

surrounding area; and that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation dated August 24, 2005 is incorporated herein by reference. Technical Staff of the Maryland-National Capital Park and Planning Commission ("M-NCPPC") and the Montgomery County Planning Board ("Planning Board") also recommended approval. The Board added the caveat that the subject proposal is "unique" and that the Board "is not encouraging other Germantown-area landowners with employment-zoned land to request zoning changes for uses other than employment."

A public hearing was convened on June 17, 2005, at which time the Applicant presented the testimony of four witnesses. There was no opposition at the hearing, and there were no letters of opposition filed in the record, although some concerns were expressed by the Gaithersburg-Germantown Chamber of Commerce, in a letter to the Chairman of the Planning Board dated March 7, 2005, about the proposed conversion of the land use from an employment-generating office building to a residential use. On the other hand, the application received support, by letter and e-mail, from three local citizen associations (the Village at Oak Hill Community Association; the Germantown Alliance; and the Germantown Citizens Association). Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner.

The subject site is a dagger-shaped strip of land adjacent to the CSX right-of-way in Germantown. The dagger points in a northwesterly direction, with its butt end (*i.e.*, extreme eastern portion) fronting on Father Hurley Boulevard (about 130 feet of frontage), and the southern side of its handle fronting on Lullaby Road (about 600 feet of frontage). The vast majority of the 4.5668 acre tract is in the I-3 Zone; however, a small (0.12 acre), triangular shaped piece, on the southern side of the site, was after-acquired by the Applicant in a land swap with a neighbor, and it retains its R-200 classification.

There are no existing improvements on the site. The topography is such that it slopes upward from west to east and downward from Lullaby Road towards the railroad right of way. A sediment control permit was issued for the site, pursuant to which the eastern half of the property has been cleared and graded, and a retaining wall was constructed at the northern property line where it adjoins the CSX Railroad right-of-way. The western half of the property is forested with steep slopes, descending to the west. The area identified as a forest retention area has been preserved undisturbed, and a broad swale runs along the back half of the property. Technical Staff notes that there are no historic structures or sites located on the property.

Because Applicant had originally intended to erect an office building on the subject site, it obtained site plan approval from the Planning Board for a 27,000 square foot office building. Applicant now feels that the proposed townhouse community would be a more compatible development.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. Technical Staff recommended describing the "surrounding area" as bounded by the CSX Right-of-way to the north, the properties fronting along Father Hurley Boulevard to the east, the properties in the Kingsview Ridge subdivision to the south, and Ranworth Drive to the west. The Applicant suggested a broader definition of the surrounding area, bound on the east by MD Route 118 (Germantown Road), on the north by Wisteria Drive, on the west by [Little Seneca Creek] in Black Hills Regional Park, and on the south, by Clopper Road. The Hearing Examiner accepted Applicant's definition of the "surrounding area" because it is identical to the one that was accepted by the Council in Local Map Amendment G-723, where the Council rezoned the confronting property (across Father Hurley Boulevard) from the I-3 Zone to the PD-15 Zone so that a large townhouse community could be developed. For the same reason, the District Council accepts the broader "surrounding area" described above.

The surrounding area contains a mixture of land uses and densities. Immediately to the north of the subject site is the CSX Right-of-way. Northeast of the site, across Father Hurley Boulevard and north of

the CSX tracks, is Fairfield at Germantown, a development including 620 residential units and 250,000 square feet of office/retail use. Immediately to the east of the subject site, across Father Hurley Boulevard and adjacent to the CSX tracks, is the townhouse community in the PD-15 Zone which was mentioned above. Further to the east, at the eastern border of the described neighborhood, lies the Germantown Business Park, a property that has been approved for development under the I-1 and O-M zones. Immediately to the south of the subject site is the Village at Oak Hills. It is part of the Kingsview Ridge subdivision, which is a mix of single family homes and townhouses in the R-200 and R-90 Zones. The Kingsview Ridge subdivision also extends further south and west of the subject site with a development of single-family detached homes. Further south is the Germantown Estates subdivision, developed with townhouses in the R-90 zone. There are also other subdivisions developed in the R-T 6.0 and the R-200/TDR zones.

The subject property is part of Kingsview Village, as designated in the Germantown Master Plan. Kingsview Village is characterized by mixed-use residential development containing a blend of single-family detached homes, townhouses and multi-family units. The densities of the surrounding developments range from two dwelling units per acre in the development to the southwest of the subject property, to 11.9 dwelling units per acre in the property to the east of Father Hurley Boulevard. The properties further south and to the west of Father Hurley Boulevard reflect densities ranging from 5.9 to 20.9 dwelling units per acre, having been subdivided for development with a mix of townhouses and multi-family uses.

