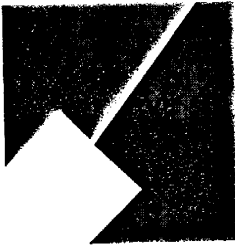


M-NCPPC



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

MCPB  
ITEM # 11  
3/31/05



MEMORANDUM

DATE: March 24, 2005

TO: Montgomery County Planning Board

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

Cathy Conlon, Acting Supervisor *CC*  
Development Review Division

FROM: Richard A. Weaver, Planner Coordinator *RAW*  
Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: Preliminary Plan Approval for 24 single family attached dwelling units

PROJECT NAME: The Townes of Boland Farm

CASE NO. 1-05026

REVIEW BASIS: Pursuant to Chapter 50, the Subdivision Regulations

ZONE: R-200/TDR

LOCATION: Located on the west side of Frederick Road (MD 355), approximately 200 feet northwest of Darnestown-Germantown Road (MD 118)

MASTER PLAN: Germantown

APPLICANT: GBI Corporation

ENGINEER: Macris, Hendricks, and Glascock.

HEARING DATE: March 31, 2005

---

**Staff Recommendation:** Approval of a maximum of 24 units, including a finding for the proposed unit mix (100% attached) and a waiver of the 100 foot setback pursuant to Section 59-C-7.15(c)(1), subject to the following conditions:

- 1) Approval under this preliminary plan is limited to a maximum of 24 single family attached dwelling units.
- 2) Dedication only at this time for the Millenium Court cul-de-sac. Applicant to dedicate one-half of the cul-de-sac on the Subject Property.
- 3) Prior to recordation of plat, coordinate with MCDPWT to record a covenant for future construction of the portion of Millenium Court on the Subject Property.
- 4) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 5) Record plat to reflect a Category I easement over all areas of stream valley buffers and forest conservation.
- 6) Record plat to reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
- 7) Access and improvements as required to be approved by MCDPWT prior to recordation of plat(s) and MDSHA prior to issuance of access permits.
- 8) The applicant shall dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Germantown Master Plan unless otherwise designated on the preliminary plan.
- 9) Applicant to construct the sewer connection within the 20 ft. WSSC easement to the rear lot line of adjacent Lot 2, Block A, Collin Hill Subdivision.
- 10) Access to MD 355 to be a right-in/right-out configuration to be closed once Millenium Court is constructed and accepted for maintenance by MCDPWT.
- 11) Record plat to contain a note, "Vehicular access to MD 355 is temporary and is to be closed once Millenium Court is constructed and accepted for maintenance by Montgomery County."
- 12) Compliance with the conditions of approval of the MCDPS stormwater management approval dated, November 19, 2004.
- 13) Compliance with conditions of MCDPWT letter dated March 21, 2005 unless otherwise amended.
- 14) Record plats to reflect the serialized TDR's that have been purchased for this site.
- 15) Final number of TDR's, number of units, unit location, sidewalks, bikepaths and open space amenities will be determined at site plan.
- 16) No clearing, grading or recording of plats prior to signature set approval.
- 17) A landscape and lighting plan must be submitted as part of the site plan application for review and approval by technical staff.
- 18) At the time of Site Plan, applicant to prepare and submit a noise analysis for current and 20-year future traffic volumes. If necessary the noise analysis must recommend methods to reduce exterior and interior noise levels to acceptable levels.

- 19) The Adequate Public Facilities review (APFO) for this project will remain valid for 61 months from the date of mailing of the Planning Board's opinion for the Preliminary Plan.
- 20) Other necessary easements.

### **PREVIOUS PLANNING BOARD ACTION**

On January 30, 2004, the Planning Board considered a pre-preliminary plan for the Subject Property. The applicant demonstrated to staff and the Planning Board that the standard PD zoning setbacks (100ft.) from adjacent R-200 zoned property would essentially render the property undevelopable. The applicant sought Board support for a waiver of the 100 foot setback from adjacent residentially **zoned** property as established in the PD development standards. With that, the applicant intended to proceed to the Board of Appeals (with Planning Board support) and seek a waiver to the setback established in the Zoning Ordinance. The Board was reluctant to lend support for binding conditions citing that there was no language in the Zoning Ordinance that offered such a waiver allowance and that the waiver was therefore, a Board of Appeals decision. The applicant proceeded to the Board of Appeals for a waiver request and was ultimately denied.

At the January 30, 2004 hearing, the Board was also asked to consider the development mix for the property, which under the TDR zone requires 15% of the units to be single family detached. The pre-preliminary plan requested 100 % single-family attached units. Staff advised the Board that the issue was more appropriately addressed as part of the preliminary plan. Again, the Board did not provide comment on the unit mix stating that they were reluctant to weigh in on an appropriate mix without a determination on the setbacks, forest conservation and compatibility.

### **SITE DESCRIPTION and SURROUNDING AREA: (Attachment A)**

The subject property is located northwest of and near the intersection of Maryland Route 118, Germantown Road and Maryland Route 355, Frederick Road in Germantown. The subject property consists of a total of approximately four (4) acres in the R-200/TDR-8 zone. The property is currently occupied by an older single-family structure. Bounding the subject property to the north are five single-family detached homes on Collins Drive within the R-200 zone. The land located immediately to the west is zoned R-20 and is improved with multi-family apartment buildings. Immediately south of the subject property is a two acre lot zoned R-200/TDR-8 which is occupied by a single-family structure that is used for a non-conforming business purpose. Immediately south of that lot, the land is zoned C-3 and is improved with a Burger King restaurant, a car wash, and a filling station with a convenience store. Maryland Route 355 abuts the subject property to the east and beyond that is the Neelsville Middle School located on R-200 zoned land.

