
**MEMORANDUM – Local Map Amendment**

**DATE:** July 20, 2006

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief, Development Review Division

**FROM:** Carlton Gilbert, Zoning Supervisor   
(301) 495-4576

**SUBJECT:** **Local Map Amendment No. G-836:** *(Deferred by the Planning Board at the April 27, 2006 Meeting)* Request by the Hearing Examiner that the Planning Board re-review the request by J. Kirby Development, LLC and Vedanta Center of Greater Washington seeks reclassification of 16 acres of land from the RE-2 zone to the PD-2 zone for up to 21 single family detached residences (one existing), up to 12 single family attached residences and 6 townhouse units (MPDU) and expansion of an existing worship center. Located at intersection of Bel Pre and Homecrest Roads. Potomac – Aspen Hill Master Plan

**FILING DATE:** February 22, 2005  
**PLANNING BOARD:** October 20, 2005, April 27, 2006  
**PUBLIC HEARING:** August 6, 2006

**STAFF RECOMMENDATION:**

**APPROVAL** of Local Map Amendment No. G-836 for the following reasons:

1. The application complies with the purpose clause of the planned development zone (59-C-7.11).
2. The revised planned development plan zone is compatible with surrounding uses.

3. The rezoning does conform to the recommendations of the 1994 Approved and Adopted Aspen Hill Master Plan.

## **Proposal Summary**

### Background

At its regular meeting of April 27, 2006, the Montgomery County Planning Board deferred the applicant's request for rezoning and the associated Development Plan. The Board found that the applicant needed to consider further revisions to the revised development plan and binding elements in response to citizens' testimony and to concerns identified in the Hearing Examiners Report dated February 6, 2006. The primary purpose of this report is to discuss certain deficiencies identified in the Development Plan by the Planning Board and by the Hearing Examiner's report. In the interim, the applicant met several times with nearby citizens and staff and has further revised the Development Plan and Binding Elements.

**Please note that the previous staff reports and other materials relative to this case are provided as attachments.**

The proposed application to rezone an approximately 16-acre parcel on Homecrest Road in the Aspen Hill area from the current RE-2 Zone to the PD-2 Zone was first reviewed by the Planning Board on October 20, 2005. At that time, staff concluded that the proposed rezoning is consistent with the goals and recommendations of the 1994 Aspen Hill Master Plan, that the application complied with the purpose clause of the planned development zone, and that the planned development zone is compatible with the surrounding uses. By a vote of 4-0, the Planning Board supported the staff recommendation and recommended approval of the rezoning request. By a resolution dated March 7, 2006, the County Council remanded the rezoning application back to the Hearing Examiner to resolve the community impact and other issues raised by some of the community members. On April 27, 2006, the Planning Board reviewed the revised plan and due to the issues regarding compatibility of the proposed nine single-family detached dwellings along Homecrest Road, granted deferral of the revised application at the applicant's request.

### **Revised Proposal**

In response, the applicant has submitted another revised plan, dated July 13, 2006, that further modifies the layout and creates a forest area along the frontage of Homecrest Road by relocating some of the proposed houses along Homecrest Road to the proposed new road (Access Road C) at the northern edge of the site. (See Attachment ) In the revised development plan, six single-family houses will front Access Road C and

seven houses are proposed along Homecrest Road. The houses proposed along Homecrest Road will be separated by two forest conservation Parcels I and J, containing 0.30 and 0.49 acres respectively. As a result, only four houses are now shown along Homecrest Road directly across from existing single-family detached houses. In addressing the issue of compatibility, staff believes that reducing the number of lots along Homecrest Road, and retaining two forested parcels, will break up the appearance of the houses along Homecrest Road and thereby enhance the compatibility of the proposed development with the single-family houses located across Homecrest Road from the subject property.

Additionally, the revised development plan shows enhanced landscaping within a 10-foot landscape easement along Homecrest Road that was previously shown in the March 10, 2006 plan. The plantings within the landscape easement, along with the proposed fencing will be maintained by the Homeowner's Association as set forth in Binding Element 4. In addition, Binding Elements 7, 9, and 10 have been added to show architectural features that enhance the appearance of the proposed houses on Homecrest Road and to prohibit accessory buildings in the rear yards of these houses facing Homecrest Road (the fronts of these houses will face the internal Access Road B).

The applicant has proffered the following **Binding Elements**:

1. **The number of units will not exceed 39 (to include the existing single-family residence located on the worship center property).**
2. **Access will be from a single point on Bel Pre Road and two points on Homecrest Road.**
3. **The addition to the worship center shall not exceed 6,500 square feet of gross floor area.**
4. **Fencing and landscaping as shown on the Development Plan along Homecrest Road (within 10 feet of lot lines) shall be maintained by the Homeowners Association.**
5. **All access points shall be maintained free and clear of any sight distance obstructions located on subject property.**
6. **There will be a minimum of 7 dwelling units along Homecrest Road.**
7. **To help ensure compatibility with the surrounding neighborhood, the rear of the homes along Homecrest Road will be designed and finished with additional architectural elements including double hung windows with circle tops, and additional moldings around windows and doors.**

8. **There will be a minimum of 6 dwelling units fronting master planned Road C. This does not count any side yards for homes fronting on Road B or Homecrest Road.**
9. **To ensure compatibility with the surrounding neighborhood, no sheds or outbuildings are permitted in the rear yards along Homecrest Road. This prohibition is to be included in the HOA documents.**
10. **Landscaping along Homecrest Road will include larger caliper hardwood and evergreen trees and will emphasize native species.**
11. **To meet the community identification recommendation of the Master Plan, the development will include "Layhill" in its name.**
12. **Land dedication and construction of Homecrest Road and Road C are to be in compliance with the recommendations of the Aspen Hill Master Plan.**

### **Council Concerns and Issues**

At the April 27, 2006, Planning Board meeting, the Board requested that the applicant respond to the concerns that were included in the Council Opinion dated March 7, 2006. The concerns generally include the following:

- ◆ Dedication of land along the site's Homecrest Road frontage.
- ◆ Percentage of Green area on site not clearly reflected on the development plan.
- ◆ Access points not clearly defined in Binding Elements.
- ◆ Size of addition to the Vedanta Center not clearly identified on in the Binding Elements.
- ◆ Density of the proposed development.
- ◆ Building configuration and orientation in relation to Homecrest Road
- ◆ Compatibility with surrounding area.
- ◆ Right-of-way dedication for Road C

Detailed response to the issues and concerns raised in the Council's Opinion is attached.

### **Community Concerns**

In response to the concerns raised by some members of the community at the April 27 Planning Board meeting, the applicant met with the community and with



staff to discuss the issues of compatibility, lay-out configuration, and right-of-way dedications with regard to the associated development plan. The community members met with technical staff and agreed with the revised concept that places single-family homes along Access Road C and also provides a forest area along the frontage of Homecrest Road. A letter, dated July 4, 2006, was sent to the applicant and staff outlining the changes addressed in the revised development plan and requested that the applicant respond in order to eliminate the need for further delays or changes to the Development Plan. The applicant responded in a letter dated July 13, 2006. (See Attached)

Although the community members have agreed to the majority of the changes of the development plan, they would prefer more setback variation from the street for Lots 7, 8, & 9. These lots are located at the southern end of the development and face Homecrest Road. The community also believes that the green corridor recommendations of the Aspen Hill Master Plan should be implemented as a Binding Element. Additionally, the community believes that the 6 MPDU units should be developed as duplexes and that they should be located throughout the entire development.

#### **Description of property (As depicted in previous plan)**

The three subject lots for the proposed rezonings form a square tract adjacent to Bel Pre Road and Homecrest Road in Aspen Hill. Approximately 867' of frontage on Bel Pre and 800' of frontage on Homecrest Road.. A stream identified in the Master Plan as Bel Pre Creek drains through the property. There is no flood plain present on the tract. The property is partially wooded, partially field, and partially residential use.

#### **Surrounding Area (As depicted in previous plan)**

In a floating zone application, the evaluation of the zoning issues requires delineation of the surrounding area. The surrounding area for this application is referenced in the 1994 Approved and Adopted Aspen Hill Master Plan as the "Bel Pre Road" area<sup>5</sup>. The boundaries of this area are Bel Pre Road to the south, Homecrest Road to the west, Argyle Country Club to the North and The Bel Pre Square Townhouses<sup>6</sup> Road to the East. The area is approximately 63 acres.

The land use pattern for the area is a mix of uses including residential, a social lodge and a nursing home. Adjacent to the north is land zoned RE-2, the Aspen Hill Racquet Club. Adjacent to the east is land zoned RE-2 and owned by the Wheaton Moose Lodge #1775. Across Homecrest Road and to the west is R-200 and RE-2 (TDR) zoned land with two senior housing facilities and single family residential. To the south is Strathmore House Apartments and townhomes in the R-150 zone

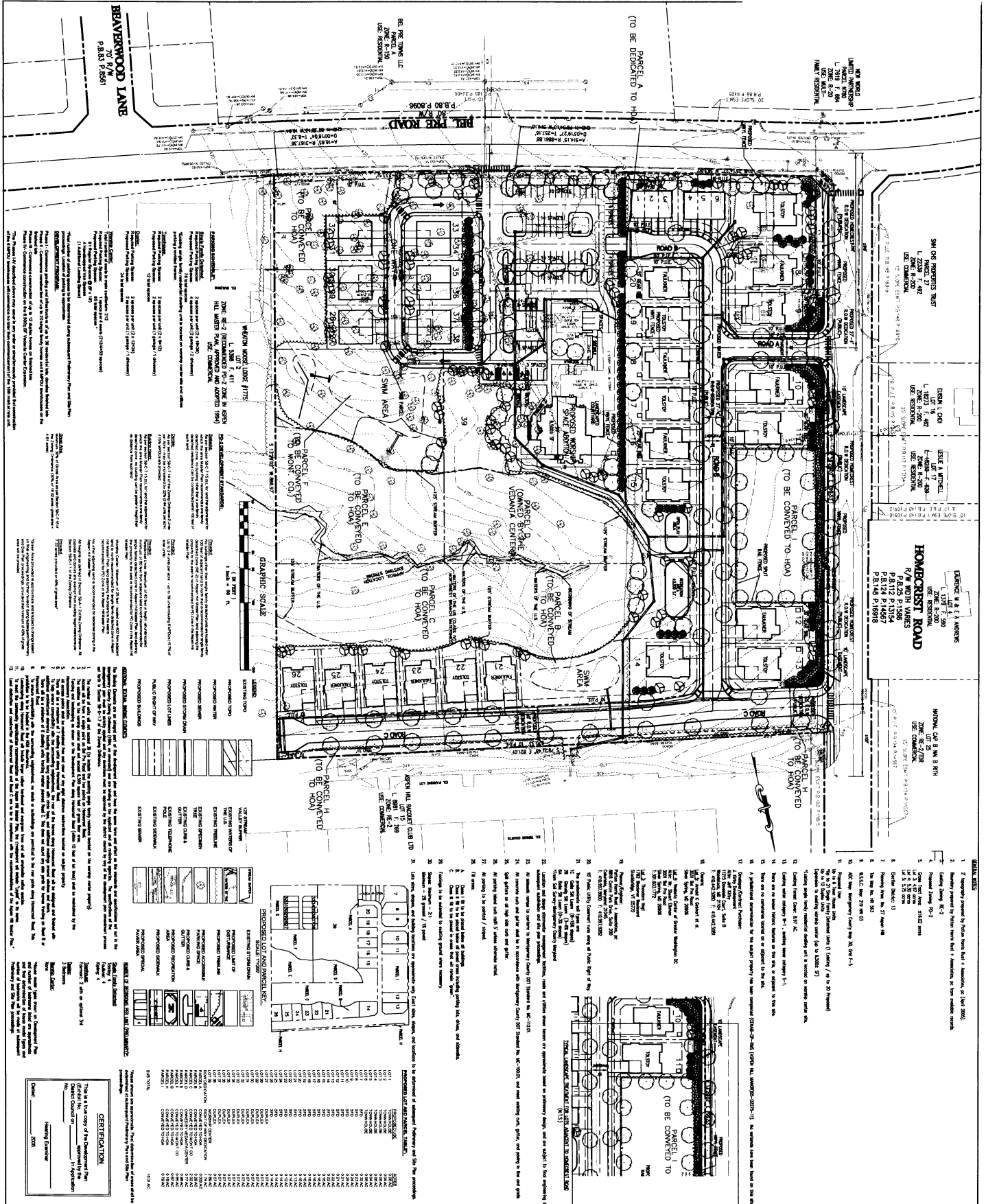
If the District Council approves rezoning, additional steps will include the review and approval of a preliminary plan of subdivision and site plan by the Planning Board.

## **CONCLUSION**

With respect to the subject application, staff finds that the purpose clause and the requirements of the Planned Development Zone to provide a broad range of housing types, to minimize the amount of grading necessary for construction through flexibility of standards, and to provide a pedestrian network that links existing and proposed communities to public facilities have been realized by this plan. Staff believes that the requested PD-2 zone meets the intent of the 1994 Approved and Adopted Aspen Hill Master Plan. Staff also recommends approval of the Development Plan and Binding Elements that accompany this application which limit the development to a maximum of 7 residential units along Homecrest Road . Staff believes that the reduction in density along Homecrest Road, along with the landscaping along the property frontage and the proffered architectural features will improve the appearance of the new community from HomecrestRoad.

## **ATTACHMENTS**

- **Attachment 1 (Revised Development Plan)**
- **Attachment 2 (Responses from Applicant and the Community)**
- **Attachment 3 (Internal Memos from Transportation, Community-Based, and Environmental Planning)**
- **Attachment 4 (Staff Report dated April 14, 2006)**
- **Attachment 5 (County Council Opinion dated March 7, 2006)**
- **Attachment 6 (Staff Report dated October 11, 2005)**



**DEVELOPMENT PLAN**

**ASPEN HILL MANOR**

TAX MAP HB83  
18065 GEORGIA AVE 2ND FLOOR  
ONLEY, MD 20832

13TH ELECTION DISTRICT  
MONTGOMERY COUNTY, MARYLAND

No.	REVISION	DATE	BY
1	REVISED PLAN TO REFLECT CHANGE FROM 20-7-20	2/17/20	UB
2	REVISED PER MPPCC COMMENTS	4/29/20	SS
3	REVISED PER MPPCC COMMENTS	7/13/20	UB

**OWNERS / DEVELOPER:** J. KIRBY DEVELOPMENT  
1214 BOWDLE COURT, SUITE B  
WOODSTOCK, VA 22691  
410-445-8888

**HOLLY RIDGE DEVELOPMENT**  
4700 HOLLY RIDGE ROAD  
ROCKVILLE, MARYLAND 20850  
971-774-0288

**Patton Harris Rust & Associates, pc**  
Engineers, Planners, Landscape Architects.  
8819 Centex Park Drive Columbia, MD 21046  
T 410-687-4830 F 410-687-4382

**VICINITY MAP**  
SCALE: 1"=2000'

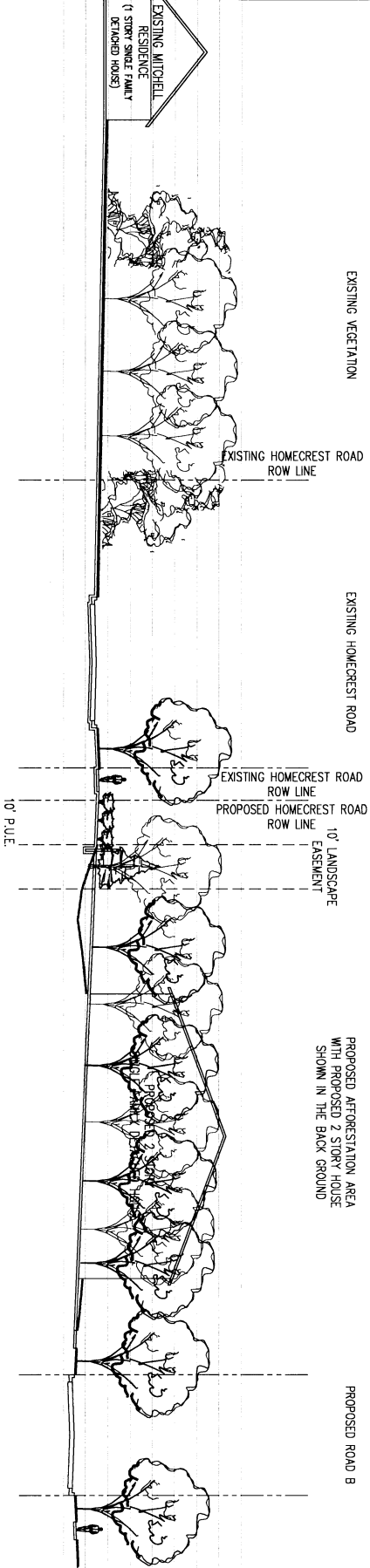
**CERTIFICATION**

I, the undersigned, being a duly Licensed Professional Engineer in the State of Maryland, do hereby certify that the above is a true and correct copy of the plans as shown to me by the applicant, and that the same conform to the provisions of the laws and regulations of the State of Maryland, and that the same are in accordance with the provisions of the laws and regulations of the State of Maryland, and that the same are in accordance with the provisions of the laws and regulations of the State of Maryland.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

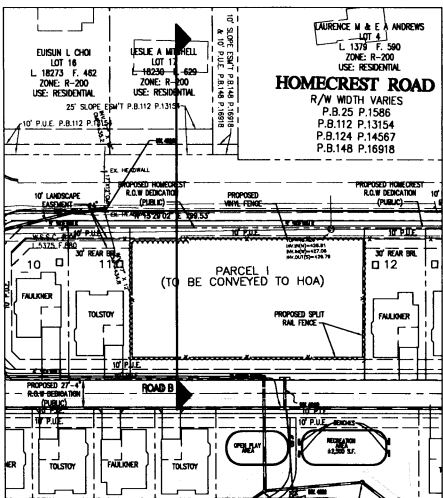
Professional Engineer License No. \_\_\_\_\_





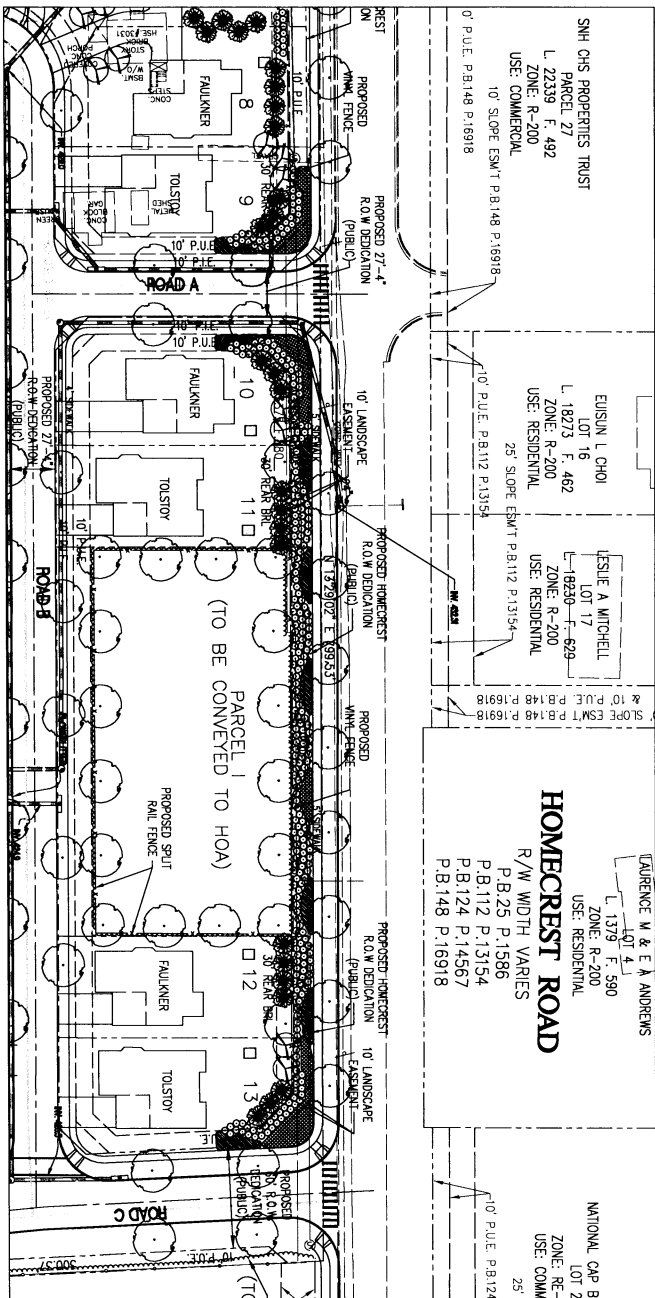
CROSS SECTION THROUGH HOMECREST ROAD SHOWING ADJACENT PROPERTY RELATION TO THE SUBJECT PROPERTY

SCALE: 1"=10'



CROSS SECTION THROUGH HOMECREST ROAD

SCALE: 1"=50'



TYPICAL LANDSCAPE TREATMENT FOR LOTS ADJACENT TO HOMECREST ROAD

SCALE: 1"=30'



PROPOSED FENCE DETAIL ALONG HOMECREST ROAD

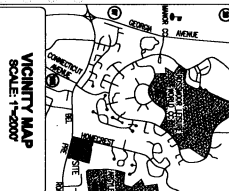
SCALE: NTS

No.	REVISION	DATE	BY

OWNER / DEVELOPER: J. KIRBY DEVELOPMENT  
 ATTN: JEFFREY C. KIRBY  
 1194 DORCHESTER COURT, SUITE B  
 WOODSTOCK, MD 21791  
 410-488-8899

HOLLY RIDGE DEVELOPMENT  
 JOHN PETERILLA  
 400 HILL FARMWAY  
 ROCKVILLE, MARYLAND 20855  
 891-774-0288

Patton Harris Rust & Associates, pc  
 Engineers, Surveyors, Planners, Landscape Architects.  
 8818 Centre Park Drive Columbia, MD 21046  
 T 410-687-8800 F 410-687-8882



DEVELOPMENT PLAN  
 DETAIL SHEET

ASPEN HILL MANOR  
 TAX MAP HR83  
 18085 GEORGIA AVE 2nd FLOOR  
 ONLEY, MD 20832

13TH ELECTION DISTRICT  
 MONTGOMERY COUNTY, MARYLAND

**PHRA**

Professional Horticulture & Planning Resources, Inc.