Technical Staff recounted the zoning history of the area. The subject site itself is part of a 21 acre tract owned by Applicant. It had been zoned R-200, going back to 1958, but after the Applicant bought the tract in 1989, it was rezoned in its entirety to I-3 by Sectional Map Amendment G-652, filed in conjunction with the 1989 Germantown Master Plan. A 12.8 acre portion of that tract (the portion east of Father Hurley Boulevard and south of the CSX tracks) was rezoned to PD-15 in 1996 by Local Map Amendment (LMA) G-723, as noted above. The subject site, which is across Father Hurley Boulevard from the

townhouse development that grew out of LMA G-723, remains in the I-3 Zone, except for the small triangle of property which Applicant acquired in a land-swap subsequent to the sectional map amendment. As mentioned above, that 0.12 acre sliver of land is in the R-200 Zone.

The Applicant seeks to have the subject site reclassified from its current I-3 and R-200 Zones to the R-T 8 Zone so that it can construct a maximum of twenty-nine (29) residential townhouse units, including four moderately priced dwelling units (MPDU's), with parking for 124 vehicles on the 4.5668 acre subject site. The proposed development has two distinct halves, separated by a stormwater management facility. The eastern half (i.e., the handle of the dagger) has all the structures and impervious surfaces, while the western half (i.e., the blade) has most of the green space, much of it in a Forest Conservation Easement. That western green space is labeled "HOA Open Space" on the schematic development plan (SDP), and no construction is permitted in that area because of a stream valley buffer and the forest conservation area.

Applicant does intend some green public use areas on the eastern half of the project, consisting mostly of two triangular green spaces adjacent to Lullaby Road, one with 4,787 square feet of space and the other with 4,031 square feet. Applicant has also agreed to a binding element restricting use of the open space on the western half of the site to construction of a pedestrian path so that residents can access and enjoy the large green area. Applicant indicates on the SDP that it plans to have 60% green space (although Applicant commits to 5% less, a minimum of 55%, in its binding elements). Individual units will have green space also in their yards, and streetscape amenities include landscaping, sidewalks, and street trees.

The proposal counts four parking spaces for each individual market unit, with two spaces in each rear-loading garage and two tandem spaces on each driveway, for a total of 100 spaces. For additional visitors to the development, and the MPDUs, 24 surface parking spaces are provided, bringing the total parking to 124 spaces. According to Technical Staff, there is no street parking available on this section of Lullaby Road. Vehicular access to the site will be from Lullaby Road at Bowman Ridge Drive.

It is Applicant's objective to keep the architecture compatible with nearby communities. The

townhouses will be 2½ stories tall, and the units facing Lullaby Road will have garages to the rear, along the railroad, so their parked cars will not be visible from Lullaby Road. The 24 street parking spaces are also located between the railroad and the rear of the units. The MPDU units are designed with two "back-to-back" dwelling units per structure, located in two individual structures numbered 9-10 and 28-29. These units do not include the rear-entry parking provided for the other units, but as mentioned, there is additional parking provided by surface parking spaces located as close to the buildings as possible.

The property has an approved Stormwater Management Concept Plan. There is an existing sediment trap in the middle of the site where the future stormwater management pond will be located. Following rezoning, the proposal will have to go through review and approval of a Preliminary Plan of Subdivision and a Site Plan review. No phasing schedule for construction of the development is proposed.

Although the potential of noise from the nearby CSX railroad is a concern, the report of an acoustical expert from Polysonics Corporation indicates that appropriate sound mitigation measures can be taken to insure that noise from the trains does not exceed County standards. Moreover, as noted by the Hearing Examiner, residential developments have been approved just as close to the tracks on either side of the subject site, so apparently the railroad noise can be sufficiently buffered. However, the Planning Board should certainly look into this issue at Site Plan review to assure that appropriate sound mitigation measures are taken. The Technical Staff report indicates that steps to deal with the noise problem will be considered at that time.

Pursuant to Code § 59-H-2.52, the Applicant in this case has chosen to follow the "optional method" of application. The optional method requires submission of a schematic development plan that specifies which elements of the plan are illustrative and which are binding, *i.e.*, elements to which the Applicant consents to be legally bound. Those elements designated by the Applicant as binding must also be set forth in a Declaration of Covenants to be filed in the county land records if rezoning is approved. The Applicant has filed the executed Declaration of Covenants in the administrative record of this case.

The Applicant in the present case has proposed binding elements which limit development to a maximum of 29 one-family attached units, with a maximum building coverage of 20%, and a minimum green area of 55%. Binding elements also require that Applicant not erect any building within 50 feet of an existing building, that construction in the open space on the western half of the site be restricted to construction of a pedestrian path so that residents can access and enjoy the large green area, and that only streetscape improvements may be erected in a designated area on the eastern side of the site, along the future extension of Father Hurley Boulevard. The Binding Elements in this case would give the Planning Board some flexibility to make revisions because, the density, building coverage and green space Binding Elements are expressed in maximums and minimums, rather than absolute values.