## **PROJECT DESCRIPTION: (Attachment B)**

The application requests approval of 24 one family attached units. The original application requested 26 units, but due to issues regarding access and dedication the unit count was reduced by two. The property is approximately 4.0 acres in size and is rather long and rectangular in shape. The site has frontage on MD 355, however, the master plan also shows another access point, Millenium Court. The preliminary plan shows that the 24 units are setback 100 feet from the rear lot lines of the adjacent residences to the north along Collins Drive, as prescribed by the PD development standards which apply to this TDR zoned property. The applicant is requesting a waiver of the 100 foot setback requirement for the southern boundary line (see discussion below on Waiver of Setback).

Millenium Court was established in the 1989 Germantown Master Plan to provide access not only to the subject property, but also to the lot to the south and the C-1 zoned properties along MD118, in order to eliminate the need for additional points of access to MD 355, an arterial highway. A portion of Millennium Court has been constructed and serves some of the C-1 zoned properties that front on MD118 to the south of the Subject Property. The intervening lot is currently occupied by a non-conforming business and impedes the ability to extend Millenium to the subject property. Staff understands that the applicant for the Townes of Boland Farms has made numerous attempts to purchase the right-of-way from the adjacent property owner and construct the cul-de-sac on the adjacent piece. The two property owners have failed to reach an agreement. Therefore, the State Highway Administration has agreed to allow a temporary right-in/right-out access point on to MD 355. This access point will be closed and eliminated once Millenium Court is constructed and accepted by the County for maintenance.

For this application, staff has requested that the Townes of Boland Farms dedicate and ultimately construct one-half of the cul-de-sac bulb of Millenium Court. At this time staff is asking only that the applicant dedicate the northern half of the bulb and work with MCDPWT to record a covenant that assigns a financial obligation to the applicant or future homeowners for a pro rata share of the construction costs for half of the cul-de-sac. It is assumed that if or when the adjoining lot to the south of the Subject Property is further subdivided or otherwise improved, the obligations to that property owner will be to dedicate and build the southern half of the bulb for access to MD 118. Again, the intention is that in the future the Townes of Boland Farm and the adjoining lot to the south of the Subject Property will be required to access Millenium Court and close all access points to MD 355.

The application has an approved stormwater management concept. Neighbors to the north along Collins Drive have expressed concerns about the current runoff through their properties from MD 355. Runoff from these properties is released onto the subject property and conveyed downstream by means of storm drain pipes. The inlets for the storm drain system have been approved by MCDPS and will not create a flooding situation for the neighbors.

At the pre-preliminary plan stage the aging septic systems for the existing homes on Collins Drive were brought to staff's attention. To provide for the future connection of these homes to the sanitary sewer system, staff has requested that the applicant provide a 20 foot WSSC easement at the low point of these homes and has further conditioned approval on the

construction of the sewer line within this easement. Staff has based this decision on the fact that the WSSC easement passes through a forest conservation easement which is to be planted soon after completion of these units. It may be a number of years before the Collins Drive residents organize and get connected to the sewer. In that time the trees within the planted easement could become quite large with root systems extending into the easement area. To avoid damage to the trees, staff feels that it is appropriate to have this applicant construct the extension while the property is under construction and before the trees are planted. The eventual connection to this sewer stub provided by this applicant to the residents of Collins Drive will be at their expense or as agreed to by the WSSC.

## **MASTER PLAN**

This property has been the subject of extensive review for conformance with the Germantown Master Plan, forest conservation, access to a state highway, and adjacent uses. The Germantown Master Plan (1989) designates this property for residential development within the NE-6 analysis area. The analysis area also contains property recommended for commercial use at the corner of MD 118 and MD 355 and the frontage along MD 118.

The land use recommendation for this property is R-200/TDR with a base density of 8 units per acre. The base zone of R-200 reflects the density of the adjoining Collins Drive residences. Achieving the TDR recommendations precludes development of single-family detached units. The Master Plan concludes, "this area is also suitable for special exception uses as transitions between the potential [now built] gas station and adjoining residential uses" (page 84). Special exception uses are subject to guidance for buffering, parking, lighting, etc.

Temporary access to the subject property is proposed from MD 118. The Master Plan illustrates a cul-de-sac bulb reaching the subject property from MD 118. A portion of this facility has been built and named Millenium Court. When Millenium Court is completed, the temporary access to MD 118 should be discontinued to provide safe entrance and egress from Millenium Court and to improve pedestrian conditions along MD 355 by reducing driveway cuts.

This application conforms to the recommendations of the master plan in that it provides a residential transition from the C-1 zone on MD 118 to the single family detached residences on Collins Drive. It is unknown at this time how the adjacent R-200/TDR property abutting to the south will ultimately develop. The current property owner has not discussed redevelopment of the ongoing special exception operation with staff. Staff feels that it is unlikely that the property would develop with single family detached dwellings given its present zoning and proximity to more intensive commercial and residential development.

