



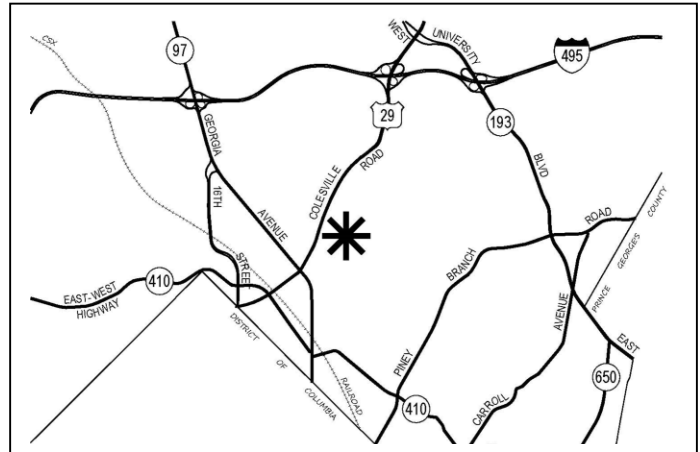
## Chelsea Court, Site Plan Amendment 82013004B

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- Robert Kronenberg, Chief, Area 1, [Robert.Kronenberg@montgomeryplanning.org](mailto:Robert.Kronenberg@montgomeryplanning.org), 301.495.2187

Staff Report Date: 7/8/16

### Description

- Limited site plan amendment for minor modifications to hardscape (addition of a pedestrian walkway) on a lot containing a one-family detached dwelling
- 0.85 acres net lot area
- RT-12.5 zone
- Located on the west side of Pershing Drive, 200 feet north of Cedar Street
- North and West Silver Spring Master Plan
- Application Accepted: 11/23/15
- Applicant: Sam Fleming
- Review Basis: Chapter 59, Montgomery County Code



### Summary

- **Staff Recommendation: Approval of the site plan amendment**
- This application is being reviewed under the RT-12.5 Zone development standards in effect on October 29, 2014, as permitted under Section 59.7.7.1.B.3 of the Zoning Ordinance.
- The site is subject to a restrictive covenant requiring a portion of the property adjacent to the environmental setting of the historic Riggs-Thompson House remain in open space. The restrictive covenant allows the addition of pedestrian walkways that have been approved on a site plan by the Planning Board, with advice from the Historic Preservation Commission.
- An initial version of this application was presented to the Planning Board on February 25, 2016. Issues raised at that hearing led to deferral of the decision and to a revised site design.

## **RECOMMENDATION AND CONDITIONS**

Staff recommends approval of Site Plan Amendment 82013004B for minor modifications to hardscape (addition of one pedestrian walkway and removal of one pedestrian walkway) on approximately 0.85 net acres in the RT-12.5 zone. All site development elements shown on the latest electronic version as of the date of this staff report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions.

1. The Applicant must replace any trees and other landscaping damaged by construction of the walkway or otherwise removed with trees and plants of the same size and species as those shown on the approved landscape plan, on a one-to-one basis. The full extent of the approved landscape must be restored on the Subject Property within the first growing season after completion of the walkway. Locations of plantings may be adjusted as needed, but all previously approved plantings as shown on the approved landscape plan must be planted on the Subject Property.
2. The Applicant must replace topsoil on all areas of soils disturbance. Topsoil must be uniformly distributed in a four to eight-inch layer and lightly compacted to a minimum thickness of four inches.
3. Prior to certification of the Site Plan, the Applicant must revise the landscape plan to show the location, details, and specifications of the necessary tree protection fence.
4. Prior to certification of the Site Plan, the Applicant must revise the Site Plan to show a limits of disturbance line on the plan. The limits of disturbance must encompass all grading, trenching, utility work, and other soil disturbance. The limits of disturbance line must be located so that there will be no new impacts to or removals of trees that would otherwise be subject to a variance.
5. Prior to certification of the Site Plan, the Applicant must revise the green area tabulations to ensure numerical consistency in all columns.
6. Prior to certification of the Site Plan, the Applicant must revise the Site Plan to show that the pedestrian walkway will have a maximum width of seven feet.

## **SITE DESCRIPTION**

The subject property, shown below and in Attachment A, is located on the block bounded by Ellsworth Drive, Springvale Road, Pershing Drive, and Cedar Street. The subject property consists of Lot 64 of the Chelsea Heights subdivision. That subdivision consists of 64 platted lots as well as four platted parcels for open space, a private street, and private alleys. The lot is 0.85 acres in size. The subject property is within the RT-12.5 zone.

The overall subdivision is being developed with 63 townhouses arranged on both sides of a private street. Private alleys between each pair of townhouse rows provide vehicular access to garages in the ground floor of each unit. Walkways, in landscaped courtyards, provide pedestrian access to each

unit's front door. The subject property (Lot 64) contains a stand-alone one-family dwelling – the historic Riggs-Thompson House, which is listed in the Master Plan for Historic Preservation.

Surrounding properties to the north, south, and east are developed with one-family detached dwellings in the R-60 zone. The properties to the south are a single row of one-family lots fronting on Cedar Street, primarily being used as commercial businesses. The Silver Spring Central Business District is located on the opposite side of Cedar Street, with a mix of residential, office, retail, and entertainment uses. A multi-family senior housing community is located across Pershing Drive to the east. Nearby properties to the west include the former Silver Spring library site and Ellsworth Urban Park in the R-60 zone, and a multi-family building in the C-O zone.

The property is located in the Sligo Creek watershed. No forests, wetlands, streams, or associated buffers occur on or near the property.



*Figure 1-Aerial Photograph. Subject Property Outlined in Yellow.*

## **PREVIOUS APPROVALS**

Preliminary Plan 120000130 was approved by the Planning Board on June 14, 2001, for creation of one lot and expansion of the then-existing private Chelsea School. A plat was recorded, creating the lot, but the school expansion did not occur. The lot encompassed the entire site.

Local Map Amendment G-892 was approved by the County Council on June 12, 2012, changing the site's zoning from R-60 to RT-12.5. Approval of the local map amendment included approval of a schematic development plan (SDP), which contains illustrative and binding elements.

Preliminary Plan 120130060 and Site Plan 820130040 were approved by the Planning Board on April 25, 2013, for subdivision of the property into 64 residential lots and four parcels and redevelopment of the site with 63 townhouses and retention of the historic Riggs-Thompson House as a private one-family dwelling.

Site Plan Amendment 82013004A was approved by the Planning Board on February 25, 2016, for minor changes in the overall subdivision's grading, landscaping, and hardscape.

## **AMENDMENT DESCRIPTION**

### Previous Proposal (February 25, 2016, Planning Board Hearing)

A previous version of this application was heard by the Planning Board on February 25, 2016. The applicant proposed to add a 930 square-foot detached two-story garage on Lot 64 of the Chelsea Court subdivision. Lot 64 contains the Riggs-Thompson House, which is listed in the Master Plan for Historic Preservation and now serves as a private residence.

In correspondence and in testimony at the hearing, members of the community raised concerns that construction of the then-proposed garage would violate a binding element of the previously approved schematic development plan. The binding element required recordation of a restrictive covenant to designate an area adjacent to the environmental setting for the Riggs-Thompson House as open space, with restrictions on the placement of buildings and other features. Further, the community members raised the concern that the garage could not be built because it was not explicitly shown as a proposed building on the schematic development plan.

At the hearing, the Planning Board deferred action on the application in order to allow the applicant an opportunity to file an application to amend the previously approved schematic development plan. The SDP amendment was a necessary prerequisite to approval of the site plan amendment, because the approved SDP did not show a garage on Lot 64, and because a binding element of the SDP limited improvements in an open space area that encompassed a portion of Lot 64, including the portion of the lot where the previously proposed garage would have been placed.

### Current Proposal

The site plan no longer proposes construction of a garage on Lot 64. Rather, the site plan proposes construction of a paved pedestrian walkway from the existing paved driveway to the side of the house. The walkway will be ramped down to provide access to a door into the basement of the house. A nearby, redundant, existing walkway will be removed.

An environmental setting has been established around the historic house. The proposed walkway is partly outside and partly inside of the environmental setting. A historic area work permit (HAWP) is required for construction of the portion of the walkway that is inside the environmental setting. The Historic Preservation Commission will consider issuance of the HAWP after the Planning Board hearing on the site plan amendment.

Under Site Plan 820130040, 50.93% of the gross tract area of the entire subdivision, or 116,471 square feet, was set aside as Green Area, as required for projects in the RT-12.5 zone. Lot 64 includes



27,670 square feet of the Green Area. The Green Area on Lot 64 encompasses the entirety of Lot 64 except the footprint of the existing house and driveway.

Construction of the proposed walkway and removal of the existing redundant walkway will result in a net increase of 384 square feet of pavement. Therefore, the application also includes a 384-square-foot reduction in Green Area, from 27,670 square feet to 27,286 square feet on Lot 64, and from 116,471 square feet to 116,087 square feet on the entire site. Expressed as a percentage of the entire gross tract area, the Green Area will be reduced from 50.93% to 50.76%, which meets the requirement of the Zoning Ordinance. As conditioned, the walkway will not exceed a width of seven feet, and the reduction in Green Area may be slightly smaller.

The Riggs-Thompson House lot contains many trees within the environmental setting that would be subject to a forest conservation variance if any new impacts were proposed beyond those previously approved by the forest conservation plan and variance. However, no variance is required because the construction activity will not impact any trees that are within the environmental setting. However, construction of the walkway could impact several trees that are located outside of the environmental setting. In order to protect these trees, staff recommends a condition of approval that would require the applicant to replace any trees damaged by construction of the walkway.

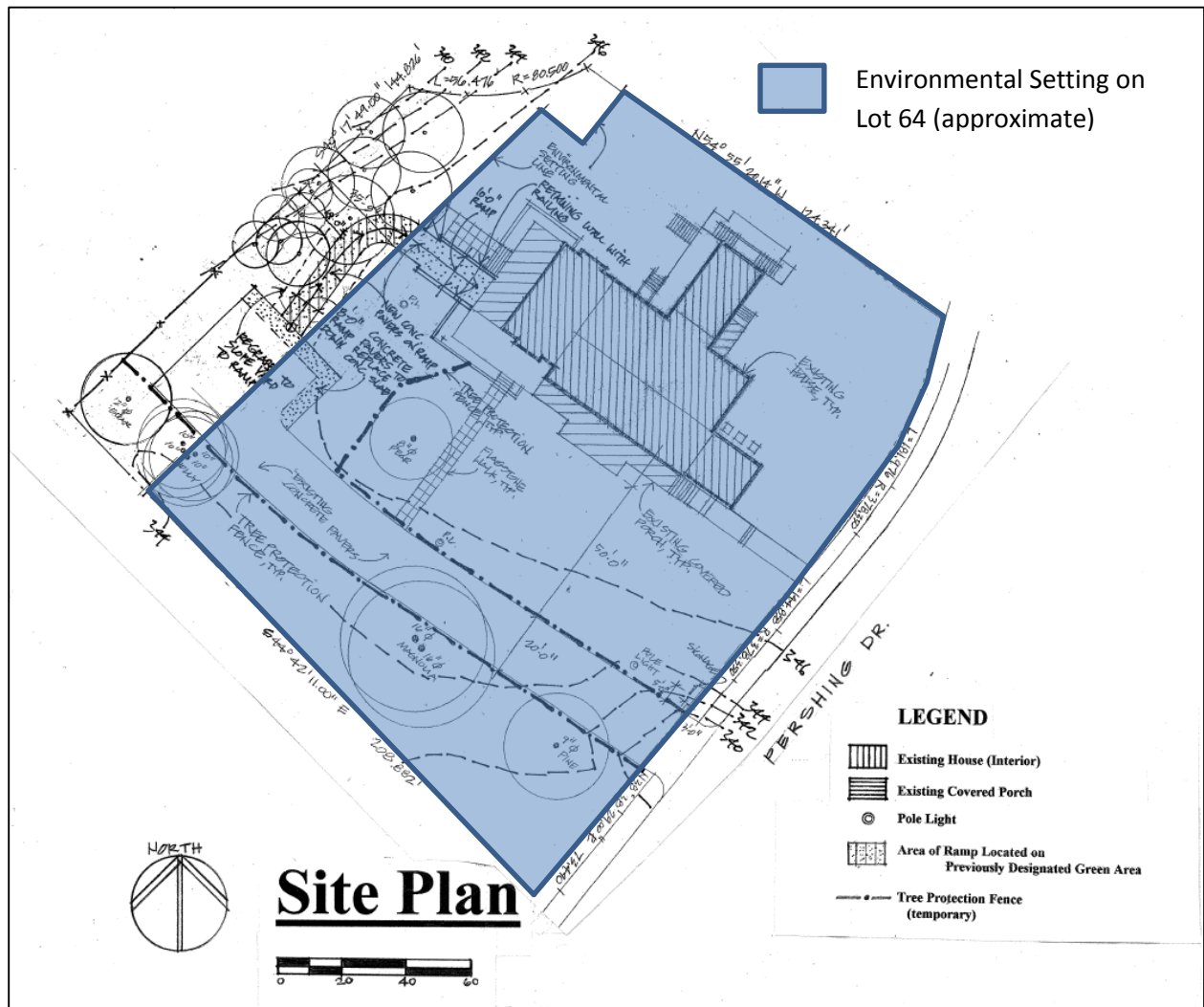


Figure 2-Site Plan Amendment

## ANALYSIS AND FINDINGS

Pursuant to Section 7.7.1.B.3 of the 2014 Zoning Ordinance, this application was reviewed under the standards and procedures of the Zoning Ordinance in effect on October 29, 2014. Section 59-D-3.7 (c) and (d) of that ordinance outline the procedures for amending an approved site plan which require the Planning Board to approve any proposed modifications. This amendment does not increase the approved residential density on the subject property and continues to conform to all other elements of the approved site plan.

In the June 18, 2013, resolution approving Site Plan 820130040 (Attachment C), the Planning Board found that the application conformed to all binding elements of approved Local Map Amendment G-892, including its associated schematic development plan, and the requirements of the RT-12.5 zone. The Planning Board found the location of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation to be adequate, safe, and efficient, and each structure and use to be compatible with other uses and other site plans, and with existing and proposed

development. The previous application met all applicable requirements of Chapter 22A regarding forest conservation and Chapter 19 regarding water resource protection. As conditioned, the proposed amendment does not affect the application's conformance with these findings and the Planning Board's prior findings remain valid and unchanged, except as modified below. The proposed development must comply with the conditions of approval for Site Plan 820130040, as enumerated in Planning Board Resolution No. 13-64 dated June 18, 2013.

As mentioned above, the application is subject to the binding elements of the previously approved Local Map Amendment G-892 (See Attachment D, County Council Resolution approving Local Map Amendment G-892). One of those binding elements, No. 13, states:

13. At the time of record plat, the Applicant will record a restrictive covenant for the open space area around the 37,056 square foot environmental setting for the Riggs Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable Applicant to complete all work approved by the Planning Board as part of the site plan approval. Following completion of those improvements, the covenant will require advice from the Historic Preservation Commission to the Planning Board for any site plan amendment to the area subject to the covenant.

The application is also subject to the conditions of approval of Preliminary Plan 120130060 (see Attachment E, resolution approving Preliminary Plan 120130060). Condition 16 of the approved preliminary plan states:

16. Prior to recordation of the plat, the Applicant must record a restrictive covenant for the open space area around the 37,056 square-foot environmental setting for the Riggs-Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable the Applicant to complete all work approved by the Planning Board as part of the site plan approval. Following completion of those improvements, the covenant will require advice from the Historic Preservation Commission to the Planning Board for any site plan amendment to the area subject to the covenant.

Pursuant to the binding element and Condition 16 of the preliminary plan, a restrictive covenant was recorded in the land records that sets forth restrictions on allowed uses and structures within the designated open space (Attachment F). Three of the provisions of the restrictive covenant state:

3. The open space area may include, but not be limited to, lawns, decorative planting, sidewalks and walkways, and active and passive recreation areas, including children's playgrounds, fountains, wooded areas, watercourses and driveways, parking areas and accessory structures as approved by the Montgomery County Planning Board, but shall not include other parking lots or vehicular surfaces or buildings, except as shown on an approved site plan.

4. As allowed by Binding Element 13 of the Development Plan approval, Developer may complete the improvements shown on Exhibit C or others approved by the Planning Board as part of the Site Plan process in the area subject to this Covenant.
5. Following completion of the improvements depicted on the Site Plan (Exhibit C) any amendment to the Site Plan that is sought for the area subject to this Covenant requires the advice by the Historic Preservation Commission to the Planning Board. This advice will be provided during the Site Plan amendment process, as applicable.

Binding Element 13 and Preliminary Plan condition 16 require that the area outside of the environmental setting on Lot 64 (and on an adjacent open space parcel) remain as open space controlled by a restrictive covenant. The binding element and the condition allow site plan amendments for additional improvements that are compatible with the open space, with Historic Preservation Commission advice. The restrictive covenant specifically allows placement of walkways in the open space area if they are shown on a site plan approved by the Planning Board. The restrictive covenant also allows amendment of the originally approved site plan, with advice from the Historic Preservation Commission.

