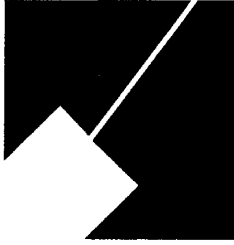


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

MCPB
ITEM # 6
6/8/06



MEMORANDUM

DATE: May 23, 2006

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

FROM: Catherine Conlon, Supervisor *CC* (301-495-4542)
Development Review Division

REVIEW TYPE: Pre-preliminary Plan of Subdivision
APPLYING FOR: Planning Board advice regarding a future preliminary plan submission for residential development

PROJECT NAME: Burn Brae Property
CASE NO. 720060480
REVIEW BASIS: Pursuant to Chapter 50, the Subdivision Regulations and Chapter 59, the Zoning Ordinance

ZONE: R-90/TDR
LOCATION: On the east side of Blackburn Lane, approximately 200 feet north of Blackburn Road
MASTER PLAN: Fairland

APPLICANT: KB Burn Brae Land, LLC
ENGINEER: Gutschick, Little & Weber, PA
ATTORNEY: Holland & Knight

FILING DATE: March 7, 2006
HEARING DATE: June 8, 2006

Staff Recommendation: Objection to the submittal of a preliminary plan.

SITE DESCRIPTION

The subject property consists of 11.55 acres of land located on the east side of Blackburn Lane north of its intersection with Blackburn Road, in the Fairland Master Plan area (Attachment A). The property is an unrecorded parcel which was the location of the Burn Brae Dinner Theatre and has most recently been used for a church and private school. The property is zoned R-90/TDR and lies within the Little Paint Branch watershed which is designated as Use Class I. Surrounding land uses are residential and consist of garden apartments to the north and a mix of one-family detached dwellings and townhouses to the west, with stream valley parkland to the east and south.

The site has access from Blackburn Lane via a panhandle which follows the stream valley of a tributary stream to Little Paint Branch. This tributary flows from west to east along the northern property boundary and joins another stream just outside of the northeast corner of the site. This stream runs from south to north along the entire eastern boundary of the site. Moderately steep to steep stream valley slopes limit development potential on the northern and eastern portions of the site. The stream valley portions of the site are mostly wooded, while the upland area and driveway access have been cleared.

PROJECT DESCRIPTION

The subject pre-preliminary plan is being presented to the Planning Board at the request of the applicant in order to obtain advice regarding the proposal for future residential development on the property. As originally submitted, the proposal consisted of a 120-unit development with an overall density of 11 units per acre. As a result of discussions with staff and surrounding community representatives, the proposal has been revised to an 85-unit subdivision containing 50 two-over-two condominiums and 35 townhouses (Attachment B). The units are accessed from Blackburn Lane via a proposed private road and would be served by public water and sewer facilities. Most of the townhouses are located on the western half of the developable area of the site, with the two-over-twos on the eastern half around a proposed green space. The proposal has a density of seven units per acre and provides the minimum of 12.5% Moderately Priced Dwelling Units (MPDUs).

DISCUSSION OF ISSUES

The applicant has submitted the subject pre-preliminary plan to obtain advice from staff and the Planning Board regarding the appropriate TDR density that may be used on this site. As previously noted, the applicant's most current plan proposes development at 7 units per acre. In staff's opinion, the density should be no greater than 4.6 units per acre exclusive of MPDUs.

Applicant's Position

By letters of March 6, 2006 and May 22, 2006 (Attachments C and D), the attorneys for the property owners have summarized their justification for the proposed density of 7 units per acre. In their opinion, the density for this site should be based upon compatibility with the

surrounding uses and densities which exceed 20 units per acre on the north and approximately 8 units per acre on the west. They believe that since the 1997 Master Plan is silent with respect to density or any development limits, the applicant may use any designation for a TDR receiving area up to the limit established in the Optional Method of Development. They are also of the opinion that the density limits supported by staff, as established by the "Trip Reduction Amendment" to the Master Plan adopted in 1990, should no longer be applicable since changes have occurred in the area which have permanently reduced traffic generation and substantially increased transportation capacity.

Staff's Position

In their May 16, 2006 and May 24, 2006 memoranda (Attachments E and F), Community-Based Planning Division staff concurs that the 1997 Fairland Master Plan does not explicitly discuss TDR densities for the subject property, but notes that there is past precedent on which to base their recommendation for density of no more than 4.6 units per acre. In staff's opinion, any density higher than that designated in the 1990 Trip Reduction Amendment would be contrary to master plan intent. Staff also does not support the type of units proposed for this development since they are inconsistent with the intent of the master plan to provide for more single-family detached homes. The master plan area has a concentration of affordable housing including MPDUs and subsidized housing built in the 1970's and 1980's. In addition, the proposed mix of housing is not consistent with the standards of the R-90/TDR zone for densities greater than 3 units per acre that require a mix of unit types including detached units. In staff's opinion, the master plan recommended a balance between housing options, transportation and future growth and the subject site should be developed in concert with those recommendations.

Citizen's Position

In his email of March 22, 2006 (Attachment G) and letter of May 16, 2006 (Attachment H), Mr. Stuart Rochester, Chairman of the Fairland Master Plan Citizens Advisory Committee strongly opposes development of the subject property at a density any higher than the 4.6 units per acre recommended by staff. He notes the Fairland Master Plan goal to improve the single-family housing balance on the east side of the planning area, and the master plan guidelines that call for future development in this area that limits low-end housing and reduces density if environmental obstacles discourage full buildout.

CITIZEN OUTREACH AND CORRESPONDENCE

This pre-preliminary plan application predates any specific requirements for pre-submission meetings, however, the applicant has discussed the proposed plan with citizen representatives. As noted above, the citizen correspondence received to date is attached to this report.

CONCLUSION

Staff recommends the Planning Board dissuade the applicant from pursuing development on the subject property at a density greater than 4.6 units per acre exclusive of MPDUs, and with

the proposed mix of unit types. The 1981 Master Plan recommended a density of 7 units per acre, but the 1990 Trip Reduction Amendment reduced that to 4.6. The 1997 Approved and Adopted Fairland Master Plan did not modify the 1990 recommendation with regard to density, and there is past precedent for staff's recommended density established by previous Planning Board decisions. With regard to the proposed unit types, staff recommends a mix of units, including one-family detached on the subject property. The two-over-two condominium unit type is not preferred over detached units, and does not appear to comply with the zoning ordinance definition of attached units which requires that each unit have an abutting ground level area for the exclusive use of its occupants.