## **WAIVER OF SETBACK (Attachment C)**

In order to utilize the TDR development option recommended by the Master Plan and for which the property is zoned, the applicant must follow the special regulations for optional method development using transferable development rights set forth in Section 59-C-1.39 of the

Zoning Ordinance. Section 59-C-1.394 addresses the development standards applicable to the optional method of development. Subparagraph (b) provides that:

*“For TDR densities of 3 or more per acre, the lot sizes and other development standards will be determined at the time of preliminary plan and site plan for conformance with applicable master plan guidelines and in accordance with the purposes and provisions of the PD zone, except as may be specified in section 59-C-1.395”.*

Accordingly, the setbacks for the PD zone are the applicable setbacks for this proposed development using TDRs. Section 59-C-7.15 which addresses the issue of compatibility in the PD zone provides in subsection (b)(1), that

*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.*

Recently, Zoning Text Amendment No.04-15 (see attachment D) was adopted by the County Council. This ZTA included a clarification of the setback waiver provision under Section 59-C-7.15(c)(1). This section has been clarified to correct what was felt to be an incorrect usage of the word “zone” as opposed to “use”. The section now reads as follows:

*A waiver of the requirement of paragraph (b)(1) may be permitted if:*

- (1) The area master plan recommends other than a one-family detached ~~zone~~ use for the property immediately adjoining the area where the waiver is to occur;*
- and*
- (2) The immediately adjoining property will not be adversely affected by the waiver for present and future use.*

The applicant proposes a setback on the southern property line of 45 feet which is the distance from the nearest proposed unit to the property line along the southern boundary of the Subject Property. As stated in the Master Plan Section of this report, the master plan envisions special exception uses or residential development utilizing TDR's on this adjoining property. While the underlying zone is R-200, staff does not feel that single family detached dwellings are a likely or desirable use for the remaining lot between the subject property and the C-1 zoned property along MD 118. Staff does not believe the waiver will adversely affect the existing uses on the intervening lot, nor any future development of that site. Therefore, staff supports the waiver request.

## **UNIT MIX - Finding By the Planning Board (Attachment C)**

The Planning Board is asked to consider the applicant's request to provide 100% townhomes rather than the mix of 85% attached and 15 % detached as specified in Section 59-C-1.395. The applicant believes that a proposed development comprised entirely of single-family attached units is a more compatible form of development given the multi-family housing to the west and the commercial uses to the south. The applicant contends that the unit mix as proposed will contribute to the ability to meet forest conservation requirements on-site. The Planning Board must make a finding that the proposal is more desirable for environmental reasons or is more compatible with adjacent development as compared to the standard percentage requirements.

Staff supports the use of 100% one family attached units for this property. The waiver of the unit mix allows for the creation of a significant forested area along the northern boundary of the site that serves as a buffer for the adjacent homes on Collins Drive. The layout afforded by the waiver also allows the developer to meet the forest conservation requirements on site. Staff believes that the use of 100% attached units is compatible with the multi-family units to the west and provides for a good transition between the single family detached units on Collins Drive and the C-1 zone business to the south.

## **TRANSPORTATION**

Staff concludes that the subject preliminary plan will provide safe and adequate access for vehicles and pedestrians. A traffic study was not required for the property because of the small number of trips that will be generated by the proposed houses. The approval conditions include construction of the temporary access to MD 355 as a right-in/right-out that will be extinguished once Millenium Court is constructed and accepted by the County for maintenance..

## **ENVIRONMENTAL**

This plan is using an optional method of development and as such, the forest conservation requirements must be met on-site. The existing on-site forest, while fairly low quality, will be preserved to some extent and supplemented with additional planting. The preliminary forest conservation plan as approved does meet the forest conservation requirements on-site through forest preservation and afforestation of a significant portion of the northern third of the property.

The property contains no wetlands, floodplains or streams, however, there is a notable deeply incised swale that traverses the property that is badly eroded. This swale receives runoff from MD 355 and Collins Drive. It is anticipated that the development of the site will remove this eroded channel and provided for a stabilized conveyance system for the runoff.

