



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

MCPB  
Item # 6  
10/08/09

September 28, 2009

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Damon B. Orobona, Senior Zoning Analyst *Damon*

VIA: Rose Krasnow, Chief of Development Review *RK*  
Ralph Wilson, Supervisor of Zoning *RW*

SUBJECT: **Local Map Amendment G-882**

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**RECOMMENDATION:** *Denial*

The applicant, the Foundation for Advanced Education in the Sciences (FAES), is a non-profit educational foundation that owns property adjacent to the NIH campus. FAES is requesting a rezoning of this property from the R-60 Zone to the R-T 8 Zone to construct a 31-townhouse community to be devoted solely to FAES student living. In total, FAES is proposing to place up to 155 students at this location, with five students living in each of the 31 townhomes. Despite the originality of the proposal, staff must analyze the application based on the zoning category sought, despite the proposal's perceived similarity to a dormitory.

To obtain approval for an R-T 8 rezoning, the applicant must show that the site is either (1) designated for the zone in the relevant master plan, (2) there is a need for a transition at the proposed location, or (3) that the proposal is appropriate given the location and density sought. Here, the applicant has failed to establish any of the three alternative eligibility requirements. The site is not designated in the *Bethesda-Chevy Chase Master Plan* as suitable for the R-T 8 Zone. In fact, the Plan reconfirms R-60 zoning on the site and recommends single-family detached housing. The site does not qualify as an appropriate transition and the proposed density of 7.6 dwelling units per acre is more than double the prevailing density of the surrounding area, making the R-T 8 Zone inappropriate at this particular location.

Further, the application does not satisfy the R-T 8 Zone requirement that at least 50 percent the site be devoted to green area. A reduced green area is permitted only where needed to facilitate an increase over the number of dwelling units otherwise permitted. The applicant's development proposal does not exceed the standard density for the RT-8 Zone and is not eligible for modification of any area or dimensional requirements.

## SUMMARY OF REPORT

Public Hearings:	October 8, 2009 (Planning Board) October 23, 2009 (Hearing Examiner)
Overview of Site:	The site is comprised of 4.08 acres of land adjacent to NIH and located at the northwest corner of the intersection of Cypress Avenue and West Cedar Lane in Bethesda, Maryland. The site is zoned R-60 and is currently developed with four single-family detached homes.
Proposed Zone and Use:	The applicant is proposing to raze the four existing single-family detached homes and construct a 31-townhouse community devoted solely to FAES student housing. Each townhouse in the community will contain five bedrooms; each bedroom will be rented to an FAES student. The R-T 8 Zone is being proposed to accomplish these objectives.
Master Plan Consistency:	The project is inconsistent with the recommendations of the 1990 <i>Bethesda-Chevy Chase Master Plan</i> . The Master Plan specifically reconfirmed R-60 zoning and recommends single-family detached houses on the site to ensure conformance with nearby housing.
Zoning Provisions:	The project does not satisfy the purpose clause and development standards of the R-T 8 Zone. The R-T 8 Zone is not recommended by the Master Plan for this site, the proposal does not meet the requirements for a transition, and the proposed density is not appropriate for this location. Further, the proposal does not have 50 percent green area as required by the zone.
Recommendation:	Reclassification to the R-T 8 Zone should not be approved.
Subsequent Review:	If the County Council approves the rezoning request, the applicant will need to undergo both subdivision and site plan review.



## **I. PROCEDURE**

Application G-882 seeks a local map amendment (rezoning), pursuant to §59-H-1.1 of the Montgomery County Zoning Ordinance, to reclassify 4.08 acres from the R-60 Zone to the R-T 8 Zone. The subject property is a combination of seven contiguous lots located in the northwest corner of the intersection of Cypress Avenue and West Cedar Lane in Bethesda, Maryland.

The application was filed under the optional method of application, allowed under §59-H-2.5, which permits the applicant to restrict the development standards or the use of the property to less than the maximum permitted in the requested zone. Such binding limitations are shown on a schematic development plan that is submitted with the application, and these limitations, if approved, must also be reiterated in covenants filed in the land records of Montgomery County.

The Office of Zoning and Administrative Hearings has scheduled a public hearing date on this application for October 23, 2009, in the Stella B. Werner Council Office Building at 100 Maryland Avenue, Rockville, Maryland. Before the Hearing Examiner's proceedings, the Montgomery County Planning Board will conduct an initial public review of the application on October 8, 2009, at 8787 Georgia Avenue, Silver Spring, Maryland.

## **II. DETAILS OF APPLICATION**

### **A. Overview**

*The Applicant.* FAES is a non-profit foundation that offers educational programs for undergraduate, graduate, and post-graduate students predominantly in the biomedical field, although courses are also offered for physical and behavioral sciences, English, and foreign language studies. Although the FAES Graduate School does not grant degrees, it enrolls some 2,000 students per year. FAES does not currently provide a large-scale housing

operation for its students, although it does rent two single-family homes to students. FAES is now proposing a housing arrangement for up to 155 students at the subject property adjacent to the National Institutes of Health (NIH).

*The Site.* The subject property is 4.08 acres, adjacent to NIH, and located in the northwest corner of the intersection of Cypress Avenue and West Cedar Lane in Bethesda. The site has approximately 280 feet of frontage along West Cedar Lane and 770 feet along Cypress Avenue.

The subject property is currently zoned R-60. The site is developed with four single-family detached houses along the property's eastern Cypress Avenue frontage. The remaining portion of the site is undeveloped. All four houses are owned by the applicant, and two of the four are currently being rented to FAES students. The topography of the site has a six percent grade due to an increase in elevation from east to west – the site is 292 feet in elevation at Cypress Avenue along the eastern property line and rises to 316 feet at the property's western property line.

*The Surrounding Area.* The surrounding area must be identified in a floating zone application so compatibility can be properly evaluated. For the subject site, the surrounding area is generally formed by Alta Vista Road to the north, Wisconsin Avenue (MD 355) to the east, NIH to the south, and Old Georgetown Road to the west. This area is appropriate for determining whether the proposed zone will be compatible with surrounding uses as this area captures virtually all nearby properties that may be affected by the rezoning and demonstrates the predominant land use pattern of the area.

