



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

**Staff Report: Preliminary Plan 12007049A: Layhill Overlook
 Site Plan 820080160: Layhill Overlook**

ITEM #: _____

MCPB HEARING DATE: July 17, 2008

REPORT DATE: July 2, 2008



TO: Montgomery County Planning Board

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APPLICATION DESCRIPTION:

Proposal to amend the Preliminary Plan by reconfiguring the proposed internal streets, relocating a proposed open-space parcel, and adding one additional lot for a one-family residence for a total of 39 lots; and to seek Site Plan approval for 39 dwelling units, including 6 MPDUs, and an expanded 10,800 square foot worship center, on 16 acres, in the PD-2 Zone; located in the northeast quadrant of the intersection of Bel Pre Road and Homecrest Road within the Aspen Hill Master Plan.

APPLICANT: Aspen Hill Estates, LLC

FILING DATE: Preliminary Plan Amendment: May 19, 2008
 Site Plan: January 3, 2008

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY:

The proposed development would consist of 39 one-family residential units, including one retained existing one-family detached unit, and an expanded 10,800 square foot worship center. The western residential portion of the site provides two recreation areas and would be accessed from Homecrest Road. The worship center and associated residential units will be accessed from Bel Pre Road. The project is subject to the Binding Elements of the Development Plan for Local Map Amendment G-836.

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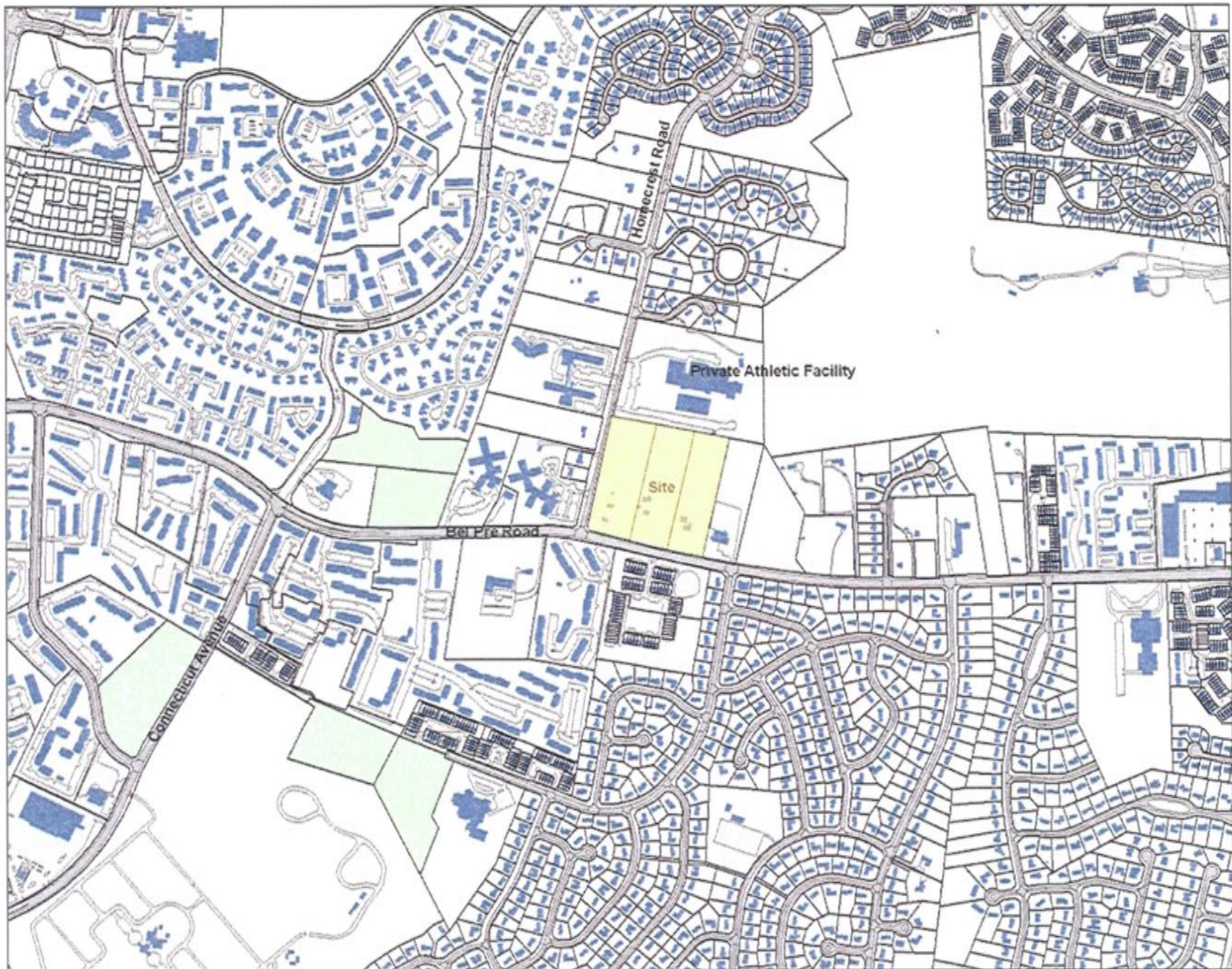
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SECTION 1: CONTEXT AND PROPOSAL

SITE DESCRIPTION

The subject property, shown below, consists of three platted lots totaling 16.02 acres. The property is zoned PD-2. It is located in the northeast quadrant of Bel Pre Road and Homecrest Road, in the community of Aspen Hill. Two of the three existing lots are developed with one-family residences, which will be removed to accommodate the proposed subdivision. The third existing lot is developed with a worship center consisting of two buildings that total 5,355 square feet, which will be retained.



Vicinity Map

Properties north of the site contain recreational uses (a tennis club and a golf course) in the RE-2 zone. Properties south of the site contain multiple-family residences in the R-20 zone, townhouses in the R-150/TDR zone, and one-family residences in the R-150 zone. Properties east of the site contain an institutional use in the RE-2 zone and an undeveloped site in the R-200 zone. Properties west of the site contain multiple-family residences in the R-200 zone and one-family residences in the R-200 and RE-2/TDR zones.

The site is located within the Northwest Branch watershed. An unnamed tributary starts on the property in the northwestern quadrant, and crosses the northern half of the property before exiting at the eastern property line. The property is developed along the Bel Pre Road frontage with residences and a worship center. The two eastern existing lots are mostly forested, and the western existing lot has been cleared.



Aerial Photo Looking North

PROJECT DESCRIPTION

Previous Approvals

Development Plan

The Layhill Overlook property was the subject of a Local Map Amendment application (G-836), to change the zoning of the property from RE-2 to PD-2. The Planning Board conducted a public hearing on the application on August 6, 2006, and the County Council approved the rezoning on October 31, 2006.

Approval of the Local Map Amendment included a Development Plan that sets the development standards that are applicable to the subdivision. In addition, the approval included 13 additional textual binding elements, with which the preliminary and plans must comply.

Preliminary Plan

At a public hearing on June 28, 2007, the Planning Board approved preliminary plan 120070490. The resolution was adopted by the Board on September 20, 2007, and was mailed on September 26, 2007. The approval entitled the Applicant to create 38 lots for 19 one-family dwelling units, six townhouses, 12 duplex units, and one religious institution with an accessory residential structure.

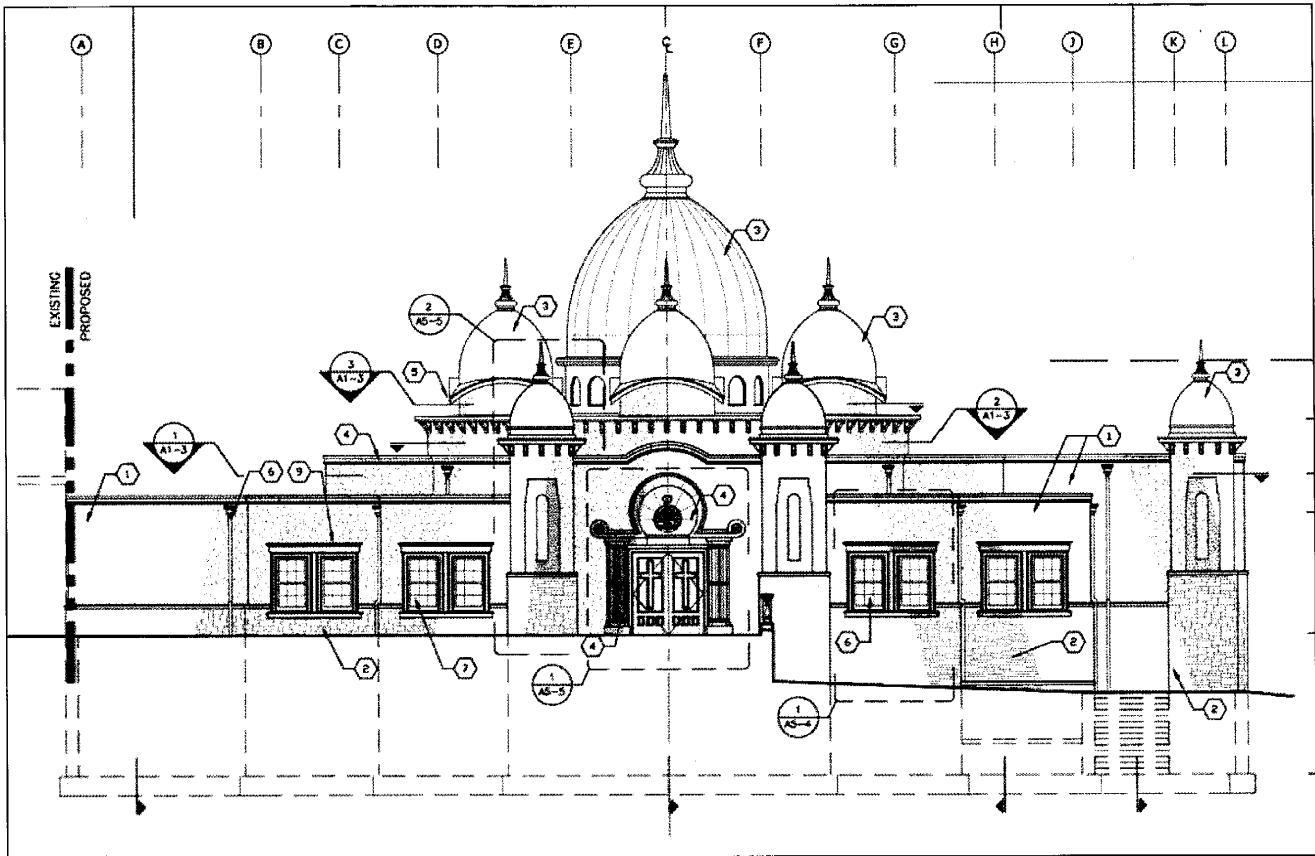
Proposal

The application proposes to modify the approved preliminary plan by reconfiguring proposed internal streets, relocating a proposed open-space parcel, and adding one additional lot for a one-family detached residence. Road B, located parallel to Homecrest Road, will be reconfigured by eliminating the cul-de-sac and terminating it at its intersection with Road A, parallel to Bel Pre Road. The residences previously shown on Lots 1-7 in the southwest corner of the site will be reoriented to face onto Bel Pre Road (Lots 1-6 on the proposed amended preliminary plan) or onto Road A (Lots 7 and 8 on the proposed amended preliminary plan). The removal of the cul-de-sac and reorienting of the residences allows for the addition of one lot to the application, for a total of 39 lots – 20 one-family detached, six townhouses, 12 duplex, and one religious institution. Lots 1-8 are now proposed with vehicular access from a rear alley. The previously required ten-foot landscape buffer is provided along Homecrest Road but has been removed along Bel Pre Road. Since these residences now face Bel Pre Road, it is no longer necessary to screen the rear yards of these lots from the road. The reforestation area has been shifted to the intersection of Homecrest Road and Big Bear Terrace (previously identified as Road C), and the four one-family residential lots on that block have been grouped together on Road B.



Preliminary/Site Plan

On the eastern portion of the site, the Applicant is proposing an expanded worship center totaling 10,800 square feet. The Preliminary Plan Amendment had also initially included a “vertical” addition to the existing one-family residence on the worship center site, but the applicant has since withdrawn that section of the proposal and it is not under consideration with these applications.



Worship Center Front Elevation

COMMUNITY OUTREACH

The Applicant has complied with all submission and noticing requirements. Two citizens submitted comments, dated June 26 and June 27, 2008. The commenters raised four main concerns: building setbacks from Homecrest Road, erosion control, landscaping and setbacks along Bel Pre Road, and street tree spacing and species.

- Along Homecrest Road, both the Development Plan and the Site Plan show a rear setback building restriction line (BRL) of 30 feet from the Homecrest right-of-way. For one-family residential projects, the exact shape and location of the building footprint for a particular lot are not specified on the site plan. Instead, the minimum front, side, and rear setbacks are indicated on the lot via BRLs, creating a box within which the developer may place a house of any shape or size, within the limits of the zone. The graphic representations of residential building footprints on the Development and Site Plans are for illustrative purposes only. Staff has included in the conditions of Site Plan approval that the houses be placed as close to the front BRL as possible, which will tend to increase the rear setback from Homecrest Road, but the minimum rear setback BRL approved in both plans remains 30 feet.

