



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

MCPB
Item #
4/22/10



MEMORANDUM

DATE: April 12, 2010

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *R.K.*
Catherine Conlon, Subdivision Supervisor *C.C.*
Development Review Division

FROM: Patrick Butler 301-495-4561 *P.B.*
Development Review Division

REVIEW TYPE: Pre-Preliminary Plan

APPLYING FOR: An impervious area waiver in the Upper Paint Branch Special Protection Area (SPA) to allow 50,302 square feet (13.9% of the 8.29 acre site) of impervious surface with the intent to record 1 lot, and convert the Edgewood historic site single family home to a Country Inn and restaurant with ancillary retail uses.

PROJECT NAME: Edgewood Inn
CASE #: 720080220
REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations and Chapter 59, Section 59-C-18.152

ZONE: Country Inn and RE-1
LOCATION: NE Quadrant at the Intersection of Oak Mill Road and Spencerville Road
MASTER PLAN: Cloverly

APPLICANT: Edgewood Inn, LLC (Contact: Steven Gudelsky)
ENGINEER: David Weber of GLW
ATTORNEY: Emily Vaias of Linowes and Blocher, LLP

FILING DATE: January 29, 2010
HEARING DATE: April 22, 2010

STAFF RECOMMENDATION: Do not grant the waiver request.

TYPE OF REVIEW: The Applicant has submitted this pre-preliminary plan for Planning Board review and a binding decision on a request for a waiver of the 8% impervious surface limit for sites within the Upper Paint Branch Special Protection Area (SPA). Such a waiver may be granted under Section 59-C-18.152(a)(2) of the Montgomery County Code if certain criteria have been met. In this case, the Applicant has not fully satisfied the three criteria necessary for the Board to make a binding decision. Staff, therefore, recommends that the Board give advice only on the level of impervious surface that could be acceptable as part of a future preliminary plan application.

SITE DESCRIPTION (Attachment A – Vicinity Map)

The Subject Property, as shown below and in Attachment A, consists of 8.29 acres of land comprised of two unrecorded parcels (P161 7.28 acres and P158 1.01 acres) located in the northeast quadrant of Oakhill Road and Spencerville Road in the Cloverly Master Plan area (“Property” or “Subject Property”). Parcel P161 is zoned Country Inn (C-I), and Parcel P158 is zoned RE-1. The site currently contains an historic home, various ancillary buildings, and two separate driveways. Small areas of gravel that appear to be used for parking or driveways are also present. A driveway connecting Oak Hill Road to Route 198 traverses the property. A remnant of an old, apparently unused driveway exists at the northwestern portion of the property. These improvements comprise a total of 36,852 square feet of impervious surface or 11.62% of parcel P161. The land use currently on the site is Commercial/Office, while the surrounding land use is primarily Rural and Single-Family Residential. The surrounding area is primarily zoned RE-1 with RC zoning further to the north of the Subject Property.



Parcel P161 of the Subject Property makes up the historic environmental setting boundary of the Individually Designated Master Plan Site, #15/52 Edgewood II, and the Subject Property is also designated in the Legacy Open Space (LOS) plan as a Heritage Resource in the Underground Railroad/Quaker Cluster. Historic Preservation and LOS staff support the country inn and restaurant as a preferred adaptive reuse of this historic and heritage resource, however, they also urge the Applicant to meet the impervious limits for this site while still meeting their preservation and adaptive reuse goals (Attachment B – Historic Preservation and Legacy Open Space Staff Memos).

The Subject Property is located in the Environmental Overlay Zone for the Upper Paint Branch Special Protection Area (SPA), which has an impervious surface limit of 8%. Any impervious surface that lawfully existed pursuant to a building permit issued prior to July 1, 2007 that exceeds the 8% impervious surface limit is allowed to remain, but an increase in the percentage of impervious surfaces on site beyond what exists is not permitted without a waiver granted in accordance with Section 59-C-18.152(a)(2).

Forest covers about 1.8 acres of parcel P161. Tree cover also exists throughout much of the remaining property surrounding the existing structures, and there are approximately 110 large and significant trees on this parcel. Parcel P158 is entirely forested, and includes approximately fourteen large and specimen trees. There are no existing structures on parcel P158.

There are no streams, wetlands, or steep slopes identified on the Subject Property, however, there is an existing Category I conservation easement located off-site and adjacent to the northern property boundary.

PROJECT DESCRIPTION (Attachment C – Proposed Plan and Existing Conditions Drawing)

The applicant is requesting to subdivide the Subject Property into one lot and convert the Edgewood historic site single family home to a Country Inn restaurant with ancillary retail uses. The applicant is requesting that the Planning Board approve an impervious surface area waiver to allow approximately 13.9% of the 8.29 acres site to be impervious. As previously indicated, pursuant to the Sec. 59-C-18.15 Environmental Overlay Zone for the Upper Paint Branch Special Protection Area, current impervious surface limits for the Property based upon the lawfully existing imperviousness is 11.2%, and therefore a waiver is necessary in this case to increase the imperviousness above 11.2%¹.

Background

On January 30, 1990, the County Council for Montgomery County, Maryland adopted Resolution No. 11-1840, which granted approval to Application No. G-640 (Attachment D). This application requested reclassification of parcel P161 of the Subject Property from the RE-1 zone to the Country Inn zone. The Certified Development Plan was signed on March 12, 1990 for the Edgewood Country Inn. At that time, the Council agreed with the findings of the Hearing

¹ Note: The Applicant and staff disagree on the current level of imperviousness on the site. The reasons are discussed in detail later in this report.

Examiner, the Technical Staff, and the Planning Board, which all recommended approval of the proposed Development Plan.

Some of the elements that are discussed in the Resolution for the 1990 Development Plan are as follows:

- Retention of the existing residential structure as a country inn restaurant to serve up to 90 patrons.
- Retention and refurbishment of several of the outbuildings to provide for antique and craft shops.
- Reconstruction of a barn slightly to the northwest of its current location.
- Parking for 81 cars with the specific location of the lot and driveways to be addressed at site plan review.
- Building coverage of 4% of the site, with 83% of the site devoted to green space.
- No signage along Oak Hill Road, and all commercial traffic to enter the Subject Property from Spencerville Road (Route 198).
- Appropriate landscaping along the common property line between the Subject Property (P161) and the property located at 16107 Oak Hill Road (N52, N59), subject to Planning Board approval at the time of site plan review.
- The noise level from any outdoor entertainment shall not exceed levels for a rural residential community as established in the Montgomery County Code or regulations related thereto.

The development standards of the Country Inn zone permit building coverage up to a maximum of 10% of the site, while the minimum green space requirement is 50%. These standards do not take into account that impervious surface limitations imposed by an overlay zone such as the one that was applied to the Subject Property subsequent to the Development Plan approval may further limit the proposed development.

The Upper Paint Branch SPA Environmental Overlay Zone was first adopted in 1995, and in 1997, a zoning text amendment for the zone created regulatory limits for impervious areas in land development projects. Initially, the maximum amount of impervious surfaces allowed in this SPA was 10%, however, the ordinance was amended in 2007 to reduce the amount of impervious surfaces allowed in the SPA from 10% to 8%. The current property owner purchased the property in April, 2006. To be grandfathered from these new requirements, any previously approved development had to receive a building permit prior to the effective date of the legislative change. Development on the Subject Property is not possible without the approval of a subdivision plan because the necessary building permit(s) cannot be issued for an unrecorded property. Site plan approval is also required.

Current Request

This pre-preliminary was previously presented to the Board on December 4, 2008. At that time, the Applicant requested advice from the Board concerning the impervious surface limits. At that hearing, the Board recommended the Applicant reduce the amount of proposed impervious surface to the amount of existing impervious surface on the Subject Property, which at the time was estimated at approximately 8.9%. The Board mentioned the possibility of allowing up to

10% imperviousness onsite (the amount of imperviousness allowed in the SPA at the time the Subject Property was acquired), but that was only because of the historic status of the site. The current pre-preliminary plan application was received on January 29, 2010. With this application, the applicant is requesting the Planning Board make a binding decision on two issues:

1. A waiver of the Upper Paint Branch Special Protection Area impervious surface area limitation to permit 13.9% impervious surface for the development. This amounts to a waiver to permit 2.7% more impervious surface than the site's existing impervious level of 11.2%.
2. A finding that the proposed plan is consistent with the Development Plan approved in 1990 and that subsequent Preliminary and Site Plans prepared to the same specifications can be considered as conforming to the illustrative and non-illustrative elements of the approved Development Plan.

ANALYSIS AND FINDINGS

Issue #1 – Impervious Surface Area Waiver

There are two ways in which a development project located within the Upper Paint Branch SPA can exceed the 8% impervious surface cap as stated in Section 59-C-18.152 of the Zoning Ordinance. The first is a grandfather provision in Section 59-C-18.152(a)(1), which states:

“Any development must not result in more than 8 percent impervious surface of the total area under application for development.

(A) Any impervious surface lawfully existing pursuant to a building permit issued before July 31, 2007 that exceeds the 8 percent restriction, may continue or be reconstructed under the development standards in effect when the building permit was issued.

(B) Any impervious surface which results from construction pursuant to a building permit may be constructed or be reconstructed under the development standards in effect on July 31, 2007 if:

- (i) **the building permit application was pending before the Department of Permitting Services on July 31, 2007, or...**”

The second way a project may exceed the impervious surface restriction is by request for a waiver. The process for requesting and the criteria for granting a waiver are located in Section 59-C-18.152(a)(2) as follows:

“The Director² may grant a waiver from the 8 percent impervious surface restriction subject to the following standards and procedures:

² Pursuant to Article V of the Montgomery County Code (Special Protection Area Law), waivers may be granted by either the Planning Board or Montgomery County Department of Permitting Services (DPS) Director. Since Planning Board action on a preliminary plan of subdivision is required for this project,

(A) Written Request. An applicant may apply for a waiver from the 8 percent impervious surface restriction if enforcement would result in undue hardship to the applicant. The request must be in writing to the Director.

(B) Review and action. The Director may grant a waiver from the 8 percent impervious surface restriction if the applicant shows by clear and convincing evidence that :

- (i) the 8 percent impervious limitation would result in undue hardship to the applicant because of events or circumstances not caused or facilitated by the applicant;**
- (ii) the applicant complies with all applicable federal, state, and county water quality standards; and**
- (iii) the relief sought is the minimum needed to prevent the hardship and the Director must consider alternative techniques.”**

Existing Impervious Area Permitted Under the Grandfather Provision

As discussed above, the Subject Property currently includes impervious surfaces that cover more than 8% of the site and were constructed prior to July 31, 2007. These areas may remain on the site or be reconstructed under the grandfathering provision of the Overlay Zone. Although staff agrees with the Applicant that some existing impervious surface qualifies for grandfathering, we do not agree on the amount. The Applicant suggests that impervious surfaces as of July 31, 2007 included 43,367 square feet or 13.7% of the C-I zoned parcel. In staff's opinion, the impervious surface permitted under grandfathering is only 11.6% of the parcel because the Applicant could not provide verification that the 2.1% difference was lawfully constructed. The area in dispute consists of a previously existing gravel area approximately 6,515 SF in size. Based on information provided by the Applicant and a review of available aerial photographs, the gravel area was put in place by the previous owner between 2002 and 2004, and was removed by the current property owner sometime between 2007 and 2008.