With one possible exception, the proposed development will meet, and in some instances exceed, the applicable development standards for the R-T 8 Zone. For example, maximum density is set at 8 units per acre, but Applicant's proposal calls for a density of only 6.4 units per acre. Maximum building coverage is specified as 35%, but Applicant has committed to a maximum coverage of 20%. Minimum green space in the zone is specified as 50%, but Applicant will have at least 55% green space, and plans to have 60%. Although only 58 parking spaces are required by statute, Applicant plans on 124 spaces.

The one possible exception concerns the restriction in Zoning Ordinance §59-C-1.722(a) that limits the number of "townhouses" in "any one attached row" to eight. The proposed development is comprised of four "sticks" of townhouses. None of them exceed eight structures, which Applicant refers to as "footprints," but one of the groupings contains a double MPDU unit (28-29), which brings the total number of townhouses in that stick to nine units. Zoning Ordinance §59-C-1.722(a) does not limit the number of "footprints" in a row; it limits the number of "townhouses" in "any one attached row." Since the SDP site layout is only illustrative, and Applicant's binding elements require a maximum (not an exact number) of 29 units, the District Council agrees with the Hearing Examiner's conclusion that rezoning should not be denied on that basis. Moreover, Zoning Ordinance §59-C-1.74(d)(2) permits this requirement to be waived

to accommodate increased density necessitated by the inclusion of MPDU's. Technical Staff and the Planning Board should examine, at Site Plan, whether the density has been increased so as to make this waiver provision applicable; or whether units must be rearranged or the number cut back to insure compliance with the ordinance.

A floating zone, such as the R-T 8 Zone, is flexible device. Individual property owners may seek to have property reclassified to a floating zone by demonstrating to the Council that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with the surrounding development, as required by the case law, *Aubinoe v. Lewis*, 250 Md. 645, 244 A.2d 879 (1967), and that it will be consistent with a coordinated and systematic development of the regional district and in the public interest, as required by the *Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110*.

Under the "purpose clause" set forth in Zoning Code §59-C-1.721, the R-T Zone may be applied if a proposal meets any one of three alternative criteria: (1) it is in an area designated for R-T Zone densities (implying a master plan designation); (2) it is in area that is appropriate for residential development at densities that are allowed in the R-T Zones; or (3) it is in an area where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.

The *Germantown Master Plan*, approved in 1989, did not designate the subject site for the R-T Zone, and thus the Purpose Clause cannot be satisfied under that criterion. However, there are three alternative methods of satisfying the Purpose Clause, and an Applicant is required to satisfy only one of them. Accordingly, the Purpose Clause may also be satisfied by development in areas "appropriate for residential development at densities allowed in the R-T Zones" or in areas "where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses."

The District Council finds that the subject site satisfies both the "appropriateness" criterion and the "transitional" criterion. The proposed townhouse development would be surrounded on three sides by

residential developments, two of which include large townhouse communities (the Village at Oak Hill immediately to the south has both single-family homes and townhouses, and the townhouse development due east of the subject site, across Father Hurley Boulevard, is all townhouses). Immediately to the southwest of the site is the Kingsview Ridge development of single-family detached residences. Other residential developments within the "surrounding area" include Germantown Estates and Liberty Heights. Thus, the proposed development will be compatible with surrounding uses. Also, Applicant intends to make the architecture of the planned townhomes compatible with the architecture of the nearby residences.

The proposal would provide plenty of open space on the west end of the site and will offer the townhouses in fee simple, consistent with the stated intent of the R-T Zone "to permit the greatest possible amount of freedom in types of ownership of townhouses." The site would also provide much more parking than required, and the proposed development would not generate enough peak hour trips to create traffic problems for the neighbors.

The District Council also finds that the proposed development will serve as a transition or buffer between the commercial/industrial/high-density residential uses to the north (*i.e.*, the railroad and the "Fairfield at Germantown" development) and the single family detached homes to the south, southwest and southeast of the site.

An application for a floating zone reclassification must be evaluated for compatibility with existing and planned uses in the surrounding area. As observed by Technical Staff, the proposal provides sufficient building setbacks, height limits, residential design and landscaping similar to existing and approved development in the neighborhood to ensure compatibility with the surrounding residences, including some nearby single-family detached homes. The proposed townhouse community would fit in with land use in the surrounding neighborhood area, which is mixed residential, including single-family detached homes, townhouses and multi-family units under several zoning classifications and constructed at densities ranging from 2 dwelling units per acre to 11.9 dwelling units per acre.



