

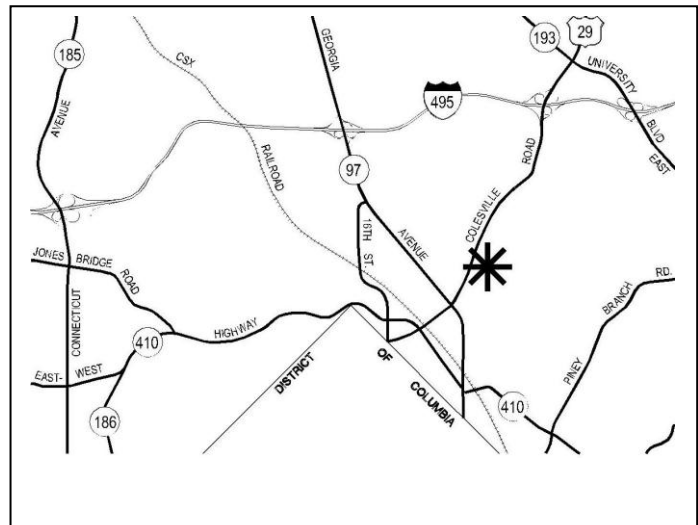
**Schematic Development Plan G-892 [REMAND] Chelsea Townhouse Rezoning – Silver Spring**

<input type="checkbox"/>	Damon B. Orobona	Planning Area 1 Senior Analyst	damon.oro bona@montgomeryplanning.org
<input type="checkbox"/>	Robert A. Kronenberg	Planning Area 1 Supervisor	robert.kronenberg@montgomeryplanning.org
<input type="checkbox"/>	Rose G. Krasnow	Planning Area 1 Division Chief	rose.krasnow@montgomeryplanning.org

**Completed: 1-17-12**

**Description**

*Applicant:* Chelsea Residential Associates, LLC  
*Prop. Address:* 630 Ellsworth Drive, Silver Spring  
*Prop. Size:* 5.25 Acres  
*Zone:* Currently R-60  
 Requesting R-T 12.5  
  
*Master Plan:* 2000 North and West Silver Spring  
*Filing Date:* January 4, 2011  
  
*Prior Hearings:* May 19, 2011 (Planning Board)  
 May 26, 2011 (Hearing Examiner)  
 June 6, 2011 (Hearing Examiner)  
 June 27, 2011 (Hearing Examiner)  
 June 30, 2011 (Hearing Examiner)  
 July 18, 2011 (Hearing Examiner)  
 October 18, 2011 (District Council)



**Summary**

This is a request to rezone a property located at 630 Ellsworth Drive to the R-T 12.5 Zone to allow the redevelopment of the site with up to 63 townhomes and the restoration of the historic Riggs-Thompson house. The application, which the Board has reviewed once before, has been remanded to the Office of Zoning and Administrative Hearings (Hearing Examiner) by the District Council (Council) for the purpose of reviewing three limited issues: (1) whether the applicant has provided a proposal with a density and massing that is more consistent with the recommendations of the 2000 North and West Silver Spring Master Plan (Master Plan or Plan) and more compatible with the character of the transition from the Silver Spring Central Business District to the R-60 zoned properties north of Cedar Street, (2) reconsideration of the environmental setting intended by the Master Plan for the Riggs-Thompson House, and (3) resolution of any issues surrounding the alignment of the proposed private street on the site. The Hearing Examiner is requesting the Planning Board’s guidance on the issues, particularly the intended environmental setting. Because the Council has limited the remand to these specific issues, no discussion outside this narrow scope should take place.

Although the subject application was previously before the Planning Board on May 19, 2011, the request at that time was to rezone to the R-T 15 Zone to allow up to 76 townhomes along with the restoration of the Riggs-Thompson House. The Board recommended approval of the R-T 15 Zone by a vote of 4 to 1. However, during five subsequent Hearing Examiner public hearings, questions relating to the above issues prompted the Hearing Examiner to recommend the Council remand the case to allow the applicant to revise the proposal. The applicant is now proposing the R-T 12.5 Zone to provide a lesser number of townhomes and has redesigned the site layout to provide more green area and greater setbacks. Additionally, the private street has been realigned to avoid any potential adverse impact to the historic Riggs-Thompson House. Staff recommends approval of the R-T 12.5 Zone and accompanying revised schematic development plan.

## The Remand Order

On October 18, 2011, the Council issued a resolution remanding the application to the Hearing Examiner with the following guidance:<sup>1</sup>

The [schematic development plan] should be reconfigured to propose a residential townhouse (RT) development with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan. The revised [schematic development plan] should also resolve issues relating to the alignment of the private road to comply with the environmental setting of the historic site as set forth in the Master Plan and its Appendix D.

On November 11, 2011, the Hearing Examiner then issued an order to all parties limiting the issues on remand to the following three points:

- (1) Submission of a revised schematic development plan for development in an RT Zone with less density and massing to be more consistent with the character of the transition from the Central Business District to the existing R-60 Zone north of Cedar Street and the recommendations of the 2000 North and West Silver Spring Master Plan. Because it will be a revised plan, this may require review of whether the development meets the required zoning and environmental regulations normally reviewed to the extent the revised plan differs from the plan originally submitted.
- (2) Reconsideration by the Planning Board of the environmental setting intended by the Master Plan for the Riggs-Thompson House.
- (3) Resolution of the issues surrounding the alignment of the private road providing access to the property. The issues regarding the road alignment include, without limitation, the relationship between the private road and the environmental setting, the compatibility of alignment (and the resulting traffic patterns) with the surrounding area, and consistency of the alignment with the Master Plan.

The Hearing Examiner specifically stated that the remand does not require review of the following issues because the Council has already made a satisfactory finding on the following points:

- (1) Whether the application fulfills the purposes of the R-T Zone. The District Council has already found that the location is “appropriate” for RT zoning; and

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<sup>1</sup> Resolution No. 17-286.

- (2) Whether public facilities are available to serve the development (including Local Area Transportation Review and Policy Area Mobility Reviews).

#### The Revised Schematic Development Plan

On November 21, 2011, the applicant filed an amended schematic development plan that requests the R-T 12.5 Zone on the subject property rather than the R-T 15 Zone. The applicant has proposed a lower density in response to concerns on the part of the Hearing Examiner and Council that the density initially proposed was too great for this location. Additionally, in the initial plan, a proposed private street bisected the property, connecting Ellsworth Drive to Pershing Drive. The proposed private street provided acceptable site access, but the street, as then proposed, would have been built in close proximity to the historic Riggs-Thompson House. Although a schematic development plan is illustrative at the rezoning stage and the applicant stated an intention to work closely with the Historic Preservation Commission (HPC) on the street location at later stages of review, the location of the proposed private street near the Riggs-Thompson House caused a sufficient level of concern to the Hearing Examiner and Council to result in a strong recommendation to relocate the private street to an area with less impact to the environmental setting.

The applicant has now revised the schematic development plan to address these issues. The applicant is now proposing up to 63 townhomes on the site, a reduction of 13 townhomes from the initial proposal (a 17 percent reduction in density). 12.5 percent of the units will be Moderately Priced Dwelling Units (MPDUs), and preservation of the historic Riggs-Thompson House is still proposed. At 64 total dwellings on the 5.25-acre site (including the Riggs-Thompson House), the effective density will be 12.19 dwelling units per acre. The number of townhomes in each row has been decreased in this iteration, and the width of the courtyards between rows has been increased. The applicant is no longer requesting a reduction to the setback from the southern property line closest to Cedar Street.

However, the most notable changes in the plan relate to increased green area, the proposal's treatment of the Riggs-Thompson House, and the alignment of the proposed private street. A linear park with a row of double street trees is still proposed along Springvale Road. However, the setback has increased, with the townhomes fronting Springvale Road now approximately 100 feet from the nearest one-family detached houses across the street, whereas in the initial proposal this measurement was approximately 95 feet. If the side of the townhomes that front Springvale Road are designed to appear as fronts of one-family homes, the transition from the site to the one-family detached homes across Springvale will continue to be appropriate. Two smaller pocket park areas are still proposed along Ellsworth Drive, creating a distinct transition from the site to Ellsworth Urban Park and the public library located across Ellsworth Drive. The biggest changes occur to the east of the site near the Riggs-Thompson House. An entire row of townhomes that were located nearest to the Riggs-Thompson House in the initial schematic plan has been removed, decreasing overall massing and specifically increasing the setback from the Riggs-Thompson House to the nearest townhome from approximately 28 feet to approximately 92 feet. The alignment of the proposed private street has been reoriented to connect to Springvale Road instead of Pershing Drive as initially proposed. The new private street alignment will continue to provide good vehicular and pedestrian connectivity throughout the area while completely avoiding any encroachment into the established 37,056 square foot environmental setting surrounding the Riggs-Thompson House. In addition, the proposal now increases the green area around the environmental setting by an additional 25,000± square feet, bringing the total green area surrounding the Riggs-Thompson House to approximately 1.4 acres. The site design continues to highlight the historic

resource on the site with the placement of a publically accessible park area proposed at the intersection of Pershing Drive and Springvale Road, just north of the Riggs-Thompson House. Overall, the site's green area has increased to 51 percent. The initial and revised schematic development plans can be compared below, followed by a graphic that visually identifies major changes through the two iterations. Finally, the proposed binding elements are listed.

