

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

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Silver Spring, Maryland 20910-3760  
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Date Mailed: **AUG 10 2005**

**Action:** Approval Staff Recommendation with Conditions of Approval  
**Motion** of Commissioner Wellington, seconded by Commissioner Robertson, with a vote of 4 to 0.  
Chairman Berlage and Commissioners Perdue, Wellington and Robinson voting in favor. Commissioner Bryant was necessarily absent.

**MONTGOMERY COUNTY PLANNING BOARD  
OPINION**

Site Plan No: 8-05024  
Project: National Park Seminary, Phase I  
Date of Hearing: April 7, 2005

The date of this written opinion is **AUG 10 2005** (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, thirty days from the date of this written opinion. This site plan shall remain valid as provided in Section 59-D-3.8.

**I. INTRODUCTION**

On November 22, 2004, Forest Glen Venture L.L.C. (the "Applicant") submitted an application for the approval of a site plan for the National Park Seminary project located in the PD-15 zone. The National Park Seminary property, in its entirety consists of 32.18 acres of land located at the northeast quadrant of the intersection of Linden Lane and Woodstock Avenue, in the North and West Silver Spring Vicinity master plan area; however this site plan approval is for Phase I only which consists of 27.95 acres of land ("Subject Property"). The application was designated Site Plan 8-05024 ("Site Plan") for the approval of 257 units. The remaining 23 units will be part of Phase II development on the site. Official notices of the public hearing scheduled for April 7, 2005, were sent to the adjoining and confronting property owners, local community associations, and other organizations that requested notice. On April 7, 2005, the Site Plan was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Site Plan Application Form; the Planning Board staff-generated minutes

of the Development Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the Applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

## **II. THE SUBJECT PROPERTY AND SURROUNDING AREA**

The Subject Property consists of 32.18 acres of land located in the northeast quadrant of the intersection of Linden Lane and Stephen Sitter Lane in Silver Spring and is better known as the National Park Seminary property. 27.2 acres of the Subject Property is located north of Linden Lane, adjacent to Route I-495 and in close proximity to the CSX Railway. The remaining 4.78 acres of the Subject Property is located south of Linden Lane between its intersections with Stephen Sitter Lane and Woodstock Court. The surrounding community to the west is the Forest Glen Park subdivision containing residential lots. Directly to the south of the Property is the Walter Reed Hospital Annex site, including associated research buildings, ancillary parking and recreation fields. All of the property to the south and west of the site is zoned R-90.

The property across the CSX railroad tracks to the east is zoned R-60 and consists primarily of residential properties mixed with some office and industrial sites. Linden Lane becomes Forest Glen Road north of the Beltway at the intersection of Seminary Road. This surrounding area contains a mix of office, retail and automobile service, surrounded by the residential communities. The intersection is a mix of zones consisting of O-M, C-1, R-20, R-30, R-60 and R-90. The Forest Glen Metrorail station is located less than one mile north of the Subject Property, and the Silver Spring Metrorail station is about four miles southeast of the Subject Property in downtown Silver Spring. Vehicular access to the site is available at several locations on Linden Lane.

The Subject Property has striking topography that varies more than one hundred feet in elevation from the gently rolling upland hills to the steep stream valley. The site drains to the Lower Rock Creek watershed which is classified as Use I-P. There are tributary streams on the Subject Property and approximately 12 acres of existing forest. The forested stream valley that traverses the center of the site, from the southeast to the northwest, is known as the "Glen". The Glen contains a stream valley buffer, steep slopes and a number of large and specimen trees. The southwestern portion of the Subject Property also contains a grouping of specimen trees at the top of the slopes and entry to Rock Creek Park. There are also several individual specimen trees scattered around the historic structures.

