausted by using natural areas and landscape features to manage runoff from impervious surfaces and that structural BMPs have been used only where absolutely necessary.

In conjunction with the County code requiring site planning and design methods to be applied to each site as the first steps in Environmental Site Design, we understand this state-level requirement to be mandatory for all projects including for Chelsea Court. To our knowledge no such clustering has been included in the Chelsea Court design, nor have the applicants shown that they have exhausted all reasonable opportunities to use the site's natural areas and landscape features – which are its tree grove and steep slopes – to manage runoff from impervious surfaces.

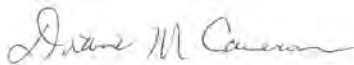
Montgomery County Code, Section 19-26, Stormwater Management Design Criteria, Section (a) states,

“Each applicant must use planning techniques, nonstructural practices, and design methods to implement environmental site design to the maximum extent practicable.”


Contrary to statements during our meeting to the effect that planning techniques and nonstructural practices are merely optional for any given developer, in fact according to this regulation, use of such techniques and practices is mandatory.

In conclusion, we ask DPS to revoke its approval of the Chelsea Court project's Stormwater Management Concept Plan, and to require the applicant to adhere to the requirements of MDE's Stormwater Design Manual and County code. Let's make Chelsea Court a model for Environmental Site Design.

For local clean water,



Diane Cameron
Conservation Program Director
Audubon Naturalist Society



Jean Cavanaugh
President
Seven Oaks Evanswood Citizens Association

cc: Councilmember Valerie Ervin
Bob Hoyt, DEP



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Diane R. Schwartz Jones
Director

March 14, 2013

Diane Cameron
Conservation Program Director
Audubon Naturalist Society

Jean Cavanaugh
President
Seven Oaks Evanswood Citizens Associations

Via e-mail

Re: Chelsea Project

Dear Ms. Cameron and Ms. Cavanaugh;

Thank you for your January 31, 2013 letter concerning the proposed Chelsea Court project which followed our November 19, 2013 with you and Councilmember Valerie Ervin as well as correspondence between you and Rick Brush. I apologize for not getting this letter out to you sooner. In the interim I understand that you have been in correspondence with Rick Brush and Mark Etheridge in my office and Bob Hoyt and Stan Edwards in the Department of Environmental Protection with respect to the interpretation you are requesting regarding requirements under the Stormwater Management Act of 2007 ("Stormwater Act").

In your January 31, 2013 letter you voiced concerns about development plans for the Chelsea School site and the Department of Permitting Services' (DPS) interpretation of the Stormwater Act and application of its provisions to the Chelsea site. You asked specifically that DPS revoke its approval of the Chelsea site project stormwater management concept plan. You also asked that the County require the applicant to adhere to the requirement of MDE's Stormwater Design Manual and to the County Code.

The site which is approximately 5.25 acres has an historic feature with a surrounding setting of approximately 1.4 acres. The property was rezoned on June 12, 2012 from R-60 to RT-15. This rezoning followed an initial application, and contested hearing and remand in which 77 units had been proposed. Following a second hearing the District Council approved the rezoning to allow for development of 66 units with a 51% green area.

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

Diane Cameron
Jean Cavanaugh
March 14, 2013
Page 2 of 4

Rick Brush met with you in the Fall of 2012 and sent you an email on October 11, 2012 responding to a letter you had written raising similar issues as in your January 31, 2013 letter and asking that DPS not allow the removal of the trees. As Mr. Brush advised you in his October 11, 2012 email, the steep slopes in question are not the natural topography of the land but reflect grading to meet needs of the school that previously occupied the site; moreover, the slopes are not adjacent to a stream. Mr. Brush also pointed out that with respect to the trees on the site, the ultimate determination on the trees will be determined by the Montgomery County Planning Board in connection with the Final Forest Conservation Plan (a preliminary forest conservation plan had been submitted in relation to the rezoning).

Following the receipt of your letter, Rick and I asked Mark Etheridge to again review the approved plan. As you know, Mark was recently promoted within the Department to manage the Water Resources Plan Review Section. Prior to that, he was the lead plan review specialist in the implementation of the new stormwater management standards in adopted in both 2002 and 2010. Therefore, he has a wealth of knowledge concerning stormwater management practices and has had many interactions with the Maryland Department of the Environment (MDE) concerning the interpretation of State requirements and standards.

Mark found that the stormwater management plan, as approved, for Chelsea Court met State and County requirements for stormwater management. Some of Mark's comments are as follows:

1. Concerning the existing steep slopes on the property – The intent of the requirement to protect steep slopes is not based on any intrinsic value concerning hydrology. In fact, steep slopes tend to limit the infiltration of runoff. The intent is to limit development on steep slopes which may cause or exacerbate erosion and sedimentation within the stream system. That is not a factor in this case due to the location of the steep slopes and the proposal to remove them. In addition, these existing steep slopes are not a part of or associated with a stream valley buffer. In this case the removal of these slopes poses no significant erosion or environmental hazard. Preservation of the slopes reaps no significant hydrologic benefit.
2. Concerning the removal of trees – Where forested areas are preserved within conservation easements or stream valley buffers, they may provide some Environmentally Sensitive Design (ESD) credit. Credit can also be given using the "Sheet Flow to Buffer" ESD standard. However, that is not the case for this project. Therefore, no ESD credit can be given for saving the grove of trees. Although a reduction in the proposed impervious area may occur if the requirement is to keep these trees, the MDE design manual does not specify the preservation of existing trees as an ESD practice.

3. Interpretation of what constitutes Environmentally Sensitive Design (ESD) to the Maximum Extent Practicable (MEP) - After issuance of the revised stormwater design manual MDE received a number of inquiries concerning the interpretation of Chapter 5 of the Manual. In July, 2010 MDE issued supplementary guidance which was entitled "Environmental Site Design (ESD) Process and Computations". The supplement is available on the MDE website. Its contents include in depth examples of acceptable practices and procedures used to design projects to meet ESD to the MEP. Page 9 of the supplement gives the process for determining ESD requirements at the stormwater concept stage. According to the supplement "ESD strategies are employed such as reducing impervious area, protecting natural resources, maximizing the use of landscaped areas for disconnecting runoff, allowing sheetflow, and integrating practices into the proposed site layout of buildings and infrastructure." All of these items are given as options that are relevant to achieving the final goal of ESD to the MEP. Guidance for the next phase of stormwater design (the Site Development Plan) discusses relevant ways to achieve ESD targets. "After alternative surfaces and nonstructural practices have been implemented, the remaining volume to be treated in microscale practices is determined. When the total ESDv is provided in all practices, the ESD to the MEP is achieved and plans may proceed forward to final design." The design for this project meets this standard. If it did not then the design would have been re-examined to evaluate what other ESD practices could be reasonably used. Please note that the guidance given by MDE allows for the use of structural measures when ESD practices can't be used. However, that was not the case for this site.

I have reviewed your correspondence, prior proceedings, Mark's review comments and interpretations of the Stormwater Act and there is no basis for me to grant your request to revoke the approval of the stormwater management concept plan for the Chelsea site.

It is also instructive that MDE in responding to comments when considering the draft stormwater regulations that MEP was either too stringent or not stringent enough, responded "MDE recognizes that some flexibility in the design and approval processes is warranted and has added "reasonable" to the definition."

As Rick pointed out to you in his October 11 e-mail the developer "is proposing to use ESD to completely meet the stormwater management requirements. He not just using ESD to the MEP. He has gone beyond that." Given that the developer is proposing to use ESD to completely meet stormwater management requirements, I don't think that the approach suggested in your letter is reasonable and I do not think that it recognizes the intended flexibility in the design and approval process.

I understand that you may not agree and that you have expressed significant opposition to the project. In our opinion, the applicant has complied with the standards spelled out in

Diane Cameron
Jean Cavanaugh
March 14, 2013
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the Montgomery County Code and with MDE standards. If you have questions or comments please contact Rick Brush at 240-777-6343 or Mark Etheridge at 240-777-6338.

Sincerely,



Diane R. Schwartz Jones
Director

Cc: Valerie Ervin, Councilmember
Bob Hoyt, Director, DEP
Stan Edwards, Division Chief, DEP
Rick Brush, DPS
Mark Etheridge, DPS

618 Bennington Drive
Silver Spring, Maryland 20910
March 13, 2013

By email

Neil Braunstein, AICP Planner
Coordinator, Area One
Montgomery County Planning Department – MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910
neil.braunstein@mncppc-mc.org

Re: Application Number 120130060: Chelsea Court, 711 Pershing Drive.
Site Plan # 820130040

Dear Mr. Braunstein,

I am a resident of the Seven Oaks/Evanswood neighborhood in Silver Spring. We do not live in the area immediately surrounding the proposed Chelsea Court development. In fact, we live within a 10-15 minutes walk downhill from the site, on the other side of Dale Drive, in the area behind Mrs. K's Tollhouse restaurant that is a gateway to the Sligo Creek park system, Sligo Creek and its tributaries.

Although we live half a mile away from the property, our area will be very clearly and negatively affected if the Chelsea site is allowed to be developed without full adherence to state and county laws and regulations governing stormwater management and Environmental Site Design (including limits on disturbance of highly erodible soil, particularly for steep slopes), and the Forest Conservation Law, in particular.

Situated in the Sligo subwatershed of the Anacostia Watershed, our neighborhood happens to be one of the main stormwater drainage routes from downtown Silver Spring. Stormwater comes from the central business district underground along Ellsworth (which the Chelsea site slopes down to), emerges above ground for the first time at the outfalls spilling into the Bennington Tributary, along Bennington Drive, and then empties into Sligo Creek a few hundred yards downstream. This is where we live. Another way to put it: what runs off the Chelsea site (whether it is stormwater, silt or pollution) pops up in our neck of the woods (the Bennington Tributary and Sligo Creek) very soon afterwards. I am not aware that this critical hydrology or topographical analysis has been conveyed to County officials or staff throughout the EYA process. This is an analytic error, at a minimum.

Given the hydrologic and topographical features and settings, I am very concerned about the downstream risks to the watershed from disturbing the very steep slopes of erodible soil and eliminating the natural vegetation managing stormwater runoff (contrary to the practices required under law) on the Chelsea site. These natural elements should be improved upon – not destroyed. Moreover, leaving them in place is the best practice under the law.

We are already dealing with tough challenges. The Bennington Tributary has been the site over the years of a number of upstream stormwater pollution incidents coming from downtown Silver Spring and its environs, including a hazardous sewage spill (more than 100,000 gallons) into the stormwater pipes stemming from a manhole blockage near the Chelsea property in December 2006. (This spill led to a large fine against WSSC under the EPA-MDE Consent Decree in place to improve the storm sewer system to help fulfill requirements of the Clean Water Act. Our watershed remains under this Consent Decree.)

I am very familiar with this ongoing saga, as I have faithfully reported a series of upstream pollution problems over the past six years to DEP, which has always acted quickly to investigate and correct them. Lori Lilly of the Center for Watershed Protection has recently documented pollution issues in the Bennington Tributary as part of her work mapping issues in the area. A grass roots system has evolved with a partnership between our community, FoSC and DEP to report water pollution in a timely way. I am concerned that if the EYA development is not handled correctly according to the ESD laws and regulations in place, we, the FoSC and DEP will face even greater challenges.

However, regardless of where we live, it is becoming all too clear as a matter of forward-looking public policy that our government must do all that is within its power to improve the quality of our water, our air and our tree canopy for the long-run welfare of the public. Based on solid legal grounds, the Planning Department has ample scope to require EYA to build a transit-oriented development that would be a County – even a national model for stormwater and tree canopy protection, and cleaner air.

Accordingly, I am writing to express my serious reservations about the preliminary plans for the Chelsea Court townhouse development being proposed by EYA. My main concerns involve the environmental impact of this townhouse development, although there are other important issues that need to be appropriately and thoughtfully addressed as well.

Details

The environment: stormwater, steep slopes and highly erodible soil, the tree canopy, clean air. To understand how important getting the environmental issues right is to the health of the Sligo Creek Subwatershed, a better sense of the Chelsea site and its topographical and hydrological relationship to the community is crucial. Throughout the approval process for the EYA development, the particularly relevant features of the site and surrounding neighborhoods has not been well understood – if at all. I frankly do not understand why these features – highly relevant to the policy process- have not been better documented or mapped.

From the perspective of downstream water pollution in the Anacostia Watershed, the Chelsea Court site is particularly challenging. The Chelsea land slopes down to what reflects a natural stream-bed or spring valley running all along Ellsworth (one of the site's boundaries). The waterway that emerges above ground at Bennington Drive half a mile downstream once flowed above ground adjacent to the Chelsea site. The water (likely a spring) was piped into buried stormwater pipes perhaps some 50 or 60 years ago. Because the Chelsea site still drains naturally, directly and rapidly into the Bennington Tributary and then into Sligo Creek, our

watershed is particularly sensitive to stormwater management practices and erosion and silt control on that site. Environmental Site Design to the Maximum Extent Practicable, besides being the law, is the most appropriate and sensible solution for the unique features of this spot.

The Chelsea Court site also brings with it major challenges for erosion and silt control, especially in the construction phase when EYA plans to radically regrade very steep slopes containing highly erodible soil and to clear cut a stabilizing grove of trees rather than enhance it. The risk of silting downstream is high – even with normal protective barriers. Silt kills aquatic life for generations and cannot be easily undone, if at all.

Most of the technical work done about the Chelsea site to-date also fails to recognize that it consists of natural rolling hills, many with grades well above 6%. Along the edge overlooking the natural stream valley are steep slopes of highly erodible soil, somewhat secured by a grove of trees. With the sensitivity of the Bennington Tributary and Sligo Creek to drainage issues, soil disturbance on the Chelsea site can have a direct and quick impact on the creek. We do not think that EYA has sufficiently identified the site's steep slopes and highly erodible soils, which should be more accurately mapped according to the table of Table 5.1 of the Stormwater Design Manual. The new erosion and silt control law and regulation at the State level (currently under consideration by the Council to be in conformity with the State) are also very important, and must not be ignored in this process.

Moreover, EYA has planned the site in such a way that they can barely squeeze in utility rights of way between the rows of tightly packed townhouses, eliminating most of the opportunity to replant canopy trees on the sloped site which can eventually help mitigate the loss of the natural landscape features that would otherwise play a critical role in stormwater management.

Montgomery County has a responsibility to vigorously implement and enforce State and County stormwater laws. EYA's plans violate state and county laws that require managing stormwater by preserving natural vegetative features, not disturbing steep slopes – particularly if they consist of highly erodible soil, and using sensible environmentally sound design techniques, such as low-impact clustered development. The County's Forest Conservation Law also obliges EYA to preserve all significant trees on the site unless EYA can demonstrate that preserving them creates an unwarranted hardship. However, the County has failed so far to impose all of these requirements.

Like my civic association SOECA, I applaud and agree with county staffers who are insisting that EYA meet the variance standard before they remove two significant trees on the property. EYA has thus far failed to meet the variance standard, refusing to consider design alternatives that could save those trees. In addition, the County needs to enforce the other laws that protect many of the other trees on the site and its other natural features. EYA plans to clear-cut the site, destroying 64 trees --- only a handful outside the historic property would be preserved --- and to re-grade nearly the entire area, disturbing highly erodible steep slopes and creating new slopes, including one that takes part of the historic Riggs-Thompson lot and comes within 30 feet of the house itself.

The County is also ignoring the zoning requirement that 50% of the townhouse development be maintained as green space accessible to its occupants. Instead, the County allows EYA to count the Riggs-Thompson House's private property towards this requirement.

The Chelsea property has 89 mature trees, many more than 100 years old. The 63% tree canopy coverage in our neighborhood is an important part of the green ring around downtown Silver Spring, which has only 14% coverage. Trees help clean the air, and the areas around them and their root systems are very effective at protecting Sligo Creek and the Anacostia Watershed by controlling stormwater runoff. It would be tragic and foolish to lose these benefits in order to squeeze the maximum number of townhouses onto the Chelsea site.

Other issues

EYA's site plan includes a new street that will circumvent our long-standing traffic control plan and bring an influx of cut-through traffic into the interior streets of our neighborhood. Our neighborhood traffic plan has been very successful. On any given day, there are many walkers, dog walkers and bicyclists who can enjoy their walk safely. The cut-through problem could be prevented by requiring EYA to have only one entrance and exit into Chelsea Court via Ellsworth Drive ending in a cul de sac inside the development. There is no legal obstacle to this design, as it would satisfy Police and Fire Department requirements for access, even with the large number of townhouses in EYA's plan as currently proposed.

I also understand (although I have not been able to confirm it) that EYA plans to have a private road in the development. As a matter of public policy in what should be an open, welcoming and neighborly community, this would simply be lousy policy. From the perspective of fiscal responsibility, those suggesting this approach would in the end be cheaper for the taxpayer have not examined all parts of the balance sheet. I also worry that a private road may well have implications for stormwater management, if it could limit the County's ability to ensure adequate maintenance practices and their ability to investigate and correct problems at the source.

Conclusion

I urge the Montgomery County Planning Board vigorously to enforce State and county stormwater law and Environmental Site Design requirements to the Maximum Extent Practicable, the Forest Conservation Law, and zoning requirements mandating green space before approving any final plan for the Chelsea Court development. EYA should also be required to build a road with only one entrance and exit into the development from Ellsworth Drive, ending in a cul-de-sac, in a "good neighbor" approach to allow the community with its many walkers and bicyclists (Ellsworth is a standard route from the Metro in downtown Silver Spring) to proceed safely. Finally, there is no justification for allowing a private road, as far as I can tell.

I also strongly support the letter submitted by SOECA, which reflects the views of our large community, living both near and far from the proposed development site.

Thank you for your consideration.

Sincerely,

Anne L. Vorce
618 Bennington Drive
Silver Spring

Neil Braunstein, AICP Planner
Coordinator, Area One
Montgomery County Planning Department – MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910
neil.braunstein@mncppc-mc.org

Re: Application Number 120130060: Chelsea Court, 711 Pershing Drive.

Dear Mr. Braunstein:

I live on Mayfair Place in Silver Spring, part of the Seven Oaks/Evanswood neighborhood, and I write to express my concern about the preliminary plans for the Chelsea Court townhouse development being proposed by EYA.

I have two main concerns with the preliminary plans

Concern #1: Impact on local neighborhood automobile traffic

EYA's site plan includes a new street that would erode our long-standing traffic control plan and bring an influx of cut-through traffic into the interior streets of our neighborhood.

This is a critical public safety issue for two related reasons: (1) the neighborhood has narrow streets and no sidewalks, and (2) our neighborhood has a large number of young children.

With the current traffic control plan, we experience very little cut-through traffic, **which is a public safety imperative because of the lack of sidewalks in the neighborhood.** Young parents pushing strollers, kids riding bikes and scooters, people walking dogs—all have to share the streets with automobile traffic.

Allowing any alteration to the existing traffic control plan poses a huge threat to the safety of pedestrians, especially young children. This simply cannot be tolerated.

Under the current traffic control plan, cars from downtown Silver Spring are prohibited from going north into our neighborhood via Ellsworth Drive; they cannot go past a "Do Not Enter" sign just south of Springvale Road, across from the Silver Spring library.

EYA's proposed street would allow cars to bypass the one-way section of Ellsworth near the library. Drivers coming from downtown could enter Ellsworth going north, go through the Chelsea development, exit onto Springvale Road, and take Pershing Drive to get to Dale Drive and the Beltway. Proposals by the developer and the county to use signs to restrict entry to cars driven by legitimate visitors and residents would be laughable—difficult to enforce and unlikely to receive sustained enforcement priority.

I urge that there be only one entrance and exit into Chelsea Court via Ellsworth Drive ending in a cul de sac inside the development. There is no legal obstacle to this design, as it would satisfy Police and Fire Department requirements for access, even with the large number of townhouses in EYA's plan.

Concern #2: Impact on our Local Environment

One of the reasons my wife, my family, and I enjoy living in Montgomery County is because it has a progressive record on balancing environmental needs with growth and development. We applaud Montgomery County's history in vigorously enforcing State and County storm water laws.

I urge that the County insist that EYA honor and uphold state and county laws that require managing storm water by preserving natural features and using reasonable design techniques such as low-impact clustered development.

I also urge that the County enforce its forest conservation law that obliges EYA to preserve all significant trees on the site unless EYA can demonstrate that preserving them creates an unwarranted hardship.

I am displeased that the County has failed so far to impose all of these requirements. I applaud and agree with county staffers who are insisting that EYA meet the variance standard before they remove two significant trees on the property, which EYA has thus far failed to do. In addition, the County needs to enforce the other laws that protect many of the other trees on the site and its other natural features. EYA has the right to propose a plan to clear-cut the site, destroying 64 trees and to re-grade nearly the entire area. **The County has an obligation to deny these unfortunate, misguided, and shortsighted plans that minimize our public duty to protect our environment.**

The County is also ignoring the zoning requirement that 50% of the townhouse development be maintained as green space accessible to its occupants. Instead, the County is allowing EYA to count the Riggs-Thompson property towards this requirement.

The Chelsea property has 89 mature trees, many more than 100 years old. The 63% tree canopy coverage in our neighborhood is an important part of the green ring around downtown Silver Spring, which has only 14% coverage. Trees help clean the air, and the areas around them and their root systems are very effective at protecting Sligo Creek and the Anacostia Watershed by controlling storm water runoff.

It would be tragic and foolish to lose these benefits in order to squeeze the maximum number of townhouses onto the Chelsea site.

Conclusion

EYA was granted its request to rezone the Chelsea School property to RT 12.5, but this does not mean that EYA's development can and should come at the expense of the County's

environmental health or our neighborhood's public safety. EYA's preliminary plan violates State and county storm water laws and environmental site design requirements, and will result in the clear-cutting of 64 mature trees at a time when, due to global warming, we need to preserve our mature trees, not destroy them.

Furthermore, EYA's current plan for its internal road will undermine the traffic control measures that protect our children and families. A single entrance and exit from Ellsworth Drive, ending in a cul de sac, will completely prevent this cut-through traffic. The County has confirmed that this cul-de-sac would satisfy Police and Fire Department requirements for access to the development.

I respectfully request that the Montgomery County Planning Board vigorously enforce State and county storm water laws, environmental site design requirements, the Forest Conservation Law, and zoning requirements mandating green space before approving any final plan for the Chelsea Court development. Furthermore, I request that the County Planning Board require EYA to build a road with only one entrance and exit into the development from Ellsworth Drive, ending in a cul-de-sac.

Sincerely,

William Mallon
8501 Mayfair Place
Silver Spring

Braunstein, Neil

From: brucehawk58@yahoo.com
Sent: Monday, March 11, 2013 7:18 PM
To: MCP-Chair; Braunstein, Neil
Cc: soeca.board@gmail.com

Dear Ms. Carrier and Mr. Bauman:

I am writing today to urge you to require that the EYA Chelsea School development site Preliminary Plan and Site Plan comply with all State and County regulations as well as the County Master Plan regarding traffic.

My neighbors and I are concerned that storm water runoff is not being managed properly, threatening the water quality in nearby Sligo Creek. Clear-cutting the trees on the site, and the significant amount of re-grading proposed, will have measurable detrimental effects on Sligo Creek. We would like to see in the public record the determination that preserving the trees on the site would create an unwarranted hardship. In addition, we are concerned that about including the grounds of the Riggs-Thompson House in the 50% green space requirement, against all precedent and in clear violation of the requirement that the green space be accessible to residents. Finally, we are concerned that the creation of a new two-way street paralleling Springvale Road would create a cut-through that would undermine the neighborhood traffic management plan, part of the County Master Plan that was put in place to protect the neighborhood from traffic to and from the nearby Downtown Silver Spring business district. This increased traffic would be directed onto narrow residential streets with no sidewalks, which are used by residents of the assisted living facility located across the street from the Chelsea School site. The combination of elderly and sometimes frail pedestrians, no sidewalks, and increased traffic from nearby bars and restaurants could have tragic consequences. My neighbors and I think that the cul-de-sac design originally proposed by EYA is the only workable solution to this issue.

Thank you for your time and consideration.

Sincerely,

Bruce Hawkins
8905 Ellsworth Ct.
Silver Spring, MD 20910

Braunstein, Neil

From: Carol Leventhal <clleven@starpower.net>
Sent: Tuesday, March 12, 2013 9:08 AM
To: Braunstein, Neil
Subject: Chelsea Court

Dear Mr. Braunstein:

Those of us who live in down county Silver Spring are extremely concerned with the EYA development planning for the Chelsea School site. It appears an opportunity to build a model development that would be based upon smart ideas that support the environment is upon us; can you help make that happen?

The announced plans for clear cutting 64 full growth, mature trees in order to jam more townhomes onto the site is worrisome. Those trees help cool and clean the air, reducing pollution and enhancing our lives. Why ever would the Montgomery County Planning Board permit a developer to proceed with a really bad plan that will negatively impact the entire area? Why is the board not demanding the retention of those trees? Why is the board not holding to a reasonable number of townhouses? Please do not permit the developer to build out.

The proposal to build a second street will result in even more cut through traffic into this neighborhood. As it is, movement during rush hour throughout the Seven Oaks/Sligo Creek neighborhoods is onerous. Traffic generated by another road through those townhouses will create higher pollution levels, noise, and jammed streets. One entry/exit roadway for Chelsea Court is sufficient; a second will be detrimental.

Developer greed for profit cannot and must not speak louder than the well being of this community. Please vote for the community.

Carol Leventhal
9219 Manchester Road
Silver Spring, MD. 20901
301-588-9383

Braunstein, Neil

From: charles wolff <wolff99@starpower.net>
Sent: Tuesday, March 12, 2013 12:01 PM
To: Braunstein, Neil
Subject: EYA-Chelsea, New Street

Neil Braunstein, MNCPPC:

About 20 years ago, Montgomery County began signing formal agreements with our neighborhood and others near the Bethesda and Silver Spring CBDs to protect against cut through traffic generated by these two rapidly developing business districts.

