

M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Appendix A - District Council
Resolution Granting PD-11 Zoning
(19 pages)

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Resolution No.: 15-881
Introduced: February 1, 2005
Adopted: February 1, 2005

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

By: County Council

**SUBJECT: APPLICATION NO. G-824 FOR AMENDMENT TO THE ZONING ORDINANCE
MAP, Timothy Dugan, Larry A. Gordon and Gus Bauman, Attorneys for Applicant, Miller
and Smith Land, Inc. OPINION AND RESOLUTION ON APPLICATION
Tax Account No. 02168441**

OPINION

Application No. G-824, filed on May 5, 2004, by Applicant Miller and Smith Land, Inc., requests reclassification of a 23.8211-acre parcel of unimproved land ("Eastside") from the R-200 Zone to the PD-11 Zone. The applicant proposes to develop the property with 290 residential units, including 232 stacked ("2 over 2") townhome condominiums and 58 single-family attached (SFA) townhome units. Forty of the units will be Moderately Priced Dwelling Units (MPDU's). The Eastside Property (Part of Liber 15162, Folio 596) includes Parcel P600 and a previously dedicated right-of-way, which are located on the south side of Shawnee Lane, between Gateway Center Drive and MD 355, in Clarksburg.

The application for rezoning was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who, in a report dated October 15, 2004, recommended approval. The Montgomery County Planning Board ("Planning Board") considered the application on October 21, 2004 and, by a vote of 4 to 0, also recommended approval, as stated in a memorandum dated October 22, 2004. On November 12, 2004, the Planning Board filed a revised memorandum, indicating its approval of the Preliminary Water Quality Plan (PWQP), as well as its recommended approval of the requested rezoning.

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The Clarksburg Civic Association Executive Committee (CCAEC) sent Technical Staff an e-mail stating that it opposed PD-11 rezoning, but no representative of that organization appeared at the hearing. A public hearing was noticed for October 25, 2004, and it proceeded as scheduled. There was no opposition testimony, and no member of the community participated at the hearing. Applicant filed a revised Development Plan (Exhibit 53(d)) on November 8, 2004. No further public comment was received, and the record closed on November 12, 2004.

The subject property is located on the south side of Shawnee Lane, approximately 100 feet east of its intersection with Gateway Center Drive and approximately 2,000 feet west of MD 355, in Clarksburg. It is generally rectangular in shape, and it is approximately 1,650 feet long and 650 feet wide, comprising 1,037,650 square feet (23.8211 acres) of land. That Gross Tract Area to be rezoned includes the current Parcel P.600, which contains 996,188 square feet (22.8693 acres), as well as 41,462 square feet (0.9518 acres) of land previously dedicated to Shawnee Lane. Approximately 0.3411 acres will be dedicated in the future to provide 25 feet of additional right-of-way for Shawnee Lane. The subject property was placed in the R-R Zone during the 1958 Countywide Comprehensive Zoning. In October of 1973, Text Amendment 73013 rezoned the property from the R-R Zone to the R-200 Zone. The 1994 Clarksburg Sectional Map Amendment (G-710) retained the property's R-200 zoning.

The subject property is currently undeveloped. The southern side of the property is densely wooded and is defined by slopes and a stream valley. Two streams converge at this portion of the property and ultimately flow to a tributary of Little Seneca Creek. The property has a frontage of approximately 594 feet on Shawnee Lane and is entirely within the Clarksburg Special Protection Area. Slopes on the subject property are relatively gentle, at an average slope of five percent for the area above the stream confluence; the confluence of the two streams creates a stream valley buffer area of approximately six acres, representing about 26% of the net tract area; and the property is mostly clear pastureland, but includes some scattered

wooded areas with most of the forested area at the confluence of the two streams. Approximately 6.6 acres, or 29% of the net tract area is forested.

The surrounding area is bounded by Clarksburg Road to the north and northwest, I-270 to the west, West Old Baltimore Road to the south and Frederick Road (MD 355) to the east and northeast. This area lies within the 900-acre area that is identified as the Transit Corridor District Study Area in the 1994 Clarksburg Master Plan. The surrounding area is characterized by a large employment facility, LCOR (formerly known as COMSAT/ Lockheed Martin), undeveloped land, schools and related service facilities, and scattered residential uses. Immediately west and northwest of the subject property are the LCOR property and the Gateway 270 Corporate Office Park in the I-3 Zone. To the north across Shawnee Lane are undeveloped parcels of land in the R-200 Zone. The Board of Education Bus Depot abuts the property to the east in the R-200 Zone, and further east are a moving company in the I-3 Zone and the new Clarksburg Area High School in the R-200 Zone. To the south, the subject property abuts undeveloped, mostly wooded area in the I-3 Zone.

Pursuant to Code § 59-D-1.11, development under the PD-11 Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD-11 Zone. The Development Plan in the present case includes a land use plan, labeled "Development Plan," that shows the proposed locations of all structures, as well as additional information regarding the planned development, both in diagram and textual form. The Development Plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. Illustrative elements may be changed during site plan review by the Planning Board, but the binding elements (*i.e.*, those used in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for a development plan amendment.

The binding elements listed by Applicant in this case are as follows:

1. Moderately Priced Dwelling Units

All required MPDUs will be provided on the Property.

2. Road Improvements

The Applicant or its successors or assigns (the "Applicant") will improve or fund the transportation capacity improvement of Shawnee Lane, a County Road, to an arterial standard from Gateway Center Drive to Frederick Road (MD Route 355). Any additional right-of-way or associated easements necessary for the improvement of Shawnee Lane will be acquired or funded by the Applicant.

3. Connections to Shawnee Lane and Adjoining Properties

Consistent with Clarksburg Master Plan objectives for strong pedestrian and vehicular linkages and accessibility to Transit Stops and throughout the neighborhood, sidewalk and road connections will be provided to: (1) improved Shawnee Lane to the north; (2) LCOR's Comsat property to the west; and (3) the Board of Education's property to the east.

4. Recreational Facilities

All required recreational facilities will be provided on the Property.

5. Forest Conservation

All required forest conservation measures will be provided on the Property.

6. Stream Valley Preservation

With the exception of a possible sewer outfall, the existing wooded stream valley on the Property will be preserved in its entirety.

7. Stormwater Management

With the exception of possible upgrading of the existing stormwater management facility on the Post Office property, all stormwater management facilities will be provided on the Property.

8. Gateway Center Drive and Stringtown Road Extended

At or prior to preliminary plan of subdivision, Applicant shall meet with DPWT and the Technical Staff of M-NCPPC to determine what if any modifications to the intersection at Gateway Center Drive and Stringtown Road are required to meet LATR standards, and Applicant will undertake such changes in accordance with the schedule specified by DPWT and the Technical Staff of M-NCPPC.

Applicant proposes to construct 290 townhome units in the Clarksburg "Transit Corridor District," consistent with the 1994 Clarksburg *Master Plan's* concept of residential development near a proposed transitway (A-19 Observation Drive). As shown on the Development Plan, the 290 residential units will consist of 232 stacked ("2 over 2") townhome condominiums and 58 single-family attached (SFA) units.

Half of the condominiums units are planned as two bedroom homes and the other half as three bedroom homes. The SFA units will each be owned in fee simple. Seventeen of those units will have front-loading garages, while 41 are designed with rear loading garages. Forty of the condominium units will be Moderately Priced Dwelling Units (MPDU's).

The PD-11 Zone permits a density of 11 units per acre. Applicant's 23.82 acres would thus yield a permitted base density of 262 Dwelling Units (11 per acre x 23.82 acres = 262.02). As shown in the Applicant's "General Notes and Site Data," Applicant seeks a density bonus of an additional 28 units, which is 10.7% above the 262 unit base density. To obtain a density bonus of an extra 28 units, bringing its total density to 290 units, Applicant is required by Montgomery County Code §25A-5(c)(3), to have 13.6% of its units as Moderately Priced Dwelling Units (MPDU's). Applying that factor of 13.6% to the planned 290 units yields a figure of 40 required MPDU's, which Applicant will scatter throughout the development.

Applicant has also committed to dedicating to the public right-of-way, a 25 foot strip of land along Shawnee Lane. This new dedication of 0.3411 acres is depicted in the diagram on the Development Plan, and it is in addition to the prior Shawnee Lane dedication which Applicant references in the "General Notes and Site Data" on the Development Plan. It also calls for 58.5% green space, though only 50% is required for the PD-11 Zone, and 648 parking spaces, though only 522 spaces are required the Zoning Ordinance for the number of dwelling units.