The surrounding area is made up predominantly of detached single-family residential homes. In fact, the entire area is zoned under the R-60 zoning category, a category that seeks to establish mostly single-family detached housing. However, there are a few special exceptions – such as a scientific society, a philanthropic organization, and a medical clinic – present at the perimeter of the surrounding area along the main thoroughfares of Old Georgetown Road and Wisconsin Avenue. Bethesda Crest, a townhouse community developed under the R-60 Zone, is the only existing townhouse



development in the surrounding area and is also located along Wisconsin Avenue. And, of course, NIH is an immense institutional presence making up the southern boundary of the surrounding area. Abutting the subject property to the north, east, and west are the well-established single-family detached neighborhoods of Maplewood and Alta Vista. Houses in the area are mostly brick two-story or split level homes from the 1950s and 1960s. To the immediate west of the site is the Carriage Hill Nursing Home, a special exception use granted in 1970. Out of the 568 dwellings that comprise the surrounding area, there are only seven special exceptions operating out of single-family detached dwellings (a one percent incidence rate), which further provides evidence that the area is a largely untouched single-family detached neighborhood. The proposal is outlined in black below, with the non-NIH portion of the area shaded.





*The Proposal.* FAES is proposing to raze the four existing single-family detached homes on the site and construct 31 townhouses to be used solely for student housing associated with FAES. In total, the development could house up to 155 students. According to the applicant, each townhouse will have five bedrooms, with each bedroom being leased to a separate student. The applicant has stated that the duration of the lease may be unique and/or staggered for each bedroom. The proposed living arrangement must qualify as a "family", which the ordinance defines as "[an] individual or [two] or more persons related by blood or marriage, or a group of not more than [five] persons, excluding servants, not related by blood or marriage, living together as a single housekeeping group in a dwelling unit."

All of the proposed townhomes will be four-level (basement plus three stories) with a height of 35 feet. The site layout has been proposed in a compact design that clusters all 31 townhomes near the southern portion of the site, allowing for the northern portion to remain in a natural state. All townhomes will have two-car garages and driveways deep enough to accommodate additional parking for two extra cars. Five guest parking spaces will be provided within the development. The total parking count for the development is 67 spaces, 5 spaces more than required by the ordinance for a typical R-T 8 zoning application. However, given the proposed use of the townhomes and the potential number of students to be housed, the typical R-T 8 zoning standards may not be adequate to provide sufficient parking.

The proposal arranges the townhomes in a manner that aligns the front of the units to West Cedar Lane and Cypress Avenue with parking hidden behind the units. While the proposed design will create a visually pleasing pedestrian-scale streetscape, staff questions whether the compact design fits within the pattern established by the older, two-story single-family detached homes predominant in the surrounding area.

The applicant is applying for R-T 8 zoning, which typically allows eight dwelling units per acre. Although it is the applicant's position that they could provide 39 units on this particular site, this amount could only be achieved under

the MPDU optional method standards, whereby the applicant provides more MPDUs than required by law. Here, the applicant is providing only 12.5 percent MPDUs – or four units – the minimum required. Therefore, 32 units would be the maximum allowed on this site under the R-T 8 Zone. The application is proposing 31 townhomes, only one unit less than the maximum allowed. This equates to 7.6 dwelling units per acre.

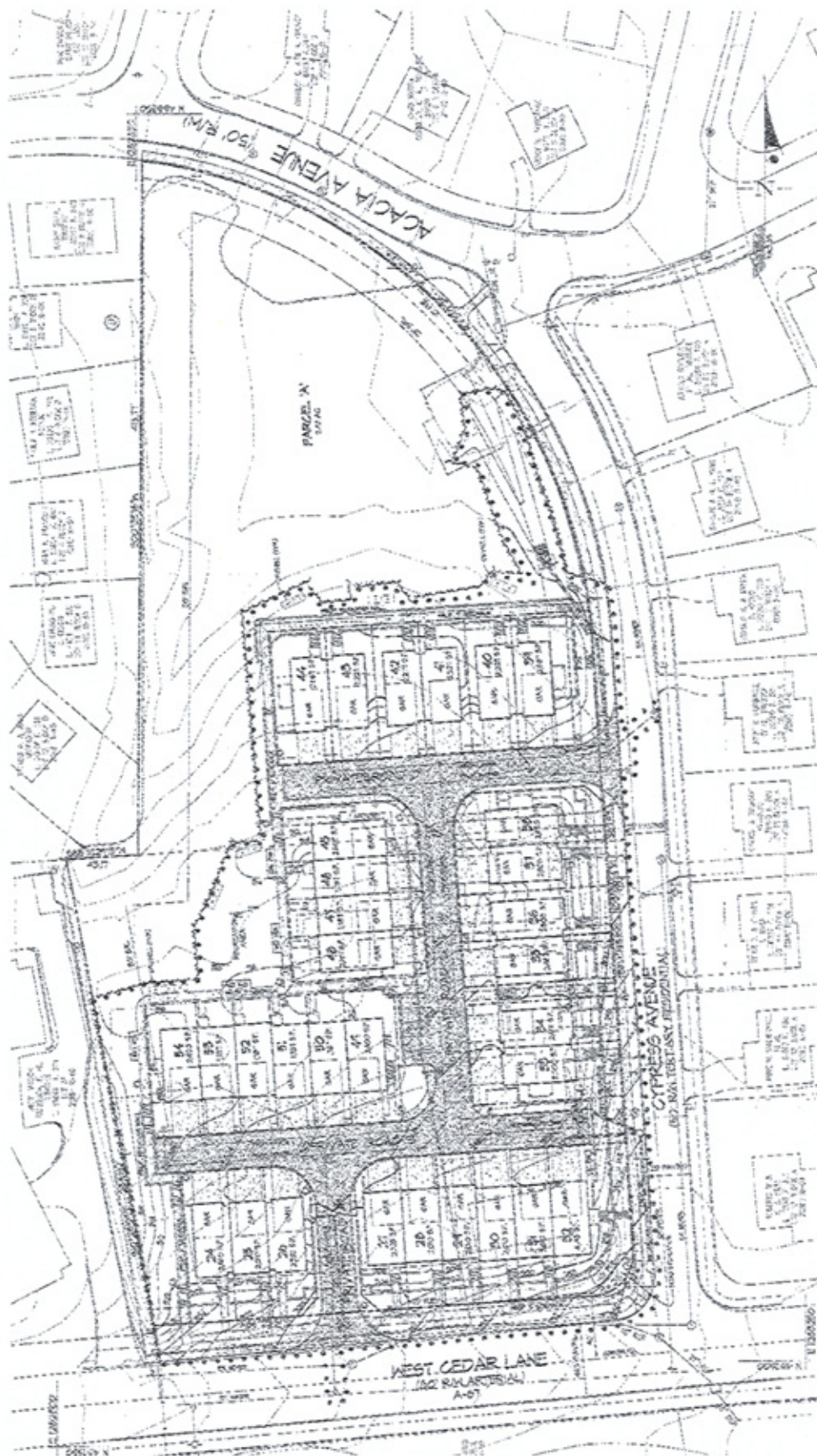
The applicant has chosen to submit a schematic development plan, which differentiates between elements of the proposal that are legally binding and elements that are merely illustrative and subject to variation during subsequent stages of review.<sup>1</sup> The binding elements for the subject application are shown below, followed by the illustrative portion of the plan.

