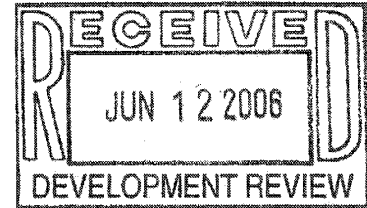




ATTORNEYS

STEVEN A. ROBINS  
DIRECT 301.657.0747  
SAROBINS@LERCHEARLY.COM

June 12, 2006



**BY HAND DELIVERY**

Ms. Rose Krasnow, Chief  
Ms. Catherine Conlon  
Mr. Richard Weaver  
Development Review Division  
Maryland-National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 30920

**Re: Winchester Homes/Additional Waiver Request from  
Subdivision Regulations for Preliminary Plan No.  
120060501 for the Indian Spring Property**

Dear Ms. Krasnow, Ms. Conlon and Mr. Weaver:

Our firm represents Winchester Homes ("Winchester"), the applicant for Preliminary Plan of Subdivision No. 120060501. Winchester is seeking subdivision approval for the Indian Spring property located off of Layhill Road in Silver Spring, Maryland (the "Property"). As you know, our team has been working on this Preliminary Plan for quite some time and is looking forward to appearing before the Planning Board on July 13, 2006.

If you will recall, in one of our most recent meetings with Technical Staff, we discussed the configuration of two sticks of town homes that are reflected on Exhibit "A" to this letter. Staff commented that these town homes would require a Section 50-38 waiver from Section 50-29(a)(2) of the Subdivision Regulations since the units, as proposed, do not technically front on either a public or private right-of-way as required by the Subdivision Regulations. This letter sets forth the justification for the granting of this waiver.

Section 50-29(a)(2) states:

Lots To Abut on Public Street. Except as otherwise provided in the zoning ordinance, every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road. In



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exceptional circumstances, the board may approve not more than two (2) lots on a private driveway or private right-of-way; provided, that proper showing in made that such access is adequate to serve the lots for emergency vehicles, for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands. In multi-family and town house development, not subdivided into individually recorded lots, the board may approve more than two (2) lots or buildings on private roads or drives, provided there is adequate access from such roads or drives to a public street, as above.

While this waiver request is somewhat unusual, it is our understanding that similar requests have been reviewed and approved by the Board, particularly in more recent large scale subdivisions where open space and lot configuration goals are a central focus. More specifically, Winchester is seeking a waiver of the Subdivision Regulations because the two sticks of town homes at issue technically do not front public rights-of-way or private drives/streets. Instead, these units actually front open space and access the public streets via a private driveway. The units are positioned to front the open space in order to maximize open space, provide variation in design and also to allow for greater environmental protection. As referenced in Section 50-29(a)(2), the Subdivision Regulations provide a mechanism for the Planning Board to approve more than two town home lots to be located on a private road or private drive – the units, however, are not envisioned to be subdivided into individually recorded lots. In the instant case, Winchester would be subdividing each town house lot into individual fee simple lots. But for the division of land into individual lots, the application of the above referenced provision would be virtually identical.

During the review process, Winchester has been guided by Technical Staff, including but not limited to, Environmental Planning Staff, to adhere closely to all of the environmental guidelines and requirements that apply to the development. In an effort to protect stream buffers, address topography related issues, grading difficulties and to protect forest and environmentally sensitive areas of the Property, Winchester also is proposing road configurations that

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include a cul-de-sac longer than that permitted by the Subdivision Regulations, variations in road width, closed section roads and variations in sidewalk requirements. The site design feature that triggers this waiver also is being requested by Winchester in an effort to protect the environment and provide more green and open space, while, at the same time incorporating street design and access that is appropriate for this type of development. The waiver is justified.

In the cover letter that was sent to you with the filing of the revisions to the Preliminary Plan on March 9, 2006, we also reiterated our understanding that the Planning Board is specifically focusing on portions of a plan that contain townhouses fronting private roads. There is a section identified on the Preliminary Plan where private roads are incorporated into the project. As we pointed out in that letter, given the lot configuration and environmental constraints affecting the relevant portion of the Property (as identified on the Preliminary Plan), the use of private roads is the best method to satisfy various competing goals at this particular location.

Winchester understands that in order for the Board to approve the waiver request herein (as well as certain other requests previously submitted), fire and rescue related needs must be satisfied for all roads within the development, including private roads and driveways. We have met with Captain John Feissner of the Montgomery County Department of Fire and Rescue Service and, as you will see from his anticipated approval letter, Fire and Rescue concerns have been addressed so that the Department is able to conclude that the plan provides for adequate emergency access.

