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February 7, 2003

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Mr. Derick Berlage, Chairman
and Members of the Planning Board
Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: *Hoyles Mill Village – Hargett Property, Site Plans Nos. 8-00019 and 8-95030B*

Dear Chairman Berlage and Members of the Board:

This letter will address the issue presented by the Hargett Site Plan of whether any impervious area from Section I of Hoyles Mill Village which has been calculated by Staff to be “overage” (*i.e.*, in excess of 21.114 percent) will be counted against the impervious area permitted on the Hargett property (“Hargett”). As more fully discussed below, Staff has concluded that the overage attributable to Section I is 8,470 square feet, and that the permitted impervious area for Hargett of 52,424 square feet (based on 21.114 percent of 5.7 acres) should be reduced by this amount. We have been advised that the resulting impervious restriction of 43,954 square feet results in overall loss of 6 lots of the original 20-lot plan, in addition to restrictions on the house size.

Hoyles Mill Village is the subject of a single preliminary plan, first approved in January 1994. For purposes of site plan approval, the property was divided into two sections, identified as Section I and Section II. Site plans were approved for both sections in 1995. With regard to impervious area limitations, Section II is the subject of a separate agreement between the Planning Board and the Phase II owners, finalized through amendments to the preliminary plan and Section II site plan in 2001, and is not at issue in the Hargett dispute. Staff has determined that, prior to the allowance of certain credits more fully outlined below, Section I has an impervious overage of 31,724 square feet. Artery disputes this calculation and has determined that if the impervious area is calculated properly, it is at least 167,679 square feet below the 21.114 percent cap imposed by Staff.¹ The major areas of difference in the impervious calculations by Staff and Artery are as follows:

¹ Artery has illustrated these calculations on the chart and analysis, collectively attached as Exhibit “A”.

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be overage based on 21.114 percent	
• Credits attributable to Section I impervious area as determined by Staff	
• Revision to Hoyles Mill Village MPDU area	4,004 square feet
• Correction to Richter Farm Road area previously included in calculations	19,250 square feet
	<hr/>
• Total impervious overage attributable to Section I as determined by Staff	(8,470) square feet
• Permitted impervious area for Hargett @ 21.114 percent of 5.7 acres without overage	52,424 square feet
• Deduction to Permitted Hargett impervious area for Staff determined overage contributable to Section I	(8,470) square feet
	<hr/>
• Total actual permitted impervious area for Hargett @ 21.114 percent of 5.7 acres with overage	43,954 square feet

Artery's original site plan proposed 20 units for Hargett. The current site plan represents a reduction to 17 lots in an effort to reasonably meet an impervious limit of 21.114 percent or 52,424 square feet on Hargett. This result depends on not penalizing Hargett by the alleged overage Staff contends is attributable to Section I. Staff's recommendation is to delete 3 lots, permitting only 14 lots on Hargett, and requiring an additional 3 lots to be placed into reservation to be restricted from development if the actual impervious area based on building

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permits for Hargett exceeds 43,954 square feet. Artery finds that such a harsh result is unsupported under the applicable facts, laws, and regulations, and should not be approved by the Planning Board. Without prejudice to its position that an impervious cap is not applicable to Hoyles Mill Village and that Staff erred in its calculation of on-site impervious areas, Artery believes that an acceptable compromise of this matter that would substantially achieve Staff goals and terminate the controversy would be the limitation of 17 lots as opposed to 20 and the allowance of the full 21.114 percent or 52,424 square feet of impervious area on Hargett without the reduction of 8,470 square feet of impervious area allegedly attributable to Section I. Imperviousness levels have now been established to Staff's satisfaction for Sections I and II. Section I is fully built out and Section II is subject to a separate agreement. Only Hargett is in question. Even under Staff's impervious analysis, the degree of magnitude of the alleged overage represents only 8,470 square feet out of 256.6 acres, or a nominal **0.075** percent. Therefore, assuming, for the sake of argument, the correctness of Staff's positions and calculations, Artery believes that it has substantially complied with all requirements, and any of the disputed impervious areas outlined above may and should be applied to this calculated overage to render the issue moot.

When the original preliminary plan and site plan for Hoyles Mill were approved in 1994 and 1995, the Germantown Master Plan contained an Appendix that dealt with certain environmental goals. Artery understands that, prior to Hoyles Mill Village, no impervious cap had ever been applied to a subdivision plan in Germantown, and no legislative predicate existed for doing so. As discussed in the attached letters dated April 3, 2000 to Michelle Rosenfeld, and November 15, 2000 to Charles Loehr, copies of which are attached as Exhibits "B" and "C", we believe that none of the numerous preliminary plan and site plan opinions and related development agreements that applied to Hoyles Mill Village established a cap on imperviousness or provided for any building permit review and enforcement provisions necessary to impose such a cap. Importantly, as detailed in these letters, every preliminary plan or site plan that followed Hoyles Mill Village that imposed a cap on imperviousness specifically referenced the cap in the enforcement documents and established a detailed mechanism for review, compliance, and enforcement with the cap (see Exhibits "B" and "C" for full details on this point). None of these provisions are found in a review of the regulatory documents associated with Hoyles Mill Village. Instead, all of the restrictions, limitations, and enforcement sections pertaining to Hoyles Mill Village have been pursued by Staff without such agreements in place. This has resulted in the retroactive application on Hoyles Mill Village of guidelines and procedures developed in relation to subsequent plans and approved under different regulatory schemes.

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Artery has suffered, and continues to suffer, substantial losses as a result of this retroactive application. In this regard, Artery structured its initial financing and contracts with lenders and builders during a period of time when it was reasonable to conclude from the detailed regulatory agreements that these types of limitations and requirements would not be imposed as they have been. Although Artery has consistently disputed both that a strict cap applies and Staff's method of calculating the imperviousness area if a cap is to be assumed, it has fully cooperated with Staff throughout this matter, at great cost and expense. The net result is that, despite its objections, Artery has permitted monitoring of permits with an assumed 21.114 percent impervious restriction, reduced unit footprints, restructured agreements with builders, responded to all requests for information from Staff, and taken other limiting actions to substantially comply with the 21.114 percent goal.²

Artery believes that the most straightforward method of resolving this longstanding dispute and achieving the compromise stated above, is to credit 8,470 square feet of the double driveways installed by homeowners through their builders to zero out the alleged overage from Section I and permit 21.114 percent or 52,424 square feet of impervious area on Hargett. These driveways were constructed prior to December 6, 2000 by builders without Artery's knowledge under valid permits issued by Montgomery County when some homeowners requested their builders to construct driveways that would not neck-down to a single width at the street. As soon as Staff complained to Artery regarding the driveways, Artery advised its builders not to construct any further double driveways. This driveway construction resulted in an additional 16,450 square feet of impervious area, which has been counted against Artery in the Section I calculations done by Staff (see attached Exhibit "A"). However, Staff permitted all remaining buyers in Section I to install such driveways without counting the future impervious area against the alleged impervious cap. There is no logical reason to treat these driveways differently; all were reviewed and permitted by Montgomery County, allowed to stay in place by Staff, and continue to be constructed at the request of buyers in Section I.

Section II was sold in bulk to Toll Brothers ("Toll") at the end of December 2000. At this time, Section I was nearing completion and construction had not commenced on Section II. Toll was prevented from closing on Section II until it could be assured that pending building permits for Section II then being held by Staff because of impervious concerns would be released and Staff

² A further example of cooperative action occurred when the Planning Board sought to widen and modify Schaeffer Road for the construction of the South Germantown Park. Artery agreed to modify its site plan for Hoyles Mill Village to dedicate additional land for the road, causing modifications to its unit types and design.

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would issue permits in the future. Therefore, to free up the building permits and meet contractual and closing deadlines, Artery, Toll, and Planning Staff entered into a letter agreement dated December 6, 2000, a copy of which is attached as Exhibit "D". This agreement established a monitoring system for Section II. Subsequently, the actual impervious limitation for Section II was established by revisions made by Toll to the Section II preliminary plan and site plan in September of 2001. The December 6, 2000 agreement resulted in Section I and II standing on their own for purposes of impervious compliance. Until the actual impervious limitation for Section II could be established and the building permits monitored for compliance, Toll agreed to hold certain lots within Section II from development. Until the impervious issues on Section I were resolved between Artery and the Board, Artery agreed not to clear, grade or construct on the Hargett property. However, as the December 6, 2000 agreement specifically states:

3. By executing this letter neither Artery nor Toll waives any of its legal or equitable remedies with respect to their ability to challenge the Commission's final impervious calculations and/or enforcement actions related thereto, for Section I, Section II, and/or the Hargett Parcel, as applicable.

4. The parties agree that any impervious area which exceeds the required impervious area attributable to each Section shall not be determined a deficit against the other Section or the Hargett Property.

(Emphasis supplied.)

Therefore, under the December 6, 2000 agreement, it was stipulated that any overage from Section I or II would not be applied to Hargett as is now being done. Artery believes that this stipulation acknowledged the cooperative efforts that were being undertaken by Artery to comply with the stringent limitations and monitoring requested by Staff for Section I.

In closing, it should be emphasized that, although it has maintained its objections to the impervious cap and calculations of Staff, Artery has limited the permitted size of units in Section I and generally abided by all Staff requests. As referenced above, the result as determined by Staff is a difference of only 8,470 square feet (compared to a total impervious area under Staff's alleged cap for the properties of 2,375,411 square feet). Artery is in substantial compliance with the 21.114 percent impervious goal of Staff and will accept a 21.114 percent or 52,424 square-foot impervious restriction for Hargett, so long as this amount is not reduced by the alleged overage of 8,470 square feet from Section I. With this cap, the

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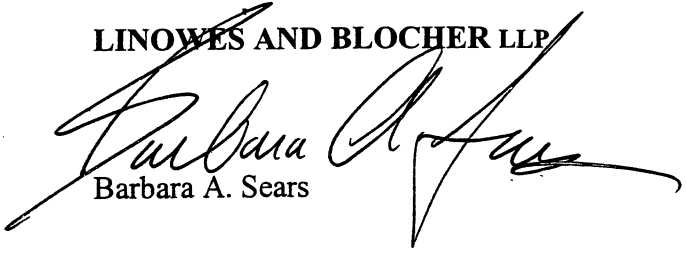
Page 7

In closing, it should be emphasized that, although it has maintained its objections to the impervious cap and calculations of Staff, Artery has limited the permitted size of units in Section I and generally abided by all Staff requests. As referenced above, the result as determined by Staff is a difference of only 8,470 square feet (compared to a total impervious area under Staff's alleged cap for the properties of 2,375,411 square feet). Artery is in substantial compliance with the 21.114 percent impervious goal of Staff and will accept a 21.114 percent or 52,424 square-foot impervious restriction for Hargett, so long as this amount is not reduced by the alleged overage of 8,470 square feet from Section I. With this cap, the houses to be built on the 17 lots in Hargett would be limited to an average of 1,880 square feet. Houses in the adjacent Kings Crossing development average approximately 2,300 square feet. Artery has selected a builder which has a single-family detached house type that will successfully accommodate this 1,880 square-foot restriction. In summary, it would appear that, despite Artery's opposition to the alleged cap and method of calculating the impervious area for Hoyles Mill Village, Artery has substantially complied with all of Staff's requirements, and Staff has substantially succeeded in implementing these requirements. As a result, and since to do so would be in violation of law and prior agreement, the Board should not impose a penalty on Hargett by applying the alleged impervious overage from Section I on Hargett.