#### DEVELOPMENT STANDARDS R-T 8.0 - Optional Method (MPDU)

	REQUIRED/PERMITTED	PROPOSED	BINDING
Minimum Tract Area:	20,000 sf (0.46 Ac.)	4.08 Acres	-
Density:	Base Density: 32 Dwelling Units (8.0 D.U. / Ac. x 4.08 Ac. = 32 D.U.)	31 Units	-
	Maximum Density with MPDU: 39 Units (8.0 D.U. / Ac. x 4.08 Ac. = 32 D.U. x 1.22 MPDU Density Bonus = 39 D.U.)	31 Units	31 Units
Moderately Priced Dwelling Units (MPDU): (12.5% of total units)	12.5%	4 Units (12.5% of 31 Units)	12.5% of total
Building Setbacks:			
- From any detached dwelling lot or land classified in a single- family detached residential zone	30 feet	30 feet minimum	-
- From any public street	25 feet	25 feet minimum	-
- From an adjoining lot:			
- Side (end unit)	10 feet	10 feet minimum	-
- Rear	20 feet	20 feet minimum	-
Maximum Building Height			
Main Building	35 feet	35 feet	-
Accessory Building	25 feet	25 feet	-
Maximum Lot Coverage	40%	40%	-
Minimum Green Area	45%	45% (1.84 Acres)	-
Off-street Parking	62 spaces (2.0 Sp/ D.U. X 31 D.U. = 62 Spaces)	129 total spaces (4.16 spaces / D.U.) 62 garage spaces 62 driveway spaces 5 Visitor Spaces	-

<sup>1</sup> §59-H-2.5







## B. Master Plan Analysis

The property is located within the geographic area covered by the 1990 *Bethesda-Chevy Chase Master Plan*. The site is within the Mid-Bethesda/Northern Bethesda area of the Plan, which specifies neighborhood preservation and community cohesion as a goal for the area. The existing zoning scheme was retained for the area to “ensure the continuation of the existing residential character and patterns so well established here.” The Plan goes further and specifically mentions recommendations for the subject property on page 52. The Plan recommends that the subject property be developed under the R-60 Zone with single-family detached homes and trees preserved around the perimeter of the site and along West Cedar Lane to ensure conformance with nearby housing. Since the Master Plan identifies other specific properties as suitable for townhouse or clustered development, staff finds it reasonable to assume that the Master Plan considered this option for the subject site and found it to be inappropriate.

Table 5  
MID-BETHESDA LAND USE AND ZONING RECOMMENDATIONS

Parcel Identification (#, Owner)	Estimated Area (Acres and/ or Sq. Ft.)	Existing Use	Zone	Recommended Use	Zone	Conditions, Constraints, Comments	Rationale
M 1 Cedar La and Cypress Ave	1.25 acres	Vacant, mature trees (5 du potential)	R-60	Single- family	R-60	- Preserve trees to buffer from Cedar La and NIH	- Conforms to nearby housing type
M 2 N326 Pl 7 Cedar La and Cypress Ave	2.09 acres	Vacant, mature trees (8 du potential)	R-60	Single- family	R-60	- Preserve trees around perimeter	- Provide housing near NIH and CBD - Conforms to nearby housing type
M 3 Alta Vista Rd and Locust Ave	4.00 acres	[Farm] house, outbuild- ings, trees (16 du potential)	R-60	Single- family (20 du potential)	R-60, suitable for cluster	- Preserve mature trees	- Protect stability of single- family neighborhood
M 4 a. P21 Alta Vista Rd and Linden Ave	4.00 acres	House, outbuilding, trees (16 du potential)	R-60	Single- family	R-60	- Preliminary plan approved for single-family detached housing including two existing homes	
b. P22 Alta Vista Rd and Linden Ave	1.76 acres	House (7 du potential)	R-60	Single- family	R-60		

Definitions: Single-family means single-family detached; townhouse means single-family attached.

Lastly, staff is concerned about placing a large volume of student housing in this well-established, stable neighborhood. One of the main goals in the Plan for this area is to “contribute to a strong sense of community and help reinforce community cohesion.” As student housing can be of a transitory nature, this type of housing may conflict with the Plan’s goals.<sup>2</sup>

### C. Adequacy of Public Facilities

*Water and Sewer.* The rezoning application and schematic development plan were reviewed by the Washington Suburban Sanitary Commission (WSSC). WSSC found that the reclassification from the R-60 Zone to the R-T 8 Zone and the subsequent proposed development would not burden the water or sewer systems of the area.<sup>3</sup>

*Transportation and Roadways.* As proposed, the development will have ingress and egress from both West Cedar Lane and Cypress Avenue. Transportation staff finds that the proposed access to the site will be safe and adequate. Also, the internal vehicular/pedestrian circulation and walkways provide for safe and adequate movement of pedestrian traffic.

The Applicant’s traffic statement analyzed the proposal as a typical residential townhouse development.

Land Use	No. of Units	Peak-Hour Trips		
		Morning	Evening	Saturday
Proposed Townhouses	31	15	26	16
Existing Single-Family Detached Units	4	- 4	- 4	- 4
Net Increase in New Peak-Hour Trips		11	22	12

If the residential land use is limited to the traffic generated by 31 typical townhouses, a traffic study is not required to satisfy Local Area Transportation

<sup>2</sup> See Community-based Planning Interoffice Memorandum at attachment 1.

<sup>3</sup> See WSSC Memorandum at attachment 2.



Review (LATR) because the number of peak-hour vehicular trips is fewer than 30 peak-hour trips within the weekday morning and evening periods.

However, the applicant's proposal could be construed as a form of "group housing" for FAES students. Since five student rentals are proposed within each townhouse, the worst case scenario is that the development could generate up to five vehicular trips per townhouse (a total of 155 vehicular trips) if every student uses an automobile to get to class. Trip-generation data is not available for student "group housing" developments. However, the student residents should have no need to drive to the NIH campus because of the short walking distance to NIH and a shuttle that can pick-up residents near the proposed site.

The Policy Area Mobility Review (PAMR) test under the Growth Policy must be satisfied as this site is located within the Bethesda-Chevy Chase Policy Area. The applicant must mitigate seven (or 30 percent of the 22) new site-generated peak-hour trips within the weekday evening peak hours by providing non-automobile transportation improvements, reducing trips from the site, or paying \$77,000 to Montgomery County Department of Transportation (MCDOT) at the time of subdivision review.