The Subject Property consists of a collection of buildings that are architecturally eclectic to emphasize structures reminiscent of different eras and regions. Many of the well-known buildings include the Japanese Pagoda, the Swiss Chalet, Ye Forest Inn ("Main Building") and the Ballroom; however, smaller buildings, parking areas, sculptures and various housing types exist on the site. The Subject Property originally was constructed as a railroad era hotel, first known as *Ye Forest Inn* and then as a private finishing school for women. The Seminary operated until 1943, when the United States acquired the Property via eminent domain under the War Powers Act. The Property was operated as a United States Army rehabilitation hospital through the end of the Vietnam War. During that period, new buildings were added to the Property and changes were made to the existing buildings. In 1972, the Subject Property was placed on the National Register and, in 1979, on the County Preservation Plan.

In 2003, Montgomery County entered into an agreement with the federal General Services Administration ("GSA") to acquire the Subject Property. In December 2003, the County selected the Applicant to redevelop the site. In October 2004, the GSA transferred ownership of the Subject Property to Montgomery County. The County imposed a Maryland Historic Trust ("MHT") preservation easement on the Subject Property and thereafter transferred title to the Applicant. The only building that is currently occupied is the stable, which is leased by Montgomery County for the Catholic Charities transitional housing facility.

### **III. BACKGROUND AND PRIOR APPROVALS**

#### **A. Zoning/Development Plan**

The Property was rezoned from the R-90 zone per County Council Resolution No. 15-923 adopted on March 15, 2005. The specifications and requirements of this rezoning have been incorporated into the approval of this Site Plan.

#### **B. Preliminary Plan**

Preliminary Plan No. 1-05054 was reviewed and approved by the Planning Board concurrently with the Site Plan.

### **IV. PROJECT DESCRIPTION**

The Applicant proposes to comprehensively redevelop the Property, creating a residential community with a maximum of 280 dwelling units, plus the transitional men's shelter (collectively "the Project"). The Project is planned to proceed in two phases. Phase I will include the bulk of the units, 257 in total. Phase II will be limited to 14 multi-family units in the Villa, one single-family dwelling in the Castle, and the eight townhouses on

Smith Road, for a total of 23 units. These units are planned as a second phase because they are located on the far side of the Glen, presenting unique challenges for vehicular access and utilities. Phase II will be constructed only after the Applicant receives Site Plan approval for the Phase II portion of the development pursuant to Section 59-D-3 et seq. of the Zoning Ordinance.

The unit types for Phase I and proposed Phase II are as follows:

Multi-family units	169
Townhouse units	98
One-family detached units	<u>13</u>
Total	280

Phase I consists of 257 dwelling units (including 56 Moderately Priced Dwelling Units ("MPDUs")), consisting of 155 multi-family units, 90 one-family attached (townhouse) units, 12 one-family detached units on 27.95 acres.

The 257 units will be a combination of adaptive reuse of historic structures and construction of new homes. A minimum of 20 percent of the units will be affordable, which exceeds the County's requirement for Moderately Priced Dwelling Units ("MPDUs") under Chapter 25A of the Montgomery County Code ("MPDU Law"). The MPDUs will be rental units located in the main historic building. The Montgomery County Department of Housing and Community Affairs has acknowledged that the proposed plan for providing affordable housing meets the requirements of the MPDU Law.

In addition to the 280 dwelling units, the Project allocates space within the main historic building for the transitional men's shelter. It provides for the renovation of the Ballroom in the main building, which is to be accessible to the public on a limited basis. It also provides for extensive renovation of the grounds. Landscaping work will include clearing invasive species that currently exist in the Glen, replacing them with new native plantings, adding ornamental plantings in the upland areas of the Subject Property consistent with the historic landscaping, and renovating and relocating historic statuary that once were found throughout the Subject Property.

An extensive pedestrian circulation network has been approved for the site, including a historic interpretive trail, open to the public that will connect the parkland southwest of the Subject Property with the Glen. One key element will be a new trailhead for hikers and bikers that will access a historic connection to Rock Creek, which will serve as an amenity for residents of the Subject Property and its neighbors.

