

Item 1B - Correspondence

From: [Soo Lee-Cho](#)
To: [MCP-Chair](#)
Cc: [Sanders, Carrie](#); [Butler, Patrick](#); [Sorrento, Christina](#); [Miry livnat](#); [dean packard](#)
Subject: CONSENT AGENDA ITEM B. RECORD PLATS - Subdivision Plat No. 220190440, Offutt Estates - MAY 28, 2020
PLANNING BOARD MTG
Date: Tuesday, May 26, 2020 11:04:12 PM
Attachments: [Attachments.html](#)
Importance: High

Citrix Attachments

Expires November 22, 2020

2020.05.26 Applicant's Ltr to Planning Boar...nda.pdf	732 KB
Exhibit A_Easement and Right of Way Agre...500.pdf	254.8 KB
Exhibit B_SDAT Info Sheets re Morrison Parcels.pdf	309.8 KB
Exhibit C_S. Orens_Supplemental Justificati...140.pdf	5 MB

Download Attachments

Soo Lee-Cho uses Citrix Files to share documents securely.

Dear Chairman Anderson,

For the Planning Board's consideration, please see attached letter and exhibits submitted on behalf of the Applicant in the above referenced matter in OPPOSITION to the request to sever action on the subdivision plat from the Consent Agenda submitted by Robert "Robby" G. Brewer, Esq.

Thank you.

Soo Lee-Cho

Attorney



200-B Monroe Street ■ Rockville, MD 20850
T: 301.762.5212 ■ F: 301.424.9673

[website](#) | [bio](#) | [vCard](#) | [confidentiality](#) | [email](#)

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All attorneys admitted in Maryland and where indicated.

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SLCHO@MMCANBY.COM

May 26, 2020

By Email Only

Casey Anderson, Chairman
Montgomery County Planning Board
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910
MCP-Chair@mncppc-mc.org

Re: **Planning Board Meeting of May 28, 2020**
CONSENT AGENDA ITEM No. 1.B;

Subdivision Plat No. 220190440, Offutt Estates, RT-12.5 Zone, 5 lots, 2 parcels,
located on the north side of Hillery Way, 525 feet west of MD 355;
White Flint Sector Plan 2010

Dear Chairman Anderson and Members of the Planning Board:

This office represents Miry and Alexander Livnat (a.k.a. White Flint Park, Inc.), the Applicant(s) and owner(s) of the property that is the subject of Subdivision Plat No. 220190440, scheduled for the Planning Board's action on this week's Consent Agenda. This letter is in response to a request submitted by Robert "Robby" G. Brewer, Esq. dated May 21, 2020 on behalf of Morrison Partners, LLC (owners of Part of Outlot A, Offutt Estates) to "sever" the subject subdivision plat from the Consent Agenda and to schedule a further hearing on the matter.

First, there is no basis to remove the subject record plat from the Consent Agenda because as confirmed by Staff, the pending plat fully complies with Preliminary Plan No. 120150040 (the "Preliminary Plan") approved by the Board on June 28, 2018. The Preliminary Plan approved a total of 5 residential lots – 4 semi-detached duplex lots and 1 single-family detached lot with a 20' wide paved Private Alley/Road connection to Hillery Way that narrows into a 10' wide section to serve as a private driveway to the single-family detached lot located at the northern end of the property. The below excerpt of the pending subdivision plat (marked-up accordingly) is provided for the Board's ease of reference.

Specifically, Mr. Brewer asserts that the pending record plat does not comply with Condition No. 16.d. of the Preliminary Plan, which requires the Applicant(s) to “record in the Land Records of Montgomery County an access easement for the benefit of the adjacent property owners to allow vehicular access from the private alley to connect to the adjacent properties for potential future redevelopment.” Mr. Brewer, however, cites to an earlier recorded instrument that has since been superseded. As indicated by Note #10 on the pending plat, an access easement titled *Easement and Right of Way Agreement* granted for the benefit of all adjacent property owners, **including Morrison Partners, LLC**, has in fact been recorded by the Applicant(s) and can be found recorded in Land Records at Book 59345 at Page 500 as required by Condition No. 16.d. A copy of said *Easement and Right of Way Agreement* is attached hereto as **Exhibit A** for the Board’s reference.

10. THE PROPERTY IS SUBJECT TO AN EASEMENT AND RIGHT OF WAY AGREEMENT RECORDED IN BOOK 59345 AT PAGE 500.

The above notwithstanding and in the event Mr. Brewer is actually arguing for something more than what is required by Condition No. 16.d., the following additional background is provided to further confirm that the *Easement and Right of Way Agreement* that has been provided by the Applicant(s) (**Exhibit A**), does in fact fully comply with what was intended by Condition No. 16.d.

- Condition No. 16.d. was not part of the original posted Staff Report but was first raised by Planning Staff to the Applicant(s) on the morning of June 25, 2018, three days before the scheduled Planning Board hearing on the Preliminary Plan.
 - The final version of the proposed condition presented to the Planning Board read as follows:

“Prior to record plat, the Applicant must record in the Land Records of Montgomery County an access easement *for the benefit of* the adjacent property owners to allow vehicular access from the private alley to connect to the adjacent properties for potential future redevelopment.” (Emphasis added)
- Prior to the above new condition language being raised by Staff, the Applicant(s) did not propose any type of access easement benefiting adjacent property owners with the “Revised [5 residential lot] Proposal” presented to the Planning Board for approval.
- At one point in the history of this application, an access easement that extended further north was briefly considered by the Applicant(s) in association with a ***previous*** “all-townhouse” version of the Preliminary Plan (referred to as the “2014 Proposal” in Staff’s PowerPoint Presentation to the Board) that had consisted of a total of 6 townhouse units with front-loaded garages.

- Although the 2014 Proposal was actually Applicant's preferred plan of development, the front-loaded garages were not at all favored by Planning Staff at the time and the Applicant(s) had little choice but to revise their proposal.
- Planning Staff encouraged the Applicant(s) to incorporate a single-family detached lot at the rear of the property.
 - Before abandoning the all-townhouse concept and reluctantly embracing the revised layout, the Applicant(s) pointed out to Planning Staff in a meeting held with the Applicant in 2017 that an access easement to Outlot A would no longer make any sense and could not be accommodated with the Revised Proposal because it would obviously have a detrimental impact on the single-family detached lot.
 - Staff indicated nonetheless that the revised layout/plan was preferred and so the Applicant(s) made the decision to proceed with the Revised Proposal.
- It wasn't until the morning of June 25, 2018 just days before the Planning Board hearing on the Preliminary Plan that the Applicant(s), through Mr. Dean Packard, received notice regarding the new condition language from Planning Staff.
- In response, Mr. Packard sought immediate clarification of the scope of the re-introduced 'access easement benefitting adjacent properties' and received the following confirmation (highlighting of relevant text added for ease of reference):

From: Butler, Patrick <patrick.butler@montgomeryplanning.org>

Sent: Monday, June 25, 2018 10:58 AM

To: dean packard <dean@packardassociatesllc.com>; Hersson-Ringskog, Rhoda <rhoda.hersson-ringsk@montgomeryplanning.org>

Cc: Tettelbaum, Emily <Emily.Tettelbaum@montgomeryplanning.org>

Subject: RE: Offutt Estates - revisions to Preliminary Plan conditions

Hi Dean,

We are not requiring you to extend the easement shown to any adjoining properties. We are requiring that the conditions of approval and the easement itself be clear that in addition to providing access to the proposed lots, that the road can be used for adjoining properties if/when they redevelop in the future. Please feel free to call if you would like to discuss.