For these reasons, and those set forth in the discussion of the Purpose Clause of the R-T 8 Zone, the District Council finds that the proposed townhouse development on the subject site would be compatible with existing and proposed development in the area.

Finally, the Applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment. The subject property is located in the area covered by the *Germantown Master Plan*, approved and adopted in 1989. Technical Staff correctly observes that the proposed schematic development plan does not conform to the land use and zoning recommendation in the Master Plan, which calls for the present I-3 Zone (pp. 70-71). Moreover, the Master Plan's objectives include increasing employment opportunities and reducing the number of single-family attached units as a total percentage of all housing units in Germantown (p. 30). Neither of these objectives will be advanced by the subject proposal.

On the other hand, the Master Plan is only a guide, and compliance with its recommendations is not mandatory unless the Zoning Ordinance makes it so. See *Richmarr Holly Hills, Inc. v. American PCS, L.P.*, 117 Md. App. 607, 635-636, 701 A.2d 879, 893, n.22 (1997). Since the provisions of the R-T 8 Zone (Zoning Ordinance §§59-C-1.7, *et seq.*) do not require compliance with the Master Plan, the question of whether or not to reject a requested reclassification due to lack of Master Plan compliance is a policy issue, not a legal question.

Both the Planning Board and the Technical Staff recommended approval of this application, apparently feeling that circumstances have changed significantly since the Master Plan was adopted in 1989. Technical Staff points out that job growth is expected to exceed household growth in Germantown around 2015, and that the employment yield from erecting an office building at this site would generate only 100 jobs, representing a small fraction of the 78,000 jobs that Germantown is ultimately projected to have.

Staff also observes that the desired mix of housing in Germantown will be difficult to achieve due to limitations of uncommitted land parcels and market trends.

Even more important, as noted by the Hearing Examiner, is the growth of residential land use in the immediate area of the subject site. The area designated for the I-3 Zone in the Master Plan includes not only the subject site, but also the confronting land east of Father Hurley Boulevard, adjacent to the CSX railway, and that land was reclassified by the Council to the PD-15 Zone in 1996. It is now the site of a townhouse community. That PD-15 residential development just to the east of the subject site was built after the Master Plan's adoption, as was the Village of Oak Hill residential development immediately to the south of the subject site. Thus, developments since the Master Plan's adoption have made the subject site much more compatible with a residential zone than with the I-3 Zone.

Considering these facts, the District Council finds that the value of the Master Plan's recommendation has been undermined by development in the area subsequent to its adoption. Therefore, its recommendation should not be followed in this case because to do so would lead to incompatible development. This conclusion is consistent with that reached by the Planning Board, the Technical Staff and the Hearing Examiner.

The District Council also finds that the proposed development will not adversely impact on public facilities or the environment. The evidence indicates that the 29 dwelling units proposed here are expected to generate eight elementary school students, three middle school students and five high school students, who will be served by the Ronald McNair Elementary School, Kingsview Middle School, and the Northwest High School. Collectively, they all are within the Northwest Cluster, and the current Annual Growth Policy (AGP) school tests finds capacity adequate within that cluster. Moreover, in August of 2006, a new elementary school opens in the area; in August of 2005, a new Middle School opens; and in August of 2006, a 30 room addition to the high school will open. The District Council therefore finds adequate capacity in the schools.

Turning to transportation facilities, the evidence is that the proposed development will not cause any adverse effects on local traffic and safety. A Local Area Transportation Review ("LATR") traffic study was not required because the proposed development would not generate 30 or more peak-hour automobile trips. The proposed townhouse development will generate only 24 trips in the p.m. peak hour and 14 trips in the a.m. peak hour. According to Applicant's transportation planning expert, Craig Hedberg, an office building on the site would generate more than twice that traffic. Mr. Hedberg and Transportation Planning Staff agree that both vehicular and pedestrian systems are safe and adequate. The District Council so finds based on the undisputed evidence.

There were no environmental issues raised in this case. The Department of Permitting Services (DPS) approved Applicant's stormwater management concept plan on June 10, 2005, without the need for any waivers. Engineer Daniel Pino testified that it fully covers the three aspects of stormwater management, recharge of ground water, water quality and water quantity Tr. 84.

Mr. Pino also testified that a forest conservation plan, meeting all the County and Park and Planning's criteria for conservation, has been submitted and that all of Applicant's forest conservation will be on site. Tr. 83. Environmental Planning Staff confirms that Applicant has submitted a revised Forest Conservation Plan for the subject site, and indicates that the Planning Board "will take action on the forest conservation plan with the preliminary plan of subdivision." Exhibit 39. Considering the record, the District Council finds no evidence of adverse environmental impact from the proposed 29 unit townhouse development.

For all of these reasons, the District Council concludes, based on the preponderance of the evidence, that the proposed reclassification and development would have no adverse effects on public facilities or the environment, and that approval of the requested zoning reclassification would be in the public interest.

Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the application satisfies the requirements of the R-T 8 Zone and its purpose clause; that the application proposes a form of

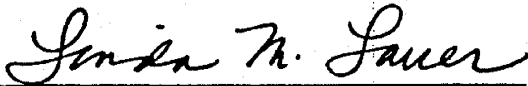
development that would be compatible with existing and planned land uses in the surrounding area; and that the requested reclassification to the R-T 8 Zone bears sufficient relationship to the public interest to justify its approval. For these reasons and because approval of the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

#### ACTION

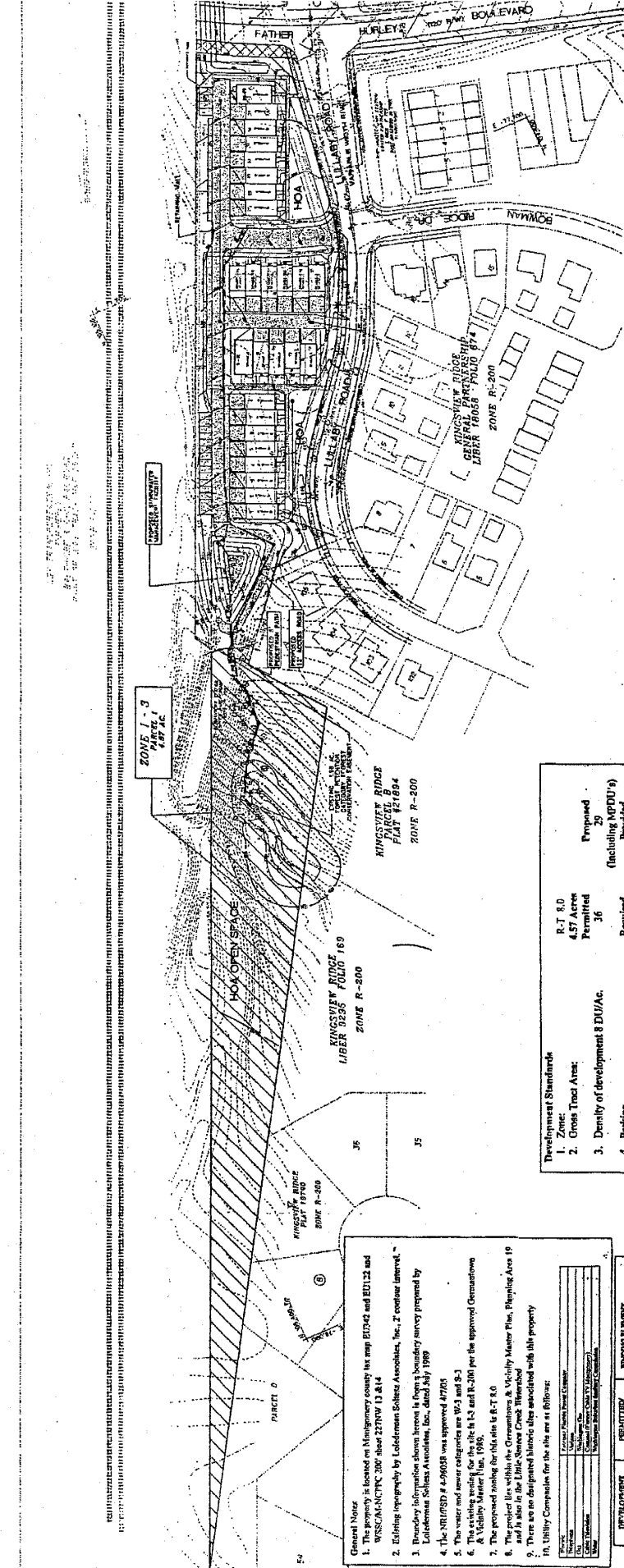
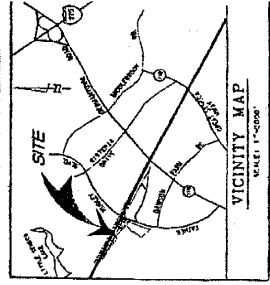
The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-833, requesting reclassification from the I-3 and R-200 Zones to the R-T 8 Zone of 4.5668 acres of land, known as Parcel 730 and part of Parcel 807 and located in the 2<sup>nd</sup> Election District south of, and adjacent to, the CSX Right-of-way, north of Lullaby Road and west of Father Hurley Boulevard, in Germantown, is hereby approved in the amount requested and subject to the specifications and requirements of the final Schematic Development Plan, Ex. 61(a); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Schematic Development Plan approved by the District Council within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council