Section 50-38(a)(1) of the Subdivision Regulations permits the Board to grant a waiver from the requirements of Chapter 50 upon a determination that "the practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) is not inconsistent with the purposes and objectives of the General Plan; and 3) is not adverse to the public interest. Winchester's request fulfills each of these requirements. There are only two sticks of town homes wherein this waiver applies and the design of the plan has been carefully considered to minimize the need for further waivers from this particular section of the Subdivision Regulations. This waiver request, if granted, would not be inconsistent with the purposes or objectives of the General Plan and also certainly would be in the

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public interest. The thrust of this request is to provide for a lot configuration that maximizes open space and a respect for environmental conditions on the Property. This design configuration achieves both goals. Through the evolution of this preliminary plan, a central theme has been to provide as much open, green and forested space as it practicable. The waiver request is an important component to fulfill this goal.

Of great importance to this request is the application of Section 50-38(a)(2)b that states:

(2) Large Scale Development or Preservation of Open Space, Forest and Tree Conservation, Environmentally Sensitive Areas, or Prevention of Soil Erosion. The standards and requirements of this Chapter may be modified by the Board if it determines that:

b. a variance will promote the preservation or creation of open space, forest and tree conservation, preservation of environmentally sensitive areas, or the prevention of soil erosion in the public interest. The Board shall also have the power to modify or vary the requirements of this Chapter where, in the opinion of the Board, the preservation or creation of open space, the prevention of soil erosion or the preservation of exceptional natural topography and trees worthy of preservation in the public interest will best be served. (Emphasis added).

Winchester's waiver request also meets the requirements set forth in Section 38(a)(2)b. Creating and preserving open space preservation is the central element of this section and the waiver request. The Board has the authority to grant a Section 50-38(a) waiver to waive the requirement contained in Section 50-29(a)(2) of the Subdivision Regulations. For the reasons set forth herein, Winchester respectfully requests that the Board exercise its discretion and grant this waiver request.



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On behalf of the entire Winchester team, thank you for your consideration regarding this waiver request. We trust that this request, along with our prior waiver letter referenced above will be forwarded to the Board as part of the Technical Staff Report. We look forward to presenting the Preliminary Plan to the Planning Board on July 13<sup>th</sup>. Please let me know if you have any questions or comments regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'SAR', written over a horizontal line.

Steven A. Robins

Enclosures

Cc: Michael Lemon  
Development Team  
Patrick L. O'Neil

Exhibit "A"

NAD 83 DATUM  
SCALE: 1" = 100'

SEE SHEET 2





ATTORNEYS

STEVEN A. ROBINS  
DIRECT 301.657.0747  
SAROBINS@LERCHEARLY.COM

March 9, 2006

***BY HAND DELIVERY***

Ms. Rose Krasnow, Chief  
Ms. Catherine Conlon  
Development Review Division  
Maryland-National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 30920

**Re: Winchester Homes/Submission of Revisions to  
Preliminary Plan No. 120060501 for the Indian Spring  
Property**

Dear Ms. Krasnow and Ms. Conlon:

Our firm represents Winchester Homes in its efforts to develop the Indian Spring property located off of Layhill Road in Silver Spring, Maryland (the "Property"). As you know, our team has been working on modifications to the Preliminary Plan based, in large part, on comments received at the Development Review Committee meeting held on November 21, 2005, and thereafter at subsequent meetings with Technical Staff from M-NCPPC, DPS, DPW&T and MDSHA. As a result of these efforts, we are submitting revised plans that address a host of issues, including but not limited to, transportation, forest conservation, stream buffer protection, lot layout and design, grading and stormwater management. We are confident that the revised Preliminary Plan and related materials addresses all of the comments and issues that have been raised since the Preliminary Plan was originally filed on October 28, 2005.

There are certain matters that we discussed at the various meetings that are addressed below. All of these items are relevant to the Preliminary Plan approval and will be presented to the Planning Board. They include:

**Waiver/Approval Requests**

As part of the Preliminary Plan submission, there are a number of waivers or approvals that Winchester is seeking from the Board or lead agency as the case may be. These waivers are listed below and are essential for this

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development. Winchester already has requested a number of the waivers. A complete set of these requests are included with this submission for your review.

The follow is a listing of the waivers being requested:

- Waiver to allow closed section roadways.
- Waiver for entry road cross section.
- Waiver for sidewalks only on one side of the roadway, where applicable.
- Waiver to allow certain structures (retaining walls) to be constructed within the public right-of-way.
- Letter requesting approval of mitigation compensation for certain encroachments within buffer areas.
- Waiver to clear forest below allowable thresholds.
- Letter requesting approval of park dedication/afforestation concept plan.

As part of the subdivision review process, Winchester also is seeking a waiver of Section 50-26(d) of the Subdivision Regulations pertaining to the overall length of a cul-de-sac. Section 50-26(d) states that, unless permitted by the Board, a cul-de-sac shall not be longer than 500 feet, unless, by reason of the property shape, size, topography, large lot size or improved street alignment, the Board may find a greater length to be justified. In this situation, a waiver is justified for the very reasons articulated in the standards. During the review process, Winchester has been guided by Environmental Planning Staff to adhere closely to the environmental guidelines and requirements that apply to the development. In an effort to protect stream buffers, address topography related issues, grading difficulties and to protect forest and environmentally sensitive areas of the Property, Winchester is proposing a road configuration that includes a cul-de-sac longer than that permitted by the Subdivision Regulations. Staff and the Applicant both recognize that the cul-de-sac in question is designed specifically to protect the environment, while, at the same time incorporating street design that is appropriate for this type of development. The waiver is justified.



