

Resolution No.: 15-735
Introduced: July 27, 2004
Adopted: July 27, 2004

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

By: County Council

**SUBJECT: APPLICATION NO. G-812 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,
Jody Kline, Esquire, Attorney for Arrowsmith Court LC, Applicant, OPINION AND
RESOLUTION ON APPLICATION**

Tax Account No. 09-00767043

OPINION

Application No. G-812, filed on July 2, 2003 by Applicant Arrowsmith Court LC, requests reclassification from the R-200 Zone to the R-T 8 Zone of 4.02 acres of land known as Parcel 949, Tax Map FU121, located north of Old Game Preserve Road and east of Arrowsmith Court in Gaithersburg, Maryland, in the 9th Election District.¹ The application was considered under the Optional Method authorized by Code §59-H-2.5, which permits binding limitations with respect to land use, density and development standards or staging.

The Hearing Examiner recommended approval of the application on the basis that the R-T 8 Zone at the proposed location would satisfy the requirements of the purpose clause; that the proposed reclassification and development would be compatible with existing and planned land uses in the surrounding area; and that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The Montgomery County Planning Board ("Planning Board") and its Technical Staff provided similar recommendations. The District Council agrees with these conclusions.

¹ The application originally sought reclassification to the RT-10 Zone, which permits up to ten dwelling units per acre. However, in light of the fact that the Applicant proposed a binding element limiting density to eight dwelling units per acre, Technical Staff and the Planning Board recommended that the application be amended to seek the RT-8 Zone. This amendment was sought during the hearing and accepted by the Hearing Examiner, pursuant to Code § 59-H-2.24, on grounds that it did not change the class of zone requested. Apart from the density limitation, the development standards for the RT-10 and RT-8 zones are identical.

The subject property measures approximately 4.02 acres and is located on the north side of Old Game Preserve Road, between Arrowsmith Court and Travis Avenue. The property is surrounded by the City of Gaithersburg on two sides, with a portion of Great Seneca Stream Valley Park on a third side and residential uses on the fourth. The subject property is trapezoidal in shape. It has approximately 310 feet of frontage on Old Game Preserve Road and an average depth of approximately 800 feet. The property is currently undeveloped. A mix of deciduous forest occupies most of the property, and the remainder is covered with shrubs and grass. There are no specimen trees on the property. The property contains steep slopes along its southern border, facing Old Game Preserve Road, and in the eastern third of the property. It drains to an ephemeral stream located along the eastern boundary.

The surrounding area for this application extends roughly from Great Seneca Stream Valley Park on the north and west, to commercially zoned properties located along North Frederick Road (MD 355) in the City of Gaithersburg to the south, and to a commercial center in the City of Gaithersburg and a PEPCO transmission line on the east. This surrounding area contains a mix of residential, commercial and institutional uses. Abutting the subject property to the north is a portion of Great Seneca Stream Valley Park, which is owned by the MNCPPC. Abutting to the west is a small community of 19 townhouses along Badger Drive and seven single-family detached homes on Arrowsmith Court, all of which are classified under the R-200 Zone. These townhouses were built to satisfy the requirement for moderately priced dwelling units ("MPDUs") associated with a larger development of single family detached homes to the north, which is separated from the Badger Drive/Arrowsmith Court neighborhood and from the subject property by a portion of Great Seneca Stream Valley Park.

To the east and south, the subject property sits on the line between unincorporated Montgomery County and the City of Gaithersburg. Abutting to the east is a townhouse development classified under the City of Gaithersburg's R-18 Zone. Confronting to the south is an undeveloped parcel of land in the City of Gaithersburg, which a community participant testified is planned as a parking area for a new Fitzgerald's Auto Mall being built nearby. Confronting to the southeast is a

PEPCO transmission line right-of-way.² Confronting to the southwest is a former motel, located in the City of Gaithersburg's C-2 commercial zone, which is now owned by Montgomery County and is being renovated, in partnership with the Montgomery County Coalition for the Homeless, to create 57 dwelling units (including 17 transitional housing units for families). Further to the south and west are commercially zoned properties within the City of Gaithersburg, including retail, restaurant and service uses, and a Montgomery County police substation. Two vacant parcels fronting on Arrowsmith Court to the west have been approved for an 82,000-square-foot office and warehouse building.