Parking will be provided in the historic district primarily through surface parking lots, with the largest lot extending along the front of the main building. Two historic condominium buildings will have parking within the building. Most of the new townhouses in the historic district will have rear-access, two-car garages. Guest parking will be available through parallel parking on interior streets, as well as the surface parking lots. The eight townhouses near the villa will have one-car garages with front access. All of the new construction south of Linden Lane will have two-car garages with rear access. Guest parking also will be available on the street. An optional parking deck is proposed north of the main building to accommodate additional parking spaces for the units contained in the Main Building.

The site is physically separated by Linden Lane into two development areas. The southern portion of Linden Lane is comprised of 39 townhouses accessed by Private Street B and five one-family detached dwelling units, one of which has been relocated from its original location at the southeastern boundary. The north side of Linden Lane consists of the existing historic buildings, which will be converted to condominiums, rental units, 59 townhouses (51 of which are part of Phase I) and a one-family detached house.

The important aspects of Linden Lane rely on a less intense road section with a minimal visual impact in order to retain the country road experience that has been maintained in the Forest Glen area. The Master Plan proposes a primary road section for Linden Lane from the eastern boundary to the section near the Pagoda. A primary road section consists of a 70-foot-wide right-of-way with 26 feet of paving; however, the Department of Public Works and Transportation ("DPWT") with support from M-NCPPC-Transportation has agreed to grant a waiver to reduce the right-of-way to 52 feet with 21 feet of paving and 7-foot-wide parallel parking bays on one side of the road. The area from the Pagoda to the bridge at the intersection at Linden Lane and Newcastle Avenue is improved with curb and gutter on the north side of Linden Lane and a 5-foot-wide sidewalk from the existing historic bridge to Newcastle Avenue. The southwest side of Linden Lane will remain in its existing condition.

The Subject Property is accessed internally by 22 and 24-foot-wide private drives to serve the townhouses and condominium units. One-way roads are 12 feet wide and (2) two-way roads are limited to 16 feet by existing structures and site features. The alleys for the townhouses to the south of Linden Lane are 20-feet-wide while the alleys on the north side are 22-feet-wide. Many of the existing internal streets, such as Hume Drive and Dewitt Drive will remain as part of the historic character of the site and provide access to the condominium units. Dewitt Drive is an internal one-way street circulating from the rear of the Main building and between the Ballroom building, exiting out to Linden Lane. Sacks Road is an existing internal one-way street that provides access from the existing historic bridge to the optional parking garage. Sacks Road continues as a one-way street behind

the Swiss Chalet, on the south side of the Ballroom building and becomes a two-way drive between the Japanese Pagoda and the Japanese Bungalow.

Landscaping consists of a mix of deciduous and evergreen shrubs with flowering trees for the foundation planting in the front of the proposed townhouse units with larger shade trees spaced appropriately within the larger green areas between units. The alley treatment in the rear of the proposed townhouse units allows for small shrubs, groundcover and ornamental grasses between the parking pad areas. Foundation planting for the historic structures resembles the setting for each building and architectural style indicative of the era. The Applicant researched historic documentation to determine the appropriate plant palette, if any, associated with each building.

The streetscape for Linden Lane within the 52-foot-wide right-of-way consists of smaller shade trees within a 5-foot-wide lawn panel and five-foot-wide sidewalk beyond the lawn panel. Larger deciduous shade trees punctuate the private entrances into the development.

The entrance to the site from the east features stone entry walls to accent the historic nature of the existing buildings and provide identity to the proposed townhouse units. The stone walls also provide a screen of the proposed surface parking facilities situated along Linden Lane. The stone being used for the walls near the entrance and internally, will come from existing structural features and buildings removed from the site. The reuse of the material will complement the existing features on the site and provide continuity with the proposed building material.

