



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Item # \_\_\_\_\_  
**MCPB 6/28/07**

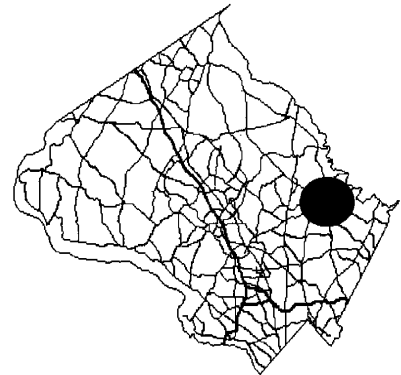
**MEMORANDUM**

**DATE:** June 8, 2007

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief  
 Robert Kronenberg, Acting Supervisor  
 Development Review Division *RAK*

**FROM:** Joshua C. Sloan, ASLA *JCS*  
 Development Review Division  
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**REVIEW TYPE:** Preliminary and Site Plan Review  
**CASE #:** 120050060 and 820070100  
**PROJECT NAME:** Ashton Meeting Place

**APPLYING FOR:** 97,677 square feet of mixed-use development, including 49,707 square feet of retail, 24,655 square feet of office, 4,274 square feet of restaurant and 18,941 square feet of residential (thirteen units), on 8.10 gross acres and a parking waiver of 8% (26/335).

**REVIEW BASIS:** Chapter 50 of the Montgomery County Subdivision Regulations  
 Chapter 59 of the Montgomery County Zoning Ordinance

**ZONE:** C-1, R-60, and the Sandy Spring/Ashton Rural Village Overlay Zone

**LOCATION:** In the southeastern quadrant of the intersection of Ashton Road (MD 108) and New Hampshire Avenue (MD 650).

**MASTER PLAN:** Sandy Spring/Ashton

**APPLICANT:** Ashton Meeting, LLC

**FILING DATE:** November 9, 2005

**HEARING DATE:** June 28, 2007

**RECOMMENDATION:** Denial of the Preliminary Plan and the Site Plan.

## **Executive Summary**

A hearing on a previous version of the subject Preliminary Plan and Site Plan was held on April 12, 2007. At that time the Planning Board took testimony from the Applicant, Development Review Staff, and numerous concerned citizens.

### Original Application

At this hearing, the Applicant provided an overview of the development, including proposed resolutions to several important issues known to be of concern to Staff and local citizens. Important aspects of their proposal were:

- Proposed density of 0.49 FAR versus the allowed maximum 0.75 FAR;
- Environmental mitigation proffers for stream-valley and wetland buffer encroachments;
- Architectural details that would create a sense of identity for the Ashton Village Center, while providing a connection to existing historic buildings in Sandy Spring;
- Design elements negotiated with local citizens, including a green on the corner and active storefronts and parallel parking along MD 108; and
- Site details, landscaping, and internal sidewalks to stimulate pedestrian traffic within the site.

### Public Testimony

Of the thirty-six local citizens who spoke at the hearing, seven were in support of the project as presented by the Applicant, one was neither in favor of the project nor against it (but interested in State Highway Administration (SHA) improvements to adjacent sidewalks), and twenty-eight were opposed to the project. The most typical reasons for support voiced at the hearing were that the project would alleviate traffic congestion (through the SHA improvements), provide necessary community services and employment opportunities, provide a sense of character for Ashton, and that the proposal was designed according to the vision of the Master Plan. In contrast, the most typical reasons voiced in opposition to the project were that the proposed development was too large in scale given the rural context, was environmentally insensitive, was too conspicuous, would exacerbate traffic congestion, was not in conformance with the Master Plan, and would generally not create a small-town or rural village experience.

### Original Staff Recommendation

In the Memorandum to the Planning Board dated March 30, 2007 (Appendix A), Staff presented its case for denial based on five issues.

- Non-compliance with Section 59-C-18.18 of the Zoning Ordinance: parking for C-1 uses in the adjacent residential zones;
- Non-compliance with Section 59-C-4.2: parking garage in the C-1 zone;
- Non-conformance with the design guidelines of the Master Plan and incompatibility with all of the Master Plan recommendations;

- Inadequate safety and inefficiency of the locations of buildings, structures, and pedestrian and vehicular circulation systems; and
- Inadequate protection of environmentally sensitive areas.

### Revised Staff Analysis and Recommendations

The current Preliminary Plan and Site Plan submissions fail to adequately address the first four of these five concerns and compel Staff to maintain the recommendation of Denial. To further analyze the most important points of this case and address specific questions about the recommended scale and character of development on the subject site the following staff report is presented in five sections:

- 1) Analysis of the Applicant's proposal.
- 2) Re-analysis of the parking restrictions on the subject site.
- 3) Analysis of the Sandy Spring/Ashton Master Plan design guidelines and recommendations.
- 4) Analysis of the Sandy Spring/Ashton Rural Village Overlay Zone.
- 5) Recommendations for the subject property based on staff analysis of the master plan and overlay zone.

### Appendices

- A. Original Memorandum, dated March 30, 2007, from Staff to the Planning Board
- B. Zoning Ordinance citations
- C. Excerpts from the Sandy Spring/Ashton Master Plan
- D. Letter from David Brown analyzing the subject site parking restrictions
- E. Applicant's correspondence countersigned by DPS
- F. Memorandum from Environmental Planning Staff

## **Analysis of the Re-Submitted Proposal for Development**

The proposed development has been changed from the original submission in three critical ways. First, there are no more environmental buffer encroachments. Second, the grocery store and bank building have been reconfigured and attached on the second floor such that there is much less retail frontage along MD 108 and no "green" on the corner. Third, with respect to safety, the pedestrian and vehicular circulation is improved in the area of the bank and the northern end of the retail/residential building.

With respect to the environmentally sensitive areas, all of the stream valley and wetland buffers have been avoided. Environmental Planning Staff supports this revision – their full analysis is attached as Appendix F. This change, however, does not solve other environmental problems such as the overall amount of impervious surface and the lack of area of area suitable for groundwater infiltration, and perhaps multiple uses. These issues remain important aspects of our analysis due to the on-site stream headwaters and wetlands in the Patuxent River Watershed.

To remove all development from the environmental buffers and still maintain the proposed density, the Applicant chose to push the grocery and bank into the site and along MD 108. One result of this reconfiguration is that it further limits available surface parking space on site. The necessary waiver of parking space requirements is one indication that the planned development is out of scale given the site restrictions. Of more concern is the reduction of active storefronts along MD 108. A particular recommendation of the Master Plan and an item negotiated with local citizens is that active storefronts should be oriented towards streets, thus providing direct access to shopping (without intervening parking lots) and creating a “main street” character. The loss of this retail is unfortunate, especially since a large area of parallel parking along MD 108 will now be adjacent to a lifeless rear wall. This reconfiguration has the further deleterious affect of removing much of the corner green space with adjacent retail and office space as previously maintained. The revised layout also cuts off pedestrian circulation to the interior of the site at the corner due to the continued location of the bank and its drive aisles on the corner. This is, of course, due to the tension between the Applicant’s reasonable desire to maximize leasable area and laudable goal of avoiding environmentally sensitive areas. It is Staff’s position, however, that the balance has tilted too far towards retention of retail area at the expense of creating animated and interesting spaces around the proposed commercial spaces.

Last, the refined and enhanced pedestrian connection from the intersection to the retail/residential building provides a better point of access to the interior of the site. Removal of the dumpsters and inclusion of better crosswalks at this point provide a safer and more efficient layout than previously designed. This proposal, however, does not attempt to resolve the larger issue of the inefficient and unsafe location of the drive aisle and parking area between the retail/residential building and MD 650. Circulation is still daunting in and around the retail and bank pad locations.

As previously mentioned, the re-submitted proposal does not address either of the Zoning Ordinance parking restrictions; the Master Plan design guidelines with respect to scale, street frontages, and parking; or the adequacy, efficiency, and safety of the layout of the buildings, structures, and pedestrian and vehicular circulation systems along MD 650. These issues are the subjects of the following sections, which lead to a recommendation for the subject site within the greater context of the Ashton Village Center.

## **Analysis of the Parking Restriction on the Subject Site**

### **Parking in Connection with C-1 Commercial Uses in the R-60 Zone**

The Memorandum from Staff dated March 30, 2007 (Appendix A, pages 7-9) provides an overview of this issue. We continue to argue that parking in the R-60 Zone for services provided in the C-1 zone of the subject site is not allowed. A letter from David Brown, representing the Sandy Spring/Ashton Rural Preservation Consortium, concurs with this position and is attached (Appendix D, pages 7-10). The following summary highlights previous arguments and addresses the “parking flexibility” references in the Master Plan. Sections of the Zoning Ordinance are in blue; sections of the Master Plan are green.

The subject site is within the Sandy Spring/Ashton Rural Village Overlay Zone and is subject to its particular requirements. When these requirements are not applicable, the underlying C-1 and R-60 zone requirements apply. With respect to the ability to provide commercial parking on an adjacent residential zone, the Overlay Zone provides for such cases in two instances. The first reference is in the regulations governing commercial development standards:

Sec. 59-C-18.182. Regulations

(b) Commercial development. Where a lot is zoned either partially or totally in a commercial zone the following regulations apply.

(2) Development standards:

(D) In areas recommended in the Sandy Spring/Ashton Master Plan for mixed use development, development should [be] consistent with the recommendations of the master plan. In the residential portions of the mixed-use areas, off-street parking for commercial uses is allowed without a requirement for approval of a special exception.

Again, Staff continues to argue that the County Council decided that the southeastern quadrant of the Ashton Village Center should be developed according to the existing zoning and that commercial and residential uses should not be combined within sites or buildings. There are two sections of the Council Resolution that reinforce this point:

Page 16 of the Resolution, Page 31 of the SS/A Master Plan (underline added text, strikethrough deleted text – both by the Council):

- Encourage a land-use mix of stores and homes by maintaining the existing mix of commercial and residential zoning within the village centers together. ~~A mix should be combined within sites and buildings to increase activities.~~

Page 20 of the Resolution, Page 39 of the SS/A Master Plan (strikethrough deleted by the Council):

**Limit residential development in the southeast quadrant to single-family detached homes only, rather than townhouses.** This Plan recognizes that special exception uses may be appropriate as well. ~~This plan recommends that there by flexibility in placement of commercial uses in the southeast quadrant to encourage design that better integrates residential and commercial uses. This flexibility is allowed through the proposed Sandy Spring/Ashton Rural Village Overlay Zone.~~ The existing zoning should be confirmed.

We conclude from this language that the village centers should have a mix of uses throughout the broader area with single-family homes, businesses, and civic buildings coexisting

by maintaining the existing zoning patterns. But the existing zoning in the southeast quadrant, which is confirmed by the Master Plan, does not allow C-1 Zone parking in R-60 zones as the Zoning Code citations confirm. If the specific language relating to flexibility in placing commercial uses to integrate the residential and commercial zones were not removed, this quadrant of the Ashton Village Center would be considered a mixed-use area. But it was removed and we are left to conclude that the intent of the Master Plan, as it stands, is to develop the southeast quadrant according to the land use restrictions of the underlying zones.

The concept of flexibility that was denied in this section of the Master Plan, however, is brought up in other areas with respect to parking in the Village Centers.

Specifically on page 31:

- Develop the new Rural Village Overlay Zone to include the following features to encourage coordinated design, simplify requirements and protect the viability of existing businesses.
  - flexibility in parking requirements.

And on page 81, in the implementation section discussing the Overlay Zone:

For Commercial

- Flexibility in siting to allow parking in conjunction with commercial uses to float between certain adjacent properties to the most desirable locations on the site if the master plan so recommends.

In these two cases, the first quote is a recommendation that was fulfilled in the Overlay Zone as seen in the citation above and the following citation, but the specifics of implementation are left to the Overlay Zone. The particular reference to simplifying requirements is based on the special exception authorization, which, based on the Ordinance, could not be approved in this case. This is also seen in the quote from page 81, but in more detail. This recommendation was directly related to specific properties as prescribed by the Master Plan and resulted in the following section of the Overlay Zone:

Sec. 59-C-18.185. Off-street parking and loading.

Parking must be provided in accordance with the provisions of Division 59-E with the following exceptions:

- (b) Properties in a residential zone that are designated in the Sandy Spring/Ashton Master Plan as suitable for mixed use or non-residential use may be utilized for off-street parking in connection with commercial uses without the necessity for approval of a special exception under Sec. 59-G-2.39.

There are properties specifically mentioned in the Master Plan and a recommendation that directly responds to the two sections of the Overlay Zone we have been discussing on page 34:

To allow better design, incorporate the village green and accommodate the new fire station, this Plan recommends allowing parking in connection with commercial uses on the properties east of Brook Road, which also front on MD 108, where properties are zoned commercial and residential. ... Under the provisions of the Village Overlay Zone, the residential portion of these sites is suitable for parking in conjunction with the current uses in the C-2 zone, without the necessity for obtaining a special exception. ... This will permit relocation and redevelopment of the existing commercial uses without a net increase in the overall amount of commercial zoning in the Sandy Spring Village Center. The Village Overlay Zone attempts to address parking concerns of local businesses by providing flexibility where parking can be located.

There is no such similar discussion related to the Ashton Village Center. These two sections of the Overlay Zone are based on recommendations for the Sandy Spring Village Center and do not provide Staff with the necessary recommendations to permit parking in connection with commercial uses on the R-60 zoned area of the subject site.

There is one last place in the Master Plan, in the Implementation section, which provides a reference to “flexibility” in design. In this case, it is with respect to the exact demarcation of the Overlay Zone boundaries.

From page 82:

Once the zone is adopted, the specific properties where it will be applied will be determined via the Sectional Map Amendment using the following guidelines:

- Commercial properties and adjacent residential uses where design flexibility is recommended in the Plan.
- Residential properties to maintain residential height limits consistent with the neighborhood character.
- Residential properties where flexibility in lot sizes is desirable.

As we have seen, the residential properties adjacent to the commercial properties within the subject site were specifically denied flexibility in integrating commercial and residential uses by the Council. But, based on the underlying zone, the maximum building height could be approved up to 40 feet during site plan review if it weren't for the limits of the Overlay Zone, which restrict all building heights to 35 feet if the Planning Board finds the additional height is compatible with the adjoining uses and is consistent with the intent of the master plan. Again Staff is left to conclude that this section of the Master Plan does not apply to the subject site, which was not designated a mixed-use area and, thus, cannot take advantage of the R-60 zoned area for commercial parking.

Because these particular allowances of the Overlay Zone do not apply to the subject site, the land use requirements of the underlying zones apply to all parking restrictions. In this case,

parking in connection with commercial uses is allowed in the R-60 Zoned portion of the site only be special exception.

**Sec. 59-C-1.31. Land uses.**

No use is allowed except as indicated in the following table:

- **Permitted Uses.** Uses designated by the letter “P” are permitted on any lot in the zones indicated, subject to all applicable regulations.
- **Special Exception Uses.** Uses designated by the letters “SE” may be authorized as special exceptions, in accordance with the provisions of Article 59-G.

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4plex	RMH 200
Parking of automobiles, off-street in connection with commercial uses.	P <sup>39</sup>	P <sup>39</sup>	P <sup>39</sup>	P <sup>39, 43</sup>	<sup>42</sup>	<sup>42</sup>	SE	SE		SE

In order to obtain the special exception use, however, the commercial use cannot be in the C-T or C-1 Zone unless they comply with a two grandfather clauses that are not relevant to the subject property.

**Sec. 59-G-2.39. Parking of automobiles, off-street, in connection with commercial uses.**

A special exception may be granted for off-street parking of motor vehicles in connection with commercial uses, subject to the following findings and requirements:

- (b) The commercial uses to be served by the facility are not in the C-T or the C-1 zone, unless the land in the C-1 zone complies with the exceptions to this provision stated in either subparagraph (h) or subparagraph (i), below.

Thus, a special exception for parking in connection with the commercial uses could not be approved on the R-60 zoned portion of the subject site. Thus, we conclude that the parking requirements for the C-1 Zoned commercial uses must be provided on the C-1 Zoned portion of the site.

Parking Garages in the C-1 Zone

This issue remains to be fully addressed by the Planning Board and the Applicant and Staff’s position remains unchanged from the March 30, 2007 Memorandum. The arguments against allowing parking structures/garages in the C-1 Zone are on pages 9-12 of that Memorandum.

The two substantive arguments put forward thus far to allow parking garages in the C-1 Zone are:

- 1) There are environmental benefits with respect to impermeable surface and site disturbance.
- 2) Parking garages have been allowed in C-1 zoned sites in the past.



The first argument is perfectly legitimate and in many cases probably preferred but still not permitted. The second argument, while more troublesome, does not mean that the approved projects should have been allowed or that our interpretation cannot evolve through closer analysis of these complicated zoning issues especially given that the issue has never been contested before the Planning Board in any of the prior cases.

Staff has received two letters from the Applicant that have been countersigned by the Montgomery County Department of Permitting Services. In response to the Applicant's position that structured parking is allowed due to their interpretation of Section 59-E-1.2, the signed stamp reads, "I have reviewed the content of this letter and agree that structured parking that is incorporated within buildings on a site to serve permitted uses is allowed in the C-1 Zone. David Niblock, Department of Permitting Services." In response to M-NCPPC Staff's presentation of their recommendation of denial of the subject site plan, a further signed letter states, "The Department of Permitting Services has final authority on the interpretation of the Montgomery County Zoning Ordinance to determine uses to be located in the C-1 Zone. Susan Scala-Demby, Department of Permitting Services." We respectfully disagree with this assertion and hold that, given the Planning Board's jurisdiction over Preliminary and Site Plan approvals, that it would be incongruent for Planning Board Staff not to have the ability to interpret zoning provisions that affect said Plans. Thus, we believe the interpretation and recommendation we have outlined is correct and supported in the language in the zoning ordinance.

### **Analysis of the Sandy Spring/Ashton Master Plan Design and Land Use Recommendations**

Unlike most site plan reviews, projects in the Sandy Spring/Ashton Rural Village Overlay Zone have specific findings directly tied to recommendations of the Master Plan:

Sec. 59-C-18.184. Site plan contents and exemptions.

In the course of site plan approval, the Planning Board must make a finding as to whether or not the proposed development substantially conforms with the design guidelines for new development contained in the approved and adopted Sandy Spring/Ashton Master Plan.

Sec. 59-C-18.186. Planning Board Approval.

The procedures for Planning Board approval under Section 59-D-3.4 are modified for this overlay zone to require the following additional findings:

- (a) The site plan is consistent with the recommendations in the approved and adopted Sandy Spring/Ashton Master Plan.

The relevant design guidelines and recommendations are found in the "Village Centers" and "Implementation" sections of the Master Plan (Appendix C). We have broken these guidelines and recommendations into three categories:

- 1) The rural village experience.
- 2) The rural village identity.
- 3) The existing Ashton Village center.

### The Rural Village Experience

According to the Master Plan, a key to the experience of the Village Centers is the perception one has of both Sandy Spring and Ashton upon arrival – what the Master Plan calls the “rural entries” along MD 108 and MD 650.

From page 29, underline added:

The rural entries along MD 108, Norwood/Dr. Bird Road, and Norwood Road separate the village centers from other nearby areas of settlement, such as the Olney Town Center and Cloverly. The entries create attractive entrances to the village centers and help establish the character of the areas. These roads are lined with homes of varied vintage, scattered vistas of open cropland and fields, woodland, hedgerows and some of the area’s institutions. The importance of the rural entry experience was recognized in the 1980 Plan and remains an important theme of this Plan.

From page 43:

The New Hampshire Avenue [MD 650] area contains one of the community’s most important roads and is the area most affected by change. It serves as an important rural entry to Sandy Spring/Ashton, a main street for the Ashton village center and a route for through traffic. Recent changes have raised significant community concerns about the area’s future ability to retain its rural character.

The important “gateway” areas for the subject site are on the southern end of the site along MD 650 and the eastern side of the site along MD 108. These areas, both of which comprise the R-60 zoned portion of the subject site, are indicated on both the Land Use Plan and the Village Centers map as “Rural (1 dwelling unit/acre)” and are not included in the “Commercial/Office” areas of those plans. Conversely, they are included within the Zoning Plan for the Village Centers, although they are designated as areas for “Residential, One Family”. These strips of R-60 within the Overlay Zone should provide the transition from rural to commercial based on this “entry” concept and the recommendations on page 39:

**Limit residential development in the southeast quadrant to single-family detached homes only, rather than townhouses.** This Plan recognizes that special exception uses may be appropriate as well. The existing zoning should be confirmed.

It seems most appropriate to establish the edges of the Ashton Village Center with one-family detached dwellings to integrate the site with the existing rural buildings and character,

while providing the necessary services that any rural village might rely on through the special exception process.

### The Rural Village Identity

Another key component of the village centers is the distinct separation of Sandy Spring and Ashton and the creation of a sense of identity. Development on the subject site will set the standard for the identity of Ashton for years to come.

From page 29:

#### **Village Centers**

**Objective: Ensure that the villages of Sandy Spring and Ashton maintain separate and distinct identities.**

The village centers of Sandy Spring and Ashton are located on the same roadway (MD 108) and lie less than one-half mile from each other. The centers have maintained separate identities because commercial uses are clustered within the villages and there is a low-density land use pattern between the villages. The following recommendations will help reinforce the separate identity of each village center.

The following sections apply to both village centers and are taken from Pages 31-32:

- Apply the new [Overlay Zone] to allow additional flexibility in development while providing the option of design review to ensure conformance with this Plan.
- Balance the need for increased road capacity along portions of MD 108 with the need to maintain a “main street” character on MD 108 within the village centers.
- Increases [in commercial density] need to be balanced with the Plan intent to maintain the small scale of the existing centers.
- Develop the new Rural Village Overlay Zone to include the following features to encourage coordinated design, simplify requirements and protect the viability of existing businesses.
  - Flexibility in parking requirements.
  - FAR of 0.75 to be calculated on the underlying commercial zone portion of the site.
  - Flexibility to increase the building height up to 30 feet on the commercial sites at site plan review.
- This Plan recommends the following development guidelines which, with design review, will help ensure that new development maintain the small scale envisioned for the village centers:

- Encourage use of traditional village design, such as height limits compatible with the Sandy Spring Historic District and buildings facing the main road.
- Encourage “active fronts” on buildings such as porches and street entrances.
- Encourage a land-use mix of stores and homes by maintaining the existing mix of commercial and residential zoning within the village centers.
- Create pedestrian “traffic” with uses and designs that invite frequent visits by all members of the community.
- Encourage stores and other uses that provide services to local residents and are at a compatible scale.
- Encourage use of the Sandy Spring Historic District as a source for design.
- Create small parking areas that are well-landscaped, preserve trees, and compatible with nearby uses both day and night.
- Place most off-street parking out of view of common space and active fronts, rather than between buildings and the street.

These recommendations can be summarized as requiring any proposed development within the Village Centers to provide a sense of place that is distinct, context-sensitive, small-scale, neighborhood-oriented, and pedestrian friendly. Further, the character of any such development should have a main-street ambiance, maintain the existing sense of scale, massing, and open-space, and generate minimal visual impacts from parking lots. In other words, the village identity is the antithesis of suburban development, which places buildings setback from the road with intervening parking lots, is large in scale, provides uses and services to regional populations, has no sense of context, and is indistinct from any other suburban development. The main points of the focus for the Village Centers are reiterated in the Implementation section of the Master Plan, which provides recommendations for the Overlay Zone.

From pages 80-81:

#### Implementation

#### Sandy Spring/Ashton Rural Village Overlay Zone

The purpose of the Rural Village Overlay Zone is to address issues related to enhancing rural village character and providing design flexibility. Rural Village Overlay Zone will help ensure the continuation of land uses and patterns that characterize rural settlements.

#### For Residential Only

- Flexibility to reduce lot sizes with site plan review to create better design, with flexible setbacks and zero lot line configurations, but with no change in density.

#### For Commercial

- Flexibility to create better design with site plan review.

- Flexibility in siting to allow parking in conjunction with commercial uses to float between certain adjacent properties to the most desirable locations on the site if the master plan so recommends.
- Height limit consistent with the Sandy Spring Historic District and an appropriate FAR limit for the size and scale of the village centers.
- Exclusion of new auto-oriented or typically large-scale uses that are inconsistent with traditional rural development patterns with flexibility to ensure the continuation of existing uses through grandfathering.
- Flexibility for on-street parking to count toward meeting the parking requirements for new development if so determined by the Planning Board at the time of site plan review.

The purpose of the overlay zone and the actual form that the zoning ordinance gave to these recommendations will be analyzed in the next section. For now, we will concentrate on a few basic parameters laid out in the master plan.

First, residential densities must remain the same albeit with smaller lot sizes, which is typical of a village area. Second, and most importantly, development, for which the Planning Board is not typically given much design oversight, must be subject to detailed design review. This leads to the last points: that flexibility for parking is only for “certain” properties as “the master plan so recommends” and that a “main street” feeling in the commercial areas includes on-street parking and eschews large, auto-oriented commercial centers that are inconsistent with traditional village patterns.

Given all these sections and various dictums, we will summarize the characteristics of a rural village as prescribed by the Master Plan:

- Create a defined edge with a sense of entry.
- Maintain the size and scale of the existing buildings.
- Maintain a significant amount of open space and rural landscape features.
- Minimize visual impacts of parking and keep parking areas small and well landscaped.
- Design buildings according to historic styles.
- Site buildings, drives, and open spaces based on historic patterns.
- Create a sense of a “main street” with on-street parking, active storefronts, sidewalks and pedestrian-oriented design.
- Allow for more flexibility than the underlying zones – which is typical of the way rural villages would have organically grown – but balance that flexibility with tighter design review.
- Provide services for local residents.

### The Existing Ashton Village Center

The last part of this section provides a basic overview of the existing village center because so many of the design guidelines are tied to the “existing size and scale” of the village center.

The following summary provides basic development data for the commercial core centered on the intersection of MD 108 and MD 650.

**Zoning:**

- Northwest quadrant: PD5 (not within the Overlay Zone)
- Northeast quadrant: C-2, General Commercial
- Southwest quadrant: C-1, Commercial/Office
- Southeast quadrant: C-1, Commercial/Office

**Building Coverage (approximate, based on net commercial area):**

- Northwest quadrant: 21%
- Northeast quadrant: 9%
- Southwest quadrant: 15%
- Southeast quadrant: 2%
- Proposed Development: 47%

**Largest Building (approx, square feet)**

- Northwest quadrant: 16,800
- Northeast quadrant: 6,000
- Southwest quadrant: 6,600
- Southeast quadrant: 2,800
- Proposed Development: 30,400

As we can see, the proposed development is nearly twice the size of the existing development in terms of total coverage and individual building footprints. The mass of such a building is out of character with the existing village fabric and the required supporting parking limits the ability to provide open space and rural landscape features.

Because the northeast quadrant is being reviewed at the same time as the subject site, we have a unique opportunity to establish a lasting character on two of the three quadrants of the Ashton Village Center. For example, buildings such as the Alloway and the proposed commercial retail building on the northeast corner of MD 650 and MD 108 have fronts on the street, with existing or proposed sidewalks along their frontage. This character should be unified throughout the village center. Although the Overlay Zone allows for a maximum FAR of 0.75, this scale of development should be limited to smaller commercial parcels where the master plan does indeed recommend parking on adjacent residential zones, viz., in Sandy Spring.

## **Analysis of the Sandy Spring/Ashton Rural Village Overlay Zone**

### **Section 59-C-18.181. Purpose**

It is the purpose of this overlay zone to:

- (a) Preserve and enhance the rural village character of the Sandy Spring and Ashton Village centers by ensuring an attractive and traditional pattern of houses, commercial establishments, open spaces and their relationship to roadways.
- (b) Encourage a compatible relationship between new or expanded houses or businesses and traditional neighboring structures that reflects the best of local village character, particularly in terms of scale, siting, design features, and orientation on the site.

Interpretation of Purpose

The traditional patterns in Ashton and Sandy Spring are created by individual buildings with intervening space and large amounts of open space and views to open space. One-family residential buildings are interspersed between and around commercial and office buildings in an ad-hoc and vernacular pattern. Many one-family detached houses have been converted for special exception uses. Roadway relationships should be tight to the main street and design features should be historic or historically inspired. Scale and siting are paramount to creating a sense of village character.

59-C-18.182. Regulations

- (a) Development standards residential zones:
  - 1. Land uses. All uses allowed in the underlying zone as set forth in Sec. 59-C-1.31.
  - 2. Development standards. The development standards are the same as those in the underlying zones, except as follows:
    - (A) [Not relevant.]
    - (B) [Irrelevant section.] Site plan review in accordance with the provisions of Sec. 59-C-18.174 is required.
    - (C) Building height: A building must not exceed a height of 35 feet.
- (b) Commercial development. Where a lot is zoned either partially or totally in a commercial zone the following regulations apply:
  - 1. Land uses. All permitted or special exception uses allowed in the underlying zones are allowed in the commercial portion of the overlay zone.
  - 2. Development standards:
    - (A) Where the property is in a commercial zone, the setback and green area standards of the underlying zone are the same as set forth in Div. 59-C-4. Building height must not exceed 24 feet, except that at the time of site plan review the Planning Board may allow additional height up to 30

feet if the board finds that the additional height is compatible with the adjoining uses and is consistent with the intent of the master plan.

(B) Floor area ration. The floor area ration of commercial uses is limited to FAR 0.75, and is computed only on the area of the underlying commercial zoned portion of the site.

(C) [Not relevant]

(D) In areas recommended in the Sandy Spring/Ashton Master Plan for mixed-use development, development should [be] consistent with the recommendations of the master plan. In the residential portions of the mixed-use areas, off-street parking for commercial uses is allowed without a requirement for approval of a special exception.

### Interpretation of Regulations

With respect to the subject site, residential development must be built according to the regulations of the underlying zone (although with some lot size exceptions that are not relevant to the subject site) except that building height is limited to 35 feet. The added requirement for conformance to Section 59-C-18.174(a) that,

“The Board must find that all retail uses proposed in new or renovated buildings must be directly accessible from a sidewalk, plaza, or other public space before approving a site plan for the neighborhood retail preservation overlay zone”,

only serves to bolster the case for a pedestrian-oriented retail environment and the preservation or creation of a large amounts of public open space

Commercial development is subject to the underlying zone’s requirement for green space and setbacks. Building height should be predominantly limited to two-stories, but allowed up to 30 feet if that third floor is judged to be more compatible with adjoining uses and remains consistent with the design guidelines and recommendations of the Master Plan; FAR is allowed up to 0.75. Commercial development must, in general, be consistent with the design guidelines and recommendations of the Master Plan and exceptions for commercial parking on residential sites is limited to sites designated as mixed-use areas in the Master Plan.

59-C018.184. Site plan contents and exemptions.

(b) A site plan for development in the Sandy Spring/Ashton Rural Village Overlay Zone must include: [1-11 are requirement details for submission.]

In the course of site plan approval, the Planning Board must make a finding as to whether or not the proposed development substantially conforms with the design guidelines for



new development contained in the approved and adopted Sandy Spring/Ashton Master Plan.

### Interpretation of Site Plan Review

The Planning Board is given an unusual amount of design review jurisdiction for projects within the Overlay Zone. As our previous discussion shows, there are numerous design guidelines brought up in the Master Plan and each of these must be analyzed and adherence to these guidelines must be assessed to make a finding of “substantial conformance”.

#### 59-C-18.185. Off-street parking and loading.

Parking must be provided in accordance with the provisions of Division 59-E with the following exceptions:

- (a) In the course of site plan review, the Planning Board may allow some on-street parking to fulfill the requirement for off-street parking to enhance compatibility, provide additional green space and reduce impervious coverage.
- (b) Properties in a residential zone that are designated in the Sandy Spring/Ashton Master Plan as suitable for mixed use or non-residential use may be utilized for off-street parking in connection with the commercial uses without the necessity for approval of a special exception under Sec. 59-G-2.39.

The Sandy Spring Ashton Rural Village Overlay Zone encourages the parking of vehicles in the side or rear yards. In addition, in order to reduce access points and thereby enhance safety, adjoining parking facilities may be required to provide internal connections. In exceptional circumstances, limited parking may be allowed in the front yard.

### Interpretation of Parking Recommendations

Parking should be limited to side and rear yards and along the streets to enhance the “main street” character of the village center and maintain a pedestrian-oriented atmosphere. Front yard parking is only allowed in “exceptional” cases.

#### 59-C-18.186. Planning Board Approval.

The procedures for Planning Board approval under Section 59-D-3.4 are modified for this overlay zone to require the following additional findings:

- (a) The site plan is consistent with the recommendation in the approved and adopted Sandy Spring/Ashton Master Plan;
- (b) The site plan meets all of the requirements of this overlay zone as well as the applicable requirements of the underlying zone; and

- (c) Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

### Interpretation of Approval Requirements

The Master Plan, as it was approved and adopted, is the guiding principle for development within the Sandy Spring/Ashton Rural Village Overlay Zone. This, in concert with the existing context vis-à-vis scale, detailing, massing, rural character, and established building patterns, should determine the character of all new development. Zoning requirements and compatibility with existing and proposed development also must be met.

### **Staff Recommendations for the Subject Site**

This final summary provides recommendations for the subject site based on our analysis of the Zoning Ordinance, the Sandy Spring/Ashton Master Plan, existing site conditions, the existing site context and the testimony from citizens.

- Required parking for commercial uses must be placed on the commercially zoned portion of the site and not within parking garages.
- There should be parking along the streets and this should be allowed to count towards the off-street parking requirement. This can safely be accomplished in this 30 mph zone by providing through lanes along with turn lanes and adding traffic-calming measures along MD 650 and MD 108.
- Parking should be provided behind buildings and in small, landscaped, interconnected lots.
- Buildings should be small in scale, generally around the limits of the existing retail buildings.
- Building details and designs should reflect the historic context of Sandy Spring.
- Open space, public space, views to natural features, and rural landscape characteristics should predominate.
- Streets should be lined with sidewalks, retail buildings, and residences with front porches and direct street access.
- Building heights should rarely exceed 24 feet in commercial areas.
- The 0.75 FAR is appropriate on small lots that can take advantage of adjacent parking, although a “critical mass” of retail will be required to keep the development viable.
- Sites should be pedestrian oriented with plazas, greens, and sidewalks on the streets and along retail buildings.
- Vehicular paving should be minimized and conflicts with pedestrian circulation should be avoided.
- The commercial area of the site should provide goods and services to the local community as well as public amenities typical of a small village.
- The residential area of the site should house one-family detached units, which may be developed as special exception uses.



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB Item # 10411  
4/12/07

**MEMORANDUM**

**DATE:** March 30, 2007

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief *RK*  
Catherine Conlon, Subdivision Supervisor *CC*  
Robert Kronenberg, Acting Site Plan Supervisor *RK*  
Development Review Division



**FROM:** Richard A. Weaver, Preliminary Plan Reviewer *RAW*  
Joshua C. Sloan, Site Plan Reviewer *JCS*  
Development Review Division

**REVIEW TYPE:** Preliminary & Site Plan Review  
**APPLYING FOR:** Subdivision to create one lot for a total of 100,094 square feet of mixed use development (including 59,450 square feet of retail, 23,973 square feet of office, 2,730 square feet of restaurant, and 13 residential dwelling units) on 8.10 gross acres. Parking waiver of ten spaces.

**PROJECT NAME:** Ashton Meeting Place  
**CASE #:** 120050060 (Preliminary) and 820060230 (Site)  
**REVIEW BASIS:** Chapter 50, Montgomery County Subdivision Regulations  
Chapter 59, Montgomery County Zoning Ordinance

**ZONE:** C-1, R-60, and Sandy Spring/Ashton Rural Village Overlay Zone  
**LOCATION:** Located in the southeast quadrant of the intersection of Ashton Road (MD 108) and New Hampshire Avenue (MD 650).

**MASTER PLAN:** Sandy Spring/Ashton

**APPLICANT:** Ashton Meeting, LLC  
**ENGINEER:** Macris, Hendricks and Glascock.  
**ATTORNEY:** Miller, Miller and Canby

**FILING DATE:** July 9, 2004 (Preliminary Plan)  
November 9, 2005 (Site Plan)

**HEARING DATE:** April 12, 2007

**RECOMMENDATION:** Denial of both the Preliminary Plan and the Site Plan

## **EXECUTIVE SUMMARY**

Staff has concluded that neither the preliminary plan nor the site plan can be supported as submitted for several reasons. Each of these issues will be discussed in detail and should be considered independently and on its own merits. Regarding our analysis and recommendation, the preliminary plan and site plan conclusions are one and the same.

### **Outline of Denial**

- 1) The plan does not comply with Section 59-C-18.18 - Sandy Spring/Ashton Rural Village Overlay Zone, of the Zoning Ordinance. The proposed development includes parking for commercial uses in residential zones. The allowance for such parking is subject to specific conditions, and this project fails to comply with those conditions.
- 2) The plan does not conform to specific language in Section 59-C-4.2 of the Zoning Ordinance related to the use of parking structures in the C-1 Zone. The proposed development includes a parking garage, which is not allowed as a permitted or special exception use in the C-1 Zone.
- 3) The proposed development does not substantially conform to the design guidelines for new development contained in the approved and adopted Sandy Spring/Ashton Master Plan and is not wholly compatible with the Master Plan.
- 4) The locations of buildings, structures, and pedestrian and vehicular circulation systems are not adequately safe and efficient as required by Section 59-D-3.4.(c) of the Zoning Ordinance. There are particular problems with the locations of buildings in relation to vehicular and pedestrian circulation patterns that should be reconsidered and conflicts between vehicular and pedestrian circulation patterns that should be avoided.
- 5) The plan fails to adequately protect environmentally sensitive areas as prescribed in Section 50-32(c) of the Subdivision Regulations. Structures, parking facilities, and storm water management facilities encroach into a wetland, wetland buffers, and stream buffers. Staff believes the encroachment is avoidable and unnecessary.

This staff report describes the existing site, the proposed development, and provides an analysis of the reasons for denial. It concludes with the necessary findings for both the preliminary and site plans.

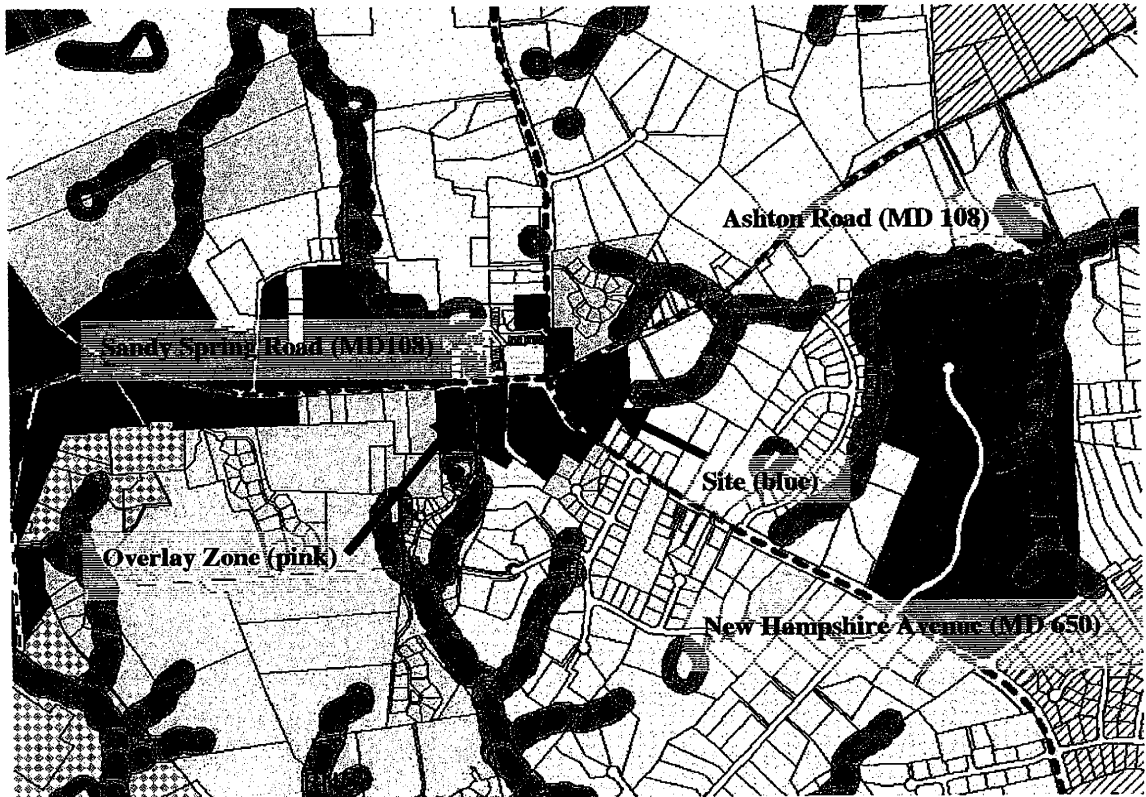
## **SITE DESCRIPTION**

### **Attachments**

- A. Vicinity Map
- B. Site Photos

### Location, Adjacent Uses, & Site Features

The Subject Property (Property) is located in the southeast quadrant of the intersection of New Hampshire Avenue (MD 650) and Ashton Road (MD 108). This site is located in the easternmost area of the Sandy Spring/Ashton Rural Village Overlay Zone (SSARVOZ).