OWNER/DEVELOPER  
 GERMAIN/IN ATATION, LLC  
 10020A COLESVILLE ROAD  
 SILVER SPRING, MD 20901  
 (301) 681-8400

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
 CERTIFICATION  
 This is a true copy of the Submittal Development Plan (Exhibit No. 1) as approved by the Board of Zoning Adjustments on 11/13/2018.  
 Board of Zoning Adjustments  
 David A. Zeleny, Jr., JUDGE

**SCHEMATIC DEVELOPMENT PLAN**  
**GATEWAY PARK**  
**PARCEL 1**

Development Standard	R-T 8.0	Proposed
1. Zone:	4.57 Acres Permitted	29 (including MPDU's)
2. Gross Tract Area:	36	50
3. Density of development 8 DU/AC:	Required 58	50
4. Parking:	Required 58	24
Residential (29 units) 270.U.	Permitted 35*	124
Tandem Spaces	8 maximum	35*
Surface Parking	3 minimum	8 maximum*
Total	Required 25*	3 minimum Provided
5. Building Height:	10'	25'
6. Building Form Design:	20'	10'
7. Building Setbacks:	30%	20%
From public street	10'	10'
Rear	20%	20%
Minimum Clear Area	30%	20%
8. Minimum building coverage:	20%	60%
9. Minimum Open Area:	20%	60%

\* All Line of Sight Right of Way, compliance with Section 59-C-1.722 will be required resulting in a relocation of a dwelling unit if necessary.

**General Notes:**

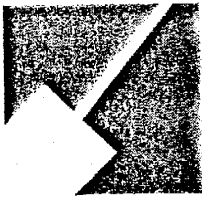
- The subject site is located in Montgomery County, Maryland, in the unincorporated area of Bethesda, Maryland, and is bounded by R.T. 8.0 and E.U. 1.2 and WISCONSIN/CHICK 200' (Sheet 2270W 13 814).
- Existing topography by Lotekoness Sothos Associates, Inc., Z contour interval, "WISCONSIN/CHICK 200" (Sheet 2270W 13 814).
- Boundary information shown herein is from a boundary survey prepared by Lotekoness Sothos Associates, Inc., dated July 1989.
- The NRI/PSD # 429618 was approved 4/7/01.
- The water and sewer categories are R-2.1 and S-1.
- This is a preliminary plan for the site and is not to be used for construction purposes.
- The project lies within the Orientation & Vicinity Master Plan, Planning Area 19 and is also in the Little Seneca Creek Watershed.
- There are no designated historic sites associated with this property.
- Utility Composites for the site are as follows:

UTILITIES	REQUIREMENTS	REMARKS
1. Land Use	R-T 8.0	Residential (29 units) 270.U.
2. Density	8 DU/AC (8 maximum)	8 maximum
3. Building coverage	20%	20%
4. Gross space	30%	30%
5. Setbacks	10' rear, 10' side, 10' front	10' rear, 10' side, 10' front
6. Use of Front Setback	10'	10'
7. Use of rear setback	20'	20'

DATE: 11/13/2018  
 TIME: 10:00 AM  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 APPROVED BY: [Name]  
 TITLE: [Title]

ROCKVILLE OFFICE  
 10020A COLESVILLE ROAD  
 SILVER SPRING, MD 20901  
 (301) 681-8400

## **APPENDIX B**



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

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

**MEMORANDUM**

**TO:** Cathy Conlon, Supervisor, Development Review  
Laxmi Srinivas, Senior Planner, Development Review

**FROM:** Mark Pfefferle, Planning Coordinator, Environmental Planning *MP*

**DATE:** April 4, 2006

**SUBJECT:** Preliminary Plan 120060470  
Site Plan 820060150  
Gateway Park Residential

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The Environmental Planning staff has reviewed the preliminary and site plans referenced above. Staff recommends approval of the plans with the following conditions.

1. Compliance with the conditions of the final forest conservation plan.
2. Compliance with the recommendations of the February 24, 2006 "Phase II Noise Barrier Analysis and Design".
3. Compliance with the recommendations of the February 24, 2006 "Phase III Building Shell Analysis" and written commitment from the builder to construct the noise impacted units in accordance with the acoustical specifications identified in this analysis. Any changes that may affect acoustical performance must be approved by the acoustical engineer in advance of installation.

**Background**

The 4.58-acre property is located in the Seneca Creek watershed. The site is located immediately west of Father Hurley Boulevard, south of the CSX railway tracks, and north of Lullaby Road. The property includes wetlands and a stream buffer.

This site was subject to two previously approved preliminary plans and sites plans and one rezoning case. The first preliminary plan (1-97096) and site plan (8-99028) were included in the Autumn Glen subdivision to the east. Those plans did not include any development to the west of Father Hurley Boulevard but did establish conservation easements on the far west side of the subject property. The second preliminary plan (1-01087) and site plan (8-02006) were approved with an office/commercial development. The applicant held pre-construction meetings and cleared forest within the limits of disturbance in preparation of construction. However, the

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buildings were never constructed. Subsequently, the applicant submitted and received approval to rezone the 4.57-acre property to RT8.