- Erosion and sediment control issues will be addressed through Environmental Planning staff during final review of the Forest Conservation Plan and through Montgomery County Department of Permitting Services Erosion and Sediment Control. These measures will be implemented prior to construction to ensure proper control of runoff.
- The Binding Elements on the Development Plan include a requirement that “Landscaping along Bel Pre Road immediately adjacent to and northerly of the public right-of-way for 20 feet shall be maintained by the future HOA or the Vedanta Center of Greater Washington.” While this 20’ landscaped buffer will remain at the Vedanta property (the worship center) frontage, along the residential units on Lots 1-6 this buffer has been replaced with the front yards of houses. As previously shown on the Development and Preliminary Plans, the houses along Bel Pre Road backed onto the Road. However, addressing the Noise Ordinance requirements for these units would have required a permanent sound wall between the rear of the units and Bel Pre Road in order to reduce the noise levels in the back yards of these units to acceptable levels. This noise wall would have been an average of eight feet high, with the tallest portion approximately twelve feet high. Staff did not find this to promote compatibility with the Master Plan character with that of the surrounding community and worked with the Applicant to face those residential units onto Bel Pre. Additionally, by rotating the units to face the road, the minimum building setback from Bel Pre Road also changed from a 30-foot rear setback to a 20-foot front setback. Staff does not find this setback to be inappropriate.
- Except where prevented by driveway locations, the plan shows street trees typically placed 35 feet on center to allow the canopy of each tree to mature without growing into its neighbor. The mature spread of the October Glory Red Maple, specified for Bel Pre and Homecrest Roads, is 25-35 feet, and is therefore spaced appropriately. In contrast, the mature spread of the Allegheny Serviceberry selected for the internal streets, is only 15 feet. Staff recommends reducing the spacing of these from 35 feet to 20 feet on center. Minor adjustments to the species selections may be made with M-NCPPC approval before Certified Site Plan.

SECTION 2: PRELIMINARY PLAN AMENDMENT REVIEW

The application is an amendment to a previously approved subdivision that created 38 lots for 19 one-family dwelling units, six townhouses, 12 duplex units, and one religious institution, including an accessory residential structure by reconfiguring proposed internal streets, relocating a proposed open-space parcel, and adding one additional lot for a one-family residence.

ANALYSIS AND FINDINGS

Master Plan Compliance

The Aspen Hill Master Plan makes specific recommendations for the subject property, including consolidation of parcels to facilitate an internal road network that would minimize development impacts on the environmentally sensitive Bel Pre Creek. Appendix C of the master plan includes a diagram that shows the possible layout of the internal road network and future extensions to undeveloped and underdeveloped properties to the east of the site. The proposed preliminary plan amendment is substantially consistent with the recommended road network and preserves the possibility of future extensions of the proposed road network. Although the master plan recommends a primary road for the first block of Road C between Homecrest Road and Road B, the master plan

states that the alignments shown are for illustrative purposes only and that final design will be determined at the time of subdivision review. Because the distance between Homecrest Road and Road B is too short to provide a safe transition between a primary street on the first block and a secondary street on the remainder of Road C, the preliminary plan proposes Road C as a secondary street along its entire length. Staff finds this to be consistent with the master plan because of the statement allowing final design at time of subdivision review and the need to provide a safe road network. A secondary road will adequately serve both proposed and future development.

Further, the master plan recommends that properties at least ten acres in size be rezoned from the RE-2 zone to the PD-2 zone. The Planning Board recommended approval of such a rezoning for the subject property and the County Council approved the rezoning on October 31, 2006.

The proposed subdivision complies with the recommendation adopted in the Aspen Hill Master Plan in that it will create the road network envisioned in the master plan and is consistent with the recommendation to rezone the property from RE-2 to PD-2.

Adequate Public Facilities

Approval of the original preliminary plan application in 2007 included findings that public facilities were adequate to serve the proposed subdivision. The adequate public facilities (APF) finding for the preliminary plan remains valid until October 26, 2012. The proposed minor reconfiguration of internal streets and the addition of one lot for a one-family detached residence does not impact the adequacy of public facilities.

Local Area Transportation Review and Policy Area Mobility Review

The proposed preliminary plan amendment will add one lot for a one-family detached residence, and it does not generate 30 or more new vehicle trips during the morning or evening peak hours. Therefore, the application is not subject to Local Area Transportation Review. In addition, the proposed amendment does not generate more than three new vehicle trips in the morning or evening peak hours. Therefore, the application is also not subject to Policy Area Mobility Review.

Other Public Facilities

Public facilities and services are available and will be adequate to serve the proposed development. The property will be served by public water and sewer systems. The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the property. The Application is not within a school moratorium area, but a school facilities payment must be made prior to issuance of building permits on the lots. Electrical, gas, and telecommunications services are also available to serve the Property.

Transportation

As with the previously approved preliminary plan, access to the site is proposed via two new public street intersections with Homecrest Road and one new private street intersection with Bel Pre Road. The proposed internal street network includes three new public streets, two of which will intersect with Homecrest Road. One of the new streets, Big Bear Terrace (labeled Road C on the previously approved preliminary plan), will provide a future connection to undeveloped properties to the east, as

envisioned by the Aspen Hill Master Plan. Until this road is connected to new subdivisions in the future, Big Bear Terrace will end at the eastern property line of the site.

The proposed preliminary plan amendment removes the cul-de-sac from the southern end of Road B. Instead, Road B will end at the intersection with Road A. In place of the cul-de-sac, a private alley will provide vehicular access to garages and parking for Lots 1-8 in the southwest quadrant of the site. Pedestrian access to these lots will be provided from sidewalks on Bel Pre Road for Lots 1-6 and on Road A for Lots 7 and 8. Staff finds that proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed improvements.

Environment

Forest Conservation

The preliminary forest conservation plan indicates that there are 8.9 acres of forest existing on the site. This plan proposes to remove 4.86 acres of forest to accommodate the development. The remaining 4.04 acres of forest will be retained and placed in Category I easements. In order to meet planting requirements, 0.61 acres of reforestation are required. The Applicant has proposed 0.77 acres of onsite planting and an additional 0.31 acres of offsite planting. A 0.68-acre reforestation area is proposed at the northern end of the block bounded by Homecrest Road, Big Bear Terrace (previously Road C), and Road B. This reforestation area is required by a binding element of the Development Plan that was approved at the time of rezoning. Although the Development Plan showed this reforestation area further to the south, between proposed residential lots, the Applicant revised the plan to show the now-proposed location after discussions with residents on the opposite side of Homecrest Road. The now proposed location better reflects the residents' desire to have the reforestation area located across the street from their property. The amended preliminary plan meets all applicable requirements of the county Forest Conservation Law and is consistent with the requirements of the binding elements with respect to forest conservation.

Noise

A noise analysis was conducted for the subject property, revealing that the proposed residences nearest Bel Pre Road will be impacted by current and future noise generated from vehicle traffic along Bel Pre Road. The noise analysis indicates that unmitigated noise levels will range from 60 to 65 dBA Ldn for the residences adjacent to Bel Pre Road, exceeding the levels recommended in the Noise Guidelines. There are three proposed townhouses, units 3-5, that face Bel Pre Road. These units are rear-loaded and will meet interior noise guidelines by using architectural treatments. Three one-family residences on Lots 1, 2, and 6 are also rear-loaded and will also meet interior noise guidelines by using architectural treatments. The duplexes on Lots 31 and 32 are parallel to Bel Pre Road. These residences will require external noise mitigation measures that may include fencing, and/or other structural noise treatments. The upper stories of the residences will rely entirely upon acoustical treatment to meet the indoor noise guideline of 45 dBA Ldn.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections. Access and public facilities will be adequate to support the proposed lots and uses. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the PD-2 Zone as specified in the Zoning Ordinance and on the approved development plan. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. In addition, the number of detached and attached dwelling units meets the requirements of the zone. Specifically, the standards of the PD-2 zone require that at least 35% of the dwelling units be one family detached, and at least 35% of the dwelling units be one family attached or townhouses; the preliminary plan proposes 53% one-family detached units and 47% one family attached and townhouse units. Further, the preliminary plan provides 46% green area, as required by a binding element of the Local Map Amendment approval, which exceeds the requirement for 30% green area required by the Zoning Ordinance. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

Section 50-29(a)(2) of the Subdivision Regulations requires lots to front on a street that has been dedicated to public use or that has acquired the status of a public road. This section also allows the Planning Board to approve up to two lots on a private driveway in exceptional circumstances. One of the lots in the proposed subdivision, proposed Lot 21, has 13.7 feet of frontage on Road B, with the remainder of the lot's frontage on the proposed private alley. Staff believes that this is acceptable because adequate and safe access is provided to the lot via the private alley and the lot is consistent with the pattern of development in the subdivision. The proposed residence on the lot will have a suitable relationship with the adjacent residence on proposed Lot 20. In addition, because the Zoning Ordinance does not specify a minimum street frontage for lots in the PD-2 zone, the proposal complies with the Zoning Ordinance and the Subdivision regulations.

PRELIMINARY PLAN AMENDMENT RECOMMENDATION AND CONDITIONS

The proposed lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance, and comply with the recommendations of the Aspen Hill Master Plan. Access and public facilities will be adequate to serve the proposed lots, and the application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, approval of the amended application is recommended subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 39 lots for 20 one-family dwelling units, 6 townhouses, 12 duplex units, and 1 religious institution with an accessory residential structure. A minimum of 15% of the dwelling units must be moderately priced dwelling units (MPDUs). This condition modifies condition 1 contained in the adopted resolution approving Preliminary Plan 120070490.
- 2) Split rail fencing or comparable fence and permanent forest conservation signage will be required along Lots 16, 22-26, and 27-32 and must be shown on the final Forest Conservation Plan. This condition modifies condition 4.d contained in the adopted resolution approving Preliminary Plan 120070490.
- 3) The record plat must show a 20-foot rear building restriction line on Lots 14-16, 22-26, and 27-32, unless otherwise specified on the approved site plan. This condition modifies condition 17 contained in the adopted resolution approving Preliminary Plan 120070490.
- 4) Condition 5 contained in the adopted resolution approving Preliminary Plan 120070490 is hereby deleted.
- 5) Before any building permit can be issued, the applicable school facilities payment required by the 2007-2009 Growth Policy must be paid to MCDPS.
- 6) All other applicable conditions contained in the adopted resolution approving Preliminary Plan 120070490 remain in full force and effect.

SECTION 3: SITE PLAN REVIEW

Master Plan

The Master Plan enumerates the general land use objectives that detail how new development should maintain and enhance the existing framework.

1. *Encourage the protection, enhancement, and continuation of the current land use patterns.*

This site is to be developed as a residential development and an expanded worship center, both of which reflect, enhance, and continue the surrounding residential and recreational uses.

2. *Protect and reinforce the integrity of existing residential neighborhoods.*

The western residential portion of the development will continue the residential fabric along both Homecrest and Bel Pre Roads, and provide a more pedestrian-oriented community than other adjacent developments.

3. *Preserve and increase the housing resources in support of Montgomery County housing policies.*

The western residential portion of this development is maximizing the density allowed under the approved Development Plan, providing a mix of market-rate units and MPDUs.

Development Standards

The proposed development is designated PD-2, which was created to implement Master Plan recommendations to allow design flexibility to achieve greater efficiency, convenience, and amenity than by-right development.

The purposes of the PD Zone include: encourage social and community interaction and activity; provide a broad range of housing types; preserve and take the greatest possible aesthetic advantage of trees; provide for open space for the general benefit of the community; encourage pedestrian circulation networks; and assure compatibility and coordination of each development with existing and proposed surrounding land uses. Despite its location along the well-trafficked Bel Pre Road, this development has created an attractive neighborhood with one-family attached and detached homes, a variety of public open space, and a pedestrian network connecting these streets with surrounding and future developments. The plan includes a sizeable tree-save area and a new re-forestation area along Homecrest Road.

The following data table indicates the proposed development's compliance with the Zoning Ordinance.

Project Data Table for the PD Zone

Development Standard		Permitted/ Required	Approved w/the Binding Elements	Approved at Preliminary Plan	Proposed for Preliminary Plan Amendment and Site Plan Approval
Gross Tract Area (acres)		n/a	16.02	16.02	16.02
Residential Development					
Max. Dwelling Units per Acre (base)	2				
Max. Dwelling Units per Acre (w/ 22% MPDU bonus)	2.44	2.40	2.40	2.40	
Max. Dwelling Units ¹	39	39	38	39	
Min. MPDUs Provided (%)	n/a	15	15	15	
Min. MPDUs Provided (#)	n/a	6	6	6	
Unit Distribution					
Min. One-Family Detached (%)	35	54	53	53	
Min. One-Family Detached (du)	14	21	20	21	
Min. One-Family Attached (%)	35	46	46	47	
Min. One-Family Attached (du)	14	18	18	18	
One-Family Detached Units	n/a	21	20	21	
Duplex Units	n/a	12	12	12	
Townhouse Units	n/a	6	6	6	

¹ Including 1 existing one-family detached house adjacent to the worship center.

Max. Building Height (ft.)²	building setback from adjoining land recommended in Master Plan for one-family detached residences (60 feet for this site)	40	n/a	40
Min. Building Setbacks (feet)³				
<i>One-Family Detached</i>				
Front	n/a	n/a	n/a	10
Side	n/a	n/a	n/a	4
Rear	n/a	n/a	n/a	10
<i>Townhouses</i>				
Front	n/a	n/a	n/a	20
Side	n/a	n/a	n/a	0/8 at end units
Rear	n/a	n/a	n/a	10
<i>Duplexes</i>				
Front	n/a	n/a	n/a	12
Side	n/a	n/a	n/a	4
Rear	n/a	n/a	n/a	10
Worship Center				
Max. Total Density (sf.) – includes the existing worship space and proposed 6,500 sf. addition	n/a	10,800	10,800	10,800
Max. Building Height	building setback from adjoining land recommended in Master Plan for one-family detached residences (60 feet for this site)	25, plus an additional 20 feet for cupolas and domes	n/a	25, plus an additional 20 feet for cupolas and domes

² The vertical distance measured from the level of approved street grade opposite the middle of the front of a building to the highest point of roof surface of a flat roof or to the mean height level between eaves and ridge of a gable, hip, mansard, or gambrel roof (Sec. 59-A-2.1).