Thank you,

Patrick

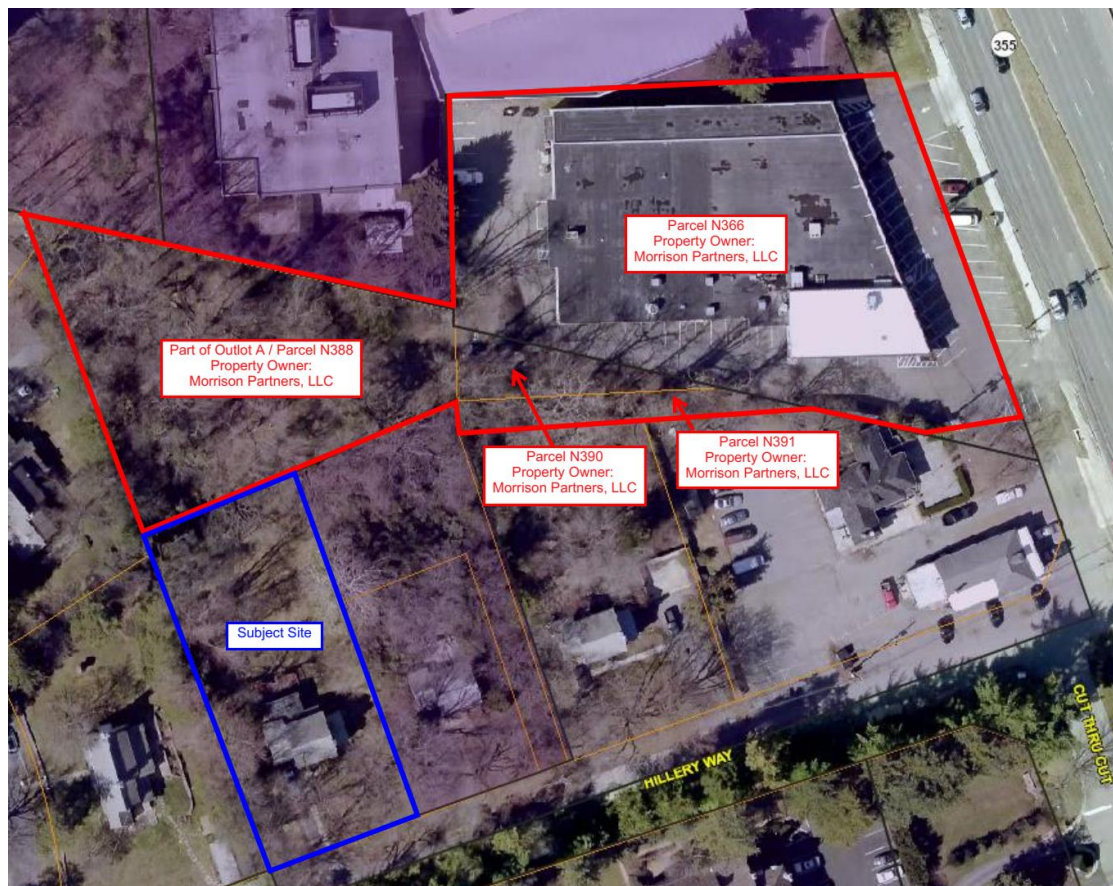
- Based on the above representation of the scope of the access easement, the Applicant(s) had a clear understanding of Staff's intended scope of Condition No. 16.d. as granting to adjacent property owners a right to access/use the private alley road to facilitate a potential future redevelopment of their properties and **not** a requirement to physically extend an easement across the single-family lot's private driveway. It was based on this confirmed understanding that the Applicant(s) decided not to object to the proposed condition.
- The Staff Report (which the Board adopted and incorporated by reference in MCPB Resolution No. 18-057) further confirms the intended scope of Condition No. 16.d. In its description of Applicant's current proposal, i.e., Revised Proposal, the Staff Report on page 11 states that, among other things, the proposed development will include "[a] private alley off Hillery way, which will provide vehicular access to the duplexes, the detached house at the rear of the site, and adjoining properties for potential future redevelopment." (Emphasis added; see excerpt/highlighted text below)
 - In other words, the Staff Report makes clear that the limits of the private alley itself (which did not extend beyond the southern boundary of Lot 6 on the Preliminary Plan, now Lot 8 on the pending subdivision plat) is what was intended as the scope of the access easement and nothing more.

Current Proposal

Following a meeting with Staff on June 8, 2017, the Applicant made substantial changes to their proposal and is now seeking to subdivide and construct four one-family semidetached (duplex) units and one single-family detached house as shown in Figure 5 and 6 below and Attachments 3 and 4. In addition to the residential units, the proposed development will include:

- **A private alley off Hillery Way, which will provide vehicular access to the duplexes, the detached house at the rear of the site, and adjoining properties for potential future redevelopment.**
- A hammerhead turn around at the end of Hillery Way in accordance with ADA requirements.
- A Design Exception for Hillery Way roadway pavement to not be centered in the right-of-way in order to accommodate a bio-swale along the right-of-way.
- A total of 10 parking spaces within 2-car garages for the five units and two visitor parking spaces along the private alley.
- An off-site sidewalk along Hillery Way to connect with the sidewalk along Rockville Pike (MD 355).
- New pedestrian paths within the Property as follows:
 - Five-foot-wide sidewalk with a 5-foot wide tree-panel along the north side of Hillery Way;
 - Five-foot-wide sidewalk along the west side of the proposed private alley; and
 - Three-foot-wide lead-in sidewalks from the proposed internal 5-foot-wide sidewalks and driveway to the front of the townhouses.
- 10,893 square feet of green space for the residents, including a usable common open area between Lot 4 and Lots 5/6. An access easement to an adjacent property owner (Outlot A) to allow vehicular access from the proposed private alley to connect to the land-locked property to the north.