Thank you for your attention to this matter.

Very truly yours,

LINOWES AND BLOCHER LLP


Barbara A. Sears

Enclosures

cc: Mr. Hayes McCarty
Mr. Bernie Rafferty
Mr. Alan Stackman
Mr. Malcolm Shaneman
Michele Rosenfeld, Esq.
Mr. Robert Kronenberg
Ms. Cathy Conlon

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April 3, 2000

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Michele M. Rosenfeld, Esq.
 Maryland-National Capital Park
 and Planning Commission
 8787 Georgia Avenue
 Silver Spring, Maryland 20910-3760

Re: Hoyles Mill Village

Dear Michele:

The purpose of this letter is to respond to the impervious issue raised by environmental staff ("Staff") with regard to development of the Property. Specifically, Staff has taken the position that the 21% impervious surface calculation made at the time of site plan is an enforceable "cap" that requires building permits to be reviewed and approved for conformance prior to issuance. As detailed below, Staff's position is not supported by the development approvals and associated agreements for the Property. Further, the imposition of such a cap at this late stage in the development of the Property would undermine the financial assumptions relied on by several parties, including the County, with regard to their respective investments in the Property.

Background

The Property consists of approximately 251 acres at the intersection of Schaeffer Road and Richter Farm Road. See Exhibit "1", attached. The Property was purchased by our client, Artery-Hoyles Mill, LLC ("Artery") in December of 1997 as part of the bankruptcy proceedings of the previous owner of the Property, West Germantown Limited Partnership (formerly known as Greenberg Germantown Limited Partnership) ("West Germantown"). The sale was approved by the United States Bankruptcy Court. West Germantown was the applicant for all preliminary and site plans for the Property filed before December of 1997. The Property is also part of the West Germantown Development District ("Development District"), which was created by the County on January 13, 1998.

Preliminary Plan No. 1-88216 for the Property ("Preliminary Plan") was approved with conditions by the Montgomery County Planning Board ("Planning Board") for a total of 579 lots by four (4) different Planning Board Opinions. Four

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hundred fifty-nine (459) units were approved by Opinion mailed on January 11, 1994; an additional 100 units were approved by Opinion mailed on August 8, 1994 (559 total units); ten (10) additional units (569 total units), were approved by Opinion mailed on November 23, 1994, and the final ten (10) units were approved by Opinion mailed May 5, 1999 (579 total units). By Opinions dated July 2, 1996, August 13, 1997, March 6, 1998 and May 5, 1999, the Planning Board approved amendments to the conditions of approval of the Preliminary Plan, unrelated to the current issue.

The original Preliminary Plan Opinion (January 11, 1994) (Exhibit "2") provides the following condition regarding water quality requirements:

- "4) At site plan applicant shall conform with requirements of Appendix 'D' of the Germantown Master Plan. These measures to include, but not be limited to, an imperviousness restriction, water quality monitoring before, during and after construction, stream buffer criteria and suggested best management practices criteria. Use of best management practices shall be reviewed by M-NCPPC and MCDEP and approved by MCDEP"

The Preliminary Plan Opinion does not require a specified impervious cap or deal with building permit release; no subsequent Preliminary Plan Opinion modified this condition.

The Property has been site planned in two separate sections. Site Plan No. 8-95027 for Hoyles Mill Village Section 1 (310 units) and Site Plan No. 8-95030 for Hoyles Mill Village Section 2 (259 units) were approved by the Planning Board by Opinion mailed August 1, 1995 (collectively, "Site Plans"). The Site Plan Opinions are attached as Exhibit "3". By Opinion dated February 26, 1999, the Planning Board approved an amendment to the Site Plans (designated 8-95027A and 8-95030A) to allow for a realignment of Schaeffer Road as requested by the Parks Department in support of the Soccer Complex at South Germantown Regional Park to add 6 units in Section 1 and 4 units in Section 2 for a total of 579 units.

Significantly, the Opinions approving the Site Plans *do not* include an impervious cap or post-site plan requirements for monitoring or review of building permits. In contrast, Conditions 9 and 10 of the Opinions deal with water quality and provide as follows:

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"9. Final stream quality monitoring program to be approved prior to sign off of the signature set of plans. Final program to be based upon the parameters outlined in the staff draft document, 'Water Quality Monitoring Program for Hoyles Mill Village', of May, 1995.

10. Applicant to enter into an agreement with Planning Board to conform to the Approved and Adopted Germantown Master Plan, Appendix D guidelines and recommendations with respect to inspection of clearing, grading, and stabilization activities at the site and to inspection and maintenance of stormwater management facilities."

In accordance with the requirements of the Opinions approving the Site Plans, on September 5, 1996, West Germantown executed Site Plan Enforcement Agreements ("SPEAs") for Site Plan No. 8-95027 (Section 1) and No. 8-95030 (Section 2). The SPEAs are identical in all relevant parts and the SPEA for Site Plan No. 8-95030 is attached for reference as Exhibit "4". The SPEAs *do not* include an impervious cap or establish any post-site plan requirements for monitoring or review of building permits. Instead, the SPEAs provide, in paragraph 3, as follows:

"3. In compliance with Condition No. 9 of Exhibit 'A' [Site Plan Opinion] attached hereto as Exhibit 'E', is a Stream Quality Monitoring Agreement, dated May 31, 1995, by and between Developer Greenberg Germantown Limited Partnership and the Planning Board. In compliance with Condition No. 10 of Exhibit 'A' [Site Plan Opinion], Developer shall enter into a stormwater management facilities agreement with the Planning Board prior to recordation of record plats for the Subject Property, as set forth in Stipulation No. 6 of the Development Program attached hereto as Exhibit 'B'."

Neither the referenced Stream Quality Monitoring Agreement nor the stormwater management facilities agreement contain an impervious cap or reference to building permit review.

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By letter to Artery's engineers dated December 23, 1999 (Exhibit "5"), Staff, for the first time, asserted an impervious cap requiring post-site plan monitoring and review of building permits:

"Overall site imperviousness of 21% is the level we will be enforcing as part of building permit review. In order to accomplish this, we will be requiring the applicant to provide us with a report which summarizes site imperviousness at specific stages of the development. We propose that the stages correspond to release of the 115th, 230th, 345th, and 461st building permits. Release of additional building permits beyond these points would be held until the report has been submitted and accepted by staff.

* * *

If site imperviousness calculated in this manner exceeds 21 percent, the report must also include an explanation of what changes will be made to the impervious surfaces proposed for future stages which will bring the plan back into conformance with the requirement."

In support of its position, Staff relies on the 1989 Approved and Adopted Germantown Master Plan ("Master Plan") which provides that development of the analysis area that includes the Property, identified as KI-2 in the Master Plan, should conform to the Water Quality Standards and Criteria for Development set forth in Appendix D to the Master Plan ("Appendix D"). Appendix D is attached as Exhibit "6". Appendix D, among several other water quality guidelines, provides that the overall development of Area KI-2 should not result in more than 20% total impervious surface.

The Preliminary and Site Plan Opinions, and development agreements that implement these approvals, do not impose an impervious area cap on development of the Property or require monitoring prior to release of building permit.

Staff fails to connect the Master Plan guidelines on imperviousness to any requirement for a continuously monitored impervious cap in any Planning Board Opinion or development agreement regarding the Property. The Preliminary Plan Opinion did not impose a continuously monitored impervious area cap, but merely states that the subsequent site plan should conform to the requirements of Appendix D. The site plan process addressed

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Appendix D in detail. Imperviousness was just one of several environmental issues addressed to assist in maintaining water quality. Other measures included extensive stream buffers, above-standard storm-water management standards, tree save, afforestation and reforestation, best management practices, and water quality monitoring. Where ongoing monitoring and enforcement mechanisms were required as a result of the Planning Board approvals, such requirements were clearly stated in the Site Plan Opinions, included in the SPEAs and separate agreements detailing the precise standards, obligations, monitoring procedures and enforcement rights were executed by the owner and Planning Board and appended as Exhibits to the SPEA. See Exhibit "4". Accordingly, the approvals of Site Plan Nos. 8-95027 and 8-95030 do not impose an impervious area cap to be monitored and continuously enforced as contended by Staff. Appendix D, including imperviousness, was addressed at site plan. All parties were satisfied that the Site Plans reasonably complied with the impervious standard and no additional setbacks affecting the building envelope or post-site plan restriction on variations in house sizes as development proceeded was required. As stated, those water quality measures requiring monitoring or imposing restrictions and limitations on the applicant, future buyers and homeowners were agreed to, fully detailed and disclosed in the public record through precise written agreements that were binding on successors and assigns.

A review of other subdivisions approved in the KI-2 area demonstrates that, when the Planning Board intended to specify imperviousness as an enforceable cap and provide for continuous review of building permits for compliance, it has made this requirement clear and unambiguous. For example, Preliminary Plan No. 1-88006 for King's Crossing was approved by Opinion of the Board on March 21, 1995 (Exhibit "7"). Condition No. 4 specifically requires the site plan to have a 20% impervious "cap." This Condition reads as follows:

- "4) Submit, with site plan, detailed information to conform to the requirements of Appendix D of the Germantown Master Plan. These measures are to include, but not be limited to, *imperviousness cap of 20 percent*; a water quality monitoring program before, during, and after construction; and extraordinary stormwater management and sediment and erosion control best management practices. The latter requirement to be determined consultation with MCDEP"

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Having imposed an impervious cap at preliminary plan, Site Plan Opinion 8-96011 for King's Crossing, approved March 21, 1996, contains the following condition:

3. The Planning Board approves the waiver of the imperviousness cap of 20% to allow 20.4% or an additional 1.69 acres of imperviousness for Site Plan No. 8-96011, King's Crossing, in conjunction with the applicant's letter dated February 22, 1996 (Attachment 2).