³ Minimum only; see Site Plan for lot-specific setbacks.

Min. Building Setbacks				
Bel Pre Road	n/a	n/a	n/a	330
Side (Lot 18)	n/a	n/a	n/a	45
Side (Parcel G)	n/a	n/a	n/a	115
Rear (Parcel E)	n/a	n/a	n/a	20
Total Development				
Min. Green Area (acres)	30	45		7.4
Min. Parking Spaces	129	197		201

MPDU Calculations

Unit Distribution	Duplex	Townhouse	One-Family Detached	Total
Market Units	12	0	21 ⁴	33
MPDUs	0	6	0	6
Total	12	6	21	39

Recreation Calculations

	Tots	Children	Teens	Adults	Seniors
Demand					
SFD II (8 DUs)	1.04	1.92	2	8.48	0.88
SFD III (12 DUs)	1.68	2.28	2.76	15.24	1.56
TH (18 DUs, incl. duplex)	3.06	3.96	3.24	23.22	1.26
Total Demand	5.78	8.16	8	46.94	3.7
Supply					
Multi-Age Playground (2)	18	22	6	14	2
Pedestrian System	0.5	1.6	1.6	21.12	1.67
Natural Areas	0	0.4	0.8	4.69	0.19
Seating Areas (3)	3	3	4.5	15	2
Total Supply	21.5	27	12.9	54.81	5.86
Percent of Demand Met	372	330	161	117	158

⁴ Including the existing one-family detached house on the worship center site.

FINDINGS

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.*

The proposed development substantially conforms to the approved Development Plan for Local Map Amendment G-836 and associated binding elements regarding building height and setbacks, development density, MPDUs, public use and recreation space, landscape, building design, dedications, and street improvements. To accommodate interagency review comments and improved compatibility with the surrounding streets and neighborhoods, the Applicant has revised the design of the termination of Road B and the location of the tree-save parcel and the public recreation areas, producing a better design for the community. Additionally, the planting buffer between the residential units and Bel Pre Road has been removed and the units have been flipped to now front onto Bel Pre Road. The Applicant will maintain the spirit of the “green avenue” desired by the Master Plan and District Council for Bel Pre Road by providing a grassed planting strip between the street and the sidewalk for the planting of street trees.

2. *The Site Plan meets 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 all of the requirements of the Planned Development (PD-2) zone as demonstrated in the project Data Table above. The mix of residential unit types, the residential density and building height, and the amount of green area required by the zoning and approved in the Development Plan are retained in the site plan. The development standards associated with the worship center expansion are not specified in the zone, but were defined in the approved Development Plan and are retained in this Site Plan.

3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

- a. Locations of buildings and structures

The proposed residential buildings are located so as to provide front doors onto the internal residential streets and common recreation areas, as well as on Bel Pre Road, helping to create a more pedestrian-oriented, albeit somewhat insular, community. The worship center – a destination use – and associated residential units will be accessed primarily from Bel Pre Road, and are set back from this busy street not only to provide a measure of remove and repose, but also to allow parking to take place next to the street. The locations of the residential units and worship center are adequate, safe, and efficient.

- b. Open Spaces

The plan proposes over 46 percent of the gross tract area as green space, including two recreation areas, seating areas, and tree-save areas. These green amenities are connected through a pedestrian network linking the residences and the worship center, encouraging residents to walk to these neighborhood amenities and explore the larger community.

Each of these features contributes to an improved pedestrian experience that is adequate, safe, and efficient.

c. Landscaping and Lighting

The proposed landscaping on the site consists of street trees along the public streets, including Bel Pre and Homecrest Roads; foundation, ornamental, and shade planting at the recreation areas; and buffer plantings along the south side of Homecrest Road. While a more preferable design might have allowed the residences along Homecrest Road to face their neighbors across that street, as houses do along the length of the road, thereby creating a more residential character to that Road, the narrowness of the western residential portion of the site and community opposition has produced an inward-facing neighborhood that turns its back to some of its neighbors, replacing front stoops with rear fences and screen plantings. Nevertheless, the visual interest and shade provided by these trees and the plantings will provide an adequate, safe, and efficient environment for residents and passers-by.

The lighting plan consists of attractive, regularly-spaced streetlights and parking lot fixtures. All site lighting will be full cut-off and will provide adequate, safe, and efficient site illumination.

d. Recreation Facilities

The plan is providing ample on-site recreation facilities, including two park play areas, several seating areas, and an extensive pedestrian network. The provided facilities conform to the M-NCPPC Recreation Guidelines and are adequate, safe, and efficient.

e. Pedestrian and Vehicular Circulation Systems

The Applicant will provide sidewalks on both sides of all interior public streets, and abutting sections of Bel Pre and Homecrest Roads. An asphalt path will also link the western residential portion of the site with the adjacent expanded worship center. These sidewalks will further encourage pedestrian exploration of both the new and existing neighborhoods and provide adequate, safe, and efficient pedestrian access throughout the site.

Vehicular access to the western residential portion of the site is provided at two points on Homecrest Road. "Road C", now called "Big Bear Terrace", is expected in the future to extend to other planned residential developments east of the site, and potentially down to Bel Pre Road. Vehicular access to the expanded worship center and associated residential units will be from Bel Pre Road. The internal road system provides adequate, safe, and efficient access to and through the site.

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

Both the residential and worship center portions of the site build upon existing uses and patterns and are compatible with the other existing and proposed residential and institutional uses surrounding the site, and is consistent with the compatibility and setback requirements of Section 59-C-7.15.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The subject site plan is in compliance with the development's approved Forest Conservation Plan.

The proposed storm water management concept approved on June 4, 2007, includes on-site channel protection measures via a dry pond and flow dispersion; on-site water quality control via sand filters, bio-filters, a proprietary filter with structural pretreatment, and non-structural methods; and on-site recharge via non-structural methods including dry wells and recharge trenches.

RECOMMENDATION AND CONDITIONS

Approval of 39 one-family dwelling units, including one existing unit and six MPDUs (15.4 percent), and a 10,800 square foot worship center, including a 6,500 square-foot addition, on 16.02 acres. All site development elements as shown on the site, landscape, and lighting plans stamped by the M-NCPPC on May 8, 2008 are required except as modified by the following conditions:

1. Development Plan Conformance
The proposed development shall comply with the binding elements listed on the Development Plan for Local Map Amendment G-836.
2. Preliminary Plan Conformance
The proposed development must comply with the conditions of the approved Resolution for preliminary plan 120070490, as amended by preliminary plan amendment 12007049A.
3. Site Plan
 - a. All on-site fencing must be wooden split-rail.
 - b. Except where required by DPWT to maintain vehicular sight distances or to accommodate 20-foot driveways between the sidewalk and the building, on lots 1-26 the residential building fronts must be located on, or in case of the noted exceptions as close as possible to, the front BRL.
 - c. The building on Lot 13 must be located on the lot such that the side setback along Road A matches the front setback of the majority of the buildings on Lots 14-21.
 - d. The Applicant must provide sidewalk along the site frontage on Bel Pre and Homecrest Roads to include a minimum 5-foot planting strip between the street and the sidewalk.
 - e. All sidewalks on-site must be a minimum of four feet wide.
4. Noise
Provide noise mitigation measures necessary to ensure that all yard areas meet the 60 dBA Ldn exterior noise guidelines and all dwelling units meet the 45 dBA Ldn interior noise guidelines. Such areas include, but may not be limited to, the rear yards of Lots 5, 6, and 29-34.
5. Lighting
 - a. On-site street and parking lot downlighting fixtures must be full cut-off fixtures;

- b. Deflectors must be installed on all up-lighting fixtures causing potential glare or excess illumination;
 - c. Illumination levels, excluding streetscape light fixtures, shall not exceed 0.5 footcandles (fc) at any property line abutting county roads or adjacent residential properties.
6. Roadways
Comply with the conditions of the Department of Permitting Services e-mail dated July 1, 2008, from Sarah Navid to Elza Hisel-McCoy, as amended by a follow-up email dated July 2, 2008, from Sarah Navid to Nat Ballard and Elza Hisel-McCoy.
7. Landscaping & Environment
- a. The Applicant must provide street trees, in a planting strip located between the roadway and the sidewalk, along the property frontage on Bel Pre Road and Homecrest Road.
 - b. Street tree species selection must remain consistent along both sides for the length of each street. Final species selection and spacing to be confirmed by Certified Site Plan.
 - c. Street tree spacing along the internal Road A, Road B, and Big Bear Terrace (nee Road C), for the Allegheny Serviceberry, shall be a maximum of 20 feet on center. If street tree species for these roads is modified before Certified Site Plan, final spacing will be determined at that time.
 - d. Comply with all conditions in Environmental Planning staff memo dated July 1, 2008.
8. Moderately Priced Dwelling Units (MPDUs)
- a. The proposed development must provide 6 MPDUs (15.4 percent) on-site in accordance with Chapter 25A of the Montgomery County Code. The Applicant is receiving a 22 percent density bonus.
 - b. The Applicant must comply with the requirements of DHCA's letter dated July 1, 2008.
 - c. The Applicant must obtain an agreement pertaining to the construction and staging of MPDUs from the Department of Housing and Community Affairs (DHCA) prior to the issuance of any building permits.
9. Stormwater Management
The proposed development is subject to Stormwater Management Concept approval conditions dated June 4, 2007, unless amended and approved by the Montgomery County Department of Permitting Services.
10. Development Program
The Applicant must construct the proposed development in accordance with Development Program. A Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of the Certified Site Plan. The Development Program shall include a phasing schedule as follows:
- a. Streets, sidewalks, and street lighting must be completed as the construction of the residential units is completed;
 - b. Street tree planting for each street must be completed within six months of the issuance of the use and occupancy permit for the last dwelling unit(s) on that street;
 - c. Streetscape improvements, seating areas, indoor amenities, and the outdoor terrace, must be completed within six months of the issuance of any use and occupancy permits;
 - d. All on-site landscaping, lighting, and recreation areas for each phase must be completed within six months of the issuance of any use and occupancy permits;

e. Specify phasing of pre-construction meetings, dedications, sediment/erosion control, or other features.

11. Clearing and Grading

Applicant must ensure that there is no clearing or grading of the subject site prior to M-NCPPC approval of the Certified Site Plan.

12. Maintenance

The Applicant, or its designee, shall be responsible for the maintenance of private on-site landscaping, lighting, alleyways, and recreation facilities.

13. Certified Site Plan

Prior to Certified Site Plan approval the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Minor corrections and clarifications to site details and labeling;
- b. Updated Recreation Facilities calculations to include seating areas provided on-site;
- c. Development standards for accessory structures;
- d. Noise barrier details;
- e. A diagram demonstrating conformance with Noise Ordinance limits;
- f. Clearly show all the limits of all required landscape buffers on the site and landscape plans;
- g. Development Program, Inspection Schedule, Forest Conservation Exemption Letter, and Site Plan Resolution.

APPENDICES

- A. Preliminary Plan Amendment
- B. Zoning Map Amendment G-836
- C. Development Plan Binding Elements
- D. Preliminary Plan Resolution
- E. Citizen Correspondence
- F. Reviewing Agency Approvals

APPENDIX A: Preliminary Plan Amendment

APPENDIX B: Zoning Map Amendment G-836 Opinion

Attachment B

Resolution No.: 15-1685
 Introduced: October 31, 2006
 Adopted: October 31, 2006

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
 SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
 OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
 IN MONTGOMERY COUNTY**

By: County Council

**SUBJECT: APPLICATION NO. G-836 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,
 Scott Wallace, Attorney for Owner Vedanta Center of Greater Washington D.C., Inc. and
 Owner/Contract Purchaser J. Kirby Development, L.L.C., OPINION AND RESOLUTION
 ON APPLICATION.**

Tax Account Nos. 13-00982556, 13-00966534, 13-00961315

OPINION

Application No. G-836, filed on March 3, 2005 by Applicants J. Kirby Development, LLC and Vedanta Center of Greater Washington, D.C., Inc., requests reclassification from the RE-2 Zone (residential, one-family, two-acre minimum lot size) to the PD-2 Zone (Planned Development, two dwelling units per acre) of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland, in the 13th Election District. The property is identified as Part of Lots 3, 4 and 5 of the "Homecrest" subdivision, recorded in Plat Book 25, Plat 1586. As required under the PD Zone, the application was accompanied by a Development Plan with detailed specifications related to land use, density, development standards and staging. Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone.

The Hearing Examiner recommended approval of the proposed rezoning on grounds that the proposed development would be in substantial compliance with the applicable master plan, would comply with the purposes, standards and regulations of the PD-2 Zone, would provide for a form of development that will be compatible with existing land uses in the surrounding area and would serve the public interest. The Montgomery County Planning Board (the "Planning Board") and its Technical

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Staff made similar recommendations. The District Council agrees, and incorporates herein the Hearing Examiner's Report and Recommendation dated October 10, 2006.

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

Lot 3, at the east end of the site, is mostly wooded and has a one-story brick house, a carport and a driveway off of Bel Pre Road. Lot 4, in the center, is also mostly wooded. It is occupied by the Vedanta Center, a worship center consisting of a concrete and stone building with a one-story wing and a two-story wing, which is used for congregation gatherings and as a home for resident monks; a small, brick, 1 ½ story guest house; a paved driveway off of Bel Pre Road; and a gravel parking area. Lot 5, at the west end of the site, is mostly grassy, with a one-story brick house, a concrete block garage, a metal shed and driveway access from Homecrest Road.