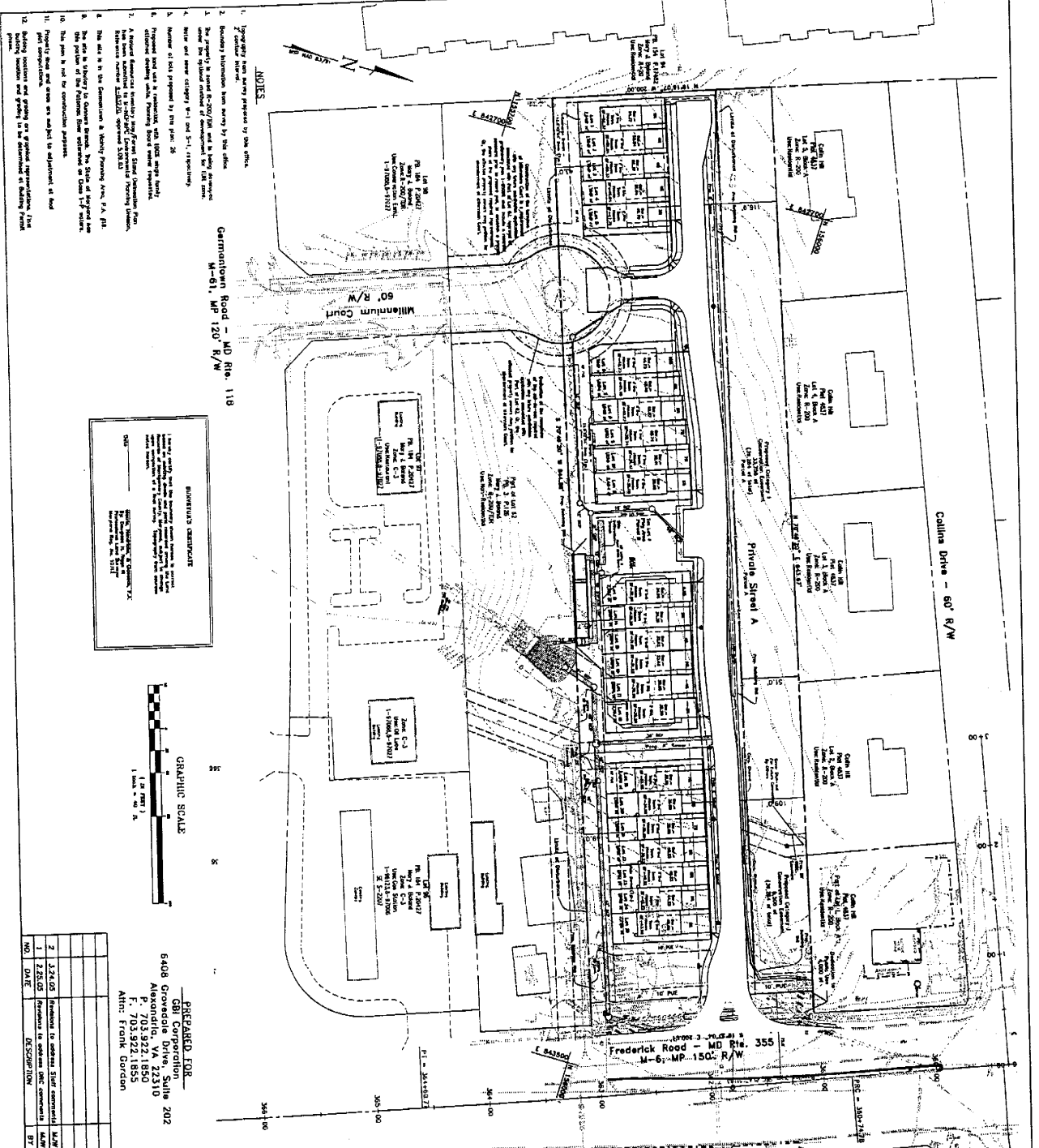
**CONCLUSION:**

Staff finds that the proposed plan conforms to the Germantown Master Plan and meets all necessary requirements of Chapter 50, the Subdivision Regulations. Public facilities will be adequate to support and service the proposed subdivision. With approval of the waivers cited in this report, staff recommends approval of the preliminary plan with the specified conditions.

**Attachments:**

- Attachment A – Vicinity Map
- Attachment B – Preliminary Plan
- Attachment C - Applicant's waiver request letter
- Attachment D – ZTA No. 04-15





- NOTES:**
1. General information prepared by the client.
  2. Boundary information from survey by the office.
  3. The property is zoned R-2000 and is being developed for residential use.
  4. The proposed subdivision is shown for the site.
  5. The lot area is shown in square feet.
  6. The lot area is shown in acres.
  7. The lot area is shown in square feet.
  8. The lot area is shown in acres.
  9. The lot area is shown in square feet.
  10. The lot area is shown in acres.
  11. The lot area is shown in square feet.
  12. The lot area is shown in acres.

**PLANNING DEPARTMENT**

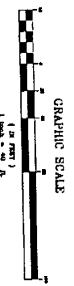
1. This plan is prepared by the Planning Department of the County of Prince George's County, Virginia. It is subject to the approval of the Board of Supervisors of the County of Prince George's County, Virginia.

2. The Planning Department is not responsible for the accuracy of the information provided by the client.

3. The Planning Department is not responsible for the accuracy of the information provided by the client.

4. The Planning Department is not responsible for the accuracy of the information provided by the client.

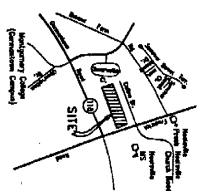
5. The Planning Department is not responsible for the accuracy of the information provided by the client.



**PREPARED FOR:**

GBI Corporation, Suite 202  
 6408 Grovewood Drive, Suite 202  
 Arlington, VA 22204  
 F: 703.922.1850  
 A: 703.922.1855  
 Attn: Frank Gordon

NO.	DATE	DESCRIPTION	BY
1	1/14/05	Prepared to assist client	MMW
2	2/21/05	Revised to include site comments	MMW



**VICINITY MAP**  
 SCALE 1" = 2,000'

**RE-2000/UR Development Standards**

RE-2000/UR Development Standards  
 Density of development per 1/4 acre  
 9 units/acre  
 6.5 units/acre

**Building setbacks**

From street - 5' (at least)  
 From rear property boundary - 5'  
 From side property boundary - 5'

**Area tabulation**

Overall Total Area (TA) = 114,500 sq. ft. or 2.61 acres  
 Total Area of Building Footprint (BA) = 114,500 sq. ft. or 2.61 acres  
 Total Area of Parking (PA) = 114,500 sq. ft. or 2.61 acres  
 Total Area of Landscaping (LA) = 114,500 sq. ft. or 2.61 acres

**Density tabulation**

Overall Density = 6.5 units/acre  
 Overall Density = 6.5 units/acre  
 Overall Density = 6.5 units/acre

**Site tabulation**

Overall Density = 6.5 units/acre  
 Overall Density = 6.5 units/acre  
 Overall Density = 6.5 units/acre

