



Germantown Park: A. Preliminary Plan 120110440 and B. Site Plan 820120090

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Staff Report Date: 07/06/12

Description: Germantown Park

A. Preliminary Plan No. 120110440

Staff Recommendation: Approval with Conditions

B. Site Plan No. 820120090

Staff Recommendation: Approval with Conditions

A request for approval of 104 lots for 104 townhomes with 12.5% MPDU's on 8.46 acres; RT-12.5 zone; located on the north side of Clopper Road (MD 117), between Mateny Road and Cinnamon Drive; Germantown Planning Area

Submittal Dates:

Preliminary Plan: July 07, 2011

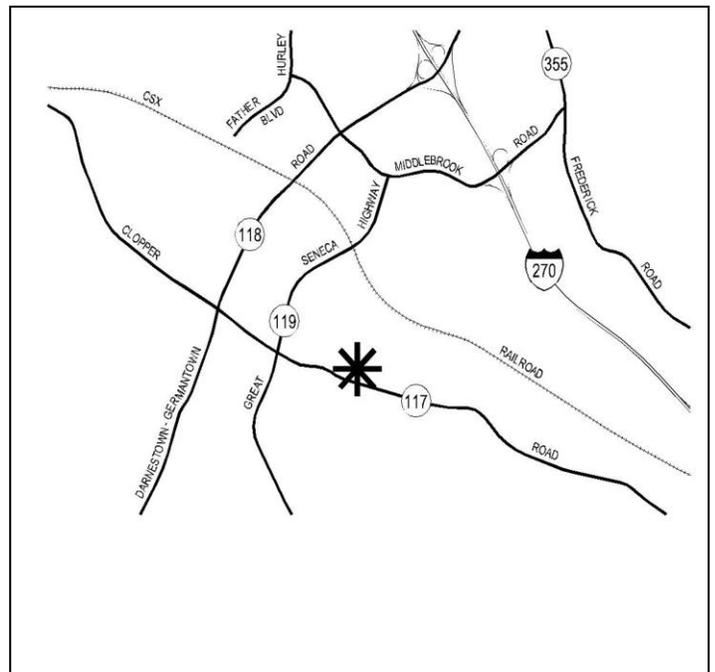
Site Plan: February 02, 2012

Review Basis:

Preliminary Plan – County Code Chapter 50

Site Plan – County Code Chapter 59-D-3

Applicant: Finmarc Management LLC (“Applicant”)



Summary

The 8.46 acre Subject Property was reclassified from the C-1 zone to the RT-12.5 zone under Zoning Application No. G-878 approved July 27, 2010 by District Council Resolution 16-1472 including a Schematic Development Plan with Binding Elements.

- The Preliminary Plan and Site Plan have been held until the capacity moratorium within the Northwest High School cluster was lifted by County Council action, July 1, 2012.
- The Preliminary Plan and Site Plan conform with the Binding Elements of Resolution G-878
- The Preliminary Plan and Site Plan are in conformance with each other
- No citizen comments have been received by staff to date on these applications.

Section 1: Context and Proposal

SITE DESCRIPTION

Vicinity

The subject property is located at 18451 Mateny Road, on the north side of Clopper Road (MD 117), between Mateny Road and Cinnamon Drive, in Germantown Maryland (“Property” or “Subject Property”)(Figure 1). The predominant land use surrounding the Subject Property to the west, north and east is one-family attached residential dwelling units in the RT 12.5 and R-60 zones. On the south west corner of the Property is an area zoned C-1 occupied by a convenience store and gas station. Confronting on Clopper Road is Seneca Creek State Park. Clopper Mill Elementary School is located approximately 600 feet to the northwest of the Subject Property, on the east side of Cinnamon Drive.



Figure 1: Vicinity Map

Site Analysis

The Subject Property consists of approximately 8.46 acres of land, currently improved with a substantially vacant commercial retail center of approximately 46,373 square feet. The Subject Property is bounded by three public roads: Mateny Road to the west, Cinnamon Drive to the east, and Clopper Road to the south. Currently, there is one access point on Clopper Road, one access point on Cinnamon Drive, and two access points along Mateny Road. The highest elevation on the Property is in the northwest and it gently slopes down to the south and east. A man-made steep slope exists along the frontage with Cinnamon Drive, in part created by the construction of surface parking and the existing stormwater management pond. There are a few trees on site, mainly matured landscaping from the existing development. There are no forests, streams, or other sensitive environmental features on the Property (Figure 2). There is an existing cemetery of the Graff-Musser Family located in the southwest corner of the Subject Property, with a plaque documenting the significance of this site.

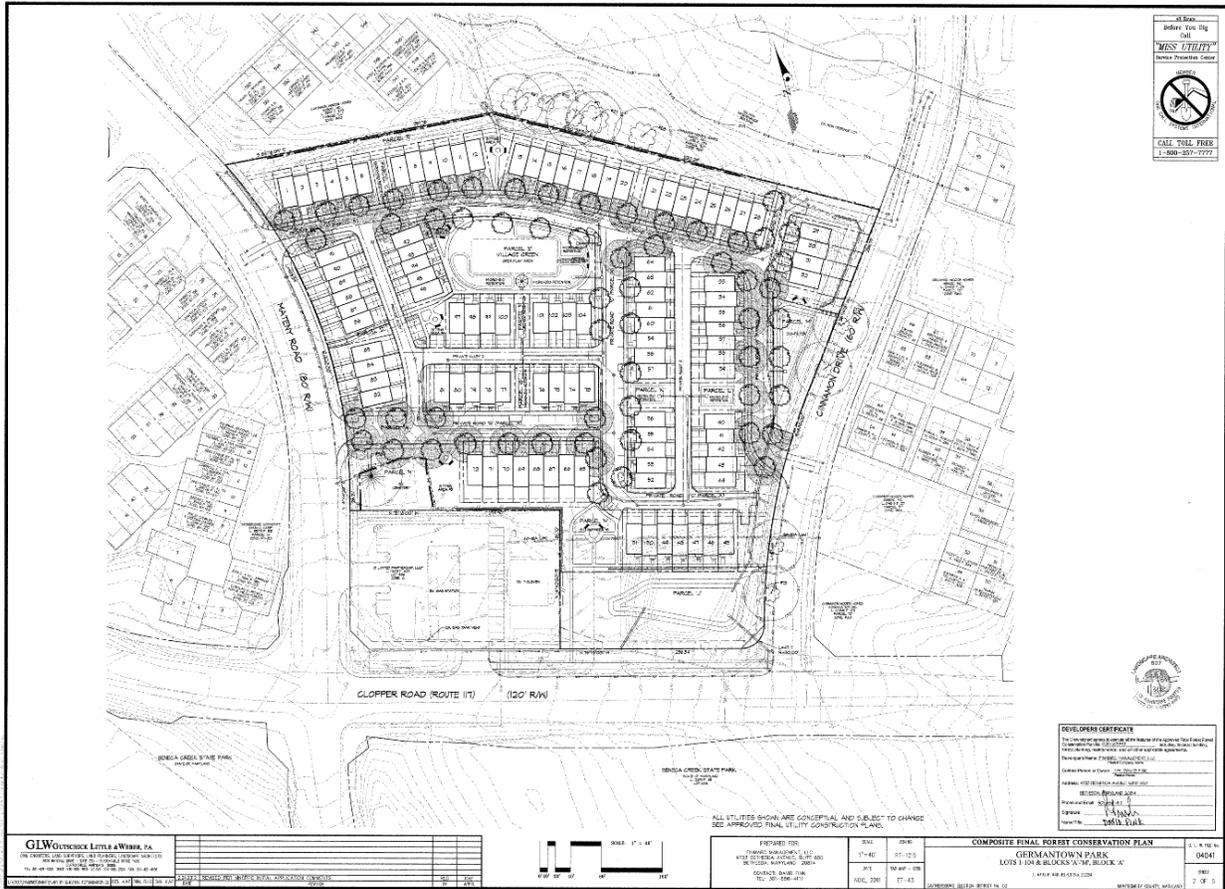


Figure 2: Aerial Photograph

PROJECT DESCRIPTION

Previous Approvals

The Montgomery County Planning Board (“Planning Board”) recommended approval Zoning Case G-878 on April 16, 2009. The County Council approved Zoning Application G-878 on July 27, 2010 for the rezoning of the Property from C-1 to RT-12.5 (Resolution 16-1472) (Appendix A) with binding elements that are enumerated and discussed in the Site Plan section of this report. The binding elements require minimum setbacks from public rights-of-way, protection of the existing cemetery, and increased minimum parking requirements.