Development is planned in three phases, commencing on the western end of the property, abutting Shawnee Lane. Phase One will consist of 74 "2 over 2" "stacked" condominiums and 17 SFA townhomes. Phase Two, in the middle portion of the property will consist of 104 of the stacked condominiums units and 20 SFA townhomes. Phase Three, toward the eastern end of the property will consist of 54 stacked condominiums and 17 SFA townhomes. Each phase, when complete, will incorporate vehicular and pedestrian circulation systems, and all required utilities, recreational amenities and open spaces.

The Clarksburg Civic Association Executive Committee (CCAEC), in an e-mail to Technical Staff, raised concerns about density of development before the transitway is constructed; the amount of green space which will be provided; the health impact of the nearby school bus depot; the effect of the development on well water; the calculation of MPDU's and the language of certain provisions of the Zoning Ordinance. The CCAEC's critique of the Zoning Ordinance itself cannot be considered in this type of proceeding, and the Council finds that the other concerns raised by CCAEC have been satisfactorily answered by the evidence in this case, as set forth in the Hearing Examiner's report.

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

§59-D-1.61(a): consistency with master plan and other County policies.

The subject site is located within the area governed by the *Clarksburg Master Plan*, approved and adopted in June, 1994. The Master Plan's recommendations for the subject site center around the Plan's proposal for "a comprehensive transit system that will reduce dependence on the automobile." Master Plan, page 22. A significant part of this proposal is a north-south Transitway that "will serve the transportation needs of the residents and workers in the I-270 Corridor north of Shady Grove." The subject property is within "Transit Corridor District" and has a recommended density of 9 to 11 dwelling units per acre, consistent with the PD-11 Zone sought in this case.

The proposed Eastside Development Plan will introduce a number of residential units into an existing employment area within walking distance of two proposed Transit Stops, which is a major goal for the development of this area as envisioned by the Master Plan. It also fulfills the Master Plan objective of improving east-west roadway connections through Binding Elements 2 and 8, which respectively call for Applicant to widen Shawnee Lane to arterial standards and to make any modifications necessary at the

intersection of Stringtown Road and Gateway Center Drive to meet Local Area Transportation Review ("LATR") requirements.

The proposed Transitway will be run just to the east of the subject site, and will have two Transit Stops located between Newcut Road Extended and MD 121 (Clarksburg Road). The center of the subject site is approximately 1,500 feet from the proposed Shawnee Lane Transit Stop to the north and approximately 2,000 feet from the Newcut Road-Extended Transit Stop located to the south.

Near the Newcut Transit Stop, the Master Plan recommends that development should be employment-oriented to serve Comsat. Master Plan, page 54. The Plan also notes that the recommended mix of residential uses at this location will only occur "if vacant land on the Comsat site is developed for residential uses." The Eastside development provides for residential development of a portion of Comsat property, thus satisfying the Plan's objective.

Finally, the Master Plan "[e]ndorses an extensive network of interconnected streets to provide local access within neighborhoods." Master Plan at page 24. As noted by Technical Staff, the Development Plan provides such an interconnected street system through its multiple connections to adjacent properties and its planned pedestrian sidewalk network.

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether the following public facilities will be adequate to support a proposed development: transportation, schools, water and sewage facilities, and police, fire and health services. While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council's determination in a rezoning case as to whether the reclassification would serve the public interest

Pursuant to the 2003-05 Annual Growth Policy (AGP) Policy Element (p.14), "[t]he Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated." There is no such evidence in this case, and the District Council finds these services to be adequate.

Under the 2003-05 AGP Policy Element, subdivision applications are subject to LATR requirements. LATR generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening peak periods. Technical Staff identified four intersections near the subject site as critical in determining whether Applicant will meet the applicable congestion standard for the Clarksburg Policy Area. Both Technical Staff and Applicant's traffic engineer applied the congestion standard in effect on the date of the application, which was May 5, 2004 (*i.e.*, 1,500 Critical Lane Volume (CLV) in the Clarksburg area). The congestion standard in effect since July 1, 2004 for the Clarksburg area is 1,450 CLV. This distinction does not make a difference in this case because all intersections will meet both standards following roadway modifications to which Applicant has committed in Binding Element 8.

Applying the FY 2004 Annual Growth Policy staging ceiling capacity in effect at the time the application in this case was filed, Technical Staff determined that there was insufficient capacity available for the housing development proposed by Applicant. As of May 31, 2004, there was a negative staging capacity of -5,028 housing units in the Clarksburg Policy Area. The Applicant proposed to widen Shawnee Lane to a four-lane divided arterial roadway from Gateway Center Drive to Frederick Road (MD 355) in order to provide sufficient capacity, and Technical Staff determined that the proposed roadway improvements would provide sufficient staging ceiling capacity to accommodate the proposed development. The District Council finds that both the LATR and the PATR standards have been satisfied.

School capacity is a significant concern in this case because of the size of the proposed development. The subject property is located within the Clarksburg/Damascus Cluster, and it is estimated that the Eastside Development of 290 dwelling units will generate 81 elementary, 27 middle and 31 high school students.

The subject site is served by Clarksburg Elementary School, Rocky Hill Middle School and Damascus High School. Clarksburg Elementary School is projected to remain over capacity for the six year forecast period. Two new elementary schools are scheduled to open, one for the 2006-07 school year (Clarksburg/Damascus Elementary School #7) and the other for the 2009-10 school year (Clarksburg/Damascus Elementary School #8). The opening of these schools is intended to address projected space shortages at Clarksburg Elementary School.

Rocky Hill Middle School is projected to exceed capacity beginning in 2008-2009 school year. The 1994 Master Plan identifies a site for a future middle school located in the Greenway Village Subdivision; however, the school is not yet scheduled for construction. At the high school level, Damascus High School is projected to remain over capacity for the six year forecast period. A new high school, the Clarksburg Area High School, is scheduled to open for the 2006-07 school year. The new school is expected to relieve projected space shortages at Damascus High School.

Applicant produced a chart showing how the timing for construction of new schools will match up with the schedule of construction and occupation of the Eastside project. Based the timing shown in this chart, the testimony of record and the fact that the current Annual Growth Policy schools test finds the school capacity adequate in the Clarksburg Cluster, the District Council concludes that MCPS will be able to handle the increased demand projected from the subject development.

Under the FY 2003-05 AGP Policy Element, p.14, "applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is

presently available, is under construction, is designated by the County Council for extension of service within the first two years of a current approved Comprehensive Water Supply and Sewerage Systems Plan (i.e., categories I, II, and III)."

Technical Staff reports that public water and sewer serve the general Shawnee Road area. Water category is W-1, and the project site is eligible for sewer service. Based on the record in this case, including the completion of the Crystal Rock Wastewater Pumping Station and associated Force Main, the District Council finds that there will be adequate water and sewer service for the site.

The District Council concludes that the proposed development plan would be in substantial compliance with the use and density indicated in the Master Plan and would not conflict with any other applicable county plan or policy.

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

The requirements for the PD-11 Zone are found in Code §59-C-7.1. PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific criteria, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings, all of which must be spelled out on a development plan.

The lengthy purpose clause for the PD-11 Zone (as well as the other PD Zones) is found in Code §59-C-7.11. Generally, it is the purpose of the Zone to implement the general and master plans by permitting "unified development consistent with densities proposed by the master plans." Development in the PD Zones should be "so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development." It is intended to produce a

“coordinated mixture of residential and convenience commercial uses and encourage a broad range of housing types....” It is also a purpose of the PD Zones to take advantage of open space and trees, enabling them to function “as places for relaxation, recreation and social activity.” The purpose clause also encourages large scale developments and creation of “pedestrian circulation networks, separated from vehicular roadways . . . [which will] minimize reliance upon the automobile as a means of transportation.” Finally, it is the purpose of the PD Zones “to achieve a maximum of safety, convenience and amenity for both the residents ... [and their neighbors], and to assure compatibility and coordination of each development with existing and proposed surrounding land uses.”

As discussed above, the proposed development will be in substantial compliance with the *1994 Clarksburg Master Plan*. Accordingly, the requested reclassification will comply with the first element of the purpose clause by allowing implementation of applicable Master Plan objectives.

Social and community interaction is facilitated and encouraged by the site layout, which provides a large green area in the center of the development and numerous pocket parks throughout. It is also well networked with streets and sidewalks to encourage residents to meet their neighbors while walking. Applicant strives for “unit connectivity of pedestrian and vehicles, access ways between properties, and within the property.” Alley ways and garages are used to keep parked cars off the major streets. Community open space is integrated with the plan and is usually spread throughout the residences instead of just having the one large parkland. There is an extensive pedestrian network and a variety of larger and smaller open spaces, passive outdoor recreation area, green spaces, and a larger green space toward the center of the property where a gathering of community residents could occur. The development is also quite compact, thereby encouraging walking. There will also be a road and promenade fronting on the storm water management basins, thus creating a walking environment and making the storm water management basins a part of the recreational and green space for the public.