**THE TOWNS OF BOLAND FARM**

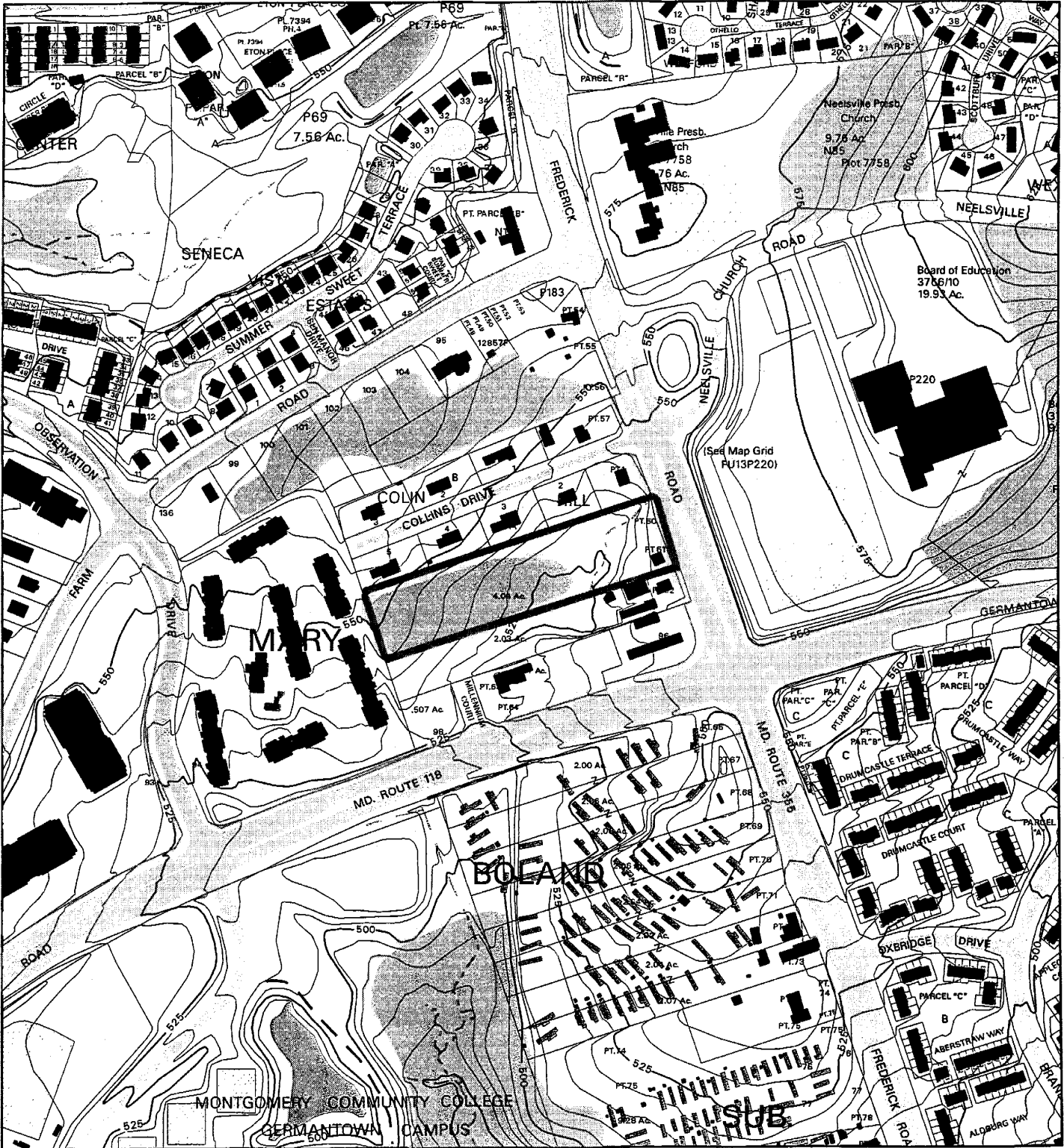
9TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

**PRELIMINARY PLAN OF SUBDIVISION**  
 Lots 1-24 and Parcel A

**MMHG**  
 Masons, Handicrafts & Glasswork, P.A.  
 10000 Rockledge Drive, Suite 100  
 Rockledge, VA 22093

Prepared by: MMHG  
 Date: Aug 2004  
 Project No.: 17-04  
 Scale: 1" = 100'

# THE TOWNS OF BOLAND FARM (1-05026)



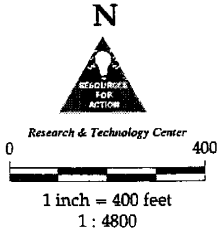
Map compiled on September 07, 2004 at 1:23 PM | Site located on base sheet no - 228NW12

**NOTICE**

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Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998



Attachment C

Ordinance No.: 15-29

1 Sec. 1. Division 59-C-7 is amended as follows:

2 DIVISION 59-C-7. PLANNED UNIT DEVELOPMENT ZONES.

3 \* \* \*

4 59-C-7.1 P-D zone—Planned development zone.

5 \* \* \*

6 59-C-7.15 Compatibility.

7 \* \* \*

8 (b) In order to assist in accomplishing compatibility for sites that are not within,  
9 or in close proximity to a Central Business District or Transit Station  
10 Development Area, the following requirements apply where a planned  
11 development zone adjoins land for which the area master plan recommends a  
12 one-family detached zone:

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

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

17 (c) A waiver of the requirement of paragraph (b)(1) [above] may be permitted  
18 [upon a finding that] if:

19 (1) The area master plan recommends other than a one-family detached  
20 ~~[[zone]]~~ use for the property immediately adjoining the area where the  
21 waiver is to occur; and

22 (2) The immediately adjoining property will not be adversely affected by  
23 the waiver for present or future use.