Schematic Development Plan

Current Proposal

Preliminary Plan 120110440, Germantown Park (“Preliminary Plan”) was submitted on July 7, 2011 by the Applicant for the Subject Property. A Site Plan, 820120090 (“Site Plan”) was subsequently submitted by the Applicant on February 02, 2012. This report reviews the Preliminary Plan and Site Plan together (“Applications”). The Applicant proposes to develop the Subject Property with a total of 104 one-family townhouse units, with 12.5% (13) Moderately Priced Dwelling Units (“MPDUs”). The Preliminary Plan and Site Plan must conform to all of the binding elements set forth in the Schematic Development Plan for Zoning Application G-878.

Vehicular access to the site is being provided in three places; two access locations are provided from Mateny Road, and one access location is provided on Cinnamon Drive. The existing access directly to Clopper Road is to be removed; however a pedestrian connection will remain from the project down to the sidewalk paralleling Clopper Road. The Applicant and Staff have worked together to modify the layout shown on the approved Schematic Development Plan to improve the internal street network and to provide a more efficient network of private streets, pedestrian accommodations and areas for on-street parking.

Six sitting areas are identified on the Site Plan in addition to the main Village Green, as well as the existing Graff-Musser Family Cemetery. The Graff-Musser Family Cemetery once was a County designated Historic Site but was subsequently removed; however, the Germantown Historical Society still considers the cemetery historic and requests its preservation. The recreation amenities, cemetery site, and additional green space provided through setbacks, yards and landscaped stormwater management areas amount to 4.51 acres (53.3%) of the Subject Property. A total of 320 parking spaces will be provided, though a combination of private garages, private driveway parking and on-street parking, which is a ratio of 3.08 spaces per dwelling unit.

COMMUNITY OUTREACH

The Applications were submitted and noticed in accordance with all Planning Board adopted procedures. Signs referencing both applications were posted along the Property frontages on Clopper Road (MD 117), Cinnamon Drive and Mateny Road. A presubmission meeting was held for the Preliminary Plan at the Cinnamon Woods Citizens Center on April 11, 2011. Twelve people were in attendance at the meeting. According to the minutes of that meeting no major issues were raised. Staff to date has received no citizen comments or correspondence regarding the Preliminary Plan application. A presubmission meeting was held for the Site Plan at the Cinnamon Woods Citizens Center on December 01, 2011, where four people were in attendance. According to the minutes of that meeting no major issues were raised. Staff to date has received no citizen comments or correspondence regarding the Site Plan application.

Section 2: Preliminary Plan Review



Rendered Preliminary Plan

RECOMMENDATION

Staff recommends approval of the Preliminary Plan with the following conditions:

1. Approval under this Preliminary Plan is limited to 104 lots for 104 dwelling units.
2. The Applicant must comply with the Final Forest Conservation Plan as approved.
3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated December 9, 2012, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
5. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated June 9, 2011, and does hereby incorporate them as conditions of the

Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Stormwater Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

6. Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of an eight (8)-foot wide bike path along the property frontage on Clopper Road.
7. The record plat must reflect a public use and access easement over all private streets and adjacent parallel sidewalks.
8. The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 (“Covenant”). The Applicant must provide verification to Staff prior to release of the 70th building permit that the Applicant’s recorded HOA Documents incorporate the Covenant by reference.
9. No clearing, grading or recording of plats prior to certified site plan approval.
10. Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bike paths will be determined at site plan.
11. The Applicant must comply with binding elements of County Council Resolution No. 16-1472 approving Zoning Application G-878.
12. Prior to issuance of the initial building permit, the Applicant must make a lump sum payment of \$468,000 to MCDOT.
13. Prior to plat recordation, Site Plan No. 820120090 must be certified by MNCPPC Staff
14. The record plat must show all necessary easements.
15. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.

ANALYSIS AND FINDINGS

Conformance to the Master Plan

Staff finds that the Preliminary Plan substantially conforms to the recommendations of the 1989 Germantown Master Plan (“Master Plan”). The Property is located in the Clopper Village section of the Master Plan, but is not specifically discussed in the land use recommendations. The Master Plan does encourage new development to broaden the mix of available housing types and promotes the development of an area-wide pedestrian and bicycle system. The Preliminary Plan provides for 104 new housing units, including 13 MDPU’s (12.5%), and has an extensive on-site pedestrian network which connects to the pedestrian network of the surrounding communities and sidewalks on the abutting public streets. The Preliminary Plan also provides for a section of off-road shared path along Clopper Road between Matney Road and Cinnamon Drive. This section of the Master Plan also identifies two Village Centers that should serve as the predominant commercial focus within the community, with residential uses elsewhere. The rezoning of the property to RT-12.5 was a way to increase housing supply and create a residential buffer between the busy Clopper Road corridor, and the existing gas station and the existing residential communities to the north. The granted zoning ensures the development provide ample green space while limiting total development density and providing adequate setbacks.

Adequate Public Facilities

Roads and Transportation Facilities

The Master Plan identifies Clopper Road (MD 117) as a Major Highway with a minimum right-of-way requirement of 120 feet for eventual construction as a six lane divided highway with a sidewalk along the north side of the road. Mateney Road is classified as an Arterial Highway with a right-of-way requirement of 80 feet with an ultimate build-out of four lanes of undivided traffic. Cinnamon Drive is a secondary residential street with a 60 foot right-of-way requirement. The required right-of-ways as established in the Master Plan have already been achieved along the frontages of the Property; therefore no further dedication is required from this Property.

The internal roadway network of the townhouse community is proposed to be entirely private streets, designed to function as public streets. Private Roads A, B and C as shown on the Preliminary Plan and Site Plan will include 20 foot wide drive isles, five foot wide sidewalks, and 8 foot wide parallel parking lanes where possible. The private street network also provides for adequate turnarounds and interconnectivity to assure they function as a public street. The roadway layout was evaluated and supported by Staff, as well as the Montgomery County Department of Transportation (MCDOT) (Appendix B), and the Montgomery County Department of Fire and Rescue Services (Appendix C) for adequacy, safety and efficiency.

Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR)

The Property is located in the Germantown West Policy Area ("Policy Area"). A traffic study was submitted to determine the impact of the proposed development on the area transportation system. Three local intersections were identified as critical intersections needing analysis to determine whether they meet the applicable congestion standard of 1,425 Critical Lane Volume (CLV) set for the Policy Area. The proposed development trips were added to the background trips for the study area (trips generated from approved but unbuilt developments) to determine the total future traffic. The total future traffic was assigned to the critical intersections to evaluate the total future CLVs. The result of CLV calculation is shown in the following Critical Lane Volume Table.