One of the first “Neighborhood Traffic Protection Plans” was jointly designed and formally approved by the County and by our neighborhood (Seven Oaks Evanswood). It is now threatened by the new layout proposed by EYA for townhouses at the old Chelsea School site.

Auto commuters will always find a way to avoid long backups at red lights on main roads if there is a legal way to bypass them on neighborhood streets. The EYA layout gives them this option. They would learn to use EYA’s proposed NEW STREET to get from the CBD to Pershing Drive, Dale Drive, and ultimately the beltway and beyond.

If EYA were not trying to cram the maximum possible townhouses onto their lot, they could design it as a cul-de-sac and thus provide more traffic safety for their townhouse owners and for the Seven Oaks Evanswood neighborhood at large.

Please do not undermine the Traffic Protection Plan we signed with Montgomery County.
Reject EYA’s proposed layout.

Sincerely,
Charles Wolff
635 Bennington Lane
Silver Spring

Braunstein, Neil

From: Chris Richardson <melchris@erols.com>
Sent: Monday, March 11, 2013 9:26 PM
To: Braunstein, Neil
Subject: Chelsea Court - EYA development proposal

Neil Braunstein, AICP Planner
Coordinator, Area One
Montgomery County Planning Department – MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: *Application Number 120130060: Chelsea Court, 711 Pershing Drive. Site Plan # 820130040*

Dear Mr. Braunstein,

I am still deeply disappointed that the Planning Board ignored its own Master Plan for Silver Spring and allowed the Chelsea Court development proposal to move forward, even though the land was zoned Residential. Given that the development planning process is in its final stages, I therefore would like to make the following emphatic requests:

- Please make Chelsea Court a model for low-impact development.
- End the clear-cut and regrading method for doing development.
- Save the mature trees on Chelsea property - they are a valuable part of the stormwater solution.
- Protect Sligo Creek and our watershed from increased runoff.
- Respect the neighborhood's traffic patterns.
- Please also respect the fact that the County worked with the neighbors to reduce and slow cut-through traffic.

What you do here will serve as a precedent in other neighborhoods.

Concluding remarks:

EYA was granted its request to rezone the Chelsea School property to RT 12.5, but this does not mean that EYA has to cram in as many townhouses as possible under that zone. 63 townhouses is simply too much. It violates State and county stormwater laws and environmental site design requirements, and will result in the clear-cutting of 64 mature trees at a time when, due to global warming, we need to be preserving our mature trees, not destroying them.

Furthermore, EYA's current plan for its internal road will undermine the traffic control measures that for more than 20 years have spared our neighborhood from the cut-through traffic that used to fill our interior streets. A single entrance and exit from Ellsworth Drive, ending in a cul de sac, will completely prevent this cut-through traffic. The County has confirmed that this cul-de-sac would satisfy Police and Fire Department requirements for access to the development.

I respectfully request that the Montgomery County Planning Board vigorously enforce State and county stormwater laws, and environmental site design requirements, the Forest Conservation Law, and zoning requirements mandating green space before approving any final plan for the Chelsea Court development, and

that it also require EYA to build a road with only one entrance and exit into the development from Ellsworth Drive, ending in a cul-de-sac.

Yours truly,

Chris Richardson
402 Deerfield Ave.
Silver Spring, MD 20910
301-608-3076
melchris@erols.com

Braunstein, Neil

From: pacquilt@aol.com
Sent: Tuesday, March 12, 2013 3:16 PM
To: Braunstein, Neil
Subject: Proposed Chelsea Court Development

March 12, 2013 Dear Mr. Braunstein:

As a tax paying property owner in the Seven Oaks section of Silver Spring, Montgomery County Maryland I favor the retention of the cul de sac which allows for ingress and egress off of Ellsworth Drive at the proposed Chelsea Court development site, thereby allowing environmentally safe, orderly development while protecting the quiet enjoyment for all of the adjacent neighborhoods.

Thank you for the opportunity to comment.

Sincerely,

David O. Williams

Braunstein, Neil

From: DEAN COOPER <coolcoops@verizon.net>
Sent: Tuesday, March 12, 2013 1:46 PM
To: Braunstein, Neil
Subject: Chelsea Court

Dear Mr. Braunstein,

I have lived in the neighborhood, 416 Pershing Drive, Silver Spring, for over 26 years. I walk to downtown Silver Spring several times a week and notice the difference in temperature when crossing Cedar and Pershing Drive. While development is in many ways positive, the heat island that is created by the downtown development is not. If Montgomery County is serious about local warming and the ecology of the area, cutting down 64 mature trees should not be allowed. Please take a walk on a warm day on Pershing Drive headed to downtown to understand what I am talking about. Has anyone from your office done this? Planting smaller trees is not a true replacement. They can not absorb heat and pollution on such a large scale. Planting tree in other parts of the County is not the answer either, since it will not help with heat island increase on the Chelsea property. This is simple science that can not be disputed.

Please ask EYA to develop an improved plan. The developers bottom line should not influence the Board's decision.

Braunstein, Neil

From: Debbie Boger <debbie.boger@post.harvard.edu>
Sent: Tuesday, March 12, 2013 11:05 PM
To: Braunstein, Neil
Subject: Concerns about Planning Board Application #120130060: Chelsea Court, 711 Pershing Drive

Neil Braunstein, AICP Planner
Coordinator, Area One
Montgomery County Planning Department – MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910
neil.braunstein@mncppc-mc.org

Re: Application Number 120130060: Chelsea Court, 711 Pershing Drive.

Dear Mr. Braunstein:

I am writing to express my serious concerns about two aspects of the preliminary plans for the Chelsea Court townhouse development being proposed by EYA: the plan to increase traffic through the adjacent neighborhood, and the plan to clear cut the trees on the Chelsea property. I live on Mayfair Place, making me a close neighbor to the Chelsea development, and I worry that the development will change the nature of our neighborhood and make it much less desirable for families.

I have two main concerns with the preliminary plans.

Concern #1: The neighborhood will no longer be safe for my kids to ride bikes and scooters or to walk to friends' houses.

EYA's site plan includes a new street that would erode our long-standing traffic control plan and bring an influx of cut-through traffic into the interior streets of our neighborhood. This prospect is scary because **we have no sidewalks in our neighborhood, and our neighborhood has a large number of young children, including my own 5- and 8- year olds.** Young parents pushing strollers, kids riding bikes and scooters, people walking dogs—all have to share the streets with automobile traffic.

Allowing any alteration to the existing traffic control plan poses a huge threat to the safety of pedestrians, especially young children. This simply cannot be tolerated.

Under the current traffic control plan, cars from downtown Silver Spring are prohibited from going north into our neighborhood via Ellsworth Drive; they cannot go past a "Do Not Enter" sign just south of Springvale Road, across from the Silver Spring library.

EYA's proposed street would allow cars to bypass the one-way section of Ellsworth near the library. Drivers coming from downtown could enter Ellsworth going north, go through the Chelsea development, exit onto Springvale Road, and take Pershing Drive to get to Dale Drive and the Beltway. Proposals by the developer and the county to use signs to restrict entry to cars driven by legitimate visitors and residents would be laughable—difficult to enforce and unlikely to receive sustained enforcement priority.

I urge that there be only one entrance and exit into Chelsea Court via Ellsworth Drive ending in a cul de sac inside the development. There is no legal obstacle to this design, as it would satisfy Police and Fire Department requirements for access, even with the large number of townhouses in EYA's plan.

Concern #2: Impact on our Local Environment

One of the reasons I enjoy living in Montgomery County is because it has a progressive record on balancing environmental needs with growth and development. In addition, I appreciate Montgomery County's history in vigorously enforcing State and County storm water laws.

I urge that the County insist that EYA honor and uphold state and county laws that require managing storm water by preserving natural features and using reasonable design techniques such as low-impact clustered development.

I also urge that the County enforce its forest conservation law that obliges EYA to preserve all significant trees on the site unless EYA can demonstrate that preserving them creates an unwarranted hardship.

I am upset that the County has failed so far to impose all of these requirements. I applaud and agree with county staffers who are insisting that EYA meet the variance standard before they remove two significant trees on the property, which EYA has thus far failed to do. In addition, the County needs to enforce the other laws that protect many of the other trees on the site and its other natural features. EYA has the right to propose a plan to clear-cut the site, destroying 64 trees and to re-grade nearly the entire area. **The County has an obligation to deny these unfortunate, misguided, and shortsighted plans that minimize our public duty to protect our environment.**

The County is also ignoring the zoning requirement that 50% of the townhouse development be maintained as green space accessible to its occupants. Instead, the County is allowing EYA to count the Riggs-Thompson property towards this requirement.

The Chelsea property has 89 mature trees, many more than 100 years old. The 63% tree canopy coverage in our neighborhood is an important part of the green ring around downtown Silver Spring, which has only 14% coverage. Trees help clean the air, and the areas around them and their root systems are very effective at protecting Sligo Creek and the Anacostia Watershed by controlling storm water runoff.

It would be tragic to lose these benefits in order to squeeze the maximum number of townhouses onto the Chelsea site.

Conclusion

EYA was granted its request to rezone the Chelsea School property to RT 12.5, but this does not mean that EYA's development can and should come at the expense of the County's environmental health or our neighborhood's public safety. EYA's preliminary plan violates State and county storm water laws and environmental site design requirements, and will result in the clear-cutting of 64 mature trees at a time when, due to global warming, we need to preserve our mature trees, not destroy them.

Furthermore, EYA's current plan for its internal road will undermine the traffic control measures that protect our children and families. A single entrance and exit from Ellsworth Drive, ending in a cul de sac, will completely prevent this cut-through traffic. The County has confirmed that this cul-de-sac would satisfy Police and Fire Department requirements for access to the development.

I respectfully request that the Montgomery County Planning Board vigorously enforce State and county storm water laws, environmental site design requirements, the Forest Conservation Law, and zoning requirements

mandating green space before approving any final plan for the Chelsea Court development. Furthermore, I request that the County Planning Board require EYA to build a road with only one entrance and exit into the development from Ellsworth Drive, ending in a cul-de-sac.

Sincerely,

Debbie Boger
8501 Mayfair Place
Silver Spring

March 12, 2013

Neil Braunstein, AICP Planner
Coordinator, Area One
Montgomery County Planning Department – MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910
neil.braunstein@mncppc-mc.org

Re: Application Number 120130060: Chelsea Court, 711 Pershing Drive.

Dear Mr. Braunstein,

We, the undersigned, live along Springvale Road and Springvale Lane, directly across the street from the proposed Chelsea Court development. As such, we are among those who will be most directly impacted by the traffic generated by this project. The decisions made by you and the rest of the Planning Board will affect our families for years to come, and so we respectfully request that you give serious consideration to our concerns, described below.

We understand that EYA and/or the Planning Board is considering modifying EYA's preliminary site plan for Chelsea Court so as to allow the general public to drive through the road without being considered trespassers. **We are adamantly opposed to this.** EYA's successful request to have the Chelsea Court property rezoned from R-60 to RT 12.5 was predicated in part on EYA installing signage notifying the public that this internal road would be restricted to use only by residents and their visitors, and that violators would be guilty of criminal trespass. This condition was incorporated into EYA's preliminary site as the following binding element:

10. THE INTERNAL PRIVATE ROAD WILL BE RESTRICTED TO USE BY RESIDENTS AND VISITORS OF CHELSEA COURT AND WILL INCLUDE DESIGN FEATURES TO AVOID CUT THROUGH TRAFFIC SUCH AS LIMITED ROADWAY WIDTH, ON-STREET PARKING, SPECIAL PAVING AT EACH OF THE TWO (2) INGRESS/EGRESS POINTS, SIGNAGE PROHIBITING CUT THROUGH TRAFFIC, AND OTHER CONTROL MEASURES, TO BE FINALIZED AT THE TIME OF SITE PLAN APPROVAL. [Emphasis added]

This binding element was added by EYA to address Seven Oaks/Evanswood residents' repeated concerns about the potential for cut-through traffic in our neighborhood by individuals seeking to use the internal road to avoid traffic along Colesville Road and Wayne Avenue. It was one of the conditions upon which Judge Lynn Robeson of the Office of Zoning and Administrative Hearings (OZAH) granted EYA's request for rezoning. It was one of the conditions upon which the Montgomery County Council affirmed Judge Robeson's decision. If the Planning Board were to unilaterally modify – and therefore nullify – this binding element by lifting the requirement that EYA install signage informing the public that the internal road will be restricted to use only by Chelsea Court residents and their visitors, and that violators will be subject to criminal trespass penalties, then it would be a clear violation and contradiction of one of the main bases upon which the County Council and OZAH relied when making their decision to grant EYA's request to rezone the property to RT 12.5

If the Planning Board and/or EYA wishes to build this development with such a significant modification to the preliminary site plan, and thereby remove the safeguards against cut-through traffic that our neighborhood was assured would be in place, then EYA must begin its approval process anew. It must submit a new plan to the Planning Board, and neighborhood residents must be allowed to testify about that plan before the Planning Board, OZAH, and the County Council before it can be approved.

We urge you to maintain the requirement that the internal road for Chelsea Court be restricted to use only by that development's residents and their visitors, and that EYA install signage notifying the public of this restriction, in accordance with the clear intent of the binding element. In the alternative, and as we strongly prefer, Chelsea Court could be built with a single access point only on Ellsworth Drive; by eliminating the second access onto Springvale Road,

the internal road could be open to the public while ensuring that our neighborhood is not beset by cut-through traffic.

Yours truly,

Michael Garmitz +  8607 Springvale Road

Beverly J. McGaughey) 4 Springvale Lane
Robert E. McGaughey) Silver Spring MD 20910

Roberta E. Bowman 8605 Springvale Road

Jane M. Eisen 8611 Springvale Road

Marcus Corbin 8 Springvale Ln


Charles H. Russell 8 Springvale Lane

Chad B. King 621 Pershing Dr.

Andrea G. Savoy 621 Pershing Dr.

Raquel M. Jell 8603 SPRINGVALE Rd

John J. Mullson 8603 Springvale Rd

Sue Teav  8615 Springvale Rd

Ruth Buckley 10 Springvale Lane

March 13, 2013

Neil Braunstein, AICP Planner
Coordinator, Area One
Montgomery County Planning Department – MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Mr. Braunstein,

I write in regard to Application Number 120130060: Chelsea Court, 711 Pershing Drive: Site Plan # 820130040.

The Board has heard much on this matter from both the affected community and EYA developer. I'll accordingly steer clear of "facts" and instead focus on tactless but honest subjective "observations."

Observation 1: In a contest involving the contrary interests of our community and the developer the Planning Board and County Council have:

- Disregarded pertinent elements of the Master Plan;
- Leapfrogged the Cedar Street "buffer" to plant a high density development in our single family home neighborhood.

Observation 2: It's therefore unrealistic for community members to expect either Board or Council to:

- Care about a bunch of old growth trees and
- Accelerated rain runoff and erosion from degraded slopes

if that might stand in the way of developer profits.

Observation 3: Community members might therefore:

- Continue raising symbolic (if fruitless) protests in defense of their neighborhood and
- Keep this experience in mind when next voting for District 5 and At Large Council membership.

Sincerely,

James Ehrman
612 Woodside Parkway
Silver Spring, Md 20910

March 13, 2012

TO: Montgomery County, MD, Area 1 Planners
ATTENTION: Neil Braunstein

FROM: Joan B. Bissell, neighbor of Chelsea School property

RE: Environmental planning, as related to the property's proposed development by EYA

Here we are in Silver Spring, entering the third year of hoping that Montgomery County will observe its own laws for protecting the environment on the Chelsea School property--and beyond!--with special attention to water flowing down to and polluting Sligo Creek.

We neighbors of the sloping property, with its full canopy of trees and historic house, thank you for your attentiveness to detail, and hope you will be able to explain to us, as well as to the Planning Board, SOME DETAILS WE DON'T UNDERSTAND. Specifically,

Trees and Storm Water Management

A preliminary Memorandum to the PB from then-Senior Analyst Damon B. Orobona, dated May 9, 2011, gives details on the LMA G-892 application filed by Chelsea Residential Associates, LLC (a subsidiary of EYA). It states on page 2 Environmental Impact: No environmental issues are present; a forest conservation plan must be approved at later stages of review;
page 26 From WSSC re. Sewer information: Interceptor capacity is deficient; the impact from this property may possibly require the replacement of existing downstream local sewers for sewer capacity augmentation purposes.
page 33 Referring to Forest Conservation ... current policy is to avoid overlap of conflicting easements (the existing conservation easement, storm water management easements overlap).

Subsequently, we sat in on numerous hearings before the MC Planning Board and before MC Hearing Examiner Lynn Robeson, regarding Zoning Case LMA G-892--and, later, Remand Case G-892. At the January 2012 PB Hearing, Chair Françoise Carrier assured us that EYA had a new Storm Water Management plan--different from the one shown on official Plat 22270. But it wasn't true.

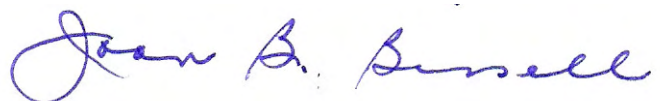
Even more surprising was the testimony given by EYA's lawyer, Mr. Harris, at the G-892 Remand hearing before the Hearing Examiner on March 30, 2012 (pp. 134-135 and pp. 139-140 of the sworn testimony):

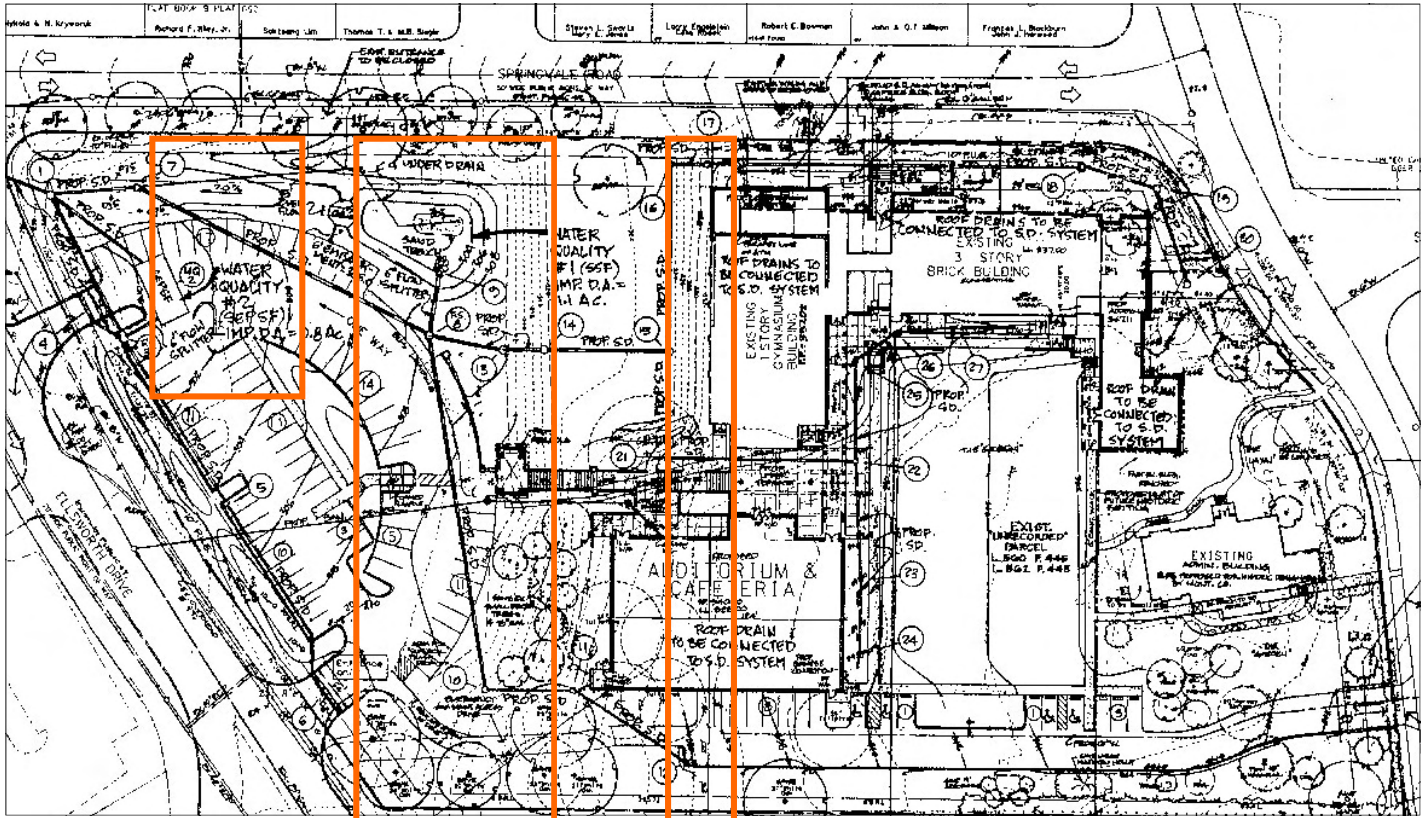
[With respect to density and massing] "I made the note early on in this hearing that the zoning approval does not determine the size, the location, the design of the units. It doesn't fix any forest conservation requirements. It doesn't determine storm water management requirements, the adequacy of utility service, or the final access details." ... "I want to touch briefly on a couple of what I'll call non-issues ... The storm water management and sewer. Mr. Thakkar addressed that. Again, that's not really a zoning issue and it's not an issue that was on remand ... Trees, another non-issue."

WHAT WE DON'T UNDERSTAND

- (1) How can EYA/Bowman Engineering be claiming an "unwarranted hardship" when they knew that zoning had nothing to do with forest conservation & storm water management requirements that they would be expected to meet in the future?! Everyone knows that "one must look before he leaps"!!
- (2) How can EYA be relying on previously approved plans for Chelsea School? A previous plan left much more open space & space for storm water management at the bottom of the hill. (Please see my chart on page 2.)
- (3) How can Montgomery County--with its wonderful environmental-mapping capabilities & new "Shades of Green plan to increase tree canopy in the CBD--ignore the major tree canopy that will be destroyed in the very next block?!
- (4) Why doesn't EYA have to abide by the 4.8499-acre total shown on existing Plat 22270 or by the acreage shown in EYA's signed purchase agreement with Chelsea School--as shown on the DAIC?

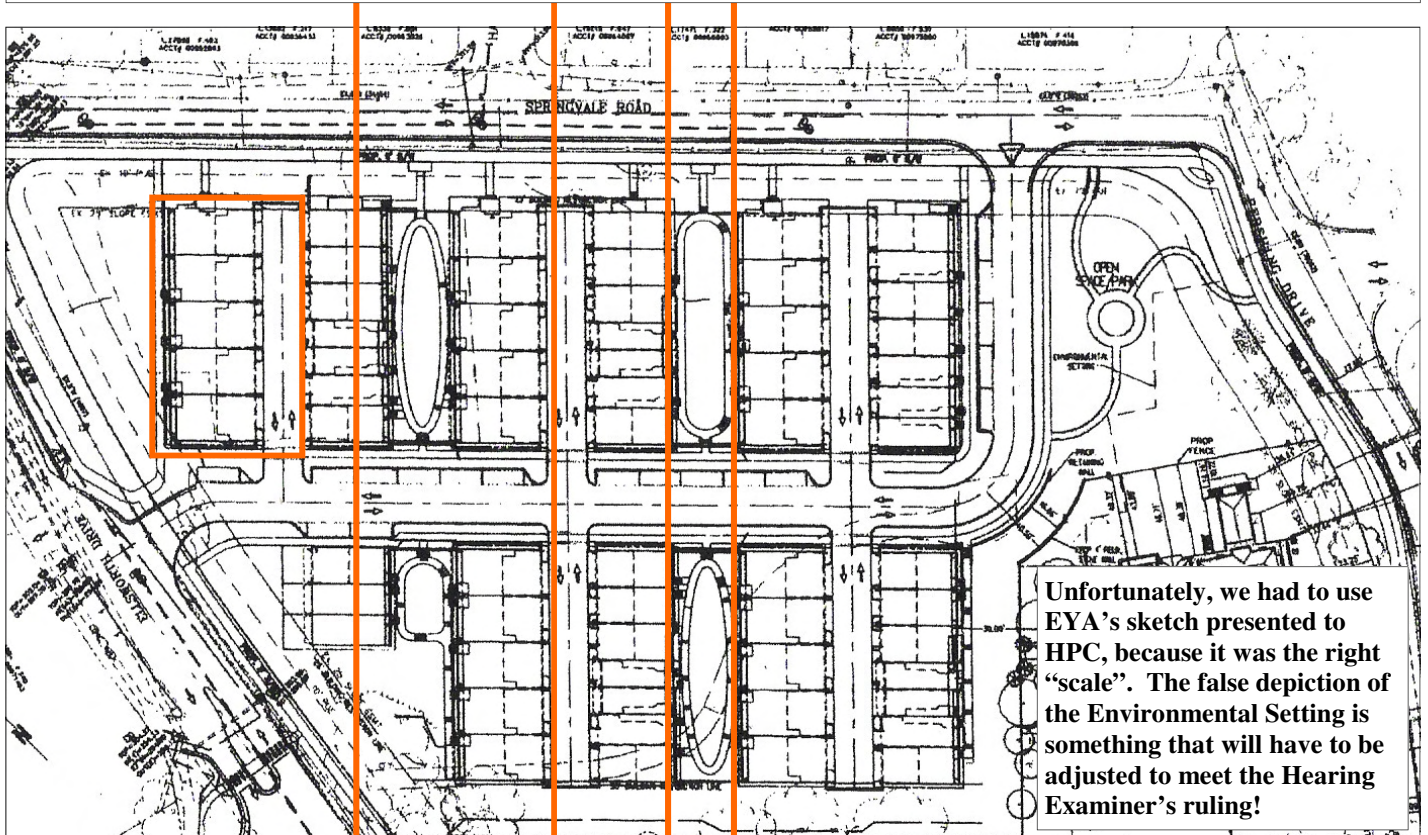
With many thanks for your attention to our concerns. Sincerely,





The above sketch was done by Loiederman Associates, Inc., for Chelsea School, as shown on DAIC #12000130, dated 6/1/1999.