The Applicant's January 29, 2010 letter contends that this historically designated Property was the subject of old building permits issued long before July 1, 2007 that created impervious surfaces that are entitled to remain. The only permits that the Applicant could find, however, were a Historic Area Work Permit approved on June 2, 2006, and a building permit issued by the Department of Permitting Services (DPS) on December 6, 2007. Lacking additional building permits as proof that the other existing impervious surfaces were lawfully constructed, the Applicant points to 2006 and 2008 aerial photographs as evidence of the buildings, pathways and parking areas that existed and, therefore, the Applicant contends must have been legally constructed. Based on this information, the Applicant has requested that the existing impervious calculations include the previously existing gravel parking area.

the necessary action on the waiver from the Overlay Zone's impervious limit must be made by the Planning Board as part of the preliminary plan decision.

Environmental Planning staff has also reviewed aerial photographs and determined that, while buildings, paths and some driveway and parking area have existed on the Property for some time, the disputed gravel parking area was installed more recently. And at a time when permits would have been necessary. The applicant has not provided any record of any permits issued in association with the gravel area. The building permit issued by DPS on December 6, 2007 (Attachment E) granted permission to restore and /or repair a single family dwelling with the following conditions:

1. Restore and repair historic home, 520 SF; and
2. HAWP# 452771, approved 6/14/2007;

The permit, issued after the July 1, 2007 “grandfathering” date, and the associated construction drawings are for the caretaker’s dwelling and did not include the construction of a gravel area.

The Applicant claims that the gravel area would not have required a building permit and, therefore, should be counted. To the contrary, per Chapter 19, Section 19-1 of the Montgomery County Code, a sediment control permit would have been required for the creation of a gravel area greater than 5,000 square feet on the property, and no such permit has been produced.

It is important to limit credit for existing impervious surface to those areas that can be verified because doing otherwise could encourage property owners in impervious-restricted locations to illegally install impervious features as a means of increasing the allowable impervious limit on their property prior to developing it. Therefore, it is staff’s position that the gravel area should not be included in the calculations of lawfully existing impervious surface to be used to set the limit of allowable impervious surface on the Subject Property. Using staff’s rationale, the existing impervious surfaces on the Subject Property cover 36,852 square feet.

Additional Impervious Area Permitted from the Currently Undeveloped Parcel

The application also includes the adjacent undeveloped RE-1-zoned parcel P158. The acreage of this parcel can be used to create an impervious surface “credit” of 3,512 square feet (which amounts to 8 percent of the total square footage of Parcel P158) that can be used toward creation of new impervious surface within the overall Property. Therefore, a total of 40,364 square feet of impervious surface can be retained, reconstructed, or newly constructed on the Subject Property under the impervious surface limits set by the Environmental Overlay Zone. This is equivalent to an imperviousness level of 11.2% over the total tract area of parcels P161 and P158 using staff’s calculations, and an imperviousness level of 13% over the total tract area using the Applicant’s rationale. Table 1 below summarizes the Applicant’s and Staff’s positions regarding the total imperviousness allowed under the grandfathering provision.

Table 1. Existing Impervious Area Calculations

	Existing Imperviousness on Parcel 161	Imperviousness Allowed on Parcel 158 (8% of 43,902 SF)	Total Imperviousness Allowed**
Applicant's Position	43,367 SF (13.7%)*	3,512 SF	46,879 SF (13%)
Staff's Position	36,852 SF (11.6%)	3,512 SF	40,364 SF (11.2%)

*Includes 6,515 SF previously existing gravel area

** (Existing imperviousness on Parcel 161) + (8% of Parcel 158)/Acreage of entire property
Impervious Surface Waiver Request

The Applicant's pre-preliminary plan includes a combination of buildings, parking, paths and driveways that amount to 50,302 SF of impervious surface or 13.9% imperviousness for the total site. This proposal exceeds the amount allowed per the Environmental Overlay Zone by 2.7% according to staff's calculations, and by 0.9% according to the applicant's calculations. Table 2 below summarizes this analysis.

Table 2. Proposed Imperviousness

	Existing Imperviousness	Proposed Imperviousness	Proposed Imperviousness in Excess of Existing Imperviousness
Applicant's Position	46,879 SF (13%)	50,302 SF (13.9%)	3,423 SF (0.9%)
Staff's Position	40,364 SF (11.2%)	50,302 SF (13.9%)	9,938 SF (2.7%)

Regardless of whose numbers are used, both scenarios require a waiver of the imperviousness limit under Section 59-C-18.152(a)(2). With the subject application and accompanying letters from the Applicant's attorney dated January 29, 2010, and April 6, 2010, (Attachment F), the applicant is requesting the waiver. Staff does not support the waiver.

Discussion

As previously noted, the Planning Board may grant such a waiver if the applicant shows by clear and convincing evidence that they meet all **three criteria** specified in Section 59-C-18.152(a)(2)(B), which are as follows:

- (i) The 8 percent impervious limitation would result in undue hardship to the applicant because of events or circumstances not caused or facilitated by the applicant;
- (ii) The applicant complies with all applicable federal, state, and county water quality standards; and
- (iii) The relief sought is the minimum needed to prevent the hardship and the Director must consider alternative techniques.

Criteria I:

Section 59-C-18.152(a)(2)(B)(i) – Undue hardship

Applicant's Position

The Applicant believes the 8 percent impervious area limitation on the Subject Property prevents the implementation of the adaptive reuse of the historic property as approved at the time of rezoning, thus creating an undue hardship for the Applicant. The Applicant purchased the property in April of 2006, and assumed that they were allowed to construct what was approved on the Development Plan. In the opinion of the applicant's representative, if the requested waiver is not granted, it will prevent the Property from being developed as envisioned by the 1990 Development Plan when it was placed in the Country Inn Zone. The Applicant is attempting to make the property compliant with historic, fire and life safety, ADA, building and environmental codes. The Applicant's representative contends that none of the hardship was self-created and the Applicant has worked diligently since acquiring the original property to upgrade, improve, and make functional the buildings and Property. The waiver is needed to accomplish the proposed improvements, and the hardship created would mean complete abandonment by the Applicant of the project and preservation of this historic property as a country inn.

Staff's Position

The previous owner of the Property had several years prior to the creation of the Overlay Zone to develop in accordance with its approved Development Plan for a Country Inn (from 1990 to 1997) and did not do so. Furthermore, when the Overlay Zone was created, and the provision that tied its applicability to the issuance of building permits was included, the County Council recognized that there would be projects that hadn't received building permits that would be affected. This point was further made when the Overlay Zone was amended to further limit imperviousness in 2007 and the County Council retained the building permit language.

When the Applicant purchased the Property in 2006, they should have been well aware of the impervious restrictions of the Upper Paint Branch SPA and the limitations those restrictions had placed on the Property. While staff agrees that the Applicant has worked to reduce the overall imperviousness of the proposed plan, no evidence has been supplied to support the applicant's statement that the hardship they will experience if the waiver is not granted has not been caused or facilitated by them. The proposed restaurant was originally 780 square feet smaller in the approved 1990 Development Plan, but due to a water and sewer category change, the Applicant is now proposing a larger restaurant as part of the proposed plan, ignoring the impervious surface restrictions of the SPA.

Since the previous submittal, the Applicant has provided staff with a more accurate analysis of the existing conditions onsite. The existing conditions of the site already exceed the impervious surface limit of 8% by 3.2% on the Subject Property. In staff's opinion, the 11.2% of existing imperviousness should provide the Applicant with enough flexibility onsite to implement a country inn.

Therefore, staff finds the impact of the SPA law alone on the previously-approved Development Plan does not prevent the Property from being developed as envisioned by the Development Plan as the Applicant and the Applicant's representative suggest, but rather a consequence of the fact that the applicant is unwilling to modify their development program to adhere to the SPA law.

Criteria II:

Section 59-C-18.152(a)(2)(B)(ii) – Compliance with applicable water quality standards

Applicant's Position

The Applicant believes they have designed a system that is creative and innovative with regard to the collection and recycling of the run-off from the Property (Attachment G - Applicant Letter). The design includes a free draining system that will collect the rain water, store it and then recycle it through an irrigation system that will support the area for the finished landscape as shown on the plan. The travel access, parking, walking-paths, and landscape have been designed to collect run-off through infiltration. The Applicant will also be removing large areas of asphalt paving in front of the house and between the smaller buildings and replacing them with a free-draining stone system. The Applicant believes they will more than satisfy all water quality standards.

Staff's Position

It is staff's opinion that a determination of compliance with water quality standards requires input from DPS' review and action on a stormwater management plan, and sediment and erosion control plan. A stormwater management concept has not been submitted, reviewed, or approved by DPS for the proposed concept plan. Also, staff does not believe the proposed system will offset the negative impacts of higher imperviousness in the SPA. The County Council's July 11, 1995 resolution creating the Upper Paint Branch SPA noted that impervious levels, as well as other parameters, need to be kept in check in order to maintain the viability of the high quality cold water stream resource. In addition, the new State stormwater management law requires minimization of impervious surfaces in a project's initial site design, thus reaffirming this priority in protecting water quality.

The applicant has not provided any evidence to support its position that imperviousness above the regulatory standard will not affect water quality. An approved stormwater concept (SWM) by the Department of Permitting Services (DPS) does not suitably or sustainably offset, in full measure, the effects of excess impervious surfaces, as compared to natural, uncompacted forest conditions.

The County Council has determined that the Upper Paint Branch SPA will best be protected through the combined application of impervious surface restrictions together with rigorous applications of other SPA mitigation measures, such as planting and protecting new forest over and above that which may be required to meet the forest conservation law and environmental guidelines requirements.

Staff believes that the environmental functions and benefits provided by natural areas are far more effective in terms of water quality than the proposed system. Staff believes that the more

vegetated cover and natural soil structure are lost to development, the more net environmental degradation will occur. Therefore, staff does not support the Applicant's position that the proposed project complies with all applicable water quality standards as required by Section 59-C-18.152(a)(2)(B)(ii).

