



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

Staff Report: Preliminary Plan No. 120070730: Mainhart Property
Site Plan No. 820070250: Mainhart Property

ITEM #: _____

MCPB HEARING DATE: November 12, 2009

REPORT DATE: October 29, 2009



TO: Montgomery County Planning Board

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APPLICATION DESCRIPTION: Proposal to create 32 lots for 32 townhouse dwelling units including 12.5 percent MPDUs; 3.28 acres; RT-10 zone; in the southwest quadrant of the intersection of Washington Grove Lane and Mid-County Highway; Gaithersburg Vicinity Master Plan.

APPLICANT: Magruder Reed at Woodward Hall LLC

FILING DATE: Preliminary Plan: May 16, 2007
 Site Plan: May 18, 2007

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY: The Applicant proposes to subdivide the property into 32 lots for 32 townhouse dwellings including 12.5 percent MPDUs. The townhouses will be built in five separate sticks, arranged around a looped private street, which will provide access to the dwellings from Washington Grove Lane. Pedestrian access will be provided by sidewalks on Mid-County highway and Washington Grove Lane, proposed sidewalks on the proposed private street, and a pedestrian path to Woodward's Store Road. A stormwater management parcel, private street parcel, and three open space parcels are also proposed. A ten-foot-wide strip measuring 5,038 square feet will be dedicated for the right-of-way for Woodward's Store Road.

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SECTION 1: CONTEXT AND PROPOSAL

SITE DESCRIPTION

Vicinity

The subject property is located in the northwest quadrant of the intersection of Washington Grove Lane and Mid-County Highway. The subject property fronts on those streets to the southeast and northeast respectively, and fronts on Woodward's Store Road to the west. Surrounding properties to the north are developed with one-family detached dwellings in the R-60 zone. Surrounding properties to the south and west are developed with one-family detached dwellings on unplatted parcels in the R-90/TDR zone (no TDRs used in development). Properties to the east are occupied by multi-family dwellings in the R-30 zone and townhouses in the RT-10 zone.

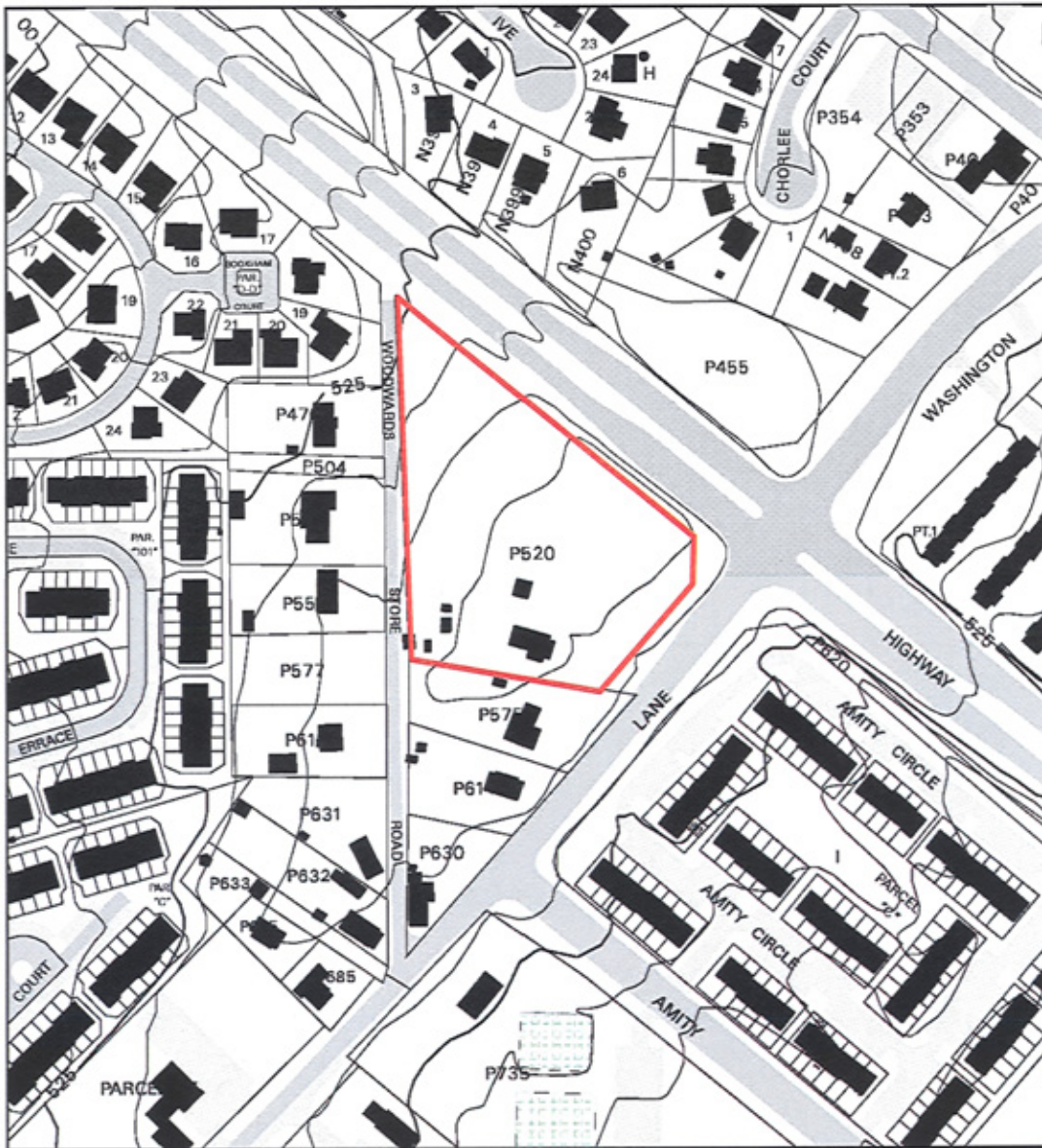


Figure 1: Vicinity Map

Site Analysis

The subject property, shown in Figures 1 and 2, is an unplatted parcel measuring approximately 3.3 acres in area. The zoning on the property is RT-10. Previously existing structures on the property have been removed to accommodate the proposed subdivision. The site is now unimproved and is characterized by turf and field grass, trees, and other landscaping.

A watershed divide bisects the property. The western portion of the subject property is located within the middle Great Seneca Creek watershed and the eastern portion of the property is located within the Upper Rock Creek watershed. There are no streams, wetlands, forests or associated buffers on this site.



Figure 2: Aerial Photo with approximate site boundary outlined in yellow

PROJECT DESCRIPTION

Previous Approvals

The County Council approved local map amendment G-840 in 2006 to change the zoning of the subject property from R-90/TDR to RT-10. The approval included certain binding elements on the schematic development plan, one of which required that a fence be erected to eliminate pedestrian cross-traffic between the proposed development and Woodward's Store Road (Binding Element No. 5). Staff raised a concern to the Applicant that this binding element and the resultant fence may prevent the Planning Board from making the required finding that pedestrian access to the site is adequate, safe, and efficient. Consequently, the Applicant sought, and in 2009 received, approval of a schematic development plan amendment that removed this binding element. Removal of the binding element allowed the provision of a pedestrian connection to Woodward's Store Road that was not shown on earlier versions of the submitted preliminary and site plans.