The Master Plan recommends the area immediately surrounding the Property to be developed as a mixed-use center. The dominant residential type recommended is multi-family (30%-50%) and single-family attached (40% to 60%) with only 5% to 10% of the residences recommended as single-family detached (Master Plan, page 39). There is some variety in both housing types and kinds of ownership provided in this Development Plan, and the Council finds it likely that other local development will provide the kind of variety sought for the Transit Corridor District as a whole.

Another purpose of the Zone is to preserve and take advantage of trees and to minimize grading. Applicant's plan achieves this goal. The southern portion of the property contains approximately six acres of reforestation and preservation area, with varying topography and vegetation. This area also provides a natural barrier from potential visual and noise intrusion. The Development Plan works very well with the natural features and topography on the site, and thus there will be no need for massive grading. The design of the project has minimized grading to prevent the erosion of the soil and preserve natural vegetation. Almost the entire forest stand on this property is being retained. All of the forest stand within the stream valley buffer is being retained, and there is no grading within that area.

The Purpose Clause also calls for use of open space, "not only for use as setbacks and yards," but also "for the general benefit of the community and public at large." Once again, Applicant has met this objective. The units are oriented in such a manner that the residents would be able to enjoy views into green areas throughout the site, including the stream valley and around the stormwater management basins. Stormwater management basins, in addition to their normal function, are thus utilized as part of the amenity package for the planned community, by creating four small cells separated by berms which will have walking paths and some type of nature exhibits, such as flowering shrubs. A large portion of the development will be green space (58%), and there will be eleven picnic sitting areas and three tot lot areas, as well as larger open play areas in the central open space, which is about 90 feet wide.

The linkages recommended in the Purpose Clause are provided by an extensive sidewalk system that interconnects all the open space areas. There are sidewalks also along the street frontages of the housing units, all of which interconnect the residences to the open space and to Shawnee Lane, where the transit is, so everything will be easily accessible for both recreation and transit. Moreover, with a total of 648 parking spaces (an average of 2.23 spaces per dwelling unit), adequate parking accommodation is provided for residents and visitors. As to safety, Technical Staff concluded that "the proposed access to the site as shown on the development plan [is] safe and adequate . . . [and] that the internal pedestrian circulation and walkways provide for a safe and adequate movements of pedestrian traffic."

With regard to compatibility with neighboring properties, the scale and the magnitude of this development, as well as the style of architecture, will work very well with development, past and present. The *Clarksburg Master Plan* recommends the area immediately surrounding the Property to be developed as a mixed-use center. The dominant residential type recommended is multi-family (30%-50%) and single-family attached (40% to 60%) with only 5% to 10% of the residences recommended as single-family detached (Master Plan, page 39). The *Master Plan* recommends that the LCOR/Comsat site to the west be developed with up to 2.3 million square feet of employment or with up to 4 million square feet of transit-oriented development. (Master Plan, pages 56-57). It recommends R&D, Institutional and residential at a density of 2 to 4 units per acre for the wooded and open vacant land to the south (Master Plan, page 55). The Board of Education's 20 acre school bus depot to the east is recommended for a residential community compatible in density to the subject development. The area immediately north of the subject property is recommended for residential density of 9 to 11 units per acre, and the area further north and east is recommended for 2 to 4 units per acre. (Master Plan page 55). The District Council finds, as did Technical Staff, that the proposed development is designed in a manner that is compatible with and will complement existing and future developments in the immediate area.

Through a combination of architectural, topographical and landscaping features, the proposed development represents retention of sensitive environmental features, a balanced site design and adequate green space, which at the same time create an aesthetically pleasing environment on the subject property. Given the fact that a large portion of the property is within the stream valley and not developable, the proposed design and mix of the residential units appear to be appropriate and desirable for the subject site.

In sum, the proposed development is consistent with the intent and purposes of the PD-11 Zone. We next look to the "standards and regulations" of the PD-11 Zone, which are spelled out in Zoning Code §§59-C-7.12 through 7.18.

Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The applicable Master Plan, the *1994 Clarksburg Master Plan*, recommends that the subject property be developed under the PD-9 or the PD-11 Zone, which permits up to 11 dwelling units per acre. Accordingly, this provision would be satisfied in this case.

Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. Alternative criteria (a) requires that the site "contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted." As noted above, the subject property is recommended for the PD-11 Zone by the Master Plan, and contains 23.82 acres. Thus, the permitted base density equals 262 dwelling units (11 X 23.82). This figure clearly exceeds the 50 dwelling unit minimum under this requirement. Moreover, the development will actually have a total of 290 units because it is allowed a 28 unit bonus based on its inclusion of 40 MPDU's.

Pursuant to Code §59-C-7.131, all types of residential uses are permitted in the PD-11 Zone except those over four stories tall. All the dwelling units proposed by Applicant are four stories, or less, and all are therefore permitted. However, the statute also requires a minimum percentage of townhome-and-attached units (20%) and four-story-or-less, multi-family units (35%). Since 290 units are proposed, 20%

of that number would require 58 townhome-and-attached units, which is the number provided for in the Development Plan. The remainder, 80%, will be four-story-or-less, multi-family units, clearly exceeding the 35% minimum for that type of unit.

Code Sections 59-C-7.132 and 7.133, concern commercial and other uses permitted, but there are no non-residential uses proposed here.

Code Section 59-C-7.14, specifies the permitted density of residential development for the Zone. The Master Plan recommends the PD-11 Zone, which is medium-density category permitting a maximum of 11 dwelling units per acre. As noted above, the base density permitted for the acreage in question is 262 units. However, Code §59-C-7.14(c) permits a bonus density if there is a minimum of 12.5% MPDU's. The subject Development Plan calls for 13.6% MPDU's and a bonus density of 28 units (10.7%). The District Council finds that Applicant's calculation is consistent with the statutory requirements.

Code Section 59-C-7.15, evaluates compatibility. The District Council finds that the proposed development will be compatible with other uses existing or proposed in the vicinity of the planned development, for the reasons set forth above in the discussion of the Zone's Purpose Clause.

Code Section 59-C-7.16, requires 50% green space for the PD-11 Zone. The Development Plan shows 58.5% (13.94 acres) of the subject property in green area, thus exceeding the 50% minimum required under the PD-11 density category.

Code Section 59-C-7.17, requires specification of land to be dedicated for public use. The Development Plan calls for dedication of approximately 0.3411 acres in a 25 foot wide right-of-way on Shawnee Lane. There was a prior dedication of 0.9518 acres to the Shawnee Lane right-of-way.

Code Section 59-C-7.18, requires parking facilities in accordance with Zoning Ordinance §59-E, which calls for 2 parking spaces for each single-family townhome, 1.5 spaces for each multi-family dwelling unit with 2 bedrooms and 2 spaces for each multi-family dwelling unit with 3 bedrooms. The total number of spaces required for this development would be 522. The Development Plan promises a

total of 648 parking spaces (an average of 2.23 spaces per dwelling unit), and it therefore exceeds the statutory requirement.

The next part of "Finding (b)" required by Section 59-D-1.61 is a determination that the proposed development would provide the "maximum safety, convenience, and amenity of the residents." Since this required finding is practically identical with one of the purpose clause requirements for the PD-11 Zone, it has been discussed in that context in this resolution. The District Council finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

The final required determination under "Finding (b)" is that the proposed development be compatible with adjacent development. For the reasons discussed above in connection with the Purpose Clause of the PD-11 Zone, the District Council concludes that the proposed residential dwelling units will be compatible with other uses existing or proposed in the vicinity of the planned development.

In sum, the District Council finds that Applicant has complied with all of the purposes, standards and regulations of the PD-11 Zone, as set forth in Article 59-C of the Code.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.

The proposed development will have two access points from Shawnee Lane, one full access and one right-in/right-out only. The full access point is to be located on the eastern edge of the property. It is proposed as a three-lane driveway, one entering and two exiting the site. This access will be reconstructed in the future to have four lanes, two egress and two ingress lanes, when the adjoining school property is developed. The new driveway will be shared between this development and the adjoining development. The safety and adequacy of the access and circulation systems were discussed above in connection with the PD-11 Zone's Purpose Clause. The District Council agrees with Technical Staff's conclusion that the proposed access to the site, as shown on the development plan, is safe and adequate, and the internal pedestrian circulation and walkways provide for a safe and adequate movements of pedestrian traffic.

Accordingly, the District Council concludes that the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.

§59-D-1.61(d): preservation of natural features

Because the subject property is located within the Little Seneca Creek Watershed of the Clarksburg Special Protection Area, it received strict environmental scrutiny by the Planning Board and the Department of Permitting Services (DPS). Its Preliminary Water Quality Plan (PWQP) was approved by both agencies.