The Historic Preservation Commission met on May 25, 2016, to discuss the application. In a memo dated June 22, 2016, the Historic Preservation Commission advised the Planning Board that the proposed scope of work is compatible with the historic Riggs-Thompson House, the scope of work supports the goal of preserving this *Master Plan for Historic Preservation*-designated historic site, and that the application is consistent with the purposes of the Historic Preservation Ordinance, Chapter 24A of the County Code (Attachment G).

In addition, the width of the walkway is recommended to be conditioned to not exceed a width of seven feet, in order to minimize environmental impact.

#### **COMMUNITY OUTREACH**

The applicant has met all proper signage, noticing, and submission meeting requirements. Notice of the subject amendment was sent to all parties of record. In all signage and noticing materials, the project description was modified to reflect the revised application. As of the date of this staff report, staff has not received any correspondence on the revised application.

#### **STAFF RECOMMENDATION**

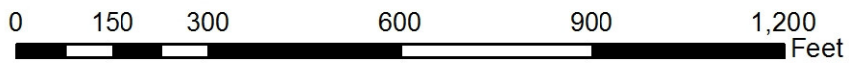
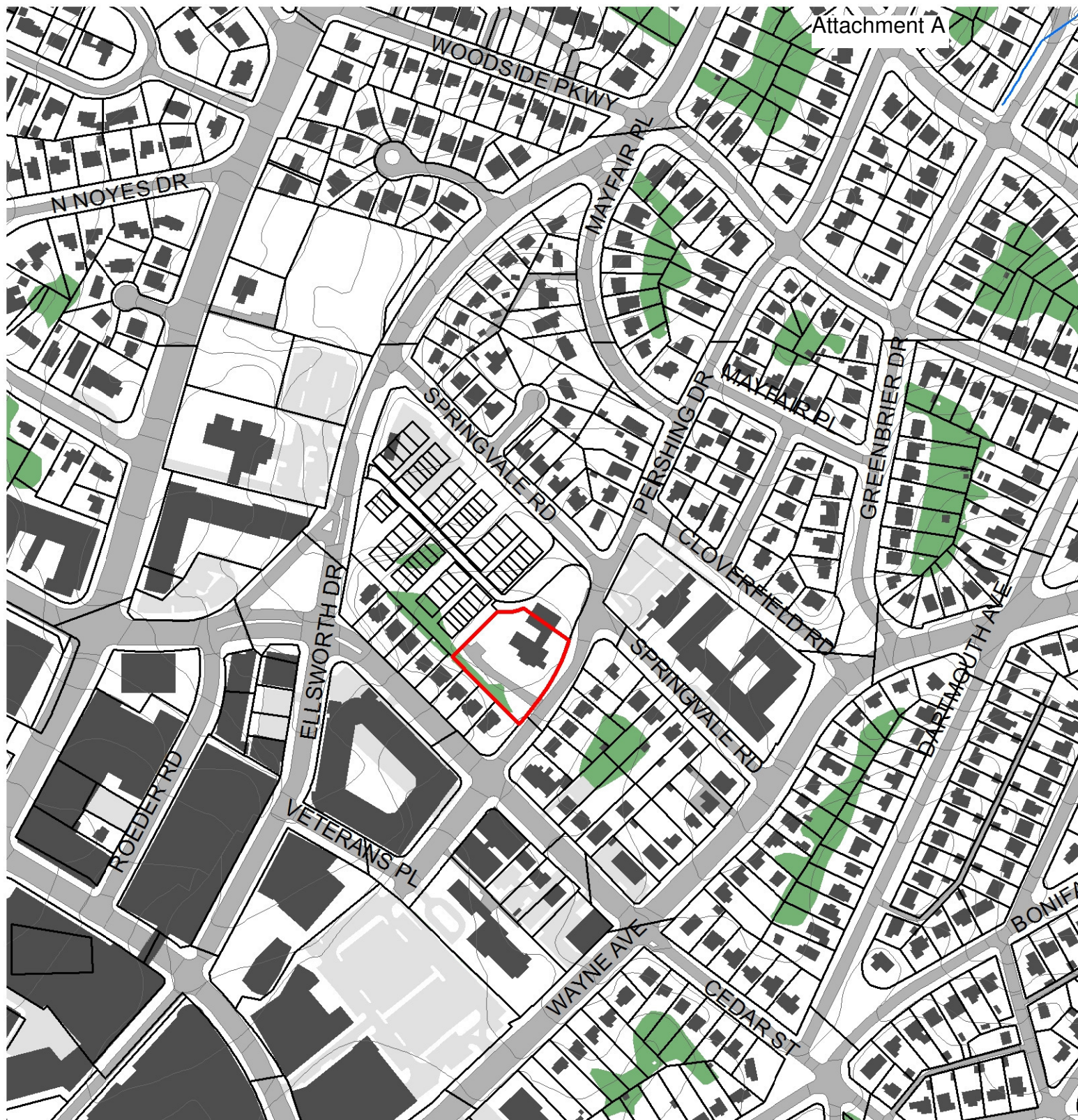
The site plan amendment meets all of the requirements established in the Zoning Ordinance. It is consistent with the binding elements of Local Map Amendment G-892 and the conditions of Preliminary Plan 120130060. Therefore, staff recommends approval of Site Plan Amendment 82013004A.

#### **ATTACHMENTS**

- A. Vicinity Map
- B. Proposed Site Plan Amendment

- C. Resolution Approving Site Plan 820130040
- D. Resolution Approving Local Map Amendment G-892
- E. Resolution Approving Preliminary Plan 120130060
- F. Restrictive Covenant
- G. Memo from the Historic Preservation Commission





1 inch = 300 feet



**GENERAL NOTES:**

1. Zoning: RT-12.5, with rear setback for accessory buildings not designated.
2. The site is located in the Chelsea Court's subdivision.
3. The project is served by public water and public sewer systems.
4. Public utility easements and rights of ways will be provided where needed on site to allow for water, sewer, gas, electric, telephone and cable services to the proposed building.

**Vicinity Map**

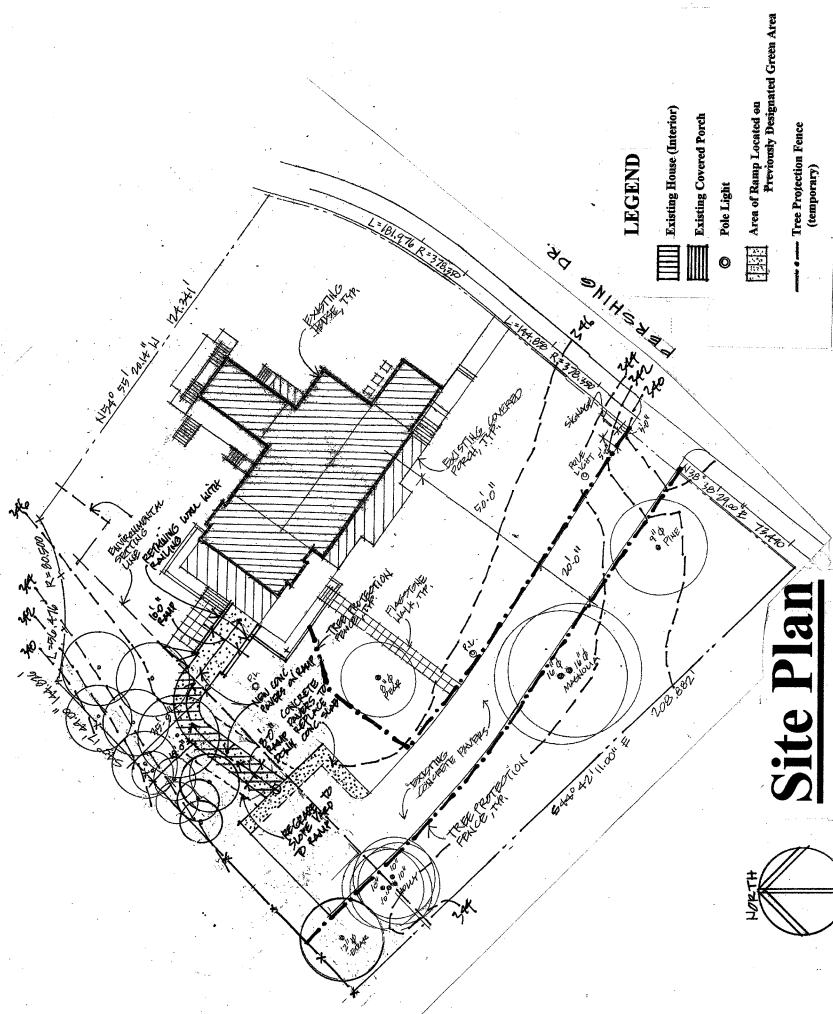


**Attachment B**

DEDCATION	GREEN AREA TABULATIONS		PERCENTAGE
	TOTAL AREA (Acres)	GREEN AREA (Acres)	
LOT 64	0.85	0.85	11.89%
PARCEL A	0.71	0.71	9.28%
PARCEL B	0.00	0.00	0%
PARCEL C	0.69	0.69	8.98%
PARCEL D	0.61	0.61	7.91%
LOTS 1 THRU 5	10.277	10.277	133.86%
<b>TOTAL</b>	<b>228.690</b>	<b>116.175</b>	<b>50.75%</b>

**Developer's Certificate**  
I hereby certify that the information on this Plan is true and correct to the best of my knowledge and belief, and that I am duly licensed as a Professional Engineer, Development Program, and Certified Site Plan.

Developer: Sam Fleming Construction  
Address: 816 Thayer Ave., Silver Spring, MD 20910  
Phone: (202) 872-1033  
Signature: \_\_\_\_\_



**Site Plan**

**Riggs-Thompson House/Chelsea Court**

Plan #: 820130048  
Subdivider: Chelsea Courts  
Lot #: 64  
Address: 715 Parkside Drive, Silver Spring, MD 20910  
Zoning: RT-12.5

**PROJECT DESCRIPTION:**  
Consistent new Rear Entry to the Basement in rear (northwest) of residence.  
**RESIDENTIAL CODE NOTES:**  
All construction shall be in conformance with the International Building Code (IBC), 2015 Edition, with Minn. Co. Amendments.

**AREA CALCULATIONS**

**EXISTING:**  
Total Lot Coverage: 13.29%  
Total Lot Area: 5896 s.f.

**PROPOSED:**  
Total Lot Coverage: 15.29%  
Total Lot Area: 5896 s.f.

**SITE PLAN AMENDMENT #820130048**

Vitrillo Architecture Studio, PC  
7016 Woodland Ave.  
Takoma Park, MD 20912  
(301)920-0137

Fleming Residence (Chelsea Court)  
Plan # 820130048  
715 Parkside Drive  
Silver Spring, MD 20910

6/21/16



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

**JUN 18 2013**

MCPB No. 13-64  
Site Plan No. 820130040  
Chelsea Court  
Date of Hearing: April 25, 2013

**RESOLUTION**

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on October 23, 2012, EYA/Chelsea Residential, LLC ("Applicant"), filed an application for approval of a site plan for 63 townhouses, including eight Moderately Priced Dwelling Units ("MPDUs"), and one one-family detached dwelling unit on 4.85 acres of RT-12.5 zoned-land, located at 711 Pershing Drive, south of Springvale Road ("Subject Property"), in the North and West Silver Spring Master Plan ("Master Plan") area; and

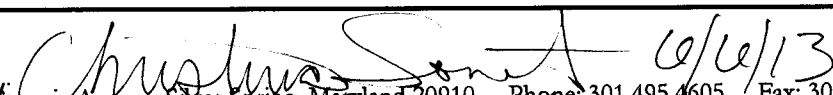
WHEREAS, Applicant's site plan application was designated Site Plan No. 820130040, Chelsea Court ("Site Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated April 12, 2013, setting forth its analysis of and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 25, 2013, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on April 25, 2013, the Planning Board voted to approve the Application subject to conditions, on the motion of Commissioner Anderson, seconded by Commissioner Presley, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

Approved as to  
Legal Sufficiency:

  
8/8/13

8/8/13, Georgia Avenue, Silver Spring, Maryland 20910 — Phone: 301.495.4605 Fax: 301.495.1320  
MNCPPC Legal Department  
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820130040 for 63 townhouses, including eight MPDUs, and one one-family detached dwelling unit on the Subject Property, subject to the following conditions:<sup>1</sup>

### **Conformance with Previous Approvals**

1. Development Plan Conformance

The Applicant must comply with the binding elements of the Development Plan G-892.

2. Preliminary Plan Conformance

The Applicant must comply with the conditions of approval for Preliminary Plan No. 120130060 as listed in the Planning Board Resolution, unless amended.

### **Historic Preservation**

3. Historic Preservation

Prior to issuance of the 54<sup>th</sup> building use and occupancy, the Applicant must fully reverse any modifications made to the historic Riggs-Thompson House as part of a temporary sales center use approved by the Historic Preservation Commission. This reversal will involve reinstalling the triple hung windows in the south chapel elevation, removing any temporary ADA access ramping, and repairing any related damage to the siding, decking or railing of the house. The Applicant must contact in writing Historic Preservation Commission staff to document the modifications. The Applicant must provide the Historic Preservation Commission documentation to MCDPS – Site Plan Enforcement.

### **Parks, Open Space, & Recreation**

4. Recreation Facilities

a. The Applicant must provide the following recreation facilities:

- i. Picnic/sitting area
- ii. Open play area
- iii. Pedestrian walkway system

b. 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.

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<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.



5. Maintenance of Publicly Accessible Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to, landscaping, walkways, lighting, and benches.

**Transportation & Circulation**

6. Transportation

- a. The development is limited to a maximum of 63 townhouse units and retention of the one existing one-family unit.
- b. The Applicant must install the signs shown on the "Dimension and Signage Plan" (Sheet C5.00) of the Site Plan. In addition, the Applicant must install a sign at the intersection of the private street and Ellsworth Drive that states "Private Street No Through Traffic" and a sign at the intersection of the private street and Springvale Road that states "Private Street No Through Traffic."

7. Pedestrian Circulation

The Applicant must provide five-foot-wide sidewalks and five-foot wide green panels along the Subject Property frontages on Ellsworth Drive, Springvale Road, and Pershing Drive, as shown on the Certified Site Plan. The five-foot-wide green panel may be omitted on the Ellsworth Drive frontage between the proposed crosswalk across Ellsworth Drive and the southern limit of the Subject Property frontage.

**Density & Housing**

8. Moderately Priced Dwelling Units (MPDUs)

- a. The development must provide 12.5% MPDUs on-site in accordance with the letter from the Department of Housing and Community Affairs dated January 4, 2013.
- b. The MPDU agreement to build must be executed prior to the release of any building permits.
- c. All of the required MPDUs must be provided on-site.
- d. The Planning Board has accepted the recommendations of the Montgomery County Department of Housing and Community Affairs ("MCDHCA") in its letter dated January 4, 2013, and does hereby incorporate them as conditions of the Site Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDHCA provided that the amendments do not conflict with other conditions of the Site Plan approval.



## **Site Plan**

### **9. Site Design**

- a. The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Sheet A.1, A.2, A.1a, A.1b, and A.1c of the submitted architectural drawings, as determined by Staff.
- b. All units with sides facing Springvale Road must have fenestrations as typically found on the front facades, including window treatments, color and fascia materials. Prior to the release of any building permits for the Springvale-Road-facing units, the Applicant must provide architectural drawings and elevations to Staff, indicating compliance with the façade treatments.

### **10. Private 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.
- c. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on any perimeter fixtures abutting the adjacent residential properties.
- d. Illumination levels shall not exceed 0.5 footcandles (fc) at any property line abutting county roads and residential properties.
- e. The height of the light poles must not exceed the height specified on the Certified Site Plan.

### **11. Surety**

Prior to issuance of the first building permit within each relevant phase of development, the 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. The 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, site furniture, the street and alleys, sidewalks, and entrance piers within the relevant phase of development.
- c. Prior to issuance of the first building permit, 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. The 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.

#### 12. 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. Street lamps and sidewalks must be installed within six months after street construction is completed. Street tree planting may wait until the next growing season.
- b. On-site amenities including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of the 54<sup>th</sup> building permit.
- c. 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.
- d. The development program must provide phasing for installation of on-site landscaping and lighting.
- e. Community-wide pedestrian pathways and recreation facilities, including benches, landscaping, and hardscape, must be completed prior to issuance of the 54<sup>th</sup> building permit.
- f. Landscaping associated with each building must be completed as construction of each building is completed.
- g. The development program must provide phasing of stormwater management and sediment and erosion control.