The sketch below is part of current work being done by Bowman Consulting for EYA. Regardless of when earth moving & school building construction was done for either Holy Names or Chelsea School, it seems clear that Chelsea Court townhouses are going to straddle the current topography AND cover the Storm Water Management areas approved back in 1999! (I've drawn some red lines to show how the two sketches line up!)



Unfortunately, we had to use EYA's sketch presented to HPC, because it was the right "scale". The false depiction of the Environmental Setting is something that will have to be adjusted to meet the Hearing Examiner's ruling!

EMAIL: March 25, 2013

TO: Neil Braunstein & M-NCPPC Planning Staff

FROM: Joan B. Bissell, a neighbor of Chelsea School, who loves the DAIC & hates bad math!

RE: Chelsea Court--DAIC #120130060; DAIC #820130040; and Previous DAIC Plans #120000130, dated 12/20/2001; and #419981560, dated 2/28/1998.

My sincere thanks for allowing neighbors the same time-extension offered to EYA (until EOB today-- March 25, 2013) to comment on Tree Variances requested for the Chelsea School property. There is no better topic for shining the spotlight on the bad math that has dramatically affected planning for the Chelsea Court townhouses! We are deeply appreciative of MC's Development Activity Information Center (DAIC)!

Let's start with the preliminary Forest Conservation Plan information, DAIC #820130040: SITE DATA TABLE shows "Acreage of Tract: 5.25 acres (includes offsite LOD)" accompanied by a chart showing the Limits-of-Disturbance line stretching into the backyards of houses with big trees, south of the Chelsea property line. Planning Staff has kindly helped us understand that the LOD is important for saving trees beyond the property line, because underground roots systems extend well beyond property lines & roots must be protected in order for large Significant Trees to survive.

NOTE #22 adds: "Existing Historic Setting Easement boundary has been provided as shown in the Montgomery County GIS data. Per the County's request, this line has replaced the Historic Setting Easement boundary that was originally shown on the approved NRI/FSD per Plat #82270 [sic] by Loiderman [sic] Soltesz Associates, approved on September 6, 2002."

This 5.25 Tract Size (without the LOD explanation) seems to have confused all of us from the very beginning! It was used on May 2011 by then-MC Senior Analyst Damon B. Orobona in his May 9th report, prepared for the initial Planning Board Hearing re. LMA G-892 on May 19, 2011. It is still used today for the Opening Page of DAIC #120130060 & for the Opening Page of DAIC #820130040 plus original data.

DAIC #120130060 has cleared up the confusion:

GENERAL NOTES explain that the NET [SITE AREA] is 4.85 AC. PER PLAT #82270. FYI, I think if you will look at the original Plat, you will see that the first number is smudged & should really be Plat #22270, referenced many times during testimony before the MC Hearing Examiner in 2011 & 2012.

Now please look at a letter dated December 12, 2012, from Certified Arborist Gregg D. Eberly of Bowman Consulting on behalf of EYA dba Chelsea Associates LLC, addressed to Marco Fuster, M-NCPPC regarding "Chelsea Court Tree Variance" (Preliminary Plan No. 120130060, Site Plan No. 820130040).

(Page 3 of letter) "... Normally, the RT-12.5 zone allows development at a density of 15.25 units per acre. The Preliminary Plan and Site Plan, however, seek only 12.19 units per acre (a 20% reduction from the potential for 80 units in the RT-12.5 zone) ..."

Let's do the math:

15.25 units per acre x 5.25 acres = 80.06 units

12.19 units per acre x 5.25 acres = 63.9975 rounded to 64 units, i.e., 63 townhouses plus the historic Riggs-Thompson House, exactly as currently planned by EYA.

What's wrong with this math?!

We now know from DAIC #120130060 that there are only 4.85 acres in Plat 22270 with 37,056 sq. ft. subtracted for the Historic Environmental Setting, under the provisions of G-892.

So the new math looks like this:

1 acre = 43,560 sq. ft.

4.85 acres x 43,560 sq. ft. per acre = 211,266 sq. ft. minus 37,056 sq. ft. for the Environmental Setting = 174,210 sq. ft. or 3.9993 acres rounded to 4 acres

12.19 units per acre x 4 acres = 48.76 units--rounded, I suppose, to 49 units.

The Riggs-Thompson House is safe on its Environmental Setting Easement, but here's the rest of the math:

63 townhouses said to be permitted x 5.25 acres

minus 49 townhouses permitted under the true calculation x 4 acres

14 TOWNHOUSES TOO MANY!!



Needless to say, we would hope this means more Significant & Specimen Trees will be saved, because ... what's the point of identifying & measuring valuable large-canopy trees, if you're only going to cut them down?!

We know that 50% of the four acres is to be set aside as Green Space, and that EYA has promised--per the Hearing Examiner's final report & a Binding Element--to dedicate "in perpetuity" a portion of this 50% as a Public Access area SW of the Riggs-Thompson House, outside of the Environmental Setting, with no trees to block the "viewshed" of the original 1858 portion of the historic house not visible from Pershing Drive. M-NCPPC will have to see the Hearing Examiner's report for details or consult with HPC that has been holding its own hearings.

In the previously mentioned December 12, 2011 letter from Gregg D. Eberly, on behalf of EYA, regarding "Chelsea Court Tree Variance," Arborist Eberly referenced DAIC #120000130 & started with some Background Information:

(Page 1 of letter) "This request seeks to amend a Forest Conservation Plan approved by the Montgomery County Planning Board on September 20, 2001, in connection with Special Exception Case No. S-2405 and Record Plat No. 22270. Those approvals allowed the Chelsea School to redevelop the property and to remove a large number of trees located on the property ..."

I trust that M-NCPPC will look at the information provided to the MC Planning Board prior to their January 26, 2012 hearing to see that

- Special Exception Case No. S-2405 & Record Plat No. 22270 required preservation of "approximately one acre around the [Riggs-Thompson] House in its historical and environmental setting."
- DAIC #120000130 gives details on trees, but the MC Planning Board's 2001 Opinion (with an August 1, 2001 Mailing Date indicated on the copy I have) specified that the "building area is limited to a maximum of 70,845 square feet."
- This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion.
- The MC Planning Board opinion also covered comments regarding "two one-way access drives to Ellsworth Drive" and "conditions of MCDPS stormwater management approval."

I hope that you will find this information helpful & also enjoy looking at DAIC #419981560 dated 2/28/1998. Please note: we need your help, too, with "doing the math" on the steep grades, so we don't end up with mud slides (!), and with making sure that DPS obtains the information submitted to the Planning Board on January 26, 2012 re. the fact that an ancient creek flowing down to Sligo Creek still exists under the pavement on Ellsworth Drive! Sincerely, Joan B. Bissell



Braunstein, Neil

From: DEAN COOPER <coolcoops@verizon.net>
Sent: Tuesday, March 12, 2013 2:01 PM
To: Braunstein, Neil
Subject: Fw: Chelsea Court

--- On **Tue, 3/12/13**, DEAN COOPER <coolcoops@verizon.net> wrote:

From: DEAN COOPER <coolcoops@verizon.net>
Subject: Fw: Chelsea Court
To: FraincoiseCarrierMCP-Chair@MNCPPC-MC.org
Date: Tuesday, March 12, 2013, 1:58 PM

--- On **Tue, 3/12/13**, DEAN COOPER <coolcoops@verizon.net> wrote:

From: DEAN COOPER <coolcoops@verizon.net>
Subject: Chelsea Court
To: neil.braunstein@mncppc-mc.org
Date: Tuesday, March 12, 2013, 1:46 PM

Dear Ms. Carrier,

I have lived in the neighborhood, 416 Pershing Drive, Silver Spring, for over 26 years. I walk to downtown Silver Spring several times a week and notice the difference in temperature when crossing Cedar and Pershing Drive. While development is in many ways positive, the heat island that is created by the downtown development is not. If Montgomery County is serious about local warming and the ecology of the area, cutting down 64 mature trees should not be allowed. Please take a walk on a warm day on Pershing Drive headed to downtown to understand what I am talking about. Has anyone from your office done this? Planting smaller trees is not a true replacement. They can not absorb heat and pollution on such a large scale. Planting tree in other parts of the County is not the answer either, since it will not help with heat island increase on the Chelsea property. This is simple science that can not be disputed.

Please ask EYA to develop an improved plan. The developers bottom line should not influence the Board's decision.

EYE's request to include a new street should not allowed. Drivers that do not live in the development will use it to cut through the neighborhood. Please visit the area at rush hour in the a.m. and p.m. to better understand why this is such a bad idea. We want to preserve our community and were promised that area would be protected from the traffic when the downtown was developed. Please continue to honor this agreement.

Sincerely,

Karen S. Cooper

Braunstein, Neil

From: KSamiy <ksamiy.soeca@gmail.com>
Sent: Tuesday, March 19, 2013 4:57 PM
To: Braunstein, Neil
Subject: Fwd: Connectivity

Please add this to the staff report

via email
March 19, 2013

Neil Braunstein, AICP Planner
Coordinator, Area One
Montgomery County Planning Department, MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910
neil.braunstein@mncppc-mc.org

re: Preliminary Plan Application No. 120130060, site Plan Application no. 820130040
Chelsea Court 711 Pershing Drive, Silver Spring, Maryland 20910

Dear Neil,

Please add this letter to the staff report. It addresses "connectivity" and is a request for Staff to deny the applicants secondary access point onto Springvale Road, because it fails to meet multiple connectivity measures.

I support the human-centered urban planning principle of "connectivity" as I believe in neighborliness. These are the measures why which residents connect: We meet our neighbors not in machines/cars, but by walking and biking, with our children, or our significant others - including our pets, by hosting back yard events, or taking out the trash, or getting the mail, or taking the interpersonal time to connect through conversation to get to know each other. Connectivity is a social and urban planning principle that I know planning staff wholeheartedly support – as integral to the social fabric that binds and connects communities.

Connectivity occurs with pedestrian and bike path connections, along public rights-of-ways, in nature's social spaces or pocket parks, and on private property where homeowners invite each other to share interests and conversations. Connectivity does not occur by adding a road exit/entrance to facilitate extra car/machine through-put – at least not inside a quiet low density historic neighborhood, that was developed and platted 100 years ago.

It makes no sense to me, if smart growth is indeed smart, and purportedly intends to get folks out of their cars, to add a second car through-put entry/exit onto Springvale Road, where it is NOT needed, one block from an urban district, when the applicants motto is 'within walking distance.' This measure of connectivity via cars, is especially unnecessary at a location such as the Chelsea site, that is one block to mass transit, stores, malls, and shops that are a hop, skip and jump away by feet, or about 200-400 feet in this specific case.

I believe regional CAR connectivity - thinking, theorizing and practices- are mistakenly being applied to this very local low density residential location - which needs NO more CAR Connectivity. So I ask that you please reconsider your staff report, and deny the Applicant's request for a SECOND car connection at Springvale Road. Please limit the CAR connectivity to one Sole Connection Point at an Entrance/Exit off Ellsworth Drive.

Please support social and human-centric connectivity instead of machine/car-centric connectivity.

Thank you for listening.

Kathleen Samiy
622 Bennington Drive
Silver Spring, Maryland 20910

via email
March 13, 2013

Neil Braunstein, AICP Planner
Coordinator, Area One
Montgomery County Planning Department - MNCPPC
8787 Georgia Aveune
Silver Spring, Maryland 20910
neil.braunstein@mncppc-mc.org

re: Preliminary Plan Application Number 120130060; Site Plan Application No. 820130040
Chelsea Court 711 Pershing Drive, Silver Spring MD 20910

Dear Neil,

Thank you for taking the time to read this letter. I ask these things occur because they will be most compatible with the surrounding residential R-60 neighborhood and they will achieve a low impact RT-12 cluster development that integrates all the Chelsea sites existing large mature trees and leaves unbuilt the naturally occurring steep slopes.

There is plenty of flat land (the former ball field/of the lower 3.4 acre parcel) is open and empty of trees. This open land is available to build townhouses with a single entry point of access, and a maximum of 40-48 units. Smart Growth and this infill project will be environmentally smarter if the development review requires these environmental conditions be met where by reducing the density below the maximum 64 units that this applicant is striving so hard to achieve.

- Do Not allow the applicant to convey or grandfather the Chelsea SCHOOL Forest Conservation Plan, because the plan applied to a completely different site plan - for a school expansion - that was NEVER built. EYA should be required to implement a NEW FCP - for townhouses - that is specific to their actual site plan. In this way according to the FC law all or most trees over 24- 30" caliber would be saved.
- If the Planning Department goes forward with applying the grandfathered FCP variance, requiring the application that 2 trees #87 (double black cherry 46" caliber) and #45 (white oak 34" caliber) be saved, the applicant should be given a mandate by staff to redesign around these 2 trees, and the staff review process and staff report should be stopped, or paused, until new site plans are reviewed at the staff level, that means postponing the April 25 tentative hearing date before the full Board.
- Supervisory Planners nor staff should give the applicant any option to 'take their chances' to go before the full board until after they have saved the 2 trees and redesigned the site plan,
- Deny the secondary exit/entrance onto Springvale Road.
- Move the proposed townhouses off the existing steep slopes (a 30' elevation change) with highly erodible soils.

Here is why.

TREES MATTER especially large ones over 24-30" caliber.

I understand that the applicant has failed meet and to justify the variance in the possible conveyance or grandfathered Forest Conservation Plan, and therefore staff have denied the developers insistence to cut down tree # 87 a double Black Cherry of 46" caliber, and tree #45 the Maryland State Tree, a White Oak of 34" caliber. Thank you to the environmental review staff, in particular Marco Fuster and yourself for standing up for the trees and the environment by denying the applicant's request to cut down these two magnificent trees.

I support your efforts and ask that the applicant be required/mandated to go back to the drawing board and redesign around these magnificent trees. This denial should stop the staff report process from moving forward to meet a tentatively pre-scheduled April 25 Planning Board review.

What I fail to understand is an apparent planning review process that makes it ok, for the Supervisory Area One Chief or any planning staff to call or communicate with the developer to apprise the applicant that theyt have an OPTION to proceed "to take their chances" knowing the environmental staff have denied the applicants request to cut down tree #87 & #45. There should be no such option. I ask for a FULL STOP to the staff report!

I request that the staff denial be upheld, and not be waived at this juncture, to meet an arbitrary date of submittal of a staff report to the Planning Board. The review timetable should go on pause until a 4th revised preliminary site plan is presented to the staff that preserves the 2 trees, and which the Staff are comfortable approving per the guidelines. So far the developer has presented 3 site plans, August 2012, December 2012 and February 2013. Why allow them an option to proceed, they don't meet environmental criteria.

By the way. In 2005-2007, during a development review (DRC) my neighbor wanted to develop his property and add 2 houses on his large lot. During the preliminary DRC the environmental group objected and denied his site plan because he failed to meet their criteria – his project was 'dead on arrival' he could not develop until he changed his plans. There was NO option to 'take his chances' before the 5 Planning Board members.

Why does this really matter? Because the high density gray and impervious zone of the Silver Spring Central Business District (CBD), one block from our residential area and the Chelsea school site, has only a 14% tree canopy. The CBD has very polluted air full of invisible particles of carbon pollution that the wind blows downhill into the valleys of our green leafy neighborhood next door, which falls into our lungs and into Sligo Creek as it makes its way to the Anacostia River. The CBD heat island effects the wind patterns in my neighborhood and creates excess wind turbulence that fells our old majestic trees. The hotter the infill areas in and around our lower density neighborhood the more trees will fall during extreme storms. This is one reason why our neighborhood tree canopy is insidiously shrinking. This is due to a lack of a balance between nature and the planning of development. Smart Growth needs to be much smarter

environmentally.

The applicant will be reducing the canopy significantly at the Chelsea site, from a verified 45% to a less than 10% canopy, they are planning to clear-cut the site, of about 70 trees, keeping only a few small caliber trees on the historic house site. They are saving just a few large ones over 30" in the required 30 foot setback area- this is NOT enough. According to American Forests a 25% minimum tree canopy makes for healthy air in an urban district, and a 50% minimum tree canopy makes for healthy air in a residential neighborhood. Allowing the applicant to cut down huge majestic trees- or any trees over 24" or 30" caliber, makes this an unhealthy choice. Will the planning department be complicit in further polluting the air and waterways?

Please choose to save and keep every large majestic tree that is humanly possible to choose to save, on this site. This is the last environmental buffer in our neighborhood that buffers us from the uphill pollution of air and noise in the CBD south of Cedar Street. Please use the power of denial, to bolster the importance of keeping all of the largest trees.

The new 2" - 3" caliber trees the applicant purports to be adding to the outer perimeter of this site will never come close to reaching near or over 30" the caliber of the existing trees. The tree canopy at this site will never ever be replaced – you will be choosing to reduce this site to a tree-less canopy that is more unhealthy than the urban district next door. Please do not trade public health for one developer's profits. My understanding is the M_NCPPC is mandated to prioritize smart stewardship of the land before profiteering. We all know this site is packed too tightly with townhouses, there is barely any room for underground or above ground utilities, there is NO room for the vulnerable roots of any new small trees to grow large on this private site or on the surrounding public rights of way - there is not enough soil in these locations to support the nutritional requirements. Please have the applicant revise their site plans around all of the the existing large trees over 24" caliber, especially these 2 trees: # 45 and #87, they are healthy and the pollution busters we sorely need to keep as a public policy necessity.

NEW STREET

Please Do NOT Approve a secondary entrance/exit, require the applicant to create a cul-de-sac or a T-street, with the only entry/exit via Ellsworth Drive. The current legally binding Traffic Protection Plan for our neighborhood put into place over 20 years ago, sets up a series of "DO NOT ENTER" signs on our southern border at Cedar Street, Ellsworth Drive and Pershing Drive. This creates a virtual wall, with no car holes in the dike. ANY site plan that adds a new road – into the Chelsea site – that exits to Springvale or allows entry from Springvale Road or Pershing into the Chelsea site, for any reason, VIOLATES and BREAKS the existing neighborhood Traffic Protection Plan and opens a hole in the dike.

Supporting a secondary entrance/exit off Springvale Road and into this new development will definitely break the legally binding elements of our DO NOT ENTER traffic protection plan. That this applicant is being permitted by Planners and County Traffic Reviewer to build a public or a

private street does not matter. That the applicant/EYA president Bob Youngentoub, who on the record at the Hearing Examine in 2012, justified the second entrance/exit onto Springvale Road by saying “how will our residents drive to Whole Foods” is hypocritical when their slogan is ‘within walking distance” literally one block away.

This secondary entrance/exit is not legally required in the law because the site is less than 75 units. I implore you to focus on the environment, choose to uphold the neighborhood traffic plan, and deny the superfluous and unnecessary request to provide a secondary car access point – which breaks the DO NOT ENTER Traffic Protection Plan that has existed for over 20 years. Traffic studies on car volumes are irrelevant, new signs saying ‘residents only’ are irrelevant. What is relevant is the undermining of the public’s trust in our county officials to go back on their word in this case.

By the way, all along this process since 2010 the owner/president/applicant at neighborhood presentations claimed they wanted to be ‘good neighbors” and they’d take into account the Seven Oaks Evanswood residents wishes. Well this is our neighborhoods wish, no secondary car entrance/exit, recommend a singular entry/exit of cars via Ellsworth Drive.

STEEP SLOPES with highly erodible soils & inferior man-made Stormwater Management

The multiple steps (3) and steep slopes (30 feet high) on the Chelsea site have existed as naturally occurring slopes for over 100 years. The site sits atop the Ellsworth historic and natural stream valley, which was mapped by COG as recently as 1974 (and we have referencing maps dating to 1900). The Chelsea site is abutting and adjacent to this Ellsworth stream valley, the site is uphill 80-120 feet and 5 blocks from the main branch of the Sligo/Bennington Tributary.

The corner of the site from Ellsworth/Springvale to the top of the upper-most hill on the historic 1.4 acre parcel, has a 44 foot elevation change. The multiple slopes vary from 45 degrees - to 65 degrees or more - these are steep slopes. The hills, soils, silt and erosions from this site drain to the historic Ellsworth tributary of Sligo Creek which originates under City Place Mall. This site drains water into the sensitive and legally protected areas of the Sligo Creek Basin, which has been included in a Consent Decree under the Clean Water Act since 2005 between WSSC and MDE, EPA and many nonprofit groups including Audubon Society and Friends of Sligo Creek. That the developer is proposing substituting man-made stormwater management solutions, (in lieu of incorporating existing natural ones) will require expensive annual maintenance to be managed by the new HOA/residents. This is an insufficient and unenforceable solution to water management that will run water into this highly sensitive location.

If the site density is reduced and homes built only on the flat plain of the lower 3.4 acre parcel, the naturally occurring steep slopes and majestic trees can freely do what the man-made engineered solutions can NEVER EVER MIMIC. Water filtration and absorption is successful and effective and efficient and free with large trees with extensive root systems, please do not allow nature to be co-opted by machines, just so the developer can squeeze in a few more townhouses.

Building only on the existing flat areas (the 3.4 acre lower parcel) is reasonable, my calculation is a maximum of 40-48 townhouses. This amount will offer a low impact development which will add significant assurance that in the hundred years to come the down hill streams will not be threatened with sediment, soil, silt, erosion, pollution and sewage from this site.

This proposed site is over packed, it requires significant re-engineering of sensitive steep slopes and soils and places a great burden of impervious surfaces on the earth and slopes. 60- 70% impervious surfaces on just the lower 3.4 acre parcel will be packed by townhouses, roads, alleys, sidewalks, and underground utilities. As you know the applicant has already been forced to remove all mews trees at entrances to accommodate underground utilities - as the utilities last resort location. Of course the applicant is clever and has asked to include the surrounding public right of way (ROW), the historic house lot, and the historic setting all of which is land which surrounds their new development, which unfairly increases their green and open space calculations. However, If you remove all these hidden measurements, and just calculate the privately taxed land, you will find the real measure of new total impervious surfaces might be alarmingly high. Will the EYA/Chelsea Court HOA pay annual taxes on the ROW into perpetuity? If not deny this land being considered in green or open space measurements and calculations. Will the public ROW become the private property of the HOA? I hope not, our streets and sidewalks are our common public spaces - please do not given them away.

Cluster development is intended to be environmentally smart, this site today is only 23% impervious (when adding all the current right of way, the illegal back road, the historic house - and the school buildings.) After these new townhouses are built the impervious surfaces increase significantly to 60-70% on the lower parcel 3.48 acre, where the most townhouses and alleyways will pack the land corner to corner. To me this falls outside the goals of low impact cluster development standards and runs counter to smart environmental planning. Other than the small pocket park of .48 acre - new planned parcel B (at the top of the hill along Pershing) the rest of the open/green space is primarily the surrounding public right of way, all impervious sidewalks and mews impervious pathways, the private land running with the historic house of .85 acre. Is this really low impact cluster development? Not to me. How much acreage is the public ROW, measure it and deny its inclusion in green space, open space and Stormwater calculations. Please calculate these measures by only the private land that will be within the final privately owned HOA boundaries.

Please hold EYA accountable to the highest environmental standards and then some more. Provide the new residents of these townhouses more open space and reduce the density to allow the earth to breathe.

Thank you for taking time to read this environmental plea for the broader public good.

Respectfully,

Kathleen Samiy, 622 Bennington Drive, Silver Spring, Maryland 20910/ SOECA resident

Via email
March 13, 2013

Neil Braunstein, AICP Planner
Coordinator, Area One
Montgomery County Planning Department – MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910
neil.braunstein@mncppc-mc.org

Re: Application Number 120130060: Chelsea Court, 711 Pershing Drive.

Dear Mr. Braunstein,

We live on Springvale Road directly across the street from the proposed Chelsea Court development. We have lived at this location since 1999, and expect to be here for many more years. The decisions made by you and the rest of the Planning Board will affect us for years to come, and so we respectfully request that you give serious consideration to our concerns.

The Development's Internal Road

Our position on Chelsea Court's internal road has long been that it should not connect Ellsworth Drive to Springvale Road, but should instead have only one access point from Ellsworth Drive, with the road ending in a cul de sac inside the development; this would eliminate the possibility of cut-through traffic into our neighborhood, particularly along Springvale Road. However, EYA successfully argued before the Office of Zoning and Administrative Hearings (OZAH) that a road with two access points could work if EYA installed signage notifying the public that the road would be restricted for use only by Chelsea Court residents and their visitors, and that violations would constitute criminal trespass. Hearing Examiner Lynn Robeson was persuaded by that argument, and her recommendation to rezone the property to RT 12.5 was based in part on EYA's representations as described above. Likewise,

the County Council, sitting as the District Council, agreed with Judge Robeson's recommendation based in part on EYA's representations regarding the road's restrictions and related signage.

EYA's representations that restricting the road to use only by Chelsea Court residents and their visitors, with violators being guilty of criminal trespass, would adequately protect our neighborhood from cut-through traffic were memorialized in Binding Element No. 10, which reads as follows:

10. THE INTERNAL PRIVATE ROAD WILL BE RESTRICTED TO USE BY RESIDENTS AND VISITORS OF CHELSEA COURT AND WILL INCLUDE DESIGN FEATURES TO AVOID CUT THROUGH TRAFFIC SUCH AS LIMITED ROADWAY WIDTH, ON-STREET PARKING, SPECIAL PAVING AT EACH OF THE TWO (2) INGRESS/EGRESS POINTS, SIGNAGE PROHIBITING CUT THROUGH TRAFFIC, AND OTHER CONTROL MEASURES, TO BE FINALIZED AT THE TIME OF SITE PLAN APPROVAL. [Emphasis added].

We now understand that the Planning Board is considering modifying EYA's plan for Chelsea Court so as to allow the general public to make use of the internal road without being considered trespassers, contrary to EYA's representations and contrary to the plain intent of Binding Element No. 10. We understand that the Planning Board will instead propose that EYA erect signage informing the public merely that the road should not be used as a cut-through. This is unacceptable.