Lastly, the residents and their visitors need to park their automobiles on the site without overflowing onto the adjacent residential streets. Without controls on automobile ownership by the student residents, up to five vehicles per townhouse plus visitors could be parking on-site, which would create an overflow situation requiring parking off-site on adjacent residential streets. The applicant's plan shows four parking spaces per townhouse and only five visitor parking spaces. If the rezoning is approved, a Traffic Mitigation Agreement should be entered into at subdivision review that includes measures to discourage student residents from owning an automobile and parking on the subject site.<sup>4</sup>

*Schools.* Staff has not received any comments from Montgomery County Public Schools regarding the proposal's potential impact on the school system. However, since the proposed use is solely for students associated with FAES,

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<sup>4</sup> See Transportation Planning Interoffice Memorandum at attachment 3.

the proposal would not be expected to impact the public school system. The applicant has stated that the townhomes will not be available to families with children, although it is not clear if this exclusion is in compliance with the County's MPDU or fair housing laws.

#### **D. Environmental Considerations**

A Natural Resources Inventory/Forest Conservation Plan (NRI/FSD) was approved on November 24, 2008 by Environmental staff. There are 3.15 acres of forest on site including 10 significant and 20 specimen trees. One forest stand was identified and recommended as a priority for forest retention due to the number of specimen trees located there.

The site is subject to Chapter 22A of the Montgomery County Forest Conservation Law. A preliminary forest conservation plan was included with the submittal of the Schematic Development Plan. However, no formal action on the preliminary forest conservation plan is required by the Planning Board at this time.

The site's forest conservation requirement is shown to be met entirely with on site retention of 1.30 acres of forest in Parcel A. In other words, the site breaks even in terms of meeting forest conservation retention requirements, which does not require any forest replanting.

Outside the 1.30 acres saved, the preliminary forest conservation plan shows a proposed limit of disturbance that will result in the removal of most of the remaining significant and specimen trees, the majority of which are identified on the NRI/FSD as in good condition. At the time of forest conservation plan review, a tree save plan will be required to define the edge of disturbance and to save as many of the healthy specimen and significant trees as is feasible.<sup>5</sup>

#### **E. Development Standards**

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<sup>5</sup> See Environmental Planning Interoffice Memorandum at attachment 4.



The proposal shown on the schematic development plan does not comply with all applicable development standards under the R-T 8 Zone. The applicant is proposing only 45 percent green area, whereas the R-T 8 Zone requires a minimum of 50 percent. It appears that the applicant is applying for a reduction of the 50 percent standard under the optional standards triggered when providing more MPDUs than required. However, as the applicant here is providing the minimum required MPDUs, the proposal does not meet the relevant R-T 8 standards. The noncompliant standard is highlighted in the chart below.

As the layout is still illustrative, the application will need to satisfy development standards again at the time of subdivision and site plan review if the rezoning is approved.

Development Standard	Standard	Provided	Applicable Zoning Provision
Minimum Tract Area	20,000 sq ft (0.46 acres)	177,725 sq ft (4.08 acres)	§59-C-1.731(a)
Maximum Density	8 dwelling unit per acre	7.6 dwelling unit per acre	§59-C-1.731(b)
Building Setback from Land Classified in One- family Detached Zone	30 ft	30 ft	§59-C-1.732(a)
Building Setback from Public Street	25 ft	25 ft	§59-C-1.732(b)
Building Setback from an Adjoining Side Lot	10 ft	10 ft	§59-C-1.732(c)(1)
Building Setback from an Adjoining Rear Lot	20 ft	20 ft	§59-C-1.732(c)(2)
Max Building Height	35 ft	35 ft	§59-C-1.733(a)
Minimum Percentage of Green Area	50%	45%	§59-C-1.34(b)
Parking	2 spaces per townhouse = <b>62 spaces</b>	<b>65 spaces</b> (129 spaces if including stacked driveway parking)	§59-C-1.735 and §59-E-3.7

## F. Community Issues

Staff has received numerous letters both in support and opposition to the proposed rezoning. Virtually all letters supporting the proposal come from current students associated with FAES. These letters carry a common theme: the students have a need for housing that is close to NIH and the Bethesda CBD, offered on a short-term basis, and available at an affordable price.

Staff met with residents of the Maplewood community at their request. During the meeting, community representatives voiced concern about a variety of issues



regarding the rezoning proposal. The density of the proposed development was questioned and was said to be inconsistent with the established single-family character of the surrounding area. Residents also claimed that the proposal is more of a dormitory housing arrangement than a residential townhouse community. They wondered whether the applicant's proposal of having five students rent separate rooms on individual, staggered leases even meets the ordinance's definition of "family" since differing tenancy durations within the same townhouse may make for a transient, irregular group. Fears were also conveyed that the transient nature of student housing would be incompatible with the family-oriented character of the surrounding area and that the proposal would bring additional traffic and parking to the area. Finally, representatives stated that there is no need for a buffer from the NIH campus, as the part of NIH adjacent to the Maplewood community already consists of residential-appearing buildings buffered by trees and fencing. All letters can be found in full in attachment 6 to this report.

### **III. ZONING ORDINANCE COMPLIANCE**

#### **A. The Purpose Clause**

**§59-C-1.721. Intent and purpose.** The purpose of the R-T Zone is to provide suitable sites for townhouses:

- (a) In sections of the County that are designated or appropriate for residential development at densities allowed in the R-T Zones; or
- (b) In locations in the County where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.

It is the intent of the R-T Zones to provide the maximum amount of freedom possible in the design of townhouses and their grouping and layout within the areas classified in that zone, to provide in such developments the amenities normally associated with less dense zoning categories, to permit the greatest possible amount of freedom in types of ownership of townhouses and townhouse developments, to prevent detrimental effects to the use or

development of adjacent properties or the neighborhood and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the County as a whole. The fact that an application for R-T zoning complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the resulting development would be compatible with surrounding land uses and, in itself shall not be sufficient to require the granting of the application.

The R-T 8 floating zone requires that one of three possible requirements be met: The proposed rezoning must either (1) be designated on a master plan, or (2) satisfy a need for a buffer or transitional use between commercial, industrial, or high density apartment uses and low density one-family uses, or (3) be determined to be an appropriate density at the particular location proposed. The proposal does not satisfy any of these requirements.

*Designation on Master Plan.* The Bethesda-Chevy Chase Master Plan does not recommend the R-T 8 Zone for this site. In fact, it specifically mentions the property and recommends that the R-60 Zone be retained to conform to the housing nearby.