#### 13. Certified Site Plan

Prior to approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Include the final forest conservation approval, stormwater management concept approval, development program, inspection schedule, and Site Plan Resolution on the approval or cover sheet.
- b. Add a note to the Site Plan stating that "M-NCPPC Staff must inspect all tree-save areas and protection devices prior to clearing and grading".
- c. Modify data table to reflect development standards enumerated in the Staff Report as needed.
- d. Ensure consistency of all details and layout between Site Plan and landscape plan.
- e. Revise the Site Plan drawing to show the provision of a sidewalk along Ellsworth Drive from the point where the Site Plan shows a proposed

crosswalk across Ellsworth Drive to the southern limit of the Subject Property frontage on Ellsworth Drive, pursuant to condition 7 above.

- f. Revise sheet C5.00 of the Site Plan to include a sign at the intersection of the private street and Ellsworth Drive that states "Private Street No Through Traffic" and a sign at the intersection of the private street and Springvale Road that states "Private Street No Through Traffic."

BE IT FURTHER RESOLVED, that all site development elements as shown on Chelsea Court Site Plan drawings stamped by the M-NCPPC on February 13, 2013, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that, having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

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

The Application complies with all applicable binding elements of County Council Resolution No. 17-471 approving Local Map Amendment G-892, which rezoned the Subject Property from the R-60 zone to the RT-12.5 zone. The following binding elements were applied to the schematic development plan:

1. The maximum number of units will be 64 (63 townhomes and 1 single family detached).

The Site Plan proposes 63 townhouses and one one-family detached dwelling.

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.

The accompanying preliminary plan shows a public access easement over the public green space as required, and a condition of approval of the preliminary plan requires the easement to be granted and shown on the plat.

3. The project will provide green area of at least 50% of the net 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.

The Site Plan shows a green area that comprises 117,414 square feet, which is 51.3% of the gross tract area and 55.6% of the net lot area. The townhouses are located in such a way that provides green areas along Pershing Drive and Ellsworth Drive and a linear green area along Springvale Road.

4. The Applicant, its successors or assigns, will preserve the Riggs-Thompson House.

The Riggs-Thompson House will be retained and converted to a private one-family dwelling.

5. 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.

No aspect of the Site Plan will prevent compliance with the existing traffic restrictions on Springvale Road, Ellsworth Drive, and Pershing Drive. Compliance by the future residents of the project is subject to police enforcement.

6. The maximum building height will be 35 feet.

The townhouses will be 35 feet in height maximum.

7. The project will provide a minimum of two parking spaces per unit plus additional spaces for guest parking.

The Site Plan shows two parking spaces per dwelling and 18 on-street parking spaces. 140 parking spaces are provided in total.

8. The historic setting for the Riggs-Thompson House will remain at a minimum of 37,056 square feet.

The Site Plan shows a historic environmental setting of 37,057 square feet.

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.

The setback along Springvale Road is 25 feet, and a double row of trees is provided.

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 (2) ingress/egress points, signage prohibiting cut through traffic, and other control measures to be finalized at the time of Site Plan approval.

The signs prohibiting through traffic between Ellsworth Drive and Springvale Road will comply with this binding element. In addition, the private street will be 20 feet wide, on street parking is provided, and special paving is provided at the ingress/egress points.

11. The townhouse units confronting Springvale Road will be designed to have their fronts facing Springvale Road.

The townhouses fronting on Springvale Road have been architecturally designed for front-facing units along Springvale Road.

12. The internal private Road shall include signage and channelization measures to prohibit left turning movements from the private street onto Springvale Road, subject to approval by MCDOT, as part of the Site Plan approval process.

The private street is designed with channelization that prevents left turns onto Springvale Road, and a right-turn-only sign is provided for traffic approaching Springvale Road on the private street.

13. At the time of record plat, the Applicant will record a restrictive covenant for the open space area around the 37,056 square foot environmental setting for the Riggs Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable Applicant to complete all work approved by the Planning Board as part of the Site Plan approval. Following completion of those improvements, the covenant will require advice from the Historic Preservation Commission to the Planning Board for any Site Plan amendment to the area subject to the covenant.



The preliminary plan approval includes a condition that requires the Applicant to record a restrictive covenant for the open area around the environmental setting for the Riggs-Thompson House.

14. The homeowners association documents for the project will provide authorization for police enforcement of all traffic restrictions and related signage regarding entry to and exits from the site and, upon Site Plan approval, Applicant will request an Executive Order (formal traffic order) for County police enforcement of entry and exit restrictions.

Compliance with this binding element will take place after approval of the Site Plan.

15. At the time of Site Plan, the Applicant will propose for Planning Board approval, a double row of trees along Springvale Road and landscaping combined with decorative walls at the ends of the alleys facing Springvale Road to screen the view down those alleys.

A double row of trees is provided along Springvale Road and decorative walls are provided at the ends of the alleys facing Springvale Road.

2. *The Site Plan meets all of the requirements of the zone in which it is located.*

The use is allowed in the RT-12.5 zone. At its hearing on May 19, 2011, the Planning Board made the determination with respect to the original proposal for LMA G-892 that the proposal fulfilled the purposes of the RT zone. The Planning Board determined that the townhouse community is compatible with adjacent development in the surrounding area. Both townhomes and detached homes are by nature one-family residential dwellings, which in itself lends to a presumption of de facto compatibility. Furthermore, given the characteristics of the specific proposal, which provides parkland buffers on three sides, increased setbacks to the north, compatible building heights, and an architectural design that is complementary to the detached homes along Springvale Road, any intrusiveness that could threaten the integrity of adjacent uses is minimized.

In County Council Resolution 17-286, dated October 18, 2011, the County Council remanded Local Map Amendment G-892 in order to address issues related to density, site layout, and the environmental setting for the Riggs-Thompson House. But, despite the remand, the County Council found that the development fulfills the purposes of the RT zone. The County Council found that:

The evidence in this case supports the Applicant's contention that an R-T Zone is appropriate at this location, although not at the density proposed [at that time, which was RT-15]. The Applicant's land planner testified that the development of the townhomes confirmed the residential use of the area, and eliminated some of the commercial-type aspects of the institutional use, such as truck traffic and school bus parking. Because the R-T Zone permits more flexibility in design than the underlying R-60 Zoning, the R-T Zone allowed the developer to provide more public access space and green space, and improvements to the existing streets, including sidewalks and landscaping, thus enhancing access to the amenities in the Central Business District. These amenities include access to civic, neighborhood-serving retail uses, and transit.

The finding made by the County Council remains valid. Therefore, the Planning Board finds that the Site Plan fulfills the purposes of the RT zone.

**Requirements of the RT-12.5 Zone**

Based on the following data table, which sets forth the development standards approved by the Planning Board and binding on the Applicant, and based on other evidence and testimony of record, the Application meets all of the applicable requirements of the RT-12.5 Zone.

**Data Table**

<b>Development Standard</b>	<b>Permitted/Required</b>	<b>Approved &amp; Binding on Applicant</b>
<b>Maximum Building Height (feet)</b>	35	35
<b>Maximum Number of Units</b>	80 <sup>1,2</sup>	64
<b>Minimum Building Setbacks (feet)</b>		
From Any Land in a One-Family Zone	30	30
Right-of-Way	25	25
Rear – From an Adjoining Lot	20	20
Side – From an Adjoining Lot (end unit)	10	10
<b>Minimum Green Area (% of gross tract area)</b>	50%	51%

<b>Maximum Building Coverage (% of lot)</b>	35%	30%
<b>Minimum Parking Spaces</b>	128	140

<sup>1</sup> Including a 22% density bonus for providing 15% MPDUs.

<sup>2</sup> Limited to 64 dwelling units by a binding element of the schematic development plan.

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

The townhouses are located in rows that run perpendicular to Springvale Road, in order to present the narrow end to the existing one-family dwellings across the street. The end units will have their entrances on the side facing the street, giving the appearance of one-family detached dwellings facing the street. These locations provide easy access to the buildings via the private street and the pedestrian network, consisting of sidewalks on the private street and walkways in the mews and open space areas. The locations of the buildings are adequate and efficient, while meeting the aesthetic concerns of the area, and do not pose any safety concerns on the site.

Open space areas are provided along the development's edge at Springvale Road, along Ellsworth Drive, and at the intersection of Springvale Road and Pershing Drive. These open space areas will be available for recreation for the residents of the development and the surrounding neighborhood. Street trees and lighting are provided to enhance the pedestrian environment. Interior lighting will create enough visibility to provide safety but not so much as to cause glare on the adjacent roads or properties.

Recreation facilities are required for this Site Plan and are provided as shown in the following table.

RECREATION CALCULATIONS							
CHELSEA COURT							
DEMAND POINTS							
TYPE	CODE	UNITS	TOTS	CHILDREN	TEENS	ADULTS	SENIORS
SINGLE FAMILY	SFDI	1	0.10	0.20	0.22	0.85	0.08
TOWNHOUSE	TH	63	10.58	13.61	5.04	81.14	4.54
<b>TOTAL</b>		<b>64</b>	<b>10.68</b>	<b>13.81</b>	<b>5.26</b>	<b>81.99</b>	<b>4.62</b>
SUPPLY POINTS							
TYPE	CODE	#	TOTS	CHILDREN	TEENS	ADULTS	SENIORS
ON-SITE							
PICNIC/SITTING AREA	4	5	5.00	5.00	7.50	25.00	10.00
OPEN PLAY AREA II	5B	1	3.00	4.00	4.00	10.00	1.00
PEDESTRIAN SYSTEM	21	1	1.07	2.76	1.05	36.90	2.08
<b>ON-SITE TOTAL</b>			<b>9.07</b>	<b>11.76</b>	<b>12.55</b>	<b>71.90</b>	<b>13.08</b>
<b>TOTAL PERCENTAGE</b>			<b>85%</b>	<b>85%</b>	<b>239%</b>	<b>88%</b>	<b>283%</b>
OFF-SITE (ELLSWORTH PARK)							
MULTI-AGE PLAYGROUND	3		9	11	3	7	1
<b>OFF-SITE TOTAL</b>			<b>9</b>	<b>11</b>	<b>3</b>	<b>7</b>	<b>1</b>
<b>TOTAL</b>			<b>18.07</b>	<b>22.76</b>	<b>15.55</b>	<b>78.90</b>	<b>14.08</b>
<b>TOTAL PERCENTAGE</b>			<b>169%</b>	<b>165%</b>	<b>296%</b>	<b>96%</b>	<b>305%</b>
<b>ADEQUATE RECREATION FACILITIES</b>							

The open spaces, landscaping, and site details adequately and efficiently address the needs of the use and the recommendations of the Master Plan, while providing a safe and comfortable environment.

Pedestrian access from adjacent sidewalks adequately and efficiently integrates this site into the surrounding area. Safety is enhanced by the provision of new sidewalks on Ellsworth Drive and Springvale Road, where none exist now. The vehicular circulation design efficiently directs traffic into and through the site with minimal impacts to pedestrian circulation. The traffic restriction signs that prohibit through traffic on the new private street ensure that the development will not create traffic impacts in the surrounding neighborhood from increased through traffic. This balance of design with the site, the recommendations of the Master Plan, and the needs of the use is an efficient and adequate means to provide a safe atmosphere for pedestrians, cyclists, and vehicles.

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

As the Planning Board determined at its public hearing of May 19, 2011, for the original LMA G-892 application, the townhouse community is compatible with adjacent development in the surrounding area. Both townhomes and detached homes are by nature one-family residential dwellings, which in itself lends to a presumption of de facto compatibility. Furthermore, given the characteristics of the specific proposal, which provides parkland buffers on three sides, increased setbacks to the north, comparable building heights, and an architectural design that is complementary to the detached homes along Springvale Road, any intrusiveness that could threaten the integrity of adjacent uses is minimized.

The approved schematic development plan includes several binding elements that ensure compatibility between the townhouses and the adjacent residential community. Those binding elements are discussed in detail above. As noted in that discussion, the development is in compliance with those binding elements.

The townhouse buildings themselves are arranged so that the narrow ends face the one-family detached dwellings on the opposite side of Springvale Road, in scale with those nearby buildings and are located such that they will not adversely impact existing or proposed adjacent uses. The heights of the townhouses will be compatible with the heights of confronting one-family dwellings. The environmental setting for the Riggs-Thompson House protects the historic resource and green area around the house.

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 Application complies with the applicable requirements of the Forest Conservation Law as approved with Preliminary Plan No. 120130060.

The MCDPS Stormwater Management Section approved the stormwater management concept on October 24, 2012. According to the approval letter, the stormwater management concept meets stormwater management requirements using environmental site design to the maximum extent practicable. The full volume of environmental site design is provided using permeable pavement, micro-bioretenion, planter boxes, bio-swales, and dry wells.

Under Section 24A-6 of the County Code, the Historic Preservation Commission must approve a Historic Area Work Permit for any exterior alterations to the buildings or the environmental setting. The Historic



Preservation Commission has approved the Applicant's Historic Area Work Permit to demolish nonhistoric buildings, rehabilitate the Riggs-Thompson House, and make hardscape and greenscape alterations within historic site's environmental setting. The approved Historic Area Work Permit is consistent with the Site Plan.

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

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

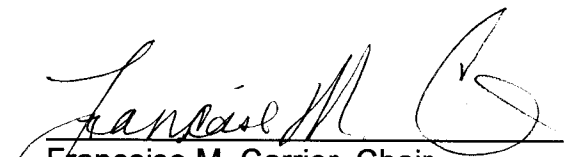
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUN 13 2013 (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor, and Commissioner Presley absent, at its regular meeting held on Thursday, June 13, 2013, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board

Resolution No.: 17-471  
Introduced: June 12, 2012  
Adopted: June 12, 2012

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

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By: District Council

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**SUBJECT:** APPLICATION NO. G-892 FOR AMENDMENT TO THE ZONING  
ORDINANCE MAP (REMAND), Robert R. Harris, Esquire and Cindy Bar,  
Esquire, Attorneys for Applicant, Chelsea Residential Associates, LLC,  
OPINION AND RESOLUTION ON APPLICATION  
Tax Account No. 13-03381404

**OPINION**

Local Map Amendment (LMA) Application No. G-892, originally filed on January 4, 2011, initially requested reclassification of 5.25 acres of land located at 630 Ellsworth Drive, Silver Spring, Maryland, from the existing R-60 Zone to the RT-15 Zone and, after remand, now requests rezoning from the R-60 Zone to the R-T 12.5 Zone. The property described as Lot 58, Evanswood Section 1, is situated on the south side of Springvale Road between Ellsworth Drive and Pershing Drive. The land is owned by the Chelsea School (Tax Account Number 13-03381404), a private educational institution which desires to relocate its facilities and has entered into a contract of sale with the Applicant. Exhibit 45, p. 3; 5/26/11 T. 71. The Applicant applied under the optional method of development, which requires the applicant to submit a Schematic Development Plan (SDP) containing illustrative as well as binding elements restricting the development of the property.

By Resolution 17-286, adopted on October 18, 2012, the District Council remanded the original application, finding that while the R-T Zone was appropriate for the property, the Applicant had failed to meet its burden of proof that the RT-15 application complied with the Master Plan or was compatible with the surrounding neighborhood. Specifically, the Council concluded that:

Zoning Application No. G-892, requesting reclassification of 5.25 acres of land, described as Lot 58, Evanswood Section 1, and located at 630 Ellsworth Drive, Silver Spring, Maryland, from the existing R-60 Zone to the RT-15 Zone, is hereby remanded to the Hearing Examiner for revision of the Schematic Development Plan (SDP) 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. The SDP should be reconfigured to propose 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.

Resolution 17-286, p. 15.

Pursuant to the Council's action, the Hearing Examiner issued a Remand Order dated November 8, 2012 (Exhibit 274), limiting the issues on remand to the following:

1. The 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 Hearing Examiner also excluded from consideration on remand whether (1) the application fulfills the purposes of the R-T Zone, and (2) whether public facilities are available to serve the development (including Local Area Transportation Review and Policy Area Mobility Reviews). Exhibit 274.

On November 21, 2012, the Applicant submitted a revised SDP and amended its application to request rezoning from the R-60 to the R-T 12.5 Zone. Exhibit 276. A public hearings on the remanded (i.e., RT 12.5) rezoning request was convened on March 23, 2012, March 26, 2012, and March 30, 2012, at which time the Applicant presented testimony from five witnesses, including the Applicant's expert witnesses, in support of the application. Twelve individuals testified in opposition to the application. Some of these individuals appeared on

behalf of civic and community organizations, including the Seven Oaks-Evanswood Community Association (SOECA), and Montgomery Preservation Inc.<sup>1</sup>

The Hearing Examiner's Report and Recommendation on the revised RT-12.5 application was filed on May 16, 2012, and is incorporated herein by reference. The Hearing Examiner found that (1) the density and massing of the development would be compatible with the surrounding land uses; (2) the Applicant adequately demonstrated the alignment of the internal private road would operate compatibly with the neighborhood and in a manner consistent with the Master Plan, (3) the density and massing proposed was consistent with the Master Plan; and (4) the environmental setting shown on the revised SDP was also consistent with the Master Plan.

