

**BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
 SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
 WASHINGTON REGIONAL DISTRICT IN
 MONTGOMERY COUNTY, MARYLAND
 Office of Zoning and Administrative Hearings
 100 Maryland Avenue, Room 200
 Rockville, Maryland 20850
 (240) 777-6660**

IN THE MATTER OF:

J. KIRBY DEVELOPMENT, L.L.C. AND
 VEDANTA CENTER OF GREATER
 WASHINGTON D.C., INC.,

Zoning Application No. G-836

Applicants

John Clapsaddle
 Stuart Elkman
 Wes Guckert
 Jeff Kirby
 Rock Lopes
 James O'Brien
 Phil Perrine

For the Application

Scott Wallace, Esquire

Attorney for the Applicant

Laurence Andrews
 Max Bronstein
 Wayne Courtney
 Richard Kauffinger
 Linda Nishioka
 Joe Podson

In Opposition to the Development
 Plan

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. SUMMARY

The present application seeks to rezone 16 acres of land at the intersection of Bel Pre Road and Homecrest Road in Silver Spring from the RE-2 Zone to the PD-2 Zone. The 16-acre tract is made up of three parcels. Two are developed with single-family detached homes and the third is the site of the Vedanta Center, a non-denominational worship center. The Vedanta Center has joined J. Kirby Development as an applicant. Together, they propose development of 38 new homes (20 single-family detached, 12 duplex units and six MPDU townhouses) and construction of a new worship building. The existing Vedanta Center worship building and guest house would remain.

The PD Zone cannot be applied unless the District Council simultaneously approves a Development Plan that meets the requirements set forth in the Zoning Ordinance. In this case, the Development Plan has four serious deficiencies: a dense form of development on the west side of the site that is not compatible with the surrounding area; a provision stating that building locations are entirely illustrative, suggesting that a completely different layout might be presented at site plan; a provision stating that the green area, shown at 46 percent of the site, could decrease by as much as a third, down to the minimum 30 percent required in the zone, with no explanation of how such a dramatic change would affect the site layout; and a provision indicating that one of the two access points shown on Homecrest Road may not be built. The latter deficiency is troubling for two reasons: it inhibits the District Council from fully evaluating the access and circulation plan, and it calls into question compliance with the Master Plan, which identified one of the Homecrest Road access points as an important goal. The Development Plan also contains a series of minor deficiencies, which are identified in Part III.E. of this report.

The Hearing Examiner recommends a remand of the present case, rather than denial, because all of the deficiencies that have been identified can be cured by a revision of the Development Plan. The Hearing Examiner is persuaded that with an appropriate development plan, reclassification of the subject property to the PD-2 Zone and its use for residential housing

and an expanded Vedanta Center would be in the public interest. Accordingly, this report recommends a remand of this case to give the Applicants the opportunity to correct the deficiencies on the Development Plan that are identified in this report, and to propose a form of development that will be compatible with surrounding land uses.

II. STATEMENT OF THE CASE

Application No. G-836, filed on March 3, 2005 by Applicants J. Kirby Development, L.L.C. and Vedanta Center of Greater Washington D.C., Inc., requests reclassification from the RE-2 Zone (Residential, one-family, two-acre minimum lot size) to the PD-2 Zone (Planned Development) of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland, in the 13th Election District. The property is identified as Part of Lots 3, 4 and 5 of the "Homecrest" subdivision, recorded in Plat Book 25, Plat 1586. The Vedanta Center is currently the owner of Lot 4. Lots 3 and 5 are currently owned by separate individuals. J. Kirby Development is identified as a contract purchaser, presumably with reference to Lots 3 and 5. The proposed Development Plan contemplates land swaps between the two Applicants, with both remaining as owners.

The application was initially reviewed by Technical Staff of the Maryland-National Capital Park and Planning Commission ("MNCPPC") who, in a report dated October 11, 2005, recommended *approval*.¹ The Montgomery County Planning Board ("Planning Board") considered the application on October 20, 2005 and recommended *approval* by a vote of 4 to 0. A public hearing was conducted on November 4, 2005 at which testimony and evidence were presented in support of and in opposition to the application. The record was held open briefly to receive supplemental submissions from the parties and Technical Staff, and closed on December 9, 2005. By Resolution dated January 24, 2006 and effective *nunc pro tunc* as of January 23, 2006, the District Council extended the time for submission of the Hearing Examiner's report and recommendation by two weeks, to February 6, 2006.

III. FINDINGS OF FACT

For the convenience of the reader, the findings of fact are grouped by subject matter. Where there are conflicts in the evidence, these conflicts are resolved under the preponderance of the evidence test.

A. Subject Property

The subject property consists of approximately 16 acres of land located in the northeast quadrant of the intersection of Bel Pre Road and Homecrest Road, roughly midway between Bel Pre Road's intersections with Georgia Avenue to the west and Layhill Road to the east. The three lots comprising the subject property form a nearly square tract of land, with approximately 867 feet of frontage on Bel Pre Road, a five-lane undivided arterial road with an 80-foot right-of-way, and 800 feet of frontage on Homecrest Road, a narrow, two-lane, residential primary street. Confronting to the south, across Bel Pre Road, are three- and four-story apartments and townhouses. Confronting to the west, across Homecrest Road, are Aspenwood Senior Living Community, located at the northwest corner of Bel Pre and Homecrest Roads, which provides assisted living for senior adults and special needs care; three single-family homes; and, diagonally to the northwest, Homecrest House, a senior housing and assisted living facility. To the east, the subject property abuts the Wheaton Moose Lodge, which is occupied by a social lodge and is about half wooded. To the north, the subject property abuts the Aspen Hill Racquet and Tennis Club (the "Racquet Club"), a large complex of indoor and outdoor sports facilities, with very large buildings and extensive parking lots.

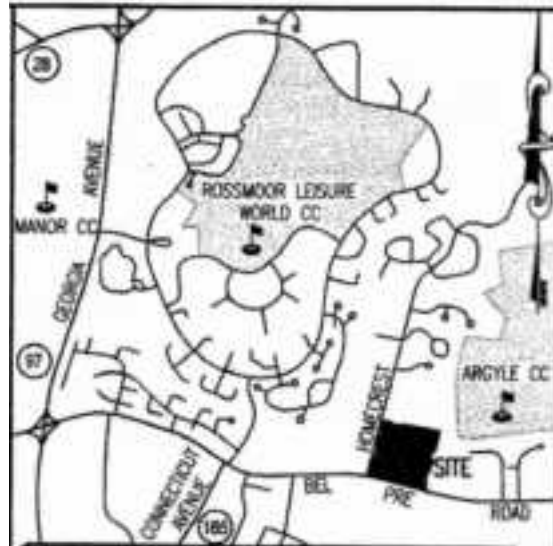
Lot 3, at the east end of the site, is mostly wooded, and has a one-story brick house, a carport and a driveway off of Bel Pre Road. Lot 4, in the center, is also mostly wooded. It is developed with the Vedanta Center, a worship center consisting of a concrete and stone building with a one-story wing and a two-story wing, which is used for congregation gatherings and a home

¹ The Staff Report is liberally paraphrased and quoted in Part II of this report.

for resident monks; a small, brick, 1 ½ story guest house; a paved driveway off of Bel Pre Road; and a gravel parking area. Lot 5, at the west end of the site, is mostly grassy, with a one-story brick house, a concrete block garage, a metal shed and driveway access from Homecrest Road.

The subject property is gently to moderately sloping. It contains approximately 9.62 acres of forest, with two major forest stands rated good quality. The property contains no flood plains, but a small stream known as Bel Pre Creek flows through the northeast part of the property, making a substantial portion of the combined property undevelopable stream valley buffer.

The general shape and location of the subject property are shown on the map that follows (excerpted from Ex. 60(a)).



B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development.