*Transition.* The applicant's position is that the subject site is suitable for rezoning because it will serve as a transition or buffer use from the NIH campus and from the nursing home to the single-family homes in the Maplewood community. The National *Institutes* of Health (NIH), by its namesake, is an institutional use; a nursing home is classified in the ordinance as a services use. The code only permits reclassification to the R-T zone where a need exists for a transition between commercial, industrial, or high-density apartment use and low-density residential. FAES believes that NIH could be considered a commercial use because it has office, research, and laboratory buildings on its campus. Also, FAES believes that the nursing home is analogous to a high-density apartment use. However, staff finds neither of these arguments compelling and both to be in direct conflict with the special regulations of the R-T zone. A strict reading of the R-T special regulations is supported by an earlier Hearing Examiner opinion. In the G-834 rezoning opinion, the Hearing Examiner



explained that if an interpretation was made that an institutional use is appropriate for a townhouse transition despite the specific language of the ordinance listing only commercial, industrial, or high density apartment uses as being appropriate for a transition, it would subject future applications of the R-T zone to subjective and undefined notions based on perceptions of adjacent properties. To disregard this reasoning may create a slippery slope scenario that allows townhouse transitions for an expanded variety of uses across the County.

One last point on the transition finding – the ordinance requires that there must be a need for the transition. In this case, the part of the NIH campus closest to the subject site consists of residential appearing buildings that face inward towards the NIH campus and are set back approximately 80 feet from the subject site. These buildings are shielded by trees, sidewalks, and fencing. Even if the subject site qualified for a transitional use, *the need* for a transitional use cannot be justified at this location. As far as the need for a transitional use from the adjacent nursing home, the nursing home is an approved special exception and as such has been found to be compatible with neighboring properties.

*Appropriate Density.* The remaining option for the applicant is to show that the site is an appropriate density at the proposed location. The term “appropriate” is undefined in the zoning ordinance. As has been established in previously cases, the term does not constitute a rigid standard to be mechanically applied. Rather, the term is applied in a flexible manner so that each application can be evaluated on a case-by-case basis given the location and density proposed.

Although the surrounding Maplewood and Alta Vista neighborhoods contain a mix of institutional, service, and residential uses, it is predominantly residential in character. The existing density of the surrounding residential portions of the area equates to 3.69 dwelling units per acre. The existing density is substantially lower than then 7.6 units per acre proposed on the subject property. Further, the clustered design for the site will make the development appear even more dense than proposed and subject property's elevated topography may make the development appear imposing on nearby homes.





## B. Compatibility

The proposed townhouse community is not compatible with development in the surrounding area. A large portion of the surrounding area is comprised of existing single-family detached housing. Comparative density is an important factor in determining compatibility with adjacent properties. As this proposal will be more than double the prevailing density of the surrounding area, the proposed rezoning would constitute a serious intrusion into the residential community.

Further, the proposed townhomes are taller than the typical homes in the area and would be built at a higher elevation than the single-family houses to the east. Under these circumstances, there may be a subtle but noticeable



difference in the respective height of the proposed townhomes and the existing homes in the area. Lastly, although the proposal is well designed, its compact nature may appear out of character with the single-family detached characteristics along the northern side of West Cedar Lane.

### **C. The Public Interest**

When evaluating the public interest it is customary to consider master plan conformance and other public interest factors such as affordable housing and environmental benefits. As previously stated, the proposal does not conform to the explicit recommendations of the *Bethesda-Chevy Chase Master Plan* for development of the site with single-family detached homes and preservation of trees around the perimeter of the site and along West Cedar Lane. Although the proposal retains a generous portion of the existing forested areas of the site, development under existing zoning could have similar environmental benefits.

The affordable housing aspect of the proposal does not fully address the need for more housing in Montgomery County since the townhouses would be devoted solely to FAES student living. The proposed development will only meet the needs of a specific group – students – and it is questionable whether the proposal meets fair housing laws. In fact, the Department of Housing and Community Affairs (DHCA) has advised the applicant to consult the County's Office of Human Rights to discuss the proposal's compliance with fair housing regulations. Additionally, DHCA has noted that aspects of the applicant's proposal do not fit within the guidelines of the County's MPDU program, since MPDUs cannot be reserved for any specific group. Also, the combined income of all household occupants is considered in determining MPDU eligibility. It is likely that adding the income of five FAES students living together will exceed the minimum income requirements for the MPDU program.<sup>6</sup> For these reasons, the application does not bear a sufficient relationship to the public interest to justify its approval.

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<sup>6</sup> See DHCA Memorandum at attachment 5.

#### **IV. CONCLUSION**

Staff recommends that Local Map Amendment G-882 be denied.

#### **V. ATTACHMENTS**

1. Community-based Planning Interoffice Memorandum
2. WSSC Memorandum
3. Transportation Planning Interoffice Memorandum
4. Environmental Planning Interoffice Memorandum
5. DHCA Memorandum
6. Community Letters





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

**DRAFT MEMORANDUM**

**DATE:** September 28, 2009

**TO:** Damon Orobona  
Build Division

**VIA:** Bill Barron, South Central Team Leader  
Vision Division

**FROM:** Crystal Myers *CM*  
Vision Division

**SUBJECT:** Zoning Case G-882

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***Staff recommendation:***

**Denial.** The proposed development is inconsistent with the *1990 Approved and Adopted Bethesda-Chevy Chase Master Plan* and is incompatible with the surrounding community.

***Background:***

The applicant is requesting a rezoning of a 4.08 acre site from an R-60 zone to the RT-8 zone. The site is adjacent to the National Institute of Health on West Cedar Lane. It is predominantly vacant, except for four single-family detached houses located on the southeast portion of the property.

***Master Plan:***

The site is within the 1994 Bethesda Chevy Chase Master Plan area. The Plan recommends more diverse housing opportunities and protection of the high quality residential communities in the area. It also reinforces community cohesion in the area. In order achieve these goals the Plan identifies certain areas for growth and certain areas for neighborhood preservation.

The site is within the Mid Bethesda- Northern Bethesda Chevy Chase area of the Plan, which is recommended for neighborhood preservation. The existing zoning is reconfirmed throughout this area to, "...ensure the continuation of the existing residential

character and patterns so well established here". It is clear that the Plan did not intend to make significant changes to this area. The Plan goes on to make specific recommendations for the site. However, these recommendations further emphasize its goal to maintain the existing character of the neighborhood.

### *Analysis*

The proposed project is inconsistent with the Master Plan and incompatible with the surrounding community. The Plan supports the development of diverse housing options in the Bethesda Chevy Chase area and encourages townhouse development only in appropriate areas. As stated on page 29, one of the Plan's area-wide land use objectives is to "Increase housing choice by allowing townhouse development where compatibility criteria can be achieved." Though the Plan wants more diverse housing options in the Bethesda Chevy Chase area it still intends to preserve the stability of the existing neighborhoods. Therefore, townhouses can only be considered in areas where they are compatible with the surrounding community. Vision Division Staff finds that this project does not meet the compatibility criteria needed to justify a townhouse development on this site. The density being proposed and the use of the townhouses make the project incompatible with the surrounding neighborhood and inconsistent with the Master Plan.