After a careful review of the entire record, the District Council finds that the application be approved for the reasons stated in the Hearing Examiner's Report and Recommendation.

### **The Property, Surrounding Area and Zoning History**

The property, surrounding area and zoning history were all described in detail both in the Hearing Examiner's Report and Recommendation in the pre-remand case and in District Council's Opinion in Resolution 17-286. The subject property is located immediately north of the boundary of the Silver Spring Central Business District, separated by a row of single-family detached homes, designated for non-resident professional office special exceptions by the 2000 North and West Silver Spring Master Plan.

Key characteristics of the property relevant to the remand include (1) a 6% grade which rises from the western boundary along Ellsworth Drive to the eastern boundary fronting Pershing Drive (a increase of approximately 40 feet) (Exhibit 45, p. 3, (2) existing mature trees on the property, clustered primarily in the southwestern corner, but also located along Springvale Road (Exhibit 151), and (3) adjoining the southern property line are a row of single-family detached homes which are recommended to be special exceptions for non-resident professional offices in the master plan, but some of which are still owner-occupied Exhibit 45, p. 3.. The rear yards of the homes along the north side of Cedar Street are adjacent to the southern boundary line of the subject property. Exhibit 45. Ellsworth Park is located immediately to the west of the property and is split-zoned R-60 and RT 12.5.

The "surrounding area" was determined in the first (i.e., RT-15) application, and is bounded by Fenton Street to the south, Wayne Avenue to the east, Dale Drive to the north, and Colesville Road to the west. Resolution 17-286, p. 4. Both the Council and the Hearing Examiner concluded in the original application that the surrounding area is characterized by wide variety of multi-family residential, civic, commercial, and low-density residential uses which

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<sup>1</sup> In addition to those organizations represented at the public hearing, six community associations submitted letters into the record opposing the application, including the Woodside Park Civic Association, Park Hills Civic Association, the Lyttonsville Community Civic Association, the East Silver Spring Citizens Association (ESSCA), and the Woodside Station Homeowners Association. Exhibits 283, 284, 294, 329, 330. Seven letters were received in support of the Application. Exhibits 289, 290, 312, 317, 331, 332, 333.

transition gradually from Fenton Street to Cedar Street, with an abrupt transition at Cedar Street to smaller single-family detached homes in the R-60 Zone. These smaller single-family detached homes characterize the neighborhood north to Dale Drive. Resolution 17-286.

### **Proposed Development and Binding Elements**

On remand, the Applicant still proposes to remove the existing school buildings and certain non-contributing additions to the Riggs-Thompson House and renovate it as a single-family dwelling, but now proposes to construct 63 townhouses, resulting in an overall density of 12.19 dwelling units per acre. Of these units, 8 (or 12.5%) will be Moderately Price Dwelling Units (MPDUs). The changes to the SDP to address the Council's directive on remand are summarized below:

1. The total number of units has been reduced from 77 to 64 dwelling units; the prior SDP showed 10 MPDUs, this SDP shows 8 MPDUs. The total density per acre is approximately 12.19 units/acre, a 17% reduction in the density from the original SDP. 3/23/12 T. 56.
2. The strings of town house units have been reduced from rows of 8 and 6 units to 7 and 5 units in this SDP. The strings north of the private street were 132 feet long in the prior application; they now total 120 feet in length.
3. The courtyards (or landscaped areas) between the townhouse strings have been widened from 36 feet (in SDP prior to remand) to 40 feet.
4. One townhouse row has been removed from the southeast corner of the original SDP. There are now five rather than six rows of townhouses south of the private street, increasing the setback from the Riggs Thompson House from 28 feet (before remand) to 92 feet.
5. The current SDP shows 54% open space and they are binding themselves to 50%, compared to the 47 or 48% green space in the prior plan.
6. The private road intersects with Springvale (as opposed to Pershing Drive as shown in the initial SDP) and avoids the environmental setting. 3/23/12 T. 59.

Pursuant to Code § 59-H-2.52, the Applicant in this case has chosen to follow the "optional method" of application. The optional method requires submission of a schematic development plan (SDP) that specifies which elements of the plan are illustrative and which are binding, *i.e.*, elements to which the Applicant consents to be legally bound. Those elements designated by the Applicant as binding on the SDP must be set forth in a Declaration of Covenants to be filed in the county land records if the rezoning is approved. The Applicant's final SDP (Exhibit 346(a)) sets forth the 10 binding elements for the development as follows:

**BINDING ELEMENTS**

1. The maximum number of units will be 64 (63 townhomes and 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 net tract area. The townhomes 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 or assigns, will preserve the Riggs-Thompson House.
5. 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.
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 a minimum of 37,056 square feet.
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 (2) ingress/egress points, signage prohibiting cut through traffic, and other control measures to be finalized at the time of site plan approval.
11. The townhouse units confronting Springvale Road will be designed to have their fronts facing Springvale Road.
12. The internal private Road shall include signage and channelization measures to prohibit left turning movements from the private street onto Springvale Road, subject to approval by MCDOT, as part of the site plan approval process.

13. At the time of record plat, the Applicant will record a restrictive covenant for the open space area around the 37,056 square foot environmental setting for the Riggs Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable Applicant to complete all work approved by the Planning Board as part of the site plan approval. Following completion of those improvements, the covenant will require advice from the Historic Preservation Commission to the Planning Board for any site plan amendment to the area subject to the covenant.
14. The homeowners association documents for the project will provide authorization for police enforcement of all traffic restrictions and related signage regarding entry to and exist from the site and, upon site plan approval, Applicant will request an Executive Order (formal traffic order) for County police enforcement of entry and exit restrictions.
15. At the time of site plan, the Applicant will propose for Planning Board approval, a double row of trees along Springvale Road and landscaping combined with decorative walls at the ends of the alleys facing Springvale Road to screen the view down those alleys.

Applicant has also filed an executed copy of the Declaration of Covenants in the record of this case as Exhibit 345(e), and it contains the binding elements listed above, as required. The legal effect of the covenants is to obligate any future owner of the property to comply with the binding elements specified on the SDP.

The graphic portion (*i.e.*, site layout) of the revised SDP (Exhibit 346(a)) is illustrative (except as specified in the binding elements). The plan shows 63 townhouses in strings of 5-7 units each (with the exception of a three-unit string along Ellsworth Drive), aligned perpendicular to Springvale Road, as well as preservation of the Riggs-Thompson House as a single-family detached dwelling.

Binding Element Nos. 2, 3, 9, and 15 relate to the green area on the site. Binding Element No. 3 binds the Applicant to provide 50% green space on the property, a portion of which (set forth in Element No. 2) will be permanently devoted to public access space. Binding Element No. 13 requires the Applicant to record a restrictive covenant on the green space surrounding the environmental setting of the Riggs-Thompson House mandating that improvements to the green space will be done as an amendment to the Applicant's site plan with advice from the Historic Preservation Commission. Binding Element Nos. 10, 12 and 14 impose requirements relating to the private road, which include signage limiting access to residents, design improvements to discourage cut-through traffic, and homeowners' association authorization for County enforcement of the private traffic restrictions. Exhibit 346(a).

## 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). The Council must also find that the rezoning will be in the public interest as part of the coordinated and systematic development of the regional district, 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 RT Zone may be applied if a proposal meets any one of three alternative criteria: (1) it is in an area designated for RT 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. Pursuant to Resolution No. 17-286, the District Council found in the original application that RT zoning is appropriate for the subject property, for the reasons set forth therein. These will not, therefore, be repeated here.

Technical Staff, the Planning Board and the Hearing Examiner all found that the Applicant’s proposal complies with all of the development standards and special regulations of the RT-12.5 Zone. Exhibits 282, 304. In the original (i.e., RT-15) application, the Applicant had requested a waiver of minimum 30-foot setback along the southern property line. 5/26/11 T. 244-246. The application on remand meets this setback, and therefore, no waiver is requested or necessary. 3/23/12 T. 119.

Those opposing the application on remand objected to the density of the development proposed on remand partially because it would remove many of the existing mature trees on the site which currently screen the neighborhood from views of the Central Business District and other uses, such as Colesville Towers, within the surrounding area. 3/26/12 T. 277-283, 298-301. Technical Staff reported that the Applicant could meet the requirements of the forest conservation law at the R-T 15 density, although a variance would have been required because of the size of some of the trees on the property and because of their association with the historic site. Exhibit 282, p. 14. The Applicant did not submit a revised Preliminary Forest Conservation Plan for the R-T 12.5 SDP. Technical Staff advises, however, that, “[n]ow 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.” With regard to the variance, Staff stated, “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.” Exhibit 282, p. 14. Based on this evidence, the Hearing Examiner agreed that the proposed development is able to comply with the forest conservation law, subject to further review later in the development process.



Section 59-C-1.722 also requires townhouse rows to be staggered so that a maximum of only three townhouses in the same row should have the same frontage. Technical Staff advised that this requirement may be addressed at the time of site plan. Exhibit 282, p. 8. The Applicant testified that this requirement can be met through the use of architectural elements such as recessed entrances and porches. 3/23/12 T. 63. Based on this evidence, the District Council concludes that the Applicant has sufficiently proven that this standard may be met, as did the Hearing Examiner.

### **Compatibility**

An application for a floating zone reclassification must be evaluated for compatibility with land uses in the surrounding area. Regarding the original application, the District Council found that, “[t]he SDP should be reconfigured to propose 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.” Exhibit 267, p. 15. The Council agreed with the Hearing Examiner that a straight line application of the “tent effect” adopted in the Silver Spring Central Business District Sector Plan was not appropriate at this location because of the abrupt change in the neighborhood at Cedar Street from more intense residential, commercial and civic uses in the Central Business District to single-family residential homes in the R-60 Zone. Resolution 17-286, p. 10. The limited issues relating to compatibility within the scope of the remand include the density of the project, its massing, and the impact of the internal private street on the surrounding neighborhood.

#### **A. Density and Massing**

The Applicant maintains that the reduced density on remand is compatible with the surrounding area because of the high quality of the green space surrounding the perimeter of the property, the building orientation, revisions increasing the width between and reducing the length of the townhouse strings, landscaping and screening, and the use of architectural elements which simulate single-family homes. According to the Applicant’s land planner, these units will appeal to a lifestyle which “lives to the front” for individuals who do not want the maintenance of a typical single-family detached homes. 3/23/12 T. 149. Technical Staff, the Planning Board, and the Hearing Examiner found this approach sufficient to make the development compatible with the surrounding community. Exhibits 282, 304. In particular, the Hearing Examiner found that the development compatible with adjacent homes because (1) the Ellsworth side of the property faced a public park and had smaller clusters (i.e., 3-5 units), (2) the strings are located perpendicular to Springvale Road and will have functional fronts, (3) the Riggs-Thompson House and a significant amount of open space will buffer the Pershing Drive frontage. Hearing Examiner’s Report and Recommendation, pp. 59-60.

The Applicant also submitted comparables of other RT-15 and RT-12.5-zoned developments near Central Business Districts to support the proposed density of 12.19 dwelling units per acre. 3/23/12 T. 130-135.

Those opposing the Application argue the massing and density are incompatible with the surrounding area, comparing the site layout to World War II "barracks". Exhibit 314(b). They believe that RT-8 Zoning would be more compatible because it would reduce the length of the townhouse strings into smaller clusters of units. 3/26/12 T. 344-346. They also assert that comparable developments should come only from within the Master Plan area, and submitted several comparables of developments within the area, which were less than 12.5 dwelling units per acre. They further argue that RT-12.5 was not appropriate because comparable developments at a similar density within the planning area were located either on major roads or abutting commercial uses. 3/26/12 T. 154-161.

The Applicant presented evidence that some of the developed densities of the comparable developments cited by the opponents were actually higher than the opponents reported. Because the Applicant's calculations were taken from the original site plans, rather than M-NCPPC's website, the Hearing Examiner found that the Applicant's density calculations were better evidence, as does the District Council. Based on these, the proposed development, at 12.19 units per acre, is well within the densities of other townhouse developments within the planning area, which range between 9.7 to 12.38 dwelling units per acre. The Hearing Examiner found the significant green space surrounding the townhomes sufficient to mitigate the fact that the development is not on a major road, and that other much larger densities within the defined neighborhood justify the higher density on this site. For the reasons set forth, the District Council agrees and so finds.

With regard to massing, the Applicant asserts that revisions to the SDP result in a significant improvement in massing over the original application. The strings are now five to seven units in length as opposed to six to eight units per string; the total length of the northern string has been reduced by 12 feet. Each "courtyard" has been widened by four feet, the townhouse string closest to the Riggs-Thompson House has been removed, there is a significant amount of open space surrounding the historic house, and the strings no longer encroach into the setback at the southern property line. 3/23/12 T. 56-59. Exhibit 327(e). It further states space created by breaking up the townhouse strings with thin bands of open area will result in space which has no useable benefit due to the 6% grade and lack of sunlight. 3/23/12 T. 260. In addition, as described, the site layout avoids having one large string of townhouses confront existing single-family homes.

SOECA and those opposing the application contend that the site layout is still too densely massed on one portion of the site. They argue that, without the green area surrounding the Riggs-Thompson House, the density of the project is 16.36 acres. They also argue that the changes in massing from the original application are nominal because the combined length of the north and south strings is only two feet shorter and the width of the units along Springvale Road have increased. 3/26/12 T. 152-154.

Technical Staff, the Planning Board, and the Hearing Examiner found that the revisions to the SDP do significantly mitigate the massing of the project so that it is compatible with the surrounding community. Exhibits 282, 304. The Hearing Examiner found that, while the combined length of the rows is only two feet less than shown in the original SDP, the shortened length of the rows north of the private street is significant. This is because it reduces the mass

from the only perspective where the townhouse strings actually confront single-family detached homes (i.e., along Pershing Road). The strings south of the private road are now screened by the only single-family home on the site (i.e., the Riggs-Thompson House), and are buffered by new, significant setbacks from both the road and the house itself. The Hearing Examiner also found that the small increase in the width of the fronts along Springvale not a major detriment as the fronts are not dissimilar in width from single-family detached homes. Thus, the widening of the courtyards does function to break up the massing of the units despite the increase in townhouse widths along Springvale Road.

With these changes in massing, the District Council finds, as did the Hearing Examiner, the Planning Board, and Technical Staff, that the building orientation, architectural elements (including varied rooflines and functional fronts) and landscaping and decorative walls to screen the private alleys from Springvale Road achieve compatibility with the surrounding neighborhood.

## **B. Private Road**

In its original application, the Applicant proposed six alternatives for alignment of the private road, several of which had unresolved environmental or traffic impacts. One of the alignments would have circumvented the existing traffic restrictions, thereby creating the potential for cut-through traffic. The District Council remanded the case, in part finding that the Applicant had failed to show that the different alignments would not adversely impact the neighborhood. Resolution 17-286, p. 15.

On remand, the Applicant proposes a single alignment which has received conceptual approval from Technical Staff, the Planning Board, and the Montgomery County Department of Transportation. Exhibits 282, 304, 335. This alignment has one access point on Ellsworth and one on Springvale Road, but further east than the alternative shown in the original application. Evidence in the record reveals that the Planning Board and Technical Staff prefer this dual access to public streets to promote "connectivity" to the existing street network, or in another words, to permit multiple access routes to destinations in the area. Record evidence also shows that dual access is preferred by emergency services for fire and safety purposes. Exhibits 282, 304.

The Applicant acknowledges that the dual connection of the private street creates an opportunity to circumvent the existing traffic restrictions on neighborhood streets. It proposes several measures to prevent potential cut-through traffic, including signage restricting access to residents, narrowing the width of the road, using specialty pavers to denote private property, and channelizing the access point at Springvale Lane to prevent left turns. 3/23/12 T. 78-111. Those opposing the application question the effectiveness of these measures primarily because, in their opinion, they are unenforceable and because the Applicant is permitted to have a single access under the County regulations. 3/23/12 T. 196-247.

The District Council finds, as did the Hearing Examiner, that the proposed signage and channelization of the private road will effectively prevent cut-through traffic because of the significant evidence in the record, both in the original case and on remand, that existing signage

and traffic restrictions have been effective since implemented in the 1990's. The effectiveness of the existing restrictions is also demonstrated by the low traffic volumes evidenced in the first hearing and again in this hearing with respect to Springvale Road. In contrast, the evidence that people will disobey the signs is anecdotal and speculative in comparison with testimony from the opposition, and the Applicant's expert traffic engineer, that volumes in the area have been significantly reduced by the traffic restrictions currently in place.

The Applicant has also proposed a binding element requiring it to seek an Executive Order, pursuant to *Montgomery County Code*, §31-2, permitting the County police to enforce the private signage on the property, which also persuades the Council that the dual access of the private street will not be incompatible with the surrounding area.

