Limited Site Plan Amendment, High Acres, 82006022B (In Response to Notices of Violation)

MCPB
Item No.
Date: 7/30/20

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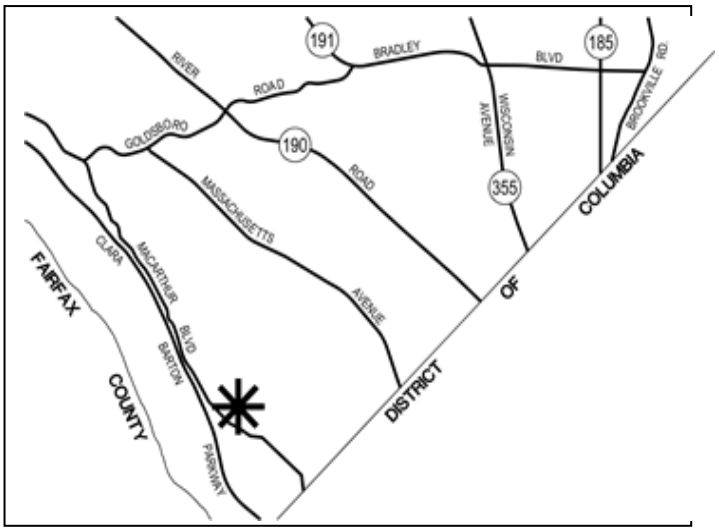
Report Date: 7/20/20

Description

- Location: 6450 Brookes Lane
- Zone: R-90 Cluster
- Property Size: 4.4 acres
- Master Plan: *Bethesda- Chevy Chase*
- Limited Site Plan Amendment: Request to amend approved certified Site Plan in response to notices of non-compliance issued in 2017 and 2019 and to add a privacy fence on site.
- Applicant: Brookes Lane Development Company, LLC
- Filing Date: November 22, 2017
- Staff Recommendation: Approval with conditions



Summary

- Staff recommends approval of the Site Plan Amendment, with conditions.
- A Site Plan 820060220 was previously approved by the Planning Board on March 27, 2007 and a Limited Site Plan Amendment 82006022A was approved by the Planning Board on May 8, 2013.
- Notices of non-compliance were issued in 2017 regarding a number of issues including a set of steps which were added to an onsite sidewalk, landscaping which did not match the approved species, locations or quantities, failure to install site furnishing, and excessive height of retaining walls.
- A citation was issued with a corrective action order to revise site elements to comply with existing approvals or amend the plan. The wall height issues have been resolved, however the other issues are proposed to be addressed with the Site Plan Amendment.
- Forest Conservation violations had also occurred in association with the retaining wall work and sediment control issues. The affected forest conservation easement will be restored under this Site Plan Amendment.
- The Amendment includes the addition of a privacy fence along a portion of the northern site boundary.
- Staff received correspondence from citizens. Copies of the correspondence are attached and discussed herein.

RECOMMENDATION AND CONDITIONS

Staff recommends approval of Site Plan Amendment 82006022B to add a set of steps to an onsite sidewalk, modify the landscape planting species, locations and quantities, and add a privacy fence along a portion of the northern site boundary. All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions.[1] The following Conditions 2 & 6.a. supersede the previous corresponding conditions, and the following conditions 3.f.-j., 7.g.-h. and 8 are added, while all other previously approved conditions remain in full force and effect:

Previous Condition #2:

Site Plan Conformance

The development must comply with the conditions of approval for Site Plan No. 820060220 as set forth in Planning Board Resolution No. 06-123 dated March 27, 2007 or amended by this application.

Proposed Condition #2:

2. Site Plan Conformance

The proposed development must comply with the previous and subsequent conditions of approval associated with Site Plan 820060220, unless amended.

Previous Condition #6.a:

Community seating areas, benches, retaining walls and associated landscaping shall be completed as the construction of the townhouse units are finished, but no later than six months after the occupancy of the townhouse units;

Proposed Condition 6.a:

6.a. The community seating areas, benches, and landscaping (including the replacement of any dead or missing material) must be installed/completed per the approved Certified Site Plan Amendment no later than March 31, 2021;

3. Forest Conservation & Tree Save

f. The split-rail fence must be restored to its correct location along the recorded Conservation Easement boundary before October 1, 2020.

g. The Amended Final Forest Conservation Plan must be approved before October 1, 2020; Prior to certification, the plans must be revised to address the following:

i. Add notes specifying that the Forest Conservation Inspector may change the species, locations and quantities of any plantings within the Conservation Easement.

ii. Provisions must be added for the care and monitoring of existing trees impacted by the retaining wall stabilization work which encroached into the easement areas.

[1] For the purposes of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor (s) in interest to the terms of this approval.

h. Any new plantings within the Conservation Easement will be subject to a 5-year maintenance and monitoring program to include the control of invasive species. The maintenance and monitoring agreement must be approved by the Office of General Counsel and recorded in the land records by November 1, 2020.
i. The applicant shall submit financial security in the amount of the Planning Department-approved cost estimate and obtain Office of General Counsel approval of the financial security by November 1, 2020.
j. The initial Conservation Easement restoration work and plantings must be completed before December 1, 2020 in coordination with, and to the satisfaction of the Forest Conservation Inspector.

7. Prior to Certified Site Plan, the following revisions must be included and/or information provided, subject to Staff review and approval:
    g. Modify the proposed open space layout to avoid conflicts with the landscape plantings and the site furnishings.
    h. Revise the proposed notes associated with the site furnishings to allow substitutions and modify locations in coordination with Planning Department Staff.

8. Before October 1, 2020, the Applicant must modify the steps covered by this amendment to have equal riser height, a minimum 12" tread (or as approved by staff), and a handrail.

DESCRIPTION

Vicinity and Site Description

The subject site is located on the west side of Brookes Lane approximately 500 feet south of its intersection with Sangamore Road ("Property" or "Subject Property"). The immediate vicinity of the Property contains a mix of residential, commercial and institutional uses. North of and adjacent to the Property, is the National Geospatial Intelligence Agency, a federal facility which is zoned R-60. Across Brookes Lane and northeast of the Property, the properties are developed with Sumner Highlands, a multi-family residential complex developed under the R-30 zone. A commercial shopping center, the Shops at Sumner Place, is zoned C-1, and contains commercial and office uses, and is located immediately north of the Sumner Highlands complex. Adjacent to and south of the Subject Property, the properties are zoned R-90 and developed with one family detached residential units. West of the Property and across MacArthur Boulevard, is the Brookmont community which borders the Clara Barton Parkway, near the Potomac River, and is developed with one family detached residential units in the R-60 zone.

Figure 1 – Vicinity Map **North ↑**

The Subject Property contains 4.4 acres and is zoned R-90. The Property has frontage on both MacArthur Boulevard and Brookes Lane. However, steep slopes along MacArthur Boulevard prohibit access from this roadway, thus access is provided from a private road via Brookes Lane. Brookes Lane is a right of-way, maintained by Montgomery County.

From Brookes Lane, west into the Property, a distance of approximately 410 feet, the terrain is slightly rolling with a large, flat clearing. The 11 townhouses were clustered in this flat clearing, while the existing single-family house along the northern lot line was restored to a residential unit. Behind the townhouses and the single-family house, the Property slopes down sharply to MacArthur Boulevard. These slopes are classified as steep slopes because they are in excess of 25% or greater. The steep slopes are also associated with highly erodible soils.

The Subject Property is on a drainage divide and is within both the Little Falls lower mainstem watershed and the Potomac River direct watershed (Use Class I-P watersheds). There are no known rare, threatened, or endangered species on site; there are no streams, 100-year floodplains, stream buffers, or wetlands on site.

Figure 2 – West facing view of High Acres development.

Previous Approvals

Both Preliminary Plan 120050560 and Site Plan 820060220 were approved concurrently at the Planning Board on December 21, 2006 for 12 lots on the Subject Property. The R-90 zoned Property was approved under the cluster provisions of the Zoning Ordinance. Eleven lots were developed as townhouses, with lots ranging in size from 2,007 square feet to 3,634 square feet. The twelfth lot contains the existing one family dwelling with a lot size of 20,529 square feet. Attachment A contains copies of approved Resolutions.

Site Plan Amendment 820060022A was approved by Planning Board Resolution on May 8, 2013 with modifications to eliminate approved recreational facilities and eliminate individual underground parking garages; reconfigure two drive aisles into one roadway; replace a single retaining wall with two terraced retaining walls and increase the overall wall height; revise lot lines; and revise landscaping and lighting plans.

PROJECT DESCRIPTION

Proposed Site Plan Amendment

The amendment addresses primarily two elements of the constructed development that did not match the Certified Site Plan, which were cited in notices of non-compliance issued in 2017 and 2019.

The first is a two-riser stair added to an internal sidewalk during construction to accommodate detailed site grading (Figure 3).

Figure 3 – Steps added to sidewalk

To improve safety, Staff is conditioning that the steps be reconstructed with even riser heights, a minimum 12" tread and a handrail.

The Applicant also proposes to revise the landscaping from the species, quantities and locations shown on the original Certified Site Plan. The proposed landscaping is qualitatively similar. Finally, the Applicant proposes a 6-foot-high wooden privacy fence along the northern property line to help screen from the adjacent federal facility (National Geospatial Intelligence Agency). Staff supports the addition of the fence as it enhances the screening and compatibly of the adjoining uses.

Furthermore, as conditioned, under the amendment 82006022B the forest conservation easement area will receive restoration plantings of native trees and shrubs along with the control of invasive species to address encroachments that occurred in association with sediment control issues and the retaining wall work.

COMMUNITY OUTREACH

The Applicant has complied with all submittal and noticing requirements. Sign postings regarding the Site Plan Amendment were installed on the Site frontages, and written notice letters for the Application and hearing were sent, however a community meeting for the Amendment was not required. Staff has received several letters of correspondence concerning this Amendment; however, the concerns were generally related to previous versions of the plans, items beyond the scope of the Amendment (such as sediment and erosion control issues) or issues that have since been resolved.

SITE PLAN AMENDMENT ANALYSIS AND FINDINGS

This Site Plan Amendment complies with the general requirements and development standards of the Zoning Ordinance, Subdivision Regulations and substantially conforms with the goals and recommendations of the 1990 *Bethesda-Chevy Chase Master Plan*. The elements of proposed Site Plan Amendment No. 82006022B do not alter the original findings and remain consistent with those findings.

RECOMMENDATION AND CONCLUSION

The proposed modifications to the Site Plan will not alter the overall character or impact of the development with respect to the original findings and approvals. Further, the modification will not affect the compatibility of the development with respect to the surrounding neighborhood. Staff recommends approval of Site Plan Amendment 82006022B with conditions as specified at the beginning of the staff report.

ATTACHMENTS

A. Prior Resolutions
B. Notices of non-compliance & Citations
C. Community Correspondence

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

MAR 27 2007

MCPB No. 06-123
Site Plan No. 820060220
High Acres
Date of Hearing: December 21, 2006

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board" or "Board") is required to review site plan applications; and

WHEREAS, on November 7, 2005, Bloom Builders, Inc. ("Applicant"), filed an application for approval of a site plan for 11 new townhouses and an existing detached unit on 4.4 acres of land in the R-90 Zone ("Site Plan" or "Plan") on the west side of Brookes Lane, north of Brookes Hill Court, between Sangamore Road and MacArthur Boulevard in Bethesda ("Property" or "Subject Property"); and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820060220, High Acres (the "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Board, dated December 8, 2006, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on December 21, 2006, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, on December 21, 2006, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on December 21, 2006, the Planning Board approved the Application subject to conditions on the motion of Commissioner Perdue, duly seconded by Commissioner Bryant, on a vote of 4-1, with Chairman Hanson and Commissioners

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Approved as to
Legal Sufficiency: RMP 3/20/07
M-NCPPC Legal Department

Bryant, Perdue and Robinson voting in favor, and Commissioner Wellington voting against the motion.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board approved Site Plan No. 820060220 for a maximum of 11 new townhouses and an existing detached unit on 4.4 gross acres of land in the R-90 Zone on the west side of Brookes Lane, north of Brookes Hill Court, between Sangamore Road and MacArthur Boulevard in Bethesda , subject to the following conditions:

1. Preliminary Plan Conformance

   The proposed development shall comply with the conditions of approval for Preliminary Plan 120050560 for High Acres.

2. Common Open Space Covenant

   Record plat of subdivision shall 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 the Covenant by reference.

3. Development Program

   Applicant shall construct the proposed development in accordance with Development Program. A Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of the certified site plan. The Development Program shall include a phasing schedule as follows:

   a. Community recreation facilities, including the clubhouse shall be completed as the construction of the townhouse units is finished, but no later than six months after occupancy of townhouse units;
   b. Landscaping, including buffer plantings adjacent to the northern and southeastern property lines, and the required No Right Turn sign shall be installed on completion of the townhouse units and the private drive;
   c. Pedestrian pathways, including the five-foot lead-in sidewalk, the five-foot sidewalk around the clubhouse and the four-foot sidewalk in the courtyard, and seating areas associated with the courtyard shall be completed as construction of the townhouse units and private drive is completed;
   d. Clearing and grading shall correspond to the construction phasing, to minimize soil erosion;
   e. Phasing of dedications, stormwater management, sediment/erosion control, recreation, paths, or other features.