Critical Lane Volume Table

	Existing		Background		Total*		Total**	
	AM	PM	AM	PM	AM	PM	AM	PM
Clopper Road (MD 117) /Great Seneca Highway	948	1,150	1,045	1,367	1,033	1,285	1,022	1,285
MD 117/Mateney Road	954	656	1,021	911	1,018	763	1,005	763
MD 117/Waring Station Road	1,416	1,268	1,475	1,373	1,487	1,358	1,469	1,358

* Total development conditions prior to mitigation
 ** Total development conditions with approved mitigation

As shown in the above Critical Lane Volume Table, all intersections analyzed under existing conditions are currently operating at or better than the acceptable 1,425 CLV congestion standard. Under the background development¹, the traffic condition at the MD 117/Waring Station Road during the AM peak hour would operate at an unacceptable 1,475 CLV, above the 1,425 CLV congestion standard for this area. The residential use proposed by the Preliminary Plan generates fewer overall vehicle trips during the peak hours than does the existing commercial use on the Property, resulting in a net reduction in overall CLVs. However, the distribution of the peak hour trips through nearby intersections is different for the residential use as compared to the trip distribution for the existing commercial use. The residential use will distribute more trips through the MD 117/Waring Station Road intersection than the existing commercial center does. Therefore, under the scenario “Total*²” the traffic at the MD 117/Waring Station Road during the AM peak hour would continue operate at an unacceptable level of congestion while the other analyzed intersections will have improved and acceptable operating conditions.

In order to mitigate the unacceptable level of congestion at the MD 117/Waring Station Road, the Applicant has committed to offset, with a payment to the County, the number of trips equal to 150 percent of the CLV impact on intersections in excess of the congestion standard. This mitigation method is identified in the *Local Area Transportation Review and Policy Area Mobility Review Guidelines* of 2011 (“LATR Guidelines”) as an acceptable method of improvement. The LATR Guidelines only require CLV mitigation for additional, new CLV trips over the existing background trips. Because the Waring Station Road intersection already fails under background, the Applicant is only responsible to mitigate the 12 new CLVs in the AM peak hour Total* 150 percent of 12 new trips equates to 18 CLVs which require mitigation. To achieve mitigation of 18 CLV trips, 40 vehicular trips that are generated by the proposed use need to be mitigated in the AM peak hour, resulting in a lump sum payment of \$468,000. Mitigation of 40 trips from the Subject Property was determined, in part, on the trip distribution agreed upon in the submitted traffic study. The result of this trip mitigation is shown in the Critical Lane Volume Table as Total**. This payment is in lieu of physical improvements and is acceptable because acquisition of

¹ Background development assumes full occupancy of the existing 48,000 square foot retail center

² Total development removes the existing commercial development and develops the 104 proposed townhouse units

the required right-of-way within State parkland to make intersection improvements at MD 117/Waring Station Road would require significant and lengthy negotiations between State Agencies over disposition of existing parkland in Seneca Creek State Park. With the trip mitigation requirement as conditioned in the above discussion, the Application satisfies the LATR requirements.

Other Public Facilities

Other public facilities and services are available and will be adequate to serve the proposed development. The Subject Property is in water and sewer categories W-1 and S-1, and the Washington Suburban Sanitary Commission finds that the local lines are of adequate size to service the Property. All other utilities including telecommunications and electricity providers have adequate service available to the Property. Police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policies currently in effect.

The Subject Property is located in the Northwest High School cluster which has been in moratorium because of capacity constraints at the High School level. The cluster came out of moratorium as of July 1, 2012, and requires no facility payments based on the FY13 schools analysis.

Environment

Environmental Guidelines

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #419992500 for this Property was originally approved on June 2, 1999. A new NRI/FSD #420081430 was on approved on May 5, 2008; this NRI/FSD was recertified on April 4, 2011. The NRI/FSD identifies the environmental constraints and forest resources on the subject property. The Property contains no forest, nine trees between 24" and 30" diameter at breast height (DBH), and no trees 30 inches and greater DBH on the property. The site's topography is generally sloped to the east. There are no streams, wetlands, or environmental buffers; therefore, the Environmental Guidelines are not applied to this Property. The Subject Property is within the Middle Great Seneca Creek watershed; a Use I-P watershed. The Countywide Stream Protection Strategy (CSPS) rates streams in this section of the watershed as fair overall condition.

Preliminary Forest Conservation Plan

A forest conservation plan ("FCP") was submitted on January 24, 2012 as part of Site Plan review, concurrent with Preliminary Plan Review. A detailed analysis of the FCP can be found in the Site Plan section of this report.

Stormwater Management

A stormwater management concept for the Preliminary Plan was approved by the Montgomery County Department of Permitting Services on June 09, 2011 (Appendix D). The concept consists of eight micro-bio-retention ponds, one bio-retention pond, and fifteen dry wells, all to provide water quality control and infiltration. The existing stormwater pond at the corner of Clopper Road and Cinnamon Drive is to be retrofitted and landscaped to meet the stormwater management requirements.

Compliance with the Subdivision Regulations and Zoning Ordinance

The Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections of the Chapter. The proposed lot's size, width, shape and orientation are appropriate for the location of the Property for the intended use as a residential, townhouse community.

The Preliminary Plan was reviewed for compliance with the dimensional requirements of the RT-12.5 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. Binding elements were placed on the Applicant from Zoning Case G-878, ensuring adequate setbacks to the surrounding roads and properties. A more detailed analysis is provided in the Development Standards table in the Site plan review. The Preliminary Plan has been reviewed by other applicable county agencies, all of whom have recommended approval.