### **The 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 or Sector Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities, or the environment, and factors such as provision of affordable housing, location near public transportation, and other public amenities. Compliance with the Master Plan recommendations, however, is not mandatory in this case because the RT Zones do not require it; rather, the courts have held that the Master Plan should be treated only as a guide in rezoning cases like this one. As stated in *Trail v. Terrapin Run*, 403 Md. 523, 527 (2008):

We have repeatedly noted that [master] plans, which are the result of work done by planning commissions and adopted by the ultimate zoning bodies, are advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning...

The subject property lies within the area covered by the 2000 North and West Silver Spring Master Plan. When remanding the original application, the District Council found that RT zoning was appropriate at this location, and would further some goals of the Master Plan, such as creating pedestrian connections, street improvements, and providing public open space. It remanded the case because the Applicant did not provide sufficient evidence that the proposed development conformed to the land use recommendations of the Plan for the transition from the Silver Spring Central Business District at this location, specifically, that the transition be by "use, not by structure type". The Plan recommended the transition to be by single-family homes designated for non-resident professional office special exceptions.

Other questions relating to conformity with the Master Plan included whether the existing environmental setting, created for the current property owner, should be expanded. Extensive testimony was presented on the legislative history of the designation, leading the Council to remand the case for more evidence on this issue.

Finally, the District Council also found that insufficient evidence had been presented on whether the alignment of the private road would undermine the Master Plan's recommendations

against creating a significant amount of cut-through traffic through the community. Resolution 17-286, p. 15.

#### **A. Land Use**

In its Resolution remanding this case, the District Council found that, “The SDP should be reconfigured to propose 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.” Resolution 17-286, p. 15.

The Applicant argues that the techniques previously described (i.e., building orientation, varied architectural elements, and significant green space along the perimeter) along with the changes to the length of rows and width of the courtyards, the additional green space surrounding the historic house, and moving out of the buffer along the southern property line, result in general compliance with the Master Plan guidelines for this location.

Those opposing the application disagree vehemently, describing the townhouse strings as “barracks” which are massed at an effective density of 16.36 acres if one ignores the green areas on the site, as already described.

The Council has already determined that R-T Zoning is appropriate at this location, so some level of deviation from traditional detached structures must be presumed. The District Council agrees with the Hearing Examiner, Technical Staff and the Planning Board that the careful site layout, along with the use of varied architectural elements, landscaping and screening, and the reductions in massing sufficiently suggest and compatibly relate to traditional single-family detached homes to comply substantially with the Master Plan.

These townhomes will be, in some respects, different from traditional single-family detached homes. These residents may wish to “live to the front” of the home, without backyards and with large green areas that do not require maintenance by the individual owner typically associated with detached homes. The District Council finds that the potentially incompatible aspects (such as headlights from the private alleys) are effectively mitigated by building orientation, site design, landscaping, and the use of architectural elements. The District Council also finds that other aspects of the development such as provision of public open space, sidewalks, and streetscape, further other goals of the Master Plan.

#### **B. The Environmental Setting of the Riggs-Thompson House**

The size of the environmental setting designated by the Master Plan after the Chelsea School leaves the property remains a matter of great debate on remand. The controversy continues to stem from competing language in the body of the Plan stated only that the environmental setting should be 37,056 square feet. An appendix (Appendix D) to the Plan sets forth a dual recommendation:

The environmental setting is 37,056 square feet as shown in the shaded area below pending approval of the Chelsea School special exception by the Board of Appeals. *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 Chelsea School plan is the integration of the Riggs-Thompson House into the campus.* Appropriate access to the house should be provided. Exhibit 139, Appendix D (emphasis supplied).<sup>2</sup>

As a result, those opposing the application continue to assert that the Plan intended the environmental setting to be the original 1.4 acre parcel (P73) on which the house was located. 3/23/12 T. 320-348; 3/26/12 T. 3-156.

The District Council found that the evidence presented prior to remand supported a finding that the environmental setting should be the 1.4-acre parcel and remanded the application to the Planning Board for additional consideration on the Master Plan's intent. Resolution 17-286, pp. 13, 15.

On remand, the Applicant, Technical Staff, and the Planning Board continue to maintain that language in the body of the plan stating that the environmental setting consists of 37,056 square feet should "trump" language in an Appendix to the Plan. Exhibits 282, 304, 3/30/12 T. 65-71. In addition, however, Technical Staff has provided new information regarding the timing of the special exception approval in relation to the Master Plan. Staff advises that the Board of Appeals approved the special exception before the Master Plan was adopted. Thus, Technical Staff and the Planning Board concluded that the Council was aware that no dual recommendation was necessary and therefore no need to take a "leap" that the setting should be changed for the future. Exhibit 282, pp. 8-10, Exhibit 304.

Those opposing the application presented evidence that there was testimony before the Historic Preservation Commission and the Planning Board that the smaller environmental setting applied only if the Chelsea School occupied the property and suggesting that the it should revert to the original 1.4-acre parcel (P73) if the property if the Chelsea School special exception was not approved or the property was developed with some other use. 3/26/12 T. 103-104, Exhibit 324(c). They also provided a work session transcript wherein the Planning Board instructed Staff to draft language to this effect. They assert that the Planning Board was unaware of the change to the Plan moving the dual recommendation to an appendix to the Plan. 3/23/12 T. 336, 342-346. According to the opposition, the PHED Committee was presented with a memorandum on the Plan explaining the Plan's alternative recommendation. Exhibit 324(p). Those in opposition feel it important to revert to the 1.4-acre parcel as an environmental setting because of concerns that the HOA is not equipped with the expertise or interest in protecting the historic house. 3/23/12 T. 115-123/ 3/26/12 T. 142-150.

The Hearing Examiner found that the revised SDP continues to meet the legislative intent underlying the Plan's designation. The Hearing Examiner found that the Plan intended to permit

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<sup>2</sup> A complete summary of the arguments on this matter prior to remand is set forth in Council Resolution 17-286, pp. 12-15.

some flexibility to the owner to fulfill its development plans because those plans provided significant protection for the historic resource. The evidence shows that the Chelsea School special exception plan incorporated the Riggs-Thompson House into an “academic quad” including a significant green area. The SDP on remand surrounds the historic house with almost 1.5 acres of green area, a portion of which (i.e., 37,056 square feet) will be the environmental setting and the bulk of the remainder will be permanently dedicated to public access. Exhibit 346(a). Technical Staff found that this combined area provided a better setting for the Riggs-Thompson House because it opened the house up to significant views from the neighboring streets. Exhibit 291(e). In response to the opposition’s concerns regarding HOA ownership, the Applicant submitted a binding element requiring any improvements to the public access space after the initial site plan approval to be accomplished by amendment to the site plan, with advice of the Historic Preservation Commission. Exhibit 346(a). Based upon this evidence, the District Council finds that the proposed SDP complies with the Master Plan.

### **C. The Private Road**

The final issue on Master Plan compliance is whether the proposed private road substantially complies with the Plan’s goal to minimize neighborhood cut-through traffic. For the same reasons it found that the alignment of the private road will be compatible with the neighborhood, the District Council finds that the proposed alignment of the private road substantially complies with the Master Plan.

### **Conclusion**

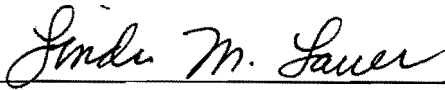
Based on the foregoing analysis and the Hearing Examiner’s Report and Recommendation dated May 16, 2012, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the application, as described in the final version of the SDP, satisfies the requirements 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 is sufficiently related to the public interest to justify its approval. For these reasons and because approval of the instant zoning application, as presently described, will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved.

**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-892 (Remand), requesting reclassification of 5.25 acres of land, described as Lot 58, Evanswood Section 1, and located at 630 Ellsworth Drive, Silver Spring, Maryland, from the existing R-60 Zone to the RT-12.5 Zone, is hereby **approved** subject to the specifications and requirements of the revised Schematic Development Plan (Exhibit 346(a)), provided that the Applicant submits to the Hearing Examiner for certification a reproducible and three copies of the Schematic Development Plan approved by the District Council within 10 days of approval, in accordance with Section 59-D-1.64 of the Zoning Ordinance, and that the revised Declaration of Covenants (Exhibit 345(e)) are recorded in the County land records in accordance with Section 59-H-2.54 of the Zoning Ordinance and proof thereof submitted to the Hearing Examiner within the same time frame.

This is a correct copy of Council action.



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Linda M. Lauer, Clerk of the Council





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

**JUN 18 2013**

MCPB No. 13-57  
Preliminary Plan No. 120130060  
Chelsea Court  
Date of Hearing: April 25, 2013

**RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on September 27, 2012, EYA/Chelsea Residential Associates, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 64 lots on 4.85 acres of land in the RT-12.5 zone, located at 711 Pershing Drive, south of Springvale Road ("Subject Property"), in the North and West Silver Spring Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120130060, Chelsea Court ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated April 12, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 25, 2013, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on April 25, 2013, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Anderson, seconded by Commissioner Dreyfuss, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves

Approved as to  
Legal Sufficiency:

*Christopher Smith* 6/5/13  
MENCPPC Legal Department  
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320

Preliminary Plan No. 120130060 to create 64 lots on the Subject Property, subject to the following conditions:<sup>1</sup>

- 1) This Preliminary Plan is limited to 64 lots for 63 townhouses and one one-family detached dwelling unit, including at least 12.5% moderately priced dwelling units (MPDUs).
- 2) The certified Preliminary Plan must contain the following note:  
Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
- 3) The Applicant must comply with the conditions of approval for the final forest conservation plan, approved as part of this Preliminary Plan, subject to the following:
  - a. Revise the mitigation planting tables for variance trees to specify only canopy trees.
  - b. Revise the variance tree table on sheet 5 of the final forest conservation plan to clearly identify the trees that are subject to the variance.
  - c. Ensure that the limits of disturbance include all areas of sidewalk construction on Ellsworth Drive.
- 4) Prior to demolition or any land disturbing activities occurring onsite, the Applicant must submit to Staff and obtain M-NCPPC Associate General Counsel Office approval of the certificate of compliance for the off-site forest mitigation bank providing an equivalent credit of 1.86 acres.
- 5) The record plat must contain a note extinguishing the existing Category II Conservation Easement on the Subject Property.
- 6) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 7, 2013, as amended by its correspondence dated March 18, 2013, 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.

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<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

- 7) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 8) 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 October 24, 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 MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the design standards imposed by all applicable road codes.
- 10) Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of five-foot wide sidewalks and five-foot wide green panels along the Subject Property frontage on Ellsworth Drive, Springvale Road, and Pershing Drive, unless construction is waived by MCDPS. The green panel may be omitted on the Ellsworth Drive frontage between the proposed crosswalk across Ellsworth Drive and the southern limit of the Subject Property frontage.
- 11) Prior to certification of the Preliminary Plan, the plan drawing must be revised to show the proposed sidewalk on Ellsworth Drive extended along the entire Subject Property frontage.
- 12) The record plat must reflect a public use and access easement over all private streets and adjacent parallel sidewalks, subject to the traffic restrictions stated in Condition No. 6.b. of Site Plan No. 820130040.
- 13) The record plat must reflect a public use and access easement over open space areas as required by Binding Element No. 2, as stated in County Council Resolution 17-471, dated June 12, 2012.
- 14) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 15) 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 final building permit that the Applicant's recorded HOA Documents incorporate the Covenant by reference.
- 16) Prior to recordation of the plat, the Applicant must record a restrictive covenant for the open space area around the 37,056 square-foot environmental setting for the Riggs-Thompson House, generally consistent with the area shown on the Schematic Development Plan. The covenant will ensure that the area around the environmental setting will remain as open space in perpetuity but will enable the Applicant to complete all work approved by the Planning Board as part of the site plan approval. Following completion of those improvements, the covenant will require advice from the Historic Preservation Commission to the Planning Board for any site plan amendment to the area subject to the covenant.

- 17) The Applicant must comply with the binding elements of County Council Resolution No. 17-471 approving Local Map Amendment G-892.
- 18) The final number of MPDUs as per condition #1 above will be determined at the time of site plan approval.
- 19) The Subject Property is within the Northwood High School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the single-family attached unit rates for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
- 20) Prior to recordation of any plat, Site Plan No. 820130040 must be certified by Staff.
- 21) No clearing, grading or recording of plats prior to certified site plan approval.
- 22) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan.
- 23) The record plat must show necessary easements.
- 24) 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.

BE IT FURTHER RESOLVED, that, having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

*1. The Preliminary Plan substantially conforms to the Master Plan.*

At its hearing of May 19, 2011, for rezoning case G-892, which rezoned the Subject Property from R-60 to RT-12.5, the Planning Board determined that the proposal was in substantial conformance with the North and West Silver Spring Master Plan. The Planning Board's determination was based on the following analysis:

The neighborhoods of North Silver Spring are predominantly comprised of one-family detached homes, with a limited number of townhomes and apartments. On page 20, the Master Plan states that the preservation of residential character and the stabilization of the neighborhood edge along major highways and the Central Business District perimeter are of major concern to North Silver Spring. In this light, the Master Plan reconfirms the existing R-60 Zone for virtually all of North Silver Spring with a few exceptions for specific locations that were in discussion at the time of the Master Plan's publication.

The Master Plan gives extensive guidance for an area along Georgia Avenue where there was particular interest in potential townhomes during the time of the master planning process. On page 21, among the many guidance points for this stretch of Georgia Avenue, the Master Plan states, "limit the development of townhomes to the blocks along Georgia Avenue and do not encroach into the interior blocks." This language, when read on its surface, may appear to recommend an absolute prohibition on townhouse development anywhere in the planning area except along Georgia Avenue. However, when the language is read in its entirety, it becomes apparent that the Master Plan was providing specific guidance solely for the area along Georgia Avenue where there was a current interest in applying the townhouse zones. The language is recommending against the development of townhomes in the interior blocks along Georgia Avenue. To read the language in the alternative would lead to the conclusion that the drafters of the Master Plan analyzed each of the hundreds of properties in North Silver Spring for its suitability for townhomes and only this one area along Georgia Avenue was deemed appropriate. This is an unrealistic interpretation. Therefore, the Master Plan does not provide specific recommendations for the Subject Property's suitability for townhomes.

While the Master Plan doesn't provide specific guidance for the Subject Property's suitability for townhomes, the Master Plan does reconfirm the existing R-60 zoning for the entire North Silver Spring area and does specifically acknowledge the institutional school use on the site. Additionally, the Master Plan provides guidance for the one-family houses along Cedar Street directly south of the Subject Property on page 44. The Master Plan designates the entire row of homes as suitable for professional office special exceptions because the homes will provide a transition between the Silver Spring Central Business District and the one-family neighborhoods of North Silver Spring. In its reasoning, the Master Plan states that the homes are "somewhat isolated from other [one]-family homes in the neighborhood by the Chelsea School." Because the Chelsea School is not a residential use, this language indicates that the drafters of the Master Plan envisioned the entire block – both the special exception-designated homes along Cedar and the Chelsea School – as a transitional block that buffers the North Silver Spring residential neighborhoods from the Silver Spring Central Business District. Given that townhomes are inherently one-family residential homes, just like detached houses, and that the zoning ordinance intends the townhouse zones for transitional areas between commercial districts and one-family detached neighborhoods, it is likely that a townhouse development at this

location will serve as a more appropriate transition, with better compatibility, than the existing school on the Subject Property.

While the Master Plan does not provide specific guidance on the development of townhomes at this particular location, the proposal substantially conforms to the Master Plan's general guidance of preserving the residential character of North Silver Spring and stabilizing the edge along the Central Business District perimeter. By replacing an institutional use with a residential one-family development, the residential character of North Silver Spring is enhanced and the transitional block between the Silver Spring Central Business District and the North Silver Spring residential neighborhoods is improved.

The County Council remanded rezoning case G-892 to the Hearing Examiner in October 2011, requesting 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." In its resolution, the County Council found 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.

After the County Council remanded rezoning case G-892, the Applicant reduced the number of townhouse units from 76 to 63. At a public hearing on January 26, 2012, the Planning Board once again determined that application G-892 was in substantial conformance with the Master Plan. The Hearing Examiner and the County Council agreed with the Planning Board's determination, stating that the density and massing of the development would be compatible with the surrounding land uses, the Applicant adequately demonstrated that the alignment of the internal private road would operate compatibly with the neighborhood and in a manner consistent with the Master Plan, the density and massing proposed was consistent with the Master Plan, and the environmental setting for the Riggs-Thompson House shown on the revised schematic development plan was also consistent with the Master Plan. The County Council approved the rezoning in June 2012.

The previous analysis of Master Plan conformance, which was accepted by both the Planning Board and the Hearing Examiner, and the finding of Master Plan conformance made by the County Council remain valid. Therefore, the Planning Board finds that the Preliminary Plan is in substantial conformance with the North and West Silver Spring Master Plan.

2. *Public facilities will be adequate to support and service the area of the approved subdivision.*

#### Roads and Transportation Facilities

The Subject Property is located just north of the Silver Spring Central Business District. The Subject Property is bordered by Springvale Road to the north, Pershing Drive to the east and Ellsworth Drive to the west. Access to the townhouses will be via a right-in right-out private street from Springvale Road and an entrance on Ellsworth Drive. Access to the single family unit will be via a driveway from Pershing Drive.