Applicant also submitted an approved Natural Resources Inventory and Forest Stand Delineation (Exhibit 34(h)), a revised Concept Grading Plan (Exhibit 36(b)), a revised Concept Water and Sanitary Sewer Plan (Exhibit 36(d)), and a revised Concept Forest Conservation Plan (CFCP-Exhibit 36(e)). The Technical Staff reported no environmental issues warranting denial of this application. Moreover, as mentioned in the discussion of the Purpose Clause, above, the project design has minimized grading to prevent the erosion of the soil and preserve natural vegetation. Almost the entire forest stand on this property is being retained.

The District Council concludes that Applicant has demonstrated the environmental controls required by the Code.

§59-D-1.61(e): common area maintenance

Applicant is the contract purchaser of the subject property from owner LCOR at Clarksburg, LLC. Applicant will use the same property management company that Applicant uses for maintenance in all of its Communities. Applicant establishes a yearly budget for the property management company and the homeowners association, which includes ongoing maintenance funds such as minor paving repairs, grass cutting, and the placement of landscaping, and it also will include reserve funds for replacement of any physical feature that is worn out over time. Applicant will take steps to ensure that, not only is the year-to-

year and day-to-day maintenance being met, but also long term replacement costs are provided for as well. Draft Homeowners Association Documents and Condominium Documents have also been filed.

The District Council finds that Applicant has sufficiently demonstrated ownership of the property, which it has contracted to purchase, and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

The Public Interest

The final finding which is required under Maryland law is that the proposed rezoning will be in the public interest. The proposed development will promote the "health, safety, morals, comfort, and welfare of the inhabitants of the regional district" (i.e., the public interest) by providing the kind of residential development called for in the *1994 Clarksburg Master Plan*, without any adverse effect on public facilities. It will bring residents within walking distance of planned transit stops and local employment options, consistent with the Master Plan. In sum, the proposed rezoning is in the public interest.

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


ACTION

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

Zoning Application No. G-824, requesting reclassification from the R-200 Zone to the PD-11 Zone, of a 23.8211-acre parcel of unimproved land, known as "Eastside" (Part of Liber 15162, Folio 596) including Parcel P600 and a previously dedicated right-of-way, which are located on the south side of Shawnee Lane, between Gateway Center Drive and MD 355, in Clarksburg, is hereby approved in the

amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibit 53(d), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, as required under Code §59-D-1.64.

This is a correct copy of Council action.


Elda M. Dodson
Elda M. Dodson, CMC
Acting Clerk of the Council



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

Date Mailed: NOV 27 2006

Hearing Date: June 22, 2006

Action: Approved

Staff Recommendation

Motion of Commissioner Bryant, seconded by Chairman Berlage, with a vote of 3-1; Chairman Berlage and Commissioners. Bryant and Robinson voting in favor; Commissioner Wellington voting against; and Commissioner Perdue absent.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan No. 120051010

NAME OF PLAN: Eastside

The date of this written opinion is NOV 27 2006 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

INTRODUCTION

On March 25, 2006, Miller and Smith at Eastside, LLC ("Applicant"), submitted an application for the approval of a preliminary plan of subdivision and preliminary water quality plan for property in the PD-11 zone. The application proposed to create 81 lots and two (2) parcels on 23.82 acres of land located on the southeast side of Shawnee Lane, at the southern terminus of Gateway Center Drive, in the Clarksburg Master Plan Area ("Subject Property"). The application was designated Preliminary Plan No. 120051010 ("Preliminary Plan"). On June 22, 2006, the Preliminary Plan was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

SITE DESCRIPTION

The Subject Property, Parcel 600, is located on the southeast side of Shawnee Lane, at the southern terminus of Gateway Center Drive. The Subject Property contains 23.82 acres and is zoned PD-11. The site is located within the Clarksburg Special Protection Area (SPA) and contains a major stream valley and associated stream valley buffer which drains to Little Seneca Creek.

PREVIOUS ZONING APPROVAL

Rezoning Application No. G-824, adopted on February 1, 2005, rezoned the Subject Property from the R-200 zone to PD-11 for a maximum of 290 residential dwelling units. The rezoning approval contained binding elements which required moderately priced dwelling units; improvement of existing Shawnee Lane to an arterial standard from Gateway Center Drive to Frederick Road (MD 355); onsite connections to Shawnee Lane and adjoining properties; provision of recreational facilities; preservation of the stream valley; provision of stormwater management; and compliance with local area traffic review (LATR).

PROJECT DESCRIPTION

The Preliminary Plan proposes to create 81 lots and two (2) parcels for the construction of a maximum of 285 residential dwelling units, including 39 moderately priced dwelling units (MPDUs). The proposed lots will be served by public water and public sewer. Access to the site will be via private streets from Shawnee Lane.

The Preliminary Plan proposes preservation of the onsite stream and associated buffer in a green space that encompasses the southeastern portion of the site. The stormwater management facility, which includes an extended-detention pond and several pre-treatment structures, abuts the green space. The proposed layout and unit

mix reflects the approved development plan and provides various open spaces and amenities which will be further reviewed as part of the required site plan.

MASTER PLAN COMPLIANCE

The Clarksburg Master Plan recommends residential uses in designated areas near employment uses and along the transitway. The Preliminary Plan is consistent with the master plan in that it proposes housing adjacent to existing employment uses and property which is the future site for transit services. The plan also reflects the master plan's goals to maximize density, including MPDUs; improve east-west connections and provide an interconnected street system that facilitates pedestrian and transit usage; and provide open space that accommodates recreational needs.

TRANSPORTATION

Site Access, Vehicular, and Pedestrian Circulation

The proposed Eastside development will gain access via two points on Shawnee Lane, one full access and one right-in/right-out only. The full access point is to be located at the northeastern corner of the Subject Property. It is proposed to be three lanes, one entering, and two exiting the site.

The proposed access to the site as shown on the development plan is safe and adequate. The internal pedestrian circulation and walkways will provide for a safe and adequate movement of pedestrian traffic.

Local Area Transportation Review

Four local intersections were identified as critical intersections for analysis to determine whether they meet the applicable congestion standard of 1,450 Critical Lane Volume (CLV) for the Clarksburg Policy Area. The proposed development trips were added to the existing and the background traffic (trips generated from approved but unbuilt developments) to determine the total future traffic. The total future traffic was assigned to the critical intersections to calculate the total future CLVs.

All existing intersections analyzed are currently operating at acceptable 1,450 CLVs. Under the background development condition, the intersection of Clarksburg Road (MD 121) and Gateway Center Drive (becomes Gateway Center Drive/Stringtown Road Extended under the background and total development conditions), exceeds the acceptable congestion standard of 1,450 CLV during the PM peak hour. Under the total development condition, the congestion at this intersection further deteriorates and must be improved. The Applicant proposed to reconfigure the exclusive northbound through lane on Gateway Center Drive as a second exclusive northbound left-turn lane. The through volumes would then share the right-turn lane. This intersection improvement

results in mitigating the site-generated trips. Upon implementation of all required roadway improvements, the Gateway Center Drive/Stringtown Road Extended (MD 121) intersection will operate within the acceptable level of congestion, which is 1,450 CLV.

Policy Area Transportation Review

The zoning application for this property was submitted and reviewed prior to changes in the Annual Growth Policy laws requiring the developments to satisfy staging ceiling capacity. Based on the FY 2004 Annual Growth Policy staging ceiling capacity, there was insufficient capacity available for the housing development (-5,028 housing units as of May 31, 2004, the date this zoning application was filed) in the Clarksburg Policy Area. The Applicant had proposed to widen Shawnee Lane to a four-lane divided arterial roadway from Gateway Center Drive to Frederick Road (MD 355) to satisfy staging ceiling capacity and, therefore, the Applicant is bound by those requirements. The proposed roadway improvements will provide sufficient staging ceiling capacity to accommodate the proposed development.

Access Via Private Streets and Waiver of Lot Frontage on Public Street

Section 50-29(a)(2) of the Subdivision Regulations states that individually recorded lots shall abut on a street or road which has been dedicated to public use, or which has acquired the status of a public road. Multifamily and condominium units which are not located on individually recorded lots, may abut a private street or right-of-way. The proposed subdivision includes a combination of streets and alleys/driveways, none of which will be dedicated to public use. Therefore, staff determined that a finding needed to be made that all the individually recorded lots abut at least one street that can otherwise attain the status of a public road. Staff further determined that this finding must be based upon the proposed roads being: fully accessible to the public; accessible to fire and rescue vehicles, as needed; and designed to minimum public road standards, except for right-of-way and pavement widths.

Staff found that the proposed streets which provide frontage to individually recorded lots can meet the minimum standards necessary to make the finding that they have the status of a public road, with one exception. These standards include: minimum pavement widths and turning radii; appropriate circulation pattern and terminus; adequate parking design; and sidewalks with minimum tree panels. These standards also apply to proposed alleys/driveways since they provide fire access and the only frontage for some of the proposed condominium lots. A public use easement should be recorded over all the roads, including alleys/driveways.