Approval of the schematic development plan amendment, which reflects the deletion of former Binding Element No. 5, includes the addition of "Commitments to be Implemented" at Site Plan. The commitments are:

1. Subject to Planning Board review at the time of site plan, the site plan will reflect that:
 - a) The townhomes will be oriented away from Woodward's Store Road; and
 - b) Landscape and screening improvements will be added to provide an appropriate buffer between the project and the single-family neighbors on Woodward's Store Road.
2. The Applicant will coordinate with the adjacent neighbors on Woodward's Store Road before and during the site plan review process to review the project and to collaborate regarding the landscape plan, and
3. The Applicant will pursue with the Montgomery County Department of Transportation (MCDOT) the feasibility of installing no parking signs along the Woodward's Store Road right-of-way to deter the future residents and guests of the project from parking off-site.

Proposal

The Applicant proposes to subdivide the property into 32 lots for 32 townhouse dwellings. Four of the townhouses are proposed to be moderately priced dwelling units (MPDUs), in compliance with County regulations that require that at least 12.5% of the dwellings be MPDUs. The townhouses will be built in five sticks, four of which will contain six dwelling units and one of which will contain eight dwelling units. The townhouse buildings will be arranged around a looped private street, which will provide access to the dwellings from Washington Grove Lane. Pedestrian access will be provided by sidewalks on Mid-County Highway and Washington Grove Lane and proposed sidewalks on the proposed private street. A pedestrian path will also provide access to the site from Woodward's Store Road, to the west of the site. A stormwater management parcel, private street parcel, and three open space parcels are also proposed. A ten-foot-wide strip measuring 5,038 square feet will be dedicated for the right-of-way of Woodward's Store Road.

The main open space area is located along the southern property line where several large trees will be protected under a Category II Forest Conservation Easement. This area functions as a gathering area for the residents with some opportunities for recreation, and it also acts as a buffer between the subject site and the properties to the south with one-family detached houses. The recreation facilities provided consist of seating areas, natural areas and a pedestrian system located onsite; and other offsite facilities located at Washington Square Park, which is approximately 400 feet away.



Figure 3: Illustrative Plan

Along Mid-County Highway, a noise attenuation fence will provide noise reduction for the future residents. The landscaping proposed will screen this fence and create a buffer between the subject site and the adjoining properties, add a traditional foundation planting area for the buildings, and beautify the open spaces proposed.

The Applicant has committed through binding elements and “Commitments to be Implemented at Site Plan” to minimize any adverse impact from the proposed townhouse community upon the adjacent single-family homes on Woodward's Store Road. This was accomplished through building orientation, the landscaping proposed, and additional parking provided onsite.

Parking will be provided for residents in garages and on driveways, and for visitors in 14 surface parking spaces along the private street. The proposal meets the parking requirements by providing 2-car garages for 16 units and 1-car garage for 16 units in addition to 1-car pad space on the driveway of all the units, except units 6 and 26. This yields a total of 78 parking spaces. Staff has

expressed concerns that the 2-car garages are shown with a 17-foot width, which is minimal for 2 cars to park. Even though the code only requires perpendicular spaces to be 8.5 feet wide, having 2-car garages that are only 17 feet in width is a problem. However, because these units also provide a driveway parking space, which can be used in lieu of one of the garage spaces, the units effectively provide parking for 2 cars for each unit. Staff considers the parking requirements to be met and in accordance with the Zoning Ordinance.

COMMUNITY OUTREACH

The Applicant has met all proper signage, noticing, and pre-submission meeting requirements. The Applicant conducted several meetings with adjacent property owners, both during the rezoning process and during the preliminary plan and site plan approval process. Most recently, the Applicant conducted meetings on June 11, 2008, and on March 18, 2009, which Staff attended, to discuss removal of the binding element related to pedestrian access to Woodward's Store Road. Residents of Woodward's Store Road raised a concern that visitors to the proposed townhouses might park on Woodward's Store Road and use the pedestrian connection to reach their destinations within the proposed development. In response, the Applicant suggested that no-parking signs or permit-only-parking signs could be installed on Woodward's Store Road if it becomes necessary. Those in attendance were satisfied with this suggestion. Written notice was also given by the Applicant and Staff of the plan submittal and the public hearing date. As of the date of this report, no citizen letters have been received.

SECTION 2: PRELIMINARY PLAN REVIEW

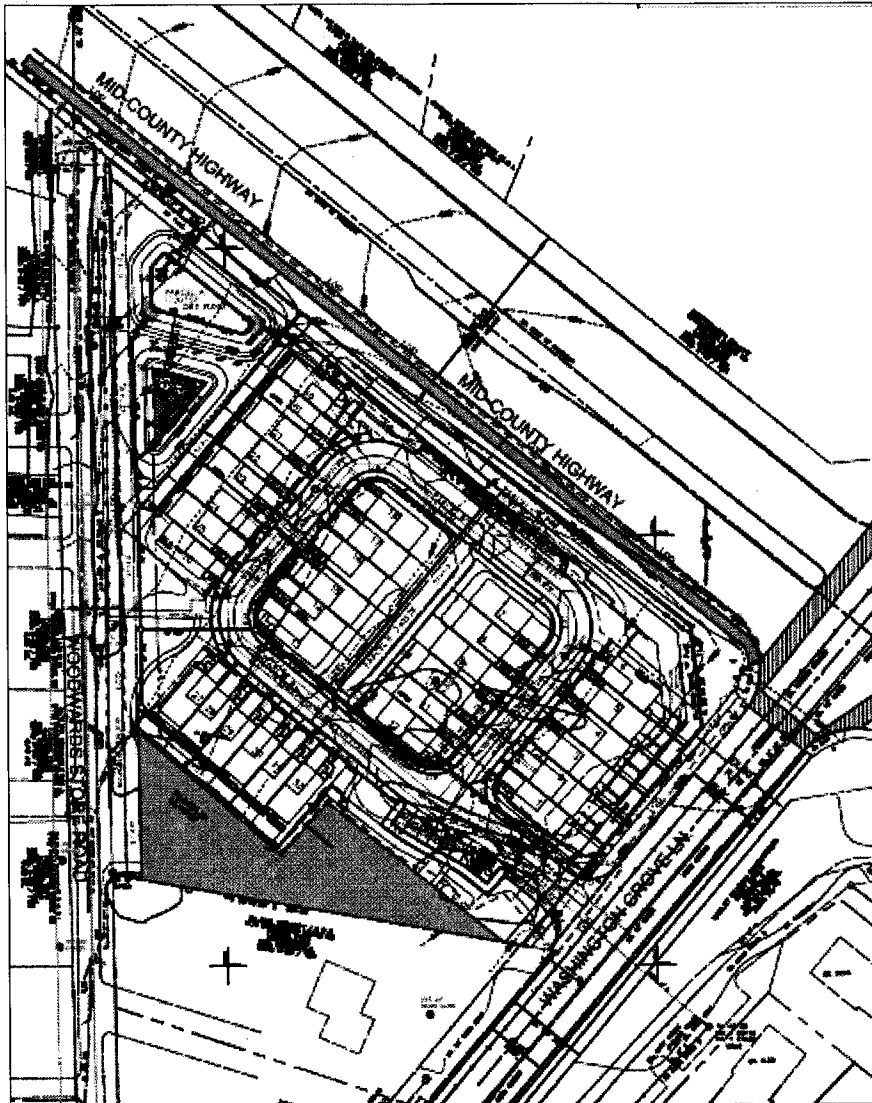


Figure 4: Preliminary Plan

ANAYSIS AND FINDINGS

Master Plan Compliance

The subject property is located in the area covered by the Gaithersburg Vicinity Master Plan, approved and adopted in January 1985, and amended in 1988 and in 1990. The subject site is not specifically mentioned in the text of the Master Plan, but it is included as part of "Analysis Area 4" in Table 3 on page 46, and it is depicted in the map on the preceding page of the Master Plan. The Master Plan recommended the R-90/TDR-5 Zone for Analysis Area 4, which at the time (i.e., prior to the construction of Mid-County Highway), was an 8-acre area, including part of what is now Mid-County Highway and land across Mid-County Highway. Given the current size of the property

(3.28 acres), neither the Applicant nor Staff believed that utilizing TDRs was feasible because only one additional unit would be gained. Thus, the Planning Board and County Council found, in Local Map Amendment G-840, that the zone recommended in the Master Plan for the subject site no longer had practical application.