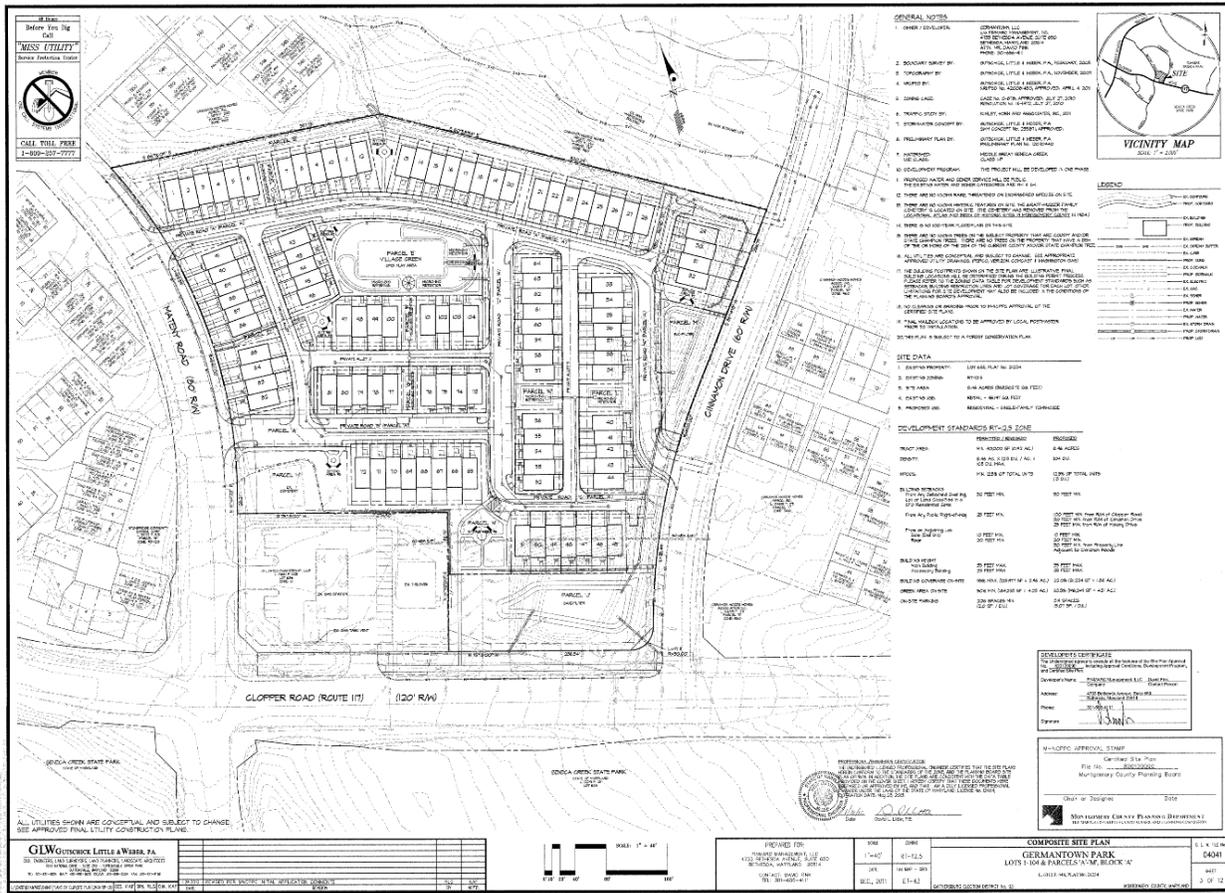
Zoning Table for the RT-12.5

PLAN DATA	Zoning Ordinance Development Standard	Binding Elements of Zoning Case G-878	Proposed for Approval by the Preliminary Plan
Minimum Tract Area	20,000 sq. ft	---	8.46 Acres
Density	12.5 units/acre or 105	105	104
Setbacks			
Detached dwelling, lot or SFD classified land	30 ft. Min.	---	30 ft. Min
Public ROW	25 ft. Min	---	Must meet minimum ¹
From Clopper Road	25 ft. Min.	100 ft. Min	100 ft. Min
From Cinnamon Drive	25 ft. Min.	30 ft. Min	30 ft. Min
From Mateny Drive	25 ft. Min.	25 ft. Min	25 ft. Min
Height	35 Ft. main/25 ft. accessory	35 ft Max	May not exceed maximum ²
Building Coverage	35% Max	---	22%
Green Area	50% Min	50% Min	53.3%
MPDUs	12.5%	12.5%	12.5% (13)
TDRs	No	No	No
Site Plan Req'd?	Yes	Yes	Yes

¹ Binding elements of Case G-878

² Determined at the time of Building Permit

Section 3: Site Plan Review



Composite Site Plan

RECOMMENDATION

Staff recommends approval of site plan 820120090, Germantown Park, for 104 attached units, including 13 MPDU's on 8.46 acres. All site development elements shown on the site and landscape plans stamped "Received" by the M-NCPPC on May 7, 2012 are required except as modified by the following conditions.

Conformance with Previous Approvals

- Development Plan Conformance
The Applicant must comply with the binding elements of the development plan G-878.
- Preliminary Plan Conformance
The Applicant must comply with the conditions of approval for Preliminary Plan No. 12011044, or as amended. This includes but is not limited to all references to density, easements, transportation conditions, and MCDPS stormwater recommendations and MCDOT recommendations.

3. Forest Conservation

The Applicant must comply with Final Forest Conservation Plan

4. Recreation Facilities

- a) The Applicant must meet the square footage requirements for all of the applicable proposed recreational elements and demonstrate that each element is in conformance with the approved M-NCPPC Recreation Guidelines.
- b) Provide the following recreation facilities: 6 picnic/sitting areas, 1 open play area II, and a pedestrian system.
- c) The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to, the private street system including the sidewalks.

5. Transportation

- a) The private streets and alleys must be built in accordance with the Site Plan and to the structural standards of a public street.

6. Moderately Priced Dwelling Units (MPDUs)

- a) The development must provide 12.5% percent of the total number of units as MPDUs on-site, consistent with the requirements of Chapter 25A.
- b) The MPDU agreement to build must be executed prior to the release of any building permits.

7. Compatibility/Architecture

- a) The fronts of the MPDUs must be designed and finished with architectural elements comparable to those found on other similar attached market rate units within the site.
- b) Provide architectural treatment details on the certified site plan.
- c) Provide architectural treatment on the side facades of end units to have an outward appearance comparable to front facades, including but not limited to façade materials and architectural treatments.

8. Lighting

- a) The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for residential development.
- b) All onsite down light fixtures must be full cut-off fixtures.
- d) Illumination levels must not exceed 0.5 foot candles at any property line abutting county roads and residential properties.
- e) The height of the light poles must not exceed 12 feet including the mounting base.

9. Landscape Surety

Prior to issuance of the first building permit within each relevant phase of development, Applicant must provide a performance bond(s) or other form of surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a) Applicant must provide a cost estimate of the materials and facilities, which, upon Staff approval, will establish the initial surety amount.
- b) The amount of the bond or surety shall include plant material, on-site lighting, recreational facilities, and site furniture within the relevant phase of development.

- c) The Applicant must enter into a Site Plan Surety & Maintenance Agreement with the Planning Board in a form approved by the Office of General Counsel that outlines the responsibilities of the Applicant and incorporates the cost estimate.
- d) Bond/surety must be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety for each phase of development will be followed by inspection and reduction of the surety.

10. Development Program

The Applicant must construct the development in accordance with a development program that will be reviewed and approved prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a) Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- b) Street lamps and sidewalks must be installed within six months after street construction is completed. Street tree planting may wait until the next growing season.
- c) On-site amenities including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any building occupancy permit.
- d) Clearing and grading must correspond to the construction phasing to minimize soil erosion and may not proceed prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- e) The development program must provide phasing for installation of on-site landscaping and lighting.
- f) Community-wide pedestrian pathways and recreation facilities must be completed prior to issuance of the 70th building permit.
- g) Landscaping associated with phase of development must be completed as construction of each facility is completed.
- h) The development program must provide phasing of stormwater management, sediment and erosion control, trip mitigation, and other features.

11. Certified Site Plan

The Certified Site must include the following:

- a) The final forest conservation approval, stormwater management concept approval, development program, inspection schedule, and Site Plan Resolution on the approval or cover sheet.
- b) A note stating that "M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading".
- c) The data table must reflect development standards enumerated in the Staff Report.
- d) Consistency of all details and layout between Site Plan and landscape plan.
- e) Recreation supply calculations must be updated to reflect those presented within the Staff Report.

SITE PLAN FINDINGS

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

The Site Plan conforms to all binding elements of Zoning Application G-878 approved by the County Council on July 27, 2010, with Resolution 16-1472. The binding elements, as set forth below, require minimum setbacks from public right-of-ways and surrounding development, provide protection for an existing family graveyard, and increase the minimum parking required.

- a) Density is limited to no more than 105 dwelling units.
 - b) MPDU units will be provided at 12.5% of total density.
 - c) The Applicant, its successors or assigns, will preserve and perpetually maintain the existing Graff-Musser Cemetery on the Property.
 - d) The project will include the following minimum building setbacks:
 - a. North property boundary - 30 feet from the property line
 - b. West property boundary - 25 feet from the Mateny Road right-of-way
 - c. South property boundary - 100 feet from the Clopper Road right-of-way
 - d. East property boundary - 30 feet from the Cinnamon Drive right-of-way
 - e) The project will include parking at a minimum of 3.0 spaces per dwelling unit.
 - f) The project will have a maximum building height of 35 feet.
 - g) The project will provide a minimum of 50% green area.
2. *The Site Plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets all of the requirements of the RT-12.5 Zone and the binding elements from Zoning Case G-878. A detailed analysis of the Site Plan as it relates to the Zone is provided in the Data Table below. The Applicant proposes a community of one-family townhouse dwelling units, with a variety of one and two car garage, front and rear loaded units. The Site Plan also provides for the specified setbacks from adjacent public streets and residential zones as required in Zoning Case G-878. The design of the proposed dwellings, along with the minimum green area and provided landscaping will ensure compatibility with the surrounding four-plex and townhouse communities.