Criteria III:

Section 59-C-18.152(a)(2)(B)(iii) – Waiver is Minimum Needed

Applicant's Position

The applicant is requesting an impervious surface waiver of at least 2.7% from the standard with the proposed concept plan. To reduce the impacts of this additional impervious surface on the watershed, the proposed plan includes numerous water quality techniques such as pervious paving, free-draining stone systems, and detention facilities. The Applicant proposes that the current amount of impervious area on the site, plus additional area needed for elements shown in the current plan, is the minimum amount necessary to develop the Property for its intended use. The Applicant indicates the small addition to the main building is to make it functional as a modern, yet charming restaurant. The Applicant claims to have made every effort to balance the various competing objectives on the Property while minimizing impervious surfaces. As part of the efforts to reduce imperviousness onsite, the Applicant has done the following:

1. Acquired an additional 1.01 acres of land (P158);
2. Removed a previously existing 6,515 square foot stone parking lot;
3. Removed the existing barn because it was no longer safe, however, the Applicant proposes to reconstruct this building for retail use; and
4. Reduced the proposed width of sidewalks and paths from five feet to three feet;

In addition to the measures to reduce imperviousness listed above, as a part of the current application, the Applicant is also proposing to:

1. Remove the existing 277-foot-long stone driveway from Spencerville Road (approximately 3,889 square feet);
2. Remove the existing stone driveway along the northern property line from Oak Hill Road (approximately 6,252 square feet);
3. Obtain a parking waiver for 10% of the number of parking spaces required by the Zoning Ordinance; and
4. Remove the existing asphalt areas throughout the Property and realign the main driveway off of Oak Hill Road;

Staff's Position

In staff's opinion, the applicant has not demonstrated that the requested waiver is the minimum necessary to permit a Country Inn use on the Subject Property. Since the Overlay Zone did not grandfather the approved Development Plan, it is staff's opinion that the new requirements should apply to the site. To obtain a waiver to exceed 11.2% imperviousness on the Subject Property, the applicant must demonstrate that all planning and zoning options to develop a

country inn with the least possible amount of additional impervious surface have been pursued. Staff believes the applicant has not explored all reasonable options to reduce the total impervious surface for the project, and that modifications to the Applicant's proposed development are necessary to achieve a more desirable level of imperviousness on the Property. Staff believes the Applicant can reduce the proposed imperviousness onsite to maintain the existing level of imperviousness (11.2%) by any combination of the following;

1. Removal of the Bank Barn and associated parking entirely from the proposed plan;
2. Reduction in the size of the proposed restaurant and associated parking; and
3. Changing the mix of uses onsite in a way that reduces the overall footprint of the proposed additions and reduces the associated parking;

The applicant states that the Bank Barn is necessary to their program and is required to be rebuilt by the Historic Preservation Commission (HPC). However, Historic Preservation staff has indicated that while the HPC supports the Applicant's request to reconstruct the Barn, it is not a necessary component of the historic site. Therefore, staff recommends that the Applicant not replace the Bank Barn as part of the proposed plan, which would reduce the retail square footage by 1,726 SF and reduce the parking requirement by nine spaces from twenty required spaces to eleven.

Another element of the proposed plan that can be altered to reduce square footage is the scope and size of proposed uses within the country inn. For example, as shown in the table below, the uses in the currently proposed concept plan are different than those on the approved Development Plan and generate the need for 12 more parking spaces (see Table 3, below). The proposed parking lot contributes the greatest amount of impervious area on the Property. Scaling back the proposed restaurant would further reduce the amount of required parking spaces and thus further reduce the amount of impervious surface onsite.

TABLE 3. Proposed Uses and Required Parking Spaces in Approved Development Plan and Proposed Concept Plan

Elements of Plan	Approved Development Plan (Approved Jan. 30, 1990)		Current Proposed Concept Plan	
	Proposed Square Footage of Building(s)	Required Parking	Proposed Square Footage of Building(s)	Required Parking
Restaurant: Indoor area -- 25 spaces/1000 sf Outdoor area -- 15 spaces/1000 sf	2500 s.f. 0 s.f.	63 spaces 0 spaces	2080 s.f. 1200 s.f.	52 spaces 18 spaces
Retail Shops - 5 spaces/1000 sf	2000 s.f.	10 spaces	3928 s.f.	20 spaces
Resident Caretaker -- 2 spaces/d.u.	1 d.u.	2 spaces	1 d.u.	2 spaces
Museum -- 2.5 spaces/1000 s.f.	2000 s.f.	5 spaces	0 s.f.	0 spaces
Total required parking spaces		80 spaces		92 spaces

Staff notes that the proposed parking lot could be reduced in size by changing the proposed mix of uses on the site and/or through a parking waiver that the Planning Board could grant at the site plan review stage. Because the applicant has not applied all possible means to limit the amount of imperviousness on the proposed plan, it is staff's opinion that the applicant has not demonstrated that the relief sought is the minimum needed.

Further, the stormwater management techniques proposed by the applicant to offset the impacts of imperviousness will not be sufficient to protect this high quality watershed. The 8% imperviousness limit on new development (reduced from 10%) in the Environmental Overlay Zone was adopted in 2007 because of recommendations from the Paint Branch Technical Work Group comprised of technical experts from regional, state, and local agencies. Its charge was to review problems of the watershed's environmental health and recommend possible measures to restore and protect it. One of its recommendations resulted in the creation of an Environmental Overlay Zone to limit impervious surfaces in new developments to minimize water resource impacts.

In 2002, the late Councilmember Marilyn Praisner reconvened the technical work group in response to observations and concerns by various environmental groups and County and State agencies that ongoing land development activities in the watershed had resulted in the continuing decline in the quality of water resources of the stream system despite the limit on impervious surface and the application of stormwater management techniques as part of those developments. Lowering the Overlay Zone's imperviousness limit from 10% to 8% was a recommendation of the group to address this issue.

Staff respectfully requests that the Planning Board consider the sensitivity of the resource and the efforts that have gone into the protection of the resource when considering this waiver request. As discussed in the March 25, 2010 Planning Board Roundtable Discussion, there are many functions provided by natural areas that will be lost by their conversion to engineered surfaces.

No combination of Best Management Practices (BMPs), no matter how well they infiltrate stormwater, can duplicate all of the environmental functions and benefits provided by natural areas. This has resulted in a generally recognized principle: the more vegetated cover and natural soil structure lost to development, the more net environmental degradation will result, even if BMPs such as permeable pavement systems infiltrate the same volume of stormwater as natural areas. In addition, a waiver of the imperviousness limitations imposed on this property would create a large parking lot and consequently result in an increase in the amount of pollution generating activities on the property (i.e., allow for more automobiles on the site). In staff's opinion, the impervious surface proposed on the concept plan is too high even with the proposed alternative stormwater management techniques.

Issue #2 - Development Plan Compliance

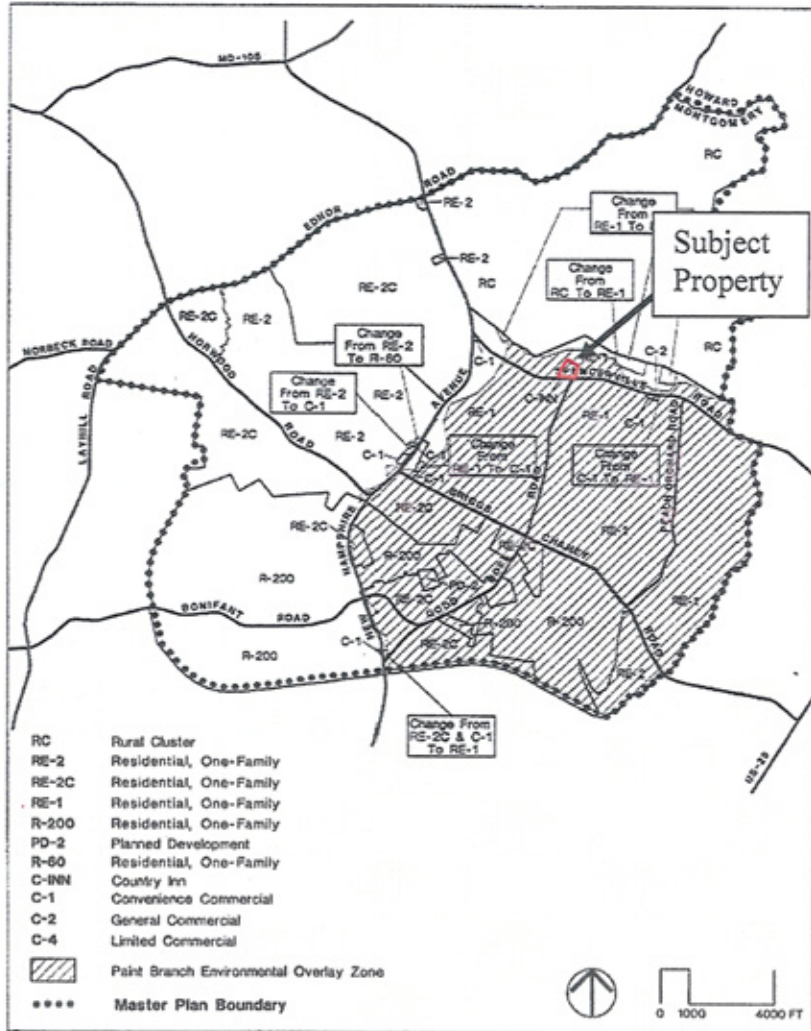
There are several binding elements the applicant is proposing to modify as identified in Resolution No. 11-1840, which granted approval to Application No. G-640. The mix of uses, number of parking spaces, location of uses, and access points were very specific in the approved

Development Plan. The approved Development Plan also indicates that commercial traffic will access the property from Spencerville Road, however, the Applicant is proposing to remove the driveway in order to reduce the imperviousness onsite and replace the driveway with a pervious surface or grass swale. The Applicant is also proposing to install a gate to prevent access to the property from Spencerville Road. Therefore, staff finds the proposed plan may require a Development Plan Amendment; however, the final determination should be made by the Montgomery County Hearing Examiner prior to submission of a subsequent Preliminary or Site Plan and not by the Planning Board. It would be premature for the Planning Board to find that a subsequent Preliminary and Site Plan conform to the illustrative and non-illustrative elements of the approved Development Plan until such a determination is made by the Hearing Examiner.

Master Plan Compliance

The Subject Property is located in the Residential Wedge of the Cloverly Master Plan (See Map Below). The Residential Wedge is located in the Upper Northwest and Upper Paint Branch watersheds. Land-use for the site is Commercial/Office, while the surrounding land-uses are a combination of Rural, Single-Family Residential, Religious/Institutional, and Park and Open Space. The Paint Branch portion of the Residential Wedge recommends that this area remain primarily low-density residential in character. The surrounding area is zoned RE-1 with the exception of the Cloverly Commercial Area, Spencerville Commercial Area, and the Subject Property, which is zoned Country Inn(C-I) (See Master Plan Map Below).

The proposed use of the Subject Property is consistent with the Master Plan; however, the Master Plan does not specifically recommend a waiver of impervious surface to accommodate the Country Inn. In fact, the Master Plan specifically recommends the implementation and strict enforcement of the requirements and guidelines of the Special Protection Area Law, and prohibiting, or placing conditions on permitted and special exception uses that create unacceptable adverse impacts on the resources of the Paint Branch.



CONCLUSION

As discussed above, Section 59-C-18.152 of the Zoning Ordinance specifies a grandfather provision and three specific criteria that an applicant must meet in order to qualify for a waiver from the 8% imperviousness requirement in the Upper Paint Branch Special Protection Area Environmental Overlay Zone. The proposed Country Inn meets the standards to qualify for the grandfather provision as specified in Section 59-C-18.152(a)(1) for 36,582 square feet of onsite imperviousness (11.2% of the site), but not for the additional 6,515 square feet requested by the Applicant.

With regard to the waiver request, the applicant has not demonstrated that it meets the criteria required for the Board to grant a waiver in accordance with Section 59-C-18.152(a)(2)(B):

- (i) The 8 percent impervious limitation (or maintenance of the 11.2% allowed for this application) would result in undue hardship to the applicant because of events or circumstances not caused or facilitated by the applicant;
- (ii) The applicant complies with all applicable federal, state, and county water quality standards; and

- (iii) The relief sought is the minimum needed to prevent the hardship and the Director must consider alternative techniques.

Staff notes that, given stringent policies and significant investments to protect the Upper Paint Branch resources, the existing impervious level of 11.2% should be maintained.

For these reasons, staff finds that the proposed plan does not meet the requirements for protection of the Upper Paint Branch SPA. We therefore recommend that the Planning Board deny the Applicant's request.