Based on this determination, the zoning was changed to a higher density residential use (from R-90 to RT-10), in support of the goals and objectives of both the General Plan and the Master Plan. The General Plan encourages a pattern of “wedges and corridors” – concentrated development along the urban transportation corridors with low intensity and agricultural uses within the wedges. In order to accomplish the general intent of the wedges and corridors concept, the Master Plan (pages 8-9) incorporates the following purposes and objectives:

- *Residential densities are the highest near the center of the area, closest to 1-270, and lower along the edges of the Planning Area;*
- *Higher density development is channeled to areas of high accessibility by private automobile and public transit; and*
- *New residential communities proposed in the Plan are planned with a variety of housing types with local shopping and educational and recreational facilities.*

The proposed townhouse development is near the center of the area, adjacent to a major roadway, and will provide additional variety in available housing, thus meeting all three objectives. Moreover, the Master Plan, on its first page, lists the objective of:

- *Increasing the County's total housing stock and concurrently providing an appropriate mix of affordable housing.*

The proposed townhouse community, with four MPDUs, will help to achieve that objective in a community where existing developments include one-family detached residences, townhome communities, and apartment. The proposed project and associated RT-10 zoning classification are thus more consistent with the Master Plan goals for housing than the original base zoning recommendation, and are more appropriate given the current density and character of the surrounding area.

Staff, the Planning Board, and the Hearing Examiner all recommended approval of, and the County Council approved, the Local Map Amendment to rezone the property from R-90 to RT-10, based on a project substantially similar to the one currently submitted, noting that circumstances have changed significantly since the Master Plan was adopted in 1985. There is now a major roadway next to the subject site and a mix of residential land uses in the immediate area of the subject site. Thus, developments built since the Master Plan's adoption have made the subject site much more compatible with a higher density townhouse development than it was before.

In addition, the cooperative process used by the Applicant to alter the binding elements and design the project in a way that does not unduly impact adjacent residents on Woodward's Store Road demonstrates compatibility between the proposed project and adjacent development.

Therefore, Staff recommends that the Planning Board find that the application is in substantial conformance with the Master Plan, albeit not its specific zoning recommendation.

Adequate Public Facilities Review

Roads and Transportation Facilities

The proposed subdivision does not generate 30 or more vehicle trips during the morning or evening peak hours. Therefore, the application is not subject to Local Area Transportation Review. The application predated the effective date of the 2007 Growth Policy requirements. Therefore, the application is also not subject to Policy Area Mobility Review.

Vehicular access to the site will be provided by a proposed private street from Washington Grove Lane, which will form a loop within the site. The private street will provide access to individual garages for the townhouse units as well as surface parking for guests. Pedestrian access will be provided by sidewalks on Mid-County Highway and Washington Grove Lane and proposed sidewalks on the proposed private street. A pedestrian path will also provide access to the site from Woodward's Store Road, to the west of the site. A ten-foot-wide strip measuring 5,038 square feet will be dedicated for right-of-way for Woodward's Store Road. No road improvements have been required by MCDOT on Woodward's Store Road because this project does not create vehicular access on that road and because the road does not connect to Mid-County Highway and it provides access to only four lots.

Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed improvements.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The property will be served by public water and public sewer. The application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, schools, 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, and a school facilities payment is not required. Electrical, telecommunications, and natural gas services are also available to serve the subject property.

Environment

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was submitted for the 3.28-acre site and approved by Environmental Planning Staff on March 24, 2009. There are no streams, wetlands, forests, or associated buffers on this site.

Although the site contains no forest, there are 12 trees 24 inches or greater in diameter located on the subject site. These trees range in size from 24 inches up to 60 inches. Seven of these trees are listed in good condition and five are in fair condition.

The preliminary forest conservation plan indicates the removal of eight of the specimen sized trees (larger than 30 inches in diameter) either due to their location within the limits of disturbance (LOD) for construction or because the tree is dead and needs to be removed for safety reasons.

Four of the large trees, including a 60 inch diameter Northern Red Oak (*Quercus rubra*), are being preserved and are proposed to be protected within a 0.3-acre Category II Forest Conservation Easement (FCE). This Category II FCE is located along the southern property line and will act to protect the remaining specimen sized trees and as an open space buffer between this project and the single family residence immediately to the south.

This 3.28-acre project has an overall afforestation requirement of 0.54-acres. The Applicant has proposed to meet this afforestation requirement with a combination of 0.11 acres of on-site Category II FCE and the remaining 0.43 acres proposed to be met at an off-site location, to be determined at the time of Final Forest Conservation Plan (FFCP) approval.

Newly enacted provisions of Natural Resources, Title 5, Section 5-1607 of the Maryland Code require the Applicant to file an application for a variance to remove trees that are 30" DBH and greater or trees that are 75 percent the diameter of the county champion for that species, if a project did not receive approval of a Preliminary Forest Conservation Plan prior to October 1, 2009. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the Applicant is proposing to remove 4 trees greater than 30 inches DBH a variance is required. The Applicant has requested a variance to remove the trees.

Variances to the Forest Conservation Law are granted under the provisions of Section 22A-21. These provisions require the Planning Board to refer a copy of each variance request to the County Arborist in the Montgomery County Department of Environmental Protection (MCDEP) for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. If the County Arborist does not provide a recommendation within 30 days, the recommendation is presumed to be favorable. In this case, the variance request was referred to the Montgomery County Arborist within MCDEP on September 29, 2009. The County Arborist has elected not to review the variance request (see Appendix B). The County Arborist's recommendations for the variance request are, therefore, presumed to be favorable.

The Planning Board must make four findings before granting a variance. Sect. 22A-21(d) of the Forest Conservation Law states that a variance must *not* be granted if granting the request:

1. Will confer on the Applicant a special privilege that would be denied to other Applicants;
2. Is based on conditions or circumstances which are the result of the actions by the Applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Staff recommends that the Planning Board find as follows:

1. The requested variance will not confer on the Applicant any special privileges that would be denied to other Applicants. Two of the four large trees requested to be removed are located interior to the project site and the remaining two are located within the right-of-way of Woodward's Store Road. The trees range in size from 33" DBH up to 55" DBH but are not champion trees or 75% of the DBH of the state champion tree for that species. Even though this is the first variance submitted for Planning Board review, Staff does not envision that this circumstance will be unique. Other applications are pending now. Variances will be necessary in some cases to realize master planned densities and in other cases to remove a

potentially hazardous tree and still others to obtain other planning goals. Therefore, this variance request is not a special privilege that would be denied to other Applicants.