10000 WOODBURN AVENUE, SUITE 200  
 WASHINGTON, DC 20014  
 TEL: 703-433-7500 FAX: 703-433-7501  
 WWW.PHRA.COM

DATE: 07/20/2011 SHEET 1 OF 1

**APPLICATION NO. G-836 FOR AMENDMENT TO THE ZONING  
ORDINANCE MAP  
Vedanta Center and J. Kirby Development, LLC**

The Council Opinion dated March 7, 2006 raised some concerns and those concerns are highlighted in bold lettering below. The applicant's changes and responses are highlighted in italics.

**A. Page 6, 2<sup>nd</sup> paragraph.**

**The testimony indicated that Applicants intent to provide a small dedication of land along the site's Homecrest Road frontage, but this dedication is not clearly shown on the Development Plan. The intent is to provide 35 feet from the property line to the center of the roadway, consistent with a master plan recommendation that Homecrest Road should have a 70-foot-right-of-way.**

*The plan shows the required 35' from centerline dedication along the entire length of road frontage of Homecrest Road, which is consistent with the Master Plan recommendation.*

**B. Page 7, 3rd paragraph**

**1. The Development Plan specifies that "Lot size and shapes and building locations are for illustration only and may be further revised at subsequent Preliminary and Site Plan proceedings"**

*General Notes # 31. has been revised to state "Lot sizes, shapes, and building locations are approximate only. Exact sizes, shapes, and locations to be determined at subsequent Preliminary and Site Plan proceedings."*

**2. Green area shown covers approximately 46 percent of the site, but the text of the Development Plan states that green area may be reduced, provided that the statutory requirement of a minimum of 30 percent green area is met.**

*A note has been add to the plan to further clarify the intent. The note states "Green Area provided is approximate and is subject to change based on final engineering and further revision during subsequent Preliminary and Site Plan proceedings, provided that a minimum of 45% of gross area will be provided." The required Green Area of the Gross Area as per Section 59-C-7.16 of the Zoning Ordinance (30% of 16.02 Acres, gross area = 4.81acres and the current plan provides 46% of the gross area or 7.33acres of green area.)*

**3. A textual binding element specifies that the development will have a single access point on Bel Pre Road, and *no more than two* access points on Homecrest Road. This suggests that one of the two Homecrest Road access points shown of the Development Plan could be eliminated at a later stage of review.**

*Additional Textual Binding Element # 2. has been modified to state "access will be from a single point on Bel Pre Road and two points on Homecrest Road."*

**C. Binding Elements, Page 9, 3<sup>rd</sup> paragraph.**

**1. Textual binding element No. 1 states that the number of units will not exceed 39, including the existing Vedanta Center guest house. The General Notes are written in more exact terms: 21 single-family detached units, 12 duplex units and six townhouses. During the hearing, Applicants' counsel indicated an intention to revise the General Notes to provide for "up to" the number of each unit type specified; the failure to make that change may have been a simple oversight. If the Applicants' intention is to leave the Planning Board the discretion to reduce the number of units, if necessary, during subdivision or site plan review, the General Notes must be changed to allow for that possibility.**

*Additional Textual Binding Elements # 1. has been revised to state, "The number of units will not exceed 39 ( to include the existing single family residence located on the Worship Center property." The intent is to meet this Binding Element.*

**2. Textual binding element No.3 states that the addition to the Vedanta Center will not exceed 6,500 square feet of gross floor area. The graphic portion of the Development Plan depicts proposed worship space addition with an approximate size of "6,000± SF." The "Development Program" (phasing) description describes the Vedanta Center expansion as "6,500± SF." These inconsistencies between text and graphics must be rectified to avoid confusion.**

*The square footage on the plan for the proposed Worship Space Addition has been revised to indicate 6,500 S.F. to match Additional Textual Binding Element note number 3.*

**3. Textual binding element No.4 states that fencing and landscaping "as shown on the Development Plan along Homecrest Road (within 10 feet of lot lines) shall be maintained by the Homeowners Association." This is consistent with testimony during the hearing, which indicated that the HOA would ensure uniform fencing and landscaping between the rear yards of the new homes and Homecrest Road. The Hearing Examiner, however, could not find any indications on the submitted Development Plan of fencing or landscaping along Homecrest Road. The graphic portion of the Development Plan and the textual binding elements must be consistent.**

*The graphic portion of the Development Plan has been revised to show the Landscaping and uniform fencing within 10 feet of the rear lot lines adjacent to Homecrest Road to be consistent with Additional Textual Binding Element note number 4, and the testimony during the Hearing.*

**4. The Development Plan submitted here shows very clearly the intended road**



right-of way dedications for Roads A, B, and C, including the possible future extension of Road C along the full length of the northern boundary. It does not clearly show, however, the intended right-of-way dedication along Homecrest Road that was described during testimony. This omission must be rectified.

*The plan has been corrected to show the required Right-of-Way dedication along Homecrest Road. The plan shows the required 35' from centerline dedication along the entire length of road frontage of Homecrest Road, which is consistent with the Master Plan recommendation.*

5. As discussed in more detail in Part III.F.2. below, the 50-foot right-of-way dedication shown for Road C may not be sufficient to build the access road that the Master Plan envisioned as this location. A finding of Master Plan compliance cannot be made without sufficient right-of-way dedication to ensure enough land to carry out this important Master Plan objective.

*The plan has been revised to show a Right-of-Way dedication for Road C of 60' which is sufficient Right-of-Way dedication to ensure enough Right-of-Way to carry out this important Master Plan objective for a 60 foot Right-of-Way.*

D. NRI/FSD, Page 10, 4<sup>th</sup> paragraph.

An additional flaw on a separate document relates to NRI/FDS, Exhibit 23(d). The Zoning Ordinance specifies that a development plan must include "a natural inventory prepared in accordance with a technical manual adopted by the Planning Board ... " Code § 59-D-1.3(a). The submitted NRI/FSD does not show MNCPPC approval, although a memorandum from Environmental Planning Staff at the MNCPPC (attached to Staff Report, Ex. 28) states that it was approved on June 6, 2005. A copy of the approved document should be submitted into the record on remand.

*The copy of the approved NRI/FSD of June 06, 2005 has been submitted into the record.*

E. Page 16, 2<sup>nd</sup> paragraph.

The Development Plan shows ten single-family detached homes backing onto Homecrest Road, each with a maximum height of 40 feet and ten to 15 feet between houses. Community members expressed a legitimate concern that these dwellings would have the appearance of a density closer to townhouses than to the typical density of single-family homes in the area. The new houses would be set back about 45 feet from the sidewalk, with some of the setback presumably occupied by landscaping and fencing to be maintained by the homeowner's association. Beyond the setback, the new homes would be separated from the existing residential lots by the 20-foot width of Homecrest Road, plus sidewalks. With a street that narrow and the houses so close together, the existing homes could feel hemmed in with a vista

that goes no farther than the uniform line of fences and houses facing them. Moreover, the new development would not have the effect some community members hope for, of breaking up the high density intersection.

*The plan has been revised to show 7 single family detached homes backing onto Homecrest Road. That is a reduction of 3 single family homes. The plan also shows Right-of-Way dedication to achieve the 35' from center of existing pavement for the full Right-of-Way of 70' and the lots adjacent to Homecrest Road have been revised to be deeper lots increasing the rear yards from the previous 45 feet from proposed Right-of-Way to 60 feet from proposed Right-of-Way. In addition the revised plan now indicates an undeveloped parcel adjacent to Homecrest Road of 0.79 acres with 0.63 acres of afforestation on this undeveloped parcel. All of these revisions achieve the existing community member's hope of breaking up the density adjacent to Homecrest Road.*

F. Page 17, 2<sup>nd</sup> paragraph.

The overall density of the proposed development is 2.4 d.u./acre. This is based on the standard PD-2 density of two units per acre, plus 22 percent density bonus for 15 percent MPDUs (six units out of 39). Breaking that down to examine the visual impact of the homes shown along Homecrest Road, the Hearing Examiner estimated that the principal residential area shown on the Development Plan occupies roughly the western third of the site, an area of about 5.3 acres. Within that acreage, the Development Plan shows 26 units - a density of 4.9 d.u./acre. This represents a nearly tenfold increase over the two acre-per-lot density permitted under the current RE-2 zoning. It also represents a density considerably higher than the prevailing densities in the single-family portions of the surrounding area, zoned R-150 and R-200, both of which provide for standard densities of 2.2 d.u./acre.

*The current Development plan shows 6 fewer units/homes on this western portion of the site. Using the same methodology as the Hearing Examiner, the now 20 units on the same 5.3 acres yields a density of 3.8 units per acre. Further, the density of the area of land immediately adjacent to Homewood Road is now substantially reduced. Parcels across from the site along Homecrest Road are developed with 3 single family homes and two senior housing communities that were developed under special exceptions. The two special exception uses have densities per acre that are considerably higher than the proposed density for the applicant's property.*

G. Page 17, 3<sup>rd</sup> paragraph.

As the Master Plan makes clear, the purpose of recommending PD zoning for the subject property was to provide an incentive for consolidation of lots to provide benefits such as efficient road access with fewer curb cuts, joint storm water management and more effective environmental protection. Thus, higher density than the current zoning is expected and appropriate. The question is one of degree.

**Higher density should be accommodated in a manner that preserves compatibility with the surrounding area. The closeness of homes on the interior streets is an appropriate way to achieve higher density, as the off-site impacts would be minimal. Along a roadway frontage confronting single-family homes on large lots, however, site design requires more sensitivity to visual compatibility.**

*The revisions made to the plan preserves compability with the surrounding area by separating and introducing open space between the proposed homes which provides the look from the confronting single-family homes of larger lots that are more sensitive and visually compatible.*

July 4, 2006

Jeffrey C. Kirby  
J. Kirby Development, LLC  
11215 Dovedale Court  
Woodstock, MD 21104

RE: Development Plan for G836

Dear Jeff:

Thank you for sending the Development Plan dated 6/21/06. As you know, our group met with Technical Staff and agreed with their concept to unify the two conservation areas along Homecrest Road into one parcel. This leaves five detached single family homes adjacent to the southern end of Homecrest Road separated by the conservation area from the two detached units adjacent to the more northern end of Homecrest. Recently, staff has indicated that you are in agreement with their proposal.

In our memo of June 7, 2006, we restated our agreement to move homes along Homecrest Road 15 feet to the east (item #2). This was done for Lots 11, 12 and 13 on the new Development Plan, but was overlooked for Lots 7, 8, 9 and 10. Please correct this when you redo the Plan to incorporate the staff suggestions.

Item 4. in our memo discussed the use of the "Layhill" name. We recommend that the Binding Elements include the following statement: "To meet the community identification recommendation of the Aspen Hill Master Plan, the development will include "Layhill" in its name."

To incorporate Memo Item 8. in the Binding Elements, we recommend the following statement: "Landscaping to be provided will emphasize native species."

Memo Item 9. needs to be included in the Binding Elements with a simple statement: "The development will incorporate the green corridor recommendations of the Aspen Hill Master Plan."

The Memo Item 10. is partially covered in Binding Element 7. on the new Development Plan. We recommend new language: "To help ensure compatibility with the surrounding neighborhood, the rear elevations of the homes along Homecrest Road will be designed and finished to have the appearance of front elevations utilizing architectural elements including double hung windows with circle tops and additional moldings around windows and doors."

A simple error was made in translating the Memo Item 11. to Binding Element 8. Our agreement is to have a minimum of six dwelling units fronting Road C.

Binding Element 13. needs to be strengthened. Our recommended language is: "To ensure compatibility with the surrounding neighborhood, no sheds or other outbuildings are permitted in the rear yards along Homecrest Road. This prohibition is to be included in the Home Owner Association documents."

Memo Items 14. and 15. need to be included in the Binding Elements. We recommend a simple statement: "Land dedication and construction of Homecrest Road and Road C are to be in compliance with the recommendations of the Aspen Hill Master Plan."

Your development plan of June 21, 2006 shows J. Kirby Development as owner and Holly Ridge Development, John Petrella, as developer. This raises the question as to whether both or just one party is responsible for fulfilling requirements. A binding element should clarify this.

Our major area of conflict with the 6/21/06 Development Plan is Item 31. in the General Notes. The long and laborious process that we have gone through has been to bring greater specification to these issues to help ensure compatibility with the neighborhood and compliance with the Aspen Hill Master Plan. We continue to believe that strong specifications and directions are necessary to achieve compatibility and compliance.

We continue to hope that as you prepare a final development plan, that you give full consideration to building the M.P.D.U.s as duplexes and that they be distributed throughout the entire development. We are also very interested in knowing if you have made contact with management of the Aspen Hill Club regarding the safety issues of access to Homecrest Road.

In closing, we would appreciate it greatly if you respond shortly to the points we have covered in this letter. With active conversation back and forth, we can eliminate the need for further delays or changes to the Development Plan.

Sincerely,

Max Bronstein  
2925 Birch Tree Lane  
Silver Spring, MD 20906  
301-460-3117

Richard Kauffinger  
2309 East Gate Drive  
Silver Spring, MD 20906  
301-871-1369

cc. Francoise Carrier, Esq.  
Derick Berlage  
Carlton Gilbert  
Kalid Afzul



11215 Dovedale Court • Suite B • Woodstock, MD 21104  
Tel: 410.442.5080 • Fax: 410.442.5081

July 13, 2006

Max Bronstein  
2925 Birch Tree Lane  
Silver Spring, MD 20906

Richard Kauffunger  
2309 East Gate Drive  
Silver Spring, MD 20906

**RE: DEVELOPMENT PLAN G836**

Dear Max & Dick:

I am in receipt of your letter dated 7/4/06, in reference to the proposed Aspen Hill Community. Below I have responded to each of your points. Your points are in bold type and our responses are in italic type:

**Thank you for sending the Development Plan dated 6/21/06. As you know, our group met with Technical Staff and agreed with their concept to unify the two conservation areas along Homecrest Road into one parcel. This leaves five detached single family homes adjacent to the southern end of Homecrest Road separated by the conservation area from the two detached units adjacent to the more northern end of Homecrest. Recently, staff has indicated that you are in agreement with their proposal.**

*Agreed.*

**In our memo of June 7, 2006, we restated our agreement to move homes along Homecrest Road 15 feet to the east (item #2). This was done for Lots 11, 12, and 13**

**on the new Development Plan, but was overlooked for Lots 7, 8, 9, and 10. Please correct this when you redo the Plan to incorporate the staff suggestions.**

*We have continuously heard that the previous plan was a "wall" of houses along Homecrest Road. Therefore we have moved some homes further away from Homecrest road. Our current plan shows lots 9, 11, 12, & 13 further away from Homecrest than lots 7, 8, & 10. We want to vary the distance between the homes and Homecrest in order to eliminate a uniform distance and the "wall" look. We do not want all of the homes at the same distance from Homecrest Road.*

**Item 4. in our memo discussed the use of the "Layhill" name. We recommended that the Binding Elements include the following statement: "To meet the community identification recommendation of the Aspen Hill Master Plan, the development will include "Layhill" in its name."**

*This binding element has been added to the plan.*

**To incorporate Memo Item 8. in the Binding Elements, we recommend the following statement: " Landscaping to be provided will emphasize native species."**

*This note has been added to binding element # 10.*

**Memo Item 9. needs to be included in the Binding Elements with a simple statement: " The development will incorporate the green corridor recommendations of the Aspen hill Master Plan."**

*As we move through the preliminary and detailed site plan process we will provide whatever is required for Bel Pre and Homecrest Roads.*

**The Memo Item 10. is partially covered in Binding Element 7. on the new Development Plan. We recommend new language: "To help ensure compatibility with the surrounding neighborhood, the rear elevations of the homes along Homecrest Road will be designed and finished to have the appearance of front elevations utilizing architectural elements including double hung windows with circle tops and additional moldings around windows and doors."**

*We have added the following binding element to the plan: "To help ensure compatibility with the surrounding neighborhood, the rear of the homes along Homecrest Road will be designed and finished with additional architectural elements including double hung windows with circle tops, and additional moldings around windows and doors."*

**A simple error was made in translating Memo Item 11. to Binding Element 8. Our agreement is to have a minimum of six dwelling units fronting Road C.**

*We have added this word to binding element # 8.*

**Binding Element 13. needs to be strengthened. Our recommended language is: “ To ensure compatibility with the surrounding neighborhood, no sheds or other outbuildings are permitted in the rear yards along Homecrest Road. This prohibition is to be included in the Home Owner Association documents.”**

*We have revised binding element # 9 pursuant to your request above.*

**Memo Item 14. and 15. need to be included in the Binding Elements. We recommend a simple statement: “Land dedication and construction of Homecrest Road and Road C are to be in compliance with the recommendations of the Aspen Hill Master Plan.”**

*We have added this as a new binding element.*

**Your development plan of June 21, 2006 shows J. Kirby Development as owner and Holly Ridge Development, John Petrella, as developer. This raises the questions as to whether both or just one party is responsible for fulfilling requirements. A binding element should clarify this.**

*The title block of the development plan has been corrected and both entities are shown as “owner/developer.”*

**Our major area of conflict with the 6/21/06 Development Plan is Item 31. in the General Notes. The long and laborious process that we have gone through has been to bring greater specification to these issues to help ensure compatibility with the neighborhood and compliance with the Aspen Hill Master Plane. We continue to believe that strong specifications and directions are necessary to achieve compatibility and compliance.**

*This note must remain as stated on the development plan. This noted was crafted with input from the Hearing Examiner. As we all go through the preliminary and detailed site plan process, this note gives all of us the ability to make minor changes to the plan without having to go back to the Planning Board for an amendment to the Development Plan.*

**We continue to hope that as you prepare a final development plan, that you give full consideration to building the M.P.D.U.s as duplexes and that they be distributed throughout the entire development. We are also very interested in knowing if you have made contact with management of the Aspen Hill Club regarding the safety issues of access to Homecrest Road.**

*We continue to believe that the appearance and massing of the MPDU homes in groups of three is the most closing compatible with the single family detached homes that will be developed in this community. We have also spent considerable time in considering where to place the MPDU town homes. They are not allowed along Road C because of the 100’*



*setback rule about multi-family housing in a PD zone. These MPDU town homes are across Bel Pre Road from an existing town home community. Some communities hide these homes and we have chosen not to do this.*

*We met with the Aspen Hill Racquet Club awhile back in order to show them our proposed plan.*

**In closing, we would appreciate it greatly if you respond shortly to the points we have covered in this letter, With active conversation back and forth, we can eliminate the need for further delays or changes to the Development Plan.**

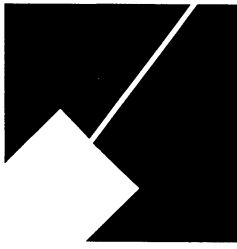
I hope that we have addressed all of your areas of concern. Thank you for your time and hard work on this community.