A series of traffic restrictions exist on the streets in the surrounding neighborhood, such as prohibitions against turns at certain intersections and one-way street segments. The purpose of these restrictions is to discourage through traffic between the Silver Spring central business district and the Capital Beltway from using the neighborhood streets as an alternative to Colesville Road. The development includes a new private street that will intersect Ellsworth Drive at one end and Springvale Road at the other, creating a new connection between these two streets. Citizen correspondence on the Application has raised the concern that the new street will allow drivers to circumvent the existing traffic restrictions, which some residents believe would cause adverse impacts on the neighborhood from a large increase in through traffic. However, this approval includes a condition that requires the Applicant to install traffic restriction signs on the private street, which will prohibit non-resident and non-visitor traffic from using the new street between Ellsworth Drive and Springvale Road. The Planning Board does not expect a lower level of compliance for these signs than for the existing signs. Thus, the Application will not cause an increase in through traffic in the neighborhood.

#### Master/Sector-Planned Roadways and Bikeways

Springvale Road is a tertiary residential street not listed in the North & West Silver Spring Master Plan. Pershing Drive is also a tertiary residential street not listed in the Master Plan, but it has a designated bikeway (either bike lanes or a signed shared roadway); PB-17. This section of Ellsworth Drive is a secondary residential street not listed in the Master Plan, but it has a signed shared roadway, SR-31.

### Available Transit Service

Although transit service is not available on Springvale Road, Pershing Drive or Ellsworth Drive, there are existing bus stops located on nearby Wayne Avenue. These bus stops are within a quarter-mile walking distance of the Subject Property and are served by Ride-On routes 12, 15 and 19. The Subject Property is located less than a mile from the Silver Spring Metrorail station.

### Pedestrian Facilities

There is currently a sidewalk and green panel along Pershing Drive on the east side of the Subject Property. There are, however, no sidewalks along the Subject Property's frontage on Springvale Road and Ellsworth Drive. The Applicant will provide a five-foot wide sidewalk and five-foot wide green panel along the Subject Property frontage, except that the green panel along Ellsworth Drive is only required along the Subject Property frontage from the intersection of Springvale Drive to a point approximately 65 feet north of the southern Subject Property line. This 65-foot segment of the Ellsworth Drive frontage was excluded from the frontage to be improved with a green panel to avoid the loss of three trees. The Applicant will provide a crosswalk to connect the new sidewalk to the existing sidewalk on the opposite side of the street. The number of dwellings and the close proximity to the Silver Spring Central Business District and Silver Spring Metrorail Station will result in a large number of pedestrians on Ellsworth Drive. Therefore, this approval includes a condition that requires the Applicant to continue the construction of the sidewalk along Ellsworth Drive to the southern boundary of the Subject Property.

The Applicant is providing three bike racks on the site. Two will be located adjacent to the open space area on Chelsea Court and one will be near the intersection of Ellsworth Drive on Chelsea Court.

### Local Area Transportation Review (LATR)

A traffic study is required to satisfy the LATR component of the adequate public facilities (APF) test when a proposed land use generates a total of 30 or more peak-hour trips within the weekday morning peak period (6:30 to 9:30 a.m.) or evening peak periods (4:00 to 7:00 p.m.). The traffic study shows the net new number of weekday peak-hour trips generated by the redevelopment of the school into 63 townhouses and one single-family unit during the weekday a.m. and the p.m. peak periods.

The traffic study shows that the critical lane volume (CLV) values at all analyzed intersections during the weekday morning and evening peak-hours will



be less than their applicable congestion standard of 1,600 for the Silver Spring/Takoma Park Policy Area or 1,800 for the intersections located within the Silver Spring CBD Policy Area. Based on the analysis presented in the traffic study, it is concluded that the Application will satisfy the LATR requirements of the APF test.

#### Policy Area Mobility Review (PAMR)

Pursuant to Paragraph AP2, Transition, of the 2012-2016 Subdivision Staging Policy, the Applicant has selected to use the PAMR test in lieu of the Transportation Policy Area Review (TPAR) test to satisfy the policy area requirements of the APF test. The PAMR Guidelines require a 5 percent mitigation of base trips in the Silver Spring/Takoma Park Policy Area. The required number of trips to be mitigated is two peak hour trips ( $34 \times 0.05 = 2$ ), as shown in Table 3. The Applicant proposes to pay a mitigation fee of \$23,400 ( $2 \times \$11,700$ ), which will pay for improvements located in the immediate neighborhood. With the required mitigation, the Application thus satisfies the PAMR requirements of the APF test.

#### Conclusion

Vehicle and pedestrian access for the subdivision will be adequate with the required improvements.

#### Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the development. The Subject Property will be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Subdivision Staging Policy resolution currently in effect and will be adequate to serve the Subject Property. The Subject Property is within the Northwood High School cluster area, which is currently operating between 105-120% of capacity at the high school level, and a school facilities payment is required. Electrical, telecommunications, and gas services are also available to serve the Subject Property.

- 3. The lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated, because the lots are appropriately dimensioned to contain the townhouse units. The provision of townhouses is consistent with the RT-12.5 zoning designation and in substantial conformance with the Master Plan.

The lots were reviewed for compliance with the dimensional requirements for 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. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

#### Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

A Final Forest Conservation Plan (FFCP) was approved on September 20, 2001, with the approval of Preliminary Plan No. 120000130 for a proposed school expansion. The FFCP included a substantial development envelope for the construction of building 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 Conservation Easement was established over the entirety of the Subject Property as recorded in plat 22270, protecting the onsite trees and the associated forest conservation credits. The plan for the school expansion was not implemented except for the installation of a driveway and parking area off of Pershing Drive.

Local Map Amendment G-892 for the project was not subject to a formal forest conservation review. However, a preliminary forest conservation plan (PFCP) associated with the rezoning was submitted on May 4, 2011. The PFCP showed that the forest conservation requirements could be achieved, although the PFCP did not address the potential forest conservation variance issues. Ultimately, the project was remanded to decrease the density. The revised schematic development plan included greater setbacks, lower density, more

green space, and less overall disturbance; indicating that the forest conservation and tree save requirements could be satisfied.

Revised NRI/FSD 420121810 was submitted by the Applicant and approved on July 16, 2012. During the review period, a severe storm had occurred in the area, which felled or damaged a number of the trees within the study area. Prior to approval, the forest conservation plan was updated to reflect the felled and damaged trees.

The formal submission of the final forest conservation plan (FFCP) and associated forest conservation variance request have been included for review during the Preliminary Plan and Site Plan review. The current FFCP shows some additional tree impacts and removals beyond the levels previously approved on the FFCP for the school expansion. The additional impacts and removals trigger forest conservation variance requirements which are discussed further below. Onsite mitigation plantings for the variance trees are included on the FFCP and are generally located behind the residences along Cedar Street, within the boundary of the Subject Property.

The existing Category II Conservation Easement already established over the entire Subject Property was suitable for an institutional, owner-occupied use, such as the school. However, the same easement would not be appropriate for a residential, multi-owner townhouse community. Additionally, current practice is to avoid overlap of conflicting easements such as the stormwater management and public access easements within the site. As a result of these circumstances, the Planning Board abandons the existing Category II Easement. Mitigation of the easement area will be satisfied by use of an offsite forest conservation bank. The standard policy adopted by the Planning Board for off-site mitigation of conservation easement abandonment is to provide replacement at a 2:1 ratio. However, the Category II Easement associated with the project covers the entire site, which includes substantial areas of buildings, parking lots, driveways, and turf fields in addition to the protected trees and plantings. The blanket easement was established to avoid a complex easement description that would have only included the particular areas of interest such as the plantings and tree cover (which are interspersed throughout the site). Therefore, in this case the easement mitigation will be satisfied by a 2:1 mitigation ratio of the forest conservation credits provided by the original plan (rather than a 2:1 ratio of the easement area). Since the original forest conservation plan provided 0.93 acres of forest credit, a mitigation requirement of 1.86 acres will be satisfied by the Applicant's purchase of equivalent credits from an offsite conservation bank. No forest conservation easements are approved with this Application.

### Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to 25 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board made the following findings necessary to grant the Variance:

- 1. Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Trees 98 and 116 are both in poor condition and would be removed independent of the development activity. Furthermore tree 116 is located within the existing Springvale Road right-of-way; the MCDOT arborist was consulted on the condition of the tree and agrees that the tree warrants removal. The other removals (trees No. 45 and 87) and impacts are within the buildable area established by the setbacks and other site constraints. Therefore, the Variance request would be granted to any applicant in a similar situation.

- 2. The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested Variance is based on development allowed under the existing zoning. The Variance can be granted under this condition if the impacts are avoided or minimized and that any necessary mitigation is provided. Design changes were incorporated to reduce tree disturbance and removals. A variety of alternative townhouse configurations and roadway alignments were explored, but none of those configurations resulted in fewer impacts to or removals of trees that would be subject to the Variance. Additionally, mitigation is provided to reduce the effects of the trees to be removed.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested Variance is a result of the site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

Granting this Variance request will not violate State water quality standards or cause measurable degradation in water quality. MCDPS approved the stormwater management concept for the project on October 24, 2012. The MCDPS review and ultimate approval of the sediment and erosion control and stormwater management plans will ensure that appropriate standards are met. The Subject Property is not directly associated with any steams, wetlands, or related buffers. Additionally the mitigation plantings will help provide shading and water retention and uptake. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately one inch diameter at breast height ("DBH") of tree caliper for every four inches DBH removed. No mitigation is required for Protected Trees impacted but retained.

5. *All stormwater management requirements shall be met as provided in Chapter 19, article II, title "stormwater management", Section 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The MCDPS Stormwater Management Section approved the stormwater management concept on October 24, 2012. According to the approval letter, the stormwater management concept meets stormwater management requirements using environmental site design to the maximum extent practicable. The full volume of environmental site design is provided using permeable pavement, micro-bioretenion, planter boxes, bio-swales, and dry wells.

The Planning Board has received correspondence from the Seven Oaks Evanswood Citizen Association, the Audubon Naturalist Society, and nearby

residents that raises the concern that the stormwater management concept is not in compliance with state and county laws that require the use of environmental site design to the maximum extent practicable, and that MCDPS inappropriately approved the stormwater management concept. In support of those concerns, the correspondence argues that preservation of the existing steep slopes and an existing grove of trees on the Subject Property are necessary in order to determine that the stormwater management concept uses environmental site design to the maximum extent practicable.

Rick Brush of MCDPS responded to these concerns in an email dated October 11, 2012. The email provides a detailed response to each of the concerns that were raised, and states that the stormwater concept is fully in compliance with the requirement to implement environmental site design. A March 14, 2013 letter from Diane Schwartz Jones, Director of MCDPS, to the Audubon Naturalist Society and the Seven Oaks Evanswood Citizen Association reiterates that the stormwater concept meets the requirements for use of environmental site design, and confirms that approval of the stormwater management concept was appropriate. Both Mr. Brush's and Ms. Schwartz Jones's responses on the issue also address the concerns raised with respect to retention of the existing steep slopes and a grove of trees.

With respect to steep slopes, Ms. Schwartz Jones states:

The intent of the requirement to protect steep slopes is not based on any intrinsic value concerning hydrology. In fact, steep slopes tend to limit the infiltration of runoff. The intent is to limit development on steep slopes which may cause or exacerbate erosion and sedimentation within the stream system. That is not a factor in this case due to the location of the steep slopes and the proposal to remove them. In addition, these existing steep slopes are not a part of or associated with a stream valley buffer. In this case the removal of these slopes poses no significant erosion or environmental hazard. Preservation of the slopes reaps no significant hydrologic benefit.

With respect to the removal of trees, Ms. Schwartz Jones states:

Where forested areas are preserved within conservation easements or stream valley buffers, they may provide some Environmentally Sensitive Design ("ESD") credit. Credit can also be given using the "Sheet Flow to Buffer" ESD standard. However, that is not the case for this project. Therefore, no ESD credit can be given for saving the grove of trees. Although a reduction in the impervious area may occur if the requirement is to keep these trees, the MDE [Maryland Department of the

Environment] design manual does not specify the preservation of existing trees as an ESD practice.

Ms. Schwartz Jones's response with respect to removal of the grove of trees is making the distinction between removal of forest, per the definition in the Forest Conservation Law, and a grove of trees that does not meet that definition. While the preservation of forest is eligible for ESD credit, preservation of trees that are not in a forest is not eligible.

6. *Practical difficulties or unusual circumstances exist so that a waiver of the resubdivision analysis as required by of Section 50-29(b)(2) of the Subdivision Regulations is appropriate, and i) a waiver is the minimum necessary to provide relief, ii) such waiver is not inconsistent with the purposes and objectives of the General Plan, and iii) such waiver is not adverse to the public interest.*

The Application is a resubdivision of a platted lot. Resubdivision of residential lots is subject to review criteria specified in Section 50-29(b)(2) of the Subdivision Regulations. The review requires the comparison of new lots with existing lots in a delineated neighborhood to ensure that the new lots are of the same character with respect to street frontage, alignment, size, shape, width, area, and suitability for residential use. The Subject Property is to be developed under development standards of the RT-12.5 zone, but the surrounding neighborhood has been developed under development standards of the R-60 zone for standard method development. The RT-12.5 zone allows unit types, such as townhouses and duplexes, that are not permitted in the R-60 zone with standard development. In addition, the RT-12.5 zone allows significantly smaller lot sizes than the R-60 standard method of development.

Because of these differences between the RT-12.5 and the R-60 zones, a meaningful comparison between the new lots and the existing lots in the neighborhood cannot be made. Therefore, the Applicant has requested a waiver of the resubdivision analysis required by Section 50-29(b)(2). The Planning Board has the authority to grant such a waiver pursuant to Section 50-38(a)(1) of the Subdivision Regulations, provided that certain findings can be made. The section states:

The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.

The fact that the required analysis cannot be made presents a practical difficulty for the Applicant. In addition, this is an unusual circumstance because no preceding subdivisions in the neighborhood have been developed in the RT-12.5 zone. Granting a waiver of the requirements of Section 50-29(b)(2) is the minimum waiver necessary to provide relief from the requirements. The waiver is not inconsistent with the purposes and objectives of the General Plan and is not adverse to the public interest because the waiver is needed in order to develop the Subject Property in accordance with a local map amendment to change the zone of the site from R-60 to RT-12.5. The local map amendment was found by the County Council to be consistent with the purposes and objectives of the General Plan and to be in the public interest.

7. *Practical difficulties or unusual circumstances exist so that a waiver of the requirement that individually recorded lots abut on a street that has been dedicated to public use or which has acquired the status of a public road, as required by of Section 50-29(a)(2) of the Subdivision Regulations is appropriate, and i) a waiver is the minimum necessary to provide relief, ii) such waiver is not inconsistent with the purposes and objectives of the General Plan, and iii) such waiver is not adverse to the public interest.*

Section 50-29(a)(2) of the Subdivision Regulations requires "...that individually recorded lots shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road." The townhouse lots will be on individually recorded lots and will front onto private alleys, which will be accessed via a private street. Therefore, in order to approve the Preliminary Plan, the Planning Board would typically also find that the private alleys and street have acquired the status of a public road. This finding is based upon the road being fully accessible to the public; accessible to fire and rescue vehicles, as needed; and designed to minimum public road standards, except for right-of-way and pavement widths.

In the case of this Application, the street and alleys that provide frontage to the individually recorded townhouse lots can meet the minimum design standards necessary to make the finding that they have the status of public roads. These standards, as previously applied by the Planning Board, include 20-foot pavement width, 25-foot or larger curve radii, an appropriate circulation pattern, and an appropriate paving cross-section.

However, public access to the street is subject to the limitations of a binding element placed on Local Map Amendment G-892. The binding element states:



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.

Compliance with the binding element precludes the street being accessible to the public. This presents a practical difficulty for the Applicant and prevents compliance with Section 50-29(a)(2) of the Subdivision Regulations. Granting a waiver of the requirements of Section 50-29(a)(2) is the minimum waiver necessary to provide relief from the requirements. The waiver is not inconsistent with the purposes and objectives of the General Plan and is not adverse to the public interest because granting the waiver is necessary in order to comply with the binding element, which itself was placed in response to public concerns.

8. *Approval of the Application will not result in development of unsafe land.*

The Subject Property contains several areas of man-made steep slopes (some in excess of 25% slope). These generally occur in the form of straight, graded slopes that were created when the site was graded to create flat areas for the school's buildings, sports fields, and parking areas. The development will result in regrading of the Subject Property and, consequently, removal of these steep slopes.

Section 50-32 of the Subdivision Regulations addresses special controls for environmentally sensitive areas. Paragraph (b) of the section states that the Planning Board must restrict subdivision of any land that it finds to be unsafe for development because of unstabilized slope or fill, among other reasons. To address the requirements of this section, the Applicant has provided a letter from a geotechnical engineering firm that states that the development will not result in unsafe conditions, as defined by Section 50-32.