ATTACHMENTS

Attachment A – Vicinity Map

Attachment B – Historic Preservation and Legacy Open Space Staff Memos

Attachment C – Proposed Plan and Existing Conditions Drawing

Attachment D – Resolution 11-1840 (G-640 Rezone from RE-1 to Country Inn)

Attachment E – Building permit issued by DPS to repair historic home

Attachment F – Applicant's Justification Letters – January 29, 2010 and April 6, 2010

Attachment G – Applicant's Letter – January 18, 2010

EDGEWOOD INN (720080220)



Map compiled on May 01, 2008 at 11:28 AM | Site located on base sheet no - 221NE02 | Date of Orthophotos: April 2006 - Used with permission from Montgomery County Government

NOTICE

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

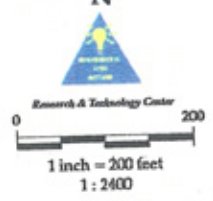
Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14,400 scale aerial photography using stereo photogrammetric methods.

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

Key Map



N



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
 8287 Georgia Avenue - Silver Spring, Maryland 20910-7100

17



November 14, 2008

MEMORANDUM

TO: Cathy Conlon, Subdivision Supervisor
Development Review Division

FROM: Brenda Sandberg, Legacy Open Space Program Manager
Park Planning and Stewardship Division, Department of Parks

SUBJECT: Review of Pre-Application Concept Plan for Edgewood Inn (#720080220)

Legacy Open Space staff has reviewed the pre-application plan for Edgewood Inn (#720080220) for consistency with the *Legacy Open Space Functional Master Plan* (2001). The Edgewood property is designated in the Legacy Open Space plan as a Heritage Resource in the Underground Railroad/Quaker Cluster. Staff finds the proposal to be consistent with the goals of the Legacy Open Space (LOS) plan to encourage preservation of key open spaces surrounding historic sites and to encourage heritage tourism.

The Legacy Open Space plan designates critical open space resources of many types (environmental, heritage, urban) throughout the County for preservation through a variety of tools (acquisition, easement, appropriate development). The Heritage Resource category focuses on four heritage themes or clusters that tie in to the efforts to promote heritage tourism in the County. The Underground Railroad and Quaker Heritage Cluster is located in northeast portion of the County and seven individual sites have been designated within that cluster for special preservation efforts through the LOS program.

In 2001, the LOS Plan designated the Edgewood site as a Heritage Resource that should be considered for acquisition into the Park system for public interpretation as a historic site. Further analysis by staff in the next few years resulted in a revised recommended preservation technique of supporting adaptive reuse in private ownership.

The submitted concept plan for Edgewood Inn largely preserves the open viewshed from Spencerville Road and Oakhill Road toward the historic structures. The concept plan also preserves most of the woods on the site and hides the required parking area behind the historic structures and the woods. The proposed adaptive reuse of the site as a country inn and restaurant is one of the preferred uses for heritage resources such as this in the County. The development of a country inn and restaurant on the site supports the heritage tourism efforts of the County, a key component of keeping rural and agricultural lands viable.

As noted by the Historic Preservation Section in their review, the site is also an existing designated site in the Master Plan for Historic Preservation. That designation will result in review of architectural and design elements to preserve this heritage resource as it moves through the development review process.

LOS staff finds the proposed Edgewood Inn proposal to be consistent with the goals of the Legacy Open Space plan regarding the preservation of the historic farmstead, the open space setting of the historic buildings, and the adaptive reuse of the property to a use that supports heritage tourism. Staff encourages the applicant to pursue all avenues possible to meet the stringent impervious limits for this site while still meeting their preservation and adaptive reuse goals.



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

October 16, 2008

MEMORANDUM

TO: Cathy Conlon, Subdivision Supervisor
Development Review Division

FROM: Joshua Silver, Senior Planner *(JAS)*
Historic Preservation Section

SUBJECT: Review of Revised Pre-Application & Preliminary Consultation Plan
(#720080220 Edgewood Inn)

The Historic Preservation Section has reviewed the revised Pre-Application & Preliminary Consultation Plan for the Edgewood Inn #720080220 for potential impacts to historic properties listed on the Locational Atlas and Index of Historic Sites and Master Plan for Historic Preservation.

The proposed development plan is located within the historic environmental setting boundary of Individually Designated Master Plan Site, #15/52 Edgewood II. Any proposed construction, alterations of existing structures, or grading within the historic environmental setting will require review and approval by the Historic Preservation Commission.

Originally built in c1858, Edgewood has strong historical associations with the Stablers, a prominent Quaker family. The house and its outbuildings comprise one of Eastern Montgomery County's most significant Quaker farmsteads. The architecture of the original dwelling combines nineteenth and early twentieth century folk vernacular I-house and gable front and wing architectural forms to create a rambling frame farmhouse with Neo-classical ornamentation. The property is characterized by an existing grove of hardwood trees from which the house obtained its name.

On August 13, 2008 the HPC held a Preliminary Consultation hearing to review plans for the development of the site as a Country Inn. The HPC provided comments and feedback on three specific historic preservation items related to the development of the site. Items discussed included the: (1) site plan/overall design of the property; (2) construction of a new 727 s.f. addition to the main house; and (3) construction of a new 1,728 s.f. barn. There was consensus among the HPC that the overall design for the property, massing, location and scale of the proposed addition and construction of a new barn were generally consistent with the historic environmental setting and style of the main house and outbuildings. The HPC advised the applicants that some basic design refinements would be necessary for the proposed addition and noted that further definition of details for the treatment of proposed impervious surfaces at the property, including the proposed parking area and the existing driveway from MD Route 198/Spencerville Road to the historic house, were necessary before moving forward with a Historic Area Work Permit.

The HPC supports the development of this property as a country inn and restaurant and the adaptive reuse of the main house and existing outbuildings for related commercial purposes. The proposed use of the property as a country inn would enhance the protection of the existing historic resources on the property and their public

(Signature)

utilization, consistent with the purpose of the County Historic Preservation Ordinance, the intent of the Country Inn zone, and the Cloverly Master Plan historic preservation objectives. The HPC recognizes the sensitivity of this property because of its location in the Upper Paint Branch Special Protection Area and acknowledges other planning and zoning prerequisites must first be addressed before any development at this property can proceed.

The Historic Preservation Section encourages continued consultation with the M-NCPPC staff, HPC, and state and county agencies to further develop details for the development of the property as a country inn.

Division Of Revenue
RECEIVED

0509-11B

FEB 6 1990

Montgomery County, MD

Resolution No.: 11-1840
Introduced: January 30, 1990
Adopted: January 30, 1990

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

By: County Council

Subject: APPLICATION NO. G-640 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Susan W. Carter, Esquire, Attorney for Loyal Ralph and Laura Jeanette Swan Purchaser, Applicant, OPINION AND RESOLUTION ON APPLICATION
Tax Account No. 05-00279326

OPINION

Application No. G-640 requests reclassification from the RE-1 Zone to the Country Inn Zone of 7.785 acres known as Part of Loyal Ralph Swan, et ux, Property, located at 16101 Oak Hill Road, Silver Spring, in the 5th Election District.

The Hearing Examiner recommended approval of the development plan and approval of the reclassification subject to the specifications and requirements of the development plan. These recommendations were based on conclusions that the Country Inn Zone at the proposed location satisfies the requirements of the zone; that the proposed use will be compatible with existing and planned land uses in the surrounding area; and that the proposed use bears sufficient relationship to the public interest to justify it. The Technical Staff and the Planning Board provided similar recommendations. The District Council agrees with the findings and conclusions of the Hearing Examiner, the Technical Staff, and the Planning Board.

The subject property lies in the Patuxent Watershed Conservation Area at the intersection of Spencerville Road, also known as MD Route 198, and Oak Hill Road. It is located about two-and-one-half miles west of U.S. Route 29. The property forms a trapezoid which contains 560 feet of frontage along Route 198 and 790 feet of frontage along Oak Hill Road. The topography gradually ranges from a

11-1840

high point adjacent to Oak Hill Road to a low point near the eastern boundary line. The site is currently developed with a two-and-one-half-story frame residence and is shown on the Locational Atlas and Index of Historic Sites as "Edgewood II." There are two access driveways, one from Route 198 and another from Oak Hill Road. A brick and stone walkway is located adjacent to the main residence. There are several outbuildings located on the site including an old blacksmith shop, a garage, several maintenance buildings, and a ruins of a barn. The site is densely wooded in the east and central portions and contains some tree clusters at its southwest corner.

The zoning history of the site reveals that it was initially classified for one-half acre residential density by the 1954 Regional District Zoning. This zoning category was reapplied by the 1958 Countywide Comprehensive Zoning. The property was downzoned to its current one-acre density by sectional map amendment in 1982. There have been no previous local map amendments pertaining to this site. The Eastern Montgomery County Master Plan, adopted and approved in 1981, recommended the site for the Country Inn Zone.

The surrounding area is generally bounded by the public land adjoining the Patuxent River to the north, Batson Road to the east, Good Hope Estates subdivision to the south and the area extending toward New Hampshire Avenue to the west. This area is predominantly rural in character with a mixture of farms, low density residential development and institutional uses. A church and school are located directly south of the site. The Good Hope Estates subdivision, developed at a density of two dwelling units per acre, is located further south. Farms are located west, east, and southeast of the site. The Spencerville Knolls subdivision is located north of the site along Armond Lane and Sondra Court. Some scattered single-family homes are developed along both sides of Spencerville Road.

The proposed development will retain the existing residential structure as a country inn restaurant to serve up to 90 patrons. The size of the restaurant is limited by the capacity of a private septic disposal system and well. Several of the outbuildings will also be retained and refurbished to provide for antique and craft shops. A barn will be reconstructed slightly to the northwest of its current location. Parking for 81 cars is proposed in an area located to the southeast of the frame house.

Building coverage will be limited to four percent of the site and 83 percent of the site will be devoted to green space. There will be no signage along Oak Hill Road and all commercial traffic will enter the subject property from Route 198. The common property line along the northeast boundary will be landscaped as approved by the Planning Board at the time of site plan. The issue of reconstruction of an existing fence along this property line will also be examined by the Board at site plan. The development will involve three stages: the opening of a restaurant operation in the existing frame house and construction of supporting driveway, parking, and walkway systems; the conversion of outbuildings into antique and craft shops, walkway links and the relocation of the caretaker to the third floor of the main house; and the construction of a new 600 square foot kitchen and 2,500 square foot dining room and the conversion of the main house dining room and food handling areas into a museum.

The District Council agrees with the determination of the Hearing Examiner that the development plan satisfies the requirements of Section 59-D-1.6. In this respect, the District Council finds that the Country Inn Zone at the proposed location is in compliance with the recommendations of the applicable Master Plan and does not conflict with the General Plan, the County CIP, or other applicable County plans or policies. Also, the proposed zoning is in compliance with the

requirements of the Country Inn Zone and will provide for the maximum safety, convenience, and amenities of residents of the area as well as being compatible with adjacent development. The evidence also demonstrates that the internal vehicular and pedestrian circulation systems are safe, adequate, and efficient. The development plan, by its site design, will minimize grading of the site and prevent soil erosion and preserve natural vegetation and other natural features of the site. Since the property is under single ownership, there is no need for documents showing perpetual maintenance of recreational, common, or quasi-public areas.