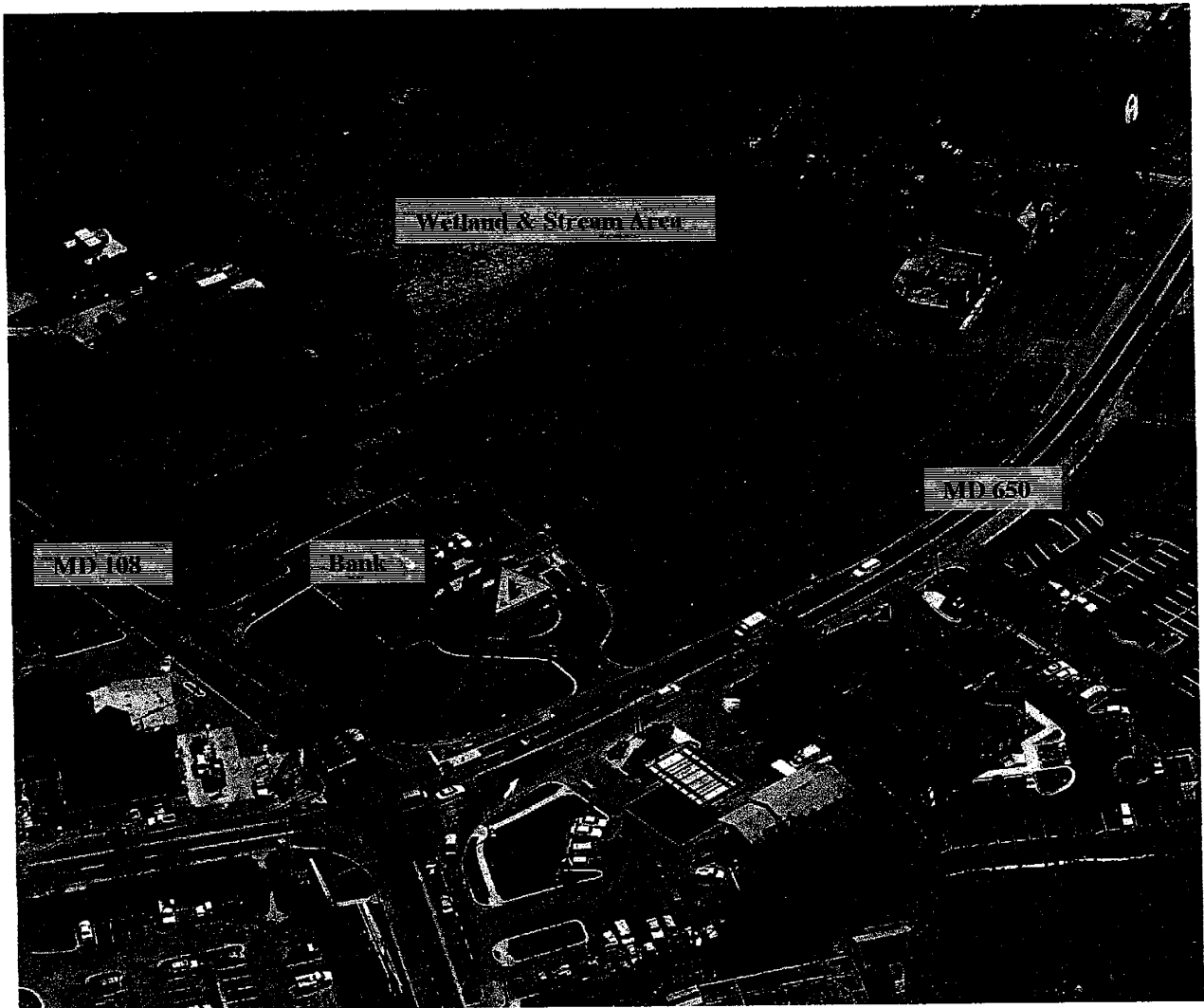


The Property is comprised of four platted properties identified as Parcel "F", Parcel "A", Outlot "A", Lot 1, and seven unplatted parcels (P456, P509, P457, P454, P411, P357 and P356) all shown on Tax Map page JT42. The total acreage of the Property is 8.1 acres of which 4.7 acres are zoned C-1 and 3.4 acres are zoned R-60; the net site area is 7.0 acres after right-of-way dedication. The Property is currently occupied by a Sandy Spring Bank located at the intersection of the two state highways; there is a small utility shed of unknown use located to the east of the bank. Three other structures were recently razed on the site.

Uses surrounding the site area as follows: to the north across MD 108 is a closed convenience store and gas station that dates back to the 1930's; to the west is a gas station at the intersection, the Cricket Book Store, and the Alloway office building. Directly south are scattered residential units, some of which house special exception uses; to the east is a PEPCO substation with low density residential beyond. In the northwest quadrant of the intersection of MD 650 and MD 108 there is a strip shopping center.

The Property's highest point is at the intersection of the two state highways. The grade then slopes downward towards the wetland and stream in the eastern corner. Most of the site is

mowed lawn with scattered trees. The wetland and environmental buffers are associated with a headwater Use IV-P stream that connects to the Patuxent River watershed. The Patuxent is a tributary to the Triadelphia and Rocky Gorge Reservoirs, which supply drinking water for parts of Montgomery, Howard, and Prince George's counties. A Category I conservation easement located on Outlot "A" protects a portion of the site's environmental buffer (28,110 square feet out of square feet 66,860 of onsite buffer area) and was created as part of a previous preliminary plan approval.



*Aerial view of site looking southeast.*

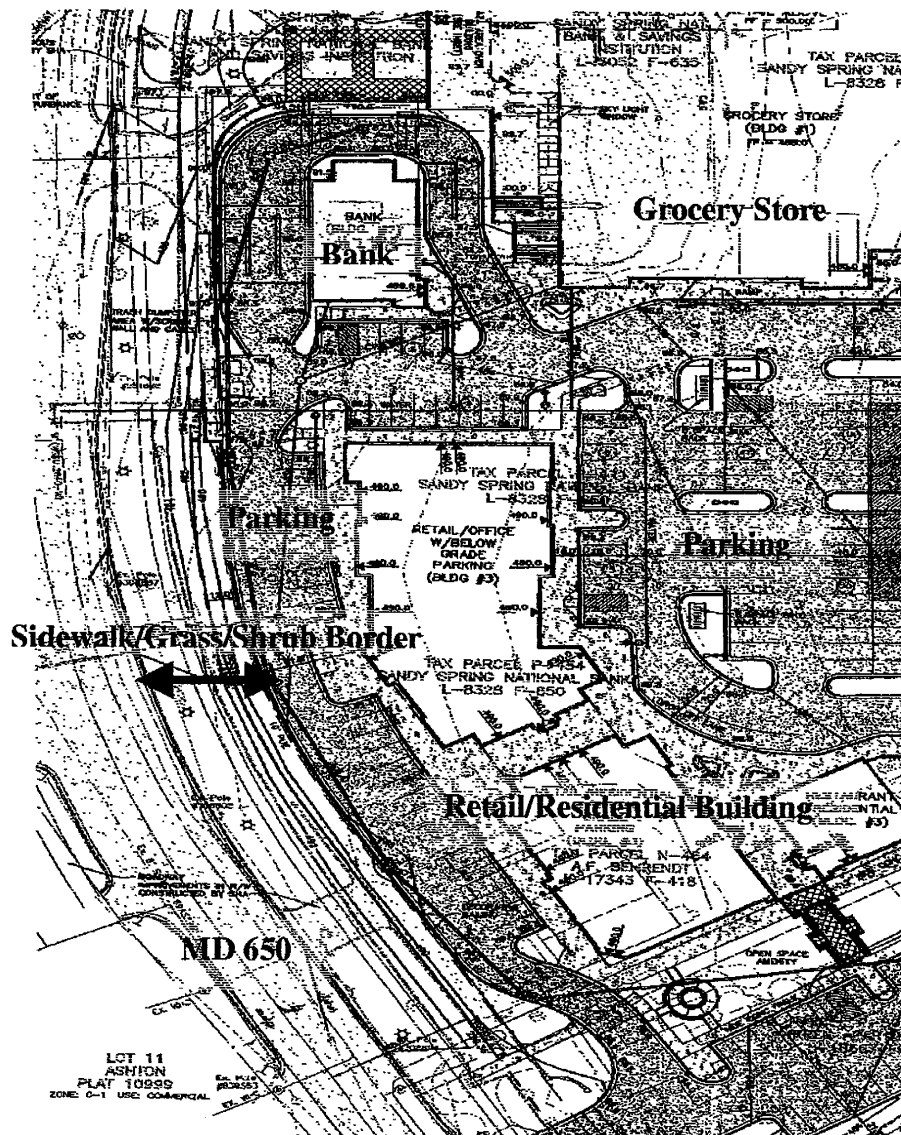
## **PROJECT DESCRIPTION**

### **Attachments**

- C. Preliminary Plan
- D. Site Plan

## Proposed Development

The application proposes to create one lot to accommodate 54,450 square feet of retail space (including 33,120 square feet for a grocery store); 23,973 square feet of office space; 2,730 square feet for restaurant use; and, 13 residential dwelling units (condominiums). The total floor area ratio (FAR) for the project is 0.49. The Maryland State Highway Administration (MDSHA) has approved access to the site at two locations: one on MD 650 and one on MD 108. The existing branch of the Sandy Spring Bank is to be rebuilt at the intersection of the two state highways as a separate, freestanding building with a below-grade, drive-through access. The grocery store is to be located to the east of the bank with its façade to the interior of the site. To meet certain master plan goals a strip of retail and office space was added along the back of the grocery store to activate the street front along MD 108. On-street parking was also added along MD 108 and has been approved by the MDSHA.



*Detail of Site Plan Along MD 650*

Along the MD 650 frontage there is a strip of retail, office, and restaurant space; this building is terminated by a community open space at its southern end. The 13 residential units will be located on the second and third floor of this structure. The building does not front directly on MD 650 - instead, a single loaded parking area with two-way traffic, a shrub border, grass strip, and sidewalk separate it from the road. The remainder of the surface parking is provided in the interior of the Property and is generally hidden from view from the adjacent roads. The plan also proposes 49 parking spaces in a subsurface structure under the retail/residential building along MD 650. This parking structure is to be used primarily by the residents of the 13 units and the owners or lessees of the retail stores but is open to the retail patrons. Access to the underground parking is immediately to the south of the restaurant.

The plan proposes significant dedications to the two adjacent state highways. The MDSHA has a design and funding in place for a significant upgrade to the intersection of MD 650 and MD 108 that is inextricably bound to this project. The applicant is required to provide certain improvements including left, through, and right-turn lanes on both eastbound and westbound MD108 and MD650. Sidewalks will also be required on both roads.

The landscape is enhanced with street trees along MD 650 and MD 108. The northwest corner of the property, directly on the intersection, is designed as a large green space with a small plaza connecting the bank and grocery store buildings as requested by members of the community. Two existing trees within this open space area will be saved. The green space adjacent to the retail/residential building is designed to provide passive recreational opportunities for residents and patrons. It will contain a fountain, pergola, plantings, and a lawn. Numerous plant beds and screening plants are used throughout the site to add visual interest and block views from the residential neighborhoods and into the parking lots.

Lighting is provided along both street fronts and throughout the site to ensure that the site provides safe and functional space at night. There will be no glare or excessive illumination on adjacent residential areas.

Most of the pedestrian paving is concrete or scored and tinted concrete. Stone benches are provided in the open space amenity area. The parking lot contains an area of permeable paving to mitigate some run-off. Stormwater management facilities are primarily housed under the parking lot and on an adjacent facility that SHA will construct.

## ANALYSIS

The following section describes the rationale for denial based on Zoning Ordinance requirements, Master Plan compliance, and Subdivision Regulations. It should be stated that this is an unusually complex case due to the difficulty of interpreting the particulars of the Zoning Ordinance, the Sandy Spring/Ashton Master Plan and the Rural Village Overlay Zone. For purposes of this report staff has concentrated primarily on an analysis of the issues that lead us to our recommendation of denial.



## ■ Zoning Ordinance Requirements

### Attachments

- E. Letter from Miller, Miller & Canby
- F. Letter countersigned by the Department of Permitting Services

The Sandy Spring/Ashton Rural Village Overlay Zone (SSARVOZ) was established in the Zoning Ordinance to ensure compliance and consistency with the recommendations of the Sandy Spring/Ashton Master Plan. Although the plan complies with some of these recommendations, it does not comply with two specific Zoning Ordinance stipulations.

#### *1. Parking for Commercial Uses in the R-60 Zone*

The plan proposes parking for commercial uses in the R-60 zoned portion of this property. In virtually all circumstances “Parking of automobiles, off-street, in connection with commercial uses” is allowed in the R-60 zone if approved by special exception (59-C-1.31(b)). In the cases where that commercial use is on land zoned C-1, however, section 59-C-4.345 states, “The off-street parking required by Article 59-E must be provided on land which is in the C-1 zone, except as required in the special exception provisions of section 59-G-2.39 or 59-G-2.40.” Section 59-G-2.39 describes the findings and requirements necessary to grant a special exception for off-street parking in zones where it is not permitted by right. Section 59-G-2.40 has no bearing on this case.

Section 59-G-2.39(b) requires that “the commercial uses to be served by the [parking] facility are not in the C-T or the C-1 zone unless the land in the C-1 zone complies with the exceptions to this provision stated in either subparagraph (h) or subparagraph (i)”. Neither subparagraph applies to this case. Consequently, if there were no further complications, parking in connection with the C-1 zoned uses on the R-60 zoned portion of the subject site would not be allowed.

Notwithstanding the requirements of the underlying zones, the Sandy Spring/Ashton Rural Village Overlay Zone (SSARVOZ) does, under specific circumstances, allow for parking related to commercial uses in the R-60 zone without the need to obtain a special exception. In particular, there are two sections of the Zoning Ordinance that make reference to parking “in connection with” or “for” commercial uses in residential zones. The first is in the section on Commercial development: Development standards, 59-C-18.182(b)(2)(D):

In areas recommended in the Sandy Spring/Ashton Master Plan for mixed use development, development should [be] consistent with the recommendation of the master plan. In the residential portions of the mixed-use areas, off-street parking for commercial uses is allowed without a requirement for approval of a special exception.

The second is in the section on Off-street parking and loading, 59-C-18.185(b):

Properties in a residential zone that are designated in the Sandy Spring/Ashton Master Plan as suitable for mixed use or non-residential use may be utilized for off-street parking in connection with commercial uses without the necessity for approval of a special exception under Sec. 59-G-2.39.

The relevant question is whether the subject property is in an “area recommended...for mixed use development” and/or whether it is a “property in a residential zone that [is] designated...as suitable for mixed use or non-residential use.” The latter question is easier to answer than the first.

Although the entire southeast quadrant of the intersection of MD 108 and MD 650 is mentioned with respect to the type of residential development that should occur, the properties on the subject site, including those in a residential zone, are not designated as suitable for mixed use or non-residential use in the Sandy Spring/Ashton Master Plan (SS/AMP). Therefore, section 59-C-18.185(b) cannot apply to this project. The question could be raised as to whether this section is thus rendered meaningless or can be applied to other properties. In fact, page 34 of the SS/AMP designates three properties as suitable for parking in connection with commercial uses.

To allow better design, incorporate the village green and accommodate the new fire station, this Plan recommends allowing parking in connection with the commercial uses on the properties east of Brooke Road, which also front on MD 108, where properties are zoned commercial and residential.

So, section 59-C-18.185(b) of the zoning ordinance can be applied to certain properties in the SSARVOZ but cannot be applied to the subject property.

The former question relating to whether the subject site is an area recommended in the Sandy Spring/Ashton Master Plan for mixed use development is harder to answer, but there are several sections of the master plan that have been analyzed. The only mention of anything akin to “mixed use” is on page 31 in the section on development guidelines that apply to both village centers: “Encourage a land-use mix of stores and homes by maintaining the existing mix of commercial and residential zoning within the village centers.” This implies that businesses should or could be next to homes next to institutional uses, etc. according to the existing zoning pattern. But does this also imply that the entirety of both village centers is to be considered “mixed use”? If this is the case, then any “residential portion” of the village centers is open to parking for commercial uses without the need for a special exception and staff does not believe this to be the intent of the master plan.

Further, it seems illogical to say, “in areas recommended in the SS/AMP” if the entire area is thus recommended. It can be argued that the village centers are such areas and are distinct from other areas of the overlay zone but there is no such designation of a mixed-use project for this site to take advantage of the parking provision within the master plan. In fact, prior to approval, the Montgomery County Council removed language such as “flexibility in siting commercial and residential uses on adjacent properties in designated areas” and more

importantly modified the second bullet under the Recommendations for the Ashton Village Center as follows:

**Limit residential development in the southeast quadrant to single-family detached homes only, rather than townhouses.** This plan recognizes that special exception uses may be appropriate as well. ~~This plan recommends that there be flexibility in placement of commercial uses in the southeast quadrant to encourage design that better integrates residential and commercial uses. This flexibility is allowed through the proposed Sandy Spring/Ashton Rural Village Overlay Zone.~~ The existing zoning should be confirmed. (Page 20 of the Resolution, Page 39 SSAMP)

By removing the third and fourth sentences of the recommendation, the Council directly addressed this area of the Overlay Zone and removed any recommendation for mixed use on the Property and thereby removed any designation that would allow parking for commercial uses in the residential zones. Due to an unfortunate editing error, the text remains in the master plan as originally written, not as amended and approved by the Resolution.

Another example of the Council's intent is seen in their editing of the third sub-bullet in the development guidelines of the Recommendations for the Village Centers:

Encourage a land-use mix of stores and homes by maintaining the existing mix of commercial and residential zoning within the village centers together. ~~A mix should be combined within sites and buildings to increase activities.~~ (Page 16 of the Resolution, Page 31 SSAMP)

The underlined section was added by the Council and the strikethrough was removed. Thus, we conclude that the "land-use mix" is in relation to separate but adjacent uses as reflected by the zoning patterns and the parking in connection with this C-1 property is not allowed on this portion of R-60 land.

## *2. Parking structures in the C-1 Zone.*

As mentioned in the project description, a below-grade parking structure takes up the entire cellar area of the retail/residential building. There are six reasons that the Zoning Ordinance does not allow such a parking garage on the is particular site and C-1 Zones in general. But first we provide a synopsis of the applicant's line of reasoning; the full explanation is in their attached letter, which is countersigned by the Department of Permitting Services.

The applicant argues that structured parking is allowed on the subject site because it is part of the off-street parking requirements for the site. The first premise of this argument is that Section 59-C-4.2, Land Uses, which are allowed in commercial zones, states that, "Parking of motor vehicles, off-street, in connection with any use permitted," is permitted in all of the commercial zones. The second premise is that "Off-street" parking is interpreted to allow surface parking and/or structured parking that supports any use permitted on site. To support this interpretation, the applicant references section 59-E-1.2, which states, "All garage or other

structured space allocated for the parking of vehicles in basements, on the roofs of buildings, or otherwise within buildings shall be considered part of the required off-street parking facilities.” Thus, the term, “off-street parking facilities”, is partially defined through section 59-E-1.2 to include garages, structures, rooftop parking, and in fact, any parking on or within a building. Therefore, the conclusion is that parking structures are allowed in connection with any use permitted.

Staff strongly disagrees, finding six reasons that the Zoning Ordinance does not allow such a parking garage on this particular site and C-1 Zones in general. These reasons are enumerated below.

- 1) *If parking garages are allowed everywhere off-street parking in connection with permitted uses is allowed, parking garages would be permissible in virtually every zone.*

For example, Section 59-C-1.13, Land Uses, for residential zones, includes the same text: “Parking of motor vehicles, off-street, in connection with any use permitted in the zone.” And, as in the commercial zones, this use is permitted for all residential zones. Thus, under the logic of the applicant’s argument, one could argue that “structured parking” is allowed in any residential zone. An identical argument and inference can be made in every industrial zone and every agricultural zone. These are zones that do not offer any garage parking as a possible permitted use and for good reason because parking structures allow more vehicles to take up less land area. This, in turn, impacts how much density can be placed on any given site. Clearly, limiting parking to surface parking is one means to limit the density allowed in those zones - especially in zones where there is no development standard concerning floor area ratio or dwelling units per acre.

- 2) *If we follow the logic of the applicant’s argument further, several sections of the Zoning Ordinance are rendered meaningless.*

Most notably, the several definitions of “Automobile, Garage, Group/Private/Public” in section 59-A-2.1 are rendered meaningless. In fact, the entire row of the land use table for “Parking garages, automobile” becomes meaningless. This is implied by the fact that we now have a definition of off-street parking, which includes “garages, structures, etc.” and it is used to infer an allowed use through the “Parking, off-street...” land use. Thus, we circumvent the land use restrictions on parking garages, which is limited to several specific zones, such as C-P, C-2, most CBD, and several MX zones. Also, because there is not a definition of “Parking Structure”, we should instead look to the specific provisions in the Zoning Ordinance as is and not create new terms and definitions or render existing ones meaningless.

- 3) *The provision for off-street parking is for permitted uses, not those allowed by special exception.*

Even if one were to accept the Applicant's position that the "off-street" use controls, its argument still would not endure. Section 59-C-4.2, Land Uses., which are allowed in commercial zones, states that, "Dwellings" in the C-1 zone may be allowed only by special exception. Dwellings are not a "permitted" use, and, consequently, parking for dwellings is not a permitted use and it doesn't seem that the use, "Parking of motor vehicles, off-street, in connection with any use permitted," applies to this set of facts, namely, the parking is for dwellings which are allowed only by special exception.

4) *This parking structure is not an accessory use or accessory building.*

Commercial and multi-family parking garages, in particular garages or structures with more than six (6) spaces, are not accessory buildings: they are built only when the subject site does not allow for surface parking due to area or aesthetic/compatibility constraints. An accessory building is "A building subordinate, and located on the same lot with, a main building, the use of which is clearly incidental to that of the main building or the use of the land, and which is not attached by any part of a common wall or common roof to the main building". (Section 59-A-2.1.) ("Subordinate means that the footprint of the accessory building is smaller than the footprint of the main building". (ibid)) Meeting the required parking standards for commercial or multi-family use of the land is not an incidental matter. Nor are they an accessory use when they are provided for uses that would not be viable without them. In that case they become necessary and, thus, are not "incidental" to the development.

5) *The Zoning Ordinance uses limitations on parking to limit density.*

In the specific case of the C-1 zone, the distinct purpose of the zone, which has no FAR limit - only height, setbacks, green area and land use restrictions, is to "provide locations for convenience shopping facilities in which are found retail commercial uses which have a neighborhood orientation and which supply necessities usually requiring frequent purchasing with a minimum of consumer travel. Such facilities should not be so large or so broad in scope of services as to attract substantial amounts of trade from outside the neighborhood." Limiting parking by prohibiting parking garages is one way to limit these larger scales.

6) *Last, there is a more reasonable interpretation of Section 59-E-1.2.*

Although parking is allowed for any permitted use, and garages or other structures are considered part of the required off-street parking facilities, this does not mean that garages are permitted anywhere off-street parking is required. This logic would suggest that garages are allowed in the residential, agricultural, and industrial zones, among others, because they also allow, "parking of motor vehicles, off-street, in connection with any use permitted", even though the table is silent on garages. With respect to the land use sections for most zones, the ordinance states, "No use is allowed except as indicated in the following table,"

but the logic stated above would allow garages. The intention of Section 59-E-1.2 is simply that parking within buildings or on their roofs must be considered by the reviewing agency when analyzing a plan for compliance with section 59-E provisions. Further, that section requires that even if there is a garage or structure, one must submit a parking facilities plan in conformance with section 59-E; it doesn't permit the construction of a garage or structure to meet minimum parking requirements. This section does not deal with permitting uses - it is concerned with the standards and requirements for all off-street parking, regardless of type.

The proposed structure is a parking garage and is subject to the land use table for commercial zones. It is Staff's position that, on this issue, the zoning ordinance as it currently stands is unambiguous and does not allow parking garages as a permitted use in the C-1 zone.

### **■ Master Plan Compliance**

#### **Attachments**

G. Memorandum from Community Based Planning

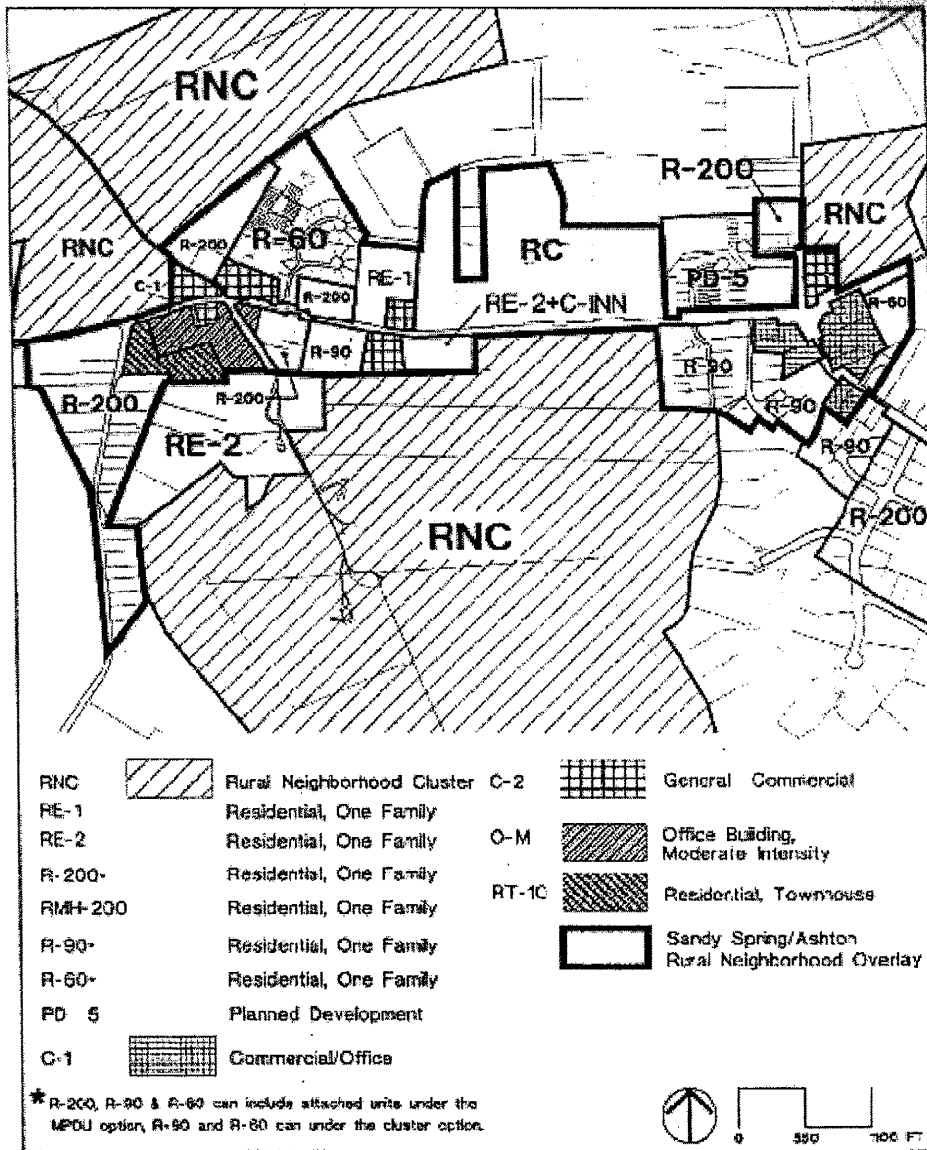
#### **Consistency with the Master Plan and Compliance with Design Guidelines**

The Sandy Spring/Ashton Master Plan was approved and adopted in 1998 and is the basis of two findings that are required by the Sandy Spring/Ashton Rural Village Overlay Zone (SSARVOZ). Community Based Planning (CBP) has done an excellent job in depicting the struggles the applicant, the community, and staff have had in trying to decipher the various pertinent issues. Their full memorandum is attached.

In brief, staff is of the opinion that the proposed development complies with the larger land use vision of the master plan and is consistent with many of its goals and recommendations. As CBP has noted, the recommendations of the master plan "are at best ambiguous and at worst contradictory and inconsistent". With respect to Zoning Ordinance section 59-C-18.186(a) that states that the site plan must be found to be "consistent with the recommendations" in the master plan, we find this to be generally true regarding land use and redevelopment issues. There are other issues of consistency, however, that are not met by this project including scale, functional design, and regulatory concerns.

ZONING PLAN FOR THE VILLAGE CENTERS

FIGURE 17



There is a more substantial problem with Zoning Ordinance section 59-C-18.184(b), which requires that any proposed development must “substantially conform with the design guidelines” in the master plan. In this case, there are several reasons why this finding cannot be made. There are several design guidelines specifically mentioned in the master plan:

- Provide attractive rural entries along roads leading to Sandy Spring and Ashton village centers. (Pg. 9).
- Ensure that the villages of Sandy Spring and Ashton maintain separate and distinct identities. (Pg. 29)

- Balance the need for increased road capacity along portions of MD 108 with the need to maintain a “main street” character on MD 108 within the village centers. (Pg. 31)
- Balance increased commercial density with the intent to maintain the small scale of the existing village centers. (Pg. 31)
- Use traditional village design. (Pg. 31)
- Encourage active fronts on buildings, such as porches and street entrances. (Pg. 31)
- Create pedestrian traffic with uses and designs that invite frequent visits by all members of the community. (Pg. 32)
- Encourage stores and other uses that provide services for local residents and are at a compatible scale. (Pg. 32)
- Create small parking areas that are well landscaped, preserve trees, and compatible with nearby uses both day and night. Place most off-street parking out of view of common space and active fronts, rather than between buildings and the street. (Pg. 32)
- Maintain the existing scale of Ashton village center and encourage improvements to its character. (Pg. 38)
- Exclusion of new auto-oriented or typically large-scale uses that are inconsistent with traditional rural development patterns. (Pg. 81)

The proposed development provides the architectural character and interest appropriate to a village center and creates a separate and distinct aesthetic for Ashton. It does not, however, provide the recommended scale and active main-street the master plan envisions. In particular, the mass of the grocery store is inconsistent with the “small scale of the existing village centers”. Further, the separation of the buildings along MD 650 from the street does not provide “active fronts” or “street entrances” that would help “create pedestrian traffic”, whereas these exact features are provided along MD 108. And while the architectural details may improve the character of the village center and are based on traditional design motifs, the layout and massing is not in keeping with traditional rural development patterns. This is especially true with regard to the large-scale, auto-oriented nature of the project. Last, the parking in front of the buildings along MD 650 minimizes street activity and cuts pedestrians off from the site.

## ■ Environmental

### Attachments

- H. Memorandum from Environmental Planning
- I. Biota Environmental Resource Functional Assessment Report

### Compliance with Environmental Guidelines & Regulations

Environmental staff recommends denial due to the avoidable and unnecessary encroachments into the wetland, wetland buffers, and stream valley buffers on the Property based on the provisions of Section 50-32(c) of the Montgomery County Subdivision Regulations. Despite the fact that the proposed development has an underground parking facility, parking in the residential portion of the site, and requests a waiver of the required number of parking spaces, the project continues to rely on excessive grading, fill, and paving in the environmentally sensitive areas. This, in concert, with the design guideline concerns discussed above, reinforces



our position that the scale of the proposed development is inconsistent with contextual and site constraints.

The applicant maintains that the encroachment of the building and parking facilities into the wetland and its buffer are necessary and that they have exhausted all efforts to completely avoid the environmentally sensitive areas. Staff contends that the encroachments are avoidable and can be eliminated, with the realization that it may have significant implications for the viability of the grocery store and perhaps the economic viability of the project as a whole. Throughout the review of this plan, Environmental Planning staff has been involved in numerous meetings and negotiations with the applicant and concerned citizens. Their memorandum with detailed analyses and conclusions is attached.

In their assertion that the encroachments are necessary and unavoidable, the applicant has proposed a plan to mitigate the encroachment. The mitigation plan includes the revitalization of wetland areas and buffers, considerable afforestation, and improved water quantity and quality control. The applicant's consultant provides the following summary to the attached report:

In summary, the results of this environmental functional assessment reveal that the proposed improvement of the property will not have any adverse environmental impact upon the primary functions the existing wetlands provide. Through sound site design and the incorporation of innovative stormwater management practices, the ability of the wetlands to be retained on-site to provide a groundwater recharge functional benefit during small rainfall events, as well as their ability to provide groundwater discharge during larger rainfall events has been preserved and enhanced. In addition, the wetlands ability to provide sediment retention and pollution filtering, natural flood control and water quality improvements has been persevered [sic] and enhanced. The streambank stabilization, wildlife habitat and recreational amenities the existing wetland provide are generally characterized as of low value and will not be adversely impacted in association with the proposed site improvements. The proposed management of off-site stormwater run-off in combination with forested wetland mitigation and off-site reforestation serves to significantly enhance these functional benefits and, thus, provides full mitigation for all jurisdictional impacts associated with the project.

Staff respectfully disagrees with the proposal to mitigate the impacts. Based on the importance of the on-site headwaters, the uncertainty as to whether groundwater recharge will be sufficiently maintained by the proposed mitigation, and due to the amount of imperviousness proposed we believe that the recommendations of the relevant environmental regulations and guidelines should be strictly upheld.

#### **■ Citizen Correspondence and Issues**

Staff has provided the Planning Board with a comprehensive set of emails and letters on the proposed development. Given the volume of the correspondence it is not possible to address each and every concern. The Community Based Planning memorandum, attached to this report,

provides a very good synopsis of the evolution of this plan. The community has been extremely active in the review and involvement of this property. It is exceedingly clear that the citizens believe this property to be the cornerstone of the Ashton Village Center and that the form of its development is important to the success of "downtown" Ashton as a livable and economically viable community. To summarize, the citizens that we have heard from come from three camps:

- 1) Oppose the proposal citing that it is too big for the site and does not live up to the vision of the master plan as local service, rural village.
- 2) Support the concept of a mixed use, village center with a grocery store but at an appropriate size and scale that protects the environmental resources.
- 3) Support the plan as proposed.

It is difficult to give the Planning Board a sense of the degree of support from each camp. Suffice to say that staff has heard from a critical mass from each perspective, some camps having swapped members as the plan has evolved. It is safe to conclude that through the efforts of the applicant, they have seemingly won over more citizens than they have lost. In the numerous meetings with citizens on the plan, it is a rare occurrence to have ever made any one group entirely happy, but most understand that the Property does have some level of development potential and that if this plan is, in fact, denied, a new plan will be submitted possibly for something other than what is now proposed.

## **■ Transportation**

### **Attachments**

#### J. Memorandum from Transportation Planning

A traffic study was required for the subject development since it would generate 30 or more peak hour trips. The Transportation Planning Section of the County-Wide Planning Division evaluated the preliminary plan and traffic study. The recommendation for the project is conditional approval.

## **■ Concurrent Review**

### **Special Exception**

There is a current application for a Special Exception (S-2683) submitted for review. The special exception is a request to allow residential dwellings in the C-1 zoned land on the subject site. The applicant has decided to withhold pursuit of this approval due to the staff recommendations of denial of the Preliminary and Site Plans. If the Preliminary and Site Plans are ultimately approved, the Planning Board will need to hold a hearing on this Special Exception use.

## FINDINGS

### **■ Preliminary Plan Review**

#### **Compliance with the Subdivision Regulations and Zoning Ordinance**

This application has been reviewed for compliance with the Montgomery County Code, including Chapter 59, the Zoning Ordinance and Chapter 50, the Subdivision Regulations. As detailed and discussed in this staff report, there are significant inconsistencies between the plan and the County Code.

1. *The proposed development does not comply with Section 59-C-18.18. Sandy Spring/Ashton Rural Village Overlay Zone of the Zoning Ordinance.*

The proposed development includes parking for commercial uses on residential zones. The allowance for such parking is subject to specific constraints and this project fails to meet those constraints.

2. *The proposed development does not comply with Section 59-C-4.2. Land Uses of the Zoning Ordinance*

The proposed development includes a parking garage, which is not allowed as a permitted or special exception use in the C-1 Zone.

3. *The preliminary plan does not meet all of the applicable environmental requirements as stipulated in Section 50-32(c) of the Subdivision Regulations.*

The plan fails to adequately protect environmentally sensitive areas including wetlands, wetland buffers, and stream buffers.

### **■ Site Plan Review**

#### **Compliance with the Zoning Ordinance, Master Plan, & Applicable Environmental Requirements**

1. *The site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan;.*

An approved development plan or a project plan is not required for the subject development. A special exception is required to permit residential dwellings on the C-1 area of the subject site according to section 59-C-4.2.

2. *The Site Plan does not meet all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The site plan meets many of the development standards for density, setbacks, building heights, and green space of the C-1, R-60, and Sandy Spring/Ashton Rural Village Overlay zones. The site plan does not, however, meet all of the requirements of these zones as we discussed in the Analysis section of the Staff Report. A statement of our findings regarding the overlay zone is provided below.

The site plan does not comply with certain land use requirements of the underlying C-1 or R-60 zones. In this instance, the proposed development includes a parking garage, which is not allowed by permit or by special exception in the C-1 zone. The detailed explanation of this issue is in the Analysis section of the Staff Report.

3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are not adequate, safe, and efficient.*

- a. Locations of Buildings and Structures:

The locations of the building and structures along MD 108 are adequate, safe, and efficient with respect to basic design parameters. With respect to their mass and the consequent impacts on village character and wetland encroachments, however, the location is incompatible with the site context.

The locations of the buildings, structures, and pedestrian and vehicular circulation systems along MD 650 are neither safe nor efficient. The duplication of streetlights and pedestrian sidewalks as well as the single-loaded parking in front of the storefronts are an inefficient use of resources and space. This design unnecessarily adds to impermeable surface and decreases the main street “walkability” of the site. This is especially true on a site with related environmental constraints.

Staff recommends that the buildings be pulled up to the street to provide a more efficient and safe pedestrian and vehicular environment as well as a safer, more efficient and more adequate in terms of environmental and site context.

- b. Open Spaces:

The plan proposes 21% of the site to be dedicated green space. This space is composed primarily of the open-space amenities at both ends of the buildings along MD 650 and the wetland and stream areas.

- c. Landscaping and Lighting:

The proposed landscaping on the site consists of street trees along MD 650 and MD 108; shrub borders along the parking lots adjacent to these roads; interior

landscape beds; trees and shrubs within the parking lot islands; and various deciduous and evergreen border plantings around the perimeter of the site.

The lighting plan consists of streetlights along MD 650 and MD 108; interior lamps and fixtures along all of the pedestrian paths; and parking lot fixtures on 25-foot poles. The streetlights are colonial in style, while the parking fixtures are standard commercial box fixtures. As noted in the Analysis section, the lighting will not produce excessive glare or illumination on adjacent residential areas.

d. Recreation Facilities

Recreation facilities are not required for the proposed development.

e. Pedestrian and Vehicular Circulation Systems

Access points to the site are to be provided from MD 650 and MD 108. These have been negotiated with SHA and are adequate, safe and, efficient.

The internal pedestrian and vehicular circulation is not adequate, safe, and efficient. There are two safety issues that are not resolved. The first is that pedestrians and bicyclists must cross traffic twice – across MD 650 and the internal parallel drive aisle – to get to the retail and residential building. Potential conflicts between pedestrians, bicyclists, and vehicles could be avoided by removing the access road and locating the buildings directly along MD 650. There are further complications with the proximity of the drive aisle to the drive-through egress, two dumpsters and a handicapped access ramp. The second safety issue is that traffic turning into the shopping center from MD 650 can immediately turn left into a parking area potentially backing traffic up into the state road as well as creating potential conflicts with pedestrians and vehicles coming in into and out of the various parking drive aisles and sidewalks at this point. Given the amount of traffic on MD 650 and the projections for trips in and out of the center, we recommend that this area be reconfigured to direct traffic further into the site to avoid such conflicts.