The subject property was classified under the R-R (now R-200) Zone in the 1958 Countywide Comprehensive Zoning. It was reclassified under the R-20 Zone in 1966 by Local Map Amendment E-602. The R-20 Zone was reaffirmed by Sectional Map Amendment (SMA) in 1972 (SMA F-805) and 1974 (SMA F-939). The latter action was reversed by the Court of Appeals in 1975 and the property was then mapped in the R-200 Zone. The current R-200 zoning was confirmed in 1986 (SMA G-502), 1987 (SMA G-568) and 1990 (SMA G-652).

The Applicant proposes to build a maximum of 32 townhouses on the subject property, and has committed to building only single-family attached units. The illustrative elements of the schematic development plan indicate that the units would be arranged in five clusters fronting on a private street, with access from Old Game Preserve Road. Eleven units would have one-car garages integrated into the residences. The remaining units would rely on surface parking. The plans provide for garages on some lots and walk-out basements on others. Including the garages, driveway spaces for the garage units and surface parking, the development as currently proposed would have a total of 75 spaces, or 2.3 spaces per dwelling unit (the number of parking spaces is not a binding element). This would exceed the Zoning Ordinance requirement of two spaces per unit, or 64 spaces. See Code § 59-E-3.7.

The Applicant proposes a centrally located tot lot on the west side of the site, and an interior sidewalk network to connect with Old Game Preserve Road and the existing sidewalk on

² The southeast corner of the subject property currently appears to touch the PEPCO right-of-way, but after a required roadway dedication the property line would move north, away from the PEPCO lines.

Arrowsmith Court. The Applicant's representative testified that he intends to comply with the request made by a resident of Badger Drive, Heather Skull, that a fence be erected along the property line between the subject property and the homes that front on Badger Drive. Ms. Skull testified that Badger Drive is a private street and the property owners are personally liable for any injuries that may occur there. She was concerned that if pedestrians were able to use Badger Drive to access the proposed development, the liability exposure for property owners on her street would expand considerably.

Approximately one acre of the subject property, adjacent to Great Seneca Stream Valley Park, would be preserved within a Category One conservation easement, prohibiting any construction in that area. The Applicant was not required to submit a landscape plan and did not do so. However, the Applicant's representative testified that he intends to comply with the request made by Jim Vassef, who resides in the only single-family detached home that abuts the subject property, that the development include evergreen screening along his property line (in the northwest portion of the site). The testimony indicates an intention to install dense vegetative screening along the western property line, and a binding element specifies that only landscape screening or fencing may be built in that area. Testimony also indicated that additional landscaping would be installed in the form of street trees and ornamental plantings, as well as potential screening for the townhouse development to the east.

The subject property contains approximately 2.97 acres of forest. The Applicant plans to satisfy applicable forest conservation requirements by preserving approximately 0.93 acres of forest in the conservation easement area. As recommended by Technical Staff, the Applicant would satisfy afforestation requirements by carrying out 0.38 acres of supplemental planting in appropriate areas of existing forest on site, or in the stream valley buffer on and near the property.

The schematic development plan ("SDP") submitted in the present case proposes six binding elements, which are set forth in full on the next page. These binding elements limit development to 32 single-family attached dwelling units, with a maximum of 14% building coverage and a minimum of 65% green space. The binding elements specify that the Applicant may file an application for preliminary plan approval no sooner than July 1, 2004, when the current residential building moratorium in the area

ends. Finally, the binding elements specify that the only above-ground features permitted in the first ten feet along the western property line are landscape screening and potential fencing.³

Binding Elements of Schematic Development Plan, from Ex. 41(a)