The subject property is gently to moderately sloping. It contains approximately 9.62 acres of forest, with two major forest stands rated good quality. The property contains no flood plains,

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but a small stream known as Bel Pre Creek flows through the northeast part of the property. As a result, a substantial portion of the combined property is undevelopable stream valley buffer.

The surrounding area for this application consists, roughly, of the Bel Pre Road Area described in the *1994 Approved and Adopted Aspen Hill Master Plan* (which extends from Bel Pre Road on the south to Homecrest Road on the west, the property line of Argyle Country Club on the north and the Bel Pre Square Townhouses, across from North Gate Drive, on the east), plus properties that are either adjacent or directly or diagonally confronting.

The surrounding area contains a mix of uses including three- and four-story apartment buildings, senior housing including assisted living, townhouses, single-family detached homes, churches, a large sports facility, a social lodge and a country club. The zoning pattern is a mixture of RE-2, RE-2/TDR, R-200 and R-150 zoning, the product of multiple individual rezonings that occurred mostly between 1965 and 1980.

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

Lots 3 and 5 of the subject property are each developed with a single-family home, while lot 5 has been the site of the Vedanta Center for eight or nine years. The Center has ties to Indian spiritual traditions, but considers itself a universal, non-denominational movement, accepting people from all religions and different spiritual paths. The Center teaches spiritual principals and practices including meditation, and tries to maintain a serene atmosphere.

The Applicant proposes expansion of the Vedanta Center's facilities and the coordinated development of a residential community with a total of 39 dwelling units: 20 new single-family detached homes, 12 new single-family, semidetached duplex units, six new single-family attached units to be

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marketed as moderately-priced dwelling units ("MPDUs"), and the existing Vedanta Center guest house. The largest grouping of homes would be at the west end of the site, near Homecrest Road, with 14 detached homes and six townhouses. The other six detached homes would be in the northeast corner of the site, overlooking the stream valley buffer. The 12 duplex units would be in the southeast corner of the site, south of the stream valley buffer and east of the Vedanta Center parking lot. The preliminary bedroom calculation indicates that the single-family detached units would have four bedrooms, the townhouses would have two bedrooms with an optional third bedroom, and the duplexes would have three bedrooms.

The detached homes at the western end of the site are shown facing each other across a main road (Road B) and a perpendicular entrance road (Road A). The townhouse MPDUs are shown grouped in a single location on Road B, in two blocks of three units each, backing onto Bel Pre Road. Road A is shown running perpendicular to Homecrest Road, separating the Homecrest Road frontage into two parts. The visually-prominent location at the corner of Homecrest and Bel Pre Roads, south of Road A, would be occupied by three detached homes. On the rest of the Homecrest Road frontage, north of Road A, two detached homes are shown at each end of the block, with a proposed 0.63-acre reforestation area between them. The reforestation area would be an "artificial" forest, to be created from scratch on what is now a grassy field. It would provide a significant visual break in the line of homes. In addition, the Applicant has committed to creating a permanent, 20-foot landscaped buffer strip between these homes and the new Homecrest Road right-of-way, as well as installing a sidewalk and street trees.

The other side of Road B is shown with a row of seven single-family detached homes, interrupted by a recreation area and an open play area overlooking the stream valley buffer. The northern end of Road B is shown connecting to "Road C," along the northern property line, which would provide a second point of access off of Homecrest Road.

The existing Vedanta Center worship building, measuring approximately 4,300 square feet and located roughly in the middle of the site, would be retained. In addition, a new, 6,500-square

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foot addition would be built onto the rear wall of the existing worship building, with a landscaped courtyard between the old and new structures. The new building would provide a larger worship space and a cellar to serve refreshments, which is lacking in the current facility. The Center plans to use the auditorium in the existing building as a multi-function meeting space. The architecture for the new building is based on a well-known Indian Hindu temple, incorporating a blend of traditional Indian and European styles. The maximum height would be 24 feet, plus an additional 20 feet for cupolas and domes. The new Vedanta Center building would face east, towards a wooded area abutting the stream valley buffer. It would be partially obscured from view from Bel Pre Road by the existing Vedanta Center buildings.

The Development Plan allocates the land immediately south of the Vedanta Center, between the Center and Bel Pre Road, to an 85-space parking lot for the Vedanta Center. East of the parking lot, in the southeast corner of the site, the Development Plan provides for 12 duplex units.¹ Each duplex unit is shown with a one-car garage and one driveway space. The plan shows a sidewalk connecting Bel Pre Road to the duplex units, and continuing on to link the duplexes to sidewalks within the Vedanta Center facility, and from there to a path leading along the stream valley buffer to proposed recreation areas on the west side of the site and, eventually, Homecrest Road.

The duplex units, as shown on the Development Plan, would be separated from the Wheaton Moose Lodge property by a forested area approximately 77 feet deep, which is to be conveyed to the Homeowner's Association ("HOA") for the development and protected by a Category One Conservation Easement. The distance between the lodge structure and the closest residential unit would be approximately 110 feet. To the west, the duplex units would be separated from the Vedanta Center parking lot by the shared access road and a 30-foot landscaped area, in addition to the backyards of the units themselves. To the north, they would abut a dry stormwater management pond

¹ Testimony from a representative of the Vedanta Center indicated that these units would be under the Vedanta Center's ownership, and that the Center hopes to sell the units with covenants restricting their occupancy to members of the Vedanta Center community. A question was raised as to the legality of such covenants, which might be considered discriminatory under federal, state and/or county law. The District Council is not making a judgment on the legality or appropriateness of any such covenants by acting on this rezoning request.

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and a forested area. To the south, the buffering shown on the Development Plan is somewhat different for the two rows of units. The western row of units, closer to the Vedanta Center, is separated from Bel Pre Road by the access road that would serve the duplex units, plus a landscaped strip about 40 feet wide. The eastern row of units, closer to the Wheaton Moose Lodge property, is separated from Bel Pre Road by an existing forested area about 65 feet deep.

As noted above in connection with the duplex units, the proposed Development Plan provides for sidewalks and pathways that would connect the residential areas of the development with each other, the Vedanta Center, a partial trail along the stream valley buffer, the on-site recreation areas and the abutting streets. The Development Plan shows one point of access on Bel Pre Road, for the Vedanta Center and the 12 duplex units. The residential areas along Homecrest Road and in the northeast corner of the site would be accessed via two points of entry on Homecrest Road, connecting to Roads A, B and C.

With regard to phasing, the Development Plan specifies that all development steps may occur in any order or simultaneously, provided that "construction of the 6 MPDU townhouses will commence no later than commencement of the 18th market rate unit." Ex. 60(a).

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

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zone, for example – may not be changed without further application to the Council to amend the Development Plan.

The principal component of the Development Plan in this case is a document entitled Development Plan, Exhibit 112(a). Exhibit 112(a), satisfies the requirements of Code § 59-D-1.3 by showing access points, approximate locations of existing and proposed buildings and structures, preliminary classification of dwellings by number of bedrooms, parking areas, intended right-of-way dedications for the three internal roads and Homecrest Road, and areas intended for common use but not public ownership (recreation areas and stream valley). The Development Plan specifies that lot sizes, shapes and building locations will be approximately as shown, with exact sizes, shapes and locations to be determined during Preliminary Plan and Site Plan proceedings. The intent of this language is to allow for minor shifts in lot lines and building locations while ensuring that if this project goes forward, the general locations shown for detached, duplex and townhouse units will not change in the Applicant's Preliminary Plan and Site Plan submissions. The Development Plan has one minor error that will have to be corrected on the Development Plan submitted for certification: it identifies Lot 3 under its prior, rather than current, ownership.

The Development Plan specifies (in language that is not described as illustrative, and therefore is binding) how the project would satisfy the development standards for the zone. This includes a maximum height for residential buildings of 40 feet, and a maximum height for the new worship center of 24 feet, plus 20 feet more for cupolas and domes. These provisions also specify a maximum of 39 dwelling units and memorialize a commitment to preserve at least 45 percent of the gross land area as green area, which is considerably higher than the 30 percent required in the PD Zone. Parking is planned to exceed the Zoning Ordinance requirement, with (preliminarily) four spaces per unit for detached homes (two garage, two driveway), two spaces for townhouses and duplex units (one garage, one driveway), and 85 spaces for the Vedanta Center.

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The Development Plan also contains additional, textual binding elements that memorialize a variety of commitments the Applicant has made to the Planning Board and the community, as summarized below:

- Maximum of 39 units, including existing house on Vedanta Center property.
- Access from a single point on Bel Pre Road and two points on Homecrest Road.
- Worship center addition not to exceed 6,500 square feet gross floor area.
- HOA to maintain landscaping and fencing shown on Development Plan along Homecrest Road in first 20 feet east of right-of-way along Lots 7-13, and first ten feet east of right-of-way along reforestation area, Parcel I. HOA or Vedanta Center to maintain landscaping along Bel Pre Road in first 20 feet north of right-of-way.
- All access points to be maintained free and clear of any sight distance obstructions on subject property.
- Maximum of seven dwelling units along Homecrest Road.
- To help ensure compatibility, rear of homes along Homecrest Road to be designed and finished with additional architectural features typically found on building fronts, including double hung windows with circle tops, and additional moldings around windows and doors.
- Minimum of six dwelling units fronting on Road C.
- No detached sheds or outbuildings permitted in rear yards along Homecrest Road or rear yards of Lots 15-20.
- Landscaping along Homecrest Road to include larger caliper hardwood and evergreen trees, emphasize native species and avoid plants on Maryland State Invasive Species List.
- To meet community identification recommendation of Aspen Hill Master Plan, development will include "Layhill" in its name.

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- Land dedication and construction of Homecrest Road and Road C to be in compliance with recommendations of Aspen Hill Master Plan.
- Applicant to place Category I Conservation Easement on minimum 4.73 acres of reforestation and forest retention shown on Preliminary Forest Conservation Plan dated July 13, 2006.

The District Council finds that the Development Plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): master plan consistency. In the present case, both the Planning Board and Technical Staff found that the proposed development conforms to the recommendations of the *1994 Approved and Adopted Aspen Hill Master Plan* (the "Master Plan"). The Hearing Examiner agrees.

The Development Plan is in compliance with the Master Plan's broad goals related to housing, the environment, and community identity and design. The three unit types proposed offer a choice of housing types for people of varying incomes and lifestyles. The most significant natural resources on the site would be fully preserved within the stream valley. The Master Plan's goal with regard to community identity and design is to "[p]rovide for attractive land uses that encourage opportunity for social interaction and promote community identity." Master Plan at 22. The Development Plan would serve this goal by creating a well-planned community, with uniform landscaping and fencing along Homecrest Road, an architecturally interesting worship building serving as a "visual accent", and a network of sidewalks and paths connecting the various residential areas with each other, the worship center, the recreation area, the partial stream valley trail and neighboring sidewalks.

The site layout might better meet the Master Plan's goal of increasing community interaction and reducing the social and physical isolation of portions of the community if the MPDUs were distributed in more than one location on the site, rather than located together at one end of the main internal road. However, the Applicant does not consider this approach feasible for such a small

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development. Moreover, the residents of the MPDUs would have neighbors in detached homes on three sides, and there is every reason to expect they would be fully integrated into the life of this small community. The District Council finds that the Development Plan substantially complies with the Master Plan's community identity goals.

The Development Plan also complies with the specific recommendations made for the Western Bel Pre Road Area: PD-2 zoning for consolidations of ten acres or more; protection of Bel Pre Creek and the stream buffer areas; and consolidated, on-site storm water management.

A central element of the Master Plan's vision for the development of the subject property and nearby parcels was a road along the northern property line of the site, with access from Homecrest Road. This road is recommended as part of a network of internal roadways to reduce the need for curb cuts on Bel Pre Road, reduce the environmental impacts of development on Bel Pre Creek, and provide a way for new development to enter busy Bel Pre Road at a signalized intersection. The Master Plan further suggested that if the proximity of this road to the existing entrance for the Aspen Hill Club is deemed to be unsafe, access to the two properties should be combined on the new road. The Applicant proposes to construct Road C in the location indicated in the Master Plan, but the right-of-way shown on the Development Plan is slightly smaller than recommended in the Master Plan.² The Hearing Examiner, Planning Board and Technical Staff found, nonetheless, that the proposed Development Plan substantially complies with the Master Plan. Moreover, the unrefuted testimony of the Applicant's traffic planner is that the right-of-way widths proposed on the Development Plan would be adequate to handle the expected traffic. The District Council finds that the departure from the Master Plan's specific right-of-way recommendations is not sufficient to derail this application's substantial compliance with the Master Plan.

The Master Plan also recommends the creation of a "green corridor" along Bel Pre Road. The Applicant contends that it would satisfy this recommendation by planting trees along its Bel Pre

² The Master Plan recommended a primary residential road (70 foot right-of-way) from Homecrest Road to a point where access might have to be provided for the Aspen Hill Club, and a secondary road (60-foot right-of-way) thereafter. The Development Plan provides for 60 feet of right-of-way from Homecrest Road to the possible Aspen Hill Club access point, and 50 feet thereafter.

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Road frontage, even though they would not separate the sidewalk from the road. The District Council considers the Applicant's partial compliance with the green corridor recommendation sufficient to support a finding of substantial compliance with the Master Plan, at least for purposes of zoning stage review. However, the District Council would consider it preferable, from the standpoint of both safety and aesthetics, for the Applicant to satisfy the desire expressed by several community members for street trees separating the sidewalk from the road. The District Council would also find such an approach to be more consistent with the Master Plan.

Based on the preponderance of the evidence, the District Council finds that the proposed development would be in substantial compliance with the use, density and other recommendations of the Master Plan. The evidence also supports the conclusion that the Development Plan does not conflict with any other county plans or policies, or the capital improvement program. It would further county housing policy by creating diverse housing options, including affordable housing. The evidence demonstrates that the proposed development would satisfy the requirements of Local Area Transportation Review, would have minimal impact on public school capacity and, as a consequence, would not be inconsistent with the county Growth Policy.