Attachments

Attachment A – Site Vicinity Map

Attachment B – Preliminary Plan

Attachment C – March 6, 2006 Applicant Letter

Attachment D – May 22, 2006 Applicant Letter

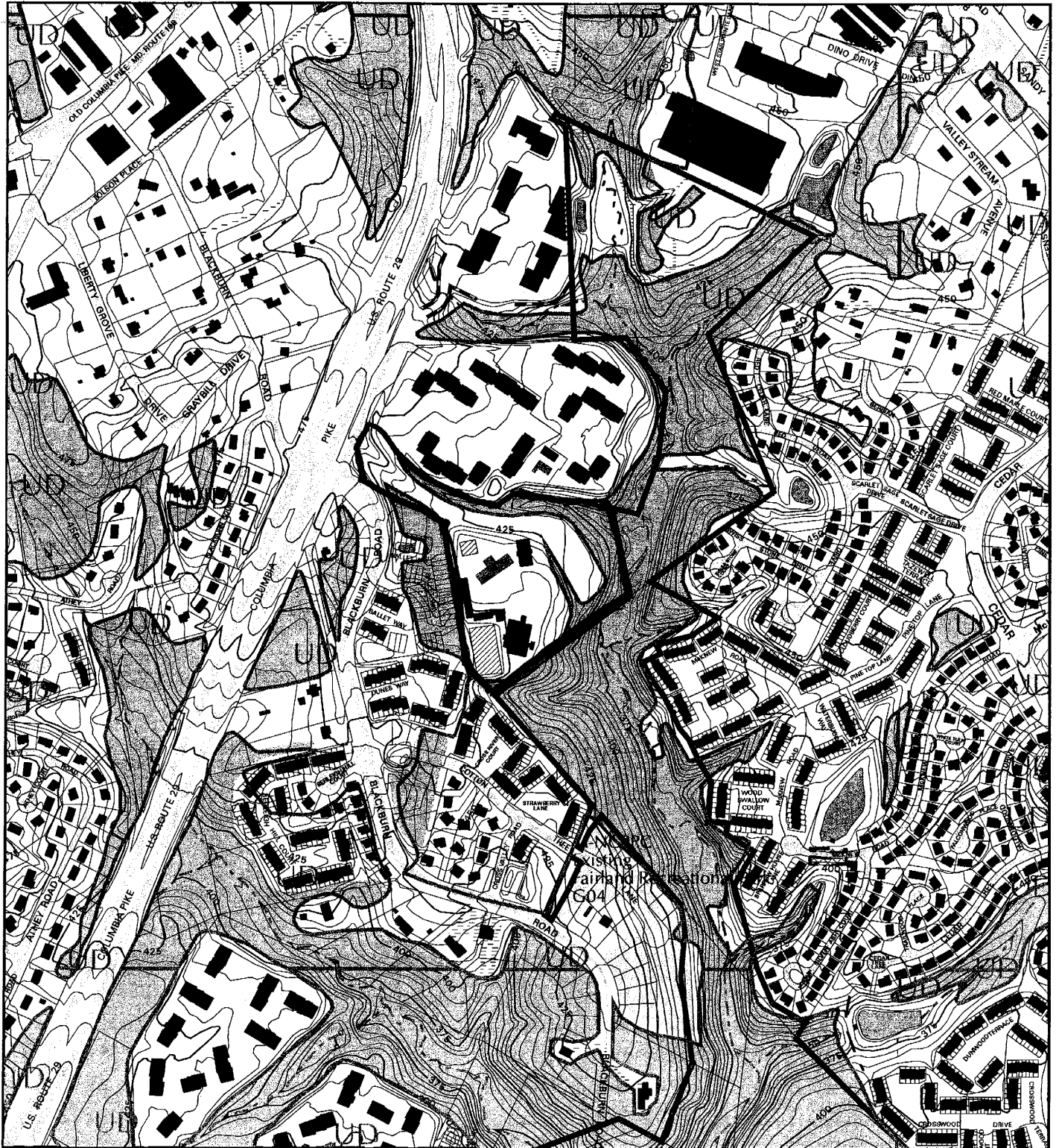
Attachment E – May 16, 2006 Community-Based Planning Memo

Attachment F – May 24, 2006 Community-Based Planning Memo

Attachment G – March 22, 2006 Citizen Email

Attachment H – May 16, 2006 Citizen Letter

BURN BRAE PROPERTY (720060480)



Map compiled on March 29, 2006 at 12:13 PM | Site located on base sheet no - 220NE04

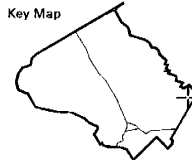
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Key Map



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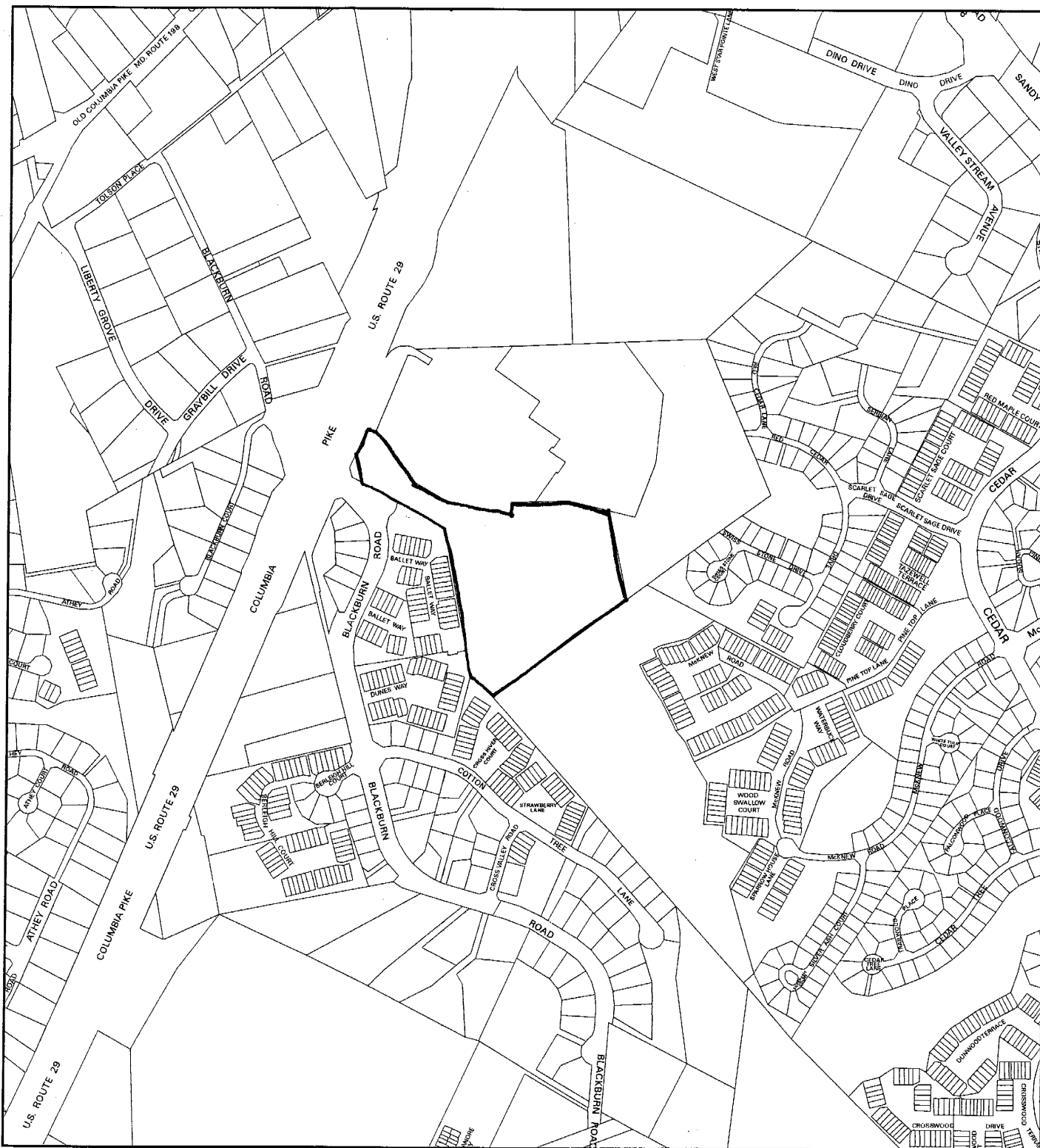