The District Council also agrees with the determination of the Hearing Examiner that the application satisfies the requirements of the Country Inn Zone. In this respect, the subject property is located in an area that is rural and will be an appropriate setting for a Country Inn as indicated by the Master Plan. The proposed use will be located in an existing residential structure and will be limited in a manner compatible with the rural character of the area. Significant tree cover will be preserved. Moreover, the minimum development standards of the zone are satisfied. The zone requires at least a two-acre minimum lot size and the subject property involves over seven acres. The zone permits building coverage up to 10 percent of the site, while the proposed use will only cover 4 percent. The zone requires green space of 50 percent of the site, while the proposed use will provide 83 percent. Required setbacks are 50 feet from any street and 75 feet from boundary lines. The closest buildings to a street or boundary line meet or exceed these requirements. The existing structure conforms with the building height restrictions of the zone. The parking exceeds the minimum off-street parking requirements.

The District Council also agrees with the determination of the Hearing Examiner that the proposed zoning will be compatible with the rural character of the area and will be in general conformity with the Master Plan. The evidence indicates that the proposed use will not adversely affect public facilities or propose a detriment to the public health, safety, or welfare. The Planning Board and the Technical Staff recommended approval. Hence, the proposed development bears sufficient relationship to the public interest to justify it.

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

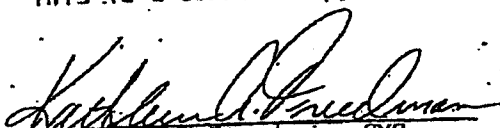
ACTION

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, approves the following resolution.

The amended development plan, submitted as Exhibits 20(a) and 29 is approved.

Application No. G-640 for the reclassification from the RE-1 Zone to the Country Inn Zone of 7.785 acres known as Part of Loyal Ralph Swan, et ux, Property, located at 16101 Oak Hill Road, Silver Spring, in the 5th Election District is granted for the Country Inn Zone in the amount requested subject to the specifications and requirements of the amended development plan approved above.

This is a correct copy of Council action.


Kathleen A. Freedman, CMC
Secretary of the County Council



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Carla Joyner
Director

BUILDING PERMIT

Issue Date: 12/6/2007

Permit No: 468180
Aptype : BUILDING
Expires: 12/6/2008
X Ref.
Rev. No:
Contact_ID: AC1088297

THIS IS TO CERTIFY THAT: STEVEN GUDELSKY
12071 TECH RD UNIT B
SILVER SPRING MD 20905

HAS PERMISSION TO: RESTORE AND / OR REPAIR SINGLE FAMILY DWELLING
PERMIT CONDITIONS: Restore and Repair historic home, 520-sqft.
HAWP# 452771, Apvd 06/14/2007.

MODEL NAME:
PREMISE ADDRESS: 16101 OAK HILL RD
SILVER SPRING MD 20905-3931

LOT N/A BLOCK N/A ZONE CI GRID
LIBER ELECTION DISTRICT 05 PLATE PARCEL
FOLIO TAX ACCOUNT NO.: PS NUMBER
PERMIT FEE: \$ 198.00 SUBDIVISION COLESVILLE OUTSIDE

MUST BE POSTED ON JOB SITE

AN APPROVED FINAL INSPECTION IS REQUIRED PRIOR TO USE OR OCCUPANCY

Every new one- or two-family dwelling, every townhouse and any attached accessory structure must be equipped with a fire sprinkler system. A separate sprinkler permit is required for the installation of the fire sprinkler system.

Many subdivisions and neighborhoods within Montgomery County have private deed restrictions and covenants regulating building construction. Obtaining a building permit does not relieve the property owner of responsibility for complying with applicable covenants.

NOTICE
THIS APPROVAL DOES NOT INCLUDE PLUMBING, GAS PIPING OR ELECTRICAL OR CONSTRUCTION IN ANY DEDICATED RIGHT-OF-WAY.

NOTE
THIS PERMIT DOES NOT INCLUDE APPROVAL FOR ANY ELECTRICAL WORK. YOU MUST HAVE A SEPARATE ELECTRICAL PERMIT TO DO ANY ELECTRICAL WORK.

Director, Department of Permitting Services



Montgomery County Maryland
 Department of Permitting Services
 240-777-6300 Fax 240-777-6262
<http://permittingservices.montgomerycountymd.gov>

255 Rockville Pike, 2nd Floor
 Rockville, Maryland 20850-4166



APPLICATION FOR RESIDENTIAL BUILDING PERMIT

WFS

DWELLING FOR CARETAKER

Sediment Control # _____ Building AP #(s) 468180 Demolition # _____

DESCRIPTION OF WORK: (check all that apply)

- ADD
 - ALTER
 - CONSTRUCT
 - DEMOLISH
 - MOVE
 - FOUNDATION ONLY
 - RESTORE and/or REPAIR
 - REVISION
 - FINAL INSPECTION ONLY
- Gross Sq. Ft. of Area Created or Affected by this Action: 520
 Estimated Cost: \$ 40,000
 Disturbed Land Area: 500

USE OF STRUCTURE:

- SINGLE FAMILY DWELLING
- TOWNHOUSE
- FENCE*
- RETAINING WALL
- TRAILER**
- MODULAR HOME**
- HOT TUB
- OTHER _____
- DECK
- DUPLEX
- BASEMENT
- POOL IN GROUND
- POOL ABOVE GROUND
- SHED

Plans Picked O Bin

* IF BUILDING A FENCE OR RETAINING WALL

HEIGHT: _____ ft. _____ in. Note: (A signed approval letter from the adjacent lot owner is required)
 Located entirely on the land of the owner Public Right of Way/Easement Located on the lot line

Amount Due 0

**NOTE: _____
 Manufacturer's Name and Model # for All Trailers and Modular Homes

Date Called 11/26/07

MODEL HOUSE PROGRAM: to build new homes

- INITIAL SUBMITTAL or
 - PREVIOUSLY APPROVED PERMIT # _____
- New Home Model Name or # _____

REFER-BACK SYSTEM: to build new homes & pools

- INITIAL SUBMITTAL or
- PREVIOUSLY APPROVED PERMIT # Notes _____

REVISION to ORIGINAL PERMIT # _____

(Original permit has been issued and is active)

- SITE
- STRUCTURAL
- HOUSE TYPE
- OTHER: _____

BUILDING PREMISE ADDRESS:

Add'l. House #'s if building new townhouses: _____

House Number 16101 Street OAK HILL ROAD City SILVER SPRING Zip 20905

Lot(s) _____ Block _____ Subdivision _____

Nearest Cross Street SPENCERVILLE ROAD

APPLICANT INFORMATION: Contact ID #: _____

Fax #: 301-622-9871 Email: sgudelsky@comcast.net

Name of Applicant STEVEN GUDELSKY Daytime Phone #: 301-980-5960
 (Permit will be issued to Applicant)

Address 12071 B TECH ROAD City SILVER SPRING State MD Zip 20905

CONTACT INFORMATION: Contact ID #: _____ Fax #: _____ Email: _____

Contact Person _____ Daytime Phone # _____
 (If other than Applicant)

Address _____ City _____ State _____ Zip _____

Contractor JON REITKOPP, JAZZ CONSTRUCTION MHC or Montgomery County Builders License # 45203

Contractor Address 7813 MUDLUM LANE BETHESDA MD 20814 Daytime Phone # 301-957-0701

If applying for "Design for Life" certification, indicate the level of accessibility Visit-Able Live-Able

CERTIFICATE NAME: _____

ADDITIONAL APPROVALS:

Properties located within historic districts, municipalities and special taxing districts may require additional approvals beyond the required Department of Permitting Services (DPS) building permit. For projects located in the City of Takoma Park's Commercial Revitalization Overlay, certain permits must be approved by the City prior to commencing construction. Please refer to "Permit Procedures for Properties within a Montgomery County Municipality" for more information.

TYPE OF WATER SUPPLY WSSC WELL OTHER (specify) _____
SEWAGE DISPOSAL WSSC SEPTIC OTHER (specify) _____

MPDU ... 20% of this new home development will be built as Moderately Priced Dwelling Units Yes No

IMPACT TAX... New Homes will be assessed an Impact Tax based on the area where the house is built ... (see Impact Tax guide)
 I will exercise an approved Impact Tax Credit, a copy of which is attached

DAP & EDAET AGREEMENTS... Agreement must be attached for new homes when applicable.

SPECIAL EXCEPTION: Is this lot subject to a Special Exception? Yes, Case # _____ No

VARIANCE: Has a Variance been granted to perform this work? Yes, Variance # _____ No

HISTORIC AREA IN ATLAS or MASTER PLAN: Is the property a Historic resource? Yes No

AUTHORIZED AGENT AFFIDAVIT: I hereby declare and affirm, under the penalty of perjury, that:

- 1. I am duly authorized to make this permit application on behalf of: BARRY GUNDELSKY
(please print property owner's name)
- 2. The work proposed by this building permit application is authorized by the property owner; and
- 3. All matters and facts set forth in this Affidavit are true and correct to the best of my knowledge, information and belief.

[Signature] 10/11/07 STEVEN M. GUNDELSKY
(Signature of Authorized Agent) Date (Print Name)

HOMEOWNER ACTING AS NEW HOME BUILDER AFFIDAVIT:

By this instrument, I, as the property owner, am applying for an exemption from the licensing requirements for a building contractor, I hereby declare and affirm, under the penalty of perjury that:

- 1. I or a member of my immediate family will perform any and all construction associated with the foregoing building permit application; and
- 2. The type of improvement indicated on the building permit application is designed for use as a residence or dwelling place for my own or my immediate family's use; and
- 3. I take full responsibility for all and any code violations.
- 4. All matters and facts set forth in this affidavit are true and correct to the best of my knowledge, information, and belief.

(Signature of Property Owner) Date (Print Name)

TO BE READ BY THE APPLICANT:

Any information that the applicant has set forth in this application that is false or misleading may result in the rejection of the application. A condition for the issuance of this permit is that the proposed construction will comply at all times with the plans as approved by all applicable government agencies. I hereby declare and affirm, under the penalty of perjury, that all matters and facts set forth in the building permit application are true and correct to the best of my knowledge, information and belief.

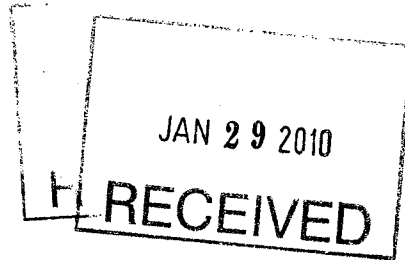
[Signature] 10/11/07 STEVEN M. GUNDELSKY
(Applicant's Signature) Date (Print Name)

EXPEDITED PLAN REVIEW: I request an Expedited Plan Review, when available, which is subjected to additional fees.

(Applicant's Signature) Date (Print Name)

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

January 29, 2010



Emily J. Vaias
301.961.5174
evaias@linowes-law.com

By Hand

Mr. Patrick Butler
Maryland National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Edgewood Inn, Pre-preliminary Plan No. 720080220A;
Located in the Northeast Quadrant of Spencerville Road and Oak Hill Road, approximately
8.29 acres consisting of Parcel 161 (317,254 square feet) and Parcel 158 (43,902 square feet)
(the "Property")
Amended Application in response to Planning Board Comments on December 4, 2008
(Amended Application attached)

Dear Mr. Butler:

We have recently been retained by Edgewood Inn, LLC to assist and represent them with the filing and processing of the plans for their historically designated Property to create a Country Inn and retail shops. In response to comments they received from the Planning Board and Staff at the December 4, 2008 hearing, the owners have worked diligently with new consultants to design a more environmentally sensitive plan that best addresses the competing goals of the Property's historic designation, Country Inn Zoning and development plan, as well as its location within the Upper Paint Branch Special Protection Area ("SPA"). Because there was some confusion about the facts and circumstances of the Property, the Applicant, by separate letter included herewith, has provided some additional explanation of the history and circumstances surrounding the Property. In addition, in this letter as well as the Applicant's, we will explain the various improvements that have been made to the plans to better balance the environmental, historical and practical realities of the Property, and which warrant the granting of the requested waiver from the SPA 8 % impervious area cap as set forth in Section 59-C-18.152(a)(2) of the County Code.