Recreational facilities on the property consist of a variety of outdoor activities such as open lawn areas, nature trails and pathways, including the interpretive trail and picnic and seating areas. The interpretive trail provides access from the Glen at the northern boundary to M-NCPPC property on the southern boundary and then to the entrance of the Rock Creek trail. Interpretive signs will be placed along the hard surface trail to include history of the site and specific architectural and scenic amenities within the Seminary property. Indoor activity areas include a fitness facility and exercise room as well as a community room located within the existing ballroom. The community room is scheduled for use as a neighborhood community facility.

Forest conservation requirements have been met with the retention of 8.70 acres of the 11.7 acres of existing forest on the site. The entirety of the Glen will be placed in a forest conservation easement and protected for its historic value, visual contributions and environmental benefits. Protection of the large and specimen trees on the property is integral to the requirements of the Forest Conservation Plan. Mitigation for the existing and proposed encroachment within the stream valley buffer is being addressed through an enhancement package.

The plan proposes open space or green area in compliance with the minimum 50 percent required by the PD-15 Zone. The green area requirements and stormwater management facilities satisfy the Phase I portion of the development only. The Montgomery County Department of Permitting Services ("DPS") approved the stormwater management concept on February 24, 2005.

The Development Plan approved as part of the rezoning case contains five textual binding elements. These elements limit the number of residential units to 280; provide for two phases of construction, with the flexibility to shift units between phases; commit the Applicant to placing a conservation easement on the Glen; require the construction of a historic interpretative trail that is open to the public during daylight hours; and specify that at least 20 percent of the units will be designated as affordable housing according to applicable government codes.

#### **V. STAFF RECOMMENDATION**

Staff recommended approval of the Site Plan with conditions as set forth in the Staff Report dated April 1, 2005. Staff found that the Site Plan, with the conditions of approval, conformed to the development standards of the PD-15 zone and met all the applicable requirements of Chapter 59 of the Montgomery County Code ("Zoning Ordinance").

#### **VI. PLANNING BOARD HEARING<sup>1</sup>**

##### **A. Introduction**

On April 7, 2005, the Site Plan was brought before the Planning Board for a public hearing in accordance with the requirements of Art. 28, Md. Ann. Code ("Regional District Act") and 59 of the Montgomery County Code ("Zoning Ordinance"), and the Planning Board's Rules of Procedure. At the public hearing, the Planning Board heard testimony regarding the Site Plan from Staff and representatives of the Applicant in support of the Site Plan and from representatives of several of the community groups in the vicinity of the Property, including Save Our Seminary, the Seminary Advisory Board, Preservation Montgomery, Linden Civic Association, Forest Glen Park Homeowners Associations, individual property owners in the neighborhood and interested citizens. Before and during the hearing, the Planning Board received evidence submitted in the record on the Site Plan, including, without limitation, a Staff Report and analysis of the Site Plan, a vicinity map, plan drawings, landscape plans, amenities plan, plans for Linden Lane, a PowerPoint presentation prepared by the Applicant, a traffic study submitted by the traffic expert

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<sup>1</sup> Both the Preliminary Plan and Site Plan hearings were held concurrently. As such, the summary of what took place at the Planning Board hearing includes both Preliminary Plan and Site Plan issues.

retained by the Applicant, various renderings and elevations, various other exhibits, and correspondence from the Applicant in support of the Site Plan.

In its report and through testimony at the public hearing, Staff described the Subject Property, the proposal, the surrounding neighborhood and recommendations contained in the North and West Silver Spring Master Plan, approved and adopted August 2000 ("Master Plan"). Staff recommended approval of the Site Plan, with conditions. Staff described the conditions of approval and certain revisions to those conditions.

The Applicant confirmed that, except for two additional revisions to the conditions proposed by the Applicant, it was in agreement with Staff's recommendations including Staff's revised conditions.

#### **B. Right-of-way and Paving of Linden Lane**

There was a significant amount of testimony offered on the treatment of Linden Lane. Some speakers expressed the desire for a narrow right-of-way, and pavement on Linden Lane to preserve existing character, and provide a traffic-calming effect, among other issues.