Sincerely,



Jeffrey C. Kirby

M-NCPPC



## MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION*8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, www.mncppc.org*

July 17, 2006

## MEMORANDUM

TO: Carlton Gilbert, Zoning Analyst  
Development Review Division

FROM: Khalid Afzal, Team Leader, Georgia Avenue Team *KA*

SUBJECT: G-836 Remanded

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This staff memorandum addresses the revised development plan submitted by the applicant dated July 13, 2006.

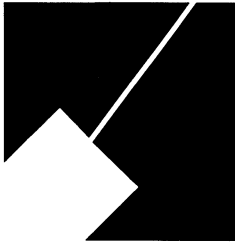
The proposed application to rezone an approximately 16-acre parcel on Homecrest Road in the Aspen Hill area from the current RE-2 Zone to the PD-2 Zone was first reviewed by the Planning Board on October 20, 2005. The Community-Based Planning staff concluded at the time that the proposed rezoning was consistent with the goals and recommendations of the 1994 Aspen Hill Master Plan. The Planning Board supported the staff recommendation and recommended approval of the rezoning request.

By a resolution dated March 7, 2006, the County Council remanded the rezoning application back to the Hearing Examiner to resolve the community impact and other issues raised by some of the community members. The applicant submitted a revised plan with seven single-family units in the block surrounded by Homecrest Road, Road A, Road B and Road C. (Previously, this block had eight units in the plan approved by the Planning Board during its review on October 20, 2005). Community-Based Planning staff concluded that the revised plan was consistent with the goals and recommendations of the Master Plan. There were no other significant changes in the revised plan. On April 27, 2005, the Planning Board reviewed the revised plan and due to the issues regarding the compatibility of proposed seven single-family detached houses along Homecrest Road, granted deferral of the revised application at the applicant's request.

The applicant has submitted another revised plan, dated July 13, 2006, that further modifies the layout and creates a forest area along the frontage of Homecrest Road by relocating some of the proposed houses along Homecrest Road to the proposed new road at the northern edge of the site. After analyzing the proposed revised plan, the

Community-based Planning staff concludes that the revised plan is consistent with the goals and recommendations of the 1994 Aspen Hill Master Plan, and that it further improves the compatibility between the proposed single-family detached houses and the existing houses along Homecrest Road.

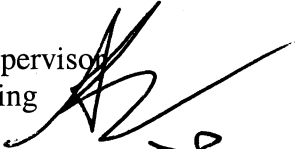
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July 17, 2006

**MEMORANDUM**

TO: Carlton Gilbert, Zoning Supervisor  
Development Review Division

VIA: Shahriar Etemadi, Supervisor  
Transportation Planning 

FROM: David Paine, Planner/Coordinator  
Transportation Planning 

SUBJECT: Local Map Amendment No. G-836  
Aspen Hill Manor (Homecrest Road Property)  
Aspen Hill Policy Area

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This memorandum is Transportation Planning staff's adequate public facilities (APF) review of the subject local map amendment for the rezoning from the RE-2 zone to the PD-2 zone. A future preliminary plan would be required to reconfigure the existing Lots 3, 4, and 5 and record them as Lots 1 to 39 and Parcels A to E.

**RECOMMENDATIONS**

Transportation Planning staff recommends the following recommendations as part of the APF test for transportation requirements related to the subject local map amendment:

1. The applicant shall limit the local map amendment to the following land uses:
  - a. 20 additional single-family detached units in addition to the one existing unit, for a total of 21 single-family detached units.
  - b. 18 attached units consisting of 12 single-family that are semi-detached units (duplex), and six townhouse units.

- c. A 6,000 square-foot expansion to the existing house of worship that includes a new 212-seat main auditorium.
2. The applicant to limit activities associated with the house of worship to exclude programs that would generate peak-hour vehicular trips within the weekday morning and evening peak periods, such as a weekday child daycare facility or private school. These land uses would require a separate APF review.
3. At the time of preliminary plan review, the applicant shall dedicate right-of-ways at following locations:
  - a. Six feet of additional right-of-way required for a total of 35 feet from the centerline of Homecrest Road, a primary residential street.
  - b. A 50-foot-wide right-of-way for a new road across the northern portion of the subject property, as recommended in the *Aspen Hill Master Plan*.

## **DISCUSSION**

### **Site Location**

The site is located in the northeast quadrant of the Bel Pre Road and Homecrest Road intersection.

### **Vehicular Access Points**

The site access points are proposed at following locations:

1. One access point is provided from Bel Pre Road for the house of worship and 12 duplex units.
2. Two access points are provided from Homecrest Road for the new single-family units, the townhouse units, and a new public street connecting to landlocked property to the east of the site.

### **Pedestrian and Bicycle Facilities**

The proposed local map amendment will not adversely affect the existing pedestrian (five-foot-wide) and bicycle facilities along Bel Pre Road and Homecrest Road. The applicant has proffered to construct the missing sidewalk links on Bel Pre Road and Homecrest Road. Lead-in sidewalk shall be provided into the site.

### **Available Transit Service**

Transit service is available via Ride-On route 26 running along Homecrest Road west of the site and Bel Pre Road, and via Ride-On route 49 on Bel Pre Road.

Montgomery County Master-Planned Roadways and Bikeways

In accordance with the *Aspen Hill Master Plan*, the master planned roadways and bikeway designations are shown below:

1. Bel Pre Road is designated as a five-lane arterial, A-40, with a recommended right-of-way width of 80 feet and an existing shared-use path (SP-30, in the *Countywide Bikeways Functional Master Plan*).
2. Homecrest Road is designated as a primary residential street, P-12, with a recommended right-of-way width of 70 feet and as a signed shared roadway.

The Master Plan recommends construction of a future public street from Homecrest Road across the northern portion of the subject property. The future public street would provide access to the landlocked “western Bel Pre Road properties” if developed in the future.

Local Area Transportation Review

The table below shows the number of peak-hour vehicular trips generated by the proposed land uses during the weekday morning and evening peak periods (i.e., 6:30 to 9:30 a.m. and 4:00 to 7:00 p.m., respectively):

Proposed Land Uses	Number of Units Increased	Weekday Peak-Hour Trips	
		Morning	Evening
Single-Family Detached Units	20	19	22
Single-Family Attached Units	18	9	15
Expanded House of Worship	N/A- Generates No Peak-Hour Trips		
Total Vehicular Trips		28	37

Under the *Annual Growth Policy*, a traffic study is required to satisfy Local Area Transportation Review because the proposed land uses generate 30 or more peak-hour trips within the weekday evening peak period.

In the submitted traffic study, the table below summarizes the result of critical lane volume (CLV) values for the existing, background (approved but unbuilt developments), and total future traffic conditions.

Intersection	Weekday Peak-Hour	Traffic Condition		
		Existing	Background	Total
Bel Pre Road & Beaverwood Lane	Morning	874	913	914
	Evening	858	914	916
Bel Pre Road & Homecrest Road	Morning	1,246	1,285	1,300
	Evening	860	901	920
Bel Pre Road & Site Access Point	Morning	N/A-Not Existing		923
	Evening	N/A-Not Existing		832
Homecrest Road & Northern Site Access Point	Morning	N/A-Not Existing		472
	Evening	N/A-Not Existing		411
Homecrest Road & Southern Site Access Point	Morning	N/A-Not Existing		478
	Evening	N/A-Not Existing		409

For both weekday peak-hours in all traffic conditions, the CLV values do not exceed the congestion/CLV standard of 1,500 for the Aspen Hill Policy Area at any of the five intersections.

DP:gw

cc: Scott Wallace

mno to Gilbert re Aspen Hill Manor G 836

## MEMORANDUM

TO: Carlton Gilbert, Community Based Planning

VIA: Mary Dolan, Environmental Planning

FROM: Michael Zamore, Environmental Planning

DATE: July 12, 2006

SUBJECT: Zoning Application No. G-836: Aspen Hill Manor  
Hearing Examiner Remand Case

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### Recommendation

Environmental Planning staff recommends **approval** of this application. Staff believes that the plan generally meets the environmental objectives present in the purpose clause of the PD zone and findings required for the Development Plan. However, staff believes that the following issues must be addressed at Preliminary Plan phase:

1. The applicant must submit a Preliminary Forest Conservation Plan for Planning Board action with the preliminary plan submission and a Final Forest Conservation Plan (FCP) by time of site plan submission. This plan must demonstrate full compliance with the requirements of Forest Conservation Law, Section 22A. Additionally, forest conservation and common area access easements will also be required, and should be provided during the course of site plan review and recordation of property.
2. No encroachment into stream valley buffers is allowed without permission of the Planning Board. The proposed stormwater concept shows necessary stormwater outfalls in the stream buffer and stormwater management facilities very close to the stream buffer. If at later stages of stormwater review and design it is determined that a stormwater management facility, or sediment control facility, is not properly sized and it must be enlarged to accommodate the proposed drainage areas the applicant will have to find additional space outside of the stream buffer. This may mean the reconfiguration of site layout, and loss of yield.

### Forest Conservation – Chapter 22A

The development has an approved NRI/FSD (No. 4-05251, issued June 6, 2005). The applicant has submitted a concept Forest Conservation Plan (FCP) to Environmental Planning staff for review. Environmental Planning staff has reviewed the plan and finds that it meets the basic parameters of forest conservation law. The Planning Board is not requested to take action on the preliminary forest conservation plan for this rezoning case. The Planning Board will take action on the forest conservation plan with the preliminary plan of subdivision. A Category I Forest Conservation Easement will be required for all retained forest. All areas proposed for reforestation or as forest retention must meet the requirements of Section 108.



## **Environmental Guidelines**

This development complies with the Environmental Guidelines (*Guidelines for Environmental Management of Development in Montgomery County, January 2000*). The site is not within a Special Protection Area or Primary Management Area. The concept Forest Conservation Plan shows an open area of the stream buffer being reforested as per the Guidelines.

## **Stormwater Management – Chapter 19**

The applicant has submitted a stormwater management concept plan to the Montgomery County Department of Permitting Services (DPS) for review. The stormwater management concept plan shows stormwater being brought via a system of underground pipes, to two stormwater facilities for treatment. The concept shows no encroachment into stream buffers except for necessary outfalls. However, the LOD for the stormwater management facility is very close to the buffer in the southeastern part of the site.

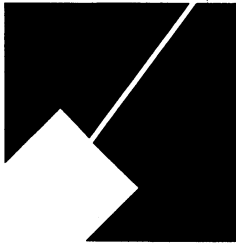
## **Watershed Protection/Water Quality**

The site drains to the Bel Pre Creek subwatershed of the Northwest Branch Watershed. The Montgomery County *Countywide Stream Protection Strategy* (CSPS, 1998) rates subwatershed/stream conditions as 'poor', and habitat conditions as 'fair to good' overall, based on data available at that time. Flow-related problems such as marginal bank stability, sediment deposition, and embeddedness are evident in the stream habitat. Bel Pre Creek has been designated a Watershed Restoration Area, reflecting the need to comprehensively address degraded stream conditions that stem from high imperviousness and channel erosion. The Maryland Department of the Environment has designated Northwest Branch as Use IV. Use IV (Recreational Trout Waters) indicates that the waters are capable of holding or supporting adult trout for put and take fishing, and that they are managed as a special fishery by periodic stocking and seasonal catching.

## **Water and Sewer**

The site is served by public water and sewer service.

M-NCPPC



## MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, www.mncppc.orgMCPB  
Item # 8  
4/21/06**MEMORANDUM: REMAND - LOCAL MAP AMENDMENT**

**DATE:** April 14, 2006

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Development Review Chief *RK*  
Carlton Gilbert, Zoning Supervisor *Gilbert/gp*

**FROM:** Joel A. Gallihue, AICP, Senior Planner (301) 495-2119 *JAG*

**SUBJECT:** **Local Map Amendment No. G-836:** J. Kirby Development, LLC and Vedanta Center of Greater Washington seeks reclassification of 16 acres of land from the RE-2 zone to the PD-2 zone for 20 single family detached residences (one existing), 12 single family attached residences and 6 townhouse units (MPDU) and expansion of an existing worship center. Proposed rental units for senior independent living were deleted from the proposal. Located at intersection of Bel Pre and Homecrest roads. Aspen Hill Master Plan.

**FILING DATE:** February 22, 2005 (revised June 10, 2005)

**PUBLIC HEARING:** May 9, 2006

**STAFF RECOMMENDATION:** Approval, of the Planned Development Zone (PD-2) for 20 single family detached residences (one existing), 12 single family attached residences, 6 townhouse units (MPDU), and expansion of an existing worship center based upon the following findings:

1. The application complies with the purpose clause of the planned development zone (59-C-7.11).
2. The requested planned development zone is compatible with the surrounding uses.
3. The rezoning does conform to the recommendations of the 1994 Approved and Adopted Aspen Hill Master Plan.

## **SUMMARY**

This development plan for this application has been revised since the Planning Board reviewed the case and recommended approval.<sup>1</sup> The revision removes one proposed single-family detached dwelling and makes changes to the binding elements and notes on the plan. The Planning Board meeting is being held to review a revised development plan that the applicant has submitted following the District Council's remand of the case to the Hearing Examiner. The Hearing Examiner raised concerns about the compatibility of the proposal and because there continues to be opposition, despite the revision. Technical staff continues to recommend approval of the proposed rezoning as revised. For reference the original technical staff report and the Hearing Examiner report have been attached.

### **Reasons for Remand and Analysis**

The Hearing Examiner found that the proposed Development Plan is not in substantial compliance with the Aspen Hill Master Plan, does not comply with the purposes, standards and regulations of the PD zone, does not provide for a form of development that will be compatible with adjacent development, and does not provide sufficient certainty to fully evaluate the adequacy and safety of external access points. In response, the applicant has made some changes to the development plan. Each finding is examined below in the context of changes made, and the perspective of technical staff is noted. Upon considering the technical analysis and any testimony, the Planning Board may make a new recommendation on the revised plan and transmit this recommendation to the Hearing Examiner.

#### **1. *Substantial Compliance with the Aspen Hill Master Plan***

The Hearing Examiner states that the development "Would be in substantial compliance with all of the Master Plan's recommendations except those concerning an internal roadway with access from Homecrest Road."<sup>2</sup> The concern is in regards to what is identified as "Roadway C" on the development plan. Roadway C has implications beyond this particular development because it is an important element of the Master Plan objectives for the Bel Pre Road Area. When the Master Plan designated this "Area 8" and considered access for new development that would be environmentally sensitive, a goal of providing an internal road was set for this area. Roadway C fulfills this goal on the property and the dedication prepares for any future development off-site. The Hearing Examiner recognized the importance of this goal and, in checking the development plan to be certain the goal was implemented, became concerned with language in the binding elements. The concern is that a binding element stating that the project will have "no more than two" access points on Homecrest

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<sup>1</sup> On a motion by Commissioner Robinson and seconded by Commissioner Bryant with Commissioner Wellington and Chairman Berlage voting in favor of the motion and Vice Chair Purdue absent for the motion at its regular meeting held in Silver Spring, Maryland on Thursday, October 20, 2005

<sup>2</sup> Zoning And Administrative Hearings Opinion, Page. 76.

Road could result in less than two access points, potentially thwarting the goal of providing the interior connector road. The purpose of this textual element was actually to provide assurance to staff that a site plan would not be submitted with an earlier design, which put driveways on Homecrest Road. With that said, any impediment to the implementation of Roadway C should be removed. The binding element has been revised to say, "Access will be from a single point on Bel Pre Road and two points on Homecrest Road. This language dispels the concern raised by the Hearing Examiner and also prevents the possibility of multiple driveways on Homecrest.

Another concern was that the plan showed 50' of right of way for Roadway C which was recommended for approval by technical staff. The Aspen Hill Master Plan notes that since "the proposed road [i.e. Roadway C] may be close to the existing entrance of the Aspen Hill Racquet and Tennis Club, the Montgomery County Department of Transportation may deem the proximity of two entrances to be a safety hazard. If so, access should be provided from the new street when it is constructed as a primary residential street to the location where access may have to be provided to the Racquet and Tennis Club. After that point, the street would continue as a secondary residential street through the Bel Pre Road properties in a circuitous alignment and ultimately intersect Bel Pre Road opposite Rippling Brook" (page 238). The proposed development scheme provides dedication to accomplish this Bel Pre parallel road in Roadway C. Staff believed that the proposed street with a 50-foot right-of-way is consistent with the goal of the master plan if the DPWT considers the proposed roadway to be adequate for the number of units in the proposal. Since no development is currently proposed for the Racquet Club, staff believed that consolidation or widening of the street to a primary standard at this location could be accommodated at the time a new entrance or consolidation of entrances is need when the adjoining Racquet Club property redevelops.

The Hearing Examiner took a different position on how access could be coordinated. This position rejects the uncertainty of waiting for consolidation if the Aspen Hill Country Club redevelops and expects Roadway C to have a 60-foot right-of-way. The applicant has acquiesced and revised the plan to show 60' for the entire segment of Roadway C on the site. The benefit of this change is more certainty for the District Council that approving the Development Plan serves the goals of their adopted Master Plan. The wider right-of-way is just that and wouldn't lead to any unnecessary pavement width in the segment of Roadway C that would serve as a secondary road east of the future connection to the Aspen Hill Country Club. Technical staff supports this change.

## 2. *Purpose of PD Zone - Form of Development*

The compatibility of the proposed development form is questioned, particularly with respect to the western side which faces Homecrest Road. The Hearing Examiner identifies concern about, "a dense form of development on the west

side of the site that is not compatible with the surrounding area.”<sup>3</sup> In the analysis of the purpose clause for the PD zone, it is later explained<sup>4</sup> that the concern about a dense form of development arises when the development is broken into its western third and the density is measured for that section. In that case, twenty-six units in about 5.3 acres would have a density of 4.9 units per acre. This causes concern to the Hearing Examiner because it is about ten times denser than the RE-2 zoned properties across the street and denser than the 2.4 dwelling units per acre that can be accomplished in surrounding zones.<sup>5</sup> The revised plan would remove one unit, lowering the density in this concept to 4.7 units to the acre. The Hearing Examiner observes that the density in this section could have been lower in a scheme, which proposed to locate homes on Roadway C.

Technical staff continues to believe the proposed development form is compatible. The Hearing Examiner’s concern about compatibility considers density but there are other factors to measuring compatibility. Another measure is similarity of unit type. Importantly the PD zone has a section devoted to compatibility<sup>6</sup> which is met by this development and met in this section because single family detached dwellings are adjacent to the same. Buffering is important and has been enhanced with the current design.<sup>7</sup> Technical staff believes that returning to a scheme that would string single loaded houses on Roadway C would significantly dilute the identity of the development by reducing opportunity for social interaction, running counter to an important Master Plan goal.<sup>8</sup>

Technical staff returned to the compatibility finding in the purpose clause of the zone<sup>9</sup> and considered it important that the wording states a purpose is to, “assure compatibility and coordination of each development with existing and proposed surrounding land *uses*.” (Emphasis added) Technical staff believes that the fact that this section seeks compatibility of *uses* while Section 59-C-7.15, focuses on setbacks between unit types is an important distinction. The purpose clause finding of compatibility is about uses. Certainly, both uses are residential, but this proposal also meets Section 59-C-7.15 by proposing to locate new single family detached units across the street from other single family detached units.

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<sup>3</sup> Zoning And Administrative Hearings Opinion, Page 3.

<sup>4</sup> Zoning And Administrative Hearings Opinion, Page 83.

<sup>5</sup> In the standard method of development with MPDU units.

<sup>6</sup> Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no building other than a one-family detached residence may be constructed within 100 feet of such adjoining land.

<sup>7</sup> Buffering has been particularly important because the design, in balancing an attempt to create a place for community interaction off of a busy road and limit access points on Homecrest will cause the houses on Homecrest to face the internal street.

<sup>8</sup> Master Plan, page 3. Note that the original staff report elaborates on the weakness of such a scheme on page 3.

<sup>9</sup> §59-C-7.11, Eighth paragraph, second part.