Attachment 2 of the Site Plan Opinion is a letter from the applicant's engineer requesting a formal waiver from the 20% cap imposed (Exhibit "8"). Finally, a site plan enforcement agreement for the King's Crossing Site Plan was approved by the Planning Board with the following requirement set forth in the development program:

- (b) Developer shall clearly show the following information on the signature set of site, landscape/lighting, forest conservation, sediment and erosion control plans for Planning Staff review prior to the approval by the Montgomery County Department of Environmental Protection:

* * *

9. Final imperviousness calculations, as submitted in Dewberry & Davis letter of 2/22/96 and configuration and location of impervious surfaces, including house footprint and drive configuration, that demonstrates conformance to "Approved and Adopted Germantown Master Plan," Appendix D, performance criteria for imperviousness.

Moreover, the King's Crossing SPEA expressly requires demonstration by the applicant and its successors and assigns of compliance with the specified impervious cap at time of building permit:

- "(i) the developer shall demonstrate conformance to impervious limit approved by the Planning Board prior to M-NCPCC staff release of building permits." (Exhibit "9")

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The inclusion of a specific impervious area cap and agreement to monitor compliance prior to release of building permit in the King's Crossing Preliminary Plan Opinion, Site Plan Opinion and SPEA demonstrates that, when the Planning Board imposes a specific impervious area cap and requires review of building permits for compliance, it expressly states these requirements in the development approval and implementation documents required by law. Staff's attempt to impose such conditions on Hoyles Mill Village approximately five (5) years after site plan approval and four (4) years after all site plan enforcement agreements and accompanying development agreements have been executed is without lawful authority and violates the existing approvals and agreements for the Property.

The imposition of an impervious area cap and restriction on issuance of building permits is unlawful.

As noted above, Artery purchased the Property in December 1997 out of bankruptcy. At this time and subsequent to bankruptcy court approval of the sale, all approvals, site plan enforcement agreements and water quality agreements for the Property had been signed – none of these provided notice that an impervious cap would be imposed as now sought to be done. Since that time, multiple actions have been taken and sales consummated in reliance on the conditions and limitations as expressly contained in the public approvals and agreements. With regard to Section 1, development of the Property has been divided into three areas identified as 1-A, 1-B and 1-C. See Exhibit "1". All of the lots in Section 1 have been recorded. Section 1-A includes 159 lots, all of which have been finished by Artery as the developer. This work has included lot grading, construction and paving of all roads, construction of all storm-water management facilities, and the installation of all utilities. Further, by 1998 all of the lots in Section 1-A were under contract to builders for construction of residential dwelling units. These include Centex, Richmond American, Ryan Homes and Artery Homes. These companies have, in turn, received numerous building permits and sold homes to homebuyers. To date, there have been approximately 140 sales in Section 1.

With regard to Sections 1-B and 1-C, which include a total of approximately 157 lots, significant site development work has been completed, including lot grading. Street construction and utility installation has commenced and is expected to be completed in the next two months. All of the lots in Sections 1-B and 1-C are under contract with three builders. Home construction has commenced in Section 1-B and finished lots in Section 1-B are to be delivered to developers in June of this year. These Sections are, together with

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Section 1-A, being actively marketed to the public and sales are reported to be very strong. Therefore, by 1998 the following actions had occurred: (i) Artery purchase of the Property from West Germantown; (ii) Artery contracted with builders for all lots in Sections 1-A, 1-B and 1-C; (iii) expenditure of millions of dollars in development costs; and (iv) consummation of all acquisition, development and construction loans for the work and construction discussed above. Further, all of these actions were taken nearly four (4) years after the last of the Hoyles Mill Village development agreements had been signed with Park and Planning. Without question, these actions constitute significant material changes in reliance on the approvals granted. Any change as now sought by Staff would have a material adverse effect.

Section 2 totals approximately 262 lots, including 225 single-family detached houses and 37 MPDU townhouses. Site development plans, including storm-water management, water and sewer, and paving have been approved by the appropriate County agencies, and several permits for the site development work have been issued. Further, the 225 single-family detached lots have been under contract to Toll Brothers, a national builder, since August of 1998. Home construction is scheduled to commence in Section 2 in the fall of this year.

The imposition of an impervious surface cap as proposed by Staff may also undermine the financial assumptions that underlie the underwriting analysis of the Development District. As discussed above, the Development District has been created and includes the Property. At this time, the process of securing the underwriting for the bonds is proceeding between the County, the owners of property in the Development District and designated financial institution. Artery has provided certain estimated sale prices to the County based on a variety of house products. These values have been used to support the bond amounts needed. The analysis does not take into account the impact of monitored impervious restrictions which may act to limit building permits or jeopardize housing production as planned.

In summary, the approved preliminary and site plan opinions for the Property, and the unambiguous terms of the development agreements implementing Appendix D, do not impose an impervious cap or provide for continuous review and monitoring of building permits for the Property. Staff's attempt to impose such restriction at this stage of the development process is contrary to these approvals and the terms of the SPEAs.

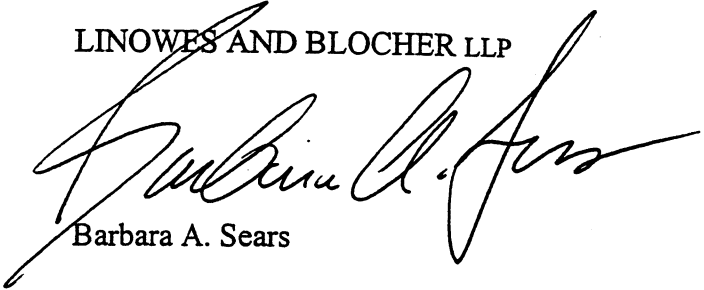
Further, Artery, the homebuilders, and homeowners who have purchased lots on Hoyles Mill Village have justifiably relied on the clear, unambiguous provisions of the Opinions

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and the SPEAs regarding the water quality protection requirements they must comply with in purchasing their parts of the Property. Financial lenders have similarly relied on these approvals and provisions. All have changed their position and expended significant sums in reliance on the conditions of approval as plainly stated in the documents referenced above, and substantial development has proceeded, including issuance of numerous permits, without objection. Further, in addition to the developer, builders, and financial lenders, numerous homeowners may find unexpected restrictions on the use, improvements and sale of their homes. In sum, no reasonable buyer has or would review the approvals of record and discern the restrictions now sought to be imposed. To impose such drastic requirements at this stage is unlawful and inequitable and would cause irreparable and unnecessary harm.

Very truly yours,

LINOWES AND BLOCHER LLP


Barbara A. Sears

Enclosures

cc: Mr. Hayes McCarty
Mr. Bernie Rafferty
Mr. Alan Stackman

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Mr. Charles Loehr
Director of Planning
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Re: Hoyles Mill Village, Phases 1 and 2; Site Plan Nos. 8-95027, 8-95030

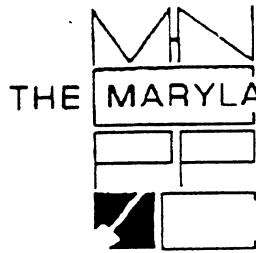
Dear Mr. Loehr:

As a follow up to our recent telephone conversation, the purpose of this letter is to provide you with impervious calculations for Hoyles Mill Village (the "Property"). Artery agreed to prepare an analysis of the existing impervious status of the Property for review by Staff. Staff agreed to release building permits for Phase 1. However, before building permits would be released for issuance for Phase 2 by Staff, Staff advised that the as-built impervious calculations for Phase 1 must be completed and the issues regarding monitoring of Phase 2 resolved. Attached as Exhibit "I" please find the impervious calculations for Hoyles Mill Village.

In the box on the left side of Exhibit "I" is a calculation of the baseline impervious area of the approved site plans for Phases 1 and 2. The approved site plans contained a total imperviousness of 21.115%. The box on the right side of Exhibit "I" indicates the calculations of imperviousness based on the Phase 1 as-built conditions as of October 2000 (see Schedule "A") and the impervious calculations for Phase 2 as originally approved.

We note that, in accordance with our prior discussions with Staff, the actual single-family detached lot impervious area is used for Phase 1. The calculations for impervious area for Phase 2 are consistent with the approved baseline impervious area calculations in that they assume that the average SFD unit impervious area is 1,792 square feet and use the original MPDU impervious area. Additionally, the use of double-wide driveway aprons on some Phase 1 lots have been accounted for in the as-built calculations. The double-wide driveway aprons were installed by the builders at the request of homebuyers with approval of DPS to eliminate a potentially dangerous condition. Artery has notified all builders not to use double-wide driveway aprons.

The total imperviousness based on the above as-built conditions is 21.370% (or 0.255% in excess of the approved site plans). We believe that the current as-built condition of Phase 1, when combined with the allowable build-out of Phase 2, demonstrates an impervious area for the Property in substantial compliance with the Staff position limiting imperviousness to approximately 21%.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

OFFICE OF
THE GENERAL COUNSEL

(301) 495-4646
FAX (301) 495-2173

December 6, 2000

Barbara A. Sears, Esquire
Linowes and Blocher LLP
1010 Wayne Avenue, 10th Floor
Silver Spring, Maryland 20910-5600

RE: Hoyles Mill Village, Phases 1 and 2; Site Plan Nos. 8-95027, 8-95030

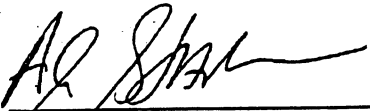
Dear Ms. Sears:

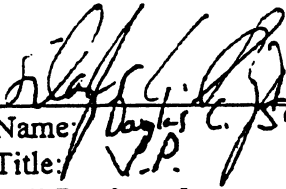
I am writing in response to your November 28, 2000 letter to Charles Loehr, proposing a means to allow Toll Brothers, Inc. ("Toll") and Artery Hoyles Mill LLC ("Artery") to go to closing on December 1, 2000 (copy attached as Exhibit "A"). The Commission is willing to agree to the terms of the letter subject to the following modifications:

1. To deal with any impervious area issues associated with Section 1, Artery agrees to execute and record a restrictive covenant for the Hargett Parcel, containing approximately 6 acres as shown on Exhibit "B" ("Hargett Parcel"). The covenant shall be binding on successors and assigns and shall provide that no clearing, grading or construction shall be undertaken on the Hargett Parcel until the impervious issues on Section 1 of the above-referenced property are resolved between Artery and the Commission.
2. Toll Brothers must provide to the Commission monitoring reports for Section 2 development at stages that correspond to the release of the 56th, 112th and 168th building permits for Section 2 (225 single family lots owned by Toll). The reports must detail the (i) actual impervious area constructed in each stage at the date of the report [*i.e.*, house footprints, roadways (excluding Schaeffer Road, Richter Farm Road, and Leaman Farm Road), driveways and sidewalks], (ii) estimated impervious area for lots for which building permits have been issued in each stage but not yet constructed, and (iii) impervious area proposed for future stages (as shown on the approved Section 2 Site Plan). The Commission will not release building permits for each of the stages until the reports are submitted to the Commission for the previous stage. If the impervious area for Section 2 calculated in this manner exceeds the impervious area limits applicable to Section 2 after release of the 112th building permit (50% completion of the Section 2 development), the Commission may require Toll to submit monitoring reports on a more frequent basis as determined by Staff but not more often than every 30th building permit. After release of the 200th building permit, Staff may further require review and approval of imperviousness as part of

Barbara A. Sears, Esq.
December 5, 2000
Page 3

The undersigned authorized signatories accept the terms of this letter:


Name: Alan Szymanski
Title: Sr. V.P.
Artery Hoyles Mill LLC


Name: Douglas C. Skipt
Title: V.P.
Toll Brothers, Inc.