The exception is proposed townhouse Lots 152-155, which abut an alley/driveway which does not attain the status of a public road since it does not provide appropriate circulation or terminus. Since this alley/driveway is the only frontage

provided for the lots, a waiver of Section 50-29(a)(2) is needed to permit the proposed configuration. Section 50-38(a) authorizes the Planning Board to grant waivers of any part of the Subdivision Regulations based upon a finding that practical difficulties or unusual circumstances exist which prevent full compliance with the requirements.

The Applicant's proposed plan reflects the general layout and road network that was reviewed by the Planning Board and the District Council as part of the development plan approved with the rezoning of the Subject Property. The layout was designed to meet master plan goals for density near proposed transit, and creation of a neighborhood that incorporates the general principles of neo-traditional design such as, a hierarchy of streets, including a series of alleyways, with a mix of housing types and densities, and green areas dispersed throughout. The configuration of the lots for which this waiver is necessary does facilitate the creation of internal green spaces between the units.

Staff found that a waiver of the lot frontage requirement is justified where it can be found that it supports the desired design principles for the subdivision. This waiver is justified in that the proposed neo-traditional neighborhood design best implements the intent of the Clarksburg Master Plan, particularly with regard to integrating green space throughout the development. The requested waiver facilitates the replacement of certain roads with green spaces that reduces the amount of paving in the development, and creates visible open areas and gathering spaces for the community. The Montgomery County Fire and Rescue Service (MCFRS) has reviewed the proposed alley for fire access to the lots and determined that all the houses will be adequately served. For these reasons, Staff recommended a waiver of the frontage requirement for proposed Lots 152-155. In Staff's opinion, the waiver is the minimum needed, is not contrary to the recommendations of the General Plan, and is not adverse to the public interest.

ENVIRONMENTAL COMPLIANCE

Environmental Guidelines

The Applicant submitted a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) to M-NCPPC for review and approval. Environmental Planning staff approved NRI/FSD 4-05096 on October 28, 2004. The NRI/FSD indicates 6.43 acres of existing forest, 5.4 acres of environmental buffers, and no wetlands or floodplains. The only slopes greater than 15 percent are located within the environmental buffers. A first order stream diagonally crosses the back quarter of the Subject Property. The forest is concentrated in the back third of the site. The environmental buffers are forested except for 0.22-acres, which will be forested per the environmental guidelines. The only encroachment into the environmental buffers is for a natural surface trail and necessary stormwater management conveyances. There are no stormwater management facilities or drywells proposed for the environmental buffer. All environmental buffers will be included in a Category I forest conservation easement.

Forest Conservation

The Applicant submitted a preliminary forest conservation plan with the Preliminary Plan. There is 6.43 acres of existing forest on the Subject Property. The Applicant is proposing to remove 0.95 acres, retain 5.48 acres, and plant 0.22 acres of unforested stream buffer. Since the Applicant proposes to develop this site as a planned unit development it must comply with Section 22A-12(f) of the Montgomery County Code. This section requires planned unit developments to meet the appropriate forest conservation threshold on site. The Applicant will meet the requirements of Section 22A-12(f) and all forest conservation requirements through forest retention on the Subject Property. In addition, the Applicant will plant the unforested portion of the site, as per the Environmental Guidelines.

Stormwater Management/Water Quality Plan

As part of the water quality plan the following site performance goals were established:

1. Maintain the natural on-site stream channels.
2. Minimize storm flow run off increases.
3. Minimize increases to ambient water temperatures.
4. Minimize sediment loading.
5. Maintain stream base flows.
6. Protect springs, seeps, and wetlands.
7. Identify and protect stream banks prone to erosion and slumping.
8. Minimize nutrient loading and control insecticides, pesticides and toxic substances.

To help meet the performance goals, the water quality control for this site will be provided via an extended detention pond. This structure will provide channel protection volume for the one-year storm with a maximum detention time of 12 hours, per state standards. Quality control will be provided via a combination of structural and non-structural measures that include dry wells, surface sand filters, dry swales and water quality inlets.

ADEQUATE PUBLIC FACILITIES VALIDITY PERIOD

Pursuant to Section 50-20(c)(3) of the Subdivision Regulations, a determination of adequate public facilities made under this section of the regulations is timely and remains valid for no less than 5 and no more than 12 years, as determined by the Planning Board at the time of subdivision, for projects approved on or after October 19, 1999. The Applicant requested a 6-year adequate public facilities ("APF") validity period. Staff recommended granting the Applicant's request because, pursuant to the binding elements of the development plan, the Applicant is required to acquire or fund the

County acquisition of right-of-way from 19 properties for the widening of Shawnee Lane. Since the Applicant is required to make a good faith effort to acquire right-of-way and temporary easements from property owners prior to the County exercising its condemnation authority, the additional time required for the Applicant to attempt acquisition, and the County to go through the condemnation process, supports the request for a six-year APF validity.

PRELIMINARY PLAN PHASING

The Applicant also requested permission to record the proposed lots in phases which correspond to the extended validity period for the APF. Section 50-35(h)(2)(b) of the Subdivision Regulations gives the Planning Board authority to establish such phasing at the time of the preliminary plan approval. Staff recommended approval of the Applicant's proposed phasing schedule.

STAFF RECOMMENDATION

In accordance with Staff's findings and conclusions as set forth above, Staff recommended approval of the Preliminary Plan subject to conditions.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies¹; the Applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds, based on the findings and conclusions of Staff as set forth above and with the conditions of approval, that:

- a) Preliminary Plan No. 12005101 substantially conforms to the Clarksburg Master.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision. The Planning Board hereby approves the waiver of Section 50-29(a)(2) requiring frontage along a public street for Lots 152-155 and hereby adopts the Staff's findings and recommendations on this issue as set forth above.
- c) The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision. At the time of site plan review, the Planning

¹ The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

Board will review in more detail the amount and location of green space provided for the development.

At the hearing, Commissioner Wellington expressed her concern about public safety and parking enforcement due to the use of private streets throughout the proposed development. Other Boardmembers found that the Preliminary Plan conforms to the approved development plan and stressed the development's proximity to the future transit center as support for the proposed density and layout of the development but noted that, at site plan, the Planning Board would be looking closely at the amount and location of the green space being provided and that the Applicant may not be able to accommodate the maximum of 285 units on the site.

- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.
- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) The application satisfies all the applicable requirements of Montgomery County Code Chapter 19, Article V (Water Quality Review in Special Protection Areas).

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 120051010 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50 and Chapter 59, the Planning Board approves Preliminary Plan No. 120051010, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 81 lots and 2 parcels for 285 residential dwelling units, including 39 MPDUs.
- 2) Compliance with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.
- 3) Record plat to reflect a Category I easement over all areas of stream valley buffers and forest conservation.
- 4) Compliance with conditions of approval for Rezoning Case G-824.

- 5) The Applicant shall dedicate and/or acquire 120 feet of right-of-way for Shawnee Lane from Gateway Center Drive to Frederick Road (MD 355), and construct Shawnee Lane to a four-lane divided arterial roadway. Any additional right-of-way or associated easements necessary for construction of Shawnee Lane will be acquired or funded by the Applicant. The Applicant must acquire or fund the cost of condemnation by Montgomery County Department of Public Works and Transportation (DPWT) for all necessary right-of-way for the entire length of Shawnee Lane prior to issuance of the building permit for the 91st dwelling unit. Construction of Shawnee Lane shall be complete and open to traffic prior to issuance of building permit for the 201st dwelling unit.
- 6) The Applicant shall provide the following improvements at the intersection of Stringtown Road Extended and Gateway Center Drive prior to the issuance of the building permit for the 91st dwelling unit:
 - a. Exclusive dual northbound left turn lanes on Gateway Center Drive, by redesignating one exclusive northbound through lane as an exclusive left turn lane with particular design requirements to be approved by DPWT.
 - b. The third lane on the northbound movement on Gateway Center Drive will be designated as a shared through and right turn lane.
 - c. The Applicant is responsible for all changes required to the traffic signal system as a result of the change in lane configuration at this location.
- 7) The Applicant shall widen the northeastern site access points from Shawnee Lane to a total of 52 feet wide to provide for 22-foot wide in-bound and out-bound lanes and an eight-foot median, prior to redevelopment of the adjoining MCPS property. The egress lanes will be further widened to 26 feet when development of the adjoining school bus depot occurs. The landscaping on the east side of the driveway shall be replaced if the widening of the outbound lanes to 26 feet results in changes in the landscaping at this location.
- 8) The Applicant shall provide a five-foot wide lead-in sidewalk from Shawnee Lane at or near the northwestern site access point.
- 9) The Applicant shall provide a Class I, shared-use path along the south side of Shawnee Lane and extend it to the future intersection with Gateway Center Drive. This improvement shall be complete prior to issuance of building permit for the 201st dwelling unit.
- 10) The Applicant shall provide crosswalks at the following locations:


- a. Perpendicular across the internal roadway at the two locations of the three-way handicapped ramps for Phase I, Areas A and C, and for Phase 3, Areas A and B.
 - b. Across the temporary northwestern site access point parallel to Shawnee Lane
- 11) Final approval of the number and location of buildings, dwelling units, MPDUs, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
- 12) No clearing, grading or recording of plats prior to certified site plan approval.
- 13) The site plan shall reflect the following design standards with respect to proposed roads, including the alleys/driveways:
 - a. All roads shall be built to the structural standards of a tertiary road.
 - b. All roads must have a paved surface a minimum of 20 feet wide, exclusive of parking.
 - c. On-street parallel parking must be 8 feet wide and protected by bump-outs, especially at all intersections.
 - d. The radii at intersections for through streets to adjacent properties must be at least 30 feet.
 - e. The radii at intersections for interior streets and alleys/driveways that serve as fire access must be at least 25 feet.
 - f. All sidewalks shall be 4 feet wide with a 6-foot minimum tree panel.
- 14) Record plat to reflect public use, common ingress/egress and utility easements over all roads and alleys/driveways.
- 15) Record plat shall reflect all areas under Homeowners Association and stormwater management parcels.
- 16) Record plat to reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to Commission Staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
- 17) Access and improvements as required to be approved by the Maryland State Highway Administration (SHA) prior to issuance of access permits.
- 18) Compliance with conditions of DPWT letter dated May 9, 2006, unless otherwise amended.

- 19) Compliance with the conditions of the MCDPS stormwater management and preliminary water quality approval dated October 15, 2004.
- 20) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for seventy-two (72) months from the date of mailing of the Planning Board opinion.
- 21) This preliminary plan will remain valid for 72 months from the date of mailing of the Planning Board opinion. Record plats shall be recorded in phases based on the following schedule:
 - Phase 1: 90 dwelling units within 36 months (3 years) from the date of mailing of the Planning Board opinion;
 - Phase 2: 119 additional dwelling units within 60 months (5 years) from the date of mailing of the Planning Board opinion
 - Phase 3: the remaining 76 dwelling units within 72 months (6 years) from the date of mailing of the Planning Board opinion.
- 22) Other necessary easements.

* * * * *

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on Thursday November 2, 2006, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Bryant seconded by Commissioner Robinson, by a vote of 5-0, with Commissioners Hanson, Perdue, Bryant, Wellington, and Robinson present, ADOPTED the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan No. 120051010, Eastside.



Certification As To Vote of Adoption
M. Clara Moise, Technical Writer



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

MCPB No.07-17
Site Plan No. 820050380
Eastside
Hearing Date: February 8, 2007

JUN 20 2007
RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board" or "Board") is required to review site plan applications; and

WHEREAS, on May 25, 2005, Miller and Smith ("the Applicant"), filed an application for approval of a Site Plan for development of a maximum of 265 dwelling units, including 34 MPDUs on 23.82 gross acres of PD-11 zoned land located on the south side of Shawnee Lane and 100 feet east of the intersection with Gateway Center Drive ("Property" or "Subject Property"); and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820050380, Eastside ("Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated January 26, 2007, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on February 8, 2007, Staff presented the Application to the Planning Board at a public hearing for its review and action (the "Hearing"); and

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

WHEREAS, on February 8, 2007, the Planning Board approved the Application subject to conditions on the motion of Commissioner Bryant, duly seconded by Commissioner Robinson, on a vote of 4-0-1, with Chairman Hanson and

APPROVED AS TO LEGAL SUFFICIENCY

DVB 6/4/07
MONTGOMERY LEGAL DEPARTMENT

Commissioners Bryant, Perdue and Robinson voting in favor, and Commissioner Wellington abstaining.¹

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board approved Site Plan No. 820050380 and Final Water Quality Plan for a maximum of 265 dwelling units, including 34 MPDUs on 23.82 gross acres of PD-11 zoned land, subject to the following conditions:

1. Development Plan Conformance

The proposed development shall comply with the binding elements listed in the District Council Resolution 15-881 for Zoning Map Amendment G-824 and associated Development Plan.

2. Conformance with Preliminary Plan

The proposed development shall comply with the conditions of approval for Preliminary Plan 120051010 as listed in the Planning Board's opinion dated November 27, 2006.

3. Forest Conservation

Applicant to comply with the following conditions of approval from the M-NCPPC Environmental Planning in the memorandum dated January 21, 2007:

Applicant to protect all areas within the environmental buffers and all retained forests with a Category I conservation easement.

Applicant to reforest unplanted environmental buffers.

Stormwater management outfall trenches to be field located with the M-NCPPC Forest Conservation inspector

4. Stormwater Management

The proposed development is subject to a Final Water Quality Plan and a Stormwater Management Concept as approved by Montgomery County Department of Permitting Services (MCDPS) in a letter dated December 21, 2006, or as amended.

5. Common Open Space Covenant

JUN 20 2007

¹ Commissioner Wellington abstained from voting on this Application because of concerns regarding 1) the extensive use of internal private streets; and 2) the uncertainty of the timing and funding of certain public transit improvements.

Record plat of subdivision shall reference the *standard HOA Common Open Space Covenant* recorded at Liber 28045, Folio 578. Applicant shall provide verification to the M-NCPPC staff before the issuance of the first building permit that the recorded Homeowners Association Documents refer to the Covenant.

6. Certified Site Plan

The following items shall be included and/or information provided subject to staff review and approval before the approval of the certified site plan:

Development program, inspection schedule and Site Plan Resolution.
Indicate handicapped accessible ramps are designed to County/State Standards.
Lighting standards shall include measurement for base and a maximum height of 16 feet.

Show typical detail for each unit type and indicate minimum setbacks, maximum heights, and on-lot parking inside and outside units.

Indicate phases and sequencing of construction including recreational facilities and MPDU units for each phase.

Delineate parcels for storm water management and natural area.

7. Development Program

The Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of the certified site plan. The Site Plan Development Program shall include, but is not limited to the following:

Street tree planting shall be completed no later than six months after completion of the units adjacent to completed streets.

Pedestrian paths, recreation facilities and landscaping located in phases 1 and 2 shall be completed before the issuance of the 214th building permit and the construction of units in phase 3.

MPDUs to be provided in each phase.

8. Clearing and Grading

No clearing or grading before the M-NCPPC approval of the Certified Site Plan.

9. Prior Approvals

The terms and conditions of all applicable prior regulatory approvals and agreements remain in full force and effect.

10. Record Plats

Record plat of subdivision shall reflect a Category I conservation easement over all areas of stream buffers and forest conservation. In order to facilitate the future connections for the private streets to adjoining properties, record plats shall indicate provision for future ingress and egress easements to the property line including vehicular and pedestrian access.

11. MPDUS

All MPDUS are to be provided on-site.

BE IT FURTHER RESOLVED, that all site development elements shown on Eastside site plans stamped by the M-NCPPC on January 25, 2007, shall be required except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

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

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

An approved diagrammatic, schematic or project plan is not required for this development. The Site Plan conforms to all non-illustrative elements of the Development Plan certified by the Hearing Examiner.

(2) The site plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.

The Site Plan is not the subject of an urban renewal plan. The site plan meets all of the requirements of the zone in which it is located as set forth in the Site Plan Data Tables below:

Development Standards Data Table

	Zoning Ordinance	Established per G-824	Approved by Planning Board and Binding on Applicant
Gross Tract Area in acres		23.82	23.82
Dedication Shawnee Lane		.95	.95
Net Tract Area in acres		22.86	22.86
Total Number of Dwelling Units		290	265
Unit mix: TH	20%	20%	26%
Unit mix MF	35%	80%	74%
Detached		0	0
Attached		58	75
Multi-family		232	190
MPDUs required	12.5% minimum	40 (13.6%)	34 (12.7%)
Lot Sizes -- Townhouses		NA	1,100 SF
Green Space	50%	58.5%(13.94acres)	59.4 %(14.11 acres)
Building Height			
Townhouses		Four stories	40 feet
Multifamily		Four stories	55 feet
Building setbacks			
From Property Boundary	NA	NA	5 feet
Between Attached Building Sticks	NA	NA	10 feet
Townhouses Front	NA	NA	20 feet, front loaded 5 feet, rear loaded
Side (end units only)			0 feet, front loaded 3 feet, rear loaded
Rear			5 feet
Multi-family Front			0 feet
Side			0 feet
Rear (to alley)			20 feet
Total Parking Spaces		648	652
2 per townhouse unit		116	190