24 (d) A waiver of [the provisions of] subsection (b) [above] may be permitted if:

25 (1) [where] [t]The site is within or in close proximity to a central business  
26 district or transit station development area and reduced setbacks are  
27 recommended by the master or sector plan, and the Planning Board

Ordinance No.: 15-29

28 finds that the reduced setbacks are compatible with existing or  
29 proposed development in the adjoining or confronting one-family  
30 detached zones[.][.]; or [The maximum building height under the  
31 waiver will not exceed 50 feet.]

32 (2) The site is within or in close proximity to a historic district and the  
33 Planning Board finds that reduced setbacks or increased building  
34 height will facilitate the preservation, reuse, or redevelopment of a  
35 designated historic district and the immediately adjoining property  
36 will not be adversely affected by the waiver.

37 (3) The maximum building height under this waiver must not exceed 50  
38 feet.

39 [(e)](e)Compliance with these requirements does not, by itself, create a  
40 presumption of compatibility.

41  
42 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
43 date of Council adoption.

44  
45 This is a correct copy of Council action.

46  
47  
48  
49 

50 Mary A. Edgar, CMC

51 Clerk of the Council

**THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

(301) 495-4605

Montgomery County Planning Board  
Office of the Chairman**MONTGOMERY COUNTY PLANNING BOARD**

The Maryland-National Capital Park and Planning Commission

September 10, 2004

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

**FROM:** Montgomery County Planning Board

**SUBJECT:** Planning Board on Zoning Ordinance Text Amendment No. 04-15

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Ordinance Text Amendment No. 04-15, at its regular meeting on September 9, 2004. By a vote of 5-0, the Board recommends that the text amendment be approved as modified and included in the technical staff report.

Sites classified in the Planned Development (PD) Zone that are not within or in close proximity to a CBD or Transit Station zone, must comply with certain setback requirements if the site adjoins land recommended in a master plan for one-family residential development. The text amendment as proposed would allow a waiver of certain Planned Development (PD) zone standards to facilitate the preservation, reuse, or redevelopment of a historic district. ZTA 04-15 would apply mostly to property proposed for PD zoning in the future. This includes property recommended for PD zoning in approved master plans and properties where the owner might apply for PD zoning without the benefit of a master plan recommendation for such zoning. The PD zone is a floating zone; a property may be approved for such zoning if the proposed development is consistent with the purposes and standards of the zone, and compatible with the surrounding uses.

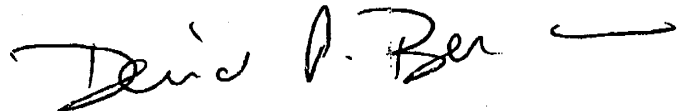
The Board has no objection to the proposed text amendment to allow a waiver of certain Planned Development (PD) zone standards (setbacks and building height) to facilitate the preservation, reuse, or redevelopment of a historic district, since the Planning Board will be required to reach a finding that the reduction will not adversely

affect the adjoining property. The Board recommends that the proposed language in Section 59-C-7.15(d)(2) be modified to refer to adjoining properties, rather than referring to a singular property. Furthermore, the Planning Board recommends that proposed Section 59-C-7.15(d)(2) include language stating that for waivers of the limit on maximum building height the Planning Board must also make a "no adverse impact" finding and a finding that the waiver will facilitate historic preservation.

With these revisions, including plain language changes, the Board believes that there will be adequate safeguards to ensure compatibility and that the legislation authorizing the Planning Board to waive the normal setback and height requirements could be approved.

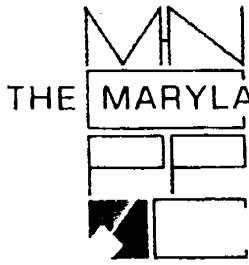
### CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on a motion of Commissioner Wellington, seconded by Commissioner Bryant, with Commissioners Robinson, Bryant and Wellington, Vice-Chair Perdue and Chairman Berlage voting in favor of the motion, at its regular meeting held in Silver Spring, Maryland on Thursday, September 9, 2004.



Derick P. Berlage  
Chairman

DB:gr



**THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

**MCPB  
Item # 16  
9/09/04**

**DATE:** September 3, 2004  
**TO:** Montgomery County Planning Board  
**VIA:** Carlton Gilbert, Zoning Supervisor *CG*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To amend the Zoning Ordinance to allow a waiver of certain Planned Development (PD) zone standards to facilitate the preservation, reuse, or redevelopment of a historic district.

**TEXT AMENDMENT:** No. 04-15  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmember Perez  
**INTRODUCED DATE:** July 27, 2004

**PLANNING BOARD REVIEW:** September 9, 2004  
**PUBLIC HEARING:** September 14, 2004; 1:30pm

---

**STAFF RECOMMENDATION:** APPROVAL with modifications

**PURPOSE OF THE TEXT AMENDMENT**

To amend the Zoning Ordinance to allow a waiver of certain Planned Development (PD) zone standards to facilitate the preservation, reuse, or redevelopment of a historic district.