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LINOWES AND BLOCHER

1010 Wayne Avenue, Tenth Floor
 Silver Spring, MD 20910-5900
 301.581.7500
 Fax 301.485.9044
 Web site: www.linowes-law.com

November 23, 2000

Barbara A. Sears
 301.650.7057
 bas@linowes-law.com

BY HAND DELIVERY

Mr. Charles Loehr
 Director of Planning
 Montgomery County Planning Board
 8787 Georgia Avenue
 Silver Spring, Maryland 20910-3760

Re: Hoyles Mill Village, Phases 1 and 2; Site Plan Nos. 8-95027, 8-95030

Dear Mr. Loehr:

It is our understanding from your voice-mail message of yesterday that further investigation of matters contained in our letter to you dated November 15, 2000 needs to be undertaken by Staff in order to respond to the letter. As we discussed, the settlement of the Toll Brothers Artery litigation provides for closing on the sale of the Section 2 single-family detached lots to Toll Brothers ("Toll") on Friday, December 1, 2000. Your message further indicated that the Staff questions were of a nature that the December 1, 2000 date for a response from staff would probably not be met.

In order to preserve the December 1, 2000 closing date, Artery suggests that, until the impervious issue can be resolved, Artery hereby agrees to withhold development on 15 lots in Section 2. Specifically, these lots would include: Lots 1 through 7, Block Z, Lots 1 through 4, Block AA, and Lots 51 through 54, Block B. The set-aside of these 15 lots would not only cover the 27,960 square feet of projected increased impervious area from the approved site plans, but an additional approximate 25% buffer above the 27,960 square feet. Both Park and Planning and Artery would retain their respective positions with regard to impervious area until the impervious area calculations can be confirmed by Staff.

In exchange for the set-aside, Park and Planning hereby agrees to consent to the issuance of building permits for the other Phase 2 lots not identified in this letter as the 15 set-aside lots. This agreement will not prevent Artery from contesting the final position of Park and Planning on the impervious issue if unfavorable to Artery, nor compromise any decision Park and Planning may make on the November 15, 2000 letter. This agreement will provide security to Park and Planning that the 21% impervious area viewed by Staff as a cap would not be exceeded if Park and Planning rejects Artery's November 15, 2000 proposal. Additionally, Artery agrees that Section 2 may be monitored as provided in the November 15, 2000 letter.

We believe that this mechanism for proceeding is fair to all parties and allows the closing with Toll to proceed on December 1, 2000 and, hence, the major obstacle currently

Annapolis

Columbia

Frederick

Greenbelt

Silver Spring

Washington, DC

EXHIBIT "A"

LINOWES AND BLOCHER

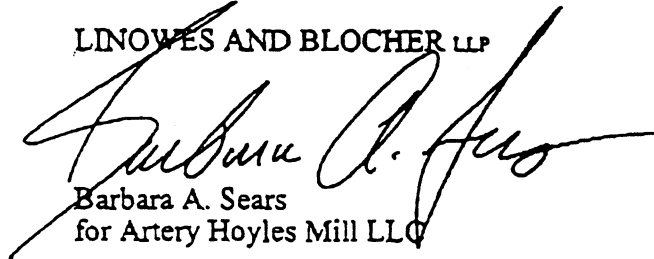
Mr. Charles Loehr
November 28, 2000
Page 2

preventing the Development District from moving forward to be averted. Since Artery and Toll are currently meeting on the details of closing, we would ask that, if you agree with this interim method of proceeding, you indicate your agreement below.

Thank you for your continued cooperation in this matter.

Very truly yours,

LINOWES AND BLOCHER LLP



Barbara A. Sears
for Artery Hoyles Mill LLC

SEEN AND AGREED TO:

MONTGOMERY COUNTY PLANNING BOARD

By: _____
Charles Loehr
Director of Planning

cc: Michele M. Rosenfeld, Esq.
Ms. Catherine Conlon
Mr. Hayes McCarty
Mr. Alan Stackman
Mr. Bernie Rafferty

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SCHEMATIC LAYOUT
HOYLES MILL VILLAGE
 SECTION 2
 DARNESTOWN (6TH) DISTRICT
 MONTGOMERY COUNTY, MARYLAND

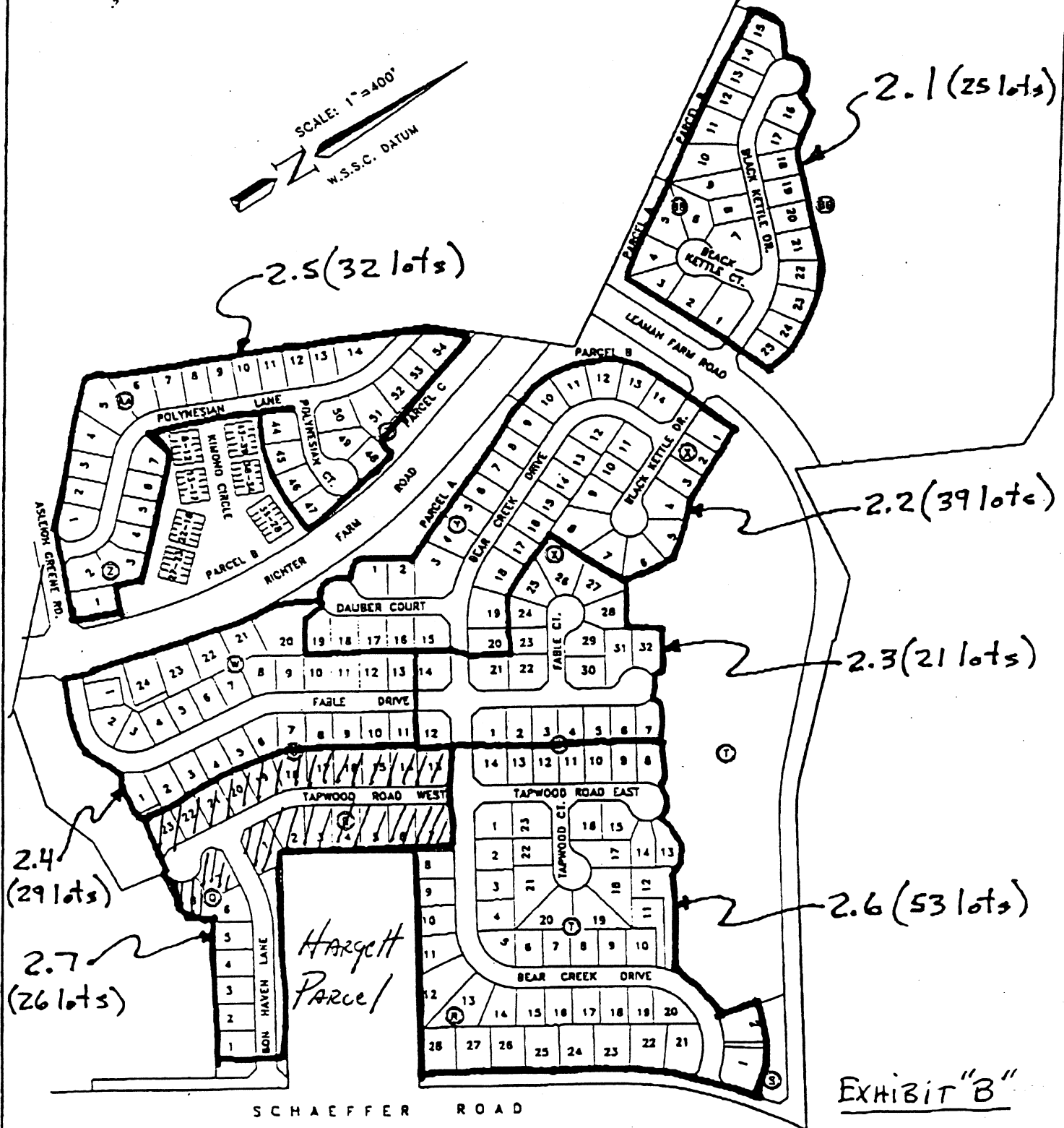
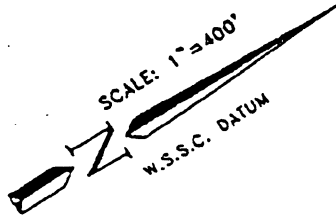


EXHIBIT "B"



ITEM # 11 & 12
MCPB AGENDA 2/13/03

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION


MEMORANDUM

DATE: February 7, 2003

TO: Montgomery County Planning Board

VIA: Joseph R. Davis, Division Chief *JRD*
Development Review Division
Michael Ma, Supervisor *Ma*
Development Review Division

FROM: Robert A. Kronenberg, RLA *RAK*
Planning Department Staff
(301) 495-2187



REVIEW TYPE: Site Plan Review

APPLYING FOR: 8-95030B-Revision to an approved site plan to add (3) MPDU's from 38 to 41 units
8-00019-Approval of 14 one-family detached units in the R-200 Zone

NAME: Hoyles Mill Village, Section 2 and Section 2D (Hargett Tract)

CASE #: 8-95030B and 8-00019

REVIEW BASIS: Section 59-D-3, Montgomery County Zoning Ordinance
Section 59-D-2.6, Montgomery County Zoning Ordinance
Section 59-C-1.61 of the Zoning Ordinance, Development including Moderately Priced Dwelling Units

ZONE: R-200

LOCATION: West side of Schaeffer Road, approximately 5000 feet south of its intersection with Clopper Road

MASTER PLAN: Germantown

APPLICANT: Artery Hoyles Mill Village, LLC

FILING DATE: October 20, 2002

HEARING DATE: February 13, 2003

STAFF RECOMMENDATION FOR SITE PLAN 8-95030B: Approval of 3 additional townhomes as MPDUs, with the following conditions:

1. Signature Set
Prior to signature approval of the site/landscape plans the following revisions shall be made and/or information provided, subject to staff review and approval:
 - a. Site Plan
 - i. Show all easements, LODS, ROW's, Forest Conservation Areas and

Hoyles Mill Village/Hargett Property Impervious Coverage Analysis

Major Areas of Dispute in Impervious Calculations¹

- Portion of Richter Farm Road beyond construction obligation to construct Richter Farm Road (A-297) from Schaeffer Road to Ashleigh Greene Road (at 120 feet ROW)² 147,220 s.f.
- Double driveways constructed by non-Artery builders at request of resident/buyers 16,450 s.f.
- Credit from Richmond American (builder at adjacent Wildman Tract and at Hargett Property) 4,009 s.f.