The associated bike paths and sidewalks that will be undertaken by SHA and DPWT are discussed in the Transportation Planning Memorandum. Interior sidewalks around the perimeters of the retail and residential buildings provide an adequate, safe, and efficient pedestrian environment with the notable exception of the problems in front of the buildings along MD 650.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The structures and uses proposed by the subject site plan are larger in scale and mass and have proposed uses that are not compatible with the rural village context and the existing small scale of the village center. A future plan that is less dense

could comply with the parking limitations and may well be able to avoid the environmentally sensitive wetlands and buffers on the site.

5. *The Site Plan does not meet all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

As the discussion above and the detailed memorandum from Environmental Planning Staff make clear, the site plan does not comply with the applicable environmental requirements and guidelines for Montgomery County. Specifically, the proposed development does not provide adequate mitigation measures to protect environmentally sensitive areas as recommended by Section 50-32(c) of the Subdivision Regulations. Additionally, it is inconsistent with the Planning Board's Environmental Guidelines and the Functional Master Plan for the Patuxent River Watershed.

The proposed stormwater management concept consists of (1) on-site channel protection measures via underground storage and surface ponds; (2) on-site and off-site water quality control via stormfilter and a water quality inlet pretreatment. The stormwater management concept was approved by the Montgomery County Department of Permitting Services on December 22, 2006.

6. *The proposed development does not substantially conform with the design guidelines for new development contained in the approved and adopted Sandy Spring/Aston Master Plan as required by Section 59-C-18.184(b).*

The proposed development does not maintain a "main street" character along MD 650 as it does along MD 108. Instead the land use pattern is more suburban than village oriented in nature. The commercial density is out of balance with the small scale of the existing village center. While providing aspects of traditional village design, the lack of active fronts and street entrances diminishes the rural village character emphasized by the master plan. The pedestrian environment, although adequate internally, could be more inviting from the perspective of the surrounding village. Also, the services provided are much more regional in their purpose than local. This auto-oriented large-scale use is specifically excluded by the master plan due to its inconsistency with traditional rural development patterns. Finally, the parking areas are quite large and are placed adjacent to or in front of storefronts rather than behind the buildings.

7. *The site plan is not wholly consistent with the recommendations in the approved and adopted Sandy Spring/Ashton Master Plan.*

The site plan is generally consistent with the land use recommendations of the master plan, but fails to satisfy other recommendations, such as the design guidelines, parking restrictions, and the village scale as we have detailed in the Analysis.

8. *The site plan does not meet all of the requirements of the Sandy Spring/Ashton Rural Village Overlay Zone as well as the applicable requirements of the underlying zones.*

As detailed in the Analysis section of the Staff Report, while most of the requirements of the overlay zone and underlying zones are met, the proposed development includes two uses that do not comply with the Zoning Ordinance. As we discussed above, the proposed development includes a parking garage in the C-1 Zone, which is not permitted by right or special exception. Also, the proposed development includes parking for commercial uses on the R-60 Zoned portion of the subject site. This is not allowed because the property is not designated by the master plan as appropriate for such a use and because the area of the overlay zone is not recommended as a mixed-use area. That is, because the master plan specifically indicates separate land use mixes according to the standards of the existing zoning, the recommendations of flexible uses do not apply to this site.

## **CONCLUSION**

Staff concludes that preliminary plan 120050060 does not comply with certain sections of the Montgomery County Zoning Ordinance and sections of the Subdivision Regulations. Specifically, the plan fails to comply with Sections 59-C-4.2 and 59-C-18.18 of the Zoning Ordinance, both of which affect the ability to provide adequate parking on the project. Because the project continues to encroach into wetlands, wetland buffers, and stream buffers with what staff believes to be otherwise avoidable encroachments, staff contends that the plan does not comply with Section 50-32(c) of the Subdivision Regulations which require protection of environmentally sensitive areas.

Staff also concludes that site plan 820060230 does not substantially conform with the design guidelines for new development contained in the approved and adopted Sandy Spring/Aston Master Plan and is not wholly consistent with the Master Plan recommendations. The location of the buildings and structures is not safe and efficient and the plan as proposed is not compatible with the rural village concept.

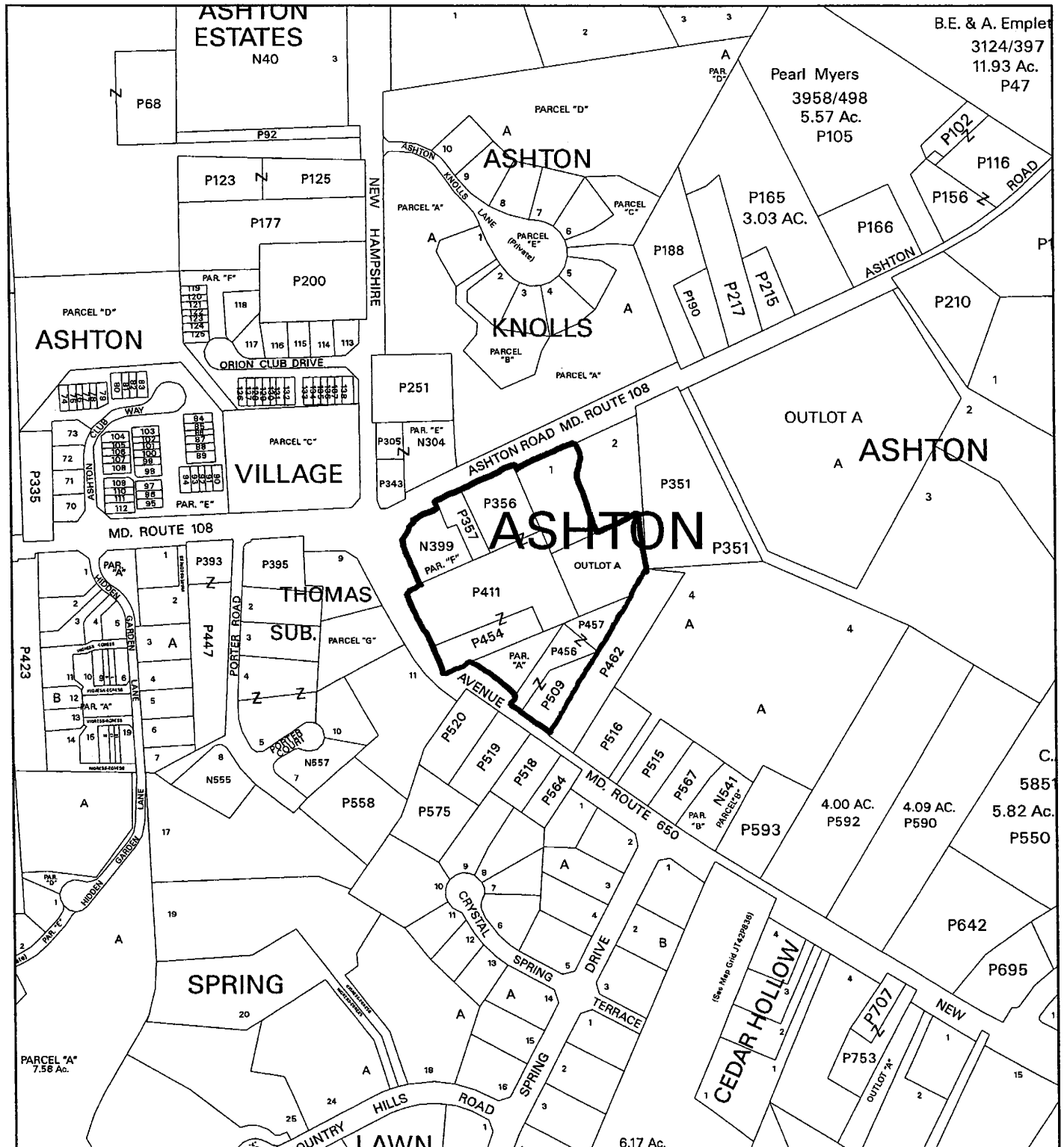
For all of these reasons, the development shown on the plan is too intense for this property and is recommended for denial. A future plan with less density should be able to comply with the parking limitations, avoid the environmentally sensitive wetlands and buffers on the site, and be more in keeping with the intent of the Rural Village Overlay Zone.

## **Attachments**

- A. Vicinity Map
- B. Site Photos
- C. Preliminary Plan
- D. Site Plan
- E. Letter from Miller, Miller & Canby
- F. Letter countersigned from the Department of Permitting Services
- G. Memorandum from Community Based Planning
- H. Memorandum from Environmental Planning
- I. Biota Environmental Resource Functional Assessment Report
- J. Memorandum from Transportation Planning



# ASHTON MEETING PLACE (1-05006)



Map compiled on August 02, 2004 at 10:46 AM | Site located on base sheet no - 224NW01

## NOTICE

The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland -National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

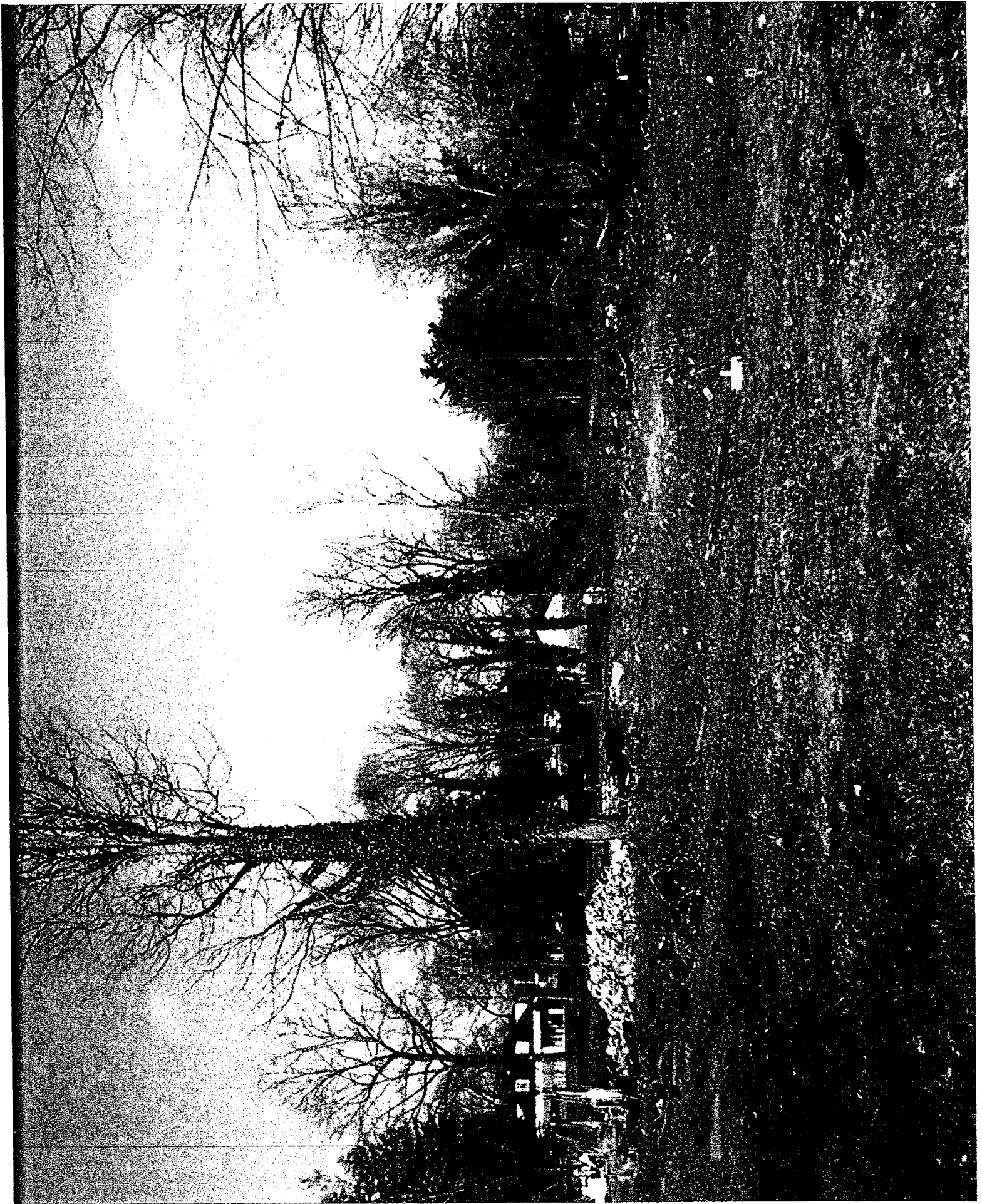
This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998

Key Map

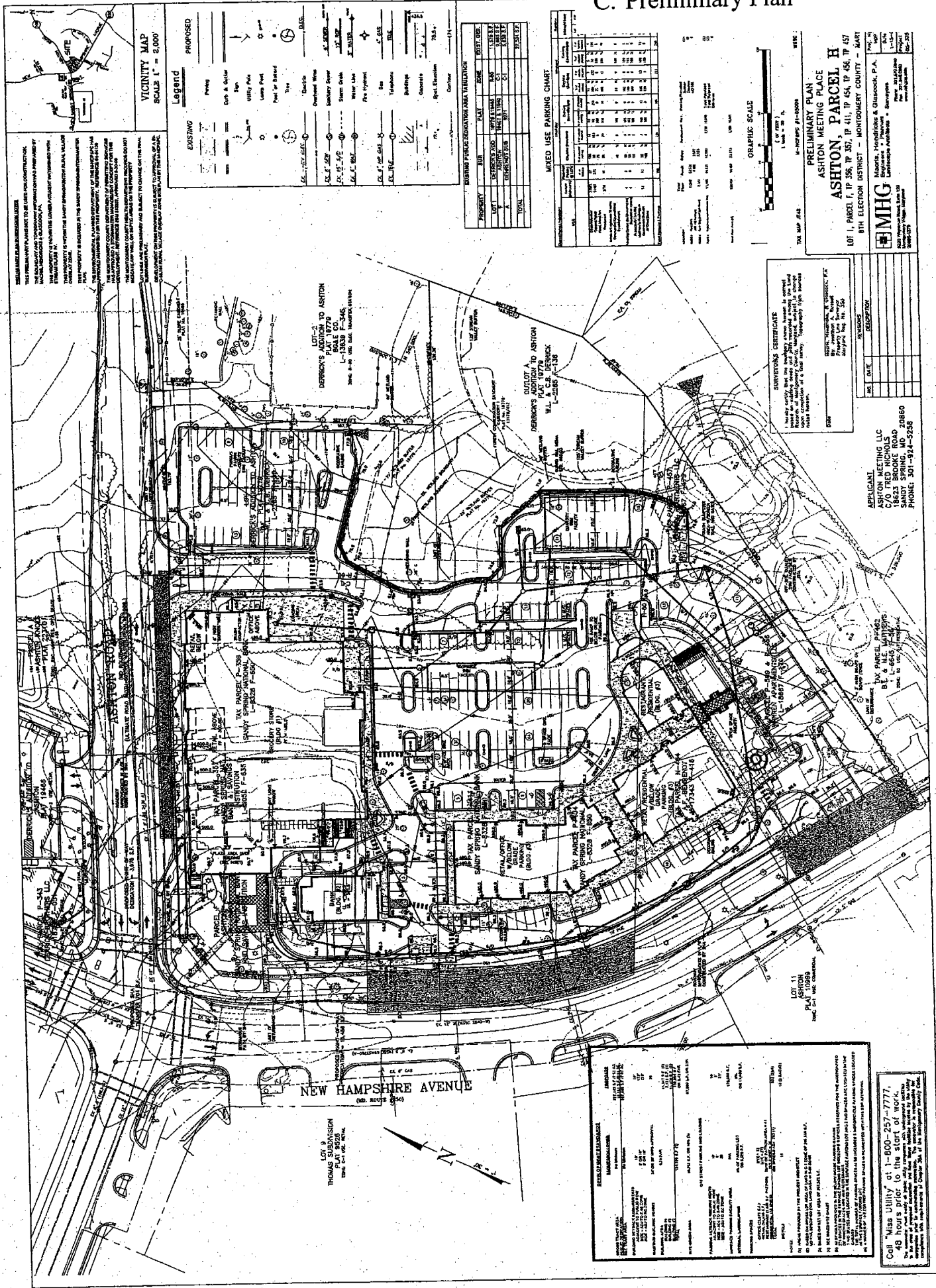


B. Site Photos

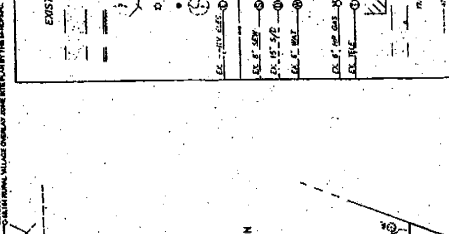




# C. Preliminary Plan



**GENERAL NOTES:**  
 THIS PRELIMINARY PLAN IS TO BE USED FOR CONSTRUCTION OF THE BUILDING AND OTHER STRUCTURES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE AUTHORITIES.

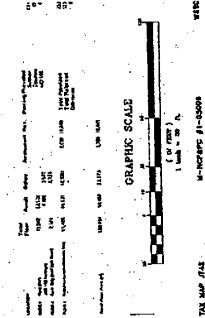


**EXISTING PUBLIC UTILITIES AND VARIATIONS**

PROPERTY	TYPE	DATE	DEPTH
LOT 1	WATER	1985	48"
LOT 1	SEWER	1985	48"
LOT 1	GAS	1985	48"
LOT 1	TELEPHONE	1985	48"
TOTAL			

**MIXED USE PARKING CHART**

Category	Area	Count	Notes
TOTAL	Garage	100	
	Surface	150	
TOTAL	Garage	100	
	Surface	150	
	Other	50	



**PRELIMINARY PLAN**  
**ASHTON, MEETING PLACE**  
**ASHTON, PARCEL B**  
 LOT 1, PARCEL F, P. 358, P. 357, P. 411, P. 454, P. 456, P. 457  
 8TH ELECTION DISTRICT - HANCOCK COUNTY - MAINE

**MHG**  
 Maine, Maryland & Massachusetts, P.A.  
 Engineers & Planners  
 1000 South Main Street  
 Portland, Maine 04101  
 Phone: 603-876-3800  
 Fax: 603-876-3801

**SURVEYORS CERTIFICATE**

I, the undersigned, being a duly licensed and sworn Surveyor of the State of Maine, do hereby certify that the foregoing is a true and correct copy of the original map as filed in my office.

**DATE:** 10/11/2008  
**BY:** J. H. HARRIS, P.E.

**APPLICANT:**  
 ASHTON MEETING LLC  
 C/O BEEBACH HOLDINGS  
 18623 BROOKFIELD ROAD  
 SANDY SPRING, MD 20886  
 PHONE: 301-924-2520

**NEW HAMPSHIRE AVENUE**  
 (Old State Road)

**LOT 9 THOMAS SUBDIVISION**  
 (Old State Road)

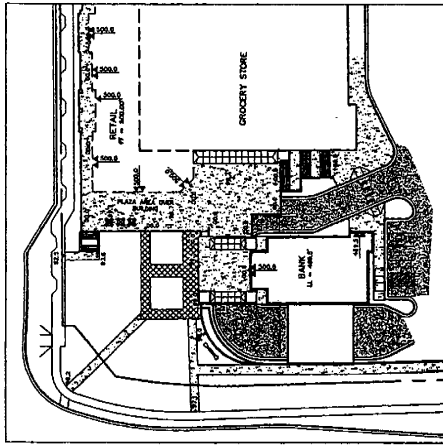
**LOT 11 ASHTON PLAT 1098B**  
 (Old State Road)

**ASHTON MEETING LLC**  
 C/O BEEBACH HOLDINGS  
 18623 BROOKFIELD ROAD  
 SANDY SPRING, MD 20886  
 PHONE: 301-924-2520

**GENERAL NOTES:**  
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Call "Miss Utility" at 1-800-257-4777, 48 hours prior to the start of work. The utility will mark the location of all underground utilities. The contractor will be responsible for protecting the marked utilities. The contractor will be responsible for protecting the marked utilities. The contractor will be responsible for protecting the marked utilities.

# D. Site Plan



**OWNER CERTIFICATE**  
 The undersigned agrees to execute all the features and conditions of this site plan and to comply with any and all requirements of the Montgomery County Planning Board and the property owner.  
 By: \_\_\_\_\_ Date: \_\_\_\_\_

GRAPHIC SCALE



SP-11  
 WSPC 324 MW

TAX MAP 7143  
 4-MONTH #255000339

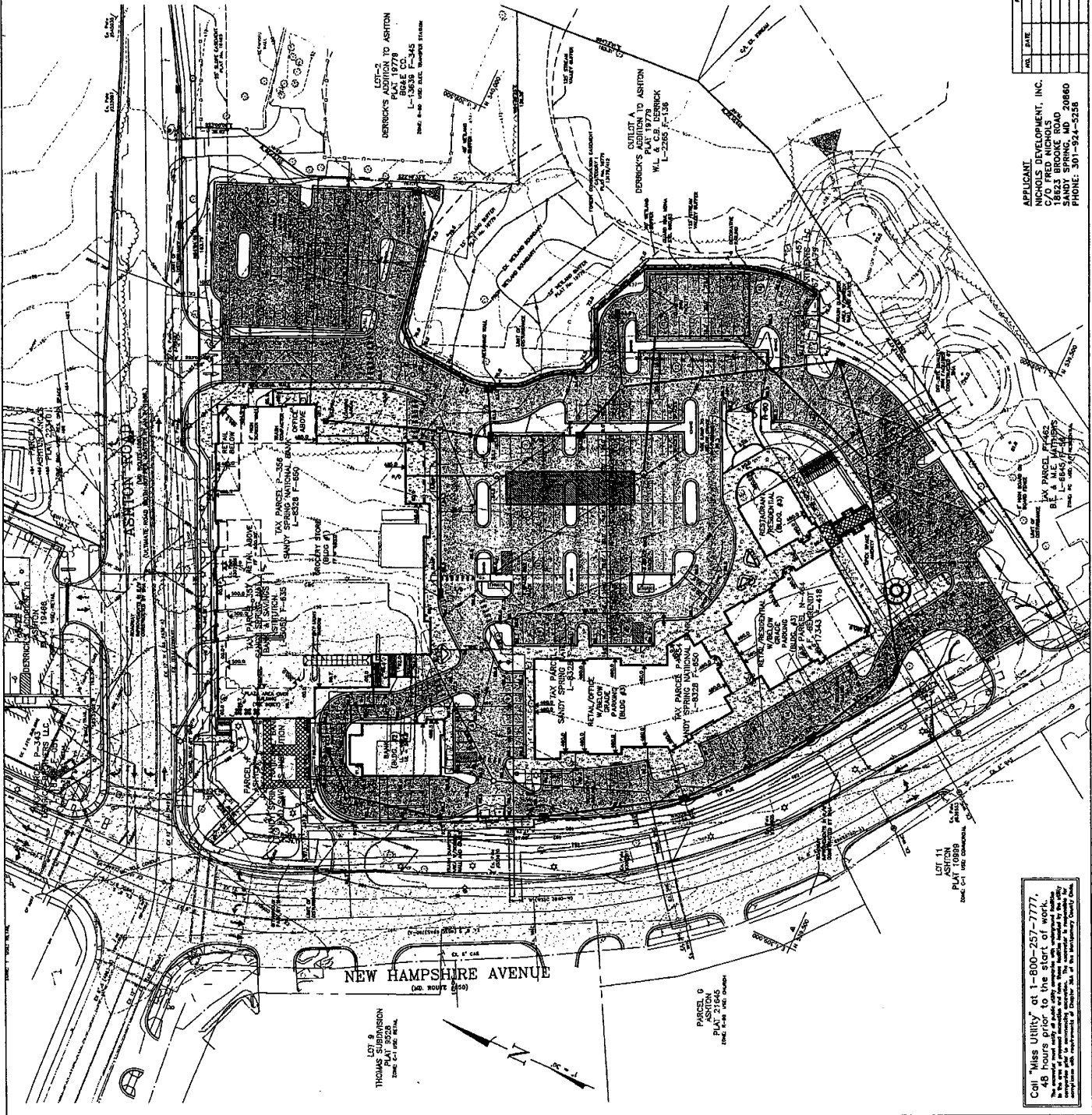
**SITE PLAN  
 ASHTON MEETING PLACE  
 ASHTON, PARCEL H**

8TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

**MHG**  
 MONTGOMERY HILL GROUP  
 18623 BROOKE ROAD  
 SANDY SPRING, MD 20886-5279  
 PH: 301-924-0528

APPLICANT: MICHIGAS DEVELOPMENT, INC.  
 C/O FRED NICHOLS  
 18623 BROOKE ROAD  
 SANDY SPRING, MD 20886  
 PHONE: 301-924-0528

REV. DATE	REVISION



Call "Miss Utility" at 1-800-257-7777, 48 hours prior to the start of work. In the event of an emergency, call 911. All utility work must be done in accordance with the applicable codes and regulations of Montgomery County.

RECEIVED

LAW OFFICES

**MILLER, MILLER & CANBY**

E. Letter from Miller, Miller & Canby

DEVELOPMENT REVIEW DIVISION

CHARTERED

200-B MONROE STREET  
ROCKVILLE, MARYLAND 20850

(301) 762-5212  
FAX (301) 762-6044

JAMES R. MILLER, JR.  
PATRICK C. MCKEEVER  
JAMES L. THOMPSON  
LEWIS R. SCHUMANN  
JODY S. KLINE  
ELLEN S. WALKER  
MAURY S. EPNER  
JOSEPH P. SUNTUM  
SUSAN W. CARTER  
ROBERT E. GOUGH  
GLENN M. ANDERSON\*  
MICHAEL G. CAMPBELL  
SOO LEE-CHO  
*\*Licensed in Maryland and Florida*

April 7, 2006

Ms. Laxmi Srinivas  
M-NCPPC  
8787 Georgia Avenue  
Silver Spring, MD 20910

RE: Preliminary Plan No. 1-05006;  
Site Plan Review No. 8-20060230;  
"Ashton Meeting Place"

Dear Ms. Srinivas:

We are writing to address certain master plan and zoning issues relating to the proposed "Ashton Meeting Place" project. The area proposed for redevelopment consists of 7.4 acres of C-1 and R-60 zoned properties located in the southeast quadrant of the intersection of New Hampshire Avenue and Maryland Route 108, a cross roads area commonly known as the "Ashton Village Center". The properties are covered by the Sandy Spring/Ashton Rural Village Overlay Zone. The project seeks to redevelop the subject site with a mix of retail goods and services, office space and residential units, and proposes to locate 144 parking spaces for the commercial uses on the residentially zoned portions of the site without special exception approval, in accordance with Sections 59-C-18.182(b)(2)(D) and 59-C-18.185(b) of the Montgomery County Zoning Ordinance.

In preparing the site plan and preliminary plan applications, we have relied on certain provisions of the Sandy Spring/Ashton Master Plan (hereinafter referred to as the "1998 Plan") and the Sandy Spring/Ashton Rural Village Overlay Zone (hereinafter referred to as the "Overlay Zone") that allow the project to utilize the above referenced off-street parking provisions of the Overlay Zone. This letter provides a summary of our analysis of both the 1998 Plan and the Overlay Zone, as well as our research of the legislative histories of each, which confirm that the parking for Ashton Meeting Place is permitted as proposed in Site Plan No. 8-20060230 and Preliminary Plan No. 1-05006.

## **I. EXECUTIVE SUMMARY**

To facilitate your understanding of the research described in this correspondence, the information contained herein is organized in the following manner with conclusions for each subsection of the Analysis summarized as follows:

- A.** The 1998 Sandy Spring/Ashton Master Plan and the Sandy Spring/Ashton Rural Village Overlay Zone were simultaneously reviewed and were adopted together, with the Overlay Zone being the principal tool for implementation of the 1998 Plan's land use recommendations to preserve rural village character and to encourage revitalization of the village centers.
  - 1. The intent of the Overlay Zone was to encourage "design flexibility" in development of the two village centers within the planning area, including parking of vehicles in conjunction with commercial uses on residentially zoned land without special exception approval in areas recommended for mixed use development in the 1998 Plan.
  - 2. The application of the Overlay Zone to specific properties via Sectional Map Amendment confirmed the County Council's desire to see the "design flexibility" provisions applied to the two village center areas, including the Ashton Meeting Place property.
  
- B.** The 1998 Plan does not use the specific phrase "mixed use development" prescribed in the Overlay Zone for locations where parking for commercial uses on residentially zoned land was appropriate without special exception approval.
  - 1. However, the Plan provides specific development guidelines for the village centers that encourage "a land-use mix of stores and homes" or mixed use development for the centers. It proposes maintaining the existing commercial and residential zoning while applying the Overlay Zone to promote flexibility in design.

2. In addition, the 1998 Plan and the legislative history of both the Plan and the Overlay Zone text amendment are replete with references to the fact that the properties that comprise the "Ashton Meeting Place" project were intended to be developed as "mixed use".
- C. The 1980 Sandy Spring-Ashton Special Study Plan recommended the subject properties for a mixed use form of development and that recommendation was restated and confirmed in the 1998 Plan amendment.
  - D. The changes to the text of the 1998 Plan by the County Council prior to the Plan's adoption eliminated the ability to place commercial buildings and structures on residentially zoned land but preserved the Plan and the Overlay Zone's intent to allow commercial parking on residentially zoned land without special exception approval.

## II. LEGISLATIVE BACKGROUND

The Montgomery County Council, sitting as the District Council, approved with revisions the Planning Board (Final) Draft Master Plan for Sandy Spring/Ashton on July 7, 1998. On the same date (in back-to-back actions), the Council also adopted Zoning Text Amendment No. 98002, which created the Sandy Spring/Ashton Rural Village Overlay Zone (codified in Section 59-C-18.18 of the Montgomery County Zoning Ordinance). (Exhibit 1). Sectional Map Amendment G-770 was adopted on October 13, 1998, placing the Overlay Zone over a select number of properties in the Sandy Spring/Ashton area (including properties in the southeast quadrant of Ashton Village Center that make up the "Ashton Meeting Place" project). This action created a second layer of zoning intended "to address issues related to enhancing rural village character and providing design flexibility". (1998 Plan, pg. 80; Exhibit 2).

The off-street parking provision of the Overlay Zone, which allows parking for commercial uses to be sited on adjacent residentially zoned land without special exception approval, is one of six provisions intended to provide "design flexibility" for commercial properties located within the



Overlay Zone. The following is a summary of the six "design flexibility" provisions of the adopted Overlay Zone for commercial properties that are listed on page 81 of the 1998 Plan: (Exhibit 2).

1. Require site plan review to encourage flexibility in creating better design and to ensure that adherence to design guidelines in the Plan have generated new development with rural village character.

***2. Allow flexibility in the siting of parking in conjunction with commercial uses on certain adjacent properties, to the most desirable locations on the site, where recommended for mixed use development in the master plan.*** (Emphasis added).

3. Allow flexibility for Planning Board to approve building heights of up to 30 feet at site plan review and impose an FAR limit of 0.75 for the size and scale of the village centers.

4. Exclude new auto-oriented or typically large-scale uses and certain additional uses that are inconsistent with traditional rural development patterns with flexibility to ensure the continuation of existing uses through grandfathering.

5. Allow flexibility for on-street parking to count toward meeting the parking requirement for new development if so determined by the Planning Board at the time of site plan review.

6. Allow flexibility to allow a waiver of the minimum acreage requirement for special exception uses, where recommended in the master plan.

The planning principles embodied in Provision #2 above are codified in Sections 59-C-18.182(b)(2)(D) and 59-C-18.185(b) of the Zoning Ordinance which reads: (Exhibit 1).

Section 59-C-18.182(b)(2)(D): "In areas recommended in the Sandy Spring/Ashton Master Plan for mixed use development, development should [be] consistent with the recommendations of the master plan. In the

residential portions of the mixed-use areas, off-street parking for commercial uses is allowed without a requirement for approval of a special exception."

Section 59-C-18.185(b): "Properties in a residential zone that are designated in the Sandy Spring/Ashton master plan as suitable for mixed use or non-residential use may be utilized for off-street parking in connection with commercial uses without the necessity for approval of a special exception under Sec. 59-G-2.39."

### III. ANALYSIS

#### A. **The 1998 Plan Recommended the Creation of the Overlay Zone in order to Provide Design Flexibility in the Development of the Sandy Spring and Ashton Village Centers**

One of the key recommendations made in the 1998 Plan relates to the creation of the Overlay Zone for the purpose of allowing design flexibility to encourage/facilitate revitalization of the two village centers in the planning area. The 1998 Plan first discusses the overall concept of "village centers", their importance to the Sandy Spring/Ashton area, and their geographic location beginning on page 29. (Exhibit 2). Figure 14 depicts the planning area and the properties that comprise the two village centers. (1998 Plan, pg. 30; Exhibit 2). The Plan encourages development and revitalization of the village centers with "a land-use mix of stores and homes" through use of the design flexibility provisions of the Overlay Zone. (1998 Plan, pg. 31, bullets 3-5; Exhibit 2).

The Overlay Zone is the primary mechanism to achieve the Plan's goal of promoting design flexibility and enhancing rural village character for both Sandy Spring and Ashton village centers. The 1998 Plan outlined the purpose and the framework for the Overlay Zone and recommended specific "design flexibility" provisions, which, *inter alia*, included the off-street parking provision, for inclusion in the Overlay Zone. Further, the 1998 Plan repeatedly states that the main goal of the new Overlay Zone should be to provide design flexibility to properties selected for inclusion within the overlay.

Ultimately, the Overlay Zone was applied to various properties in the Sandy Spring/Ashton area under the Sectional Map Amendment process, pursuant to specific guidelines provided in the 1998 Plan. The Implementation Chapter of the 1998 Plan provides that "[o]nce the [Overlay Zone] is adopted, the specific properties where it will be applied will be determined via the Sectional Map Amendment using the following guidelines: commercial properties and adjacent residential uses where design flexibility is recommended in the Plan; residential properties to maintain residential height limits consistent with the neighborhood character; and residential properties where flexibility in lot sizes is desirable." (1998 Plan, pg. 82; Exhibit 2). (Emphasis added). As stated previously, the commercial and adjacent residential zoned properties located in the southeast quadrant of the Ashton Village Center that comprise the Ashton Meeting Place project were included in the Overlay Zone pursuant to the adoption of Sectional Map Amendment G-770 on October 13, 1998. Thus, by Council action, these properties were declared to be appropriate for application of the "design flexibility" provisions set forth in both the 1998 Plan and the Overlay Zone (assuming that other requirements dictated by the Overlay Zone are met).

**B. A "Mixed Use" Designation *Per Se* Does Not Exist in the 1998 Plan for Any Property in the Sandy Spring or Ashton Village Center Areas**

The Overlay Zone was created to include six "design flexibility" components, one of which is the off-street parking provision codified under Sections 59-C-18.182(b)(2)(D) and 59-C-18.185(b) of the Zoning Ordinance. The only prerequisite for an Overlay Zone property to be able to utilize this parking provision is a designation in the Sandy Spring/Ashton master plan as being suitable for "mixed use development".

Preliminarily, it is interesting to note that the 1998 Plan did not confer a "mixed-use" designation *per se* on any property in the Sandy Spring or Ashton village center areas. Indeed, none of the drafts (Public Hearing (Preliminary) Draft, pgs. 42-62, Exhibit 3; Planning Board (Final) Draft, pgs. 38-49, Exhibit 4), nor the adopted 1998 Plan, ever use the term "mixed use development" even though the Overlay Zone text amendment was in simultaneous development with the language of the 1998 Plan.

Instead, the 1998 Plan spoke in general terms of a mixed use/rural village concept by describing an overall vision for achieving a compatible mix of commercial and residential uses in a rural village setting as opposed to using the phrase "mixed use". The Plan provides development guidelines for the village centers that encourage "a land-use mix of stores and homes" or mixed use development that incorporates "traditional village design" concepts such as "active fronts on buildings", "height limits compatible with the Sandy Spring Historic District" and "buildings facing the main road", etc. (1998 Plan, pg. 31; Exhibit 2). (Emphasis added).

The absence in the Plan of the use of the specific term "mixed use" or the lack of a "mixed use" designation on a map does not undermine what was clearly intended by the Plan's authors. Not only did the Plan itself encourage "a land-use mix of stores and homes" for the village centers, but the legislative history of the 1998 Plan indicates that two groups of commercial and residential properties in the Sandy Spring/Ashton area were commonly understood as possible locations for mixed use type of development. In a memorandum to the Planning Board dated February 27, 1998 regarding the text of the Overlay Zone, staff member Deane Mellander notes: "There are two areas recommended in the final draft master plan for mixed use. These are the three properties in the Sandy Spring village center on the north side of MD 108 east of Brooke Road, and the two properties in the southeast quadrant of the Ashton village center. The plan recommends flexibility of development on these sites, which could include allowing commercial uses on the residentially-zoned portion of the site." (See Memorandum to Planning Board from Deane Mellander re Overlay Zone, dated February 27, 1998, pg. 3; see Exhibit 5). (Emphasis added).

**C. The 1998 Plan Specifically Confirms the 1980 Plan's Land Use Recommendation for a Planned Mix of Commercial and Residential Uses in the Southeast Corner of Ashton Village Center**

In the case of the southeast quadrant of Ashton Village Center, a general "designation" or land use recommendation for a mixed use type of development first appears in the Sandy Spring-Ashton Special Study Plan adopted in 1980 (hereinafter referred to as

the "1980 Plan"). (Exhibit 6). The 1998 Plan expressly confirmed the land use recommendations for the Ashton Village Center contained in the previous master plan. (1998 Plan, pg. 38; Exhibit 2). A review of the 1980 Plan's overall vision and recommendations for the Sandy Spring/Ashton area is helpful to better understand the evolution of the 1998 Plan and the current planning goals for the two village centers. In comparing the two Plans, it is evident that in 1980 the development potential of properties in Ashton was better established to achieve a rural village center than the properties found in Sandy Spring.

1. First, with regard to the Sandy Spring area, it is interesting to note that the 1980 Plan's focus for this area was not on its development as a "rural village center". The Plan did not contain recommendations encouraging redevelopment of existing commercial uses or design flexibility for local businesses, as later recommended in the 1998 Plan for Sandy Spring. Rather, the 1980 Plan was primarily concerned with residential development in the Sandy Spring area, stating that "[a] major goal of the Plan [for Sandy Spring] is to provide a range of housing types to help meet the different housing needs of residents." (1980 Plan, pg. 33; See Exhibit 6)
2. On the other hand for the Ashton area, the 1980 Plan recommends a mixed use form of development through the use of planned development zones to achieve a rural village concept for the Ashton Village Center. The Plan's description of what it believes a "planned development zone" would achieve is enlightening. It recommends development of the northwest corner of the Ashton Village Center under a planned development zone in order to allow "more site design flexibility than fixed zones." (1980 Plan, pg. 39, footnote 5; Exhibit 6). (Emphasis added). The 1980 Plan further explains that:

"A Planned Development would also encourage an overall plan for both commercial and residential uses at this corner and help assure that future development is compatible with the rural village concept." (1980 Plan, pg. 39; Exhibit 6). (Emphasis added).

3. Significantly, the 1980 Plan specifically discusses the southeast corner of the Ashton Village Center and indicates that a planned development (i.e., mixed use) concept for this corner would be appropriate as well. The Plan notes, however, that:

"Present zoning regulations do not permit planned developments on small tracts of land... [i]f a rural planned development zone is adopted, it should be considered for this corner." (1980 Plan, pg. 40; Exhibit 6).

Therefore, the 1980 Plan's vision for both the northwest and southeast corners of the Ashton Village Center was clear – a compatible mix of commercial and residential uses in a rural village concept.

4. With the above recommendations in the 1980 Plan as background, the 1998 Plan's treatment of the Sandy Spring and Ashton Village Centers becomes more understandable. Unlike the 1980 Plan, the 1998 Plan focuses more attention on developing Sandy Spring as a true "village center" that serves as the "heart of the community in terms of local commerce and community gatherings." (1998 Plan, pg. 32; Exhibit 2). But, for the Ashton Village Center, rather than re-addressing the Ashton area in great detail, the 1998 Plan simply states that it confirms the land use recommendations of the 1980 Plan. In essence, the 1998 Plan's treatment of the Sandy Spring Village Center serves to bring that area "up to speed" with the "rural village concept" originally contemplated for Ashton in the 1980 Plan.
5. The 1998 Plan defers to recommendations made in the previous master plan even further. On page 80, the 1998 Plan indicates that its creation of the Sandy Spring/Ashton Rural Village Overlay Zone was in fact originally recommended in the 1980 Plan (i.e., the rural planned development zone for Ashton) but had never been developed. (Exhibit 2). Again, the text of the

later Plan demonstrates that mixed use development had been considered for the Ashton area as early as 1980 and was being ratified by the 1998 Plan.