Binding Elements

Development Standard	Permitted/Required	Binding Elements
1. Land Use	* Detached, attached, or semi-detached dwelling units	- Exclusively one-family attached dwelling units
2. Density	* 32 one-family attached dwelling units	- Not more than 32 one-family attached dwelling units. *
3. Building Coverage	* 35% of 175,180 square feet	- not more than 14% or 24,000 square feet
4. Green Space	* 50% or 87,590 square feet	- not less than 65% or 113,800 square feet
5. Staging (per Sec. 59-H-2.53)	* Optional	- Submission of a preliminary plan of subdivision will be restricted to July 1, 2004 or thereafter
6. Land Use	* Detached, attached, or semi-detached dwelling units	- In the area designated XXXX , the only above ground feature permitted will be landscape screening and potential fencing. Details of which to be determined at Site Plan review.

As shown on page 12 of the Hearing Examiner's Report and Recommendation, the proposed development would be consistent with applicable development standards for the R-T 8 Zone.

The District Council concludes that the proposed rezoning would comply with the purpose clause of the R-T 8 Zone. The purpose of the R-T Zone is to provide suitable sites for townhouses in "sections of the County that are designated or appropriate for residential development at densities allowed in the R-T Zones" or in "locations in the County where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses." Code §59-C-1.721. In the present case, the *1985 Gaithersburg and Vicinity Master Plan* does not designate the subject property for development at densities allowed in the R-T Zones. On the contrary, the Master Plan recommends development of the subject property at a density of two to four dwelling units per acre. However, the purpose clause specifically states three alternatives. The R-T Zone may be applied (1) in areas that are designated for R-T Zone densities (implying a master plan designation); (2) in areas that are appropriate for residential development at densities that are allowed in the R-T Zones; or (3) where there is a need for buffer or transitional uses. The present application satisfies both the second and the third of these alternatives.

³ The SDP does not specify the width of the strip of land to which this binding element applies. The Hearing Examiner measured it with a scale at about ten feet. The District Council accepts this measurement as a reasonable estimate.

The District Council agrees with the findings made by the Hearing Examiner and Technical Staff that the proposed development would be compatible with surrounding land uses. Townhouses predominate among the existing adjacent uses, both to the east and to the west. Accordingly, the nature of the use is compatible with the character of the area. The proposed density of eight dwelling units per acre is the same as the density in the existing townhouse development to the east. The proposed density is higher than the overall density of the combined townhouse/single-family detached development adjacent to the west, but is substantially lower than the density of the townhouse portion of that development. Moreover, the proposed development would contribute to the transition between existing and proposed higher-density commercial and residential uses to the south, and existing low-density single-family uses to the north and west. The Applicant proposes appropriate setbacks, and opportunities exist for significant buffering. In addition, the proposed conservation easement would provide a substantial green area, preserving some of the community's sense of the subject property being a continuation of the adjacent park. For all of these reasons, the Hearing Examiner concludes, based on the preponderance of the evidence, that the density proposed here, which is near the low end of the densities permitted in the R-T Zones, is appropriate at this location and would meet a need for a transitional use.

The forest area conservation easement and the provision for a small recreational area would be consistent with the intent of the R-T Zone to provide amenities normally associated with less dense zoning categories. For the reasons discussed in the previous paragraph, the proposed development would be compatible with existing and planned land uses in the surrounding area. Accordingly, the evidence demonstrates that the proposed rezoning and development would be consistent with the intent of the R-T Zone to prevent detrimental effects to adjacent properties and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the County.

As discussed above, the District Council finds that the proposed development would be compatible with existing and planned land uses in the surrounding area. The surrounding area contains

a mix of uses including a substantial number of townhouses. The proposed townhouse development would be consistent with that mix in terms of both the nature of the use and density. The record contains no information concerning architectural compatibility, but this can be addressed at site plan review.

The one-acre portion of the subject property to be preserved in its natural state contributes to compatibility. The preservation of this open space would provide a substantial green area, preserving some of the community's sense of the subject property being a continuation of the adjacent park. The open space would serve as a visual amenity for the neighborhood as well as for residents of the new development.