- Finally, it must be noted that the one adjacent property to the north of the subject site is **not** in fact landlocked as erroneously suggested in one of the slides included in Planning Staff's PowerPoint Presentation to the Board and highlighted by Mr. Brewer in his May 21, 2020 letter.
- The aerial below shows all properties owned by Morrison Partners, LLC outlined in red. (SDAT info sheets confirming current ownership are attached hereto as **Exhibit B**) The property identified as "part of Outlot A / Parcel N388" once had a house located on it that enjoyed direct access to Rockville Pike/MD 355 via an easement across the adjacent parcels to the east, now all in common ownership by Morrison Partners, LLC.
 - The full deed/assemblage history which confirms that Part of Outlot A is not landlocked but in fact has access to MD 355 and therefore does not need an access easement through the Subject Site, was previously outlined in detail in a Supplemental Justification Statement prepared by Applicant's former counsel, Stephen Orens, Esq. The Statement was prepared in support of the 2014 Proposal but remains part of the record in this case and relevant on the "Access to Outlot A" issue discussed therein, and as such is attached hereto as **Exhibit C** for the Board's reference.



Based on all the above and as recommended by Staff, we respectfully request that the Planning Board find Subdivision Plat No. 220190440, Offutt Estates, to be in compliance with Preliminary Plan No. 120150040 (MCPB Resolution No. 18-057) as approved by the Board and deny Mr. Brewer's request to sever this matter from the Board's Consent Agenda.

Thank you for your consideration.

Sincerely,

MILLER, MILLER & CANBY

By: 
Soo Lee-Cho

Enclosures: **Exhibit A** - Easement and Right of Way Agreement_Liber 59345 Folio 500
Exhibit B - SDAT Info Sheets re Morrison Parcels
Exhibit C - S. Orens_Supplemental Justification Statement_32-JUSTSTMT-820150140

Cc: Carrie Sanders, Area 2 Chief
Patrick Butler, Supervisor
Christina Sorrento, Esq., Associate General Counsel, M-NCPPC
Miry and Alexander Livnat
Dean Packard

MONTGOMERY COUNTY, MD

APPROVED BY bb

APR 08 2020

Tax Account Nos.: 04-00053372

04-01805408

04-01805396

04-00052674

\$ NA RECORDATION TAX PAID\$ NA TRANSFER TAX PAID**EASEMENT AND RIGHT OF WAY AGREEMENT**

This Easement and Right of Way Agreement ("Agreement"), made this 3rd day of April, 2020, by and between White Flint Park, Inc., the owner of the property described herein, located in the County of Montgomery, in the State of Maryland, hereinafter referred to as "GRANTOR" for the benefit of the Bahman Teimourian as Trustee of the Bahman Teimourian Revocable Trust ("Trust") and Morrison Partners, LLC ("Morrison"), and any of their successors and assigns (Trust and Morrison, collectively, "GRANTEES").

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of real property located in Montgomery County, Maryland, described as Lot 3, Offutt Estates (Tax Account 04-00053372), and further described in a deed dated February 11, 2016, and recorded among the Land Records of Montgomery County, Maryland in Liber 51682 at Folio 11 ("Grantor's Property"); and

WHEREAS, Trust is the fee simple owner of two parcels of real property located in Montgomery County, Maryland described as Lot 4, Offutt Estates (Tax Account 04-01805408) and Parcel N422, Outlot B, Offutt Estates (Tax Account 04-01805396) and further described in a deed dated May 31, 2019, and recorded among the Land Records of Montgomery County, Maryland in Book 57755 at page 90 ("Trust Property"); and

WHEREAS, Morrison is the fee simple owner of real property located in Montgomery County, Maryland described as Parcel N388, part of Outlot A, Offutt Estates (Tax Account 04-

20

41

00052674), and further described in a deed dated August 29, 2008, and recorded among the aforesaid Land Records in Liber 57302 at Folio 528 ("Morrison Property"); and

WHEREAS, in a resolution approving Preliminary Plan No. 120150040 dated July 17, 2018, the Montgomery County Planning Board of the Maryland National Capital Park and Planning Commission (the "Commission") included as a condition of subdivision approval of Grantor's Property, that, prior to record plat, Grantor record "an access easement for the benefit of the adjacent property owners to allow vehicular access from the private alley to connect to the adjacent properties for potential future redevelopment."

NOW THEREFORE, in consideration of the following recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the said Grantor does hereby grant, establish and convey a prospective future easement and right-of-way to the Grantees, their successors and assigns, for the use and benefit of the Trust Property and the Morrison Property, for ingress and egress, across the Grantor's Property known as Lot 3, Offutt Estates, the said right-of-way and easement being described in Exhibit "A" and depicted in Exhibit "B" attached hereto and incorporated herein ("Easement" or "Easement Area", and "Right-Of-Way", or "Right-Of-Way Area"), together with the rights, privileges, and advantages thereto belonging or appertaining, unto and to benefit forever the Grantees, their successors and assigns, subject to the following terms and conditions:

FIRST: Grantees shall have no right of use of this Easement and Right-of-Way unless and until Grantees obtain approval for a future subdivision of their respective properties (Trust Property and Morrison Property) in conformance with the approved Master Plan, and Grantees have provided notice of such approval to Grantor.

SECOND: Upon meeting the condition of use provided in paragraph FIRST herein, the Grantees, their successors and assigns have the right of ingress and egress over the Easement Area and Right-Of-Way Area for the purpose of access from and to the Trust Property and the Morrison Property for non-construction-related vehicles. The right of access granted in this paragraph SECOND specifically does not include use of the Easement Area and Right-Of-Way Area by construction-related vehicles associated with implementation of a future subdivision of Grantees' respective properties. The above notwithstanding, a temporary construction easement is also hereby granted to Grantees for the sole purpose of facilitating a future road connection to the private alley/road to be located on Grantor's Property within the Easement Area and Right-Of-Way Area, if required in conjunction with and only for so long as necessary to implement said future subdivision approval of the Trust Property and Morrison Property. However, at no time shall Grantees' use of the temporary construction easement result in the obstruction and/or blockage of the private alley/road to be located on Grantor's Property of any kind.

THIRD: The grant of this Easement and Right-of-Way and Grantees' use thereof is subject to all of the restrictions placed upon the Grantor for said Easement and Right-of-Way, including but not limited to Fire Department Access.

FOURTH: The Grantor will warrant specially the Easement and Right-of-Way, and will execute such further assurances thereof as may be requisite.

FIFTH: This Agreement shall be recorded among the Land Records of Montgomery County, Maryland and the Easement will run with the land and shall be binding on the successors and assigns of the parties hereto.

SIXTH: This Agreement will be construed according to the Laws of the State of

Maryland.

SEVENTH: This Agreement may be modified or amended, from time to time, in a writing signed by the Grantor and any modifications to this Declaration will be recorded among the Land Records of Montgomery County.

IN WITNESS WHEREOF, the Grantor has hereunto affixed its hands and seals the day and year first herein above written.

WITNESS/ATTEST:

T. [Signature]

WHITE FLINT PARK, INC.