Staff testified to its recommendation that the Applicant provide two ten-foot wide travel lanes, one eight-foot parking lane along the northern curbside, two five-foot planting strips, two five-foot sidewalks, and two two-foot maintenance strips beyond the sidewalks within a 52-foot wide right-of-way. This cross section will be provided between Stephen Sitter Lane and the private driveway near the Japanese Pagoda where the historic buildings constrain the right-of-way at Lots 57 (Japanese Pagoda) and 58 (Swiss Chalet), Staff recommended a 21-foot wide total paving section and extending the right-of-way to maintain two-feet behind the curb and gutter. Staff further recommended a 26-foot wide right-of-way from the centerline and a total pavement width of 26-feet where other historic features such as walls constrain lot size, and the road's sharp curve on a down slope exists at this location. This is necessary for safety reasons and will still provide a consistency with the nearby reduced right-of-way width on Linden Lane between Woodstock Avenue and Stephen Sitter Lane.

The Applicant, in its rebuttal testimony, reiterated its treatment of Linden Lane and requested that the Planning Board reduce the dedication requirement recommended by Staff from 26 feet to 20 feet in width from the centerline of Linden Lane, between the existing private bridge and the proposed lot line between Lots 58 and 59. After carefully considering this testimony, the Planning Board agreed that the dedication requirement for this particular location should be reduced as requested by the Applicant. The Board found that, based on testimony by Staff, the width of the actual paving would not be reduced. However, the Board found that it would be



preserving the historic character of the site by requiring less dedication since less dedication would make it more likely that Linden Lane would not be widened in the future. Moreover, the Board found that a narrower road not only preserves the historic nature of the site, but also facilitated traffic calming.

In addition, the Applicant requested a change to Staff's condition No. 13(i) of the Preliminary Plan regarding the right-of-way and paving of Linden Lane between Stephen Sitter Lane and the eastern property line near Smith Drive to more accurately reflect the agreement between the Applicant and DPWT regarding the width of paving. The Planning Board found that the revision requested is technical in substance and agreed to the revision.

Community members also suggested that, as part of the Project, traffic calming measures should be incorporated to address excessive speed on Linden Lane and pedestrian safety. Individuals also expressed frustration with excessive cut through traffic. The Applicant, in its explanation of the Project, reiterated that what was proposed to calm traffic is a narrow lane width between Stephen Sitter Lane and Woodstock Avenue, coupled with the existing speed hump and proposed raised crosswalk near Street B. Staff noted and the Planning Board agreed that the Project does not trigger any congestion threshold criteria that would require traffic mitigation measures off-site. Therefore, requests for a reduction in cut-through traffic, traffic-calming measures, and sidewalks outside the limits of the Project must follow the procedures as outlined by DPWT.<sup>2</sup>

### **C. Traffic Signal**

Transportation Planning Staff recommended that the Applicant participate in funding the installation of a traffic signal at this location. The Applicant's contribution, according to Staff was justified because it mitigates their trips at this location, and potentially enhances safety and convenience for the residents of the development, and the neighboring communities. The Applicant, in its rebuttal, and certain citizen and community testimony, all objected to Staff's recommended condition regarding the pro rata contribution for a traffic signal, arguing that it was not this Applicant's responsibility to resolve a problem that has existed long before this application. After careful review of the evidence presented in the record, the Planning Board found that the need for this traffic signal was not created by the Applicant's development proposal and concluded it would not require the Applicant to

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<sup>2</sup> Other concerns expressed by speakers related requests for the County to link the metro station and Montgomery Hills shopping area. There also was a request to establish bus routes from the Subject Property and surrounding communities to the *Forest Glen Metro Station*. Again, Staff reiterated and the Planning Board agreed that these concerns must be addressed by County agencies and are not issues related to review of this application.

contribute to a traffic signal for the intersection and, consequently, deleted proposed Condition No. 16 of the Preliminary Plan.