Total of Major Disputed Areas 167,679 s.f.

Actual adjustment needed under M-NCPPC analysis if Hargett to be kept at 21.114 percent impervious coverage and limited to 17 lots with overage footprint of 1,880 sf. 8,470 s.f.

¹ Artery maintains its position that a cap in the impervious area was not lawfully imposed; see letters to Michele Rosenfeld dated April 3, 2000 and to Charles Loehr dated November 15, 2000.

² See letter dated May 30, 2000 from CPJ Associates to Artery-Hoyles Mill with calculations. Alternately, Artery asserts that if full road (324,370 s.f.) included in impervious calculations, 21.114 percent permitted impervious coverage must be increased to permit density lost by larger impervious request to be recaptured on buildable land.

**Hoyles Mill Village/Hargett Property
Impervious Coverage Analysis**

Property	Acreage	Square Feet	Percent Permitted Impervious per M-NCPPC	Sq. Ft. Permitted Impervious based on 21.1114%	Sq. Ft. Actual Impervious Coverage per M-NCPPC assuming 21.114% permitted	Sq. Ft. Actual Impervious Compliance per Artery assuming 21.114% permitted	Credits Against Impervious Area Available to Hargett per M-NCPPC (sf)	Sq. Ft. Total Impervious Coverage Proposed by Artery	Actual/ Permitted Total Impervious per M-NCPPC (sf)
Section I	138.6	6,037,416	21.114	***	(31,724)	167,679	23,254*****	N/A	(8,470)
Section II	113.3	4,935,348	21.114	***	****	****	*****	****	****
Hargett	5.7	248,292	21.114	52,424	N/A	N/A	(8,470)*****	52,424	43,954*****

* Total acreage for Section I and Section II = 251.9 acres

** Total s.f. for Section I and Section II = 10,972,276 s.f.

*** Total permitted impervious for Sections I and II per M-NCPPC (based on 21.114% for Section I and Section II) = 2,322,987

**** Artery understands M-NCPPC has separate agreement with Section II owners through 9/13/01 conditions of revised preliminary plan and site plan approvals to establish s.f. of total impervious area allowed in Section II, expressed as a limitation of total imperviousness permitted for Section II unit footprints and driveways.

***** M-NCPPC has applied Section I credit of 23, 254 s.f. to Hargett; credit calculated by modifications to MPDUs of 4,004 s.f. plus a correction for that portion of Richter Farm Road which is not on the property but previously included in calculations of 19,250 s.f. for a total credit of 23,254 s.f. as offset by Section I impervious overage calculated by M-NCPPC of 31,724 s.f.; (31,724) + 23, 254 = 8,470 s.f.

- i. Show all easements, LODS, ROW's, Forest Conservation Areas and Stormwater Management Parcels, HOA parcel and trails, numbers and dates of approval on the drawing.
- ii. The amount of green area required per townhouse shall be added to the plans.
- iii. Details and specifications for the noise fence shall be added to the plans.
- iv. A berm and additional landscape planting shall be added on Parcel B to screen the rears of Lots 9 and 10, and 18, Block Y.
- v. MPDUs shall not be less than 18-feet-wide.
- vi. Street trees shall be added along the driveways serving Lots 57-63, Block Z, and Lots 15-21, block Y.
- vii. Additional landscape planting shall be provided to screen the rear yard of Lot 2, Block S, and Lots 9-16 and 27, Block Q.
- viii. The location of all recreation facilities shall be clearly identified on both the site and landscape plans. Complete details and specifications demonstrating full conformance with the Recreation Guidelines shall be added to the plans.
- ix. All previous Conditions of Approval associated with 8-95030 and 8-95030A and 8-95030B unless specifically amended, remain in full force and effect.
- x. Applicant shall provide each prospective homebuyer with a site plan that clearly illustrates house setback and sidewalk locations.
- xi. Before issuance of the 57th building permit, the sidewalk shall be constructed in its final location on all model home lots.
- xii. Show the location of the additional MPDU's on the site plan.

2. Impervious Limitations

Compliance with the conditions of approval enumerated in the Environmental Planning Memorandum dated, September 6, 2001 (see attached in Appendix D) as follows:

- a. Imperviousness for the Section II one-family detached units and driveways must not exceed 12.588 acres or 548,333 square feet. Street, sidewalk and attached housing units with associated parking must be constructed per design shown on approved Site Plan No. 8-95030 except as amended by this plan.
- b. Monitoring of conformance to the imperviousness limits for the single family detached portion of Section II shall be done in accordance with the December 6, 2000 agreement between the applicant and the M-NCPPC (Appendix E-Attachment A), except that, the 20 lots identified to be held in reserve in this agreement shall be replaced by the 20 lots identified in the August 17, 2001 letter from Toll Brothers, Inc (Appendix E-Attachment B). The last five lots of the 20 lots to be released will be lots 60&61, block Z, followed by lot 1, block Z, and followed by lots 1&2, block S.
- c. If at any time the imperviousness limit is reached before building permits for all approved lots have been released, the lots for which building permits have not been released must be re-recorded as non-impervious open space. All pending use and occupancy permits will be held until such time that the open space plats are recorded.
- d. All driveways must be designed as single car width (10 feet) from the edge of the road through the sidewalk and flared out to double car width (20 feet) in front of the garage. The maximum driveway length from the edge of the road right of way to the garage entrance shall be 25 feet. Alternate driveway design may be

approved by M-NCPPC Environmental Planning staff on a case-by-case basis provided any additional impervious surface is accounted for as part of the overall imperviousness limit. All sales contracts must disclose to buyers that these dimensions are imposed as a condition of the Planning Board approval.

- e. Upon recordation of the plat, applicant shall record in the land records a disclosure of the imperviousness limits and monitoring requirements to subsequent land buyers. This disclosure shall be reviewed and approved by Commission legal staff before recordation.

3. Site Plan Enforcement Agreement

Submit a Site Plan Enforcement Agreement, Development Review Program and Homeowner Association Documents for review and approval prior to approval of the signature set as follows:

- a. Development Program to include a phasing schedule as follows:
 - i. Clearing and Grading to correspond to the construction phasing, to minimize soil erosion;
 - ii. Street tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets;
 - iii. Community-wide pedestrian pathways and recreation facilities must be completed prior to seventy percent occupancy of each phase of the development;
 - iv. Coordination of each section of the development and roads;
 - v. Phasing of dedications, stormwater management, sediment and erosion control, forest conservation or other features;
 - vi. Site Plan Enforcement Agreement to include recreation facility maintenance.
- b. Forest conservation Plan shall satisfy all conditions of approval prior to recording of plat and DPS issuance of sediment and erosion control permit.
- c. No clearing or grading prior to M-NCPPC approval of signature set of plans.

STAFF RECOMMENDATION FOR SITE PLAN 8-00019: Approval with the following conditions:

1. Site Plan Enforcement Agreement

Submit a Site Plan Enforcement Agreement, Development Review Program and Homeowner Association Documents for review and approval prior to approval of the signature set as follows:

- a. Development Program to include a phasing schedule as follows:
 - i. Clearing and Grading to correspond to the construction phasing, to minimize soil erosion;
 - ii. Street tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets;
 - iii. Coordination of each section of the development and roads;
 - iv. Phasing of dedications, stormwater management, sediment and erosion control, forest conservation or other features;
- b. Forest conservation Plan shall satisfy all conditions of approval prior to recording of plat and DPS issuance of sediment and erosion control permit.
- c. No clearing or grading prior to M-NCPPC approval of signature set of plans.

2. Signature Set

Prior to signature approval of the site/landscape plans the following revisions shall be made and/or information provided, subject to staff review and approval:

- a. Site Plan
 - i. Show all easements, LODS, ROW's, Forest Conservation Areas and Stormwater Management Parcels, HOA parcel and trails, numbers and dates of approval on the drawing.
 - ii. Provide a covenant in the Homeowners Association documents providing for up to 5 lots sharing a private driveway. The driveway shall be 10 feet wide. The covenant shall be noted on the record plat.
 - iii. Provide a lighting distribution plan for technical review by staff.
 - iv. Provide additional evergreen screening between units 37, 38, 40 and 41 and in the rear of unit 52 and side of unit 47.
 - v. Provide additional screening along the eastern and northern boundary line to buffer adjacent units.
 - vi. Verify the species of trees along Schaeffer Road and revise the landscape plan as appropriate.
- 3. Forest Conservation Plan
 - a. Compliance with the conditions of approval for the final forest conservation plan dated May 20, 1996.
 - b. A Final Tree Save Plan must be developed and submitted to M-NCPPC Environmental Planning prior to any clearing and grading, for protection of the two specimen trees being preserved on the lots. The Tree Save Plan must be prepared and implemented by a certified arborist.
- 4. Impervious Limitations
 - a. Comply with the impervious limitations and credit as outlined in the staff report and the Environmental Planning Department memo dated December 2, 2002 and memo dated January 30, 2003 [Appendix D]. The maximum total impervious coverage permitted shall be limited to 42, 435 square feet.
 - b. Delete 3 lots from the 17 lots submitted for a total of 14 lots, based on impervious coverage. Submit a revised site plan for review and approval to staff prior to acceptance of signature set package.
 - c. Applicant to enter into an agreement with the Montgomery County Planning Board for the purpose of withholding three (3) residential lots for final recordation, of the 14 lots recommended for approval by staff, to ensure compliance with the impervious limitations. The lots to be held shall be graphically denoted on the site plan. Place impervious coverage limitations and information pertaining to the above agreement on the record plat.
 - d. All driveways must be designed as single car width (10 feet) at the public right-of-way, flaring out to (20') in front of the garage. Alternative driveway design may be approved by M-NCPPC Environmental Planning Staff on a case-by-case basis provided any additional impervious surface is accounted for as part of the overall impervious limit. All sales contracts must disclose to buyers that these dimensions are imposed as a condition of the Planning Board approval.
 - e. The developer/builder must submit an impervious report to M-NCPPC Environmental Planning Staff after issuance of the 5th, 9th and 11th building permits. Thereafter, the applicant must submit an impervious report for each of the remaining building permits. The impervious reports must include: surveyed 'as-builts' drawings which include buildings, driveways, sidewalks, leadwalks, porches, patios, welled exists and any building feature that is two feet of less from the ground. Numbers in these reports must be verified by M-NCPPC prior to the release of the next building permit.