Research & Technology Center



1 inch = 600 feet
1 : 7200

BURN BRAE PROPERTY (720060480)



Map compiled on March 29, 2006 at 12:27 PM | Site located on base sheet no - 22QNE04

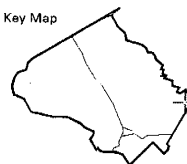
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Key Map



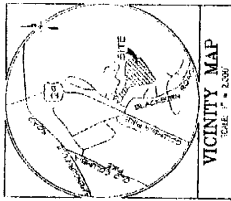
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1 inch = 600 feet
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MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue - Silver Spring, Maryland 20910-3760

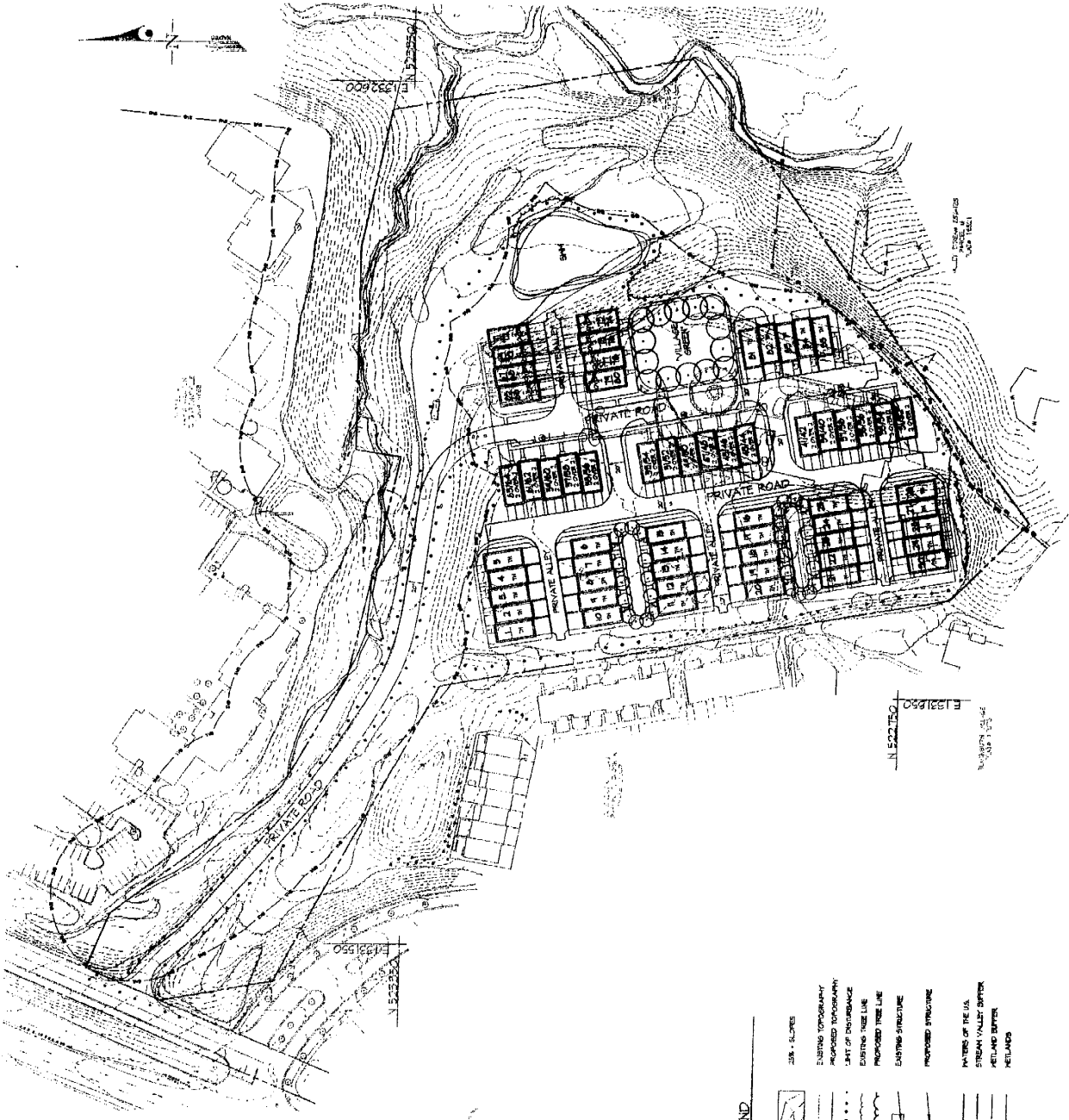


GENERAL NOTES

- OWNER'S RECORDS, SURVEY PLANS AND ALL UTILITIES TO BE MAINTAINED IN THE FIELD.
- BOUNDARY BY LSA NO. 2009
- ADJACENT TOPOGRAPHY BY LSA NO. 2008
- THIS PLAN IS NOT A FINAL UTILITIES PLAN AND IS NOT TO BE USED FOR ANY OTHER PURPOSES.
- EXISTING PUBLIC WATER AND SEWER SERVICE.
- EXISTING WATER UTILITY CATEGORIES: H, E, I.
- EXISTING UTILITIES TO BE MAINTAINED.
- RELAND DELIMITATION BY MCCLINTOCK & ASSOCIATES, INC. 2008
- THIS PROPERTY WILL BE SUBJECT TO A FOREST CONSERVATION PLAN.
- THE PLAN SHALL BE CONSIDERED AS A SINGLE PHASE.
- A TRAFFIC STUDY HAS BEEN REQUESTED BY THE PROPERTY AND SUBMITTED JANUARY 2009.
- THERE ARE NO KNOWN HISTORIC SITES ON THE PROPERTY.
- ALL UTILITIES ARE CONSTRUCTION AND SUBJECT TO CHANGE. SEE SPECIES CLASSIFICATION AND PROTECTION OR ENDORSEMENT APPROPRIATE FINAL UTILITY CONSTRUCTION PLANS.

SITE DATA

SITE AREA:	178 AC
CONV.:	16-0000
PERMITTED DENSITY (20' D.U.):	300 DU
PROPOSED DENSITY:	300 DU
CONV. OF CONSERVATION:	30 DU
WATER REQUIRED (GAL):	1 DU
SEWER REQUIRED (GAL):	1 DU
SEWER AREA (SCHEDULED):	1 DU
SEWER AREA (PROPOSED):	1 DU



LEGEND

- EXISTING TOPOGRAPHY
- PROPOSED TOPOGRAPHY
- PROPERTY BOUNDARY
- EXISTING TREE LINE
- PROPOSED TREE LINE
- EXISTING STRUCTURE
- PROPOSED STRUCTURE
- WATERS OF THE US
- STREAM VALLEY BUFFER
- WETLAND BUFFER
- WETLAND

GLW
 Geotechnical, Limited & Water, P.A.
 578 COLUMBIA ROAD
 COLUMBIA, SC 29928
 TEL: 803-733-1000 FAX: 803-733-1001
 WWW.GLW.COM



PREPARED FOR:
 BURN BRAS THEATRE PROPERTY
 215 BURN BRAS LANE, SE
 WASHINGTON, DC 20003

PRE-APPLICATION PLAN
 BURN BRAS THEATRE PROPERTY
 (SHEET NUMBER 1 OF 3)

SCALE:	DATE:	BY:
1" = 50'	11-23-07	RS - JI
CHECKED:	DATE:	BY:

Holland+Knight

Tel 301 654 7800
Fax 301 656 3978

Holland & Knight LLP
3 Bethesda Metro Center
Suite 800
Bethesda, MD 20814-6301
www.hklaw.com

Stacy P. Silber
301 664 7621
stacy.silber@hklaw.com

March 6, 2006

Derick Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Pre-Application Plan
3811 Blackburn Lane
Burn Brae Theater Property

Dear Chairman Berlage:

On behalf of the Applicant, KB Burn Brae Land, LLC, we are seeking your recommendations on a pre-application plan for townhouse development on certain property known as Parcel 581 or the Burn Brae Dinner Theater property (the "Property"). The Property is zoned R-90/TDR, but has been used for non-residential purposes for many years. The Applicant requests that the Planning Board confirm that that the Applicant has correctly determined the allowed density of 11 units per acre on the R-90/TDR zoned Property, and asks for guidance on the overall application. As discussed herein, we respectfully submit that the proposed development should be recommended for approval given that the proposed development is well below the 28 unit per acre density allowance of the R-90/TDR zone, and is consistent with the 1997 Fairland Master Plan recommendations, which is silent with regards to a recommended density for the Property.