It may also be that there is a weakness in the concept of effective density in the western third of the development because the comparison should be between 4.7 du/acre and 2.4 du/acre and not compared against the low two-acre lot density of the RE-2 zone. In considering the confronting RE-2 zoned land it is also important to recognize the intensity of the existing senior housing developments on the opposite side of Homecrest Road as well as the existing single family homes.<sup>10</sup> The master plan recommended PD-2 zoning for the site fully acknowledging it was a higher density zoning than RE-2. The plan did this to encourage consolidation of parcels, which would minimize the number of entrances onto Bel Pre Road and facilitate the creation of an internal road network that would minimize the impact of development on Bel Pre Creek. These two master plan goals taken together with the existing worship center on site certainly limit site design options. Despite those constraints, the density of the western section (4.7 du/a) is a little less than double the average density of the development (2.4 du/a) and this is found by technical staff to be an appropriate use of the flexibility of the zone. The PD-2 zone choice is consistent with the plan<sup>11</sup> and accomplishing its goals for this site and the PD zone compatibility standard is met by this design. Technical staff concludes that the purpose clause compatibility objective is met by this design.

### 3. *Adequacy and Safety of External Access Points*

As noted above, the Hearing Examiner was concerned that a textual binding element could cause one of the two access points shown on Homecrest Road to not be built. The applicant has changed the element to say there will be two access points on Homecrest Road, eliminating this concern. The Hearing Examiner had taken this concern and found that it inhibited the District Council from fully evaluating the access and circulation plan.<sup>12</sup> Obviously, the subsequent subdivision and site plan review are appropriate stages of review to examine the access and circulation plan in more detail. The District Council can now be certain that the Development Plan will have two, and only two, access points on Homecrest Road. Any other configuration would require the developer to return to the District Council with a Development Plan Amendment application. Technical staff notes that the Hearing Examiner was not raising this concern as a result of a specific exchange which may be found on the record of the hearing about adequacy of sight distance. The Hearing Examiner concluded, "At this preliminary stage, without actual road profiles and final grading, the Hearing

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<sup>10</sup> Certainly the staff position is not to imitate that development, as can be seen by the position against the original submission. Still the existing senior housing is an obvious part of the existing context.

<sup>11</sup> Important earlier improvements to this plan were to remove a large senior housing building from Homecrest and to lower the proposal to PD-2.

<sup>12</sup> Zoning And Administrative Hearings Opinion, Page 3.

Examiner is persuaded by the preponderance of the evidence that sight distances are adequate to support the zoning request. The more authoritative of two measurements<sup>[1]</sup> found that all sight distances meet county standards.”<sup>13</sup>

4. *Illustrative Building Locations*

The Hearing Examiner found that a provision on the Development Plan stating that building locations are entirely illustrative was a serious deficiency. The note was located under the “Proposed Lot and Parcel Table” as a reference noted by asterisk. Apparently the note came as a result of an exchange between the applicant’s representative and the Hearing Examiner that led to the confusion. The note is located in the same place on the plan as an asterisk to the “Proposed Lot and Parcel Table” but now has been revised to state, “Areas shown are approximate. Final determination of areas shall be determined at subsequent Preliminary Plan and Site Plan.” Technical staff notes that this language strikes a balance between giving the District Council certainty about the Development Plan without advancing all of the detail from the Preliminary Plan and Site Plan process into the zoning analysis.

5. *Green Area.*

In a similar vein as the illustrative building locations, the Hearing Examiner found that a provision on the Development Plan stating that the green area, shown at 46 percent of the site, could decrease by as much as a third, down to the minimum 30 percent required in the zone, was a serious deficiency. The note was located as an asterisk to the development standards. The Development Plan is now revised to state, “Green Area provided is approximate and subject to change based on final engineering and further revision during subsequent Preliminary Plan and Site Plan proceedings, provided that minimum of 45% of gross area will be provided.” Technical staff again finds this language strikes a good balance between the instant zoning review and required subsequent reviews.

6. *Number of Units in Binding Element*

The opinions of the Hearing Examiner and District Council reference other minor deficiencies of the development plan. For example, one was confusion caused by the first binding element and the general notes which seemed to imply there would not be flexibility to do fewer units if such a development was found to be better in the subsequent reviews. Both notes were revised to include the words, “up to” to allow flexibility to do less. One current flaw that is being corrected is that the first binding element continues to reference 39 units when one was

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[1] The Hearing Examiner is referring to the sight distance analysis of Traffic Engineer Mr. Wesley Guckert as opposed to the sight distance analysis presented by Mr. Richard Kauffunger. She notes that, “Even Mr. Kauffunger found only a deficiency of less than one percent of the required distance.”

<sup>13</sup> Zoning And Administrative Hearings Opinion, Page 41

removed to improve Homecrest Road and allow a sixty-foot right-of-way for Roadway C. This is a typographical error and should reference 38 units as is shown graphically on the plan and in the General Notes. With this correction, Technical Staff feels the minor deficiency is resolved.

7. *Area of Vedanta Center Expansion*

In the course of multiple revisions the area of the Vedanta Center Expansion came to be misreported as 6,000± sq. ft when the phasing plan referenced 6,500± sq. ft. This was a typographical error and has been corrected. With this correction, Technical Staff feels the minor deficiency is resolved.

8. *Fencing and Landscaping on Homecrest Road.*

Textual binding element No. 4 states that fencing and landscaping “*as shown on the Development Plan* [emphasis added] along Homecrest Road (within 10 feet of the lot line) shall be maintained by the Homeowners Association. An observation was that the development plan did not actually show this fencing. The applicant considered the difficulty of presenting the information at the scale where one inch equals fifty feet and decided to submit an inset which shows the fence and is referenced on the development plan. The idea of this element incidentally is to ensure uniform maintenance of this side of the development. The clarification appears to resolve this minor concern.

9. *Homecrest Right-of-Way Dedication*

The Development Plan before the Hearing Examiner did not identify that there would be right-of-way dedication on Homecrest Road. The current revision of the Development Plan has a notation indicating the intended dedication of right-of-way on Homecrest Road.

10. *NRI/FSD*

The District Council opinion raised a concern that the NRI/FSD does not show MNCPPC approval and stated that a copy of the approved document should be submitted into the record because of 59-D-1.3(a). The original problem was that the Development Plan was accepted without this approval. Technical staff raised the issue and the applicant proceeded to get an approved NRI/FSD. It is a fact that the NRI/FSD was approved<sup>14</sup> and on file at M-NCPPC. Technical staff has directed the applicant to place a copy of the stamped approved plan in the record.

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<sup>14</sup> No. 4-05251. The approval issued on June 6, 2005.



## History of Design Changes

In the current design, J. Kirby Development, LLC and Vedanta Center of Greater Washington<sup>15</sup> propose a rezoning from RE-2 to the PD-2 zone for the site of approximately 16 acres. The plan proposes 20 single family detached dwelling units (one existing), 12 one family attached dwelling units, and 6 townhouse units (MPDUs) and expansion of an existing worship center (appx. 6,500 square feet). The proposed zoning is in the low category (PD-2). This development proposal has gone through three major revisions to reach the current scheme.

The original proposal was considered for a recommendation of denial by staff. Initially, PD-7 and PD-4 versions were proposed which both exceeded the PD-2 density recommended in the 1994 Approved and Adopted Aspen Hill Master Plan. The original submission would have located another large building at an intersection where the Aspen Hill Master Plan specifically identifies a concern for over concentration of large-scale institutional uses. The various components of that plan were compartmentalized and increasing access points and making sharing of parking a challenge.<sup>16</sup> In order to accomplish this scheme, a PD-7 classification would have been necessary when the plan only allows PD-2. While the plan calls for a road on the north side of the property, the single loaded configuration was thought by staff to be inefficient. Such a suburban and auto-oriented design is not inconceivable in the PD zone. However, staff suggested that better design could go further to advance the purpose clause objective to, "encourage a maximum of social and community interaction" among those who live and work within an area where visual character and internal pedestrian connections were lacking. The applicant made several efforts to resolve these matters with the senior housing component but then decided to drop that aspect of the proposal and redesign.

Having eliminated the senior housing, the next draft represented a fundamental improvement, in that the zone requested was PD-2. This brought the scheme into master plan conformance for density. Staff continued to argue for better social and community interaction as called for in the PD zone purpose clause. The open space area and some internal paths represented an improvement. Staff continued to object to the disparate assembly of the plan and was particularly concerned with the use of flag lots on Homecrest. Staff asked the applicant to provide internal pedestrian connections and work to integrate the worship center into the development. Subsequent to hearing various staff and community concerns, the applicant presented the current draft.

The most recent revisions are per the opinions of the Hearing Examiner and the District Council as explained above. Staff continues to believe the current scheme has many favorable components. By having the residential development grouped in a pattern that encourages interaction off the main roads, and the plan "creates a place" that has an

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<sup>15</sup> Land planning report indicates a Hindu worship center. Website indicates, "The center provides a spiritual home for devotees and friends who come for Sunday lectures, weeknight scripture classes, worship and meditation." (<http://www.vedanta-dc.org/about.html>)

<sup>16</sup> A link to promote shared parking between senior housing and the worship center is clearly a missed opportunity considering the parking deficit for senior housing and surplus for the worship center.

identity. Reinforcing this is an open space feature incorporated prominently into the interior development. The loss of a unit allows for a looser form of development along Homecrest, which is recommended by staff. While grouping of MPDUs can be a detriment, the small size of this development with environmental constraints leaves few options. While the MPDUs are not interspersed, they are integrated with the market rate units. Pedestrian connections link the worship center and related duplexes to the rest of the community. An emergency connection is available connecting the worship center to the interior street. Should roads be blocked, this provides emergency vehicles with an option but the design prohibits cut-through in normal situations. The master plan road on the north of the property is retained in this design and also benefits from the loss of a unit. The sixty-foot right-of-way provides certainty that the plan objective will be met even with the uncertainties for development of the adjacent properties.

**COMMUNITY CONCERNS** – Staff has spoken with homeowners and civic associations in the area on several occasions, including a recent meeting in response to the remand. Staff spoke to some members of the Layhill Alliance Association and other residents. They initially expressed opposition to the proposal. Staff explained that the Master Plan recommendation of PD-2 zoning using the senior housing bonus for one third of the site could yield more than six units to the acre. There were mixed feelings about this hypothetical situation. Some prefer the property to retain much more of the open appearance it currently has, citing the original “wedge” designation to support this desire. Others felt a PD-2 development without senior housing was more in keeping with the Master Plan objective of limiting institutions on major corridors. The applicant worked with citizens and continues to discuss the project, which led to these revisions. Staff believes most support the PD-2 proposal without senior housing. Based upon recent interactions, staff believes some remain concerned about the design on Homecrest Road. Notably those with objections are the residents of the RE-2 zoned houses across the street and their adult children who are representing their parents. Others include members of separate community groups that have formed. Staff believes it is fair to observe there are differences of opinion between various groups that appear to transcend this particular development application. Use of similar names by different groups also makes it difficult to give an accurate summary of the community concerns. Staff will assemble any new correspondence that arrives subsequent to this report and offer them as a supplemental on the day of the hearing.

## **CONCLUSION –**

With respect to the revised application, staff finds that the purpose clause and the requirements of the Planned Development Zone to provide a broad range of housing types, to minimize the amount of grading necessary for construction through flexibility of standards, and to provide a pedestrian network that links existing and proposed communities to public facilities have been realized by this plan. Staff believes that the requested PD-2 zone meets the intent of the 1994 Approved and Adopted Aspen Hill Master Plan. Staff also recommends approval of the Development Plan and Binding Elements that accompany this application which limit the development to a maximum of

38 residential units. Staff recommends returning the revised application to the Hearing Examiner with a recommendation of approval.

### **Sec. 59-D-1.6 Approval by District Council**

#### **59-D-1.61. Findings.**

*Before approving an application for classification in any of these zones, the district council must consider whether the application, including the development plan, fulfills the purposes and requirements set forth in article 59-C for the zone. In so doing, the district council must make the following specific findings, in addition to any other findings, which may be necessary and appropriate to the evaluation of the proposed reclassification:*

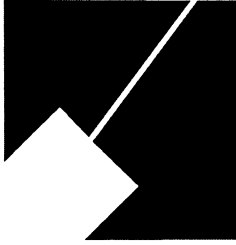
- (a) *That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.*
- (b) *That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*
- (c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*
- (d) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*
- (e) *That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

Technical staff finds that the findings of 59-D-1.61 listed above can be made for this application as revised and believes this report provides sufficient analysis for the District Council to come to this conclusion.

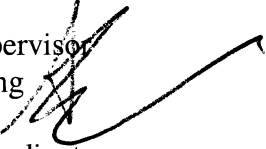
#### **Attachments**


- 1. Revised Development Plan
- 2. Community Based Planning Referral
- 3. Transportation Planning Referral
- 4. Original Staff Report.
- 5. Zoning And Administrative Hearing
- 6. District Council Opinion.

#### **Attachment 1 – Vicinity Map**

Revised: March 27, 2006  
~~October 3, 2005~~MEMORANDUM

TO: Joel Gallihue, Planner  
Development Review Division

VIA: Shahriar Etemadi, Supervisor  
Transportation Planning 

FROM: Ed Axler, Planner/Coordinator  
Revised by David Paine, Planner/Coordinator   
Transportation Planning

SUBJECT: Local Map Amendment No. G-836  
Aspen Hill Manor (Homecrest Road Property)  
Aspen Hill Policy Area

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**Note: Transportation Planning staff revised this memorandum on March 23, 2006 to reflect the opinion of District Council, that the proposed development allow for 19 single-family detached units rather than 20. Staff reaffirms the findings below, revised in bold to reflect the reduction in units. The revision would result in one less peak hour trip in the AM and PM.**

This memorandum is Transportation Planning staff's adequate public facilities (APF) review of the subject local map amendment for the rezoning from the RE-2 zone to the PD-2 zone. A future preliminary plan would be required to reconfigure the existing Lots 3, 4, and 5 and record them as Lots 1 to 39 and Parcels A to E.

**RECOMMENDATIONS**

Transportation Planning staff recommends the following recommendations as part of the APF test for transportation requirements related to the subject local map amendment:

1. Limit the local map amendment to the following land uses:
  - a. ~~20~~ **19** additional single-family detached units, one existing unit retained, and one existing unit removed from the site for a net total of ~~20~~ **19** units.
  - b. 18 attached units consisting of 12 single-family, semi-detached units (duplex) and six townhouse units.
  - c. A 6,000+/- square-foot expansion to the existing house of worship that includes a new 212-seat main auditorium.
2. Limit activities associated with the house of worship to exclude programs that would generate peak-hour vehicular trips within the weekday morning and evening peak periods, such as a weekday childcare facility or private school. These uses would require a separate APF review.
3. At the time of preliminary plan review, dedicate right-of-ways at following locations:
  - a. Dedicate six feet of additional right-of-way required for a total of 35 feet from the centerline of Homecrest Road, a primary residential street.
  - b. Dedicate a 50-foot-wide right-of-way for a new road across the northern portion of the subject property, as recommended in the *Aspen Hill Master Plan*.

## **DISCUSSION**

### **Site Location**

The site is located in the northeast side of Bel Pre Road and Homecrest Road.

### **Vehicular Access Points**

The site access points are proposed at following locations:

1. One access is provided from Bel Pre Road for the house of worship and 12 duplex units.
2. Two access points are provided from Homecrest Road.

### **Pedestrian and Bicycle Facilities**

The proposed local map amendment will not adversely affect the existing pedestrian (5-foot-wide) and bicycle facilities along Bel Pre Road and Homecrest Road.

The applicant has proffered to construct the missing sidewalk links on Bel Pre Road and Homecrest Road. Lead-in sidewalk shall be provided into the site.

Available Transit Service

Transit service is available via Ride-On route 26 running along Homecrest Road and Bel Pre Road west of the site, and via Ride-On route 49 on Bel Pre Road.

Montgomery County Master-Planned Roadways and Bikeways

In accordance with the *Aspen Hill Master Plan*, the planned roadways and bikeway designations are shown below:

1. Bel Pre Road is designated as a five-lane arterial, A-40, with a recommended right-of-way width of 80 feet and an existing shared-use path (SP-30, in the *Countywide Bikeways Functional Master Plan*).
2. Homecrest Road is designated as a primary residential street, P-12, with a recommended right-of-way width of 70 feet as a signed shared roadway.

The Master Plan recommends construction of a future public street from Homecrest Road across the northern portion of the subject property. The future public street would provide access to the “western Bel Pre Road properties” if developed in the future.

Local Area Transportation Review

The table below shows the number of peak-hour vehicular trips generated by the proposed land uses during the weekday morning and evening peak periods (i.e., 6:30 to 9:30 a.m. and 4:00 to 7:00 p.m., respectively):

Proposed Land Uses	Number of Units Increased	Weekday Peak-Hour Trips	
		Morning	Evening
Single-Family Detached Units	1 - 1+2019 = 20 19	19 18	22 21
Single-Family Attached Units	18	9	15
Expanded House of Worship	N/A- Generates No Peak-Hour Trips		
Total Vehicular Trips		28 27	37 36

Under the *FY 2005 Annual Growth Policy*, a traffic study is required to satisfy Local Area Transportation Review because the proposed land uses generate 30 or more peak-hour trips within the weekday evening peak period.

In the submitted traffic study, the table below summarizes the result of critical lane volume (CLV) values for the existing, background (approved but unbuilt developments), and total future traffic conditions.

Intersection	Weekday Peak-Hour	Traffic Condition		
		Existing	Background	Total
Bel Pre Road & Beaverwood Lane	Morning	874	913	914
	Evening	858	914	916
Bel Pre Road & Homecrest Road	Morning	1,246	1,285	1,300
	Evening	860	901	920
Bel Pre Road & Site Access Point	Morning	N/A-Not Existing		923
	Evening	N/A-Not Existing		832
Homecrest Road & Northern Site Access Point	Morning	N/A-Not Existing		472
	Evening	N/A-Not Existing		411
Homecrest Road & Southern Site Access Point	Morning	N/A-Not Existing		478
	Evening	N/A-Not Existing		409

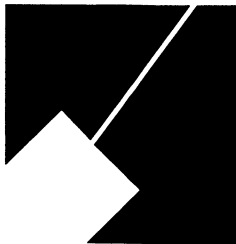
For both weekday peak-hours in all traffic conditions, the CLV values do not exceed the congestion/CLV standard of 1,500 for the Aspen Hill Policy Area at any of the five intersections.

DP:gw

cc: Glen Cook  
Scott Wallace

mmo to Gallihue re Aspen Hill Manor G 836

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, [www.mncppc.org](http://www.mncppc.org)

March 24, 2006

MEMORANDUM

TO: Joel Gallihue, Zoning Analyst  
Development Review Division

FROM: Khalid Afzal, Team Leader, Georgia Avenue Team *KA*

SUBJECT: G-836 Remanded

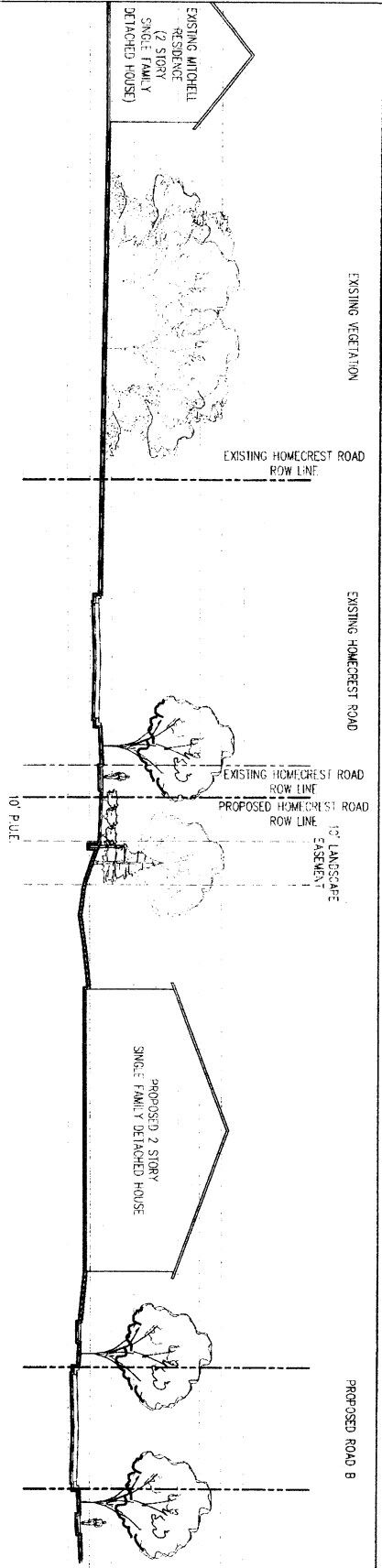
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The proposed application to rezone an approximately 16-acre parcel On Homecrest Road in the Aspen Hill area from the current RE-2 Zone to the PD-2 Zone was reviewed by the Planning Board on October 20, 2005. The Community-Based Planning staff concluded at the time that the proposed rezoning was consistent with the goals and recommendations of the 1994 Aspen Hill Master Plan.