Therefore, as confirmed by the 1998 Plan, the 1980 Plan's recommendation for a planned mix of commercial and residential development in a "rural village concept" for the southeast corner of Ashton Village Center continues in force. As such, the Ashton Meeting Place project site meets the Overlay Zone's requirement that "[p]roperties in a residential zone [be] designated in the Sandy Spring/Ashton master plan as suitable for mixed use", in order to locate parking for commercial uses on adjacent residentially zoned properties without a special exception. (Section 59-C-18.185(b); Exhibit 1).

**D. The Legislative Histories of the 1998 Plan and Overlay Zone Confirms There was No Intent to Exclude Southeast Corner of the Ashton Village Center from Any of the Design Flexibility Provisions of the Overlay Zone**

As stated previously, a fundamental goal of the 1998 Plan and the Overlay Zone was to provide design flexibility for properties located in both the Sandy Spring and Ashton Village Center areas. The 1980 Plan's recommendation for a "rural planned development zone" (in particular for the southeast corner of the Ashton Village Center) (see 1980 Plan, pg. 40; Exhibit 6) and the design flexibility that such a zoning mechanism would allow was finally realized with the creation of the Sandy Spring/Ashton Rural Village Overlay Zone under the 1998 Plan and implemented over commercial and residential properties in both Sandy Spring and Ashton by Sectional Map Amendment.

Nonetheless, it has been suggested that one of the provisions of the Overlay Zone intended to provide design flexibility (specifically, the off-street parking provision) may not be applicable to the southeast corner of the Ashton Village Center based on the fact that certain language (which appears in the published version of the Plan) was actually supposed to have been deleted. (District Council Resolution No. 13-1364, pg. 20; Exhibit 7). The language that was supposed to have been deleted (shown underlined below) appears in the second bullet of the Ashton Village Center section of the published 1998 Plan and states as follows:

**"Limit residential development in the southeast quadrant to single-family detached homes only, rather than townhouses.** This Plan recognizes that special exception uses may be appropriate as well. This Plan recommends that there be flexibility in placement of commercial uses in the southeast quadrant to encourage design that better integrates residential and commercial uses. This flexibility is allowed through the proposed Sandy Spring/Ashton Rural Village Overlay Zone. The existing zoning should be confirmed." (1998 Plan, pg. 39; Exhibit 2).

We looked to the legislative history of both the 1998 Plan and the Overlay Zone to understand the rationale behind the deleted language and to determine whether the deletion has any relevance to the applicability of the off-street parking provision to the southeast corner of the Ashton Village Center. We find that it does not.

First, we find that the deleted language was in response to a different issue that the County Council and staff were grappling with at the time.<sup>1</sup> That issue involved whether to include provisions in the Overlay Zone that would allow the location of C-1 commercial uses throughout the Overlay Zone area regardless of the underlying base zone, including on residentially zoned land, which was referred to as the "mixed-use provision" of the Overlay Zone. The legislative history of the Overlay Zone indicates that this provision was primarily developed to facilitate achievement of the "village green concept" proposed in the 1998 Plan for the Sandy Spring Village Center area, which in the end was deleted from the Overlay Zone "in favor of other approaches described in the master plan" for implementing that element of the Plan's recommendations for the Sandy Spring area. (See Memorandum to County Council from Ralph D. Wilson re Rural Village Overlay Zone, dated June 30, 1998, pg. 2; Exhibit 8). However, as part of the Overlay Zone, the provision would have applied to the southeast corner of Ashton Village Center as well, and, therefore, the above

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<sup>1</sup> We note that although the County Council's review of the 1998 Plan proceeded in advance of the Overlay Zone, the final adoption of both the 1998 Plan and Overlay Zone occurred on the same day (on July 7, 1998) in back-to-back actions. Despite the fact that separate staff analyses/reports and committee recommendations (i.e., legislative histories) were generated relative to the 1998 Plan and the Overlay Zone, it is clear that the Overlay Zone was promulgated to implement key recommendations contained in the 1998 Plan and the review process for both was for the most part contemporaneous.



underlined language was initially included in the second bullet of the Ashton Village Center section of the 1998 Plan.

Council staff had raised concerns about including such a provision in the Overlay Zone. The PHED Committee eventually concurred with staff and decided at its June 11, 1998 meeting to recommend to the full Council that the "mixed-use provision" be eliminated from the Overlay Zone. (See Memorandum to PHED Committee from Ralph D. Wilson re Rural Village Overlay Zone, dated June 10, 1998, pg. 2; Exhibit 9). In the end, the County Council concurred with the PHED Committee recommendation, and the provision was removed from the text amendment enacting the Overlay Zone. (See Memorandum to County Council from Ralph D. Wilson re PHED Committee's Rural Village Overlay Zone Recommendations, dated June 17, 1998, pg. 2; Exhibit 10). The PHED committee further recommended that corresponding language in the 1998 Plan be removed in conformance with the Overlay Zone. (See Memorandum to County Council from Marlene L. Michaelson re PHED Committee's Master Plan Recommendations, dated June 19, 1998, pgs. 3, 4 and 7; Exhibit 11). As a result, any language that had related to the "mixed-use provision" of the Overlay Provision was removed, such as the underlined text above as well as the following text found on page 41 of the Planning Board (Final) Draft (see Exhibit 4): "flexibility in the siting of commercial and residential uses on adjacent properties in designated areas". (District Council Resolution No. 13-1364, pgs. 16 and 20; Exhibit 7).

The decision to remove the "mixed-use provision" from the Overlay Zone and related language from the 1998 Plan, however, did not affect the applicability of the other "design flexibility" components to properties included in the Overlay Zone. In fact, legislative history indicates that at the same time the "mixed-use provision" was deleted, the off-street parking provision, allowing "commercial parking on the residential portion of a subject site without a [] special exception", was specifically included in the Overlay Zone. (See Memorandum to PHED Committee from Ralph D. Wilson re Rural Village Overlay Zone, dated June 10, 1998, pg. 2; Exhibit 9). The day after the PHED Committee's June 11, 1998 meeting at which this recommendation was made, Planning Board staff member, Deane Mellander, sent a memorandum to Senior Legislative Analyst, Ralph D. Wilson, indicating that changes have been made to the text of the Village Overlay Zone based on the

Committee's action. He notes that "[t]he mixed use provisions of subsection (B) are deleted" and a new "[s]ubsection (D) allows for parking without requirement for special exception on sites designated as suitable for mixed use development in the master plan." (See Memorandum from Deane Mellander to Ralph D. Wilson, dated June 12, 1998, pg. 2; Exhibit 12).

#### IV. CONCLUSION

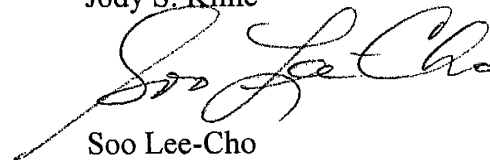
Based on the research and analysis presented above of the Sandy Spring/Ashton master plans, the Rural Village Overlay Zone and their legislative histories, we believe that the off-street parking provision along with the other design flexibility components of the Overlay Zone are applicable to properties located in the southeast corner of the Ashton Village Center and, thereby, may be utilized by the Ashton Meeting Place project.

Very truly yours,

MILLER, MILLER & CANBY



Jody S. Kline



Soo Lee-Cho

cc: Mr. Bill Barron  
Ms. Piera Weiss  
Tariq El-Baba, Esquire  
Mr. Fred Nichols  
Mr. Phil Perrine

F. Letter countersigned from the Department of Permitting Services

LAW OFFICES

**MILLER, MILLER & CANBY**

CHARTERED

200-B MONROE STREET  
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*\*Licensed in Maryland and Florida*

February 23, 2007

Dan Janousek  
Development Review Division  
Maryland-National Capital Park  
and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

RE: Ashton Meeting Place

Dear Dan:

This is in response to staff's recent inquiry relative to whether structured parking is permitted in the C-1 zone, in light of the fact that "parking garages, automobile" are not permissible in the C-1. Our analysis is as follows:

- 1) First, we find that in the use tables of Section 59-C-4.2, "Parking of motor vehicles, off-street, in connection with any use permitted" (emphasis added) is a permitted use in the C-1 zone.
- 2) We interpret the term "off-street" to allow either surface parking or structured parking that supports any use permitted on site, and believe support for our interpretation exists in Section 59-E-1.2, which provides that "[a]ll garage or other structured space allocated for the parking of vehicles in basements, on the roofs of buildings, or otherwise within buildings shall be considered part of the required off-street parking facilities."
- 3) For confirmation of our interpretation, we have obtained a counter-signed letter from the Department of Permitting Services, which is attached for your reference.

We hope that the above adequately addresses staff's concerns. Please do not hesitate to contact us if you require any additional information or assistance.

Sincerely yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "Jody". The signature is written in a cursive, slightly stylized font.

Jody S. Kline

JSK/dlt

Enclosure

cc: Josh Sloan  
Bill Barron  
Piera Weiss  
Rich Weaver  
Fred Nichols  
Phil Perrine  
Mike Plitt  
✓ Soo Lee-Cho, Esquire

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*\*Licensed in Maryland and Florida*

February 23, 2007

Mr. David Niblock  
Department of Permitting Services  
255 Rockville Pike, 2nd Floor  
Rockville, MD 20850

RE: Confirmation of Zoning Ordinance Interpretation re Section 59-C-4.2,  
"Parking of motor vehicles, off-street, in connection with any use permitted"

Dear David:

Pursuant to a recent conversation you had with John Reinhard on the subject referenced above, we request confirmation from the Department of Permitting Services that structured parking (located in basements, on the roofs or otherwise incorporated within buildings on a site) is permitted in the C-1 zone to serve any use permitted on the property in accordance with Sections 59-C-4.2 and 59-E-1.2.

Section 59-C-4.2 provides that "parking of motor vehicles, off-street, in connection with any use permitted" is a permitted use in the C-1 zone. (Emphases added.) We seek confirmation from the Department that the term "off-street" contemplates either surface parking or structured parking that supports any use permitted on site. We believe support for our interpretation exists in Section 59-E-1.2, which provides that "[a]ll garage or other structure space allocated for the parking of vehicles in basements, on the roofs of buildings, or otherwise within buildings shall be considered part of the required off-street parking facilities."

Based on the above, please confirm by counter-signing this letter where indicated below that our interpretation of what constitutes permitted "off-street" parking in the C-1 zone is correct.

We greatly appreciate your assistance. Thank you for your attention to this matter.

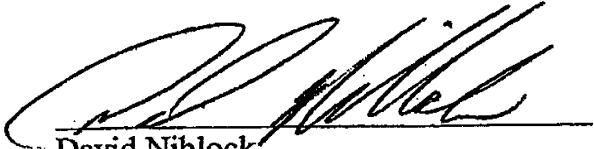
Very truly yours,

MILLER, MILLER & CANBY



Soo Lee-Cho

I HAVE REVIEWED THE CONTENTS OF THIS LETTER AND AGREE THAT STRUCTURED PARKING THAT IS INCORPORATED WITHIN BUILDINGS ON A SITE TO SERVE PERMITTED USES IS ALLOWED IN THE C-1 ZONE.



David Niblock  
Department of Permitting Services

cc: John Reinhard  
Jody S. Kline, Esquire



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

March 20, 2007

**MEMORANDUM**

**TO:** Richard Weaver, Development Review-Subdivision  
Joshua Sloan, Development Review-Site Plan  
Dan Janoushek, Development Review-Zoning/Special Exceptions

**FROM:** William Barron, Community-Based Planning, Team Leader  
Piera Weiss, Community-Based Planning, Eastern County Team

**SUBJECT:** Ashton Meeting Place  
Preliminary Plan 120050060  
Site Plan 820060230  
Special Exception S-2683

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**Recommendation:** Staff believes that the project complies with the land use vision of the master plan and is consistent with many of the goals and recommendations contained therein, but there are regulatory standards by which this project, as all projects, must be evaluated. If the project can't be found to be in conformance on the basis of regulatory review, then it should be denied.

This project has been all about process. The process of searching for clarity in the ambiguities of a master plan and creating, in three dimensions, a vision for a village center that developer and community could support.

It has taken years to arrive at the current design. But it has become clear during this process that the regulatory standards dictate the form of the project. Perhaps a slightly different project with some of the same elements that distinguish this project would be more successful.

We commend the community and the applicant for trying so hard to develop a design that would make Ashton a special place. The proposed design features residential units over retail in historically styled buildings. There is public green space at the corner and street level retail. The project will provide services and public space for the Sandy Spring/Ashton community, which has grown by three hundred new homes since 1998.

The 1998 Sandy Spring/Ashton Master Plan envisioned improving the "character" of the Ashton village center. The existing crossroads of Ashton, the intersection of MD 108 and MD 650, has a 7 & 11 store, developed under the PD zone, with parking at the front on the northeast quadrant and a closed gas and service station (dating to the 1930s) on the northwest quadrant. The southeast quadrant has a drive-through bank, some homes and a PEPCO substation. The southeast quadrant has the Cricket Bookstore, located in a residential building with parking in the front, a new building built by the applicant (Alloway Building), and at the intersection a green area and parking lot. There are no continuous sidewalks. This is the "character" that the master plan wanted to improve so as to provide a separate and distinct identity for Ashton village center

### **Background - Ashton Meeting Place**

The proposed project is local in many ways. A Sandy Spring resident and developer and the architect who designed the Sandy Spring Fire Station have created a one-of-a-kind colonial-inspired development reminiscent of the brick architecture used in the historic buildings in the Sandy Spring village center. The development group includes long standing members of the business community such as the Derrick Brothers and the eponymous Sandy Spring Bank.

The applicant first met with Community-Based Planning staff in 2003 before submitting any application. At that time the applicant was proposing development on a split zoned (C-1 and R-60) property in the Ashton village center and within the Sandy Spring Ashton Overlay Zone. The proposed development included a grocery store and other retail with parking in the R-60 portion of the site. This parking provision can only be applied to mixed-use development or properties recommended for non-residential uses. In order to use that provision the development needed to have a mix of uses. The master plan contains references to a mix of housing and stores and therefore we told the applicant to add housing. We also expressed reservations regarding the parking in the R-60 provision because there were ambiguities between the language in the master plan and zoning ordinance. We notified legal staff that this zoning issue needed interpretation. Finally, we urged the applicant to meet with the community.

The residents of the Sandy Spring-Ashton community responded in number and energetically to the proposal. Residents of nearby Olney and Howard County have participated. Newer and established members of the community have written hundreds and hundreds of letters and e-mails, held scores of meetings, formed at least two citizen groups and revitalized old groups to make know their concerns. Activities, such as candlelight vigils, web sites, newsletters, newspaper articles, have made it clear that there is both opposition and support for the project.

Although the applicant attended meetings with the residents since 2005, according to members of the community, he was not responsive to making changes to the project. The applicant finally agreed in July 2006 to meet with a group to discuss the design of the project. Legal counsel for some of the opposition submitted documentation stating, among other items, that the parking provision of the overlay zone did not apply to the



subject site. A second issue that neither the applicant nor staff had focused on was if the housing component required a special exception in the C-1 zone. The applicant agreed to file a special exception and did so. We asked the applicant's attorney to prepare documentation regarding the zoning questions.

Much of the community opposition related to the size and scale of the project and details of usable community space, green space and active storefronts. The residential component was one of the elements over which there was general agreement. The two sides met for months and in January 2007, the community group presented the agreed upon changes to the design and layout to the larger community.

The opposition and support can be broken generally into three camps. There are those who are against the project under any circumstances as too big and not serving local residents. There are those who support the concept of a mixed-use commercial center with anchor grocery store and apartment dwelling units, but believe that the layout, scale and function can be improved and question the size of the grocery store. And there are those who support the project and think the grocery store should be as proposed or the development will not be successful.

### **The Master Plan**

As the community has struggled with the project, so has the staff, because the master plan recommendations are at best ambiguous and at worst contradictory and inconsistent: The language of the Sandy Spring/Ashton Rural Village Overlay Zone further underscores the ambiguities and inconsistencies.

The master plan provides limited specific guidance for the "future" with respect to the subject site. It states on page 39:

"Limit residential development in the southeast quadrant to single-family detached only. This plan recognizes that special exception uses may be appropriate as well."

The goal of the master plan, page 39, for the Ashton village center is:

"Maintain existing scale and encourage improvements to its character..."

The following excerpt from the master plan indicate that redevelopment is envisioned in the Sandy Spring and Ashton village centers.

"This Plan emphasizes "rural villages" as one of the important elements of rural character in Sandy Spring/Ashton... There is concern about the future economic and social health of these village centers. This Plan acknowledges and addresses these issues to the extent possible through land use and design recommendations."  
(Page 29)

The objective for the village centers is:

“Ensure that the villages of Sandy Spring and Ashton maintain separate and distinct identities.”(Page 29)

“Encourage development and revitalization of the village centers. The Plan recognizes that incentives to property owners are an important part of revitalizing the village centers. **Providing for increases in commercial density** (emphasis added) is one way... in these village centers such increases need to be balanced.” To maintain the small-scale of the existing centers, the plan cautioned “. . . however, in these village centers such increases need to be balanced with the Plan intent to maintain the small-scale of existing centers.”(Page 31)

There is no specific guidance in the master plan on how to improve the “character” of the Ashton village center. We believe that the master plan envisioned revitalization of the Ashton village center since if applying the overlay zone to the area. We believe a land-use mix of stores and residences is consistent with the land use vision of the master plan and accomplishes its recommendations. The project as submitted is consistent with the land use vision and goals of the master plan.

### **The Sandy Spring Ashton Overlay Zone**

In Ashton and on this property, the master plan’s land use recommendations are implemented through the Sandy Spring/Ashton Village Overlay Zone.

“Apply the new Sandy Spring/Ashton Rural Village Overlay Zone to allow additional flexibility in development while providing the option of design review to ensure conformance with this plan.” (Page 31)

Furthermore, the overlay zone permits an FAR up to .75 and a building height of 24 feet, with the possibility of 30 feet if found compatible with adjoining uses and off-street parking for commercial uses in the residential portions of the mixed-use areas under specific circumstances.

The proposed project depends on parking in the R-60 zone, which is permitted without a special exception in the overlay zone if recommended in the master plan. The overlay zone uses the phrases “mixed-use areas” and “mixed-use properties” in two different paragraphs to describe commercial locations where off-street parking in residential zones could be used. The master plan, however, doesn’t designate any mixed-use properties or mixed-use areas; it doesn’t use the term mixed-use.

The specific language of the overlay zone states:

Sec 59- C-18.182 (b) (2) Development standards at (D)

In areas recommended in the Sandy Spring Ashton Master Plan for mixed-use development, development should consistent (sic) with the recommendations of the master plan. In the residential portions of the mixed-use areas, off street parking for commercial uses is allowed without a requirement for approval of a special exception.

Sec 59-C-18.185 Off Street Parking and loading at (b)

Properties in a residential zone that are designated in the Sandy Spring/Ashton Master Plan as suitable for mixed-use or non-residential use may be utilized for off-street parking in connection with commercial uses without the necessity for approval of a special exception under Sec 59-G 2.39.

The master plan clearly recommends parking on three residential properties that are split zoned C-2 and R-60, but again fails to use the words "mixed-use area" or "mixed-use properties."

The Plan states at page 34:

To allow better design, incorporate the village green and accommodate the new fire station, this Plan recommends allowing parking in connection with the commercial uses on the properties east of Brooke Road, which also front on MD 108, where properties are zoned commercial and residential. These properties ...are identified as the Batheja, Isaacson and Eppard properties.... Under the provision of the Village Overlay Zone, the residential portion of these sites is suitable of parking in conjunction with the current uses in the C-2 zone, without the necessity for obtaining a special exception. At such time as the fire station an village green projects are programmed and funded, the resulting change in the neighborhood will allow for rezoning of the residential portion of the Batheja, Eppard and Isaacson properties to the C-2 zone via a new sectional map amendment (SMA) to be filed by the County. This will permit relocation and redevelopment of the existing commercial uses without a net increase in the overall amount of commercial zoning in the Sandy Spring Village Center. The Village Overlay Zone attempts to address parking concerns of local businesses by providing flexibility where parking can be located. An overall parking scheme for the village should be a product of the design study recommended below.

**Conclusion:**

While staff believes that the project complies with the vision of the master plan, there are regulatory standards for which this project, as all projects, must be evaluated. There are aspects of design and layout that must be reviewed under the design guidelines contained in the master plan, such as scale and character. There are encroachments to the wetlands resulting from the location of the grocery store and parking areas. The zoning ordinance requires that master plan designate a mixed-use project to take advantage of the parking provision. There is no such language or designated project in the master plan. This is

either a discrepancy or an ambiguity that we are unable to resolve. While staff believes that the project is consistent with many of the goals and recommendations contained in the master plan, we defer to the Development Review, Environmental Unit and legal staff to determine conformance with the regulatory standards.




**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

March 26, 2007

**MEMORANDUM**

**TO:** Richard Weaver, Planner Coordinator, Development Review Division  
Joshua Sloan, Senior Planner, Development Review Division

**VIA:** Stephen D. Federline, Supervisor 

**FROM:** Candy Bunnag, Planner Coordinator,  
Environmental Planning,  
Countywide Planning Division

**SUBJECT:** Ashton Meeting Place, Preliminary Plan No. 120050060 and Site Plan No. 820060230

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**STAFF RECOMMENDATION**

Staff recommends denial of the preliminary subdivision, site plan, and forest conservation plan.

**Rationale:**

The proposed encroachments into the environmental buffer, which includes portions of a headwater wetland in a Use IV watershed, its buffer, and part of a forested stream buffer, are inconsistent with Section 50-32(c) of the Subdivision Regulations, the Planning Board's Environmental Guidelines, and the County Forest Conservation Law. Section 50-32(c) of the Subdivision Regulations and the Environmental Guidelines identify stream buffers and wetlands as environmentally sensitive areas which should be protected. Environmental buffers are considered to be the highest priority land for forest retention and forest planting under the County Forest Conservation Law.

The Environmental Guidelines state that no buildings, structures, impervious surfaces, or activities requiring clearing or grading will be permitted in stream buffers/environmentally-sensitive areas except when they are for necessary and unavoidable infrastructure. In limited cases, staff has also allowed encroachments into environmental buffers for non-infrastructure features of a development proposal. However, such encroachments are very small in size and do not involve the loss of an environmentally-sensitive feature, such as a wetland or stream valley forest, that is

connected to or part of a larger naturally-occurring system such as a stream valley. In addition, mitigation for such encroachments usually involves the protection of an area at least as big as the proposed encroachment (usually on a two for one basis); is adjoining and an extension of the impacted buffer; is of equal or greater qualitative value; and is located on the same site as the encroachment.

For the subject project, the larger of the two areas of encroachments is due to encroachments by the proposed driveway through the site, a corner of a proposed grocery store, and part of the loading area for the grocery store. These encroachments are the result of the applicant's desire to locate a grocery store of a certain size at a specific location on the site. The grocery store and its loading area are not infrastructure elements of the project. The internal driveway could be considered part of the infrastructure requirements, but it could be located outside the environmental buffer if the site plan is reconfigured to do so.

The applicant also proposes to meet part of the project's stormwater management requirements by sharing stormwater management (SWM) facilities with State Highway Administration (SHA). These SWM facilities are to be constructed by SHA on property owned by the applicant and adjacent to, but not part of, the subject application. One of these SWM facilities is proposed to lie partly within a forested portion of the environmental buffer. Although SWM facilities are necessary infrastructures of the proposed project, the applicant has not provided any information that the location of part of the SWM facility within the environmental buffer is necessary and unavoidable.

The Functional Master Plan for the Patuxent River Watershed includes several recommendations for controlling runoff from non-agricultural uses. The functional master plan recommends the implementation and enforcement of the Primary Management Area (PMA) concept as identified in the Environmental Guidelines. The PMA is the area that lies within 660 feet from a tributary stream in the Patuxent River watershed. The subject site lies within a PMA. The guidelines recommend that within a PMA, the "stream buffer area must be left undisturbed and in a natural state." In addition, the Functional Master Plan recommends the location of SWM facilities outside buffer areas when feasible to avoid adverse impacts to wetlands and habitat. Staff does not find that the layout, as currently proposed, conforms to the functional master plan recommendations.

Section 50-32(d) of the Subdivision Regulations provides for various measures that may be imposed on a proposed subdivision in order to protect environmentally sensitive areas such as stream buffers and wetlands. Some of these measures include deletion or rearrangement of proposed lots, roads, utilities, and other facilities. Staff finds that the layout proposed by the applicant for this commercial project does not adequately arrange proposed roads, SWM facilities, and buildings to avoid clearing, grading, and permanent encroachments into wetlands and environmental buffer areas.

Staff recognizes that this finding may result in a downsized or resized commercial use, but notes that the site configuration and density forces significant amount of commercial

site uses (e.g., parking, driveway, SWM) onto adjoining R-60 and R-C zoned land, thus expanding the *de-facto* commercial envelope well beyond the C-1 zoned area. This expansion occurs without the corresponding “flexibility in placement of commercial uses” noted on page 39 of the Sandy Spring/Ashton Master Plan to comply with the Environmental Guidelines and other environmental objectives noted herein.

In addition, the Sandy Spring/Ashton Master Plan recommends that only specific areas of the Patuxent River watershed should be more intensely developed. The subject site is not identified by the master plan as one of these areas. Environmental Planning staff finds that the proposed development is of higher intensity than envisioned in the master plan and, as a result, encroaches into the environmental buffer. Although staff is aware that the overlay zone allows for a FAR up to 0.75, the proposed project should not be so large that it results in encroachments into the environmental buffer.

The applicant proposes to mitigate for the environmental buffer encroachments. In staff’s opinion, the proposed environmental buffer encroachments set a damaging precedent, regardless of the ability to compensate. Allowing buffer encroachments for elements of a project that are not necessary or could be reconfigured or relocated will take away the strongest incentive for applicants to thoroughly examine all options to avoid and minimize, and may encourage other projects to propose unnecessary encroachments into environmentally-sensitive areas. If it is acceptable to compensate for an environmental buffer encroachment no matter the purpose of the encroachment, there is no longer any incentive to first preserve environmental buffers as the highest priority land for preservation, reforestation and restoration. This is inconsistent with the Forest Conservation Law, Sections 50-32(a) and (c) of the Subdivision Regulations, and the Environmental Guidelines and severely limits staff’s and the Planning Board’s ability to effectively implement the law and guidelines.

In addition, staff finds that the applicant’s proposed mitigation measures for the encroachments do not sufficiently mitigate the loss of wetlands and their buffers. The applicant proposes to plant forest in excess of that required by the Forest Conservation Law. The proposed planting area is offsite and downstream of the encroachments and would not replace the buffer that is lost through the construction of a road and part of a building. Therefore, the proposed downstream plantings would not provide filtering and screening of stormwater runoff for the wetland nearest the commercial use, would prevent the creation of a high priority forested wetland/buffer area, and would not provide the separation of the wetland from the impervious surface that a buffer would normally provide.

## **DISCUSSION**

The subject site is composed of several properties. The site lies within the Patuxent River watershed, and drain into the reservoirs which provide drinking water for parts of Montgomery, Howard, and Prince George’s counties. Most of the site is in grass cover with scattered trees. A bank and associated parking area and driveway are located in the northwestern portion of the site near the intersection of New Hampshire Avenue/Route

650 and Ashton Road/Route 108. Two other buildings also existed on the site, but they have been recently demolished under demolition permits that did not require review under the Forest Conservation Law because each building was located on property that was under 40,000 square feet in size.

The eastern portion of the site contains a wetland and environmental buffer associated with a headwater stream. A portion of the site's environmental buffer (28,110 square feet out of square feet 66,860 of onsite buffer area) is protected by an existing Category I conservation easement as part of a preliminary subdivision plan (#1-95053, Derrick's Addition to Ashton, approved by the Planning Board on June 1, 1995) which created two lots and an outlot. Forest planting was required under an approved forest conservation plan. Much of the environmental buffer is in grass cover, with forest cover in the southern portion of the environmental buffer.

### **Section 50-32, Subdivision Regulations**

- 1. *Trees, Forests, and Environmentally Sensitive Areas.* The board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources and to protect environmentally sensitive areas. For purposes of this subsection, environmentally sensitive areas are limited to critical habitats for wildlife or plant species, slopes over 25% or over 15% with highly erodible soils, wetlands, perennial and intermittent streams, and stream buffers. Specific measures also may be required to protect any rare, threatened or endangered plants or animals.**

The applicant proposes a commercial use with a residential special exception that results in impervious surface of about 10,800 square feet (0.25 acre) within the environmental buffer area, including 2000 square feet (0.05 acre) of wetlands, associated with the headwater stream. In addition, the applicant proposes to share an offsite stormwater management facility with SHA, which will result in about 3950 square feet (0.09 acre) of forest clearing within an environmental buffer. The total proposed encroachments into the environmental buffer are 14,750 square feet (0.34 acre), of which about 2000 square feet (0.05 acre) are encroachments into wetlands.

Staff finds that the locations of the project's proposed internal driveways, grocery store, and the store's loading area are not fixed and could be redesigned to avoid permanent encroachments into the wetland and environmental buffer. Keeping the grocery store fixed on the site results in pushing the driveway, as well as the corner of the store and its loading area, into the wetland and its buffer.

In addition, staff believes that the offsite SWM facility may also be redesigned to avoid forest clearing within an environmental buffer. *DPS has required the applicant to revise the SWM concept to relocate the SWM facility outside the forested environmental buffer, if feasible.*



2. **Restrictions – general.** (1) In addition to any requirement imposed under Chapter 22A, the proposed subdivision may be restricted under this Section by:
- a. **deletion of or rearrangement of proposed lots, roads, utilities, and other facilities;**
  - b. **the establishment of building restriction and land disturbance limit lines, and other protective measures or conditions;**
  - c. **requiring conservation easements, deed restrictions, or covenants over portions or lots or parcels to be recorded.**

Staff finds that the proposed project may be revised to protect the entirety of the wetland and environmental buffer on the site. If the grocery store is relocated or reconfigured, then the proposed internal driveway through the site may be located outside the wetland and environmental buffer. The SWM facility may also be relocated outside the forested buffer.

The applicant indicates that a grocery store is a critical element of the project and must be located and configured as it is shown in the proposed preliminary and site plans. The applicant has made some design changes to reduce, but not eliminate, the amount of buffer encroachment attributed to the driveway, grocery store, and loading area. Staff does not agree that the grocery store cannot further change in size or location on the site, or that all options for “flexibility in placement of commercial uses” noted on page 39 of the Sandy Spring/Ashton Master Plan has been fully explored.

### **Planning Board’s Environmental Guidelines**

1. **Wetland buffers based on the State regulations will be incorporated into the stream buffer described in Section B. The State mandates a minimum 25-foot buffer around all wetlands, with expansion up to 100’ where adjacent areas contain steep slopes or highly erodible soils. These guidelines also include a larger minimum buffer for wetlands on small headwater streams in sensitive Use III and IV watersheds (50 foot and 40 foot, respectively). ...**

In the Planning Board’s Environmental Guidelines, the term “stream buffer” is comparable to the term “environmental buffer”. “Stream buffer”, as defined by the guidelines, includes wetlands and their buffers.

2. **Recommended Guidelines for Stream Buffers**
  - a) **Streams, natural surface springs, and seeps will be maintained in a natural condition so that the existing hydraulic regimen and State water quality standards can be maintained.**
  - b) **No buildings, structures, impervious surfaces, or activities requiring clearing or grading will be permitted in stream buffers, except for infrastructure uses, bikeways, and trails found to be necessary,**

- unavoidable, and minimized by the Park and Planning Department environmental staff working closely with the utility or lead agency.
- c) Stormwater management (SWM) facilities are generally discouraged within stream buffers since, as a general rule, location of this permanent use within the buffer does not allow maximized accomplishment of all environmental management objectives for the stream buffer. However, maximum long-term effectiveness of SWM facilities is also an important objective of an overall stream protection strategy, and must be considered together with the buffer objectives in siting decisions. As a general rule, minimized buffer intrusions are allowed for construction of suitable SWM facilities or non-erosive storm drain outfalls, and unavoidable and consolidated sanitary sewer connections.

A SWM facility may be allowed within the stream buffer area on a case-by-case basis. The following factors will be considered by DPS and M-NCPPC staff in the evaluation of which facilities or other Best Management Practices (BMPs) may be appropriate in the buffer:

- (1) Documented and measurable improvement in the effectiveness of the SWM control system if placed in the buffer
- (2) Minimization of encroachment into the buffer
- (3) Avoidance of existing sensitive areas (forest, wetlands and their State-designated buffers, floodplain, steep slopes, and habitat for rare, threatened, and endangered species with their associated protection buffers)
- (4) Extent to which the SWM facility or BMP design is consistent with the preferred use of the buffer (for example, preservation of existing forest and natural vegetation within part of all of the flood pool; naturally contoured and vegetated infiltration areas or filter strips; etc.)
- (5) Excessive grading caused by an uphill SWM location; and /or the reduction of numerous smaller less efficient structures outside the buffer
- (6) Existence of severely degraded conditions within the buffer area that could not be improved if the SWM facility is outside the buffer area
- (7) Presence of man-made structures (e.g., farm ponds) in the buffer area under pre-development conditions that can be converted to SWM use without excessive stream disturbance
- (8) Ability to provide full or partial compensation for the loss of buffer function from the disturbance and permanent absence of forested areas.

M-NCPPC and DPS Water Resources staff will evaluate SWM alternatives that provide effective SWM in a manner closest to the preferred use of the buffer as a stable forested area. The two agencies will jointly determine where SWM facilities are appropriate in stream buffers. When a SWM facility is allowed in the buffer, an area that is of comparable or greater environmental benefit than that used for the SWM and not otherwise protected, may be required as a replacement buffer.

e) **Small amounts of clearing and grading for other purposes within the stream buffer (such as paving for bikeways) may be recommended for approval by staff on a case-by-case basis so long as the modification is consistent with a comprehensive approach to protecting areas that are critical to preserving or enhancing streams, wetlands, and their ecosystems. The applicant shall provide rationale for stream buffer modifications addressing at a minimum the factors below. The extent to which the proposal meets all the following factors will form the basis for staff recommendations.**

- (1) **Reasonable alternatives for avoidance of the buffer are not available.**
- (2) **Encroachment into the buffer has been minimized.**
- (3) **Existing sensitive areas have been avoided (forest, wetlands and their state designated buffers, floodplain, steep slopes, and habitat for rare, threatened, and endangered species and their associated protection buffers).**
- (4) **The proposed use is consistent with the preferred use of the buffer (e.g., pervious areas such as tie outs to existing grades, slope stabilizing BMPs, etc.).**
- (5) **The plan design provides compensation for the loss of buffer function.**

f) **Only unavoidable road and utility crossings will be permitted in the stream buffer when it is clearly demonstrated that no feasible alternatives exist, and every efforts is made to locate road alignment and/or utilities to create the least disturbance to existing vegetation, grade, wetlands, trout spawning areas in Use III watersheds, etc.**

Staff finds the proposed encroachments into the environmental buffer to be inconsistent with the Environmental Guidelines. The guidelines do not allow for buildings, structures, or impervious surfaces to be placed in stream buffers unless it is determined that these features are necessary infrastructure elements. Staff finds that the proposed driveway is an infrastructure element of the project, but its location over wetlands and buffer are avoidable if the layout is changed.

In addition, a proposed offsite stormwater management facility, which will provide part of the quality controls for the project and which is proposed to be constructed by SHA, will require clearing roughly 8900 square feet of forest within the environmental buffer. The applicant indicates that the location and design of the SWM facility is determined by SHA and is reviewed by the Maryland Department of the Environment. However, since this SWM facility, as well as other SWM structures and facilities that are proposed to be shared with SHA, is an integral infrastructure element of the project, staff believes the facility's location and design elements must be subject to the Planning Board's Environmental Guidelines and the County Forest Conservation Law. Staff believes it is possible for the SWM facility to avoid encroachment into the forested environmental buffer area, and as stated earlier, *DPS has required the applicant to relocate the SWM facility outside the forested environmental buffer.*

- 3. The Planning Department evaluates proposed wetland impacts under the federal and State avoidance guidelines that are listed in order of preference as follows:**
- (1) Avoiding the wetland impact altogether by not taking a certain action or parts of an action**
  - (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation**
  - (3) Rectifying the impacts by repairing, rehabilitating, or restoring the affected environment**
  - (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action**
  - (5) Compensating for the impact by replacing or providing substitute resources or environments**

**Wetlands and their associated buffer areas must be maintained in their natural condition unless the proposed disturbance is for a project determined to be necessary and unavoidable for the public good, such as:**

- (1) Road crossings, water and sewer lines, and storm drain outfalls for which no alternative exists**
- (2) Stormwater management facilities, when it can be demonstrated that upland areas are infeasible or would severely limit the performance/effectiveness of the facility**
- (3) Park projects for wildlife and habitat enhancement**
- (4) Wetland enhancement projects**
- (5) Bikeways and trails, when it can be demonstrated that a satisfactory connection cannot be made otherwise...**

The proposed project would result in permanent loss of about 10,800 square feet (0.25 acre) of environmental buffer area, including 2000 square feet (0.05 acre) of wetlands, associated with the headwater stream. An internal driveway and part of the grocery store building and its loading area would be located within the wetland and its buffer. Staff believes these encroachments could be avoided if the layout for the project was modified.

In 2005, the applicant submitted a nontidal wetlands permit application to the Maryland Department of the Environment (MDE) showing a wetland impact of 3400 square feet. At the time, the applicant had indicated that the proposed fill of the wetland was necessary and unavoidable, and that the proposed wetland impact had been minimized.

Contrary to the applicant's information for the state wetlands permit application, the plan has been revised to reduce the wetland impact to 2000 square feet. Staff does not agree with the applicant that the proposed project cannot be further modified to completely avoid filling in the wetland and buffer.

- 3. The provision of BMPs in the Primary Management Area is required for all areas where zoning densities are higher than RE-2, as previously discussed. The use of BMPs will also be encouraged in lower density areas during the**

development review process to facilitate clustering of development and the maximization of soil infiltration capacities. .

**Possible Best Management Practices (BMPs)**

- 1. Locating and possibly clustering development to maximize suitable developable land areas and to minimize negative impacts to water quality and other environmental considerations such as tree stands and wetlands.**
- 2. Widening the stream buffer area to ensure increased infiltration of pollutants, nutrients, and sediments over the extended run.**
- 3. Afforestation of more than the required 50-foot minimum of forest cover within the stream buffer.**
- 4. Utilizing more innovative and effective stormwater management. Maximize infiltration and design ponds to effectively mitigate for both temperature and nutrient/sediment removal. Design for the ten-year storm rather than the required two-year storm.**

The Environmental Guidelines include recommendations for land within the Patuxent River watershed that lie within set distances from streams. This land area is known as a Primary Management Area (PMA).

The entire subject site lies within a PMA. The proposed encroachments into the environmental buffers for both the proposed driveway, part of the grocery store and its loading area, and stormwater management facility are inconsistent with the Primary Management Area (PMA) guidelines. The proposed development is not clustered away from forest, tree stands, or wetlands. Contrary to the guidelines, the stream buffer that is proposed for protection is reduced, not expanded .

**4. Delineating the Stream Buffer within the PMA**

**The stream buffer area must be left undisturbed and in its natural state. Land disturbing activities such as clearing and grading will not be permitted in the stream buffer area. Activities that would be encouraged in the stream buffer area include afforestation and, if possible, the implementation of Best Management Practices (BMPs). The control of noxious weed species in the stream buffer area, such as thistles (Asteraceae or compositae), Johnson grass, shattercane and wildcane, and multilfora rose, will be permitted when deemed necessary and when done in a manner that minimizes disturbance to other vegetation. Any disturbance of the stream buffer will require M-NCPPC staff review.**

The proposed fill in the wetland and its buffer to locate uses for the commercial project and the proposed clearing of forested buffer to locate a SWM facility are inconsistent with the PMA recommendation to protect the stream buffer area.

**County Forest Conservation Law**

1. **Section 22A-12(b) states:**
  - (1) **The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition unless the Planning Director finds that:**
    - (A) **the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention;**
    - (B) **reasonable efforts have been made to protect specific areas and vegetation listed in the plan; and**
    - (C) **the development proposal cannot be reasonably altered.**

The proposed loss of 14,750 square feet (0.34 acre) of environmental buffer, including 3950 square feet of forest loss within the buffer, due to the location of avoidable elements of the proposed project is inconsistent with the Forest Conservation Law.