For all of the above reasons, the District Council concludes that for purposes of zoning stage review, the proposed development would be compatible with existing and planned land uses in the surrounding area.

The District Council further determines that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The Planning Board and Technical Staff opined that the proposed development would substantially comply with the Master Plan. The Hearing Examiner did not agree. She found that the Master Plan maps specifically recommend development of the subject property at a density of two to four d.u./acre, and that nothing in the text suggests that the higher density proposed here would be appropriate. The District Council agrees with the Hearing Examiner's conclusion. However, unless Master Plan compliance is explicitly made an element of the purpose clause for a particular zone, the Master Plan serves merely as guide, not a zoning requirement. See *Richmarr Holly Hills, Inc. v. American PCS, L.P.*, 117 Md App. 607, 701 A.2d 879 (1997). Moreover, the favorable opinions of the Planning Board and Technical Staff serve as persuasive evidence that the proposed development would be appropriate at this location and would serve the public interest.

The evidence demonstrates that the proposed rezoning and development would have no adverse effect on public facilities, including roads, pedestrian walkways and schools, that warrants denial of the application. Several residents argued that the proposed development would have a negative impact on traffic safety on Old Game Preserve Road because of the road's narrowness and steep

slopes. The contrary opinions of Technical Staff and of the Applicant's traffic expert represent substantial, probative evidence that the proposed development would not have an adverse effect on traffic safety. These expert opinions tend to outweigh the general concerns voiced by area residents. See *Rockville Fuel & Feed Co. v. Board of Appeals*, 257 Md. 183, 192-93 (1970); *Moseman v. County Council of Prince George's County*, 99 Md. App. 258, 265 (Ct. Spec. App. 1994). Moreover, the final site plan would be subject to further review by Transportation Planning Staff for the M-NCPPC.

The preponderance of the evidence indicates that the small number of students expected to be generated by the proposed development would not have an adverse effect on school capacity sufficient to warrant denial of the application.

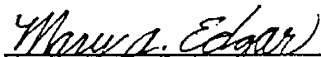
For these reasons and because to grant the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, the application will be granted in the manner set forth below.

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-812, requesting reclassification from the R-200 Zone to the R-T 8 Zone of 4.02 acres of land known as Parcel 949, Tax Map FU121, located north of Old Game Preserve Road and east of Arrowsmith Court in Gaithersburg, in the 9th Election District, is hereby approved in the amount requested subject to the specifications and requirements of the final schematic development plan, Exhibit 41(a); provided that, within 10 days of receipt of the District Council's approval resolution, the Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the approved schematic development plan, in accordance with §59-D-1.64.

This is a correct copy of Council action.



Mary A. Edgar, CMC
Clerk of the Council



Gaithersburg
A CHARACTER COUNTS! CITY

February 3, 2005

[VIA: FAX TRANSMISSION]

Mr. Derick P. Berlage, Chairman
Montgomery County Department of Park and Planning
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 2910-3760

RE: Preliminary Plan MNCPPC #8-05010
Whetstone

Dear Chairman Berlage:

The City of Gaithersburg Planning Commission reviewed a presentation of above referenced Preliminary Subdivision and Site Plan at their February 2, 2005, meeting and had the following comments:

1. The Commission supported the M-NCPPC staff and the applicants' proposal to provide a sidewalk along Old Game Preserve Road adjacent to the PEPCO Transmission Line Right of Way. This sidewalk will provide continuous pedestrian access to public transportation.
2. The Commission recommended for Lots 21 and 22 that the applicant and/or builder provide architectural elevations of the side of the units with multiple fenestrations and materials to match the front elevations.
3. The Commission raised concerns about the limited guest parking on the site and whether it is feasible for 32 units to maintain the private access way in addition to the parking spaces, tot lots, storm water management system and retaining walls.

The City Department of Public Works also commented that the intersection of Old Game Preserve Road with Travis Avenue does not have sufficient right of way or landing grade, and additional traffic from this development may cause safety concerns at this intersection.