§59-D-1.61(b): purposes of the zone: maximum safety, convenience and amenity of residents; and compatibility with adjacent development.

1. **The Purpose Clause**

The purpose clause for the PD Zone contains a number of goals and objectives, all of which are satisfied by the instant application. The District Council's findings as to each paragraph of the purpose clause are set forth below.

First paragraph: Master Plan implementation. As discussed under (a) above, the proposed development would substantially comply with the recommendations and objectives of the Master Plan. It would also integrate mutually compatible uses and provide more efficient circulation, access and stormwater management than could be achieved under the current conventional zoning, as well as better environmental protection and amenities.

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Second paragraph: social and community interaction, distinctive visual character, balanced mixture of uses. The proposed development would achieve these objectives in several ways. The development would have a distinctive visual character because a worship center would occupy a prominent central location, because much of the site would consist of open stream valley buffer, and because of the unusual architecture proposed for the new Vedanta Center building. A network of pedestrian sidewalks and trails would facilitate social and community interaction by connecting the residential areas with each other, the Vedanta Center, the recreation areas at the west end of the site, a path along part of the stream buffer, and adjoining public sidewalks. The subject site is in relatively close proximity to shopping, parks and public transportation, and testimony indicated that there is a substantial amount of pedestrian activity, despite marginally adequate sidewalks, providing opportunities for interaction between residents of the proposed development and the surrounding community. In addition, the expansion of the Vedanta Center would enhance opportunities for fellowship and community among its members and visitors, who would be part of the larger community as well.

Most of the homes would face other homes, further encouraging social interaction and a sense of community within the development. One possible flaw in the plan is that the decision to face all of the homes inward, with their rear facades toward the roadways, tends to cut off opportunities for interaction between residents of the proposed community and those in the surrounding area. It might have been preferable, from a public interest standpoint, to strike the balance in favor of integration with the larger community, given that the three homes on the west side of Homecrest Road have few neighbors. The record suggests that this decision was made at the urging of Technical Staff, who apparently felt that an internal sense of community was more important. However, this issue is not enough, in the District Council's view, to undercut the conclusion that overall, the proposed development would satisfy this element of the purpose clause.

The proposed development does not include commercial uses due to its size, but it does include a mix of residential use types, recreational opportunities and a religious use. Technical Staff

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indicates that commercial uses would not be appropriate for a development of this size, and the District Council agrees. Based on the preponderance of the evidence, the District Council concludes that the development depicted on the proposed Development Plan would satisfy this element of the purpose clause.

Third paragraph: broad range of housing types. The proposed development would provide a broad range of housing types, including two-to-three bedroom MPDUs, three-bedroom duplex units and four-bedroom single-family detached homes. These options would attract residents with varying lifestyles and income levels. The development would broaden the mix of housing types in the surrounding area, in which residential uses other than single family detached homes currently dominate.

Fourth and fifth paragraphs: trees, grading and open space. The proposed development would preserve four acres of existing forest, mostly in the stream valley, and would create a reforestation area measuring 0.63 acres. The layout of the Development Plan would minimize grading by preserving the stream valley buffer and existing Vedanta Center buildings, and through efficient layouts making use of the existing topography. Contrary to statements made by some community members, there is no evidence of record to suggest that the Applicant intends to clear and re-grade the entire site. On the contrary, significant forested areas are to be preserved, particularly in the stream valley.

Both residents of the proposed development and visitors to the Vedanta Center would be able to enjoy the visual beauty of the stream valley from the trail, the sidewalks and the recreation areas at the west end of the site. The stream valley would provide a lovely vista for the six homes proposed at the northeast end of the site. The stream valley, which is the main open space area, would not be readily accessible to the general public because it is set back from the roads. Area residents might be able to enjoy the trail along the stream buffer by parking in the Vedanta Center parking lot, which by all accounts is empty much of the time, or on Road B. In addition, the preserved stream

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valley on the subject property would continue to form part of and support the health of the larger stream valley that runs through the area, which serves as a valuable amenity for all area residents.

Additional open space is shown in the reforestation area proposed along Homecrest Road. This area would be a visual amenity for area residents and visitors, particularly as it matures. The District Council agrees with Technical Staff that the PD Zone's open space requirement is geared more towards large projects, and that for a development of this size, the open space and access shown is adequate.

Sixth paragraph: pedestrian networks. Pedestrian activity would be encouraged by a network of pedestrian sidewalks and trails linking the residential areas with one another, the worship center, the recreation areas on Road B, the partial stream valley trail and the nearby public sidewalks. The subject site is located within one block of bus stops on both Bel Pre and Homecrest Roads. The availability of pedestrian sidewalks and paths separate from roads, and the proximity to public transportation, would both reduce reliance on the automobile.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The proposed Development Plan would consolidate three parcels for a total of 16 acres of land. While not large in an absolute sense, the proposed development would aggregate enough parcels to satisfy the Master Plan's specific size recommendation for PD-2 zoning, with enough to space to permit three different unit types and the efficiency of joint storm water management and road connections.

Eighth paragraph, first part: maximum safety, convenience and amenity. The evidence demonstrates that the proposed development would provide safe and convenient roadways, sidewalks and pathways, provided that the necessary steps are taken to assure adequate sight distances for the Bel Pre Road entrance and the access to Road C. On Bel Pre Road, adequate sight distance likely would require cutting back vegetation and moving a utility pole by a few feet. At the access point to Road C, ensuring a safe condition might require providing access to the Aspen Hill Club from Road C.

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The sidewalk along Bel Pre Road would undoubtedly be safer and more attractive with a landscaped strip separating it from the roadway. However, in light of other features of the plan, the District Council does not consider this step essential to satisfying the purpose clause.

Residents of the homes on the west side of the site would have access to Bel Pre Road at a signalized intersection. Residents of the duplex units and visitors to the Vedanta Center would not have that advantage, but their shared access point would improve safety on Bel Pre Road by reducing the number of curb cuts along this stretch of land from two to one. The proposed pathways, partial stream valley trail and recreation areas represent amenities that would be available to residents of the development and to any residents of the larger community who care to enter the development to view the stream valley. The reforestation area on Homecrest Road would be an additional visual amenity for area residents and visitors.

Eighth paragraph, second part: compatibility. The District Council finds that the proposed development would be compatible with existing uses in the surrounding area. The proposed uses -- residential and worship center -- are clearly compatible with the surrounding area, which is used primarily for residential purposes. For the reasons discussed below, the District Council finds the Development Plan to be compatible with the surrounding area, as well.

The duplex units would be adequately buffered from the Moose Lodge building by 77 feet of forested land, which would provide substantial visual and noise screening. Across Bel Pre Road, the duplex units would confront townhouses that are built at a density of five dwelling units per acre, significantly higher than the 2.4 d.u./acre proposed for the subject site overall. The townhouses and single-family detached home with frontage on Bel Pre Road, in the southwest corner of the site, would confront townhouses built at five d.u./acre, and three-story multi-family units with a density of approximately 22 d.u./acre. Moreover, the dwellings across Bel Pre Road are set back a significant distance from the street, so the impact of the new development likely would not be substantial. The homes in the northeast corner of the site would abut the wooded portion of the Moose Lodge property

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to the east. To the north, they would confront the Aspen Hill Club, which has a substantial level of on-site activity and, in all likelihood, would not be affected by these homes.

The homes proposed along Homecrest Road are the most visible, with their long street frontage. They play a key role in the visual impact of the proposed development on the intersection and on Homecrest Road. The Development Plan proposes a total of seven detached homes along Homecrest Road, arranged on either side of a 0.63-acre reforestation area. They have setbacks from the face of curb varying from 56 feet to 80 feet, and the distance between them varies from 12 feet to 43 feet. These seven homes would be across the street from the Aspenwood Senior Living Community and three single-family detached homes, all of which have substantial front building setbacks. The three single-family homes would be directly across from the reforestation area and the four homes flanking it. The reforestation would be visually prominent because it would occupy roughly the same amount of street frontage as the four houses surrounding it.

The seven dwellings along Homecrest Road would be broken up by Road A and the reforestation area, allowing enough room for each house to have a substantial amount of open space on at least one side. For three houses that space is occupied by a side yard and a road, and for the other four it is green space. In addition, these seven homes would have varying setbacks, rather than presenting a straight, unbroken line of houses. The visual impact of the houses along Homecrest Road would be softened by 20 feet of landscaping, in addition to a sidewalk and street trees. The Applicant has committed to including larger caliper hardwood and evergreen trees in this landscaping, to ensure an immediate visual impact. The Applicant has also committed to design and finish the rears of homes facing Homecrest Road with architectural features normally found on building fronts, such as double-hung windows with circle tops, and additional moldings around doors and windows.

The record suggests that the homes the Applicant proposes would be taller and of a different architectural style than the three homes across the street. However, compatible need not mean "the same." With implementation of the present Development Plan, the three homes across the street would face four homes and a substantial reforestation area, all bordered by a 20-foot landscaped

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buffer, a sidewalk and a row of street trees. A view of trees and houses would be a change from the current open vista of green fields, but with the environmental constraints on this site, it is difficult to imagine how it could be developed at the density called for in the Master Plan – two dwelling units per acre – without materially changing that vista. As the Master Plan makes clear, the purpose of recommending PD zoning for the subject property was to provide an incentive for consolidation of lots to attain the benefits that the development proposed here would provide, including efficient road access with fewer curb cuts, joint storm water management and more effective environmental protection.

A compatibility determination also must take into account the entire surrounding area, not just the three single-family homes across from the subject site. The evidence suggests that this neighborhood has more than its share of special exceptions. Nonetheless, it would be inappropriate, in the context of a rezoning case, to ignore the existence of those special exceptions. The surrounding area in this case is not predominantly a neighborhood of single-family, detached homes. It has a mix of single-family, multi-family and institutional residential uses, plus the Aspen Hill Club. The buildings in the surrounding area, and even in the immediate vicinity of the subject site, vary from one story to five stories, and several of them have very large parking lots that create a decidedly non-rural impression. In this context, the 40-foot homes proposed by the Applicant would blend well with their surroundings.

The District Council sees no justification to impose on this Development Plan, as requested by the Aspen Hill Club, a requirement for the type of berms and landscape buffering that were required for the Aspen Hill Club and other special exceptions in the surrounding area. Special exceptions are typically required to install buffers where they abut single-family residential property, to protect residential uses from the adverse effects of non-residential special exceptions. The level of activity, noise and traffic impacts of non-residential uses are different, and typically more intense, than those of single-family residential uses. Accordingly, the extensive berms, setbacks and screening surrounding several of the nearby special exceptions are appropriate for those uses, but are not necessary for a residential community.

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For all of the reasons stated above, the District Council concludes that the proposed rezoning and development would be compatible with existing land uses in the surrounding area.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

Based on the preponderance of the evidence and for the reasons stated above, the District Council concludes that present application is proper for the comprehensive and systematic development of the County; is capable of accomplishing all of the purposes of the zone; and is in substantial compliance with the Master Plan.

2. Standards and Regulations of the Zone

The standards and regulations of the PD-2 Zone are summarized below, together with the grounds for the District Council's conclusion that the proposed development would satisfy these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is recommended in the Master Plan for PD-2 zoning, provided there is a consolidation of at least ten acres of land. The subject property represents an assemblage of approximately 16 acres, so this requirement is satisfied.

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Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the last of these criteria, which states the following:

That the Property is recommended for the PD zone in an approved and adopted master or sector plan and so uniquely situated that assembly of a minimum gross area to accommodate at least 50 dwelling units is unlikely or undesirable and the development of less than 50 dwelling units is in the public interest.

The subject property is recommended for the PD Zone in the Master Plan. It is not large enough, at 16 acres with a density of two units per acre, to accommodate 50 dwelling units. Applicant J. Kirby Development represented that its efforts to negotiate with the adjacent Wheaton Moose Lodge for additional land at the rear of the Moose Lodge parcel were unfruitful. A representative of the Moose Lodge confirmed this, stating that the Lodge rejected a request for negotiations. The adjacent property to the north is fully developed and used by the Aspen Hill Club, and the other two boundaries of the property abut roadways. The evidence indicates that development of the subject property with less than 50 units would be in the public interest, as it would allow implementation of the Master Plan's goals for this property. Accordingly, the District Council finds that this requirement is satisfied.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A PD-2 development with less than 50 units must have at least 35 percent single-family detached units and at least 35 percent townhouse or single-family attached units. The proposed Development Plan provides for 54 percent single-family detached units and 46 percent single-family attached or townhouse units, satisfying this requirement.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which proposes no commercial uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the recreation area on Road B and the trail along part of the stream valley, are permitted in the PD Zone. The PD Zone also permits any nonresidential, noncommercial

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use at the discretion of the District Council, on a finding that such use is compatible with the planned development and satisfies the requirements of Section 59-C-7.15. The Vedanta Center may be considered a nonresidential, noncommercial use, and the District Council considers it compatible with the proposed development. It would provide a visual amenity, possibly a worship center for some residents, and a quiet neighbor. As discussed below, the specific requirements of Section 59-C-7.15 also would be satisfied.

Section 59-C-7.14. Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The density category applied for, PD-2, is the lowest density available in the PD Zones, and is recommended in the Master Plan. All of the evidence indicates that this density category is appropriate for the site.

Section 59-C-7.15. Compatibility. This section requires that a proposed development be compatible internally and with adjacent uses. It also establishes minimum parameters for setbacks and building height that are designed to promote compatibility. As discussed above, the District Council finds that the proposed development would be compatible with existing development in the surrounding area. The application also satisfies the specific setback and building height provisions, as detailed below.

Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no building other than a one-family detached residence may be constructed within 100 feet of such adjoining land, and no building may be constructed at a height greater than its distance from such adjoining land. The Development Plan specifies a maximum height of 40 feet for all residential units, and notes that all units are located at least 60 feet from the only adjacent land that is recommended in

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the Master Plan for single-family detached zoning, which is the Aspen Hill Club property to the north. Moreover, it is evident on the Development Plan that all units shown within 100 feet of the northern property line are single-family detached homes. The new Vedanta Center building would be over 400 feet from the northern property line. Adjacent property to the east is recommended in the Master Plan for PD-2 zoning, and to the south and west are roadways, so these limitations do not apply.

Section 59-C-7.16, Green Area. The PD-2 Zone requires a minimum of 30 percent green area. The Development Plan depicts green space of 7.3 acres, or approximately 46 percent of the site, and specifies that a minimum of 45 percent green area will be provided.

Section 59-C-7.17, Dedication of Land for Public Use. This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated to public use, with such dedications shown on all required development plans and site plans. The Development Plan shows the small dedication required for the right-of-way of Homecrest Road (described by Technical Staff as about six feet deep), as well as the 50- and 60-foot dedications necessary for Road C, a 27-foot dedication for Road B, and a 26-foot dedication for Road A. No other dedications are anticipated.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. As shown on the Development Plan, the proposed project would provide more than the required number of spaces for the single-family detached units, the number of spaces required for the other residential uses, and more than the number of spaces required for the Vedanta Center.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed.

§59-D-1.61(c); safe, adequate and efficient internal vehicular and pedestrian circulation systems. The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient. The internal circulation system would not provide vehicular connectivity, to avoid creating a cut-through route for motorists trying to circumvent the traffic light. It would, however, provide pedestrian

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connections among the residential areas, the worship center, the recreation areas, the partial stream valley trail and nearby sidewalks, all separate from roadways. The District Council concludes, based on the preponderance of the evidence, that the proposed points of external access can be constructed in the locations shown in a manner that would be safe, adequate and efficient.

§59-D-1.61(d): preservation of natural features. The proposed development would tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site by preserving the stream valley buffer and additional small, forested areas. Efficient layouts making use of the existing topography, together with preservation of the stream valley, would minimize grading. The evidence establishes that forest conservation requirements under Chapter 22A would be satisfied. The current concept storm water management plan had not yet received approval from the Department of Permitting Services when the record was closed. However, the evidence indicates that the current plan contains only minor differences from an earlier plan that was approved by the Department of Permitting Services, and that no waivers are likely to be needed.

§59-D-1.61(e): common area maintenance. The Applicant has provided draft documents that adequately provide for perpetual maintenance of common and quasi-public areas by a homeowners' association.

In addition to the five development plan findings, the District Council also must consider the relationship of the present application to the public interest. When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment. For the reasons discussed under finding (a) above, the District Council concludes that the subject application substantially complies with the Master Plan.

The evidence of record indicates that the proposed development would have no adverse effects on traffic conditions, schools or public utilities, and would comply with forest conservation and stormwater management regulations.

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Accordingly, having carefully weighed the totality of the evidence, the District Council concludes that approval of the requested zoning reclassification would be in the public interest.

For these reasons and because to approve the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

ACTION

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

Zoning Application No. G-836, requesting reclassification from the RE-2 Zone to the PD-2 Zone of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland in the 13th Election District, is hereby approved in the amount requested subject to the specifications and requirements of the final Development Plan approved by the District Council, Exhibit 112(a); provided that, within 10 days of receipt of the District Council's approval resolution, the Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the approved Development Plan, with the owner of Lot 3 correctly identified, in accordance with §59-D-1.64.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

APPENDIX C: Development Plan Binding Elements

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The Development Plan also contains additional, textual binding elements that memorialize a variety of commitments the Applicant has made to the Planning Board and the community, as summarized below:

- Maximum of 39 units, including existing house on Vedanta Center property.
- Access from a single point on Bel Pre Road and two points on Homecrest Road.
- Worship center addition not to exceed 6,500 square feet gross floor area.
- HOA to maintain landscaping and fencing shown on Development Plan along Homecrest Road in first 20 feet east of right-of-way along Lots 7-13, and first ten feet east of right-of-way along reforestation area, Parcel I. HOA or Vedanta Center to maintain landscaping along Bel Pre Road in first 20 feet north of right-of-way.
- All access points to be maintained free and clear of any sight distance obstructions on subject property.
- Maximum of seven dwelling units along Homecrest Road.
- To help ensure compatibility, rear of homes along Homecrest Road to be designed and finished with additional architectural features typically found on building fronts, including double hung windows with circle tops, and additional moldings around windows and doors.
- Minimum of six dwelling units fronting on Road C.
- No detached sheds or outbuildings permitted in rear yards along Homecrest Road or rear yards of Lots 15-20.
- Landscaping along Homecrest Road to include larger caliper hardwood and evergreen trees, emphasize native species and avoid plants on Maryland State Invasive Species List.
- To meet community identification recommendation of Aspen Hill Master Plan, development will include "Layhill" in its name.

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- Land dedication and construction of Homecrest Road and Road C to be in compliance with recommendations of Aspen Hill Master Plan.
- Applicant to place Category I Conservation Easement on minimum 4.73 acres of reforestation and forest retention shown on Preliminary Forest Conservation Plan dated July 13, 2006.

The District Council finds that the Development Plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): master plan consistency. In the present case, both the Planning Board and Technical Staff found that the proposed development conforms to the recommendations of the *1994 Approved and Adopted Aspen Hill Master Plan* (the "Master Plan"). The Hearing Examiner agrees.

The Development Plan is in compliance with the Master Plan's broad goals related to housing, the environment, and community identity and design. The three unit types proposed offer a choice of housing types for people of varying incomes and lifestyles. The most significant natural resources on the site would be fully preserved within the stream valley. The Master Plan's goal with regard to community identity and design is to "[p]rovide for attractive land uses that encourage opportunity for social interaction and promote community identity." Master Plan at 22. The Development Plan would serve this goal by creating a well-planned community, with uniform landscaping and fencing along Homecrest Road, an architecturally interesting worship building serving as a "visual accent", and a network of sidewalks and paths connecting the various residential areas with each other, the worship center, the recreation area, the partial stream valley trail and neighboring sidewalks.

The site layout might better meet the Master Plan's goal of increasing community interaction and reducing the social and physical isolation of portions of the community if the MPDUs were distributed in more than one location on the site, rather than located together at one end of the main internal road. However, the Applicant does not consider this approach feasible for such a small



MONTGOMERY COUNTY PLANNING BOARD
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

SEP 26 2007

MCPB No. 07-150
Preliminary Plan No. 120070490
Layhill Overlook
Date of Hearing: June 28, 2007

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on December 18, 2006, Aspen Hill Estates, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 39 lots on 16.02 acres of land located in the northeast quadrant of the intersection of Bel Pre Road and Homecrest Road ("Property" or "Subject Property"), in the Aspen Hill Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070490, Layhill Overlook ("Preliminary Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated June 15, 2007, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staffs of other governmental agencies, on June 28, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

[Handwritten signature]

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

WHEREAS, on June 28, 2007, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Wellington; seconded by Commissioner Robinson; with a vote of 4-0, Commissioners Hanson, Perdue, Robinson, and Wellington voting in favor; Commissioner Bryant temporarily absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120070490 to create 39 lots on 16.02 acres of land located in the northeast quadrant of the intersection of Bel Pre Road and Homecrest Road ("Property" or "Subject Property"), in the Aspen Hill Master Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 38 lots for 19 one-family dwelling units, 6 townhouses, 12 duplex units, and 1 religious institution, including 1 accessory residential structure. A minimum of 15% of the dwelling units must be moderately priced dwelling units (MPDUs).
- 2) Activities associated with the worship center are limited to exclude programs that would generate peak-hour vehicular trips within the weekday morning and evening peak periods, such as a weekday child daycare facility or private school. These land uses would require a separate APF review.
- 3) The Applicant must comply with the specifications and requirements of the schematic development plan approved as part of Local Map Amendment case G-836.
- 4) The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable. Conditions include:
 - a. On-site reforestation and forest retention must total a minimum of 4.73 acres, as per Local Map Amendment case G-836.

The natural resources inventory/forest stand delineation must be revised prior to submission of the final forest conservation plan, and the forest acreage must be reconciled with the preliminary forest conservation plan. All aspects of the NRI/FSD will be rechecked and revised as necessary, including the stream valley buffer.

- b. Approval of the final forest conservation plan consistent with the approved preliminary forest conservation plan prior to any clearing, grading or demolition on the site.
 - c. The final forest conservation plan must show a planting plan consistent with the adjacent land uses. Canopy trees must be sited a minimum of 20 feet from all proposed structures. Under story and shrub plantings may be used to the easement line.
 - d. Split rail fencing or comparable fence and permanent forest conservation signage will be required along lots 15, 21-25, and 26-31 and must be shown on the final forest conservation plan.
- 5) Prior to certification of the preliminary plan, the plan drawing must be amended to comply with Binding Element 13 of Local Map Amendment G-836. Specifically, the reforestation area on proposed Parcel B must be reconfigured to conform to the reforestation area shown on the Preliminary Forest Conservation Plan dated July 13, 2006.
 - 6) At time of site plan approval, noise mitigation measures must be provided on the plan such that all yard areas meet the 60 dBA L_{dn} exterior noise guidelines and all dwelling units meet the 45 dBA L_{dn} interior noise guidelines.
 - 7) No clearing, grading or recording of plats is permitted prior to certified site plan approval.
 - 8) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and other improvements will be determined at site plan approval. Final number of MPDUs per Condition 1 will be determined at site plan approval.
 - 9) The Applicant must comply with the conditions of the DPWT letter dated June 15, 2007, unless otherwise amended.
 - 10) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated June 4, 2007, unless otherwise amended.
 - 11) The Applicant must dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Master Plan unless otherwise designated on the preliminary plan.
 - 12) The Applicant must construct all road improvements within the rights-of-way shown on the approved preliminary plan to the full width mandated by the

master plan and to the design standards imposed by all applicable road codes, unless otherwise designated on the preliminary plan. All road construction must be complete and open to traffic prior to issuance of the 16th building permit.

- 13) The Applicant must provide access and improvements as required by DPWT prior to recordation of plat(s).
- 14) The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant must provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
- 15) The record plat must have the following note: "The land contained hereon is within an approved planned development and subdivision or resubdivision is not permitted after the property is developed."
- 16) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 17) The record plat must show a 20-foot rear building restriction line on lots 13-15, 21-25, and 26-31, unless otherwise specified on the approved site plan.
- 18) The record plat must reflect a public use and access easement over all private streets and adjacent sidewalks.
- 19) The record plat must reflect a Category I Conservation Easement over all areas of environmental/stream valley buffer and forest conservation. Prior to plat recordation, M-NCPPC staff must approve any amended language to easements or agreements.
- 20) The record plat must show other necessary easements.
- 21) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the master plan.*

The Aspen Hill Master Plan makes specific recommendations for the Subject Property, including consolidation of parcels to facilitate an internal road network that would minimize development impacts on the environmentally sensitive Bel Pre Creek. The proposed Preliminary Plan is substantially consistent with the recommended road network and preserves the possibility of future extensions of the proposed road network. Although the Master Plan recommends a primary road for the first block of Road C between Homecrest Road and Road B, the Master Plan states that the alignments shown are for illustrative purposes only and that final design will be determined at the time of subdivision review. Because the distance between Homecrest Road and Road B is too short to provide a safe transition between a primary street on the first block and a secondary street on the remainder of Road C, the Preliminary Plan proposes Road C as a secondary street along its entire length. The Planning Board finds this to be consistent with the Master Plan because of the statement allowing final design at time of subdivision review and the need to provide a safe road network. A secondary road will adequately serve both proposed and future development.

The proposed subdivision complies with the recommendations adopted in the Aspen Hill Master Plan in that it will create the road network envisioned in the Master Plan and is consistent with the recommendation to rezone the Property from RE-2 to PD-2.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*

According to the traffic study submitted in January 2007, the table below shows the number of peak-hour vehicular trips generated by the proposed land uses during the weekday morning and evening peak periods, 6:30 to 9:30 A.M. and 4:00 to 7:00 P.M.:

Proposed Land Uses	Number of Units	Weekday Peak-Hour Trips	
		Morning	Evening
Single-Family Units	32	30	36
Townhouse Units	6	3	5
House of Worship Expansion	N/A- Generates No Peak-Hour Trips		
Total Vehicular Trips		33	41

In the traffic study, the table below shows the resulting critical lane volume (CLV) values for the existing, background, and the total future traffic conditions. The background traffic condition includes existing traffic plus traffic generated by approved developments.

Intersection	Weekday Peak-Hour	Traffic Condition		
		Existing	Background	Total
Bel Pre Road & Beaverwood Lane	AM	876	915	916
	PM	936	991	993
Bel Pre Road & Homecrest Road	AM	1,252	1,291	1,305
	PM	842	883	901

As noted in the table, the weekday peak-hour Critical Lane Volume analysis concludes that total traffic conditions CLV at all of the study intersections are below the Aspen Hill Policy Area congestion standard of 1,500.