#### **D. On-Site Sidewalks**

There were two issues raised related to on-site sidewalks. The first issue related to Staff's proposed condition No. 15 of the Preliminary Plan requiring an 8' off-road, shared use bikeway parallel to Linden Lane between the existing private bridge and the private driveway near the Japanese Pagoda. The Applicant argued that it should only be 5' wide since the sidewalk on either side of the proposed 8' bikeway was only 5' wide. The Applicant further argued that 5' was in keeping with the historic character of the site and noted that the 5' width had been approved by MHT as further support that it was in keeping with the historical nature of the site. The Planning Board found that the 5' width was appropriate for historical preservation purposes.

The second issue involved the narrow right-of-way at the west end of the site, which leaves no room for sidewalks until a point farther north, near the bridge where Linden Lane crosses over the Beltway. Both Staff and the Applicant agreed that pedestrian access must be provided from the fully developed portion of the road to the sidewalk that goes over the bridge. This will be achieved by extending the sidewalk into the Subject Property, north of the Pagoda, and connecting it back to Linden Lane further north.

#### **E. Vehicular Access, Circulation, and Parking**

As part of the hearing, there was testimony offered on roadway design, sidewalks and right-of-way widths, all of which reflect the goals of balancing historic preservation while providing safe vehicular and pedestrian passage within and through the Subject Property. The reduced pavement widths, coupled with the proposed raised crosswalk on Linden Lane at Street B, and the reconstruction of the existing speed hump, provide traffic-calming effects on Linden Avenue within the limits of the Property. The Applicant argued that it needs DPWT's approval to provide a raised crosswalk as required by Condition No. 13(h) of the Preliminary Plan. The Planning Board agreed to modify Condition No. 13(h) to begin with "Subject to DPWT approval, . . . ."

The Site Plan provides 534 parking spaces with the inclusion of the parking deck located adjacent to the Main Building. The required parking spaces for the Project are 504. On-street parking will be accommodated along one side of Linden Lane between Woodstock Avenue and Stephen Sitter Lane.

Transportation Planning Staff concluded that the access, circulation, and parking spaces provided for the Project are adequate, safe, and will operate efficiently.

#### **F. Environmental**

Staff identified several areas where a stream valley buffer may have an encroachment but thereafter suggested that Staff and the Applicant had worked very hard to minimize any encroachment and impact on the environment. Staff noted that full restoration of the buffer to natural conditions would be contrary to the historic restoration for these nationally recognized historic landmarks.

One speaker at the hearing questioned whether the Applicant was meeting all of the requirements of the Forest Conservation laws since certain trees were being removed to accommodate the Project. The Applicant, in its rebuttal, as well as Staff in their testimony, reiterated that all Forest Conservation laws were being followed with the retention of 8.70 acres of the 11.7 acres of existing forest on the Property. The entirety of the Glen will be placed in a forest conservation easement and protected for its historic value, visual contributions and environmental benefits. Protection of the large and specimen trees on the property is integral to the requirements of the Forest Conservation Plan. Mitigation for the existing and proposed encroachment within the stream valley buffer is being addressed through an enhancement package.

#### **G. Stormwater Management**

As part of the Applicant's direct testimony and also on rebuttal, the Applicant discussed stormwater management for the Property. Because of the age of the development, the Subject Property does not currently have storm water controls. The Applicant's engineer testified that the proposed stormwater management system will maintain natural drainage patterns while adding quality control and channel protection (quantity control) measures. The Applicant submitted a storm water concept plan to the Department of Permitting Services ("DPS") in November 2004, and that plan has been approved. The Applicant's civil engineer also testified that, while impervious surface may increase somewhat with the adaptive reuse of the Property, with modern storm water management controls, the net effect will be to improve the quality of run-off, decrease its quantity and make some stream channel improvements.

#### **H. Off-Site Sidewalks and Recreational Amenities**

There were several speakers from the surrounding neighborhood who testified to the lack of sidewalks in their neighborhood as well as the lack of recreational amenities. Staff testified that the on-site amenities included the trail connections, new trailhead and open spaces that were designed to accommodate and serve not only the new residents but the existing residents as well. The Planning Board found that the on-site recreational amenities met the requirements for development of the site and that any off-site sidewalks

and/or recreational amenities would need to be addressed through the County's CIP program.