Site Plan Data Table for the RT 12.5

Development Standard	Zoning Ordinance Permitted/ Required	Binding Elements per G-878	Proposed for Approval & Binding on the Applicant
Tract Area	n/a	n/a	8.46 acres
Density			
Max. Residential Density (du/acres) 59-C-7.14(a)	12.5 du/acre or 105 du total	105 du total	104 du total
MPDUs (%)	12.5% minimum	12.5% or 13 total	12.5% or 13 total
Max. Number of Dwelling Units			<u>104</u>
- Market Rate	105 including MPDUs	105 including MPDUs	91
- MPDUs			13
Housing Mix (59-C-7.13) Min. one-family attached/townhouses	100%	n/a	100% (104 units)
Min. Setbacks			
Main Building (ft)			
Adjoining one-family detached zoned land (59-C-7.15)	30	n/a	More than 30
From public street			
- One-family attached	n/a	n/a	25 or more
From Clopper Road	n/a	100	100
From Cinnamon Drive	n/a	30	30
From Mateny Road	n/a	25	25
Front yard			
- One-family attached	n/a	n/a	5 or more
Rear yard (opposite front door)			
- One-family attached	20	n/a	20
From Cinnamon Woods	n/a	30	30
Side yard			
- One-family attached	10	n/a	10
Accessory Buildings (ft)			
Rear and side lot lines			
- All structures	n/a	n/a	5
Max. Building Height (feet)			
- one-family detached	35	n/a	35
- accessory structure	25	n/a	25
Min. Green Area			
(% of GTA) (59-C-7.16)	50% (4.23 acres)	50%	53.3% (4.51 acres)
Parking Spaces (59-E)			
Residential			
- One-family attached	208 (2 sp/du)	3/du	320 (3.08 sp/du)

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

Buildings and Structures

The orientations of the buildings on the Site Plan are in a manner which is appropriate for the character envisioned by the Master Plan and for compatibility with surrounding development. The building orientation substantially matches that shown on the Schematic Development Plan which was found to be in conformance with the Master Plan and specifically designed to be compatible with surrounding developments. The townhouse sticks adhere to the binding setbacks from public streets, and the Graff-Musser family cemetery established in Zoning Case G-878. The townhouse sticks are also efficiently laid out to ensure each unit has ease of access to the pedestrian and vehicular network that links the units to the recreational amenities that are interspersed throughout the project. .

Recreation Facilities and Open Space

The open spaces and recreation facilities are adequate, safe and efficiently located for the needs of the community with most units confronting or adjoining an area of open space. The primary open spaces shown on the Site Plan include picnic and sitting areas, open play areas and the extensive pedestrian system. Other open space areas are used for stormwater management infiltration. As shown in the Recreation Demand Table below, the Site Plan provides an internal pedestrian system, which connects to the surrounding pedestrian network, as well as an open play area, and six additional seating areas. The Applicant is also taking credit for two different off-site recreation areas located within one mile of the Property: Clopper Mill Elementary School, and Gunners Branch Park.

Recreation Demand Table

		D1	D2	D3	D4	D5	
		Tots	Children	Teens	Adults	Seniors	
Housing Type	Number of Units	0 to 4	5 to 11	12 to 17	18 to 64	65+	
TH	104	17.68	22.88	18.72	134.16	7.28	
		17.68	22.88	18.72	134.16	7.28	
On-Site Supply							
Recreation Facility		Quantity Provided	D1	D2	D3	D4	D5
Picnic/Sitting	6	6.00	6.00	9.00	30.00	12.00	
Open Play Area II	1	3.00	4.00	4.00	10.00	1.00	
Pedestrian System	1	1.77	4.58	3.74	60.37	3.28	
total:		10.77	14.58	16.74	100.37	16.28	
Off-Site Supply*							
*within one mile; submit recreation facilities plan							
Recreation Facility		Quantity Provided	D1	D2	D3	D4	D5
Tot Lot	1	3.15	0.70	0.00	1.40	0.35	
Play Lot	1	0.00	3.15	1.05	1.40	0.35	
Multipurpose Court	2	2.10	7.00	10.50	7.00	1.75	
Half MP Court I	2	1.40	3.50	4.90	5.60	0.70	
Half MP Court II	2	1.40	3.50	2.80	3.50	0.70	
Tennis	2	0.00	1.05	7.35	16.80	0.70	
Soccer - Junior	1	0.70	5.25	5.25	10.50	0.70	
Baseball - Junior	1	0.70	5.25	5.25	10.50	0.70	
Natural Areas	1	0.00	0.40	0.66	4.70	0.13	
total:		9.45	29.80	37.76	61.40	6.08	
Adequacy of Facilities							
		D1	D2	D3	D4	D5	
Gross Total Supply		20.22	44.38	54.50	161.77	22.35	
35% of Total Demand		6.18	8	6.55	46.95	2.54	
Max Off-Site Supply		6.18	8	6.55	46.95	2.54	
Total Supply		16.95	22.58	23.29	147.32	18.82	
90% Demand		15.92	20.6	16.85	120.75	6.56	
Adequate?		yes	yes	yes	yes	yes	

Landscaping and Lighting

The landscaping and lighting proposed for the Property is safe, adequate, and efficient. The proposed landscaping provides sufficient shade, screening, and visual interest on the Property that includes a vegetated buffer between the Property and the Cinnamon Woods community to the north. The location and species of shade trees will also provide adequate shade and aesthetic value as the landscaping matures along the streets and the proposed recreation facilities. The placement of the vegetation creates a sense of privacy without fully obscuring views of the public spaces from

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

The structures and uses proposed are compatible with other structures, uses and proposed development both on and off the Subject Property. All of the proposed structures and uses with this Site Plan are townhouse units, with varying designs including the location and size of the garage and driveway. The townhouses that are along Mateny Road are oriented to front Mateny with rear driveway access. This will help activate the street frontage and provide a more visually appealing façade. Larger open spaces and rear yards help provide an extra buffer from the new units with Cinnamon Drive and the Cinnamon Woods Community. The Application proposes adequate landscaping along the public street frontages including new street trees and smaller ornamental trees and shrubs. This Site Plan is subject to binding elements requiring minimum setbacks from all public streets and adjacent communities. The setbacks along the outer edge of the Site Plan meet, and in many places exceed those required by the Binding Elements and the Zoning Code, providing adequate places to provide additional landscaping.

A minimum 30 foot setback was provided from the northern property lines of units 1-28, that adjoin the Cinnamon Woods community. This provides ample space for on-site landscaping including canopy trees and evergreens that will create a vegetative screen between the two communities. To the south, the development is set back in excess of 100 feet from Clopper Road because of the placement of on-site stormwater management facilities, and the location of an existing service station and convenience store just off the southwest corner of the Property. These setbacks provide for opportunities for visual screening and natural noise reduction for the proposed dwelling units. The existing one-family attached dwellings located to the east of the Property are separated from the Property by a 60 foot wide right-of-way for Cinnamon Drive, plus a 30 foot setback on the Property with additional stormwater parcels providing room for landscaped buffers. The two locations along the western portion of the Property where the new dwellings will be closest to the developments edge are opposite parking for the Cinnamon Woods community and not actual dwelling units. To the west, Mateny Road has an 80 foot right-of-way in addition to a 25 foot setback providing separation of the new dwelling units with the existing homes across Mateny Road.