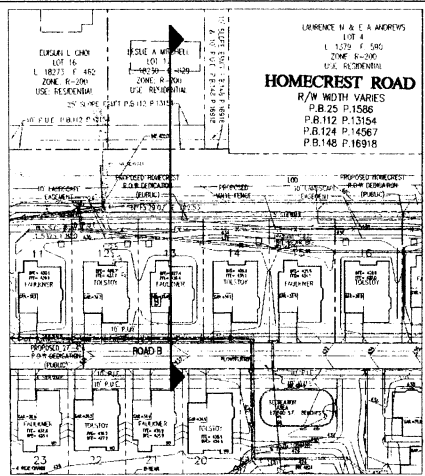
Recently, the County Council remanded the rezoning application back to the Hearing Examiner to resolve the community impact issues raised by one of the residential property owners across Homecrest Road. The applicant has submitted a revised plan, dated 3-10-06, which shows one less single-family unit in the block surrounded by Homecrest Road, Road A, Road B and Road C. This block had eight units in the plan approved by the Planning Board during its review on October 20, 2005. Community-Based Planning staff concludes that the revised plan is consistent with the goals and recommendations of the Master Plan. There are no other significant changes in the revised plan.

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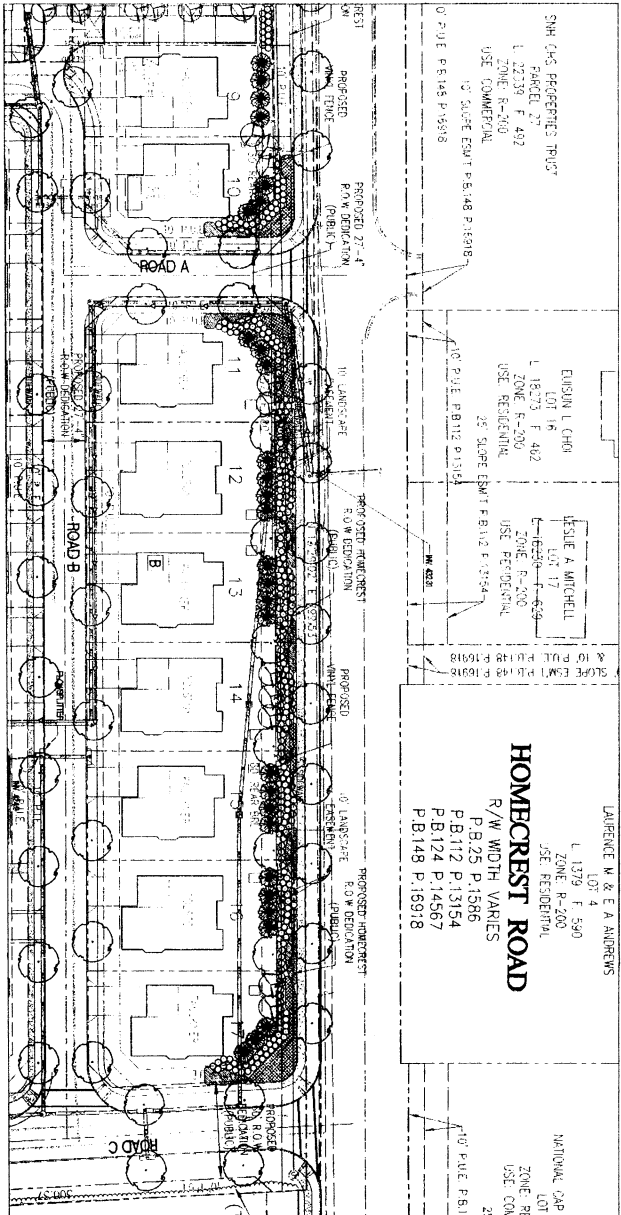




CROSS SECTION THROUGH HOMCREST ROAD SHOWING ADJACENT PROPERTY RELATION TO THE SUBJECT PROPERTY  
SCALE: 1"=10'



CROSS SECTION THROUGH HOMCREST ROAD  
SCALE: 1"=30'



TYPICAL LANDSCAPE TREATMENT FOR LOTS ADJACENT TO HOMCREST ROAD  
SCALE: 1"=30'



PROPOSED FENCE DETAIL ALONG HOMCREST ROAD  
SCALE: NIS

**CERTIFICATION**  
This is a true and correct copy of the development plan as submitted to the Planning Board of the County of Montgomery, Maryland, and as approved by the Board on the date indicated below.  
DATE: 2/1/2006  
BY: [Signature]

**PPRA**  
Professional Planning & Real Estate Associates, Inc.  
1318 ELECTION DISTRICT  
MONTGOMERY COUNTY, MARYLAND

**DEVELOPMENT PLAN  
DETAIL SHEET**  
**ASPEN HILL MANOR**  
TAX MAP HRS3  
18065 GEORGIA AVE 2ND FLOOR  
ONLEY, MD 20832  
13TH ELECTION DISTRICT  
MONTGOMERY COUNTY, MARYLAND

No.	REVISION	DATE	BY

**LAWRENCE M & E A ANDREWS**  
LOT 4  
L 1379 F 590  
ZONE R-200  
USE RESIDENTIAL  
R/W WIDTH VARIES  
P.B.25 P.1586  
P.B.124 P.13154  
P.B.148 P.16918

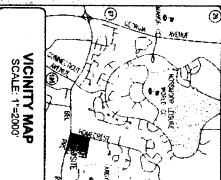
**HOMCREST ROAD**  
R/W WIDTH VARIES  
P.B.25 P.1586  
P.B.124 P.13154  
P.B.148 P.16918

**NATIONAL CAP B**  
LOT 2  
ZONE R-100  
USE COMM

**OWNER:** J. KIRBY DEVELOPMENT  
ATTN: JEFFREY C. JARBY  
11515 COVINGTON COURT, SUITE B  
WOODBRIDGE, MD 21714  
410-445-8886

**DEVELOPER:** HOLLY RIDGE DEVELOPMENT  
9700 HOLLY RIDGE ROAD  
ROCKHILL, MARYLAND 20851  
201-774-6058

**Patton Harris Rust & Associates, pc**  
Engineers Surveyors Planners Landscape Architects  
8818 Centre Park Drive Gaithersburg, MD 20878  
T 410-997-8900 F 410-997-8262



Resolution No. 15-1353Introduced: March 7, 2006Adopted: March 7, 2006

**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: County Council

**SUBJECT: APPLICATION NO. G-836 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,  
Scott Wallace, Attorney for Owner Vedanta Center of Greater Washington D.C., Inc. and  
Contract Purchaser J. Kirby Development, L.L.C. OPINION AND RESOLUTION ON  
APPLICATION**

Tax Account Nos. 13-00982556, 13-00966534, 13-00961315

**OPINION**

Application No. G-836, filed on March 3, 2005 by Applicants J. Kirby Development, LLC and Vedanta Center of Greater Washington, D.C., Inc., requests reclassification from the RE-2 Zone (residential, one-family, two-acre minimum lot size) to the PD-2 Zone (Planned Development, two dwelling units per acre) of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland, in the 13th Election District. The property is identified as Part of Lots 3, 4 and 5 of the "Homecrest" subdivision, recorded in Plat Book 25, Plat 1586. As required under the PD Zone, the application was accompanied by a Development Plan with detailed specifications related to land use, density, development standards and staging. Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone.

The Hearing Examiner found that the proposed Development Plan is not in substantial compliance with the applicable master plan, does not fully comply with the purposes, standards and regulations of the PD-2 Zone, does not provide for a form of development that will be compatible with adjacent development, and does not provide sufficient certainty to fully evaluate the adequacy and safety of external access points. Finding, further, that these deficiencies can all be remedied by changes to the Development Plan, the Hearing Examiner recommended a remand of the application to

provide the Applicants with the opportunity to rectify the deficiencies identified in the Hearing Examiner's report, and to propose a form of development that will be compatible with existing land uses in the surrounding area, including those uses confronting the subject site on the west side of Homecrest Road. Following the issuance of the Hearing Examiner's report, the Applicants submitted a written request to the Council for a remand of the application to allow the Applicants to submit a revised Development Plan for the Hearing Examiner's review.

The Montgomery County Planning Board (the "Planning Board") and its Technical Staff both recommended approval of the subject application, finding that the proposed development would be compatible with the surrounding area, would be consistent with the purposes and standards of the zone, would be consistent with the recommendations of the applicable Master Plan and would serve the public interest. The District Council notes that the Planning Board and its staff were not privy to certain changes that were made to the Development Plan subsequent to the public hearing, which might have affected some of their conclusions.

The District Council agrees with the Hearing Examiner's conclusions and incorporates her report and recommendation herein.

The subject property consists of approximately 16 acres of land located in the northeast quadrant of the intersection of Bel Pre Road and Homecrest Road, roughly midway between Bel Pre Road's intersections with Georgia Avenue (to the west) and Layhill Road (to the east). The three lots comprising the subject property form a nearly square tract of land, with approximately 867 feet of frontage on Bel Pre Road, a five-lane undivided arterial road with an 80-foot right-of-way, and 800 feet of frontage on Homecrest Road, a narrow, two-lane, residential primary street. Confronting to the south, across Bel Pre Road, are three- and four-story apartments and townhouses. Confronting to the west, across Homecrest Road, are Aspenwood Senior Living Community, located at the northwest corner of Bel Pre and Homecrest Roads, which provides assisted living for senior adults and special needs care; three single-family homes; and, diagonally to the northwest, Homecrest House, a senior housing and assisted living facility. To the east, the subject property abuts the property of the Wheaton

Page 3.

Resolution No.: 15-1353

Moose Lodge, which is occupied by a social lodge and is about half wooded. To the north, the subject property abuts the Aspen Hill Racquet and Tennis Club (the "Racquet Club"), a large complex of indoor and outdoor sports facilities with very large buildings and extensive parking lots.

Lot 3, at the east end of the site, is mostly wooded and has a one-story brick house, a carport and a driveway off of Bel Pre Road. Lot 4, in the center, is also mostly wooded. It is developed with the Vedanta Center, a worship center consisting of a concrete and stone building with a one-story wing and a two-story wing, which is used for congregation gatherings and as a home for resident monks; a small, brick, 1 ½ story guest house; a paved driveway off of Bel Pre Road; and a gravel parking area. Lot 5, at the west end of the site, is mostly grassy, with a one-story brick house, a concrete block garage, a metal shed and driveway access from Homecrest Road.

The subject property is gently to moderately sloping. It contains approximately 9.62 acres of forest, with two major forest stands rated good quality. The property contains no flood plains, but a small stream known as Bel Pre Creek flows through the northeast part of the property. As a result, a substantial portion of the combined property is undevelopable stream valley buffer.

The surrounding area for this application consists, roughly, of the Bel Pre Road Area described in the *1994 Approved and Adopted Aspen Hill Master Plan* (which extends from Bel Pre Road to the south to Homecrest Road to the west, the property line of Argyle Country Club to the north and the Bel Pre Square Townhouses to the east, located across from North Gate Drive), plus properties that are either adjacent or directly or diagonally confronting.

The surrounding area contains a mix of uses including three- and four-story apartment buildings, senior housing including assisted living, townhouses, single-family detached homes, churches, a large sports facility, a social lodge and a country club. The zoning pattern is a mixture of RE-2, RE-2/TDR, R-200 and R-150 zoning, the product of multiple individual rezonings that occurred mostly between 1965 and 1980.

The subject property was classified under the R-A (Agricultural Residential) Zone in the 1958 County-wide comprehensive rezoning. The R-A Zone was redesignated the RE-2 Zone by text

amendment in 1973, and the subject property's zoning has remained the same since then. The area was recommended for reclassification to the R-200 Zone in the *1970 Aspen Hill Master Plan*, but no sectional map amendment followed. RE-2 zoning on the subject property was confirmed by Sectional Map Amendment G-709 in 1994, as recommended in the 1994 Master Plan.

Lots 3 and 5 of the subject property are each developed with a single-family home, while lot 5 has been the site of the Vedanta Center for eight and a half years. The Center has ties to Indian spiritual traditions, but considers itself a universal, non-denominational movement, accepting people from all religions and different spiritual paths. The Center teaches spiritual principals and practices including meditation, and tries to maintain a serene atmosphere.

The Applicant proposes expansion of the Vedanta Center's facilities and the coordinated development of a residential community with a total of 39 dwelling units: 20 new single-family detached homes, 12 new single-family, semidetached duplex units, six new single-family attached units to be marketed as moderately-priced dwelling units ("MPDUs"), and the existing Vedanta Center guest house. The preliminary bedroom calculation indicates that the single-family detached units would have four bedrooms, the townhouses would have two bedrooms with an optional third bedroom, and the duplexes would have three bedrooms.

The existing Vedanta Center worship building, measuring approximately 4,300 square feet and located roughly in the middle of the site, would be retained. In addition, a new, 6,500-square foot structure would be built onto the rear wall of the existing worship building, with a landscaped courtyard between the old and new structures. The new building would provide a larger worship space and a cellar to serve refreshments, which is lacking in the current facility. The Center plans to use the existing auditorium as a multi-function meeting space. The architecture for the new building is based on a well-known Indian Hindu temple, incorporating a blend of traditional Indian and European styles. The maximum height, excluding cupolas and domes, would be 24 feet. The new Vedanta Center building would face east, towards a wooded area abutting the stream valley buffer. It would be partially obscured from view from Bel Pre Road by the existing Vedanta Center buildings.

The Development Plan allocates the land immediately south of the Vedanta Center, between the Center and Bel Pre Road, to an 85-space parking lot for the Vedanta Center. East of the parking lot, in the southeast corner of the site, the Development Plan shows 12 duplex units. Testimony indicated that these units would be under the Vedanta Center's ownership, and that the Center hopes to sell the units with covenants restricting their occupancy to members of the Vedanta Center community. Each duplex unit is shown with a one-car garage and one driveway space. The plan shows a sidewalk winding from Bel Pre Road to the duplex units, and continuing on to link the duplexes to sidewalks within the Vedanta Center facility, and from there to a path leading along the stream valley buffer to a proposed recreation area on the west side of the site.

To the south, the duplex units would be buffered from the adjacent Bel Pre Road by a stand of trees ranging in depth from about 25 feet to about 40 feet. To the west, as noted above, the duplex units are shown abutting the Vedanta Center parking lot, with a setback of about 65 feet. To the east, the duplex units would abut the property of the Wheaton Moose Lodge. The lodge structure is located directly across the property line from the location proposed for some of the duplex units; at its closest point, the lodge is shown approximately 62 feet from the two closest duplex units and 70 feet from four others. The duplex units would be buffered from the noise and activity of the Moose Lodge by a wooded area about 30 to 35 feet deep.

The Vedanta Center and its 12 duplex units would occupy roughly a third of the site, in the central and southeast portion of the site. Roughly another third of the site, in the central and northeast portion of the site, would be occupied by non-developable stream valley buffer and a provision for future dedication of a 50-foot road right-of-way along the northern border. The Development Plan shows the western third of the property as the main residential area, with 20 single-family, detached homes and six MPDU townhouses. The Development Plan shows most of the single-family homes facing each other across an internal roadway ("Road B"), each with a two-car garage and two driveway parking spaces. The MPDUs are shown clustered in two groups of three townhouses, which would be designed to have the appearance of large single-family homes. They would have their

Page 6.

Resolution No.: 15-1353

own stub access road, and each would have a one-car garage and one driveway parking space. All of the streets would be connected by sidewalks. The Development Plan also shows a 2,500-square-foot open recreation area along the main internal roadway, with benches along the adjacent path.

The Development Plan shows one point of access on Bel Pre Road, aligned with the Vedanta Center's existing entrance and its parking lot, which would serve the Vedanta Center and the duplex units. It shows two points of access on Homecrest Road, "Road A" near the southeast corner of the site, not far from the intersection of Bel Pre and Homecrest Roads, and "Road C" at the very northern end of the site. Road C is proposed in an effort to satisfy a transportation objective stated in the Master Plan, which called for a road along the northern boundary of the subject site to provide internal circulation routes for future development in the area. As candidly stated by the Applicants' traffic planner, Road C would be convenient for the homes at the northern end of the development, but is not necessary for safe, adequate and efficient circulation. The Development Plan shows Road C stopping at the end of the last home, with a 50-foot right-of-way dedication along the remainder of the frontage so the road can be extended if future development warrants it.<sup>1</sup> The testimony indicated that Applicants intend to provide a small dedication of land along the site's Homecrest Road frontage, but this dedication is not clearly shown on the Development Plan. The intent is to provide 35 feet from the property line to the center of the roadway, consistent with a master plan recommendation that Homecrest Road should have a 70-foot right-of-way.

An additional element of the on-site circulation plan is a feature located where Road B would otherwise connect with the Vedanta Center parking lot, described as a "friendly connection." This connection would be paved, but would not have the appearance of a normal road. The specifics have not yet been determined, although the Applicants' land planner indicated that the connection would be available to pedestrians and emergency vehicles, but not to normal traffic.

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<sup>1</sup> Testimony indicated that Applicant J. Kirby Development expects to be obligated during site plan review to pay for construction of the road to the eastern property line at some future point, if needed for proposed development of properties to the east.

With regard to phasing, the Development Plan specifies that all development steps may occur in any order or simultaneously, provided that "construction of the 6 MPDU townhouses will commence no later than commencement of the 18th market rate unit." Ex. 60(a).

The Development Plan in the present case shows access points, approximate locations of existing and proposed buildings and structures, preliminary classification of dwellings by number of bedrooms, parking areas, some intended right-of-way dedications, and areas intended for common use but not public ownership (the small recreation area on Road B and the stream valley). In its current form, the binding nature of the Development Plan is subject to the following limitations:

1. The Development Plan specifies that "Lot sizes and shapes and building locations are for illustration only and may be further revised at subsequent Preliminary and Site Plan proceedings."
2. Green area shown covers approximately 46 percent of the site, but the text of the Development Plan states that green area may be reduced, provided that the statutory requirement of a minimum of 30 percent green area is met.
3. A textual binding element specifies that the development will have a single access point on Bel Pre Road, and *no more than two* access points on Homecrest Road. This suggests that one of the two Homecrest Road access points shown on the Development Plan could be eliminated at a later stage of review.

The District Council finds that these limitations reduce the Development Plan to a document so lacking in specifics that it is impossible to fully and fairly evaluate compatibility with surrounding uses, compliance with the purpose clause for the zone or master plan consistency. The Development Plan states, without limitation, that "building locations are for illustration only." A broad, general statement of this kind leaves open the possibility that if the rezoning were approved, the Applicants (or successors in interest) might present a site plan to the Planning Board and its staff with a totally different site layout than what is currently shown. Similarly, the Development Plan provides for a possible reduction of green area by more than a third, from 46 percent of the site to 30 percent; it is



Page 8.

Resolution No.: 15-1353

impossible to anticipate what the Development Plan would look like with such a dramatic reduction in green area.

Finally, the Development Plan leaves open the possibility that one of the two access points shown on Homecrest Road could be eliminated. This makes it impossible to evaluate consistency with the Master Plan, which proposed as one of its main objectives for the area an internal roadway that would begin in the northwest corner of this property. The promise of that roadway appears to have played a significant role in Technical Staff's evaluation of master plan compliance, so the potential for its elimination undercuts Staff's support for the application as well as that of the Planning Board, which relied on the Staff Report. The possible elimination of one of the Homecrest Road access points could also have impacts on the safety, adequacy and efficiency of vehicular circulation that have not been specified and, therefore, cannot be fully assessed.

The Applicants appear to labor under a fundamental misapprehension of the District Council's role in this case. The Montgomery County Zoning Ordinance specifies that in certain zones (mostly planned development and transit station zones), development is permitted "only in accordance with a plan approved by the district council at the time the land is classified" in one of these zones. Code § 59-D-1.1. The zones that require a development plan generally do not include the type of strict development parameters that are imposed in other zones, for example maximum building heights and minimum building setbacks. They do, however, require the submission of a development plan, which "must clearly indicate how the proposed development meets the standards and purposes of the applicable zone." Code § 59-D-1.3. The Zoning Ordinance specifies that a development plan must show general locations of points of access, the locations and uses of all buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, the location of parking areas and number of spaces, the location of land to be dedicated to public use, and the location of land intended for common or quasi-public use but not proposed for public ownership. Code § 59-D-1.3(a) – (c). These submission requirements ensure that the Council has enough information about the proposed development to fully assess its compatibility and compliance with applicable requirements.