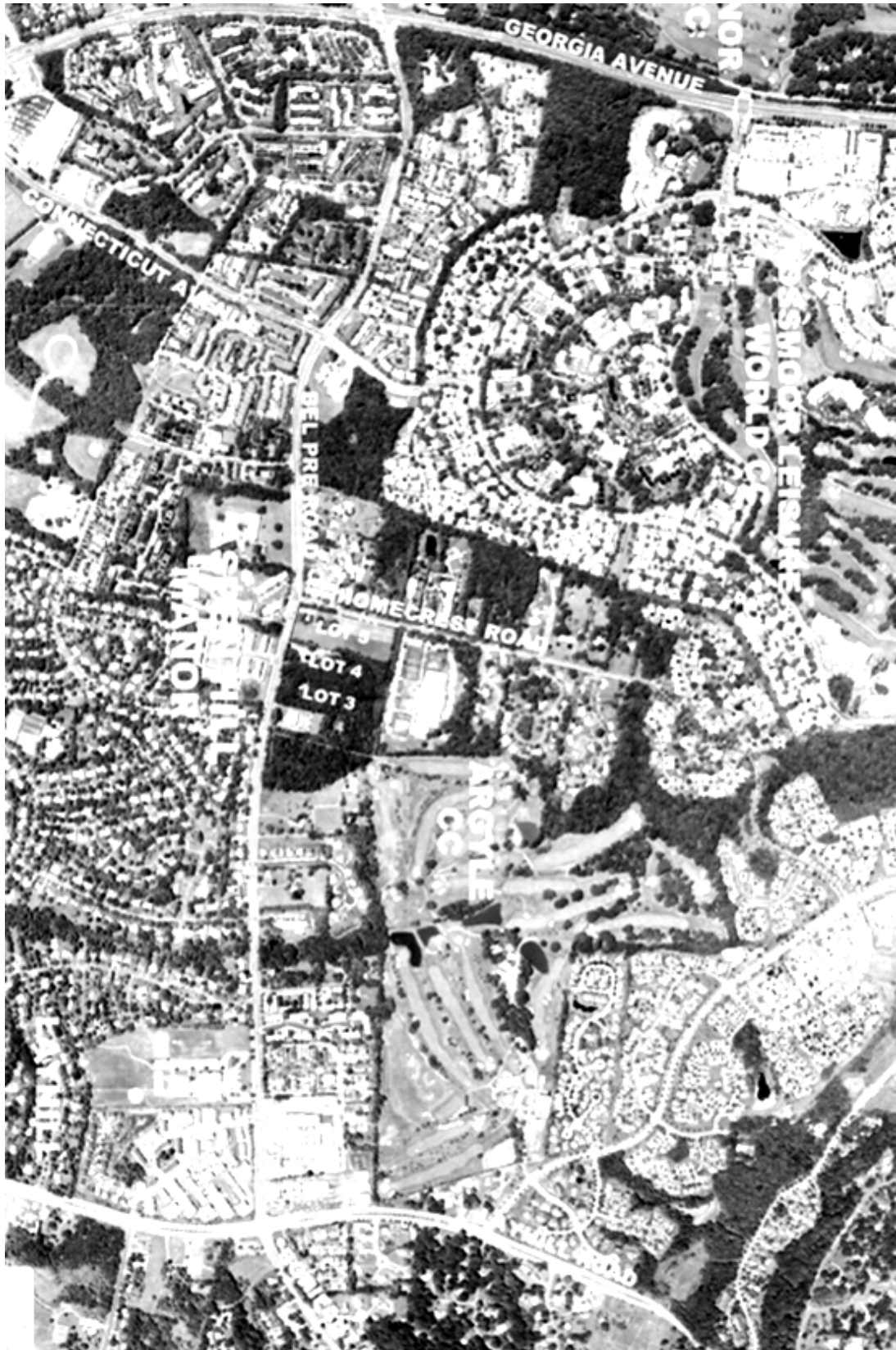
In the present case, Technical Staff described the surrounding area as the land designated in the *1994 Approved and Adopted Aspen Hill Master Plan* (the “Master Plan”) as the

Bel Pre Road Area. See Staff Report, Ex. 28 at 6; Master Plan at 46-47. As shown on the Master Plan map below, this 63-acre area extends from Bel Pre Road to the south to Homecrest Road to the west, the property line of Argyle Country Club to the north and the Bel Pre Square Townhouses to the east (located across from North Gate Drive).

The Applicants' land planner, Phil Perrine, considered the surrounding area to include principally the abutting and confronting land uses, noting that the surrounding area to be considered for a small development is smaller than for a development with larger impacts, such as a ten-story high-rise. Mr. Perrine appears to underestimate the likely impact of the proposed development, which would represent a significant change in density and intensity of use on an important corner property. Accordingly, the Hearing Examiner agrees with Technical Staff that the Bel Pre Road Area as described in the Master Plan may properly be considered part of the surrounding area for purposes of this application. However, confronting properties on Bel Pre and Homecrest Roads and the adjacent property that are not within that defined area undoubtedly would be affected by the proposed development. Taking both into account, the Hearing Examiner designates the surrounding area as, roughly, the Bel Pre Road Area described in the Master Plan plus properties that are either adjacent or directly or diagonally confronting. The relationship of the subject property to existing land uses in the surrounding area is shown in the aerial photograph on the next page.

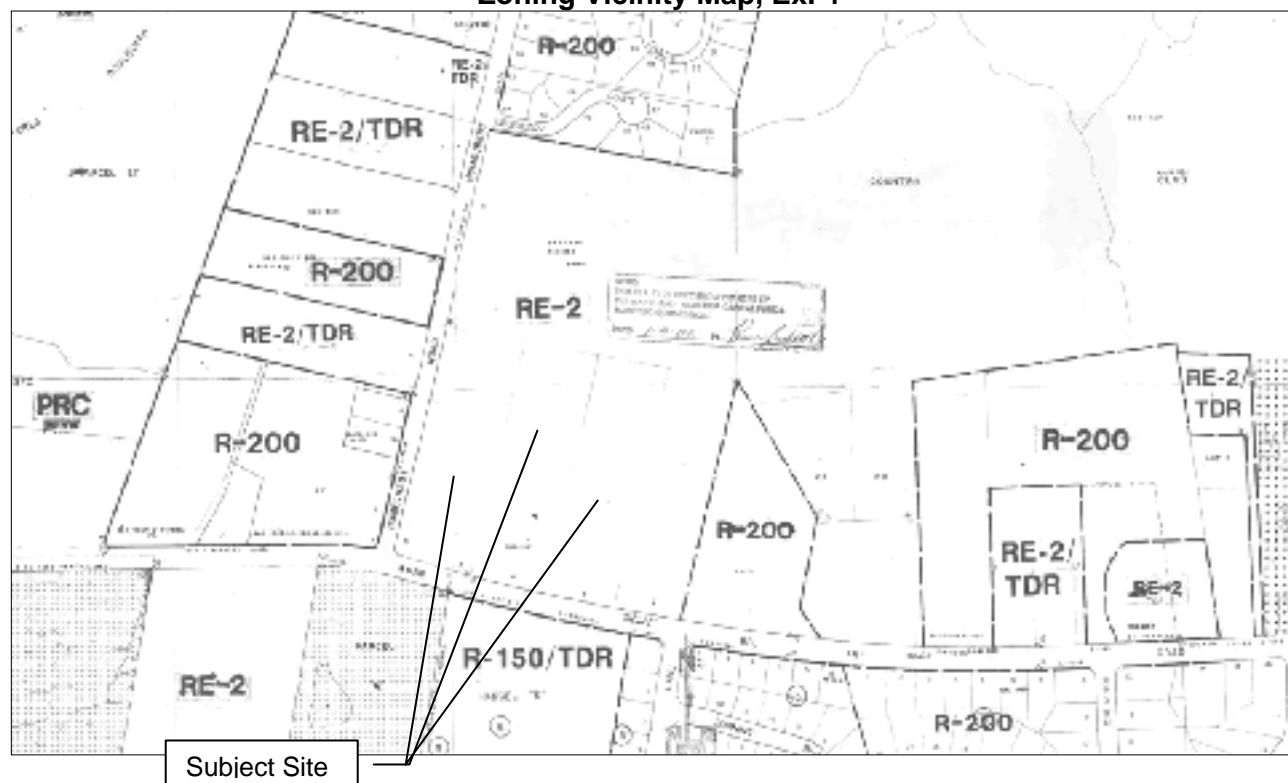
The surrounding area contains a mix of uses including three- and four-story apartment buildings, senior housing including assisted living, townhouses, single-family detached homes, churches, a large sports facility, a social lodge and a country club. As shown on the zoning vicinity map on page 9, the zoning pattern is a mixture of RE-2, RE-2/TDR, R-200 and R-150 zoning. Mr. Perrine explained this apparently random zoning pattern by stating that at one time, the entire area was classified under the RE-2 Zone. In 1970, the master plan recommended R-200 zoning, but that was not implemented. Instead individual, piecemeal zoning applications came in for a variety of zones. Most of the properties in the vicinity were reclassified to their current zones

Aerial Photograph, Ex. 38



between 1965 and 1980, and were developed with a variety of uses. Mr. Perrine observed that the current Master Plan attempted to reconcile the different rezonings and provide a plan for the developed areas by retaining existing RE-2 classifications, while also recommending the PD-2 Zone for the subject property and the remaining undeveloped property east of it, all the way to Big Bear Court. Mr. Perrine noted that the PD-2 Zone has the same density as the RE-2 Zone, but allows for more design flexibility to achieve some of the Master Plan's other goals.

Zoning Vicinity Map, Ex. 4



C. Zoning and Land Use History

The subject property was classified under the R-A (Agricultural Residential) Zone in the 1958 County-wide comprehensive rezoning. The R-A Zone was redesignated the RE-2 Zone by text amendment in 1973, and the subject property's zoning has remained the same since then. The area was recommended for reclassification to the R-200 Zone in the *1970 Aspen Hill Master Plan*, but no sectional map amendment followed. RE-2 zoning on the subject property was confirmed by Sectional Map Amendment G-709 in 1994, as recommended in the 1994 Master Plan.

As noted above, lots 3 and 5 of the subject property are each developed with a single-family home, while lot 5 has been the site of the Vedanta Center for eight and a half years. The Center has ties to Indian spiritual traditions, but considers itself a universal, non-denominational movement, accepting people from all religions and different spiritual paths. The Center teaches spiritual principals and practices including meditation, and tries to maintain a serene atmosphere. The main program is on Sunday morning at 11:00, which involves a series of lectures on different topics, attracting about 60 to 70 people. The Center has study groups on Wednesday and Friday nights from 8:00 to 9:00, youth programs on Saturday afternoons, early morning meditation at 5:30, and evening meditation. Generally, the only people attending weekday activities are the small number who live on site or are staying in the guest house. The Center has larger programs two or three times a year, necessitating a larger parking lot.