The applicant has not demonstrated that the loss of high priority forest (i.e., forest in an environmental buffer) due to the location of a SWM facility is necessary and unavoidable. As previously noted, DPS has required the applicant to relocate the SWM facility outside the forested environmental buffer, if feasible.

### **Sandy Spring/Ashton Master Plan**

1. **To protect and enhance the water quality within the Patuxent River watershed this plan:**
  - **Continues the predominantly low-density land use pattern established by the 1980 Plan. Currently, the five-acre Rural Cluster zoning covers most of the Sandy Spring/Ashton portion of the watershed. As noted in the Patuxent Plan, this type of land use pattern “is not likely to exacerbate the present situation.”**
  - **Maintains the small amount of more intense land use in the existing village centers and endorses it in other areas to meet other Plan goals. The areas within the Patuxent River watershed where more intense land uses are recommended are discussed below.**

### **The Sandy Spring Village Center**

**As noted in the Land Use, Design and Zoning chapter, a small expansion of the Sandy Spring village center is proposed to reinforce its viability by clustering a small amount of housing near existing retail. The scale of the proposed expansion is likely to have only a small adverse impact on the Patuxent River watershed. However, to ensure watershed protection in these areas, this Plan recommends:**

- **Montgomery County Department of Permitting Services (MCDPS) maintains stringent sediment control during construction and careful selection of appropriate stormwater management strategies and locations for any stormwater structures.**
- **Encouraging developers to limit impervious surfaces to the minimum necessary.**
- **Maximize stream buffer protection as outlined in the Montgomery County Planning Board’s Guidelines for Environmental Management of Development.**

### **The Brooke Grove Foundation Campus**

**This campus provides care for the elderly. This Plan recommends no expansion of the Brooke Grove Foundation campus beyond the envelope established by the 1995 Special Exception (SE) approval. To ensure watershed protection on this campus, this Plan recommends:**

- **Maintaining a minimum 125-foot non-disturbed stream buffer.**
- **Clustering development and disturbance away from streams and wetlands.**
- **Limiting impervious surfaces within the Primary Management Area to 10 percent and over the entire site to 11 percent.**
- **Phasing development to minimize the amount of construction at any one time.**
- **Accelerated reforestation of stream buffers.**

### **Brooke Road/Chandlee Mill Road Neighborhood**

**This Plan confirms the 1980 Plan recommendations of 2 dwelling units per acre for most of the Brooke Road/Chandlee Mill Road Neighborhood to enable this community to continue its current land use pattern. This pattern includes homes and trailers on property handed down by family members. A reduction in recommended density would create a great hardship for the existing residents and undermine the community. Because of the need to reinforce this community, environmental concerns such as failing septic systems and stream valley disturbance will need to be addressed through strategies other than land use changes.**

The subject is not identified by the master plan as one of the three areas recommended for more intense land uses. Contrary to the master plan recommendations, staff finds the project proposes uses on the site of such a scale that the internal driveway, the corner of the grocery store building, the store’s loading area, and one of the SWM facilities is “pushed” into the environmental buffer.

In addition, for each of these three sites, the master plan includes specific recommendations to “ensure watershed protection in these areas” despite the goal of more intense land uses. These recommendations include clustering development away

from streams and wetlands and maximizing stream buffer protection. Staff finds that the subject project not only is more intense than what the master plan recommends, but it cannot meet master plan recommendations for protecting environmental buffer areas that are intended for sites that are specified for high intensity land uses.

### **Functional Master Plan for the Patuxent River Watershed**

The Sandy Spring/Ashton Master Plan refers to the Functional Master Plan for the Patuxent River Watershed as the basis for its specific recommendations to protect and enhance the water quality within the Patuxent River watershed. The functional master plan contains several general recommendations for controlling “urban<sup>1</sup>” runoff. These include, but are not limited to: location of stormwater management facilities outside buffer areas when feasible to avoid adverse impacts to wetlands and habitat and the implementation and enforcement of the Primary Management Area (PMA) concept as stated in the Environmental Guidelines. As discussed above, staff believes the proposed project does not meet the PMA guidelines as set forth in the Environmental Guidelines, nor does it locate a proposed SWM facility outside an environmental buffer where it could be possible to do so.

### **Applicant’s Proposed Measures to Mitigate Environmental Buffer Encroachments**

The applicant proposes to mitigate the environmental buffer encroachments by creating about 9450 square feet (0.22 acre) of wetlands within the environmental buffer (compared to the approximately 2000 square feet (0.05 acre) of wetland that is proposed to be filled and replaced with impervious surfaces), planting 0.67 acre of forest in excess of that required under the Forest Conservation Law, placing a conservation easement on part of the environmental buffer that lies offsite on an already developed residential lot, and planting at a denser rate of trees than that required under the Forest Conservation Law.

Notwithstanding staff’s concerns with allowing unnecessary and avoidable encroachments into environmental buffers, staff does not find that the proposed mitigation measures, in conjunction with the proposed commercial use, will necessarily be environmentally better than a commercial use that protects the full environmental buffer.

The applicant proposes to create additional wetlands, but they would be located within the standard environmental buffer. Not only would the existing natural wetland lose a large part of its buffer and have impervious surfaces located immediately next to it, but there would be no buffer area to help protect the newly created wetland. Also, there is no land area on the subject site that is proposed to be protected as a natural area to offset the permanent loss of land area within the standard buffer. In addition, providing adequate hydrology to preserve the existing wetland conditions will be difficult at best due to the

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<sup>1</sup> The Functional Master Plan for the Patuxent River Watershed defines “urban” as “all areas which are not zoned agricultural (agricultural zones include Rural, Rural Cluster, and Rural Density Transfer)” for the purposes of the plan.



upstream imperviousness: providing hydrology to a much larger area to “create” new wetlands will significantly reduce the potential for sustainable wetland conditions.

Forest is proposed to be planted to help mitigate the buffer encroachments, but forest planting is already required for the proposed project to meet Forest Conservation Law requirements. The forest planting that is proposed for mitigating the buffer encroachments would be in excess of the Forest Conservation Law requirements with respect to the total size of the planted area and the number of trees and shrubs to be planted. Although the “excess” planting would establish more forest within and adjoining the buffer, over time most of this area should naturally regenerate into forest, with some measures to controThat is, the same buffer area would revert into forest cover over time with the required forest planting and maintenance measures (i.e., without the proffer of “excess” planting).

It should be noted that forest planting was completed within part of the environmental buffer as part of the forest conservation plan for Preliminary Plan # 1-95053 . However, from records in the forest conservation plan file, the trees that were planted were small and did not have any protection from deer. The planting measures that were implemented for the old preliminary plan did not include measures that are typically required today to help the survival of planted trees and reduce die off due to deer damage or other causes. In addition, it appears that unauthorized mowing occurred within the buffer area. The unauthorized mowing and the lack of current planting practices resulted in an unsuccessful reforestation project for the old preliminary plan.

There is testimony that indicates the existing wetland is not of high quality and does not receive much water in its current condition. This wetland, which is located in the headwater of a stream, was delineated by the applicant’s consultant and has been verified by the Maryland Department of the Environment. In fact, evidence of groundwater flows can be seen on the surface by the presence of a seep/spring near the eastern portion of the on-site environmental buffer. The applicant’s Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) for the subject site states that the wetlands “are supported by seep/spring wetland hydrology.” It is not uncommon in this County to have small, natural wetlands in headwater areas of streams. By definition, a headwater area is the beginning of a stream, and because it is located at the top of a drainage area, it commonly contains wetlands and stream channels that do not receive a large amount of groundwater flows. A buffer of a vegetated or natural area is critical to protect these small wetlands and stream channels.

The applicant proposes to “improve” the wetland by discharging stormwater runoff from the grocery store building into an infiltration structure immediately uphill of the wetland as part of the project’s SWM treatment.

However, staff does not find that the proposed project, even with the proposed SWM facilities, will necessarily provide more surface and groundwater sources to the wetland area. The impervious cover of the drainage area to the wetland will increase from about 15 percent to 68 percent. This will significantly decrease the amount of pervious land that

can act as a natural recharge area for the groundwater that feeds the wetland. In addition, the proposed project will rely on engineering methods to provide water to the wetland area. Whether these proposed engineered structures will mimic natural infiltration and groundwater recharge functions of vegetated land is questionable. DPS recognizes that the proposed infiltration trench and porous pavement areas may fail and requires a formal plan revision if these structures become dysfunctional. The SWM concept approval letter for the project, dated December 22, 2006, states:

“If the proposed bottom grades of the infiltration trench and porous pavement areas are compromised during construction, underground sand filter may possibly substitute as water quality devices, with a formal plan revision.” It should be noted that infiltration trenches and porous pavement are designed to provide water quality controls and help recharge groundwater, but sand filters provide water quality benefits without groundwater recharge functions.

### **Applicant’s Proposals for Changes**

On March 15, 2007, a meeting was held with M-NCPPC staff, DPS staff, the applicant, the applicant’s engineer and land planning consultant, and SHA. The applicant discussed possible changes to two parts of the project that encroach into environmental buffer areas: the SHA SWM facility to the south of the site, and the part of the commercial project at the eastern end of the proposed grocery store.

The applicant indicated that SHA had recently been provided information on the location of the environmental buffer area. SHA stated that its engineers were re-evaluating the design of the SWM facility to determine if it could be reconfigured to avoid grading into the forested environmental buffer. A week after the meeting, staff received drawings that showed that the SWM facility and associated grading could be located outside the environmental buffer. Staff supports these changes if they meet DPS requirements for SWM facilities.

The second revision presented by the applicant showed a reduced encroachment into the environmental buffer due to the commercial project. The applicant presented a concept sketch of changes to the eastern corner of the proposed grocery store and the access road that avoided filling in the wetland, but still resulted in disturbance and construction within the wetland’s buffer. Although the proposed changes are an improvement over the current layout of the commercial project, staff does not support the remaining encroachment within the wetland buffer.

The wetland, which is small by virtue of its location in a headwater area, will be affected by the increase in impervious surfaces of any commercial development on the site, including the currently proposed project. The protection of a vegetated buffer around the entirety of the wetland, in conjunction with a SWM concept that includes recharging of the groundwater source for the wetland, is very important in countering the negative impacts of adding significant impervious surfaces around the wetland.

The applicant proposes to plant forest offsite in excess of that required by the Forest Conservation Law. Staff does not believe that the proposed forest planting would mitigate the loss of wetland buffer because the planting area is downstream of the affected wetland buffer and would not be able to replace the functions of the paved buffer area with respect to protecting the on-site wetland.

### **Summary**

In summary, although the changes proposed by the applicant at the March 15<sup>th</sup> meeting would reduce the impacts of the proposed project, the changes fall short of full protection of the site's environmental buffer. Staff continues to conclude that the buffer encroachment could be avoided if further changes to the commercial project. Staff also concludes that the location and configuration of the grocery store, free-standing bank building, and access road are could be further modified to protect the full environmental buffer on the site. In staff's opinion, the location and configuration of these features of the commercial project are not set. The grading and fill of the environmental buffer are not necessary or unavoidable.

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# Biota

ENVIRONMENTAL DESIGN & RESTORATION

## ENVIRONMENTAL RESOURCE FUNCTIONAL ASSESSMENT REPORT

“ASHTON MEETING PLACE”

Montgomery County, Maryland  
January 2007

**PREPARED FOR:**

Ashton Meeting L.L.C.  
18623 Brooke Road  
Sandy Spring, Maryland 20860

**SUBMITTED TO:**

M-NCPPC  
Montgomery County  
Silver Spring, MD 21203-1715

**ENVIRONMENTAL RESOURCE FUNCTIONAL**  
**ASSESSMENT REPORT**

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**1.0 INTRODUCTION**

- 1.1 This Environmental Impact Assessment Report (EIA) has been prepared in support of the construction of a mixed use commercial/residential development at the intersection of Ashton Road and New Hampshire Avenue in northern Montgomery County. The property consists of several parcels and lots of record containing a total of 7.5 acres of land. In order to construct the proposed facility, a Joint Maryland Department of the Environment (MDE)/ U.S. Army Corps of Engineers (COE) Permit has been applied for and conditional approval obtained subject to the preparation of final engineering plans.
- 1.2 An alternatives analysis has been previously submitted providing a detailed evaluation of other properties and development alternatives which Ashton Meeting, L.L.C. has considered as part of the initial site planning process. Based upon this analysis, it was determined that the Ashton Meeting Place property was the only available site suitable for the construction of a mixed use commercial/residential center (Refer Alternative Site Analysis information prepared by Perrine Planning and Zoning and Biota Inc.).
- 1.3 This EIA report provides an assessment of the existing site conditions and the non-tidal wetlands on the Ashton Meeting Place Property. This information has been utilized to assess potential site development alternatives which serve to avoid, minimize and mitigate adverse environmental impacts to the greatest extent possible. Through careful review, it has been established that, due to the size and configuration of the remaining area located beyond the limits of wetlands, impact of jurisdictional wetlands can not be avoided while achieving the project purpose.
- 1.4 Through the incorporation of sound environmental site design principles and innovative best management practices, the primary functional benefits the existing wetlands provide have been preserved and/or enhanced. In addition, by increasing the total amount of existing wetlands located on-site by greater than 50 % and afforesting all of the available open space located on and adjacent to the site, the quality of the wetlands to be retained upon project completion will be significantly improved, thus enhancing the environmental functional benefit provided by the preservation of wetlands (Refer to Forest Conservation & Tree Preservation/Mitigation Plan).
- 1.5 In summary, this EIA report will demonstrate that the proposed improvement of the Ashton Meeting Place Property for a mixed use commercial/residential center is consistent with the Montgomery County Environmental Guidelines. Through the incorporation of innovative environmental site design and best management practices, the construction of the proposed facility has been achieved while preserving the functional benefits the existing waters and wetlands provide. In addition, the design of the project serves to avoid adverse environmental impacts on and adjacent to the property. This in combination with the creation of forested non-tidal wetlands, enhancement of the existing

wetlands to be preserved and the reforestation of the entire stream valley buffer both on-site and adjacent to the property serves to provide full mitigation of all jurisdictional impacts associated with the project.



**2.0 EXISTING SITE CONDITIONS**

**2.1** In order to identify those factors which affect the existing site conditions, a historical site evaluation has been conducted considering the land use activities on and adjacent to the property. This has been achieved primarily through the utilization of aerial photographs, topographic field surveys and various other publicly available mapped data and field site inspection.

**2.2** The Ashton Meeting Place property is 7.5 acres +/- in size, split-zoned Commercial (C-1) and residential (R-60) and is located at the southeast corner of the intersection formed by Ashton Road and New Hampshire Avenue. An existing bank and associated parking area is currently located at the intersection. Several additional buildings and associated paved area located along the site road frontage have recently been removed. The balance of the property is characterized by maintained lawn and fallow field with a small area of scattered trees found in the southeastern most corner of the overall tract. Surrounding land use consisted of existing commercial and residential development to the north and west and low to medium density residential development to the south and east.

**2.3 Site Terrain and Soil Mapping**

**2.3.1** The site terrain is characterized by level to gently rolling topography with elevations ranging from 496' at the northwestern corner of the property to 468' at the southeastern corner of the overall tract. A slope analysis has been conducted to determine the extent of steep slopes present on and adjacent to the site. The results of this analysis reveal that slopes in the vicinity of the property are generally 2-8%.

**2.3.2** The site contains three (3) soil-mapping units, according to the Montgomery County Soil Survey listed as follows:

<u>SYMBOL</u>	<u>MAPPING UNIT</u>	<u>DRAINAGE</u>	<u>CONSTRAINTS</u>
2B	Glenelg Silt Loam	Well Drained	None
1C	Glilia Silt Loam	Well Drained	None
6A	Baile Silt Loam	Poorly Drained	Potentially Hydric

**2.3.3** Of the soil mapping units identified on-site, both the Glenelg and Glilia soil mapping units are not noted as being associated with potentially erodible or hydric soil conditions. The Baile soil mapping unit is noted as being potentially hydric and is typically associated with high groundwater conditions.

## 2.4 Site Hydrology

- 2.4.1 An emergent non-tidal wetlands forms in the lower site elevations found in the southeastern portion of the property as result of a groundwater seep and drains easterly through a fallow grassed swale to a clearly defined springhead located off-site. At this point surface and groundwater concentrates forming an intermittent stream system confined within an ensized drainage channel. According to the Maryland Department of the Environment (MDE) Water Quality Regulations, this stream is classified as a Use IV Recreational Trout Stream (Put and Take) waterway. As the downstream resource is not large enough to support recreational trout stream habitat and discharges in such close proximity to the Patuxent Reservoir, this drainage system has little opportunity to provide a significant recreational fisheries habitat benefit.
- 2.4.2 The overall drainage area contributing to the headwaters of this drainage channel above the existing springhead located off-site is approximately 11.0 acres +/- in size. Of this area approximately 3.5 acres +/- is located off-site the majority of which is characterized by impervious paved road surfaces located within State Highway Administration (SHA) right-of ways. The on-site drainage area contributing to this intermittent drainageway is approximately 7.5 acres +/- in size, of which impervious surfaces cover approximately 2.0 acres (25% +/- of the gross tract area). The total existing impervious surface located within this drainage area equals approximately four (4) acre or 36% +/- of the upland drainage area. All of the impervious surface area was created prior to stormwater management regulation, thus neither stormwater quantity nor quality management have been provided to pre-treat surface run-off prior to it's release into the existing wetlands and downstream receiving waters.

## 2.5 Site Vegetation

- 2.5.1 The central and southeastern portion of the site is characterized by common fescue with scattered deciduous trees ranging from early successional to mature. The understory is dominated by invasive species. The delineated emergent wetlands located on-site are clearly dominated by common fescue as this area has historically been maintain in a lawn condition with scattered common carex and rush species identified in the field. A narrow band of existing riparian deciduous forest is found around the existing springhead located off-site running easterly approximately 100 to 150 wide.
- 2.5.2 Based upon the limited width of the existing forest located off-site this woodland does not provide a significant habitat for forest interior dwelling birds. According to the Maryland Department of Natural Resources (DNR), the site does not contain any known State or Federal rare, threatened or endangered species. Due to the amount of existing developed/maintained site area and the developed nature of the adjacent properties the site supports primarily suburban wildlife.

**3.0 PROPOSED LAND USE ASSESSMENT**

- 3.1** The proposed Site Plan centers on the creation of an integrated mixed use commercial/residential village center. The layout of the center is predicated upon numerous site design factors essential to the success of the project, which have been briefly summarized as follows:
1. The design of a grocery store building adequate in size to provide those services essential to the project purpose.
  2. The design of entrance roads and internal travel aisles that allow the safe and functional operation of the facility.
  3. The design of an adequate amount of active and passive open space, parking and service area to support a modern integrated mixed use commercial/residential village center.
- 3.2** Utilizing these site design factors, several alternative site plans have been considered to achieve the project purpose. The original Site Plan proposed the impact of approximately 4,000 S.F.+/- of wetlands and 10,700 S.F.+/- of wetland buffer (40' wide) in order to obtain essential access into the site from Ashton Road. Based upon consultation with the Department of Environmental Protection, MDE and SHA, alternative site designs were evaluated to avoid and minimize the extent of impact to non-tidal wetlands. It was determined that the amount of jurisdictional impact could be significantly reduced by shifting the required access from Ashton Road into the site westerly toward the intersection and creating a subtle curve around the top of the delineated emergent wetlands located on-site. This in combination with the construction of a retaining wall behind the proposed improvements served to reduce the amount of wetland impact originally proposed by approximately 2,000 S.F.+/- or 50%.
- 3.3** The current site plan reflects the minimum aerial extent of development necessary to achieve the project purpose. The buildings have been located to comply with both the Montgomery County Development Regulations and provide the minimum square footage, parking and service area necessary to support an integrated mixed use commercial/residential village center.
- 3.4** Stormwater quality and quantity management will be provided for through the creation of a joint use stormwater management facility to be constructed by SHA on the adjacent "Matthews Property" in combination with on-site water quality and quantity facilities. These facilities have been designed to capture a large amount of previously unmanaged surface run-off, as well as the increased run-off created by the proposed site improvements and SHA road improvements. Water quality structures have been incorporated within the interior of the site in order to ensure adequate groundwater recharge to the existing wetlands to be retained on-site.

- 3.5** In order to mitigate for non-tidal wetlands impacted that could not be avoided, forested wetland enhancement and wetland mitigation at a ratio greater than 4.7:1 has been proposed on-site. The proposed wetland mitigation is contiguous to the existing wetlands to be retained and will result in the creation a large woodland capable of supporting a significantly more biological diverse plant and wildlife community by afforesting in excess of the entire 125 foot stream valley buffer extending more than 300 feet off-site down stream.
- 3.6** In summary, through careful consideration to environmental features, site improvements have been clustered in the uplands around the perimeter of the highest quality wetlands minimizing adverse impact to the greatest extent possible. Wetland mitigation has been proposed replacing those wetlands to be impacted with a significantly more biologically diverse ecosystem. This serves to provide full mitigation of all jurisdictional impacts to the natural resources.

#### 4.0 ENVIRONMENTAL RESOURCE FUNCTIONAL IMPACT ASSESSMENT

- 4.1.1 This assessment consists of an evaluation of the pre-development condition, post-development condition and proposed management techniques utilized to avoid, minimize and mitigate potential adverse impacts to non-tidal wetlands. The pre-development drainage area is generally characterized by unmanaged on-site run-off through maintained lawn to the existing wetlands. A considerable amount of the upland drainage area located off-site consists of unmanaged run-off from paved road right-of-ways that has been artificially directed around the wetlands by the existing road grade.
- 4.1.2 The post- development drainage area, similar to that of the pre-development drainage area, is divided into two (2) sub-drainage areas. The stormwater management facility captures the unmanaged run-off from the adjacent paved road right-of-way and the increased surface run-off from the site development active. The stormwater management facility also captures increased run-off from proposed SHA intersection improvements independent of this project. The drainage area to the wetlands to be retained and enlarged consists primarily of the designed stormwater management recharge facilities and the porous pavement parking area.
- 4.1.3 Utilizing the above described drainage areas, an environmental resource functional assessment has been conducted based upon an analysis of seven (7) primary functional benefits wetlands provide. Each wetland functional characteristic assessed has been described as follows:
- 4.2.1 Groundwater recharge is the process where surface water is stored and retained within wetlands and allowed to infiltrate into the groundwater table. The environmental benefit this wetland function provides is to recharge the groundwater table during periods of low annual rainfall. Based upon the existing hydrologic and soil conditions identified on-site, the delineated wetlands are associated with a high groundwater table, which is typically characteristic of groundwater discharge conditions. Due to the level terrain across the existing wetlands and the intermittent nature of the wetland hydrology, however, surface water is retained and allowed to infiltrate during small rainfall events and periods of seasonal low groundwater table elevations (ie. generally between May and October of each year). The pre-development assessment of this environmental functional benefit is moderate.
- 4.2.2 Based upon post-development site conditions, the aerial extent of the existing wetlands located on-site will be reduced by approximately 15% during the initial construction phase of the project and will be increased by greater than 50% once the project has been completed. The proposed stormwater management design has incorporated underground recharge facilities in combination with a large area of porous pavement. This promotes surface water infiltration and increases the amount of water entering the wetlands and

length the residence time before surface run-off is discharged to the down stream receiving waters. These factors serve to enhance the opportunity the wetlands have to provide a groundwater recharge functional benefit. The post-development assessment of this environmental functional benefit is high.

- 4.3.1 Groundwater discharge is the process where water is released from the groundwater table and allowed to filter through wetlands while being conveyed to the down stream receiving waters at a greater rate than infiltration occurs. The environmental benefit this wetland function provides is to maintain the hydrologic characteristics of the down stream receiving waters during periods of low annual rainfall. The existing wetlands are associated with a high groundwater table, however based upon field evaluation the volume of groundwater discharge does not exceed the rate of infiltration. In fact, the upper portion of the existing wetlands area which is the primary subject of this assessment could be considered hydrologically isolated from the down stream receiving waters from an over land surface water prospective. Consequently, this low volume of intermittent hydrology does not directly contribute to ground water discharge. The pre-development assessment of this environmental functional benefit is low.
- 4.3.2 The design of the proposed site improvements around the perimeter of the existing wetlands located on-site serves to retain the majority of lowland surface area permitting groundwater water discharge to occur similar to pre-development site conditions. The placement of compacted fill material in association with these site improvements will force the parabolic water table down, thus raising the groundwater table in the adjacent wetlands to be enlarged and enhanced. This in combination with the designed stormwater recharge facilities serves to provide the necessary hydrology to support the proposed wetland mitigation and enhance the opportunity the wetlands have to provide a groundwater discharge function. The post-development assessment of this environmental functional benefit is moderate.
- 4.4.1 Natural Flood Control occurs when wetlands store and/or detain surface run-off during rainfall events and release it slowly to the down stream receiving waters. The environmental benefit this wetland function provides is to reduce flood elevations and flow velocities protecting down stream properties and reducing stream bank erosion. Due to the level terrain across the existing wetland area and the dense herbaceous vegetation surface water is effectively stored and released to the down stream receiving waters during large rainfall events. The pre-development assessment of this environmental functional benefit is high.
- 4.4.2 Based upon the design of the proposed site improvements, stormwater management has been provided to capture existing and increased run-off during rainfall events and release it slowly to the down stream receiving waters. As the majority of the wetlands are to be preserved on-site, this serves to maintain post development natural flood controls similar

to pre-development conditions. In addition, stormwater management has been provided to detain surface run-off from unmanaged impervious surfaces both on and off site during large and smaller rainfall events which have the greatest impact upon the stability of the down stream receiving waters. The post-development assessment of this environmental functional perimeter is high.

- 4.5.1 Sediment Retention and Pollutant Filtering occurs when wetlands serve to remove and retain nutrients and suspended sediments introduced from upland surface run-off. The environmental benefit this wetland function provides is to reduce nutrient and sediment discharge to the down stream receiving waters, thus maintaining water quality conditions and aquatic resources. The existing wetlands effectively remove both nutrients and suspended sediments through the process of soil de-nitrification and vegetation filtering by retaining a surface run-off for an extended period of time. As the upland drainage area to the wetlands has been partially developed without the benefit of water quality management the existing wetlands effectively provide a sediment retention and pollutant filtering functional benefit. The pre-development assessment of this environmental functional benefit is high.
- 4.5.2 Based upon the design of the proposed site improvements, water quality management has been provided to pre-treat both the existing and proposed run-off from impervious surfaces located within the overall upland drainage area prior to releasing into the down stream receiving waters. This effectively minimizes and mitigates the reduction in the proposed aerial extent of non-tidal wetland area located on-site. Based upon the permitted commercial land use, the management of high density commercial development surface run-off in upland structural facilities is considered a priority, according to the state stormwater management regulations as they effectively remove commercial pollutants and will be maintained over an extended period of time. The post-development assessment of this environmental function benefit is high +.
- 4.6.1 Stream bank stabilization occurs when wetlands provide vegetated stabilization and reduce erosive surface run-off velocities during periods of normal annual stream flow and flood flow events. The environmental benefit this wetland function provides is to maintain natural channel characteristics, supporting aquatic resources and maintain water quality conditions. The wetlands located on-site do not result in the concentration of surface water. The wetlands ability to retain surface run-off, however, does have some beneficial effect upon the stability of the down stream receiving waters. The pre-development assessment of this environmental functional benefit is moderate.
- 4.6.2 The wetlands located on-site are not directly associated with a perennial stream or large overland surface flows, thus have a limited opportunity to provide a significant stream bank stabilization functional benefit. The wetlands to be retained in combination with proposed stormwater management practices and wetland mitigation serves to maintain

and enhance the ability the wetlands have to effectively store and release surface run-off to the down stream receiving waters. The post-development assessment of this environmental function benefit is moderate to high.

- 4.7.1. Wildlife habitat is the ability wetlands have to provide the essential elements to support a unique variety of flora and fauna. Due to the historically maintained condition of the existing wetlands and the developed nature of the surrounding land use, the existing wetlands have limited opportunity to provide food, water and shelter for a diverse range of species. The limited amount of contiguous forested area to down stream environmental resources significant reduces the wildlife habitat benefits these wetlands provide. The pre-development assessment of this environmental functional benefit is low.
- 4.7.2 The post-development site conditions will significant improve upon the existing wildlife habitat through the creation of a larger more biologically diverse wetlands and the afforestation of 1.79 acres of riparian stream buffer. In addition the forested corridor both on-site and extending down stream greater than 500 L.F. will be greater than 300 feet in width, thus providing habitat capable of supporting forest interior dwelling bird species. The cumulative affect will result in a net improvement in wildlife habitat. The post-development assessment of this environmental function benefit is high.
- 4.8.1 Recreational amenities are the values wetlands provide for both active and passive recreational land use. The wetlands located on-site due to their limited size, location and surrounding land use have a limited opportunity to provide a significant recreational land use benefit. The pre-development assessment of this environmental functional benefit is low.
- 4.8.2 Based upon the proposed site design which creates and retains a large, broad-forested non-tidal wetland area, the proposed improvement of the property will marginally improve the recreational amenities the existing wetlands provide. The post-development assessment of this environmental function benefit is low to moderate.



**5.0 SUMMARY AND FINDINGS**

- 5.1** In summary, the results of this environmental functional assessment reveal that the proposed improvement of the property will not have any adverse environmental impact upon the primary functions the existing wetlands provide. Through sound site design and the incorporation of innovative stormwater management practices, the ability of the wetlands to be retained on-site to provide a groundwater recharge functional benefit during small rainfall events, as well as, their ability to provide groundwater discharge during larger rainfall events has been preserved and enhanced. In addition, the wetlands ability to provide sediment retention and pollution filtering, natural flood control and water quality improvements has been persevered and enhanced. The streambank stabilization, wildlife habitat and recreational amenities the existing wetlands provide are generally characterized as of low value and will not be adversely impacted in association with the proposed site improvements. The proposed management of off-site stormwater run-off in combination with forested wetland mitigation and off-site reforestation serves to significantly enhance these functional benefits and, thus, provides full mitigation for all jurisdictional impacts associated with the project (Refer to Appendix A: Functional Impact Assessment Summary Table).

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APPENDIX A:

FUNCTIONAL IMPACT ASSESSMENT SUMMARY TABLE

FUNCTION IMPACT ASSESSEMNT SUMMARY TABLE:

<u>FUNCTIONAL CHARARACTERISTIC</u>	<u>PRE-DEVELOPMENT</u>	<u>POST-DEVELOPMENT</u>
Groundwater recharge	Moderate	High
Groundwater discharge	Low	Moderate
Natural Flood Control	High	High
Sediment Retention and Pollutant Filtering	High	High +
Stream bank stabilization	Moderate	Moderate to High
Wildlife habitat	Low	High
Recreational amenities	Low	Low to Moderate



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

March 15, 2007

**MEMORANDUM**

TO: Cathy Conlon, Supervisor  
Development Review Division

VIA: Shahriar Etemadi, Supervisor  
Transportation Planning

Dan Hardy, Supervisor  
Transportation Planning

FROM: Cherian Eapen, Planner/Coordinator  
Transportation Planning  
301-495-4525

SUBJECT: Preliminary Plan No. 120050060  
Site Plan No. 820060230  
Special Exception Case No. S-2683  
Ashton Meeting Place  
New Hampshire Avenue and Olney-Sandy Spring Road/Ashton Road  
Patuxent (Rural) Policy Area



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This memorandum presents Transportation Planning staff's Adequate Public Facilities (APF) review of Ashton Meeting Place development to be located within the southeast quadrant of New Hampshire Avenue (MD 650) and Ashton Road (MD 108) in Ashton.

Ashton Meeting Place is proposed with 60,147 square feet of retail (which includes the existing bank on the site), 21,006 square feet of office, and 13 multi-family dwelling units. The development is zoned C-1 near the MD 650/MD 108 intersection, and is zoned R-60 to the rear. The density proposed on the site is placed entirely within the C-1 zoned area. The R-60 zoned area wraps around the C-1 zoned area and has frontage along both MD 650 and MD 108. This area is used to provide access to the site, parking for the uses proposed on the C-1 zoned area, and to provide some open space amenity. The entire site is also within the Sandy Spring/Ashton Rural Village Overlay Zone.

## RECOMMENDATIONS

Transportation Planning staff recommends the following conditions as part of the transportation-related requirements to approve this application:

1. Limit development on the property to 60,147 square-feet of retail, 21,006 square-feet of office, and 13 multi-family dwelling units.
2. The applicant must dedicate and show on the final record plat the following rights-of-way (according to 1998 Approved and Adopted *Sandy Spring/Ashton Master Plan*):
  - a. Ashton Road (MD 108) – minimum of 40 feet from the roadway right-of-way centerline.
  - b. New Hampshire Avenue (MD 650) – minimum of 60 feet from the roadway right-of-way centerline.

The final record plat shall also reflect dedication of necessary truncation at public street intersection corners.

3. The applicant must meet all Montgomery County Department of Public Works and Transportation (DPWT) requirements enumerated in their letter dated November 1, 2006 (see Attachment No. 1) prior to issuance of any building permit for the proposed development.
4. The applicant must document that Maryland State Highway Administration (SHA) initiated design and funded site frontage/site access improvements for the MD 108/MD 650 roadway/intersection are fully implemented prior to the release of building occupancy permits for the proposed development. SHA improvements must include:
  - Separate left, through, and right turn lanes on the eastbound and westbound approaches of MD 108, and the northbound approach of MD 650, and
  - Minimum five-foot wide sidewalks along both MD 650 and MD 108.

We support approval of the special exception request related to this subdivision case (multi-family residential units within the C-1 Zone) since the application meets the transportation-related requirements of the APF test. The proposed uses will not have an adverse effect on the transportation network in the immediate area.

## DISCUSSION

### Site Location, Vehicular/Pedestrian Access, Transit and Land Uses

The subject development is located within Ashton Village Center in the southeast quadrant of the intersection of MD 650 and MD 108 in Ashton. The Sandy Spring Village Center is to the west of the site.

Within the study area, both MD 650 and MD 108 are two-lane roadways; with its intersection corners developed with retail/office uses. The site currently has a bank (with drive-through windows) and three single-family dwelling units. Access to the development will be from full-movement driveways on MD 108 and MD 650. As part of SHA's improvements at the intersection of MD 650 and MD 108, SHA will be constructing sidewalks along the MD 650 and MD 108 property frontages. Sidewalks that lead pedestrians/bicyclists from MD 650 and MD 108 to various uses on the site are also provided at several locations. The applicant for Ashton Meeting Place is pursuing redevelopment of the northeast corner of the intersection with an automobile filling station with a car wash and a convenience store, a general retail store, and an office use area.

Metrobus Route Z2 services the south leg of MD 650 and the west leg of MD 108 with a stop in Ashton.

### Master Plan Roadway and Pedestrian/Bikeway Facilities

The 1998 Approved and Adopted *Sandy Spring/Ashton Master Plan* includes the following master-planned roadways, pedestrian and bikeway facilities:

1. Ashton Road (MD 108): This is an east-west arterial (A-92) with a minimum right-of-way width of 80 feet between the Howard County line to the east and Dr. Bird Road to the west. The roadway is recommended as the "Main Street" for the Sandy Spring and Ashton village centers. A shared use path (SP-37) is recommended in the *Countywide Bikeways Functional Master Plan* for MD 108 along its north side between Howard County line to the east and Olney Master Plan area to the west.
2. New Hampshire Avenue (MD 650): This is a north-south major highway (M-12) with a minimum right-of-way width of 120 feet to the south of MD 108. The master plan identifies a desire line for a local trail along MD 650 to the south of MD 108. A shared use path (SP-15) is recommended in the *Countywide Bikeways Functional Master Plan* for MD 650 along its west side between MD 108 to the north and Ednor Road to the south.

### Nearby Transportation Improvement Projects

DPWT's Capital Improvement Program (CIP) and SHA's current construction program for fiscal years 2007 and 2008 includes the following nearby transportation improvement projects:

1. MD 108 Sidewalk: This DPWT project provides for the construction of a sidewalk along the south side of MD 108 between Hidden Garden Lane to the east and Norwood Road to the west (approximately 4,000 feet), and a sidewalk along the east side of Norwood Road to the south of MD 108 (approximately 350 feet). The eastern limit for this project, Hidden Garden Lane, is also the western limit for SHA's MD 650/MD 108 project, the proposed improvements thereby providing a continuous sidewalk connection along the south side of MD 108 from east of MD 650 to south of Norwood Road, connecting both Ashton and Sandy Spring Village Centers. The project is anticipated to start construction in April 2007, and currently has a finish date of October 2007.

2. Intersection Capacity Improvements at MD 108/MD 650: SHA is jointly working with the applicant to implement capacity improvements at this intersection that was a former Congestion Relief Study (CRS) intersection capacity improvement project (reviewed by Planning Board in 2001). This project is fully funded for construction, and currently has a bid date in March 2007. SHA, though eager to start construction of this project, has delayed the bid date for this project several times in response to delay in reaching a decision on the pending subdivision cases (see letters from SHA – Attachment No. 2 and No. 3).

Though staff has several concerns regarding the limits and quality of SHA's design effort for the intersection improvement project and DPWT's design effort for the MD 108 sidewalk project, it is our opinion that ultimately, these two projects will significantly improve area pedestrian/bicyclist accessibility and safety in Ashton.

SHA's Consolidated Transportation Program (CTP) for fiscal years 2007 and 2008 also has preliminary engineering funding for safety improvements along Sandy Spring Road (at Brooke Road) and along Norwood Road.

#### Local Area Transportation Review

As part of the APF test, a traffic study was required for the subject development since the development was estimated to generate 30 or more peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods.

The applicant submitted a traffic study dated April 2006 (and a supplementary analysis dated October 26, 2006) that examined traffic-related impacts of the development on nearby intersections and at the site driveways. Staff review of the study indicated that it complied with the requirements of the *Local Area Transportation Review (LATR) Guidelines* and the traffic study scope provided by staff.

The traffic analysis estimated that the density proposed on the site – 60,147 square-feet of retail, 21,006 square-feet of office, and 13 multi-family dwelling units – would generate approximately 208 total peak-hour trips during the weekday morning and 747 total peak-hour trips during the weekday evening. A summary of the above is provided in Table 1.

With credit for trips associated with the existing bank on the site, the development was estimated to generate approximately 203 additional peak-hour trips during the weekday morning (credit of 5 total trips) and 725 additional peak-hour trips during the weekday evening (credit of 22 total trips).

**TABLE 1  
SUMMARY OF TOTAL SITE TRIP GENERATION  
PROPOSED ASHTON MEETING PLACE**

Proposed Density	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
<b>Retail</b> – 60,147 SF	90	83	173	361	333	694
“New” or “Primary” Trips – 57% (Evening Peak-Hour Only)	90	83	173	206	190	396
“Pass-by/Diverted” Trips – 43% (Evening Peak-Hour Only)	--	--	--	155	143	298
<b>Office</b> – 21,006 SF	25	4	29	8	39	47
<b>Multi-Family</b> – 13 DU’s	1	5	6	4	2	6
Total “New” or “Primary” Trips	116	92	208	218	231	449
Total “Pass-by/Diverted” Trips	--	--	--	155	143	298
<b>Total Site Trips</b>	<b>116</b>	<b>92</b>	<b>208</b>	<b>373</b>	<b>374</b>	<b>747</b>

Source: Integrated Transportation Solutions, Inc.; Ashton Meeting Place – Supplementary Analysis; October 26, 2006.

A summary of the capacity/Critical Lane Volume (CLV) analysis results for the study intersections for the weekday morning and evening peak-hours within the respective peak-periods from the traffic analysis is presented in Table 2.

As shown in Table 2, the weekday morning and evening peak-hour capacity analysis presented in the traffic study indicated that under Total (or Build) Traffic Conditions, with the state funded roadway improvements, CLV values at the study intersections were below the applicable congestion standards. Therefore, the application satisfies the LATR requirements of the APF test.



**TABLE 2  
SUMMARY OF CAPACITY CALCULATIONS  
PROPOSED ASHTON MEETING PLACE**

Intersection	Traffic Conditions					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
MD 108 and MD 650 <sup>1</sup>	1,302	1,334	1,344	1,358	1,251 <sup>3</sup>	1,287 <sup>3</sup>
MD 108 and Brooke Road/Meetinghouse Road <sup>2</sup>	1,334	1,275	1,377	1,339	1,397	1,373
MD 108 and Norwood Road <sup>2</sup>	1,328	1,295	1,367	1,363	1,383	1,397
MD 650 and Site Access Driveway <sup>1</sup>	--	--	--	--	700	819
MD 108 and Site Access Driveway <sup>1</sup>	--	--	--	--	836	986

Source: Integrated Transportation Solutions, Inc.; Ashton Meeting Place – Supplementary Analysis; October 26, 2006.