### **Forest Conservation**

The entire Gateway West property including the 4.57-acre subject property is part of forest conservation plan 8-99028. When site plan and forest conservation plan 8-99028 were approved there was a 1.96-acre category I forest conservation placed on the subject property. The easement is located on the most western portion of the property and includes all environmentally sensitive areas. There were no planting requirements associated with plan 8-99028 because the forest conservation plan indicates the preservation of more forest than the break-even point. Approval of site plan 8-02006 permitted a 0.1-acre encroachment into the conservation easement for a stormwater management conveyance and outfall. The subject preliminary and site plan have no additional encroachment into the forest conservation easement other than what was previously approved by site plan 8-02006. There is no forest planting requirements associated with the development of the 4.57-acre property. The forest conservation plan for Gateway West, which includes the subject property, has a 1.34-acre credit for forest retention above the conservation threshold.

### **Noise**

The subject property is impacted by traffic on the CSX rail line and Father Hurley Boulevard. The applicant was required to prepare and submit a noise analysis for the subject property. At this time, the greatest noise source on the subject property is the rail line. In a 24-hour period from July 22-23, 2004 there were 46 trains that passed the subject property. The trains included both passenger and freight trains. The train speeds ranged from 20 to 55 miles per hour. Currently, there is little influence from Father Hurley Boulevard because this roadway is not complete from Wisteria Road to Germantown Road. However, once the roadway is complete, vehicle traffic will also impact the residential development. The noise analysis takes into consideration 20-year future traffic levels that include a completed Father Hurley Boulevard.

The 1983 "Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development" identifies an interior noise guideline not to exceed 45 dBA Ldn for residential properties and 60 dBA Ldn exterior noise level for recreation and outdoor areas. The method to accomplish these criteria, in order of preference is: site design; berms; acoustical fences/walls/barriers; landscaping; and finally acoustical design and construction techniques/materials. Development of the subject site will utilize noise barriers and acoustical treatments.

#### Exterior Noise Levels

The applicant's noise consultant performed a noise barrier analysis to determine the outdoor noise levels in the proposed recreational locations for the subject property. The noise barrier analysis indicates unmitigated ground-level noise levels of approximately 65 dBA Ldn in the proposed gazebo and seating areas. The "Phase II Noise Barrier Analysis and Design Gateway Park", dated February 24, 2006, prepared by Polysonics Corporation indicates that these outdoor recreational areas can achieve the recommended exterior noise levels of 60 dBA Ldn by constructing an 8-foot high noise barrier. The location, height, and materials of a noise barrier



are important factors that influence the noise mitigation that can be achieved at impacted locations. The noise analysis identifies two 8-foot high noise barriers, one parallel to the rail line and the second integrated into the gazebo in order to reduce the noise from the CSX rail line and Father Hurley Boulevard to acceptable levels. The efficiency of the noise barriers is also dependent upon grading. Changes to the grading may change the required heights of the barriers.

The applicant has proposed to use Paraglas Soundstop Noise Barrier sheets as a noise barrier. The product is transparent and has been used for noise control along railways and roadways throughout the Country. The noise consultant recommends 25 mm thickness sheets for use in this project. When the wooden construction is utilized, the noise barrier analysis recommends a solid wood fence of nominal 1-inch thick boards with no gaps or openings. No matter the materials used, it is imperative that the construction be free of gaps or openings otherwise the noise-mitigating performance of the barriers can be severely diminished.

Environmental Planning requests a specific condition requiring the builder comply with the Noise Consultant's noise barrier recommendations.

#### Interior Noise Levels

The traffic noise analysis, prepared by the applicant's noise consultant, indicates all units will be impacted by noise levels greater than those recommended by the M-NCPPC Noise Guidelines. Unmitigated noise levels in excess of 70-dBA Ldn impact lots 1 through 10, 15, and 22 through 28. Unmitigated noise levels in excess of 65-dBA Ldn impact all lots. The highest unmitigated noise level is 72.5 dBA Ldn and will impact the top level of the residential unit on Lot 28. Residential units of good quality construction will typically reduce interior noise levels as high as 65 dBA to 45 dBA without modification. When noise levels rise above 65 dBA, such as they do in this plan, it is necessary to employ acoustical building materials to achieve an interior noise criteria of 45 dBA Ldn. The "Phase III Building Shell Analysis Gateway Park", February 24, 2006, prepared by Polysonics Corporation identifies Sound Transmission Class (STC) ratings that must be incorporated into specific building elements to achieve an interior noise level of 45 dBA Ldn. The specific building elements addressed are front, side, and rear exterior walls, exterior doors, front and rear windows and are unit specific. It is important to note that if a resident opens an exterior window the interior noise level will be compromised.