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John B. Schlichting

CITY MANAGER
David B. Humpston

Mr. Derick P. Berlage, Chairman
Page Two
February 3, 2005

If you have any questions, please do not hesitate to call me at 301-258-6330 or via email at tschwarz@gaitHERSBURGmd.gov.

Sincerely,



Trudy M.W. Schwarz
Community Planning Director
Planning and Code Administration

TWS/mb

cc: Mary Beth O'Quinn, M-NCPPC
Jody Kline, Miller, Miller & Canby
Mike Watkins, Macris, Hendricks & Glascock
Planning Commission
Jim Arnoult, Public Works, Park Maintenance & Engineering Director
Greg Ossont, Director, Planning & Code Administration



**THE MARYLAND-NATIONAL CAPITAL PARK AND
PLANNING COMMISSION**

Department of Park & Planning, Montgomery County, Maryland
8787 Georgia Avenue, Silver Spring, Maryland 20910

MEMORANDUM

TO: Mary Beth O'Quinn, Development Review
Cathy Conlon, Development Review

FROM: Mark Pfefferle, Environmental Planning Division *MP*

DATE: February 2, 2005

SUBJECT: Site Plan 8-05010
Preliminary Plan 1-05036
Whetstone Run

The Environmental Planning staff has reviewed the preliminary and site plans referenced above and recommends approval of the plans with the following condition:

- Compliance with conditions of the final forest conservation plan. The applicant must satisfy all these conditions prior to recording of record plat(s) or MCDPS issuance of sediment and erosion control permits.

Background

The subject property is approximately 4 acres in size and is located just outside the boundary for the City of Gaithersburg north of Game Preserve Road and between Travis Court and Arrowsmith Court. The entire site drains to Whetstone Run, and is located in the Seneca Creek watershed. The State of Maryland had designated this watershed as Use Class I-P waters. There are no streams or wetlands on the property but the property does include 0.66-acres of stream buffers and 0.38-acres of floodplains. The northern portion of the site includes low-lying floodplain. Steep and moderately steep slopes with highly erodible soils make the transition from the floodplain to the upland areas.

The site contains two pioneer forest stands totally 2.97 acres of forest. The southern stand of pioneer mixed hardwoods range from 2 to 6 inches in diameter. The dominant trees in this stand are black locust, black cherry, and red cedar. The second stand is slightly older and the trees range from 6 to 15 inches in diameter. This stand occupies a rip rapped ephemeral channel along the eastern property line and west facing slopes of the floodplain ranges. Box elders, red maple, tulip poplars, and black cherry trees dominate this forest. There are only two trees greater than 24 inches in diameter on the property. Both trees are located in the floodplain.

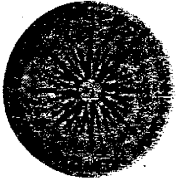
No rare, threatened, or endangered species observed on-site and the site is not known habitat for rare, threatened, or endangered species.

Environmental Guidelines

There are no proposed encroachments into stream buffers except for necessary stormwater management outfalls. The highly erodible soils on steep and moderately steep slopes are incorporated within the environmental buffers.

Forest Conservation

The site currently includes 2.97 acres of forest. The applicant is proposing to remove 2.04 acres of forest and retain 0.93 acres of forest. This results in a planting requirement of 0.38 acres of forest. Environmental Planning recommends the applicant meet planting requirements by using an offsite forest conservation bank or through the fee-in-lieu option.



February 1, 2005

MEMORANDUM

TO: Rich Weaver, Planner/Coordinator
Mary Beth O'Quinn, Site Planner
Development Review Division

VIA: Shahriar Etemadi, Supervisor
Transportation Planning

FROM: Ed Axler, Planner/Coordinator EA
Transportation Planning

SUBJECT: Preliminary Plan No. 1-05036 and Site Plan No. 8-05010
Whetstone Run
Montgomery Village/Airpark Policy Area

This memorandum is Transportation Planning staff's adequate public facilities (APF) review of the subject preliminary plan and site plan in the RT-8 zone.