**Initial Schematic Development Plan (R-T 15 Zone)**



**Revised Schematic Development Plan (R-T 12.5 Zone)**



Changes to Chelsea School Site Plan		
	Initial Plan	Revised Plan
1 Zoning	RT-15	RT-12.5
2 Unit Count	67 Market, 10 MPDUs	56 Market, 8 MPDUs
3 Springvale Setback	20 ft	25 ft
4 String Length (Townhouse Groupings)	8 / 6 Units	7 / 5 Units
5 Minimum Green Area	40%	50%
6 Wider Courtyards		
7 Historic Setting	37,056 sf Protected	37,056 sf Protected
8 Add. Green Space Surrounding Historic Setting		± 25,000 sf (1.4 acres)
9 Setbacks (SW Property Line)	Waiver Requested	30 ft (no waiver requested)
10 Access	Ellsworth and Pershing	Ellsworth and Springvale (avoiding historic setting)
11 Traffic Calming Techniques		Specialty paving at driveway aprons and on street parking
12 Cut Through Prevention		Residents only and turn restriction signage
13 Closest Distance From Townhouse to Historic House	28 ft	92 ft



# BINDING ELEMENTS

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1. THE MAXIMUM NUMBER OF UNITS WILL BE 64 (63 TOWNHOMES AND ONE (1) SINGLE-FAMILY DETACHED).
  2. THE APPLICANT, ITS SUCCESSORS AND ASSIGNS WILL RECORD A PUBLIC ACCESS EASEMENT ALLOWING PUBLIC USE OF THE DESIGNATED PUBLIC GREEN SPACE ALONG ELLSWORTH DRIVE, SPRINGVALE ROAD AND PERSHING DRIVE, WITH THE SPECIFIC SIZE, CONFIGURATION AND LOCATION OF THIS EASEMENT SUBJECT TO FINAL SITE PLAN APPROVAL.
  3. THE PROJECT WILL PROVIDE GREEN AREA OF AT LEAST 50% OF THE TRACT AREA. THE TOWNHOUSES WILL BE LOCATED IN A MANNER THAT WILL PROVIDE GREEN AREAS ALONG PERSHING DRIVE AND ELLSWORTH DRIVE AND A LINEAR GREEN AREA ALONG SPRINGVALE ROAD, ALL GENERALLY CONSISTENT WITH THE SCHEMATIC DEVELOPMENT PLAN WITH THE SPECIFIC SIZE, CONFIGURATION AND LOCATION SUBJECT TO FINAL SITE PLAN APPROVAL.
  4. THE APPLICANT, ITS SUCCESSORS AND ASSIGNS WILL PRESERVE THE RIGGS-THOMPSON HOUSE.
  5. THE APPLICANT, ITS SUCCESSOR AND ASSIGNS SHALL ABIDE BY THE EXISTING TRAFFIC RESTRICTIONS ON SPRINGVALE ROAD, ELLSWORTH DRIVE AND PERSHING DRIVE SO LONG AS THOSE RESTRICTIONS REMAIN IN EFFECT.
  6. THE MAXIMUM BUILDING HEIGHT WILL BE 35 FEET.
  7. THE PROJECT WILL PROVIDE A MINIMUM OF TWO PARKING SPACES PER UNIT PLUS ADDITIONAL SPACES FOR GUEST PARKING.
  8. THE HISTORIC SETTING FOR THE RIGGS-THOMPSON HOUSE WILL REMAIN AT 37,056 SQUARE FEET (0.850 Ac.).
  9. THE SETBACK ALONG SPRINGVALE ROAD SHALL BE A MINIMUM OF 25 FEET AND, SUBJECT TO SITE PLAN APPROVAL, WILL INCLUDE A DOUBLE ROW OF TREES.
  10. THE INTERNAL PRIVATE ROAD WILL BE RESTRICTED TO USE BY RESIDENTS AND VISITORS OF CHELSEA COURT AND WILL INCLUDE DESIGN FEATURES TO AVOID CUT THROUGH TRAFFIC SUCH AS LIMITED ROADWAY WIDTH, ON-STREET PARKING, SPECIAL PAVING AT EACH OF THE TWO INGRESS/EGRESS POINTS, SIGNAGE PROHIBITING CUT THROUGH TRAFFIC, AND OTHER CONTROL MEASURES, TO BE FINALIZED AT THE TIME OF SITE PLAN APPROVAL.
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### Analysis of the Issues Identified in the Order

*Density and Massing.* As referenced in the Hearing Examiner's order, the Council "has already found that the 'location' is appropriate for RT zoning." The Council, in its resolution, requested that the applicant provide a revised schematic development plan "with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan." Given the Council's dictum, it is inferred that the applicant's initial proposal for townhomes at the subject property was an appropriate use, and compatibility with the surrounding area can be furthered with a lower density and slight revisions to the layout and design of the site.

Many of the changes proposed by the applicant in the current iteration of the proposal address the Hearing Examiner and Council concerns. Density has been substantially reduced by 17 percent from 76 townhomes to 63 townhomes. The density proposed for the site is now 12.19 dwelling units per acre versus 14.67 dwelling units per acre. Although staff and the Planning Board found the higher density to be appropriate in a transitional area such as this, which includes a nearby major transportation hub and many amenities and residential uses having up to 430 dwellings per acre, at 12.19 dwellings per acre, the proposal is undoubtedly less dense and more compatible with the surrounding residential area to the north from strictly a density perspective. In addition, numerous design considerations have been incorporated to further improve compatibility, including increasing the overall green area on all three sides of the site fronting public roadways, increasing the setback from the nearest one-family detached homes across Springvale Road to the proposed townhomes to approximately 100 feet, and providing a viewshed for the Riggs-Thompson House that is larger and has been reoriented to now draw more attention to the historic dwelling. These changes are in addition to those already offered, including providing a linear park buffer with a double row of street trees along Springvale Road, end unit townhouses on Springvale designed to appear as entrances to one-family detached homes<sup>2</sup>, heights that mirror those of the adjacent detached homes to the north, and a townhouse row design that takes advantage of a gradual slope along Springvale to provide seemingly varying building heights stepping down from Pershing Drive to Ellsworth Drive.

Massing has also been somewhat reduced. The entire row of townhomes nearest to the Riggs-Thompson House has been removed, which decreases overall building coverage on the site and substantially increases green area around the historic resource and along Pershing Drive. The length of the townhouse rows along Springvale Road has also been reduced in length by approximately 12 feet per building, while the courtyards between rows have been increased in width. Townhome heights continue to be proposed in line with the heights of the one-family detached homes to the north. Townhouse sticks will now be comprised of no more than seven townhomes, meeting the zoning standard that no more than eight townhouses be adjoined in any one contiguous row. Moreover, any potential massing concern in this particular application is mitigated considering the careful site design. On the northern portion of the site, orientation of the townhouse rows places end units, designed to appear as one-family detached homes, directly across from the one-family detached homes across Springvale Road. Therefore, no continuous wall of townhomes front one-family detached homes. To the east, a public gathering area and the Riggs-Thompson House, a one-family detached home, face the

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<sup>2</sup> The applicant, in its current iteration, has removed the binding element that ensured end townhouse units along Springvale Road would be designed to appear as entrances to one-family detached homes. Staff recommends the Board strongly encourage the applicant to provide this binding element on the current schematic plan.

one-family detached homes across Pershing Drive. To the west of the site near Ellsworth Drive, the only contiguous row of townhomes fronting a public street, comprised of five and three townhomes, respectively, faces a public library and park, not one-family detached homes. All sides of the site are buffered by generous green area. Lastly, variations in each row's building line will run throughout the site, with no uninterrupted building line enduring for more than three contiguous townhomes. This standard will be addressed if the project progresses through site plan review.