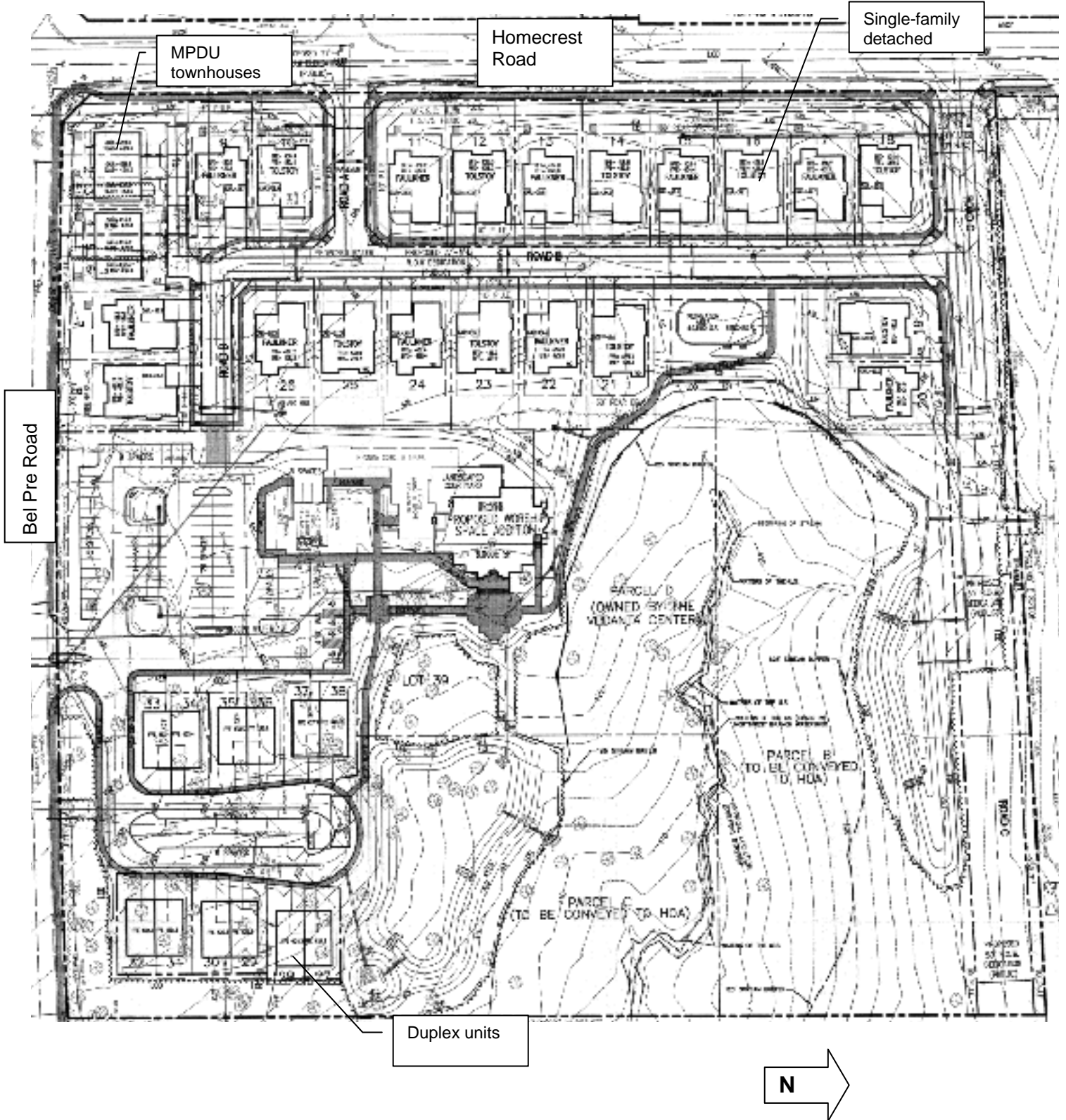
The small house on the Vedanta Center property pre-dates the Center and is used as a guest house, where people occasionally come for a retreat for a few days. The house accommodates five comfortably, with a maximum of seven. It is used as a women's guest house, or for a family. The larger, L-shaped building contains approximately 4,300 square feet of space. It houses the auditorium and a residential wing, whose current residents are two monks. Male visitors, some of whom stay overnight every weekend, sleep in the residential wing of the main building, which can accommodate eight residents.

D. Proposed Development

The Development Plan proposes expansion of the Vedanta Center's facilities and the coordinated development of a residential community with a total of 39 dwelling units: 20 new single-family detached homes, 12 new single-family, semidetached duplex units, six single-family attached units to be marketed as moderately-priced dwelling units ("MPDUs"), and the existing Vedanta Center guest house. The preliminary bedroom calculation indicates that the single-family detached units would have four bedrooms, the townhouses would have two bedrooms with an optional third bedroom, and the duplexes would have three bedrooms. The graphic portion of the Development

Plan, Exhibit 60(a), is reproduced below, with textual elements of the plan provided on the pages that follow.

Graphic Portion of Development Plan, excerpted from Ex. 60(a)



Additional elements of Development Plan, Ex. 60(a).

<u>LEGEND:</u>				SCALE: 1"=60'	
EXISTING TOPO		125' STREAM VALLEY BUFFER		EXISTING STORM DRAIN	
PROPOSED TOPO		EXISTING WATERS OF THE U.S.		PROPOSED LIMIT OF DISTURBANCE	
PROPOSED WATER		EXISTING TREE LINE		PROPOSED TREE LINE	
PROPOSED SEWER		EXISTING SPECIMEN TREE		PROPOSED ACCESSIBLE PARKING SPACE	
PROPOSED STORM DRAIN		EXISTING CURB & GUTTER		PROPOSED CURB & GUTTER	
PROPOSED LOT LINES		EXISTING TELEPHONE POLE		PROPOSED RECREATION AREA	
PUBLIC RIGHT OF WAY		EXISTING SIDEWALK		PROPOSED SIDEWALK	
PROPOSED BUILDINGS		EXISTING SEWER		PROPOSED SPECIAL PAVER AREA	

ADDITIONAL TEXTUAL BINDING ELEMENTS:

The Binding Elements are an integral part of this development plan and have the same force and effect as the standards and specifications set out in the Montgomery County Zoning Ordinance (1994, as amended) and are binding on the Applicant and all reviewing agencies. The specifications of the development plan must be strictly applied and any deviations must be approved by the district council by way of the development plan amendment process set forth in Section 59-D-1.7 of the Zoning Ordinance.

1. The number of units will not exceed 39 (to include the existing single family residence located on the worship center property).
2. Access will be from a single point on Bel Pre Road and no more than two points on Homecrest Road.
3. The addition to the worship center shall not exceed 6,500 square feet of gross floor area.
4. Fencing and landscaping as shown on the Development Plan along Homecrest Road (within 10 feet of lot lines) shall be maintained by the Homeowners Association.
5. All access points shall be maintained free and clear of any sight distance obstructions located on subject property.

Additional elements of Development Plan, Ex. 60(a).

PD-2 DEVELOPMENT STANDARDS:**Setbacks:**

As per section 59-C-7.15.(b), for land that adjoins land for which the area Master Plan recommends a one-family detached zone, no building other than a one-family detached residence can be constructed within 100 feet of such land

Density:

As per section 59-C-7.14 of the Zoning Ordinance-2 Units per Acre - may be increased by 22% (2.44 units per acre) if 15% MPDUs are provided

Building Height:

As per section 59-C-7.15.(b), for land that adjoins land for which the area Master Plan recommends a one-family detached zone, no building can be greater in height than its distance from such land

Green Area:

Minimum 30% of Gross Area as per Section 59-C-7.16 of the Zoning Ordinance (30% of 16.02 acres - gross area = 4.81 acres)

Provided:

No buildings other than single family detached units are located within 100 feet of adjacent land to north that is recommended for single family detached zone (RE-2) in Aspen Hill Master Plan; land adjoining the property to the east is recommended for PD Zone in the Aspen Hill Master Plan

Provided:

Up to 2.4 units per acre - up to 39 units including 6 MPDUs (15.3% of total units).

Provided:

Residential Units- Maximum of 40 feet in height - all units located minimum of 60 feet from adjacent land to north recommended for single family detached zone in Aspen Hill Master Plan; land adjoining the property to the east is recommended for PD Zone in the Aspen Hill Master Plan

Worship Center- Maximum of 25 feet - located over 400' from adjacent land to north recommended for single family detached zone in Aspen Hill Master Plan; land adjoining the property to the east is recommended for PD Zone in the Aspen Hill Master Plan

No other adjoining land is recommended for residential zoning in the Aspen Hill Master Plan

All heights as defined in Section 59-A-1.2 of the Zoning Ordinance. All cupolas and domes are exempt from building height restrictions per Section 59-B-1.1 of the Zoning Ordinance

Provided:

7.33 acres provided or 46% of gross area*

*Green Area provided subject to change based on final engineering and further revision during subsequent Preliminary and Site Plan proceedings, provided that minimum of 30% will be provided.

NUMBER OF BEDROOMS PER UNIT (PRELIMINARY)*:**Single Family Detached:**

Telstar: 4
Faulkner: 4
Kipling: 4

Townhouse:

Fairmont: 2 with an optional 3rd

Duplex:

3 Bedrooms

Worship Center:

None

*House model types shown on Development Plan and number of bedrooms listed are for illustration only and are subject to further revision at subsequent Preliminary and Site Plan proceedings.

Additional elements of Development Plan, Ex. 60(a).

PARKING SCHEDULE*:

Single Family Detached:

Required Parking Spaces: 2 spaces per unit (2 x 20=40)
 Proposed Parking Spaces: 4 spaces per unit (2 garage / 2 driveway)
 80 total spaces

*Existing single family residential dwelling unit is located on worship center site and utilizes parking provided thereon.