RECOMMENDATIONS

Transportation Planning staff recommends the following conditions as part of the transportation-related requirements to approve this Preliminary Plan and Site Plan:

1. Limit the preliminary plan and site plan to a maximum of 32 single-family attached dwelling units.
2. Dedicate 30 to 35 feet of right-of-way from the boundary of existing property line needed on Old Game Preserve Road as shown on the plan.
3. Permit vehicular site access from Old Game Preserve Road, while prohibiting vehicular access from Arrowsmith Court.

4. Improve off site vehicle and pedestrian circulation along Old Game Preserve Road to better access Travis Avenue to the south and Frederick Road (MD 355) by the following:
 - a. Applicant must make a good faith effort with PEPCO to obtain a public improvement easement (PIE) for the roadway segment through the PEPCO right-of-way from the site to Travis Avenue. A PIE with PEPCO should be resolved prior to signature set for the site plan in coordination with the Montgomery County Department of Public Works and Transportation (DPWT) and the Montgomery County Department of Permitting Services.
 - b. Upgrade Old Game Preserve Road from the site's proposed access point southward through the PEPCO right-of-way, and connect to Travis Avenue as a Tertiary Residential Street with adequate vertical grading at Travis Avenue and to include a five-foot-wide sidewalk with a tree panel on the east side if the applicant is successful in obtaining a PIE from PEPCO.
 - c. Upgrade the segment of Old Game Preserve Road along the entire property frontage as a Tertiary Residential Street including a five-foot-wide sidewalk with a tree panel on the east side, if the applicant can not obtain a PIE from PEPCO.
5. Provide a pedestrian connection from the northern end of the internal street to Arrowsmith Court's cul-de-sac.

With the recommendations above, Transportation Planning staff finds that Local Area Transportation Review would be satisfied and as the result, there will be no adverse effect on the local area roadways. It also enhances the quality of existing pedestrian facilities, as well as vehicular access and circulation.

DISCUSSION

Prior Regulatory Actions

The Planning Board previously reviewed this site at its January 29, 2004, public hearing as Local Map Amendment No. G-812, Arrowsmith Court. The Montgomery County Council approved Local Map Amendment No. G-812 to rezone Parcel P949 from the R-200 zone to the RT-8 zone.

Site Location

The subject trapezoidal-shaped site, Parcel P949, is located on each side by the following:

- On the northeast side by Old Game Preserve Road that is located within the County. The Gaithersburg Corporate Limits borders the northwestern side of Old Game Preserve Road.

- On the east by the termini of Arrowsmith Court and Badger Court.
- On the south by the Gaithersburg Corporate Limits and the adjoining PEPCO right-of-way.
- On the west by Maryland-National Capital Park and Planning Commission's Great Seneca Stream Valley Park.

Vehicular Access, Circulation and Pedestrian Facilities

The only vehicular access point is from Old Game Preserve Road that connects with Frederick Road through Travis Lane from the south or through Arrowsmith Court and Game Preserve Road to the north. Circulation from the proposed access point and within the site is adequate.

Pedestrian circulation would be improved with the recommended following improvements:

- Construction of sidewalks leading from the site to Old Game Preserve Road and extending to Travis Avenue. With the existing sidewalks, residents would have an improved pedestrian path to reach available transit services on Travis Lane and Frederick Road. The local residents are served by Ride-On bus route 55 along nearby Travis Avenue and Ride-On bus routes 55 and 62 along Frederick Road.
- Providing a pedestrian connection to Arrowsmith Court's cul-de-sac to provide interconnectivity between the adjacent residential communities. A connection to Badger Court is not recommended due to a liability issue involved with this connection; concerns with others being injured on their privately controlled court.