*Environmental Setting Intended by the Master Plan.* A core issue in the application addressed in the Hearing Examiner proceedings has been the intended size of the environmental setting as established in the 2000 North and West Silver Spring Master Plan. This issue was largely raised after the Planning Board's review, with little discussion of the matter taking place during the Board's May 2011 hearing. The controversy seemingly stems from page 29 of the main body of the Master Plan and page 15 of Appendix D of the Master Plan (titled Historic Resources of the North and West Silver Spring Master Plan Area). Historic preservation staff has consistently maintained that the established environmental setting is 37,056 square feet, citing page 29 of the Plan. The Seven Oaks Evanswood Citizens' Association (SOECA) and others in the community have asserted that the proper environmental setting should be the 1.4 acre parcel that the house was once located upon, referencing Appendix D. Page 29 of the main body of the Master Plan states:

The Riggs-Thompson House is located on a 1.4-acre parcel. The environmental setting is 37,056 square feet.

Whereas, page 15 of Appendix D states:

The environmental setting [for the Riggs-Thompson House] is 37,056 square feet [...], pending approval of the Chelsea School special exception by the Board of Appeals. In the event that the Chelsea School [special exception] is not approved, the designated environmental setting is the entire 1.4 acre parcel (P73) on which the house is located.

In evaluating historic area work permits subject to Chapter 24A of the Montgomery County Code, historic preservation staff and the HPC are guided by environmental settings established in approved and adopted amendments to the Master Plan for Historic Preservation. The North and West Silver Spring Master Plan, in which the Council established the environmental setting for the Riggs-Thompson House as 37,056 square feet on page 29 of the Plan, is such an amendment to the Master Plan for Historic Preservation.<sup>3</sup> Page 15 of Appendix D is simply the Planning Board's recommended draft amendment for the Riggs-Thompson environmental setting, which the Board transmitted to Council for approval. The Council, not the Planning Board, approves Master Plan amendments.

However, SOECA and others are pointing to the draft amendment on page 15 of Appendix D. The language of the draft amendment states that the environmental setting for the Riggs-Thompson House should be established at 37,056 square feet pending the approval of the Chelsea School special exception request S-2405 by the Board of Appeals. Even though the Board of Appeals did approve the S-2405 Chelsea School special exception in 2000, SOECA is asserting that the language in Appendix D implies that if the Chelsea School no longer occupies the property the designated environmental setting should be the entire 1.4 acre parcel identified in Appendix D.

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<sup>3</sup> See Certificate of Approval and Adoption, page *iii* of the 2000 North and West Silver Spring Master Plan.



Three points must be made here. First, although an appendix may shed light on the contents of a master plan, the master plan is generally controlling. Where, as here, the language in an adopted plan is clear and explicit, that is certainly the case. When the Council approves a master plan, it approves the language contained in the main body of the plan. The appendices of a master plan typically contain supplemental background information that may have been used in evaluating various recommendations contained in the plan's main body, such as Planning Board draft amendments to the Master Plan for Historic Preservation that were transmitted to the Council. Information contained in appendices may be helpful, but appendix language is not typically a directive from the Council (aside, of course, from the Council's resolution approving the Plan). Hence, the environmental setting for the Riggs-Thompson House established on page 29 of the Master Plan should control.

Second, the reason for the inconsistency between the main body of the Master Plan and Appendix D, which brings about this confusion in the first place, is easily explained when the timeline of the Master Plan and the Chelsea School special exception is analyzed. Both the Master Plan and Chelsea School special exception were approved within a matter of months of each other. The draft amendment in Appendix D was likely formulated before the official adoption date of the Plan. At the time of the draft amendment, special exception S-2405 for the Chelsea School was still pending at the Board of Appeals. Hence the draft amendment containing the words "pending approval..." After the draft amendment was issued, the Board of Appeals voted to approve S-2405 on March 29, 2000<sup>4</sup>, but did not officially publish its opinion on the matter until October 5, 2000. The North and West Silver Spring Master Plan was approved by the Council on August 1, 2000, and adopted by the Commission on September 20, 2000, with unequivocal language that the environmental setting for the Riggs-Thompson House is 37,056 square feet, in all likelihood because the Board of Appeals had already issued a vote to approve the special exception. However, this timeline has become confusing to follow 12 years later, particularly since the official opinion of the Chelsea School special exception was not issued by the Board of Appeals until two months after the Master Plan was approved. A fresh look at the timeline certainly provides clues as to how a draft amendment for the Riggs-Thompson House in Appendix D references a contingency on a special exception being approved while the main body of the plan does not.

Third, even if the Board were to be persuaded to give Appendix D the same weight as the main body of the Plan, it is still a leap to construe the language of Appendix D to require the environmental setting to revert back to a larger size if the school vacates the site after the special exception was already approved. Appendix D plainly reads "[i]n the event that the Chelsea School [special exception] is not approved, the designated environmental setting is the entire 1.4 acre parcel [...] on which the house is located." The special exception was approved, and it is a stretch to construe the appendix language to mean that the environmental setting should *revert back to* 1.4 acres if the school vacates the site 12 years after the special exception was approved and the environmental setting was properly reduced to 37,056 square feet through the preliminary plan process. Here, staff is unable to infer the intent of the Plan beyond a plain language reading. The language clearly establishes the environmental setting for the Riggs-Thompson House at 37,056 square feet and is silent on the question of what might become of the environmental setting in the event that the school no longer occupies the property.

Although an environmental setting may be reduced through the preliminary plan process, only the Council, not the Planning Board, has the power to enlarge a historic site's environmental setting through

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<sup>4</sup> Confirmed by Katherine Freeman, Executive Director of the Board of Appeals, with meeting minutes reproduced from the Board of Appeals March 29, 2000 meeting.

an amendment to the Master Plan for Historic Preservation, typically after considering a recommendation from the HPC. Accordingly, the environmental setting for the Riggs-Thompson House must remain as established at 37,056 square feet unless the Council enlarges the setting by approving an amendment to the Master Plan for Historic Preservation. The Local Map Amendment process is not the proper vehicle for establishing or enlarging an environmental setting, so an HPC recommendation has not been sought. However, the Planning Board's guidance is requested since this issue is strictly one of Master Plan interpretation.

*Alignment of the Proposed Private Street.*

As previously stated, the proposed private street has been realigned to connect to Springvale Road instead of Pershing Drive as originally designed. The realignment places the private street completely outside the 37,056 square foot environmental setting. The realignment and the removal of a row of townhomes allow for greater distance between the Riggs-Thompson House and adjacent townhomes and increases green area around the historic resource to approximately 1.4 acres, providing an adequate buffer sufficient to express the historic character of the resource. No new construction related to the proposed development will take place within the 37,056 square foot environmental setting, so no historic area work permit will be required for the construction of the proposed private street (although any alterations to the exterior of the Riggs-Thompson House itself, including the contemplated demolition of non-historic buildings within the environmental setting, will require HPC review; a historic area work permit may still be required as more detailed plans evolve).

From a transportation perspective, the realignment of the private street that is now proposed to extend between Ellsworth Drive and Springvale Road is compatible with the recommendations of the Master Plan. On pages 16 and 68, the Master Plan broadly recommends limiting the negative impact of traffic in residential areas and protecting the residential neighborhoods from commercial and through traffic. The design features and alignment of the internal private street should adequately discourage commercial traffic from the Silver Spring Central Business District and cut-through traffic through the development, while allowing adjacent residential neighborhoods to be protected from commercial and cut-through traffic in concert with traffic access and turn restrictions that are in place in the neighborhood today.

The proposed internal street alignment will enhance essential local and regional access for residents within the development as well as access to the development by emergency vehicles. The roads surrounding the proposed development, Ellsworth Drive, Springvale Road, and Pershing Drive, are secondary residential streets, which are meant to carry some through traffic and provide access between a residential development with fewer than 200 dwelling units and one or more higher classification roads. Currently, Ellsworth, Springvale, and Pershing carry a minimal amount of traffic during peak-hours (approximately 100 vehicles per hour or less) and can accommodate the additional traffic associated with the proposed development (the 63 proposed townhomes will generate approximately 30 trips during the morning peak-hour and 52 trips during the evening peak-hour). When compared to the approved school special exception on the site, traffic impact from the proposed residential development will be substantially less during the morning peak-hour and will be comparable during the evening peak-hour.

Further, given the minimal peak-hour traffic expected to and from the development at the two site access points, the low traffic volumes on Ellsworth Drive and Springvale Road, and the extensive frontage sidewalk improvements that will be implemented by the development, the site access points will be safe for vehicular as well as non-vehicular traffic.

Lastly, the placement of the site's access driveway on Springvale Road is strategically placed across from an existing driveway and not the front of a residential home. Therefore, any impact due to headlight glare resulting from vehicular traffic exiting the development will be minimal. It should be noted that the existing school on the site currently has a parking lot with approximately 60 parking spaces accessed from Springvale Road. Therefore, Springvale Road already has many vehicles that exit the subject property from Springvale.