Townhouse:

Required Parking Spaces: 2 spaces per unit (2 x 6=12)
 Proposed Parking Spaces: 2 spaces per unit (1 garage / 1 driveway)
 12 total spaces

Duplex:

Required Parking Spaces: 2 spaces per unit (2 x 12=24)
 Proposed Parking Spaces: 2 spaces per unit (1 garage / 1 driveway)
 24 total spaces

Worship Center:

Total number of seats in main auditorium: 212
 Required Parking Spaces: 1 space per 4 seats (212/4=53 spaces)
 Proposed Parking Spaces: 85 total spaces *
 81 Regular Spaces @ (9' x 18')
 4 Handicapped Van Spaces
 (1 Additional Loading Space)

*Final number of parking spaces is subject to revision during subsequent Preliminary Plan and Site Plan proceedings. Location of parking is illustrative only.

DEVELOPMENT PROGRAM:

Phase I - Commence grading and infrastructure of up to 38 residential lots, develop finished lots
 Phase II - Commence construction of up to 20 single family homes and 6 MPDU townhouses on the finished lots
 Phase III - Commence construction of up to 12 duplex homes on finished lots
 Phase IV - Commence construction on the 6,500± SF Vedanta Center Expansion.

*The Phases I-IV described above may occur in any order or simultaneously provided that construction of the 6 MPDU townhouses will commence no later than commencement of the 18th market rate unit.

General Notes from Development
Plan, Ex. 60(a)

GENERAL NOTES:

1. Z Topography prepared by Taylor Harris Furd + Associates, pc; 4/6/12/2015;
2. Boundaries prepared by Patton Harris Furd + Associates, pc; from available records.
3. Existing Zoning: RE-2
4. Proposed Zoning: PD-2
5. Gross Total Area: ± 16.02 acres
 Lot 3: 4.87 acres
 Lot 4: 6.32 acres
 Lot 5: 5.75 acres
6. Election District: 13
7. Planning Area: No. 27 Assar Hill
8. Tax Map No. HR 953
9. W.S.S.D. Map: 219 NW 03
10. ALC Map: Montgomery County Map 30, GMD-F-3
11. Proposed Use: 8 Town House Units
 21 Single Family Detached Units (Existing / 20 Proposed)
 12 Duplex Units
 Expansion to existing worship center (8,500 sq ft)
 *Existing single family residential dwelling unit is located on worship center site.
12. Existing Forest Cover: 6.87 AC.
13. Existing water category: W-1, existing sewer category: S-1.
14. There are no known historic features on this site, or adjacent to the site.
15. There are no cemeteries located on or adjacent to the site.
16. A utility line determination for the subject property has been completed (CEUB-B-CP-RMS (ASPER HILL WWD-RM-42275-11). No wetlands have been found on this site.
17. Developer/Contract Purchaser:
 1. Kathy Development
 Mr. Jeff Kifer
 11215 Doveside Court, Suite 3
 Woodstock, MD 21154
 T: 410.442.5000 F: 410.442.5061
18. Owners:
 LDC: Arnold K. Geckhart et al.
 3231 Bell Pine Road
 Silver Spring, MD 20906

General Notes from
Development Plan. cont.

Lot 4: Viceria Center of Greater Washington DC

Attn: Mr. Stuart Ekman
3001 Bel Pre Road
Silver Spring, MD 20906
T: 301.903.1772

Lot 3: Theodore Vogt
1782 Bladenor Boulevard
Stockbridge, VT 05172

19. Planner/Engineer:

Patricia Harris Rust + Associates, pc
6818 Centre Park Drive, Suite 200
Columbia, Maryland 21045
T: 410.967.8600 F: 410.967.9282

20. 10' Public Utility Easement runs along all Public Right of Way.

21. The predominant soil types are:

- 1C. Galle Silt Loam (8-15% slopes)
 - 2B. Chertall Silt Loam (3-8% slopes)
 - 6A. Baile Silt Loam (0-3% slopes)
- *From Soil Survey-Montgomery County Maryland

22. Location and design stormwater management facilities, roads and utilities shown hereon are for illustration only, based on preliminary design, and are subject to final engineering and further revision during subsequent subdivision and site plan proceedings.

23. All sidewalk ramps to conform to Montgomery County DOT Standard No. MC-112.01.

24. All concrete curb and gutter shall be in accordance with Montgomery County DOT Standard No. MC-100.01, and meet existing curb, gutter, and parking in line and grade.

25. Gall gutters on all high side curb and gutter.

26. All parking island curb radii 5' unless otherwise noted.

27. All parking to be painted / striped.

28. Fill areas:

- A. Class I fill to be placed below all buildings.
- B. Class II fill to be placed below all paved areas including parking lots, drives, and sidewalks.
- C. Class III fill to be placed in areas that will remain "green".

29. Footings to be extended to existing ground where necessary.

30. Slopes: Maximum = 2:1
Minimum = 2% grassed / 1% paved

31. Lots sizes and shapes and building locations are for illustration only and may be further revised at subsequent Preliminary and Site Plan proceedings.

The existing Vedanta Center worship building and its attached residential wing, roughly in the middle of the site, would be retained. In addition, a new, 6,500-square foot structure would be built onto the rear wall of the existing worship building, with a landscaped courtyard between the old and new structures. The new building would provide a worship space with approximately 212 seats, a study room, an entry lobby, bathrooms, storage space, a cellar gathering space and a kitchen. The Center plans to use the existing auditorium as a multi-function meeting space. The new building would provide a larger auditorium, as well a space in the cellar to serve refreshments after worship activities, which is lacking in the current facility. The architecture for the new building is based on a well-known Indian Hindu temple, incorporating a blend of traditional Indian and European styles. The maximum height, excluding cupolas and domes, would be 24 feet. The new Vedanta Center building would face east, towards a wooded area abutting the stream valley buffer. It would be partially obscured from Bel Pre Road by the existing Vedanta Center buildings, so one would have only an oblique view of the new building from Bel Pre Road.

The Development Plan allocates the land immediately south of the Vedanta Center, between the Center and Bel Pre Road, to an 85-space parking lot for the Vedanta Center. East of the parking lot, in the southeast corner of the site, the Development Plan shows 12 duplex units. Testimony indicated that these units would be under the Vedanta Center's ownership, and that the Center hopes to sell the units with covenants restricting their occupancy to members of the Vedanta Center community. The duplex units are shown with access via the same driveway serving the Vedanta Center; cars would turn left to enter the Vedanta Center parking lot or right to reach the cluster of duplex units. Each duplex unit is shown with a one-car garage and one driveway space. The Development Plan depicts the 12 units as six buildings, arranged in two rows of three that face each other across a median ringed by an oblong access road. Six parallel parking spaces are shown along each side of the median. The plan shows a sidewalk winding from Bel Pre Road to the duplex units, and continuing on to link the duplexes to sidewalks within the Vedanta Center

facility, and from there to a path leading along the stream valley buffer to a proposed recreation area on the west side of the site.

The Development Plan places the cluster of duplex units adjacent to a dry stormwater management pond to the north. To the south, the duplex units would be buffered from the adjacent Bel Pre Road by a stand of trees ranging in depth from about 25 feet to about 40 feet.² To the west, as noted above, the duplex units are shown abutting the Vedanta Center parking lot, with a setback of about 65 feet. No buffering is shown between the backyards for the units and the sidewalk along the parking lot access road. To the east, the duplex units would abut the property of the Wheaton Moose Lodge. The lodge structure is located directly across the property line from the location proposed for some of the duplex units; at its closest point, the lodge is shown approximately 62 feet from the two closest duplex units and 70 feet from four others.³ The duplex units would be buffered from the noise and activity of Moose Lodge activities by a wooded area about 30 to 35 feet deep.⁴

As described above and shown on the Development Plan, the Vedanta Center and its 12 duplex units would occupy roughly a third of the site, in the central and southeast portion of the site. Roughly another third of the site, in the central and northeast portion of the site, would be occupied by non-developable stream valley buffer and a provision for future dedication of a 50-foot road right-of-way along the northern border. The Development Plan shows the western third of the property as the main residential area, with 20 single-family, detached homes and six MPDU townhouses. The Development Plan shows most of the single-family homes facing each other across an internal roadway ("Road B"), with two homes at either end facing Bel Pre Road to the

² These figures were scaled off by the Hearing Examiner from a revised site plan submitted after the hearing.

³ The site plan that was submitted at the hearing showed the duplex units quite close to the eastern property line, only 35 feet from the Moose Lodge building. Based on concerns raised at the hearing by a representative of the Moose Lodge, the site plan was revised to move these units 25 to 30 feet west, creating space for a wooded buffer. This necessitated removing a wooded buffer that was previously shown between the duplex units and the Vedanta Center parking lot.

⁴ These figures were scaled off by the Hearing Examiner from a revised site plan submitted after the hearing.

south and a proposed stub road to the north. The Development Plan anticipates that each house will have a two-car garage and two driveway parking spaces. The MPDUs are shown clustered in two groups of three townhouses, which would be designed to have the appearance of large single-family homes. They would have their own stub access road, and each would have a one-car garage and one driveway parking space. All of the streets would be connected by sidewalks. The Development Plan also shows a 2,500-square-foot open recreation area along the main internal roadway, with benches along the adjacent path. The duplex units at the other end of the site would be connected to this recreation area, and to the rest of the community, by a trail shown running along part of the stream valley and past the Vedanta Center.