### Density

The Applicant proposes to build student housing townhouses at a density of 7.6 units an acre. In comparison, the Maplewood and Alta-Vista community is composed of mostly single-family detached houses developed at approximately 3 units an acre. Staff finds that the proposed development is out of character for the area. Though the area is zoned R-60, most of the development is less than the maximum density permitted in an R-60 zone. The R-60 zone provides enough flexibility and density to accommodate a variety of housing at densities that the Plan considers appropriate for an area right outside an urban core. Therefore, since the R-60 zone already permits up to 6.1 units an acre, staff does not see a need to support an even greater density than the one already permitted in this area.

On page 52, the Plan specifically recommends single-family detached housing. It then goes on to reconfirm the R-60 zone on the site, which is identified as M1 and M2, and explains that the R-60 zone has been reconfirmed to conform new development on the site to the housing type in the area. If the site were rezoned to RT-8 it would be inconsistent with the intent of the Plan.

Nevertheless, townhouse development is permitted under the R-60 zone. The zone's MPDU development option for R-60 permits townhouses at a density of 6.1 units an acre. A development with MPDUs can be composed of up to 60% townhouses. And, if the Planning Board finds that due to environmental or MPDU cost effectiveness concerns it would be better for the project to be 100% townhouses then the project can be all townhouses. Therefore, Staff finds that for these reasons an RT-8 townhouse development is inappropriate for this area. At 7.6 units an acre the amount of housing on



the site would be out of character with the neighborhood. The level of density being proposed is incompatible with the development character of the community and is inconsistent with the Master Plan.

#### Buffer/Transition

The Master Plan recommends maintaining a tree buffer on the site. On page 52 it states that the first parcel, M1, "Preserve trees to buffer from Cedar Lane to NIH" and on the second parcel, M2 it states, "Preserve trees around perimeter," However, the Applicant is proposing to replace the established tree buffer with the new development. The Applicant claims that the new development is a transition from NIH's institutional use to the single-family residential use. This is contrary to the Master Plan's recommendation that the tree buffer be maintained. And, it is contrary to the RT zone requirement that a transition is needed in the area.

Vision Division Staff is deferring to Environmental Division to make a final determination on whether or not removal of the tree buffer is appropriate. However, according to the Master Plan, there is no need for a transition in this area. The tree buffer is currently well-maintained and the Plan recommends that the tree buffer remain upon development of the site. Therefore, Staff finds that this project is inconsistent with the Master Plan because it conflicts with the recommendation to preserve the tree buffer that contributes to preserving the neighborhood.

#### Use

The Applicant is proposing a townhouse development for students with characteristics more similar to dormitory housing than to single-family housing. Staff is concerned about the transitory nature of student housing in a stable single-family neighborhood. This type of development goes against one of the main goals of the Plan, "Contribute to a strong sense of community and help reinforce community cohesion". Therefore, Staff finds that the use of this project is incompatible with the surrounding community. And, the use of the project conflicts with the community cohesion goal of the Plan so the project is inconsistent with the Master Plan.

#### Conclusion

Vision Division Planning Staff recommends denial of this project on the basis of the proposed development being inconsistent with the Master Plan and by its proposed density and use being incompatible with the surrounding area.

**ATTACHMENT 2**

**WASHINGTON SUBURBAN SANITARY COMMISSION**

**DEVELOPMENT PROPOSAL REVIEW  
FOR A  
REZONING APPLICATION**



APPLICATION NO.: G-882

DATE: JUNE 24, 2009

APPLICANT: FOUNDATION FOR ADVANCE EDUCATION

LOCATION: CYPRESS AVE & CEDAR LANE, BETHESDA

COUNTY: MONTGOMERY COUNTY

200' SHEET NO.: 215NW05

PRESENT ZONING: R-60

PROPOSED ZONING: R-T 8

SIZE OF PARCEL: 4.08 ACRES

DWELLING UNITS: 31 TH'S

OTHER: NA

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**WATER INFORMATION**

1. Water pressure zone: 495
2. An 8-inch water line abuts the property. In February 2009, water extension was conceptually approved for service to this property under (job no. DA5015Z09).
3. Local service is adequate.
4. Program-sized water main extensions (16 inches in diameter or greater) are not required to serve the property.
5. The impact from rezoning this property would be negligible; estimated fire flow requirements would remain the same.

(24)



**SEWER INFORMATION**

1. Basin: Rock Creek
2. An 8-inch sewer line abuts the property. In February 2009, sewer extension was conceptually approved for service to this property under (job no. DA5015Z09).
3. Flow from the present zoning: 4,030 GPD  
Flow from the requested zoning: 4,030 GPD  
Flow from the proposed development: 4,030 GPD
4. Program-sized sewer mains are not required to serve the property.
5. Interceptor capacity is adequate.
6. Rezoning this property would not significantly impact the sewerage system.

[Check dynamic sewer system sketches on T:\dsg\procedures\hydraulics for potential downstream problems.] Checked ok

*Statements of adequacy/inadequacy are made exclusively for this application at this time. Further analysis of adequacy will be part of the review at the time of application for water/sewer service.*

*Reviewed by Jonathan Madagu, 301-206-8642*



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

**ATTACHMENT 3**

September 10, 2009

**MEMORANDUM**

TO: Damon Orobona, Zoning Analyst  
Development Review Division

VIA: Shahriar Etemadi, Supervisor  
Transportation Planning

FROM: Ed Axler, Coordinator  
Transportation Planning

SUBJECT: Local Map Amendment No. G-882  
Foundation for Advanced Education in the Sciences  
North Bethesda Policy Area

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This memorandum is Transportation Planning staff's Adequate Public Facilities (APF) review of the subject Local Map Amendment.

**RECOMMENDATIONS**

We recommend the following conditions as part of the APF review for transportation requirements related to the subject Local Map Amendment case.

1. The Applicant must limit the residential land use equivalent to the same vehicular trip generation of 31 single-family attached units/townhouse which is a maximum of 15 morning (6:30 to 9:30 a.m.) and 26 evening (4:00 to 6:00 p.m.) peak-hour trips within the weekday peak periods.
2. At the time of preliminary plan review, the Applicant must enter into a Traffic Mitigation Agreement with the Planning Board to limit the maximum number of vehicular trips generated by the proposed 31 townhouses to 15 morning and 26 evening peak-hour trips within the weekday evening peak periods.
3. At the time of preliminary plan review, the Applicant must satisfy the Policy Area Mobility Review (PAMR) test to mitigate seven new site-generated peak-hour trips by non-automobile transportation improvements to be identified at preliminary plan review. The improvements must be identified, approved and under permit and bond prior to site



plan certification. The Applicant has the option of paying \$11,000 per PAMR trip for a total of \$77,000 to Montgomery County Department of Transportation (MCDOT) prior to site plan certification.