Environmental Planning requests a specific condition requiring the builder of the residential units to comply with the Noise Consultant's recommendations and provide a certification that they make that commitment. The most realistic time to determine if the builder is complying with the Noise Consultant's recommendations is when the Department of Permitting Services reviews the drawings for the individual building permits and when that agency conducts their building inspections.

#### **Recommendation**

Environmental Planning recommends approval of the preliminary and site plans for the subject site with the conditions stated above.

## **APPENDIX C**



DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan  
County Executive

Robert C. Hubbard  
Director

June 10, 2005

Ms. Carmen Crisostomo  
Loiederman Soltesz Associates, Inc.  
1390 Piccard Drive, Suite 100  
Rockville, MD 20850

Re: Stormwater Management **CONCEPT** Request  
for revised Gateway Park  
Preliminary Plan #: 1-01087  
SM File #: 216227  
Tract Size/Zone: 4.57 acres  
Total Concept Area: 4.57 acres  
Lots/Block:  
Parcel(s): P909  
Watershed: Little Seneca Creek

Dear Ms. Crisostomo:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site channel protection measures via detention pond; on-site water quality control via a surface sand filter; and onsite recharge via recharge trenches.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. The drainage area for the sand filter /pond exceeds the County's standards. However, it is acceptable for this project only. Please make sure all future designs remain within the maximum allowable drainage area of 2 acres for this type of best management practice.
6. All paved areas of the site will have some form of structural pre-treatment provided.

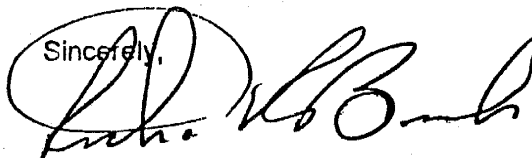
This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is not required.



This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Richard Gee at 240-777-6333.

Sincerely,  


Richard R. Brush, Manager  
Water Resources Section  
Division of Land Development Services

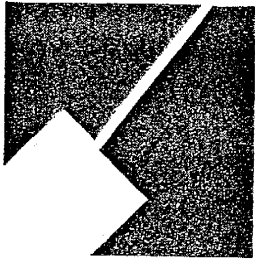
RRB:dm RIGcn216227

cc: R. Weaver  
S. Federline  
SM File # CN216227

QN - on site; Acres: 2.57  
QL - on site; Acres: 2.57  
Recharge is provided

## **APPENDIX D**

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

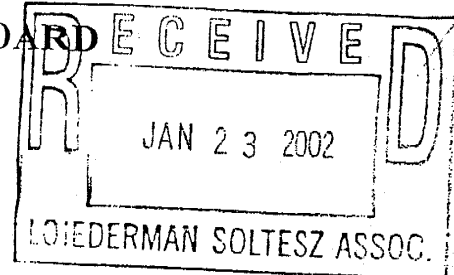
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

Date Mailed: January 22, 2002

Action: Approved Staff Recommendation  
Motion of Comm. Bryant, seconded by  
Comm. Robinson with a vote of 5-0;  
Comms. Bryant, Holmes, Perdue,  
Robinson and Wellington voting in favor

MONTGOMERY COUNTY PLANNING BOARD

OPINION



Preliminary Plan 1-01087  
NAME OF PLAN: GATEWAY PARK

On 06/19/01, GERMANTOWN STATION LTD. submitted an application for the approval of a preliminary plan of subdivision of property in the I-3/R-200 zones. The application proposed to create 1 lot on 4.57 acres of land. The application was designated Preliminary Plan 1-01087. On 11/29/01, Preliminary Plan 1-01087 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-01087 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-01087.

Approval, subject to the following conditions:

- (1) Approval of this preliminary plan is limited 30,690 square feet of office space
- (2) The applicant pays the cost necessary to change the exclusive right-turn lane to a through/right choice lane westbound on Wisteria Drive at MD 118
- (3) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits
- (4) Record plat to show delineation of a Category I conservation easement over the stream valley buffer and forest conservation areas
- (5) All road rights-of-way shown on the approved preliminary plan shall be dedicated by the applicant, to the full width mandated by the Germantown Master Plan, unless otherwise designated on the preliminary plan
- (6) All roads shown on the approved preliminary plan shall be constructed, by the applicant, to the full width mandated by the Germantown Master Plan, and to the design standards imposed by all applicable road codes.
- (7) Record plat to provide for dedication for 80 feet of right-of-way for Lullaby Road and 120 feet for Father Hurley Boulevard
- (8) Compliance with conditions of MCDPS stormwater management approval dated, July 26, 2001