Master Plan Status of nearby Roadways

The nearby roadways have the following master plan status:

1. Frederick Road (MD 355) is designated in the *Gaithersburg Vicinity Master Plan* as a north-south six-lane major roadway, M-6, with a 120-foot right-of-way. The Planning Board Draft of *the Countywide Bikeway Functional Master Plan* recommends a shared-use path, SP-72, along Frederick Road north of Watkins Mill Road.
2. The following roadways were not designated in the *Gaithersburg Vicinity Master Plan*:
 - a. Old Game Preserve Road is a north-south two-lane roadway that is not designated in the City's Master Plan and has a right-of-way varying from 0 to 50 feet.
 - b. Arrowsmith Court is a north-south two-lane secondary residential street with a 60-foot right-of-way.

- d. Game Preserve Road is an east-west residential street with a right-of-way varying from 50 to 70 feet.
3. Within the City of Gaithersburg's corporate limits, Travis Avenue is designated as northwest-southeast collector road in the City's Master Plan, and has a right-of-way varying from 50 to 80 feet.

Adequate Public Facilities Review

The subject preliminary plan was reviewed under the *FY 2005 Annual Growth Policy* (AGP) because it was filed after July 1, 2004. Under the *FY 2005 AGP*, the Policy Area Transportation Review component of the APF test is no longer applicable even though there is no remaining staging ceiling capacity for non-residential development in the Montgomery Village/Airpark Policy Area.

The trip generation by 32 single-family attached units is expected to be 15 peak-hour trips during the weekday morning peak period (6:30 a.m. to 9:30 a.m.) and 26 peak-hour trips during the evening peak period (4:00 p.m. to 7:00 p.m.). A traffic study is not required for this application to satisfy Local Area Transportation Review (LATR) because it generates fewer than 30 peak-hour trips during the weekday morning and/or evening peak periods. Thus, it passes the LATR test.

EA:gw

mno to Weaver re Whetstone Run 1-05036.doc

Post-it* Fax Note	7671	Date	2/3	# of pages	3
To	Marybeth O'Quinn	From	Jody Kline		
Co./Dept.		Co.			
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 *Of Counsel

February 9, 2004

Francoise Carrier, Esquire, Director
 Office of Zoning & Administrative Hearings
 Stella B. Werner Council Office Building
 100 Maryland Avenue
 Rockville, MD 20850

RE: Zoning Application No. G-812
 Application of Arrowsmith Court LC

Dear Ms. Carrier:

By now, I believe that you have received a copy of the Planning Board's recommendation on Zoning Application No. G-812. In the Planning Board's recommendation letter, it was noted that the Technical Staff had recommended that the application "...be revised to reflect the RT-8 zone instead of the RT-10 zone consistent with the actual density of eight dwelling units per acre being sought."

At the time the zoning application was filed, the land use plan showed more than eight dwelling units per acre, which is the reason why the zoning classification RT-10 was requested by the applicant. Subsequent amendments to the land use plan to address issues which arose during its review resulted in the density being reduced to a level that is supported by an RT-8 zone. Notwithstanding the current pending request for RT-10 zoning, the applicant has filed under the optional method of application in which it has limited the density, both on the face of the land use plan and through a covenant, to construct no more than thirty-two residential units.

As the Planning Board's transmittal letter indicates, the applicant was concerned about amending its application from RT-10 to the RT-8 zone if it meant that the public hearing may be delayed. However, if your office's interpretation of Section 59-H-2.24 ("Modification of an Application") of the Zoning Ordinance allows a change in the zone requested, provided that such change is consistent with the binding elements of the subject application, then Arrowsmith Court LC requests leave to make such an amendment, a request that will be reiterated at the commencement of the public hearing on this matter scheduled for Friday, February 13th at 9:30 a.m.

Please note that copies of this letter are being forwarded to neighbors from whom your office has received correspondence on this subject.

Sincerely yours,

MILLER, MILLER & CANBY



Jody S. Kline

JSK/dlt

cc: Bill Landfair
Martin Klauber, Esquire
Jonathan Lerner
Michael Fisher
Mike Watkins
City of Gaithersburg
Heather Scull and Slade Sidwell
Jamshid and E. Vassef