As noted above, EYA testified before Judge Robeson that it would erect signage informing the public that the internal road would be restricted to use only by Chelsea Court residents and their visitors, and that violators would be guilty of criminal trespass. Please see attached Exhibits A, B, and C, which provide: relevant testimony and statements of EYA; excerpts from the *Hearing Examiner's Report and Recommendation*, dated May 16, 2012, and *District Council Resolution 17-471*, dated June 12, 2012; and, one of EYA's introduced exhibits.

Binding element No. 10 was added by EYA to address Seven Oaks-Evanswood residents' repeated concerns about the potential for cut-through traffic in our neighborhood by individuals seeking to use the internal road to avoid traffic along Colesville Road and Wayne Avenue. If the Planning Board were to unilaterally modify – and therefore nullify – this binding element by lifting the requirement that EYA install signage informing the public that the internal road will be restricted to use only by Chelsea Court residents and their visitors, and that violators will be subject to criminal trespass penalties, then it would be a clear contravention of one of the important bases upon which the District Council and OZAH relied when making their decisions to grant EYA's request to rezone the property to RT 12.5. In that case, we and other interested individuals must be allowed to testify on this new proposal.

The solution to the problem of cut-through traffic remains the option of an internal road with only one access point from Ellsworth Drive, ending in a cul de sac or related terminus. There are no legal obstacles to such a road, and we urge the Planning Board to support this option.

Protecting and Preserving our Environment

Montgomery County has a responsibility to vigorously implement and enforce state and county stormwater laws. EYA's plans violate state and county laws that require managing stormwater by preserving natural features --- which at the Chelsea Court site include numerous mature trees and steep, erodible slopes --- and using sensible design techniques, such as clustered development. The County's forest conservation law also obliges EYA to preserve all significant trees on the site unless EYA can demonstrate that preserving them creates an unwarranted hardship.

However, Montgomery County has failed so far to impose these requirements. Instead, EYA plans to virtually clear-cut the site, destroying 64 trees --- with only a handful outside the historic property being preserved --- and to re-grade nearly the entire area, disturbing highly erodible steep slopes and creating new slopes, including one that takes part of the historic Riggs-Thompson lot and comes within 30 feet of the house itself. The County is also ignoring the zoning requirement that 50% of the townhouse development be maintained as green space accessible to its occupants. Instead, the County is allowing EYA to count the Riggs-Thompson property towards this requirement.

The Chelsea property has 89 mature trees, many more than 100 years old. The 63% tree canopy coverage in our neighborhood is an important part of the green ring around downtown Silver Spring, which has only 14% coverage. Trees help clean the air and offset the heat island generated by the Central Business District, and their root systems are very effective at protecting Sligo Creek and the Anacostia Watershed by controlling stormwater runoff. Trees are also critical to combatting global warming. It would be tragic and foolish to lose these benefits for the sake of allowing EYA to squeeze the maximum number of townhouses it can onto the Chelsea Court site.

Conclusion

EYA's current plan for its internal road will undermine the traffic control measures that for more than 20 years have spared our neighborhood from the cut-through traffic that used to fill our interior streets, especially if the Planning Board proceeds in an injudicious attempt to ignore the requirements of Binding Element No. 10. The solution is a single entrance and exit from Ellsworth Drive, ending in a cul de sac, as this would completely prevent the problem of cut-through traffic. This is not asking too much from EYA.

And, while EYA was granted its request to rezone the Chelsea School property to RT 12.5, this does not mean that EYA has to cram in as many townhouses as possible under that zone. 63 townhouses is simply too much. It will result in the violation of State and county stormwater laws and environmental site design requirements, and lead to the clear-cutting of 64 mature trees at a time when, due to global warming, we need to be preserving as many of our mature trees as possible.

Thank you for your consideration of these important issues.

Yours truly,

A handwritten signature in blue ink, consisting of two names joined by a plus sign: "Michael Gurwitz + Maria Schmit". The signature is fluid and cursive.

Michael Gurwitz & Maria Schmit

EXHIBIT A

The following are excerpts of transcripts of the hearings held by Judge Lynn Robeson, Office of Zoning and Administrative Hearings (OZAH), on the remand of EYA's Chelsea School petition, from March 23-30, 2012. **There is no question whatsoever** that it was EYA's intention that the internal road for Chelsea Court: 1) be restricted to use only by residents and their visitors; 2) that this restriction would be made known to drivers by the use of signage, and 3) that this restriction would be vigorously enforced by laws against trespassing.

March 23, 2012

Response of Aakash Thakkar, Senior Vice-President, Development, of EYA, to question posed by Robert Harris, attorney for EYA, pp. 85-86:

MR. THAKKAR: Not to get into too much detail but we're, what we would submit, probably most importantly, is just as much as folks in the community today don't want to see cut-through traffic, we can't imagine an HOA that would feel any differently. It's going to be their private road, it's their private property. **It kind of ups the ante in terms of you own this piece of property and there's going to be signage, and we will write in the HOA documents that this road will be a private road for, as I said, residents and visitors.** [Emphasis added].

Response of Aakash Thakkar to question posed by Robert Harris, pp. 95:

MR. THAKKAR: **The internal private road will be restricted to use by residents and visitors of Chelsea Court** and will include design features to avoid cut-through traffic such as limited roadway width, on-street parking, special paving at each of the two ingress-egress points, signage prohibiting cut-through traffic and other control measures to be finalized at site plan approval. So what we tried to do was put a binding element in that incorporates much of what I just said with regard to signage, with regard to channelization. [Emphasis added].

MS. ROBESON: I see.

Response of Chris Kabatt, Civil Engineer, Wells and Associations, for EYA, to question posed by Robert Harris, pp. 221-222:

MR. KABATT: Such streets calm traffic and discourage cut-through traffic. Left turns from the private street onto Springvale Road and from Springvale Road onto the private street will be prohibited, as will access onto the private street from Ellsworth and Springvale by nonresidents or their visitors. **Therefore, restricting traffic in all direction to residents and visitors of Chelsea Court because of the private signs, private property signs.** [Emphasis added].

Response of Chris Kabatt to question posed by Michael Gurwitz, SOECA member, p. 250:

MR. GURWITZ: . . . Will we residents of Seven Oaks and Evanswood because [SIC] considered **trespassers** if we use this internal road? [Emphasis added].

MS. ROBESON: Yes –

MR. KABATT: Yes.

March 26

Questions posed by Robert Harris to Michael Gurwitz, pp. 232-233:

MR. HARRIS: Okay. Suppose, couldn't unit owners in this community observe cars coming in Ellsworth and turning directly at Pershing, or at Springvale, and know that they were cutting through, if that ever happened?

MR. GURWITZ: It is possible.

MR. HARRIS: **And if they were cutting through and the sign said, "No Trespassing," they would be guilty of trespassing, is that correct?** [Emphasis added]

MR. GURWITZ: I'm actually not familiar enough with the criminal law regarding trespassing to know whether or not that's the case.

MR. HARRIS: **All right. So if there's testimony later that the trespass laws would allow those people to be arrested, fined \$500, and put in jail for up to a year, you have nothing to conflict with that?** [Emphasis added]

March 30, 2012:

Response of Aakash Thakkar to question posed by Robert Harris, pp. 54-56:

MR. THAKKAR: Fine. So, I think, you know, the good news here is we agreed with the community that this should not be a cut-through, a cut-through. . . So, what we did was Ms. [Cindy] Bar [attorney for EYA] contacted Fred Lees of the Department of Transportation, and he's the lead traffic engineer in operations divisions. We understand that he's the person that can advise on issues like this, and in short, Ms. Bar says that, you know, **we want to be able to have the police police these streets in the same way that they police the streets in the surrounding community**, given the broader policy that the county has in place for this region of Silver Spring, and his response to her, in short was, I'm quoting, this is something we could do for the Chelsea School but he says that we periodically write formal traffic orders to formalize regulations on private property. It is usually stop signs or turn restrictions where they come onto public streets but not always. This is something we could do for the Chelsea School site. That's the entire response. And I think, you know, we maintained even before this that we thought the county

executive would be supportive given, you know, his and their concern over cutthrough [SIC] in this area, and **I think we have strong evidence now that should this move forward that, for example, if you have a sign on Ellsworth, again, mid-block saying, you know, we'll have the private no trespassing signs.** [Emphasis added].

Furthermore, Robert Harris, EYA's attorney, emphasized in his closing argument that the restriction on the use of the internal road only by residents and their guests, and resulting prohibition against trespassing, would be vigorously enforced.

Closing statement of Robert Harris, p. 137-139:

MR. HARRIS: . . . We've proven that the traffic laws, turn restrictions will be enforceable. We have DOT's agreement to work with us on that, and **we have committed through a binding element to seek that approval. So, we have every expectation that those signs will be in place and will be enforced by the police department. To the extent they weren't, we've also offered evidence about the even more rigid penalties for trespassing.** None of us would trespass on somebody else's yard or property particularly if there's a sign that prohibits that, and we believe that that type of prohibition in this neighborhood will doubly, triply, quadruply ensure that there won't be cut-through traffic. [Emphasis added].

Lastly, EYA's sworn testimony that the internal road would be restricted to Chelsea Court residents and their guests was referenced in the closing statement of Dave Brown, attorney for SOECA:

Closing statement of Dave Brown, p. 177:

MR. BROWN: . . . Even using EYAs own metric, vehicular connectivity, it's ironic that **EYA has stated that anyone who enters the private road who is not a townhouse resident or invited guest will be subject to criminal trespass laws.** Seven Oaks Evanswood residents have every right to question just what kind of a connectivity that is, if it would result in their arrest, if they dare take advantage of such connectivity. **It was especially disturbing to watch during the last hearing as EYA and its representatives immediately and vociferously agreed that the rest of the neighborhood would be considered trespasser is [SIC] they were the cut-through traffic.** So, how can a development be compatible and appropriate in a neighborhood where its developer believes that surrounding neighborhoods are potential trespassers.

EXHIBIT B

Below are excerpts that establish that the Office of Zoning and Administrative Hearings and the District Council clearly took into consideration EYA's representations that the internal road would be restricted to Chelsea Court residents and guests, that violators would be guilty of criminal trespass, and that EYA would erect signage so notifying the public, when deciding to grant EYA's request to rezone the Chelsea School property from R-60 to RT 12.5.

From *Hearing Examiner's Report and Recommendation*, dated May 16, 2012:

"The first measure proposed by the Applicant to prevent cut-through traffic is signage to be located at the entrance to the property along Ellsworth Road limiting access to residents only." [Page 47].

"The Applicant responded by citing §31-2 of the Montgomery County Code, which they argue authorizes the County Executive, by Executive Order, to have County police enforce private traffic signs on private property if requested by the owner." [Page 50].

"Mr. Thakkar testified that the signage prohibiting public access to the private streets will be enforced by the HOA as trespassing." [Appendix, page 6].

"In Mr. Kabatt's professional opinion, the proposed development would not permit cut-through traffic through the neighborhood. . . . According to him, Dale Drive is the northern most access to Colesville Road, and is less than a half of a mile from Spring Street. The design of the private street will not permit vehicles travelling north to avoid the restriction on northbound traffic on Ellsworth for several reasons . . . 4. Access to the private street will be restricted to residents by the use of private signage" [Appendix, page 14].

"Therefore, in addition to "no trespassing" signs at the entrances, the Applicant could also have a sign prohibiting right turns from Ellsworth and left turns onto Springvale which the police could enforce. . . . [Aakash Thakkar] read into the record a proposed binding element providing that the Applicant will include in the HOA documents authorization for the police to enforce traffic signs on the property and, upon site plan approval, the Applicant will request a formal traffic order from Montgomery County permitting enforcement of the signs." [Appendix, p. 38].

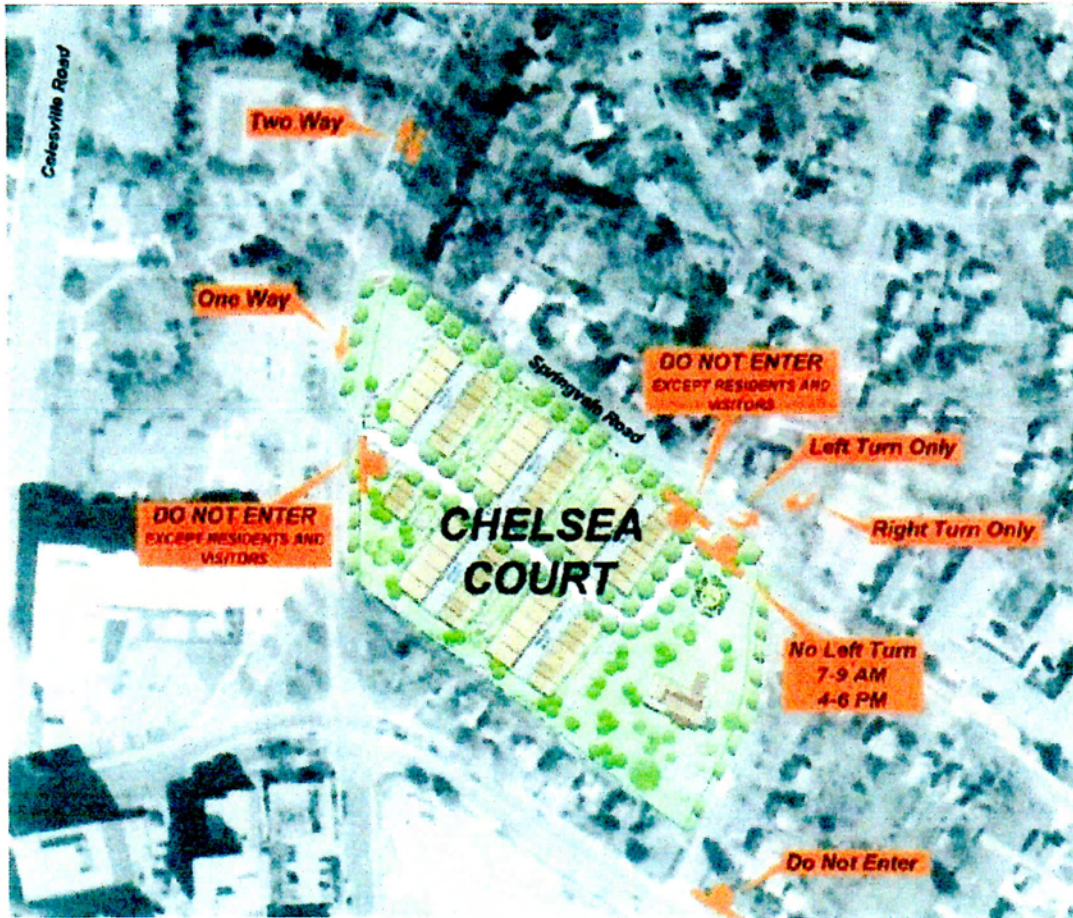
From *District Council Resolution 17-471*, dated June 12, 2012, p. 10. See also pp. 5-6.

"Binding Element Nos. 10, 12 and 14 impose requirements relating to the private road, which include signage limiting access to residents, design improvements to discourage cut-through traffic, and homeowners' association authorization for County enforcement of the private traffic restrictions." [Page 6].

"The Applicant acknowledges that the dual connection of the private street creates an opportunity to circumvent the existing traffic restrictions on neighborhood streets. It proposes several measures to prevent potential cut-through traffic, including signage restricting access to residents" [Page 10].

EXHIBIT C

This aerial photograph with the existing and proposed traffic restrictions superimposed was introduced by EYA to the Office of Zoning and Administrative Hearings as Exhibit 327(e). (Note the proposed signage reading, "DO NOT ENTER Except Residents and Visitors" at either end of the proposed internal road).



Source: *Hearing Examiner's Report and Recommendation*, dated May 16, 2012, p. 47.

Via Email

March 13, 2013

Neil Braunstein, AICP Planner
Coordinator, Area One
Montgomery County Planning Department - MNCPPC 8787 Georgia Avenue
Silver Spring, Maryland 20910 neil.braunstein@mncppc-mc.org

Re: Application Number 120130060: Chelsea Court, 711 Pershing Drive.

Dear Mr. Braunstein,

My wife, Beverly, and I live on Springvale Lane, which is directly across Springvale Road from the lower portion of the Chelsea Court site where EYA is planning to construct 63 townhouses. Therefore we are directly affected by the proposed development. We have lived here for 33 years and we value this location for its many nearby amenities as well as for the natural beauty of the neighborhood. We are members of the Seven-Oaks-Evanswood Citizens Association (SOECA) Chelsea School Task Force and we endorse the all of the points made in their March 13, 2013 letter to you. Without repeating these points, I would like to explain why in my opinion the EYA stormwater concept plan fails to meet the requirements of the Maryland Stormwater Design Manual and also to urge the Planning staff to alleviate the problem of overflow parking from Chelsea Court on Springvale Road and other neighborhood streets.

In late August of 2012 the Bowman Consulting Group sent, via certified mail, to the neighbors surrounding the Chelsea Court site, the drawings accompanying the EYA stormwater concept plan, which was under review by the County Department of Permitting Services (DPS). After studying the plans, I found several instances where the Design Manual requirements were not being met by the concept plan, and I sent a comment letter, dated September 29, 2012, to Mr. Brush of the DPS citing these points. The DPS has subsequently approved the concept plan despite my objections but I am attaching my comments here (see EXHIBIT) to inform the planning staff about the controversies that still exist. The main difficulty with the design is that the large area of impermeable roofs, sidewalks and streets associated with the 63-townhouse footprint is located at the lowest elevation at the edge of the site; therefore there is no downstream area to treat the runoff before it leaves the site via drain pipes to Sligo Creek. Another difficulty is the extensive reliance on permeable pavement, with its difficult long-term maintenance requirements, to provide the groundwater discharge necessary for the upper part of

the site. I urge your planning staff and the DPS to reconsider these points before making any recommendations to the Planning Board about stormwater management.

The arrival of 63 residential units to the Chelsea Court area will probably bring about 100 cars that will need to be kept in this area. Even though each residence has a two-car garage, it is likely that many households will need one of them for storage, leaving roughly 40 cars that can not be parked in the driveways. With only 12 parking spaces in the private road, there will probably be over 25 cars that will have to be parked on the public streets. This creates a pedestrian hazard for the narrow streets in our neighborhood which have no sidewalks. One solution to this problem may be to require EYA to install sidewalks along Pershing and other streets. I urge the planning staff to solve this problem.

Sincerely,

Robert McGaughy
4 Springvale Lane
Silver Spring, MD 20910

EXHIBIT

Richard E. Brush, Manager

September 29, 2012

Montgomery County Department of Permitting Services
Water Resources Section
255 Rockville Pike, 2nd floor
Rockville, MD 20850-4166

Re: Stormwater Management Concept Plan
for Chelsea Court
M-NCPPC Plan Number 1-(TBD)
SM File Number 239939

Dear Mr. Brush,

With this letter I am commenting on the package I received via certified mail on September 10, 2012 from Michael Szynal of Bowman Consulting Group, LTD. This package was sent to residents bordering on the proposed Chelsea Court development, and our home overlooks the site.

The package contains 13 engineering drawings; the concept plan drawing was dated August 17 (fourth submission). However it does not contain the narrative component of the concept plan which Bowman should have sent to you. Since the narrative is supposed to describe the process leading to the plan and demonstrate that it complies with Chapter 5 of the Maryland Stormwater Design Manual, my comments will necessarily be incomplete. Furthermore I am not an engineer and this is my first reading of the manual.

I also received a previous version of the drawings on August 23 via regular mail with a request to respond to you in three weeks. The concept plan drawing in that package was dated August 10 (first submission), so evidently your office was involved in multiple revisions of the original plan. To treat the stormwater from the 63-unit town house complex. this original plan largely relied on a series of concrete-lined "planter boxes", which collect water from roofs and sidewalks into a 4-foot layer of soil, then pass it through layers of sand and gravel and deposits it into drain pipes. These devices do provide limited temporary storage during a storm event and effective filtration, but do not divert water into the ground at the site and instead send it directly into Sligo Creek. Therefore the Environmental Site Design principles were violated by this plan.

In the current plan several sidewalks and the driveway of the Riggs-Thompson (RT) house were converted from impervious surfaces to permeable pavement, two drywells were added to the RT house, and a bioretention area was added to the lower part of the property. These changes do provide some groundwater recharge and, according to a September 23 letter from Richard Klein to David Kuykendall, the recharge is now large enough to meet the Chapter 5 requirements. However Richard stated in a September 20 email to the SOECA Task Force that although the requirements have been met, 83 percent of the runoff flows to devices with underdrains. I interpret this to mean that a large fraction of the stormwater falling on the site still goes directly to Sligo Creek. I am disappointed that the State laws and the County implementation of those laws really do allow a significant amount of stormwater from new developments to enter our natural streams

I would like to direct your attention to several other apparent additional violations of the ESD procedures. In the following paragraphs I have quoted the relevant sections of the stormwater design documents and have indicated why the current plan violates these requirements.

1) The site is obviously very heterogeneous, with the town house complex at the lower end and the relatively green public space and RT house at the upper end.

“When a project is divided into several drainage areas that do not share a common outfall or when the land use is distinctly non-uniform, ESD requirements should be addressed for each drainage area” (Reference 1, page 4).

According to this principle the large area of the permeable driveway of the RT house (large compared to the area of the other permeable surfaces) should not have any bearing on the ESD requirements of the town house section of the site. My strong suspicion is that the recharge requirement for the entire site was met based in part on the recharge from that driveway. The townhouse section, with its impermeable roofs, sidewalks and street, obviously has much greater need for treatment and retention than the green area. If the ESD goal for the town house section (expressed as P_e , the number of inches of rain that need to be treated) were to be calculated separately, it would be much larger than if it were based on the average for the site. Therefore the goal for ESD treatment of the town house area was probably set too low.

2) There are several (related) problems with the oval-shaped permeable pavements located in the “mews” areas between the blocks of buildings.

a) “Permeable pavements shall be located down-gradient of building structures and be set back at least 10 feet from buildings”. (Reference 2, page 5.51).

The plan actually shows that there are buildings down-gradient of each of the four “mews” permeable ovals. Furthermore the plan shows the setbacks of each are closer to 5 feet than 10 feet.

b) “Topography: Pavement surfaces should be gradual (<5%) to prevent ponding of water”. (Reference 2, page 5.46)

The plan shows that the oval on the northeast “mews” has a large slope facing west (estimated 4 foot rise over a distance of 24 feet across the pavement, which is a 16% gradient), The southeast “mews” has a smaller but still excessive slope facing north (estimated 8 feet rise over 105 feet along the pavement, which is a 7.6% slope).

c) “Soils: Sandy and silty soils are critical to successful application of permeable pavements. The HSG should be A, B, or C.” (Reference 2, page 5.46)

The plan shows that a small portion of the permeable pavement on the northeast “mews” and several permeable sidewalk areas are located within the Glenelg type 2UB region of the site, which is classified as hydrologic group D.

d) “Maintenance Criteria: 1) Pavements should be used only where regular maintenance can be performed. Maintenance agreements should clearly specify how to conduct routine tasks to ensure long-term performance. 2) Pavement surfaces should be swept and vacuumed to reduce sediment accumulation and ensure continued surface porosity. Sweeping should be performed at least twice annually with a commercial unit.” (Reference 2, page 5.51).

These are only two of the five elements of the maintenance requirements. I am concerned that DPS will not be able to require and enforce such maintenance agreements in the approximately 50 years of the lifetime of these units, especially considering that RT house owners and the future Chelsea Court Homeowners Association are separate entities. Therefore the addition of permeable pavements to gain DPS acceptance of the plan will probably not be a durable achievement.

References:

- 1) “Environmental Site Design (ESD) Process and Computations”, Maryland Department of Environment. (July 2010).
- 2) Environmental Site Design. Chapter 5 of the Maryland Stormwater Design Manual, Revised 2009.

I hope these comments are useful to you as you further evaluate these plans for compliance with County requirements.

Sincerely,

Robert E. McGaughy
4 Springvale Lane
Silver Spring, MD 20910

Braunstein, Neil

From: Rob Sorey <robsorey@gmail.com>
Sent: Friday, March 15, 2013 3:41 PM
To: MCP-Chair
Cc: Braunstein, Neil
Subject: Make Chelsea Court a model for real environmental design

Dear Francoise Carrier -

My fiancée and I own 8609 Mayfair Place, Silver Spring, MD 20910. I am concerned about the development of the Chelsea Court area. EYA's plans violate state and county laws that require managing storm water and using sensible design techniques such as clustered development. The County's forest conservation law also obliges EYA to preserve all significant trees on the site. This property should be developed according to all laws and regulations. To do so is conscionable and reasonable - something the current plans are not. Beyond this, we have the ability, the foresight, the desire, the knowledge, and the obligation to make Silver Spring and Chelsea Court a model for real environmental design. It will increase the fiscal and intrinsic value of living in Silver Spring, and we can show ourselves to be a model community of conscious and desirable development.

Thank you,

Robert Sorey



Via email

March 13, 2013

Neil Braunstein, AICP Planner
Coordinator, Area One
Montgomery County Planning Department – MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910
neil.braunstein@mncppc-mc.org

RE: Preliminary Plan Application Number 120130060, Site Plan Application Number
820130040: Chelsea Court, 711 Pershing Drive

Dear Mr. Braunstein:

Set forth below are the comments of the Seven Oaks Evanswood Citizens' Association ("SOECA") on the preliminary plan and site plan submitted by EYA to build a townhouse development on the site of the Chelsea School, located at 711 Pershing Drive in Silver Spring. SOECA agrees with the planning staff's determination to date that EYA has failed to justify the grant of a variance, as required by the Forest Conservation Law, for its proposal to destroy two significant trees on the property and that EYA's plans must be rejected on that basis. However, EYA's plans are also deficient in a number of other key respects, including the failure to comply with stormwater requirements, green area requirements, additional requirements of the Forest Conservation Law, the binding elements applicable to the plans, requirements protecting the historic pre-Civil War Riggs Thompson property, and the binding elements and regulations applicable to the proposed private street for the development. Because of these deficiencies, the preliminary and site plans must be rejected until such time as a development is proposed that complies with all applicable laws.