Paragraph (c) of Section 50-32 states that the Planning Board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to the conservation of environmentally sensitive land. For purposes of the subsection, environmentally sensitive land is defined to include slopes over 25% or over 15% with highly erodible soils. The Subject Property does not contain any erodible soils. As mentioned above, the slopes that exceed 25% have been artificially created. They are not adjacent to any streams or stream buffers, and they are not within a forest. Thus, they are not inherently environmentally valuable. Further, regrading of the Subject Property will eliminate the steep slopes, so that

a potentially erosive condition will not be created after development of the Subject Property. For these reasons, the Planning Board did not restrict development based on Section 50-32.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

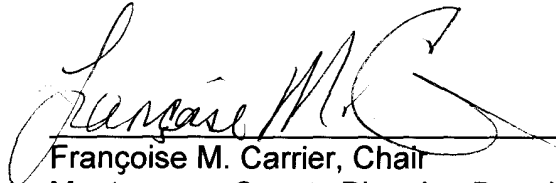
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUN 18 2013 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor, and Commissioner Presley absent, at its regular meeting held on Thursday, June 13, 2013, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board



Planning Board for any site plan amendment to the area subject to the covenant.

- C. The Schematic Development Plan (SDP) attached as Exhibit B approved with LMA G-892, generally depicts the area of the Chelsea Property which is to be subject to this Covenant.
- D. The Montgomery County Planning Board approved the Preliminary Plan (No. 120130060) and Site Plan (No.820130040), for the Chelsea Property pursuant to Resolutions No. 13-57 and No. 13-64 both of which are dated June, 18, 2013. Condition Number 16 of the Preliminary Plan requires Developer to record the restrictive covenant described in Paragraph B herein prior to recordation of the Plat for the Chelsea Property.
- E. The 37,056 square foot environmental setting for the Riggs Thompson House is shown on Site Plan No. 820130040 attached as Exhibit C.
- F. The area to be subject to this Covenant is described in Exhibits D and E attached hereto.
- G. The portion of the Chelsea Property described in Exhibits D and E, attached hereto, is generally consistent with the area shown on the Schematic Development Plan attached as Exhibit B, as required in Binding Element 13.
- H. The Site Plan for the Chelsea Property, Exhibit C attached hereto, depicts the improvements approved by the Planning Board for the portion of the Chelsea Property described in Exhibit D and E attached hereto.
- I. Developer desires to record this Covenant over the land described in Exhibits D and E in compliance with the above requirements.

NOW, THEREFORE, in consideration of the premises set forth herein and other good and valuable consideration, this sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The area subject to this Covenant described in Exhibits D and E will remain “open space” for the Chelsea Property in perpetuity. As open space it will operate to provide light and air, scenic or recreational space, or other similar purpose.
2. The open space area shall, in general, be available for entry and use by the occupants of the Chelsea Property and for the benefit of the occupants in neighboring areas, and to provide a general appearance of openness for the Chelsea Property.
3. The open space area may include, but not be limited to, lawns, decorative planting, sidewalks and walkways, and active and passive recreation areas, including children's playgrounds, fountains, wooded areas, watercourses and driveways, parking areas and accessory structures as approved by the Montgomery County Planning Board, but shall not include other parking lots or vehicular surfaces or buildings, except as shown on an approved site plan.
4. As allowed by Binding Element 13 of the Development Plan approval, Developer may complete the improvements shown on Exhibit C or others approved by the Planning Board as part of the Site Plan process in the area subject to this Covenant.
5. Following completion of the improvements depicted on the Site Plan (Exhibit C) any amendment to the Site Plan that is sought for the area subject to this Covenant requires the advice by the Historic Preservation Commission to the Planning Board. This advice will be provided during the Site Plan amendment process, as applicable.
6. Subject to the provisions of Section 7 below, the open space and improvements constructed in the area subject to this Covenant shall be perpetually maintained by the Developer, its successor or assigns.

7. The rights and obligations contained in this Covenant shall run with title to the Chelsea Property and shall bind and inure to the benefit of both parties hereto and their tenants and their respective successors and assigns in interest, as the case may be. It is acknowledged that it is the intention of the Developer to establish a homeowners association (the "**Homeowners Association**") with respect to a portion of the Chelsea Property, and the Homeowners Association will own common area parcels which include portions of the open space subject to this Covenant. Upon conveyance of those common area parcels to the Homeowners Association, the obligations of the Developer as to those common area parcels shall be solely the obligations of the Homeowners Association, and not the obligations of the Developer or the individual members of said Homeowners Association. Upon conveyance of those portions of the open space subject to this Covenant which will be included in future Lot 64 (as shown on Exhibit D), the obligations of the Developer shall be solely the obligations of the owner of said Lot 64, and not the obligations of the Developer.
8. This Covenant shall be governed in accordance with the laws of the State of Maryland.
9. The provisions of this Covenant are severable and the invalidity of one or more of the provisions shall not affect the validity or enforceability of any other provisions. Modifications, waivers and consents regarding this Amendment shall only be binding if in writing and signed by the party against whom such modification, waiver or consent is sought to be enforced.

48264 250

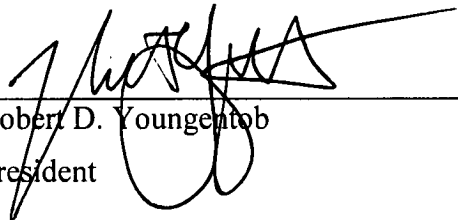
10. The recitals at the beginning of this Covenant are incorporated herein by this reference and deemed a substantive part hereof.
11. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the subject properties to the general public.

**[Signatures Appear on Following Page;  
Remainder of this Page Intentionally Blank]**

IN WITNESS WHEREOF, the parties have executed this Covenant on the day and year first above written.

**CS HOMES ASSOCIATES LLC,**  
a Delaware limited liability company

By: EYA CS MANAGER LLC,  
a Delaware limited liability company,  
Manager

By:   
\_\_\_\_\_  
Robert D. Youngentob  
President

\* \* \*

STATE OF MARYLAND

\*

\*

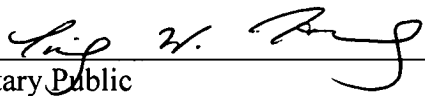
to wit:

\*

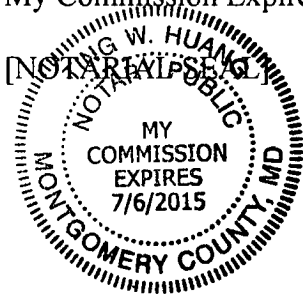
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 14<sup>th</sup> day of January, 2014, before me, a Notary Public in and for the State and County aforesaid, personally appeared Robert D. Youngentob, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument as the President of EYA CS Manager LLC, the Manager of CS Homes Associates LLC, and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: July 6, 2015





WITNESS:

MONTGOMERY COUNTY, MARYLAND

*Sarah Hanna-Jones*

Name: Sarah Hanna-Jones

By: *Robert A. Kronenberg*

Name: ROBERT A. KRONENBERG

Title: ACTING CHIEF, AREA 1  
Montgomery County Planning Department

APPROVED AS TO LEGAL SUFFICIENCY

*Christina Sonest* 1/16/14  
M-NCPPC LEGAL DEPARTMENT

\*\*\*

STATE OF MARYLAND

\*

\*

to wit:

COUNTY OF MONTGOMERY

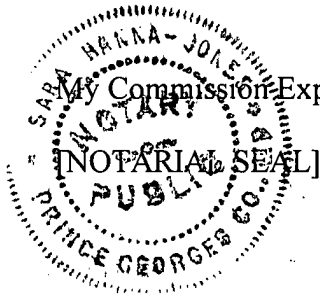
\*

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of January, 2014, before me, a Notary Public in and for the State and County aforesaid, personally appeared Robert A. Kronenberg, known to me (or satisfactorily proven) to be the ~~Development Review Chief~~ Acting Chief, Area One of Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, a public body corporate, and that such ~~Development Review Chief~~, being authorized to do so, executed the foregoing and annexed instrument on behalf of Montgomery County, Maryland for the purposes therein contained by signing the name of the said public body corporate.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Sarah Hanna-Jones*  
Notary Public for Prince Georges County, Md.

My Commission Expires: November 20, 2017



CONSENT AND JOINDER

The undersigned Beneficiary and Sole Acting Trustee under that certain Deed of Trust and Security Agreement with Assignment of Contracts of Sale, Leases, Rents and Profits made by CS Homes Associates LLC, a Delaware limited liability company, dated as of August 28, 2013 and recorded September 4, 2013 in Liber 47586 at folio 388 among the Land Records of Montgomery County, Maryland, as amended, securing Wells Fargo Bank, N.A., hereby consent to the within Agreement and hereby subordinate the lien of said Deed of Trust to the lien, legal effect and operation of said Agreement.

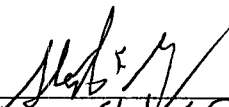
IN WITNESS WHEREOF, the Beneficiary has caused this instrument to be executed by Stephen Gray, its Sr Vice Pres., as the act and deed of the Beneficiary as of the date first above written; and the Sole Acting Trustee has executed this instrument as her act and deed in her capacity as Sole Acting Trustee. all as of the date of the foregoing Declaration.

WITNESS:

BENEFICIARY

WELLS FARGO BANK, N.A.

  
Name: **Katherine E. Reid**  
Title: **Senior Vice President**

By:   
Name: Stephen Gray  
Title: SVR

WITNESS:

TRUSTEE

\_\_\_\_\_  
Sandra Howard  
Sole Acting Trustee

CONSENT AND JOINDER

The undersigned Beneficiary and Sole Acting Trustee under that certain Deed of Trust and Security Agreement with Assignment of Contracts of Sale, Leases, Rents and Profits made by CS Homes Associates LLC, a Delaware limited liability company, dated as of August 28, 2013 and recorded September 4, 2013 in Liber 47586 at folio 388 among the Land Records of Montgomery County, Maryland, as amended, securing Wells Fargo Bank, N.A., hereby consent to the within Agreement and hereby subordinate the lien of said Deed of Trust to the lien, legal effect and operation of said Agreement.

IN WITNESS WHEREOF, the Beneficiary has caused this instrument to be executed by \_\_\_\_\_, its \_\_\_\_\_, as the act and deed of the Beneficiary as of the date first above written; and the Sole Acting Trustee has executed this instrument as her act and deed in her capacity as Sole Acting Trustee. all as of the date of the foregoing Declaration.

WITNESS:

BENEFICIARY

WELLS FARGO BANK, N.A.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WITNESS:

TRUSTEE

Janya Medinger  
\_\_\_\_\_

Sandra Howard  
Sandra Howard  
Sole Acting Trustee

DISTRICT OF COLUMBIA ) ss:

On this the 29 day of January, 2014, before me, Diana Becerra, the undersigned officer, personally appeared Stephen Fray, who acknowledged himself/herself to be the Senior Vice President of Wells Fargo Bank, N.A., a national banking association, and that he/she, as such officer, being authorized so to do executed the Wells Fargo Bank, N.A. by himself/herself as \_\_\_\_\_.

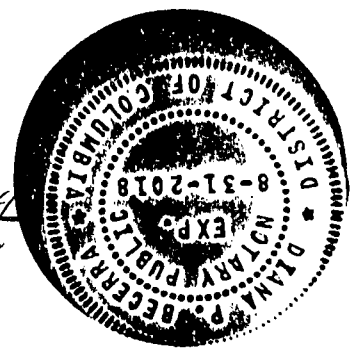
GIVEN under my hand and seal this 29 day of January, 2014.

*[Signature]*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires: August 31, 2018

District of Columbia: SS  
Subscribed and sworn to before me, in my presence,  
this 29 day of January, 2014



STATE OF MARYLAND )  
COUNTY OF \_\_\_\_\_ )

*[Signature]*  
\_\_\_\_\_  
Diana P. Becerra, Notary Public, D.C.  
My commission expires August 31, 2018.  
SS.

On this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared Sandra Howard, who acknowledged herself to be the Sole Acting Trustee under the foregoing described Deed of Trust, and acknowledged that she executed the foregoing instrument for the purposes therein contained in her capacity as the Sole Acting Trustee under said Deed of Trust.

GIVEN under my hand and seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires: \_\_\_\_\_

DISTRICT OF COLUMBIA ) ss:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of Wells Fargo Bank, N.A., a national banking association, and that he/she, as such officer, being authorized so to do executed the Wells Fargo Bank, N.A. by himself/herself as \_\_\_\_\_.

GIVEN under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

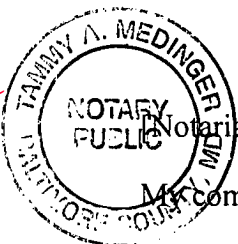
My commission expires: \_\_\_\_\_

STATE OF MARYLAND )  
 ) ss:  
COUNTY OF Baltimore )

On this the 10<sup>th</sup> day of January, 2014, before me, Tammy A. Medinger, the undersigned officer, personally appeared Sandra Howard, who acknowledged herself to be the Sole Acting Trustee under the foregoing described Deed of Trust, and acknowledged that she executed the foregoing instrument for the purposes therein contained in her capacity as the Sole Acting Trustee under said Deed of Trust.

GIVEN under my hand and seal this 10<sup>th</sup> day of January, 2014.

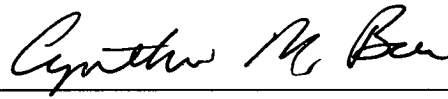
Tammy A. Medinger  
Notary Public



TAMMY A. MEDINGER  
Notary Public, State of Maryland  
My Commission Expires 11/15/2017  
My commission expires: \_\_\_\_\_

ATTORNEY'S CERTIFICATE

I HEREBY CERTIFY that this Agreement was prepared under my supervision, and that I am an attorney duly admitted to practice before the Court of Appeals of Maryland.

A handwritten signature in cursive script, reading "Cynthia M. Bar", is written above a horizontal line.

Cynthia M. Bar, Esq.

48264 258

**EXHIBIT A**

All that piece or parcel of ground situate, lying and being in the 13<sup>th</sup> Election District of Montgomery County, State of Maryland being described as follows, to wit:

Lot numbered Fifty-eight (58) in a subdivision known as "EVANSWOOD, Section One" per plat thereof recorded at Plat No. 22270 among the Land Records of Montgomery County, Maryland.

Parcel Identification Number: 13-03381404

EXHIBIT B

**GENERAL NOTES (ZONING CASE #2-89)**

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE ZONING ORDINANCES OF THE CITY OF MONTGOMERY.
2. THE DEVELOPER SHALL MAINTAIN ALL EXISTING UTILITIES AND SHALL BE RESPONSIBLE FOR ANY NECESSARY RELOCATION OR DEEPENING OF UTILITIES.
3. THE DEVELOPER SHALL MAINTAIN ALL EXISTING TREES AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REMOVAL OR PROTECTION OF TREES.
4. THE DEVELOPER SHALL MAINTAIN ALL EXISTING EASEMENTS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO EASEMENTS.
5. THE DEVELOPER SHALL MAINTAIN ALL EXISTING SETBACKS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO SETBACKS.
6. THE DEVELOPER SHALL MAINTAIN ALL EXISTING DRIVEWAYS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO DRIVEWAYS.
7. THE DEVELOPER SHALL MAINTAIN ALL EXISTING SIDEWALKS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO SIDEWALKS.
8. THE DEVELOPER SHALL MAINTAIN ALL EXISTING STAIRS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO STAIRS.
9. THE DEVELOPER SHALL MAINTAIN ALL EXISTING RAMPWAYS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO RAMPWAYS.
10. THE DEVELOPER SHALL MAINTAIN ALL EXISTING DRIVEWAYS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO DRIVEWAYS.
11. THE DEVELOPER SHALL MAINTAIN ALL EXISTING SIDEWALKS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO SIDEWALKS.
12. THE DEVELOPER SHALL MAINTAIN ALL EXISTING STAIRS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO STAIRS.
13. THE DEVELOPER SHALL MAINTAIN ALL EXISTING RAMPWAYS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO RAMPWAYS.
14. THE DEVELOPER SHALL MAINTAIN ALL EXISTING DRIVEWAYS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO DRIVEWAYS.
15. THE DEVELOPER SHALL MAINTAIN ALL EXISTING SIDEWALKS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO SIDEWALKS.
16. THE DEVELOPER SHALL MAINTAIN ALL EXISTING STAIRS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO STAIRS.
17. THE DEVELOPER SHALL MAINTAIN ALL EXISTING RAMPWAYS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO RAMPWAYS.
18. THE DEVELOPER SHALL MAINTAIN ALL EXISTING DRIVEWAYS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO DRIVEWAYS.
19. THE DEVELOPER SHALL MAINTAIN ALL EXISTING SIDEWALKS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO SIDEWALKS.
20. THE DEVELOPER SHALL MAINTAIN ALL EXISTING STAIRS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO STAIRS.
21. THE DEVELOPER SHALL MAINTAIN ALL EXISTING RAMPWAYS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO RAMPWAYS.
22. THE DEVELOPER SHALL MAINTAIN ALL EXISTING DRIVEWAYS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO DRIVEWAYS.
23. THE DEVELOPER SHALL MAINTAIN ALL EXISTING SIDEWALKS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO SIDEWALKS.
24. THE DEVELOPER SHALL MAINTAIN ALL EXISTING STAIRS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO STAIRS.
25. THE DEVELOPER SHALL MAINTAIN ALL EXISTING RAMPWAYS AND SHALL BE RESPONSIBLE FOR ANY NECESSARY REVISIONS TO RAMPWAYS.