SUMMARY OF ISSUES RELATIVE TO SITE PLAN REVIEW: Impervious restrictions

The subject property is part of a two-phase development located in Germantown within the KI-2 analysis area identified in the Germantown Master Plan. This analysis area is subject to special environmental protection measures because of the sensitivity and high quality conditions of the portion of the Little Seneca Creek stream system to which it drains, including impervious restrictions.

The special environmental protection measures recommended by the master plan are set forth in Appendix D of the master plan and are attached in APPENDIX C of this report. These measures include a site imperviousness cap, performance monitoring, stringent best management practices, and protection and enhancement of stream buffer areas. These measures were included in the approval of the original site plan.

The applicant's plans state the Hargett Tract as 5.7 acres. The impervious computations for this site include a strip of land separating the Hargett Tract and Tapwood Way, which apparently was incorporated into Section II, as part of the plat. The computations, as outlined in the data table and table in the memorandum from Cathy Conlon to Michele Rosenfeld dated January 30, 2003 [Appendix D] account for 6.2 acres which includes the strip of land and required impervious limitations.

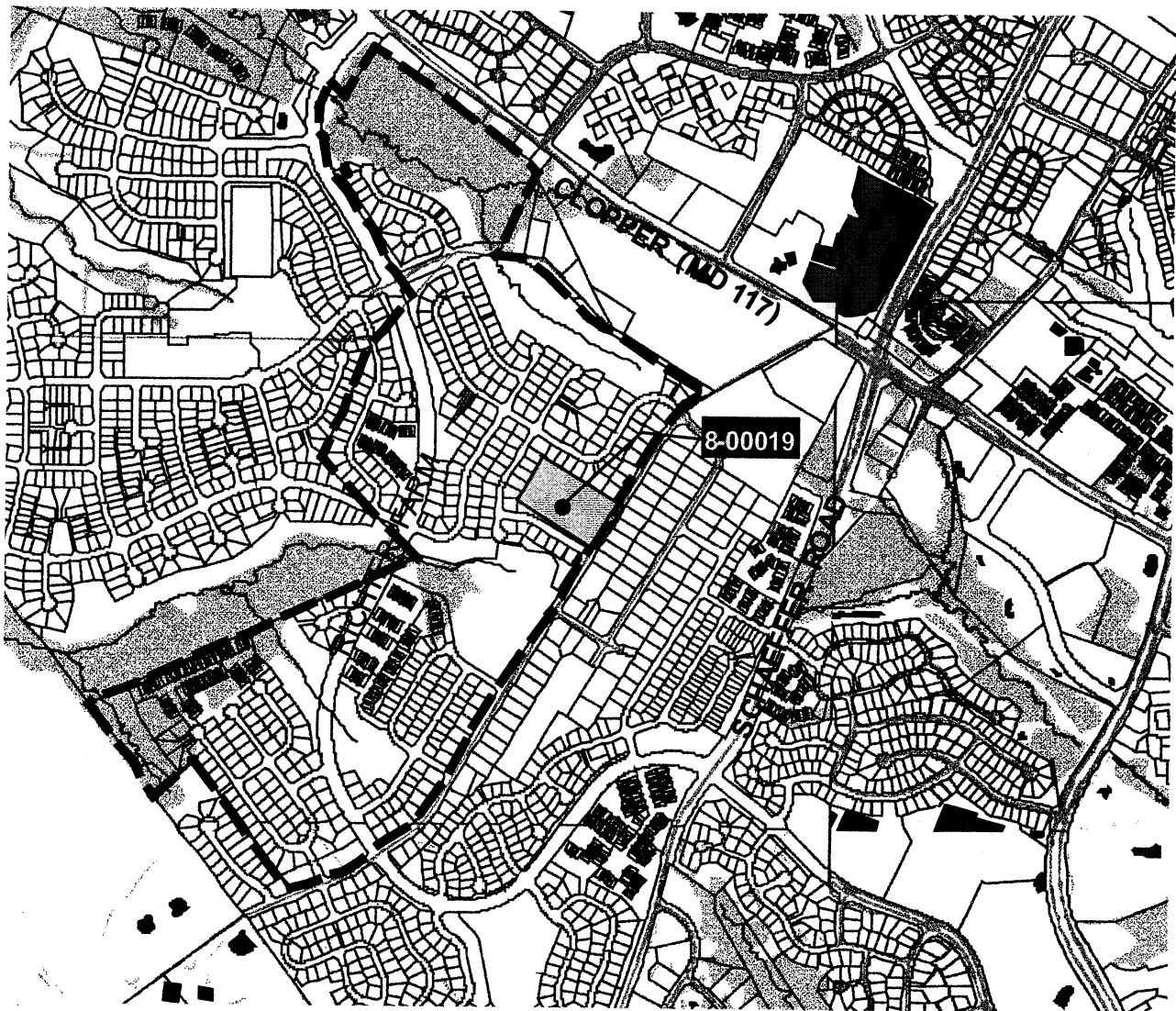
The impervious limits of the Master Plan required the applicant to assess the overall impervious coverage that had been applied to the site. An impervious level of 21.114% was approved as part of the preliminary and site plans for Hoyles Mill Village. The Planning Board granted a waiver of the master plan recommended 20% impervious cap, expanding it to 21.114%. The waiver allowed for additional sidewalks, which were not contemplated when assumptions regarding impervious restrictions were made at the time of the master plan. At the time the Section I site plan was approved, overages in the constructed imperviousness of Section 1 of the subdivision had been identified. Rather than account for these overages within Section 2, Artery entered into an agreement with the Commission, which placed the subject (Hargett) property in reservation pending resolution of the issue.

The applicant plan exceeds the impervious limitations given the impervious computations outlined in the project data table. Staff is recommending the deletion of three lots, of the 17 proposed to meet impervious limitations, based on the computations provided by the applicant. This allows the applicant to construct a reasonable size house, compatible with the surrounding neighborhood. In addition, three lots, as identified on the plan are proposed to be held for final recordation, to ensure that the impervious cap is not exceeded while at the same time providing the builder with the needed flexibility to build homes larger than those assumed in the original impervious calculations. The overall site imperviousness requirements would be met by this revision.

PROJECT DESCRIPTION: Surrounding Vicinity

Hoyles Mill Village is located on the west side of Schaeffer Road, south of its intersection with Clopper Road, and immediately north of the South Germantown Recreational Park. The properties, which are the subject of this review, are located towards the center of the overall development, now called Woodcliffe Park, Section II.

The confronting subdivision (Kingsview Knolls, Plat Book 72, Plat No. 6970) across Schaeffer Road to the east, is zoned R-200 and developed with single-family detached homes. Section 1, of Hoyle's Mills Village, consisting of 316 lots, lies to the south of the subject section and is nearly complete. Section II of Hoyles Mill Village is currently under construction and approximately 50% complete. The development known as King's Crossing, to the west of Hoyles Mill Village, is zoned, PD-2, and is also currently under construction.



PROJECT DESCRIPTION: Site Description and Proposal

The Hargett tract was formerly the Hargett family homestead and consists of a red brick farmhouse and several barns and outbuildings. The parcel contains numerous specimen-size and significant trees, including a mass of mature holly trees, which line the original driveway from Schaeffer Road. The subject property is part of a two-phase development located in Germantown within the KI-2 analysis area identified in the Germantown Master Plan. This analysis area is subject to special environmental protection measures because of the sensitivity and high quality conditions of the portion of the Little Seneca Creek stream system to which it drains. This section of Little Seneca Creek and its tributaries are classified as Use III-p waters (natural trout waters). The Hoyles Mill Village plan area contains four streams that drain to Little Seneca Creek. Two of these streams are located within Section II of Hoyles Mill Village.

The special environmental protection measures recommended by the master plan are set forth in Appendix D of the master plan and are attached in APPENDIX C of this report. These measures include a site imperviousness cap, performance monitoring, stringent best management practices, and protection and enhancement of stream buffer areas. These measures were included in the approval of the original site plan.

The proposal includes the removal of the farmhouse with retention of two of the specimen trees. The trees will remain on private lots. The applicant originally submitted a plan for more units and a much more intensive road network. The impervious constraints have forced the applicant to combine driveways to accommodate the coverage requirements.

An impervious level of 21.114% was approved as part of the preliminary and site plans for Hoyles Mill Village. The Planning Board granted a waiver of the master plan recommended 20% impervious cap, expanding it to 21.114%. The waiver allowed for additional sidewalks, which were not contemplated when assumptions regarding impervious restrictions were made at the time of the master plan. The most recently approved site plan for Section 2 contains 225 one family detached houses and associated driveways. The imperviousness attributed to these as part of the overall site's 21.114% imperviousness is 12.588 acres or 548,333 square feet. At the time this site plan was approved, overages in the constructed imperviousness of Section 1 of the subdivision had been identified. Rather than account for these overages within Section 2, Artery entered into an agreement [Appendix E] with the Commission, which placed the subject property in reservation pending resolution of the issue. The property was intended to account for impervious overages on Section II and compensate for overages in Section I.

The applicant's plan partially addresses the Section 1 overages (6,198 sf.) but would require an additional waiver by the Board for the remaining square footage (8,390 sf).

Staff proposes to further reduce site imperviousness by eliminating three lots. This allows the applicant to construct a reasonable size house, compatible with the surrounding neighborhood. In addition, three lots, as identified on the plan are proposed to be held in reserve to ensure that the impervious cap is not exceeded while at the same time providing the builder with the needed flexibility to build homes larger than those assumed in the original impervious calculations. The overall site imperviousness requirements would be met with this revision.

The current amendment to Site Plan 8-95030(B) intends to address the applicant's requirements for MPDU's. The revisions include changes to the MPDU townhouses to garage units, which affect the

parking layout, proposed recreation and associated improvements along Schaeffer Road.

PROJECT DESCRIPTION: Prior Approvals

Preliminary Plans

Preliminary Plan #1-88216 and #1-88216R

The original Preliminary Plan, 1-88216, was approved by the Planning Board with conditions on June 25, 1994. On January 21, 1999 a revision to the approved Preliminary Plan, 1-88216R was approved with conditions by the Planning Board for 579 lots on 251.90 acres. Final Plats for the property have subsequently been recorded.