2 Per multifamily unit		306	380
Visitor/Extra		126	82

Recreational Guidelines Data Table

Demand Points	Tots D1	Children D2	Teens D3	Adults D4	Senior D5
TH 75	x 17 = 12.75	x 22 = 16.50	x 18 =13.50	x 129 = 96.75	x 9 = 6.75
MF 190	x 11 = 20.90	x 14 = 26.60	x 12 =22.80	x 18 = 224.20	x 16 = 30.40
TOTAL Demand	33.65	43.10	36.30	320.95	37.15
Supply Points					
Open Play I	6.00	9.00	12.00	30.00	2.00
Open Play II (2)	6.00	8.00	8.00	20.00	2.00
Sitting Area (13)	13.00	13.00	19.50	65.00	26.00
Pedestrian System	3.37	8.62	7.26	144.43	16.72
Nature Trails	1.68	4.31	5.45	48.14	5.57
Natural Areas	0.00	2.16	3.63	32.10	1.86
Tot Lot (1)	9.00	2.00	0.00	4.00	1.00
TOTAL Supply	39.05	47.09	55.84	343.67	55.15
TOTAL Demand	33.65	43.10	36.30	320.95	37.15
Difference	+5.40	+3.99	+19.54	+22.72	+18.00

MPDU Calculations Data Table

Base Density PD 11	11 x 23.82 = 262
Proposed Density	265
Bonus Units	3
Percentage Bonus Units	3/262 = 1.1%
Required MPDUS for bonus between 1 and 2% is 12.7%	265 x 12.7% = 33.7 or 34 units
MPDUs provided	34 units

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

a. Buildings and Structures

The townhouse and multi-family units are arranged in the same layout as approved in the Development Plan. The MPDU units are distributed throughout the site.

The Planning Board notes that the mix of units in the proposed plan is different from that shown in the preliminary plan. In both the preliminary plan and zoning case, the mix of units was 80% multi-family and 20% attached. The deletion of 20 lots and rearranging unit types results in a loss of 36 multi-family units and an increase of 16 townhouses, for a final mix of 74% multi-family and 26% townhouses. The mix of units was an issue for the community and the Community-Based Planning Division at the time of the preliminary plan. The revisions address that concern.

The layout of the units consistently reinforces the differentiation between public and private spaces in a dense development. Each unit faces public spaces and private spaces and parking for each unit is provided at the rear. There are smaller groups of units within the overall plan and each group has open space for community interaction. The layout provides adequate space between and around units. All units are setback from the property boundary at least 5 feet. Townhouse units have front and rear setbacks from the individual lot. The rears of the condominium multi-family units are setback at least 20 feet from the alleys to accommodate on-site parking. There is a distance of a least 10 feet between the multifamily units. The Planning Board finds that the overall layout is adequate, safe and efficient.

b. Green/Open Spaces

The plan proposes more than 14 acres of green space for different uses: protected forested areas along the streams and green space for active and passive recreation. Approximately 6.6 acres are to be protected and the remainder, approximately 8.5 acres are recreational and stormwater management areas. The rearranging and reduction of units have resulted in 0.3 acres, or 13,068 square feet, more green space. The additional green space has been provided to expand existing common open space and to provide a third large play area of 10,000 square feet. Green space was enlarged at key locations such as along the main thoroughfare and in the mews. Two sitting areas were also added. Overall green space has been increased from that approved in the zoning case.

The Planning Board finds that the green space as proposed is an improvement over that shown in the preliminary plan and is adequate, safe and efficient.

c. Landscaping and Lighting

The proposed landscaping includes street trees, planted areas to delineate between private and public spaces, entrance plantings, plantings along walls, and plantings for each unit. There is a six-foot planting panel between the streets and sidewalks, in conformance with the conditions of approval for the preliminary plan. Landscaping delineates the edges between private and public spaces surrounds all sitting areas and play areas.

The layout generally places the utility feeds and boxes to the rear of units or in utility rooms subject to final approval by utility companies. The individual feeds are located on pads between each unit. Plantings are located on the pads if there is sufficient length to accommodate the structures and plants. As shown on the landscape plan, end units are equipped with walls or landscaping to deflect direct view into the alleys and parking places.

The proposed lighting plan consists of streetlights at regular intervals. All lighting standards are 16 feet in height including the base. The lighting fixture is similar to those used elsewhere in the Clarksburg planning area. According to the lighting plan, no illumination will be greater than 0.1 at the property line. This is less than the maximum recommended in IESNA .5.

The Planning Board finds that the landscaping and lighting plans are adequate, safe and efficient.

d. Recreation Facilities

Recreation demand calculations, as recommended in the Planning Board's 1992 Recreational Guidelines, have been exceeded by the proposed recreational facilities. The plan includes 13 sitting areas, one tot lot, one Open Play I area (10,000 SF), two Open Play II areas (5,000 SF), a nature walk, natural area and pedestrian system.

According to the Guidelines, recommended setbacks for tot-lots and open play areas may be "... reduced, provided that other measures, such as landscaping and fencing, are uses as necessary to achieve compatibility." The Applicant is requesting a reduction for setbacks for two categories of facilities, the tot lot and open play areas. The recommended 30-foot setback between tot lots and buildings/curbs would be reduced to no less than 20 feet to buildings and 10 feet to curbs. Setbacks for Open Play Areas II would be reduced from 30 feet to a minimum of 15 feet from buildings. Setbacks for the Open Play Area I would be reduced from 30 feet to buildings and curbs to 20 feet for buildings and 10 feet for curbs.

The Recreational Guidelines state that landscaping may compensate for a reduction on setbacks. The Applicant is proposing landscaping and fencing around the tot lot as buffer from the nearest unit. Landscaping and sidewalks are used similarly around the two centrally located Open Play I areas. Units face the fifty-foot wide play areas. There are sidewalk and landscaping in the fifteen-foot area between the open play area and units. The alleys are located to the rear of the units, a feature that greatly reduces conflict between playing children and vehicles.

Landscaping and sitting areas are placed in strategic locations to delineate the different uses of

the common open spaces. The larger open play area is separated from the street by sidewalks, a 6-foot wide street tree panel and parallel parking spaces. The parking spaces are protected by bump-outs. Landscaping, sitting areas and sidewalks clearly delineate the recreational areas for community use. The tot lot and open space / play area, sitting areas and stormwater/nature area form a large connected common space where adults and children of all ages can recreate side-by-side.

The Planning Board finds that the recreational facilities are adequate, safe and efficiently designed.

e. Vehicular and Pedestrian Circulation

Vehicular access points conform to those required in the zoning case. The main entrance will serve both the proposed development and future development of the adjacent properties. The entrance lines up with the entrance opposite on Shawnee Lane as approved in the zoning case for the Garnkirk Property. There is a second right-in/right-out as shown on the preliminary plan. The main entrance will ultimately have four lanes and median. Access to the adjoining properties, as required in the zoning case and preliminary plan, is provided.

All the streets are private and are designed in a hierarchy: main thoroughfare, connecting streets, local streets and alleys. In conformance with conditions of the preliminary plan, connecting streets have 30-foot radii at intersection. All streets intersect at right angles. There are no offsets where interior streets intersect alleys. All streets have a, four feet wide sidewalk and a six feet wide tree panel. All radii for intersections that provide for fire access are 25 feet wide, all roads have a paved surface of 20 feet and all parking spaces are 8 feet wide and protected by bump-outs. Sidewalks are provided to the fronts of all units. Lead-in sidewalks are provided along the main entrance. Pedestrian access to the natural area and around the wooded stream buffers (outside the buffer) is provided. A ten-foot-wide bike path (Class I bikeway) is shown along Shawnee Lane.

The Fire Marshal approved the plan for circulation and access for fire safety.

The Planning Board finds that the vehicular and pedestrian circulation is safe, adequate and efficient.

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

The Planning Board finds that each structure and use is compatible with other uses. The proposed site plan is compatible with all existing development. No site plans have been approved for any adjoining properties to date.

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

The site is in the Clarksburg Special Protection Area (SPA) and subject to the Special Protection Area Law and requires a water quality plan. MCDPS reviewed and conditionally approved the elements of the final water quality plan under their purview in December 21, 2006. The Planning Board finds that the environmental guidelines for special protection areas, forest conservation requirements, and site imperviousness requirements are satisfied.

* * * * *

At its regular meeting, held on Thursday June 14, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Robinson, seconded by Vice Chair Perdue, with Chairman Hanson, Vice Chair Perdue, and Commissioners Wellington, and Robinson present and voting in favor. Commissioner Bryant was absent. This Resolution constitutes the final decision of the Planning Board, and memorializes the Board's findings of fact and conclusions of law for Site Plan No. 820050380, Eastside.