**EXISTING STANDARDS RT-2.5**

**FOOTNOTE:**  
 OFFICE OF ZONING & ADMINISTRATIVE HEARINGS CERTIFICATION  
 I, [Signature], Planning Director, do hereby certify that the above information is true and correct to the best of my knowledge and belief.

**GEOMETRIC SCALE:**  
 1" = 100'

**ZONING CASE NO. 2-89  
 SCHEMATIC DEVELOPMENT PLAN  
 CHELSEA SCHOOL  
 LOT 10**

**Bowman CONSULTING**



EXHIBIT C

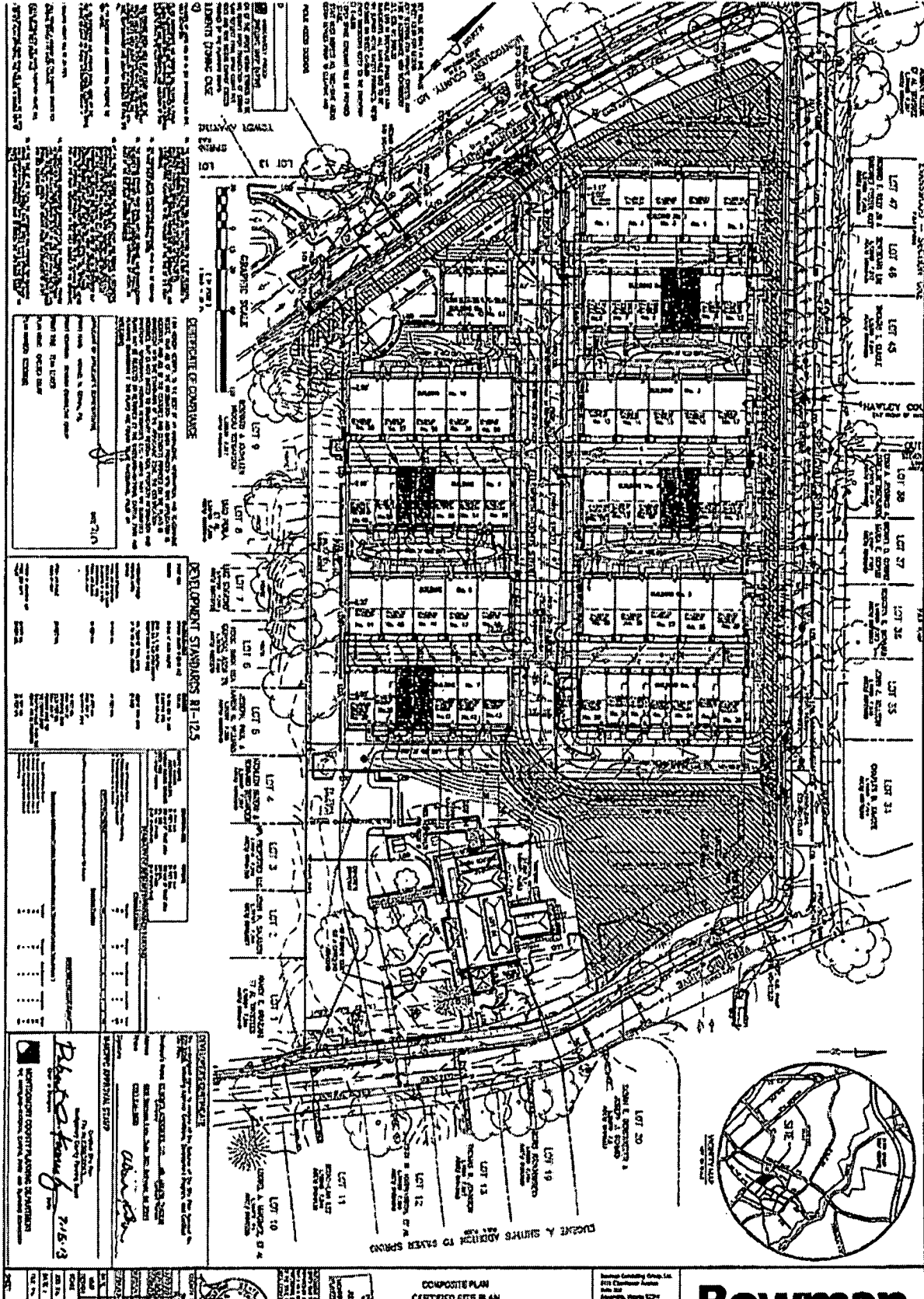
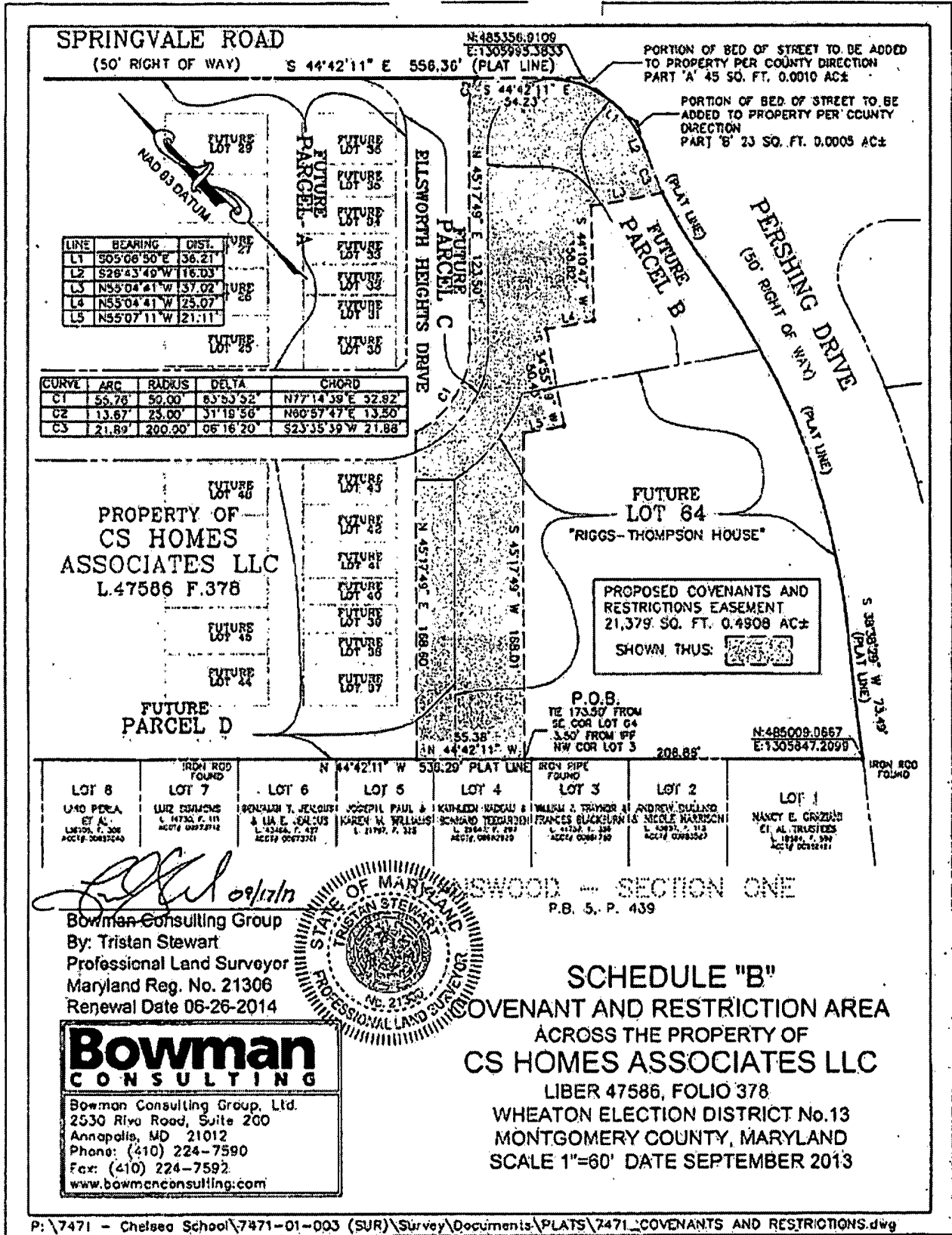


EXHIBIT D



## EXHIBIT E

Tax ID - 13-033381404

**DESCRIPTION OF  
COVENANT AND RESTRICTION AREA  
ACROSS THE PROPERTY OF  
CS HOMES ASSOCIATES LLC  
630 ELLSWORTH DR  
SILVER SPRING, MARYLAND 20910**

**BEING** a parcel of land situated in the Wheaton (13<sup>th</sup>) District of Montgomery County, Maryland hereinafter described and running in, through, over and across the property acquired by CS Homes Associates LLC from the Chelsea School by deed dated August 28, 2013 and recorded among the Land Records of Montgomery County, Maryland in Liber 47586 at Folio 378 and all being more particularly described in the Maryland State Plane Datum (NAD 83) as follows:

**BEGINNING** for the said parcel of land at a point on the southwesterly or North 44°42'11" West, 536.29 foot boundary line of said parcel of land, 173.50 feet from the beginning thereof, and running thence with and binding on part of said line the following course and distance:

1. North 44°42'11" West, 55.38 feet to a point, thence leaving said line and running over, across and through the lands of CS Homes Associates LLC the following four (4) courses and distances:
2. North 45°17'49" East, 168.60 feet to a point, thence
3. 55.76 feet along the arc of a non-radial curve to the left having a radius of 50.00 feet and an interior angle of 63°53'46" with a chord bearing and distance of North 77°14'42" East, 52.92 feet to a point of tangency, thence
4. North 45°17'49" East, 123.50 feet to a point of curvature, thence
5. 13.67 feet along the arc of a curve to the right having a radius of 25.00 feet and an interior angle of 31°19'56" with a chord bearing and distance of north 60°57'47" East, 13.50 feet to a point on the northeasterly or South 44°42'11" East, 556.36 foot boundary line of said parcel of land conveyed in the deed recorded in Liber 47586 at Folio 378, thence running with and binding on part of said boundary line 34.05 feet and then leaving the boundary of said parcel of land and extending into the right-of-way of Pershing Drive (50-foot Public Road) the following course and total distance:
6. South 44°42'11" East 54.23 feet to a point, thence continuing to run over, across and through part of the right-of-way of said Pershing Drive the following course and distance:
7. South 05°08'50" East, 36.21 feet to a point on the easterly boundary of the aforesaid parcel of land conveyed in the deed recorded in Liber 47586 at Folio 378, thence running with and binding on part of said boundary





48264 263

State of Maryland Land Instrument Intake Sheet

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.

Certified By: Tran, Anh

Handwritten signature of Anh Tran

Approved on: 1/31/2014 10:43:23 AM

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) LEK 48264, p. 0263, MSA\_CE63\_48221. Date available 02/04/2014. Printed 12/07/2015.

1. Type(s) of Instruments	<input type="checkbox"/> Deed	<input type="checkbox"/> Mortgage	<input checked="" type="checkbox"/> Other Restrictive Covenant
	<input checked="" type="checkbox"/> Deed of Trust	<input type="checkbox"/> Lease	<input type="checkbox"/> Other
2. Conveyance Type	<input type="checkbox"/> Arms Length	<input type="checkbox"/> Not Arms Length	
	<input checked="" type="checkbox"/> Not a farm	<input type="checkbox"/> Farm within five years	
3. Tax Exemption (if Applicable) Cite or Explain Authority	Recordation	Document not subject to recordation/transfer taxes.	
	State Transfer	Document not subject to recordation/transfer taxes.	
	County Transfer	Document not subject to recordation/transfer taxes.	
4. Consideration and Tax Calculation	Consideration Amount:		Finance Office Use Only:
	Purchase Price/Consideration	\$ 0.00	Transfer Tax Consideration
	Any New Mortgage	\$ 0.00	X( 0)%
	Balance of Existing Mortgage	\$ 0.00	Less Exemption Amount)
	Other 1	\$ 0.00	Total Transfer Tax
	Other 2	\$ 0.00	Recordation Tax Consideration
	Full Cash Value	\$	X(0) per \$500.00
		TOTAL DUE	\$0.00
5. Fees	Amount of Fees:		
		Doc.1	Doc.2
	Recording Charge	\$ 75.00	\$ 0.00
	Surcharge	\$ 40.00	\$ 0.00
	State Recordation Tax	\$ 0.00	\$ 0.00
	County Transfer Tax	\$ 0.00	\$ 0.00
	State Transfer Tax	\$ 0.00	\$ 0.00
Other 1	\$ 0.00	\$ 0.00	
Other 2	\$ 0.00	\$ 0.00	
6. Description of Property SDAT requires submission of all application information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i)	District	Property Tax ID No.(1)	Grantor Liber/Folio
	13	03381404	00000/0000
	Map	Parcel No.	Var. LOG
			[ ]
	Subdivision Name	Lot (3a)	Block (3b)
	501-EVANSWOOD	58	
	Sect/AR (3c)	Plat Ref.	SqFt/Acreage(4)
			211,262
	Location/Address of Property being Conveyed(2)		
	630 ELLSWORTH DR, SILVER SPRING, MD 20910		
	Other Property Identifiers (if applicable)		Water Meter Account Number
	Residential [ ] Non-Residential [ X ] Fee Simple [ ] Ground Rent [ ] None [ ]		Amount \$ 0.00
Partial Conveyance ?		[ ] Yes [ X ] No	
If Partial Conveyance, List Improvements Conveyed:			
Discription/Amount of SqFt/Acreage Transferred:			
7. Transferred From	Doc.1 - Grantor(s) Name(s)		Doc.2 - Grantor(s) Name(s)
	CS HOMES ASSOCIATES LLC		
	Doc.1 - Owner(s) of Record, if Different from Grantor(s)		Doc.2 - Owner(s) of Record, if Different from Grantor(s)
8. Transferred To	Doc.1 - Grantee(s) Name(s)		Doc.2 - Grantee(s) Name(s)
	Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission		
	New Owner's( Grantee/Grantor's(for Deed of Trust) ) Mailing Address		
	630 ELLSWORTH DR, SILVER SPRING, MD 20910		
9. Other Names to be Indexed	Doc.1 - Additional Names to be Indexed (Optional)		Doc.2 - Additional Names to be Indexed (Optional)
10. Contact/Mail Information	Instrument Submitted By or Contact Person		
	Name :	Judith Hill	
	Firm :	Lerch, Early & Brewer, Chartered	
	Address :	3 Bethesda Metro Center Suite 460 Bethesda, MD - 20814	
	Telephone :	301-657-0158	
	Hold for Pick up [ ] Return to Address Provided [ ] Return to Contact Person [ X ]		
11. Assessment Information	IMPORTANT: both the Original Deed and a Photocopy must accompany each transfer		
	Will the property being conveyed be the grantee's/grantor's(for Deed of Trust) principal residence ?		[ ] Yes [ X ] No
	Does transfer include personal property ?		[ ] Yes [ X ] No
	If yes, identify:		
	Was property surveyed ? If yes, attach copy of survey(if recorded, no copy is required)		[ ] Yes [ X ] No
Remark: The document being recorded is a Restrictive Covenant. Please note that Deed of Trust is being checked to facilitate the recording of this Restrictive Covenant only.			
Case Number or File Number: 85237.006			



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

Attachment G

To: Neil Braunstein, Area 1  
From: Scott Whipple, FPP Historic Preservation Section  
Date: June 22, 2016  
Re: Limited Plan Amendment #82013004B

---

The Historic Preservation Commission (HPC) met on May 25, 2016, for the purpose of reviewing Limited Plan Amendment #82013004B and providing advice to the Planning Board, pursuant to Binding Element 13 of Local Map Amendment G-892, Condition 16 of Preliminary Plan No. 120130060, and the Restrictive Covenant between CS Homes Associates, LLC and the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

The HPC received materials and testimony provided by the applicant and testimony from six residents. Five supported the proposal; one stated that they were “neutral”.

Having carefully considered all materials and testimony entered into the record, the HPC expressed support for the project, finding the proposed scope of work compatible with the historic Riggs-Thompson House. The Commission advises the Planning Board that the scope of work would support the goal of preserving this Master Plan for Historic Preservation-designated historic site, and that Limited Plan Amendment #82013004B is consistent with the purposes of the Historic Preservation Ordinance, Chapter 24A of the County Code.