Preliminary Plan #1-01063

Preliminary Plan, 1-01063, was approved by the Planning Board with conditions on September 13, 2001. This preliminary plan modified the existing lot configuration and road network in Phase II to address impervious issues. A condition limiting the newly configured single-family lots and associated driveways to the same square footage of impervious surface approved as part of the overall 21.114% limit for the subdivision was included. Also included was a condition placing 20 lots in reservation pending staff approval of building permits to ensure that the impervious limit is not exceeded.

The subject site plan is in substantial conformance with Preliminary Plan 1-01063 in terms of density, access, open space and lot layout. Record Plats have been recorded for all of Section II. This proposal requests to amend Preliminary Plan 1-88216 to include the King Hargett tract.

The conditions of both approved Preliminary Plans and the amendment to the original plan remain valid and in full force and effect.

Site Plans

Site Plan 8-95027 and 8-95027A

On August 1, 1995, the Planning Board approved Site Plan 8-95027 for 310 units including 153 single-family detached units and 157 single-family attached units (including 43 MPDUs). See attached Opinion in Appendix B. This Site Plan specifically addressed construction in Phase I of Hoyles Mill. On January 21, 1999, the Planning Board approved an amendment to Site Plan 8-95027(A) to increase the number and change the layout of single-family detached units. Impervious levels were re-analyzed as part of this revision and a concurrent revision to Phase II Site Plan 8-95030A, and a level of 21/114% was approved.

Site Plan 8-95030, 8-95030A and 8-95030C

On June 1, 1995, the Planning Board approved Site Plan 8-95030 for 259 units including 233 single-family detached units and 36 single-family attached units (MPDUs). See attached Opinion in Appendix B. On January 21, 1999 the Planning Board approved a revision to the approved Site Plan, 8-95030A. The site plan revision was in response to a change in the access to the M-NCPPC South Germantown Regional Park from Schaeffer Road. Schaeffer Road was widened from a primary residential road to a 120-foot-wide right-of-way with center medians and landscaped berms. The end result was an increase of four single-family-detached

units and two single-family attached units (MPDUs). A second amendment to this site plan, 8-95030C, was approved for Phase II concurrently with Preliminary Plan 1-01063 on September 13, 2001. This revision revised the lot layout and road configuration and placed impervious surface restrictions on the tract by placing lots in reservation to ensure compliance with the limitations.

Site Plan 8-00019

On April 4, 1999, a site plan was submitted for 20 single-family detached units on the subject site, including 4 MPDU's in Site Plan 8-95030B. The revisions to Site Plan 8-95030B were to change the MPDU townhouses to garage units, changes in parking, recreation and improvements along Schaeffer Road. Site Plan 8-00019 and the proposed amendment to 8-95030B was withdrawn and never presented to the Planning Board.

The conditions of both approved Site Plans and the subsequent amendments remain valid and in full force and effect.

ANALYSIS: Conformance to Master Plan

Hoyles Mill Village (formerly the King-Hargett property) is located within the KI-2 analysis area identified in the Germantown Master Plan. This analysis area is subject to special environmental protection measures because of the sensitivity and high quality conditions of the portion of the Little Seneca Creek to which it drains. This section of Little Seneca Creek and its tributaries are classified as Use II-P waters (natural trout waters). The master plan performance standards set forth in Appendix D of the master plan to assist in maintaining the existing high water quality include the following provision concerning impervious surfaces:

“Overall, development shall not result in more than 20 percent total impervious surface (e.g., structures, road ways, parking areas, paths).”

The Master Plan also contains the following footnote:

“Variances from the Master Plan Standards, Best Management Practices, and Impact Assessment Requirements may be granted on a case-by-case basis by the Montgomery County Planning Board if it can demonstrated that other measures, with innovative BMP’s, would maintain the existing high water quality of Little Seneca Creek.”

The original Planning Board recommendation for imperviousness in the analysis area was 15 percent. The level was increased to 20 percent during the County Council work sessions. The work sessions included presentation of proposed plans by several of the developers within the analysis areas that demonstrated compliance with the 20 percent impervious level was possible. Plans for the King-Hargett property were included in these discussions.

The applicant is proposing additional lots, which will increase the impervious coverage for the site. Staff is recommending that the applicant lose three lots to conform to the impervious limitations of the Master Plan.

ANALYSIS: Conformance to Development Standards

PROJECT DATA TABLE

Zoning	R-200/MPDU	
Net Tract Area of Section 2	113.3 ac.	
Net Tract Area of Section 2D (Hargett Tract)	5.7 ac.*	
Proposed Use	Residential	
	Permitted/ <u>Required</u>	<u>Proposed</u>
<u>Development Standard</u>		
Density		
-Section 2 (2.44 du's/useable ac)	276	264
SFD		223
SFA (MPDUs)		41**
-Section 2D (2.44 du's/useable ac.)	13**	14***
Setbacks		
-front	25	25
-from Schaeffer Road	50	50
-rear	30	30
-side	12/25 combined	5
Minimum Net Lot Area (sf)		
-single-family detached lot	6,000	7,875
-townhouse***	1,500	1,530
Max. Building Height (ft.):	40	40
Green Area per Townhouse (2,000 sf/du)	84,000	*****

* Net tract area of Hargett Tract is 5.7 acres as provided by applicant. Acreage does not account for strip of land separating public road and subject property. Actual acreage for impervious computations is 6.2 acres as described in the Impervious Computations table on the following sheet. Impervious computations reflect the 6.2 acres.

** The overall maximum density permitted based on the overall acreage of Phases I and II is 628 lots. The total proposed is 599 lots.

*** Townhouses are 33% of the total, 40% is the maximum permitted.

**** The fourteen lot yield is based on staff's recommendation for maximum impervious limitations of 42,435 sf.

***** This information has not been provided. It appears that this requirement has been exceeded. A condition has been included which requires that this information be provided prior to signature approval of the site plans.

IMPERVIOUS COMPUTATIONS

<i>Site Area:</i>	270, 072 sf*
<i>Permitted Impervious Coverage: (@21.114%)=</i>	57, 023 sf
<i>Impervious Overage from Section 1 (per table)</i>	<u>14, 588 sf</u>
<i>Adjusted Imperviousness (to meet 21.114% overall)</i>	42, 435 sf
<i>Proposed Imperviousness</i>	50, 825 sf
<i>Impervious Required to meet overall 21.114%</i>	<u>42, 435 sf</u>
<i>Adjusted Impervious Overage</i>	8, 390 sf
<i>Adjusted Imperviousness Overage</i>	8, 390 sf
<i>Average Square Feet per Lot</i>	<u>2, 582 sf</u>
<i>Proposed Lots in Excess of Impervious Limit</i>	3.2 Lots

* Net tract area of Hargett Tract is 5.7 acres as provided by applicant. Acreage does not account for strip of land separating public road and subject property. Actual acreage for impervious computations is 6.2 acres as described in the Impervious Computations table.

MPDU CALCULATIONS

	Sections I and II
Base Density	504 dus (251.9 ac x 2dus/ac.)
Proposed Density	577 dus*
MPDUs Required	81**
MPDUs provided in Phase I	43
MPDUs required in Phase II	41
MPDUs proposed in Phase II	41

* The overall maximum density permitted based on the overall acreage of Sections I and II is 614 lots. The total proposed is 577 lots.

** 577 units proposed-504 units base density =73 unit density bonus. $73/504=14.5\%$ or 15%. Up to 15% density bonus requires 14.0% (81 dus) of total units as MPDUs

RECREATION CALCULATIONS
Sections I and II

	<u>tots</u>	<u>children</u>	<u>teens</u>	<u>adults</u>	<u>seniors</u>	
Demand Points						
Housing Type						
-SFD II(333)	42.9	79.2	82.5	349.3	36.3	
-SFD III(51)	7.1	9.7	11.7	64.8	6.6	
<u>-SFA (195)</u>	<u>33.2</u>	<u>42.9</u>	<u>35.1</u>	<u>251.6</u>	<u>13.7</u>	
Total	82.3	131.8	129.3	665.7	56.6	
Supply Points						
<u>On-Site Facilities:</u>						
Multi-age area (4)	36.0	44.0	12.0	28.0	4.0	
Picnic/Sitting (1)	1.0	1.0	1.5	5.0	2.0	
Pedestrian System	8.4	26.5	26.0	301.3	25.7	
Natural Area	0.0	6.6	13.6	67.0	2.9	
Regulation Softball	2.0	15.0	20.0	40.0	2.0	
Multi-purpose Court	<u>3.0</u>	<u>10.0</u>	<u>15.0</u>	<u>10.0</u>	<u>2.5</u>	
On-Site Total	50.4	103.1	88.1	450.0	39.1	
<u>Off-Site Facilities*</u>						
@ Kings Crossing						
@ So.Grmntwn Reg. Park						
Off-site Total (35% Max.)	<u>28.4</u>	<u>37.0</u>	<u>36.6</u>	<u>179.8</u>	<u>16.8</u>	
Total Supply Points	78.4	139.3	123.7	6	24.3	55.2

* As taken from Previous Approval of 8-95030A

FINDINGS for Site Plan Review:

1. *The site plan is consistent with an approved development plan or a project plan for the optional method of development, if required. None is required.*
2. *The site plan meets all of the requirements of the zone in which it is located. See Project Data Table above.*
3. *The locations of the buildings and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe and efficient.*

a. **Location of Buildings**

The location of the buildings as proposed is somewhat conceptual. The houses will be sited and the lots graded based on the model type chosen by lot purchasers. The proposed house sitings as indicated are consistent and compatible with those in previously approved sections. If the staff recommendation to delete three lots were approved by the Planning Board, staff's recommendation would be to delete the units on the shared driveways or increase the size of the lots along Tapwood Way to be more compatible with the adjacent properties.

b. **Open Spaces**

The open space proposed for the Hargett tract consists of an area for proposed entry signs and landscaping along Schaeffer Road. In the event that the impervious cap is exceeded, all or some of the lots proposed for reservation on the Hargett tract will be converted to permanent open space and conveyed to the HOA.

The open space for the amendment to Site Plan 8-95030B has been revised only to include three additional townhouse units on the end. The open space will be conveyed to the HOA. The additional impervious in this section has not impacted the open space requirements.