I. Background.

A. Current use of Property.

The Property has been used as the Burn Brae Dinner Theater. In recent years, however, the Parker Memorial Baptist Church has been renting the vacant theater building. The

Church has now sold the Property, and given the Property's proximity to a multifamily housing development to the north, and a townhouse development to the Property's south, a single family attached development is an appropriate use.

B. Proposed Development.

The Applicant proposes to develop the Property with 120 housing units, including 15 MPDUs on an 11.51 acre site. This equates to 11 units per acre.

C. Compatible with Surrounding Uses.

As discussed herein, the Fairland Master Plan area has been changing over time. The Property is now surrounded by multifamily development to the north (Country Place Apartments), which is zoned R-20, allowing up to 22 units per acre. To the Property's south, there exists a townhouse development (Blackburn Village), which is developed under an R-90/TDR-7 density. The Property represents the hole among these divergent residentially developed properties. As such, the Applicant's proposed 11 unit per acre project will provide the proper transition among the surrounding uses.

D. Master Plan History.

The Property falls within the Fairland Master Plan, approved and adopted in May of 1997 ("1997 Fairland Master Plan"). The 1997 Master Plan is silent relating to the density of the Property. When the Master Plan is silent, one must consider the Zoning Ordinance relating to the R-90/TDR zone. The Ordinance provides in Section 59-C-1.332(c) of the Zoning Ordinance that a maximum density of 28 units per acre is appropriate in R-90/TDR zones.

While the 1997 Fairland Master Plan is silent as to a density recommendation for the Property, the Council did make broad recommendations for the Fairland area and identifies "... community building as one of its key components; recognizing and reinforcing each community's unique character" 1997 Fairland Master Plan, at p. xiv. The Plan also states that "[m]ost of all, this Fairland of the future is a livable suburban community – a series of neighborhoods with sidewalks and street trees, access to the natural environment and recreational facilities There is plenty of green space, jobs, shopping, and, most importantly, a variety of housing options to serve a variety of needs and households – the young couples just starting out, single adults, families who need room, older couples who want less space, and senior citizens who want to be able to participate in community life." 1997 Fairland Master Plan, at p. 15. The proposed single family attached units will ensure that these goals are met.

E. Proposed Development is in Conformance with County Policies on Increasing TDR Receiving Areas, and Expanding Housing Stock in Montgomery County.

1. Need for TDR Receiving Areas.

Last year, the Maryland-National Park & Planning Commission, after an extensive study period, determined that there is a need for more TDR receiving areas in the County. Specifically, a November 10, 2005 Memorandum from Judy Daniel to the Montgomery County Planning Board provided that "There is a need for additional TDR receiving sites. Concepts to reduce development potential in the RDT Zone will create new sending TDRs." The subject development will help implement this recommendation.