4. Lighting

   a. Provide a lighting distribution and photometric plan with summary report and tabulations to conform to IESNA standards for residential development;
   b. All light fixtures shall be full cut-off fixtures;
   c. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties;
   d. Illumination levels shall not exceed 0.5 footcandles (fc) at any property line abutting county roads or adjacent residential properties;
   e. The height of the light poles shall not exceed 16 feet including the mounting base.

5. Forest Conservation

The applicant shall comply with the conditions of approval stated in the memorandum from the Department's Environmental Planning unit dated June 7, 2006:

   a. Implementation of tree protection plan and compliance with all ISA certified arborist's recommendations to protect trees as specified on final FCP and per Arborist's March 8, 2006 Davey Tree Expert report. Variations in protection measures listed on signed FCP and in the Arborist report can only occur with signoff from ISA Certified arborist and M-NCPPC Inspector;
   b. Split rail fencing and permanent signage, or staff approved equivalent, shall be placed along Natural Regeneration Area #1. Permanent signage shall be placed along remainder of easement boundary that adjoins the residential buildings;
   c. Required site inspections by M-NCPPC monitoring staff (as specified in Section 110 of the Forest Conservation Regulations).

6. Noise Attenuation

The applicant shall comply with the conditions of approval stated in the memorandum from the Department's Environmental Planning unit dated June 7, 2006:

   a. Prior to issuance of any building permit, the applicant shall secure air traffic noise information from the Airport Authority of noise levels from National Airport affecting this site, and provide that information to M-NCPPC Environmental Planning staff. If noise levels exceed 65 dBA Ldn, the applicant will be required to demonstrate achievement of an interior noise level of 45 dBA Ldn or less for the residential units. To do so, the applicant shall:

1) Engage an acoustical consultant to provide a detailed analysis of the proposed building shell to determine if it will meet acoustical design specifications as necessary to achieve no greater than a 45 dBA Ldn interior noise level.
2) Require the builder to construct in accord with those specifications, or receive written approval from the consultant for any changes that may affect acoustical performance.

7. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated November 10, 2005 unless amended and approved by the Montgomery County Department of Permitting Services.

8. Transportation

a. The applicant shall comply with the conditions of the Montgomery County Department of Public Works and Transportation (DPWT) approval letter dated April 19, 2006, unless otherwise amended.
b. The applicant shall install, and the homeowners association shall permanently maintain, a No Right Turn sign at the Brookes Lane exit from the community.

9. Clearing and Grading

No clearing or grading prior to M-NCPPC approval of Certified Site Plan.

10. Certified Site Plan

Prior to signature set approval of site and landscape/lighting plans the following revisions shall be included and/or information provided, subject to staff review and approval:

a. A data table setting out the approved development standards for the proposed development, including: the area under development; the number of dwelling units; the minimum lot areas for each housing type; setbacks from public streets, rear yards and side yards; and building heights, which must be delineated in feet;
b. The size of each lot shown on the site plan drawings;
c. A development program, inspection schedule, and Site Plan Resolution;
d. The limits of disturbance;
e. The methods and locations of tree protection;

f. A note stating that M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading;
g. The location of outfalls such that they are away from tree preservation areas.

BE IT FURTHER RESOLVED that all site development elements shown on High Acres plans stamped by the M-NCPPC on December 1, 2006, shall be required except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and on consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all bindings elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.*

   There is no development, diagrammatic, schematic development or project plan required for this proposal.

2. *The site plan meets all the requirements of the zone in which it is located, and where applicable conforms to the urban renewal plan approved under Chapter 56.*

   The Board finds, based on the data table provided in the Staff Report, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the R-90 Zone. The following data table sets forth the development standards that are approved by the Planning Board and are binding on the Applicant.

Development Data Table

Development Standard	R-90 Zone	Approved by the Planning Board and binding on the Applicant
Zone	R-90	
Area of Development	None[1]	4.4 acres
Density of Development	3.6 units/acre	2.7 units/acre
Dwelling Units	15	12
One-family Detached		1 (existing)
Townhouse		11
Minimum Lot Area (square feet)		
One-family Detached	5,000	20,577
Townhouse	2,000	2,000
Setback from Public Street		
One-family Detached	25 feet	200 feet
Minimum Lot Width at Street Line		
One-family Detached	25 feet	25 feet
Setback from Lot or Property Line		
One-family Detached	**None**	15 feet (front) 8 feet (side) 40 feet (rear)[2] 200 feet (rear)[3]
Townhouse	**None**	3 feet (front) 6 feet (side)[4] 20 feet (rear)
Minimum Lot Width (Townhouses)	18 feet	18 feet
Average lot frontage for townhouse group	20 feet	22 feet
Green Space	None required	81 percent (3.6 acres)
Building Height	35 feet (sfd, th) 25 feet (clubhouse)	See following table

1. There is no minimum area of development when a master plan recommends cluster development. The 1990 Bethesda-Chevy Chase Master Plan recommends cluster development for this property.
2. To property line along HOA open space.
3. To subdivision boundary line.
4. For end units only.

Building Height Table

Unit	Measuring Point	Building Height (feet)
1	Face of Building	29.5
2	Face of Building	29.5
3	Face of Building	29.5
4	Centerline of Street	30
5	Centerline of Street	30
6	Centerline of Street	30
7	Face of Building	29.5
8	Face of Building	29.5
9	Face of Building	29.5
10	Face of Building	29.5
11	Face of Building	29.5
12	Face of Building	29.5
Clubhouse	Centerline of Street	25

3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

Buildings

The applicant has concentrated the buildings on the higher portion of the property and avoided construction on steep and sensitive forested slopes. In addition, the proposal groups new houses around the existing house and attaches them as a way to minimize the impact of the buildings on the extensive natural portions of the property and reduce impervious areas. This approach increases efficiency by consolidating and shrinking the amount of space needed for vehicles. Use of underground parking creates similar efficiencies by, in effect, getting more value from impervious areas.

Open Spaces

The proposed development leaves existing open space in an undisturbed state and creates a clear distinction between developed and undeveloped portions of the neighborhood. Leaving steep slopes forested and undisturbed contributes to safe and efficient control of rainwater runoff and prevents erosion, which can create severely unsafe conditions on hillsides.

Landscaping

The proposed development uses a broad mix of shrubs, groundcovers, shade trees and ornamental trees to augment existing forested open space. In particular, landscaping is used to enhance already planted areas nearest neighboring houses and to supplement existing plantings along the boundary with the National Geospatial-Intelligence Agency. The proposed landscaping adequately provides screening from existing activities and reduces the impact of new construction on those land uses.

Recreational Facilities

This 12-unit project includes a clubhouse that will provide exercise facilities. In addition, the courtyard offers a seating wall and several benches that are conveniently located for residents' use. These facilities, and the undeveloped natural area, provide recreational opportunities on site that exceed the County's Recreational Guidelines.

Pedestrian and Vehicular Circulation Systems

The proposed vehicular circulation system includes an underground garage for each house, which efficiently uses existing topography and minimizes impervious surfaces. The underground drive aisle is wide enough to accommodate passing cars and includes parking spaces for long-term visitors. The entrance has been configured to discourage right turns on to Brooke Lane and will include a No Right Turn sign.

The underground garage system effectively separates drivers from pedestrians and sidewalks will allow residents to reach neighbors' homes and the clubhouse safely, without the need to cross the surface drive.

4. *Each structure and use is compatible with other uses and other site plans, and with existing and proposed adjacent development.*

The 1990 Bethesda-Chevy Chase Master Plan recommended cluster development for this property, recognizing that environmental resources would best be protected if all development on this property was concentrated away from steep and forested slopes. The Master Plan anticipated attached houses on this property and recognized that environmental benefits of cluster development warranted the use of attached houses in a neighborhood dominated by one-family detached houses. This project achieves compatibility by clustering houses away from the steep slopes to MacArthur Boulevard, protecting views and environmentally sensitive areas. It also uses distance, topography and

landscaping to shield adjacent homes from the new homes and to minimize their visual impact on their neighbors and on those who travel past the project.

At the Hearing, some neighbors testified in support of the Application and some neighbors testified against the Application. Those that testified against the Application raised, among other things, an issue related to compatibility of the proposed development.

With respect to compatibility, neighbors acknowledged that the Master Plan recommends cluster development for the subject property but maintained that clustering is an option, not a mandate. The neighbors further pointed out that the Master Plan is 17 years old and questioned whether the proposed density and clustering should still be approved given the new Council's desire to limit development. The neighbors also argued that the proposed development is too intense for their neighborhood stating that their street only has 20 other homes on it and that this development would add an additional 11 homes.

Based on the evidence of record, the Planning Board finds that the project is developed at an appropriate and allowable density and that cluster development is appropriate for the site. The Board further finds that the proposed development protects scenic values of the surrounding area and that any development of the site that did not involve a cluster would greatly endanger the trees and slope of the Palisades. The Board noted that there are townhomes developed directly to the north of the proposed development and there are apartment buildings to the south and found that the proposed development is compatible with the overall neighborhood.

The neighbors also raised issues regarding the access to the proposed development, which involved a property line dispute. This issue is addressed in MCPB Resolution No. 06-122 for Preliminary Plan 120050560, the preliminary plan for this proposed development, which was heard concurrently with this Site Plan Application. Commissioner Wellington noted that she still had questions regarding the dispute over the property line and the limit of disturbance and, accordingly, she could not support approval of this Application.

5. *The site plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The proposed project satisfies forest conservation requirements by preserving approximately 1.44 acres of forest on existing steep, forested slopes. The project also preserves 22 specimen trees in this area.

The proposed project has a stormwater management concept that has been accepted by the Montgomery County Department of Permitting Services. The concept includes a water quality control system that uses a Storm Filter and credits for preserving the natural areas. The Department waived recharge requirements for the site and channel protection volume requirements for three of eight drainage areas. Channel protection volume is not required for the remaining drainage areas because one-year, post development peak discharge is less than or equal to two cubic feet per second.

BE IT FURTHER RESOLVED, that this site plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED, that the date of this Resolution is MAR 27 2007 (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* *

At its regular meeting, held on Thursday March 22, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Robinson, seconded by Commissioner Bryant, with Commissioners Robinson, Bryant, and Perdue present and voting in favor, with Commissioner Wellington abstaining, and Chairman Hanson absent. This Resolution constitutes the final decision of the Planning Board, and memorializes the Board's findings of fact and conclusions of law for Site Plan No. 8200600220, High Acres.

Royce Hanson, Chairman
Montgomery County Planning Board

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

MCPB No. 13-62
Site Plan No. 82006022A
High Acres
Date of Hearing: May 2, 2013

MAY 8 2013

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on March 27, 2007, the Planning Board, by Resolution MCPB No. 06-123, approved Site Plan No. 820060220 for 11 new townhouses and one existing detached house on 4.4 acres of R-90 zoned land, located on the west side of Brookes lane, north of Brookes Hill Court between Sangamore Road and Mac Arthur Boulevard ("Subject Property"), in the Bethesda Policy Area, Bethesda Chevy Chase Master Plan ("Master Plan") area; and

WHEREAS, on November 26, 2012, Brookes Lane Development Company LLC, ("Applicant"), filed an application for approval of an amendment to the previously approved site plan to:

- Eliminate the clubhouse and pool as the approved recreational facilities[1] and provide benches and tables in a sitting area as the recreational facilities;
- Eliminate the underground parking garages for each unit and replace with at-grade parking garages for each unit;
- Reconfigure the two drive aisles into one roadway that will terminate in a cul-de-sac to serve all new and existing residential units;
- Eliminate the courtyard above the underground parking;
- Replace the single retaining wall at the rear of each lot with two terraced retaining walls and increase the overall wall height;
- Adjust the townhouse lot lines;
- Relocate the approved light fixtures in conjunction with the reconfigured driveway; and
- Revise landscaping plans on the Subject Property; and

WHEREAS, Applicant's application to amend the site plan was designated Site Plan No. 82006022A, High Acres ("Site Plan," "Amendment" or "Application"); and

[1] The approved recreational facilities were proffered by the Applicant, as the project, with less than the threshold requirement of 25 units, is not required to provide recreational facilities.

Approved as to
Legal Sufficiency: M-NCPPC Legal Department 5/2/13

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated April 19, 2013, setting forth its analysis of, and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 2, 2013 , the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that, the Planning Board APPROVES Site Plan No. 82006022A by modifying the following conditions of the previously approved site plan for High Acres: [2]

Conformance with Previous Approvals

1. Preliminary Plan Conformance

   The development must comply with the conditions of approval for Preliminary Plan No.120050560 as set forth in Planning Board Resolution No. 06-122 dated April 3, 2007.

2. Site Plan Conformance

   The development must comply with the conditions of approval for Site Plan No. 820060220 as set forth in Planning Board Resolution No. 06-123 dated March 27, 2007 or amended by this Application.