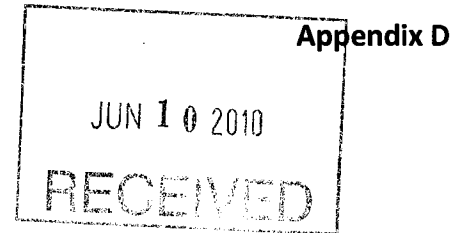


Royce Hanson, Chairman
Montgomery County Planning Board

JUN 20 2007



DEPARTMENT OF TRANSPORTATION



Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

May 27, 2007

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

RE: Preliminary Plan #1-2005101A
Gallery Park, Amended

Dear Ms. Conlon:

We have completed our review of the amended preliminary plan signed on March 18, 2010. This preliminary plan was reviewed by the Development Review Committee at its meeting on May 24, 2010. We recommend approval of the plan subject to the following comments:

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

1. All comments of our previous approval letters dated May 9, 2006 and May 12, 2008 remain in effect and we have no further comments.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact Sam Farhadi at (240) 777-2197.

Sincerely,

Gregory M. Leck, P.E. Manager
Development Review Team

m:/subdivision/farhas01/preliminary plans/ 1-2005101A, Gallery Park, Amended.doc

Division of Traffic Engineering and Operations

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878
Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080
trafficops@montgomerycountymd.gov

Ms. Catherine Conlon
Preliminary Plan No. 1-2005101A
Date May 27, 2010
Page 2

Enclosures ()

cc: Bob Spalding, Miller and Smith at Eastside, LLC
Ed Wallington, Loiederman Soltesz Associates
Tim Dugan, SRGP&E, P.A.
Joseph Y. Cheung; DPS RWPPR
Sarah Navid; DPS RWPPR
Henry Emery; DPS RWPPR
Shahriar Etemadi; M-NCPPC TP
Jon Hutchings, DOT DTE
Dan Sanayi, DOT TEO
Fred Lees, DOT TEO
Bruce Mangum, DOT TEO
Sam Farhadi, DOT TEO
Preliminary Plan Folder
Preliminary Plans Note Book



SEP 9 2010

DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett
County Executive

Richard Y. Nelson, Jr.
Director

September 8, 2010

Mr. Joshua Sloan
Development Review Division
M-NCPPC
8787 Georgia Ave.
Silver Spring, MD 20910

RE: Gallery Park (aka Eastside) Site Plan Amendment Application No. 82005038A

Dear Mr. Sloan:

Per your request, the following are DHCA's comments regarding the revised Site Plan Amendment application for Gallery Park:

1. DHCA agrees that the proposed 186 multifamily townhouse condominium units in Gallery Park (32 MPDUs and 154 market rate units) are multifamily units under the current zoning classification (and master plan requirements) for this site.
2. The proposed geographic distribution of MPDUs, as shown on the submitted site plan amendment, is acceptable to DHCA.
3. The 14' wide multifamily MPDUs are permitted based on examples provided by the builder. As with any development, DHCA will need to review and approve schematic floorplans for the MPDUs in Gallery Park prior to certified site plan.
4. The proportion of 3 bedroom MPDUs must be at least equivalent to the proportion of 3 bedroom multi-family market rate units. DHCA has requested that the applicant propose a minimum number of 3 bedroom (and maximum number of 2 bedroom) MPDUs. Miller and Smith will voluntarily build at least 25% of the MPDUs with 3 bedrooms and a maximum of 75% 2 bedroom MPDUs. Wherever possible, the 3 bedroom MPDUs will be located in 4 story sticks which include 3 bedroom market rate units (as per paragraph number 8, below).
5. The MPDU Agreement will need to provide a specific mix of 2 and 3 bedroom MPDUs. The bedroom mix may be changed within the stated limits by letter amendment with DHCA. DHCA would welcome more 3 bedroom MPDUs than required, if these are in the 4-story configuration (see paragraph number 8, below).
6. The 3rd bedroom located on the 1st floor in a 3-story MPDU would only be constructed if no 3 bedroom market rate multifamily unit residences are constructed in the same

Division of Housing and Code Enforcement

	Moderately Priced	Housing Development	
Code Enforcement	Dwelling Unit	and Loan Programs	Landlord-Tenant Affairs
FAX 240-777-3701	FAX 240-777-3709	FAX 240-777-3691	FAX 240-777-3691

townhouse stick. The number of bedrooms in the fee simple single family attached townhomes would not affect the above condition.

7. If 4-story townhouse condominiums are built in the same townhouse stick, three bedroom MPDUs will have a garage on the first floor. The 3rd bedroom will be located above the first floor.
8. In recognition that the number (and type) of units in a stick affects the ability to stay strictly on pace with MPDU construction, DHCA requires that the on-going mix of MPDUs to Market Rate Units stay within 10-15% of the 12.5% MPDUs. Miller and Smith has agreed to be mindful in drafting the MPDU Agreement that the construction of a certain number of MPDUs required at a certain phase does not conflict with the construction of other amenities, such as lighting, green space and/or recreation space.
9. Construction cost and sales cost calculations will be discussed with DHCA as Miller and Smith moves forward.
10. In order to achieve lower condominium fees for both MPDU and market rate owners, Miller and Smith will make every effort to include all of the multi-family units within a single condominium association. However, in any case no condominium association at Gallery Park will contain fewer than 50 units.

If you have any questions, please contact Lisa Schwartz, Senior Planning Specialist, at 240-777-3786.

Sincerely,



Christopher J. Anderson
Manager, Single Family Housing Programs

cc: Robert J. Spalding, Miller & Smith
Joseph T. Giloley, Chief, Division of Housing and Code Enforcement, DHCA
Lisa S. Schwartz, Senior Planning Specialist, DHCA

September 10, 2010

Mr. Edward Wallington
Loiederman Soltesz Associates, Inc.
2 Research Place, Suite 100
Rockville, Maryland 20850

Re: **Revised Final** Water Quality Plan for
Eastside (Gallery Park)
SM File #: 214128
Tract Size/Zone: 23.8Ac/PD-11 Proposed
Tax Plate: EV 43
Parcels: P600
Montg. Co. Grid: 9D07
Watershed: Little Seneca Creek

SPECIAL PROTECTION AREA

Dear Mr. Wallington:

Based on a review by the Department of Permitting Services, the **Revised** Final Water Quality Plan (FWQP) for the above mentioned site is conditionally approved. This approval is for the elements of the Final Water Quality Plan of which DPS has lead agency responsibility, and does not include limits on imperviousness or stream buffer encroachments.

Site Description: The site is located at the intersection of Gateway Center Drive and Shawnee Lane. This proposal is for a multifamily and townhouse development with a zoning of PD-11. This is located within the Little Seneca Creek watershed of the Clarksburg Special Protection Area.

Stormwater Management: Water quantity control for this site will be provided via an extended detention dry pond. This structure will provide channel protection volume for the one-year storm with a maximum detention time of 24 hours per state standards. Quality control will be provided via a combination of structures that includes recharge trenches, surface sand filters, bioswales, microbiofilters and biofilters. These practices are placed in series to provide redundancy. Since open section roads will not be feasible due to the proposed zoning of the site, additional water quality volume will be provided in the proposed water quality and recharge structures. Areas that are intended for vehicular use are to be pretreated prior to entering any water quality structures. The primary water quality structures must be sized to treat a minimum of one-inch over the proposed impervious area with additional volume (1/4" over the impervious area) provided for open section offset. **The revisions to the FWQP include replacing surface sand filters and structural sand filters with biofilters and microbiofilters. Also, several bioswales were added to the plan. These at the surface bio-features replace several underground structures and surface sand filters more in keeping with the ESD design goals.**

All of the requirements and conditions of the previously approved FWQP, including sediment control, monitoring and conditions of approval, still apply.

The following are additional conditions which must be addressed in the initial submission of a detailed sediment control/stormwater management plan. This list may not be all inclusive and may change based on available information at the time of the subsequent plan reviews:

1. Provide driveway aprons and full depth paving in areas where curbs, sidewalks and/or bike paths must be crossed to access a stormwater management facility.
2. Remove the bioswales from lots 1-21 and replace them with a combination of biofilters and dry wells.
3. Retaining walls are not to be located in stormwater management easements.
4. A detailed review of the stormwater management computations will occur at the time of detailed plan review.

Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended Water Quality Plan requirements.

If you have any questions regarding these actions, please feel free to contact Leo Galanko at (240) 777-6242.

Sincerely,

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

RRB:img:CN214128

cc: J. Sloan (MNCPPC-DR)
M. Pfefferle (MNCPPC-ED)
R. Gauza (MCDEP)
L. Galanko
SM File # 214128

Qn: on-site 23.8 ac
Ql: on-site 23.8 ac
Recharge Provided