Note: Congestion standard for those intersections that straddle two or more policy areas will be the higher of the respective policy area congestion standard.

<sup>1</sup> FY 2005 Congestion Standard for Rural (Patuxent) Policy Area: 1,400.

<sup>2</sup> FY 2005 Congestion Standard for Olney Policy Area: 1,475.

<sup>3</sup> CLV with SHA intersection improvements.

CE:nm

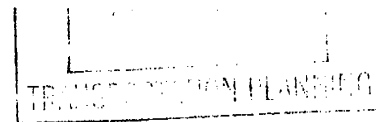
cc: Larry Cole  
Candy Bunnag  
Joshua Sloan  
Dan Janousek  
Bill Barron  
Piera Weiss  
Ray Burns  
Greg Leck  
C. Craig Hedberg  
Jody Kline



## Attachment No. 1

Douglas M. Duncan  
*County Executive*

### DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION



Arthur Holmes, Jr.  
*Director*

November 1, 2006

Ms. Catherine Conlon, Subdivision Supervisor  
Development Review Division  
The Maryland-National Capital  
Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan #1-20050060  
Ashton Meeting Place

Dear Ms. Conlon:

We have completed our review of the preliminary plan dated 10/26/06. This plan was reviewed by the Development Review Committee at its meeting on 08/09/04. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
2. Record plat to reflect a reciprocal ingress, egress, and public utilities easement to serve the lots accessed by each common driveway.
3. Private common driveways and private streets shall be determined through the subdivision process as part of the Planning Board's approval of a preliminary plan. The composition, typical section, horizontal alignment, profile, and drainage characteristics of private common driveways and private streets, beyond the public right-of-way, shall be approved by the Planning Board during their review of the preliminary plan.
4. The parking layout plan will be reviewed by the Department of Permitting Services at the site plan or building permit stage, whichever comes first. To facilitate their review, that plan should delineate and dimension the proposed on-site travel lanes, parking spaces, curb radii, handicap parking spaces and access facilities, and sidewalks. The applicant may wish to contact Ms. Sarah Navid of that Department at (240) 777-6320 to discuss the parking lot design.



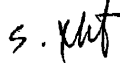
Division of Operations

101 Orchard Ridge Drive, 2nd Floor • Gaithersburg, Maryland 20878  
240/777-6000, TTY 240/777-6013, FAX 240/777-6030

Ms. Catherine Conlon  
Preliminary Plan No. 1-20050060  
Date November 1, 2006  
Page 3

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at [sam.farhadi@montgomerycountymd.gov](mailto:sam.farhadi@montgomerycountymd.gov) or (240) 777-6000.

Sincerely,



Sam Farhadi, P.E., Senior Planning Specialist  
Development Review Group  
Traffic Engineering and Operations Section  
Division of Operations

m:/subdivision/farhas01/preliminary plans/ 1-20050060, Ashton Meeting Place.doc

Enclosures 0

cc: Fred Nichols; Ashton Meeting LLC  
Jody Kline; Miller, Miller & Canby  
Joseph Y. Cheung; DPS RWPPR  
Sarah Navid; DPS RWPPR  
Shahriar Etemadi; M-NCPPC TP  
Gregory Leck, DPWT TEOS  
Raymond Burns, MSHA  
Preliminary Plan Folder  
Preliminary Plans Note Book



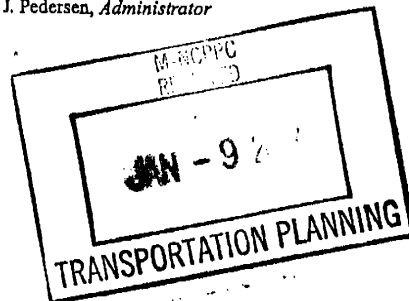
State Highway Administration

Maryland Department of Transportation

Robert L. Ehrlich, Jr., Governor  
Michael S. Steele, Lt. Governor

Robert L. Flanagan, Secretary  
Neil J. Pedersen, Administrator

January 3, 2007



Royce Hanson, Chairman  
Montgomery County Planning Board  
Maryland-National Capital Park and  
Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

Dear ~~Chairman~~ <sup>Royce</sup> Hanson:

I am writing regarding a matter of significant concern for a State Highway Administration (SHA) project and an adjacent development in Montgomery County. Recent discussions about a potential moratorium on development will have a profound impact on the proposed SHA roadway improvement project at the intersection of MD 650 with MD 108. I would appreciate your assistance to ensure that SHA's project successfully moves forward to advertisement and construction. Here are the details about this important project.

The SHA has partnered with both the Ashton Meeting Place developer and the Ashton community to prepare plans and contract documents for the MD 108 at MD 650 intersection improvement project. The SHA has worked with the Ashton community, the Maryland-National Capital Park and Planning Commission (M-NCPPC), the Montgomery County Department of Public Works and Transportation (MCDPWT) and the developer to make this a better project that is consistent with the Master Plan for this area.

The advertisement of SHA's project has been rescheduled twice, primarily because environmental and miscellaneous site plan issues have delayed the inclusion of the Ashton Meeting Place development on the Planning Board's meeting agenda. Originally scheduled for advertisement in November, 2006, our project was rescheduled to December 19, 2006 and recently slipped again to advertise in February, 2007.

A tentative agreement on the concept and right-of-way dedication was reached with the developer and community. As a result, a draft agreement between SHA and the developer, Ashton Meeting, LLC, was developed in late October, 2006 to protect all parties and formalize the agreement. Under this agreement, the developer will dedicate right-of-way that SHA needs to improve the MD 650/MD 108 intersection and will contribute its share of the construction funding to this very important SHA project. The developer needs to have an approved site plan in hand, before it can sign this agreement; and, based on the efforts of all parties, the developer has been moving forward to gain approval of the new site plan details, which would ultimately allow the SHA project to move forward.



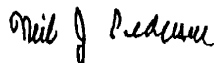
Mr. Royce Hanson  
Page Two

It is important to recognize the efforts of the developer, the community, and SHA to arrive at an acceptable solution for everyone. The developer is actually in the process of purchasing land, which SHA needs for the MD 650/MD 108 intersection project and which SHA may not have been able to purchase. These acquisitions and the ultimate right-of-way dedications are crucial for the MD 108 and MD 650 widening and improvements, and the developer's efforts have significantly contributed to SHA's progress on this project.

We understand that M-NCPPC staff has concerns with the wetland mitigation plans, as well as recently discovered concerns with other minor site plan details. These issues may significantly delay the Planning Board's approval of these site plans. Consequently, the schedule for SHA's project will be adversely impacted, and the project's funding status may also be affected. All parties have made concessions so that the MD 650/MD 108 project will be safer and pedestrian/cyclist friendly, and so that the wishes of the Ashton community for a village setting will be respected. Absent an agreement with the developer, SHA will be forced to delay its project. Please let me know what SHA can do to facilitate and expedite the site plan approval process.

Thank you, again, for your consideration. If you have any questions or comments, please do not hesitate to contact Mr. Kirk McClelland, Director of Highway Development, SHA at 410-545-8800, or Mr. Steven Foster, Chief of Engineering Access Permits, SHA at 410-545-5601, toll-free 800-876-4742 or sfoster1@sha.state.md.us. SHA will be pleased to assist you.

Sincerely,



Neil J. Pedersen  
Administrator

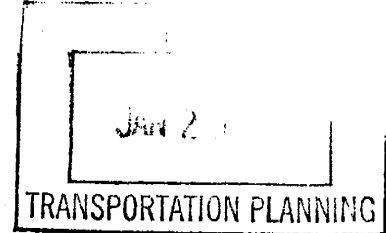
cc: Mr. Kenneth T. Briggs, Chief, Highway Design Division, SHA  
Mr. Raymond Burns, Regional Supervisor, Engineering Access Permits Division, SHA  
Ms. Catherine Conlon, Subdivision Coordinator, M-NCPPC  
Mr. Shahriar Etemadi, Transportation Supervisor, M-NCPPC  
Mr. Steven D. Foster, Chief, Engineering Access Permits Division, SHA  
Mr. Glenn Klaverweiden, Agreements Coordination Team, SHA  
Mr. Gregory Leck, Planning and Traffic Manager, MCDPWT  
Ms. Kate Mazzara, Assistant District Engineer, Project Development, SHA  
Mr. Kirk G. McClelland, Director, Office of Highway Development, SHA  
Mr. Darrell B. Mobley, Metropolitan District Engineer, SHA  
Mr. Fred Nichols, Ashton Meeting LLC,  
Mr. Douglas H. Simmons, Deputy Administrator/Chief Engineer for Planning and Engineering, SHA  
Mr. Richard Weaver, Planning Coordinator, M-NCPPC



Martin O'Malley, Governor  
Anthony Brown, Lt. Governor

John D. Porcari, Secretary Designate  
Neil J. Pedersen, Administrator

Maryland Department of Transportation



January 19, 2007

Willard H. Derrick, Managing Member  
Derrick Brothers, LLC  
1001 Ashland Drive  
Ashton, Maryland 20861

Dear Mr. Derrick:

Thank you for the copy of your letter to County Executive Isiah Leggett regarding your pending development and the potential delay to the MD 650/MD 108 roadway improvement project. It is my pleasure to respond to your concerns.

The State Highway Administration (SHA) appreciates your level of commitment and cooperation to reach consensus with the community on a meaningful roadway improvement that will be compatible with proposed developments. Likewise, SHA has a vested interest in meeting the schedule to improve the intersection capacity and pedestrian mobility in this area. The SHA has partnered with the Ashton Meeting Place developer, the Ashton community, the Maryland-National Capital Park and Planning Commission (M-NCPPC) and the Montgomery County Department of Public Works and Transportation (MCDPWT) to ensure proper coordination of the MD 650/MD 108 intersection improvement plan. Your project, along with the Ashton Meeting Place development, is vital to meeting SHA's goals for this project. You may be interested to know that I wrote to Mr. Royce Hanson, Chairman of the Montgomery County Planning Board, on January 3, to outline SHA's issues and request assistance in moving the development process forward. I am enclosing a copy of that letter for you information.

The SHA will continue to work with the developers, the community, and local government agencies in the local land-use-approval process for pending developments in the Ashton area that affect SHA's project. We appreciate your continued interest to make this a better project that is consistent with the master plan for this area.

My telephone number/toll-free number is 410-545-0400 or 1-800-206-0770

Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone: 410.545.0300 • [www.marylandroads.com](http://www.marylandroads.com)



Mr. Willard H. Derrick  
Page Two

Thank you, again, for your letter. If you have any further questions or comments, please do not hesitate to contact Mr. Steven D. Foster, Chief, Engineering Access Permits Division, SHA at 410-545-5601, toll-free 800-876-4742 or via email at sfoster1@sha.state.md.us. SHA will be pleased to assist you.

Sincerely,



Neil J. Pedersen  
Administrator

Enclosure

cc: Mr. Steven D. Foster, Chief, Engineering Access Permits Division, SHA  
Mr. Royce Hanson, Chairman, Montgomery County Planning Board, M-NCPPC  
The Honorable Isiah Leggett, County Executive, Montgomery County  
Mr. Darrell B. Mobley, District Engineer, SHA  
Mr. Fred Nichols, Ashton Meeting, LLC

Mr. Willard H. Derrick  
Page Three

bcc: Mr. Kenneth T. Briggs, Chief, Highway Design Division, SHA  
Mr. Raymond Burns, Regional Supervisor, Engineering Access Permits Division, SHA  
Ms. Catherine Conlon, Subdivision Coordinator, M-NCPPC  
**Mr. Shahriar Etemadi, Transportation Supervisor, M-NCPPC**  
Mr. Glenn Klaverweiden, Agreements Coordination Team, SHA  
Ms. Rose Krasnow, Chief, Development Review, M-NCPPC  
Mr. Gregory Leck, Planning and Traffic Manager, MCDPWT  
Kate Mazzara, P.E., Assistant District Engineer-Project Development, SHA  
Mr. Kirk G. McClelland, Director, Office of Highway Development, SHA  
The Honorable Marilyn Praisner, President, Montgomery County Council  
Mr. Douglas H. Simmons, Deputy Administrator/Chief Engineer for Planning and  
Engineering, SHA



Zoning Ordinance Citations  
for  
Ashton Meeting Place Analysis

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**Sec. 50-32. Special controls for environmentally sensitive areas.**

- (a) *Stream valleys and floodplains.* The board must, when it deems necessary for the health, safety, comfort or welfare of the present and future population of the regional district and necessary to the conservation of water, drainage and sanitary facilities, restrict subdivision for development of any property which lies within the one-hundred-year floodplain of any stream or drainage course. "One-hundred-year floodplain" is defined as the area along a stream/drainage course, lake, or pond, which would experience inundation by stormwater runoff equivalent to that which would occur on the average of once in every one hundred years after total ultimate development of the watershed.
- (b) *Unsafe Land.* The board must restrict the subdivision of any land which it finds to be unsafe for development because of possible flooding or erosive stream action, soils with structural limitations, unstabilized slope or fill, or similar environmental or topographical conditions.
- (c) *Trees, Forests, and Environmentally Sensitive Areas.* The board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources and to protect environmentally sensitive areas. For purposes of this subsection, environmentally sensitive areas are limited to critical habitats for wildlife or plant species, slopes over 25% or over 15% with highly erodible soils, wetlands, perennial and intermittent streams, and stream buffers. Specific measures also may be required to protect any rare, threatened or endangered plants or animals.
- (d) *Restrictions - general.*
- (1) In addition to any requirement imposed under Chapter 22A, the proposed subdivision may be restricted under this Section by:
- deletion of or rearrangement of proposed lots, roads, utilities, and other facilities;
  - the establishment of building restriction and land disturbance limit lines, and other protective measures or conditions;
  - requiring conservation easements, deed restrictions, or covenants over portions of lots or parcels to be recorded.
- (2) The deletion of proposed lots under subsection (c), should occur only if the board finds that other measures authorized by law are inadequate to provide reasonably appropriate short or long-term natural resource protection or to satisfy the requirements of Chapter 22A.

- (e) *Building restriction and land disturbance limit lines.*
- (1) **Building restriction line.** A building restriction line is a line designating an area in which development or building is restricted under this Section. A building restriction line must be used to designate floodplain, and other environmentally sensitive or unsafe building areas if the area is not shown on the plat as a right-of-way or easement in accordance with this Chapter.
  - (2) **Land disturbance limit line.** A land disturbance limit line is a line restricting land disturbing activities as defined in Chapter 19.
- (f) *Floodplain or unsafe land on part of a lot.* The board may permit, floodplain, or unsafe land to be platted as a part of a lot in which there is sufficient safe ground to erect a building or dwelling within the required setbacks of the zoning classification. In the event that such land is platted as a part of a buildable lot, there shall be placed on such platted lot a building restriction line which shall be located so as to provide at least a twenty-five-foot setback between any building and the unsafe areas and a greater setback where necessary to provide positive drainage between the building and unsafe area.
- (g) *Removal of building restriction line or land disturbance limit line.* A building restriction line or land disturbance limit line may be removed by the recording of a new plat approved by the Board if it finds that a subsequent change in conditions warrants the removal.
- (h) *Denial of a building permit.*
- (1) Except as provided under paragraph (2), a building permit must not be issued for development within any area for which building or land disturbance is restricted under this Section.
  - (2) This subsection does not apply to:
    - a. fences, agricultural structures, public utilities, or environmental management facilities or structures, approved by the Board or County; or
    - b. the issuance of building permits for the reconstruction or repair of single-family dwellings existing on September 1, 1971, and located within any one-hundred year floodplain which abuts a creek or other recess, cove, bay or inlet on the shore of a river.

MONTGOMERY COUNTY CODE  
ZONING ORDINANCE  
Chapter 59

Article 59-A

incidental and no storage or parking space is offered for rent. A car wash with up to 2 bays may be allowed as an accessory use to an automobile filling station.

**Automobile fluid maintenance station:** Any area of land, including buildings and other structures thereon, that is used to service the routine fluid maintenance of a motor vehicle, including engine, transmission, differential, power steering, battery, brakes, cooling, and windshield washer systems; and where no general motor vehicle repair, junk, and auto wrecking business is conducted.

**Automobile garage, group:** An accessory building or portion of a main building designed, arranged or used for housing motor vehicles in connection with one or more multiple dwellings erected under one ownership. Such garage shall be for passenger vehicles only, including noncommercial buses used by occupants of such dwellings.

**Automobile garage, private:** An accessory building or portion of a main building designed, arranged or used for the housing of private motor vehicles, only one of which may be a commercial vehicle. Not more than 50 percent of the space in such a garage shall be used for housing vehicles other than those owned by occupants of the premises; except, that all of the space in a garage of one- or two-car capacity may be so rented. A private automobile garage having any part of a wall or roof in common with a dwelling shall be considered a part of the main building and not an accessory building.

**Automobile garage, public:** Any building or portion thereof, other than an automobile sales room, held out or used for the housing of 6 or more vehicles, where service or repair facilities, if any, are incidental to the principal use for storage. Such garage shall not be considered an accessory use; nor shall it be used for the storage of dismantled or wrecked motor vehicles, parts thereof or junk.

**Automobile parking facility:** Any lot or structure used for off-street parking of 6 or more motor vehicles, where service or repair facilities are not permitted. A parking facility must not be used for storage of dismantled or wrecked motor vehicles, parts thereof or junk. An automobile sales lot is not a parking facility for the purposes of this chapter. This definition includes 6 or more parking spaces serving a special exception use. (See section 59-E-2.92 for special requirements applying to a smaller parking area serving a special exception use in a one-family residential zone.)

**Automobile recycling facility:** Any land or building used for the abandonment, demolition, dismantling, storage and salvaging of machinery and parts, of automobiles or other vehicles. The recycling of automobile tires is regulated by State law and is not an automobile recycling facility.

MONTGOMERY COUNTY CODE  
ZONING ORDINANCE  
Chapter 59

Article 59-A

**Block:** That property abutting one side of a street and lying between the 2 nearest intersecting or intercepting streets or the nearest intersecting or intercepting street and railroad right-of-way, unsubdivided acreage, river or live stream or between any of the foregoing and any other barrier to the continuity of development.

**Board:** The county board of appeals.

**Boardinghouse:** A dwelling in which, for compensation, lodging or meals, or both, are furnished on a weekly or monthly basis to not more than 5 transient visitors. A boardinghouse is not a "home occupation" nor a "group home." Any boardinghouse lawfully existing prior to August 27, 1974, may continue to exist and may be renewed by the board in accordance with the requirements in effect prior to August 27, 1974.

**Building:** A structure having one or more stories and a roof, designed primarily for the shelter, support or enclosure of persons, animals or property of any kind.

**Building, accessory:** A building subordinate, and located on the same lot with, a main building, the use of which is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or common roof to the main building. In addition to any other meaning the word "subordinate" may have in this definition, on a lot where the main building is a one-family detached residential dwelling, except for an accessory agricultural building, subordinate means that the footprint of the accessory building is smaller than the footprint of the main building.

**Building coverage:** The area of a lot that is occupied by the main and accessory buildings, including covered decks, porches, and steps.

**Building, height of:** See "height of building."

**Building line:** A line, parallel to a lot line, creating an area into which a structure must not project, except as provided in article 59-B of this chapter.

**Building line, established:** A front yard building line which is greater than the minimum setback required for structures in a designated zone. See section 59-A-5.33.

**Building, main:** A building in which is conducted the principal use of the lot on which it is situated. In any residential zone, any dwelling shall be deemed to be a main building on the lot on which the same is located if the lot is used primarily for residential purposes.

**Cable communications system:** All of the component physical, operational and programming elements of a system of antennas, coaxial cable, amplifiers, towers, microwave links, lines, wires, fibre optic cables, waveguides, laser beams, satellites, or any other conductors, converters,

MONTGOMERY COUNTY CODE  
ZONING ORDINANCE  
Chapter 59

§59-A-2.1

Article 59-A

A trucking terminal is not a solid waste transfer station.

**Truncation:** For a corner lot, a straight line joining points on the front lot line and side street line, each of which is at least 25 feet back from the theoretical point where those 2 lot lines would intersect if there were no truncation.

**Unenclosed porch:** A roofed structure abutting an exterior dwelling wall with no obstruction on any other sides at the perimeter with the exception of a guardrail as required in the Building Code.

**Use:** Except as otherwise provided, the principal purpose for which a lot or the main building thereon is designed, arranged, or intended, and for which it is or may be used, occupied, or maintained.

⑤

**Use, accessory:** A use which is (1) customarily incidental and subordinate to the principal use of a lot or the main building, and (2) located on the same lot as the principal use or building. A temporary structure or trailer used for construction administration or real estate sales in conjunction with and during the period of development, construction or sales within the same site or subdivision in which it is located is an accessory use.

**Use, transitory:** A use on private property or the public right-of-way conducted from a vehicle or from a movable structure that:

- (a) remains in the same location for less than 24 hours; and
- (b) is in accordance with Section 59-A-6.13 and Chapter 47.

A transitory use is not an accessory use.

**Water Quality Plan:** A plan, including supporting documents, required as part of a water quality review for significant projects being developed within a special protection area, intended to measure and control the effect that development will have on water resources or other environmental features lying within a special protection area.

**Winery:** A facility for processing grapes or other fruit into wine for sale on site or through wholesale or retail outlets.

**Workforce housing unit:** A dwelling unit that is subject to rent limits or sales controls under Chapter 25B. A workforce housing unit is not a Moderately Priced Dwelling Unit or a Productivity Housing Unit.

MONTGOMERY COUNTY CODE  
ZONING ORDINANCE  
Chapter 59

Division 59-C-1

**Sec. 59-C-1.2. Methods of development.**

Four alternative methods are available for development in certain of these zones, each in accordance with appropriate regulations as set forth in the sections indicated, as follows:

- (a) **Standard development.** (section 59-C-1.3)
- (b) **Density control development.** Permits averaging of lot sizes. (section 59-C-1.4)
- (c) **Cluster development.** Permits development on smaller lots with common open space. (section 59-C-1.5)
- (d) **Development including moderately priced dwelling units.** Permits increased density where such units are included in accordance with chapter 25A of the County Code. (section 59-C-1.6)

**Sec. 59-C-1.3. Standard development.**

The procedure for approval is as set forth in Chapter 50, title "Subdivision of Land," of the Montgomery County Code, as amended.

**59-C-1.31. Land uses.**

No use is allowed except as indicated in the following table:

- **Permitted Uses.** Uses designated by the letter "P" are permitted on any lot in the zones indicated, subject to all applicable regulations.
- **Special Exception Uses.** Uses designated by the letters "SE" may be authorized as special exceptions, in accordance with the provisions of Article 59-G.

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4 plex	RMH 200
<b>(a) Residential</b>										
Accessory apartment. <sup>4</sup>	SE	SE	SE	SE	SE	SE	SE			SE
Bed-and-breakfast lodging with one or 2 guest rooms. <sup>6</sup>	P	P	P	P	P	P	SE			P

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	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4 plex	RMH 200
Bed-and-breakfast lodging with 3, 4 or 5 guest rooms. <sup>6</sup>	SE	SE	SE	SE	SE	SE	SE			SE
Boardinghouses.					SE	SE	SE	SE	SE	
Dwellings, one-family detached.	P	P	P	P	P	P	P	P <sup>1</sup>	P <sup>1</sup>	P
Dwellings, one-family semi-detached.								P <sup>2</sup>	P <sup>2</sup>	
Dwellings, two-family detached. <sup>5</sup>								P	P <sup>2</sup>	
Dwellings, triplex.									P	
Dwellings, fourplex.									P	
Embassy. <sup>35</sup>	P	P	P	P	P	P	P	P	P	P
Farm tenant dwelling.	P <sup>37</sup>		P <sup>37</sup>	P	P	P	P	P	P	P
Farm tenant mobile home, one only.	P	P	P	P						P
Farm tenant mobile homes for more than one but less than 4. <sup>40</sup>										
Group home, small.	P	P	P	P	P	P	P	P	P	P
Group home, large. <sup>23</sup>	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE
Guest houses, as accessory uses.	P	P	P	P	P	P	P	P	P	P
Guest rooms, for not more than 2 roomers in any dwelling unit.	P		P	P	P	P	P	P	P	P
Housing and related facilities for elderly or handicapped persons.	SE	SE	SE	SE	SE	SE	SE	SE		SE
Life care facility.	SE	SE	SE	SE	SE	SE	SE	SE		SE
Mobile homes, double wide.	P <sup>7</sup>	P <sup>7</sup>	P <sup>7</sup>	P <sup>7</sup>	P <sup>7</sup>	P <sup>7</sup>	P <sup>7</sup>			P
Mobile homes, single-wide.										SE



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	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4plex	RMH 200
Motels. <sup>8</sup>										
Registered living unit. <sup>4, 10</sup>	P	P	P	P	P	P	P			P
Tourist cabin camps. <sup>8</sup>										
(b) Transportation, communication and utilities.										
Airstrips, in the common open space.		P								
Amateur radio facility.	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE
Cable communications system.	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>
Electric power transmission and distribution lines, overhead, carrying 69,000 volts or less.	P		P	P	P	P	P	P	P	P
Electric power transmission and distribution lines, underground.	P	P	P	P	P	P	P	P	P	P
Helistop. <sup>46</sup>										
Parking of automobiles, off-street, in connection with commercial uses.	P <sup>39</sup>	P <sup>39</sup>	P <sup>39</sup>	P <sup>39, 43</sup>	<sup>42</sup>	<sup>42</sup>	SE	SE		SE
Parking of motor vehicles, off-street, in connection with any use permitted in the zone.	P <sup>11, 13</sup>	P <sup>11</sup>	P <sup>11</sup>	P <sup>12, 13</sup>	P <sup>12</sup>	P <sup>12</sup>	P <sup>12</sup>	P <sup>12</sup>	P <sup>12</sup>	P <sup>12</sup>
Pipelines, aboveground.	SE		SE	SE	SE	SE	SE	SE	SE	SE
Pipelines, underground.	P	P	P	P	P	P	P	P	P	P
Public utility buildings and structures.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE
Radio and television broadcasting stations and towers.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE

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DIVISION 59-C-4. COMMERCIAL ZONES.\*

**Sec. 59-C-4.1. Zones established.**

The following are the commercial zones and their identifying symbols and the location of development standards for each (land uses are listed in section 59-C-4.2):

C-T zone—Commercial, transitional . . . . .	C-4.30
O-M zone—Office building, moderate intensity . . . . .	C-4.31
C-O zone—Commercial, office building . . . . .	C-4.32
C-P zone—Commercial, office park . . . . .	C-4.33
C-1 zone—Convenience commercial . . . . .	C-4.34
C-2 zone—General commercial . . . . .	C-4.35
C-3 zone—Highway commercial . . . . .	C-4.36
C-4 zone—Limited commercial . . . . .	C-4.37
C-5 zone—Low-density, office commercial . . . . .	C-4.40
C-6 zone—Low-density, regional commercial (Euclidean) . . . . .	C-4.41
H-M zone—Hotel-motel . . . . .	C-4.38
Country inn zone . . . . .	C-4.39

(Legislative History: Ord. No. 9-80, § 1; Ord. No. 11-44, § 1; Ord. No. 13-54, § 1.)

Editor's note—Formerly, section 59-C-4.01.

**Sec. 59-C-4.2. Land uses.**

No use is allowed except as indicated in the following table:

- **Permitted Uses.** Uses designated by the letter "P" are permitted on any lot in the zones indicated, subject to all applicable regulations.
- **Special Exception Uses.** Uses designated by the letters "SE" may be authorized as special exceptions under article 59-G.

	C-T	O-M	C-O	C-P	C-1	C-2	C-3	C-4	C-5	C-6	H-M	Country Inn
<b>(a) Residential:</b>												
Apartment hotels. <sup>1</sup>												
Boarding houses.			P			P						

\*Editor's note—Section 59-C-4 is cited in Wheaton Moose Lodge No. 1775 v. Montgomery County, 41 Md. App. 401, 397 A.2d 250 (1979).

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	C-T	O-M	C-O	C-P	C-1	C-2	C-3	C-4	C-5	C-6	H-M	Country Inn
Dwellings.	P <sup>6</sup>	P <sup>6</sup> / SE	P <sup>2, 52</sup>		SE	P <sup>40</sup> / SE	SE	SE		SE		P <sup>4</sup>
Guest rooms.												P <sup>5</sup>
Hotel or motel.						P <sup>3</sup>					P	
Personal living quarters. <sup>50</sup>					P/ SE	P/ SE	P/ SE	P/ SE				
Tourist homes.	P		P			P	P					
<b>(b) Manufacturing and industrial</b>												
Ice storage.						P	P					
Manufacturing and assembly of medical, scientific or technical instruments, devises, products and equipment.		P <sup>56</sup>										
Newspaper, printing and publishing shops.						P	P					
<b>(c) Transportation, communication and utilities:</b>												
Amateur radio facility.	P <sup>63</sup> / SE	P <sup>63</sup> / SE	P <sup>63</sup> / SE	P <sup>63</sup> / SE	P <sup>63</sup> / SE	P <sup>63</sup> / SE	P <sup>63</sup> / SE	P <sup>63</sup> / SE	P <sup>63</sup> / SE	P <sup>63</sup> / SE	P <sup>63</sup> / SE	P <sup>63</sup> / SE
Cable communications system.	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>
Electric power transmission and distribution lines.			P									

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	C-T	O-M	C-O	C-P	C-1	C-2	C-3	C-4	C-5	C-6	H-M	Country Inn
Electric power transmission and distribution lines, overhead, carrying 69,000 volts or less.						P						
Electric power transmission and distribution lines, underground				P								
Heliports.			SE	SE		SE	SE	SE		SE		
Helistops.		SE	SE	SE		SE	SE	SE	SE	SE		
Parking garages, automobile.				P <sup>7</sup>		P	P	SE		SE		
Parking of automobiles, off-street, in connection with commercial uses.			SE									
Parking of motor vehicles, off-street, in connection with any use permitted.	P	P	P	P	P	P	P	P	P	P	P	P
Parking lots, automobile.						P	P					
Pipelines, aboveground.			P			P						
Pipelines, underground.			P	P		P						
Public utility buildings and structures.	SE	SE	SE	SE	SE	SE	SE	SE	SE	P/SE	SE	SE

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**Sec. 59-C-4.34. C-1 zone--Purpose and development standards.**

**59-C-4.340. Purpose.**

It is the purpose of the C-1 zone to provide locations for convenience shopping facilities in which are found retail commercial uses which have a neighborhood orientation and which supply necessities usually requiring frequent purchasing with a minimum of consumer travel. Such facilities should be located so that their frequency and distributional pattern reflect their neighborhood orientation. In addition, such facilities should not be so large or so broad in scope of services as to attract substantial amounts of trade from outside the neighborhood. It is further the intent of this zone that, in order to restrict the size of such facilities, the convenience commercial zone should not be located in close proximity to other commercial areas; and it shall not be applied to land which is located within a central business district as defined in section 59-A-2.1.

**59-C-4.341. Area requirements.**

Land classified in the C-1 zone shall not exceed 15 acres at one location, including land which is zoned for, or developed with, commercial uses and which is adjacent and contiguous or separated only by a street or other right-of-way; except where, by reason of exceptional topographic conditions, exceptional narrowness, shallowness, shape or juxtaposition of specific parcels, the failure to so classify would result in unusable, abandoned or unproductive land or properties; and any such exception shall be limited to the extent necessary to avoid such result.

**59-C-4.341.1. Special area provision.**

Notwithstanding the area limitation of this zone, more than 15 acres of land at one location may be classified in the C-1 zone if such zoning is recommended for more than 15 acres on the applicable master or sector plan.

**59-C-4.341.2. Site Plan Review.**

Any development or redevelopment of any portion of land zoned C-1 where C-1 zoning is in excess of 15 acres at one location requires approval of a site plan in accordance with Division 59-3. In order to approve a site plan, the Planning Board must find that the proposed development is consistent with the criteria and guidelines relating to the property, if any, as shown in the area master or sector plan.

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**59-C-4.342. Building height.**

Notwithstanding any other provisions of this Code allowing greater height for any reason, no building shall exceed the height of 30 feet as measured from the average elevation of finished grade surface along the base of the front, rear and sides of the building to the highest point of roof surface of a flat roof; to the deck line of a mansard roof; and to the mean height level between eaves and ridges of a gable, hip or gambrel roof; provided, however, that the height in the front, rear or any side shall not exceed 45 feet. On lots having severe topography, the Board of Appeals shall have authority to grant variances from the maximum 45-foot height limitation on the front, rear or any side up to a maximum 60 feet on such side; provided, however, that the average height shall in no case exceed the 30-foot average height limitation contained herein.

Where land is zoned in the C-1 classification on October 30, 1978, and an application for a building permit is received by the Department on or before March 1, 1979, the height of a building may not exceed 35 feet measured as set forth in this section.

**59-C-4.343. Setbacks.**

All buildings shall be set back from lot lines at least as follows:

- (a) From any street right-of-way:
  - (1) If the right-of-way line is established on a master plan—10 feet.
  - (2) Be equal to the majority of the lots fronting on that street but not less than 10 feet.
  - (3) If there is no master plan showing the right-of-way line, the setback shall be 60 feet from the center line of the street.
  - (4) A setback is not required when a “mainstreet” type of development is recommended in a master or sector plan.

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(b) From any other lot line:

(1) If the lot adjoins a residential zone which is not

- Recommended on a master plan for commercial or industrial zoning, nor
- Used as a public parking lot
- Used for the parking of motor vehicle in connection with a commercial use in an historic district under the provisions of Sec. 59-A-6.22.

then the setback must be not less than that required in the adjoining zone.

(2) In all other cases, no setback is required.

(3) No yard shall be less than 10 feet in width.

**59-C-4.344. Green area.**

Green area shall constitute at least 10 percent of the area of the lot.

**59-C-4.345. Off-street parking.**

The off-street parking required by Article 59-E must be provided on land which is in the C-1 zone, except as required in the special exception provisions of section 59-G-2.39 or 59-G-2.40. In a designated historic district, required parking is permitted in an agricultural or residential zone in accordance with the provisions of section 59-A-6.22 and 59-C-1.31(b).



**59-C-4.346. Nuisances.**

Any use which is found by the board of appeals to be a public nuisance, by reason of emission of dust, fumes, gas, smoke, odor, noise, vibration or other disturbance, is and shall be expressly prohibited. No such finding shall be made by the board except after a hearing upon reasonable notice, and any person, the commission or the district council may file a petition with the board for such hearing.

**59-C-4.347. Nonconforming uses, amendment of 1971.**

Any use which is not permitted in the C-1 zone but was lawfully existing prior to the amendment of the C-1 zone on March 26, 1971, shall not be regarded as a nonconforming use; but any additions or structural alterations shall be in conformance with the above yard, green area and height regulations and shall not exceed 10 percent of the gross floor area of such use as it existed on that date.

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Division 59-C-18

**Sec. 59-C-18.18. Sandy Spring/Ashton Rural Village Overlay Zone.**

**59-C-18.181. Purpose.**

It is the purpose of this overlay zone to:

- (a) Preserve and enhance the rural village character of the Sandy Spring and Ashton village centers by ensuring an attractive and traditional pattern of houses, commercial establishments, open spaces and their relationship to roadways.
- (b) Encourage a compatible relationship between new or expanded houses or businesses and traditional neighboring structures that reflects the best of local village character, particularly in terms of scale, siting, design features, and orientation on the site.

**59-C-18.182. Regulations.**

Lots developed under this overlay zone must be connected to a community water and sewerage system, unless it can be demonstrated that at the time of subdivision that limited number of lots on a private well and septic facility within the development will provide a more beneficial subdivision design because of environmental or compatibility reasons.

- (a) Development standards residential zones:
  - (1) Land uses. All uses as allowed in the underlying zone as set forth in Sec. 59-C-1.31.
  - (2) Development standards. The development standards are the same as those in the underlying zones, except as follows:
    - (A) Density of development: The density of development cannot exceed the standards for the underlying zone as set forth in the cluster provisions of Sec. 59-C-1.533.
    - (B) Minimum net lot area: If development proceeds under the standards of the zone as set forth in Sec. 59-C-1, the standards for the zone apply and site plan review will not be required.

Lot sizes down to 3,000 square feet may be approved by the Planning Board, including zero side yard setbacks on one side, upon a showing that the resulting development will be consistent with the guidelines of



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the master plan. Site plan review in accordance with the provisions of Sec. 59-C-18.174 is required.

- (C) Building height: A main building must not exceed a height of 35 feet.
- (b) Commercial development. Where a lot is zoned either partially or totally in a commercial zone the following regulations apply:
  - (1) Land uses. All permitted or special exception uses allowed in the underlying zones are allowed in the commercial portion of the overlay zone. The following uses are prohibited in the overlay zones:
    - Automobile filling station<sup>1</sup>
    - Automobile fluid maintenance station
    - Automobile, light truck and light trailer rentals, outdoor, except any automobile rental business, in existence on October 13, 1998 may continue as a conforming use, and may be altered, repaired, or replaced in accordance with provisions of the zone in effect at the time the use was established.
    - Automobile sales, indoor
    - Automobile sales, outdoor
    - Baseball driving range
    - Building materials and supplies
    - Department stores
    - Eating and drinking establishments, drive-in
    - Fairgrounds, circuses and amusement parks
    - Heliports
    - Helistops
    - Ice storage
    - Laboratories
    - Multi-family dwellings, except when included in a structure containing retail or commercial uses
    - Newspaper, printing and publishing shops
    - Rifle or pistol ranges, indoor
    - Roller and ice skating rinks
    - Stadiums or arenas
    - Swimming pools, commercial
  - (2) Development standards:
    - (A) Where the property is in a commercial zone, the setback and green area standards of the underlying zone are the same as set forth in Div. 59-C-4.

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Building height must not exceed 24 feet, except that at the time of site plan review the Planning Board may allow additional height up to 30 feet if the Board finds that the additional height is compatible with the adjoining uses and is consistent with the intent of the master plan.

- (B) Floor area ratio. The floor area ratio for commercial uses is limited to FAR 0.75, and is computed only on the area of the underlying commercial zoned portion of the site.
- (C) In the case of special exceptions where a minimum area is otherwise required, the minimum area may be waived where recommended as appropriate in the master plan.

(D) In areas recommended in the Sandy Spring/Ashton Master Plan for mixed use development, development should <sup>be</sup> consistent with the recommendations of the master plan. In the residential portions of the mixed-use areas, off-street parking for commercial uses is allowed without a requirement for approval of a special exception.

Any lawful use in existence as of the date of application of the overlay zone is a conforming use, and may be altered, repaired, or replaced in accordance with the provisions of the zone in effect at the time the use was established.

**59-C-18.183. Procedure for application and approval.**

A site plan for any development in the Sandy Spring/Ashton Rural Village Overlay Zone must be approved under the provisions of Section 59-C-18.174 except for a one-family detached residential house developed in accordance with the provisions of Division 59-C-1. Development includes the following:

- (a) Construction of a new building;
- (b) Additions and other exterior improvements to existing buildings that increase the amount of gross floor area on a site; and
- (c) Additions of off-street parking spaces or revisions to parking facilities that would otherwise require the approval of a new parking facilities plan under Section 59-E-4.1.

**59-C-18.184. Site plan contents and exemptions.**

- (a) Section 59-D-3.22 and 59-D-3.23 do not apply in the Sandy Spring/Ashton Rural Village Overlay Zone.

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- (b) A site plan for development in the Sandy Spring/Ashton Rural Village Overlay Zone must include:
- (1) A drawing of the site and adjacent area that includes existing buildings and structures, uses, and zoning;
  - (2) The location, height, ground coverage, roof design, surface finish materials, and use of all structures on the site;
  - (3) For each mixed-use building, the number and type of dwelling units, classified by the number of bedrooms, and the total floor area, if any, to be used for commercial purposes;
  - (4) The floor areas of all nonresidential buildings and the proposed use of each;
  - (5) The location of recreational and green areas and other open spaces;
  - (6) Calculations of building coverage, density, green area, number of parking spaces and areas of land use;
  - (7) A grading plan;
  - (8) The location and dimensions of all roads, streets and driveways, parking facilities, loading areas, points of access to surrounding streets or properties and pedestrian walks;
  - (9) A landscaping plan (and final forest conservation plan, if required under Chapter 22A), showing all man-made features and the location, height or caliper, and species of all plant materials;
  - (10) An exterior lighting plan, including all parking areas, driveways and pedestrian ways, and the height, number, and type of fixtures with a diagram showing their light distribution characteristics; and
  - (11) A development program with the sequence in which all structures, open spaces, vehicular and pedestrian circulation systems, landscaping, and recreational facilities, are to be developed. The applicant must designate the point in the development program sequence when the applicant will ask the Planning Board to inspect for compliance with the approved site plan.