2. Need to Increase Housing Stock.

Beyond the overall Master Plan goal of increasing housing and ensuring a variety of housing options, the County also has stated a need to increase housing opportunities in Montgomery County. The Council of Government's concurs that there is a serious need for more housing in the region. In its "Round 7.0" analysis, COG predicted that the "region's population will grow by about 2 million over the next quarter century, reaching 6.6 million by 2030." The existing housing stock cannot accommodate this growth. The subject plan will add 120 new units to the County's housing stock. There is also a significant need for affordable housing units, and this plan will add 15 Moderately Priced Dwelling Units to the County.

II. The Proposed Residential Community Complies with Applicable Sections of the Zoning Ordinance for TDR Optional Method of Developments.

Section 59-C-1.393 provides that the Planning Board must approve a request to utilize development rights if the request:

(1) Does not exceed the limitation on the density or number of dwelling units permitted in the zone and in the applicable master plan approved by the District Council;

As discussed herein, the Master Plan contains no limit and section 59-C-1.332(c) of the Zoning Ordinance recommends a maximum of 28 dwelling units per acre. The Applicant's proposed 11 unit per acre project falls well below this limit.

(2) Is in accordance with the provisions of this chapter;

As depicted in the proposed pre-application plan, the subject development is in accordance with the provisions of Chapter 59.

(3) Is in accordance with chapter 50, title "Subdivision of Land;"

As depicted in the proposed pre-application plan, the subject development is in accordance with Chapter 50.

(4) Is consistent with other recommendations of the master plan approved by the District Council; and

The 1997 Fairland Master Plan makes broad recommendations regarding increasing housing opportunities in the County. The Council also discusses in the Plan the need for creating livable suburban communities, with access to the natural environment. The subject development will help achieve these goals. The subject plan proposes to add 120 single family attached units, including 15 MPDUs. Access to forested areas is also a potential opportunity.

(5) Achieves a desirable development compatible with both site conditions and surrounding existing and future development.

As discussed above and as depicted on the attached pre-application plan, the proposed 11 unit per acre development is exactly the proper development on the subject property. The proposed layout ensures preservation of environmentally sensitive areas of the Property. In addition, an 11 unit per acre development provides a suitable residential transition between a residential property to the north, which allows 22 units to the acre, and a residential project to the south developed at 7 units per the acre. The existing non-residential use of the Property does not provide the same "community building" as would the proposed residential development.

Section 59-C-1.3 (Development Standards Applicable to the Optional Method of Development), provides:

In making this determination to the final density, the planning board will consider whether a proposed plan has the flexibility in design to provide an appropriate range of housing types, taking advantage of existing topography and other natural features, to achieve a mutually compatible relationship between the proposed residential development and adjoining land uses, while implementing the area master plan approved by the district council.

As discussed herein and as depicted on the pre-application plan, the proposed 2 over 2 single family attached units provide the proper transition between multifamily to the north of the Property, and a 7 unit to the acre townhouse community to the south. As is evident from the pre-application plan, the development will take advantage and preserve the natural features of the Property. The proposed residential community will implement applicable recommendations of the 1997 Fairland Master Plan.

Section 59-C-1.33(b) indicates:

Under the optional method of development for the TDR zones, greater densities may be permitted up to the maximum density established in the development standards of section 59-C-1.332 of the zone, but development must also conform to the special regulations for optional method developments using transferable development rights as contained in Section 59-C-1.39. The special regulations require compliance with the density numerical limitations, and other guidelines contained in the applicable master plan approved by the district council

Section 59-C-1.392(c) provides that:

The development density of a property under the TDR optional method may not be increased above the maximum density permitted in the zone (section 59-C-1.332(c)) nor beyond the density or number of dwelling units recommended for such property, by the land use plan of the applicable master plan approved by the district council..

The proposed residential community satisfies both sections 59-C-1.33(b) and 59-C-1.392(c). Section 59-C-1.332(c) allows 28 dwelling units per acre for the R-90/TDR zone. The proposed 11 unit per acre development is below this maximum allowance.

The 1997 Fairland Master Plan is silent regarding a density recommendation for the Property, unlike the Council's specific recommendations for other properties within the Master Plan area. As is discussed herein, prior master plans for this area did make density recommendations for the Property, but those plans have been amended and supplanted with the 1997 Fairland Master Plan which no longer limits the TDR density. In fact, the 1997 Fairland Master Plan has a discussion of the "Planning History" of the Master Plan area, but in no place does it indicate that prior recommendations from old, superseded plans, would still govern. Rather, it is the 1997 Fairland Master Plan which is now utilized to provide guidance on the future development of the Master Plan area.

Because the Fairland Master Plan is silent, the Planning Board must look to the other guidance of the County Council. This guidance comes in part from section 59-C-1.332(c), which allows up to 28 dwelling units per acre. The proper density is determined by looking at compatibility of the proposed community with adjacent uses, as is discussed above.

Chairman Derick Berlage
March 6, 2006
Page 6

In conclusion, we respectfully submit that the subject pre-application plan satisfies all applicable Code requirements. We thus ask the Planning Board to provide guidance on the overall application, and confirm that a TDR 11 density is permissible density on the Property.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Stacy P. Silber

3631200_v1

Robert R. Harris
301 215 6607
robert.harris@hklaw.com

May 22, 2006

Derick Berlage, Esq.
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Burn Brae Property (Pre Application Plan No. 7-20060480)

Dear Chairman Berlage:

We represent KB Burn Brae Land, LLC, the Applicant in this Application. The purpose of this letter is to revise the request we submitted with the Application on March 6, 2006. As discussed below, based on outreach efforts over the past two months and our own review, we are revising the request to seek the Planning Board's support for a project consisting of 85 dwelling units rather than the 120 originally proposed.

By way of background, the Plan submitted on March 6, 2006 for Planning Board review as a Pre Application sought approval for 120 units on this 11.5 acre property along US 29 near Burtonsville. The units proposed in that Plan were all condominium units. Since then, our clients have had discussions with community representatives and your Staff about the proposed Plan and have been informed that they do not support the proposed 120 units. Enclosed with this letter is a revised Concept Plan reflecting a significant reduction in total density to 85 units as well as a change in the unit type so that now 35 of the units would be traditional townhouses and 50 would be 2 over 2 stacked townhouses. At this time, unfortunately we believe at least a portion of the community and your Staff still do not support this Plan either but we want to present it to you because we believe it is a plan that responds to a variety of public policies. At the hearing on June 8, we will address the comments we have heard so far with respect to our Plan. If we are able to obtain preliminary Planning Board support for this revised plan, prior to submitting a formal subdivision application we will resume our meetings with the community in an effort to further revise the concept to address any concerns they have.