At a minimum, the Council must have the information specifically required in a development plan, such as the locations proposed for buildings and points of access. In recognition of the need for some measure of flexibility at site plan to respond to field conditions, the Council has, in the past, approved development plans that stated that exact building locations or the exact location of an access point were illustrative. Approximate locations, or building envelopes, can provide a sufficient basis for evaluation of a proposed development at the zoning stage. In the present case, however, the application lacks even that level of detail. The submitted Development Plan leaves open the potential for a complete site re-design, a reduction of green area by as much as one third and the elimination of one of two access points shown on Homecrest Road. This is unacceptable.

In addition to the major flaws described above, the Development Plan contains a number of more minor deficiencies that must be addressed if this plan moves forward. These deficiencies are described in detail below.

1. Textual binding element No. 1 states that the number of units will not exceed 39, including the existing Vedanta Center guest house. The General Notes are written in more exact terms: 21 single-family detached units, 12 duplex units and six townhouses. During the hearing, Applicants' counsel indicated an intention to revise the General Notes to provide for "up to" the number of each unit type specified; the failure to make that change may have been a simple oversight. If the Applicants' intention is to leave the Planning Board the discretion to reduce the number of units, if necessary, during subdivision or site plan review, the General Notes must be changed to allow for that possibility.

2. Textual binding element No. 3 states that the addition to the Vedanta Center will not exceed 6,500 square feet of gross floor area. The graphic portion of the Development Plan depicts the proposed worship space addition with an approximate size of "6,000± SF." The "Development Program" (phasing) description describes the Vedanta Center expansion as "6,500± SF." These inconsistencies between text and graphics must be rectified to avoid confusion.

3. Textual binding element No. 4 states that fencing and landscaping "as shown on the Development Plan along Homecrest Road (within 10 feet of lot lines) shall be maintained by the Homeowners Association." This is consistent with testimony during the hearing, which indicated that the HOA would ensure uniform fencing and landscaping between the rear yards of the new homes and Homecrest Road. The Hearing Examiner, however, could not find any indications on the submitted Development Plan of fencing or landscaping along Homecrest Road. The graphic portion of the Development Plan and the textual binding elements must be consistent.

4. The Development Plan submitted here shows very clearly the intended road right-of-way dedications for Roads A, B and C, including the possible future extension of Road C along the full length of the northern boundary. It does not clearly show, however, the intended right-of-way dedication along Homecrest Road that was described during testimony. This omission must be rectified.

5. As discussed in more detail in Part III.F.2. below, the 50-foot right-of-way dedication shown for Road C may not be sufficient to build the access road that the Master Plan envisioned at this location. A finding of Master Plan compliance cannot be made without sufficient right-of-way dedication to ensure enough land to carry out this important Master Plan objective.

An additional flaw on a separate document relates to the NRI/FSD, Exhibit 23(d). The Zoning Ordinance specifies that a development plan must include "a natural resources inventory prepared in accordance with a technical manual adopted by the Planning Board. . . ." Code § 59-D-1.3(a). The submitted NRI/FSD does not show MNCPPC approval, although a memorandum from Environmental Planning Staff at the MNCPPC (attached to the Staff Report, Ex. 28) states that it was approved on June 6, 2005. A copy of the approved document should be submitted into the record on remand.

The District Council finds that the Development Plan submitted with this application does not satisfy all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

**§59-D-1.61(a): master plan consistency.** The proposed development would be consistent with many of the goals set forth in the *1994 Approved and Adopted Aspen Hill Master Plan* (the "Master Plan"), including its broad goals related to housing diversity, environmental protection, and community identity and design. The three unit types proposed offer a choice of housing types for people of varying incomes and lifestyles. The most significant natural resources on the site would be fully preserved within the stream valley, and some of the significant trees outside the stream valley might be preserved, as well. The Master Plan's goal with regard to community identity and design is to "[p]rovide for attractive land uses that encourage opportunity for social interaction and promote community identity." Master Plan at 22. The Development Plan would create a well-planned community, with an architecturally interesting worship building serving as a "visual accent", and a network of sidewalks and paths connecting the various residential areas with each other, the worship center, the recreation area, the partial stream valley trail and neighboring sidewalks.

The site layout would better meet the Master Plan's goal of increasing community interaction and reducing the social and physical isolation of portions of the community if the MPDUs were distributed in more than one location on the site, rather than clumped together in a corner, with a separate (and narrower) access road. However, the District Council nonetheless finds that the Development Plan *substantially* complies with the Master Plan's community identity goals.

The Development Plan also complies with the specific Master Plan recommendations for the Western Bel Pre Road Area, which includes the subject site: PD-2 zoning for consolidations of ten acres or more; protection of Bel Pre Creek and the stream buffer areas; and consolidated, on-site storm water management.

The only unresolved question concerning Master Plan compliance is the roadway along the northern boundary line, which is central to the Master Plan's vision for the development of the subject property and nearby parcels. The Master Plan calls for a network of internal roadways to reduce the need for curb cuts on Bel Pre Road, reduce the environmental impacts of development on Bel Pre Creek, and provide a way for new development to enter busy Bel Pre Road at a signalized

Page 12.

Resolution No.: 15-1353

intersection. The Master Plan specifically recommended, both pictorially and in the text, an internal roadway along the northern edge of the subject property, with access from Homecrest Road. The road is specified as a secondary roadway, and the Master Plan suggests consolidating access drives with the adjacent Racquet Club if the proximity of the two entrances is considered a safety hazard. The submitted Development Plan provides for a 50-foot right-of-way dedication in the appropriate location, along the northern boundary of the site. It also states, however, in a textual binding element, that there will be "no more than two" access points on Homecrest Road. This suggests that one of the two access points shown on the Development Plan may be eliminated. Thus, the fulfillment of one of the Master Plan's key objectives is uncertain.

The evidence supports the conclusion that the Development Plan does not conflict with any other county plans or policies, or with the capital improvement program, and would further county housing policy by creating diverse housing options, including affordable housing. The evidence demonstrates that the proposed development would satisfy the requirements of Local Area Transportation Review, would have minimal impact on public school capacity and, as consequence, would not be inconsistent with the county Growth Policy.

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

#### **1. The Purpose Clause**

The purpose clause for the PD Zone contains a number of goals and objectives, some of which are satisfied by this application and some of which are not. The District Council's findings as to each paragraph of the purpose clause are set forth below.

**First paragraph: Master Plan implementation.** As discussed under (a) above, the proposed development would be in substantial compliance with most of the recommendations and objectives of the Master Plan. It would also integrate mutually compatible uses and provide more efficient circulation, access and storm water management than could be achieved under the current conventional zoning, as well as better environmental protection and amenities. The evidence is

inconclusive, however, as to whether the proposed development would implement the Master Plan's key internal roadway objectives for this site. Accordingly, this element of the purpose clause is not satisfied.

Second paragraph: social and community interaction, distinctive visual character, balanced mixture of uses. The proposed development would achieve these objectives in several ways. The development would have a distinctive visual character because a worship center with unusual architecture would occupy a prominent central location, and because much of the site would consist of open stream valley buffer. A network of pedestrian sidewalks and trails would connect each of the residential areas with each other, the Vedanta Center, the recreation area on Road B, a path along part of the stream buffer, and adjoining public sidewalks, facilitating social and community interaction. Most of the homes would face other homes, further encouraging social interaction and a sense of community. The subject site is in relatively close proximity to shopping, parks and public transportation, and testimony indicated that there is a substantial amount of pedestrian activity, despite marginally adequate sidewalks, providing opportunities for interaction between residents of the proposed development and the surrounding community. In addition, the expansion of the Vedanta Center would enhance opportunities for fellowship and community among its members and visitors.

The unified sense of community that the purpose clause suggests might be attained to a higher degree if the duplex units were adjacent to the single-family homes, rather than separated from them by the Vedanta Center parking lot, as suggested by some community members. On the other hand, the worship center would be less integrated into the development if the location of the duplex units did not require paths that would lead duplex residents to walk the grounds of the Vedanta Center to reach the stream valley trail and the community recreation area. Moreover, the area shown for the Vedanta Center parking lot appears to be significantly smaller than the area shown for the duplex units, making the "switch" suggested during the hearing impractical.

The proposed development does not include commercial uses due to its size, but it does include a mix of residential use types, recreational opportunities and a religious use. Technical Staff

indicates that commercial uses would not be appropriate for a development of this size, and the District Council agrees. Based on the preponderance of the evidence, the District Council concludes that the development depicted on the proposed Development Plan would satisfy this element of the purpose clause.

Third paragraph: broad range of housing types. The proposed development would provide a broad range of housing types, including two-to-three bedroom MPDUs, three-bedroom duplex units and four-bedroom single-family detached homes. These options would attract residents with varying lifestyles and income levels. The development would broaden the mix of housing types in the surrounding area, which is currently dominated by residential uses other than single family detached homes.

Fourth and fifth paragraphs: trees, grading and open space. The proposed development would preserve 4.2 acres of existing forest, mostly in the stream valley. The layout of the Development Plan would minimize grading by preserving the stream valley buffer and existing Vedanta Center buildings, and through efficient layouts making use of the existing topography.

Both residents of the proposed development and visitors to the Vedanta Center would be able to enjoy the visual beauty of the stream valley from the trail, the sidewalks and the recreation area on Road B. The stream valley is not readily accessible to the general public because it is set back from the roads. Area residents might be able to enjoy the trail along the stream buffer by parking in the Vedanta Center parking lot, which by all accounts is empty much of the time, or on Road B. In addition, the preserved stream valley on the subject property would continue to form part of the larger stream valley that runs through the area and serves as a valuable amenity for all area residents. The District Council agrees with Technical Staff that the open space requirement is geared more towards large projects, and that for a development of this size, the open space and access shown is adequate.

Sixth paragraph: pedestrian networks. Pedestrian activity would be encouraged by a network of pedestrian sidewalks and trails linking the residential areas with one another, the worship center, the recreation area on Road B, the partial stream valley trail and the nearby public sidewalks.

The subject site is located with one block of bus stops on both Bel Pre and Homecrest Roads. The availability of pedestrian sidewalks and paths separate from roads, and the proximity to public transportation, would both reduce reliance on the automobile.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The proposed Development Plan would consolidate three parcels for a total of 16 acres of land. While not large in an absolute sense, the proposed development would aggregate enough parcels to satisfy the Master Plan's specific size recommendation for PD-2 zoning, with enough to space to permit three different unit types and the efficiency of joint storm water management and road connections.

Eighth paragraph, first part: safety, convenience and amenity. The evidence demonstrates that the proposed development would provide safe and convenient roadways, sidewalks and pathways, provided that the necessary steps are taken to assure adequate sight distances for the Bel Pre Road entrance and the access to Road C. On Bel Pre Road, adequate sight distance likely would require cutting back vegetation and moving a utility pole by a few feet. At the access point to Road C, ensuring a safe condition might require redesigning the size and location of the access point. As discussed earlier, the uncertainty surrounding this element of the project impedes full compliance with the purpose clause for the zone.

Residents of the homes on the west side of the site would have access to Bel Pre Road at a signalized intersection. Residents of the duplex units and visitors to the Vedanta Center would not have that advantage, but their shared access point would improve safety on Bel Pre Road by reducing the number of curb cuts along this stretch of land from three to two. The proposed pathways, partial stream valley trail and recreation area represent amenities that would be available to residents of the development, and to any residents of the larger community who care to enter the development to view the stream valley.

Eighth paragraph, second part: compatibility. The District Council is not persuaded that the proposed development as a whole would be compatible with existing uses in the surrounding area,



Page 16.

Resolution No.: 15-1353

although some elements of the development would be compatible with their surroundings. The duplex units would be within 60 feet of the Moose Lodge building, but would be buffered by a 30- to 35-foot deep wooded area, which would provide substantial visual and noise screening. Across Bel Pre Road, the duplex units would confront townhouses that are built at a density of five dwelling units per acre, significantly higher than the 2.4 d.u./acre propose for the subject site overall. The townhouses and two single-family detached homes backing onto Bel Pre Road, in the southwest corner of the site, would confront townhouses built at five d.u./acre and multi-family units at a density of approximately 22 d.u./acre. All of the dwellings across Bel Pre Road are set back a significant distance from the street, so the impact of the new development likely would not be substantial.

The problematic issue in terms of compatibility is the number and size of the units proposed along Homecrest Road. These units are the most visible, with their long street frontage. They play a key role in the visual impact of the proposed development on the intersection and on Homecrest Road. Across Homecrest Road from the site are three single-family homes and a residential community for seniors and special needs care. Both sides of the street would have single-family detached dwellings with the proposed development in place, but there the similarities end. The three existing homes are located on large, wooded lots, with substantial space on all sides of each house. The Development Plan shows ten single-family detached homes backing onto Homecrest Road, each with a maximum height of 40 feet and ten to 15 feet between houses. Community members expressed a legitimate concern that these dwellings would have the appearance of a density closer to townhouses than to the typical density of single-family homes in the area. The new houses would be set back about 45 feet from the sidewalk, with some of the setback presumably occupied by landscaping and fencing to be maintained by the homeowner's association. Beyond the setback, the new homes would be separated from the existing residential lots by the 20-foot width of Homecrest Road, plus sidewalks. With a street that narrow and the houses so close together, the existing homes could feel hemmed in, with a vista that goes no farther than the uniform line of fences and houses

Page 17.

Resolution No.: 15-1353

facing them. Moreover, the new development would not have the effect some community members hope for, of breaking up the high density concentrated at this intersection.

The overall density of the proposed development is 2.4 d.u./acre. This is based on the standard PD-2 density of two units per acre, plus a 22 percent density bonus for 15 percent MPDUs (six units out of 39). Breaking that down to examine the visual impact of the homes shown along Homecrest Road, the Hearing Examiner estimated that the principal residential area shown on the Development Plan occupies roughly the western third of the site, an area of about 5.3 acres. Within that acreage, the Development Plan shows 26 units – a density of 4.9 d.u./acre. This represents a nearly tenfold increase over the two-acres-per-lot density permitted under the current RE-2 zoning. It also represents a density considerably higher than the prevailing densities in the single-family portions of the surrounding area, zoned R-150 and R-200, both of which provide for standard densities of 2.2 d.u./acre.

As the Master Plan makes clear, the purpose of recommending PD zoning for the subject property was to provide an incentive for consolidation of lots to provide benefits such as efficient road access with fewer curb cuts, joint storm water management and more effective environmental protection. Thus, higher density than the current zoning is expected and appropriate. The question is one of degree. Higher density should be accommodated in a manner that preserves compatibility with the surrounding area. The closeness of homes on the interior streets is an appropriate way to achieve higher density, as the off-site impacts would be minimal. Along a roadway frontage confronting single-family homes on large lots, however, site design requires more sensitivity to visual compatibility.

The Applicants are apparently frustrated by Technical Staff's refusal to permit units in the northeast corner of the site, a decision that expanded the already substantial environmental constraints on the property. However, the Applicants have the responsibility to work within the site constraints and present an application that is compatible with the surrounding area.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

Based on the preponderance of the evidence and for the reasons stated above, the District Council concludes that present application is not proper for the comprehensive and systematic development of the County due to a lack of compatibility; is not in compliance with or capable of accomplishing all of the purposes of the zone; and is not in substantial compliance with the Master Plan.

## 2. Standards and Regulations of the Zone

The standards and regulations of the PD-2 Zone are summarized below, together with the grounds for the District Council's conclusion that the proposed development would satisfy many, but not all of these requirements.

Section 59-C-7.121. Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is recommended in the Master Plan for PD-2 zoning, provided there is a consolidation of at least ten acres of land. The subject property represents an assemblage of approximately 16 acres, so this requirement is satisfied.

Section 59-C-7.122. Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the last of these criteria, which states the following:

That the Property is recommended for the PD zone in an approved and adopted master or sector plan and so uniquely situated that assembly of a minimum gross

area to accommodate at least 50 dwelling units is unlikely or undesirable and the development of less than 50 dwelling units is in the public interest.

The subject property is recommended for the PD Zone in the Master Plan. It is not large enough, at 16 acres with a density of two units per acre, to accommodate 50 dwelling units. Applicant J. Kirby Development represented that its efforts to negotiate with the adjacent Wheaton Moose Lodge for additional land at the rear of the Moose Lodge parcel were unfruitful. A representative of the Moose Lodge confirmed this, stating that the Lodge rejected a request for negotiations. The adjacent property to the north is fully developed and used by the Racquet Club, and the other two boundaries of the property abut roadways. If the compatibility problems and other deficiencies noted in this report can be corrected, the evidence indicates that development of the subject property with less than 50 units would be in the public interest. Accordingly, the District Council finds that this requirement is satisfied.

Section 59-C-7.131. Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A PD-2 development with less than 50 units must have at least 35 percent single-family detached units and at least 35 percent townhouse or single-family attached units. The proposed Development Plan provides for 54 percent single-family detached units and 46 percent single-family attached or townhouse units, satisfying this requirement.

Section 59-C-7.132. Commercial Uses. Commercial uses are permitted but not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which is limited to residential uses.

Section 59-C-7.133. Other Uses. Noncommercial community recreational facilities for the use of residents, such as the recreation area on Road B and the trail along part of the stream valley are permitted in the PD Zone. The PD Zone also permits any nonresidential, noncommercial use at the discretion of the District Council, on a finding that such use is compatible with the planned development and satisfies the requirements of Section 59-C-7.15. The Vedanta Center may be considered a nonresidential, noncommercial use, and the District Council considers it compatible with the proposed development. It would provide a visual amenity, possibly a worship center for some residents, and a

quiet neighbor. As discussed below, the specific requirements of Section 59-C-7.15 also would be satisfied.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The density category applied for, PD-2, is the lowest density available in the PD Zones, and is recommended in the Master Plan. All of the evidence indicates that this density category is appropriate for the site. As discussed above, the actual dwelling unit density and its distribution on the site create compatibility problems, but these are not related to the density category.

Section 59-C-7.15, Compatibility. This section requires that a proposed development be compatible internally and with adjacent uses. It also establishes minimum parameters for setbacks and building height that are designed to promote compatibility. As discussed above, the District Council finds that the proposed development would not be compatible with existing development in the surrounding area. The application does, however, satisfy the specific setback and building height provisions.

Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no building other than a one-family detached residence may be constructed within 100 feet of such adjoining land, and no building may be constructed at a height greater than its distance from such adjoining land. The Development Plan specifies a maximum height of 40 feet for all residential units, and notes that all units are located at least 60 feet from land adjacent to the north that is recommended in the Master Plan for single-family detached zoning. Moreover, it is evident on the Development Plan that all units shown within 100 feet of the northern property line are single-family detached homes. The new Vedanta Center building would be over 400 feet from the adjacent property to the north. Adjacent

Page 21.

property to the east is recommended in the Master Plan for PD-2 zoning, so these limitations do not apply.

Section 59-C-7.16. Green Area. The PD-2 Zone requires a minimum of 30 percent green area. The proposed Development Plan depicts green space of 7.3 acres, or approximately 46 percent of the site. However, a textual binding element states that green space may be reduced by as much as a third, to the 30 percent minimum. This would continue to satisfy Section 59-C-7.16.

Section 59-C-7.17. Dedication of Land for Public Use. This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated to public use, with such dedications shown on all required development plans and site plans. As noted earlier, the Development Plan fails to clearly show the small dedication (described by Technical Staff as about six feet deep) required for the right-of-way of Homecrest Road. Accordingly, this requirement is not satisfied.

Section 59-C-7.18. Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. As shown on the Development Plan, the proposed project would provide more than the required number of spaces for the single-family detached units, the number of spaces required for the other residential uses, and more than the number of spaces required for the Vedanta Center.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems. The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems would be safe, adequate, and efficient. The internal circulation system would not provide vehicular connectivity, to avoid creating a cut-through route for motorists trying to avoid the traffic light. It would, however, provide pedestrian connections, separate from roadways, among the residential areas, the worship center, the partial stream valley trail and nearby sidewalks.