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In the course of site plan approval, the Planning Board must make a finding as to whether or not the proposed development substantially conforms with the design guidelines for new development contained in the approved and adopted Sandy Spring/Ashton Master Plan.

**59-C-18.185. Off-street parking and loading.**

Parking must be provided in accordance with the provisions of Division 59-E with the following exceptions:

(a) In the course of site plan review, the Planning Board may allow some on-street parking to fulfill the requirement for off-street parking to enhance compatibility, provide additional green space and reduce impervious coverage.

(b) Properties (in a residential zone) that are designated in the Sandy Spring/Ashton Master Plan as suitable for mixed use or non-residential use may be utilized for off-street parking in connection with commercial uses without the necessity for approval of a special exception under Sec. 59-G-2.39.

The Sandy Spring/Ashton Rural Village Overlay Zone encourages the parking of vehicles in the side or rear yards. In addition, in order to reduce access points and thereby enhance safety, adjoining parking facilities may be required to provide internal connections. In exceptional circumstances, limited parking may be allowed in the front yard.

**59-C-18.186. Planning Board approval.**

The procedures for Planning Board approval under Section 59-D-3.4 are modified for this overlay zone to require the following additional findings:

(a) The site plan is consistent with the recommendations in the approved and adopted Sandy Spring/Ashton Master Plan;

(b) The site plan meets all of the requirements of this overlay zone as well as the applicable requirements of the underlying zone; and

(c) Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

(Legislative History: Ord. No. 13-95, § 1; Ord. No. 14-23; § 1.)

**ARTICLE 59-E. OFF-STREET PARKING AND LOADING.\***

**DIVISION 59-E-1. OFF-STREET PARKING SPACE.\*\***

**Sec. 59-E-1.1. Required.**

Off-street parking spaces with adequate provisions for ingress and egress by motor vehicles shall be provided, in accordance with the provisions of this article, for any main building or structure at the time of construction and when any main building or structure is enlarged or increased in capacity. All off-street parking facilities provided, whether required or in addition to minimum requirements, shall conform to all standards contained in this article.

(Legislative History: Ord. No. 10-32, § 8.)

**Sec. 59-E-1.2. Structured parking.**

All garage or other structured space allocated for the parking of vehicles in basements, on the roofs of buildings, or otherwise within buildings shall be considered part of the required off-street parking facilities. For all structured parking facilities, a parking facilities plan shall be submitted to either the director or the planning board, as specified in the parking facilities plan requirements contained in section 59-E-4.1, for approval of interior traffic circulation; the slope of ramps; locations of entrances and exits with respect to public roads; sight distances at all entrances, exits and corners of intersecting public roads; and the effective screening of the cars located in or on the parking structure from adjoining properties and from public roads.

(Legislative History: Ord. No. 10-32, § 8.)

**Sec. 59-E-1.3. Distance from establishment served.**

- (a) All automobile off-street parking facilities shall be located so that the major point of pedestrian access to a parking facility is within 500 feet walking distance of the entrance to the establishment to be served by such facilities. For regional shopping centers, however, the major point of pedestrian access for off-street parking facilities that occupy contiguous land areas integral to the shopping center property may extend more than 500 feet walking distance from an entrance to the center in order to satisfy the number of spaces required in division 59-E-3.

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\*Cross references—Off-street public parking regulations, § 31-22 et seq.; parking lot districts, ch. 60.

\*\*Editor's note—Section 59-E-1 [formerly §111-27] is interpreted in Galblum v. Board of Appeals of Montgomery County, 258 Md. 168, 265 A.2d 232 (1970). Section 59-E-1 [formerly §104-20] is discussed in Beall v. Montgomery County Council, 240 Md. 77, 212 A.2d 751 (1965).

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- (iii) The approval of the general office use will not increase traffic to the extent that other industrial, commercial, or residential uses that are permitted by right are precluded from development within the traffic analysis area.

It is the intention of the District Council that the provisions of this subsection be administered in a manner which closely parallels the administration of the adequate public facilities provisions of the subdivision regulations (Section 50-35 of this Code). The recommendations of the Planning Board must be based on its administrative practices under Section 50-35, and these recommendations must be adopted by the Board of Appeals unless the Board finds that a modification is justified by the weight of the evidence supplied by the parties to the case. In its recommendations, the Planning Board must consider and report the recommendations of the State Highway Administration and County Department of Public Works and Transportation, the applicable levels of traffic service, peak hour use and average use, and any other information presented.

(Legislative History: Ord. No. 10-55, § 2; Ord. No. 12-79, § 7; Ord. No. 13-25, § 1.)

**Sec. 59-G-2.39. Parking of automobiles, off-street, in connection with commercial uses.**

A special exception may be granted for off-street parking of motor vehicles in connection with commercial uses, subject to the following findings and requirements:

- (a) Off-street parking at this location will not constitute a nuisance because of traffic, noise, or physical activity;
- (b) The commercial uses to be served by the facility are not in the C-T or the C-1 zone, unless the land in the C-1 zone complies with the exceptions to this provision stated in either subparagraph (h) or subparagraph (i), below;
- (c) The land on which the facility is to be located is not reserved for street or highway purposes;
- (d) The facility is in compliance with the applicable provisions of article 59-E, particularly the parking area screening provisions of section 59-E-2.9;
- (e) No charge is to be made for the first hour of parking unless the facility is located within the boundary of a parking lot district as defined in chapter 60 of this Code;
- (f) No service of any kind is to be provided to persons occupying vehicles parked in such a facility; and

MONTGOMERY COUNTY CODE  
ZONING ORDINANCE  
Chapter 59

§59-G-2.39

Article 59-G

(g) No spaces in the facility are to be used for automobile service, repair or storage, other than the storage of new cars by a new car dealer at a location adjacent to or separated only by a street from land in the C-2 zone. The board may limit the number of new cars to be stored at the facility.

(h) If off-street parking is required to accommodate additional development on property zoned C-1 and substantially developed in accordance with those uses permitted in the C-1 zone prior to March 16, 1971, a special exception for parking of automobiles may be granted subject to the following conditions:

- (1) There is insufficient land in the C-1 zone to accommodate the amount of parking required by the additional development;
- (2) The applicable approved and adopted master plan anticipated the provision of parking on residentially zoned land in connection with commercial uses in the C-1 zone;
- (3) This special exception will be an addition to a previously granted special exception for off-street parking at the same general location; and
- (4) The total of the area in the C-1 zone together with the area used for parking in the residential zone (exclusive of areas devoted to landscaping and driveways) will not exceed 15 acres.

(i) If the land in the one-family residential zone is specifically designated as suitable for special exception uses on a master plan approved and adopted on or before January 25, 1967, a special exception may be granted for parking of automobiles in connection with commercial uses in the C-1 zone, subject to the following conditions:

- (1) The land is part of a single parcel which is divided into 2 or more different zoning categories, and the portions that are not in the C-1 zone do not have direct and usable frontage on a public street; and
- (2) The adjacent land in the C-1 zone was not substantially developed in retail commercial uses prior to January 1, 1968.

(Legislative History: Ord. No. 10-32, § 16; Ord. No. 10-70, § 4.)

Editor's note—In Eger v. Stone, 253 Md. 533, 253 A.2d 372 (1969), the court found that there was sufficient evidence to sustain the granting of an exception for off-street parking.

- Maximum density of 1 dwelling unit per 2.2 acre with density to be capped in the master plan
- Preservation of 65-85 percent of the land in rural open space
- Centrally located neighborhood open space
- A variety of lot sizes: starting as low as 4,000 square feet
- The possibility of some very large lots of 10 acres or more
- Sewer and water service

This Plan recommends that the properties in the Rural Legacy area owned by the following parties be rezoned from RE-2 to the new Rural Neighborhood Cluster Zone: Hodges, Alfandre, Hoffman, Johnson, Dematatis, O'Connell, and Schaeffer. (See Appendix A.)

## VILLAGE CENTERS

This Plan emphasizes "rural villages" as one of the important elements of rural character in Sandy Spring/Ashton. The village centers provide for the business of daily life also. The rural character of the village centers is of great value to the community. There is concern about the future economic and social health of these village centers. This Plan acknowledges and addresses these issues to the extent possible through land use and design recommendations.

The rural entries along MD 108, Norwood/Dr. Bird Road, and Norwood Road separate the village centers from other nearby areas of settlement, such as the Olney Town Center and Cloverly. The entries create attractive entrances to the village centers and help establish the character of the area. These roads are lined with homes of varied vintage, scattered vistas of open cropland and fields, woodland, hedgerows and some of the area's institutions. The importance of the rural entry experience was recognized in the 1980 Plan and remains an important theme of this Plan.

entry  
to  
RURAL  
VILLAGE

**OBJECTIVE:** Ensure that the villages of Sandy Spring and Ashton maintain separate and distinct identities.

The village centers of Sandy Spring and Ashton are located on the same roadway (MD 108) and lie less than one-half mile from each other. The centers have maintained separate identities because commercial uses are clustered within the villages and there is a low-density land use pattern between the villages. The following recommendations will help reinforce the separate identity of each village center.

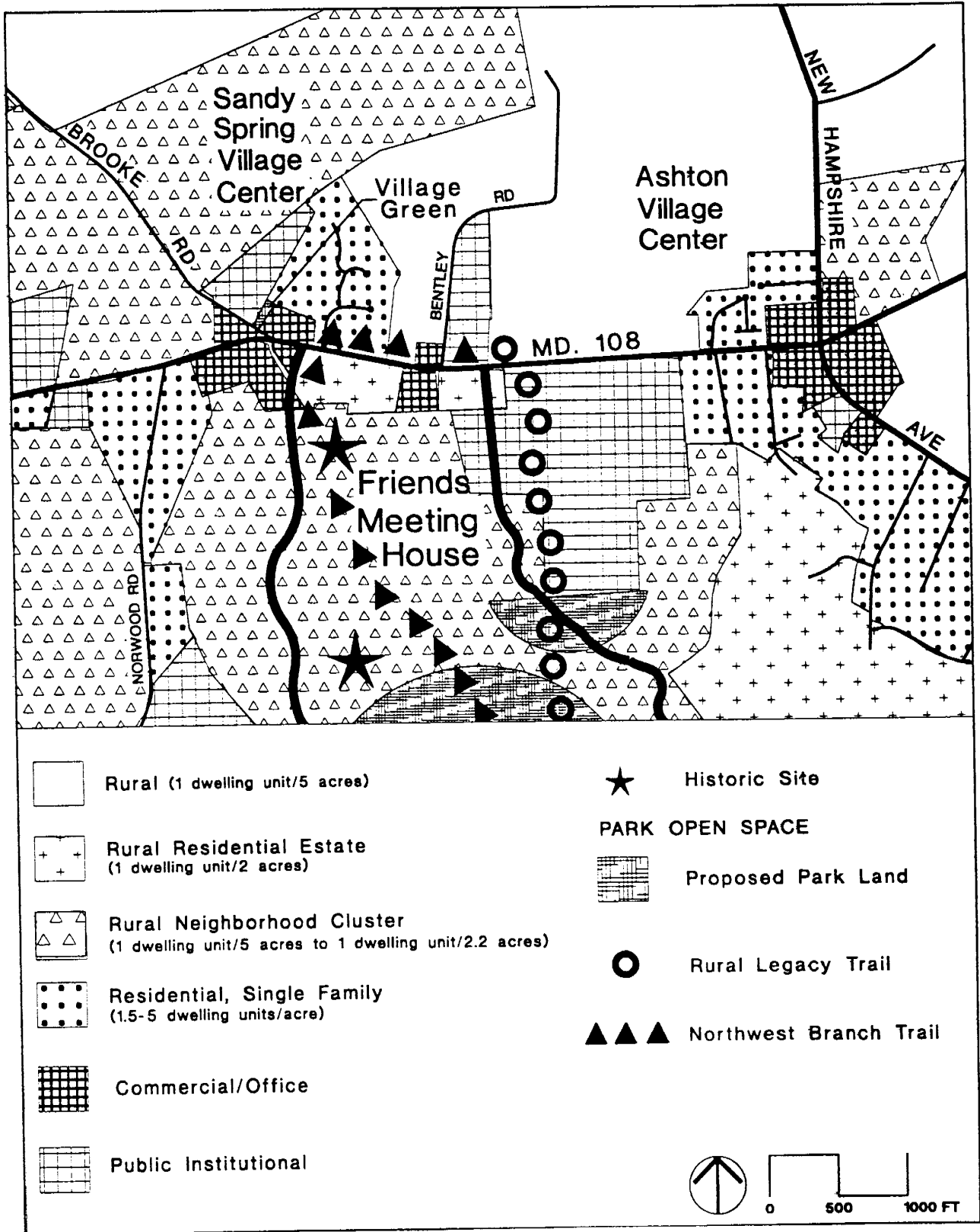
### RECOMMENDATIONS:

- **Maintain low density on the north side of MD 108 between Bentley Road and Ashton Club Way with appropriate setbacks of rural open space or a heavily wooded edge.**
- **Reinforce the eastern edge of the Sandy Spring village center. Allow some additional large-lot homes on the Brown Property as a transition between the medium-density residential and commercial uses of the villages and the adjacent rural/open space area that is 1 dwelling unit per 5 acres density with a cluster option (RC). Rezone the 3.59-acre parcel from Rural Cluster to RE-1.**



# VILLAGE CENTERS

FIGURE 14



- **Apply the new Sandy Spring/Ashton Rural Village Overlay Zone to allow additional flexibility in development while providing the option of design review to ensure conformance with this Plan.**
- **Balance the need for increased road capacity along portions of MD 108 with the need to maintain a "main street" character on MD 108 within the village centers. This Plan reaffirms the 1980 Plan recommendation that the right-of-way for MD 108 remain 80 feet to help ensure the road functions as a street serving the village centers rather than dividing them. (See also Transportation Chapter.)**
- **Encourage development and revitalization of the village centers. This Plan recognizes that incentives to property owners are an important part of revitalizing the village centers. Providing for increases in commercial density is one way of encouraging redevelopment. However, in these village centers such increases need to be balanced with the Plan intent to maintain the small scale of the existing centers.**
- **Develop the new Rural Village Overlay Zone to include the following features to encourage coordinated design, simplify requirements and protect the viability of existing businesses. (See also Implementation Chapter.)**
  - flexibility in parking requirements.
  - flexibility in minimum lot size for certain special exceptions
  - grandfathering certain existing uses which would otherwise be considered inconsistent with traditional village character.
  - FAR of 0.75 to be calculated on the underlying commercial zone portion of the site.
  - flexibility to increase the building height up to 30 feet on the commercial sites at site plan review.
- **In combination with the above flexibility provisions, this Plan recommends the following development guidelines which, with design review, will help ensure that new development maintain the small scale envisioned for the village centers:**
  - Encourage use of traditional village design, such as height limits compatible with the Sandy Spring Historic District and buildings facing the main road.
  - Encourage "active fronts" on buildings, such as porches and street entrances.
  - Encourage a land-use mix of stores and homes by maintaining the existing mix of commercial and residential zoning within the village centers.

m i x

- Create pedestrian “traffic” with uses and designs that invite frequent visits by all members of the community.
- Encourage stores and other uses that provide services to local residents and are at a compatible scale.
- Encourage use of the Sandy Spring Historic District as a source for design.
- Create small parking areas that are well-landscaped, preserve trees, and compatible with nearby uses both day and night.
- Place most off-street parking out of view of common space and active fronts, rather than between buildings and the street.
- Provide lighting that is consistent with the area’s character in terms of style, scale and intensity.

### **SANDY SPRING VILLAGE CENTER**

The Sandy Spring village center should be the heart of the community in terms of local commerce and community gatherings. Already the Friends Meeting House, Montgomery Mutual Insurance Company, Sandy Spring National Bank and the Sandy Spring Volunteer Fire Department (VFD) Station contribute to this goal.

While the character of the village center south of MD 108 is well-established, efforts are needed to reinforce the village center on the north side. Many buildings are not in keeping with the historic character of the area. Parking intrudes on the pedestrian areas and several uses serve only a very small segment of the community and are not inviting to the rest. Development of public/private strategies is essential to make Sandy Spring village center more inviting.

**OBJECTIVE:** Create a Sandy Spring village center concept that will help ensure that the village center serves its role as a focal point of community life.

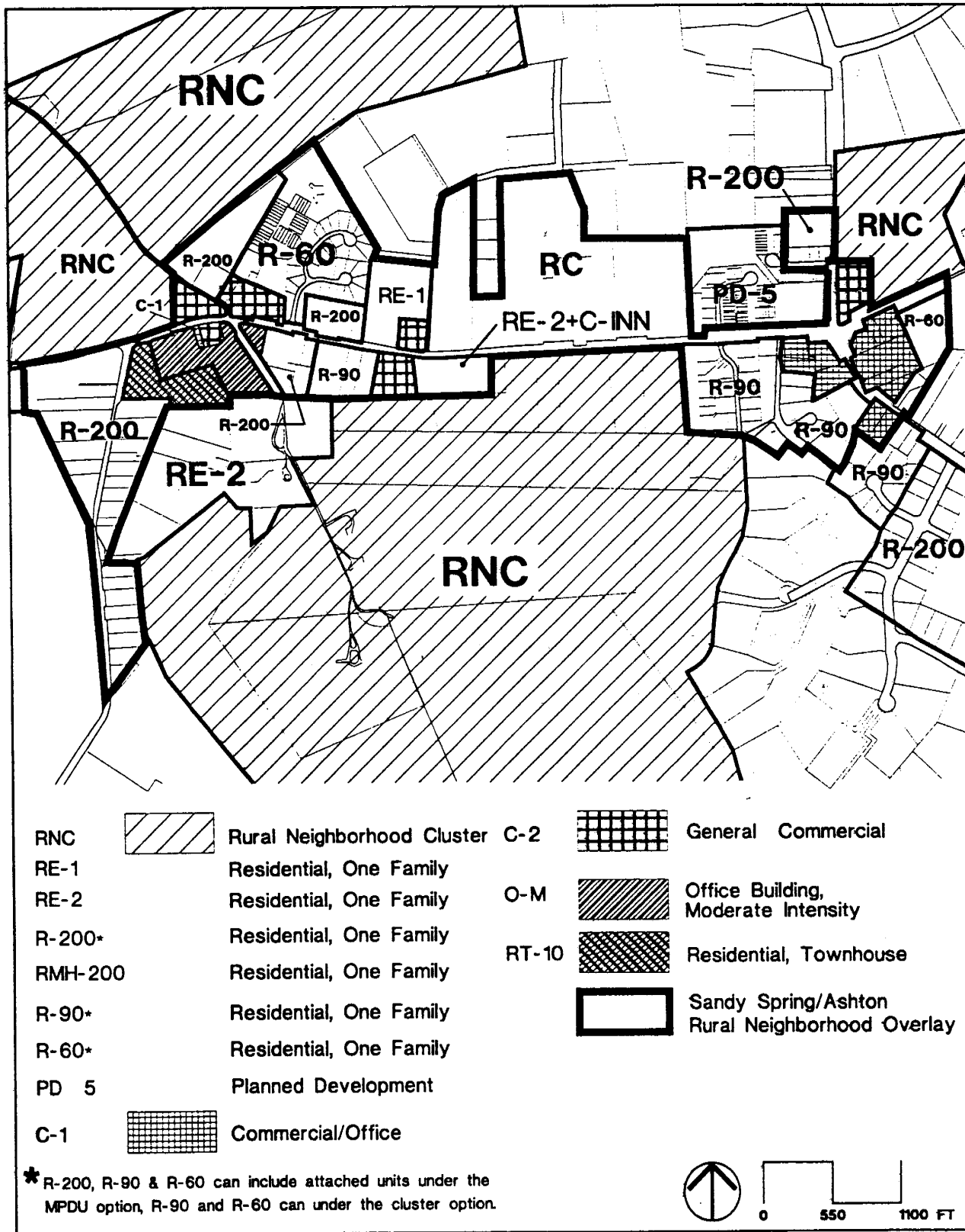
### **RECOMMENDATIONS:**

- **The village center concept (Figure 15) should consist of the three following elements.**

*Development of a new fire station as a community focal point.* The Sandy Spring Volunteer Fire Department has purchased a 7-acre site in the village center to build a new fire station. The fire station has the potential to be a strong civic presence. The fire station building and site should be carefully planned to maximize potential as a community focal point. However, the site should be rezoned from RC to R-200 which is a more appropriate intensity for reinforcing the village center should the fire station not be built.


# ZONING PLAN FOR THE VILLAGE CENTERS

FIGURE 15



***Realignment of Brooke Road.*** This Plan recommends that Brooke Road be realigned slightly to help improve pedestrian and vehicular movement in the village center. This improvement will maintain the historic crossroads of Brooke Road and MD 108 as the center of the village while allowing better pedestrian access to shops and homes in the area.

***Village green for civic events and casual socializing.*** Creation of a civic space in the center of the village should be studied in conjunction with the new fire station and the realignment of Brooke Road. Since the Plan recommends that the village green be located where there are existing businesses, purchase or redevelopment of those businesses will be necessary to implement the Plan's recommendations. The village green is intended to be a unifying design element that could also serve as a focal point for the Rural Legacy Trail as it reaches the village center. It should be planned and designed in coordination with the redevelopment of private businesses, the post office and fire station, and be large enough to accommodate community gatherings. Approximately one-half acre is desirable. The edges of the village green should be reinforced by the placement of buildings. Implementation will call for public-private partnerships.

•  **To allow better design, incorporate the village green and accommodate the new fire station, this Plan recommends allowing parking in connection with the commercial uses on the properties east of Brooke Road, which also front on MD 108, where properties are zoned commercial and residential.** These properties are shown in Figure 14 and Appendix A and identified as the Batheja, Isaacson and Eppard properties. The relocation of the fire department will provide the opportunity for realigning the Brooke Road intersection and creating the village green. This may necessitate the relocation of the existing commercial buildings. Under the provisions of the Village Overlay Zone, the residential portion of these sites is suitable for parking in conjunction with the current uses in the C-2 zone, without the necessity for obtaining a special exception. At such time as the fire station and village green projects are programmed and funded, the resulting change in the neighborhood will allow for rezoning of the residential portions of the Batheja, Eppard, and Isaacson properties to the C-2 zone via a new sectional map amendment (SMA) to be filed by the County. This will permit relocation and redevelopment of the existing commercial uses without a net increase in the overall amount of commercial zoning in the Sandy Spring Village Center. The Village Overlay Zone attempts to address parking concerns of local businesses by providing flexibility where parking can be located. An overall parking scheme for the village should be a product of the design study recommended below.

- **Develop a more detailed concept plan.** Certain Plan recommendations regarding the Sandy Spring village center require a level of study and refinement that is beyond the scope of this Plan. To implement the concept for the village center a more detailed study should be prepared. The study could not only address the above recommendations, but also streetscape elements. Staff from different agencies could participate in the study.
- **Provide for business expansion and better customer parking and circulation in the Sandy Spring village center.** Property owners expressed concern about these issues. To respond to these concerns, this Plan:

- **Require that campus institutional uses be compatible with the rural character of the area.** This Plan addresses the rural entry areas leading into the village of Sandy Spring including several existing campus institutional uses: Brooke Grove Foundation, Friends House Retirement Community and Sandy Springs Friends School. To ensure compatibility with the rural character of the area, this Plan:
  - Encourages using the traditional buildings of Sandy Spring/Ashton as inspiration for design. Strategies should include deep setbacks, significant landscaping and screening.
  - Encourage institutional uses when these campuses are expanded, to provide rural open space in accord with the goals and objectives of this Plan. The appropriate percentage of rural open space should be considered at the time of development and should encompass at least 60% of the entire site.

### *Design Guidelines*

The following guidelines apply to specific sites:

**Brooke Grove Foundation:** Provide rural open space along Lake Hallowell, MD 108, and Brooke Road. Cluster new structures in the central area of site. Ensure that the visitors center at the site entrance on MD 108 is of residential scale in keeping with the rural entry concept for Sandy Spring village center.

**Friends House Retirement Community and Sandy Spring Friends School:** Rural open space should be located along Norwood Road. New structures and parking should blend in with the rural landscape.

## **ASHTON VILLAGE CENTER**

There is constant pressure for the Ashton village center to continue to grow into a suburban crossroads since it sits at the junction of two heavily used roads. The 1980 Plan recommendations for limited commercial use and moderate- to low-density residential use are confirmed, with changes primarily to address character.

**OBJECTIVE:**           **Maintain the existing scale of Ashton village center and encourage improvements to its character.**

This Plan confirms the 1980 Plan land use recommendations and the existing zoning pattern in Ashton village center with the following changes that are reflected in Figure 14 and concern properties identified by owner in Figure 32:

### **RECOMMENDATIONS:**

- **Allow modest expansion of Kimball's Market.** Kimball's Market contributes significantly to the sense of community and the village's character. This Plan recommends additional

commercial zoning on 0.5 acres adjacent to the existing commercial lot where the market is located. This modest expansion will help the market. Therefore, the 0.5 acres should be rezoned from R-90 to C-1.

- **Limit residential development in the southeast quadrant to single-family detached homes only, rather than townhouses.** This Plan recognizes that special exception uses may be appropriate as well. ~~This Plan recommends that there be flexibility in placement of commercial uses in the southeast quadrant to encourage design that better integrates residential and commercial uses. This flexibility is allowed through the proposed Sandy Spring/Ashton Rural Village Overlay Zone.~~ The existing zoning should be confirmed. ★  
DEL.
- **Implement the 1980 Plan recommendation for commercial land use on the Cuff Property in the southwest quadrant.** This property is within the bounds of the small village center commercial area, although it has remained residentially zoned. This Plan recommends that the property be rezoned from R-90 to C-1 as intended in the 1980 Plan.
- **Apply the Rural Neighborhood Cluster zone to the Oakton Associates property.** Oakton Associates property lies in the Patuxent watershed in the northeast quadrant of the Ashton Village Center at the corner of MD 108 and New Hampshire Avenue. The property consists of 20.19 acres. One acre of the property is zoned C-2, the remainder is zoned RC. The acre of commercial zoning was added by the 1980 Master Plan to provide enough commercial zoning to allow relocation of the existing gas station (Free State Garage) from the MD 108 right-of-way. The property is undeveloped and is currently leased for growing nursery stock. To the west, opposite New Hampshire Avenue, is R-200 and PD-5 development. The residential portion of the Oakton property, if developed under the Rural Neighborhood Cluster Zone, could achieve a pattern similar to existing patterns and still provide sufficient open space to create transition and buffer between existing development in the Ashton Village Center and rural development to the north and east. Density for the residential portion should be capped at 8 to 10 units and clustered toward the Village Center. The commercial portion of the site should be included in the Rural Village Overlay Zone.

## **RURAL/OPEN SPACE AREA**

The Rural/Open Space Area is the largest part of Sandy Spring/Ashton and is envisioned to remain predominantly rural. This area is zoned Rural and Rural Cluster.

**OBJECTIVE:** Continue to recommend a low-density land use pattern to protect farmland and other rural open space.

The few remaining farms in this area are interspersed with subdivisions and development pressures are mounting. Unlike Olney, where the Agricultural Reserve was established to protect large areas of working farms, this area has never been considered part of the County's critical mass of farm-land. This Plan envisions the continuation of small farms along with some residential development.

the sensitive environmental areas, providing an appropriate historic setting on at least 7 acres, locating and designing a private road to reduce impacts on the historic setting, limiting impacts on the stream, and locating lots on land most suitable for development.

- Rezone from RE-2 and RMH-200 to the rural neighborhood cluster zone; maximum density not to exceed 48 lots.
- Community water and sewer service to be provided by a connection to the James Creek Wastewater Pump Station, adjacent to the site. This is not to be a precedent for sewer service to properties or portions of properties other than those specifically identified in this Plan. However, the reviewing agency should consider a solution or partial solution to the Brooke Road/Chandlee Mill Road health problem at the time of the community water and sewer category change request for the Dellabrooke property. See also Implementation Chapter.

## **NEW HAMPSHIRE AVENUE AREA**

Although this Plan proposes no zoning changes in this area other than the Brinklow Post Office site, the character of New Hampshire Avenue is a major planning concern. The New Hampshire Avenue area contains one of the community's most important roads and is the area most affected by change. It serves as an important rural entry to Sandy Spring/Ashton, a main street for the Ashton village center and a route for through traffic. Recent changes have raised significant community concerns about the area's future ability to retain its rural character.

This Plan proposes a rural character concept as shown in Figure 18, that both maintains the existing rural character and re-creates it along the road. The New Hampshire Avenue area naturally extends to the north into the Brighton area of the Olney Master Plan area.

**OBJECTIVE:**        **Ensure that the rural character of the New Hampshire Avenue area will be enhanced and maintained.**

### *Design Guidelines*

These guidelines apply north and south of the Ashton village center:

- Preserve rural open space along the road where it is highly visible to the community. Cluster new homes and site other buildings and uses to preserve open space along the road. Provide for scenic setbacks, as permitted in the Rural Cluster Zone, greater than 50 feet to be determined at the time of development review.
- Orient new homes and other buildings to the road. If homes cannot present fronts or sides to the road then the houses should be carefully sited and screened to minimize visibility. Berms are generally not as desirable as other forms of screening since they are not typical of the rural landscape of the area.



optional method of development can allow densities of up to 1 dwelling per acre, with a consequent increase in the amount of open space. (The Master Plan may cap the density at a lower amount.) Reduced lot sizes allowed under the optional method allow for a more compact, efficient neighborhood and encourage preservation of additional open space.

As shown in Table 6, the RNC Zone allows an optional density of one dwelling unit per 1 acre but this Plan caps the density for properties recommended for the RNC Zone at 1 unit per 2.2 acres. The optional method provides: a density bonus for the preservation of additional open space that will remain rural and open in perpetuity, diversity of lot and house sizes, and responsiveness to the guidelines of the Plan, particularly those related to qualities of the rural neighborhood and its setting.

The RNC Zone requires preservation of 65-85 percent rural open space; however, the Plan recommends more limited ranges for specific properties. At the time of development, the Planning Board will have to determine the amount of open space within the specific range that achieves the Plan's objectives.

The standards that would still have to be met include:

- Views from the Rural Legacy Trail, rural entries or village edges are protected.
- Sensitive environmental features are protected and impact minimized.
- Rural setting for the residential neighborhood is maintained.

This Plan strongly recommends that the Zoning Ordinance be amended to include Rural Neighborhood Cluster Zone at the time of the comprehensive rezoning (the Sectional Map Amendment) of the Sandy Spring/Ashton Master Plan area would be applied.

### **Sandy Spring/Ashton Rural Village Overlay Zone**

The purpose of the Rural Village Overlay Zone is to address issues related to enhancing rural village character and providing design flexibility. Rural Village Overlay Zone will help ensure the continuation of land uses and patterns that characterize rural settlements. A rural village zone to do this was recommended in the 1980 Plan but never developed. In part, this was because the rural village zone as it was envisioned at the time was to have County-wide implications and was to be formulated to meet the needs of many rural settlements. The proposed Overlay Zone has been tailored to the specific needs of Sandy Spring/Ashton without affecting all of the other rural villages of the County. Key features of the zone are described in Table 6.

#### *For Residential Only*

- Flexibility to reduce lot sizes with site plan review to create better design, with flexible setbacks and zero lot line configurations, but with no change in density.

*For Commercial*

- Flexibility to create better design with site plan review.
- Flexibility in siting to allow parking in conjunction with commercial uses to float between certain adjacent properties to the most desirable locations on the site if the master plan so recommends.
- Height limit consistent with the Sandy Spring Historic District and an appropriate FAR limit for the size and scale of the village centers.
- Exclusion of new auto-oriented or typically large-scale uses that are inconsistent with traditional rural development patterns with flexibility to ensure the continuation of existing uses through grandfathering.
- Flexibility for on-street parking to count toward meeting the parking requirement for new development if so determined by the Planning Board at the time of site plan review.
- Flexibility to allow a waiver of the minimum acreage requirement for special exception uses, such as a nursery in a residential zone.

**TABLE 6**

**SUMMARY OF KEY FEATURES OF RURAL NEIGHBORHOOD CLUSTER ZONE**

	Standard Method (1 du per 5 acres)	Optional Method (1 du per 2.2 acres)
Mandatory Clustering with water and sewer service on properties 25 acres or more	YES	YES
Minimum Amount of Open Space	60%	75-85% with flexibility to provide 70% if Plan objectives can still be achieved (such as protecting views from the Rural Legacy Trail, maintaining the rural setting, and providing diversity of lot sizes)
Lot Size	minimum of 25,000 sf	No minimum lot size. Additional variety encouraged by allowing accessory units over garages as well as zero lot lines.
Preservation of Open Space	Requires preservation in perpetuity and ensures uses permitted within the rural open space are consistent with the intent of the master plan to preserve the rural character of the area.	

Once the zone is adopted, the specific properties where it will be applied will be determined via the Sectional Map Amendment using the following guidelines:

- Commercial properties and adjacent residential uses where design flexibility is recommended in the Plan.
- Residential properties to maintain residential height limits consistent with the neighborhood character.
- Residential properties where flexibility in lot sizes is desirable.

## **PRESERVING RURAL OPEN SPACE**

The permanent retention of the rural open space created through the Rural Neighborhood Cluster Zone is important to the objectives of this Plan. To do this, techniques should be used that will preserve land designated as rural open space, maintain the aesthetic and environmental qualities of that open space over time, and limit uses to those that are acceptable in the rural open space area.

Zoning is the vehicle that allows clustering and open space to be set aside from development and preserved. Rural open space, once approved by the Planning Board, would be recorded as such in the land records of Montgomery County.

The Rural Neighborhood Cluster Zone identifies uses that are permitted by right or as special exceptions within the 65-85 percent rural open space.

This Plan describes two strategies that may serve to preserve the special character of the rural open space. The size of the rural open space area and the degree to which public access is encouraged are important considerations.

- **Public ownership** of the open space by a state or local government, such as the M-NCPPC, Department of Parks.
- **Private ownership** either by an individual or entity of the open space with an easement for public access.

During the course of this Plan, the community formed an organization, the *Greater Sandy Spring Green Space, Incorporated*. Such an organization could address the community concerns about the future of the open space and could provide for direct and on-going involvement of the community in preserving the rural open space.

This Plan, therefore, recommends that the most suitable strategy and appropriate mechanism available at the time of development under the Rural Neighborhood Cluster Zone be selected to protect the open space. This Plan also recommends that a report on the different means available to preserve open space, the advantages and disadvantages of each, and changes in policy or law necessary to ensure long-term preservation of open space be developed.

APPENDIX D

05/02/06

LAW OFFICES OF

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DAVID W. BROWN

TO: Brooke Farquhar  
Sandy Spring Ashton Rural Preservation Consortium

FROM: David W. Brown, Esq. *[Signature]*

DATE: May 2, 2006

RE: Analysis of Master Plan and Zoning Code Compliance  
- Ashton Meeting Place

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You have asked that I provide an analysis of whether the revised Ashton Meeting Place submission to the Planning Board complies with the Master Plan and the Zoning Code.

**Ashton Meeting Place**

Ashton Meeting Place is a proposed development on 7.1 net acres of land at the southeast intersection of Ashton Road (MD Rte. 108) and New Hampshire Avenue (MD Rte. 650). The project is comprised of several distinct parcels to be combined in a Preliminary Plan of Subdivision. All of the property is in the Sandy Spring/Ashton Rural Village Overlay Zone, Zoning §59-C-18.18 - five R-60 parcels (3 acres) and six C-1 parcels (4.1 acres). I have reviewed the revised Site Plan and Cover Sheet dated 4/13/06, and a number of contemporaneous supporting drawings. There are three buildings proposed for the site. Building 3 is a grocery store, with its back to Route 108 with a building area of 35,182 square feet. Building 2 is the Sandy Spring Bank building, on the corner of the intersection, with an area of 7,100 square feet. Building 1 fronts on New Hampshire Avenue, south of the Bank. It is a combination office/retail/residential and restaurant building, with a total of 55,586 square feet. The total floor area for the project is 97,868 square feet: about 55% retail, about 23% office, 20% residential and 2% restaurant. Given the size of this development, 338 parking spaces are required; 349 are provided. Of these, 20 spaces are designated for the 13 residential units in building 1.

The grocery store appears to be one story; building 2 is two stories; and building 1 is three stories. Elevation drawings reveal the following building heights (to roof midpoints): building 1 - 24'; building 2 - 30'; building 3 - 30' (with two "architectural peaks" - one at 49.2' and the other 61.1').

## Master Plan

The applicable Master Plan is the Sandy Spring/Ashton Master Plan, approved by the Montgomery County Council on July 7, 1998 in Resolution No. 13-1364.<sup>1</sup> The first substantive commentary in the Plan is the section preceding Chapter One called "Highlights". The first section under Highlights is a subsection called "Rural Character". The first sentence under Rural Character is as follows: "This Plan strengthens the 1980 Plan's commitment to maintain and preserve the aesthetic qualities and rural character of Sandy Spring/Ashton." The next paragraph goes on to state, *inter alia*, as follows:

This Plan recognizes that additional development will occur, but recommends development patterns and design standards that will help continue Sandy Spring/Ashton's unique rural character. This Plan: defines the elements of rural character as rural open space, rural traditions, new rural neighborhoods, rural roads, rural villages.<sup>2</sup>

Opposite this first Highlight page is Figure 1, which is a set of photographs illustrating what the Board meant by rural character, including a photograph of the Cricket Book Shop in the Ashton Village Center. It is a modest 1 ½ story building with bay windows and dormers in the roof, facing on New Hampshire Avenue, across the street from the proposed Ashton Meeting Place, with parking immediately in front of it directly adjacent to New Hampshire Avenue.

Chapter 3 of the Master Plan discusses land use design and zoning in particular areas, including the Village Centers of Sandy Spring and Ashton. In an introductory observation about both Village Centers the Plan states as follows:

This Plan emphasizes "rural villages" as one of the important elements of rural character in Sandy Spring/Ashton. The village centers provide for the business of daily life also. The rural character of the village centers is of great value to the community. There is concern about the future economic and social health of these village centers. This Plan acknowledges and addresses these issues to the extent possible through land use and design recommendations.

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<sup>1</sup> Where there is no inconsistency, all references to the Master Plan herein are to the pages in the version printed by the Planning Board on July 15, 1998. Where there is an inconsistency, it is in the failure of the Board to make all of the changes required by the Council in Resolution 13-1364. In such instances, the Resolution is controlling. See Regional District Act, §7-108(d)(2); Montgomery County Code §33A-9.

<sup>2</sup> Master Plan at page xii. Unless otherwise indicated, all references to the Master Plan are to the version published by the Planning Board on July 15, 1998.

Master Plan, p. 29. The first objective noted in fulfilling this rural village goal is to “[e]nsure that the villages of Sandy Spring and Ashton maintain separate and distinct identities.” Id. The Plan makes several recommendations in furtherance of that objective. First, the Plan recommends “apply[ing] the new Sandy Spring/Ashton Rural Village Overlay Zone to allow additional flexibility and development while providing the option of design review to ensure conformance with this Plan.” Id. at 31. Second, the Plan recommends against widening Maryland Rte. 108 greater than 80’ so as to maintain a “main street” character on Maryland Rte. 108 within the village centers. The goal is to “ensure the road functions as a street serving the village centers, rather than dividing them.” Id. Third, the Plan seeks to “[e]ncourage development and revitalization of the village centers.” Id. The Plan recognizes that an increase in commercial density is a way of encouraging redevelopment, but cautions as follows: “However, in these village centers, such increases need to be balanced with the Plan intent to maintain the small scale of the existing centers.” Id. Fourth, the Plan recommends a number of development guidelines that the Plan drafters believed, with design review, would “help ensure that new development maintain the small scale envisioned for the village centers.” Id. As relevant here, the enumerated guidelines are as follows:

- Encourage use of traditional village design such as height limits compatible with the Sandy Spring Historic District and buildings facing the main road.
- Encourage “active fronts” on buildings such as porches and street entrances.
- Encourage a land-use mix of stores and homes by maintaining the existing mix of commercial and residential zoning within the village centers.
- Create pedestrian “traffic” with uses and designs that invite frequent visits by all members of the community.
- Encourage stores and other uses that provide services to local residents and are at a compatible scale.
- Create small parking areas that are well-landscaped, preserve trees and are compatible with nearby uses, both day and night.
- Place most off-street parking out of view of common space and active fronts rather than between buildings and the street.