#### Community Correspondence

A letter was received on January 6, 2011, from SOECA. SOECA continues to oppose the project for a variety of reasons, including an assertion that the environmental setting should be the original 1.4 acre parcel as identified in Appendix D of the Master Plan, that the density and massing are still too intense for the site, that the private street alignment will cause cut-through traffic into residential neighborhoods north of the site, and that the applicant's proposal is not compatible with the surrounding area. Because the letter was received approximately one week before the posting date of the staff recommendation, staff will not have the time to address the letter point by point. However, many of the points identified by SOECA have been addressed earlier in the report. Staff specifically agrees with SOECA on the matter of having the townhouse end units be designed to appear as one-family detached homes along Springvale Road.

#### Conclusion

For the forgoing reasoning, staff recommends approval of the R-T 12.5 Zone on the subject property.

#### Attachments

1. Development Standards Analysis for the R-T 12.5 Zone
2. Area 1 Environmental Planning Interoffice Memo
3. Historic Preservation Interoffice Memo
4. Area 1 Transportation Planning Interoffice Memo
5. Planning Board's Transmittal Letter dated May 25, 2011
6. Copy of Hearing Examiner Remand Order dated November 8, 2011
7. Community Correspondence

**ATTACHMENT 1**

Development Standard	Required	Proposed	Applicable Zoning Provision
Minimum Tract Area	20,000 sq ft (0.46 acres)	5.25 acres	§59-C-1.731(a)
Maximum Density	12.5 dwelling units per acre	12.19 dwelling units per acre	§59-C-1.731(b)
Building Setback from Land Classified in One-family Detached Zone	30 ft	30 ft	§59-C-1.732(a)
Building Setback from Public Street	20 ft	25 ft Springvale 25 ft Ellsworth 23.35 Pershing (from Riggs-Thompson)	§59-C-1.732(b)
Building Setback from an Adjoining Side Lot	10 ft	n/a	§59-C-1.732(c)(1)
Building Setback from an Adjoining Rear Lot	20 ft	n/a	§59-C-1.732(c)(2)
Max Building Height	35 ft	35 ft	§59-C-1.733(a)
Max Building Coverage	35 percent	30 percent	§59-C-1.34(a)
Minimum Percentage of Green Area	50 percent	51 percent	§59-C-1.34(b)
Parking	2 spaces per dwelling	2 spaces per dwelling	§59-C-1.735 and §59-E-3.7



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

TO: Damon Orobona, Senior Zoning Analyst, Area 1

FROM: Marco Fuster, Senior Planner, Area 1

SUBJECT: Forest Conservation Background and Environmental Review History  
Plan # G-892 (S-2405 / 120000130)  
Name: Chelsea Court

DATE: January 10, 2012

**Forest Conservation Background**

The Chelsea School site has a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) plan # 419981560, which was approved on January 28, 1998. The plan identifies a number of significant and specimen trees which occur on portions of the site. No forest areas, wetlands, streams or associated buffers occur on or near the property. Areas of onsite steep slopes are identified by the plan; most of the slopes areas are manmade and there are no areas of highly erodible soils mapped in the vicinity. Since the project has an existing Final Forest Conservation Plan (FFPC) approved, a new NRI/FSD would not necessarily be required to revise the forest conservation plan for the proposed re-development. However the ultimately submitted forest conservation plan would need to accurately reflect the current conditions (such as increases in tree sizes for example).

A Final Forest Conservation Plan (FFPC) # 120000130 was approved for a *school expansion* on September 20, 2001. The plans include a substantial development envelope for the construction of additions, new school buildings, parking and access drives. The forest conservation requirements for the school were met through a combination of credited tree preservations and supplemental plantings. A Category II Forest Conservation Easement was established over the entirety of the property as recorded in plat #22270 (M-NCPPC plat # 618-46) protecting the onsite trees. The plan for the school expansion was not implemented except for the installation of a driveway/parking area off of Pershing Drive. Aside from the relatively minor modifications the site conditions are similar to those shown on the original NRI/FSD.

The zoning application G-892 is not presently subject to a formal forest conservation review which will be triggered at later stages in the development process. However, the site is subject to an existing FFPC. Therefore the applicant was instructed to demonstrate that a FCP reflecting the proposed development was *approvable*, even though the Planning Board was not asked to act on the PFCP at the time.

A preliminary forest conservation plan (PFCP) associated with the proposed rezoning was submitted on May 4, 2011. The submitted plan showed that the forest conservation requirements could be achieved. Now with the revised schematic development plan which includes greater setbacks, less density, more green space and less overall disturbance, it appears the forest conservation requirements would be easier to meet.

Potentially a Category II Forest Conservation Easement (or portions) will remain to protect onsite trees. The existing Category II Forest Conservation Easement already established over the entire property is suitable for an institutional, owner-occupied use such as a school. However, the same easement would not be appropriate a residential, multi-owner townhome community. Additionally, current policy is to avoid overlap of conflicting easements (the existing conservation easement storm water management easements overlap). Therefore Staff would support revision to the existing Category II Easement. The final location of any Forest Conservation Easement areas will be determined at a later stage.

### **Forest Conservation Variance**

The townhouse proposal includes the removal and/or impacts to a number of trees which are subject to a forest conservation variance due to their size and/or association with the historic site. Since the FCP is not in for direct Planning Board action, the variance request has not been prepared or submitted. However, the increased setbacks and lower density will facilitate the preservation of subject trees, particularly those along the south boundary of the site and those near the Riggs-Thompson house. The variance provisions apply to trees of any size that are associated with a historic setting. Therefore an increase in the historic setting footprint will establish additional trees that potentially require a variance.

Typically, impacts and/or removal of resources subject to a variance trigger additional planting requirements above and beyond standard forest conservation requirements. The increased green space and lower density provide additional opportunities to meet any planting requirements on site.



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

January 11, 2012

To: Damon Orobona  
From: Scott Whipple, Historic Preservation Supervisor  
Via: Mary Dolan, Acting Chief, Functional Planning and Policy Division  
Re: Local Map Amendment Application G-892: Hearing Examiner's Order

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This memo addresses the two points pertaining to historic preservation raised in the Hearing Examiner's order related to Local Map Amendment Application G-892.

- Reconsideration by the Planning Board of the environmental setting intended by the Master Plan for the Riggs-Thompson House.
- Resolution of the issues surrounding the alignment of the private road providing access to the property. The issues regarding the road alignments include, without limitation, the relationship between the private road and the environmental setting.

**Environmental Setting**

Regarding the issue of the environmental setting, the Approved and Adopted North and West Silver Spring Master Plan states:

The Riggs-Thompson House is located on a 1.4-acre parcel. The environmental setting is 37,056 square feet... [page 29]

In evaluating historic area work permits, subject to chapter 24A of the County Code, the Historic Preservation Commission and historic preservation staff are guided by the environmental settings and historic district boundaries established in approved and adopted amendments to the Master Plan for Historic Preservation.

Background: As specified in Appendix D of the Approved and Adopted North and West Silver Spring Master Plan, the Planning Board, Historic Preservation Commission and historic preservation staff recommended that the environmental setting be established at 37,056 square feet, pending the approval of a special exception requested by the Chelsea School at that time. The recommendation stated that:

In the event that the Chelsea School plan is not approved, the designated environmental setting is the entire 1.4 acre parcel (P73) on which the house is located. An important goal of the proposed Chelsea

School plan is the integration of the Riggs-Thompson House into the campus. Appropriate access to the house should be provided. [Appendix D, page 19]

The Chelsea School's special exception was granted. Therefore, the Approved and Adopted North and West Silver Spring Master Plan established a 37,056 environmental setting for the Riggs-Thompson House. The Planning Board may exercise its discretion in interpreting a plan's language. In evaluating the proper environmental setting the master plan intended for this site, staff was unable to infer the intent of the Council beyond a plain reading of the amendment language or the Planning Board beyond a plain reading of the language included in the recommendation. The Approved and Adopted North and West Silver Spring Master Plan clearly establishes at 37,056 square foot environmental setting, but is silent on the question of what might become of the environmental setting in the eventuality that a school no longer occupied the property.

It is historic preservation staff's understanding that, although an environmental setting may be reduced through subdivision, it is the purview of the County Council, not the Planning Board, to establish, by amendment to the Master Plan for Historic Preservation, a historic site's environmental setting. So, absent language to the contrary, the environmental setting for the Riggs-Thompson House should remain 37,056 square feet as established unless the County Council enlarges the setting by approving an amendment to the Master Plan for Historic Preservation. Preservation staff does not believe that a Local Map Amendment is a vehicle for establishing or enlarging an environmental setting.