During the zoning hearings for this development, EYA repeatedly represented that the zoning approval did not determine the size, location, total number, or design of the units to be built and that it would unequivocally meet its legal obligations under the forest conservation, stormwater, and zoning laws at the preliminary and site plan phases of the development. Now it is time for the County to hold EYA to its promises and to require EYA to fully comply with all of its legal obligations for this project. At stake are critical natural resources that confer substantial benefits for the public welfare: Sligo Creek, the Anacostia Watershed and the Chesapeake Bay, our urban tree canopy, our soil, and the quality of our air. Montgomery County and EYA have a real opportunity to make Chelsea Court a model for

sustainable urban development by ensuring that the environment and our neighborhood are protected as required by the applicable laws.

Interest of SOECA

The Seven Oaks-Evanswood Citizens' Association ("SOECA") is a county civic association that represents the interests of more than 700 households directly to the north of the Silver Spring Central Business District (CBD). SOECA's borders are Colesville Road (RT 29), Franklin Avenue, Sligo Creek Parkway, Wayne Avenue, Bonifant Street, Fenton Street and Cedar Street. The Chelsea Court project is proposed to be built squarely within the boundaries of the SOECA community, and SOECA has been actively involved in the county proceedings since EYA initiated the development project for the Chelsea School site. During this preliminary and site plan phase, SOECA continues to work to achieve a development that is appropriate for and compatible with our neighborhood and that complies with the legal requirements that protect our environment and community.

EYA Must Fully Comply With the Forest Conservation Law.

Under Section 22A-12 (b) of Montgomery County's Forest Conservation Law, EYA's forest conservation plan must have as its primary objective the retention of existing forests and trees. Certain trees, including trees that are a part of a historic site, champion trees, trees that are 30 inches or more in diameter, and trees that are at least 75 percent of the diameter of the state champion, "*must be left in an undisturbed condition (emphasis supplied)*" unless the applicant meets its burden to show that it qualifies for a variance. The staff has correctly found to date that EYA has failed to satisfy the variance standard for removal of two trees that are greater than 30 inches in diameter, a large cherry (Tree 87) and a white oak (tree 45), as it has not proven that enforcement of the law would result in an unwarranted hardship.

EYA's justification for the removal of these mature and significant trees is that keeping them will require a redesign of its development proposal and will not allow it to build the maximum number of units approved in the zoning case. This purported justification is completely inadequate and fails to rest on special conditions peculiar to the property, as the statute requires. Instead, it rests on conditions or circumstances which are a direct result of the applicant's actions, a circumstance where the forest conservation law *requires* rejection of the variance. EYA can design its development around these two trees, and indeed make them a show case of an environmentally sensitive project. As EYA repeatedly asserted, the schematic development plan used for purposes of obtaining rezoning of the property was merely illustrative and the number of maximum units approved as a result of the zoning case is merely a cap; the plan can be modified. During the zoning process EYA specifically objected to any consideration of the Forest Conservation Law and promised that it would fully comply with that law during the preliminary and site plan phases. It cannot now set up a catch-22 where the zoning approval establishes the unwarranted hardship that allows it to destroy protected trees. EYA has always had and continues to have options for designing the project so as to protect these significant and mature trees. To purposely design the project instead so that it requires removal of significant trees protected by the forest conservation law is a problem of EYA's own making that cannot form the basis for the grant of a variance.¹

¹ In an effort to support its variance request, EYA has misrepresented what transpired during the zoning approval process. EYA's proposal has always been to build the *maximum* number of units allowed under the approved

In addition to the two trees for which planning staff has recommended that the variance be denied, there are 4 other trees that are greater than 30 inches in diameter, trees 29, 37, 51 and 65, that also are protected by the Forest Conservation Law but for which no variance request has been submitted. EYA and planning staff have incorrectly interpreted that law as not applying to these trees based on the effective date of the Forest Conservation Law and an abandoned preliminary plan and forest conservation plan that the Chelsea School, the prior owner of the property, has never implemented in the more than a decade since their approval.

On a preliminary plan and forest conservation plan approved in September 2001, the Chelsea School received approval to destroy several dozen trees, including specimen trees numbered 29, 37, 51 and 65 on the inventory as part of its project to substantially renovate and redesign the school and its buildings. However, the Chelsea School never implemented its development plans and did not cut down these significant trees. Instead, it has abandoned those plans and contracted with EYA to sell the property. Today, EYA is proposing a completely different development project and has submitted new preliminary plans and site plans and new subdivisions of the property as well as a new Natural Resources Inventory (approved 7/16/2012) that are the basis for a new forest conservation plan (first submission dated 8/10/2012).

The Forest Conservation Law contains a transition provision that states that "Any Amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to: (a) a preliminary or final forest conservation plan approved before this Act took effect November 5, 2001." EYA and the staff claim that any trees slated for removal under the Chelsea School's prior plan, which has never been implemented and has been abandoned, are grandfathered in and the protections of the law do not apply with respect to those trees. This reading of the transition provision is incorrect. Before the planning staff and board is a completely new project proposed by a completely different owner. The transition provision was meant to protect existing approved plans in the pipeline. It does not apply to a new set of plans and a completely different project with a new developer. Therefore, EYA must meet the requirements for a variance before it can destroy these beautiful, mature, and significant trees.

Finally, the afforestation that is required in lieu of the current conservation easement on the property must take place on site. The Forest Conservation Law specifically states a preference for on-site afforestation. On-site plantings are essential if the tree canopy provided by the numerous trees that are being clear cut for this development is ever to be replaced even in some small measure. Our neighborhood needs tree canopy for better air, to help achieve clean streams, and to avoid spreading the heat island affect in downtown Silver Spring into the surrounding community. The applicant's unnecessary design proposal to tightly pack rows of townhouses so as to barely be able to squeeze in

zoning classification, and it is doing so here. The entire tract is zoned RT-12.5 and EYA is proposing construction of 12.19 units per acre. EYA has never sought nor is it entitled to any density bonus, which would allow the construction of additional units. Contrary to EYA's assertion, the changes it has made in design and the reduction in units from the original rezoning request filed in 2010 were not voluntarily made, but were made because the District Council rejected its original request for RT-15 zoning on the grounds that EYA failed to satisfy the applicable requirements for the purpose and intent of the zone. All of the green space, setbacks, and land around the historic Riggs-Thompson house which appear in the development plan are required elements without which EYA would not have obtained approval for the rezoning. Indeed, what is notable about the plan is how tightly it continues to be packed because of the primacy of the effort to maximize the number of units on the site.

utility rights of way should not be used as an excuse for eliminating much of the opportunity to replant a sufficient number of replacement native canopy trees on site. EYA's mitigation plan calls for primarily ornamental mitigation trees, which are not sufficient to replace the specimen trees, the 15 additional large canopy trees greater than 20 inches in diameter being removed, or the dozens of smaller, understory canopy trees that do not qualify as specimen trees.

EYA's Development Fails to Comply with Stormwater Law.

EYA's stormwater concept plan does not comply with Montgomery County's Stormwater Management Code, the Maryland Stormwater Management Act of 2007, and the Maryland Department of Environment ("MDE") Stormwater Design Manual. By effectively clear-cutting the site and destroying 64 trees – preserving only a handful outside the historic property – and re-grading to eliminate highly erodible steep slopes, EYA's plans clearly violate *mandatory* requirements in the law to: 1) minimize total site imperviousness by implementing clustered development and other better site design techniques; and 2) use natural areas, in addition to landscape features, to meet stormwater management requirements. See MDE Stormwater Design Manual part 5.1; Montgomery County Stormwater Code § 19-26. Absent compliance with these laws, EYA's preliminary and site plans may not be approved.

The law requires that these mandatory site design elements be exhausted prior to use of structural measures such as those EYA relies on here. When applied to the Chelsea site, the exhaustion – through demonstration of all reasonable opportunities – for use of natural areas, means that EYA must show that it has made *every effort* to use and incorporate into its stormwater concept plan the following three elements: 1) the site's large grove of trees; 2) clustered development (to enable buildings to be built while maintaining the tree grove); and 3) maintaining and protecting the site's steep slopes, a significant portion of which is highly erodible. EYA may not, when developing this site with existing, significant natural areas, ignore those resources and solely rely upon "landscape features" such as rain gardens. Instead, EYA is required to devise methods to protect and incorporate the existing tree grove into the stormwater concept plan and to preserve the site's highly erodible steep slopes.²

Unfortunately and inexplicably, the County has not imposed these mandatory requirements on the applicant and required EYA to demonstrate that it has exhausted the use of the required elements in its site design and stormwater concept plan. Nor has Montgomery County required EYA to submit a site design and stormwater concept plan that integrates stormwater management with forest conservation, as not only intended but required by the Stormwater Management Act of 2007, by the MDE Stormwater Design Manual's basic principles of environmental site design, and by the Water Resources Planning Element Law of 2008. The planning staff and Planning Board, together with the County's Department of Permitting Services, are required to integrate the planning for this site and enforce the applicable legal

² There is nothing in the law or the MDE Stormwater Manual that distinguishes between man-made and natural steep slopes. Moreover, while irrelevant to the applicable legal standard, the steep slopes on the Chelsea School property have been documented as being there almost 100 years.

EYA has also failed to identify in its natural resources inventory another significant natural resource – the Ellsworth stream bed – which abuts the Chelsea School site along an underground tributary of Sligo Creek running from downtown Silver Spring, underneath Ellsworth Drive, and emerging on Bennington Drive.

requirements so as to ensure control of the adverse impacts associated with increased stormwater runoff, as the law intends.

EYA's Development Does Not Satisfy the Requirement to Have 50% Green Area Accessible to the Occupants.

EYA's current plan fails to satisfy the zoning requirement that at least 50 percent of the development be green area. EYA cannot meet this requirement with its current plan because it is improperly counting toward this minimum percentage the green acreage of proposed Lot 64, which will contain the fenced-off, single family Riggs Thompson house and a truncated portion of its environmental setting. The definition of green area does not include an extensive portion of space that will be limited to the use of one single family occupant, will be fenced off from the 63 townhouse owners and the townhouse development, will constitute a distinct and separate lot, and will not even be part of the townhouse development's Home Owner's Association.

The Montgomery County Zoning Ordinance, §59A-2.1, defines green area as follows:

An area of land associated with and located on the same tract of land as a major building or group of buildings, or a prescribed portion of the land area encompassed by a development plan, diagrammatic plan or site plan, to which it provides light and air, or scenic, recreational or similar amenities. *This space must generally be available for entry and use by the occupants of the building or area involved, but may include a limited proportion of space so located and treated as to enhance the amenity of the development by providing landscaping features or screening for the benefit of the occupants or those in neighboring areas, or a general appearance of openness.* Green area may include but is not limited to lawns, decorative plantings, sidewalks and walkways, active and passive recreational areas including children's playgrounds, public plazas, fountains, swimming pools, wooded areas, and watercourses. Green area does not include parking lots or vehicular surfaces, accessory buildings other than swimming pools, or areas of open space so located, small, or circumscribed by buildings, parking or drainage areas as to have no substantial value for the purposes stated in this paragraph. [Emphasis added].

The purpose of this zoning requirement is to ensure that an extensive development with numerous attached houses and numerous occupants, such as the one proposed by EYA here, is not merely a mass of concrete, but that it provides half of its acreage as green area *accessible to the townhouse residents* for their use, enjoyment, and recreation. As set forth in the definition, to be considered green area the space "*must*" be generally available for both entry and use by the development's occupants. Only a *limited proportion* of space that is not accessible to the development occupants can be counted as green space if it provides a general appearance of openness.

Lot 64 in no way can be counted as green area consistent with this definition. It has purposely been separated from the townhouse development both visually and functionally. Any potential sense of "openness" will be eliminated through fencing designed to segregate the single-family home from the adjoining townhome community. This fencing is intended to ensure that this space will function solely as the private yard of the occupants of the single-family detached Riggs Thompson house. This area will be circumscribed by the proposed fencing and so will have "no substantial value" for the residents of the

63 townhouses, who will not have the right to view, walk upon, or sit within this space. Lot 64's residents will be entirely separate from the townhouse residents and, as testified to by EYA before the Historic Preservation Commission on December 19, 2012, will not be part of the home owners association of the townhouse development. Lot 64 comprises a significant portion of the "green space" required for the overall development, but will provide none of the benefits that green space is intended to offer. Of all the parcels that comprise the Chelsea Court development, Lot 64 contains almost the largest acreage of green space, including 27,669.70 square feet, which is 24 percent of the claimed green area. In no way can it be considered only a limited proportion of the space. Therefore, EYA's plan must be rejected for failing to satisfy the 50 percent green area requirement.

EYA's Plans for the Riggs Thompson Property Fail to Comply with the Subdivision Requirements and the Binding Elements of the Zoning Case and to Adequately Protect the Historic Resource.

EYA's plans are also deficient with respect to the Riggs Thompson property and must be rejected on that basis as well. EYA's plans for resubdividing the current tract include subdivision of the environmental setting of the historic Riggs Thompson property. As a result, pursuant to Montgomery County Code §24A-5(j), the Historic Preservation Commission ("HPC") has a statutory responsibility to provide advice to the planning board about the proposed subdivision. However, the HPC has not validly considered or made a recommendation about the subdivision in this case. While HPC held a hearing on September 19, 2012, regarding a theoretical subdivision, there was no actual filed application for a subdivision of the property before the planning department or HPC at that time. At the time of the September 19th HPC hearing, SOECA and its members, adjoining and confronting property owners, and interested parties had no opportunity to review the subdivision application or EYA's justification for it. While SOECA and other parties protested HPC's improper holding of the hearing, HPC did not even consider or address this issue on September 19th. Accordingly, the proposed subdivision must be referred back to the HPC for its advice now that an application has actually been filed and made available for public review.

Even if EYA's proposed subdivision of the Riggs-Thompson property can be considered without a valid HPC recommendation, it must be rejected because it violates the binding elements imposed during the zoning case, violates representations made during the zoning hearing that were critical to the approval of a reduced environmental setting for the Riggs Thompson house, and continues to shrink the property's environmental setting to its detriment. EYA's proposed plans draw the back lot line of the Riggs Thompson property approximately 15 feet from the back stoop of the house.³ This proposed subdivision of the property not only precludes the house from having virtually any back yard, but it also severs the house from its full environmental setting and the land and open space to the north. Ownership and responsibility for the environmental setting will be split among different owners, the owners of the Riggs Thompson property and the townhouse development's HOA, putting at risk yet again the integrity of the ever shrinking environmental setting. EYA's plans also include the planting of new trees on the historic property (without even obtaining the required HAWPs) and significant re-grading, on the west side of the property, both of which further rob the Riggs Thompson house of what was once its open, expansive setting.

³ Although the HPC's September 19th recommendation on the subdivision was premature and thus invalid, it is worth noting that the recommendation included moving the rear lot line so as to increase the backyard by up to 20 feet.

All of these proposals for the Riggs Thompson property violate the representations EYA made to the Hearing Examiner and accepted by the District Council during the zoning case as well as binding element 13. The zoning decision rested on the representations that additional land, maintained in perpetuity as open space and roughly equivalent in acreage to the original 1.4 acre Riggs Thompson house environmental setting, would be combined with the 0.85 acre environmental setting established in conjunction with the Chelsea School's prior planned development so as to provide the Riggs Thompson property with the functional equivalent of its original setting, in keeping with legislative intent. It was important to the zoning decision that this enlarged setting be maintained as open space in perpetuity, as required by binding element 13, so as to open up the house and its environs to significant views from the neighboring streets. Dividing up the environmental setting, splitting the property with a private fence, filling part of the setting with new unapproved trees, and lopping off a large section of the lawn to accommodate the re-grading needed to pack in additional townhouses does not comply with the binding element requiring open space nor with the zoning decision's premise that there would be an enlarged and expanded viewscape for the house.

The plans to separate the house from its existing environmental setting, to create a lot line steps from the rear door, and to carve away through substantial regrading the open space that frames how the historic house is meant to be understood also compromise the integrity of the Riggs-Thompson resource. The history of the environmental setting for this property has been one of continual shrinkage as the County makes accommodations to various proposed developments and cuts up the previous environmental setting in various ways. As time passes and the individual players change, the prior pieces of the setting unconnected to the house are forgotten. Dividing the setting and giving ownership of part of it to the HOA rather than to the Riggs-Thompson home owner will lead to further erosion of the resource and put keeping the setting intact at great risk. Therefore, to protect this resource, if the house lot is to be reconfigured, it can only be done in way that keeps the full remaining environmental setting with the house.

The Proposed Private Internal Road Violates Binding Element 10, Is Otherwise Severely Flawed, and Should Be Redesigned to Enter and Exit Only from Ellsworth Drive.

The internal road, as currently configured, violates Binding Element 10.

A critical issue during the zoning remand process was the ability of the private internal road proposed by EYA, with access points on both Ellsworth Drive and Springvale Road, to undermine existing traffic protection measures and result in cut-through traffic to and from downtown Silver Spring through the neighborhood. SOECA argued strenuously against an internal road that connected Chelsea Court to our neighborhood via Springvale Road. Instead, SOECA argued for an internal road with a single access point on Ellsworth Drive, just south of the "Do Not Enter" sign at Springvale Road, and ending in a cul de sac or similar terminus inside the development. The single access road satisfied all applicable requirements and would completely eliminate the threat of cut-through traffic and therefore be consistent with the 2000 North and West Silver Spring Master Plan's goal that new development minimize neighborhood cut-through traffic.

To obtain approval of its currently configured internal road, EYA represented to Hearing Examiner Lynn Robeson of the Office of Zoning and Administrative Hearings (OZAH) that it would ensure that the internal road would be restricted to use only by Chelsea Court residents and their visitors, and

that it would erect signage warning that violations of that restriction would be an act of criminal trespass. Despite SOECA's vigorous opposition, the Hearing Examiner accepted EYA's assurances that the restrictions and measures it proposed would adequately protect our neighborhood from cut-through traffic, and relied in relevant part on those assurances, as memorialized in Binding Element No. 10, in recommending that EYA's request to have the property rezoned to RT 12.5 be approved. Binding Element No. 10 reads:

10. THE INTERNAL PRIVATE ROAD WILL BE RESTRICTED TO USE BY RESIDENTS AND VISITORS OF CHELSEA COURT AND WILL INCLUDE DESIGN FEATURES TO AVOID CUT THROUGH TRAFFIC SUCH AS LIMITED ROADWAY WIDTH, ON-STREET PARKING, SPECIAL PAVING AT EACH OF THE TWO (2) INGRESS/EGRESS POINTS, SIGNAGE PROHIBITING CUT THROUGH TRAFFIC, AND OTHER CONTROL MEASURES, TO BE FINALIZED AT THE TIME OF SITE PLAN APPROVAL. [Emphasis added].

It has now come to SOECA's attention that EYA's plans for Chelsea Court will not comply with the binding element, but will instead allow the general public to make use of the internal road without being considered criminal trespassers in blatant violation of the representations EYA made to the Hearing Examiner and accepted by the District Council during the zoning case. The language of this binding element clearly restricts use of the internal road to residents and their visitors. In addition, EYA's sworn testimony and statements during the zoning remand unequivocally establish that the internal road for Chelsea Court: 1) would be restricted to use only by residents and their visitors; 2) that this restriction would be made known to drivers by the use of signage, and 3) that this restriction would be vigorously enforced by laws against trespassing.⁴

Binding Element No. 10 was added by EYA and accepted by the Hearing Examiner as a condition of the rezoning. In her *Hearing Examiner's Report and Recommendation*, dated May 16, 2012, Judge Robeson specifically referred to EYA's testimony and statements asserting that: the internal road would be restricted to residents and visitors; that violations of that restriction would be criminal trespass; and, that EYA would erect signage notifying the public of that restriction and penalty.⁵ She even included in that report EYA's exhibit 327(e), which is an aerial photograph depicting the proposed traffic restrictions, one of which reads, "DO NOT ENTER except residents and visitors" at both ends of the internal road.⁶

The District Council similarly relied on binding element number 10 in approving Judge Robeson's recommendation in its Resolution 17-471, dated June 12, 2012. In its resolution, the Council discussed

⁴ See sworn testimony of Aakash Thakkar, Senior Vice-President, Development, of EYA, before Judge Lynn Robeson of the Office of Zoning and Administrative Hearings: *March 23, 2012: pp. 85-86, 95; March 30, 2012: pp. 54-56*. See also the sworn testimony of Chris Kabatt, Civil Engineer, Wells and Associates, before Judge Lynn Robeson of the Office of Zoning and Administrative Hearings: *March 23, 2012: pp. 221-222, 25*. See also statements made by Robert Harris, Attorney for EYA, before Judge Lynn Robeson of the Office of Zoning and Administrative Hearings: *March 26, 2012: pp. 232-23; March 30, 2012: pp. 137-139*.

⁵ See *Hearing Examiner's Report and Recommendation*, dated May 16, 2012, pp. 46-47, 50; Appendix, pp. 6-7, 14, 38.

⁶ *Id.* at p.47.

the potential for cut-through traffic via the internal road but was satisfied that EYA's intention to restrict that road to residents and visitors would, in combination with other measures, prevent that problem: "The Applicant acknowledges that the dual connection of the private street creates an opportunity to circumvent the existing traffic restrictions on neighborhood streets. It proposes several measures to prevent potential cut-through traffic, including signage restricting access to residents . . ."⁷

EYA cannot now unilaterally modify Binding Element No. 10 by allowing non-residents (and non-visitors of residents) to use the internal road, without reopening the zoning case and giving SOECA and other concerned individuals the opportunity to testify on this new proposal.

The current configuration of the internal road is severely flawed and should be redesigned to limit entry and exit to Ellsworth Drive.

The current configuration of the internal road connecting Ellsworth Drive to Springvale Road is severely flawed in a number of ways, resulting in dangerous and problematic impacts on the neighborhood. That configuration should be rejected and redesigned with entry and exit limited to Ellsworth Drive, thereby avoiding the adverse effects on the surrounding community.

Having the internal road exit onto Springvale Road a mere 50 feet from its intersection with Pershing Drive will create a confusing and hazardous five-way intersection at an intersection that already is poorly aligned and leads to dangerous traffic situations in the neighborhood. Springvale Road intersects Pershing Drive, with traffic moving east, west, north, and south along that intersection although the intersection is not fully perpendicular. Adding what is, in essence, a fifth intersection at that point will lead to an even more unsafe situation in which drivers paying attention to upcoming traffic from Springvale or Pershing will suddenly meet with traffic coming out of the development. This situation will be especially acute during morning and evening rush hour, as almost all of the townhouses in Chelsea Court will have two-car garages, with the potential of more than 120 cars added into the mix of traffic that current exists at that intersection. Moreover, the decision to situate the internal road's access onto Springvale Road only 50 feet from Pershing Drive was apparently the result of a last minute meeting between the Montgomery Department of Transportation (DOT) and EYA. SOECA had been told repeatedly by DOT that DOT guidelines called for a 100 foot "tangent distance" between intersections, which means that the proposed road is improperly sited and too close to Pershing Drive. EYA's alignment reduces by half the recommended tangent distance to the detriment of safety and the neighborhood even as it dangerously pours traffic volume into the new five-way intersection.⁸

The fact that the internal road will connect Ellsworth Drive to Springvale Road also means that the existing traffic protection plan, put in place nearly 20 years ago, will be undermined. That traffic plan has effectively prevented cut-through traffic in the neighborhood by prohibiting drivers from using Ellsworth Drive as a means to avoid the heavy traffic on Colesville Road or Wayne Avenue. The internal road will create the ability for drivers to avoid those protective measures as any signage announcing access restrictions depends on an unrealistic expectation of both police enforcement and the ability of residents to distinguish cut-through traffic from permissible traffic.

⁷ District Council Resolution 17-471, June 12, 2012, p. 10. See also pp. 5-6.

⁸ In the event the exit onto Springvale were to be adjusted to address the unsafe proximity to Pershing Road, any new alignment would also have to preclude headlights from being directed into the windows of occupants of Springvale Road; the proper alignment would be facing another road, specifically, Springvale Lane.

All of the problems associated with the current configuration of the internal road can be completely eliminated by redesigning the road to have only one entry/exit point from Ellsworth Drive, with the road terminating in a cul de sac, T-intersection, or similar design. A single entrance road from Ellsworth Drive provides the perfect solution to the traffic problems posed by this development. There are no legal requirements whatsoever that this development have more than a single entry/exit point for purposes of fire or other emergency vehicle needs. Because Chelsea Court will have 64 or fewer units, the internal road can be a tertiary road and therefore end in a cul de sac or similar terminus. Bicyclist and pedestrian access to Springvale Road can easily be created. This kind of design would make cut-through traffic impossible and thereby support the existing traffic protection measures, and it will eliminate the confusing and potentially hazardous five-way intersection described above. The current flawed and highly problematic current configuration for the internal road should be rejected in favor of a single access road as described herein.

Conclusion

For the foregoing reasons, the applicant's preliminary and site plans should be rejected.

Sincerely,

 /mj
Jean Cavanaugh, President

 /mj
Anne Spielberg
Chair, Chelsea School Redevelopment Task Force

Braunstein, Neil

From: Susan Andrea <sandrea5@hotmail.com>
Sent: Tuesday, March 19, 2013 2:53 PM
To: Braunstein, Neil
Subject: Application Number 120130060: Chelsea Court, 711 Pershing Drive, Site Plan # 820130040

Dear Mr. Braunstein,

I am a resident of the Seven Oaks/Evanswood neighborhood, and am deeply concerned about the preliminary plans for the "Chelsea Court" townhouse development being proposed by the developer EYA. My main concerns involve the environmental impact of this townhouse development, and the effect this development will have on neighborhood traffic.