There appears to be no disagreement that the property should be developed for residential use in a manner compatible with the neighboring properties. The primary issue we believe you will need to address concerns the appropriate density. As you may be aware, the 1981 Master Plan for this area (as reflected in the copies of pages I have attached to this letter) recommended

moderate density housing for this site using the R-90/TDR zone at a density of seven units per acre. The Master Plan explained at page 107:

The master plan designates this area as a TDR receiving area, suitable for a density up to seven dwellings units per acre. This density is compatible with nearby land-uses, including substantial amounts of park, open space, industrial land and major roadways.

Although not reflected in that language, the property is bordered on the north by multi-family development at a density exceeding 20 units per acre, on the west by townhouses at a density of approximately eight units per acre, and on the south and east by substantial parkland. As such, we believe a density of seven units per acre is fully compatible.

The density issue which you will need to address arises because of an amendment to the Master Plan adopted in 1990. That amendment, known as the "Trip Reduction Amendment" called for reduced densities on numerous properties in the eastern Montgomery County area. That reduction was based exclusively on traffic congestion concerns at the time. As a result of that Master Plan Amendment, development potential for the entire Fairland Area was reduced significantly, resulting in an overall trip reduction of 13,550 peak hour trips. Under then applicable Annual Growth Policy standards, there was inadequate traffic capacity for new projects and improvements to interchanges along US 29, that would provide the primary traffic relief, were uncertain, leading to the Trip Reduction Amendment.

Since the 1990 Master Plan Amendment, however, and in fact since the 1997 Fairland Master Plan amendment, substantial changes have occurred so as to negate the traffic concerns that would have arisen had the 1981 Master Plan land-uses proceeded. Two of those changes have resulted in permanently reduced traffic generation and two have resulted in substantial increases in transportation capacity.

With respect to trip generation, the vast majority of properties that were undeveloped in 1990, have proceeded with development at greatly reduced densities. This includes all of the properties along Blackburn Road near the subject property as well as virtually all others in the immediate area. As such, excess trip generation has been eliminated by that reduced level of development. Secondly, in connection with the 1997 Master Plan, a major portion of the eastern Montgomery County area was designated an environmental Special Protection Area with imperviousness limits and other development restrictions. (The subject property is not located within such an area). Additional land also has been acquired for parks and other properties have been purchased for construction of the Intercounty Connector. This even includes approved properties such as the Peach Orchard project with more than 130 lots. As a result of these various actions, trip generation in the Blackburn Road area and elsewhere has been reduced significantly even below the 1990 Trip Reduction Amendment levels.

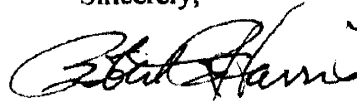
The second set of consequences concerns added transportation capacity. Again, since 1990, major improvements have occurred along US 29. The State has built grade separated interchanges on US 29 at Randolph Road and Maryland Route 198 and is well underway with construction of one at Briggs Chaney Road. They also have made improvements to the access to

Derick Berlage, Esq.
May 22, 2006
Page 3

Blackburn Road. Equally important, the County and State have progressed significantly with respect to the Intercounty Connector. At the time of the last Master Plan, construction of that road appeared doubtful because then Governor Glendening had withdrawn state support for it and the Montgomery County Council opposed it. Now, the County Council and State both support it and the state is committed to starting construction later this year. These factors substantially change the circumstances at play in 1990 when the Trip Reduction Amendment was adopted. In fact, as reflected in the traffic study submitted with the Pre Application, there is traffic capacity even for the 120 unit density we first proposed. As reflected in the traffic study submitted with the Pre Application Plan, traffic is not a constraint. Given the adjoining densities higher than seven units per acre, such a density is appropriate here.

We also would like to discuss with you at the hearing the growing importance of new housing resources in the County. Just last week, the Park and Planning Commission hosted a roundtable discussion on growth with a particular focus on housing demand now and in the future. Information presented at that roundtable reflected the demand for 94,000 new homes in the County over the next 25 years. The discussion included data indicating Montgomery County's commitment to the Metropolitan Washington Council of Governments to add 16,000 more households above existing master plans in order to help address that shortage. Although Burn Brae will respond to only a fraction of that demand, it is reflective of the opportunities the County should consider in order to address the County's future housing supply. We hope to have the Board's preliminary support to do so here.

Sincerely,



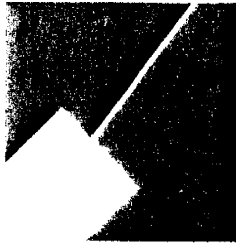
Robert R. Harris

Enclosures

cc: Cathy Conlon
Piera Weiss

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M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING


THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

May 16, 2006

MEMORANDUM

TO: Cathy Conlon, Development Review

FROM:  Piera Weiss, Community-Based Planning
Eastern County, Team 6

SUBJECT: Burn Brae Pre-preliminary Plan 7-20060480

Staff Recommendation:

Submit a preliminary plan that has a density of no greater than 4.6 units per acre exclusive of MPDUs.

Issue: TDR designation in the Fairland Master Plan

Sectional Map Amendment, G-747, that implemented the 1997 Approved and Adopted Fairland Master Plan, reconfirmed R-90/TDR zoning for some properties, originally zoned R-90/TDR in 1987. The Applicant is proposing TDR development on one of these properties, the old Burn Brae Theater site. At issue is what TDR density they may use.

Applicant's Position

Attorneys for property owners are of the opinion that if the master plan is silent with respect to density or any development limits, then the applicant may use any designation for a TDR receiving area up to the limit established in the Optional Method of Development.

Staff's Position

Staff concurs that the 1997 Fairland Master Plan does not explicitly discuss TDR densities for the subject property. (See Attachment 1, 1997 Master Plan.)

Staff notes, however, that a precedent on this issue has been established. The Planning Board approved amendments to Preliminary Plan, 1-83140 on February 26, 1998 and to Site Plan, 8-86087A on February 11, 1999 for the Barman Tract, a property located in the same area and with same zoning as the subject

property, R-90/TDR. The master plan did not discuss densities for the Barman Tract either.

A portion of the Barman Tract had developed prior to 1990 used TDRs in accordance with the TDR designation of the 1981 Eastern Montgomery Master: Cloverly, Fairland and White Oak, which was R-90/TDR 7. In 1990, the Council approved the Trip Reduction Amendment that uniformly changed the TDR densities to one above the base zone, which, in the case of R-90/TDR, was 4.6 units to the acre, exclusive of MPDUs. (See Attachment 2, 1990 Amendment.)