#### **Road Alignment/Relationship Between the Private Road and the Environmental Setting**

The Schematic Development Plan, dated November 21, 2011, shows the private road realigned such that it would be entirely outside the established 37,056 square foot environmental setting. This plan indicates that no new construction related to the development would take place within the environmental setting, so no Historic Area Work Permit (HAWP) would be required under Chapter 24A of the County Code for the construction of the road or pedestrian walkways and other improvements proposed in the Schematic Development Plan.

Binding Element 4 calls for the preservation of the Riggs-Thompson House. Any alterations to the exterior of the house or its appurtenances, including the contemplated demolition of non-historic buildings within the environmental setting, will require Historic Preservation Commission review and approval. There is a possibility that, as detailed plans emerge, certain site work within the environmental setting could require a HAWP.

Historic preservation staff finds that the revised proposal provides greater distance between the Riggs-Thompson House and the adjacent townhomes, increases green space around the Riggs-Thompson House, and realigns the private road such that it no longer intrudes on the established 37,056 square foot environmental setting. According to the Schematic Development Plan, appropriate access for the Riggs-Thompson House is provided via a driveway off Pershing Drive. The Schematic Development Plan



also indicates that the applicants propose approximately 1.4 acres of green space around the Riggs-Thompson House.

Historic preservation staff concludes that, notwithstanding the fact that limited portions of the proposed development do encroach on the 1.4 acre parcel (P73) on which the Riggs-Thompson House is located, all of the proposed improvements are outside the established 37,056 environmental setting. In staff's view, the proposed 1.4 acre green space around the historic house, although not coterminous with P73, provide an adequate buffer sufficient to express the historic character of the Riggs-Thompson House. Staff supports the plans to remove non-historic buildings associated with the school and restore the Riggs-Thompson House to its historic form.



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

**MEMORANDUM**

January 12, 2012

TO: Damon Orobona, Senior Zoning Analyst

FROM: Cherian Eapen, Planner/Coordinator  
301-495-4539

SUBJECT: Application No. G-892  
Chelsea Court – Remand  
South of Springvale Road; between Ellsworth Drive and Pershing Drive  
Silver Spring/Takoma Park Policy Area

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This memorandum is in response to request for comments on the revised plan for the proposed 64-unit Chelsea Court residential development (63 single-family attached units and one existing single-family residence), specifically on following issues:

**1. Compatibility of the proposed internal private street alignment with the North and West Silver Spring Master Plan recommendations regarding commercial and cut-through traffic through residential neighborhoods in the area:**

The North and West Silver Spring Master Plan in its Community Preservation, Stability, and Character section (page 16) and Neighborhood-Friendly Circulation Systems section (page 68) broadly recommends limiting the negative impact of traffic in residential areas and protecting the residential neighborhoods from commercial and through traffic.

The subject plan proposes access to the residential development via an internal private street that will extend between Ellsworth Drive and Springvale Road. Staff is of the opinion that the design features and alignment of the internal street could adequately discourage commercial and cut-through traffic through the development, and will continue to protect the adjacent residential neighborhoods from commercial and/or cut-through traffic as recommended in the Master Plan in concert with traffic access and turn restrictions that are in place in the neighborhood today.

It is staff's opinion that the proposed internal street alignment, in general, will enhance essential local and regional access for residents within the development as well as access to the development by emergency vehicles. The roads surrounding the proposed development, Ellsworth Drive, Springvale Road, and Pershing Drive are secondary residential streets, which are meant to carry some through traffic and to provide access between a residential development with fewer than 200 dwelling units and one or more higher classification roads. Currently, these roads carry a minimal amount of traffic during peak-hours (approximately 100 vehicles per hour or less) and can accommodate the additional traffic associated with the proposed residential development (proposed townhouses generating 30 trips during the morning peak-hour and 52 trips during the evening peak-hour). Staff also notes that when compared to the current approved density for the school, traffic impact from the proposed residential development will be substantially less during the morning peak-hour and will be comparable during the evening peak-hour.

Staff therefore has no technical reason to believe that the proposed internal street connection will encourage cut-through traffic through the larger neighborhood to the north between Silver Spring CBD and Dale Drive, Colesville Road, or Wayne Avenue.

## **2. Traffic safety at site driveway intersections with Ellsworth Drive and Springvale Road:**

Given the minimal peak-hour traffic expected to and from the development at the two site access points, the low traffic volumes on Ellsworth Drive and Springvale Road, and the extensive frontage sidewalk improvements that will be implemented by the development, it is staff's opinion that the site access points will be safe for vehicular as well as non-vehicular traffic.

## **3. Effect of site traffic on existing residences along Springvale Road:**

The proposed site access driveway off Springvale Road is placed across a residential driveway. Therefore, residences along Springvale Road will only have a marginal impact, if any, due to headlight glare resulting from vehicular traffic exiting the development. It is also noted that the existing school currently has a 60-plus space parking lot off Springvale Road and therefore already has an impact on Springvale Road.

Staff thus finds traffic impacts from the proposed residential development to be similar to that of the existing use on the property and to be compatible with the surrounding residential area. Staff is of the opinion that the proposed internal street alignment will not have any detrimental effect on the adjacent residential neighborhoods. Staff also finds the proposal to be consistent with the general transportation planning and master plan goals for the area.

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

**OFFICE OF THE CHAIRMAN**

May 25, 2011

**TO:** The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

**FROM:** The Montgomery County Planning Board

**SUBJECT:** Local Map Amendment G-892: Request for reclassification of 5.25 acres of land from the R-60 Zone to the R-T 15 Zone.

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission reviewed Local Map Amendment G-892 and its accompanying schematic development plan at the Planning Board's regularly scheduled meeting on May 19, 2011. The applicant, Chelsea Residential, LLC, is requesting a rezoning from the R-60 Zone to the R-T 15 Zone for a property located at 711 Pershing Drive in Silver Spring. The applicant proposes to replace an existing private school (operating by special exception) with up to 76 newly-constructed townhomes, while preserving the existing Riggs-Thompson historic home on the site. The Planning Board voted 4 to 1 to recommend approval of the rezoning for the reasons stated in the Staff Report.

To satisfy the purpose clause for the R-T 15 Zone, an applicant must show either that the site is designated for density allowed by the R-T 15 Zone in the relevant master or sector plan, that there is a need for a transition at the proposed location, or that the proposal is appropriate given the location and density sought. The Planning Board agrees with staff that while the 2000 North and West Silver Spring Master Plan does not give any specific recommendations for the subject property, the G-892 application satisfies both the appropriateness and the transition standards of the R-T 15 Zone. The proposal is compatible with the density of the surrounding area and contributes to an existing transitional block where the subject property is located.

To assist the Council in making a final determination of compatibility, the Board encouraged the applicant to offer additional textual binding elements on the schematic development plan, which binds the applicant to certain aspects of the proposal. During the hearing, the applicant offered to include the following textual binding elements on the schematic development plan. The Board acknowledges that modifications to the below binding elements may be justified in light of new information presented during the Hearing Examiner's evidentiary hearing.

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

100% recycled paper

- (1) The maximum number of units shall be 77 (76 one-family attached and 1 one-family detached).
- (2) Subject to final site plan approval, the applicant, its successors and assigns will record a public access easement allowing public use of the designated public green space along Ellsworth Drive, Springvale Road, and Pershing Drive.
- (3) Subject to final Site Plan approval, the townhouse units confronting Springvale Road will be designated to have their fronts facing Springvale Road.
- (4) Subject to final Site Plan approval, the project will provide green space of at least 40 percent of the tract.
- (5) The applicant, its successors or assigns, will preserve the historic elements of the Riggs-Thompson House, subject to Historic Preservation Board review.
- (6) There shall be no vehicular access to or from Springvale Road.
- (7) The applicant, its successors and assigns shall abide by the existing traffic restrictions on Springvale Road, Ellsworth Drive, and Pershing Drive so long as those restrictions remain in effect.
- (8) The maximum height of the townhomes will be 35 feet or the same height limitation in the R-60 Zone.
- (9) The project will have a minimum of 2 parking spaces per townhouse plus additional parking spaces for visitors and guests.

While the Board agreed with staff on all substantive issues regarding the suitability of the R-T 15 Zone at the subject property, the Board diverged from staff on the breadth of the surrounding area. The Board recommends that the Hearing Examiner define a surrounding area that is somewhat narrower in scope in both the northern and southern direction than staff recommended, while still maintaining an area that captures both a portion of the Silver Spring Central Business District and the residential neighborhoods to the north of the site.