**I. On-Site Recreational Facilities**

At the public hearing, the Planning Board heard testimony from certain individuals concerned about the lack of community-wide recreation facilities. The Applicant testified that recreational facilities on the Property consist of a variety of outdoor activities such as open lawn areas, nature trails and pathways, including the interpretive trail and picnic and seating areas. The interpretive trail provides access from the Glen at the northern boundary to the entrance of the Rock Creek trail. Interpretive signs will be placed along the hard surface trail to include history of the site and specific architectural and scenic amenities within the Seminary property. Indoor activity areas include a fitness facility and exercise room as well as a community room located within the existing Ballroom. The community room is scheduled for use as a neighborhood community facility. Staff confirmed that the Project satisfied the County's Recreation Guidelines.

**J. Waivers**

**i. Building Setback and Height Waiver**

The Applicant requested a waiver of the setback and height requirements pursuant to Section 59-C-7.15(b)(1), providing that "no building other than a one-family detached residence can be constructed within 100 feet of such adjoining land, and (2), "no building can be constructed to a height greater than its distance from such adjoining land. A waiver may be granted by the Planning Board, pursuant to subsection (d), if, "the site is within close proximity to a historic district and the Planning Board finds that reduced setbacks or increased building height will facilitate the preservation, reuse, or redevelopment of a designated historic district and the immediately adjoining property will not be adversely affected by the waiver." The setback and height limitations are as set forth in the Project Data Table in the Findings section of this Opinion.

The Applicant's attorney stated in a letter dated November 18, 2004, and Staff agreed, that the Project satisfies the waiver requirement. The waiver is essential for the development of new units on the Property south of Linden Lane that adjoins M-NCPPC parkland and federal government property, as well as the Property north of Linden Lane along Smith Road that adjoins federal government property. The waiver also is necessary to redevelop certain units within the historic structures on the Property north of Linden Lane. According to the Applicant, the new development unquestionably facilitates the preservation, reuse or redevelopment of a designated historic district. The County Council made this similar finding as part of the rezoning approval and recommended that this waiver be granted.

The Applicant's attorney also stated, and Staff agreed, that the development resulting from the waiver will be compatible with the immediately adjoining property and the surrounding neighborhood. The property that is adjacent to the area that involves the waiver request is either federally owned land or parkland. As such, granting a waiver does not adversely affect immediately adjoining property or compromise the compatibility with the surrounding neighborhood.

The Planning Board finds that the reduced setbacks and increased building height will facilitate the preservation, reuse, and redevelopment of a designated historic district and the immediately adjoining property will not be adversely affected by the waiver. As such, the Board grants this waiver request.

ii. Right-of-Way Width Waiver

The Applicant requested a waiver pursuant to §50-38 of the Subdivision Regulations to permit a right-of-way width along Linden Lane, which, at certain points, is less than required per §50-26(a). The Applicant's attorney stated in a letter dated November 18, 2004, and Staff agreed, that the waiver is necessary to maintain the historic character of the area, to protect and preserve specimen trees and other natural features, and to preserve existing historic structures. The Applicant, Staff, certain members of the community and the Board spent a significant amount of time discussing the vision for Linden Lane, appropriate rights-of-way, sidewalks, planting strips and the width of paving. The Applicant presented plans for the entire section of Linden Lane that fronts the site (on both side of Linden Lane), including paving width, inclusion of sidewalks and planting strips on both sides of Linden Lane, and parking on the north side of Linden Lane, and specifically explained that the Applicant, the Montgomery County Department of Public Works and Transportation ("MCDPWT") and Transportation Planning Staff had agreed on a varied road section for Linden Lane that would require the waiver. Furthermore, DPWT indicated in its correspondence to the Planning Board that it would look to the Planning Board to set the right-of-way for Linden Lane.