2. The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The variance is based on a site layout for a townhouse development that was submitted to the County Council as part of the zone change request from R-90 to RT-10, which was subsequently approved by the County Council. The layout included the removal of four trees with diameters 30" or greater, two of which are within the development area and two of which are within the right-of-way of Woodward's Store Road, which may be improved in the future. Staff supports the proposed layout as the appropriate way to develop this property.
3. The requested variance is a result of the proposed site design and layout on the subject property and not as a result of land or building use on a neighboring property.
4. The requested variance will not violate State water quality standards or cause measurable degradation in water quality. Under section 22A-16(d) of the Forest Conservation Law "*The Board or Director may treat any forest clearing in a stream buffer, wetland or special protection area as creating a rebuttable presumption that the clearing had an adverse impact on water quality.*" In this case, the specimen trees proposed to be removed are not within a stream buffer, wetland or a special protection area and as such it is presumed that the removal of these individual trees would not cause degradation to water quality.

In consideration of the above findings, Staff recommends that the Planning Board approve the Forest Conservation Plan and the Applicant's request for a variance from the Forest Conservation Law to remove the four specimen trees.

The MCDPS Stormwater Management Section approved the stormwater management concept on February 22, 2007. The stormwater management concept consists of on-site channel protection via a detention pond, on-site water quality control via a surface sand filter, and on-site recharge via additional storage below the sand filter.

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. 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 RT-10 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in Table 1 below. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Mainhart Property				
Plan Number: 120070730				
Zoning: RT-10				
# of Lots: 32				
# of Outlots: N/a				
Dev. Type: Residential				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	Not specified	1,300 sq. ft. minimum	NB	10/16/09
Lot Width	Not specified	18 ft. minimum	NB	10/16/09
Lot Frontage	Not specified	18 ft. minimum	NB	10/16/09
Setbacks				
Front (public R.O.W.)	25 ft. Min.	Must meet minimum ¹	NB	10/16/09
Side (end unit)	10 ft. Min.	Must meet minimum ¹	NB	10/16/09
Rear	20 ft. Min.	Must meet minimum ¹	NB	10/16/09
Height	35 ft. Max.	May not exceed maximum ¹	NB	10/16/09
Max Resid'l d.u. per Zoning	32	32	NB	10/16/09
MPDUs	12.5% of total	12.5% of total	NB	10/16/09
TDRs	N/a		NB	10/16/09
Site Plan Req'd?	Yes		NB	10/16/09
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street		Yes	NB	10/16/09
Road dedication and frontage improvements		Yes	Agency letter	10/14/09
Environmental Guidelines		N/a	Staff memo	9/16/09
Forest Conservation		Yes	Staff memo	9/16/09
Master Plan Compliance		Yes	Staff memo	10/7/09
ADEQUATE PUBLIC FACILITIES				
Stormwater Management		Yes	Agency letter	3/18/09
Water and Sewer (WSSC)		Yes	Agency comments	9/10/07
10-yr Water and Sewer Plan Compliance		Yes	Agency comments	9/10/07
Well and Septic		N/a	Agency letter	9/10/07
Local Area Traffic Review		N/a	Staff memo	9/10/07
Policy Area Mobility Review		N/a	Staff memo	9/10/07
Transportation Management Agreement		No	Staff memo	9/10/07
School Cluster in Moratorium?		No	NB	10/16/09
School Facilities Payment		No	NB	10/16/09
Fire and Rescue		Yes	Agency letter	10/16/09

¹ As determined at site plan approval.

PRELIMINARY PLAN RECOMMENDATION AND CONDITIONS

The application meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and complies with the recommendations of the Gaithersburg Vicinity Master Plan. Therefore, Staff recommends approval of Preliminary Plan 120070730 subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 32 lots for 32 townhouse dwelling units, of which 12.5% must be moderately priced dwelling units (MPDUs).
- 2) Final approval of the number and location of buildings, dwelling units, MPDUs, on-site parking, site circulation, sidewalks, and bike paths will be determined at site plan.
- 3) The Applicant must comply with the conditions of approval for 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, but are not limited to:
 - a. The final forest conservation plan must fully conform with section 109.B of the forest conservation law prior to scheduling a pre-construction meeting.
 - b. The record plat must reflect a Category II Forest Conservation Easement over all areas of forest conservation delineated on the Preliminary Forest Conservation Plan.
 - c. The Applicant must install permanent forest conservation easement signage along the perimeter of the Category II Forest Conservation Easement.
 - d. The final sediment and erosion control plans must be consistent with the final limits of disturbance as approved by MNCPPC Staff in the Final Forest Conservation Plan.
 - e. Trees that are to be taken for landscape credit on both the Preliminary and Final Forest Conservation Plans must either be species native to the Maryland Piedmont Region or trees that are shown on the Montgomery County Department of Transportation list of acceptable street trees.
- 4) The Applicant must dedicate and the record plat must show dedication of ten feet of right-of-way along the property frontage for Woodward's Store Road. The right-of-way is to measure 40 feet wide, including the ten-foot-wide dedication from the subject property.
- 5) The Applicant must construct five-foot-wide sidewalks along the property frontage on Washington Grove Lane and along the proposed internal loop street, as shown on the approved preliminary plan and as presented in the development phasing of the site plan.
- 6) The Applicant must construct an eight-foot-wide multi-use path along the property frontage on Mid-County Highway as presented in the development phasing of the site plan.
- 7) The record plat must reflect a public use and access easement over all private streets, adjacent surface parking areas, and adjacent sidewalks and over the pedestrian connection between the private street and Woodward's Store Road.
- 8) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 9) 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.

- 10) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated March 18, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan and site plan approvals.
- 11) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated October 14, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan and site plan approvals.
- 12) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
- 13) No clearing, grading or recording of plats prior to certified site plan approval.
- 14) Site Plan No. 820070250 must be approved by the Planning Board and signed by the Development Review Staff prior to the approval of the record plat.
- 15) The record plat must show necessary easements.
- 16) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.

SECTION 3: SITE PLAN REVIEW

Development Standards

The subject site is zoned RT-10. The purpose of the RT-10 Zone is to provide suitable sites for townhouses with the maximum amount of freedom possible in the design of the townhouses, their groupings and layout. The RT-10 Zone allows the proposed use. The proposed development meets the purpose and requirements of the zone as detailed in the Findings section of this report.

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

Project Data Table for the RT-10 Zone including MPDUs

Development Standard	Permitted/Required	Proposed for Approval
Min. Tract Area (square feet) 59-C-1.731(a)	20,000 (0.46 acres)	142,947 (3.28 acres)
Max. Density (du/acre) 59-C-1.731(b)	10	9.8
Max. No. of Units	32	32
MPDUs	12.5%	12.5% (4 MPDUs)

Min. Building Setbacks (feet)		
Land zoned one-family detached 59-C-1.732(a)	30	30
Public street, 59-C-1.732(b)	25	25
Adjoining lot, 59-C-1.732(c)		
- Rear	10	10
- Side	20	20 ^(a)
Max. Building Height (feet) 59-C-1.733		
- Main building	35	35
- Accessory building	25	25
Max. Building Coverage (% of lot) 59-C-1.734(a)		
	35	19 (26, 800 SF)
Min. Green Area (% of lot) 59-C-1.734(b)		
	50	60 (86, 095 SF)
Min. Parking Spaces 59-E-3.7		
	64 (2 spaces/du)	92 total spaces 48 garage spaces 30 driveway spaces 14 visitor spaces

^(a) Only applies to end units

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 conforms to all non-illustrative elements of the Schematic Development Plan Amendment 09-2 for Mainhart Property, which was certified on July 15, 2009 (SDPA). The SDPA reflects the deletion of former Binding Element No. 5, which prevented the Planning Board from making the required findings for pedestrian access and circulation, and the addition of the Commitments to be Implemented at Site Plan. The proposed development conforms to the binding elements which seek to protect the existing character of Woodward's Store Road, protect existing specimen trees, and reduce noise on the property. The Commitments focus on protecting the existing character of Woodward's Store Road by providing specific recommendations on buildings orientation, landscaping, and parking. As further described below, the development satisfies these Commitments by orienting the buildings towards the internal private road rather than Woodward's Store Road; creating a landscape buffer that screens the development from the road; and, as agreed between the adjacent neighbors at Woodward's Store Road and the Applicant, the no-parking signs for Woodward's Store Road will only be requested to DOT if it becomes necessary.