Environment

3. Forest Conservation & Tree Save

   Condition Nos. 5 (a), (b) and (c) of Site Plan No. 820060220 are replaced by the following:

   a. The development must comply with the conditions of the revised Final Forest Conservation Plan ("FFCP"). The Applicant must satisfy all conditions prior to the later of i) recording of a plat(s), or ii) issuance of sediment and erosion control permits by the Montgomery County Department of Permitting Services.
   b. The Applicant must submit and obtain Staff approval of a revised FFCP, which shall include the following:

[2] For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

i. Adjust the retaining wall design and/or shift the Site Plan elements to maintain at least 3 feet of clearance between the wall foundation and the forest conservation easement.
i. Provide an invasive species management plan throughout the entire onsite forested slope area (rather than only within 20' of the wall). Specify target species, recommended treatment methods and timing of applications.
ii. Clarify the tree preservation notes for Tree #54[3] and include improved tree preservation measures such as heavy duty temporary matting and specialized construction techniques for installation of the 8" water line.
iii. Update FFCP to reflect that Tree #45 has been felled.
iv. Add at least three 2-inch caliper American Holly Trees within the conservation easement area in the vicinity of Trees # 45 & 47.
v. Update the FFCP references in the title blocks & developers certificate to reflect the Amendment number.
vi. Remove the references to a 36" tree fronting Maryland Ave (near the corner of Brooks Hill Court). Staff has confirmed that no such tree is present.
vii. Adjust the planting details/notes for the tree and shrubs to clearly indicate that the size of plantings pits rather than the root balls shall be minimized for plantings within the conservation easement among the roots of saved trees.
viii. Revise the print quality of the FFCP so that all elements are clearly legible.
ix. Show LOD along the outer retaining wall more clearly. Adjust tree protection fence/LOD lines so they are contained within the LOD.
x. Add the M-NCPPC Standard plantings inspection schedule at the end of the new plantings notes on sheet FCP-3. The schedule can be found at following link: http://montgomeryplanning.org/development/forms/FC_Inspection_Schedule.pdf

c. The Applicant must submit financial security for the planting requirements and invasive management work specified on the FFCP, which must be approved by M-NCPPC Associate General Counsel prior to any land disturbing activities occurring onsite.
d. The Applicant must perform the initial invasive species control work following the preconstruction meeting, and prior to the planting of trees and shrubs within the conservation easement. The supplemental native plantings must occur no later than 2 growing seasons after the pre-construction meeting date.
e. The forest conservation supplemental planting, including at least forty-five trees (2-inch caliper overstory/6-foot tall understory) within the conservation easement

[3] Trees are as identified on the FFCP.

must be located during the pre-construction meeting in the field by the inspector in coordination with the Applicant to address site lines and screening from MacArthur Boulevard and from the adjacent homes on Brookes Hill Court.

4. Landscape Plan
   a. The Applicant must submit and obtain Staff approval of a revised Landscape Plan to:
      i. Specify the composition of fill materials shown below the 18" top soil. Fill materials must be appropriate to sustain the plantings and allow for adequate drainage; and
      ii. Revise the retaining wall terrace plantings, specifically shrubs, to provide a more diversified arrangement of the species and more visual interest.

5. Lighting
   Condition No. 4(d) of Site Plan No. 820060220 is replaced by the following:

   Illumination levels must not exceed 0.5 footcandles (fc) at any property line abutting county roads or adjacent residentially developed properties, especially at the site's entrance.

6. Development Program
   Condition Nos. 3(a), (c) and (e) of Site Plan No. 820060220 are replaced by the following:

   The Applicant shall construct the development in accordance with the Development Program, which must be approved by Staff prior to approval of the certified Site Plan. The Development Program shall include the following items in addition to the previously approved Development Program.
   a. Community seating areas, benches, retaining walls and associated landscaping shall be completed as the construction of the townhouse units are finished, but no later than six months after occupancy of the townhouse units;
   b. Pedestrian pathways shall be completed as construction of the townhouse units and private drive is completed;
   c. Phasing of dedications, stormwater management, sediment and erosion control, recreation, paths, or other features.

7. Certified Site Plan
   Condition No. 10 of Site Plan No. 820060220 is replaced by the following:

   Prior to certified Site Plan, the following revisions must be included and/or information provided, subject to Staff review and approval:

a. Revise Site Plan to show a 50 foot setback from the southeast corner of Lot 1 to the abutting property line, Parcel B, Block A.
b. Include the FFCP approval, stormwater management concept approval, development program, inspection schedule, and Site Plan resolution on the approval or cover sheet.
c. Add a note to the Site Plan stating that "M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading".
d. Ensure consistency of all details and layout between Site Plan and landscape lighting plan.
e. Adjust the wall design and/or shift the Site Plan elements to maintain at least 3 feet of clearance between the wall foundation and the conservation easement.
f. Adjust the wall detail to eliminate the reference to Nellie Stevens hollies.

BE IT FURTHER RESOLVED, that all other conditions of approval of Site Plan No. 820060220 for this project remain valid, unchanged and in full force and effect; and

BE IT FURTHER RESOLVED, that all site development elements as shown on High Acres, drawings stamped by the M-NCPPC on April 10, 2013, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the hearing and set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan, and all findings not specifically addressed remain in effect.

1. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

Buildings

The townhouses will now have at grade garages instead of underground structures. The buildings' impact on the site's steep slopes are minimized by reducing the amount of imperviousness. As conditioned the terraced retaining wall will be located a minimum of 3 feet from the conservation easement to allow for installation, maintenance and additional plantings.

Open Space
Under this Amendment, the approved open space shown as 3.6 acres remains unchanged.

Landscaping
As revised, the landscaping consists of a mix of trees, shrubs, groundcover and container plantings. Beech trees will be added to the conservation easement to adequately and effectively screen the retaining wall from adjacent residential properties south of the site. Additional landscaping has been added near the site's driveway entrance on Brooke Lane to screen the glare of vehicular headlights from the residential properties opposite Brooke's Lane. The lighting remains adequate and ensures the safety for residents and visitors either walking or driving onto the site.

Recreational Facilities
The previous approved site plan included a small clubhouse lap pool and sitting areas. This Amendment eliminates the clubhouse and pool due to the revised parking and garage configuration. Under the Recreational Guidelines, this project is exempt from required recreation facilities because it contains less than 25 single family dwelling units. However, the Applicant will place a sitting area with benches and tables onsite, which satisfies the Guidelines recommendation for sitting areas in lieu of facilities.

Pedestrian and Vehicular Systems
The vehicular circulation pattern has been redesigned to minimize vehicular and pedestrian conflicts. The rear loaded alley has been eliminated in favor of front end garages to help alleviate concerns for vehicular movements in the alley. The sidewalks continue to provide safe connection throughout the site and connect to Brookes Lane where it will meet an existing sidewalk that leads to Sangamore Road. The sidewalk adequately and efficiently integrates this site into the surrounding area. The *no right turn sign* at the site's entrance, a previous condition of approval, continues to reinforce safe pedestrian and vehicular movement from the site into the adjacent community and from MacArthur Boulevard.

2. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The structures and uses are compatible with existing and proposed adjacent development. The scale, design and orientation of the townhouse units are appropriate relative to the existing steep slopes and forested character of the Subject Property to the surrounding area. The townhouse units have been

designed to ensure compatibility with approved uses within the site and the general neighborhood. The retaining wall has been redesigned to be terraced and to be compatible and less visible from the adjacent development.

3. *The site plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

   The limits of disturbance have not changed from the original approval and continue to meet the forest conservation requirements. The approved stormwater management concept plan has been reconfirmed by the Department of Permitting Services.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 8 2013 (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, May 2, 2013, in Silver Spring, Maryland.

Françoise M. Carrier, Chair
Montgomery County Planning Board

ATTACHMENT B

Citation No. SP009

Administrative Citation
Site Plan
The Maryland-National Capital Park and Planning Commission
vs.

Name: Anne (First) Middle McCarthy (Last)
Company/Position: Brookes Lane Development Co. LLC
Address: 7508 Wisconsin Avenue, Bethesda MD 20814
Phone Number: 301 654-9300 Fax Number: 301 654-7211 Email:

Location and Description of Violation:
Address/location of site: Brookes Ridge Court

Pursuant of the M-NCPPC's authority under the Land Use Article of the Annotated Code of Maryland and Chapters 50 and 59 of the Montgomery County Code, it is formally charged that the above named defendant on April 11, 2019 (date) at the stated site location did commit the following: Failed to comply with the certified site plan and installed step in the sidewalk in front of Lot 2/3 contrary to site plan 82006022A. Failed to complete the remedials actions identified the Remedial Actions for Administrative Citation 82006022A dated August 10, 2017.

In violation of:
- ☐ Montgomery County Code, Chapter 22A
- ☒ Approval of certified site plan Plan No. 82006022A
- ☐ Montgomery County Code, Chapter 59
- ☐ Other:

* PAID 4/29/2019

Civil Fine and Compliance:
1. (a) ☒ You shall pay a fine of $ 500.00 by May 1, 2019 and complete the remedial action listed below
   (b) ☒ You shall pay a daily fine of $ 500.00 if the original fine has not been paid by May 1, 2019. The daily fine shall accrue (until the original fine is paid).
2. ☐ You shall pay a daily fine of $ _____ until the remedial action listed below is completed. This fine shall be paid within 15 days of completion of all remedial action.

Checks should be made payable to M-NCPPC and shall be paid during normal business hours at the information Counter of M-NCPPC's Montgomery Regional Office located at 8787 Georgia Avenue, 2nd Floor, Silver Spring, MD 20910, 301-495-4610. Failure to comply with this citation may result in an administrative enforcement hearing or issuance of additional citations including additional fines. You may also contest the administrative citation by requesting a hearing. If you request a hearing, you must notify the M-NCPPC Office of the General Counsel, in writing, at 8787 Georgia Avenue, Suite 205, Silver Spring, MD 20910, within 15 days of the citation. The Montgomery County Planning Board will thereafter notify you of the hearing date.

Remedial Action:

Restart the amendment to site plan. Submit all documentation so that staff is able to present the site plan amendment to the Planning Board no later than August 1, 2019. Or, comply with approved and certified site plan by July 1, 2019.

If remedial action is not completed by August 1, 2019, you shall pay a daily fine of $500.00 until the Planning Board hearing occurs.

Administrative Civil Penalty:
If the Montgomery County Planning Board finds you in violation of Chapters 50 or 59, you may be subject to an Administrative Civil Penalty. An Administrative Civil Penalty may include an additional monetary fine in addition to corrective measures.

Acknowledgment:
I sign my name as a receipt of a copy of this Administrative Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation. I have a right to request a hearing for the offense(s) charged. If I do not exercise my right to request a hearing, I agree to entry by the court judgment on affidavit for the amount of the fine.

Ann McCarthy
Defendant's Signature

4-11-2019
Date

Affirmation:
I solemnly affirm under the penalties of perjury, and upon personal knowledge or based on the affidavit, that the contents of this Administrative Citation are true to the best of my knowledge, information and belief and that I am competent to testify on these matters.

Inspector's Signature

April 11, 2019
Date

Print Name: Mark Pfefferle Phone Number: 301 495-4730 email: mark.pfefferle@montgomeryplanning.org

MONTGOMERY COUNTY P
THE MARYLAND-NATIONAL CAPITAL I


U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only
For delivery information, visit our website at www.usps.com®.
OFFICIAL USE
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Extra Services & Fees (check box, add fee as appropriate)
Return Receipt (hardcopy) $
Return Receipt (electronic) $
Certified Mail Restricted Delivery $
Adult Signature Required $
Adult Signature Restricted Delivery $
Postage
$
Total Postage and Fees
$
Sassan Gharai
Brookes Lane Development Co, LLC
7508 Wisconsin Avenue, Fourth Floor
Bethesda, MD 20814
8/10/17
Postmark Here
Sheila
PS Form 3800, April 2015 PSN 7530-02-000-9047
See Reverse for Instructions
7015 0640 0006 7540 9569

August 10, 2017

Sassan Gharai
Brookes Lane Development Company, LLC
c/o SGA Companies Ltd
7508 Wisconsin Avenue
Fourth Floor
Bethesda, MD 20814

Re: Site Plan 82006022A
High Acres
Administrative Citation

Sent by Certified Mail

Dear Mr. Gharai:

This letter and the attached Administrative Citation directs the resolution of the outstanding violation to Site Plan 82006022A for the site plan known as High Acres.

On April 28, 2017 and May 2, 2017, the Site Plan Inspector issued Notices of Non-Compliance for failure to comply with site plan 82006022A. Each Notice of Non-Compliance required compliance with the certified site plan within 30 days. None of the violations identified in the two Notices of Non-Compliance were corrected. On May 16, 2017, you, or your representatives, were a site plan application checklist to bring the property into compliance. As of this date no application has been submitted on your behalf and the project remains in violation of the certified site plan. Thus, the Montgomery County Planning Department is issuing the attached Administrative Citation because the High Acres site plan is not in compliance with certified site plan 82006022A. The Administrative Citation includes a $500 civil fine and a $500 daily fine if the remedial actions are not completed by deadlines identified in the citation.