4. At the time of preliminary plan review, the Applicant must dedicate additional five feet of right-of-way for a recommended minimum of 80 feet from the opposite right-of-way line along West Cedar Lane.

Staff finds that the proposed special exception use with the recommended conditions referenced above satisfies the Local Area Transportation Review (LATR) and PAMR tests and will have no adverse effect on area roadway conditions or nearby pedestrian facilities.

## DISCUSSION

### Site Location and Vehicular Access

The site is located northwest corner of the intersection of West Cedar Lane and Cypress Avenue. Vehicular access is proposed from West Cedar Lane and Cypress Avenue.

### Pedestrian Facilities

Sidewalks exist along West Cedar Lane, Acacia Avenue, and Cypress Avenue. The plans for the proposed housing development will improve the existing pedestrian facilities. The improved pedestrian environment is important because school children use the neighborhood sidewalks to walk to and from the nearby school bus stops located at the following nearby intersections:

1. Acacia Avenue and Danbury Road serving students attending the two Montgomery County Public Schools -- Wyngate Elementary School and Walter Johnson Senior High.
2. Acacia Avenue and Locust Avenue serving students attending the Montgomery County Public School -- North Bethesda Middle School.

### Master-Planned Roadways and Bikeway

West Cedar Lane is designated as an arterial, A-67, with a recommended 80-foot right-of-way in the *North Bethesda/Garrett Park Master Plan*. The dual bikeway, DB-21, with bike lanes on both sides and a shared use path on the south side is designated along West Cedar Lane in the *Countywide Bikeways Functional Master Plan*. With an existing right-of-way of only 75 feet, the Applicant would be required to dedicate an additional five feet of right-of-way at preliminary plan. Acacia Avenue and Cypress Avenue are not listed in the *North Bethesda/Garrett Park Master Plan*, but functions as tertiary residential streets with 50-foot rights-of-way.



### Local Area Transportation Review

The Applicant's traffic statement analyzed the proposed student housing as a typical residential townhouse development. The table below gives the number of peak-hour vehicular trips projected during the weekday morning peak period (6:30 to 9:30 a.m.), weekday evening peak period (4:00 to 7:00 p.m.), and Saturday peak-hour:

Land Use	No. of Units	Peak-Hour Trips		
		Morning	Evening	Saturday
Proposed Townhouses	31	15	26	16
Existing Single-Family Detached Units	4	- 4	- 4	- 4
Net Increase in New Peak-Hour Trips		11	22	12

The peak-hour trips were calculated using trip-generation rates from the *Local Area Transportation Review and Policy Area Mobility Review Guidelines*, for the weekday morning and evening peak-hours and from the Institute of Transportation Engineers' *Trip Generation* report for the Saturday peak-hour. If the residential land use is limited to the traffic generated by 31 typical townhouses, a traffic study is not required to satisfy LATR because the number of peak-hour vehicular trips is fewer than 30 peak-hour trips within the weekday morning and evening peak periods.

However, the Applicant proposes that the townhouses to be used as "group housing" for students studying at the adjacent NIH Campus. Trip-generation data is not available for the student "group housing" developments. Each townhouse is proposed to have five short-term rental subunits to house students with no family connections. In the worst case scenario, the proposed student housing could generate 5 vehicular trips per townhouse or a total of 155 vehicular trips if all of the students owned an automobile and used them to travel to/from the NIH Campus.

However, the student residents should have no need to drive to the NIH Campus because of short walking distance to the NIH Campus by way of nearby security entrance at the Cedar Lane and West Drive. In addition, parking on the campus is limited because it is controlled by NIH as one of the trip reduction measures required in 1992 Memorandum of Understanding between NIH and the Montgomery County Planning Board to cap the number of vehicular trips to and from the campus. NIH also operates their Campus Perimeter Shuttle that can pick-up the students residents near the proposed site and bring them into the NIH Campus. The NIH Shuttle operates from 6:30 a.m. to 7:10 p.m. with 20-minutes headways and has two bus stops near the subject site at West Cedar Lane/West Drive-Locust Avenue and West Cedar Lane/Garden Drive-Cedarcrest Drive. If all of the students walked or use the NIH shuttle, the student housing would generate no peak-hour trips during the weekday morning and evening peak periods.

### Policy Area Mobility Review

The Policy Area Mobility Review (PAMR) test under the *Growth Policy* must be satisfied because this site is located within the Bethesda/Chevy Chase Policy Area. The Applicant must mitigate 7 (or 30% of the 22) new site-generated peak-hour trips within the



weekday evening peak hours by providing non-automobile transportation improvements, reducing trips from the site or paying \$77,000 to MCDOT as discussed in Recommendation No. 3.

### Parking

Even if student residents did not use their automobiles to travel to the adjacent NIH Campus, the student residents and their visitors need to park their automobiles on the site and without overflowing onto the adjacent residential streets. Without controls on automobile ownership by the student residents, up to 5 vehicles per townhouse unit plus any visitors could be parking on-site and may overflow off-site onto the adjacent residential streets. The Applicant's plan shows 4 parking spaces per townhouse unit and only five visitor parking spaces. The recommended Traffic Mitigation Agreement should include measure to discourage student residents from owning an automobile and parking on the subject site.

### Vehicular Trip Mitigation and Parking Management

As discussed in Recommendation No. 2, the Applicant must enter into a Traffic Mitigation Agreement with the Planning Board to implement traffic mitigation measures to achieve and maintain the vehicular trip cap and manage on-site parking. The following traffic mitigation measures should be included but not limited to:

1. Providing easily-available route and schedule information to encouraging reliance on the shuttle bus service to the adjacent National Institutes of Health (NIH) campus that has convenient bus stops near the subject site.
2. Providing students with transit fare subsidizes to encourage use of Ride-On, Metrobus, and Metrorail.
3. Encouraging participation in the NIH ridesharing program for on-site and off-site travel.
4. Appointing a Transportation Coordinator to facilitate transit and ridesharing programs for students.
5. Instituting disincentives for the student's use of private automobiles such as imposing parking fees for use of the four spaces per townhouse unit while the five visitor parking spaces are limited only to visitors.