[Signature]
Miriam Livnat, President

STATE OF MARYLAND

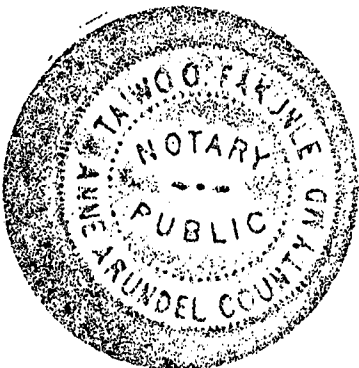
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 3rd day of April, 2020, before me, the subscriber, a Notary Public of the jurisdiction aforesaid, personally appeared Miriam Livnat, the President of White Flint Park, Inc., known to me (or satisfactorily proven) to be the person whose name, Miriam Livnat, is subscribed to the within instrument and acknowledged that she, being authorized to do so, executed the same for the purpose therein contained on behalf of White Flint Park, Inc.

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


T. [Signature]
Notary Public

My Commission expires: 05/17/2023



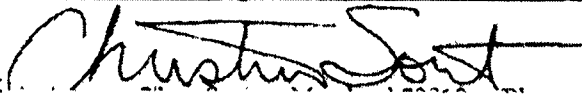
Preparing Attorney Certificate

I hereby certify that I am an attorney duly admitted to practice before the Court of Appeals of Maryland and that the within Easement and Right Of Way Agreement was prepared under my supervision.


Cathy G. Borten

REVIEWED AND APPROVED BY:

Montgomery County Planning
Board of the Maryland-National
Capital Park and Planning Commission

By: 

Name: Christina Sorrento, Esq.
Title: Associate General Counsel
Date: April 3, 2020

AFTER RECORDING RETURN TO:

Cathy G. Borten, Esq.
Miller, Miller & Canby
200-B Monroe Street
Rockville, Maryland 20850

Return to:
Dean Packard
Packard & Associates, LLC
16220 Frederick Rd #300
Gaithersburg MD 20877
(301) 943-2527

ACKNOWLEDGMENT

STATE OF Maryland)
COUNTY OF Prince George's) SS.

Before me, the undersigned, a Notary Public, in and for said County and State on the 8 day of April, 2019, personally appeared Nathan Booker to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that X executed the same as X free and voluntary act and deed for the uses and purposes therein set forth.

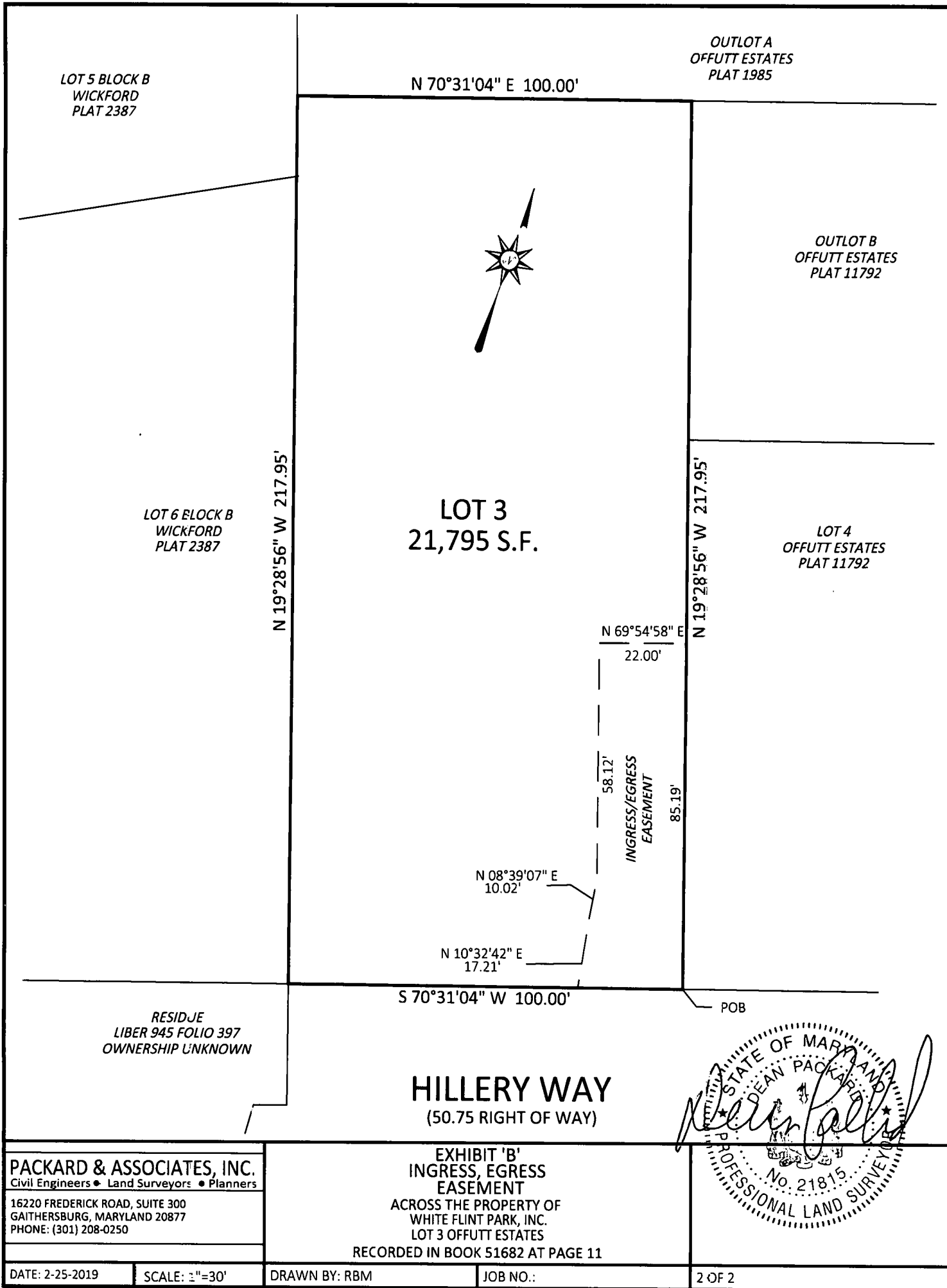
IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my official seal the day and year first above written.