**BACKGROUND/DISCUSSION**

Sites classified in the Planned Development (PD) Zone that are not within or in close proximity to a CBD or Transit Station zone, must comply with certain setback requirements if the site adjoins land recommended in a master plan for one-family residential development. ZTA 04-15 would allow a waiver of the setback requirements if development of a site in the PD zone would facilitate the preservation, reuse, or redevelopment of property in a historic district. The

proposed text amendment was initiated to address a potential development issue for the National Park Seminary property located in Forest Glen.

## ANALYSIS

### Planning/Zoning Process

ZTA 04-15 would apply mostly to property proposed for PD zoning in the future. This includes property recommended for PD zoning in approved master plans and properties where the owner might apply for PD zoning without the benefit of a master plan recommendation for such zoning. The PD zone is a floating zone; a property may be approved for such zoning if the proposed development is consistent with the purposes and standards of the zone, and compatible with the surrounding uses. Property owners can apply for PD zoning for property not specifically recommended for PD in the approved master plan where 1) the approved master plan recommends residential densities of at least two units per acre, and 2) there is sufficient property to meet the minimum area requirements (e.g., the requested zone will yield at least 50 dwelling units; it will extend an existing planned development; or it will result in the preservation of a historic structure or site).

The proposed ZTA language is as follows:

**59-C-7.1 P-D zone—Planned development zone.**

\* \* \*

**59-C-7.15 Compatibility.**

\* \* \*

(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.*

(c) *A waiver of the requirement of paragraph (b)(1) [above] may be permitted [upon a finding that] if:*



- (1) *The area master plan recommends other than a one-family detached zone for the property immediately adjoining the area where the waiver is to occur; and*
  - (2) *The immediately adjoining property will not be adversely affected by the waiver for present or future use.*
- (d) *A waiver of [the provisions of] subsection (b) [above] may be permitted if:*
- (1) *[where] [t]The site is within or in close proximity to a central business district or transit station development area and reduced setbacks are recommended by the master or sector plan, and the Planning Board finds that the reduced setbacks are compatible with existing or proposed development in the adjoining or confronting one-family detached zones[.], or [The maximum building height under the waiver will not exceed 50 feet.]*
  - (2) *The site is within or in close proximity to a historic district and the Planning Board finds that reduced setbacks will facilitate the preservation, reuse, or redevelopment of a designated historic district and the immediately adjoining property will not be adversely affected by the waiver.*
  - (3) *The maximum building height under this waiver must not exceed 50 feet.*

Staff has no objection to the proposed text amendment to allow a waiver of certain Planned Development (PD) zone standards (setbacks and building height) to facilitate the preservation, reuse, or redevelopment of a historic district, since the Planning Board will be required to reach a finding that the reduction will not adversely affect the adjoining property. Staff recommends that the proposed language in Section 59-C-7.15(d)(2) be modified to refer to adjoining properties, rather than referring to a singular property. Furthermore, staff recommends that proposed Section 59-C-7.15(d)(2) include language stating that for waivers of the limit on maximum building height the Planning Board must also make a "no adverse impact" finding and a finding that the waiver will facilitate historic preservation.

In addition to the modifications as stated above, staff believes that clarification of Section 59-C-7.15(c)(1) is necessary. The requirements of subsection (b)(1) above apply where a planned development zone adjoins land for which the area master plan recommends a one-family detached zone. Under subsection (c)(1), a waiver of paragraph (b)(1) may be permitted if the area master plan recommends other than a one-family detached zone for the adjoining property. Staff believes that subsection 59-C-7.15(c)(1) does not make sense when read in conjunction



with 59-C-7.15(b). It is believed that the word "use" was intended instead of the word "zone" under 59-C-7.15(c)(1). As such, staff is recommending that this plain language change be made. \*

### Conformance with the Applicable Sector Plans

The Community-Based Planning Division has reviewed ZTA 04-15 with regard to its potential applications. There are a number of PD-zoned properties in Montgomery County but staff has not identified any that adjoin or are located in close proximity to designated historic districts. In any case, property that is already zoned PD has an approved development plan\* and would probably already have site plan approval from the Planning Board. Unless such prior approvals are amended, the provision for reduced setbacks in ZTA 04-15 would probably not apply to property already zoned PD.

Community-Based Planning has identified several properties that are recommended for PD zoning in approved master plans and located in close proximity to historic sites. These include the WTOP property in Wheaton; the Hanson Farm in Potomac; and the Old Derwood and Crown Farm properties in Shady Grove. Such properties would not be affected by the proposed ZTA because the amendment relates only to designated historic districts—not individual historic sites. The proposed ZTA was crafted narrowly in order to provide the flexibility for the redevelopment associated with the National Park Seminary (NPS) historic district. At this time, staff is not aware of other properties that would benefit from the proposed legislation (i.e., properties recommended for PD zoning in close proximity to historic districts).

Although the proposed text amendment is intended to facilitate redevelopment of the NPS property, ZTA 04-15 is not a single property ordinance because a) new historic districts could be designated at any time, possibly in close proximity to property proposed for PD zoning; and b) properties could be rezoned to PD through local map amendment at any time, possibly in close proximity to existing (or future) historic districts.

Council action would be required to designate future historic districts or rezone property to PD. Consequently, the Council will be in a position to evaluate the potential impact of the proposed ZTA should either situation occur. For example, if PD zoning were proposed elsewhere *in close proximity to a historic district*, the Council would be able to consider the potential impact of reduced setbacks (or increased building height) in the course of considering the rezoning application. Since waivers of the setback requirements and maximum building height would

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\* PD zones are development plan floating zones that must be approved by the Council through a Local Map Amendment. A development plan must be submitted along with the rezoning application. The development plan describes the general location of uses on the site, the internal road network, public facilities, etc. Decisions about more specific concerns (e.g., setback reductions) are made by the Planning Board through the site plan approval process.