The Development Plan shows one point of access on Bel Pre Road, aligned with the Vedanta Center's existing entrance and its parking lot. It shows two points of access on Homecrest Road, "Road A" near the southeast corner of the site, not far from the intersection of Bel Pre and Homecrest Roads, and "Road C" at the very northern end of the site. Road C is proposed in an effort to satisfy a transportation objective stated in the Master Plan, which called for a road along the northern boundary of the subject site and beyond, to provide internal circulation routes for future development in the area. As candidly stated by the Applicants' traffic planner, Wes Guckert, Road C would be convenient for the homes at the northern end of the development, but is not necessary for safe, adequate and efficient circulation. The Development Plan provides for actual construction of Road C only as far as the houses would be built, on the expectation that a length of road with no homes on it would tend to become a lover's lane and attract undesirable nighttime activity. The Development Plan shows Road C stopping at the end of the last home, with a 50-foot right-of-way dedication along the remainder of the frontage.⁵ The testimony indicated that Applicants intend to provide a small dedication of land along the site's Homecrest Road frontage, but this dedication is

⁵ Testimony indicated that Applicant J. Kirby Development expects to be obligated during site plan review to pay for construction of the road to the eastern property line at some future point, if needed for proposed development of properties to the east.

not clearly shown on the Development Plan.⁶ It would be intended to provide 35 feet from the property line to the center of the roadway, consistent with the Master Plan's recommendation that Homecrest Road should have a 70-foot right-of-way.

An additional element of the on-site circulation plan is a feature located where Road B would otherwise connect with the Vedanta Center parking lot, which Mr. Perrine described as a "friendly connection." This connection would be paved, but would not have the appearance of a normal road. The specifics have not yet been determined, but Mr. Perrine indicated that the connection would be available to pedestrians and emergency vehicles, but not to normal traffic.

With regard to phasing, the Development Plan divides the proposed development into four phases (grading and infrastructure, single-family detached homes and townhouses, duplex units, and Vedanta Center expansion, in that order). It specifies, however, that the four phases may occur in any order or simultaneously, provided that "construction of the 6 MPDU townhouses will commence no later than commencement of the 18th market rate unit." Ex. 60(a).

The aerial photograph reproduced on the next page shows most of the subject property, as well as some adjacent properties, with the lot lines proposed on the Development Plan superimposed.

E. Development Plan

Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. This development plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. The Development Plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plan is subject to site plan review by the

⁶ As discussed further below, this deficiency will need to be rectified if the application moves forward.

Planning Board, and changes in details may be made at that time. The principal specifications on the Development Plan – those that the District Council considers in evaluating compatibility and compliance with the zone, for example – may not be changed without further application to the Council to amend the Development Plan.

Aerial Photograph with Proposed Lot Lines, Ex. 39



The principal component of the Development Plan in this case is a document entitled Development Plan, Exhibit 60(a), which is reproduced in the previous section (pages 11-16). Additional elements of the Development Plan have been submitted through exhibits, including two aerial photographs of the area (Exs. 38 and 39) and a Natural Resources Inventory/Forest Stand Delineation (“NRI/FSD,” Ex. 23(d)).

The Development Plan, Exhibit 60(a), shows access points, approximate locations of existing and proposed buildings and structures, preliminary classification of dwellings by number of bedrooms, parking areas, some intended right-of-way dedications, and areas intended for common use but not public ownership (the small recreation area on Road B and the stream valley). During the hearing, the Hearing Examiner initiated a discussion of the binding nature of a Development Plan, explaining to the Applicants and counsel that anything intended to be illustrative, rather than binding, should be so noted on the plan. This resulted in the submission of a revised Development Plan after the hearing, which made several changes limiting the binding nature of the features shown on the Development Plan. In its current form, the binding nature of the Development Plan is subject to the following limitations, which the Hearing Examiner finds to be overly broad:

1. The Development Plan specifies that “Lot sizes and shapes and building locations are for illustration only and may be further revised at subsequent Preliminary and Site Plan proceedings.”

2. Green area shown covers approximately 46 percent of the site, but the text of the Development Plan states that green area may be reduced, provided that the statutory requirement of a minimum of 30 percent green area is met.

3. A textual binding element specifies that the development will have a single access point on Bel Pre Road, and *no more than two* access points on Homecrest Road. This suggests that one of the two Homecrest Road access points shown on the Development Plan could be eliminated at a later stage of review.

The Hearing Examiner finds that these limitations reduce the Development Plan to a document so lacking in specifics that it is impossible to fully and fairly evaluate compatibility with surrounding uses, compliance with the purpose clause for the zone or master plan consistency. The Development Plan states, without limitation, that “building locations are for illustration only.” A broad, general statement of this kind leaves open the possibility that if the rezoning were approved, the Applicants might present a site plan to the Planning Board and its staff with a totally different site layout than what is currently shown. Similarly, the Development Plan provides for a possible reduction of green area *by more than a third*, from 46 percent of the site to 30 percent. The Applicants may not have fully recognized the implications of this provision. In the Hearing Examiner’s view, it is impossible to anticipate what the Development Plan would look like with such a dramatic reduction in green area. Would it mean eliminating the recreation area on Road B; eliminating the wooded buffer south and east of the duplex units; eliminating the wooded area south of the Vedanta Center expansion; and/or dramatically reducing the size of the front and back yards for individual homes? These questions require an answer.

Finally, the Development Plan leaves open the possibility that one of the two access points shown on Homecrest Road could be eliminated. This makes it impossible to evaluate consistency with the Master Plan, which proposed as one of its main objectives for the area of the subject site an internal roadway that would begin in the northwest corner of this property. The promise of that roadway appears to have played a significant role in Technical Staff’s evaluation of master plan compliance, so the potential for its elimination undercuts Staff’s support for the application as well as that of the Planning Board, which relied on the Staff Report. The possible elimination of one of the Homecrest Road access points could also have impacts on the safety, adequacy and efficiency of vehicular circulation that have not been specified and, therefore, cannot be fully assessed.

The Applicants appear to labor under a fundamental misapprehension of the District Council’s role in this case. The Montgomery County Zoning Ordinance specifies that in certain

zones (mostly planned development and transit station zones), development is permitted “only in accordance with a plan approved by the district council at the time the land is classified” in one of these zones. Code § 59-D-1.1. The zones that require a development plan generally do not include the type of strict development parameters that are imposed in other zones, for example maximum building heights and minimum building setbacks. They do, however, require the submission of a development plan, which “must clearly indicate how the proposed development meets the standards and purposes of the applicable zone.” Code § 59-D-1.3. The Zoning Ordinance specifies that a development plan must show general locations of points of access, the locations and uses of all buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, the location of parking areas and number of spaces, the location of land to be dedicated to public use, and the location of land intended for common or quasi-public use but not proposed for public ownership. Code § 59-D-1.3(a) – (c). These submission requirements ensure that the Council has enough information about the proposed development to fully assess its compatibility and compliance with applicable requirements. The Zoning Ordinance further specifies that “[a] site plan that is consistent with the approved development plan must subsequently be approved in accordance with the requirements of Division 59-D-3 [(which establishes parameters for Planning Board review and approval of site plans)] prior to the issuance of any building permit.” Code § 59-D-1.2.

Thus, the legislative framework for the zones that require submission of a development plan at the rezoning stage assigns to the District Council the responsibility to evaluate the submitted development plan, not just the concept of applying the proposed zoning classification to the land in question. To fully carry out that evaluation, the Council must have enough hard data to assess whether the proposed development satisfies the standards and purposes of the zone, complies with the Master Plan, and would be compatible with surrounding uses. At a minimum, this must include the information specifically required in a development plan, such as the locations proposed for buildings and points of access. In recognition of the need for some measure of

flexibility at site plan to respond to field conditions, the Council has, in the past, approved development plans that specified that *exact* building locations or the *exact* location of an access point were illustrative. Approximate locations, or building envelopes, can provide a sufficient basis for evaluation of a proposed development at the zoning stage. In the present case, however, the application lacks even that level of detail. The submitted Development Plan leaves open the potential for a complete site re-design, a reduction of green area by as much as one third, and the potential elimination of one of two access points shown on Homecrest Road. This is unacceptable.

In addition to the major flaws described above, the Development Plan contains a number of more minor deficiencies that must be addressed if this plan moves forward. These deficiencies are described in detail below.

1. Textual binding element No. 1 states that the number of units will not exceed 39, including the existing Vedanta Center guest house. The General Notes are written in more exact terms: 21 single-family detached units, 12 duplex units and six townhouses. During the hearing, Applicants' counsel indicated an intention to revise the General Notes to provide for "up to" the number of each unit type specified; the failure to make that change may have been a simple oversight. If the Applicants' intention is to leave the Planning Board the discretion to reduce the number of units, if necessary, during subdivision or site plan review, the General Notes must be changed to allow for that possibility.

2. Textual binding element No. 3 states that the addition to the Vedanta Center will not exceed 6,500 square feet of gross floor area. The graphic portion of the Development Plan depicts the proposed worship space addition with an approximate size of "6,000± SF." The "Development Program" (phasing) description describes the Vedanta Center expansion as "6,500± SF." These inconsistencies between text and graphics must be rectified to avoid confusion. The approximate size of the addition must be shown consistently, and must not be shown (as it currently is in the phasing program) with the possibility of exceeding the maximum square footage indicated in the textual binding element.

3. Textual binding element No. 4 states that fencing and landscaping “as shown on the Development Plan along Homecrest Road (within 10 feet of lot lines) shall be maintained by the Homeowners Association.” This is consistent with testimony during the hearing, which indicated that the HOA would ensure uniform fencing and landscaping between the rear yards of the new homes and Homecrest Road. The Hearing Examiner, however, could not find any indications on the submitted Development Plan of fencing or landscaping along Homecrest Road. The graphic portion of the Development Plan and the textual binding elements must be consistent.

4. As noted above, a development plan is required to show all property intended for dedication to public use. The Development Plan submitted here shows very clearly the intended road right-of-way dedications for Roads A, B and C, including the possible future extension of Road C along the full length of the northern boundary. It does not clearly show, however, the intended right-of-way dedication along Homecrest Road that was described during testimony. This omission must be rectified.