Therefore, the Planning Board finds that proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. Access and public facilities will be adequate to support the proposed lots and uses. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the PD-2 zone as specified in the Zoning Ordinance and on the approved development plan. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. In addition, the number of detached and attached dwelling units meets the requirements of the zone. Specifically, the standards of the PD-2 zone require that at least 35% of the dwelling units be one family detached, and at least 35% of the dwelling units be one family attached or townhouses; the Preliminary Plan proposes 53% one-family detached units and 47% one family attached and townhouse units. Further, the Preliminary Plan provides 46% green area, as required by a binding element of the Local Map Amendment approval, which exceeds the requirement for 30% green area required by the Zoning Ordinance. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

The approved NRI/FSD shows 9.62 acres of forest, but the conceptual preliminary forest conservation plan submitted at the time of rezoning, and further refined as part of the Preliminary Plan, shows 8.97 acres of forest. Although the more conservative figure of 9.62 acres was used for the forest conservation plan worksheet, this difference must be reconciled before the final forest conservation plan is submitted.

This plan proposes to remove 5.62 acres of forest as part of the development. The remaining four acres of forest will be retained and placed in Category I easements. In order to meet planting requirements, 0.61 acres of reforestation are required. The Applicant has proposed 0.73 acres of onsite planting, as required by binding element 13 of the Local Map Amendment, and an additional 0.31 acres of offsite planting.

As stated in Section 22A-12(f)(2)(B) of the Forest Conservation Law, "In a planned development or a site developed using a cluster or other optional method in a one-family residential zone, on-site forest retention must be equal to the applicable conservation threshold in subsection (a)." For this Property, the conservation threshold is 20%, or 3.2 acres. This Property meets this requirement by retaining four acres of forest.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved a stormwater management concept for the project on June 4, 2007, which includes: on-site channel protection measures via a dry pond and flow dispersion; on-site water quality control via sand filters, bio filters, a proprietary filter with structural pretreatment, and nonstructural methods; and onsite recharge via nonstructural methods including dry wells and recharge trenches.

6. *Issues raised at the public hearing have been appropriately addressed.*

Citizens who submitted written and oral testimony to the Planning Board at the public hearing raised the following issues for the Board's consideration:

- a) The proposed reforestation area adjacent to Homecrest Road shown on the preliminary plan has been reduced in width from 226 feet to 200 feet, as compared to the configuration shown on the development plan that was a part of Local Map Amendment application G-836.

- b) Proposed houses along Homecrest Road are shown closer to the street than was shown on the development plan that was a part of Local Map Amendment application G-836.

With respect to issue a) above, the Planning Board finds that Condition 5 of this resolution states:

Prior to certification of the preliminary plan, the plan drawing must be amended to comply with Binding Element 13 of Local Map Amendment G-836. Specifically, the reforestation area on proposed Parcel B must be reconfigured to conform to the reforestation area shown on the Preliminary Forest Conservation Plan dated July 13, 2006.

This condition requires that the reforestation area be returned to the configuration shown at the time of the local map amendment approval, and addresses this issue.

With respect to issue b) above, the Planning Board finds that building locations will be determined at the time of site plan approval and are not determined by the preliminary plan.

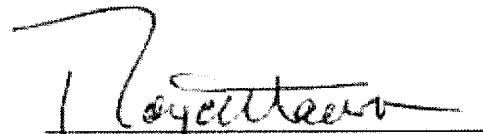
BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be; and

BE IT FURTHER RESOLVED, that the date of this Resolution is _____ (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

At its regular meeting held on Thursday September 20, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Bryant, seconded by Vice Chair Robinson, with Chairman Hanson, Vice Chair Robinson, and Commissioner Bryant present and voting in favor. This Resolution constitutes the final decision of the Planning Board, and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan No. 120070490, Layhill Overlook.



Royce Hanson, Chairman
Montgomery County Planning Board

APPENDIX E: Citizen Correspondence

14450 Homecrest Road
Silver Spring, Maryland

June 27, 2008

Elza Hisel-McCoy, Senior Planner
Development Review Division
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Layhill Overlook

Site Plan No. 820080160

Preliminary Plan Amendment No. 1-20070490-A

Dear Elza Hisel-McCoy, Senior Planner:

Below are 3 groups of comments regarding the site plan submitted in May 2008.

Positives:

1. A long-standing drafting error, undetected until this past winter, has been corrected. Now the accurate locations of properties on the west side of Homecrest Road are shown in relationship to the proposed houses. The developer has subsequently moved the proposed houses off the northwest corner of Big Bear Terrace and Homecrest Road. This restores the promise he made to us at a Park and Planning meeting in early summer of 2006.

In that meeting, which included Carlton Gilbert of P & P and community members, Mr. Kirby proposed to locate the reforested area across from the Andrews property so that there would be no houses directly in front of their home. The amended plan accomplishes this.

2. Alien invasive plant species have been replaced with beneficial native species in the landscape plan.

Concerns and suggestions:

1. Set backs along Homecrest Road are less than what is on the Development Plan and what were reiterated in the County Council Opinion, Oct. 31, 2006, pg. 16. The houses "...have setbacks from the face of curb varying from 56 to 80 feet." Measurements, by my ruler, going from Bel Pre intersection north up Homecrest Road, appear close to

54, 54, 71, 71, 77 and 81 feet on the Development Plan, but
48, 45, 60, 78, 75 and 71 feet on the Site Plan.

2. The "Development Program" (Preliminary Plan Amend.) "...may occur in any order..." We do not want to see lot 5 graded and left barren for an undetermined time awaiting homebuyers. As soon as soil is disturbed a cover planting must be seed to keep soil dust from blowing in the wind and to check water erosion. Before the first house is finished, reforestation should have begun on Parcel B. This needs to be a binding element.

3. Loss of the landscaping along Bel Pre Rd that was shown on the Development Plan and affirmed in the County Council Opinion, Oct. 31, 2006 pg.8, "HOA or Vedanta Center to maintain landscaping along Bel Pre Road in first 20 feet north of right-of-way."

A suggestion that would also ease the problem of overhead utility wires for the street trees and add back some landscaping: Plant "sets" of street trees. That is, where each street tree is presently shown on the south side of the sidewalk, plant a second one just opposite to it, on the north side of the sidewalk. This has been done very effectively with London Plane trees (dry land variety of sycamore tree) at the 1401 – 1449 block of Rockville Pike. Each tree has grown gracefully up, and branched more away from its twin tree, creating a natural open area for the low utility wires between them. No pruning for overhead utility wires is apparent. (The variety planted was responsive to this close planting growth pattern. Whether or not the proposed red maples would give the same results is unknown to me.)

4. Street trees inside the development:

- a. Should be closer together
- b. Should be major canopy trees wherever possible
- c. Ash is not recommended, according to Carol Bergmann, Forest Ecologist, M-NCPPC. If the emerald ash borer is found all trees within a mile or so radius of the find must be removed. The borer is spreading in this area, so if green ash is planted, it may have to be removed.
- d. Should be planted at the duplex sites also.

Questions:

1. What size is a "larger caliper" tree? (Preliminary Plan Amendment, General Rules No. 35) Larger than what? What size is "standard caliper"?
2. Headwaters pollution/erosion prevention: What special precautions are going to be put in place for the storm water presently being dumped from the Aspen Hill Clubs' parking? (Just north of Unit 22. Presently the water dumps at the northern border of the site. With construction of Big Bear Terrace and the houses, the water will be piped and dumped right at the top of a steep draw, close to the headwaters of the creek. This looks potentially bad, erosion and pollution for the creek. This location needs more attention.

Thank you for the opportunity to voice my and my family's concerns.

Linda Andrews Nishioka

Hisel-McCoy, Elza

From: susan and max [sumax@rcn.com]
Sent: Thursday, June 26, 2008 9:38 AM
To: Hisel-McCoy, Elza
Subject: Re: 120070490 layhill overlook

Thank you very much. Regards, Max

----- Original Message -----

From: Hisel-McCoy, Elza
To: susan and max
Sent: Thursday, June 26, 2008 9:31 AM
Subject: RE: 120070490 layhill overlook

Mr. Bronstein,

I did receive your e-mail and will include it in the staff report and file. Thanks very much for commenting. I will send you a response early next week.

Regards,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED-AP
Planner Coordinator
Development Review Division
Montgomery County Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910
301.495.2115 p
301.495.1306 f
elza.hisel-mccoy@mncppc-mc.org
www.mcparkandplanning.org

From: susan and max [mailto:sumax@rcn.com]
Sent: Thursday, June 26, 2008 9:29 AM
To: Hisel-McCoy, Elza
Subject: Re: 120070490 layhill overlook

Dear Mr. Hisel-McCoy,

In a recent phone conversation you told me that the applicant would withdraw their plan to add a 2180 sq ft vertical addition to a Vedanta structure. None of the parties of record have received written notice of this withdrawal.

Additionally, we see no reason for moving homes planned along Bel-Pre Rd. closer to the road, while also removing the 10 foot width of trees which provided a visual and sound buffer between them and Bel-Pre Rd. as shown on the plan of 4/25/08.

You will find on examining the record of this application which goes back several years that the plan as presented on 8/10/06 shows shade trees along almost the full length of the property fronting Bel Pre Rd. This latter plan was the result of many hearings including a number before the Planning Board as well as before the Hearing Examiner. The Planning

Board allowed the developer another chance, following a near denial, to improve the layout of their plan. It then proceeded to the Hearing Examiner and was refined even further as to how structures were situated and what features were to be provided.

It then went to the Council sitting as the District Council & its opinion was given 10/31/06. On page 10 of the opinion, in the last paragraph, reference is made to a green corridor along Bel-Pre Rd. "The Applicant contends that it would satisfy this recommendation by planting trees along its Bel-Pre Rd. frontage"--.

Also, at the top of page 11 of the opinion, line 4, "the District Council would consider it preferable, from the standpoint of both safety and aesthetics, for the Applicant to satisfy the desire expressed by several community members for street trees separating the sidewalk from the road. The District Council would also find such an approach to be more consistent with the Master Plan."

The expressions of the community members referred to pointed out that across Bel-Pre Rd. from the property a 5 foot grassy strip separated the street from an 8 foot wide sidewalk; that nearby Beaverwood Lane with a 25 mile speed limit offered an 11 foot grassy strip between the road and a 4 foot sidewalk. Therefore we are extremely puzzled and chagrined that the decision and clear instructions of the District Council are not being carried out by the Applicant.

We call upon you to bring this to the Applicant's attention for correction. Failure of the Applicant to correct their plan to comply with the District Council's opinion should earn them a denial until they clearly demonstrate compliance.

Furthermore, we ask that you notify in writing all parties of record as to what is being done to rectify these failures, bearing in mind that while you have told me in our phone conversation that a hearing is contemplated in this case for July 17, 2008, we can certainly wait until this plan is corrected. We are not interested in speed, but we are interested in a development that is done correctly and that will be a source of pride for the neighborhood, and a credit to the developer.

Sincerely,

Max Bronstein
2925 Birchtree Lane
Silver Spring, Md. 20906
301 460 3117
cell: 240 463 5233
sumax@rcn.com

----- Original Message -----

From: [Hisel-McCoy, Elza](#)
To: [susan and max](#)
Sent: Thursday, June 26, 2008 9:22 AM
Subject: RE: 120070490 layhill overlook

hello

Elza Hisel-McCoy, Assoc. AIA, LEED-AP
Planner Coordinator
Development Review Division
Montgomery County Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910
301.495.2115 p
301.495.1306 f

From: susan and max [mailto:sumax@rcn.com]
Sent: Thursday, May 29, 2008 11:45 AM
To: Hisel-McCoy, Elza
Subject: 120070490 layhill overlook

I am a party of record in this case from the time it was first introduced & as it went through the process all the way through the Hearing Examiner & including testimony before the Council when the zoning change was approved with conditions. I noticed in the paperwork recently received on this case that an amendment to the Preliminary Plan proposes to add a 2180 sf vertical expansion to the existing residential structure. Please be advised that the residential structure there is a small brick house that was there when Vedanta acquired the property. They have since built a very large L-shaped structure there.

Please inform me as to whether the latter is also considered a residential structure. I do not believe a 2180 sf vertical addition can be placed on the small brick residence there. If we now have there 2 residential structures, some adjustment in the number of allowable homes must be made. Also, a clarification must be forthcoming regarding the # of residents there will be in the huge residence being proposed if a 2180sf addition is included. Thank you for any help you furnish. (I left 2 phone messages on 5/28/08)

Max Bronstein; External Affairs Chair, Strathmore Bel-Pre Civic Association
2925 Birchtree Lane Silver Spring, Md. 20906
301 460-3117 cell: 240 463 5233

APPENDIX F: Agency Approval Letters



MEMORANDUM

TO: Elza Hisel-McCoy, Development Review

VIA: Stephen Federline, Supervisor, Environmental Planning

FROM: Amy Lindsey, Environmental Planning

DATE: July 1, 2008

SUBJECT: Site Plan 820080160
Layhill Overlook Subdivision

The subject plan has been reviewed by Environmental Planning to determine if it meets the requirements of Chapter 22A of the Montgomery County Code (Forest Conservation Law), the Environmental Guidelines, Noise Guidelines, and other related requirements. The following determination has been made:

RECOMMENDATION: Approval subject to the following conditions:

1. The proposed development shall comply with the staff recommended conditions of approval for the final forest conservation plan, as per the letter dated 7/1/2008. Conditions include, but are not limited to:
 - a. The applicant must revise the final forest conservation plan to remove all areas of landscaping from Category I conservation easements.
 - b. Split rail fencing and permanent forest conservation signage will be required along lots 12, 14-16, and 23-24.
 - c. Applicant shall place a Category I conservation easement over environmental buffers and all planted forests.
2. Compliance with MNCPPC noise compatibility guidelines:
 - a. The builder must construct noise barriers in the locations shown and by the performance requirements described in the technical analysis prepared by Staiano Engineering, Inc, dated 4/30/2008.
 - b. At time of building permit, an acoustical engineer must certify through building shell analysis that that interior noise levels will not exceed 45 DBA L_{DN} .
 - c. The builder must construct the buildings in accord with these acoustical recommendations, with any changes affecting acoustical performance approved by the acoustical engineer, with copy to MNCPPC staff.
 - d. The certification and builder acceptance letter must be provided to MNCPPC Environmental Planning staff before building permits are approved.