Our environment must be protected and preserved

Montgomery County has a responsibility to vigorously implement and enforce State and County stormwater laws. EYA's plans violate state and county laws that require managing stormwater by preserving natural features--which at the Chelsea Court site include numerous mature trees and steep, erodible slopes--and using sensible design techniques, such as low-impact clustered development. The County's forest conservation law also obliges EYA to preserve all significant trees on the site unless EYA can demonstrate that preserving them creates an unwarranted hardship. However, the County has failed so far to impose all of these requirements.

We applaud and agree with county staffers who are insisting that EYA meet the variance standard before they remove two significant trees on the property. EYA has thus far failed to meet the variance standard, refusing to consider design alternatives that could save those trees. In addition, the County needs to enforce the other laws that protect many of the other trees on the site and its other natural features. EYA plans to clear-cut the site, destroying 64 trees--only a handful outside the historic property would be preserved--and to re-grade nearly the entire area, disturbing highly erodible steep slopes and creating new slopes, including one that takes part of the historic Riggs-Thompson lot and comes within 30 feet of the house itself.

The County is also ignoring the zoning requirement that 50% of the townhouse development be maintained as green space accessible to its occupants. Instead, the County allows EYA to count the Riggs-Thompson House's private property towards this requirement.

The Chelsea property has 89 mature trees, many more than 100 years old. The 63% tree canopy coverage in our neighborhood is an important part of the green ring around downtown Silver Spring, which has only 14% coverage. Trees help clean the air, and the areas around them and their root systems are very effective at protecting Sligo Creek and the Anacostia Watershed by controlling stormwater runoff. It would be tragic and foolish to lose these benefits in order to squeeze the maximum number of townhouses onto the Chelsea site.

Our traffic control plan must be respected and preserved

EYA's site plan includes a new street that will circumvent our long-standing traffic control plan and bring an influx of cut-through traffic into the interior streets of our neighborhood.

Currently, cars from downtown Silver Spring are prohibited from going north into our neighborhood via Ellsworth Drive; they cannot go past a "Do Not Enter" sign just south of Springvale Road, across from the Silver Spring library. This was part of a traffic control plan implemented more than 20 years ago due to traffic cutting through our interior streets as a way to avoid Colesville Road and Wayne Avenue. It was implemented after overwhelming approval in a neighborhood referendum. Thanks to these measures, our neighborhood is no longer plagued by cut-through traffic.

EYA's proposed street would allow cars to bypass the one-way section of Ellsworth near the library. For instance, drivers coming from downtown could enter Ellsworth going north, go through the Chelsea development, exit onto Springvale Road, and take Pershing Drive to get to Dale Drive and the Beltway – just the kind of cut-through traffic that our traffic plan has been preventing for more than 20 years. Proposals by the developer and the county to use signs to restrict entry to cars driven by legitimate visitors and residents are difficult to enforce and unlikely to receive sustained enforcement priority.

This problem could be prevented by requiring EYA to have only one entrance and exit into Chelsea Court via Ellsworth Drive ending in a cul de sac inside the development. There is no legal obstacle to this design, as it would satisfy Police and Fire Department requirements for access, even with the large number of townhouses in EYA's plan. There are no legal or physical barriers to doing so– all it takes is EYA's willingness to slightly reduce the number of townhouses in order to protect our neighborhood from traffic. That is not too much to ask.

Conclusion

EYA was granted its request to rezone the Chelsea School property to RT 12.5, but this does not mean that EYA has to cram in as many townhouses as possible under that zone. 63 townhouses is simply too much. It violates State and county stormwater laws and environmental site design requirements, and will result in the clear-cutting of 64 mature trees at a time when, due to global warming, we need to be preserving our mature trees, not destroying them.

Furthermore, EYA's current plan for its internal road will undermine the traffic control measures that for more than 20 years have spared our neighborhood from the cut-through traffic that used to fill our interior streets. A single entrance and exit from Ellsworth Drive, ending in a cul-de-sac, will completely prevent this cut-through traffic. The County has confirmed that this cul-de-sac would satisfy Police and Fire Department requirements for access to the development.

I respectfully request that the Montgomery County Planning Board vigorously enforce State and county stormwater laws, and environmental site design requirements, the Forest Conservation Law, and zoning requirements mandating green space before approving any final plan for the Chelsea Court development, and that it also require EYA to build a road with only one entrance and exit into the development from Ellsworth Drive, ending in a cul-de-sac.

Yours truly,

Susan Andrea

402 Dale Drive
Silver Spring, MD 20910

Braunstein, Neil

From: Susan Janney <sej926@gmail.com>
Sent: Tuesday, March 12, 2013 12:41 AM
To: Braunstein, Neil
Subject: Application #120130060: Chelsea Court Site Plan Hearing

RE: Application #120130060:Chelsea Court, 711 Pershing Drive Site Plan #820130040

Dear Mr. Braunstein:

As a resident of the Seven Oaks neighborhood, I am requesting that you require EYA abide by Montgomery County's , already established, stormwater and green space guidelines when developing new their new housing project. Please, also, be aware that EYA plans on clear -cutting the land and destroying many 100 year old trees which add beauty and clean air to an already densely developed area. These are environmentally hazardous decisions.

Many years ago the county, in its wisdom, created controlled access to commuter traffic through his neighborhood. The residential streets, constructed 75+ years ago, are narrow by today's standards and not designed for heavy commuter use. Therefore, the county placed barriers in the roads making the streets one-way traffic and placed several "no turn" signs during commuter hours to prevent cut through traffic on the residential streets. Now EYA wants to un-do the county's effective efforts by constructing a new road allowing commuter traffic to bypass the crowded Colesville Road and Wayne Ave by cutting through the narrow residential streets. It will make these little streets a virtual highway for commuters to sidestep the proper roads and make the residential streets unsafe for pedestrians and bicycles. Many of these residential streets have no sidewalks so the heavy commuter will become a very dangerous situation.

Please look carefully at EYA's plan and protect the residents of the neighborhood and their quality of life.

Thank you,

Susan Janney
816 Woodside Pkwy
silver Spring, Md 20910

--

SUSAN JANNEY

Helping Buyers & Sellers for 25+ Years

March 13, 2013

Tom Armstrong
606 Greenbrier Drive
Silver Spring, MD 20910

Neil Braunstein, AICP Planner
Coordinator, Area One
Montgomery County Planning Department – MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910
neil.braunstein@mncppc-mc.org

Re: Application Number 120130060: Chelsea Court, 711 Pershing Drive.

Dear Mr. Braunstein,

As a 20-year resident of the Seven Oaks-Evanswood neighborhood, and as someone who has been active in the Seven Oaks/Evanswood Citizens' Association for most of that time, I am writing to urge you and the Planning Department staff to reject EYA's site development plan as it currently stands. The plan is deficient in its approach to preserving trees; to using the features of the site, such as its wooded areas, to control stormwater runoff; to preserving the environmental setting of the protected historic Riggs-Thompson house; to satisfying the green area requirements under the zoning code; and to preserving the neighborhood's long-standing restrictions against cut-through traffic to or from Silver Spring's Central Business District.

The Planning Department has a key role to play in this process. In particular, it is important to consider the Forest Conservation Law and the Stormwater Management Code together, since the trees and other vegetation on the site are features that can help control stormwater runoff with the Environmental Site Design techniques recommended in the stormwater law. The stormwater code requires that these methods—using the natural features of the site—be exhausted before structural control methods are used, but EYA has made no use of these features.

The Planning staff's refusal to grant a waiver for the removal two of the significant trees on the site is a welcome step in the right direction. The same standards should be applied to the entire site, since the old forest conservation plan, dating from 2001, applied to a totally different development under a different owner. The old plan should not be grandfathered in. Under the current plan, only a few of the trees outside the Riggs-Thompson lot would survive.

It is also important to assure that EYA's plans and the resulting development fully comply with all the County's laws and regulations, as EYA explicitly pledged to do. The regulations for the RT-12.5 zone require 50% of the development to be green space. EYA claims that their plan has 51% green space, but they incorrectly count the fenced-off Riggs Thompson lot as accessible to

the townhouse residents. Without that, the remaining green space is 47% of the townhouse portion of the development.

Finally, EYA should dispense with the through street that is part of the current plan, and replace it with a cul-de-sac opening off Ellsworth Drive. This is the only traffic pattern that would preserve the strictures against cut-through traffic in our current traffic control plan, a plan that required the enthusiastic support of the neighborhood when it was instituted nearly 20 years ago.

For all these reasons, I urge you to send EYA back to the drawing boards for an improved site plan for the Chelsea property.

Sincerely,

Tom Armstrong

Braunstein, Neil

From: max2allie@aol.com
Sent: Wednesday, March 13, 2013 1:49 PM
To: Braunstein, Neil
Subject: Preliminary Plan Application Number 120130060, Site Plan Application Number 820130040: Chelsea Court, 711 Pershing Drive

Dear Neil:

I am writing as a long-time resident of the Seven Oaks Evanswood neighborhood. Our family has lived in the community for more than 27 years. As someone who spends time in the neighborhood each and every day, I have a number of concerns about EYA's Preliminary Plan Application Number 120130060 and would like my observations included in the staff report prepared for the Planning Board hearing on the plan scheduled for April 25, 2013.

First, the development is too dense. The townhomes are so closely packed in that EYA cannot follow the normal standards for builders. They continually ask for waivers from the regulations that were put into effect to benefit both the residents of the new development and those living in the existing neighborhood.

For example, they cannot provide the required greenspace for those living in the townhomes based on their current plans. In order to meet the requirements, they are including land that will be fenced off and not accessible to townhouse residents. Greenspace requirements state that the green area must be on the same tract of land. Yet in their Chelsea Court plan, they are calculating the land on a private lot, Lot 64, and including that area in their greenspace calculations for the townhouse development. If this is allowed, those living in the townhomes will not have the greenspace they are entitled to and will have to go elsewhere to walk their dogs, to sit under a tree or to just enjoy nature. What you are creating is a situation similar to what has evolved in South Silver Spring and the Shepherds Park neighborhood of Washington, DC. Apartment dwellers in South Silver Spring have no access to green space and so they use the Shepherds Park neighborhood--private land owned by residents to walk their dogs or just to sit under a tree. This has created a great deal of friction between the two communities as the Planning Department must be aware. Yet EYA proposes to do the same thing in their plans for Chelsea Court. Lot 64 will be privately owned and is a separate tract of land from that owned by the Chelsea Court Homeowners Association, yet EYA is using Lot 64 to meet greenspace requirements.

The waiver for the internal road to exit on Springvale puts it closer than the required distance from the Springvale-Pershing Drive intersection. This intersection is already unstable due to the fact that Springvale does not line up evenly on either side of Pershing. In addition, cars heading south on Pershing are not to enter the intersection, so there is no stop sign there. This DO NOT ENTER restriction is routinely violated as traffic congestion increases on Wayne Avenue. There is no enforcement of the violations. Yet, EYA was given a waiver to add additional cars to this intersection even closer to the intersection than what is normally allowed. I simply cannot understand the logic here. It is my belief that no additional cars should enter or exit on Springvale Road. Chelsea Court should limit the increased traffic to Ellsworth Drive, a wider, more open road with sidewalks I might add.

EYA continues to ask for waivers to remove the trees that were not grandfathered in for removal under the previous Chelsea School plan. EYA's Forest Conservation plan has not been approved because it does not meet the guidelines set for removal of trees. Like everyone else, they should have to meet those guidelines and not be permitted to cut down trees that are protected by regulations. Let them change their design to incorporate the trees and provide additional green space around those trees so that they can meet the greenspace requirements.

EYA is asking to subdivide the historic setting around the Riggs-Thompson House to create a private lot so they can sell the house as a single family home. Testimony before the Hearing Examiner showed that both the Planning Board and the County Council always intended that the original parcel (1.4 acres) on which the House was located at the time of designation should be the Historic Environmental Setting if the Chelsea School did not move forward with their expansion. They did not and have sold the land to EYA. The Hearing Examiner ruled that EYA must leave 1.4 acres in open space around the Riggs-Thompson House (binding element 13). EYA is now violating that binding element by

subdividing the 1.4 acre space to create a private lot which will then be fenced off from the remaining Environmental Setting. This absolutely cannot be allowed. Each successive development on that land is eroding the space that both the County Council and Planning Board stated must remain with the property. EYA also proposes to begin the grading necessary for its townhouse development within the Environmental Setting. This further erosion of the land around the House defeats the whole purpose of an Environmental Setting. It is designed to provide a view to the house that dignifies its historical significance.

The Chelsea Court project has the promise of becoming something that could be a model of melding current environmentally sustainable practices with historic preservation. Yet in its current state it does neither.

Back to the drawing board.

Sincerely,

Vicki Warren
503 Pershing Drive
Silver Spring, MD

20910

301-537-6572



ideas that work

Attorneys at Law

3 Bethesda Metro Center, Suite 460
Bethesda, MD 20814-5367

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Robert R. Harris

Tel. (301) 841-3826

Fax (301) 347-1779

rrharris@lerchearly.com

Attachment I

October 31, 2012

VIA HAND-DELIVERY

Francoise Carrier, Esquire
Chair, Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: EYA-Chelsea Residential Associates, LLC (Chelsea Court -
Preliminary Plan No. 120130060)

Dear Chair Carrier:

We represent EYA-Chelsea Residential Associates, LLC, the Applicant in this proceeding. The purpose of this letter is to request two waivers under Section 50-38 of the Subdivision Regulations. The first is a two-part request concerning road standards and the second concerns the resubdivision criteria.

I. Road Standards
A. Chelsea Court

Section 50-29(a)(2) states that: "...individually recorded lots shall abut on a street or a road which has been dedicated to public use or which has acquired the status of a public road." The subject property will be served by an internal road (called Chelsea Court) as well as a series of alleys that provide access to the rear-loaded townhouses. Chelsea Court meets the objectives of the subdivision regulations. The road is being constructed to the width and dimensions of a public road and subject to the typical standards for such roads. It will provide full access to the community for residents, visitors, services (post office, trash, repairmen, etc.) as well as fire and rescue services. To that extent, the Department of Fire and Rescue Services already has reviewed the road and confirmed that it provides appropriate access in the nature of a public road. Similar to other public roads in the adjoining community, at the request of local residents, cut-through traffic will be restricted. (For example, Ellsworth Drive adjoining the property is a one-way movement and turn restrictions are prohibited from Ellsworth onto Cedar Street with the exception that library patrons can make a left turn onto Cedar. Similarly, Pershing Drive has access restrictions that prevent cut-through traffic as do other streets in the neighborhood). Subject to such restrictions, however, Chelsea Court will function like a public street. Therefore, we do not believe a waiver is required for Chelsea Court; to the extent it is determined that a waiver is required, this letter so requests one.

In addition to the positive ways in which the road design meets the objectives of Section 50-29(a)(2) there are substantial justifications for any required waiver, and the absence of the waiver would create undue hardship both for the applicant and the broader

community. First, during the approval of the Schematic Development Plan (“SDP”) and rezoning for this property, the community expressed concern about cut-through traffic. As a result, the applicant agreed to include turn restrictions and measures that would preclude cut-through traffic. Second, in response to community comments, a Binding Element was included in the approval that incorporated this very road design and the same traffic restriction. That Binding Element was reviewed by and supported by Park and Planning Commission staff, the Montgomery County Planning Board, the Zoning Hearing Examiner and the Montgomery County Council, stating the following:

10. The internal private road will be restricted to use by residents and visitors of Chelsea Court and will include design features to avoid cut-through traffic such as limited roadway width, on-street parking, special paving at each of the two (2) ingress/egress points, signage prohibiting cut-through traffic and other control measures to be finalized at the time of site plan approval.

Applicant now is seeking to comply with the roadway design and traffic restrictions approved in the SDP. Third, this restriction is similar to other restrictions already in place in the neighborhood on roads dedicated to public use and is similar to such restrictions approved on public roads elsewhere in Montgomery County. The private road, however, enables the mandated restriction to be implemented more easily than if it were a dedicated public road. It thus serves the mutual purposes of enabling residents along Chelsea Court to gain access to the surrounding public roads, and allows public access to the extent it does not constitute cut-through traffic, while ensuring the continuation of neighborhood traffic restrictions supported by the community. Fourth, the presence of an approved SDP with this road design, and a Binding Element mandating its restrictions, certainly constitutes the unusual circumstances and practical difficulty that support the waiver. Finally, this request is the minimum necessary to provide relief from the requirements, the road will function as a public road in all respects with the exception of restricting cut-through traffic. It is not inconsistent with the purposes and objectives of the general plan, as reflected by the Planning Board’s and County Council’s findings that the SDP is consistent with the Master Plan. It is not adverse to the public interest, being expressly conceived to serve the public interest.

B. Alleys

In terms of a road design waiver, as noted above, townhouse units in this project will have direct driveway access via private alleys. Visitor parking is provided along Chelsea Court with the alleys providing access only to the rear of the units themselves. Turn-arounds have not been included at the end of the alleys because they would serve no necessary purpose given that the only users of the alley are those directly accessing the garages along with alley. Moreover, the alleys and the connecting driveways are wide enough to enable vehicles to turn around if required. None of these alleys is necessary for fire and rescue access because such access is being provided by Springvale Road and Chelsea Court pursuant to the approvals of Fire and Rescue Service.

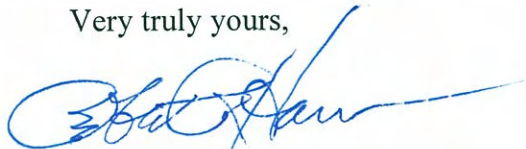
This design has been approved in other projects, including the Brownstones of Wheaton and Casey 6 & 7 for similar reasons. The alleys have been designed in this way in response to community comments and the desire to avoid visual intrusion to the west and north, while providing a large green area along Springvale Road. The addition of turn-arounds at the ends of these alleys would be contrary to those purposes. Turnarounds at the ends for the alleys would affect the building restriction lines and adversely impact the design plan worked out during the rezoning/SDP approval. Therefore, to the extent required, applicant seeks a waiver under Section 50-38 with respect to the public road requirements under Section 50-29(a)(2) of the subdivision regulations. The same findings are applicable for this waiver request that are stated above with respect to any potential waiver regarding Chelsea Court.

II. Resubdivision Criteria

Second, to the extent required, we request a waiver under Section 50-38 with respect to the resubdivision provisions in Section 50-30(b)(2). As noted above, the subject property was rezoned by the District Council from the R-60 zone to the RT-12.5 zone pursuant to Local Map Amendment G-892. As such, there are no other properties within the block, neighborhood or subdivision that are similarly situated. Moreover, the inherent implication of the rezoning from R-60 (single family) to RT-12.5 (townhouse) and the plan for the site approved in the Schematic Development Plan, reflect townhouse redevelopment in the very form now reflected in the Preliminary Plan and Site Plan. The Planning Board has long held that properties subject to a rezoning are not also subject to the resubdivision requirements of Section 50-30 for obvious reasons. To the extent a waiver is required, however, this letter requests such a waiver. As with the other waiver, this is necessary to avoid practical difficulties and the unusual circumstances of a rezoned property specifically for the very development being proposed. This relief is the minimum necessary to provide relief, and is not inconsistent with the purposes of and objectives of the General Plan. This is reflected by the District Council's conclusion that this rezoning and the development reflected in the Schematic Development are consistent with the Master Plan and is not adverse to the public interest.

We have enclosed a check in the amount of \$4,780 to cover the filing fee for these two waivers, a completed application form and the other materials required for approval of these waivers.

Very truly yours,



Robert R. Harris

Enclosure

Francoise Carrier, Esquire
October 31, 2012
Page 4 of 4

cc: Neil Braunstein
Robert Kronenberg
Aaskash Thakkar
McLean Quinn
Michael Szynal



Attorneys at Law

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rrharris@lerchearly.com

December 5, 2012

Mr. Neil Braunstein
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: EYA – Chelsea Residential Associates, LLC (Chelsea Court – Preliminary Plan No. 120130060)

Dear Neil:

By letter of October 31, 2012 addressed to Chair Françoise Carrier, we requested a waiver, under Section 50-38 of the Subdivision Regulations, of the provision in Section 50-29(a)(2) generally requiring lots to front on a public road or one that has achieved the status of a public road. Since then, we have had additional discussions with you and Robert Kronenberg concerning our belief that Chelsea Court meets the requirements of Section 50-29 such that a waiver should not be required. You have asked us to submit our analysis in writing to you to enable you to evaluate our position so that you either can support the conclusion that Chelsea Court will have the status of a public road such that no waiver is required or, alternatively, that you will have the justification for such a waiver, if required.

I. FACTUAL BACKGROUND

Like the roads in many townhome projects in Montgomery County, Chelsea Court will be privately owned and maintained. Nevertheless, it has been designed to meet all public road standards of the Montgomery County Department of Transportation (“MC-DOT”) and to meet all fire and rescue access requirements applicable in the County. There also will be a recorded Public Access Easement allowing the general public to use the road as well.

At the same time, however, cut-through traffic has been an issue for the neighboring community for a number of years. As a result, some years ago, MC-DOT installed physical barriers, signage prohibiting entry into the neighborhood at certain points, and turn restrictions at others, all designed to protect the neighborhood from cut-through traffic. During the rezoning approval for Chelsea Court and the approval of the Schematic Development Plan (“SDP”), neighbors complained that Chelsea Court might expose the neighborhood to cut-through traffic that had been avoided through the entry restrictions discussed above. Although the applicant disagreed with the likelihood of cut-through traffic, they did agree to certain design features for Chelsea Court and to the installation of signage prohibiting cut-through traffic. That agreement then became a Binding Element. The SDP and the Binding Element itself were reviewed and supported by MC-DOT, Planning Staff, the Planning Board, the Zoning Hearing Examiner and the Council. In order to conform with the Binding Element and the SDP approval, applicant proposes to install signage at the two entrances to Chelsea Court stating “No Through Traffic/Chelsea Court Access Only.”

II. ANALYSIS

A. Permissibility of Traffic Restrictions

Public roads regularly have restrictions with respect to the type of vehicles, direction of travel, hours of access and other such restrictions. None diminishes the status of the roads as public. Even more relevant to our particular access restrictions is the County's ability to prohibit "through traffic" on public roads. The Code of Montgomery County Regulations ("COMCOR"), Section 31.69.01, allows all types of neighborhood traffic restrictions. These measures were developed a number of years ago to enable neighborhoods, such as Seven Oaks/Evanswood, to protect themselves from what the Regulations identify as "non-local traffic" and "through traffic." These Regulations expressly allow the type of restriction proposed here. They allow neighborhoods to request, and MC-DOT to install, "traffic controls which directly restrict or prohibit access into or through" an area. This includes signage, in the words of the Regulations, to "discourage non-local traffic in a particular neighborhood or on a particular neighborhood street." Through such measures, the regulations define a permissible "access restriction" as "a prohibition or barrier preventing full or directional entry into or through a particular street..." and "through traffic" is defined as "vehicular traffic entering or exiting a neighborhood without origin or destination in that neighborhood." Allowable traffic controls include signs such as we propose, that establish turn or entry restrictions. Significantly, these measures are permitted for public streets with the explicit conclusion that such entry and turn restrictions prohibiting through traffic do not affect the public road status of the particular street. As such, they clearly are permitted on a private road.

In many respects, the proposed access restrictions for Chelsea Court are significantly less severe than the access restrictions on some public roads. For example, there are numerous locations in the down county (such as both Ellsworth Drive and Pershing Drive) where movements into or out of a neighborhood on a certain street are completely prohibited. These restrictions do not deprive that road of public road status. In our situation, access to all will be allowed and there will be a public access easement. The signage restrictions will prevent only through traffic as defined in COMCOR, i.e. that not destined to or originating at the homes in the Chelsea Court community. These restrictions will not treat Chelsea Court residents differently from non-residents. The proposed signage would mean that all drivers regardless of where they live have access to Chelsea Court for the purpose of origins and destinations on Chelsea Court but that no drivers may cut through Chelsea Court as a means of navigating to different destinations.

B. Consistency with Subdivision Regulations

We also believe the access restrictions established during the Chelsea Court SMA conform with the objectives of the Subdivision Regulations. Clearly, not every road is required to provide through access to be a public road or to achieve that status. Some public roads are dead end streets or cul-de-sacs and others may have turn restrictions that prohibit through movements. Nevertheless, they are public streets and lots can front on them. We believe the objective of the Subdivision Regulations is to ensure that homes are built on roads that provide adequate access for the homeowners, their visitors, deliveries, service people, fire and rescue and others. Chelsea Court clearly does that as reflected in the review and approvals to date.

C. Enforceability

You also have asked about the enforceability of the proposed signage. This should not affect a conclusion that the road functions as a public street. Nevertheless, we believe the traffic restriction will be enforceable whether Chelsea Court is a public or private street. Section 11-127 of The Transportation Article of the Maryland Annotated Code, which provides the underlying foundation for enforcement of motor vehicle operations, defines a highway as “the entire width between the boundary lines of any way or thoroughfare of which any part is used by the public for vehicular traffic, whether or not the way or thoroughfare has been dedicated to the public and accepted by any proper authority....” Section 21-101.1 states further that provisions of the Title relating to driving of motor vehicles apply to private property as well as public roads stating: “a person may not drive a motor vehicle in violation of any provision of this title on any private property that is used by the public in general....” Section 21-201, in turn, requires obedience to all traffic control devices. Pursuant to these provisions, Maryland’s highest court has ruled that drivers may be ticketed and fined for violating provisions of the Transportation Article even if those operations occur on private property. (See United States of America v. Julian M. Ambrose (403 Md. 425, 942 A.2d 755 (Md. 2008)). Similarly, Montgomery County Code Section 31-2, allows the Montgomery County Police to enforce turn restrictions relating to private property.

D. Examples

Finally, you have asked if there are any examples of the type of entry restrictions we propose. I do not believe there is any requirement that there be an example for a restriction, given the all-encompassing provisions of COMCOR Section 31.69.01 and the permissibility there of signage prohibitions for through traffic. Nevertheless, we have provided you with information including a photograph of a sign on Bradley Boulevard prohibiting through traffic on West Lane. That sign states simply “Local Traffic Only” Although one of the City Staff members in the Town of Chevy Chase indicated his belief that such signage restrictions are not enforceable, we believe the clear letter of both the COMCOR regulations and the Transportation Article of the Maryland Code indicate that they are. We also referenced the signs on the service drive portion of Connecticut Avenue, near Randolph Road, that allow local traffic only. Since we talked, we have found another on Baltimore Avenue at Philadelphia Avenue in Takoma Park.