Section 59-C-18.152(a)(1)(A) (the "Grandfather Provision") provides that impervious surfaces that lawfully existed pursuant to a building permit issued prior to July 1, 2007 that exceed 8% may continue or be reconstructed. This historically designated Property clearly was the subject of old building permits issued long before July 1, 2007 that included lawfully existing impervious surfaces that are entitled to remain or be reconstructed. As evidenced by the attached aerial photographs, from 2006 (Exhibit "A") and 2008 (Exhibit "B"), the buildings, pathways and parking areas existed prior to July 1, 2007. Although we requested copies of all permits from the Department of Permitting Services (DPS), they only provided building permits from December 6, 2007, just a few months beyond the July 1, 2007 deadline. Further, there was an Historic Area Work Permit (HAWP) approved on June 2, 2006

Mr. Patrick Butler
January 29, 2010
Page 2

which was the precursor to the December 6, 2007 building permit. Consequently, it seems in this circumstance, where the Property has an historic designation with historic research proving the buildings and surroundings pre-existed the SPA Law, the condition of the Property as it existed pursuant to the HAWP and subsequent building permit, supported by aerial photographs, represents the impervious surfaces that are entitled to remain, pursuant to the Grandfather Provision. Accordingly, the attached Existing Conditions Plan (Exhibit "C") and approved NRI/FSD (Exhibit "D"), show that there was 43,408 square feet of impervious area as of July 1, 2007, or 13.68%. — Existing

After careful consideration of the Planning Board's comments, the Applicant is proposing to decrease and remove several existing impervious surfaces, while preserving and strengthening the historic buildings on the Property in order to create the Country Inn that is essentially the only use permitted by the zone. The final result is that there will be 52,409 square feet of impervious area, and because of the Applicant's recent purchase of the adjacent property (resulting in an impervious area credit of 3,512 square feet), this results in a final project impervious area of 48,897 square feet, or an increase of 5,489 square feet from the pre-existing impervious area. Consequently, the requested waiver is to go from the pre-existing condition of 13.68% impervious area to 15.41% for an increase in 1.73% (See Pre-Application Plan, Exhibit "E", Illustrative Site Plan, Exhibit "F", and Proposed Impervious Area Plan, Exhibit "G")

Waiver request

The chart below depicts the specific categories of impervious area and their existing and proposed computations. We note that there is a disagreement between us and Staff with regard to a previously existing stone parking lot, consisting of 6,515 square feet that was constructed and contemplated for use by a Canadian Company as part of using the house as a restaurant in 2003 or thereabouts (See attached pictures, Exhibits "A" & "B"). The Applicant removed this stone parking lot in order to preserve and save trees on the Property sometime between 2007 and 2008, and should not be penalized for having done so. Clearly, this parking area existed as of July 1, 2007 and was entitled to grandfathering, and this should be credited towards the final project calculations.

	<u>Grandfathered</u> Existing as of July 1, 2007 (sq. ft.)	<u>%</u>	<u>Current</u> <u>Proposal</u>	<u>%</u>
Property Area	317,254	100%	317,254*	100%
Buildings	6,973		7,760	
Parking/Driveway	27,469**		32,171	
Sidewalks/Paths	1,040		4,552	
Public ROW/Oak Hill Rd.	7,926		7,926	
Sub-total Impervious	43,408	13.69	52,409	
Credit from P158			(3,512)	
Total	43,408	13.69	48,897	15.41

Mr. Patrick Butler
January 29, 2010
Page 3

*In 2008, the Applicant purchased P158, consisting of 43,902 sq. ft in order to preserve more open space and reduce imperviousness in the watershed. If this land is included in the total land area for the project, the final area is 361,156 square feet and the total impervious area across the entire Property would be 52,409 sq. ft./361,156 sq. ft. or 14.51%.

**This includes the stone parking lot which is 6,515 square feet.

As part of the efforts to address prior comments, preserve the historic buildings, create a practical and ADA-compliant campus, and limit the impervious area (achieving the numbers shown above), the Applicant is proposing or has done the following:

- D -1) Acquired an additional 1.01 acres of land (P158).
- D - 2) Removed previously existing 6,515 square foot stone parking lot.
- WD 3) Will remove the existing 277-foot long stone driveway from Spencerville Road (approximately 3,889 square feet), even though this is part of the historic setting for the Property, the Applicant has worked with Historic Preservation Staff to reach agreement on its removal.
- WD 4) Will remove the existing stone driveway along the northern property line from Oak Hill Road (approximately 6,252 square feet).
- WD 5) Will remove existing asphalt areas throughout the Property and realign the main driveway off of Oak Hill Road (over 10,000 square feet), using a free-draining stone system.
- D- 6) Removed the existing barn because it was no longer safe, and will reconstruct this building.
- WD 7) Will upgrade, reconstruct and improve existing buildings.
- WD 8) Will construct 92 parking spaces which includes 4 handicapped spaces and 2 motorcycle spaces, as required by Code.
- 9) Will provide ADA-compliant walkways along and between the buildings.
- 10) Will utilize porous materials whenever possible on driving and walking surfaces (see detailed discussion of these materials in the Applicant's letter attached hereto)

Section 59-C-18.152(a)(2) provides:

The Director may grant a waiver from the 8 percent impervious surface restriction subject to the following standards and procedures:

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- (A) *Written Request. An applicant may apply for a waiver from the 8 percent impervious surface restriction if enforcement would result in undue hardship to the applicant. The request must be in writing to the Director.*
- (B) *Review and action. The Director may grant a waiver from the 8 percent impervious surface restriction if the applicant shows by clear and convincing evidence that:*
- (i) *the 8 percent impervious limitation would result in undue hardship to the applicant because of events or circumstances not caused or facilitated by the applicant;*
 - (ii) *the applicant complies with all applicable federal, state and county water quality standards; and*
 - (iii) *the relief sought is the minimum needed to prevent the hardship and the Director must consider alternative techniques."*

A. Written Request Section 59-C-18.152(a)(2)(A)

We are presenting this additional written request for a waiver from the 8 percent impervious surface restriction as enforcement would result in undue hardship in the development of the Edgewood Country Inn. If the Applicant is not allowed to exceed the cap, they will not be able to proceed with the project as adopted under Resolution No. 11-1840 (the original Development Plan approved in 1990) which granted approval to Application No. G-640 to reclassify Parcel P161 from the RE-1 zone to the Country Inn Zone.

B. Section 59-C-18.152(a)(2)(B)(i) – Undue hardship

If the requested waiver is not granted, it will prevent the Property from being developed as envisioned by the Development Plan, approved in 1990, when it was placed in the Country Inn Zone. The Zone essentially has one use and purpose – a country inn. The Applicant is attempting to make the Property compliant with historic, fire and life safety, ADA, building and environmental codes. This is no small task. None of the hardship was self-created and the Applicant has worked diligently since acquiring the original property to upgrade, improve and make functional the buildings and Property. They have made significant strides towards improving the Property and have been good stewards of the land and its environmental and historic character. The waiver is needed to accomplish the proposed improvements listed above, and the hardship created would mean complete abandonment of the project and preservation of this quaint and charming country inn.

C. Section 59-C-18.152(a)(2)(B)(ii) – Compliance with Applicable Water Quality Standards

The Owner/Applicant and its consultants, David S. Weber, P.E., Julie Soss, ASLA and John W. Deering, Special Consultant for Land Use, Development and Construction Methods, have extensively

Mr. Patrick Butler
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researched various drainage systems throughout the world, and designed a system that is creative and innovative with regard to the collection and recycling of the run-off from the Property. The details of this system are contained in the Applicant's letter attached hereto, and the end result is compliance with all water quality standards.

D. Section 59-C-18.152(a)(2)(B)(iii) – Relief Sought is Minimum Necessary

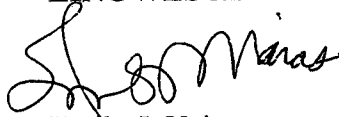
The requested waiver is the minimum needed to develop the Property for its intended use. The above list of proposed improvements have reduced the impervious area to the minimum needed to make the Property functional as a country inn. The restaurant is being sized to accommodate a reasonably sized, sit-down restaurant with related accessory retail uses, triggering a need for 92 parking spaces. The buildings on the Property are all part of the historic setting and generally are not to be removed (except for the barn which was in disrepair and will be replaced). Therefore, there is no reduction that can be made to the building footprints. The slight addition to the main building is simply to make it functional in this day and age as a modern, yet charming restaurant. The increased sidewalk areas are required for accessibility. Every effort has been made to balance the various competing objectives on the Property and to minimize the impervious surfaces.

Conclusion

We respectfully request, that based on the above and attached information, an appropriate waiver be granted to allow this project to move forward and be completed as envisioned for the past 19 years. The Applicant has spent considerable amounts of time and energy designing the site and buildings in an effort to create a unique experience in an environmentally sensitive manner. We would ask that the Board approve the waiver for a sufficient period of time to allow for submission of a Preliminary Plan consistent with the proposed plans.

Sincerely,

LINOWES AND BLOCHER LLP



Emily J. Vaias

Enclosures

cc: Mr. Mark Pfefferle Mr. Steven Gudelsky
Ms. Candy Bunnag Ms. Lisa Barry
Mr. Barry Gudelsky Mr. David Weber
Mr. Jack Deering



LINOWES
AND | BLOCHER LLP
ATTORNEYS AT LAW

April 6, 2010

Emily J. Vaias
301.961.5174
evaias@linowes-law.com

By Hand Delivery and Electronic Mail

Mr. Patrick Butler
Maryland National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Edgewood Inn, Pre-Preliminary Plan No. 720080220A (the "Application") – April 6, 2010 Submission of revised plan for redevelopment of the property located in the Northeast Quadrant of Spencerville Road and Oak Hill Road, 361,156 square feet (approximately 8.29 acres) consisting of Parcel 161 (317,254 square feet) and Parcel 158 (43,902 square feet) (the "Property")

Dear Mr. Butler:

As you know, we represent Edgewood Inn, LLC (the "Applicant") with regard to the filing and processing of the Application to redevelop a country-inn-style restaurant and retail shop project on the Property (the "Project"). Per Staff's direction during the April 5, 2010 meeting, the Applicant submits further revised plans that reflect the agreed-upon Total Site area boundary and the imperviousness calculation methodology. Accordingly, the Applicant hereby submits its revised Pre-Application Site Plan, attached hereto as Exhibit "A", Impervious Area Exhibit – Existing Conditions Plan, attached hereto as Exhibit "B" and Impervious Area Exhibit – Proposed Development Plan, attached hereto as Exhibit "C", collectively the "April 6, 2010 Revised Plan" for your review.

First, the April 6, 2010 Revised Plan establishes that the Property's Total Site area includes both Parcel 161 and Parcel 158, which combine for a Total Site area of 361,156 square feet. Second, during the April 5, 2010 meeting, Staff and the Applicant agreed to calculate imperviousness based on the 361,156 square foot Total Site area.