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 final forest conservation plan ("FFCP") was submitted on January 24, 2012. The FFCP proposes no forest clearing and no forest retention. The Subject Property has a 15% afforestation threshold for the net tract area, generating a 1.35 acre afforestation planting requirement.

Section 22A-12(F) of the Montgomery County Forest Conservation Law requires any site developed in an agricultural and resource area, any planned unit development, any site developed under a cluster or other optional method of development in a one-family residential zone, and any waiver from a zoning requirement for environmental reasons, to include a minimum amount of forest on-site as part of meeting its total forest conservation requirement. In a planned development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection 22A-12. This project is being developed under an optional method of development and, therefore; must meet its afforestation threshold of 15% or 1.35 acres on-site. The Applicant has proposed to meet

Attachment A

Resolution No.: 16-1472
Introduced: July 27, 2010
Adopted: July 27, 2010

**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-878 FOR AMENDMENT TO THE ZONING
ORDINANCE MAP, Cindy Bar, Esquire, Attorney for Applicant, Germantown,
LLC, OPINION AND RESOLUTION ON APPLICATION AFTER REMAND
Tax Account No.03276364

OPINION

Application No. G-878, filed on October 1, 2006 by Applicant Germantown, LLC, initially requested reclassification from the C-1 Zone to the RT-15 Zone of 8.46 acres of land known as Germantown Park, Lot 685, Subdivision 21, located at 18451 Mateny Road, Germantown, Md. The amended application seeks to reclassify this land to the RT-12.5 Zone.

The application was filed under the Optional Method authorized by Code § 59-H-2.5, which permits binding limitations with respect to land use, density and development standards or staging.

The Technical Staff of the Maryland National Capital Park and Planning Commission (MNCPPC) reviewed the application and recommended approval. The Montgomery County Planning Board unanimously recommended approval on April 16, 2009. A public hearing was held on April 28, 2009, and the hearing examiner's report was issued on June 25, 2009, recommending approval.

The Opposition filed a request for oral argument, which took place on July 28, 2009. Following that oral argument, the District Council remanded the case to the hearing examiner on

September 15, 2009, for further proceedings. On the same date, the District Council adopted a resolution to permit the Applicant and other interested parties to present evidence on remand about specific economic and land use issues outlined in the resolution, Ex. 78. On December 11, 2009, the Applicant filed an amended application reducing the density it requested to the RT-12.5 classification. The amendment also reduced the maximum number of dwelling units (townhouses) from 112 to 105, specified that 12.5% moderately priced dwelling units (MPDUs) would be provided and added more binding elements. The proposal is set forth in a revised Schematic Development Plan (SDP), Exhibit 91, which contains an illustrative plan, specifications of the binding elements, and other information regarding the development. The Technical Staff continued to recommend approval of the amended application, and an additional hearing was conducted by the hearing examiner on May 17, 2010. The Hearing Examiner's supplemental report was issued on July 15, 2010. It addressed the questions raised by the District Council in its remand resolution, and recommended approval of the revised SDP.

The Hearing Examiner's recommended approval of the amended application based on his findings that the RT-12.5 Zone at the proposed location would satisfy the requirements of the zone and its purpose clause; that the proposed reclassification and development would be compatible with land uses in the surrounding area; and that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation, dated June 26, 2009, and his Supplemental Report and Recommendation, dated July 15, 2010, are incorporated herein by reference.

The Property, Surrounding Area and Zoning History

The subject property forms an irregularly shaped parcel located near the northeast quadrant of the intersection of Clopper (Md. Route 117) and Mateny Roads. The site is generally flat and gently sloping from northwest to southeast at about a 3.6 percent grade in the developed area adjacent to the Mateny Road entrance. The site slopes away from Clopper Road. Mateny Road is about 30 feet higher than Cinnamon Drive as it abuts the site.

The site contains about 250 feet of frontage along Clopper Road, 400 feet of frontage along Mateny Road and 580 feet of frontage along Cinnamon Drive. There are steep slopes at the site where it abuts Clopper Road and Cinnamon Drive. Located immediately southwest of the site at the intersection of Clopper and Mateny Roads is a 7-11 gasoline filling station and convenience store, which is classified under the C-1 Zone. This property is not part of the instant zoning request. A storm water management (SWM) facility is located at the southeast corner of the site at the intersection of Clopper Road and Mateny Road. The facility is located at the low point of the site. The high point is at the northwest corner. The existing SWM facility is outdated and does not provide for quality controls.

Located in the southwest corner of the site is an existing cemetery known as the Graff-Musser Family Cemetery. The cemetery contains a plaque documenting its history. The cemetery dates to the 1800s and has African Americans and Caucasians buried side by side, apparently one of the first such burial patterns in the region. The cemetery was once included in the County Locational Atlas and Index to Historic Sites but was subsequently removed. There is a large retaining wall between the cemetery area and the adjacent convenience store. The Germantown Historical Society considers the cemetery to be historic and expressed concerns about the maintenance and future care of it. The Applicant submitted a binding element to the SDP to provide for perpetual maintenance and care of the cemetery.

Cemetery

The property contains a shopping center with a grocery store, known as “Super Grand,” which sells Asian food among other types of groceries, a beer and wine store, a drycleaner and a satellite station for the Montgomery County Police Department. The site contains an asphalt parking lot for about 275 cars and grassy areas along the perimeter. The developed area is at the center of the site and this area constitutes about 90% impervious surface.

The Applicant bought the center in 2004 with the expectation that a retail upgrade would make the center competitive. However, a combination of factors has resulted in the center not producing expected income. These factors include the economic downturn, nearby competition, a fire that closed the grocery store for about a year, and an inability to attract the right mix of tenants including a national food chain as an anchor store. The site is also too small and has a visibility problem from the street because ongoing traffic cannot see the available retail uses.

In floating zone cases a surrounding area is defined so as to include uses that are most directly affected by the proposed development. The District Council adopts the surrounding area recommended by Technical Staff and Hearing Examiner. This area is bounded on the north by Pine Ridge Lane and Cinnamon Woods subdivision; bounded on the east by Gunners Branch Park and the Ashton Place subdivision; bounded on the south by Dairymaid Drive; and bounded on the west by Metz Road and the Stone Ridge subdivision.

The character of the surrounding area reflects medium densities made up of townhouses, four-plexes and single-family detached homes. The surrounding area is predominately residential with largely stable and mature communities.

Cinnamon Woods is a community located north and east of the site with about 640 older two-story four-plexes or “back to back” style townhouses and related surface parking lots. Much of the area has large green areas. This community contains Clopper Mill Elementary School and the entry to Gunners Branch Local Park. West and northwest of the subject property is the Stone

Ridge subdivision, classified under the RT-12.5 Zone, which contains about 305 older two-story townhouses without garages and the community relies on surface parking.

The area to the south is a stream valley of a tributary of the Gunners Branch beyond which lies the Ashton Place community, classified under the RT-12.5 Zone that contains about 257 two-story townhouses without garages and dependent on surface parking. Some isolated single-family detached homes are located along Metz Drive near Clopper Road.

The densities of these communities are in scale with each other. This area was developed in the 1980s. The site abuts townhouses and four-plexes to the north, west and southwest. Elements of the surrounding area also include the road network made up of Clopper Road, Mateny Road, Metz Road, Cinnamon Drive and stream valleys associated with Seneca Creek.

The property was the subject of countywide comprehensive zoning in 1958 when it was classified under the Rural Residential (R-R) Zone, which allowed for a density of two dwelling units per acre. In 1969, the property was reclassified from the R-R Zone to the C-1 Zone by Local Map Amendment F-345. The property was developed as a one story 46,193 square foot shopping center under the C-1 Zone in the 1984 and the Weis Market operated a grocery store there until it was leased to the Super Grand in 2004.