During the Board's hearing, there was considerable public testimony regarding the proposal, with many citizens speaking both in favor of and in opposition to the rezoning request. Additionally, testimony was given from the Historic Preservation Section regarding the historic Riggs-Thompson House located on the subject property. Staff testified that the alignment of the proposed private street on the schematic development plan might not be approved by the Historic Preservation Board because it might require the removal of historic elements of the Riggs-Thompson House. A memo from Historic Preservation Staff was issued during the Board's hearing and accompanies this transmittal letter. The Board reminds the District Council that the site layout is illustrative at the rezoning stage, but nevertheless alerts the Council to this potential issue if the proposal progresses to site plan. The applicant indicated during discussion with the Board that the alignment presently shown is desirable for efficient site access, but that adjustments can be made if needed.

With the appropriate textual binding elements reflecting the compatibility of the proposed development, the Board finds the proposal compatible with the surrounding area and considers the R-T 15 Zone suitable at this location. The majority of the Planning Board was persuaded by the reasoning in the Staff Report that the Master Plan's general guidance controls in this case, where there is no specific guidance for this site, and that the proposed development fits well with the Master Plan's general objectives for the CBD and its relationship with nearby single-family neighborhoods. The majority of the Board also found persuasive the testimony provided by the staff member who was primary author of the Master Plan, who disagreed with the opposition argument that the language in the Plan regarding potential townhouse development along a particular segment of Georgia Avenue was intended to prohibit town houses anywhere else in the Master Plan area. She explained that the language in question was written in response to an inquiry at the time about town houses along one segment of Georgia Avenue, and was not intended for broader application.

The dissenting Planning Board member noted that density was a key issue at the time of the master plan development and remains a key issue for neighbors of the subject property and residents in the surrounding area today. In her view, the plain language of the master plan (page 21) makes clear the intent to uphold the R-60 zoning and density. Accordingly, she argues that the subject property should not be recommended for any level of RT zoning, and certainly not the level proposed here, which is nearly three times as dense as the six units per acre permitted under the R-60 Zone. She suggested that the subject property could potentially be developed with townhomes under the R-60 cluster option.

The dissenting Planning Board member further found that only the blocks along Georgia Avenue that were specifically discussed in the Master Plan were recommended for consideration of RT zoning, and that in all other areas the plan reconfirmed existing zoning. She noted that the Council in its Resolution (14-628) approving the plan added the following language (which is captured within the Plan itself at page 21, and also in Appendix F at page 2):

“Under the Zoning Ordinance, the development of townhomes along Georgia Avenue may be allowed in the future. Any redevelopment must maintain the residential character along Georgia Avenue while protecting interior neighborhoods from increased development pressure...”

This Plan does not recommend rezoning at this time. However, if assemblage occurs, the Zoning Ordinance permits application for rezoning to the residential townhouse (RT) zone through a local map amendment...”

The dissent also noted other complicating issues such as the historic Riggs-Thompson House situated on the property. The Master Plan recommended an environmental setting of 1.4 acres if the Chelsea School special exception then pending was not approved (see Appendix D, page 5), with a smaller environmental setting if the special exception were approved. In the dissent's view, common sense suggests that with the discontinuation of the

Local Map Amendment G-892  
May 25, 2011  
Page 4 of 4

special exception now proposed, the environmental setting requirement should revert to the 1.4 acres initially identified as appropriate. That setting is not consistent with the development proposed here.

We hope these recommendations are helpful to the Hearing Examiner and the District Council.

Yours truly,



Françoise M. Carrier  
Chair

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS (OZAH)  
FOR  
MONTGOMERY COUNTY, MARYLAND

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6660/fax (240) 777-6665

[www.montgomerycountymd.gov/content/council/zah/index.asp](http://www.montgomerycountymd.gov/content/council/zah/index.asp)

**ORDER REOPENING THE RECORD, SETTING A DATE FOR SUBMISSION OF A  
REVISED SDP, AND REFERRING THE CASE TO THE MONTGOMERY COUNTY  
PLANNING BOARD**

Local Map Amendment Application G-892: Robert Harris and Cindy Bar, Attorneys for Chelsea Residential Associates, LLC (an affiliate of EYA) Applicant, requests rezoning from the R-60 Zone to the RT-15 (townhouse) Zone of property known as Lot 58, Evanswood, Section 1 (Plat Nos. 22270, 439) located at 630 Ellsworth Drive, Silver Spring, Maryland, consisting of 5.24524 acres in the 13<sup>th</sup> Election District.

Public hearings in the above-captioned case were held on May 26, 2011, June 6, 2011, June 27, 2011, June 30, 2011, and July 18, 2011, and the record closed on August 5, 2011. On September 22, 2011, the Hearing Examiner filed her Report and Recommendation to the Council, recommending remand of the application to the Hearing Examiner. The recommendation to remand the case was for the purpose of allowing the Applicant to revise its Schematic Development Plan (SDP) to propose a development with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan, and to resolve issues relating to the alignment of the private road and its relationship to the environmental setting for the Riggs-Thompson House. The Hearing Examiner also recommended that the Planning Board consider the size of the environmental setting of the Riggs-Thompson House given language in Appendix D of the Master Plan.

On October 18, 2011, by Resolution 17-286 (Exhibit 267), the District Council remanded the case to the Hearing Examiner for revision of the Schematic Development Plan and consideration by the Planning Board of the intended size of the environmental setting of the Riggs-Thompson House historic resource, given the language in Appendix D of the North Silver Spring Master Plan. It further stated that:

The SDP should be reconfigured to propose a residential townhouse (RT) development with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan. The revised SDP should also resolve issues relating to the alignment of the private road to comply with the environmental setting of the historic site as set forth in the Master Plan and its Appendix D.

Subsequent to the Council's action, the Hearing Examiner and the parties corresponded in writing regarding the procedures and issues to be resolved on the remand. (Exhibits 269, 271, and 272). Because the Council remanded the case to address specific issues, the review and public hearing process will be limited to the matters specified for remand in the Council action. These include the following:



1. Submission of a revised schematic development plan for development in an RT Zone with less density and massing to be more consistent with the character of the transition from the Central Business District to the existing R-60 Zone north of Cedar Street and the recommendations of the 2000 North and West Silver Spring Master Plan. Because it will be a revised plan, this may require review of whether the development meets the required zoning and environmental regulations normally reviewed to the extent the revised plan differs from the plan originally submitted.
2. Reconsideration by the Planning Board of the environmental setting intended by the Master Plan for the Riggs-Thompson House.
3. Resolution of the issues surrounding the alignment of the private road providing access to the property. The issues regarding the road alignments include, without limitation, the relationship between the private road and the environmental setting, the compatibility of alignment (and the resulting traffic patterns) with the surrounding area, and consistency of the alignment with the Master Plan.

The remand does *not* require review of the District Council's findings as to the following:

1. Whether the application fulfills the purposes of the R-T Zone. The District Council has already found that the location is "appropriate" for RT zoning; and
2. Whether public facilities are available to serve the development (including Local Area Transportation Review and Policy Area Mobility Reviews).

All testimony and evidence previously submitted in this case remains in the record and need not be resubmitted for consideration by the Hearing Examiner.

Technical Staff advised that the Planning Board would not solicit the advice of the Historic Preservation Commission (HPC) on the appropriate size of the environmental setting during consideration of that matter because the HPC does not have direct authority over adoption of the master plan. Exhibit 272. Those opposing the application asserted that the HPC has an advisory role in the Master Plan process, and therefore, the case should be remanded to the HPC for their interpretation of the scope of the environmental setting. The Hearing Examiner agrees with Technical Staff that she does not have the authority to remand directly to the HPC because the Commission does not have direct authority over cases at the rezoning stage, nor was the HPC specifically named in the Council's action directing remand.

Because, however, the Commission may have independent authority to exercise an advisory role in the Planning Board hearings on the matter (should it choose to do so), a copy of this remand order and Council Resolution 17-286 have been forwarded to the HPC for whatever input into the Planning Board proceedings it deems appropriate at this juncture.

The Applicant must submit a revised Schematic Development Plan addressing the issues set forth above, to the Office of Zoning and Administrative Hearings no later than Monday, November 21, 2011. The Applicant has also agreed to meet with representatives of those opposing the application prior to submission.

This matter is hereby referred to the Planning Board for its consideration of the issues specified by the Council in Resolution 17-286. This matter is hereby referred to the Planning Board for its consideration of the issues specified by the Council in Resolution 17-286. Notice of an OZAH remand hearing date

will be issued after consultation with the Planning Board, its Technical Staff, the Applicant and opposing counsel regarding an appropriate date.