Due to the uncertainty concerning where access would be provided on Homecrest Road, the evidence does not support a finding that points of external access would be safe, adequate and efficient. It appears that safe entrances can be provided as shown on the Development Plan, if the utility pole is moved and vegetation is cut back at the Bel Pre Road entrance, and if the size and location of the Road C access point is carefully designed to address both the Master Plan and safety. This cannot be assessed, however, without a Development Plan that adequately accounts for contingencies.

**§59-D-1.61(d): preservation of natural features.** The proposed development would tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site by preserving the stream valley buffer and additional small, forested areas. Efficient layouts making use of the existing topography, together with preservation of the stream valley, would minimize grading. The evidence establishes that forest conservation requirements under Chapter 22A would be satisfied. The current concept storm water management plan had not yet received DPS approval at the time of the hearing. However, the evidence indicates that the current plan contains only minor differences from the original plan, which was approved by DPS, and that no waivers are likely to be needed.

**§59-D-1.61(e): common area maintenance.** The Applicant has provided draft documents that adequately provide for perpetual maintenance of common and quasi-public areas by a homeowners' association.

In addition to the five development plan findings, the District Council also must consider the relationship of the present application to the public interest. When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment. As discussed earlier, the recommendations from the Planning Board and its Staff appear to have been based on an impression that the road along the northern boundary of the site, which was a key Master Plan objective, was certain to be built. Based on the current Development Plan, that outcome is uncertain.

Page 23.

Accordingly, the District Council concludes that the subject application is not consistent with the applicable Master Plan.

The evidence of record indicates that the proposed development would have no adverse effects on traffic congestion, schools or public utilities. Given the uncertainty surrounding the access point or points proposed for Homecrest Road, it is not possible to fully evaluate impacts on traffic safety.

The Master Plan plays a central role in the purpose clause for the PD Zones, so in this context its recommendations and objectives are entitled to particular deference. Having found that the proposed development, as depicted on the submitted Development Plan, would not be consistent with the Master Plan, the District Council concludes that approval of the application in its current form would not be in the public interest. The District Council finds, however, that reclassification of the subject property to the PD-2 Zone with an appropriate development plan would be in the public interest. With the right development plan, such a project could provide housing diversity, a compatible form of development, environmental protection and the expansion of a religious institution that is open to the public and provides a spiritual home for its members.

For these reasons, the application will be remanded to the Hearing Examiner in the manner set forth below.

#### **ACTION**

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

Zoning Application No. G-836, requesting reclassification from the RE-2 Zone to the PD-2 Zone of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland in the 13<sup>th</sup> Election District, is hereby remanded to the Hearing Examiner with instructions to reopen the record, to provide the Applicants with the opportunity to (i) rectify the deficiencies on the Development Plan that are identified in this Resolution and in the Hearing Examiner's Report and Recommendation



M-NCPPC



## MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, www.mncppc.orgMCPB  
Item # 4  
10/20/05**MEMORANDUM: LOCAL MAP AMENDMENT**

**DATE:** October 11, 2005

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Development Review Chief *RK*  
Carlton Gilbert, Zoning Supervisor *CG*

**FROM:** Joel A. Gallihue, AICP *JAG*

**SUBJECT:** **Local Map Amendment No. G-836:** J. Kirby Development, LLC and Vedanta Center of Greater Washington seeks reclassification of 16 acres of land from the RE-2 zone to the PD-2 zone for 21 single family detached residences (one existing), 12 single family attached residences and 6 townhouse units (MPDU) and expansion of an existing worship center. Proposed rental units for senior independent living were deleted from the proposal. Located at intersection of Bel Pre and Homecrest roads. Aspen Hill Master Plan.

**FILING DATE:** February 22, 2005 (revised June 10, 2005)

**PUBLIC HEARING:** 11/04/2005

**STAFF RECOMMENDATION:** Approval, of the Planned Development Zone (PD-2) for 21 single family detached residences (one existing), 12 single family attached residences, 6 townhouse units (MPDU), and expansion of an existing worship center based upon the following findings:

1. The application complies with the purpose clause of the planned development zone (59-C-7.11).
2. The requested planned development zone is compatible with the surrounding uses.

3. The rezoning does conform with the recommendations of the 1994 Approved and Adopted Aspen Hill Master Plan.

## **SUMMARY**

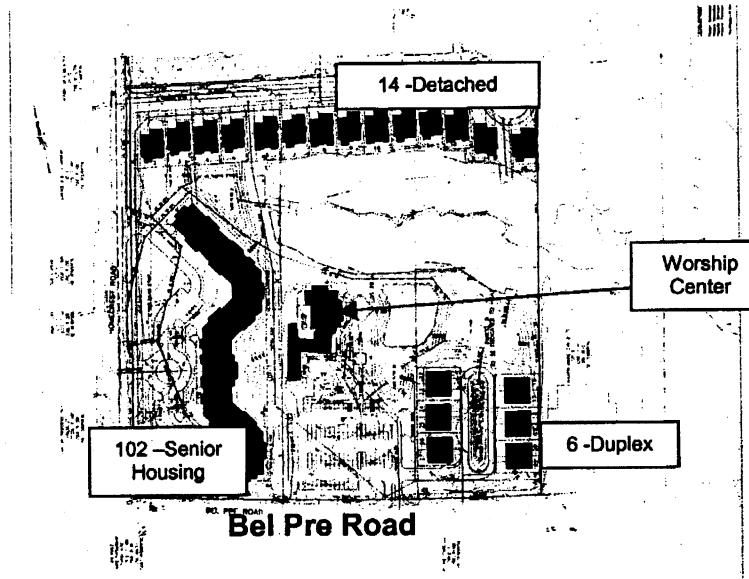
J. Kirby Development, LLC and Vedanta Center of Greater Washington<sup>1</sup> propose a rezoning from RE-2 to the PD-2 zone. The subject property for the rezoning tracts measure approximately 16 acres in area. The project includes parts of lots 3, 4 and 5 of the "Homecrest" subdivision recorded in Plat Book 25, Plat 1586. The addresses of the property are 2929, 3001, and 3031 Bel Pre Road, Silver Spring, MD. The plan proposes 21 single family detached dwelling units (one existing), 12 one family attached dwelling units, and 6 townhouse units (MPDUs) and expansion of an existing worship center (appx. 6,000 square feet) on approximately 16 acres of land. The proposed zoning is in the low category (PD-2). This development proposal has gone through three major revisions to reach the current scheme.



The original proposal was considered for a recommendation of denial by staff. Initially, PD-4 and then PD-7 was proposed which both exceeded the PD-2 density recommended in the 1994 Approved and Adopted Aspen Hill Master Plan. Additionally, proposed use of the senior housing bonus exceeded the

<sup>1</sup> Land planning report indicates a Hindu worship center. Website indicates, "The center provides a spiritual home for devotees and friends who come for Sunday lectures, weeknight scripture classes, worship and meditation." (<http://www.vedanta-dc.org/about.html>)

maximum one third of tract for calculating the bonus, per 59-C-7.14(d)(3)(c)<sup>2</sup>. The original submission would have located another large building at an intersection where the Aspen Hill Master Plan specifically identifies a concern for over concentration of large-scale institutional uses.

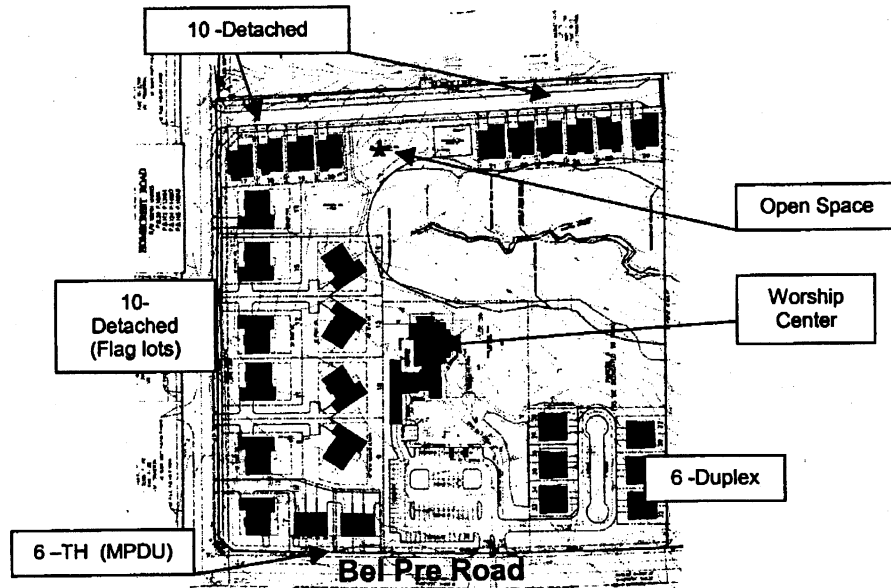


*Initial Development Scheme - G-836*

The relationship of the various components of the original proposed development was tenuous at best and ignored objectives of the PD zone purpose clause. The only link was the required sidewalk on public roads. The various components were compartmentalized on the plan increasing access points and making sharing of parking a challenge.<sup>3</sup> In order to accomplish this scheme, a PD-7 classification would be necessary when the plan only allows PD-2. While the plan calls for a road on the north side of the property, the single loaded configuration was thought by staff to be inefficient. Such a suburban and auto-oriented design is not inconceivable in the PD zone. However, staff suggested that instead it was possible a better design could go further to advance the purpose clause objective to, "encourage a maximum of social and community interaction among those who live and work within an area." Staff believes that limited effort was taken to, "Create a distinctive visual character and identity for each coordinated residential use." No internal pedestrian connections or open space linked the site. The applicant made several efforts to resolve these matters with the senior housing component but then decided to drop that aspect of the proposal and redesign.

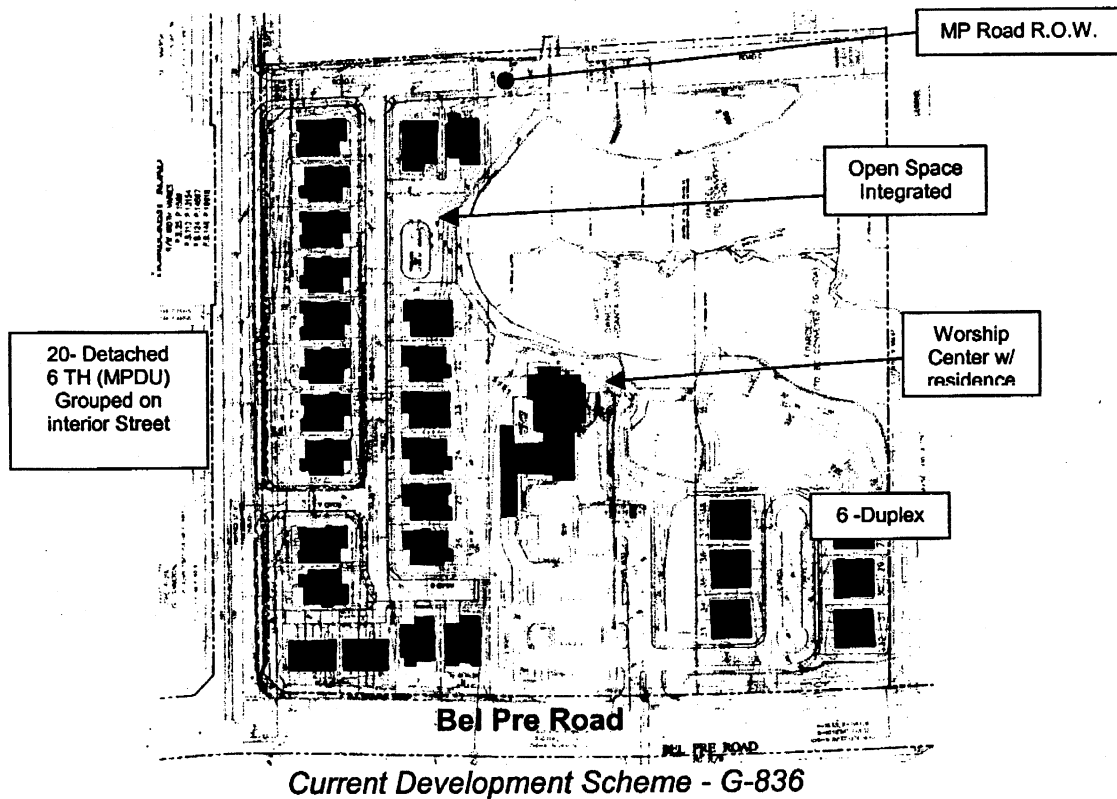
<sup>2</sup> An attempt to increase the density to the PD-7 category resolved the bonus issue but continued to fail to meet the master plan goals.

<sup>3</sup> A link to promote shared parking between senior housing and the worship center is clearly a missed opportunity considering the parking deficit for senior housing and surplus for the worship center.



*Second Development Scheme – G-836*

Having eliminated the senior housing, the next draft represented a fundamental improvement, in that the zone requested was PD-2. This brought the scheme into master plan conformance for density. Staff continued to argue for better social and community interaction as called for in the PD zone purpose clause. The open space area and some internal paths represented an improvement. Staff continued to object to the way the disparate assembly of the plan and was particularly concerned with the use of flag lots on Homecrest. Staff asked the applicant to provide internal pedestrian connections and work to integrate the worship center into the development. Subsequent to hearing various staff and community concerns, the applicant presented the current draft.



The current scheme has many favorable components. Most of the residential development has been grouped in a pattern that encourages interaction off the main roads and “creates a place” that has an identity. Reinforcing this is an open space feature incorporated prominently into the interior development. While grouping of MPDUs can be a detriment, the small size of this development with environmental constraints leaves few options. While the MPDUs are not interspersed, they are integrated with the market rate units. Pedestrian connections link the worship center and related duplexes to the rest of the community. An emergency connection is available connecting the worship center to the interior street. Should roads be blocked, this provides emergency vehicles an option but the design prohibits cut-through in normal situations.

The master plan road on the north of the property is retained in this design, mostly as a dedication. Considering the uncertainties for development of the adjacent property, construction may not yet be necessary. Further consideration of this matter will be given when the preliminary plan of subdivision is reviewed. The scheme permits further discussion of the new intersection at Homecrest during preliminary plan review.<sup>4</sup>

<sup>4</sup> The master plan concept of connecting the Tennis Club to the new road will be evaluated at that time.

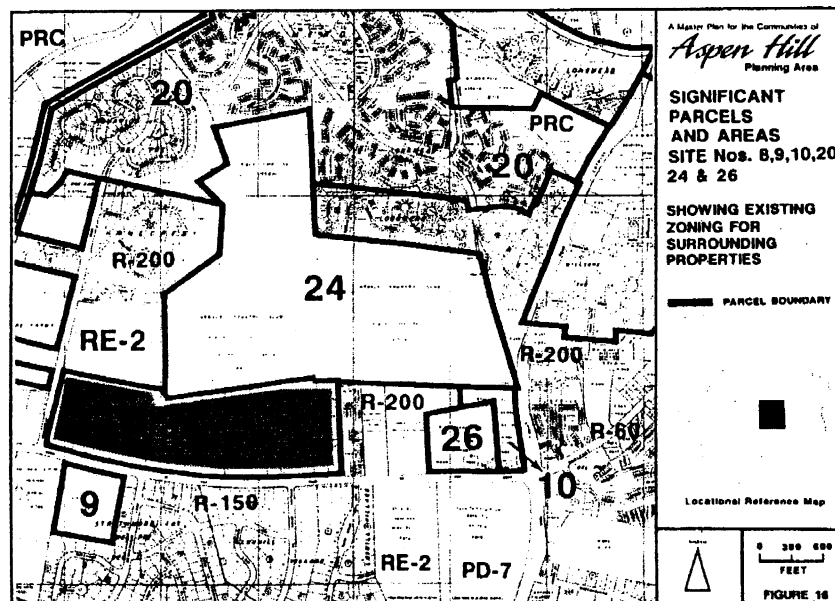
## BACKGROUND

### **A. Description of Property**

The three subject lots for the proposed rezonings form a square tract adjacent to Bel Pre Road and Homecrest Road in Aspen Hill. Approximately 867' of frontage on Bel Pre and 800' of frontage on Homecrest Road. A stream identified in the Master Plan as Bel Pre Creek drains through the property. There is no flood plain present on the tract. The property is partially wooded, partially field, and partially residential use.

### **B. Surrounding Area –**

In a floating zone application, the evaluation of the zoning issues requires delineation of the surrounding area. The surrounding area for this application is referenced in the 1994 Approved and Adopted Aspen Hill Master Plan as the "Bel Pre Road" area<sup>5</sup>. The boundaries of this area are Bel Pre Road to the south, Homecrest Road to the west, Argyle Country Club to the North and The Bel Pre Square Townhouses<sup>6</sup> Road to the East. The area is approximately 63 acres.



The land use pattern for the area is a mix of uses including residential, a social lodge and a nursing home. Adjacent to the north is land zoned RE-2, the Aspen Hill Racquet Club. Adjacent to the east is land zoned RE-2 and owned by the Wheaton Moose Lodge #1775. Across Homecrest Road and to the west is R-

<sup>5</sup> The Plan has a section beginning on Page 34 entitled "Parcels or Areas Recommended for a Change in Use or Density." Page 46 begins the discussion Bel Pre Road Area (#8) of which the subject tract comprises a portion.

<sup>6</sup> These townhouses are located across the street from Argyle School.

200 and RE-2 (TDR) zoned land with two senior housing facilities and single family residential. To the south is Strathmore House Apartments and townhomes in the R-150 zone.<sup>7</sup>

### **C. Intended Use and Approval Procedures**

The applicant requests the PD-2 zone to allow the redevelopment of the site, which will consist of 21 detached units and 12 attached units, 6 townhouse units and the worship center.

The submitted development plan enumerates the following information on the land use plan:

Area of the site – 16.02 acres

Total number of units – 39 (21 SFD / 12 SFA / 6 TH)

*(The number of bedrooms for SFD and SFA units not reported.)*

Number of Moderate Priced Dwelling Units – 6, or 15% (12.5% min. is met)

Number of Parking Spaces – 201 spaces (71 more than is required)

Setback from One-Family Zone for SFA- < 50 feet

Greenspace – 47.39%

Development Program – The phasing plan indicates that development will occur in four phases, any or all of which may be initiated at any time:

- Phase I      Grading and infrastructure for all 38 new single family lots, develop finished lots.
- Phase II     Commence construction of 20 new single family homes and six MPDU townhouses on finished lots.
- Phase III    Commence construction of 12 duplex homes.
- Phase IV    Commence construction of 6,000 SF Vedanta Center Expansion.

*Development plan indicates that phases may occur in any order and may occur simultaneously although its not possible to grade and construct at the same time.*

#### **Binding Elements –**

1. The number of dwelling units shall be limited to 39, including the existing residence at the worship center.
2. The addition to the worship center shall be limited to 5,700 sq. ft. gross floor area.
3. Access will be from a single point on Bel Pre Road and three points on Homecrest Road.

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<sup>7</sup> Area # 9 per the Aspen Hill Plan.

The subdivision and development of this property as proposed depends upon the rezoning to the PD-2 zone. In addition to this rezoning application, other approval processes for this site will include a preliminary plan of subdivision, a site plan and a final plat of subdivision.

**D. Zoning History –**

1. Comprehensive Zoning:

- a. 1959 Countywide Comprehensive Zoning mapped RA zone. (Agriculture – Residential)
- b. Re-designated RE-2 by ZTA #73013 in 1973.
- c. SMA G-709 reconfirmed RE-2 zoning.

1. Local Map Amendment:

None prior to instant proposal.

**E. Master Plan Recommendation –**

1. Land Use: Residential and Special Exception Uses
2. Zoning: RE-2 or PD-2 with assembly of ten acres or more.

**F. Public Facilities**

1. **Water and Sewer Service:**

- a. Service Categories: The property is Water Category W-1 and Sewer Category S-1
- b. Water and Sewer Service: Water and sewer lines abut the property. Local service is deemed adequate and the impact from rezoning is considered negligible

2. **Roadways:**

According to the 1994 Approved and Adopted Aspen Hill Master Plan, the nearby master-planned facilities include:

**Bel Pre Road** – designated as a five-lane arterial, A-40 with a recommended minimum right-of-way width of 80 feet and an existing Class I bikeway (i.e., a shared use path, SP-30, in the Countywide Bikeway Functional Master Plan).

**Homecrest Road** – designated as a primary residential primary street, P-12, with a recommended minimum right-of-way width of 70 feet and a proposed Class III bikeway.



**3. Schools:**

The subject property is located within the Kennedy School Cluster. The land planning report indicates that all levels of schools in this cluster have adequate capacity.