In the case of the Barman Tract, staff asked the applicant to reduce the densities on the pending portion to 4.6 units per acre and to provide a mix of detached and attached housing in conformance with the master plan and zoning ordinance. The Board approved for 53 units for the Barman Tract (Blackburn Village Phase II) including 18 detached and 35 town homes at a density of 4.6 units to the acre. (See Attachment 3, Staff Site Plan Report dated February 5, 1999.)

Staff's position on the TDR designation was based on the fact that 1997 Plan amends the 1981 Plan, as amended, Staff believes that the TDR designation in the 1990 Amendment was carried forward, which is why the 1997 Plan was silent.

If the master plan were truly silent, which staff believes is not the case, staff is of the opinion that the optional method can't be used because the optional method can be used only if it is found in conformance with the master plan.

With respect to the Applicant's wish to use a density of 11 units per acre, staff thinks that any density higher than that designated in the 1990 Trip Reduction Amendment would be contrary to master plan intent.

Background:

Zoning Ordinance

Sec C.1.33 Transferable development rights zones states that there are two methods of development: Standard method and Optional method. (See Attachment 4.)

(a). ...Development under the standard method for TDR zones must comply with the requirements for development and density limitations contained in the corresponding zones as identified in section 59-C.1.332...

(B)...Under the optional method of development for the TDR zones, greater densities may be permitted up to the maximum density established in the development standards of section 59-C.1.322 of the zone, but development must also conform to the special regulations ... as contained in section 59-C.1.39. The special regulations require compliance with the density, numerical

limitations and other guidelines contained in the applicable master plan approved by the district council.

Staff understands this language to mean that the special regulations with which development must comply are density, numerical limitations etc., as contained in the applicable master plan. If there are no such limits in the master plan, then the optional method cannot be applicable because there can't be a finding of compliance. Therefore, where a master plan is truly silent, in staff's opinion, only the standard method may be used.

Staff believes that in the case of the 1997 Fairland Master Plan, which is silent with respect to TDRs on the subject property, that the density set in the 1990 Amendment, may be used, as was done in 1998 for the Barman Tract, when this issue was first raised.

Master Plan and Zoning History

1981 Plan

The 1981 Eastern County Master Plan designated a number of receiving areas along US 29 to add density that would support transit in the east and preserve agriculture in the west. One of the major planning concepts of the master plan was transit serviceability and TDRs were used to add density to land that could be easily served by transit along US 29.

The 1981 Master Plan designated approximately 1,300 acres along either side of US 29 as TDR receiving areas with densities between 3 and 9 per acre.

TDR Sectional Map Amendment of 1987

Between 1981 and 1987 hundreds of acres of residential development were built in Fairland using TDRs in accordance with the TDR densities set in the 1981 master plan. In 1987, Maryland Court of Appeals determined that the TDR density designation in a master plan was an insufficient vehicle to add density without a zoning category for TDRs and that a TDR zone or zones needed to be created to implement legally the use of TDRs. In 1987, the M-NCPPC prepared a series of Sectional Map Amendments for each master plan that had designated TDR receiving areas as well as text amendments to the zoning ordinance regarding development standards for TDRs. Prior to this, TDR development used standards of comparable zones, i.e. a development with a TDR density of 8 might use RT-8 standards. The District Council approved the SMAs and the zoning text amendments.

The TDR zones created through this action were Euclidean zones and could only be placed on properties through the Sectional Map Amendment process. The Zoning Ordinance provided for two options for development, the standard

method and the optional method. The standard method was to be used in cases where TDR densities were not specified in the master plan.

The 1987 Sectional Map Amendment, G-563, applied TDR zoning to approximately 1033 acres in Fairland.

1990 Trip Reduction Amendment

In 1990, the County Council approved an amendment to the 1981 Master Plan reducing the master plan designation for all TDR receiving areas, except where TDR developed already occurred, including areas which had pending plans to one unit above the base zone density. (Attachment 5, Staff Memorandum to Development Review Division.) The density of the base zone was specified in the master plan as one above the base zone, as indicated on page 9 of the 1990 Amendment. The receiving areas were still eligible for the MPDU bonus.

1997 Amendment

In May 1997, the County Council reviewed the 1997 Fairland Master Plan, which recommended adding and removing TDR receiving areas in order to rebalance the proportion of future single-family detached housing and attached housing. Prior to the approval of the Fairland Master Plan, the County Council requested an analysis of the TDR program so that in approving the changes proposed in the Fairland Master Plan, the Council understood the effect the master plan would have on the overall TDR program.

Zoning Staff presented a memorandum to the Planning Board and County Council summarizing the effect on the TDR program the 1997 Master Plan would have. (See Attachment 6, Staff Memorandum - TDR Data for Fairland Master Plan Area.) The Council approved the master plan with the recommended changes to the TDR receiving areas, understanding that one above the base density of the 1990 Amendment would still be in effect, and adopted the Sectional Map Amendment implementing the master plan.

Explicit in staff's memorandum, was that undeveloped receiving areas were still able to absorb one TDR above the base zone for any properties. This is an important point because the 1997 Master Plan is silent on the TDR density for receiving areas that remained untouched by master plan recommendations but retained the TDR zoning designation. Subsequently, the County Council approved Sectional Map Amendment G-747, which removed and added TDR receiving areas consistent with the master plan recommendations.

One of the reasons for removing some of the TDR receiving areas while retaining others was to have receiving areas where a mix of housing could be accommodated. The master plan has as its primary goal to "increase the potential of single family detached homes in undeveloped or underdeveloped

areas ...while maintaining a mix of housing types. The plan also had as its goal, to remove "TDR development options wherever environmental and access constraints limit using increased densities." In the Blackburn Road area which includes the subject parcel and the Barman Tract, discussed earlier in this memorandum, the master plan removed TDRS from 3 areas (Areas 8, 24a and 25) where TDRS couldn't be used, but left in place some R-90/TDR zoning that had not yet been used.

Proposed Pre-preliminary Plan

Staff recommends the Planning Board dissuade the applicant from pursuing the proposed development for the following reasons:

(1) The proposed development is not in conformance with the 1997 Approved and Adopted Fairland Master Plan Master Plan. The density far exceeds that envisioned in the Fairland Master Plan or any previous master plan amended by the Fairland Master Plan. The 1981 Master Plan recommended a density of 7 units to acre and the 1990 Trip Reduction Amendment reduced that to 4.6. Staff believes that the maximum density that could be approved is 4.6 units to the acre exclusive of MDPUs.

(2) That the master plan is not silent as to general principles for residential development and specifically rezoned areas to encourage more single family detached housing. The number and type of units proposed in this project is inconsistent with the intent of the master plan to provide for more single-family detached homes.