The record in this matter is hereby reopened until further notice. The Hearing Examiner hereby admits into the record Exhibits 259 through 273, which include matters filed following her report of September 22, 2011, to date, including correspondence relating to oral argument, the e-mail exchanges referred to, *supra*, Resolution 17-286, and this Order.

The local map amendment application and supporting documentation are matters of public record and are available for review from 8:30 am to 4:00 pm weekdays, at our office, located in Room 200, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville. OZAH's website is available at [www.montgomerycountymd.gov](http://www.montgomerycountymd.gov) (click on Departments, then scroll down and select Zoning and Administrative Hearings) or you may phone OZAH at 240-777-6660.

The County Council is required to make its decision in a local map amendment request based solely on the evidence in the record. Neither the applicant nor a member of the community may communicate directly to Councilmembers about a local map amendment request. Such communication is prohibited by law because it would not allow other parties to dispute the information provided or provide contrary information.

SO ORDERED, this 8<sup>th</sup> day of November, 2011.



\_\_\_\_\_  
Lynn A. Robeson  
Hearing Examiner  
Office of Zoning and Administrative Hearings

Notices forwarded this 8<sup>th</sup> day of November, 2011, to:

Robert Harris, Esquire  
Cindy Bar, Esquire  
David Brown, Esquire  
Françoise Carrier, Chair, Planning Board  
Leslie Miles, Chair, Historic Preservation Commission (w/enclosure of Resolution 17-286)  
Damon Orobona, Technical Staff  
Scott Whipple, Technical Staff  
Jeffrey Zyontz, Legislative Counsel  
All participants in the May 26, June 6, June 27, June 30, and July 18, 2011, public hearing  
Adjoining and Confronting Landowners  
Local Civic Associations



**Via Email**  
January 6, 2012

Damon B. Orobona  
Senior Planner/Zoning Analyst  
Development Review Division  
Montgomery County Planning Department  
8787 Georgia Avenue  
Silver Spring, MD 20910  
email: Damon.Orobona@mncppc-mc.org

RE: Application for Local Map Amendment G-892, Chelsea Residential Associates, LLC (an affiliate of EYA), 630 Ellsworth Drive

Dear Damon,

Set forth below are the comments of the Seven Oaks Evanswood Citizens' Association ("SOECA") on the revised schematic development plan submitted by the applicant in response to the order of remand of the District Council. Unfortunately, in significant respects, the revised plan does not comply with the directives of the remand order. While the District Council has allowed rezoning of the site for some form of townhouse development, the revised plan fails to address many of the fundamental problems that were to be corrected on remand, including protection of the environmental setting of the historic Riggs Thompson House, reduction of the density and massing in keeping with the North and West Silver Spring Master Plan ("Master Plan") and the immediately surrounding area, and protection of the community from traffic and other adverse impacts to ensure compatibility. Therefore, the revised plan does not meet the requirements for rezoning in conformity with the Montgomery County Zoning Ordinance nor comply with the District Council order.

While SOECA knows that the planning staff and planning board recommended approval of the previous application of the Chelsea School site, we encourage you not to reflexively approve this new application simply because it seeks rezoning below the previous RT-15 level. We believe that the extensive testimony and evidence submitted since those recommendations and the analysis of the Hearing Examiner and District

Council about the historic property, density, massing, compatibility, and traffic require a searching assessment of the revised plan that has been submitted. As discussed below, if that assessment is conducted, it is clear the plan has not adequately addressed the requirements of the remand order.

#### **Riggs Thompson Property**

The applicant continues to fail to protect the full 1.4 acre environmental setting of the historic Riggs Thompson House. Proposed binding element 8 promises only to preserve 37,056 square feet or 0.85 acres as the environmental setting of the historic site. While the District Council remanded this application for consideration of the intended size of the Riggs Thompson environmental setting, the District Council directed that such consideration occur in light of the language in Appendix D of the Master Plan and the District Council incorporated the Hearing Examiner's finding that the evidence to date establish an intent that once the Chelsea School no longer occupies the property, "the designated environmental setting is the entire 1.4 acre parcel (P73) on which the house is located." Exhibit 139 at Appendix D. The applicant bears the burden of showing to the contrary, and it has presented no evidence to support its refusal to protect the full 1.4 acre Riggs Thompson parcel.

Preserving the full 1.4 acre parcel of the Riggs Thompson house is not only required by the Master Plan, but also is vital for the viability of this rare pre-Civil War historic property. P73, which is the original Riggs Thompson parcel, provides significant open space to the west of the house as well as to the north, providing a critical buffer for the house from any new development. Maintaining the original parcel also keeps the house together with its land. The proposed development plan divides the historic setting among multiple uses and users, part as a park, part as townhouse frontage, and part as the lawn for the house. Allowing the setting to be parsed among different owners and uses would make ongoing protection of the entire property extremely difficult.

Moreover, the 1.4 acre Riggs Thompson property must be treated as a distinct and separate property because the resubdivision that combined it with the rest of the Chelsea School property—Preliminary Plan 1-00013—will be defunct upon sale of the property by the Chelsea School to the applicant. As reflected in Plat 2270 (part of Exhibit 65 in LMA G-892), approved in the wake of Planning Board approval of Preliminary Plan 1-00013 (by Board Opinion of August 1, 2001, Exhibit 140), the Riggs-Thompson property was combined with adjacent land previously platted as "Parcel A" on Plat 2501, to form Lot 58. However, the Planning Board's approval of the resubdivision was expressly conditioned on use of Lot 58 for a private educational institution (Condition No. 1). Plat 2270 accordingly provides in subdivision note 8 that "Development is subject to the terms and conditions of Preliminary Plan 1-00013." The Chelsea School's sale of the site to the applicant is the event that has triggered LMA G-892. Under that application, the applicant is most definitely not planning to develop a private educational institution (or an educational institution of any kind). This extinguishes the rationale for continuing to combine the Riggs-Thompson environmental setting with Parcel A. The original 1.4

acre Riggs Thompson parcel, depicted on Plat 439, the predecessor to Plat 2501 as comprised of 61,647 square feet (or 1.415 acres), must be treated as its own distinct parcel once again. This is not just a matter of honoring historical intent; it also squares with the applicant's future intentions. The applicant intends to sell the Riggs Thompson property as a separate single family detached home, which will require its own separately platted lot, necessitating amendment of defunct Plat 2270 in any event. In every way, therefore, it is appropriate to view the historic property as distinct from the adjacent property used for rows of attached townhomes.

### **Density**

The applicant's revised plan fails to adequately address the central concern about the density of the proposed development raised by the Hearing Examiner and District Council. Notably, the applicant does not analyze the suitability of the density in relation to the Master Plan and to the uses in the immediately surrounding area, as required by the remand order. Instead, the applicant only notes the change in density from its previous application, which was rejected as inappropriate and incompatible by both the Hearing Examiner and District Council, and thus is irrelevant to the remand consideration.

When analyzed in terms of consistency with the Master Plan and compatibility with the surrounding single family detached homes, all zoned R-60, the density of the plan clearly remains inappropriate and incompatible. The proposed rezoning to RT 12.5, with 63 townhouse units and one single family detached home, would result in a density for the Chelsea School property that continues to be significantly out of proportion to the density of the existing homes on Cedar Street to the south, across Springvale Road to the north, and across Pershing Drive to the east, all of which have a density of 6 units per acre.

Even when the size of the proposed development is measured so as to include the entire Riggs Thompson property, which must be preserved, the resulting density per acre would be 12.19 units per acre (64/5.25 acres). When, as is appropriate, the Riggs Thompson parcel is removed from the density calculation, the effective density of the plan is 16.36 units per acre (63 units/ 5.25 acres – 1.4 acre historic setting) or 2 ½ times the density of the surrounding homes.<sup>1</sup> This inappropriate level of density will occur in the interior of the neighborhood, in the midst of the older single family detached homes that surround the site, on minor interior roads, and behind the Cedar Street detached single family homes that buffer the community from the Silver Spring Central Business District ("CBD"). By contrast, the other townhouse developments in North Silver Spring, even where sitting on major highways, have an actual density per acre that is significantly lower, in keeping with the surrounding neighborhoods.