If you choose to remediate the violation by installing the landscaping and site plan amenities as shown in plan number 82006022A you must contact the Site Plan Inspector to schedule a final

inspection. If you have any questions concerning the Administrative Citation, please contact me at 301 495-4730, or mark.pfefferle@montgomeryplanning.org.

Sincerely,

Mark Pfefferle
Chief, Development Applications and Regulatory Coordination
M-NCPPC, Montgomery County Planning Department

CC: Greg Nichols, DPS

Attachments:

Administrative Citation No. SP005
Notice of Non-Compliance dated 4/28/17
Notice of Non-Compliance dated 5/2/17

MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Citation No. SP005

Administrative Citation - Site Plan
The Maryland-National Capital Park and Planning Commission
vs.

Name: Sas (First) Middle Gharai (Last)
Company/Position: Brookes Lane Development Co, LLC
Address: 7508 Wisconsin Avenue, Bethesda, MD 20814
Phone Number: 301 654-9300 Fax Number: 301 654-7211 Email: sas@sgacos.com

Location and Description of Violation:

Address/location of site: Brookes Ridge Court

Pursuant of the M-NCPPC's authority under the Land Use Article of the Annotated Code of Maryland and Chapters 50 and 59 of the Montgomery County Code, it is formally charged that the above named defendant on **August 10, 2017** at the stated site location did commit the following: Failed to install the landscaping per the certified site plan and installed a step in the sidewalk in front of Lot 2/3 contrary to 82006022A.

In violation of:

- ☐ Montgomery County Code, Chapter 22A
- ☒ Approval of certified site plans 82006022A
- ☐ Montgomery County Code, Chapter 59
- ☐ Other: _____

Civil Fine and Compliance:

1. (a) ☒ You shall pay a fine of $500.00 by August 31, 2017 and complete the remedial action listed on the accompanying page.
   (b) ☒ You shall pay a daily fine of $50.00 if the original fine has not been paid by August 31, 2017. The daily fine shall accrue until the original fine is paid.
2. ☒ If you fail to complete either of the remedial actions listed on the accompanying page you shall pay a daily fine of $500.00 until the corrective action is being completed. This fine shall be paid within 15 days of completion of the chosen remedial action.

Checks should be made payable to M-NCPPC and shall be paid during normal business hours at the information Counter of M-NCPPC's Montgomery Regional Office located at 8787 Georgia Avenue, 2nd Floor, Silver Spring, MD 20910, 301-495-4610. Failure to comply with this citation may result in an administrative enforcement hearing or issuance of additional citations including additional fines. You may also contest the administrative citation by requesting a hearing. If you request a hearing, you must notify the M-NCPPC Office of the General Counsel, in writing, at 8787 Georgia Avenue, Suite 205, Silver Spring, MD 20910, within 15 days of the citation. The Montgomery County Planning Board will thereafter notify you of the hearing date.

Remedial Action:

Please see attached sheet for the remedial actions associated with this Administrative Citation.

Administrative Civil Penalty:

If the Montgomery County Planning Board finds you in violation of Chapters 50 or 59, you may be subject to an Administrative Civil Penalty. An Administrative Civil Penalty may include an additional monetary fine in addition to corrective measures.

Acknowledgment:

I sign my name as a receipt of a copy of this Administrative Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation. I have a right to request a hearing for the offense(s) charged. If I do not exercise my right to request a hearing, I agree to entry by the court judgment on affidavit for the amount of the fine.

Defendant's Signature Date

Affirmation: SENT VIA CERTIFIED MAIL

I solemnly affirm under the penalties of perjury, and upon personal knowledge or based on the affidavit, that the contents of this Administrative Citation are true to the best of my knowledge, information and belief and that I am competent to testify on these matters.

Inspector's Signature 8-10-17 Date

Print Name: Mark Pfefferle Phone Number: 301 495-4730

Remedial Action for Administrative Citation SP005
August 10, 2017

1. Install all landscaping material and amenities as shown on certified site plans 82006022A sheets LA-1 an LA-2.
2. Remove the step in the sidewalk between lots 2 and 3 and comply with certified site plan 82006022A.
3. Work must be completed and inspected by the Planning Board's inspection staff by September 30, 2017.

Or

1. Submit a site plan amendment that addresses the site plan violations including but not limited to the landscaping, site amenities, and step in the sidewalk between lots 2 and 3.
2. Site plan amendment must be submitted to the Planning Department's Development Application and Regulatory Coordination division and accepted by the Planning Department to start the review of the site plan amendment no later than September 8, 2017.

MONTGOMERY COUNTY DEPARTMENT OF PERMITTING SERVICES SITE PLAN ENFORCEMENT SECTION 255 Rockville Pike, 2nd Floor Rockville, MD 20850-4166	**NOTICE OF NON-COMPLIANCE**

FOR MONTGOMERY COUNTY, MARYLAND the undersigned issuer; being duly authorized, states that:

On 5/02/17, the site plan recipient of this NOTICE: **Michael Schecter**, who represents the site plan applicant/ defendant, **Sas Gharai / SGA Architects**.

is notified that Non-Compliant conditions exist under Section 8-26 (g) (Compliance with Zoning Regulations) and Section 8-50-41 (Enforcement) of the Montgomery County Code regarding the following:

M-NCPPC Certified Site Plan # 82006022A **and Project Name:** High Acres.

The Non-Compliance is described as:

Recent pour of the 5' concrete sidewalk in front of lot 3 includes two (2) steps which are not marked on Certified Site Plan. Also, two (2) retaining walls on southern side of property are currently built too high as presently constructed. Taller wall measures 14' at highest point (13' max), lower wall measures 6' at highest point (4' max) per Certified Site Plan notes on page C-300.

The following corrective Compliance action(s) must be performed in: ☒ **30-Days** ☐ **60-Days**

Construct concrete sidewalk in front of lot 3 and retaining walls along southern property line in accordance with Certified Site Plan.

Failure to comply with this Notice of Non-Compliance may result in the issuance of one or more $500.00 civil citations.

☐ **A "STOP WORK ORDER" is issued this date at the above referenced project: All construction activities on these premises must cease immediately. Only those activities required to correct the non-compliance may continue. Permission from the Site Plan Enforcement Inspector is required to resume construction.**

Issued by:	Matthew Makowski		5/02/17	240-401-9237
	Please Print Name	Signature	Date	Phone
Received by:	Joseph M. Reiss		02 May 17	(202) 439-6163
	Please Print Name	Signature	Date	Phone

Call **DPS SPZE Inspector Matt Makowski** at 240-401-9237 to schedule a re-inspection.

☐ **Sent by e-mail Mail on 5/02/17. Discussed findings on site on 5/01/17 with Joe Reiss**

(Recipients signature acknowledges receipt of a copy of this notice of non-compliance only.) If you wish to contest/dispute this Notice of Non-Compliance, contact the DPS Site Plan Enforcement Manager Greg Nichols at 240-777-6278.
You have the right to a hearing before the Planning Board if you dispute this Notice.

MONTGOMERY COUNTY DEPARTMENT OF PERMITTING SERVICES SITE PLAN ENFORCEMENT SECTION 255 Rockville Pike, 2nd Floor Rockville, MD 20850-4166	**NOTICE OF NON-COMPLIANCE**

FOR MONTGOMERY COUNTY, MARYLAND the undersigned issuer; being duly authorized, states that:

On 4/28/17, the site plan recipient of this NOTICE: **Michael Schecter**, who represents the site plan applicant/ defendant, **Sas Gharai / SGA Architects**.

is notified that Non-Compliant conditions exist under Section 8-26 (g) (Compliance with Zoning Regulations) and Section 8-50-41 (Enforcement) of the Montgomery County Code regarding the following:

M-NCPPC Certified Site Plan # 82006022A **and Project Name:** High Acres

The Non-Compliance is described as:

Current on-site landscape installations do not match approved landscape plan.

The following corrective Compliance action(s) must be performed in: ☒ **30-Days** ☐ **60-Days**

Install all on-site landscaping to match Certified Site Plan 82006022A, page LA-1

Failure to comply with this Notice of Non-Compliance may result in the issuance of one or more $500.00 civil citations.

☐ **A "STOP WORK ORDER" is issued this date at the above referenced project: All construction activities on these premises must cease immediately. Only those activities required to correct the non-compliance may continue. Permission from the Site Plan Enforcement Inspector is required to resume construction.**

Issued by: Matthew Makowski (Please Print Name) _____ (Signature) 4/28/17 (Date) 240-401-9237 (Phone)

Received by: Joseph M. Reiss (Please Print Name) Joseph M. Reiss (Signature) 28 Apr 17 (Date) (202) 439-6153 (Phone)

SIGNED ON BEHALF OF MICHAEL SCHECTER

Call **DPS SPZE Inspector Matt Makowski** at 240-401-9237 to schedule a re-inspection.

☒ **Sent by e-mail to Michael Schecter, Joe Reiss, Colleen Duggen & James Andrews on** ~~4/28/17~~ 5/1/17

(Recipients signature acknowledges receipt of a copy of this notice of non-compliance only.) If you wish to contest/dispute this Notice of Non-Compliance, contact the DPS Site Plan Enforcement Manager Greg Nichols at 240-777-6278.
You have the right to a hearing before the Planning Board if you dispute this Notice.

ATTACHMENT C

THOMAS PATRICK RYAN*^
ROBERT B. HETHERINGTON*
DAVID L. RUBINO*
RICHARD W. EVANS*^
JONATHAN R. CLARK*
MICHAEL B. DE TROIA*
AMY LEETE LEONE*^

JOSEPH S. McCARTHY
(1918-1983)

CHARLES E. WILSON, JR
(1941-2012)

McCARTHY WILSON LLP
www.mcwilson.com

EVANSR@MCWILSON.COM

RONALD W. COX, JR. *^^
MARISA R. SCHOLLAERT*
SEAN V. WERNER*
JEFFREY W. STICKLE*
KATHRYN E. BONORCHIS*^
KATHLEEN A. FAWCETT*
EVELYN R. BUTLER*
LAURA L. RUBINO*
PAUL J. HAVENSTEIN*
CARLY A. BROWN*
JAMES G. FEGAN, III*
STEPHEN A. CRUZ*
CLAUDETTE A. ERICKSON*
JORDAN M. McINTYRE*

*ADMITTED IN MD | ^ADMITTED IN DC
^ADMITTED IN VA | ^ADMITTED IN NH

July 2, 2019

HAND DELIVERY
Montgomery County Planning Department M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: High Acres Development, 6450 Brookes Lane, Bethesda, MD 20814:
Site Plan Amendment 82006022B

To Whom It May Concern:

This office represents Brookes Lane Development Company, LLC. In accordance with the agreement reached between Brookes Lane Development Company, LLC, Edwina Rogers, and Dr. Greg Neimeyer, enclosed, please find the letter from Ms. Rogers and Dr. Neimeyer withdrawing any and all objections raised with regard to the above referenced development, including but not limited to those raised with regard to the proposed Site Plan Amendment 82006022B. Martin Protas is counsel for Ms. Rogers, and he is copied on this correspondence as noted below.

Please confirm your receipt and filing of this correspondence. Should you have any questions or require any additional information at this time, please do not hesitate to contact me.

Very truly yours,

Richard W. Evans

RWE/jgf
Enclosure
CC: Martin Protas, Esquire (via email only)
Margaret F. Ward, Esquire (via email only)
Michael Schecter (via email only)

Montgomery County Planning Department M-NCPPC
8787 Georgia Avenue
Silver Spring, MD
20910

Dear Ms. Reilly,

RE: High Acres Development, 6450 Brookes Lane, Bethesda, MD 20814: Site Plan Amendment (82006022B)

We hereby withdraw any and all objections that we may have at any time raised with regard to the High Acres Development (also known as Brookes Ridge) located at 6450 Brookes Lane, Bethesda MD 20814 and in particular to any objections that we may have raised with regard to the proposed Site Plan Amendment (82006022B) (the "**Site Plan Amendment**"). We withdraw our request for a public hearing.