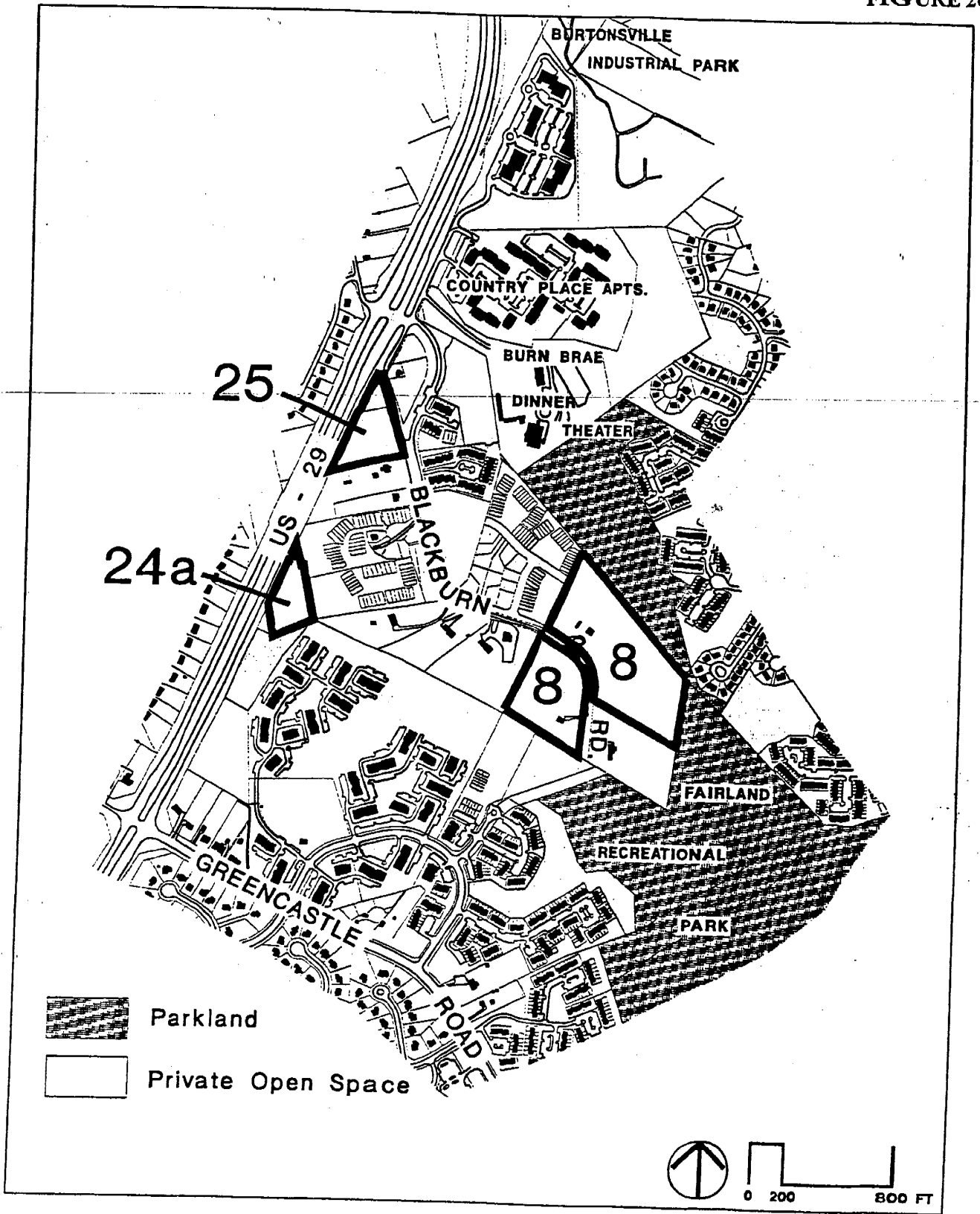
(3) That the proposed development provides for only one type of housing unit and is not consistent with the standards of the R-90/TDR zone that requires densities greater than 3 units per acre to comply with the PD standards. The PD standards require a mix of unit types including detached units.

(4) That the over/under condominium unit type does not appear to comply with the zoning ordinance requirement for providing single family detached units nor does it comply with the definition of attached units that requires a one-family attached dwelling unit have an "abutting ground level area for the exclusive use of its occupants..."

BLACKBURN ROAD

Circles 1+2

FIGURE 20



BLACKBURN ROAD (Figure 20)

This small residential area is separated from the surrounding communities and facilities to the north and south. Connections are pre-empted by existing development patterns and the steep valleys of the Little Paint Branch. A connection between Wexhall Drive south to Briggs Chaney Road through the Greencastle subdivision was considered and eliminated because of the steep topography. Residential development includes over 300 garden apartments, 60 townhouses, and ten single-family homes. There is development under construction that will add 17 detached homes and 50 townhouses. The average density is about eight units per acre. Non-residential uses include the Burtonsville Office Park, which has a day-care center, and the Burn Brae Dinner Theater. There are no public recreational facilities in the area, although the determined hiker can reach Fairland Recreational Park by walking to the end of Blackburn Road and following an unmarked trail. The proposed interchange at Blackburn Road and US 29 will improve access to US 29 and enable pedestrians and vehicles to cross US 29 safely.

Area 8, a 14-acre area zoned R-90/TDR containing steep slopes and forest cover, is located at the end of Blackburn Road. This area could provide single-family detached houses and better access to the park. Area 24 has an easement to Blackburn Road, but it is not wide enough for a public road, and therefore, the potential for subdivision and utilizing TDRs is limited. Area 25 is a three acre site, located between Blackburn Road and US 29. In addition to addressing environmental constraints, future development in this area should contain single-family detached homes to balance the housing mix within the community.

RECOMMENDATIONS:

Area 8: 14 acres, R-90/TDR, 2 parcels

- Remove TDRs, rezone to R-200 to reduce density where environmental constraints, very steep slopes, woods, and streams, severely limit the ability to achieve the densities permitted under R-90/TDR zoning.
- Expand stream valley buffers and include them as part of a private open space system around Fairland Recreational Park.
- Encourage cluster development to maximize tree cover and forest preservation.
- Retain wooded stream buffers by locating stormwater management facilities and erosion/sediment control measures outside buffers where feasible.
- Incorporate on-site stormwater management quantity and quality controls, because the feasibility of the proposed Silverwood Regional SWM facility is in question due to its potential environmental impacts.

Area 24a: 1 acre, R-90/TDR, 1 parcel

- Remove TDRs, retain R-90 zoning.

Area 25: 3 acres, R-90/TDR, 2 parcels

- Remove TDRs since TDRs cannot be used due to access constraints and proximity to US 29(which will require significant setbacks); retain R-90 zoning.