**ANALYSIS**

**A. Purpose of the PD-Zone:** A floating zone requires an evaluation of the purpose clause of the zone. The purpose of the PD zone is as follows:

**Sec. 59-C-7.1. P-D Zone-Planned development zone.**

**59-C-7.11. Purpose.**

*It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional District and the area master plans by permitting unified development consistent with densities proposed by master plans. It is intended that this zone provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. In so doing, it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.*

*It is further the purpose of this zone that development be so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development. It is intended that development in this zone produce a balanced and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area master plan, and related public and private facilities.*

*It is furthermore the purpose of this zone to provide and encourage a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types.*

*Additionally, it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees and, in order to do so, minimize the amount of grading necessary for construction of a development.*

*It is further the purpose of this zone to encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial concentration so as to function for the general benefit of the community and*

*public at large as places for relaxation, recreation and social activity; and, furthermore, open space should be so situated as part of the plan and design of each development as to achieve the physical and aesthetic integration of the uses and activities within each development.*

*It is also the purpose of this zone to encourage and provide for the development of comprehensive, pedestrian circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities, and thereby minimize reliance upon the automobile as a means of transportation.*

*Since many of the purposes of the zone can best be realized with developments of a large scale in terms of area of land and numbers of dwelling units which offer opportunities for a wider range of related residential and nonresidential uses, it is therefore the purpose of this zone to encourage development on such a scale.*

*It is further the purpose of this zone to achieve a maximum of safety, convenience and amenity for both the residents of each development and the residents of neighboring areas, and, furthermore, to assure compatibility and coordination of each development with existing and proposed surrounding land uses.*

*This zone is in the nature of a special exception, and shall be approved or disapproved upon findings that the application is or is not proper for the comprehensive and systematic development of the county, is or is not capable of accomplishing the purposes of this zone and is or is not in substantial compliance with the duly approved and adopted general plan and master plans. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a special set of plans is required for each planned development, and the district council and the planning board are empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.*

Staff believes that the rezoning request, as revised meets the purpose clause of the PD zone. The proposed Land Use Plan would not be possible using the existing R-200 and RE-2 zone and the use of the PD-2 zoning category is recommended by the Aspen Hill Master Plan.

The current proposed development creates a residential community where previous drafts, in the opinion of staff, were an assemblage of unrelated residential and institutional components. Pedestrian and vehicular improvements are now configured to develop a unified residential community and provide safe access. No commercial or non-residential<sup>8</sup> uses are proposed.

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<sup>8</sup> Other than worship center.

The proposed development provides adequate access for response from the Kensington Fire Department (Station 25- Aspen Hill) via Bel Pre road. The station is at the intersection of Connecticut Avenue and Bel Pre Road. Bel Pre, Homecrest and the new road provide fire fighter access to the site.

The submissions for zoning applications G-836 are accompanied by a set of plans that are sufficient for the Planning Board and District Council to make the finding that the proposed development meets the purpose of the zone and is in compliance with the adopted general plan and master plans.

With the comments discussed above, staff concludes the subject application meets the purpose clause of the PD Zone.

**59-C-7.12. Where applicable.**

**59-C-7.121. Master plan.** *No land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher.*

The master plan specifically recommends PD-2 zoning. *Initial proposals for higher PD zoning would have been recommend for denial because of the master plan recommendation.* The initial proposal for PD-4 and the revised proposal for PD-7 exceeded this recommendation. The submitted land planning report represents that 38 new units plus the existing residence at worship center are proposed. The "Proposed Lot, Parcel, and Density Calculation Table" on the submitted Development Plan indicates the same. So the representation of the land planning report is consistent with the submitted development plan.

**59-C-7.122. Minimum area.** *No land can be classified in the planned development zone unless the district council finds that the proposed development meets at least one of the following criteria:*

(e) *That the site is recommended for the PD zone in an approved and adopted master or sector plan and so uniquely situated that assembly of a minimum gross area to accommodate at least 50 dwelling units is unlikely or undesirable and the development of less than 50 dwelling units is in the public interest.*

The applicant has advised staff that it has not been possible to negotiate with the adjacent property on Bel Pre Road to be a part of this application so assembly to accommodate at least 50 dwelling units is unlikely at this time. Development of less than fifty dwelling units is in the public interest when the Master Plan recommendation for PD-2 is taken into consideration and the fact that the plan recommends tracts of ten acres or more.

**59-C-7.13. Uses permitted.**

**59-C-7.131. Residential.** *All types of residential uses are permitted, including accessory uses. These include the following, provided they are shown on the development plan: housing and related facilities for senior adults or persons with disabilities, a group home, and a life care facility. A life care facility is subject to the provisions of Section G-2.35.1. The various dwelling unit types must be planned and constructed in accordance with the following table. The table establishes, by density category and size of development, the minimum percentage required for each dwelling unit type within a planned development. All remaining dwelling units not included in the minimum requirements may be of any type or combination of types permitted in the applicable density category and development size, provided the maximum percentage is not exceeded in any instance.*

One family detached, semi-detached (duplex), and townhouse units are proposed. For the low density category, the permitted minimum number of single family detached units is 35% and 54% are provided. Also, the minimum number of townhouse and attached units is 35% and 46% are provided. Multifamily units are not permitted in this category and they are not proposed.

**59-C-7.132. Commercial.**

No commercial uses are proposed under this rezoning application.

**59-C-7.133. Other uses.**

(a) *Noncommercial community recreational facilities, which are intended, exclusively for the use of the residents of the development and their guests may be permitted.*

No such facilities are indicated in the proposal other than common open space.

**59-C-7.14. Density of residential development.**

(a) *An application for the planned development zone must specify one of the following density categories and the district council in granting the planned development zone must specify one of the following density categories:*

The proposal is for the low-density category of two units to the acre.

(b) *The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide moderately priced dwelling units in accordance with Chapter 25A of this Code, as*

*amended, and such other information as may be relevant. Where 2 or more parts of the proposed planned development are indicated for different densities on a master plan, a density category may be granted which would produce the same total number of dwelling units as would the several parts if calculated individually at the density indicated for each respective part and then totaled together for the entire planned development.*

The proposal does follow the low-density category (PD-2) recommended in the plan.

*(c) The density of development is based on the area shown for residential use on the master plan and must not exceed the density permitted by the density category granted. However, the maximum density prescribed by Subsection (a) may be increased to accommodate the construction of Moderately Priced Dwelling Units as follows:*

The base density of PD-2 (two dwelling units/acre) is only exceeded by the proposal as required by the MPDU provisions.

*(d) Notwithstanding the density provisions of this zone, the District Council may approve an increase in density for housing for senior adults or persons with disabilities, as defined in Section 59-A-2.1, within a planned development in accordance with the following requirements:*

*(e) The District Council may approve a density bonus of up to 10% above the maximum density specified in the approved and adopted master plan for the provision of TDRs, if the use of TDRs is recommended for the site.*

TDRs are not recommended for this site, nor are TDRs a part of this application.

#### **59-C-7.15. Compatibility.**

*(a) All uses must achieve the purposes set forth in section 59-C-7.11 and be compatible with the other uses proposed for the planned development and with other uses existing or proposed adjacent to or in the vicinity of the area covered by the proposed planned development.*

The proposed development is consistent with the goals and objectives of the Aspen Hill Master Plan by providing development that exceeds the recommended density. The proposed use and requesting density are incompatible with the existing development in the surrounding area.

*(b) In order to assist in accomplishing compatibility for sites that are not within, or in close proximity to a central business district or transit station development area, the following requirements apply where a planned*

*development zone adjoins land for which the area master plan recommends a one-family detached zone:*

*(1) No building other than a one-family detached residence can be constructed within 100 feet of such adjoining land; and*

*(2) No building can be constructed to a height greater than its distance from such adjoining land.*

The Development Plan does not indicate that buildings other than one-family detached will be within 100 feet of adjoining land recommended for one-family detached zones<sup>9</sup>. No property is within close proximity to a CBD or transit station. The 100' setback for units other than single family detached dwellings (59-C-7.15. (b)(1) from adjacent one family detached zones met on the east side where duplexes are less than fifty feet from the property line. The adjacent Moose Lodge property is recommended for PD zoning, which could allow something other than one family detached units so the 100' setback does not apply to the duplexes on this side.

*(e) Compliance with these requirements does not, by itself, create a presumption of compatibility.*

**59-C-7.16. Green area.**

*Green area must be provided in amounts not less than indicated by the following schedule:*

The green area comprises over 46 percent of the site, which exceeds the 30% minimum for the Master Plan recommended PD-2 density category.

**59-C-7.17. Dedication of land for public use.**

*Such land as may be required for public streets, parks, schools and other public uses must be dedicated in accordance with the requirements of the county subdivision regulations, being chapter 50 of this Code, as amended, and the adopted general plan and such adopted master plans and other plans as may be applicable. The lands to be dedicated must be so identified upon development plans and site plans required under the provisions of article 59-D.*

Such features are clearly shown on the land use plan and are indicated for dedication. Dedication must occur under applicable subdivision regulations, which will be applied at preliminary plan of subdivision. At the time of preliminary

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<sup>9</sup> Staff concludes that the adjacent Moose Lodge property is recommended for PD-2.

plan of subdivision sight distance requirements or other considerations may require adjustments to the plan.<sup>10</sup>

**59-C-7.18. Parking facilities.**

**Off-street parking must be provided in accordance with the requirements of article 59-E.**

As noted in the parking table on the development plan, requirements are met by this plan.

**59-C-7.19. Procedure for application and approval.**

*(a) Application and development plan approval must be in accordance with the provisions of division 59-D-1.*

The information required by 59-D-1 has been submitted.

*(b) Site plans must be submitted and approved in accordance with the provisions of division 59-D-3.*

If the zoning applications are approved, site plans will be required.

**B. Master Plan Recommendation**

Based on the following analysis of the 1994 Approved and Adopted Aspen Hill Master Plan, staff concludes that the proposed rezoning of the approximately 16-acre parcel, located at the northeast corner of Bel Pre Road and Homecrest Road, from the existing RE-2 to PD-2 Zone is consistent with the goals and recommendations of the 1994 Aspen Hill Master Plan.

The subject property is within a portion of the area identified in the Land Use Chapter of the 1994 Aspen Hill Master Plan as #8 Bel Pre Area (the area "located along the northern side of Bel Pre Road between Homecrest Road and the Bel Pre Square townhouses..." (page 51). The Master Plan designated the subject property as "Area 8 The Bel Pre Road Area" needing sensitive treatment to protect Bel Pre Creek (a high quality Use IV stream) and described the community as needing an internal road network to minimize development impact on this creek (avoid crossings) and minimize entrances to Bel Pre Road from any future redevelopment in this area.

Figure 55 in Appendix C of the master plan (page 237) shows an entrance to the western Bel Pre area properties from Homecrest Road at the northern edge of these properties along the southern property line of the Aspen Hill Racquet Club.

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<sup>10</sup> As anticipated by Aspen Hill Master Plan on page 231.

The Plan states that a higher density zoning than RE-2 would help provide an incentive for such assemblage and redevelopment. In addition, the plan also stresses the need for on-site storm water management methods for maintenance of appropriate water quality standards for Use VI streams.

For the Western Bel Pre Road area, which contains the subject property, the Plan has more specific recommendations. It recommends, "Retaining the existing RE-2 zone for all properties not now zoned R-200. If properties amounting to at least 10 acres are assembled, a PD-2 zoning is recommended" (page 54). For a new access road for the Bel Pre Area, the Master Plan recommends a circulation pattern with access points on Homecrest Road and Bel Pre Road. The access point on Homecrest Road is on the subject parcel. The Plan recommends that since "the proposed road may be close to the existing entrance of the Aspen Hill Racquet and Tennis Club, the Montgomery County Department of Transportation may deem the proximity of two entrances to be a safety hazard. If so, access should be provided from the new street when it is constructed as a primary residential street to the location where access may have to be provided to the Racquet and Tennis Club. After that point, the street would continue as a secondary residential street through the Bel Pre Road properties in a circuitous alignment and ultimately intersect Bel Pre Road opposite Rippling Brook" (page 238). The proposed development scheme provides dedication to accomplish this Bel Pre parallel road. Staff believes that the proposed street with a 50-foot right-of-way is consistent with the goal of the master plan if the DPWT considers the proposed roadway to be adequate for the number of units in the proposal. Consolidation or widening of the street to a primary standard at this location can be accommodated at the time a new entrance or consolidation of entrances is need when the adjoining Racquet Club property redevelops.

### **C. Transportation**

Transportation staff does not find a transportation related reason for recommending denial for this application. As noted in the attached memorandum, approved congestion standards are not exceeded. Various subdivision and site plan comments are included in the memorandum.

### **D. Development Plan**

Section 59-C-7.19 requires that application and development plan approval must be in accordance with the provisions of Division 59-D-1

#### **Sec. 59-D-1.3. Contents of development plan.**

*The development plan must clearly indicate how the proposed development meets the standards and purposes of the applicable zone. The development plan must include the following, in addition to any other information, which the applicant considers necessary to support the application:*



- (a) *A natural resources inventory prepared in accordance with a technical manual adopted by the Planning Board and, in addition:*
- (1) *other natural features, such as rock outcroppings and scenic views;*
  - (2) *historic buildings and structures and their approximate ages.*
- and
- (b) *A map showing the relationship of the site to the surrounding area and the use of adjacent land.*
- (c) *Except for the town sector zone, a land use plan showing:*
- (1) *The general locations of the points of access to the site.*
  - (2) *The locations and uses of all buildings and structures.*
  - (3) *A preliminary classification of dwelling units by type and by number of bedrooms.*
  - (4) *The location of parking areas, with calculations of the number of parking spaces.*
  - (5) *The location of land to be dedicated to public use.*
  - (6) *The location of the land which is intended for common or quasi-public use but not proposed to be in public ownership, and proposed restrictions, agreements or other documents indicating the manner in which it will be held, owned and maintained in perpetuity for the indicated purposes.*
  - (7) *The preliminary forest conservation plan prepared in accordance with Chapter 22A.*
- (d) *Except for the town sector zone, a development program stating the sequence in which all structures, open spaces, vehicular and pedestrian circulation systems and community recreational facilities are to be developed. For the town sector zone, a development program stating the sequence of the following in relation to the development of the residential and commercial areas specified in subsection 59-D-1.3(f), below:*
- (1) *Dedication of land to public use.*
  - (2) *Development of the arterial road system.*

- (3) *Development of pedestrian and bicycle circulation systems.*
- (4) *Development of community facilities and open space.*
- (5) *Development of regional stormwater management facilities.*
- (e) *The relationship, if any of the development program to the county's capital improvements program.*
- (h) *In the zones indicated by "X" below, the following shall also be shown:  
Note: only relevant portion of table is shown*

	P-D
(6) The density category applied for, as required in subsection 59-C-7.14(a).	X

(i) *If a property proposed for development lies within a special protection area, the applicant must submit water quality inventories and plans and secure required approvals in accordance with Article V of Chapter 19. The development plan should demonstrate how any water quality protection facilities proposed in the preliminary water quality plan can be accommodated on the property as part of the project.*

An Natural Resources Inventory/ Forest Stand Delineation (NRI/FSD) was not originally submitted with the Development Plan. The NRI/FSD was finally approved early this month according to the technical manual adopted by the Planning Board on September 25, 2003. It is not known how the application was accepted without meeting this minimum submission requirement.

The submitted Land Use Plan indicates access points to the site. One access is proposed on Bel Pre Road and three are proposed on Homecrest Road. A binding element is offered to hold access to this configuration. All residential lots are shown on the plan. The Land Use Plan indicates that there will be 21 SFD units, 12 SFA units and 102 senior units. The Land Use Plan includes parking areas with calculations and number of parking spaces. The Land Use Plan does not specifically indicate land dedicated for public use. The sidewalks and stream valley area qualify. No land, which is intended for common or quasi-public use, is noted on the Land Use Plan. Technical staff has made a finding whether the preliminary forest conservation plan in accordance with Chapter 22A. The four-phase development program is indicated on the development plan. There is no specific CIP issue associated with this proposal. No commercial development is proposed. The property is not in a special protection area.

<b>Development Standards for PD-2 Zone</b>		
<b>Standard</b>	<b>Permitted/Required</b>	<b>Proposed</b>
Minimum tract area	12.5 acres (sufficient for 50 dwelling units)	16.013 Acres
Maximum density/ total yield	2 units to the acre	39 units (permitted w/MPDU) 2.4 / ac.
Minimum (maximum) percentage of units	35% SFD, 35% SFA and TH. No MF	54% SFD, 46% SFA 0% MF
<b>Minimum setback</b>		
-From any detached dwelling lot or land classified in a one-family, detached, residential zone.	100 Feet	Setback is met.
Maximum Building Height	No higher than distance from adjoining one-family detached residential zone.	Provision is met by development plan.
Minimum Green Area	40%	47.39% entire site
Minimum Parking	2 spaces per du for SFD/SFA. 0.85 per 1BR MF, 1.15 per 2 BR MF, .25 per seat worship = total of 220	Total of 271. Extra parking is provided for SFD and worship. Senior housing has 72% required on site.

### **E. Environmental**

Countywide Environmental Planning staff has recommended approval of this zoning application and development plan.

### **F. Preliminary and Site Plan Issues**

Section 59-C-7.19 requires that Site plans must be submitted and approved in accordance with the provisions of division 59-D-3. If the County Council approves the subject rezoning, this project will require approval of a preliminary plan and site plan by the Planning Board. The site plan must be consistent with the Development Plan covering the instant zoning applications. The number of dwelling units may be reduced during the review of the preliminary and site plan to meet environmental and other requirements.

This proposal would construct part of a master plan recommended road and dedicate right of way for the remainder. Staff recommended against an earlier draft that would have constructed the entire road because it left an isolated group of homes on the eastern end. The current configuration presents a more cohesive community that does not yet need the road constructed to the eastern end. Providing the pavement at this time may not be efficient given that

redevelopment of the lodge property is not at all imminent.<sup>11</sup> This is the position of technical staff in reviewing the zoning proposal, however the final decision for dedication is made in the subdivision process.

**COMMUNITY CONCERNS** – Staff has spoken with homeowners and civic associations in the area. Staff spoke to some members of the Layhill Alliance Association and other residents. They initially expressed opposition to the proposal. Staff explained that the Master Plan recommendation of PD-2 zoning using the senior housing bonus for one third of the site could yield more than six units to the acre. There were mixed feelings about this hypothetical situation. Some prefer the property to retain much more of the open appearance it currently has, citing the original “wedge” designation to support this desire. Others felt a PD-2 development without senior housing was more in keeping with the Master Plan objective of limiting institutions on major corridors. The applicant worked with citizens and continues to discuss the project, which led to the revisions. In a recent meeting with citizens staff found that the changes had been received favorably. Most support the PD-2 proposal without senior housing. Some remained concerned about adequate sight distance and some believe the master plan road should be constructed by this development.

#### **CONCLUSION –**

With respect to the subject application, staff finds that the purpose clause and the requirements of the Planned Development Zone to provide a broad range of housing types, to minimize the amount of grading necessary for construction through flexibility of standards, and to provide a pedestrian network that links existing and proposed communities to public facilities have been realized by this plan. Staff believes that the requested PD-2 zone meets the intent of the 1994 Approved and Adopted Aspen Hill Master Plan. Staff also recommends approval of the Development Plan and Binding Elements that accompany this application which limit the development to a maximum of 39 residential units.

#### **Sec. 59-D-1.6 Approval by District Council**

##### **59-D-1.61. Findings.**

*Before approving an application for classification in any of these zones, the district council must consider whether the application, including the development plan, fulfills the purposes and requirements set forth in article 59-C for the zone. In so doing, the district council must make the following specific findings, in addition to any other findings, which may be necessary and appropriate to the evaluation of the proposed reclassification:*

- (a) *That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does*

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<sup>11</sup> A potential concern is that the unused section would be used for dumping.

*not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.*

- (b) *That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*
- (c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*
- (d) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*
- (e) *That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

Technical staff finds that the findings of 59-D-1.61 listed above can be made for this application and believes this report provides sufficient analysis for the District Council to come to this conclusion.

#### Attachments

1. Vicinity Map
2. Surrounding Neighborhood Map
3. Development Plan
4. Transportation Planning Memorandum
5. State Highway Administration Memorandum
6. Environmental Planning Memorandum
7. Letter from B'nai B'rith Housing Foundation opposed to earlier development scheme.