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As shown on Exhibits "A" and "B", the Applicant calculates the Total Existing/Allowed Impervious Area as:

- Total Site Area = P161 (317,254 square feet) + P158 (43,900 square feet) = 361,156 square feet
- Actual Impervious Area + (8% of the credit for area of P 158) = Total Allowed/Existing Impervious Area
 - 43,367 square feet + (.08 x 43,902 square feet) = 46, 879 square feet

Accordingly, the Applicant calculates the Existing/Allowed percentage of imperviousness as:

- Total Existing/Allowed Impervious Area divided by Total Site Area
 - 46,879 square feet / 361,156 square feet = 13.0%

As shown on Exhibits "A" and "C", the Applicant calculates the Proposed percentage of imperviousness as:

- Proposed Impervious Area divided by Total Site Area
 - 50,302 square feet / 361,156 square feet = 13.9%

Therefore, the Applicant is requesting a waiver for a .9% increase in imperviousness.

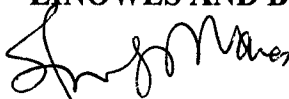
Furthermore, as Mr. Weber referenced in his April 6, 2010 email, the Applicant's Revised Plan submitted on April 1, 2010 reflects some minor calculation errors stemming from the Applicant's double counting of the proposed uncovered stoop located near the Blacksmith shop. To correct this error, the April 6, 2010 Revised Plan Exhibit "B" "Buildings" and "Sidewalks/Paths" calculations have been revised to "Buildings = 6,919 square feet" and "Sidewalks/Paths = 1,053 square feet". Likewise, the April 6, 2010 Revised Plan Exhibit "C", "Buildings" and "Sidewalks/Paths" calculations have been revised to "Buildings = 7,699 square feet" and "Sidewalks/Paths = 3,894 square feet." These changes are minor and do not impact either the imperviousness calculation or the parking requirements.

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We will be happy to discuss the April 6, 2010 Revised Plan with you further. Also, if additional information is needed, please contact us.

Sincerely,

LINOWES AND BLOCHER LLP



Emily J. Vaias

Enclosures

cc: Mr. Josh Silver
Ms. Candy Bunnag
Mr. Steven Gudelsky
Mr. David Weber
Ms. Cathy Conlon
Mr. Barry Gudelsky
Ms. Lisa Barry
Mr. John Deering

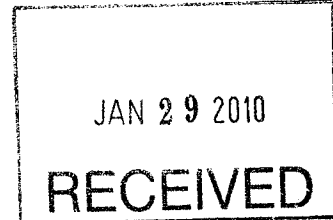
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EDGEWOOD INN, LLC

12071B Tech Road
Silver Spring, MD 20904

Phone: 301-622-5272

Fax: 301-622-9871



January 18, 2010

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

Re: Edgewood Inn, 16101 Oak Hill Road, Silver Spring
Planning Board Hearing

Dear Members of the Planning Board:

Since our meeting on December 4, 2008 with the Planning Board pursuant to our Pre-Application Plan submittal and our request for a waiver to exceed the 8 percent impervious cap, we reviewed all of the data presented at this meeting and found many errors and omissions. We are submitting this letter for two reasons – to correct any misconceptions from the previous report and to update you on the research we have been doing and new information we will be presenting to decrease the impervious area to develop our Edgewood Project. We were told to be creative in our thinking and come up with new options. One main aspect of research was to have a new engineer review and re-survey the property. We are presenting new and accurate calculations, and with changes to our concept plan, we are again requesting a waiver to exceed the 8 percent impervious surface cap for the Upper Paint Branch SPA as stated in Section 59-C-18.152(a)(2) as detailed below.

The Director may grant a waiver from the 8 percent impervious surface restriction subject to the following standards and procedures:

- (A) *Written Request. An applicant may apply for a waiver from the 8 percent impervious surface restriction if enforcement would result in undue hardship to the applicant. The request must be in writing to the Director.*
- (B) *Review and action. The Director may grant a waiver from the 8 percent impervious surface restriction if the applicant shows by clear and convincing evidence that:*

- (i) *the 8 percent impervious limitation would result in undue hardship to the applicant because of events or circumstances not caused or facilitated by the applicant;*
- (ii) *the applicant complies with all applicable federal, state and county water quality standards; and*
- (iii) *the relief sought is the minimum needed to prevent the hardship and the Director must consider alternative techniques."*

A. Written Request:

Section 59-C-18.152(a)(2)(A)

We are presenting this written request for a waiver from the 8 percent impervious surface restriction as enforcement would result in undue hardship in the development of the Edgewood Country Inn. If we are not allowed to exceed the cap, we will not be able to proceed with the project as adopted under Resolution No. 11-1840 which granted approval to Application No. G-640 to reclassify Parcel P161 from the RE-1 zone to the Country Inn Zone. We are proposing a layout which reduces the impervious area that we originally proposed and is less than the impervious area shown on the Development Plan approved in 1990 as part of the rezoning.

When we purchased Parcel P161 in April of 2006, the existing impervious surface on the Country Inn-zoned (P161) portion of the property covered 43,408 sq. ft. or 13.68%. The Environmental Overlay Zone permits this amount of impervious surface to remain, be constructed or reconstructed even though it amounts to more than 8 percent of the parcel. We purchased the adjoining Parcel P158 in February of 2008. As a result of not developing the property, it will create an allowance for additional impervious surface. The adjacent undeveloped RE-1 zoned 43,902 sq. ft. parcel P158 can be used to create 8% or an additional credit of 3,512 sq. ft. of impervious surface. On our proposed concept plan we are requesting an impervious surface coverage of 52,409 sq. ft. or 16.52%. With the allowance of 8% or 3,512 sq. ft. applied as a credit from parcel P158 to the original parcel P161, it puts our request at 48,897 sq. ft. or 15.41% impervious surface coverage. Comparing that to 43,408 sq. ft. or 13.68% as existing impervious surface, our proposed concept plan results in an overage of 5,489 sq. ft. This would put us at a request for a waiver of 1.73% on the original parcel P161 while staying within the limits of the 8% on the additional parcel P158, using that surface as a credit towards Parcel P161.

As you can see from the table below, with the credit applied from the additional parcel P158, our proposed plan is less than the Approved Development Plan. Using the figure of 48,897 sq. ft. proposed, we have reduced the impervious surface by 10,402 sq. ft. from the Approved Development Plan.



	Exhibit 1	Exhibit 2	Exhibit 3
	Existing Impervious Surface on Parcel P161 at time of Purchase	Proposed Impervious Surface on Parcel P161	Impervious Surface on Approved Development Plan for Parcel P161
Buildings	6,973	7,760	10,567
Parking/Driveway	27,469	32,171	37,040
Sidewalks/Paths	1,040	4,552	3,766
Public ROW on Oak Hill Road	7,926	7,926	7,926
Subtotals	43,408	52,409	59,299
Credit from Parcel P158 – 8% Allowance		-3,512	
Totals	43,408	48,897	59,299
Resulting % based on 317,254 sq. ft. on Original Parcel P161	13.68%	15.41%	18.69%

To clarify our calculations for existing impervious surfaces, please see the items below:

- Since we purchased Parcel P161, we removed the remains of the barn at the advice of our insurance company for liability reasons. There was some question at the previous Planning Board Meeting as to whether the remains still existed. Please see picture (Exhibit 4). This area is included in our existing impervious area calculations with the intention of reconstructing the barn.
- There was also a large stone parking area to the west of the driveway entrance off Route 198. The previous owners had placed this as a temporary parking lot during the time they operated antique shops and a restaurant and in 2003, a Canadian Company was working with the owners to use the house as a restaurant. The parking lot seems to have been expanded at that time; see attached pictures (Exhibits 5 & 6). We removed the stone parking lot on Parcel P161 at the advice of our arborist for the health and well-being of the trees in that area. As you can see from the attached aerial photo, it clearly shows the stone area as it existed. Our discussions with Park and Planning Staff indicate they do not feel this parking area was legal as it did not conform to the approved Development Plan. We believe it should be included as it was stated at the December 4, 2008 Planning Board meeting by Patrick Butler that the original approved Development Plan had a large parking area and one particular note

on the approved development plan indicated that at time of site plan it was to be determined the exact location of the parking lot. He went on to say that it was the only element that would be determined at a later date and there was flexibility in the location of the parking lot. Therefore, we feel it would be considered as being consistent with the approved development plan. If it is determined the parking was not legally placed, it does not change the fact that it was there when we purchased the property. Since we started development on this parcel and removed the stone parking lot, we feel it should count as removal of impervious area as if we had removed it from some other property in the SPA. Regardless of whether it was legally placed or not, we removed existing impervious surface from the SPA that has been in existence for quite some time. It would continue to be there had we not purchased the property.

B. Review and Action:

Criteria I:

Section 59-C-18.152(a)(2)(B)(i) – Undue hardship

If our request for a waiver of the 8% impervious cap is not granted, it will prevent us from developing the historic property as approved at the time of rezoning. This will create undue hardship for us as the property will not be able to be developed for its intended use and this has not been caused or facilitated by us. In response to the memorandum dated November 21, 2008, we purchased the property in April of 2006, so we did not have ownership of the property to enable us to develop it in accordance with the approved Development Plan for a Country Inn (from 1990 to 1997). We were not far enough along in our plans to begin development before the Overlay Zone was amended to further limit imperviousness from 10% to 8% prior to July 1, 2007.

Criteria II:

Section 59-C-18.152(a)(2)(B)(ii)

COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE AND COUNTY WATER QUALITY STANDARDS

The Owner/Applicant has authorized and assigned the design team of David S. Weber, P.E., Julie Soss, ASLA and John W. Deering, Special Consultant for Land Use, Development and Construction Methods, the charge to be totally creative and innovative with the collection and recycling of the run-off during a rain event. With that authority the team will be presenting a free draining system that will collect the rain water, store it and then recycle it through an irrigation system that will support the area for the finished landscape as shown on the plan.

The basic items that will support the proposed system are as follows:



- a. The main parking lot will be designed to collect the water during a rain event. It will be designed to handle a ten (10) year storm. The sub-surface of the parking lot will consist of number 68 stone, a design grid of four (4) inch under-drain that will carry the overflow to the designed storage area, an additional layer of number 57 stone, and a travel surface of process aggregate 121A. There will also be an additional collection area to be off-set from the end of the parking lot; this will facilitate the over-flow during a rain event that is beyond the planned ten (10) year storm.
- b. The pumping station for the irrigation system will be strategically located to service the designed irrigation system, which will be located in the walking paths as shown on the plan.
- c. Rain barrels will be placed in locations that will best serve their purpose.
- d. The travel access for cars will be based with number 57 stone and the travel surface area will be process aggregate 121A.
- e. The walking paths will be based with number 68 stone and a walking surface of process aggregate 121A.

The above design items have been implemented for the purpose to collect the run-off through infiltration of the travel access, parking, walking-paths and landscape as shown on the plan. It should be noted that this type of free draining base is a design requirement for pervious asphalt pavement or concrete and other related products. It should also be noted that we will be removing large areas of asphalt paving in front of the house and between the smaller buildings and replacing them with the free-draining stone system described above. This will result in a decrease of runoff from the property as it is presently constructed. We will more than satisfy all required water quality standards.