My Commission Expires:

March 12, 2022

[Signature]
Notary Public





LR - Easement
(No-Taxes) Recording
Fee 20.00
Name: TEIMOURIAN
Ref:
LR - Easement
(No-Taxes) Surcharge 40.00
=====
SubTotal: 60.00
=====
Total: 60.00
04/08/2020 10:20
CC15-F6
#13595091 CC0602 -
Montgomery
County/CC06.02.06 -
Register 06



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BARBARA H. MEIKLEJOHN
Clerk of the Circuit Court for Montgomery County
50 Maryland Avenue
Rockville, Maryland 20850
Recording and Licensing
(240) 777-9470

Search Result for MONTGOMERY COUNTY

View Map

View GroundRent Redemption

View GroundRent Registration

Special Tax Recapture: None

Account Identifier:

District - 04 Account Number - 00052674

Owner Information

Owner Name:

MORRISON PARTNERS LLC

Use:

COMMERCIAL

Principal Residence:

NO

Mailing Address:

C/O JOANNE MORRISON
388 NE SPANISH CT
BOCA RATON FL 33432-

Deed Reference:

/57302/ 00528

Location & Structure Information

Premises Address:

5419 HILLERY WAY
ROCKVILLE 20852-0000

Legal Description:

PT OUTLOT A OFFUTTS
EST

Map:

Grid:

Parcel:

Neighborhood:

Subdivision:

Section:

Block:

Lot:

Assessment Year:

Plat No:

HQ11

0000

N388

30004.16

0001

2018

Plat Ref:

Town: None

Primary Structure Built

Above Grade Living Area

Finished Basement Area

Property Land Area

County Use

25,700 SF

990

Stories

Basement

Type

Exterior

Quality

Full/Half Bath

Garage

Last Notice of Major Improvements

/

Value Information

Base Value

Value

Phase-in Assessments

As of

As of

As of

Land:

1,182,200

496,500

07/01/2019

07/01/2020

Improvements

0

0

Total:

1,182,200

496,500

496,500

496,500

Preferential Land:

0

0

Transfer Information

Seller: MORRISON PARTNERS LLC

Date: 03/12/2019

Price: \$0

Type: NON-ARMS LENGTH OTHER

Deed1: /57302/ 00528

Deed2:

Seller: MORRISON PARTNERS LLC

Date: 03/12/2019

Price: \$0

Type: NON-ARMS LENGTH OTHER

Deed1: /57302/ 00516

Deed2:

Seller: MORRISON PARTNERS LLC

Date: 03/12/2019

Price: \$0

Type: NON-ARMS LENGTH OTHER

Deed1: /57302/ 00504

Deed2:

Exemption Information

Partial Exempt Assessments:

Class

07/01/2019

07/01/2020

County:

000

0.00

State:

000

0.00

Municipal:

000

0.00|0.00

0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application

Date:

1. This screen allows you to search the Real Property database and display property records.
2. Click [here](#) for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.

Search Result for MONTGOMERY COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Special Tax Recapture: None		
Account Identifier:		District - 04 Account Number - 00052652
Owner Information		
Owner Name:	MORRISON PARTNERS LLC	Use: COMMERCIAL
Mailing Address:	C/O JOANNE MORRISON 388 NE SPANISH CT BOCA RATON FL 33432-	Principal Residence: NO Deed Reference: /57302/ 00528
Location & Structure Information		
Premises Address:	ROCKVILLE PIK 0-0000	Legal Description: PT OUTLT A OFFUTTS S UB&ADD WILSON DISC
Map: HQ11	Grid: 0000	Parcel: N390
Neighborhood: 30004.16	Subdivision: 0001	Section:
Block:	Lot: P1	Assessment Year: 2018
Plat No:	Plat Ref:	
Town: None		
Primary Structure Built	Above Grade Living Area	Finished Basement Area
		Property Land Area 3,780 SF
County Use 460		
Stories	Basement	Type
		Exterior /
Quality	Full/Half Bath	Garage
Last Notice of Major Improvements		
Value Information		
	Base Value	Value
		As of 01/01/2018
Land:	48,800	51,200
Improvements	0	0
Total:	48,800	51,200
Preferential Land:	0	0
		Phase-in Assessments
		As of 07/01/2019
		As of 07/01/2020
		50,400
		51,200
		0
Transfer Information		
Seller: MORRISON PARTNERS LLC	Date: 03/12/2019	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /57302/ 00528	Deed2:
Seller: MORRISON PARTNERS LLC	Date: 03/12/2019	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /57302/ 00516	Deed2:
Seller: MORRISON PARTNERS LLC	Date: 03/12/2019	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /57302/ 00504	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	
County: 000		07/01/2019
State: 000		07/01/2020
Municipal: 000		0.00
		0.00 0.00
		0.00 0.00
Special Tax Recapture: None		
Homestead Application Information		
Homestead Application Status: No Application		
Homeowners' Tax Credit Application Information		
Homeowners' Tax Credit Application Status: No Application		Date:

1. This screen allows you to search the Real Property database and display property records.
2. Click [here](#) for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.

Search Result for MONTGOMERY COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Special Tax Recapture: None		
Account Identifier:		District - 04 Account Number - 00052663
Owner Information		
Owner Name:	MORRISON PARTNERS LLC	Use: COMMERCIAL
Mailing Address:	C/O JOANNE MORRISON 388 NE SPANISH CT BOCA RATON FL 33432-	Principal Residence: NO
		Deed Reference: /57302/ 00528
Location & Structure Information		
Premises Address:	ROCKVILLE PIK 0-0000	Legal Description: P 2 & P OL A OFFUTT ESTS & ADD WILSON DISC
Map: HQ11	Grid: 0000	Parcel: N391
Neighborhood: 30004.16	Subdivision: 0001	Section:
Block:	Lot: P1	Assessment Year: 2018
Plat No:	Plat Ref:	
Town: None		
Primary Structure Built	Above Grade Living Area	Finished Basement Area
		Property Land Area 3,013 SF
County Use 990		
Stories	Basement	Type
		Exterior
		Quality
		Full/Half Bath
		Garage
		Last Notice of Major Improvements
Value Information		
	Base Value	Value
		As of 01/01/2018
Land:	2,700	2,900
Improvements	0	0
Total:	2,700	2,900
Preferential Land:	0	0
		Phase-in Assessments
		As of 07/01/2019
		As of 07/01/2020
		2,833
		2,900
Transfer Information		
Seller: MORRISON PARTNERS LLC	Date: 03/12/2019	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /57302/ 00528	Deed2:
Seller: MORRISON PARTNERS LLC	Date: 03/12/2019	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /57302/ 00516	Deed2:
Seller: MORRISON PARTNERS LLC	Date: 03/12/2019	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /57302/ 00504	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2019
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00 0.00
Special Tax Recapture: None		
Homestead Application Information		
Homestead Application Status: No Application		
Homeowners' Tax Credit Application Information		
Homeowners' Tax Credit Application Status: No Application		
Date:		

1. This screen allows you to search the Real Property database and display property records.
2. Click [here](#) for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.