The stormwater management concept for the proposed development was approved with conditions by the Montgomery County Department of Permitting Services (DPS) for the original submission, and remains unchanged by the subject revision. The concept was reconfirmed by DPS on December 12, 2002.

c. **Landscaping and Lighting**

Landscaping on the site consists primarily of street trees and buffer planting to screen houses. Several conditions have been added which require that additional planting be provided along flag lot driveways and in areas where additional planting is necessary to better screen the rear and side yard areas of lots from public view.

d. **Recreation**

Recreation demand is satisfied as shown in the recreation calculations table above.

e. **Vehicular and Pedestrian Circulation**

Apart from the elimination of three previously approved short cul-de-sac streets and the proposal to connect two cul-de-sacs the road network remains exactly the same as that previously approved. The proposed change is an improvement to the overall vehicular and pedestrian circulation system.

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

The proposed structures and uses are compatible with the existing and proposed adjacent residential properties. Landscape buffers are proposed in areas of the site where necessary to screen views of rear yards of homes and will, along with the setbacks, ensure compatibility.

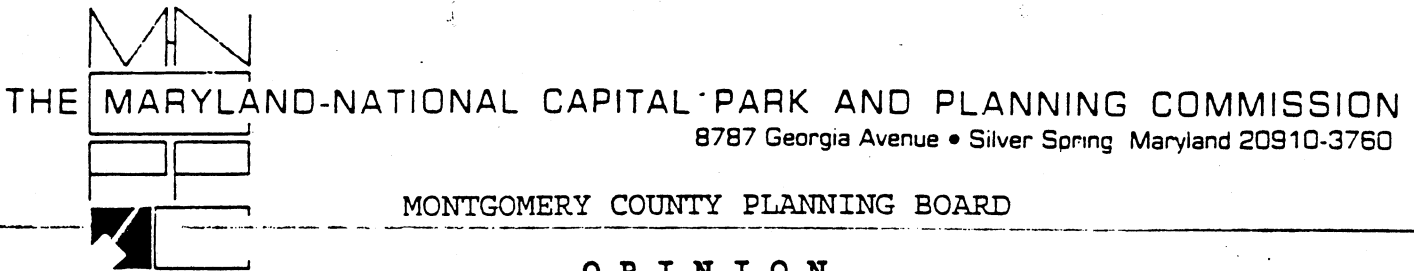
5. *The site plan meets all applicable requirements of Chapter 22A regarding forest conservation.*

The forest conservation requirements, with respect to clearing, grading, forest retention and reforestation have been complied with on this site and the overall Hoyles Mill subdivision. The applicant has also complied with the impervious monitoring for individual lots for Phase I, although the numbers directly affect this property.

This submittal *does not* conform to the impervious calculations and restrictions as outlined in the project data table. The project would comply with the restrictions if three lots were deleted from the submission, based upon computations for proposed houses, lead walks, driveways and parking pads for each house, from information provided by the applicant.

APPENDIX

- A. Standard conditions of Approval
- B. Previous Planning Board Opinions
- C. Appendix D from Germantown Masterplan
- D. Environmental Planning Memorandums
- E. December 6, 2000 agreement (Attachment A & B)



MONTGOMERY COUNTY PLANNING BOARD

O P I N I O N

DATE MAILED: August 1, 1995

SITE PLAN REVIEW #8-95030

PROJECT: HOYLES MILL VILLAGE SECTION 2

Action: Approval subject to conditions. Motion was made by Commissioner Aron, seconded by Commissioner Holmes, with a vote of 5-0, Commissioners Aron, Holmes, Hussmann, Richardson and Baptiste voting for.

The date of this written opinion is August 1, 1995 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before August 31, 1995 (which is thirty days from the date of this written opinion). If no administrative appeal is filed, then the validity period of this site plan is tied to the phased validity periods established in the underlying preliminary plan. The underlying preliminary plan was approved in three different phases. Phase I consisting of 459 units was approved on December 9, 1993 and will remain valid until February 7, 1997. Phase II was approved on June 30, 1994 for an additional 100 units (559 total units) and will remain valid until September 8, 1997. Phase III consisting of the final 10 units (569 total units) was approved by the Planning Board on September 29, 1994 and will remain valid until December 23, 1997. Prior to the expiration of these validity periods, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.

On February 7, 1995, Greenberg Germantown Limited Partnership submitted an application for the approval of a site plan for property in the R-200 zone. The application was designated Site Plan Review #8-95030.

On June 1, 1995, Site Plan Review #8-95030 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based on the testimony and evidence presented by the

staff and on the staff report with modifications to the conditions hereby adopted by the Montgomery County Planning Board, and which is make a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan meets all of the requirements of the zone in which it is located.
2. The locations of the buildings and structures, the open spaces, the landscaping, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.
3. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

The Montgomery County Planning Board approves Site Plan Review #8-95030 as follows:

Staff recommends APPROVAL of Site Plan #8-95030 for 259 units including 223 single family detached units and 36 townhouses (including 36 MPDU's), subject to the following conditions:

1. Submit a Site Plan Enforcement Agreement, Development Program, and Homeowners Association Documents for review and approval prior to approval of the signature set as follows:
 - a. Development Program to include a phasing schedule as follows:
 - 1) Street tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets;
 - 2) Community-wide pedestrian pathways and recreation facilities must be completed prior to seventy percent occupancy of each phase of the development. Pathways between units must be completed prior to occupancy of adjacent units;
 - 3) Clearing and grading schedule;
 - 4) Required site inspections of retention and reforestation areas by M-NCPPC enforcement staff as specified in the "Trees Technical Manual";
 - 5) Submit financial security for reforestation planting prior to clearing and grading;
 - 6) Maintenance agreement for reforestation areas to be reviewed and approved by M-NCPPC staff prior to first inspection of planted areas.
 - b. Enforcement Agreement to reference stream quality

monitoring agreement and stormwater management facility maintenance agreement;

- c. Site Plan Enforcement Agreement to include an element requiring each Applicant/Builder of a project or a portion of a project identified in Table I to construct or participate in the construction of each particular transportation improvement referenced in the Germantown West Improvements/Development Phasing Program ("Phasing Program") consistent with the terms and conditions imposed upon the project pursuant to its preliminary plan approval by the Planning Board. This requirement does not increase or decrease the responsibility of any Applicant with respect to the construction of a transportation improvement, each Applicant remains obligated to construct or participate in the cost of constructing an improvement consistent with the preliminary plan for the project ("Required Improvements"). The enforcement agreement shall provide that if an applicant/builder of another project identified on Table I, as may be amended from time to time, has undertaken construction of all or a portion of the Required Improvements attributable to Applicant at the time Applicant files for an initial building permit tied to such Required Improvements, Applicant must pay a pro rata share of all costs and expenses associated with the Required Improvements prior to or contemporaneous with an application for building permits.

The parties shall agree to appropriate formulas and calculations for determining pro rata shares. The agreement may provide that the Planning Department should monitor pro rata payments and is authorized to withhold release of a building permit in the event a share has not been paid. The agreement shall provide that the Applicant will cooperate with other developers and not unreasonably delay respective development proposals, including dedication of right-of-way, provided that the requesting party provides appropriate reimbursement to the Applicant.

- d. Homeowners Association Documents to include provisions for inspection and maintenance of SWM facilities per the Approved and Adopted Germantown Master Plan recommendations and guidelines, Appendix D.

2. Submit a phasing plan as follows:

- a. Phasing for all clearing and grading that will correspond to the construction schedule and reduce soil erosion;
- b. Phasing of each section of the development which reflects

- phasing of required roadway improvements;
- c. Phasing of stormwater management facilities and recreation facilities.
3. Incorporate the following items into the signature set landscaping plan:
 - a. Street trees 45 feet on center along all public streets;
 - b. Planting within the stormwater management facilities.
 4. The following information must be shown on the signature set of all plans and be incorporated into the sediment and erosion control plan for staff review prior to approval by MCDEP:
 - a. Stream buffers;
 - b. Limit of disturbance line;
 - c. Methods and location of tree protection;
 - d. Forest retention and reforestation areas;
 - e. Conservation easements.
 5. Type I conservation easement to include all stream buffers, wetland, floodplain and forest conservation areas. Easement must be delineated on the record plat.
 6. Provide noise attenuation as follows:
 - a. Construct noise berms to attenuate current noise levels to not exceed 60 dBA Ldn for the outdoor rear yard area of homes located on either side of Richter Farm Road (A-297) and future Hoyles Mill Road (A-298);
 - b. Show design and final location of berms on signature set of site plans.
 7. Incorporate the following items into the final stormwater management and sediment control plans for EPD staff review and approval prior to MCDEP approval of the plans and issuance of permits:
 - a. Limits of disturbance for grading of stormwater management ponds 4 and 5 a minimum of 50 feet from the stream channels;
 - b. Sediment traps and associated grading outside of stream buffers except in the location of permanent ponds 4 and 5.

8. Signature set of plans to clearly show roadway improvements.
9. Final stream quality monitoring program to be approved prior to sign off of the signature set of plans. Final program to be based upon the parameters outlined in the staff draft document, "Water Quality Monitoring Program for Hoyles Mill Village", of May, 1995.
10. Applicant to enter into an agreement with Planning Board to conform to Approved and Adopted Germantown Master Plan, Appendix D guidelines and recommendations with respect to inspection of clearing, grading, and stabilization activities at the site and to inspection and maintenance of stormwater management facilities.
11. Storm drain along the stream valley at the end of proposed Tapwood Road East shall be relocated so that there is no disturbance within the designated stream valley buffer.
12. No clearing or grading prior to Planning Department approval of signature set of plans.
13. Compliance with Forest Conservation Plan. Prior to approval of signature set of site plans, revise Forest Conservation Plan to include:
 - a. Tree Protection Plan which incorporates the final locations of sediment and erosion control devices and stormwater management facilities;
 - b. Reforestation Planting Plan including planting of 2" caliper trees in reforestation areas along the stream channels adjacent to the stormwater quantity control ponds.
14. Agreement with the Planning Board to construct road improvements as follows:
 - a. Construct Hoyles Mill Road (A-298) as a two-lane road with an eight (8) foot bikepath, from the western property line north of Richter Farm Road (A-297) to twenty (20) feet east of the intersection of A-298 and Black Kettle Drive. This condition is contingent upon the construction of the adjacent development (Kings Crossing) by others. If the development is not constructed or near construction at the time the Hoyles Mill Village improvements are to be made, the developer will be required to grade the roadway and provide a Public Improvement Easement (PIE).
 - b. The developer shall be required to improve Hoyles Mill Road from the twenty (20) feet east of the intersection

of A-298 and Black Kettle Drive to Schaeffer Road. Discussions with the MCDOT have determined the developer may choose one of the following improvements, and still meet MCDOT requirements:

- 1) Widen Hoyles Mill Road to twenty (20) feet, providing a shoulder and drainage ditch on the southern side of the road.
- 2) Widen Hoyles Mill Road to twenty-one(21) feet, providing a rolled curb on the southern side of the road.