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 RT-10 Zone including the provision of MPDUs as demonstrated in the project Data Table on page 15. With respect to building height, setbacks, and density the proposed development is in accord with all the minimum and maximum standards allowed. With respect to green space the proposed development provides 60 percent allowing for a greater amount of permeable surface and landscaped open space.

The proposal also meets the design requirements for the townhouse rows as described in section 59-C-1.722 of the Zoning Ordinance. The maximum number of townhouses allowed in a group is eight; and three continuous, attached townhouses is the maximum number permitted with the same front building line. Variations in the building line must be at least 2 feet. The proposal shows five rows of townhouses, with none exceeding eight units. All the groups show the required two-foot variation in their front building lines.

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 location of the proposed buildings and structures is safe, adequate and efficient. The 32 townhouses, divided into five sticks, are located along an internal loop road, which is accessed off Washington Grove Lane. All the buildings front onto this private street, except for the easternmost row, which fronts onto Washington Grove Lane. Townhouses are oriented away from Woodward's Store Road to satisfy Commitment 1(a) and binding element no. 4 of the SDPA, which was recommended to prevent vehicular or pedestrian improvements to Woodward's Store Road.

The main structures proposed include retaining walls and a noise attenuation fence. The retaining wall next to lot 32 will hold the existing grades and minimize impacts on the root system of the adjacent large trees to be protected. The retaining wall near the storm water management facilities will help to create more usable backyards for Lots 19-26. Along Mid-County Highway, the 6.5-foot tall noise attenuation fence, as required by binding element number 1, will provide noise reduction for the future residents.

b. Open Spaces

The open spaces provided are safe, adequate, and efficient. The main open space area is located along the southern property line where several large trees will be protected under a Category II Forest Conservation Easement. This open space will be mostly lawn with a wood chip path that connects to a seating area and a gazebo. This area functions as a gathering area for the residents with some opportunities for recreation, and it also acts as a buffer between the subject site and the properties to the south with one-family detached houses.

c. Landscaping and Lighting

The landscaping is adequate, safe and efficient while serving various purposes. It screens the noise attenuation fence, provides a buffer from the adjoining properties, adds a traditional foundation planting area for the buildings, and beautifies the open spaces proposed. The landscaping along the noise attenuation fence consists of a mix of evergreens and ornamental trees which will screen and add interest to the fence. These plantings complement in scale the proposed street trees along Mid-County Highway. Landscaping is also used as a buffer between the subject site and the one-family detached neighborhood on Woodward's Store Road, as requested in Commitment 1(b) of the SDPA. The foundation plantings consist of a mix of deciduous and evergreen shrubs, flowering trees, ornamental grasses, and ground covers. The variety of plant material enhances the pedestrian environment and adds scale to the buildings. Throughout the various open spaces, shade and ornamental trees are provided to complement some of the existing large trees to remain.

The lighting plan consists of on-site light fixtures mounted on 14-foot poles located on the perimeter of the private street. Interior lighting will create enough visibility to provide safety but not so much as to cause glare on the adjacent roads or properties. The proposed lighting provides safe, adequate and efficient illumination for the development.

d. Recreation Facilities

The recreation facilities provided are safe, adequate, and efficient. The on-site facilities consist of seating areas, natural areas and a pedestrian system. The Applicant is taking credit for offsite facilities including tennis courts, a multipurpose court, a tot lot, a play lot and a softball junior court located across Washington Grove Lane at Washington Square Park. The facilities provided and the credit taken for offsite facilities meet the 1992 M-NCPPC Recreation Guidelines.

e. Pedestrian and Vehicular Circulation Systems

The pedestrian and vehicular circulation systems are safe, adequate, and efficient. The site is accessed via a two-way private street that connects to Washington Grove Lane. This street loops around the site and provides access to the 32 townhouses and areas of surface parking. Although a vehicular connection to Woodward's Store Road would have been desirable to improve vehicular circulation and to better integrate this site into the surrounding community, this option was precluded by binding element no. 3. Parking is located on individual lots (garage and private driveways) as well as the private street for visitors.

The pedestrian circulation system consists of sidewalks along both sides of the internal loop road that connect to the sidewalk system along Washington Grove Lane and to the mulch path on the open space to the south of the property. As a result of the recent Schematic Development Plan Amendment 09-2, the Applicant can now provide a pedestrian connection to Woodward's Store Road, which will allow pedestrian cross-traffic between the proposed development and the communities to the west. Woodward's Store Road does not have a sidewalk system and binding element number 4 precludes it from having any improvements as a result of this application. The Applicant is

providing a hiker-biker trail along Mid-County Highway according to the Master Plan's recommendations.

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

The structures and use proposed are compatible with other uses, and with existing adjacent development. The proposed townhouse use is compatible with the mix of residential land uses, and the wide range of housing types, lot sizes, and ownership composition in the immediate vicinity of the site. The Woodwards Store Road community and the community to the north across Mid-County Highway are predominantly one-family detached homes. Several townhouse communities include Wedgewood, Washington Square and Hamlet North. There are also multi-family uses, such as, Emory Grove Village.

Also, the Applicant has committed through binding elements and Commitments to be Implemented at Site Plan to minimize any adverse impact from the proposed townhouse community upon the adjacent single-family homes on Woodwards Store Road. Orienting the buildings away from Woodwards Store Road and fronting them on the private street creates a wider setback from the public road, which combined with the proposed landscaping provides an enhanced buffer between the proposed development and the adjacent one-family homes. In addition, the proposal is providing more parking than required to avoid visitors and residents of the proposed townhouses to park on Woodwards Store Road and use the pedestrian connection to reach their destinations within the proposed development, which was a concern raised by the neighbors at Woodwards Store Road. The neighbors and the Applicant further agreed that no-parking signs or permit-only-parking signs for Woodwards Store Road would be requested of DOT if it becomes necessary.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, including the variance provisions to permit clearing of specimen trees, and the requirements of Chapter 19 regarding water resource protection, and any other applicable law.*

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was submitted for the 3.28-acre site and approved by Environmental Planning Staff on March 24, 2009. There are no streams, wetlands, forests, or associated buffers on this site. This 3.28-acre project has an overall afforestation requirement of 0.54-acres. The Applicant has proposed to meet this afforestation requirement with a combination of 0.11-acres of on-site Category II FCE and the remaining 0.43-acres at an off-site location, to be determined at the time of Final Forest Conservation Plan (FFCP) approval.

This application requires a variance to the Forest Conservation Law, granted under the provisions of Section 22A-21, because it did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009, and it proposes to remove 4 trees greater than 30 inches DBH. The Applicant has requested a variance to remove the trees. Based on the findings described in the preliminary plan section, the variance request from the Forest Conservation Law to remove the four specimen trees is being recommended for approval.