III. CONCLUSION

Neil, based on the provisions in COMCOR, the motor vehicle laws in the Transportation Article of the Maryland Annotated Code, and cases decided in Maryland such as United States v. Ambrose, we believe that traffic restriction being proposed for Chelsea Court is completely appropriate and is fully enforceable. It would be allowed on a public road under the COMCOR regulations. As such, its restrictive nature does not diminish the functionality of Chelsea Court as a public road, open to any interested user subject to the restriction against cut-through movements.

Finally, there are many examples of signs prohibiting “through truck traffic” including those along Wisconsin Avenue at Oliver Street and Grafton Street just north of the Friendship Heights CBD. Trucks may enter for local deliveries and services, but not for through traffic just as cars will be restricted on Chelsea Court.

Mr. Neil Braunstein
December 5, 2012
Page 4

If, for some reason, you do not agree, we ask that you take this matter to the Planning Board for their determination of this project's satisfaction of the Subdivision Regulation provisions in Section 50-29. Should the Planning Board determine that the road does not meet that requirement without a waiver, we ask that a waiver be granted under Section 50-38. The restrictive signage is important both because of the Binding Element in the SMA and because of the community's long standing support for traffic restrictions that prohibit cut-through traffic. The presence in the approved SDP of this road design and the proposed traffic restriction would create an undue hardship both for the applicant and the broader community if that restriction is not allowed. Similarly, the request is the minimum necessary in order to provide relief from the requirements. As noted above, the road will function as a public road in all respects. The signage will merely prohibit through traffic as defined in COMCOR and this restriction will be consistent with those permitted by COMCOR. Finally, the combination of events including the comprehensive system of traffic restrictions in the Seven Oaks/Evanswood neighborhood, the previous determination that the road should not extend from Ellsworth Drive to Pershing Drive, but, rather, from Ellsworth Drive to Springvale Road, and the Binding Element in the SMA, all create unusual circumstances that justify a waiver should one be required.

Cordially yours,



Robert R. Harris

cc: Robert Kronenberg
Aakash Thakker
Mike Szynal
McLean Quinn



December 13, 2012

Ms. Stephanie Marcus
EYA
4800 Hampden Lane
Suite 300
Bethesda, Maryland 20814

ECS Project No. 01:16669

Reference: Montgomery County Regulations Section 50-32

Dear Ms. Marcus:

As requested by your email dated November 15, 2012, ECS Mid-Atlantic, LLC (ECS) has prepared this letter addressing Montgomery County's questions regarding the proposed development located at the above-referenced project site. Specifically, the County has requested an opinion on whether the planned development will result in unstable slopes per Section 50-32 of the County's regulations.

Based on our review of the site plan provided by EYA, the final grading approach includes less severe gradients than those which currently occupy the parcel in question. The new grading will be facilitated via site retaining walls and other ancillary earthwork operations associated with the site's development. Provided that the recommendations detailed in our *Report of Subsurface Exploration and Geotechnical Engineering Analysis* dated July 1, 2010 are incorporated in the project's final design, it appears that the proposed development will not result in unsafe conditions as defined by Section 50-32.

Should you have any questions or need anything further, please feel free to contact the undersigned.

Respectfully,

ECS MID-ATLANTIC, LLC


Michael C. Blanchino, P.E.
Geotechnical Department Manager


Manol P. Andonyadis, P.E.
Principal Engineer

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Attachment K

HISTORIC PRESERVATION COMMISSION

Isiah Leggett
County Executive

Leslie Miles
Chair

March 19, 2013

Ms. Françoise Carrier, Chair
Montgomery County Planning Board
8787 Georgia Ave
Silver Spring, MD 20

RE: Preliminary Plan Review No. 120130060

Dear Ms. Carrier:

Section 24A-5(j) of the County Code charges the Montgomery County Historic Preservation Commission with advising "the planning board, in the event of subdivision of land containing an historic resource, on the appurtenances and environmental setting necessary to preserve it."

The Commission on August 15, 2012 considered a proposal to subdivide the Chelsea School property. Due to a noticing issue, the Commission reconsidered the proposal on September 19, 2012. The Chelsea School property includes the Riggs-Thompson House (MIHP #36/8), a site listed in the Master Plan for Historic Preservation.

After considering the submission and testimony presented by the applicants, neighborhood and historic preservation organizations, and individuals, the Commission voted 4-1 to recommend that the Planning Board support the proposal as submitted, having found that the proposed resubdivision creating a lot for the Riggs-Thompson House is sufficient for the preservation of the historic resource. While finding the proposal to be sufficient, the Commission suggests that moving the rear (north) property line an additional ten to twenty feet north would improve the proposal.

Sincerely yours,

Leslie Miles, Chair



Resolution No.: 17-286
Introduced: October 18, 2011
Adopted: October 18, 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-892 FOR AMENDMENT TO THE ZONING
ORDINANCE MAP, Robert R. Harris, Esquire and Cindy Bar, Esquire,
Attorneys for Applicant, Chelsea Residential Associates, LLC, OPINION AND
RESOLUTION ON APPLICATION Tax Account No. 13-03381404

OPINION

Local Map Amendment (LMA) Application No. G-892 was filed on January 4, 2011, and it requests reclassification of 5.25 acres of land located at 630 Ellsworth Drive, Silver Spring, Maryland, from the existing R-60 Zone to the RT-15 Zone. The property, whose legal description is Lot 58, Evanswood Section 1, is situated on the south side of Springvale Road between Ellsworth Drive and Pershing Drive. The land is owned by the Chelsea School (tax account number 13-03381404), a private educational institution which desires to relocate its facilities and has entered into a contract of sale with the Applicant. Exhibit 45, p. 3; 5/26/11 T. 71.

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 76 new townhomes, including sixty-seven market-rate units and ten moderately priced dwelling units (MPDUs). The Applicant also proposes to rehabilitate the existing historic resource on the property, the Riggs-Thompson House, and convert it to a single-family detached privately owned residence. The proposal is set forth in a revised Schematic Development Plan (SDP), Exhibit 253(a)(corrected), which contains an illustrative diagram and a specification of 10 binding elements, as well as other information regarding the development.¹

Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) reviewed the plans, and in a report dated May 9, 2011, recommended approval

¹ On September 15, 2011, the Applicant submitted a revised SDP correcting a technical error in the SDP previously submitted (Exhibit 253(a)). The most recent SDP has been marked for the record as Exhibit 253(a)(corrected). For ease of reference, this will be referred to as Exhibit 253(a) throughout this Resolution.

(Exhibit 45). The Montgomery County Planning Board considered the application on May 25, 2011, and voted to recommend approval with one member dissenting. The Planning Board's recommendation is contained in a memorandum dated May 26, 2011 (Exhibit 103). The Planning Board also solicited comments from Staff to the Historic Preservation Commission because the proposed private access road bisected the environmental setting of the Riggs-Thompson House. The Board supported the binding elements proposed by the Applicant that addressed concerns raised by members of the community. The Planning Board also included a memorandum from Staff to the Historic Preservation Commission (HPC) as an attachment to the Board's recommendation. Exhibit 107. HPC Staff urged the Applicant to consider alternative alignments of the private road which were "more consistent with Chapter 24A" of the County Code. That Chapter sets forth the standards for construction of improvements within an environmental setting. Prior to the public hearing before the Hearing Examiner, the Applicant on the binding element considered by the Planning Board which prohibited access from the site onto Springvale Road.

A public hearing was duly noticed and convened on May 26, 2011, June 6, 2011, June 27, 2011, June 30, 2011, and July 18, 2011, at which time the Applicant presented testimony from eighteen witnesses, including the Applicant's expert witnesses, in support of the application. One of the witnesses appeared on behalf of the Coalition for Smarter Growth and the Washington Sustainable Growth Alliance, which awarded preliminary recognition of the development for implementing smart growth principles. At the July 18, 2011, public hearing, the Applicant also proposed an additional five alternative alignments of the private road to address the concerns raised by HPC Staff. Exhibits 223-227. The Hearing Examiner referred these potential alignments, including the alignment shown on the SDP, to Technical Staff for their review. Technical Staff responded on July 22, 2011, advising that three of the alignments proposed were potentially supportable by Technical Staff, if several issues could be resolved. Exhibit 232. Technical Staff did not find the particular alignment shown on the Schematic Development Plan supportable because of its impact on the environmental setting of the Riggs-Thompson House.

Twenty-two individuals testified in opposition to the application. Some of these individuals appeared on behalf of civic and community organizations, including the Seven Oaks-Evanswood Community Association (SOECA), and Montgomery Preservation Inc.²

Ms. Anne Spielberg testified on behalf of SOECA. SOECA opposed the application because it is inconsistent with the 2000 North and West Silver Spring Master Plan, the density is too high given the surrounding land uses, and the density proposed intrudes into the neighborhood rather than providing a buffer or transition from the Silver Spring Central Business District.

Montgomery Preservation Inc. opposed the density of the development as well as the private road bisecting the environmental setting of the Riggs-Thompson House. They testified that the density and private road compromised the historic setting of the house.

² In addition to those organizations represented at the public hearing, an additional five organizations, the South Four Corners Civic Association, the East Silver Spring Citizens Association, the Park Hills Civic Association, the Woodside Park Civic Association, and the Montgomery Civic Federation, submitted letters of opposition into the record of the case.

After the hearing was completed, the record was held open for written closing arguments and filing, by the Applicant, of the executed covenants and the revised plans, including modified binding elements. The parties timely filed their closing arguments and the Applicant filed its proposed covenants and final SDP (Exhibit 253). The record closed, as scheduled, on August 5, 2011.

The Hearing Examiner's Report and Recommendation was filed on September 22, 2011, and it is incorporated herein by reference. The Hearing Examiner found that (1) the density and massing of the development is incompatible with the surrounding land uses; (2) the Applicant failed to meet its burden of proof that the three road alignments which were supportable by Technical Staff were viable and would not adversely impact the community; (3) the density proposed was inconsistent with the Master Plan; and (4) the environmental setting shown on the SDP was inconsistent with the Master Plan. Because the R-T Zone did further some aspects of the Master Plan's goals, the Hearing Examiner recommended remanding the case to permit the Applicant to revise the SDP to reduce the density and massing, address the open issues on the potential road alignments, and revise the SDP to be consistent with the environmental setting for the Riggs-Thompson House designated in the Master Plan.

After a careful review of the entire record, the District Council finds that the application should be remanded to the Hearing Examiner for the reasons stated in the Hearing Examiner's Report and Recommendation.

The Property, Surrounding Area and Zoning History

The subject property consists of 5.25 acres located on the south side of Springvale Road between Ellsworth Drive and Pershing Drive. It is currently zoned R-60.

The subject property is generally rectangular in shape and has a 6 percent decrease in slope from east to west. The Chelsea School, a private educational institution for individuals with learning disabilities, currently occupies the property. The property is improved with approximately 40,000 square feet of school buildings as well as a 70-space asphalt parking lot and the Riggs-Thompson House. Exhibit 45; 5/26/11 T. 48-49. Springvale Road, bordering the northern property line, is a narrow street with no curb or gutter and many of the streets in the area do not meet current county standards. The property contains many mature trees, especially in the southern portion of the property.

The subject property is separated from the boundary of the Silver Spring Central Business District (i.e., Cedar Street to the south of the subject property) by a row of single-family detached houses which are recommended for non-resident professional office special exceptions in the Master Plan. Some but not all of these houses have approved special exceptions; others remain single-family homes. Access and turn restrictions on the surrounding neighborhood streets have been in place since the early 1990's in order to prevent traffic traveling north and south between the Beltway and the Silver Spring Central Business District from cutting through the immediately surrounding neighborhood. Exhibit 154; 6/6/11 T. 196-201.

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

areas that would be most directly affected by the project. Technical Staff adopted the Applicant's proposed delineation of the surrounding area, which was bounded by Georgia Avenue to the south, Dale Drive to the north, Colesville Road to the west and Wayne Avenue to the east. Both Technical Staff and the Applicant based the delineation on the fact that it captured the entire transition in density from the core of the Silver Spring Central Business District to R-60 zoning surrounding the subject property. The Planning Board found that the northern and southern boundaries recommended by Technical Staff and the Applicant were too broad and recommended narrowing those boundaries.

Before the Hearing Examiner, the Applicant revised its northern and southern boundary to be Woodside Parkway to the north and Fenton Street in the Silver Spring Central Business District to the south because these were within a quarter-mile radius, or 5-minute "walk radius" from the subject property. The Applicant also believed that this boundary left the subject property in the center of the density transition between the Central Business District core and the R-60 Zone beginning north of Cedar Street. The opposition's expert land planner agreed that Colesville Road and Wayne Avenue formed the western and eastern boundaries of the surrounding area, but opined that the southern boundary should be the single-family detached houses on the north side of Cedar Street, the border between the North and West Silver Spring Master Plan and the Central Business District. Because the zoning from Cedar Street north to Dale Drive is almost entirely R-60 and a high berm and mature trees along Cedar Street physically separate the subject property from the Central Business District, the opposition land planner opined that the appropriate southern boundary was Cedar Street on the south and three blocks north of the subject property to the north.

The Hearing Examiner concluded that the appropriate delineation of the surrounding area should be Fenton Street to the south, Dale Drive to the north, Colesville Road to the west, and Wayne Avenue to the east. The parties failed to direct the Hearing Examiner to any authority to support the opposition's position that the surrounding area should be defined by physical barriers and planning techniques rather than direct impacts of the proposed development. Because the only evidence in the record on the impact of the development to the south is the 5-minute walk radius submitted by the Applicant, the Hearing Examiner found that the southern boundary should be Fenton Street. The Hearing Examiner found that the northern boundary should be Dale Drive due to the evidence that traffic from the development travels north along Pershing Drive and Ellsworth Drive to Dale Drive in order to access Colesville Road.

Based on this surrounding area, the Hearing Examiner characterized the surrounding land uses generally as widely diverse, including commercial, civic and multi-family residential uses in the Silver Spring Central Business District and single-family detached houses north of Cedar Street. The Hearing Examiner found, however, that the abrupt transition in land uses which occur at Cedar Street, with much more intense uses south in the Central Business District and primarily single-family detached houses north of Cedar Street, is central to the area's character. Certain non-residential uses are on the edges of the area, such as Colesville Towers, built in the 1960's, and the Springvale Terrace retirement community, a special exception in the R-60 zone, but these uses were either significantly buffered from the interior neighborhood or were very low-impact so as not to change the existing single-family detached character of the area north of Cedar Street.

Technical Staff provided the zoning history of the subject property. In 1958, when the County was comprehensively rezoned, the subject property was placed in the R-60 Zone, which has been continuous since that time. The property has been operated as a school since the 1930's. Initially, it was a parochial school which operated without a special exception. In the late 1990's, the Chelsea School began leasing a portion of the subject property and then purchased the entire property in order to expand. The Board of Appeals approved a special exception for the Chelsea School expansion on March 5, 2000. Because of declining enrollment, however, the Chelsea School never implemented its expansion plans.

Proposed Development and Binding Elements

The Applicant proposes to remove the existing school buildings and certain non-contributing additions to the Riggs-Thompson House and construct 76 townhouses. It would also renovate the Riggs-Thompson House as a single-family detached private home. The Applicant proposes to include 10 Moderately Price Dwelling Units (MPDUs), which equates to 12.5% of the new dwelling units. The townhouse rows or strings will be aligned perpendicular to Springvale Road with cosmetic fronts facing the road in order to simulate single-family detached homes from the perspective of the properties directly confronting to the north. The Applicant proposes a 25-foot setback along Springvale Road, and subject to site plan review, a double-row of landscaping along the road.

The fronts of the townhouse strings will face each other with landscaped "courtyards" separating the rows. The rear of the units will face alleys containing parking and rear decks. All of the units have garages and two parking spaces, although some of the units will have tandem parking spaces. Exhibit 253(a). There will be some spaces for visitor parking.

The environmental setting of the Riggs-Thompson House is depicted on the Schematic Development Plan as consisting of 37,056 square feet on the eastern side of the site. The Applicant proposes to remove certain non-contributing additions to the house and convert the house to a private, single-family detached home.

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 253(a)) sets forth the 10 binding elements for the development as follows:

BINDING ELEMENTS

1. The maximum number of units will be 77 (76 townhomes and 1 single family detached).
2. The Applicant, its successors and assigns will record a public access easement allowing public use of the designated public green space along Ellsworth Drive, Springvale Road and Pershing Drive, with the specific size, configuration and location of this easement subject to final site plan approval.

3. Townhouse units confronting Springvale Road will be designed to have their fronts facing Springvale Road.
4. The project will provide green area of at least 40% of the net tract. The townhouses will be located in a manner that will provide green areas along Pershing Drive and Ellsworth Drive and a linear green area along Springvale Road, all generally consistent with the schematic development plan with the specific size, configuration and location subject to final site plan approval.
5. The applicant, its successors or assigns, will preserve the Riggs-Thompson House.
6. The Applicant, its successors and assigns shall abide by the existing traffic restrictions on Springvale Road, Ellsworth Drive and Pershing Drive so long as those restrictions remain in effect.
7. The maximum building height will be 35 feet.
8. The project will provide a minimum of 2 parking spaces per unit plus additional spaces for guest parking.
9. The historic setting for the Riggs-Thompson House will remain at a minimum of 37,056 square feet, subject to HPC approval of a possible access road to Pershing Drive.
10. The set-back along Springvale Road shall be a minimum of 25 feet, and, subject to site plan approval, will include a double row of trees.

Applicant has also filed an executed copy of the Declaration of Covenants in the record of this case as Exhibit 253(d), and it contains the binding elements listed above, 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 253(a)) is illustrative (except as specified in the binding elements). The plan shows 76 townhouses (ten of which are MPDUs), in strings of 8 units each, aligned perpendicular to Springvale Road. A binding element requires a 25-foot setback from Springvale Road, although the double row of street trees contained within that binding element is subject to site plan review. Binding Element No. 3 requires the Applicant to design the end-cap units facing Springvale Road with cosmetic fronts.

Binding Element No. 4 requires the Applicant to provide public access areas along Pershing and Ellsworth Drives, with the exact configuration and location to be determined at site

plan review. Overall, the development includes 40% green space, as opposed to the minimum of 30% required in the R-T 15 Zone.

Binding Element No. 6 requires the Applicant to observe the existing traffic restrictions contained in the streets immediately surrounding the subject property.

Binding Element No. 9 requires the Applicant to maintain an environmental setting of at least 37,056 square feet, subject to HPC review. The size of the environmental setting of the Riggs-Thompson House designated by the Master Plan was the source of much controversy before the Hearing Examiner, described below.

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 District Council agrees with the Hearing Examiner’s conclusion that the 2000 North and West Silver Spring Master Plan did *not* designate this subject property for R-T Zoning.

The evidence in this case supports the Applicant’s contention that an R-T Zone is appropriate at this location, although not at the density proposed. The Applicant’s land planner testified that the development of the townhomes confirmed the residential use of the area, and eliminated some of the commercial-type aspects of the institutional use, such as truck traffic and school bus parking. Because the R-T Zone permits more flexibility in design than the underlying R-60 Zoning, the R-T Zone allowed the developer to provide more public access space and green space, and improvements to the existing streets, including sidewalks and landscaping, thus enhancing access to the amenities in the Central Business District. These amenities include access to civic, neighborhood-serving retail uses, and transit.

The District Council agrees with SOECA, and others opposing the Application, however, that an additional transition is not necessary between the higher density multi-family residential uses in the Central Business District and the single-family detached homes north of Cedar Street. The opposition’s land use planner testified that single-family houses on the north side of Cedar

Street rest on a high berm and contain many mature trees that continue through the southern portion of the subject property. The berm and mature trees effectively screen the view of the Central Business District from those who live along Springvale Road and other areas, and even serve to screen uses such as Colesville Towers, an older 275-unit multi-family residential development, which are considered to be within the surrounding area.

Because the District Council agrees that R-T Zoning is appropriate for the site, but finds that the schematic development plan is neither consistent with the Master Plan nor compatible with uses in the immediately surrounding area, the Council agrees with the Hearing Examiner that the application should be remanded for revisions to address those issues, detailed below.

Having addressed the purpose and intent of the R-T 15 Zone, we now turn to the statutory requirements of the Zone. The Applicant's proposal complies with all of the development standards and special regulations of the RT-15 Zone save two, one of which may be varied under specific circumstances.

The first is the requirement of a thirty-foot setback from land classified in a one-family detached zone. The Applicant proposes a 20-foot setback from the rear yards of the single-family detached houses along the north side of Cedar Street, which are recommended in the Master Plan for non-resident professional office and which are zoned R-60. 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 a reduced setback in order to permit the 25-foot setback along Springvale Road on the northern boundary of the site. The Planning Board adopted Technical Staff's in their recommendation.

The opposition objected to the density of the development partially because it would remove many of the existing mature trees on the site which currently screen the neighborhood from views of the Central Business District and other uses, such as Colesville Towers, within the surrounding area. Because the District Council is hereby remanding the case for revision at a lesser density, this is an issue that need not presently be addressed.

Section 59-C-1.722 also requires townhouse rows to be staggered so that a maximum of only three townhouses in the same row should have the same frontage. If there are more than three townhouses in a row, the building frontages must be staggered by at least two feet between the groups of three units. The Zoning Ordinance permits a waiver of this requirement, but only if the development proposes more than 12.5% MPDUs. In this instance, the schematic development plan proposes the minimum number of MPDUs, so this requirement should be addressed on remand as well.

Compatibility

An application for a floating zone reclassification must be evaluated for compatibility with land uses in the surrounding area. The compatibility of the development with the predominantly single-family homes north of Cedar Street was an issue of much controversy at the public hearing.

The Applicant's land planner testified that the density of the proposed development was compatible with the surrounding area because of its proximity to Metro and the Silver Spring Central Business District. He opined that any lesser density would result in a gross underutilization of the site. He asserted that townhouses are inherently compatible with single-family detached homes because both are single-family residential uses which are owned in fee simple and because they are allowed in all single-family detached zones.

The Applicant also argued that the density of the development was compatible with the surrounding area by relying on the "tent effect" principle applied in the 2000 Silver Spring Central Business District Sector Plan. He opined that beginning with a density of 430 dwelling units per acre at the core of the Central Business District, the proposed development was an appropriate transition to the R-60 single-family detached houses located to the north of the subject property.

He also asserted that there were eight metrics to compatibility, including (1) compatibility of land uses, (2) massing and scale, (3) building height, (4) architectural style, (5) building orientation, (6) setbacks, (7) buffers, and (8) traffic. Applicant's land planner testified that the orientation of the townhouse rows perpendicular to Springvale Road and the cosmetic fronts along that road would render the townhouse rows compatible with single-family detached homes surrounding the subject property. Because the rows were massed together, there are additional setbacks along the eastern and western boundaries of the site to further buffer the use, and the double-row of street trees along Springvale Road would also lessen the impact of the alleys which would be perpendicular to Springvale Road as well. The 35-foot height limit and the traditional architectural style would mirror the houses in the surrounding neighborhood.

The Applicant's land planner also argued that the development under the RT-15 Zone would be *more* compatible than development under the R-60 Zone recommended in the Master Plan. Development under the R-60 Zone could result in "McMansions" bordering Springvale Road, with less green space and no public access space. He also maintained that RT-15 Zoning was more compatible than the existing school use because that use is institutional and has non-residential elements such as school bus parking.

Technical Staff addressed the issue of compatibility primarily in terms of density and land use. They determined that the RT-15 density was appropriate by applying the "tent effect" principle beginning with the 430 dwelling units per acre at the CBD core and transitioning north of the subject property. Technical Staff also found that the land uses were compatible, stating that there is a "*de facto*" presumption that townhomes and single-family detached homes are compatible because both are owner-occupied, single-family residential dwellings. Exhibit 45, p. 2.

The expert land planner appearing on behalf of SOECA and other individuals, Mr. Kenneth Doggett, testified that the proposed density was incompatible with the surrounding area because it is more than three times the density of the uses immediately surrounding the subject property. He opined that the density proposed combined with the need to preserve the environmental setting of the Riggs-Thompson House results in a massing and scale more similar to the urban densities found in the Central Business District. He also testified that the setback reduction along the southern property line removed many of the mature trees on the site which currently screen the community from the Central Business District. He opined that the cosmetic

facades along Springvale Road would not ameliorate the massing and scale because the homes would not always be viewed from the perspective directly confronting the property.

The District Council agrees with the Hearing Examiner that the density proposed at the subject property is incompatible with the surrounding area. While the RT-15 density is low compared to the density at the core of the Silver Spring Central Business District, a straight linear application of the tent effect principle ignores the abrupt transition from the high-intensity multi-family uses on the south side of Cedar Street to the older, smaller, single-family detached homes immediately north of Cedar Street. The density proposed is three times that of the immediately surrounding land uses and massed closely together in the center of the property. Despite the cosmetic facades and building orientation, it is difficult to say that the density, massing and scale of the rows of townhomes have a relation to the smaller, older single-family detached homes surrounding the subject property.

In addition, the District Council agrees with the Hearing Examiner that the Applicant failed to meet its burden of proof that the traffic impact of the development on the surrounding streets would be compatible or consistent with the Master Plan. The Schematic Development Plan currently shows access to the site via a private road bisecting the site and connecting to Pershing Drive and Ellsworth Drive. The private road bisects the environmental setting of the Riggs-Thompson House running east-west just to the north (rear) of the house. Before the Planning Board, the Applicant proposed a binding element which would have precluded access onto Springvale Road, but the Applicant withdrew this binding element before the Hearing Examiner after Staff to the Historic Preservation Commission indicated that they would not support the alignment of the private street shown on the Schematic Development Plan (because it was too close to the Riggs-Thompson House). The Applicant then submitted five additional alternative alignments of the private street, one of which did access onto Springvale Road. Exhibits 223-227.