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We understand that the Planning Board now may be specifically focusing on those portions of a plan that contain townhouses on private roads. There is a section identified on the revised Preliminary Plan where private roads are incorporated into the project. Given the lot configuration and environmental constraints affecting the relevant portion of the Property (as identified on the Preliminary Plan), the use of private roads is the best method to satisfy various competing goals at this particular location. Winchester understands that fire and rescue related needs must be satisfied for all roads within the development, including private roads and requests that the Board approve the use of the private roads for this limited portion of the development.

### **Phasing and Recordation**

Pursuant to Section 50-34(g) of the Subdivision Regulations, Winchester is proposing a development staging schedule for the recordation of plats and the validity period for the APFO approval. This schedule is based on three phases of development. Given the size and complexity of the proposed development, we are requesting that the Planning Board approve the following phasing and recordation schedule:

- Phase 1 – Record Plat recorded within 3 years of the Preliminary Plan approval.
- Phase 2 – Record Plat recorded within 6 years of the Preliminary Plan approval.
- Phase 3 – Record Plat recorded within 9 years of the Preliminary Plan approval.
- An APFO validity period of 12 years for the entire project, commencing upon the approval of the Preliminary Plan (Phase 1).

Details regarding this phasing and recordation plan may be further articulated as part of the site plan approval (as permitted pursuant to Section 50-24(g) of the Subdivision Regulations).

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### Forest Conservation and Mitigation Banking

Winchester's Preliminary Forest Conservation Plan identifies a base planting requirement of 20.5 acres, a mitigation requirement of 8.24 acres for certain encroachments into the stream valley buffer, and, at this point in time, a mitigation banking area of approximately 30 acres. At our most recent meeting on March 2, 2006 with Technical Staff, we discussed the various aspects of the mitigation bank. Staff indicated that the preferred approach for the bank would be for all of the planting to be accomplished at one time instead of a piecemeal approach. While Winchester also agreed with Staff's position, it was not without reservation – one related to up-front cost. More specifically, without users readily available to purchase the banked forest, Winchester would be reluctant to plant until a need arises (and purchaser(s) are available). It is our understanding that Staff will be discussing this mitigation banking matter internally and will report back to Winchester regarding (i) the availability of private sector users, (ii) whether public sector users may avail themselves of Winchester's bank and (iii) whether certain "fee-in-lieu" funds already collected by M-NCPPC for other forest conservation requirements could be allocated for this mitigation banking effort.

### Forest Retention

Section 22A-12(f)(2)(B) of the Montgomery County Code, dealing with Forest Conservation, and more specifically, forest retention, states in part that, "In a planned development or a site developed using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a) . . . etc." In other words, if a property contains existing forest in an amount less than the conservation threshold, all forest must be preserved on site. In the case of the Property, the 32 acres of existing forest is less than the conservation threshold of 62 acres (20%); thus, by Code, all of the 32 acres should be preserved. The applicant is seeking a waiver to clear approximately 3 acres of the 32 acres of existing forest. The areas to be cleared (18 locations) are very small and widely scattered across the 300 acre property. No large concentrated areas of forest are to be removed. The clearing areas proposed are for tie out of grading, utility extensions and master planned road construction (that Staff has asked Winchester to include in the calculation). The required and voluntary planting of 63 acres of new forest overwhelmingly offsets the small amount of

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clearing requested. Section 22A-12(f)(3) of the County Code allows for the Planning Board to approve this waiver.

### **Park Dedication**

The revised plans reflect a significant portion of the Property that ultimately will be conveyed to the Park's Department. At our most recent meeting with you, we reiterated our position regarding the timing of the conveyance. It is Winchester's intention to deed the property in question to the Park's Department once the project is completed and the Park's Department thereafter accepts the parkland. As part of this approach, we will identify the property to be transferred along with a note indicating that the transfer will occur by deed on the Record Plat(s).

### **Community Outreach**

As part of the development approval process, Winchester has spent a significant amount of time since the original filing of the Preliminary Plan meeting with interested community groups and associations. Winchester has conducted numerous meetings with the Tivoli Home Owners' Association, the Layhill View Civic Association and the Greater Colesville Civic Association. We also are scheduled to meet with the Layhill Alliance next week. Other outreach efforts are underway. Winchester will continue to provide meaningful community outreach, not only while the development makes its way through the land use approval processes, but also once the development is fully approved and under construction.

### **Distribution of the Submitted Materials**

In order to facilitate the review of the revisions to the Preliminary Plan (and related materials), we are forwarding copies to the following Staff, all of whom have taken a role in the review of this development:

Richard Weaver  
Candy Bunnag  
Shahriar Etemadi and David Paine  
Sam Farhadi  
Sarah Navid  
Captain John Feissner