Id. at 31-32.

With respect to the Ashton Village Center in particular, the Plan notes that “[t]here is constant pressure on the Center to continue to grow into a suburban cross-roads because of its location at the junction of two heavily used roads.” Id. at 38. Nevertheless, the Plan states that the “1980 plan recommendations for limited commercial use and moderate to low-density residential use are confirmed, with changes primarily to address character.” Id. The Plan then defines the objective for the Ashton Village Center: “Maintain the existing scale of Ashton Village Center and encourage improvements to its character.” Id. Then the Plan goes on to state that “this Plan confirms the 1980 Plan land use recommendations and the existing zoning pattern in the Ashton Village Center.” Id. This is followed by recommendations of certain specific changes from the 1980 Plan, none of which are applicable to the Ashton Meeting Place property. Id. at 38-39.<sup>3</sup>

In short, the 1998 Master Plan for the Ashton Village Center, subject to amendments not relevant here, effectively incorporates the 1980 recommendations for land use in the Ashton Village Center in the 1980 Master Plan. Those recommendations are at p.37 and p.38 of the 1980 Plan, approved and adopted by the Board in November, 1980. As relevant here, that Plan states as follows:

Commercial development is channeled along New Hampshire Avenue south of Maryland Route 108 where stores and offices are interspersed with small residential lots. A small amount of commercial expansion should occur in these areas in accord with the present development pattern: small stores fronting New Hampshire Avenue. Parking for these uses should be coordinated and placed in the rear of these structures, if this is feasible.

1980 Plan at 38.

I conclude from the foregoing that the 1980 Plan, as reconfirmed in the 1998 Plan, provides for a small amount of commercial expansion on the commercial portion of the site, which is owned almost entirely by Sandy Spring Bank. The 1980 Plan explicitly endorsed small stores fronting New Hampshire Avenue. The 1998 Plan would arguably embrace commercial activity fronting on MD Rte. 108 as well, providing that those stores reinforced the model of a “main street,” between Ashton and Sandy Spring. Looking only at Buildings 1 and 2, but for their 49’ and 60’ “peaks,” one could plausibly argue that these buildings would add vibrancy and economic vitality to Ashton, and therefore

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<sup>3</sup> The Planning Board version of the Master Plan includes a recommendation of “flexibility in placement of commercial uses in the southeast quadrant,” on the grounds such flexibility is allowed in the Overlay Zone. Id. at 39. However, the District Council deleted this language from the Plan in Resolution No. 13-1364. The deletion is controlling. See note 1, supra.

should be approved as consistent with the Master Plan. This conclusion is influenced in significant part by the fact that the Alloway Building across the street, which I believe is at a height of 30', was approved in 2001 and probably would be comparable in height (except for the "peaks"), even though not in square footage, to Building 1. It is my understanding that for whatever reason, the Alloway Building did not generate any significant community opposition and was approved in a fairly routine fashion at a hearing on May 25, 2000. The Staff Report submitted to the Board did not discuss compliance with the foregoing provisions of the Master Plan. Rather, the Staff Report spoke generally to compliance with the Sandy Spring/Ashton Rural Village Overlay Zone, in which the site lies. Without discussing the building scale issue, the staff simply observed generally:

The plan conforms substantially (with agreed-upon conditions) with the recommended design goals for the Sandy Spring/Ashton Rural Village Overlay Zone in use, site layout, parking location and design, arcaded street façade and main entry. Staff recommends attention to building height, with regard to elevations and roof design staff recommends particular attention to the lighting plan at signature set.

Staff Report 9. The Report also notes that the Overlay Zone "allows flexibility in building heights with an allowance for 30' building height for commercial sites." Id.

A fair reading of the Alloway result, therefore, is that in the absence of any significant demand or voice from the community for a smaller scale than 30' in height at this location, the Board allowed the builder to build at that height rather than the lower height of 24' generally specified as the limit in the Overlay Zone. This precedent certainly does not preclude SSARP from insisting on a more modest approach across the street for Ashton Meeting Place.

With respect to the grocery store, there is 227'4" of frontage of the back wall of the grocery store on MD. Rte. 108. While this wall will be configured with façade architectural elements to create the illusion of multiple separate buildings, there will be no separate buildings or entrances along this side. It appears that most of the building will be set back from the street about 10', with a vertical height along that wall averaging about 22,' with the slope of the land exposing more of the building on the east end. Obviously, a very strong case can be made that this kind of frontage is not "main street" frontage in a rural village. Similarly, building 2, the bank, is proposed to be built at the maximum allowed height of 30,' which is ample for a two-story building, even if height were measured at the roof peak (which is not the case). In this case, however, an exaggerated roof and rooftop adornments swell the peak to 42' – a vertical scale wholly inappropriate for a rural village. In building 3, the same analysis applies to the 49' and 61' architectural "peaks" and the entire third floor, where the ceilings alone are above 30'.



Even if the design of Ashton Meeting Place was not inconsistent with the rural village development guidelines in the Master Plan in the above-enumerated ways, just the sheer size of the project – 97,868 square feet, about 78,000 of which is for commercial use – violates the village scale expectations set forth in the Master Plan. Specifically, for Ashton Village Center, the Master Plan confirms the “1980 plan recommendations for limited commercial use.” Master Plan at 38. In turn, the 1980 Plan makes clear the amount of commercial square footage that is “inconsistent with the scale of uses envisioned for a village center.” 1980 Plan at 38. For the northeast quadrant of the same intersection as Ashton Meeting Place, the 1980 Plan states that 60,000 square feet for commercial floor area would be inappropriate, and recommends a two-thirds reduction in commercial use acreage (from 6 acres to 2). *Id.* Hence, the 1980 Plan regards 20,000 square feet of commercial floor area as the appropriate scale of development for six acres of commercial property just across the two streets from Ashton Meeting Place. Taking into account that the Ashton Meeting Place acreage is 18% larger (7.1 acres v. 6 acres), consistency with the 1980 Plan would be achieved with commercial floor area of 118% of 20,000 square feet, or 23,600 square feet. At 78,000 square feet of commercial floor area, Ashton Meeting Place is more than 3.3 times larger than this adjusted figure. It is even proportionately larger (after an 18% upward adjustment) than the 60,000 square foot figure that the 1980 Plan finds “inconsistent with the scale of uses envisioned for a village center.” *Id.* In short, it is simply not possible to reconcile the size of the commercial floor area proposed for Ashton Meeting Place with the 1980 Plan vision for village center commercial activity, as confirmed in the 1998 Master Plan.

### **Sandy Spring/Ashton Rural Village Overlay Zone**

The 1998 Master Plan was adopted in connection with enactment of the new Sandy Spring/Ashton Rural Village Overlay Zone in §59-C-18.18 of the Zoning Ordinance. As noted above, the Plan recommends applying the Overlay Zone to ensure conformance with the Plan and conversely, the Zoning Ordinance says that the purpose of the Overlay Zone is to

- (a) preserve and enhance the rural village character of the Sandy Spring and Ashton Village Centers by ensuring an attractive and traditional pattern of houses, commercial establishments, open spaces and their relationship to roadways, and
- (b) encourage a compatible relationship between new or expanded houses or businesses and traditional neighboring structures that reflect the best of local village character particularly in terms of scale, siting, design features, and orientation on the site.

§59-C-18.181. The building height permitted under the Zoning Ordinance is 24', except where the Planning Board, in reviewing the Site Plan, allows height to increase to 30' under §59-C-18.182(b)(2)(A). This section specifies that the Board may allow an

additional 6' of height on particular buildings if that height is compatible with the adjoining uses and consistent with the intent of the Master Plan.

The key legal significance of the Overlay Zone is the extent to which the Planning Board's discretion to approve a site plan – even though it does not conform with the explicit recommendations in the Master Plan – has been curtailed. This has been accomplished by enactment of §59-C-18.186(a), wherein the Board's approval procedures for site plans generally are modified for this Overlay Zone to require the following additional finding: "The Site Plan is consistent with the recommendations in the approved and adopted Sandy Spring/Ashton Master Plan." Included in the Master Plan recommendations are all of the rural village center design guidelines quoted above. The use of the language "consistent with" in this section is pivotal. Maryland case law makes clear that where the legislative body wants to impose a plans' recommendations as statutory mandates, thereby eliminating the discretion of the planning body in applying the recommendations, it must employ language such as "consistent with" or "in compliance with" rather than language such as "in harmony with" or modifiers to "conforms with" such as "substantially". Richmar Holly Hills, Inc. v. American PCS, LP, 117 Md. App. 607, 701 A.2d 879, 903 (1997). See also Board of County Comm'rs of Cecil County v. Gaster, 285 Md. 233, 401 A.2d 666, 670 (1979); Coffee v. MNCPPC, 293 Md. 24, 441 A.2d 1041, 1044 (1982). Based on these authorities, I conclude that all recommendations in the Overlay Zone have to be met for site plan approval, because of the use of the word "consistent" under §59-C-18.186, which is described as the standard for Planning Board approval.

In most cases, where the Planning Board is not dealing with Master Plan recommendations that have been elevated to Zoning Ordinance mandates, it is typical for the Board to find that a site plan substantially conforms to the Master Plan if some of the recommendations in the Master Plan are honored in the site plan, even if some are not met. In this case, however, there is no "plus and minus" weighing scale. If there is **anything** about the site plan at odds with recommendations in the Master Plan applicable to the site, approval is not merely at odds with the Master Plan; it is a Zoning Ordinance violation. The Board does not have the authority to weigh compliance against non-compliance when the yardstick is the Zoning Ordinance, and conclude that complying elements can excuse features that do not comply. The only lawful option is disapproval unless and until illegal elements of the site plan are corrected. In this case, therefore, all the reasons why the site plan is inconsistent with the Master Plan, as detailed above, are also reasons why approval of the site plan would violate the Zoning Ordinance.

### **Commercial Parking on Residentially Zoned Land**

The applicant's attorneys at Miller, Miller & Canby (MMC) have gone to great lengths to create a plausible argument that the commercially-zoned property (C-1) in Ashton Meeting Place may be served by parking located on the residentially zoned property (R-60). The argument is borne of necessity: of the 349 parking spaces (338 required) for the C-1 buildings, 143 (over 40%) are on the R-60 portion, and only 20 of these can be categorized as supporting residential use. In basic Euclidean zoning terms,

parking in support of commercial uses may not be placed on R-60 properties without a special exception. §59-C-1.31(b). Closer inspection reveals that such parking is not allowed in support of C-1-zoned properties, except in certain grandfathered situations dating back thirty or more years. §59-G-2.39(b), (h), (i). Hence, the only way the parking arrangement shown on the site plan could pass muster under the Zoning Ordinance is if it is expressly allowed under the Overlay Zone.

Analysis of the Overlay Zone is straightforward and clear on this issue. In only a few instances does the Ordinance vary the standards and requirements for development of residentially-zoned land, as set forth in §59-C-18.182(a)(2). In all other respects, the “standards are the same as those in the underlying zones.” *Id.* The exceptions do not include any changes in the permitted or special exception uses. Thus, the Overlay Zone does not establish a generic right to use R-60-zoned property for C-1-related parking that is any broader than that contained in the R-60 zone considered apart from the Overlay Zone.

Further, the Overlay Zone deals explicitly with the issue of use of residentially zoned land for commercial off-street parking, and expressly limits such use to residentially zoned properties “designated in the Sandy Spring/Ashton Master Plan as suitable for mixed use or non-residential use.” §59-C-18.185(b). The zoning plan for the Sandy Spring and Ashton Village Centers in the master Plan identifies the R-60 portion of the Ashton Meeting Place property as continuing in R-60 use.<sup>4</sup> Hence, this land is plainly not recommended for non-residential use.

Is it nevertheless recommended for mixed use? The MMC Memo laboriously attempts to squeeze an affirmative answer to this question out of the text or context of the Master Plan, but it simply is not there. As noted in note 2, *supra*, there is language in the Planning Board version of the Master Plan that recommends “flexibility in placement of commercial uses in the southeast quadrant.” It is quite clear that this is a reference to the R-60 property in Ashton Meeting Place.<sup>5</sup> But it is equally clear that the District Council **deleted** this recommendation in Resolution 13-1364, at page 20. While this deletion was mandated by the District Council, it was not made in the published Planning Board version of the Master Plan. Nevertheless, the District Council’s decision is controlling. See note 1, *supra*.

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<sup>4</sup> The Final Draft as approved by the District Council (with modifications not pertinent here) shows this in Figure 14 at page 40, “Zoning Plan.” This Figure is expressly referenced in the Ashton Village Center text at page 49. This version of the Master Plan controls. See note 1, *supra*. In the published Planning Board version, this figure, unchanged insofar as relevant here, has been renumbered as Figure 15.

<sup>5</sup> The Final Draft references the southeastern quadrant of Md 108 and New Hampshire Avenue within the Overlay Zone as drawn in Figure 14 and the properties identified by owner in Figure 31. There are no properties that meet this description other than those R-60 properties within Ashton Meeting Place. In the Planning Board version of the Master Plan, these Figures have been renumbered 15 and 32, respectively.

The MMC Memo constructs an elaborate black-is-really-white argument to suggest that this deletion really was not intended to have the effect that it obviously has – to eliminate the option of commercially-oriented parking on the R-60 portion of Ashton Meeting Place. The supporting strands of the argument are as flawed as its conclusion.

First, the MMC Memo claims that the “main goal” of the Overlay Zone is to promote “design flexibility.” *Id.* at 5. This is erroneous. Design flexibility is not a planning goal; it is a means to an end. The real purpose of the Zone is as stated in the Ordinance itself and bears repeating:

The purpose of the Overlay Zone is to

- (a) Preserve and enhance the rural village character of the Sandy Spring and Ashton Village Centers by ensuring an attractive and traditional pattern of houses, commercial establishments, open spaces and their relationship to roadways.
- (b) Encourage a compatible relationship between new or expanded houses or businesses and traditional neighboring structures that reflect the best of local village character particularly in terms of scale, siting, design features, and orientation on the site.

§59-C-18.181.

Second, starting with the false premise that design flexibility was the purpose of the Overlay Zone the MMC Memo argues that the mere inclusion of the Ashton Meeting Place property in the Zone means that it was an appropriate candidate for all design flexibility provisions in the Master Plan and the Ordinance. MMC Memo 6. But the express terms of both the Master Plan and the Ordinance are to the contrary. In the Plan, only specific properties are identified for commercial use on residential property, and the Ordinance explicitly limits parking on residentially zoned land in support of adjacent commercial uses to those residential parcels expressly designated in the Master Plan “as suitable for mixed use or non-residential use.” §59-C-18.185(b). To the same effect, §59-C-18.182(b)(2)(D) limits residential off-street parking for commercial uses to the residential portions of areas recommended in the Master Plan for mixed use development. As noted above, the land comprising Ashton Meeting Place was expressly **excluded** from mixed-use recommendation by the District Council in its review and approval of the Master Plan.

Third, although aware that the District Council deleted mixed-use recommendations from the Plan the MMC Memo nonetheless argues that this must not be read to “undermine what was clearly intended by the Plan’s authors.” MMC Memo 7. This is, in reality, a bald-faced invitation to ignore the District Council’s revisions to the Master Plan eliminating property-specific mixed-use development recommendations. The MMC Memo concedes that the rationale for this District Council action was to

eliminate mixed-use designations in favor of other approaches for implementing Master Plan goals. *Id.* at 11-12. The proper reading of the Master Plan, therefore, is that mixed use on the Ashton Meeting Place site was rejected by the District Council in favor of other approaches. MMC argues that this change was directed “primarily” at Sandy Spring, not Ashton, *id.* at 11, but even if this is so, it cannot alter the fact that this change in the Master Plan required by the Council was expressly applicable to the Ashton Meeting Place property as well.

Fourth, the MMC Memo argues that the 1980 Plan recommended mixed use on the Ashton Meeting Place property and the 1998 Plan, by confirming such recommendation, fulfills the Overlay Zone requirement for a property-specific designation of suitability for mixed use. MMC Memo 9-10. This is another nonsensical attempt to turn black into white. The unalterable fact is that the version of the 1998 Plan submitted to the Council recommended such a designation but regardless of what the 1980 Plan may have said, the Council **rejected** the recommendation. Moreover, the 1980 Plan did **not** recommend mixed-use for this site. It recommended commercial use along New Hampshire Avenue south of Md. Route 108, and that adjacent residential areas apply for P-D zoning (which, of course, is exclusively residential). 1980 Plan at 38-40.

Finally, the MMC Memo argues that the deletion of mixed-use designation for the Ashton Meeting Place property by the Council in the Master Plan is of no significance because, at the same time, the off-street parking provision was added to the contemporaneously enacted Overlay Zone, allowing commercial parking on the residential portion of a subject site without a special exception. MMC Memo 12-13. But this labored attempt to divine special significance from a sequence of events before the District Council proves nothing except the folly of engaging in such exercises when the plain meaning of the Ordinance is evident and to the contrary.<sup>6</sup> Specifically, as noted above, the off-street parking provision applies only to sites “that are designated in the Sandy Spring/Ashton Master Plan as suitable for mixed-use or non-residential use...” §59-C-18.185(b). The residential portion of the Ashton Meeting Place property plainly cannot pass this test, and no amount of fanciful speculation about legislative intent gleaned from legislative history can alter this result.

### **Other Considerations**

I have not done an exhaustive analysis of compliance of the revised Ashton Meeting Place project with the Overlay Zone development standards. I have not even assessed the threshold question of the adequacy of the information submitted by the applicant under §59-C-18.184(b). On the information already provided, however, it is abundantly clear, on multiple grounds, that the project cannot properly be approved by the Board. All three buildings lack the proper rural village scale required. The project as

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<sup>6</sup> See, e.g., *Allstate Ins. Co. v. Kim*, 376 Md. 275, 829 A.2d 611, 619 (2003) (If legislative intent is clear from “the plain meaning of the statutory language,” there “is no need to search further,” looking “for evidence of intent from legislative history or other sources.”).

a whole has far too much commercial space to qualify as appropriate scale commercial use in the Zone. The project improperly relies on use of R-60 zoned property within the Overlay Zone to meet commercial parking requirements. Any one of these defects, standing alone, is sufficient to require disapproval.

Even if the project could climb all these hurdles, it could not be approved without clearing yet another hurdle. The site plan cannot be approved unless it meets all the requirements of the zone in which it is located. This project proposes multi-family dwellings on the commercial (underlying C-1 zone) portion of the site. Dwellings are a special exception in the C-1 zone. §59-C-4.2(a). In the Overlay Zone, on commercial property, special exception uses allowed in the underlying zone are special exception uses allowed in the Overlay Zone, with certain prohibitions not applicable here. §59-C-18.182(b)(1).<sup>7</sup> Thus, the Planning Board could, at most, condition the project on obtaining special exception approval. This would have to be obtained from the Board of Appeals, under the conditions, standards and requirements set forth in §59-G-1.2 and §59-G-2.39, before final approval could be obtained for the site plan.

### **Conclusion**

A more in-depth analysis of the application could be undertaken to determine if there are other problems with the Ashton Meeting Place project. But three glaring defects in the site plan make this a largely academic exercise. Even if there are no other problems, the project cannot meet the standards of the Overlay Zone and should be disapproved.

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<sup>7</sup> One of these prohibitions is multiple-family dwellings, but an exception is made – applicable here – for such dwellings “when included in a structure containing retail or commercial uses.” Id.

LAW OFFICES

**MILLER, MILLER & CANBY**

CHARTERED

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February 23, 2007

Mr. David Niblock  
Department of Permitting Services  
255 Rockville Pike, 2nd Floor  
Rockville, MD 20850RE: Confirmation of Zoning Ordinance Interpretation re Section 59-C-4.2,  
"Parking of motor vehicles, off-street, in connection with any use permitted"

Dear David:

Pursuant to a recent conversation you had with John Reinhard on the subject referenced above, we request confirmation from the Department of Permitting Services that structured parking (located in basements, on the roofs or otherwise incorporated within buildings on a site) is permitted in the C-1 zone to serve any use permitted on the property in accordance with Sections 59-C-4.2 and 59-E-1.2.

Section 59-C-4.2 provides that "parking of motor vehicles, off-street, in connection with any use permitted" is a permitted use in the C-1 zone. (Emphases added.) We seek confirmation from the Department that the term "off-street" contemplates either surface parking or structured parking that supports any use permitted on site. We believe support for our interpretation exists in Section 59-E-1.2, which provides that "[a]ll garage or other structure space allocated for the parking of vehicles in basements, on the roofs of buildings, or otherwise within buildings shall be considered part of the required off-street parking facilities."

Based on the above, please confirm by counter-signing this letter where indicated below that our interpretation of what constitutes permitted "off-street" parking in the C-1 zone is correct.

We greatly appreciate your assistance. Thank you for your attention to this matter.

Very truly yours,

MILLER, MILLER & CANBY



Soo Lee-Cho

I HAVE REVIEWED THE CONTENTS OF THIS LETTER AND AGREE THAT STRUCTURED PARKING THAT IS INCORPORATED WITHIN BUILDINGS ON A SITE TO SERVE PERMITTED USES IS ALLOWED IN THE C-1 ZONE.



David Niblock  
Department of Permitting Services

cc: John Reinhard  
Jody S. Kline, Esquire



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March 22, 2007

Ms. Susan Scala-Demby  
Permitting Services Manager  
Department of Permitting Services  
255 Rockville Pike, 2nd Floor  
Rockville, MD 20850

RE: Protocol Between MCDPS and M-NCPPC  
Regarding Interpretation of the Montgomery County Zoning Ordinance

Dear Ms. Scala-Demby:

David Niblock was kind to countersign a letter (copy attached) which I recently submitted to your office relating to an issue of Zoning Ordinance interpretation that has arisen in the context of a site plan review at Maryland-National Capital Park & Planning Commission for a mixed-use (retail/office/residential center) located in the C-1 zone. (Site plan review required because the property is located in the Sandy Spring-Ashton Rural Village Overlay Zone.)

Subsequent to my submission of the letter to Mr. Niblock, it was brought to my attention that the Department of Permitting Services has final authority in interpretation and application of the Montgomery County Zoning Ordinance regarding uses that may be established in the C-1 zone under Section 59-C-4.2 ("Land Uses") in the Montgomery County Zoning Ordinance. I understand that you have discussed this inquiry with Mr. Malcolm Spicer of the Office of the County Attorney and he concurs in the advice that we have asked your office to provide.

If we are correct in our understanding of this role of the Department of Permitting Services, could you please indicate your confirmation of that fact by countersigning this letter in the space provided below. Your guidance on this subject will be instructive to the Staff at M-NCPPC since there appears to be a disagreement with Mr. Niblock's conclusion recently expressed in the letter referenced above, a copy of which we provided to the Development Review Division Staff at M-NCPPC.

Thank you for your attention to this matter.

Sincerely yours,

MILLER, MILLER & CANBY

**JODY KLINE**

Jody S. Kline

JSK/dlt

Enclosure

cc: David Niblock  
Malcolm Spicer, Esquire

The Department of Permitting Services has  
final authority on the interpretation of the  
Montgomery County Zoning Ordinance  
to determine uses to be located in the C-1 Zone.

*Susan Scala-Demby*

Susan Scala-Demby  
Department of Permitting Services

Date: 4-11-07





**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

June 18, 2007

**MEMORANDUM**

**TO:** Richard Weaver, Planner Coordinator, Development Review Division  
Joshua Sloan, Senior Planner, Development Review Division

**VIA:** Stephen D. Federline, Supervisor   
Environmental Planning,  
Countywide Planning Division

**FROM:**  Candy Bunnag, Planner Coordinator, Environmental Planning, Countywide  
Planning Division

**SUBJECT:** Revised Plans for Ashton Meeting Place, Preliminary Plan No. 120050060  
and Site Plan No. 820060230

This memorandum applies to the revised preliminary plan, site plan, and final forest conservation plan (dated 5/25/07) that have recently been submitted by the applicant. The memorandum also responds to questions and issues on environmental topics raised by the Planning Board, the applicant's presentation, and public testimony at the April 12, 2007 public hearing for Ashton Meeting Place preliminary and site plans.

Since the April 12, 2007 Planning Board hearing, the applicant has revised the preliminary, site, and forest conservation plans. The plans have been revised to show preservation and protection of the entirety of the environmental buffers. There are no longer proposed encroachments into the environmental buffers, including wetlands, on the site. In addition, the State Highway Administration has revised its stormwater management (SWM) plan on the adjacent Matthews Property to show a proposed SWM facility that is no longer encroaching in the environmental buffer. This SWM facility will be shared with the proposed Ashton Meeting Place development. These plans meet the requirements of physically protecting environmentally sensitive areas, as defined in Section 50-32(c) of the Subdivision Regulations, the Planning Board's Environmental Guidelines, and the County Forest Conservation Law.

However, avoidance of environmentally-sensitive areas is just one element in protecting the aquatic resources of the Patuxent River watershed. The current plans continue to propose

parking for commercial uses within the R-60-zoned areas of the site. As has been stated by Development Review Division staff, parking in the R-60 zone for commercial uses does not conform to the zoning ordinance. It also, in effect, expands impervious surfaces associated with the proposed commercial use. Expansion of impervious surfaces is inconsistent with the intent of the Patuxent River Primary Management Area guidelines in the Planning Board's Environmental Guidelines to minimize adverse environmental impacts for land uses on properties zoned for higher densities than RE-2. Impervious surfaces reduce the land area that is available for infiltration and recharging of groundwater sources. Impervious surfaces also heat up stormwater runoff during the warmer months of the year and results in warm water discharges to receiving streams. *Therefore, Environmental Planning staff supports Development Review Division staff's recommendation against commercial parking in the R-60 zone.*

As noted in the March 26, 2007 staff memorandum, the site lies within the Patuxent River Primary Management Area (PMA). The part of the property that lies outside the environmental buffer is considered to be the transition area of the PMA. The Planning Board's Environmental Guidelines recommend an impervious limit of 10 percent for transition areas that are zoned RE-2 or less dense. Since the subject site is zoned C-1 and R-60, which are of greater density than RE-2, the imperviousness guideline limit does not apply. However, the Environmental Guidelines recommend the use of best management practices to minimize the environmental impacts of higher density zones. Minimization of impervious surface would be a best management practice that is applicable to this site. One way this could be accomplished would be to limit impervious surfaces for commercial uses to the C-1 zoned portion of the site.

### **Forest Conservation Plan**

If the Planning Board approves the preliminary and site plan, staff recommends approval of the final forest conservation plan with the following conditions:

1. The applicant must comply with the conditions of approval of the final forest conservation plan. Conditions include, but are not limited to, the following:
  - a. Final forest conservation plan shall be revised to include the following elements:
    - i. Provide an evaluation and recommendations by a certified arborist for protection of the 48-inch ash, 40-inch silver maple, and 20 to 24-inch maple on the site and the 38-inch silver maple and 30-inch silver maple on the adjacent SHA property. If the arborist's recommendations identify that some or all of these trees cannot be protected, four-inch or larger native trees must be planted on site or on the adjacent SHA site outside the environmental buffer at a minimum rate of 1:1 of the total diameters of trees removed. The exact locations of mitigation trees to be planted must be reviewed and approved by M-NCPPC staff.
    - ii. Revise the forest conservation plan worksheets to include land dedication for roads in the net tract areas.
    - iii. Add deer protection measures for reforestation areas.

- iv. Add specific notes for M-NCPPC inspections of forest planting materials and planting area.
2. The applicant must place Category I conservation easements over the environmental buffer, forest retention areas, and forest planting areas. Conservation easements must be shown on record plats for the subject site. Conservation easements on unrecorded parcels (offsite) must be recorded in the land records.

## **STAFF RESPONSES TO QUESTIONS AND ISSUES ON ENVIRONMENTAL TOPICS RAISED AT THE APRIL 12, 2007 PUBLIC HEARING**

1. What is past staff practice and Planning Board actions regarding the application of avoidance, minimization, and mitigation review of proposed impacts on environmentally-sensitive areas for private development versus public projects? Specifically, what are the environmental review criteria for the proposed project at Indian Spring Country Club site and the Intercounty Connector?

Staff practice, consistent with the Environmental Guidelines and other environmental regulatory efforts at the state and federal levels, requires avoidance of impacts to environmentally-sensitive areas as the first choice of action. Minimization of impact to environmentally-sensitive areas are allowed if it is determined that the disturbance proposed to the sensitive area is necessary and unavoidable.

Staff's criteria for identifying necessary and unavoidable impacts to environmentally-sensitive areas are tied to elements of a proposed project that are created for the public good or for a necessary infrastructure for the project that can only be constructed with impacts to sensitive areas. Such elements may include water and sewer lines, storm drain outfalls, or road crossings for which no alternatives exist that avoid impacts to sensitive areas.

Staff's practice/policy also allows existing uses to continue within an environmentally-sensitive area if the land use and features do not change. If new construction or reconstruction is proposed for the use, or if the use changes, staff typically recommends that the use be relocated outside the environmental buffer.

Staff's practices and policies stated above are applied to both private development and public projects. For example, the combined golf course and residential subdivision proposed on the Indian Spring Country Club site is a recent private development project where the proposed use and site layout were recommended by staff for denial and were not approved by the Planning Board because of proposed encroachments into the environmental buffer. Staff considered the application to be new development and the proposed encroachments into the environmentally-sensitive areas due to the applicant's project layout and a golf

course use were avoidable and not necessary. Staff concluded that the majority of the environmental buffer encroachments could be avoided if the subdivision was substantially altered, without changing the current zoning on the property. Staff also recognized that such changes could have resulted in the loss of the golf course and/or changes in the proposed mix or numbers of residential units.

In addition, the fact that much of the vegetative cover in the environmental buffer on the Indian Spring Country Club site has been greatly altered from natural conditions because of the golf course use did not lower the value or function of the environmental buffer area as a potential natural area that should be protected and restored.

With respect to a public project, staff reviews a proposed project with the same hierarchy of avoidance, minimization, and mitigation of adverse impacts to environmentally-sensitive areas. For example, with the Intercounty Connector, the public need for the road had been determined to outweigh the significant environmental impacts. A decision to locate the road within the master plan alignment was also made based on a variety of factors in which environmental impact was only one of many. Therefore, at this point of the ICC project, staff’s focus in the review of this road project is to minimize and mitigate environmental impacts with the set alignment of the road ROW.

In keeping with staff’s practices and policies for applying Section 50-32 (Montgomery County Subdivision Regulations), Chapter 22A (the County Forest Conservation Law), and the Planning Board’s Environmental Guidelines, staff finds that the proposed encroachments in environmentally-sensitive areas on the Ashton Meeting Place site are avoidable and unnecessary. The proposed encroachments are due to the applicant’s proposed location and configuration of the grocery store and the free-standing bank building on the site, which “push” part of the store’s service area, a corner of the store building, and the internal driveway into the environmental buffer. None of these proposed features are required to be located or configured to cause the encroachments into environmentally-sensitive areas.

2. What are the amounts of proposed encroachments into environmentally-sensitive areas compared to the total amount of sensitive areas on the subject site?

<b>Environmental Buffer Area</b>	<b>Total Area on Site <sup>1</sup></b>	<b>Proposed Encroachment into Environmental Buffer Area on <u>Original</u> Plan Submission</b>
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<sup>1</sup> The site includes the properties that are the subject of the preliminary and site plan applications and the Matthews Property, which is the proposed location for the SHA stormwater management facility that will also provide stormwater management controls for the proposed Ashton Meeting Place project. The Matthews Property is adjacent to, but not part of, the properties that are the subject of the preliminary and site plans. The sizes of the environmental features in the table were measured by the use of a planimeter on a plan. The sizes may be slightly different than those measured by the applicant due to differences in measurement methods.

		Area of Encroachment	Percent of Environmentally Sensitive Area	Reason for Encroachment
Environmental buffer (total):	66,860 s.f.	14,750 s.f.	22%	10,800 s.f. due to grocery store and driveway; 3950 s.f. due to SHA SWM facility.
Wetland:	14,765 s.f.	2,000 s.f.	14%	Wetland encroachment due to grocery store and driveway.
Non-wetland:	52,095 s.f.	12,750 s.f.	25%	

The most current plan submission shows no encroachment into the environmental buffer, including the wetland. In addition, the applicant, in coordination with SHA, has reconfigured the SWM facility to lie outside the environmental buffer (on the Matthews Property).

3. What are the environmental consequences, if any, of allowing 5:1 mitigation through wetland creation and protection of additional environmental buffers to compensate for natural wetlands and buffers that are proposed to be filled and destroyed?

As stated above, staff practice, in conformance to the Environmental Guidelines, requires avoidance of impacts to environmentally-sensitive areas as the first choice of action.

The applicant's presentations and information regarding the environmentally-sensitive area on the site have focused on the wetland that occur within the sensitive area. However, it should be reiterated that the wetland and its buffer on the site are integral features of a larger natural, interconnected system of a headwater stream that continues offsite and eventually flows into the mainstem of the Patuxent River, upstream of the Rocky Gorge Reservoir. The wetland on the site is a major source of the headwater stream system. Protection of natural systems of streams, wetlands, seeps, springs, and their buffers, especially those natural systems which are connected and interrelated is a major goal of the Planning Board's Environmental Guidelines.

The wetland on the site is supported by groundwater, surface hydrology, and a spring. Headwaters are important because they are the origins of fresh water to a stream and may have unique ecological characteristics and functions that may not exist in larger, downstream waterbodies. Headwaters can support varied communities of plants, animals, and may be sources of terrestrial invertebrates found in the hydric soils. Although headwater streams and wetlands may be individually small, they collectively exert a large influence on the overall

ecological integrity of a watershed in mediating runoff and sediment, assimilating pollutants, and providing for downstream areas (Rheihardt et. al., 1999). From a hydrological perspective, loss of headwater streams and wetlands may result in dramatic alteration of downstream hydrology (Poff et.al., 1997). From a water quality perspective, headwater streams and wetlands play a critical role in solute and sediment retention (Dieterich and Anderson, 1998).

The applicant has indicated that the wetland on the Ashton Meeting Place site is in grass cover and does not have much biological diversity. However, it should be noted that the grass cover and absence of trees and biological diversity over part of the wetland and its buffer is most likely due, at least in part, to the mowing that has taken place over the years. There are inspection entries in the forest conservation plan file for the part of the site that is subject to an old forest conservation plan (preliminary plan 1-95053, Derrick's Addition to Ashton) that indicates repeated mowing by an adjacent property owner occurred within the environmental buffer.

Earlier, the applicant had proposed to create 9450 square feet of wetland and protect 21,780 square feet of offsite environmental buffer. The applicant had proposed to locate the created wetlands within the buffer on the site. *However, staff believes the success of the created wetland is questionable.* The created wetland would not have any buffer area to provide a natural area for infiltrating water into the ground to help maintain groundwater flows to this created wetland area. The lack of a buffer from the developed part of the site would increase the likelihood of trash (e.g., plastic bags, paper, etc.) entering the wetland. The existing natural wetland is small (about 14,361 s.f.) because of the limited groundwater flows to the wetland today. It is questionable whether a proposed development that will significantly increase impervious cover (from roughly 15 percent to 68 percent) around the wetland and buffer and decrease the site's natural infiltration capacity, will have enough groundwater to be able to support wetlands (natural and created) that are larger than the existing natural wetlands. In addition, the proposed project will rely on engineering methods to provide water to the wetland area. Whether these proposed engineered structures (infiltration trench and porous pavement) will mimic natural infiltration and groundwater recharge functions of vegetated land is also questionable. DPS recognizes that the proposed infiltration trench and porous pavement areas may fail and requires a formal plan revision if these structures become dysfunctional. The SWM concept approval letter for the project, dated December 22, 2006, states:

“If the proposed bottom grades of the infiltration trench and porous pavement areas are compromised during construction, underground sand filter may possibly substitute as water quality devices, with a formal plan revision.”

It should be noted that infiltration trenches and porous pavement are designed to provide water quality controls and help recharge groundwater through infiltration, but sand filters provide water quality benefits without the infiltration or



groundwater recharge functions.

Recent studies of wetland creation projects indicate that there is high variability in the success of such projects. The field of wetlands creation is not an exact science. The success of a wetland creation project is dependent on many variables, including but not limited to, the size or type of the created wetland, the location of the wetland site, and the adequacy of hydrological conditions to support the created wetland. A study of wetland mitigation banks in the U.S. (Spieles, 2005) indicate that 23 of the 45 (51%) created wetlands that were evaluated were determined to have failed, based on an analysis of vegetation that grew in these wetlands. Based on other criteria, other studies of created wetland projects have found the following: 57% of 75 California mitigation wetlands did not meet all criteria for success (Allen and Fedema, 1996); 38% of 13 mitigation sites were determined to be failures (Cole and Shafer, 2002); 96% of 50 mitigation projects in Tennessee did not meet all permit requirements (Morgan and Roberts, 2003); 36% of wetland mitigation sites studied in Indiana were reported to be unsuccessful (Robb, 2002); and 35% of 114 sites in Massachusetts were found to be in non-compliance (Brown and Veneman, 2001).

The National Academy of Sciences (2001) concludes that on-site wetland mitigation is usually “constrained by hydrological conditions that are likely to have been or are being modified by the developments requiring mitigation. Hydrological conditions, including variability in water levels and water flow rates, are the primary driving force influencing wetland development, structure, functioning, and persistence.”

Another study (Garrett, 1995) evaluated 17 wetland creation projects in 14 states to meet federal wetlands mitigation requirements as compensatory mitigation for impacts to wetlands caused by highway construction. The study found that a consistent problem is the availability of a suitable site for wetland creation or establishment. “If a site has a high potential for wetland development, it is most likely already a wetland, or has been wetland and has been drained or converted to some other land use type or cover type.”

A recent, local example of the difficulties in achieving successful wetland mitigation is the State Highway Administration (SHA) wetland creation project adjacent to Northwest Branch on M-NCPPC parkland. It is a mitigation project that SHA constructed as part of the Intercounty Connector project. M-NCPPC staff has been observing the project since construction began in October 2006. Staff has concerns that the hydrologic conditions do not meet the mitigation goals despite the fact that the site is within the relatively large floodplain of the mainstem of Northwest Branch. The created wetland area is disconnected from adjacent, natural wetlands by an earth berm created by error during construction. Groundwater levels in some locations within the created wetland are significantly deeper (by about 2 to 3 feet) than proposed on the final design plan. Additionally, heavy clay soils between the groundwater table and the surface of the wetland may

impede the flow of groundwater to the created wetland. Although SHA is monitoring the site and would re-work the site if required, the project highlights some of the numerous complications and variables that can occur in constructing wetlands. If a government agency, which has the expertise, experience, and funding to create wetland mitigation areas, has problems in creating such a mitigation site, then it is questionable whether a developer with much more limited funding devoted to wetland mitigation can create a successful wetland area. This concern is particularly relevant for a site where hydrologic conditions are anticipated to change drastically, given the proposed change in land use and land cover (i.e., increase of impervious surfaces from roughly 15 percent to 68 percent).

Staff believes the likelihood of the proposed created wetland succeeding on the Ashton Meeting Place project is low. The consequence of a failed wetland on the subject site would be a net loss of wetlands as part of the headwater stream system of the tributary to the Patuxent River.

In an earlier version of the plan, which showed encroachment into the environmental buffer, the applicant had proposed to create about 21,780 square feet of environmental buffer through the establishment of a conservation easement on an offsite property adjacent to the subject site. The offsite conservation easement would protect existing forest and would be planted with additional forest. Although protecting additional buffer areas around streams and wetlands benefits the overall stream system, staff does not believe that the proposed offsite buffer would mitigate the loss of buffer on the subject site. The additional buffer protection on the adjacent property would be *downstream* of the natural wetland whose buffer will be partially lost. This offsite buffer protection would not offset the loss of buffer adjacent to the wetland.

4. How does staff change the element of environmental protection related to the location of an environmentally-sensitive area on the site?

If a proposed development shows encroachment into an environmentally-sensitive area, and the encroachment is due to a required infrastructure for the development (e.g., sewer line, public road, stormwater management outfall), staff must determine if the proposed location of the infrastructure is set or can be moved to avoid the environmentally-sensitive area. If staff concludes that the required infrastructure must be located within an environmentally-sensitive area and cannot be moved, then staff's recommendations focus on minimizing the encroachment and measures to compensate for the encroached area. If staff concludes that either the proposed encroachment is not necessary (i.e., not due to a required infrastructure) or can be avoided by moving the structure to an alternative location outside the environmentally-sensitive area, then staff would recommend changes to the proposal to avoid the encroachment into the environmentally-sensitive area.

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