Technical Staff reviewed the five additional alternative alignments of the private road, and determined that three could be supported by Staff, including the alignment which permitted access onto Springvale Road. Exhibit 232. These three alternative alignments proposed (1) to shift the alignment currently shown on the Schematic Development Plan further north toward Springvale Road, further away from the rear of the historic house, (2) move the road to the south in front of the historic house, and (3) permit access onto Springvale Road.

Technical Staff noted that while the first alignment was supportable, it would reduce the size of the public park proposed in the application. Exhibit 232. The opposition urged that this alignment still truncated the environmental setting and raised questions about whether the access so close to the existing intersection with Springvale Road and Pershing Drive would create an unworkable type of five-way intersection with Springvale Road, Pershing Drive, and the private access road. Exhibit 251.

The second alternative alignment considered supportable by Technical Staff proposed moving the access road further south, in front of the Riggs-Thompson House. Technical Staff noted that this would further disturb the environmental setting, possibly reduce the number of visitor parking spaces, which were already limited, and raised forest conservation issues because of the number of mature trees that currently exist along that portion of the site. Exhibit 232, p. 6. The opposition argued that this alignment would result in the reduction of even more mature

trees along the southern border of the property which both define the site and act as a visual screen for the views from the historic house's higher elevation. Exhibit 251.

The final alternative Technical Staff considered potentially supportable is the alignment proposed to access Springvale Road, thus avoiding any impact on the environmental setting. Technical Staff found that site circulation would improve with the full turning movement onto Springvale Road, but acknowledged that this alignment would permit cut-through traffic to avoid the existing traffic restrictions. The Applicant's traffic engineer also acknowledged that cut-through traffic could occur with this alignment, but did not present evidence as to what impact this would have on the neighborhood. The opposition's land planner believed that Springvale Road, which is very narrow, would be unable to handle the traffic, and possible overflow parking from the development, and still severely compressed the environmental setting. Other residents opposed this alignment because it permitted cut-through traffic from outside of the neighborhood. Exhibit 250.

In order to make a finding of compatibility, the District Council must assume that any one of the possible alignments is compatible with the neighborhood. Because the issue of cut-through traffic has not been addressed in one of the possible alignments, nor has the viability of the alignment south of the historic house, the District Council agrees with the Hearing Examiner that the Applicant failed to submit sufficient evidence to prove that the impact of traffic from the development is compatible with the surrounding streets.

The 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.

The subject property lies within the area covered by the 2000 North and West Silver Spring Master Plan. The parties agree, and there is no evidence to the contrary, that the Master Plan did not explicitly designate the subject property for development under the RT-15 Zone, and the District Council so finds.

Compliance with the Master Plan recommendations, however, is not mandatory in this case because the R-T Zones do not require it; rather, the courts have held that the Master 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 (2008):

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

The consistency of the proposed land use, at the R-T 15 density, as well as the recommendations of the Planning Board and Technical Staff were considered at length in Part

V.A.1 of the Hearing Examiners report. The District Council agrees with the Hearing Examiner, that the proposed schematic development plan is inconsistent with the objectives of the Plan, particularly with regard to the recommended transition from the Central Business District to the neighborhood north of Cedar Street and with regard to the environmental setting of the Riggs-Thompson House.

While silent as to the subject property, many portions of the Master Plan when read together reveal its intent regarding the transition along the Cedar Street boundary. First, the master plan specifically recommended only the single row of single-family detached houses on the north side of Cedar Street as the appropriate transition between the higher density of the Silver Spring Central Business District and reconfirmed the solidly R-60 Zoning from Cedar Street to the north. Regarding the Cedar Street transition, the Plan recommended the houses for non-resident professional office special exceptions, and explicitly stated that the transition should be “by use, not by structure type.” Exhibit 139, p. 43. Nor do the proposed land use and zoning maps contained in the Master Plan support the Applicant’s argument that the “tent effect” should be applied at this transitional location. The tent effect explicitly adopted in the Silver Spring Master Plan ends abruptly at Cedar Street, which continues the recommended R-60 Zoning north to the Beltway.

While the density proposed here is inconsistent with the Master Plan, R-T zoning at a lower density may achieve some additional goals of the Master Plan. These goals are included in Chapter One of the Master Plan, which recommends preserving the existing residential character of the neighborhood by improving sidewalks and landscaping as well as public open space. R-T Zoning at this location may be more capable of achieving these goals than the underlying R-60 Zoning and for this reason, the District Council finds it appropriate to remand the case to the Hearing Examiner for revision of the schematic development at a lesser density, with less massing, than the current development plan.

The second area of controversy relating to the Master Plan is the size of the environmental setting designated by the Master Plan. The Applicant points to language in the body of the plan stating that the environmental setting consists of 37,056 square feet. The body of the Master Plan also contains language directing the reader to the Appendix on historic resources. This language states:

This section summarizes the historic nature of existing designated resources and provides a brief overview of sites to be considered for designation...Detailed evaluations of each site, prepared for consideration by the HPC, the Planning Board, and the County Council, are available in the appendix. Exhibit 139, p. 28.

Those opposing the application point to language contained in the Appendix as follows:

The environmental setting is 37,056 square feet as shown in the shaded area below pending approval of the Chelsea School special exception by the Board of Appeals. *In the event that the Chelsea School plan is not approved, the designated environmental setting is the entire 1.4-acre parcel (P73) on which the house is located. An important goal of the Chelsea School plan is the integration of the Riggs-Thompson House into the campus. Appropriate access to the house should be provided. Exhibit 139 (emphasis supplied).*

The Applicant argues that the 37,056 square foot environmental setting stated in the body of the Master Plan should be applied to the site because appendices are generally only a “slice in time” and not intended to be binding. Those in opposition, including Montgomery Preservation Inc., argue that the Plan intended the environmental setting to be the original 1.4-acre parcel if the Chelsea School no longer occupied the site.

Ms. Vicki Warren provided some legislative history related to the language contained in the Master Plan. She stated that the Master Plan was adopted at approximately the same time that the Chelsea School was considering purchasing the property. She testified that the property had originally been part of a 140-acre “country estate” of two prominent citizens, George Washington Riggs (founder of Riggs Bank) and William H. Thompson. Chelsea School asserted that it needed a portion of the 1.4 environmental setting to implement the School’s expansion plans. The Historic Preservation Commission recommended that the environmental setting include the entire 1.4 acres, but the County was under pressure of a lawsuit from the Sisters of the Holy Names (the prior owner who wished to sell the property). Ms. Warren also quoted from minutes from the Planning Board’s meeting on the preliminary draft of the plan, stating that “the setting may need to be modified if the property is redeveloped with a use other than the Chelsea School.” As late as 2001, the environmental setting showed two boundary areas surrounding the historic house, one for the 37,056 square feet for the Chelsea School and one the larger 1.4 acre parcel if the Chelsea School did not go forward. 6/30/11 T. 212-219; Exhibits 191. Ms. Judith Christensen, testifying on behalf of Montgomery Preservation Inc., expressed the opinion that the Board may have felt the smaller setting more appropriate given its integration into a larger campus. 6/30/11 T. 214-215.

Mindful of the principle that statutes should be construed according to their plain language, Maryland law also rejects interpreting “plain language” in a manner contrary to the legislative intent when that intent is clearly known. *Maryland-National Capital Park and Planning Commission v. Anderson*, 164 Md. App. 540, 569-570 (2005), *aff’d*. 395 Md. 172 (2006). The Hearing Examiner found that the evidence in this case to date supported the opposition’s argument that the Master Plan intended the environmental setting to be 1.4 acres if the Chelsea School no longer occupied the property.

The evidence in this case to date supports the arguments of those opposing the application that the Master Plan intended the environmental setting to be 1.4 acres in the event the Chelsea School abandoned its use of the property, in the opinion of the Hearing Examiner. The body of the Master Plan states that it “summarizes” the basis of its recommendations and specifically refers to the more detailed analysis in the Appendix. In addition, the testimony provided by Ms. Warren indicates that as late as 2001, Technical Staff required the Chelsea School to show both alternative environmental settings on its special exception plan if “the Chelsea School does not go forward.” 6/30/11 T. 246. This is consistent with the Master Plan’s rationale for the smaller environmental setting which may be appropriate when based on the Chelsea School’s plan to integrate the Riggs-Thompson House in its campus.

In the opinion of the Hearing Examiner, based on the evidence to date, now that the Chelsea School has abandoned its use of the property and in the context of the R-T 15 townhome development with no associated “campus”, the smaller environmental setting no longer meets what was clearly intended by the Master Plan, to frame the house in some historical context.

Whether the application is in the public interest also requires the Council to determine whether public facilities are adequate to support the proposed development. The Applicant's transportation planner, Mr. Martin Wells, analyzed the projected traffic impact of the development under both the Policy Area Mobility Review (PAMR) and Local Area Transportation Review (LATR) guidelines. While the traffic expert for those in opposition to the development criticized the accuracy of the County's LATR guidelines in projecting the actual traffic impact of the use, the District Council agrees with the Hearing Examiner, Technical Staff, and the Applicant that those guidelines are mandated by law and therefore should be applied. Other than anecdotal evidence, there is no expert testimony that supports the opposition's argument that traffic generated by the proposed development will be outside the mandated guidelines.

There was also uncontroverted evidence from the Montgomery County Public Schools that there is sufficient school capacity to accommodate the proposed development provided that the Applicant makes a school facility payment at the time of subdivision approval. Exhibit 45, Attachment 3. In addition, the uncontroverted evidence established that water and sewer will be available to service the development. Exhibit 45, p. 8.

While the opposition presented some objections to the number of specimen trees required to be removed from the subject property to accommodate the proposed development, Technical Staff advises that there are no environmental issues regarding the proposed use.

Conclusion

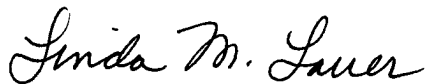
Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the application, as described in the final version of the SDP, does not satisfy the requirements of the RT-15 Zone and its purpose clause; that the application proposes a form of development that would be incompatible with land uses in the surrounding area; and that the requested reclassification to the RT-15 Zone is not sufficiently related to the public interest to justify its approval. Because the subject property may be appropriate for R-T Zoning at a lesser density, and because R-T Zoning may have the capability of achieving some goals of the Master Plan, the District Council finds that the application should be remanded to the Hearing Examiner in order to revise the schematic development plan to have less density and more breaks in massing, and to take further evidence regarding the size of the environmental setting for the historic resource. For these reasons and because approval of the instant zoning application, as presently described, will not aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be remanded to the Hearing Examiner 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-892, requesting reclassification of 5.25 acres of land, described as Lot 58, Evanswood Section 1, and located at 630 Ellsworth Drive, Silver Spring, Maryland, from the existing R-60 Zone to the RT-15 Zone, is hereby **remanded** to the Hearing Examiner for revision of the Schematic Development Plan (SDP) and consideration by the Planning Board of the intended size of the environmental setting of the Riggs-Thompson House historic resource, given the language in Appendix D of the North Silver Spring Master Plan. The SDP should be reconfigured to propose residential townhouse (RT) development with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan. The revised SDP should also resolve issues relating to the alignment of the private road to comply with the environmental setting of the historic site as set forth in the Master Plan and its Appendix D.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

March 7, 2013

Mr. Neil Braunstein, Planner Coordinator
Area 1 Planning Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan No. 1-20130060
Chelsea Court

Dear Mr. Braunstein:

We have completed our review of the preliminary plan dated September 25, 2012, as well as the revised submission dated December 12, 2012. This initial submission was reviewed by the Development Review Committee at its meeting on November 5, 2012. We recommend approval of the preliminary plan subject to the following comments:

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

1. Necessary right-of-way dedication along Ellsworth Drive, Springvale Road, and Pershing Drive site frontages as required by the Planning Board.
2. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
3. Size storm drain easement(s) prior to record plat. No fences will be allowed within the storm drain easement(s) without a revocable permit from the Department of Permitting Services and a recorded Maintenance and Liability Agreement.

Division of Traffic Engineering and Operations

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878
Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080
trafficops@montgomerycountymd.gov

4. The drainage study provided appears to indicate reduced flow to all three of the noted outflow points. Provide calculations for these flows.

It also appears flow drains to Ellsworth Drive at the Silver Spring Library access. If this is correct, prior to approval of the record plat, the consultant will need to provide drainage information for this flow.

Provide inlet efficiency computations & spread computations in the impact analysis for any new inlets or inlets receiving additional flow.

5. Revised sight distance evaluations dated December 11, 2012, were provided for the two proposed intersections / access points. These sight distances studies have been accepted. A copy of the accepted Sight Distances Evaluation certification form is enclosed for your information and reference.
6. We approve of the private street accessing Springvale Rd approximately 50' from Pershing, and the private street being offset from the Silver Spring Library along Ellsworth Dr. These alignments were agreed upon as part of the zoning case.
7. Confirm the proposed geometries are consistent with our March 23, 2012 comments on the zoning case (and 3/21/12 amended Bowman plan). Specifically, upon approach of the site's private street at Ellsworth Dr, channelize the northern curblineline of the private street to reinforce the intent that motorists should not turn right (onto Ellsworth Drive).

A response received from Bowman Consulting on December 7, 2012, declined this comment on the basis of its limited access to/from the north. Per the zoning case, this limited access is the specific & previously-approved intent of this comment: reducing cut-through potential and restricting the risk for illegal right-turns out of the site and down the wrong way of Ellsworth Dr. Our comment therefore stands.

8. Private common driveways and private streets shall be determined through the subdivision process as part of the Planning Board's approval of a preliminary plan. The composition, typical section, horizontal alignment, profile, and drainage characteristics of private common driveways and private streets, beyond the public right-of-way, shall be approved by the Planning Board during their review of the preliminary plan.

9. Regarding pedestrian ramps locations:
 - a. Shift the southern ramp location across Ellsworth at Springvale northward, nearer to the intersection. Include a receiving ramp on the west side.
 - b. Shift the western ramp across Springvale at Pershing eastward, nearer to the intersection. No receiving ramp is necessary.
 - c. Shift the ramp across Pershing between the Springvale intersections southward to align with the existing ramp along Springvale. Reconstruct the existing ramp to similarly align with this crossing.
 - d. Remove the southern ramp across Pershing at Springvale. After further internal discussion this ramp is not considered to be preferable at this time.
 - e. Do not show marked crosswalks.
10. Master-planned shared lanes along Ellsworth Dr:
 - a. Signing/markings as applicable at design stage.
 - b. We concur with the cross-section shown for the contraflow bike lane along the one-way segment of Ellsworth Dr, which provides a 6' bike lane, 1' buffer, and 10' vehicular lane, for 17' of pavement (including gutters on each side).
11. The owner will be required to submit a recorded covenant for the operation and maintenance of private streets, storm drain systems, and/or open space areas prior to MCDPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
12. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
13. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Dan Sanayi of our Traffic Engineering Design and Operations Section at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.

14. If the proposed development will alter or impact any existing County maintained transportation system management component (i.e., traffic signals, signal poles, handboxes, surveillance cameras, etc.) or communication component (i.e., traffic signal interconnect, fiber optic lines, etc.), please contact Mr. Bruce Mangum of our Transportation Systems Engineering Team at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.

15. Trees in the County rights of way – spacing and species to be in accordance with the applicable MCDOT standards. Tree planning within the public right of way must be coordinated with Brett Linkletter, Chief of the Division of Highway Services, Tree Maintenance Section at (240) 777-7651.

Trees 98 and 116 have been specifically discussed given potential impacts to both trees as part of the modifications to Springvale Road. We support saving both trees if feasible, but primarily require construction of the transportation facilities according to or in substantial conformance (pending MCDOT approval) with County standards and as noted under comment #16A.

16. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:

- A. Street grading, paving, curbs and gutters, sidewalks and pedestrian ramps, storm drainage and appurtenances, and minor street trees along Springvale Road. The cross-section is to include 28' of pavement (an 8' parking lane, two 10' travel lanes), and along the site frontage: 4' lawn panels, 5' sidewalks, and a 1' maintenance buffer.
- B. Street grading, paving, curbs and gutters, sidewalks and pedestrian ramps, storm drainage and appurtenances, and street trees along Ellsworth Drive. Along the bidirectional portion the cross-section is to include 39' of pavement (including a 6' northbound bike lane with 1' buffer, also a 9' median at the Ellsworth split), and along the site frontage: 4' lawn panels with minor street trees, 5' sidewalks, and a 1' maintenance buffer. The one-way segment is to include 17' of pavement (a 10' vehicular lane, 1' buffer, and 6' northbound bike lane), 5' lawn panels, 5' sidewalks, and a variable-width landscaped area to the property line.
- C. Street grading, paving, curbs and gutters, sidewalks and pedestrian ramps, storm drainage and appurtenances, and minor street trees along Pershing Drive. The cross-section is to include two 13' travel lanes and across the site frontage: 4' lawn panels, 5' sidewalks, and a 1' maintenance buffer.

NOTE: the Public Utilities Easement is to be graded on a side slope not to exceed 4:1.

- D. Geometric restrictions at access to/from proposed Chelsea Court to enforce right-in / right-out at Springvale Road and a prohibition on right-turns from Chelsea Court onto Ellsworth Drive.
- E. Enclosed storm drainage and/or engineered channel (in accordance with the MCDOT Storm Drain Design Criteria) within the County rights-of-way and all drainage easements.
- F. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.
- G. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.
- H. Developer shall ensure final and proper completion and installation of all utility lines underground, for all new road construction.
- I. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the MCDOT Division of Traffic Engineering and Operations.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact Andrew Bossi, our Development Review Area Engineer for this project, at andrew.bossi@montgomerycountymd.gov or (240) 777-2197.

Sincerely,



Gregory M. Leck, Manager
Development Review Team

Mr. Neil Braunstein
Preliminary Plan No. 1-20130060
March 07, 2013
Page 6

cc: Aakash Thakker Chelsea Residential Asse
Kate Fedalen Chelsea School
Robert Harris / Cynthia Bar Lerch, Early, & Brewer
Mark Stires Bowman Consulting
Robert Kronenberg M-NCPPC Area 1
Cherian Eapen M-NCPPC Area 1
Catherine Conlon M-NCPPC DARC
Preliminary Plan folder
Preliminary Plan letters notebook

cc-e: Amy Butler Stevens DPS SWFMP
Atiq Panjshiri DPS RWPR
Sam Farhadi DPS RWPR
Rick Brush MCDPS WRM
Bill Campbell MCDPS WRM
Marie LaBaw MCFRS
Brett Linkletter MCDOT DHS
Dan Sanayi MCDOT DTEO
Fred Lees MCDOT DTEO
Khursheed Bilgrami MCDOT DTEO
Bruce Mangum MCDOT DTEO
Andrew Bossi MCDOT DTEO
Michael Gurwitz Resident

Braunstein, Neil

From: Bossi, Andrew <Andrew.Bossi@montgomerycountymd.gov>
Sent: Monday, March 18, 2013 4:02 PM
To: Braunstein, Neil
Cc: Aakash Thakkar; Michael Szynal; rrharris@lercheary.com; Bar, Cynthia M.; mstires@bowmanconsulting.com; Kronenberg, Robert; Folden, Matthew; Conlon, Catherine; Stevens, Amy; Panjshiri, Atiq; Farhadi, Sam; Brush, Rick; Campbell, William; LaBaw, Marie; Lees, Fred; Bilgrami, Khursheed; Leck, Gregory
Subject: RE: 120130060 - Chelsea Court - Prelim Plan Approval Letter
Attachments: 2013 03 14 - Ellsworth-Chelsea Intersection Revision.pdf; 120130060, Chelsea Court, prelim plan ltr.pdf

Hi Neil,

This is in follow-up to our preliminary plan approval letter. A subsequent revision submitted by EYA regarding the Ellsworth/Chelsea intersection addressed the concerns given in our comment # 7. The intent of the geometry at this intersection is only to restrict rights-out from inadvertently traveling the wrong way along the one-way part of Ellsworth. They are permitted to turn left off of Chelsea as well as right/straight to access the existing library site. Both lefts- and rights-in are permitted.

We approve of the modification to the geometry of this intersection as shown on the attached plan, received from EYA via the email immediately below, provided this revision is reflected on the certified site plan. We also ask that the modification ensure that positive drainage is provided along the flow line of the gutter pan.

As always, don't hesitate to contact me if you should have any questions, comments, or concerns. Thanks!

Andrew Bossi, P.E.
MCDOT Development Review Team
240.777.2118.direct // 240.777.2197.general

From: Michael Szynal [<mailto:mszynal@bowmanconsulting.com>]
Sent: Wednesday, 13 March 2013 14:32
To: Bossi, Andrew
Cc: Aakash Thakkar; McLean Quinn (mquinn@eya.com)
Subject: RE: 120130060 - Chelsea Court - Prelim Plan Approval Letter

Andrew,

Just left a vmail for you. I was hoping to set up a quick 10 min call with you today at 4 to discuss the treatment at the Chelsea Court / Ellsworth intersection. Please look at the quick exhibit I have attached. What we want to do is continue the full Ellsworth two way Road section until the library entrance. At that point we would stop and go straight to a one way section. We would place "Do No Enter" signs at the one way section, maybe add a "Left Only" sign for those traveling north on Ellsworth, and maybe even a left turn arrow. We feel that this solution will really convey to a driver that Ellsworth is one way past the library entrance. With all of this signage and road configuration no one who is not blatantly breaking the law will not go down the one-way portion of Ellsworth. Look forward to talking to you.

Michael Szynal, P.E. | LEED Green Assoc.
Team Leader
Bowman Consulting Group, Ltd.

Direct: 703.838-9461 | mszynal@bowmancg.com

From: Bossi, Andrew

Sent: Friday, 08 March 2013 17:13

To: Braunstein, Neil

Cc: 'Aakash Thakkar'; 'kfedalen@chelseaschool.edu'; 'rrharris@lercheary.com'; 'Bar, Cynthia M..'; 'mstires@bowmanconsulting.com'; Michael Szynal; 'Kronenberg, Robert'; 'Matthew.Folden@montgomeryplanning.org'; 'catherine.conlon@montgomeryplanning.org'; Stevens, Amy; Panjshiri, Atiq; Farhadi, Sam; Brush, Rick; Campbell, William; LaBaw, Marie; Linkletter, Brett; Sanayi, Dan; Lees, Fred; Bilgrami, Khursheed; Mangum, Bruce; Leck, Gregory; Bossi, Andrew; 'mgurwitz@hotmail.com'

Subject: 120130060 - Chelsea Court - Prelim Plan Approval Letter

Greetings,

Attached is our approval letter for the Chelsea Court preliminary plan ([120130060](#)). Hardcopies will be forthcoming to those listed. As always, don't hesitate to contact me if there should be any questions, comments, or concerns.

Thanks!

Andrew Bossi, P.E.

Senior Planning Specialist
Montgomery County Dept. of Transportation
Development Review Team

100 Edison Park Dr, 4th Floor

Gaithersburg, MD 20878

240.777.2118.direct // 240.777.2197.general

*On Ride-On Route 56 between Rockville Metro (Red Line)
and the Lakeforest Mall / Transit Center*



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

October 24, 2012

Diane R. Schwartz Jones
Director

Michael Szynal, P.E.
Bowman Consulting Group, Ltd.
2121 Eisenhower Avenue, Suite 302
Alexandria, VA 22314

Re: Stormwater Management **CONCEPT** Request
for Chelsea School
Preliminary Plan #: 120130060
SM File #: 239939
Tract Size/Zone: 5.25 Ac./RT-12.5
Total Concept Area: 5.25 Ac.
Lots/Block: 58
Watershed: Sligo Creek

Dear Mr. Szynal:

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 stormwater management requirements using ESD to MEP. The full volume of ESD is provided using permeable pavement, micro-bioretenion/planter boxes, bio-swales, and dry wells.

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. Landscaping shown on the approved Landscape Plan as part of the approved Site Plan are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.
6. Easements and covenants are required for all stormwater management measures.
7. Design all ESD measures according to the MCDPS design specifications in place at time of plan submittal.
8. No retaining walls are to be located within the easement areas.
9. All landscaping for surface storm water structures is to be approved by a Landscape Architect licensed in Maryland.

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

10. The permeable pavement may be concrete or may be porous pavers that have been approved by MCDPS.
11. When submitting design plans for review and approval, please label specifically what porous pavement is being used for storm water management.
12. Due to moderately erodible soils, additional sediment controls are required. This may include specific sequencing in order to provide adequate erosion and sediment control for this site.
13. Full recharge volume is provided on site.

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: tla CN 239939 Chelsea School.DWK

cc: C. Conlon
SM File # 239939

ESD Acres:	5.25
STRUCTURAL Acres:	0.00
WAIVED Acres:	0.00



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett
County Executive

January 4, 2013

Richard Y. Nelson, Jr.
Director

Mr. Neil Braunstein
Area 1 Division
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Chelsea Court
Preliminary Plan No. 120130060 and Site Plan No. 820130040

Dear Mr. Braunstein:

The Montgomery County Department of Housing and Community Affairs (DHCA) has reviewed the above referenced Preliminary and Site Plans. DHCA finds the plans to be responsive to DHCA's Development Review Committee (DRC) comments, and recommends Approval of the Preliminary and Site Plans, with the following condition, which has been agreed to by the Applicant:

- The 14 foot wide MPDUs will include a full bath on each floor that includes bedrooms as a standard condition.

Sincerely,

Lisa S. Schwartz
Senior Planning Specialist

cc: Aakash Thakker, EYA/Chelsea Residential Associates, LLC
Christopher J. Anderson, Manager, Single Family Housing Programs, DHCA

S:\Files\FY2013\Housing\MPDU\Lisa Schwartz\Chelsea Court DHCA Letter 1-4-2013.doc

Division of Housing

Moderately Priced
Dwelling Unit
FAX 240-777-3709

Housing Development
& Loan Programs
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Landlord-Tenant Affairs
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Licensing & Registration Unit
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