The Planning Board finds that this development presents a unique circumstance given the scale of the historical preservation proposed on the site, that the waiver is the minimum necessary to provide relief from the section, is not inconsistent with the purposes and objectives of the General Plan, and is not adverse to the public interest. As such, the Board grants the waiver.

iii. Waiver to Permit a Building Crossing a Lot Line

Section 50-20(b) of the Subdivision Regulations states that, "A building permit may not be approved for the construction of a dwelling or other structure, except those strictly for agricultural use, which is located on more than one (1) lot, which crosses a lot line, which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot...". The Applicant requested a waiver of this provision, pursuant to Section 50-38 of the Subdivision Regulations to permit lot lines to be created through an existing historic structure.

The Applicant's attorney, in letters dated March 24, 2005 and April 5, 2005, and in his rebuttal statement at the public hearing, stated that this waiver is necessary for the adaptive reuse of the Property since the Main Building will be developed as both condominium and rental units, which, for this Project, requires separate ownership of the underlying property for each use

Staff indicated this type of justification does not constitute "practical difficulties or unusual circumstances" that would support a waiver. Staff also indicated it is not good planning practice to create lot lines through existing buildings. In this case, Staff concluded that the Applicant's concerns could be addressed by creating mortgage or lease lines through the Section 50-35A(a)(4) minor subdivision provisions. The Applicant disagreed with Staff as is reflected in its rebuttal testimony.

After due consideration of all of the evidence of record, both written and at the hearing, the Planning Board determined that the waiver was justified and thus granted the waiver request. The Board specifically found that the development presents a unique circumstance given the scale of the historic preservation proposed on the site, which has required the developer to obtain concurrent approvals from different agencies including MHT and the Historic Preservation Commission ("HPC"). Moreover, the Planning Board found that the preservation of the historic structures prohibited the developer from tearing down the Main Building and constructing two separate buildings on two separate lots. Furthermore, the Board found that preserving the historic structures complied with the Master Plan recommendations and that this Project provided significant affordable housing with the split ownership arrangement. Finally, the Board noted that the Subject Property was burdened with an MHT easement that required access throughout the Main Building that, again, limited the developer's ability to create separate lots. As such, the Board approved the waiver request finding that the circumstances were unique, that the waiver is the minimum necessary to provide relief from the section, is not inconsistent with the purposes and objectives of the General Plan, and is not adverse to the public interest.

**K. Applicant's Suggested Revisions to Conditions of Approval**

At the hearing, the Applicant submitted two suggested revisions to Staff's proposed conditions of approval for the Site Plan. Both of the suggested revisions were technical in nature and designed to bring the Site Plan into conformance with revisions made to the conditions of

approval for the Preliminary Plan. The Planning Board adopted the Applicant's suggested revisions to Conditions No. 6(b) and 6(c).

**VII. FINDINGS**

Having given full consideration to the recommendations of its Staff (including the Staff Report which is expressly made a part hereof); the recommendations of the applicable public agencies; the Applicant's position; testimony and evidence presented and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Planning Board finds Site Plan No. 8-05024 to be in accordance with the Zoning Ordinance of the Montgomery County Code, the provisions of Maryland Code Ann., Art. 28, and the Regional District Act:

1. *The Site Plan is consistent with the approved development plan or a project plan for the optional method of development, if required.*

The proposed development is consistent with approved Local Map Amendment G-828 and associated Development Plan in terms of land use, density, location, building height and development guidelines.

2. *The Site Plan meets all of the requirements of the zone in which it is located.*

The Site Plan meets all of the requirements of the PD-15 Zone as demonstrated in the following Project Data Table above:

PROJECT DATA TABLE (PD-15 Zone)

Development Standard	Permitted/ Required	Approved
Min. Tract Area (ac.):		
Phase I	N/A*	27.95
Phase II (not included in this application)		<u>4.23</u>
Total		32.18
Max. Density of Development (d.u./ac.)		
Phase I	15	9.19