The proposed storm water management concept approved on March 18, 2009, consists of on-site channel protection via a detention pond, on-site water quality control via a surface sand filter, pervious concrete sidewalk/parking areas and additional non-structural measures.

RECOMMENDATION AND CONDITIONS

Staff recommends approval of Site Plan No. 820070250, Mainhart Property, for 32 townhouse dwelling units on 3.28 acres. All site development elements as shown on the site, landscape, and lighting plans stamped by the M-NCPPC on August 21, 2009, are required except as modified by the following conditions:

1. Schematic Development Plan Conformance
The proposed development must comply with the binding elements of the Schematic Development Plan Amendment (SDPA) 09-2, which was adopted on June 9, 2009, with the Resolution No. 16-992 [Appendix A].
2. Preliminary Plan Conformance
The proposed development must comply with the conditions of approval for Preliminary Plan No. 120070730.
3. Forest Conservation
The Applicant must conform with the conditions of approval as stated in the Environmental Planning memorandum dated September 16, 2009.
4. Landscaping
Provide additional shrubs to enhance the screening of Lots 26 & 27 from the one-family neighbors on Woodward's Store Road.
5. Lighting
 - a. The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for residential development.
 - b. On-site street downlighting fixtures must be full cut-off fixtures;
 - c. Illumination levels, excluding streetscape light fixtures, must not exceed 0.5 footcandles (fc) at any property line abutting county roads.
 - d. The height of the light poles shall not exceed 14 feet excluding the mounting base.
6. Performance Bond and Agreement
The Applicant is subject to the following provisions for surety as described in Section 59-D-3.5 of the Montgomery County Zoning Ordinance and Site Plan approval:
 - a. The Applicant shall provide a cost estimate from the landscape architect or landscape contractor indicating the installed costs of site plan elements, such as, but not limited to landscaping, lighting, recreation facilities, and site furnishings. The cost estimate should include a 10% inflation factor for the site plan elements to account for changes in price and materials and modifications to the approved plans.

- b. The Applicant shall submit a Performance Bond or other satisfactory form of surety as approved by M-NCPPC to cover the installed costs of site plan elements, such as, but not limited to landscaping, lighting, recreation facilities, and site furnishings as shown and described in the cost estimate.
- c. The Applicant shall execute an agreement for site plan elements in conjunction with the performance bond indicating the Applicant's agreement to install, construct and maintain the site plan elements.
- d. The Bond or other form of surety shall be submitted along with the agreement prior to the release of the first building permit.

7. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated March 18, 2009, unless otherwise amended and approved by the Montgomery County Department of Permitting Services [Appendix B].

8. Common Open Space Covenant

Record plat of subdivision shall reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to M-NCPPC Staff prior to issuance of the 30th building permit that Applicant's recorded Homeowners Association Documents incorporate by reference the Covenant.

9. Recreation Facilities

The Applicant must provide three (3) seating areas, a pedestrian system, and natural area.

10. Moderately Priced Dwelling Units (MPDUs)

- a. The proposed development must provide a minimum of 12.5 percent MPDUs on-site in accordance with Chapter 25A of the Montgomery County Code.
- b. The Applicant must execute an Agreement to Build pertaining to the construction of on-site MPDUs with the Department of Housing and Community Affairs prior to the issuance of any building permits.
- c. The Applicant must construct a minimum of one (1) MPDU with the completion of the first 25% of the units in the project, construct a minimum of two (2) MPDUs with the completion of 50% of the units in the project, and must construct all of the MPDUs with the completion of the 26th unit in the project.

11. Development Program

The Applicant must construct the proposed development in accordance with the 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. Street lamps and sidewalks must be installed within six months after street construction is completed. Street tree planting may wait until the next growing season.
- b. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.

- c. The development program must provide phasing for installation of on-site landscaping and lighting.
- d. Community-wide and local pedestrian pathways, hiker-biker trail and recreation facilities, including sitting areas, mulch path and nature area with gazebo, must be completed prior to issuance of the 30th building permit.
- e. Landscaping, lighting and recreation facilities associated with each townhouse shall be completed as construction of each unit is completed but no later than 6 months after the Use and Occupancy Permit.
- f. Provide each section of the development with necessary roads.
- g. The development program must provide phasing of pre-construction meetings, dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.

12. 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. Include the final forest conservation approval, stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b. Add a note to the site plan stating that “M-NCPPC Staff must inspect all tree-save areas and protection devices prior to clearing and grading”.
- c. Provide a list of equivalent trees in the landscape plan Plant Schedule to be approved by Site Plan Review Staff, and add the note “In the event that any of the species listed in the plant schedule are not available, select species from the alternative plant list. Contractor to ensure that the replacements are of equivalent sizes.”
- d. Modify data table to reflect all development standards enumerated in the Staff report.
- e. Provide details of light fixtures proposed showing full cut-off devices and mounting base.
- f. Provide detail of railings proposed on top of the retaining wall.
- g. Provide detail of retaining walls with materials labeled.
- h. Ensure consistency off all details and layout between site plan and landscape plan.

APPENDICES

- A. Schematic Development Plan Amendment 09-2, Resolution No. 16-992
- B. Reviewing Agency Approvals and correspondence
- C. Proposed Preliminary Plan

APPENDIX A
SDPA 09-2, Resolution No. 16-992

Resolution No.: 16-992
Introduced: June 9, 2009
Adopted: June 9, 2009

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

By: District Council

SUBJECT: Approval of Schematic Development Plan Amendment (SDPA) 09-2

BACKGROUND

1. Schematic Development Plan Amendment (“SDPA”) No. 09-2 was filed on November 24, 2008. The Applicant, Magruder Reed at Woodward Hall, LLC, seeks to amend the approved Schematic Development Plan (SDP) applicable to 3.28 acres of land located in the northwestern quadrant of the intersection of Washington Grove Lane and Mid-County Highway. The property’s address is 17720 Washington Grove Lane, Gaithersburg, Maryland. The amendment sought is solely to delete one of the binding elements (Binding Element #5) from the SDP and from the Declaration of Covenants.
2. The property was reclassified to the RT-10 Zone in Local Map Amendment (“LMA”) G-840, in accordance with Resolution No. 15-1586 approved by the District Council on August 1, 2006. The approved SDP for the property anticipates a maximum density of 9.8 DUs/acre and a maximum of 32 townhomes, including 12.5% (*i.e.*, 4) Moderately Priced Dwelling Units (MPDUs).
3. As part of the zoning application and SDP approval, the Applicant committed to several binding elements addressing density, building coverage, green area, tree protection, noise protection and obligations for the Applicant to minimize potential adverse impacts upon adjacent single-family homes located on Woodward Store Road. The approved binding elements are included on the final SDP and in the Declaration of Covenants recorded in the Land Records of Montgomery County on February 28, 2007. Exhibit 10.