Attachment D

LAW OFFICES

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CHARTERED

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March 24, 2005

Montgomery County Planning Board  
 Maryland-National Capital Park and Planning Commission  
 8787 Georgia Avenue  
 Silver Spring, MD 20910

RE: Preliminary Plan No. 1-05026  
 "The Towns of Boland Farm" Subdivision  
 Request for Waivers in accordance with  
 Section 59-C-7.15(c) and Section 59-C-1.395

Dear Chairman Berlage and Members of the Planning Board:

I am writing to you on behalf of the applicant in the above-referenced matter to request two waivers in connection with the proposed preliminary plan of subdivision. The first is a request for a waiver of the requirement that a minimum of 15% of the proposed units must consist of one-family detached dwellings. The second is a request for a waiver of the 100 foot setback requirement that applies where a building other than a one family detached residence is constructed on property located adjacent to land for which the area master plan recommends a one family detached zone. These requested waivers are more particularly addressed as follows:

1. Waiver of Section 59-C-1.395, Special Provisions for TDR Developments.

The subject property, which consists of 4.0 acres, is a long, narrow tract of land with frontage on Frederick Road (Maryland Route 355). In February, 1990, Sectional Map Amendment G-652 rezoned the subject property from the R-200 zone to the R-200/TDR zone. This rezoning was consistent with recommendations contained in the Germantown Master Plan dated 1989, which recommended that the subject property be developed in accordance with the TDR-8 densities provided for in the Montgomery County Zoning Ordinance.

Section 59-C-1.395 of the Zoning Ordinance provides, in pertinent part, that where a TDR density of 6 to 10 units per acre is shown on the Master Plan, a minimum of 15% of the units must consist of one family detached dwellings. However, footnote 1 to this section provides that a waiver of the minimum percentage is permissible upon a finding by the Planning Board *"that a proposed development is more desirable for environmental reasons or is more compatible with adjacent development than that which would result from adherence to these standards."* We believe that a waiver of the requirement that some units consist of single family detached homes is appropriate in this instance both for reasons of compatibility as well as environmental reasons.

From a compatibility standpoint, with the exception of the eight single family detached homes located along Collins Drive to the north, the surrounding land uses are much more intense than that proposed for the subject property. The neighboring land to the west is developed with multi-family garden apartments, the land to the south is developed with commercial uses, including a non-conforming business, automobile filling station/car wash and Burger King, and the land to the east across Maryland Route 355 is developed with a school and church. The land to the north, immediately beyond the development on Collins Drive, is proposed in the County CIP for use as a fire station. The proposed townhouse units will be located at least 100 feet from the R-200 zoned land located immediately to the north and a forest conservation easement is proposed in this area which will provide for additional screening.

Likewise, the proposed development is more desirable for environmental reasons because the required forest conservation requirements can be satisfied on-site if the property is developed entirely with townhouse units. The very long and narrow shape of the subject property (approximately 200 feet in width and 850 feet in depth for an unusual frontage-to-depth ration of 1 to 8.5) does not lend itself to a layout that could accommodate a mix of unit types and still achieve 100% satisfaction of the forest conservation requirements on-site.

For these reasons, we believe that the proposed development consisting entirely of townhouses is more desirable for both environmental and compatibility reasons.

2. Waiver of Section 59-C-7.15(b) in accordance with the provision of Section 59-C-7.15(c).

Section 59-C-1.394(b) ("Development standards applicable to the optional method of development") of the Zoning Ordinance states:

"(b) For TDR densities of three or more per acre, the lot sizes and other development standards will be determined at the time of preliminary and site plan for conformance with applicable master plan guidelines and in accordance with the purposes and provisions of the PD zone, except as may be specified in Section 59-C-1.395."

Thus, the development standards for the subject property are determined by reference to the standards set forth in the PD zone.

Section 59-C-7.15(b) ("Planned development zoning: compatibility") states:

"(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 zone:

- (1) No building other than a one family detached residence can be constructed within 100 feet of such adjoining land. (emphasis added)

Like the subject property, the adjoining land to the south is zoned R-200/TDR and the master plan recommends that it, too, be developed at a density of eight units per acre. The master plan also recognizes that this area is suitable for special exception uses that would serve as transitions uses between the gas station and adjoining residential uses.

Section 59-C-7.15(c) of the Zoning Ordinance provides that a waiver of the requirement of paragraph (b)(1) above may be permitted if:


- "(1) The area master plan recommends other than a one family detached use for the property immediately adjoining the area where the waiver is to occur; and
- (2) The immediately adjoining property will not be adversely affected by the waiver for present or future use."

Clearly, the area master plan recommends other than a one family detached use for the property immediately adjoining the subject property to the south (it recommends townhouses or special exception uses). Moreover, this property will not be adversely affected by the proposed setback waiver as it is currently being used for non-residential purposes; a non-conforming business operates from this location.

Thank you for your attention to these two waiver requests. We intend to appear at the public hearing and will be available to respond to your questions.

Very truly yours,

MILLER, MILLER & CANBY



Susan W. Carter

Susan W. Carter

SWC/dlt

cc: Rich Weaver  
Frank Gordon  
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Susan Gaus  
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