5. As discussed in more detail in Part III.F.2. below, the 50-foot right-of-way dedication shown for Road C may not be sufficient to build the access road that the Master Plan envisioned at this location. A finding of Master Plan compliance cannot be made without sufficient right-of-way dedication to ensure enough land to carry out this important Master Plan objective.

An additional flaw on a separate document relates to the NRI/FSD, Exhibit 23(d). The Zoning Ordinance specifies that a development plan must include “a natural resources inventory prepared in accordance with a technical manual adopted by the Planning Board. . . .” Code § 59-D-1.3(a). The submitted NRI/FSD does not show MNCPPC approval, nor does it have a professional certification that it was prepared in accordance with a technical manual adopted by the Planning Board. A memorandum from Environmental Planning Staff at the MNCPPC (attached to the Staff Report, Ex. 28) states that the NRI/FSD was approved on June 6, 2005. A copy of the approved document should be submitted into the record if this project goes forward.

F. Master Plan

1. Summary of Objectives and Recommendations

The subject property lies within the area covered by the *1994 Approved and Adopted Aspen Hill Master Plan* (previously defined as the “Master Plan”).⁷ The Master Plan states the following with regard to its vision (Master Plan at 3):

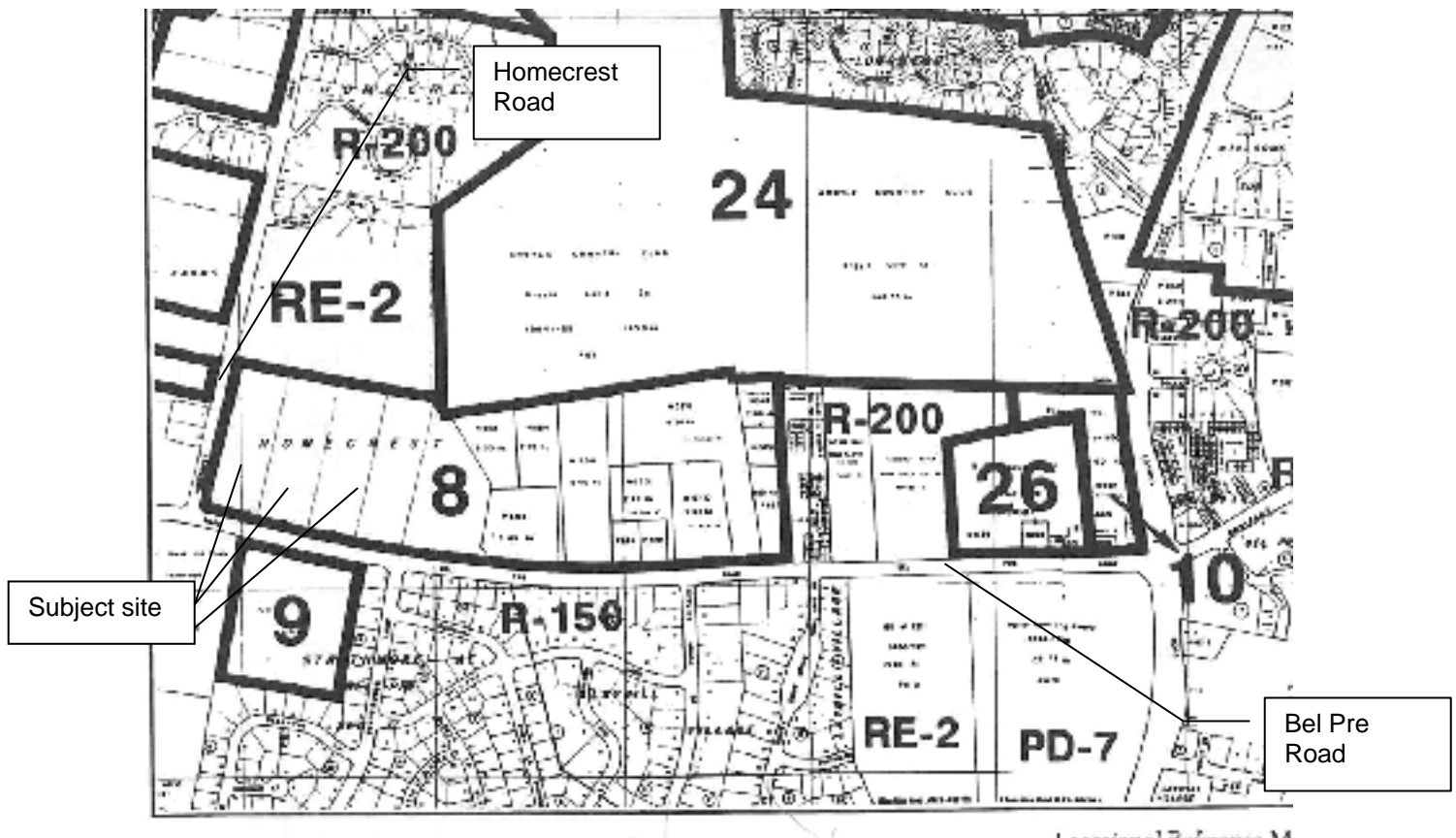
The Plan reinforces the primarily suburban and residential character of the Aspen Hill area by retaining its residential zoning with relatively few refinements. The Plan seeks to increase opportunities for community interaction. It looks to reduce the social and sometimes physical isolation of various neighbors through both public investment and physical designs of private activity.

The Master Plan states a number of broad goals. The housing goal is stated thus: “Encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles and physical capabilities at appropriate densities and locations.” Master Plan at 21. The environmental goal is to “[c]onserve and protect natural resources to provide a healthy and beautiful environment for present and future generations.” *Id.* at 22. Stream quality, wetland protection and reduction of flooding are specific issues addressed in the plan, and in particular the prevention of further degradation of stream quality and erosion. With regard to community identity and design, the Master Plan states as its goal to “[p]rovide for attractive land uses that encourage opportunity for social interaction and promote community identity.” *Id.* The plan identifies the advancement of social interaction and community identity as a major issue, with many goals and strategies aimed at this objective. These include design improvements to increase connectivity between residential neighborhoods, guidelines for special exceptions and the retention of publicly-owned sites for future community facilities. *Id.*

⁷ There are in circulation two versions of the Master Plan that have identical text and maps and the same date. One is in a vertical format and the other is horizontal, so their page numbers are different. The Hearing Examiner, like Technical Staff and Mr. Kauffinger, refers to the page numbers in what appears to be the final published edition (in vertical format). Mr. Perrine referred to the “Interim Edition,” which, based on testimony from a community member, is the version that MNCPPC commonly supplies when a request for a copy of the Master Plan is made. The record contains a complete copy of the Interim Edition and excerpts from the final edition.

The Master Plan divides its geographic range into planning areas. The subject property is within the area designated the “Bel Pre Road Area.” As shown on the map on the next page, this area was along the northern side of Bel Pre Road between Homecrest Road and the Bel Pre Square townhouses (across from North Gate Drive). The Bel Pre Road Area measured approximately 63 acres, and contained the Wheaton Moose Lodge, single-family detached homes and a nursing home. The Master Plan described the history of individual local map amendments in this area, as discussed in Part III.B. above. It also noted that the area was environmentally sensitive, with most properties containing or draining into Bel Pre Creek, a high-quality stream.

Bel Pre Road Area, Area 8. Master Plan Figure 16, p. 52.



The Master Plan recommended a higher density zoning than RE-2 to encourage consolidation of parcels, which would minimize the number of entrances onto Bel Pre Road and facilitate the creation of an internal road network that would minimize the impact of development

on Bel Pre Creek. Master Plan at 51. The Master Plan identified three issues to be addressed at the time of development: Bel Pre Creek should be protected for recreational trout populations; 17 acres of stream buffer should be delineated and left undisturbed; and on-site storm water management should be provided for water quality and quantity, with joint facilities for several parcels where possible. *Id.*

Within the Bel Pre Road Area, more detailed recommendations were provided for five subsections, including the Western Bel Pre Road section (shown below), which included the subject property and, moving to the east, the Moose Lodge property, an adjacent undeveloped parcel, and three abutting parcels in single-family residential use. The Master Plan recommended retaining the existing RE-2 zoning for all properties *not* zoned R-200. Master Plan at 54. It further recommended the PD-2 Zone for any assemblage of at least ten acres within the western Bel Pre Road Section. *Id.*