4. These binding elements had been included in the SDP by the Applicant, following negotiations with the neighbors and the People's Counsel. However, during Site Plan review, Technical Staff of the Maryland-National Capital Park and Planning Commission, expressed concern that Binding Element #5 might unduly restrict the Planning Board's flexibility in site design. Specifically, it would limit both vehicular and pedestrian connections between the site and Woodward's Store Road in a way that would result in what Staff characterized as "an awkward configuration." Exhibit 20, p. 3.
5. After attempting several piecemeal revisions to the site plan to address site design and compatibility concerns, the Applicant drafted a new site design which is inconsistent with Binding Element #5. Applicant therefore proposed the subject SDPA (Exhibit 9), which would remove Binding Element #5 from the schematic development plan, as shown in highlights on the original SDP (Exhibit 8).
6. Technical Staff, by memorandum dated March 17, 2009, recommended approval of SDPA 09-2, and concluded: "Deleting Binding Element # 5 will . . . provide greater flexibility for optimal site design to be achieved during site plan review; . . . [will r]esolv[e] any ambiguity as to the Planning Board's authority under Binding Element No. 5 [; and] will provide a more effective site plan review process." Staff also noted that Applicant's newly "proposed commitments to be implemented at site plan will help to alleviate the community concerns regarding specific site design impacts to Woodward's Store Road." Exhibit 20, p. 4.
7. Technical Staff elaborated on why it found the new design to be preferable to earlier designs limited by Binding Element #5 (Exhibit 20, p. 4):

The revised site design includes a loop road in the townhome development and an orientation of the townhomes away from Woodward's Store Road, which eliminates the awkward relationship between the internal street in the project and Woodward's Store Road and provides an improved orientation of the townhomes within the development and frontage on Washington Grove Road. Further, the revised site design reorients the townhomes on the western side of the property inward and creates a larger and enhanced buffer area between the townhomes and Woodward's Store Road, thus eliminating the need for fencing or restrictions on pedestrian connections.

The applicant reviewed the revised site design with staff, and staff agreed it provided the optimal site design solution to address compatibility concerns as well as address the zoning standards and most of the binding elements.

8. According to the Technical Staff Report (Exhibit 20, p. 4), the Applicant's new design also was positively received by the neighbors and the People's Counsel, who agreed that a fence and a prohibition against a pedestrian connection (*i.e.*, items required by Binding Element #5)

were not necessary given the compatible layout and buffer treatment of the revised site design. They are reportedly willing to have Binding Element #5 removed in order to allow the new design to be used.

9. Binding Element #5 on the old SDP provides:

Applicant will meet with the property owners on Woodward's Store Road and the Peoples Counsel as a group to develop a Landscape Plan prior to filing a Site Plan submission for the development. The proposed Landscape Plan will include a fence to eliminate pedestrian cross traffic between the development and Woodward's Store Road and the southern property line.

10. In lieu of Binding Element #5, Applicant proposes to make the following commitment which would be included in the Council's resolution approving the SDPA, but would not appear on the SDPA itself:

1. *Subject to Planning Board review at the time of Site Plan, the site plan will reflect that:*
 - a. *the townhomes will be oriented away from Woodward's Store Road;*
and
 - b. *landscape and screening improvements will be added to provide an appropriate buffer between the project and the single-family neighbors on Woodward's Store Road.*
2. *Applicant will coordinate with the adjacent neighbors on Woodward's Store Road before and during the site plan review process to review the project and to collaborate regarding the landscape plan, and*
3. *Applicant will pursue with the Department of Transportation (DOT) the feasibility of installing no parking signs along the Woodward's Store Road right-of-way to deter future residents and guests of the project from parking off-site.*

11. The Montgomery County Planning Board reviewed SDPA 09-2 at its regular meeting on April 2, 2009 and, by unanimous vote, approved the proposed SDPA and the plan to place Applicant's new commitment in the resolution to be signed by the District Council. Exhibit 21. On April 9, 2009, Technical Staff provided a copy of the Planning Board Transcript (Exhibit 24), and on April 10, 2009, Applicant supplemented the record with an executed copy of the proposed covenants and copies of notices sent regarding the SDPA (Exhibit 25).
12. There is no opposition to SDPA 09-2, and no request has been made for a hearing. The Planning Board also does not recommend a public hearing in this case. Therefore, under the provisions of Zoning Ordinance §59-D-1.74(c)(3), the matter can be considered directly by the District Council without a hearing by the Office of Zoning and Administrative Hearings.

13. There is no issue on the substance of this proposal; however, there is a procedural issue raised by the Hearing Examiner – whether Applicant’s new commitment should be printed on the proposed SDPA as a non-binding “Site Note” (i.e., not a Binding Element), or just be included in the resolution to be signed by the District Council.
14. The Hearing Examiner suggested to Staff and Applicant’s counsel that it would be preferable to include the commitment language in a non-binding site note on the SDPA, not just in the Council Resolution, because planners do not always have the Resolution before them when examining a plan. Exhibits 22 and 23. Since Applicant’s counsel indicates that the above commitment reflects Applicant’s intended plan, the Hearing Examiner feels that it is a better practice for Applicant’s formal plans to reflect Applicant’s intended plans. The District Council agrees with the Hearing Examiner’s observation. The fact that there may have been some instance in the past where this kind of change was made by language in the resolution alone does not mean that the Council should not employ a superior procedure where it can be done. Applicant’s stated commitment should appear in the SDPA as a nonbinding site note and in the Council’s resolution, so that the likelihood of it being observed and followed by future planners is enhanced.

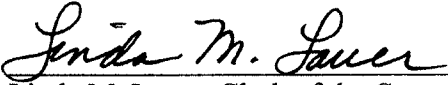
ACTION

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, approves the following resolution.

SDPA 09-2, which requests an amendment to the Schematic Development Plan approved on August 1, 2006 in LMA G-840 (Resolution No. 15-1586), for 3.28 acres of land located at 17720 Washington Grove Lane, Gaithersburg, Maryland, to delete Binding Element #5 from the SDP and the Declaration of Covenants and to provide the commitment spelled out in Paragraph numbered 10 above, is hereby approved, subject to the specifications and requirements of the Schematic Development Plan Amendment, Exhibit 9, provided that the Applicant submits the Schematic Development Plan Amendment, Exhibit 9, revised with the addition of the commitment language italicized in Paragraph numbered 10 of this Opinion as a non-binding Site Note; and that the revised SDPA is submitted for certification by the Hearing Examiner under the provisions of §59-D-1.64 within 10 days of the District Council action and that the amended Declaration of Covenants

(Exhibits 25(c) and (d)) is filed in the County land records in accordance with § 59-H-2.54 of the Zoning Ordinance.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council

APPENDIX B
Reviewing Agency Approvals and Correspondence



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

October 27, 2009

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

Re: Mainhart Property #120070730 and #820070250 (2/10/06)
Hermitage Property #120080270 (3/11/08)
Muncaster Manor #120070730 (8/12/08)
Hanson Property, Case G-884 (7/23/09)

Dear Dr. Hanson:

On September 29, 2009, I received a letter from Mark Pfefferle requesting the review of the above referenced variance requests as a result of changes to the State's Forest Conservation Act (FCA) that became effective on October 1, 2009. The FCA now requires anyone subject to the law who is disturbing certain vegetation to prove that they qualify for a variance. As you know, under Chapter 22A-21 of the Montgomery County Code, the variance process requires a review by the County Arborist in the Department of Environmental Protection (DEP).

The County Attorney's Office has advised DEP that the new provisions of the FCA do not apply to applications submitted before October 1, 2009. Since the applications for the above referenced requests were submitted before this date, the County Arborist will not be providing a recommendation pertaining to these requests. It should be noted that for one of the properties for which a variance has been requested, the Mainhart property, the initial application for development of this property was made way back in 2006. It would certainly seem unfair to apply the requirements of a law that did not become effective until more than three years later to this application.

We will be in contact with the Planning Department as we develop DEP's future actions related to these new requirements of the FCA. If you have any questions about this matter, please do not hesitate to contact me.