The 1989 Germantown Master Plan addresses shopping center uses and encouraged the concentration of retail uses in planned village centers. The plan discourages strip commercial zoning along highways like Clopper Road. Two retail village centers have since developed near the subject property. Kingsview Village center is located within 2,000 feet of the subject property and Clopper Village is located within 3,000 feet of the subject property. Both retail centers have been built in accordance with the Master Plan. Recently more competition developed with the Lotte Plaza at Wisteria and Route 118.

The 1974 Master Plan clearly shows that the Village Center for Clopper Village should be located at the intersection of Clopper Road and the Western Arterial, now the Great Seneca Highway. The subject property was deemed inadequate for a village center location. The 1989 Master Plan explicitly recommends the subject property for other convenience retail center. The plan also discouraged strip commercial development and encouraged sensitivity to development along Clopper Road because of its high visibility to travelers. The District Council concludes that housing would be a preferable use at this location because it will reinforce the established character and identity of the area. The District Council agrees with the conclusions of the Technical Staff, Planning Board and Hearing Examiner that the proposed use is consistent with the current Master Plan.

Proposed Development

The proposed development would replace the existing 25-year-old retail center with 105 townhouses, at a density of 12.4 dwelling units per acre, including 12.5% MPDUs. The SDP proposes a village green, recreational open space, pocket parks and an enlarged storm water management (SWM) facility. The plan also proposes the preservation of the Graft-Musser family cemetery. The updated SWM facility will add to the open space for the project. The tree canopy will be significantly enlarged from 0.98 acres to 4.43 acres. Impervious surfaces will decrease from 4.93 acres to 4.42 acres. Existing green space shows 3.7 acres, and the plan is to increase this to 4.68 acres, as shown in Applicant's comparison chart, Ex. 87. The revisions will add more open space, recreational areas and allow for pedestrian links as shown on Ex. 84, a pedestrian circulation plan. A concept SWM plan was approved that will improve water quality and quantity.

The Applicant's illustrative plan shows 429 parking spaces (4.08 spaces per dwelling unit). The zoning requires 210 spaces or 2.0 spaces per dwelling units. The community would be developed around a central "village green," or community open space, linked with a series of smaller open spaces by pedestrian friendly streetscapes, walkways and trails.

The proposal was revised before the record closed to add several binding elements to the SDP. The binding elements now include the following seven items.

1. Density limited to 105 dwelling units
2. MPDUs will be provided at 12.5% of total density
3. The Applicant or its' successors in interest will preserve and professionally maintain the existing cemetery
4. The minimum building setbacks will be 30 feet from north property line; 25 feet from the western property line; 100 feet from the southern property line; and 30 feet from the eastern property line.
5. Minimum parking will provide 3.0 parking spaces per unit;
6. Maximum building height will be 35 feet; and
7. Minimum green space of 50%

Standard for Review

A floating zone, such as the RT-12.5 Zone, is a flexible device. Individual property owners may seek to have property reclassified to a floating zone by demonstrating to the Council that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with the surrounding development, as required by the case law, *Aubinoe v. Lewis*, 250 Md. 645, 244 A.2d 879 (1967), and that it will be consistent with a coordinated and systematic development of the regional district and in the public interest, as required by the *Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110.*

Requirements and Purpose of the Zone

Under the “purpose clause” set forth in Zoning Code §59-C-1.721, the R-T Zone may be applied if a proposal meets any one of three alternative criteria: (1) it is in an area designated for R-T Zone densities (implying a master plan designation); (2) it is in an area that is appropriate for residential development at densities that are allowed in the RT Zones; or (3) it is in an area where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.

The Opposition raised the issue of need with respect to the existing shopping center use. The site is located near several existing townhouse communities that have enjoyed the convenience of the shopping center since 1984 and some of whose residents oppose the reclassification. The Opposition contends there is a need to retain the existing center to better serve a changing population that values the stores at the center and to which residents can easily walk. Need is not a requirement for the location of the RT-12.5 Zone. Need is sometimes relevant depending on the use. For example, a need requirement must be satisfied for a special exception for a gasoline filling station. However, the need requirement has not been extended to the proposed use. Therefore, need is not a relevant factor to evaluate the appropriateness of the proposal. Even if need was a requirement, the evidence is clear that ample shopping facilities are in the area and the competition from these facilities is one of the reasons the existing center has not done as well as expected.

The “appropriate” standard is usually measured by density, that is, whether or not the proposed density is a good fit in the particular neighborhood. The District Council finds that the subject property is located in a section of the County that is appropriate for residential development at the RT-12.5 density. Stone Ridge is directly west of the site and reflects a density of 12.6 dwelling units per acre. Aston Place is southwest of the site and reflects a density

of 12.3 dwelling units per acre. Cinnamon Woods, located north and west of the site along Mateny Road, reflects a density of 8.2 dwelling units per acre.

The District Council finds that the type of residential unit at the density proposed is entirely consistent with the surrounding area given the SDP commitments to a maximum density limit of 105 dwelling units (*i.e.*, 12.41 dwelling units per acre) and a provision for a minimum of 50% green space. The site meets the appropriate standard because of its location, relationship to, and compatibility with, surrounding townhouse developments.

The District Council determines that the proposed development meets the development standards of the RT-12.5 Zone. The design layout, green space, setbacks, density and parking all exceed zoning requirements. The Technical Staff and Planning Board recommendations also confirm that the proposed development would be appropriate for this location and meets the development standards of the RT-12.5 Zone. Therefore the Applicant has submitted sufficient evidence to satisfy the requirements of the zone.

Compatibility

An application for a floating zone reclassification must be evaluated for compatibility with land uses in the surrounding area. The District Council finds that the proposal is compatible with the nearby residential uses in terms of height, scale and building mass. By creating an architectural and building mass edge along Clopper Road, the proposed development will function as a buffer use between the higher intensity uses of the Clopper Road corridor and the adjacent residential communities. The proposed development will function as a buffer between the convenience store and gas station and the nearby residential areas.

The proposed development will be compatible with the existing community because the SDP will provide for substantial green space, density limitations, setbacks, parking, and less

impervious surface. The Technical Staff and Planning Board reviews confirm that the proposed development will be compatible with existing and planned uses in the surrounding area.

Public Interest

The Applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the MNCPPC, impact on public facilities, and important policy goals such as the provision of affordable housing and preservation of historic sites.

The District Council concludes that the proposed zoning is in the public interest and provides immediate and long-term benefits not only to the existing adjacent neighborhood but also the County as a whole. The Planning Board will revisit remaining noise, school and traffic issues during the subdivision and site plan review stages.

The proposed development provides for a number of benefits. For example, a improved and enlarged SWM facilities will benefit the environment. The elimination of the Clopper Road access will permit the expansion of SWM facilities and allow for safer more adequate traffic patterns. The replacement of the shopping center will significantly reduce impervious surface and will allow for the introduction of a tree canopy and new green space that promote the environment. The introduction of housing at this location will allow for more diversity and affordability. The preservation and perpetual maintenance of the historic cemetery will contribute to cultural heritage of the area. Finally, the proposed development is consistent with the master plan and promotes many of its goals and objectives as evidenced by the very detailed analysis by the Technical Staff.

The Opposition contends that the existing shopping center should be retained because it promotes a master plan objective for convenience neighborhood shopping areas, satisfies a community need for accessible shopping for older residents, provides a market for goods and services created by changing demographic patterns and otherwise unavailable in the area and functions as a Village Center that provides a community meeting place. The Opposition also contends that the proposed development will overwhelm schools and roads. The District Council finds that the evidence does not support this contention.