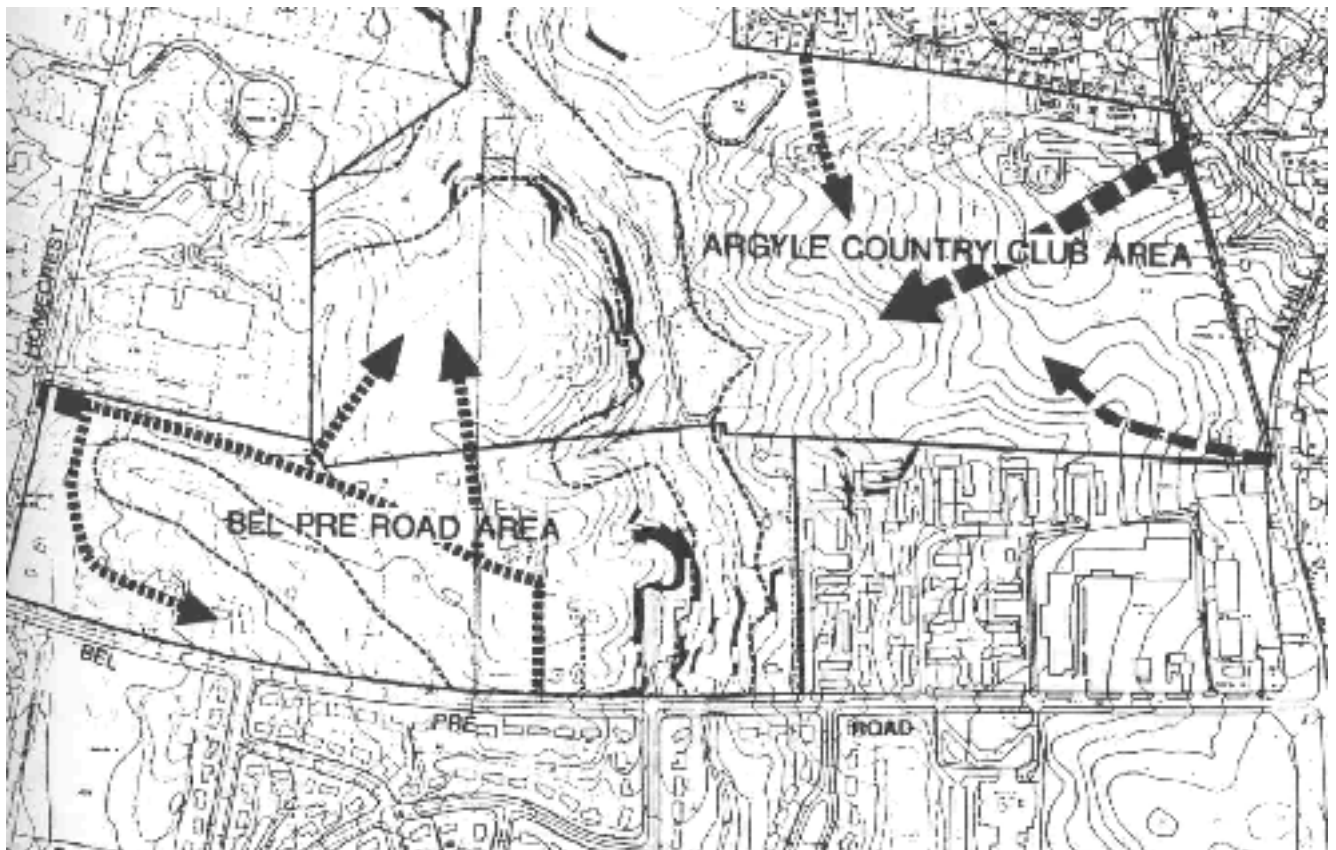
Bel Pre Road Area Subsections, Master Plan Figure 18, p. 55



The Master Plan also provided detailed transportation recommendations, including recommendations for internal roadways in the Bel Pre Road Area and the adjacent Argyle Country Club Area, if the country club were to be redeveloped for residential use. The Master Plan noted that Bel Pre Road between Georgia Avenue and Layhill Road (which includes the subject property) “is at the ultimate capacity for an arterial road.” Master Plan at 236. It stated that some properties on the north side of Bel Pre Road between Homecrest Road

and Rippling Brook Drive should have a combined access plan “to avoid the safety hazards imposed by having numerous driveways along a busy roadway.” *Id.* The plan recommended providing access to Bel Pre Road properties through a combination of secondary residential and/or tertiary streets, with one point of access through a small development that was then in the planning stages (now known as Bel Pre Estates, located slightly west of Rippling Brook Drive on the north side of Bel Pre Road), and another on Homecrest Road. The latter would permit traffic to enter Bel Pre Road at a signalized intersection. The approximate locations proposed for these internal roads are shown on the map below.

**Master Plan Proposed Access Plan for Bel Pre Road Area/
Argyle Country Club Area. Master Plan Figure 55, p. 237**



The Master Plan recognized that the proximity of the proposed access point on Homecrest Road to the existing entrance for the Racquet Club adjacent to the north could raise safety questions. The plan stated that if the Department of Transportation and Public Works

("DPWT") deemed the proximity of the two entrances to be a safety hazard, the new access street off of Homecrest Road should still be built, but it should also provide access to the Racquet Club. The Master Plan specifically recommended that the new road be built to primary residential street standards from Homecrest Road to an access point for the Racquet Club, and from there continue as a secondary residential street in a circuitous alignment, ultimately intersecting Bel Pre Road opposite Rippling Brook Drive. Master Plan at 238. The Master Plan emphasized the need for particular review of traffic safety issues in the area, as seen in the following paragraph (Master Plan at 238):

In the future, MCDOT should continue to monitor traffic speeds and accidents on Bel Pre Road, especially in the vicinity of Homecrest Road, and take appropriate action to improve and maintain safety. M-NCPPC should work closely with MCDOT in the review of preliminary plans of subdivision, zoning applications and other development cases to minimize the need for new driveways and to achieve safe locations for new access points to Bel Pre Road when they are necessary.

2. Analysis

Technical Staff concluded that the proposed rezoning would be consistent with the goals and recommendations of the Master Plan. Staff noted that Road C, shown on the Development Plan along the northern property line, would respond to the Master Plan's recommendation for an internal road network to minimize both development impacts on Bel Pre Creek and the number of entrances on Bel Pre Road. Staff Report at 15. This finding is qualified, however: Staff states that the 50-foot right-of-way proposed for dedication "is consistent with the goal of the master plan if the DPWT considers the proposed roadway to be adequate for the number of units in the proposal." Staff Report at 16. Staff suggests that "consolidation or widening of the street to a primary standard at this location can be accommodated at the time a new entrance or consolidation of entrances is need[ed] when the adjoining Racquet Club property redevelops." *Id.* Transportation Planning Staff's memorandum includes a minimum 50-foot dedication along the northern boundary line among its recommendations for preliminary plan review, but the memorandum lacks any analysis of why

this dedication was considered adequate. See Transportation Planning Staff memorandum dated October 3, 2005, attached to Staff Report, Ex. 28 (the "Transportation Staff Memo").

The Applicants' land planner, Mr. Perrine, opined that the Development Plan conforms to the Master Plan recommendations, both general and specific. He noted that it proposes a variety of housing types, lot sizes and price points, including both market rate and MPDU homes. Mr. Perrine opined that the proposed development would do a good job of encouraging a variety of housing types, by reinforcing single-family detached housing in an area that is surrounded by senior housing, townhouses, garden apartments and scattered single-family detached homes. He stated that the expansion of the Vedanta Center would provide an attractive building with unique architecture, creating a community with a distinct character and identity, which would be enhanced by the walkways connecting the uses to each other and to surrounding areas. He noted that the project proposes an assemblage of 16 acres, and would minimize access points along Bel Pre Road by reducing the number of curb cuts from two to one. It would also provide the right-of-way necessary for an access road along the full northern boundary of the site if adjacent properties are developed.

Addressing the Master Plan's environmental concerns, Mr. Perrine noted that the Development Plan preserves the 125-foot stream valley buffer, which would be an "accessible, undisturbed recreation area that that can be shared by all residents, as well as visitors to the Vedanta Center." Ex. 28(d) at 9. Mr. Perrine acknowledged during his testimony that no paths are proposed within the stream valley buffer, for environmental protection reasons, so the primary access to the stream valley buffer would be visual. Tr. at 83-84. He also noted that forest conservation requirements would be met on site, and that all the uses would have a shared, on-site storm water management system for both quality and quantity control.

Community member Richard Kauffunger, who served on the Citizen's Advisory Committee for the Master Plan, reviewed a series of concerns about Master Plan compliance, the first of which was the integration of MPDUs into communities. He referred to the first page

of text in the Master Plan, which states that the plan seeks to increase opportunities for community interaction and reduce the social and sometimes physical isolation of various parts of the community through public investments and the design of private developments. Mr. Kauffunger suggested that placing the MPDUs together in one corner of the proposed development would remove them from the rest of the community, rather than spreading them throughout the development so they look like the other houses. (Mr. Perrine responded on rebuttal that the small size of this development made a more integrated approach impractical.)

Drawing on his experience in working on the Master Plan as a member of the Citizens' Advisory Committee, Mr. Kauffunger stated that the recommended zoning for the western part of the Bel Pre Road Area was kept at RE-2 to give the County the leverage of potential higher density, as a way to get developers to build internal access roads. He acknowledged that the proposed Development Plan depicts a roadway in the right location, but objected to the size of the proposed dedication. Mr. Kauffunger noted that a 50-foot right-of-way is consistent with a tertiary residential road, but is not enough for the secondary road recommended in the Master Plan; a secondary road calls for a 60-foot right-of-way.

The Hearing Examiner shares Mr. Kauffunger's concern about the width of the dedication proposed for Road C, particularly because Transportation Planning Staff provided no analysis to support its statement that a minimum 50-foot dedication should be provided. It may be that Transportation Planning Staff drew this conclusion with the expectation that a wider dedication could be required at a preliminary plan or site plan review, if needed to provide for a wider entrance and access to the Racquet Club. However, one of the requirements for a development plan under Section 59-D-1.3 is that it show all areas intended for dedication to public use. The area intended for dedication for Road C is shown quite specifically with a width of 50 feet. If that is intended as a minimum, with the possibility that it may increase at a later stage of review, it should be so depicted.

As discussed in Part III.E. above, the Hearing Examiner additionally finds the Development Plan's treatment of Road C unsatisfactory because it makes the vague suggestion that construction of the road is uncertain.

As discussed in more detail in Part V.A.(a) below, the Hearing Examiner finds that the proposed Development Plan is consistent with the Master Plan's other objectives and recommendations.

G. Environmental Issues and Storm Water Management

Environmental Planning Staff reports that the Preliminary Forest Conservation Plan meets the basic parameters of the forest conservation law and the Planning Board's Environmental Guidelines, and recommends approval of the application. Environmental Planning memorandum attached to Staff Report, at 2. All forested areas in the stream valley buffer would be preserved, as well as additional wooded areas adjacent to the stream valley buffer, and small wooded areas between the duplex units and the new Vedanta Center building to the northwest, the Moose Lodge to the east, and Bel Pre Road to the south. The proposed development would clear 4.9 acres of forest cover, requiring a small amount of on-site reforestation. This would be accomplished principally by planting additional trees on the edges of existing wooded areas, where construction activities would remove some existing trees.