Sincerely

Edwina Rogers and Dr. Greg Neimeyer

From:	Reilly, Kathy
To:	Pfefferle, Mark; Fuster, Marco
Subject:	FW: More Flooding from Brookes Ridge Townhomes in Forest Conservation Easement down to MacArthur Boulevard
Date:	Thursday, March 21, 2019 2:24:22 PM
Attachments:	image1.jpeg

FYI

From: Edwina Rogers <edwinarogers@surryhill.us>
Sent: Thursday, March 21, 2019 1:14 PM
To: Bharat B. Montgomery Co Inspector Patel <bharat.b.patel@montgomerycountymd.gov>; info@reishmangroup.com; Edwina Rogers JRCDC Law Firm <edwinarogers@jrcdc.us>
Cc: bergdavidr@gmail.com; Mark Pffeferle Montgomery County Parks And Planning <mark.pffeferle@montgomeryplanning.org>; Reilly, Kathy <kathy.reilly@montgomeryplanning.org>; Peck, Stephen <Stephen.Peck@montgomeryplanning.org>; Andrew Kohler Montgomery County Water Plan Review <andrew.kohler@montgomerycountymd.gov>; Brian Keeler Site Plan Inspection Montgomery County <Brian.Keeler@montgomerycountymd.gov>; Christina Montgomery County Contreras <Christina.Contreras@montgomerycountymd.gov>; Chi Wong DPS Complex Structures Inspections Montgomery Co MD Commercial <chi.wong@montgomerycountymd.gov>; Christopher Allen Commercial Inspector Montgomery County MD Retaining Wall <christopher.allen@montgomerycountymd.gov>; douglad.dye@montgomerycountymd.gov; Vikrum Mathur With Councilmember Berliner Contgomery County Construction <vikrum.mathur@montgomerycountymd.gov>; Sergio Hurtado Permiting Inspector Montgomery County Permiting <sergio.hurtado@montgomerycountymd.gov>; clarence.snuggs@montgomerycountymd.gov; David Burch Montgomery County MD Residential Jnspection <david.burch@montgomerycountymd.gov>; Hisel-McCoy, Elza <Elza.Hisel-McCoy@montgomeryplanning.org>; Hadi Mansouri Montgomery County Maryland DPS <hadi.mansouri@montgomerycountymd.gov>; Matthew Makowski Montgomery County DPS <Matthew.Makowski@montgomerycountymaryland.gov>; Jacqueline Robertson Montgomery County MD Permiting Technician Friend DPS <jacqueline.robertson@montgomerycountymd.gov>; Garcia, Joyce <Joyce.Garcia@mncppc-mc.org>; MCP-Chair <mcp-chair@mncppc-mc.org>; diane.jones@montgomerycountymd.gov; Gail Lucas <Gail.Lucas@montgomerycountymd.gov>; Matthew Makowski Montgomery County Planning <Matthew.Makowski@montgomerycountymd.gov>
Subject: More Flooding from Brookes Ridge Townhomes in Forest Conservation Easement down to MacArthur Boulevard

Dear Department of Permitting Services, Maryland-National Capitol Parks and Planning Commission and Mr. Patel:

I reported two weeks ago in writing that the flood waters are still coming over the two silt fences towards my house and flooding the forest conservation easement and MacArthur Boulevard with orange construction sediment. This is the same as what occurred in 2014, 2015, 2016, 2017, and 2018. I personally spend over $140,000 in flood control measures including an over 100 foot long ditch, berms, swales, catch basins, speed drains and approximately 65 trees in an effort to protect my home from the floods and the sediment and the consequent mold. But the waters keep coming from the Brookes Ridge Townhome properties.

There have been many documented violations of the laws that are there to protect us all and stop work orders but the problem persists, as you can see from the photos and video. We are in our sixth year of these violations of the laws.

The developer seriously damaged my property, removed fences, trees and stone walls, and even refused to restore the easement area, as required by the easement agreement, leaving all of the costs and reconstruction to be born by me. We are checking around Brookmont to find our missing approximately 30 foot dogwood tree and the stones from the 1956 retaining wall. Please let us know if these items have been dumped somewhere or repurposed at the Townhomes.

Any enforcement you have legal access to would be much appreciated. I know DPS was surprised that the builder refused to install the required sediment control trap (the heart of the plan) as required by the approved plan, and you Mr. Patel personally wrote numerous violations over these five plus years. The retaining wall that was built to hold up the eleven townhomes (initially built without a permit) failed all inspections in 2014, 2015, 2016, 2017, 2018 (and also was built higher than approval by Parks and Planning).

Were the Brookes Ridge perspective buyers and town homeowners legally required to be informed regarding the ongoing challenges associated with their retaining wall that could compromise the very foundation and their property value? Does the developer (Brookes Lane Development LLC), general contractor (Joe Reiss) and realtors (Reishman Group) have legal obligation for disclosure? I would want to know that my new townhome was sitting on a compromised retaining wall that had failed inspections due to structural issues and was cracking vertically throughout. Someone needs to draw their attention to the public records at DPS (commercial and residential) and MNCPPC so that they are fully informed regarding their property and could had paid accordingly.

The only licensed builder of the townhomes swore under oath subject to penalty of perjury that he left the project in 2015 (Hal Stewart with Halco Homes) and since then the project has been under the control of an unlicensed builder, Joe Reiss. The Developer, Michael Schecter, has only one primary duty and that was to hire an experienced qualified licensed new home builder - he did not. Mr. Schecter wrote me in 2016 to tell me about his new General Contractor Joe Reiss. I was exasperated to check and see that Joe Reiss does not have a license to build new homes in Maryland. The purcheres of the townhomes may not even know that their new home warranties cannot come from an unlicensed builder. In January 2018 DPS issued a stop work order due to the townhomes not having a licensed builder. Michael Schecter filed papers stating that he got Halco Homes back though I only see Joe Reiss there. It is easy to prove that the unqualified licensed builder quit in 2015 (did not get paid for the retaining wall per him and could not get steel structures straight, according to Schecter). Halco had only built single family homes and never a complex set of townhomes on the side of a cliff so he appears to have been overmatched by the scale and complexity of the project with its many downstream consequences.

My home built in 2006 never had any flood waters rushing over the property until the builders removed the trees and stacked a 40 foot mound of dirt at the top of a hill exactly where the sediment control trap was required to be installed - where all stormwater was being directed.

Surely the floods today would require a new notice of violation to add to the many others. The spring rains have not even arrived yet. We are just getting started. The builder installed the five feet of dirt and rocks to hide the fact that the lower retaining wall was actually 9 feet tall, not 4 feet as stipulated legally by MNCPPC. We would be better off if they had to remove all the dirt they placed there in May 2017 after the wall height violation notice in April 2017. (I have the before, during and after photos).

Here is a video and a photo from just now. More waterfalls carrying sediment, breaching the silt fences and, again heading towards my home. I will add these to the other photos of the same kind. Now over 1000 of them across the course of more than 5 years.

Is there no recourse in relation to remediation or compliance? The Brookmont Civic League after filing detailed comment letters was promised a hearing at Maryland-National Capitol Parks and Planning Commission in January 2018. May we be told at this time the date for the hearing?

Thank you in advance for attending to these concerns. I do appreciate it.

Kind Regards,

Edwina Rogers, JD
6507 Brookes Hill Court
Bethesda, MD 20816
+1 202 674 7800
edwinarogers@surryhill.us

Reilly, Kathy

From: Reilly, Kathy
Sent: Friday, January 05, 2018 2:55 PM
To: David Berg
Cc: Kronenberg, Robert; Pfefferle, Mark; Hisel-McCoy, Elza; Dumais, Nicholas
Subject: RE: new comments on Brooks Ridge ER amendment

Dear Mr. Berg,

Staff is in receipt of your email below on the High Acres Site Plan Amendment 8-2006022A. The Applicant submitted a Site Plan Amendment application for staff review. The limited site plan amendment was returned to the applicant on December 8, 2017, due to incomplete information that would allow staff to review the amendment. The returned limited site plan amendment instructed the Applicant to undertake the following:

- revise the notice and resend the corrected notice to the community to include the proposed privacy fence and to note the fence on all the required posted signs along the property's boundaries;
- upload sheets showing the revised planting schedule – including plant type and quantities;
- submit a revised Landscape Plan that includes details on privacy fence materials; and
- upload the approved Forest Conservation Plan and show location of all proposed privacy fences on the site.

As noted, the Applicant was required to send another notice to the community because an earlier notice did not include the installation of a privacy fence. Thus, you have received another notice based on the inclusion of this privacy fence. To date, the Applicant has not submitted any revisions on this limited site plan amendment for staff to review.

To ensure that you receive the documents you are seeking and to more efficiently process your request staff is asking that you submit a Maryland Public Information Act (MPIA) request to
Mark Pfefferle, Chief, Development Application Regulatory Coordination. Your request can be made via email with a bulleted list of each document being requested. Your email request should include MPIA in the title block. You can reach Mark at mark.pfefferle@montgomeryplanning.org.

Based on the community's request, the Planning Board will be holding a public hearing on this submitted limited site plan amendment. However, no date has been scheduled for a public hearing. Since this application will be heard by the Planning Board, any community comments on this site plan amendment application are not limited to the 15-day review period stated in your most recent notice.

Mr. Pfefferle is copied on this email and will be expecting your MPIA request. Finally, I was out of the office from December 13, 2017 through January 1, 2018 as noted in both my voice and email messages for this period.

Thank you,
Kathy Reilly

Kathleen A. Reilly, AICP
Coordinator, Area 1
8787 Georgia Avenue
Silver Spring Md 20910
Email: kathy.reilly@montgomeryplanning.org
(t) 301- 495-4614 (f) 301 -495- 1304

EXCELLENCE
M-NCPPC90

From: David Berg [mailto:bergdavidr@gmail.com]
Sent: Tuesday, January 02, 2018 6:05 PM
To: Reilly, Kathy <kathy.reilly@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Cc: Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; 'Peter Hobby' <phobby@gmail.com>; 'Brad Northrup' <northrup.brad@gmail.com>
Subject: new comments on Brooks Ridge ER amendment

Ms. Reilly and Mr. Hisel-McCoy –

I've attached a letter conveying comments on the latest amendments to the Brooks Ridge project. As I note in the letter, we found the timing of our receipt of the latest amendments inconsiderate and inopportune. We certainly hope that the Planning Board and its staff agree with us that in order for the opportunity for public input to be meaningful, the timing should not limit our opportunity to comment to the brief period that includes two weekends, Christmas, New Year's Eve, and New Year's Day. The timing was absurd.

In our last letter, we requested additional information about the violations to which the Brooks Ridge developers were responding and the details of the proposed remedies. There has been deafening silence from the Planning Board staff ever since, so our comments are further limited in scope and detail.

Moreover, it is regrettable that no one from the Planning Board staff was able to respond to phone calls during the entire public comment period – through today.

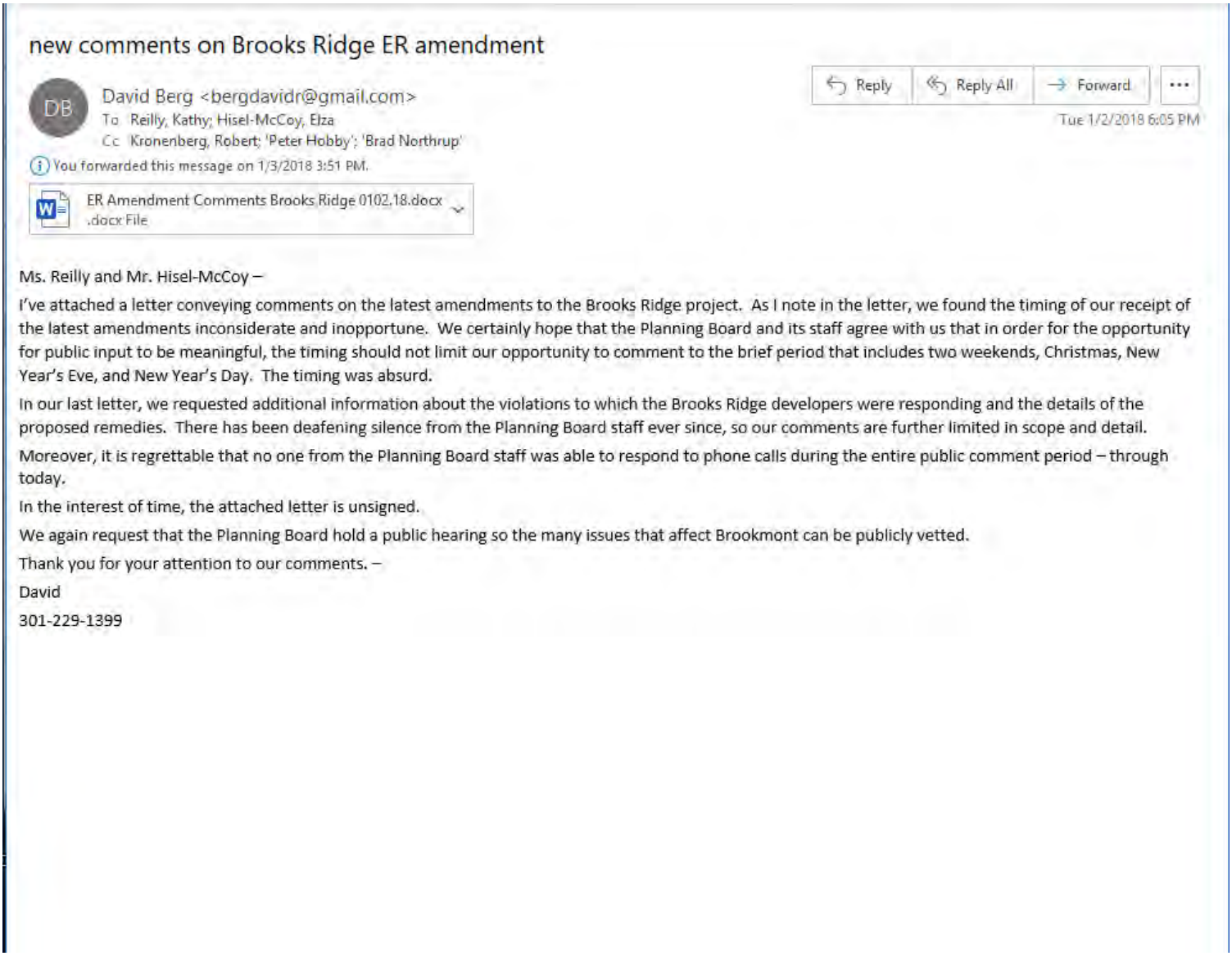
In the interest of time, the attached letter is unsigned.