A school facility payment along with capital improvements indicate that the project will not cause an adverse impact on area schools. The latest requirements for school capacity are found in exhibits 96, 96 (a) and (b), 97 and 97(a). These requirements confirm that CIP funding for the Northwest Cluster will provide additional capacity that keeps the Cluster from going into moratorium. With the reduction of density, fewer students will be generated by the development. Under these circumstances, the APF review provides sufficient safeguards to allow the zoning request. Both the Applicant's expert and the Technical Staff concluded that the Applicant could satisfy adequate public facility (APF) requirements, and this issue will be reviewed again at the post-zoning stages.

The impact on local traffic from this development would be minimal and will clearly meet LATR standards. No evidence was presented to suggest that the proposed development would produce any adverse levels of service after the applicant provided expected mitigation. The evidence also indicates that the proposed development will promote a better environment.

In balancing of the public interest factors, the benefits of the proposed zoning far outweigh the detriments. Both the Technical Staff and the Planning Board provided strong, persuasive and unanimous support to approve the rezoning. The evidence is clear that the zoning

is consistent with the 1989 Master Plan and will better serve the public interest than retention of the current use.

For all of these reasons, as more fully discussed in the Hearing Examiner's reports, the District Council concludes, based on the preponderance of the evidence that the proposed reclassification and development would be in the public interest.

Conclusion

Based on the foregoing analysis, consideration of the Hearing Examiner's report, and after a thorough review of the entire record, the District Council concludes that the application satisfies the requirements of the RT-12.5 Zone and its purpose clause; that the application proposes a form of development that would be compatible with land uses in the surrounding area; and that the requested reclassification to the RT-12.5 Zone bears sufficient relationship to the public interest to justify its approval. For these reasons and because approval of the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

Action

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

Zoning Application No. G-878, seeking reclassification from the C-1 Zone to the RT-12.5 Zone of 8.46 acres known as Germantown Park, Lot 685, Subdivision 21, located at 18451 Mateny Road, Germantown, in the 9th Election District, is hereby approved in the amount

requested and subject to the specifications and requirements of the final Schematic Development Plan (SDP), Ex. 91;

Provided that, the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the SDP within 10 days of approval, in accordance with Code § 59-D-1.64 of the Zoning Ordinance; and

Provided further that, the Applicant submits prior to certification a fully executed copy of the Declaration of Covenants, Ex. 98, which has been revised to include the most recent binding elements specified in the revised SDP, Ex. 91, and has been filed in the County land records in accordance with Code §59-H-2.54 of the Zoning Ordinance within the aforementioned 10 day period, and a suitable receipt of filing is presented to the Hearing Examiner prior to the certification.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

Attachment B



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

December 9, 2011

Arthur Holmes, Jr.
Director

Mr. Richard Weaver, Planner/Coordinator
Area 3 Planning Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan #120110440
Germantown Park

Dear Mr. Weaver:

We have completed our review of the preliminary plan signed on June 30, 2011. This preliminary plan was reviewed by the Development Review Committee at its meeting on August 15, 2011. 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. Show all existing planimetric and topographic details (paving, storm drainage, driveways adjacent and opposite the site, sidewalks and/or bikeways, bus stops, utilities, etc.) as well as existing rights of way and easements on the preliminary plan. Aerial photos indicate the existence of sidewalks along Clopper Road (MD 117), Mateny Road, and Cinnamon Drive.
2. The sight distances study has been accepted. A copy of the accepted Sight Distances Evaluation certification form is enclosed for your information and reference.
3. Access and improvements along Clopper Road (MD 117) as required by the Maryland State Highway Administration. We recommend the proposed sidewalk along MD 117 be constructed in concrete, have a five (5) foot minimum width, and be set back from the roadway as far as practicable.
4. Private common driveways and private streets shall be determined through the subdivision process as part of the Planning Board's approval of a preliminary plan. The composition, typical section, horizontal alignment, profile, and drainage characteristics of private common driveways and private streets, beyond the public right-of-way, shall be approved by the Planning Board during their review of the preliminary plan. Also homeowners' documents should establish each driveway user's (property owner's) rights & responsibilities with respect to use, maintenance, & liability of the common driveway.

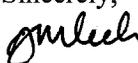
Division of Traffic Engineering and Operations

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

Mr. Richard Weaver
Preliminary Plan 1-20110440
September 14, 2011
Page 2

5. The southern entrance on Mateny Road should be shifted slightly to the north to align with the existing driveway on the opposite side of that road.
6. The owner will be required to submit a recorded covenant for the operation and maintenance of private streets, storm drain systems, and/or open space areas prior to MCDPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
7. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
8. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Dan Sanayi of our Traffic Engineering Design and Operations Section at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
9. If the proposed development will alter or impact any existing County maintained transportation system management component (i.e., traffic signals, signal poles, handboxes, surveillance cameras, etc.) or communication component (i.e., traffic signal interconnect, fiber optic lines, etc.), please contact Mr. Bruce Mangum of our Transportation Systems Engineering Team at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
10. Trees in the County rights of way – spacing and species to be in accordance with the applicable MCDOT standards. Tree planning within the public right of way must be coordinated with Brett Linkletter, Chief of the Division of Highway Services, Tree Maintenance Section at (240) 777-7651.
11. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:
 - A. Reconstruct the concrete sidewalks to five (5) foot wide and plant street trees along the Mateny Road and Cinnamon Drive site frontages.
 - B. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the MCDOT Division of Traffic Engineering and Operations.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me, at greg.leck@montgomerycountymd.gov or at (240) 777-2197.

Sincerely,


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

Mr. Richard Weaver
Preliminary Plan 1-20110440
September 14, 2011
Page 3

m:/subdivision/gml/docs/PP/120110440, Germantown Park, FINAL.doc

Enclosures (2)

cc: David Fink; Finmarc Management, LLC
Kevin A. Foster; Gutschick, Little & Weber, P.A.
Robert Harris/Cindy Barr; Lerch, Early & Brewer
Scott Newill; MSHA AMD
Cathy Conlon; M-NCPPC DARC
Sandra Pereira; M-NCPPC Area 3
Ki Kim, M-NCPPC Area 3
Preliminary Plan Folder
Preliminary Plans Note Book

cc-e: Henry Emery; DPS RWPR
Sam Farhadi; DPS RWPR

Attachment C



FIRE MARSHAL COMMENTS

DATE: 21-Dec-11
TO: Kevin Foster
Gutschick Little & Weber, PA
FROM: Marie LaBaw
RE: Germantown Park (Lot 685)
G-878 120110440

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **21-Dec-11**. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

**** Parking restrictions to submitted at time of site plan ****

Attachment D



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Carla Reid
Director

June 9, 2011

Mr. David Cha
Gutschick, Little & Weber P.A.
3909 National Drive, Suite 250
Burtonsville, MD 20866

Re: Stormwater Management **CONCEPT** Request
for Germantown Park
Preliminary Plan #: Not Assigned
SM File #: 233871
Tract Size/Zone: 8.46 acres/RT 12.5
Total Concept Area: 8.3 acres
Lots/Block: 686
Parcel(s): NA
Watershed: Great Seneca Creek

Dear Mr. Cha:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via environmentally sensitive design including a surface sand filter for CPV volume and 2 yr control of the adjacent existing commercial site.

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

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

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

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

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

If you have any questions regarding these actions, please feel free to contact William Campbell at 240-777-6345.

Sincerely,



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

RRB: tla

cc: C. Conlon
SM File # 233871

ESD Acres:	8.3
STRUCTURAL Acres:	1.1
WAIVED Acres:	0