Search Result for MONTGOMERY COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Special Tax Recapture: None		
Account Identifier:		District - 04 Account Number - 00052641
Owner Information		
Owner Name:	MORRISON PARTNERS LLC	Use: COMMERCIAL Principal Residence: NO
Mailing Address:	C/O JOANNE MORRISON 388 NE SPANISH CT BOCA RATON FL 33432-	Deed Reference: /57302/ 00528
Location & Structure Information		
Premises Address:	11130 ROCKVILLE PIK ROCKVILLE 20852-0000	Legal Description: HIGGINS EST
Map: HQ11	Grid: 0000	Parcel: N366
Neighborhood: 30004.16	Subdivision: 0001	Section:
Block:	Lot: P9	Assessment Year: 2018
Plat No: 47	Plat Ref:	
Town: None		
Primary Structure Built 1958	Above Grade Living Area 30,768 SF	Finished Basement Area
		Property Land Area 50,965 SF
		County Use 599
Stories	Basement	Type RETAIL STORE
		Exterior /
		Quality C3
		Full/Half Bath
		Garage
		Last Notice of Major Improvements
Value Information		
	Base Value	Value
		As of 01/01/2018
		Phase-in Assessments As of 07/01/2019
		As of 07/01/2020
Land:	2,344,300	2,461,600
Improvements	5,992,100	1,984,300
Total:	8,336,400	4,445,900
Preferential Land:	0	4,445,900
		0
Transfer Information		
Seller: MORRISON PARTNERS LLC	Date: 03/12/2019	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /57302/ 00528	Deed2:
Seller: MORRISON PARTNERS LLC	Date: 03/12/2019	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /57302/ 00516	Deed2:
Seller: MORRISON PARTNERS LLC	Date: 03/12/2019	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /57302/ 00504	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	
County:	000	07/01/2019
State:	000	0.00
Municipal:	000	0.00
		0.00 0.00
		0.00 0.00
Special Tax Recapture: None		
Homestead Application Information		
Homestead Application Status: No Application		
Homeowners' Tax Credit Application Information		
Homeowners' Tax Credit Application Status: No Application		Date:

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BEFORE
THE MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND -NATIONAL CAPITAL PARK & PLANNING COMMISSION

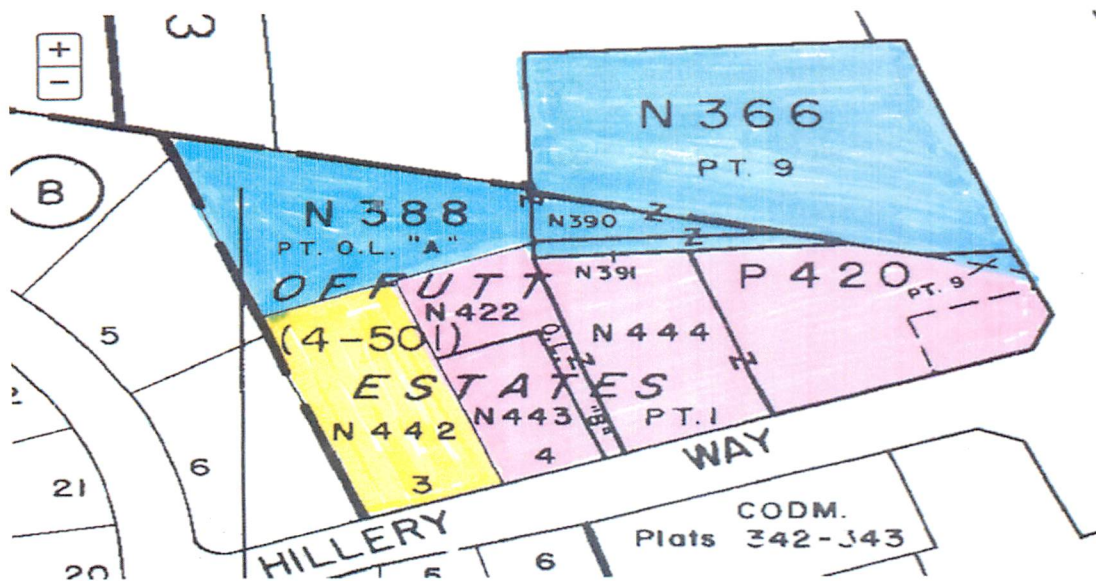
Offutt Estates
Preliminary Plan No. 120150040
Site Plan No. 820150140

Supplemental Justification Statement

Preliminary Plan No. 120150040 and Site Plan No. 820150140 request approval of a Six (6) unit townhouse development under the retained standards of the 2004 Zoning Ordinance governing the RT-12.5 zone. (2014 Zoning Ordinance Division 8.1, Section 8.1.1 “Applicability.”) The Subject Property (N442 in yellow below) was classified in the RT-12.5 zone prior to the adoption of the 2014 Zoning Ordinance.

This supplemental Justification Statement responds to points raised at the Development Review Committee meeting and by Planning Area Two Division Staff.

I. Access to Outlot A. The Applicant has been requested to provide an access easement to connect the internal private street to Outlot “A” to the north which would amount to an unwarranted hardship on the applicant. Outlot “A” has been inaccurately identified by both MC-DOT and Planning Area Two Division Staff as “the land-locked property to the north” of the Subject Property. Outlot “A” is identified as Parcel N388 on Tax Map HQ11. Outlot “A”, Parcel N366 (also known as “PT.9”), Parcel N390 and Parcel N391 (in blue below) are all owned and controlled by Morrison Partners LLC (the “Morrison Properties”).



Outlot "A" (identified as Parcel N388) connects to Parcel N366 through Parcel N391. Public record research reveals an assemblage of adjacent parcels that began in 1947. On July 23, 1947, Edward Offutt recorded Plat 1985 that created Lots 1-3 and Outlot "A" Offutt Estates. According to the survey identified as "Exhibit B" a house was constructed on Outlot "A" in the Offutt Estates Subdivision.

On February 14, 1955, Abraham Morrison purchased the property fronting on Rockville Pike identified as N366 and as "Part of Lot 9" by a deed recorded in the County Land Records in Liber 2225 at Folio 81. On January 3, 1958, Abraham Morrison purchased Parcel N390 presumably in furtherance of the 1958 construction of the retail building identified as 11130 Rockville Pike on adjacent Parcel N366. Then, on August 1, 1958, Abraham Morrison purchased the house on Outlot "A" (Parcel N388) by deed recorded in the County Land Records in Liber 2514 at Folio 258. Apparently in 1958 when Outlot "A" (Parcel N388) did not have access to a public road, Abraham Morrison also purchased, by the same deed, Parcel N391 thereby securing direct access to a public road for the then existing house on Outlot "A".

As a result of the assemblage of adjacent parcels by Mr. Morrison,, Parcels N366, N390, N391 and N388 were brought under common ownership and remain under common ownership by Morrison Partners, LLC pursuant to that certain deed recorded among the County Land Records in Liber 36022 at Folio 169. The assembled parcels, provide common ownership access between Outlot "A" (Parcel N388) and Rockville Pike.

Outlot "A" has access to a public road and does not require an easement though the Subject Property. The house on Outlot "A" was vacant and deteriorating in 2006 and it was demolished as a controlled burn under permit #414567. Even though Outlot "A" (Parcel N388) is currently vacant it continues to have access to a public road as part of the contiguous properties under common ownership by Morrison Partners, LLC.