Technical Staff notes that the subject property contains 93 specimen and significant trees, all but 24 of which are outside of the stream buffer. Staff states that the Applicants have "made a commitment to preserve some of the large trees outside the stream buffer in keeping with the intent of the zone," and that minor changes to the site design would be required during site plan review to protect these trees. No floodplains or wetlands exist on the site.

Storm water management facilities are proposed for the subject site with several different elements: surface sand filters, bio-retention devices, an underground filtering system and a pond for water quantity control. These facilities would collect and filter all of the run-off from the entire site, replacing the existing storm water management facility for the Vedanta Center. An

earlier version of the storm water management concept that corresponded with a previous development plan was approved by DPS, which noted that six of the proposed lots (the MPDU lots) are too small for dry wells, so the Applicants would have to find another approach or seek a waiver of quality control for those units. The Applicants' engineer stated during the hearing that a waiver would not be necessary, because other methods can be used to serve the same function.

H. Public Facilities

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), an assessment must be made as to whether the transportation infrastructure, area schools, water and sewage facilities, and police, fire and health services will be adequate to support a proposed development, and in turn, whether the proposed development would adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process. The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that the County Council sets each year in the Annual Growth Policy ("AGP") and biennially in the two-year AGP Policy Element.⁸ While the final test under the APFO is carried out at subdivision review, the District Council must first make its own evaluation as to the adequacy of public facilities in a rezoning case, because the Council has primary responsibility to determine whether the reclassification would be compatible with the surrounding area and would serve the public interest. The Council's evaluation of public facilities at the zoning stage is particularly important because of the discretionary nature of the Council's review, and the fact that the Council's review is much broader at the zoning stage than what is available to the Planning Board at subdivision, a process designed to more intensively examine the "nuts and bolts" of a development. The District Council is charged at the zoning stage with determining whether the proposed development would have an

⁸ See *2003-05 Annual Growth Policy – Policy Element, Resolution No. 15-375*, adopted October 28, 2003, which remains in effect. The Hearing Examiner hereby takes official notice of the 2003-05 AGP Policy Element.

adverse impact on public facilities and, if so, whether that impact would be mitigated by improvements reasonably probable of fruition in the foreseeable future.

1. Transportation

Under the 2003-05 AGP Policy Element, which remains in effect, subdivision applications are subject to only one transportation test, Local Area Transportation Review ("LATR").⁹ The Planning Board recognizes its LATR Guidelines as the standard to be used by applicants in the preparation of reports to the Hearing Examiner for zoning cases. LATR Guidelines at 1. LATR involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion at nearby intersections during the peak hours of the morning and evening peak periods (6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.).

The Applicants performed a traffic study as required in this case, taking into account existing roads, programmed roads and available or programmed mass transportation, as well as existing traffic, traffic anticipated from nearby development that is approved but unbuilt ("background" traffic), and trips expected to be generated by the proposed development. The traffic study anticipated no new trips from the Vedanta Center expansion, because the Center does not have activities during the morning and evening peak hours. With 38 new dwelling units, the proposed development is expected to generate a total of 33 additional trips during the weekday morning peak period and 41 additional trips during the weekday evening peak period. The traffic study concluded, and Technical Staff agreed, that with the proposed development in place, critical lane volumes ("CLVs") at the key intersections studied would remain below the CLV standard of 1,500 for the Aspen Hill Policy Area. See Ex. 27(c) at 19; Transportation Staff Memo.

The traffic study was prepared based on the premise that the Vedanta Center would not generate any peak hour trips, because the Center does not have activities during the morning

⁹ See 2003-05 AGP Policy Element at 6-7; *Local Area Transportation Review Guidelines Approved and Adopted July 2004* ("LATR Guidelines") at 1. The Hearing Examiner hereby takes official notice of the LATR Guidelines.

and evening peak hours. Transportation Planning Staff recommended that the local map amendment be limited to the 38 dwelling units proposed and a 6,000± square foot expansion of the Vedanta Center, and that the rezoning “[l]imit regularly scheduled activities and programs associated with the house of worship to exclude a weekday child daycare facility, a weekday private school, or any other [sic] program that would generate daily peak-hour vehicular trips within the weekday morning and evening peak periods. . . .” Transportation Staff Memo at 2. The Development Plan now proposes to expand the Vedanta Center by up to 6,500 square feet, a relatively minor increase above the size recommended in by Transportation Planning Staff. The more significant item is the recommendation to “limit” the local map amendment by prohibiting the Vedanta Center from adding a child day care facility and/or a school to its operations. Imposing such a limitation would risk running afoul of the prohibition against conditional zoning that was developed by the courts and is stated in Section 59-H-6.4 of the Zoning Ordinance. In a zone that is eligible for the optional method of development under Section 59-H-2.5, the legal parameters are different, because the Zoning Ordinance expressly provides that an applicant for rezoning who elects the optional method of application may choose to limit the uses to be conducted on the site. No such provision exists for the PD Zone, which is not eligible for the optional method of application.

The Hearing Examiner does not view Transportation Staff’s reliance on the recommended condition as fatally undercutting Staff’s overall recommendation. The entire construct of the PD Zone, including the purpose clause and the development standards, is based on the premise that the development must be coordinated, integrated, and approved in its entirety by the District Council. The addition of a new use such as a child day care facility or a private school would require a Development Plan Amendment approved by the District Council, which would give Technical Staff and the District Council the opportunity to consider the traffic impacts of the use at that time. Thus, the condition Transportation Staff recommended is unnecessary to justify the traffic generation assumed in the traffic study. Moreover, Technical Staff notes that the

addition of a new traffic generator would require a subdivision amendment to allow new APFO testing. See Ex. 33.

One week after the date of the Transportation Memo, the State Highway Administration (“SHA”) submitted a comment letter to Transportation Planning Staff recommending a substantial expansion of the traffic study. SHA noted that according to the submitted traffic study, 70 percent of the site-generated traffic is expected to use either MD 97 (Georgia Avenue) at Connecticut Avenue or MD 97 at Bel Pre Road, and 25 percent is expected to use the MD 182 (Layhill Road)/Bonifant Road intersection. SHA recommended that the applicant be required to add an analysis of these three intersections to its traffic study. See letter from Steven D. Foster to Shahriar Etemadi dated October 10, 2005, attached to Staff Report.

Technical Staff rejects SHA’s recommendation, noting that it would go well beyond LATR requirements, which direct an applicant to analyze only the first signalized intersection in each direction, if the weekday peak-hour trips are between 30 and 250. Staff notes that SHA did not provide a reason for the extra analysis it recommends, that the three intersections listed are each roughly a mile from the subject site, and that the practical impact of the proposed development would be very small, considering the scale of the intersections (the proposed development would add a total of 29 trips to the two Georgia Avenue intersections, and 11 to the Layhill Road intersection). See Ex. 43.

The Applicant’s transportation planner, Wes Guckert, described Homecrest and Bel Pre Roads and explained the basis for his opinion that the proposed access points would be safe, adequate and efficient. He stated that north of proposed Road A (the access point closer to Bel Pre Road), Homecrest Road is a two-lane roadway about 20 to 21 feet wide. From Road A south to Bel Pre Road, Homecrest Road widens to three lanes, about 37 feet wide, with two lanes approaching the traffic signal at Bel Pre Road. Mr. Guckert noted that the Master Plan describes Homecrest Road as a secondary road, but it is posted with a speed limit of 25 miles per hour (“MPH”), indicating that it functions as a tertiary road. Road A is proposed to line up with the driveway

entrance for the senior housing across Homecrest Road. Road C is shown adjacent to the northern property line.

Mr. Guckert stated that Bel Pre Road at this location is a five-lane roadway, with two through lanes in each direction plus a center turn lane. He noted that it has approximately 57 feet of pavement, which is slightly below the typical 60-foot standard for a five-lane road. Instead of five 12-foot travel lanes, Bel Pre Road has one lane that is 11 feet wide, and a ten-foot-wide center turn lane. The posted speed limit is 35 MPH. The proposed Development Plan shows one access point on Bel Pre Road, about midway between Homecrest Road and the next road to the east, Beaverwood Lane.

Mr. Guckert reviewed sight distance measurements for each of the proposed access points, and concluded that all meet or exceed county standards, with two requirements to ensure adequate sight distance at the Bel Pre Road entrance: (1) a utility pole located near the proposed entrance might have to be moved north, into the site, by about five feet; and (2) heavy vegetation near the proposed entrance, on the subject site, would need to be cut back. The required sight distance at each location and Mr. Guckert's sight distance measurements are shown in the table that follows.

Sight Distance Measurements

Access Point	Sight Distance Required	Sight Distance As Measured by Guckert	
		Right	Left
Bel Pre Road	400 ft.	530 ft.	550 ft.
Road A	250 ft.	747 ft.	290 ft.
Road C	250 ft.	255 ft.	824 ft.

Mr. Guckert explained that under standards used in Montgomery County and elsewhere, sight distance is measured at a driver's eye level – 3 ½ feet off the ground, six feet back from the edge of the road, looking at an object about 2 ¾ feet down the road. He further stated that he applied the sight distance requirement for a 35 MPH speed limit to Homecrest Road because that is the speed limit for the roadway classification recommended in the Master Plan. He noted, however, that the road is actually posted for 25 MPH, indicating that the government believes that is