We again request that the Planning Board hold a public hearing so the many issues that affect Brookmont can be publicly vetted.

Thank you for your attention to our comments. –

David

301-229-1399



new comments on Brooks Ridge ER amendment

DB David Berg <bergdavidr@gmail.com>
To Reilly, Kathy; Hisel-McCoy, Elza
Cc Kronenberg, Robert; 'Peter Hobby'; 'Brad Northrup'

Reply | Reply All | Forward | ...
Tue 1/2/2018 6:05 PM

You forwarded this message on 1/3/2018 3:51 PM.

ER Amendment Comments Brooks Ridge 0102.18.docx
.docx File

Ms. Reilly and Mr. Hisel-McCoy –

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Thank you for your attention to our comments. –

David

301-229-1399

4301 Maryland Avenue
Bethesda, MD 20816
January 2, 2018

Kathleen A. Reilly, AICP
Coordinator
Area 1
Montgomery County Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Kathy Reilly and Elza Hisel-McCoy:

1. Proposed remedy #9: The latest proposal is better than the previous version in that the developers now plan to plant trees in the conservation area behind one of the homes on Brookes Hill Court. However, the project developers plan

to plant (a) only two trees between MacArthur Boulevard and the wall, (b) no trees in the 15-20' wide cleared area at the base of the wall between MacArthur Boulevard and the wall, and (c) no trees in the triangular storm sewer easement area where the developer altered the topography and cut down every growing thing to install the stormwater management system. These three deficiencies are very important to Brookmont, over which the project hovers, and which suffers from the adverse effects of reduced tree cover on the developers' property. There is no evidence on the plan to show that additional hollies and other trees/bushes that hold their leaves over the winter will be planted.

2. Proposed remedy for the lack of visual screening on the left hand side of the driveway as you enter the developers' property: Although the developer now plans to plant 5 trees in this area, which is good, the plans do not address the need to reduce the escape of light greater than the Planning Board's specification of 1 foot candle. This problem is very important to resolve, as despite the tall fence installed along the property line in this area, the on-site street lighting is taller than the fence and very obtrusive. Also, no trees are proposed to be planted on the old driveway, which is no longer in use. Trees should be planted there, too, including evergreens.
3. Lack of proposed remedy to prevent runoff from the developers' property from entering private properties downhill of the developers' property in Brookmont. This problem is very important to resolve, as Brookmont homes continue to suffer damage from the Brooks Ridge property's runoff.
4. Lack of a clear solution to collecting and managing stormwater discharged from the Brooks Ridge townhomes. This problem is very important to resolve for the same reason as in our comment #3.

While we thank you for the opportunity to submit these comments, the timing of the opportunity made a sham of the public review process. We also are concerned that we were unable to reach anyone in your office during the public comment period and because we were unable to obtain a complete written or electronic listing of the violations. Our recent comments on the many problems with this project are completely unresolved, as well. All of this makes us worry that we have not had a legitimate opportunity to comment on all of the current issues.

We encourage the Planning Board to hold a public hearing so that it and the community can further explore solutions to the many remaining issues associated with and caused by the High Acres project, as well as any violations and issues we are not yet aware of, that continue to affect Brookmont.

We again ask that we be offered an opportunity to see the violations that county agencies have found and the proposed remedies to those violations, and we note that we have not received a response from you regarding our previous request to see the violations and proposed remedies. We wish to comment on any violations and proposed remedies that we have not yet seen and offer to work with the county to resolve these issues and concerns.

Sincerely,

David Berg
Board Member
On behalf of the Civic League of Brookmont and Vicinity

cc: Peter Hobby, President, and Brad Northrup, Vice President
Robert Kronenberg

Reilly, Kathy

From: David Berg <bergdavidr@gmail.com>
Sent: Friday, December 22, 2017 4:04 PM
To: Hisel-McCoy, Elza; Reilly, Kathy; Kronenberg, Robert
Subject: re High Acres

Folks –

On 12/20, I received a communication from the High Acres project's engineers (Maddox) noticing the opportunity to comment on their latest proposed changes. The date it was sent was 12/18; the mailman left it in my mailbox and didn't give me a chance to sign for it. Fifteen days from 12/18/17 is 1/1/18. If for MNCPPC and the Planning Board, Christmas week is an acceptable time period for the public to have an opportunity to comment, I demur! This is ridiculous.

What makes it even more ridiculous, though, is that despite my request for the following materials, I have not received a single one of them: (a) the letter you all sent to the High Acres project to which they are responding; (b) the violations High Acres is responding to; (c) the last letter you all sent to High Acres to which they responded a few weeks ago; and (d) the violations High Acres responded to a few weeks ago. I also have received no indication from you all responding to the several concerns I expressed on behalf of the Civic League of Brookmont and Vicinity in our last comment letter. Have you all supported any of these concerns? Do you all plan to support any of these concerns?

The opacity of this process rivals the ridiculous timing. I've become deeply concerned that the Planning Board staff is pushing this project to completion without a fair and open public comment process and without addressing the concerns of Brookmont, which we first raised in public testimony at a Planning Board meeting years ago. At least that is the appearance you all have created.

I again request that you make the requested documents available and that the Planning Board hold a public hearing. The public is being poorly served at this point. –

David

301-229-1399 (cell: 301-335-4350)

PS I will be out of town until January 1, 2018, so please call my cell is you need to reach me – or send an email.

Reilly, Kathy

From: Makowski, Matthew <Matthew.Makowski@montgomerycountymd.gov>
Sent: Wednesday, December 13, 2017 9:24 AM
To: Greg Neimeyer
Cc: Reilly, Kathy; Makowski, Matthew
Subject: RE: Question on High Acres - Brookes Ridge Townhomes

Mr. Neimeyer,

Thank you for your questions regarding any violations associated with the High Acres development, M-NCPPC Site Plan #82006022A. It appears that Ms. Reilly has identified the current Site Plan violations in her previous response to you. These are the only M-NCPPC violations that I am aware of for that site. To my knowledge, I can say that the height issue for the retaining walls have been addressed by the developer. The outstanding items that M-NCPPC has cited the developer are for a landscaping and stair issue.

As far as any sediment control or relative residential building issues, more information can be obtained through the Public Information Request Act. The additional questions you have asked are not in my purview. In the meantime, please use the link provided below.

https://permittingservices.montgomerycountymd.gov/DPS/pdf/InformationRequestForm.pdf

Thank you,

Matt Makowski
Zoning & Site Plan Enforcement Inspector
Montgomery County Government
Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, MD 20850-4166
240-401-9237

From: Greg Neimeyer [mailto:neimeyer@email.gwu.edu]
Sent: Tuesday, December 12, 2017 3:12 PM
To: Makowski, Matthew <Matthew.Makowski@montgomerycountymd.gov>
Subject: Fwd: Question on High Acres - Brookes Ridge Townhomes

Matthew:

Please see the email below. Kathy Reilly referred me to you. Are you aware of any violations regarding this townhome development? And if so may I get copies?

Do you know how we can get the new DPS SWM plan that is referenced in the request for approval of Amendments to the site plan?

We have been asked to file comments on the requested amendments and need the basic information in order to reply.

Sincerely,

Dr. Greg Neimeyer

From: "Reilly, Kathy" <kathy.reilly@montgomeryplanning.org>
Date: December 12, 2017 at 11:27:27 AM EST
To: "neimeyer@email.gwu.edu" <neimeyer@email.gwu.edu>
Cc: "Wright, Gwen" <gwen.wright@montgomeryplanning.org>, "Pfefferle, Mark" <mark.pfefferle@montgomeryplanning.org>, "Hisel-McCoy, Elza" <elza.hisel-mccoy@montgomeryplanning.org>, "Kronenberg, Robert" <robert.kronenberg@montgomeryplanning.org>, "Fuster, Marco" <marco.fuster@montgomeryplanning.org>, "Peck, Stephen" <stephen.peck@montgomeryplanning.org>, mark.etheridge <mark.etheridge@montgomerycountymd.gov>, "'Matthew.Makowski@montgomerycountymd.gov'" <Matthew.Makowski@montgomerycountymd.gov>, "Jon-Edward.Thorsell@wsscwater.com" <Jon-Edward.Thorsell@wsscwater.com>
Subject: FW: Question on High Acres - Brookes Ridge Townhomes

Dear Dr. Niemeyer,

Your email requesting information for Site Plan Amendment (82006022B) for the High Acres development was referred to me by Ms. Gwen Wright, Planning Director.

The Applicant was issued violations on April 28, 2017, and May 2, 2017, by Maryland-National Capital Park and Planning Commission (M-NCPPC) site inspection staff for failure to comply with development conditions of the previously approved Site Plan Amendment 82006022A. Copies of the violations are attached to this email. The violations noted by the M-NCPPC inspection staff are as follows:

- Current on-site landscaping installations do not match approved landscape plan; and
- Recent pour of 5' concrete sidewalk in front of Lot 3 includes 2 steps which are marked on the Certified Site Plan. Also, two retaining walls on southern side of property are currently built too high as presently constructed. Tall wall measures 14 feet at highest point (13 feet max) lower wall measures 6 feet at highest point (4 feet) per Certified Site Plan notes on page C-300).

The Applicant is addressing these remaining violations by submitting a Site Plan Amendment (82006022B) seeking Planning Board review and approval for these changes which is currently under review by M-NCPPC staff. For your review, the submittals for SPA 82006022B can be found on our website at www.montgomeryplanning.org

- Go the website and click the tab which says Development;
- Development Applications page will appear;
- On the Development Application page in the white box type the application number 82006022B;
- The next page will show the submitted information including plans for this amendment application.

The Department of Permitting Services (DPS), Stormwater Management Division, coordinates and approves all stormwater management plans for any development in the county. A stormwater management plan (#215294) for this development was previously approved by DPS in November 2005. Mark Etheridge at DPS oversees stormwater management approvals. He can be reached at (240) 777-6338 or at Mark.Etheridge@montgomerycountymaryland.gov. Additionally, Matt Makowski at DPS is the site plan inspector for this Project. He can be reached at (240) 401-9237 or at Matthew.Makowski@montgomerycountymaryland.gov

WSSC maintains all copies of their plans. Mr. Jon-Edward Thorsell is the M-NCPPC contact for questions related to development. Mr. Thorsell can be reached at: Jon-Edward.Thorsell@wsscwater.com

I hope this information addresses the concerns mentioned in your email. If you have additional questions on this this proposed amendment 82006022B, free feel to contact me. I will be on leave beginning December 13, 2017 and returning on January 2, 2018. If you have any questions during that time, please contact Elza Hisel-McCoy at (301) 495-2115.

Thank you,
Kathy Reilly

Kathleen A. Reilly, AICP
Coordinator, Area 1
8787 Georgia Avenue
Silver Spring Md 20910
Email: kathy.reilly@montgomeryplanning.org
(t) 301- 495-4614 (f) 301 -495- 1304

From: Hisel-McCoy, Elza
Sent: Friday, December 08, 2017 2:06 PM
To: Reilly, Kathy <kathy.reilly@montgomeryplanning.org>
Subject: FW: Question on High Acres - Brookes Ridge Townhomes
Importance: High

Elza Hisel-McCoy, Assoc. AIA, LEED-AP
Master Planner, Regulatory Supervisor
Area One
Montgomery County Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910
301.495.2115, elza.hisel-mccoy@montgomeryplanning.org
montgomeryplanning.org

From: Wright, Gwen
Sent: Friday, December 08, 2017 10:55 AM
To: Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Pfefferle, Mark <mark.pfefferle@montgomeryplanning.org>
Subject: FW: Question on High Acres - Brookes Ridge Townhomes
Importance: High

Does anyone know about this issue?

Gwen Marcus Wright
Planning Director | Montgomery County Planning Department
8787 Georgia Avenue | Silver Spring, Maryland 20910
gwen.wright@montgomeryplanning.org
301-495-4500 office | 571-329-3053 cell

From: Greg Neimeyer [mailto:neimeyer@email.gwu.edu]
Sent: Friday, December 08, 2017 10:45 AM
To: Wright, Gwen <gwen.wright@montgomeryplanning.org>
Subject: Question on High Acres - Brookes Ridge Townhomes

Dear Mr. Wright:

I called Montgomery County Planning and was told you are the right person to direct my questions.

I live in Brookmont and plan to file comments on the amendments but certain important information seems to be missing from the public file.

1. What is the "violation" that the amendments are trying to correct?

2. There is a short reference to a new "Storm Water Management Plan" with DPS and one with WSSC. May I get copies of these plans.

We have suffered tremendous flooding and sediment run off to the point that we have to constantly call to get the storm water drain cleaned out at the corner of Maryland Avenue and MacArthur Blvd. We have been calling Department of Transportation. This have been a problem for four years now as there has been a large loose mound of dirt sitting at the top of a hill where the storm water trap was due to be installed per the sediment control plan. The trap was never installed even though numerous notice of violations were issued.