A condition of approval requiring that an access easement through the Subject Property's required green area be granted for the benefit of Outlot "A" would result in undue hardship to the Applicant and an access easement to property that is clearly not landlocked is not required by the Zoning Ordinance development standards applicable to the RT-12.5 zone.

Further, an access easement for the benefit of Outlot "A" is not required by the Subdivision Regulations or the Site Plan Review standards in effect now or in effect under the 2004 Zoning Ordinance and there are no other statutory or regulatory requirements compelling this Applicant to reduce its zoned and master planned development density by establishing a private easement connection to a private street for the benefit of Outlot "A". This is especially true given the fact that Outlot "A", is in common ownership with other adjacent Morrison Properties that have both frontage on and access to Rockville Pike.

The proposed access drive connecting the six townhouse lots to Hillery Way is a private street, not a public Street and it is not required to be a public street. A condition of approval requiring an access easement connecting that private street, through the proposed green area parcel, for the private benefit of Outlot "A" is not permissible and would reduce the density by one lot because of the applicable green area requirements in Section 59-C-1.734(b) of the 2004 Zoning Ordinance.

Section 59-C-1.734(b) of the 2004 Zoning Ordinance requires that 50% or .25 acres of the Subject Property be set aside as contiguous green area. As proposed, the private street terminates north of proposed Townhouse Lot 4, at the edge of the required ¼ acre of contiguous green area that is within proposed Parcel A.

If the Applicant is required to establish an access easement through the proposed green area for the sole benefit of Outlot "A" the contiguous green area would be reduced to less than one-half of an acre requiring its extension to the south resulting in the loss of Lot 4, reducing the number of townhouses from 6 to 5. A reduction in density solely for the private benefit of one of Morrison Properties would amount to an unwarranted hardship on this applicant and potentially a taking of private property for a private, not public purpose.

II. Sector Plan Compliance. The Subject Property (Parcel N442) is one of several residential properties along the western edge of the "NoBe" or North Bethesda District identified by the Approved and Adopted 2010 White Flint Sector Plan. The Sector Plan recommends that the properties along Hillery Way including the Subject Property (N442) and adjacent Parcels N388, N443 and N444 (the "Hillery Way Properties") be rezoned to the RT-12.5 zone in order for new residential uses to provide a "transition between the existing residential communities and the commercial uses along Rockville Pike." (Sector Plan at page 34.) The Sector Plan identifies Hillery Way as "Block 5" and notes that:

This block transitions to residential communities to the immediate south and west.

Hillery Way provides the only access to the residentially-zoned areas. (Sector Plan page 37.) (Emphasis added.)

The Hillery Way Properties are not collectively in common ownership now and were not in common ownership in 2010 when the White Flint Sector Plan was approved and adopted. Ownership of the Hillery Way Properties is divided among three separate ownership entities. The Subject Property (N442) is owned by the Applicant, White Flint Park, Inc. Parcels N443, N444, N422 and P420 are all owned by Bahman Teimourian (the "Teimourian Properties" in purple above) and as stated above, Parcels N388, N390, N391 and N366, are collectively owned by Morrison Partners, LLC.

Although not expressly so stated in the text of the White Flint Sector Plan, it is the Staff's contention that the Sector Plan intended that the Hillery Way Properties be assembled under common ownership in order to develop as a single townhouse project. The text of the Sector Plan neither supports nor refutes that contention and this Applicant engaged in multiple attempts over a period of three years to organize a joint development without success.

After three unsuccessful years of active attempts to have all three property owners join together and propose a single development, The Applicant concluded that a joint venture was never going to happen and submitted the current Preliminary Plan and Site Plan in order to implement the Sector Plan's zoning and land use recommendation to develop townhouses on Lot 3 (Parcel N442) and establish the intended "transition between the existing residential communities (to the west) and the commercial uses along Rockville Pike."

The six townhouses proposed by these Preliminary Plan and Site Plan Applications as a stand-alone development implement the zoning and transitional use recommendations of the Sector Plan including the recommended upgrading of the entire length of Hillery Way to a public road, solely at the cost of our applicant. This Sector Plan compliant proposal is entitled to be evaluated on the merits of the proposal, without regard to what may or may not develop in the future on the adjacent RT-12.5 zoned Hillery Way Properties. .

Outlot "A" (Parcel N388) is an awkwardly shaped wooded parcel with very limited development potential by itself considering the development restrictions and requirements associated with subdivision approval, including, by way of example, forest retention standards, stormwater management requirements and fire department access. According to the Applicant's civil engineer Parcel N388 (Outlot A) cannot be developed under the RT-12.5 zone without combining it and commonly owned Parcels N444, N442, and N443 into a single townhouse subdivision. Given the obvious development constraints, access to any future development of Parcel N388, consistent with the Sector Plan and the RT-12.5 zoning, would be served best by a physical driveway connection off of Parcel N422 or Outlot B.

III. Rear yard setback. The standard rear yard setback for townhouse dwelling units in the RT-12.5 zone is thirty (30) feet except when the rear yard is adjacent to land classified in a one-family, detached, residential zone such as the R-90 zone. When the rear yard of an RT-12.5 townhouse shares a common boundary with land classified in a detached residential zone, the setback is reduced to twenty (20) feet under Section 59-C-1.732(a) of the 2004 Zoning Ordinance unless

"a more desirable form of development can be demonstrated by the applicant to the satisfaction of the planning board using the street, side and rear lot line setbacks as provided in this section."

The Subject Property's proposed rear yard shares a common boundary with land classified in the R-90 Zone, a detached residential zone. Proposed Lots 4, 5, 8 and 9 are each setback 22 feet from the common property line. Proposed Lots 6 and 7 are each setback twenty (20) feet from the common property line as shown on the Submitted Landscape Plan attached hereto as Exhibit C.

The Applicant has requested that the Planning Board approve the requested 22 foot and 20 foot setbacks as authorized by Section 59-C-1.732(a) of the 2004 Zoning Ordinance because the requested setbacks will result in a more desirable form of development than could otherwise be achieved if a thirty foot setback were required.

A number of factors combine to dictate the proposed rear yard to rear yard orientation of the six townhouse units. Despite how Hillery Way is identified in the Sector Plan (See Sector Plan page 37) and how it is depicted on the SDAT Tax Map and on MC Atlas aerial photographs, the Hillery Way right-of-way apparently does not extend beyond the west boundary line of the Subject Property (Parcel N442) and does not connect Waycroft Way to Rockville Pike. It appears that a fence has been erected blocking access beyond the western boundary of the Subject Property.

As a result of the unconventional terminus of Hillery Way, emergency vehicle and Fire Department access to the proposed townhouse community is restricted and in order for fire trucks to maneuver the private drive had to be located parallel to the eastern boundary line of the Subject Property. With the common driveway access to the proposed townhouses at this location, the rear yards of the townhouses abuts the western boundary line the Subject Property facing the rear yards of the adjoining single family detached R-90 zoned subdivision.