The inappropriateness of the proposed density can further be seen from the manner in which the revised plan continues to pack the 63 townhouses closely together in unbroken

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<sup>1</sup> Even if the Riggs Thompson environmental setting is limited to 0.85 acres, the density per acre would be 14.32 units per acre (63 units/5.25 acres – 0.85 acre historic setting).

barrack-like rows and substantially relies on the setting of the Riggs Thompson property to achieve the mandatory 50 percent green area. Because most of the 1.4 acre Riggs Thompson parcel is green space, its inclusion in the overall green area calculation means that the applicant need only provide green area amounting to approximately 32 percent on the part of the property that is actually devoted to the townhouse development. But this approach ignores that the Riggs Thompson parcel comprises a distinct single family detached home with its surrounding land and that the resubdivision combining it with the rest of the Chelsea School property is defunct with sale to the applicant, meaning that the applicant cannot take credit for the green space of the protected historic setting for purposes of meeting the RT zone requirements. In addition, this approach eviscerates the intent and effect of the 50 percent green area requirement, which helps avoid massive groups of units, such as those in the applicant's plan here, that overwhelm the property itself and the scale of the surrounding single family homes. Ultimately, the amount of green space on the property devoted to the townhouse development is completely inadequate and results in the inappropriately dense, monolithic development shown on the new plan.

### **Massing**

Contrary to the explicit directions of the Hearing Examiner and District Council, the applicant's revised plan also fails to adequately address the massing problem that its development will create. Almost identical in layout to its rejected plan, the applicant's current plans calls for the 63 townhouses to be aligned in 11 barracks-style rows oriented perpendicular to Springvale Road. There are six rows on the north half of the property (closest to Springvale Road), and five on the southern half (closest to Cedar Street). The six rows on the northern half, going west from Ellsworth Drive to east on Pershing Avenue, consist of alternating rows of five and seven units in a row, for a total of 36 units. However, each of the units in the five unit row is larger than the units in the corresponding seven-unit rows, so all the barracks-like rows are the same length. Four of the rows on the southern half, similarly consist of five and seven units in a row, all of the same length. The final row is a short one of three to fit the site's topography.

Although the parade of barracks includes one less row than previously and one less unit on the six sticks nearest Springvale Road, the applicant has failed to address the excessive massing of the proposed development, which as the District Council found, has little relation to the existing single family detached homes in the community. As before, the residents of the existing neighborhood, especially on Springvale Road, will be in the unenviable position of looking out at six unsightly, barracks-like rows of townhouses, and then the internal road, and then five more barracks-like rows of townhouses. While twelve feet (less than the width of a single unit) has been cut from the length of the rows closest to Springvale Road, ten additional feet have been added to the rows across the internal road, reducing the line by a mere two feet overall. This massive development would look nothing like the single family detached houses that characterize the neighborhood, and the Hearing Examiner and the District Council were explicit in their decisions that compatibility required "additional breaks in massing." The applicant must

address the massing concern caused by its current, barracks-style design and has options to do so by either limiting townhouse units to no more than several in a row, thereby breaking up the barracks, or otherwise positioning the townhouses in groups or clusters.

### **Traffic**

The applicant's plan proposes a road alignment with an access point onto Springvale Road. However, the technical staff previously concluded that such an access point would permit cut-through traffic directly into the Seven Oaks/Evanswood neighborhood, and both the Hearing Examiner and the District Council found that the impact of such traffic was not compatible with the existing neighborhood. Cut-through traffic coming out of or into the Springvale Road access point would completely undermine the traffic restrictions that were put in place by the County nearly 20 years ago.

Those restrictions prevent traffic from downtown Silver Spring from cutting through the neighborhood in two ways: 1) by preventing northbound traffic onto Pershing Drive by means of a "Do Not Enter" sign at the intersection of Pershing Drive and Cedar Street, and 2) by the installation of a "Do Not Enter" sign on Ellsworth Drive, placed just south of Springvale Road, which prevents traffic from travelling north on Ellsworth Drive any further than the Silver Spring library; Ellsworth Drive was also narrowed to a single lane at that point by means of an extended curb on its eastern side. Prior to those traffic restrictions, the neighborhood suffered from cut-through traffic, particularly as motorists sought to avoid Colesville Road as they made their way to the Beltway. Springvale Road was hit especially hard by this traffic. Montgomery County worked hand in hand with SOECA residents to plan these traffic restrictions, which were ultimately installed at County expense, and the results have been excellent. Today, Springvale Road is a quiet street, and the interior roads of the neighborhood are protected.

The applicant's revised plan would completely gut the traffic protections that neighborhood residents rely upon. Under this proposal, there would be one entrance into the townhouse development via Ellsworth Drive and, as noted above, a second entrance onto Springvale Road. If the County approves this plan, then it would be a simple matter for motorists to enter Ellsworth Drive headed north, make a quick right turn into the townhouse development, exit onto Springvale Road, and from there disperse throughout the neighborhood streets on their way to Dale Drive (and the Beltway) or Wayne Avenue. The design features proposed by the applicant as binding element 10 will not prevent commuters from using this opening to cut through the neighborhood. Moreover, this road alignment would create, for all practical purposes, a hazardous 5-way intersection at the juncture of Springvale Road and Pershing Drive, as the new road would be mere yards from that juncture.

The residents of the houses on Springvale Road opposite the proposed entrance would bear a particularly unfair and inappropriate burden due both to the increased traffic flowing directly at them and to the glare of headlights straight into their windows from cars exiting the development. In addition to any cut-through traffic from downtown, the

residents of Springvale Road would be subjected to the traffic from the townhouse development itself; whereas a typical block in Seven Oaks/Evanswood may contain approximately eight houses on either side of the street, the residents of Springvale Road and the rest of the neighborhood will be faced with traffic from 63 townhouses entering or exiting the development. A quiet street will be transformed instantly into a major access point for the future townhouse residents, to the detriment of the residents who currently reside there and contrary to Montgomery County policy goals.

These problems with the road alignment could be avoided if the plan had two entrance points onto Ellsworth Drive, with a horseshoe or similarly-shaped internal road leading through the townhouse development. Such a design would completely eliminate the problem of cut-through traffic, thereby preserving the traffic restrictions the neighborhood has come to rely on, and also provide two points of entry for emergency vehicles and residents. In addition, the horseshoe-style road would allow the applicant to break up the massive, barracks-like rows of townhouses, discussed above, that are not compatible with the surrounding neighborhood. While the applicant would likely need to reduce the total number of townhouses to build this road alignment, such a reduction in density, as discussed above, is also required to achieve consistency with the Master Plan and the surrounding single family detached homes.

To the extent additional "connectivity" between the townhouse development and the surrounding neighborhood is desirable, paths through the development can easily be created for pedestrian and bicycle traffic onto Springvale Road, Ellsworth Drive, and Pershing Drive. SOECA has no objections to such traffic. Conversely, if "connectivity" is considered to mean automobile traffic, then "connectivity" would condemn the neighborhood to the kind of cut-through traffic the County has previously helped it to avoid.<sup>2</sup>

#### **Fronts on End Units Facing Springvale Road**

The applicant's revised plan eliminates the cosmetic facades on the endcap units facing Springvale Road that previously were planned to approximate the appearance of the front of detached single family homes. Removing this element of the design worsens the development's problems with compatibility. To achieve compatibility with the surrounding neighborhood, instead of eliminating this element, the applicant should keep it for any units fronting on Springvale Road *and* address the density and massing problems raised by the District Council and discussed above.

From the beginning the applicant has consistently maintained that the cosmetic facades of the endcap units were a critical component for making its development more compatible

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<sup>2</sup> Any asserted need for automobile "connectivity" is contradicted by the applicant's claim that it will limit use of the internal road to residents and their visitors. However, if the need for the road is only for residents, then a horseshoe design with two exits on Ellsworth Road is sufficient. Current residents of the Seven Oaks/Evanswood neighborhood already have ample means to connect to downtown without promoting cut-through traffic by opening an automobile entrance to the CBD.



with the existing neighborhood, especially for the residents on the other side of Springvale Road. As the Hearing Examiner found, the cosmetic facades *by themselves* are not a sufficient means of ensuring compatibility, given the development's problematic density and massing. However, neither the Hearing Examiner nor SOECA has ever maintained that these facades could be eliminated without adversely affecting the compatibility determination. Indeed, the Master Plan's guidelines for townhouse development along Georgia Avenue call for end units to appear to be fronts, rather than blank facades.

It appears that the applicant has sacrificed this element of compatibility because the high level of density it is seeking for the site does not permit compliance with all of the setback requirements as well as construction of the cosmetic facades. What this tradeoff shows is that to achieve compatibility with the neighborhood, the applicant must seek a lower density development that is more consistent with the Master Plan and the surrounding community.

#### **Conclusion**

For the foregoing reasons, the applicant has failed to address the issues remanded by the District Council, and its application should therefore be denied. Alternatively, the applicant could revise its plan to propose an acceptable less dense, less massive development that protects the entire Riggs Thompson parcel, and a different private road configuration that does not cause cut through traffic through the neighborhood.

Sincerely,

/S/

Anne Spielberg  
Chair, Chelsea School Redevelopment Task Force  
Seven Oaks Evanswood Citizen's Association