Kindly,

Greg Neimeyer, Ph.D.
Department of Psychology
The George Washington University
212 Psychology Building
2125 G St. NW
Washington, DC 20052
Phone +1 202 430 1888

Reilly, Kathy

From: Greg Neimeyer <neimeyer@email.gwu.edu>
Sent: Tuesday, December 12, 2017 12:48 PM
To: Reilly, Kathy
Cc: Wright, Gwen; Pfefferle, Mark; Hisel-McCoy, Elza; Kronenberg, Robert; Fuster, Marco; Peck, Stephen; mark.etheridge; Matthew.Makowski@montgomerycountymd.gov; Jon-Edward.Thorsell@wsscwater.com
Subject: Re: Question on High Acres - Brookes Ridge Townhomes

Ms. Reilly:

Thank you for the reply as the information is very helpful. Please be aware that I, like many in Brookmont received a very incomplete and circumspect letter last Tuesday telling us that we had to comment on the requests for amendments by yesterday December 11, 2017. I did file comments yesterday but the filing was incomplete due to the most relevant and essential information being excluded from the public file.

I desperately tried to get the basic information need and did secure all that was available to the public. I got the complete public file at DPS and the one you reference below.

I found over 20 storm water management and Sediment Control violations at DPS between 2013 and 2017 for this project. There were also building code violations. But at Parks and Planning there were none available to the public. The amendment request simply stated that it was in response to "violation" albeit non disclosed and numerous as we are now finding out. I even asked the applicant representative Russ Resse with Maddox who sent out the letter for the Brookes Ridge Townhomes developer what were the violations that the requested amendments were in response. No reply, of course, as to wait out the Monday deadline. This type of behavior does not help to build trust and does not protect the very people that M-NCPPC is charge with to protect.

In the two sentence Statement of Justification it says that the amendments are due to a new Storm Water Management Plan at DPS and new a WSSC plans. I filed a MIFA with WSSC for that plan and checked with Derek Isensee the head of SWM and Sediment Control to get the new referenced SWM DPS plan. He said that the developer is required to submit one but the last one in August 2017 was rejected. How can we comment on these plans when after best efforts we cannot get a copy or with regard to DPS it does not even exist yet?

We must respectfully insist on a public hearing due to the extensive damage that is being caused to those of us who live down stream from the massive four year plus development. The most significant and most hidden amendment request is revision 4 - the new Storm Water Management Plan as required by the June 28, 2017 DPS Sediment Control violation. At this point we must respectfully request that this SWM plan be produced in the light of day and stop hiding in dark corners.

Sincerely,

Greg Neimeyer, Ph.D.
Department of Psychology
The George Washington University
212 Psychology Building
2125 G St. NW
Washington, DC 20052
Phone +1 202 430 1888

On Dec 12, 2017, at 11:27 AM, Reilly, Kathy <kathy.reilly@montgomeryplanning.org> wrote:

Dear Dr. Niemeyer,

Your email requesting information for Site Plan Amendment (82006022B) for the High Acres development was referred to me by Ms. Gwen Wright, Planning Director.

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I hope this information addresses the concerns mentioned in your email. If you have additional questions on this this proposed amendment 82006022B, free feel to contact me. I will be on leave beginning December 13, 2017 and returning on January 2, 2018. If you have any questions during that time, please contact Elza Hisel-McCoy at (301) 495-2115.

Thank you,
Kathy Reilly

Kathleen A. Reilly, AICP
Coordinator, Area 1
8787 Georgia Avenue
Silver Spring Md 20910
Email: kathy.reilly@montgomeryplanning.org
(t) 301- 495-4614 (f) 301 -495- 1304

<image002.jpg>

From: Hisel-McCoy, Elza
Sent: Friday, December 08, 2017 2:06 PM
To: Reilly, Kathy <kathy.reilly@montgomeryplanning.org>
Subject: FW: Question on High Acres - Brookes Ridge Townhomes
Importance: High

Elza Hisel-McCoy, Assoc. AIA, LEED-AP
Master Planner, Regulatory Supervisor
Area One
Montgomery County Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910
301.495.2115, elza.hisel-mccoy@montgomeryplanning.org
montgomeryplanning.org

From: Wright, Gwen
Sent: Friday, December 08, 2017 10:55 AM
To: Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Pfefferle, Mark <mark.pfefferle@montgomeryplanning.org>
Subject: FW: Question on High Acres - Brookes Ridge Townhomes
Importance: High

Does anyone know about this issue?

Gwen Marcus Wright
Planning Director | Montgomery County Planning Department
8787 Georgia Avenue | Silver Spring, Maryland 20910
gwen.wright@montgomeryplanning.org
301-495-4500 office | 571-329-3053 cell
<image001.png>

From: Greg Neimeyer [mailto:neimeyer@email.gwu.edu]
Sent: Friday, December 08, 2017 10:45 AM
To: Wright, Gwen <gwen.wright@montgomeryplanning.org>
Subject: Question on High Acres - Brookes Ridge Townhomes

Dear Mr. Wright:

I called Montgomery County Planning and was told you are the right person to direct my questions.

I live in Brookmont and plan to file comments on the amendments but certain important information seems to be missing from the public file.

1. What is the “violation” that the amendments are trying to correct?

2. There is a short reference to a new “Storm Water Management Plan” with DPS and one with WSSC. May I get copies of these plans.

We have suffered tremendous flooding and sediment run off to the point that we have to constantly call to get the storm water drain cleaned out at the corner of Maryland Avenue and MacArthur Blvd. We have been calling Department of Transportation. This have been a problem for four years now as there has been a large loose mound of dirt sitting at the top of a hill where the storm water trap was due to be installed per the sediment control plan. The trap was never installed even though numerous notice of violations were issued.

Kindly,

Greg Neimeyer, Ph.D.
Department of Psychology
The George Washington University
212 Psychology Building
2125 G St. NW
Washington, DC 20052
Phone +1 202 430 1888

<pfefferle violation 2017.pdf>

Reilly, Kathy

From: Pfefferle, Mark
Sent: Tuesday, December 12, 2017 4:19 PM
To: Hisel-McCoy, Elza; Reilly, Kathy
Subject: FW: Question on High Acres - Brookes Ridge Townhomes
Attachments: img-Z12154521-0001.pdf

FYI

From: Pfefferle, Mark
Sent: Tuesday, December 12, 2017 4:19 PM
To: 'Greg Neimeyer' <neimeyer@email.gwu.edu>
Subject: RE: Question on High Acres - Brookes Ridge Townhomes

Greg

Attached are the forest conservation violations associated with this project. A notice of violation was issued by the Forest Conservation Inspector on August 2014 and a Citation was issued by the Forest Conservation Inspector in June 2016. The Planning Department is not responsible for enforcing anything other than site plans and forest conservation plans so any violations or citations related to stormwater management/sediment control, building permits, right-of-way permits etc. would need to be obtained from the Department of Permitting Services. We in the Planning Department do not have access to their citations.

The email that you forwarded to me includes copies of site plan violations. The Administrative Citation identifies the site plan violations. Those are violations in which the site plan amendment must address. Other changes which may be requested are not in response to a violation.

I don't think there has been any intentional misinformation, though Cathy and Elza may not be fully informed of what documents are available online.

Mark Pfefferle
Chief
Development Applications and Regulatory Coordination
Montgomery County Planning Department
Maryland-National Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

From: Greg Neimeyer [mailto:neimeyer@email.gwu.edu]
Sent: Tuesday, December 12, 2017 2:57 PM
To: Pfefferle, Mark <mark.pfefferle@montgomeryplanning.org>
Subject: Fwd: Question on High Acres - Brookes Ridge Townhomes

Mark:

You were copied on the email below so you know about the trouble we have had in securing the basic information in order to submit our amendment comments. May I get a copy of the other violations issued by M-NCPPC for the sediment problems in the Forest Conservation Easement and any other violations regarding this location from 2013 until now.

David Berg who is on our board for Brookmont Civic League and was tasked with writing the response for the league had a call with Kathy and Elza last week and was told that all of the violations are in the public on-line file. I was tasked with securing the violations since the letter we all received said that the amendments are in response to "violation". I printed every document in the file for a and b and drove out to your office and no violations were available to the public. We needed these violations to fashion our comments that were due yesterday. We are working on a supplemental. I have to admit that we are experiencing a lack of transparency and some run around although I am sure it is not intentional.

Thank you for your time and assistance in getting this resolved.

Sincerely,

Greg Neimeyer, Ph.D.
Department of Psychology
The George Washington University
212 Psychology Building
2125 G St. NW
Washington, DC 20052
Phone +1 202 430 1888

Begin forwarded message:

From: "Reilly, Kathy" <kathy.reilly@montgomeryplanning.org>
Date: December 12, 2017 at 11:27:27 AM EST
To: "neimeyer@email.gwu.edu" <neimeyer@email.gwu.edu>
Cc: "Wright, Gwen" <gwen.wright@montgomeryplanning.org>, "Pfefferle, Mark" <mark.pfefferle@montgomeryplanning.org>, "Hisel-McCoy, Elza" <elza.hisel-mccoy@montgomeryplanning.org>, "Kronenberg, Robert" <robert.kronenberg@montgomeryplanning.org>, "Fuster, Marco" <marco.fuster@montgomeryplanning.org>, "Peck, Stephen" <stephen.peck@montgomeryplanning.org>, mark.etheridge <mark.etheridge@montgomerycountymd.gov>, "'Matthew.Makowski@montgomerycountymd.gov'" <Matthew.Makowski@montgomerycountymd.gov>, "Jon-Edward.Thorsell@wsscwater.com" <Jon-Edward.Thorsell@wsscwater.com>
Subject: FW: Question on High Acres - Brookes Ridge Townhomes

Dear Dr. Niemeyer,

Your email requesting information for Site Plan Amendment (82006022B) for the High Acres development was referred to me by Ms. Gwen Wright, Planning Director.

The Applicant was issued violations on April 28, 2017, and May 2, 2017, by Maryland-National Capital Park and Planning Commission (M-NCPPC) site inspection staff for failure to comply with development conditions of the previously approved Site Plan Amendment 82006022A. Copies of the violations are attached to this email. The violations noted by the M-NCPPC inspection staff are as follows:

- Current on-site landscaping installations do not match approved landscape plan; and
- Recent pour of 5' concrete sidewalk in front of Lot 3 includes 2 steps which are marked on the Certified Site Plan. Also, two retaining walls on southern side of property are currently built too high as presently constructed. Tall wall measures 14 feet at highest point (13 feet max) lower wall measures 6 feet at highest point (4 feet) per Certified Site Plan notes on page C-300).

The Applicant is addressing these remaining violations by submitting a Site Plan Amendment (82006022B) seeking Planning Board review and approval for these changes which is currently

under review by M-NCPPC staff. For your review, the submittals for SPA 82006022B can be found on our website at www.montgomeryplanning.org

- Go the website and click the tab which says Development;
- Development Applications page will appear;
- On the Development Application page in the white box type the application number 82006022B;
- The next page will show the submitted information including plans for this amendment application.

The Department of Permitting Services (DPS), Stormwater Management Division, coordinates and approves all stormwater management plans for any development in the county. A stormwater management plan (#215294) for this development was previously approved by DPS in November 2005. Mark Etheridge at DPS oversees stormwater management approvals. He can be reached at (240) 777-6338 or at Mark.Etheridge@montgomerycountymaryland.gov. Additionally, Matt Makowski at DPS is the site plan inspector for this Project. He can be reached at (240) 401-9237 or at Matthew.Makowski@montgomerycountymaryland.gov

WSSC maintains all copies of their plans. Mr. Jon-Edward Thorsell is the M-NCPPC contact for questions related to development. Mr. Thorsell can be reached at: Jon-Edward.Thorsell@wsscwater.com

I hope this information addresses the concerns mentioned in your email. If you have additional questions on this this proposed amendment 82006022B, free feel to contact me. I will be on leave beginning December 13, 2017 and returning on January 2, 2018. If you have any questions during that time, please contact Elza Hisel-McCoy at (301) 495-2115.

Thank you,
Kathy Reilly

Kathleen A. Reilly, AICP
Coordinator, Area 1
8787 Georgia Avenue
Silver Spring Md 20910
Email: kathy.reilly@montgomeryplanning.org
(t) 301- 495-4614 (f) 301 -495- 1304

EXCELLENCE M-NCPPC90

From: Hisel-McCoy, Elza
Sent: Friday, December 08, 2017 2:06 PM
To: Reilly, Kathy <kathy.reilly@montgomeryplanning.org>
Subject: FW: Question on High Acres - Brookes Ridge Townhomes
Importance: High

Elza Hisel-McCoy, Assoc. AIA, LEED-AP
Master Planner, Regulatory Supervisor
Area One
Montgomery County Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910
301.495.2115, elza.hisel-mccoy@montgomeryplanning.org

From: Wright, Gwen
Sent: Friday, December 08, 2017 10:55 AM
To: Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Pfefferle, Mark <mark.pfefferle@montgomeryplanning.org>
Subject: FW: Question on High Acres - Brookes Ridge Townhomes
Importance: High

Does anyone know about this issue?