BACKGROUND

The 16.02-acre property is located in Montgomery County on Bel Pre Road at Homecrest Road in the Aspen Hill Master Plan area. Currently, there are three lots (lots 3, 4, and 5) with three single-family residences on the property. This preliminary plan proposes removing two existing residences and constructing 20 new single-family residences, 6 town houses, 12 duplexes, and a worship center. Surrounding and confronting uses are a mix of residential and commercial uses, including the Aspen Hill Racquet Club. An NRI/FSD was approved by staff on 6/06/2005. The property is within the Northwest Branch watershed; a Use IV watershed.

The property includes 9.62 acres of existing forest and 3.2 acres of environmental buffers. There are no floodplains or wetlands on the subject site but there is a stream that begins and runs east-west through the forested area. The forest is concentrated on lots 3 and 4 and is contiguous, though divided into two different stands. Lot 5 is predominantly lawn and fallow field, with some landscape trees. There are no slopes greater than 15 percent outside of the environmental buffers and no highly erodible soils.

DISCUSSION

The site is subject to the Forest Conservation Law, and a conceptual Preliminary Forest Conservation Plan was submitted with Zoning Case G-836. This plan was initially reviewed by the Planning Board on 10/20/2005. The Hearing Examiner subsequently required changes to the Development Plan and associated conceptual Preliminary Forest Conservation Plan, which the Planning Board reviewed on July 27, 2006. Many of the issues surrounding the Preliminary Forest Conservation Plan occur because of the binding elements set at time of rezoning. The Planning Board's responsibility is to determine if the environmental guidelines, forest conservation requirements, and binding elements set at rezoning are satisfied.

Environmental Guidelines

The applicant submitted a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) to M-NCPPC for review and approval. Environmental Planning staff approved NRI/FSD 4200052510 on August 29, 2007. The approved NRI/FSD indicates 8.90 acres of existing forest, 3.42 acres of environmental buffers, and no wetlands or floodplains. The only slopes greater than 15 percent area located within the environmental buffers. A first order tributary of Bel Pre Creek originates and travels east-west across the middle of the property. The environmental buffers are forested except for approximately 0.2-acres, which will be forested per the environmental guidelines. The only encroachment into the environmental buffers is for necessary stormwater management conveyances. There are no stormwater management facilities or drywells proposed for the environmental buffer. All environmental buffers will be included in a Category I forest conservation easement.

Forest Conservation

This plan proposes to remove 4.87 acres of forest as part of the development. The remaining 4.05 acres of forest will be retained and placed in Category I easements. 0.38 acres of reforestation are required to meet planting requirements, as per Sec. 22A-12(c). The applicant has proposed 0.77 acres of onsite planting and 0.31 acres of offsite planting. One of the planting areas, Area 'A' has an entrance planting incorporated into the conservation area. A maintained landscape is not allowed as part of a Category I conservation easement and either the easement are must be modified or the landscaping removed.

Minimum Retention

As per Sec. 22A-12(f)(2)(B), *"In a planned development or a site developed using a cluster or other optional method in a one-family residential zone, on-site forest retention must be equal the applicable conservation threshold in subsection (a).*

For this property, the conservation threshold is 20%, or 3.2 acres. This property meets this requirement by retaining 4.05 acres.

Binding Elements

As per zoning case G-836, Aspen Hill Manor, binding element 13 reads *"Applicant to place Category I Conservation Easement on areas shown on the Preliminary Forest Conservation Plan dated July 13, 2006 for on-site reforestation and forest retention totaling a minimum of 4.73 acres."* The current forest conservation plan proposes to retain 4.05 acres and plant 0.77, which meets this requirement.

The planting areas proposed by this plan include a 0.68-acre planting area along Homecrest Lane. Ordinarily, this planting area would be unacceptable as it is isolated and surrounded by houses. However, this area was required as a planting area through the rezoning process.

Other proposed planting areas are in close proximity (10 feet) to residential development. This closeness sets up the potential for future conflicts between trees and houses. For this reason, staff recommends that canopy trees not be planted within 20' of any proposed structures.

Noise

A noise analysis was conducted for the subject property and revealed that the proposed residential units nearest Bel Pre Road will be impacted by current and future noise generated from vehicle traffic along Bel Pre Road. The noise analysis indicates that unmitigated noise levels will range from 60 and 65 dBA Ldn for the units adjacent to Bel Pre Road, which is greater than the levels recommended in the Noise Guidelines. Partially in answer to this, units 1-6 now face Bel Pre Road, so that the usable outdoor space is not directly adjacent to the road. These units are rear loaded and will meet

interior noise guidelines by using architectural treatments.

Structural noise barriers will still be needed in three locations in order to meet the noise guidelines. One sound wall is along Homecrest Road at units 5 and 6, so that the rear yards of these units, and other adjacent ones, are protected. The second wall shields the rear yards of lots 33 and 34. The final sound wall is along the rear of lots 29-32 and protects the associated rear patio spaces. The upper stories of the residential units will rely entirely upon acoustical treatment to meet the indoor noise guideline of 45 dBA Ldn. This issue will be further addressed at site plan.

CONCLUSIONS

While the proposed plan satisfies the requirements of Chapter 22A Forest Conservation Law, the plan could be better configured. Ideally, all forest conservation requirements could be met by retaining existing forest contiguously. However, this was not achievable because of constraints necessary to achieve other design objectives that were codified at rezoning.

Hisel-McCoy, Elza

From: Navid, Sarah [Sarah.Navid@montgomerycountymd.gov]
Sent: Wednesday, July 02, 2008 8:33 AM
To: L. Nathaniel Ballard; Hisel-McCoy, Elza
Cc: Farhadi, Sam; jkirby@kirbydevelopment.com; swallace@linowes-law.com
Subject: RE: Layhill Overlook - Site Plan 820080160

Follow Up Flag: Follow up
Flag Status: Flagged

Nat,

Because this is designed as part of the "public" intersection I think it will work better for the future residents, particularly those in Lot 21, if this south leg is 20' wide. This allows for two way traffic in and out on all legs of the intersection. Otherwise we are going to risk having bottlenecks in the intersection. It looks like you have the space to provide this extra width.

I didn't realize the curb ramp on Road B was for access so it can be left in.

Sarah Navid

Department of Permitting Services
255 Rockville Pike, 2nd floor
Rockville, MD 20852
t 240-777-6304

-----Original Message-----

From: L. Nathaniel Ballard [mailto:Nathaniel.Ballard@phra.com]
Sent: Tuesday, July 01, 2008 4:26 PM
To: Navid, Sarah; elza.hisel-mccoy@mncppc-mc.org
Cc: Farhadi, Sam; jkirby@kirbydevelopment.com; swallace@linowes-law.com
Subject: RE: Layhill Overlook - Site Plan 820080160

Sarah- I have a question about 2 of your comments (#1 & 5). We've provided the 16' paving width for a standard alley as per Mont. Co. standard MC-200.01. Why do we need to provide the additional pavement? The Fire Department has reviewed our Fire Department Access Plan and is not requiring these to be designed for their access.

The curb ramp on Road B at the multi-age playground is provided as access to the bio-retention facility located behind the Vedanta Center expansion for maintenance purposes as requested by the Water Resources Section of DPS during their review of the Stormwater Concept Plan.

Thanks,
Nat Ballard

From: Navid, Sarah [mailto:Sarah.Navid@montgomerycountymd.gov]
Sent: Tuesday, July 01, 2008 2:17 PM
To: elza.hisel-mccoy@mncppc-mc.org
Cc: L. Nathaniel Ballard; Farhadi, Sam; jkirby@kirbydevelopment.com; swallace@linowes-law.com
Subject: Layhill Overlook - Site Plan 820080160

Elza,

I have the following comments to add regarding the proposed site plan dated May 6, 2008:

- 1) The "Parcel I" Road should be 20 feet wide in the "continuation" section of Road B (e.g. adjacent to Lot 8).
- 2) The handicapped ramps should be pulled as close to the intersections as possible (e.g. they should be perpendicular to the curb return radii not in the tangent sections).
- 3) The "painted" crosswalks should be removed from Public Roads A and B and Big Bear Terrace.
- 4) The curb returns at Homecrest Road should be 25' rather than 30'.
- 5) Remove the curb ramp on Road B at the multi-age playground.
- 6) The applicant will be required to provide DPS with a storm drain study at the permitting and plan review stage showing that the existing downstream public storm drain system is adequate to accommodate this site development; otherwise improvements and/or possible monetary contributions for improvements will be required.

Items 1 – 5 can be addressed at certified site plan. Item 6 can be addressed at permitting.

Sarah Navid

Department of Permitting Services
Right of way Permitting and Plan Review Section
255 Rockville Pike, 2nd floor
Rockville, MD 20852
t 240-777-6304

Hisel-McCoy, Elza

From: Farhadi, Sam [Sam.Farhadi@montgomerycountymd.gov]
Sent: Tuesday, July 01, 2008 8:22 AM
To: Hisel-McCoy, Elza; L. Nathaniel Ballard
Cc: Jeff Kirby; Wallace, Scott C. - SCW; Navid, Sarah; Braunstein, Neil
Subject: RE: Layhill Overlook- Preliminary Plan Amendment 120070490-A

Hi Elza,

If that means prior to approval of site plan they have to be finalized, then, yes it is OK.

Sam

-----Original Message-----

From: Hisel-McCoy, Elza [mailto:Elza.McMcoy-Hisel@mncppc-mc.org]
Sent: Monday, June 30, 2008 3:56 PM
To: Farhadi, Sam; L. Nathaniel Ballard
Cc: Jeff Kirby; Wallace, Scott C. - SCW; Navid, Sarah; Braunstein, Neil
Subject: RE: Layhill Overlook- Preliminary Plan Amendment 120070490-A

Sam,

Thanks for the quick response. FYI, the Preliminary Plan amendment and the Site Plan are going concurrently. What I would suggest is that we add a condition to the report requiring final details of the intersection to be worked out by Certified Site Plan. OK by you? Thanks again for the quick turnaround.

Sincerely,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED-AP
Planner Coordinator
Development Review Division
Montgomery County Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910
301.495.2115 p
301.495.1306 f
elza.hisel-mccoy@mncppc-mc.org
www.mcparkandplanning.org

From: Farhadi, Sam [mailto:Sam.Farhadi@montgomerycountymd.gov]
Sent: Monday, June 30, 2008 2:06 PM
To: L. Nathaniel Ballard
Cc: Hisel-McCoy, Elza; Jeff Kirby; Wallace, Scott C. - SCW; Navid, Sarah
Subject: RE: Layhill Overlook- Preliminary Plan Amendment 120070490-A

Hello All,

The recent preliminary plans we received (signed on 5/7/08) shows the cul-de-sac for road "B" is eliminated and instead it becomes private beyond Road "A". We are in general agreement with this revision (details to be finalized at site plan stage).

Sam

-----Original Message-----

From: L. Nathaniel Ballard [mailto:Nathaniel.Ballard@phra.com]

Sent: Wednesday, June 25, 2008 10:56 AM

To: Farhadi, Sam

Cc: elza.hisel-mccoy@mncppc-mc.org; Jeff Kirby

Subject: Layhill Overlook- Preliminary Plan Amendment 120070490-A

Sam- We had submitted plans for your review on or about May 8th for the Preliminary Plan Amendment for Layhill Overlook (120070490-A). Elza has asked that we follow up with you and ask that you provide either an email approval or letter with additional conditions so that we may proceed with this application and the site plan application to Planning Board in July.

Thanks,
Nat Ballard

L. Nathaniel Ballard

Project Manager

Patton Harris Rust & Associates, pc

8818 Centre Park Drive

Columbia, Maryland 21045

P 410.997.8900

F 410.997.9282

www.phra.com



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett
County Executive

Richard Y. Nelson, Jr.
Director

July 1, 2008

Mr. Elza Hisel-McCoy
M-NCPPC - Development Review Division
8787 Georgia Ave.
Silver Spring, MD 20910

Re: Layhill Overlook – Site Plan #820080160

Dear Mr. Hisel-McCoy:

I understand that the above project is scheduled to be heard within the next month by the Planning Board. The developer of the project has provided the Department of Housing and Community Affairs (DHCA) with revised plans and a summary of the plan revisions in response to comments of the Development Review Committee (DRC). DHCA has the following additional comments:

1. There are some typos on the cover sheet in the Proposed Lot and Parcel Table. The lot numbers for some of the townhouse MPDUs are incorrectly reported (although they are correct on the plan itself).
2. The revised MPDU construction phasing provided in the Development Program is adequate as a general guideline. DHCA will need further detail in the construction schedule when the developer submits the MPDU Agreement to Build.
3. DHCA will need floor plans for the MPDUs as soon as they are available.

If you need further information, please contact me at 240-777-3786.

Sincerely,

Lisa S. Schwartz
Senior Planning Specialist

cc: Jeffrey C. Kirby, Aspen Hill Estates, LLC
Nat Ballard, Patton Harris Rust & Associates
Joseph T. Giloley, DHCA
Christopher J. Anderson, DHCA

S:\Files\FY2008\Housing\MPDU\Lisa Schwartz\Layhill Overlook Letter 7-1-08.doc

Division of Housing and Code Enforcement

Code Enforcement
FAX 240-777-3701

Moderately Priced
Dwelling Unit
FAX 240-777-3709

Housing Development
and Loan Programs
FAX 240-777-3691

Landlord-Tenant Affairs
FAX 240-777-3691