Sincerely,

Robert G. Hoyt
Director

cc: Walter Wilson, Associate County Attorney
Mark Pfefferle, Acting Chief, Green Division, MNCPPC



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Carla Reid
Director

March 18, 2009

Ms. Cheryl Hannan
Dewberry
203 Perry Parkway, Suite 1
Gaithersburg, MD 20877

Re: Stormwater Management **CONCEPT REVISION**
Request for Mainhart Property
Preliminary Plan #: 1-20070730
SM File #: 219986
Tract Size/Zone: 3.28 Ac. / R-90 / TDR (5)
Total Concept Area: 3.28 Ac.
Lots/Block: 32 Lots proposed
Parcel: P 520
Watershed: Great Seneca Creek

Dear Ms. Hannan:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site channel protection measures via a detention pond and on-site water quality control and recharge via a surface sandfilter, pervious concrete sidewalk/parking areas and additional non-structural measures as shown on the latest submittal.

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

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. A permit for the proposed pond outfall must be obtained from the DPS Right-of-Way Permitting and Plan Review section.

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

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

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

If you have any questions regarding these actions, please feel free to contact Mike Geier at 240-777-6342.

Sincerely,



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

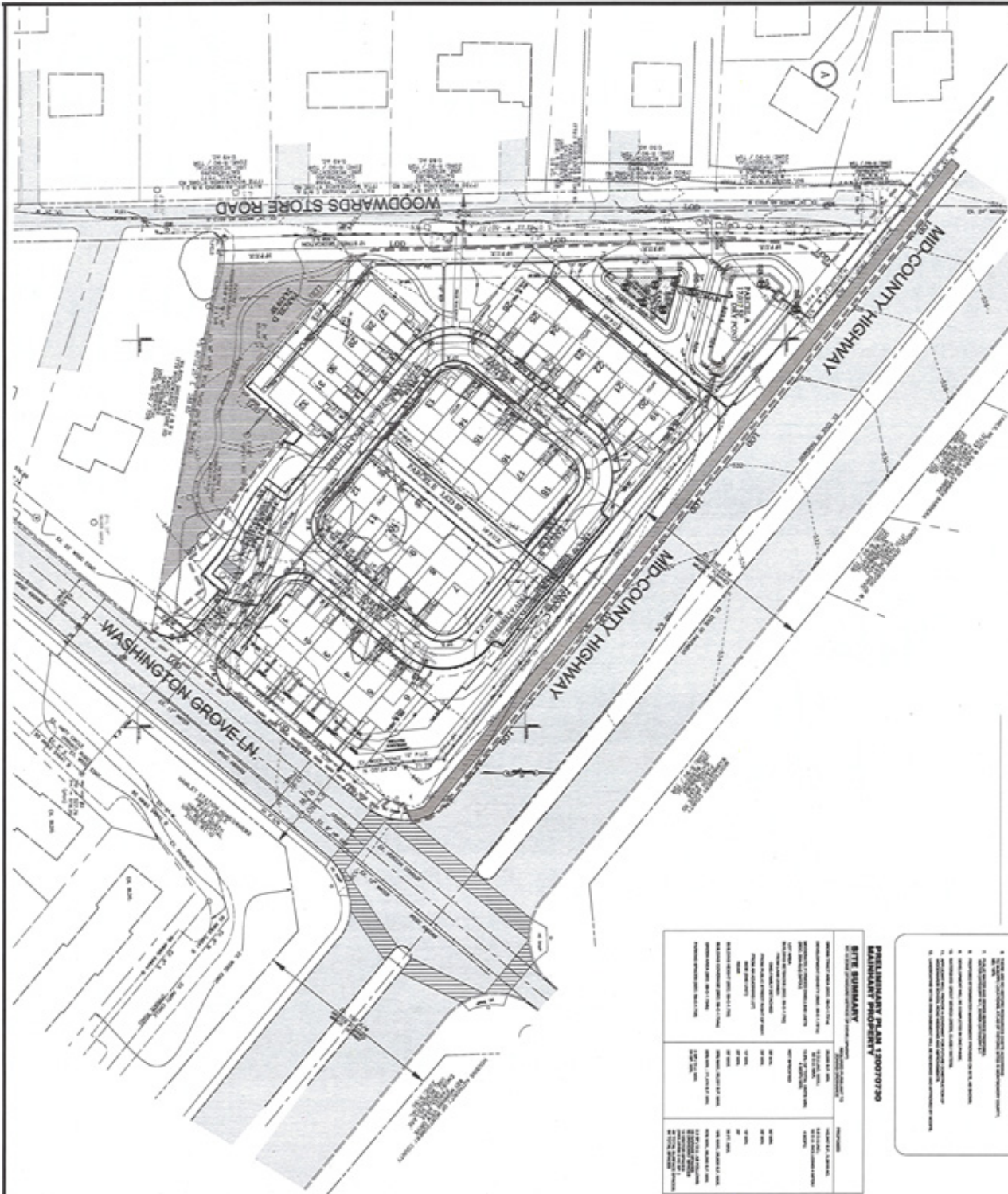
RRB:dm CN219986Rev.Mainhart Property.mjg.doc

cc: C. Conlon
M. Pfefferle
SM File # 219986

QN -onsite; Acres: 3
QL - onsite; Acres: 3
Recharge is provided

APPENDIX C
Proposed Preliminary Plan

NO.	DATE	BY	REVISIONS
1	08/11/11	MD	PRELIMINARY SUBDIVISION PLAN
2	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
3	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
4	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
5	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
6	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
7	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
8	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
9	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
10	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN



GENERAL NOTES

1. THIS PLAN IS A PRELIMINARY PLAN AND IS SUBJECT TO THE APPROVAL OF THE BOARD OF ZONING ADJUSTMENTS AND THE BOARD OF PUBLIC WORKS.
2. THE PROPERTY IS ZONED R-1 (RESIDENTIAL SINGLE-FAMILY) AND THE PROPOSED DEVELOPMENT IS SUBJECT TO THE REQUIREMENTS OF THE ZONING ORDINANCES.
3. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE REQUIREMENTS OF THE MONTGOMERY COUNTY SUBDIVISION ACT AND THE MONTGOMERY COUNTY SUBDIVISION REGULATIONS.
4. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE REQUIREMENTS OF THE MONTGOMERY COUNTY SUBDIVISION ACT AND THE MONTGOMERY COUNTY SUBDIVISION REGULATIONS.
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9. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE REQUIREMENTS OF THE MONTGOMERY COUNTY SUBDIVISION ACT AND THE MONTGOMERY COUNTY SUBDIVISION REGULATIONS.
10. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE REQUIREMENTS OF THE MONTGOMERY COUNTY SUBDIVISION ACT AND THE MONTGOMERY COUNTY SUBDIVISION REGULATIONS.

PRELIMINARY PLAN 120070730
MAINHART PROPERTY

NO.	DATE	BY	REVISIONS
1	08/11/11	MD	PRELIMINARY SUBDIVISION PLAN
2	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
3	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
4	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
5	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
6	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
7	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
8	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
9	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN
10	08/11/11	MD	REVISIONS TO PRELIMINARY SUBDIVISION PLAN

GENERAL NOTES

1. THIS PLAN IS A PRELIMINARY PLAN AND IS SUBJECT TO THE APPROVAL OF THE BOARD OF ZONING ADJUSTMENTS AND THE BOARD OF PUBLIC WORKS.
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3. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE REQUIREMENTS OF THE MONTGOMERY COUNTY SUBDIVISION ACT AND THE MONTGOMERY COUNTY SUBDIVISION REGULATIONS.
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Professional Certification: I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.

License No. _____
Expiration Date: _____