EA:tc

cc: Steve Kaufman  
Nancy Randall  
Fiona Thomas

mno to Orobona re FAES G-882.doc





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

**ATTACHMENT 4**

**MEMORANDUM**

TO: Damon Orobona, Zoning Analyst, Development Review Division

VIA: Stephen D. Federline, Master Planner, Environmental Planning Division 

FROM: Lori Shirley, Planner Coordinator, Environmental Planning Division 

SUBJECT: Foundation for Advanced Education in the Sciences (FAES)  
Preliminary Forest Conservation Plan  
Local Map Amendment G-882

DATE: September 11, 2009

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**Review Comments:** Environmental Planning staff offers the following comments for your consideration for the requested zoning change from R-60 to the RT zone (8.0 units per acre). The associated Schematic Development Plan and the Preliminary Forest Conservation Plan have been reviewed for this proposal. Chapter 22A does not require formal approval of the preliminary forest conservation plan by the Planning Board as part of a schematic development plan review. Approval of a preliminary forest conservation plan will occur at preliminary plan if the zoning request is approved.

**Background**

This 4.08-acre site is located on the north side of West Cedar Lane and the west side of Cypress Avenue in the Bethesda-Chevy Chase Planning Area. The site is developed with four single-family detached dwelling units and two abandoned remains of house foundations on the north portion of the site in the vicinity of Acacia Avenue.

The proposal is to construct 31 townhouse units for visiting scholar housing associated with the National Institute of Health (NIH). The NIH site is across the street from the subject site.

Two soils associated with the site include Glenelg Silt Loam (2C) and Glenelg Urban Land Complex (2UB). These soils do not have steep slopes, are not highly erodible and neither is characterized as having hydric qualities.

**Environmental Guidelines**

A Natural Resources Inventory/Forest Conservation Plan (NRI/FSD), #420090260, was approved on November 24, 2008. There are no sensitive environmental features on-site or nearby such as streams, wetlands, floodplain and their associated environmental buffers. There are 3.15 acres of forest on-site including 30 significant and specimen trees. The site is located in the Lower Rock Creek watershed, a Use I stream.



In NRI/FSD #420090260 one forest stand was identified and recommended as a priority for forest retention due to the number of specimen trees located there. The NRI/FSD does identify a high density of invasive species, including bamboo and stilt grass.

### **Forest Conservation**

The site is subject to Chapter 22A Montgomery County Forest Conservation Law. There is 3.15 acres of forest on-site including 20 specimen and ten significant trees. A preliminary forest conservation plan (PFCP) was included with the submittal of the Schematic Development Plan. However, no formal action on the PFCP is required by the Planning Board at this time.

The site's forest conservation requirement is shown to be met entirely with on-site retention of 1.30 acres of forest in Parcel A. In other words, the site "breaks even" in terms of meeting forest conservation retention requirements, which does not require any forest replanting.

Outside the 1.30 acres saved, the PFCP shows a proposed limit of disturbance (LOD) that will result in the removal of most of the remaining significant and specimen trees on-site, the majority of which are identified on the NRI/FSD as in good condition. At the time of forest conservation plan review, a tree save plan will be required to define the edge of disturbance, and to save as many of the healthy specimen and significant trees as is feasible.

### **Master Plan Compliance**

There are three objectives in the Environmental chapter of the Bethesda-Chevy Chase Master Plan intended to protect the natural resources to include:

- 1) protect wetlands, steep slopes and **wooded areas** (bold type for emphasis added).
- 2) design new projects to limit impacts of roadway traffic noise.
- 3) endorse higher densities near transit stations and use of ridesharing to help reduce future levels of automobile-related air pollutants.

The PFCP meets the first Master Plan objective (*protect wooded areas....*) because the site's forest retention objective is fully met on-site. Nevertheless, a large number of specimen trees will be lost as a result of development. The second Master Plan objective (noise-compatible site design) is addressed by facing the row of townhouses parallel to West Cedar Lane. The third Master Plan objective is partially met based on each occupant's ability to walk to the NIH site.

SDF:LS



**ATTACHMENT 5**

**DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

Isiah Leggett  
County Executive

Richard Y. Nelson, Jr.  
Director

September 22, 2009

Damon Orobona  
M-NCPPC  
Development Review Division  
8787 Georgia Avenue  
Silver Spring, MD 20910

RE: Local Map Amendment No. G-882: Cypress Ave./Cedar Lane Site

Dear Mr. Orobona:

Department of Housing and Community Affairs (DHCA) staff met with the applicant for the above rezoning application concerning the provision of graduate student housing on September 16, 2009. At that meeting, DHCA staff advised the applicant to ensure that the proposal would not violate the County's fair housing laws (Chapter 27, Title 1, Section 27-12 of the Montgomery County Code). DHCA therefore recommends that the applicant consult with the County Office of Human Rights.

If the application is found to be in compliance with all Federal, State and local fair housing laws, DHCA also noted that certain requirements of the applicant's proposal as submitted do not fit within the guidelines of the MPDU program, and shared the following comments with the applicant concerning the four (4) proposed MPDUs:

- With the exception of age-restricted communities, MPDUs cannot be reserved for any specific group. They must be offered to all eligible households.
- The combined income of all household occupants must be considered in determining household income eligibility for an MPDU, and annual re-certification of income is required.
- The Housing Opportunities Commission (HOC) and approved non-profit organizations must be provided the opportunity to reserve up to 40% of the MPDUs in the development.
- MPDU rental units require 99 year covenants.
- In single-family developments, the proportion of rental MPDUs to all MPDUs must not exceed the proportion of rental market rate units to all market rate units. Therefore, if any market rate units are sold, at least the same proportion of MPDUs will need to be sold. For this reason, the MPDUs will need to be built to the standards for MPDU sale units, and will need to have 3 bedrooms.

**Division of Housing and Code Enforcement**

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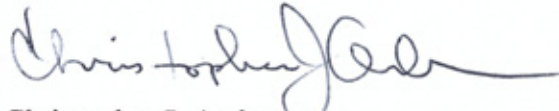


Damon Orobona  
September 22, 2009  
Page 2

- The Moderately Priced Housing law (Chapter 25A of the Montgomery County Code) and Executive Regulations provide certain exemptions for residential developments built, sold or rented with the assistance of, and subject to the conditions of, a subsidy under a federal, state or local government program. The applicant may wish to explore this option further.

If you have any questions or need anything further, please contact Lisa Schwartz at 240-777-3786.

Sincerely,



Christopher J. Anderson  
Manager, Single Family Programs

cc: Stephen Z. Kaufman, Linowes & Blocher, LLP  
Zoning Hearing Examiner, Office of Zoning and Administrative Hearings  
Joseph T. Giloley, Chief, Division of Housing and Code Enforcement

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