Criteria III:

Section 59-C-18.152(a)(2)(B)(iii)

After much work with our new engineering team researching, revising and obtaining accurate calculations, we believe the waiver we are requesting is the minimum needed to develop the site for its intended use and we are proposing alternative techniques for our parking lot, driveway, pathways and patio. Since our meeting on December 4, 2008, we have done or plan to do the following:

- We purchased Parcel P158 which will allow an increase in impervious surface.
- We have worked with our new engineering team to resurvey the property and reduce the size of the parking lot.
- We will be removing the entrance driveway from Route 198 and using Oak Hill Road as the new entrance. We met with Sarah Navid of the Rustic Roads Committee and she indicated her understanding and support for the use of Oak Hill Road as our entrance.
- We also have met informally with the HPC regarding the removal of the stone from the entrance driveway from Rt. 198. HPC has indicated their support for this,

conditioned on us delineating the driveway location with physical measures such as landscaping. Not only does this allow us to remove the existing entrance from Rt. 198, but it also eliminates the need to widen the Rt. 198 entrance for use as the fire access.

- We plan to remove existing stone and asphalt areas including the stone driveway along the back (north) property line.
- In response to the Memorandum dated November 21, 2008, we cannot reduce the impervious area with a different mix or fewer accessory buildings because Resolution #11-1840 dictates the restrictions for the use of the buildings and we are not allowed to take down any of the buildings to reduce impervious cover as the property is under Historic Preservation
- Questions are raised as to our vision for the proposed uses of the buildings and the number of parking spaces we require. One reason we are requiring more parking spaces is because we are not restricted by a limitation on the number of patrons because of the type of water and septic system. As quoted from Resolution No. 11-1840, it states: *"The proposed development will retain the existing residential structure as a country inn restaurant to serve up to 90 patrons. The size of the restaurant is limited by the capacity of a private septic disposal system and well. Several of the outbuildings will also be retained and refurbished to provide for antique and craft shops. A barn will be reconstructed slightly to the northwest of its current location. Parking for 81 cars is proposed in an area located to the southeast of the frame house."* The patron restriction to serve up to 90 patrons is no longer applicable because the restaurant is now on public water and sewer. This is one reason we are requesting additional parking. Another is that we do not plan to have a museum area, and that area will be used as restaurant area or retail space. Although we are requesting an increase of 11 parking spaces over the original approved Development Plan, in actuality, it is a decrease of 4,869 sq. ft. for the parking area and driveway.
- It was suggested in the last Planning Staff Report that we consider the use of wood chips for the onsite paths and walkways to reduce impervious area. After researching this option, we find they are not ADA compliant. We are planning to use the same materials as we propose for the parking lot and driveway.
- The parking lot and drives on the approved development plan would create 37,040 sq. ft. of impervious area whereas our new Development Plan would cover 32,171 sq. ft. of impervious area resulting in a decrease of 4,869 sq. ft. Also, the approved plan required 10,567 sq. ft. for buildings, whereas we are requesting 7,760 sq. ft. for buildings for a decrease of 2,807 sq. ft. The only element we are increasing is the area for sidewalks/paths from 3,766 on the Approved Development Plan to 4,552 on the Proposed Concept Plan for an increase of 786 sq. ft. This makes a net decrease of 6,890 sq. ft. between the buildings, parking lot, drives and sidewalks from the original approved Development Plan to our proposed Development Plan. Taking into account the credit of 8% coverage or 3,512 sq. ft. on the purchased Parcel P158, our proposed

Concept Plan will be 10,402 sq. ft. less than the approved Development Plan. Also, the relocation of the parking lot to the back of the property will create less of an impact on existing trees.

- We are proposing construction of the parking lot, driveway, and pathways using a free-draining stone system. The parking lot will have a layer of Geotextile fabric as designed. When we met with Park and Planning Staff to discuss this system as a pervious material to be used in the Special Protection Area, we offered two demonstration areas using these free-draining materials. One was to be in the M-NCPPC Executive Parking Lot and the other at the Edgewood Inn Property. After over 4 weeks of planning these demonstration areas, Planning Staff indicated they would not accept this system as a pervious surface, therefore the project was abandoned. However, we continued to research as requested by your staff to find specific information to identify any jurisdictions with regulatory impervious surface limitations where this stone product has been used and “counted” as pervious. Below we give many references to the use of this type of material as a pervious measure.
 1. The most compelling evidence that the free-draining stone system we are proposing would work as a pervious method for paving is shown in the attached documents from Interpave (Exhibits 7& 8). These references give documentation and case studies of Concrete Block Permeable Paving accepted as a Sustainable Drainage System (SUDS) in England. New legislation will make SUDS mandatory on all new developments within two years. The use of concrete block permeable paving – the most versatile SUDS technique – is set to grow rapidly to satisfy this requirement. Not only does it avoid runoff, but reduces water borne pollution as well. It addresses the concerns of performance, service life and maintenance, and also the effectiveness of removing pollution from runoff. It states, “*Pollution Prevention Guideline PPG3* (Environment Agency, 2006) recognizes the benefits of Concrete Block Permeable Paving (CBCC) in removing pollution from runoff. Oil separators are not required when CBCC is used. Permeable pavements are actually more effective at removing a wider range of pollutants from runoff than oil separators.” Many years of development and case studies give evidence of the success of this product. The base for this system is similar to the free draining stone base we are proposing for our driveways, parking lot and pathways.
 2. Our free-draining stone system is similar in concept to the bio-infiltration trenches being used by the state as described in the ICC meeting between Montgomery County and the State on June 25, 2009 (specifications attached – Exhibit 9). It was explained in that meeting by Andrea Stone, Environmental Planning Division, that these trenches are being used to replace grass swales because they have more infiltration potential than grass. Dan O’Leary, with the State, commented that projects such as the bio-infiltration trenches are treating areas that were previously draining into the streams. He explained how the grass is dug up and underneath they place 4-6 ft. of sand and stone and is designed so water will percolate through and infiltrate into the subsoil.

3. We also refer to MDE Appendix D.4. Stormwater Criteria of the MD Critical Area IDA Zone (Exhibit 10). In Table D.4.2 Definition of Imperviousness, under Driveways, grid pavers are listed as being pervious and under sidewalks/paths, both grid pavers and porous pavement are considered pervious materials. The attached specification sheet shows the sub-grade of the grid pavers as two layers of aggregate just as we propose for our free-draining system for the parking lot, driveway and paths. We are also looking at the possibility of grid pavers for use on the patio portion of the house.
4. We also refer to the new Stormwater Regulations for the State of Maryland, "Environmental Site Design, Chapter 5.0" (Exhibit 11). Under Alternative Surfaces, specifically Figure 5.3 Examples of Permeable Pavements, they give a description and typical sections for basically the same thing as SUDS. They indicate that all of the base products used are pervious.
5. Also, when you look at the sub-base for pervious concrete to be successful, it again uses the same concept of the stone and aggregate base riding surface (Exhibit 12). The effect of the sub-base on the storage capacity of the pervious concrete system can be significant.
6. A lot of today's road construction is based with a stone product/process aggregate. Railroad tracks and septic fields around the world use stone for proper drainage and support. The attached letter from Connecticut College Arboretum (Exhibit 13) gives evidence of their success with a sixteen year experience for the use of number 57/68 stone and process aggregate 121A in their paths and vehicle travel areas. These stone products are, by all engineering standards, a structural free draining natural product. Barry Gudelsky and Jack Deering witnessed together in 2008 a heavy rain storm at the Connecticut College Arboretum and found infiltration was absolute and there was no erosion.

May we suggest that the County use Edgewood Country Inn as a test pilot program for implementing this free-draining stone system as a new environmental measure to be considered as a pervious material for use in Montgomery County.

Conclusion

Since we did not have ownership of the subject property until April, 2006, there was not unreasonable delay on our part in moving to file for a preliminary and site plan. Denial of our waiver request will result in undue hardship because of events or circumstances not caused or facilitated by us.

We will suffer hardship if the waiver is not granted because we will not be able to develop the property as defined in Resolution 11-1840 in which it states:

"The Hearing Examiner recommended approval of the development plan and approval of the reclassification subject to the specifications and requirements of the development plan. These recommendations were based on conclusions that the Country Inn Zone at the proposed location satisfies the requirements of the zone; that the proposed use will be compatible with

the existing and planned land uses in the surrounding area; and that the proposed use bears sufficient relationship to the public interest to justify it. The Technical Staff and the Planning Board provided similar recommendations. The development will involve three stages: the opening of a restaurant operation in the existing frame house and construction of supporting driveway, parking, and walkway systems; the conversion of outbuildings into antique and craft shops, walkway links and the relocation of the caretaker to the third floor of the main house; and the construction of a new 600 square foot kitchen and 2,500 square foot dining room and the conversion of the main house dining room and food handling areas into a museum."

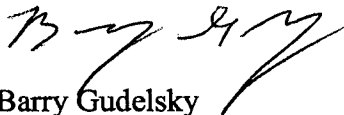
We are proposing changes to a few of the elements of the approved Development Plan, but overall the use of the buildings conforms to the uses as approved in Resolution No. 11-1840. Realizing what the cost is going to be to restore all the rotted buildings, it will necessitate the use of all the buildings on site to make the project cost effective. If we are not able to make use of all of the buildings, it will be detrimental to the entire objective of our project as we envision the patrons from the restaurant giving additional patrons to the shops and the patrons from the shops giving business to the restaurant, so if we remove the retail element of the project, it will have a negative impact on the restaurant and project as a whole. The rot and termite damage to many of the buildings far exceeds our original estimate to restore the buildings and preserve their historic value. Please see pictures (Exhibit 14) showing the extensive rot and termite damage. The fees for the engineer and attorney as we go through this approval process are well over budget as well. There comes a point in time when it is not feasible to develop a project if the cost overruns continue to exceed projected development figures. When we reach that point, we are better off cutting our losses and abandoning the project altogether. If we continue to spend all our money on development, we will have nothing left to restore the buildings. We have stopped all restoration work on the buildings at the present time because if we can not get a waiver, there will be no project. We are not allowed under Historic Preservation to remove any of the buildings. The rebuilding of the barn is an essential element in our plan for retail space. The proposed site plan is the minimum needed to prevent hardship and it is the only way we see our concept plan of each retail space feeding to the other's success.

As a side note, recognizing the importance of restoring and keeping this historic property under preservation, we also want to bring alive some of the memories of the first owners of this property, the Stabler family. We have obtained some very old pictures of the original owners, have found a photographer to print from the old negatives and he will be able to create enlargements of these pictures. We plan to place these enlargements in various spots around the property and we also have a history of the Stabler family which we have been given permission to reproduce and make available to the public. We are hoping this will be a unique property with features much like the renowned Peter Pan Restaurant that was in Urbana, MD. Many of us remember going there as a child, having to wait on the patio for dinner, but not minding the wait because we could talk and go look at the peacocks. We want our restaurant to have the same quality with a few signature foods such as hushpuppies, a good bread, etc., so it too can be a part of someone's memory as they grow up, and with the added historical features and retail shops, we envision an experience not like any other in the area.

The wealth of healthy mature trees we are preserving and environmental measures we are taking will give the site a park-like setting. The property could also become a place for small weddings or events, with such a suitable atmosphere. The project is becoming more exciting as we begin to explore the possibilities for activities, vendors and the type of restaurant we want to have on site.

As we have given you what we envision as the future of Edgewood, we hope you will see it worthy of granting the requested waiver so we can move forward.

Sincerely,


Barry Gudelsky
Managing Partner

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