As we understand it, Planning Area Two Division Staff does not object to the implementation of the standard twenty foot rear yard setback. However, the question raised by Staff pertains not to the setback itself but to the Applicant's request that future owners not be prohibited from adding rear decks that would be no closer than eleven (11) feet from the rear property line, consistent with prior Section 59-B-3.1 that allowed decks to extend up to nine (9) feet beyond a rear building restriction line

IV. Rear Deck Proposal. Front and rear top level decks were included on the original architectural designs formally presented at the Development Review Committee ("DRC") meeting. The second story architectural plans depicted sliding doors without decks proposed in the rear yard. At the DRC meeting, M-NCPPC staff stated that no decks would be permitted in the rear yard. The plans reviewed at the DRC meeting included habitable space above the 35 foot height limit. A design revision was required in order to comply with the 35 foot height

restriction and as a result of meeting with the Department of Permitting Services, the Applicant agreed to replace the fourth floor space with dormers and eliminate the front and rear decks.

Local residents who attended the DRC meeting were present when the Applicant indicated that the fourth level decks would preclude the need for second level decks in the rear yard. Compliance with the height restriction has subsequently eliminated the possibility of decks on the 4th level and in order to provide elevated outdoor space, customary to townhouse living, the second level rear yard decks are now being proposed again, contrary to what was discussed at the DRC.

Final grading will result in a grade differential of approximately two (2) feet between the Subject Property and the adjacent, mostly vacant R-90 property. The finished grade of the Subject Property will be about two feet lower than the adjacent R-90 property and a retaining wall will be installed to support the existing, higher elevation of the adjacent property. The proposed retaining wall will be 5.33 feet from the property line in providing a contiguous planting panel for the landscaped buffer that will augment existing landscaping on the adjacent property.

The rear elevation of the townhouse units as shown on the "Rear Yard Cross Section" (Exhibit "D") depicts the deck height to be approximately 8.5 feet above final grade which is 6.5 feet above the existing grade of the rear yards of the adjacent property. The proposed landscape buffer will be planted between the western boundary line and the proposed retaining wall, in a strip approximately 5 feet in width, at existing grade, zero to two feet above the final grade. When planted, the landscape buffer will consist of 8' to 9' high vertical Arborvitae evergreens, growing an additional 12 inches per year to a maximum height of 15 feet or more. In addition, the landscape buffer will be augmented by a 6' high wood board fence at the property line.

None of the proposed decks will be closer than eleven feet from the common property line. Assuming, hypothetically, that future one-family dwellings are located at the R-90 rear setback line of twenty five feet, the minimum separation between the deepest deck and the closest dwelling will be thirty six (36) feet. The elevation differential and proposed on-site landscape buffering in combination will make the decks virtually invisible from ground level and from future one-family dwellings.

There is one existing house on adjacent Lot 6 and its rear yard adjoins the future rear yards of the proposed townhouse community. That existing house is located approximately 40 feet from the common property line and approximately 51 feet from the closest deck location. (See Exhibits "C" and "D") The closest structure to the common rear property line behind

proposed Townhouse Lot 9 is a garage with upper level windows approximately 2.5 feet from the rear lot line.¹

Additional, on-site landscaping and fencing will be provided to assure a compatible rear yard to rear yard relationship between the two forms of one family dwellings on these adjacent properties. Townhouses and detached houses are compatible one family dwellings. The proposed rear yard to rear yard orientation coupled with the grading differential and buffering will provide “a more desirable form of development” than would have otherwise occurred had the orientation of the proposed townhouses been reversed, placing the access driveway immediately adjacent to the rear yards of the adjoining developed Lot 6 and the remaining yet to be developed R-90 zoned area.

When viewed from the adjacent R-90 zoned rear yards the proposed decks will be virtually invisible, at a lower elevation hidden behind a six foot high fence and on-site 8feet to 9 feet high vertical Arborvitae evergreen landscaping.

V. Critical Root Zone Impacts. Staff has also raised questions regarding the construction impact to the existing row of cedar trees on the adjoining Lot 6, approximately 18 inches to 6 feet off of the common boundary line. Although these off-site cedar trees currently serve as a natural screen between adjacent Lot 6 and the Subject Property, the proposed townhouse development does not rely on the off-site screening for compatibility between the R-90 and the RT-12.5 areas.

Lowering the elevation of the Subject Property with a retaining wall approximately five feet from the common boundary line will have a limited impact to the critical root zones of the existing cedar trees on Lot 6 as shown on Exhibit “E.” With this information Exhibit “F” was prepared by Kevin Clair, of Arbor Care, a Certified Arborist and Licensed Tree Expert who was retained to provide a professional analysis of the potential construction impacts to the existing cedar trees on adjacent Lot 6.

The supporting, illustrative Exhibit “E” identifies the critical root zones for existing trees both on-site and on the adjacent property. Removal of the on-site trees marked with an “X” and the area shaded in green represent the critical zone root impacts to the off-site trees. As noted in Kevin Clair’s report (Exhibit “F”), the competitive nature of the root systems would favor a majority of the cedar tree roots growing, away from the large on-site trees near the boundary line, into the open area toward the house on adjacent Lot 6. As also noted in Kevin Clair’s report, the impacts, shaded in green on Exhibit “E”, to all of the cedar trees on adjacent Lot 6, are less than 25% of the total critical root zone area. The limited root zone impact due to area

¹ We do not speculate as to the legal status of this structure given its proximity to the rear lot line.

disturbed and that a majority of the roots would likely be on Lot 6 support the likely survivability of the cedar trees as high.

Also, it should be noted that the area directly behind proposed Townhouse Lots 7 and 8 has the only perpendicular impact to the existing house on adjoining Lot 6. All of the other townhouse lots will have an angled impact to the house on adjoining Lot 6 or directly impact only the grass rear yards. The proposed site design maximizes the survivability of the existing cedar trees, proposing a new 6' wood board fence and proposing a landscape buffer of closely planted 8' to 9' Arborvitae trees providing an effective and substantial screening buffer to provide physical and visual compatibility of the proposed townhouses and existing abutting detached homes.

Conclusion Second story rear decks are a permitted, typical and desirable amenity that townhouse residents expect and typically find in townhouse communities. Additionally, the proposed six townhouses are designed with elevators and a no-step access, providing visitability access to each of the units, equivalent to the County's Level I Design for Life Program. Outdoor recreation areas in the form of decks are common and necessary to the unit design. The question to be addressed by the Planning Board is whether allowing rear decks to be added in the future in combination with the implementation of the standard twenty foot setback results in "a more desirable form of development" than would result if rear decks were prohibited and a thirty foot setback was required. We submit that the answer to that question is "yes."

Respectfully Submitted
McMillan Metro, P.C.

By:


Stephen J. Orens

Attorneys for White Flint Park, Inc., Applicant