Gwen Marcus Wright
Planning Director | Montgomery County Planning Department
8787 Georgia Avenue | Silver Spring, Maryland 20910
gwen.wright@montgomeryplanning.org
301-495-4500 office | 571-329-3053 cell

EXCELLENCE
MNCPPC90

From: Greg Neimeyer [mailto:neimeyer@email.gwu.edu]
Sent: Friday, December 08, 2017 10:45 AM
To: Wright, Gwen <gwen.wright@montgomeryplanning.org>
Subject: Question on High Acres - Brookes Ridge Townhomes

Dear Mr. Wright:

I called Montgomery County Planning and was told you are the right person to direct my questions.

I live in Brookmont and plan to file comments on the amendments but certain important information seems to be missing from the public file.

1. What is the “violation” that the amendments are trying to correct?

2. There is a short reference to a new “Storm Water Management Plan” with DPS and one with WSSC. May I get copies of these plans.

We have suffered tremendous flooding and sediment run off to the point that we have to constantly call to get the storm water drain cleaned out at the corner of Maryland Avenue and MacArthur Blvd. We have been calling Department of Transportation. This have been a problem for four years now as there has been a large loose mound of dirt sitting at the top of a hill where the storm water trap was due to be installed per the sediment control plan. The trap was never installed even though numerous notice of violations were issued.

Kindly,

Greg Neimeyer, Ph.D.
Department of Psychology
The George Washington University
212 Psychology Building
2125 G St. NW
Washington, DC 20052
Phone +1 202 430 1888

MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue, Silver Spring, Maryland 20910
Environmental Planning Division 301.495.4540 Fax: 301.495.1303
www.MontgomeryPlanning.Org

Issued with FAQs

NOTICE OF VIOLATION — EDPNOV 0001

FOR MONTGOMERY COUNTY, MARYLAND, the undersigned issuer, being duly authorized, states that:

On, June 20, 2016 (Date) **the recipient of this NOTICE,** Sas Gharai (Recipient's Name)
who represents the property owner, Brookes Lane Development Company LLC (Property Owner's Name)
is notified that a violation of the Montgomery County Forest Conservation Law (Chapter 22-A) exists at the following location: High Acres (aka Brookes Ridge)

Plan No. 820060220 **Explanation:** Violations of approved forest conservation plan

VIOLATION:

	Failure to hold a required pre-construction meeting.
	Failure to have tree protection measures inspected prior to starting work.
X	Failure to install or maintain tree protection measures per the approved Forest Conservation or Tree Save plan. removing tree protection fencing without prior M-NCPPC inspector permission
	Failure to comply with terms, conditions and/or specifications of an approved Forest Conservation plan or Tree Save plan, or as directed by Forest Conservation Inspector
	Failure to obtain an approved Forest Conservation plan or Tree Save plan prior to cutting, clearing, or grading 5,000 square feet on a property of 40,000 square feet or greater.
X	Failure to comply with reforestation or afforestation requirements of a Forest Conservation Plan. Failure to install supplemental planting within plan deadline
	Failure to obtain written approval for a fence permit prior to installing a fence that passes through or around a concervation easement.
X	Other: failure to have a copy of the approved forest conservation plan on site

Failure to comply with this NOV by 07/31/16 **may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action. Recipient is to call the inspector at** 301-495-4564 **when the corrective action is complete. The following corrective action(s) must be performed as directed and within any time frames specified below:**

	Stake out limits of disturbance (LOD) and contact Forest Conservation Inspector for a pre-construction meeting:
X	Install tree protection measures and/or tree care as directed by Forest Conservation Inspector. install tree protection fencing at LOD at entrance by 06/24/16
	Submit required application for compliance with Chapter 22A of the County Code. Contact Environmental Planning at 301-45-4540.
	Cease all cutting, clearing, or grading and/or land distributing activity. Approval from Forest Conservation Inspector is required to resume work.
X	Schedule a pre-planting meeting with the Forest Conservation Inspector prior to the reforestation of afforestation planting. by 07/31/16
	Schedule and attend a meeting with staff to determine appropriate corrective action to be performed by a date certain. Failure to complete the corrective action by the date assigned may result in i) issuance of a citation, ii issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action.
X	Other: Maintain approved forest conservation plan on site pursuant to Chapter 22A-15(b)

M-NCPPC Inspector

Stephen Peck	Stephen Peck	6/20/16
Printed Name	Signature	Date

RECEIVED BY:

Sent Certified Mail		
Printed Name	Signature	Date

Issued FAQ:

Citation No. EPD 000216

Administrative Citation
Forest Conservation
The Maryland-National Capital Park and Planning Commission
vs.

Name: Sas (First) Ghari (Last)
Company/Position: Brookes Lane Development Company LLC (Middle)
Address: 7508 Wisconsin Avenue Bethesda MD 20814
Phone Number: 301-652-6263 Fax Number: Email:

Location and Description of Violation:
Address/location of site: forest preservation area below retaining wall

Pursuant of the M-NCPPC's authority under Chapter 22A of the Montgomery County Code, it is formally charged that the above named defendant on 08/12/14 (date) at the stated site location did commit the following:
disturbed approximately 500 square feet of forest in forest preservation area expanded construction activity in this area by installing 30 feet of silt fencing within this protection area and in the process damaged plants

In violation of:
☒ Montgomery County Code, Chapter 22A ☒ Approval of Final Forest Conservation Plan No. Plan No 820060220 ☐ Other:

Civil Fine and Compliance:
1. (a) ☒ You shall pay a fine of $ 1,000.00 by 08/29/14 (date) and complete the remedial action listed below
(b) ☐ You shall pay a daily fine of $ _____ if the original fine has not been paid. by _____ (date). The daily fine shall accrue (until the original fine is paid.
2. ☐ You shall pay a daily fine of $ _____ until the remedial action listed below is completed. This fine shall be paid within 15 days of completion of all remedial action.

Checks should be made payable to **M-NCPPC** and shall be paid during normal business hours at the information Counter of M-NCPPC's Montgomery Regional Office located at 8787 Georgia Avenue, 2nd Floor, Silver Spring, MD 20910, 301-495-4610. Failure to comply with this citation may result in further enforcement proceedings and/or issuance of additional citations including additional fines. You may also request a hearing before the Planning Board or the Board's designee. If you elect to request a hearing, you must notify the M-NCPPC Office of the General Counsel, in writing, at 8787 Georgia Avenue, Suite 205, Silver Spring, MD 20910; within 15 days of the citation.

Remedial Action:
1. ☐ 1) Remove, by hand, the 30 feet of silt fencing that was installed within the forest preservation area
2) Stabilize the affected forest area with wood chips
3) Reestablish control measures at limits of disturbance that prevent sittation and erosion of the forest preservation areas.
by: 08/20/14 (date)
If remedial action is not completed by 08/20/14 (date), you shall pay a daily fine of $ 50.00 a day until work is completed.

2. ☒ You have violated Chapter 22A of the Montgomery County Code, and may be subject to an Administrative Civil Penalty and additional corrective measures.

Acknowledgment:
I sign my name as a receipt of a copy of this Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation. I have a right to request a hearing for the offense(s) charged. If I do not exercise my right to a hearing, I agree to entry by the court judgment on affidavit for the amount of the fine.

Sent certified mail return receipt
Defendant's Signature Date

Affirmation:
I solemnly affirm under the penalties of perjury, and upon personal knowledge or based on the affidavit, that the contents of this citation are true to the best of my knowledge, information and belief and that I am competent to testify on these matters.

Stephen Peck 08/13/2014
Inspector's Signature Date
Print Name: Stephen Peck Phone Number: 301-495-4564

Reilly, Kathy

From: David Berg <bergdavidr@gmail.com>
Sent: Monday, December 11, 2017 3:41 PM
To: Reilly, Kathy
Cc: 'Peter Hobby'; 'Brad Northrup'
Subject: RE: re High Acres project -- following up
Attachments: ltr to PB staff re High Acres violations & changes signed 1211.17.pdf

Ms. Reilly –

Thank you again for our phone conversation at the end of last week about the High Acres project. I've attached a letter from the Civic League of Brookmont and Vicinity that outlines our comments on the latest violations and proposed plans to remedy the violations. The letter covers some points of concern beyond those you mentioned in our conversation last week.

Please let me know if you have any questions. We look forward to working with you and Mr. Hisel-McCoy to resolve our community's concerns.

Please confirm receipt. –

David

From: Reilly, Kathy [mailto:kathy.reilly@montgomeryplanning.org]
Sent: Wednesday, December 06, 2017 11:37 AM
To: David Berg <bergdavidr@gmail.com>
Subject: RE: re High Acres project -- following up

Mr. Berg,

Thank you for getting back to me. I will call you at 2:00 pm today.

Kathy Reilly

From: David Berg [mailto:bergdavidr@gmail.com]
Sent: Wednesday, December 06, 2017 11:22 AM
To: Reilly, Kathy <kathy.reilly@montgomeryplanning.org>
Subject: RE: re High Acres project -- following up

Ms. Reilly –

I'll be calling without Brad. I wanted to keep him in the loop, though, since he connected us. Brad, Peter, and I coordinate on things like this one. –

David

From: Reilly, Kathy [mailto:kathy.reilly@montgomeryplanning.org]
Sent: Wednesday, December 06, 2017 9:18 AM
To: David Berg <bergdavidr@gmail.com>
Subject: RE: re High Acres project -- following up
Importance: High

Mr. Berg.

2 pm today is fine. My phone number is 301-495-4614

I noticed you had copied Mr. Northrup on an earlier email, will he be joining us on the call or will it just be you?

I'm asking because if more people are on the call – I may need to book a conference room instead of using a speaker phone at my desk. The speaker phone has the tendency to disturb my co-workers as we sit in open space.

Please let me know this morning, if I need to book a conference room.

Thank you,

Kathy Reilly

Kathleen A. Reilly, AICP
Coordinator, Area 1
8787 Georgia Avenue
Silver Spring Md 20910
Email: kathy.reilly@montgomeryplanning.org
(t) 301- 495-4614 (f) 301 -495- 1304

From: David Berg [mailto:bergdavidr@gmail.com]
Sent: Wednesday, December 06, 2017 12:08 AM
To: Reilly, Kathy <kathy.reilly@montgomeryplanning.org>
Subject: RE: re High Acres project -- following up

Ms. Reilly –

Thanks for getting back to me. I'm looking forward to speaking with you at 2:00 on Wednesday.

I see that my answerphone was shut off, so I'm glad that you sent an email. It is back on in case you need to reach me. –

David

From: Reilly, Kathy [mailto:kathy.reilly@montgomeryplanning.org]
Sent: Tuesday, December 05, 2017 5:49 PM
To: David Berg <bergdavidr@gmail.com>
Subject: RE: re High Acres project -- following up

Mr. Berg,

I'll be available to talk with you about the submitted site plan amendment for the High Acres property on Wednesday Dec. 6, 2017 at 2:00 pm.

If this time works for you, please respond via email.

Thank you,

Kathy Reilly

Kathleen A. Reilly, AICP
Coordinator, Area 1
8787 Georgia Avenue
Silver Spring Md 20910
Email: kathy.reilly@montgomeryplanning.org
(t) 301- 495-4614 (f) 301 -495- 1304

From: David Berg [mailto:bergdavidr@gmail.com]
Sent: Tuesday, December 05, 2017 1:32 PM
To: Reilly, Kathy <kathy.reilly@montgomeryplanning.org>
Cc: 'Brad Northrup' <northrup.brad@gmail.com>
Subject: FW: re High Acres project -- following up

Ms. Reilly –

I'm following up on my email last Friday afternoon inquiring about the High Acres project.

Are you available to speak sometime tomorrow afternoon about the situation there? Please advise. –

David

From: David Berg [mailto:bergdavidr@gmail.com]
Sent: Friday, December 01, 2017 4:45 PM
To: Kathy.Reilly@montgomeryplanning.org
Cc: 'Brad Northrup' <northrup.brad@gmail.com>
Subject: re High Acres project

Ms. Reilly –

Brad Northrup mentioned to me that you are following the High Acres project on behalf of the Planning Department. Along with Brad and Peter Hobby, I received yesterday notice from High Acres' engineer about proposed plan amendments to this project. The notice mentioned that there is an opportunity to comment.

I would like to arrange to have a conversation/meeting with you to learn what violations exist, what remedies and other changes are proposed, and to offer initial comments on these things. Brookmont, as you know, testified about this project when the current developers sought approval. Some things that concerned our neighborhood were addressed successfully, while others were not. Looking at the drawings sent to us by the project's engineer, I can see that issues with forest improvements have not yet been addressed, for example. We will want to seek the Planning Board's support for remedies to all of our concerns, including this one.

When might you and I speak, whether in person or on the phone? I will have some time next week and more time the week after. Please let me know what might work for you. –

David

301-229-1399

4301 Maryland Avenue
Bethesda, MD 20816
December 10, 2017

Kathleen A. Reilly, AICP
Coordinator
Area 1
Montgomery County Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Kathy Reilly and Elza Hisel-McCoy:

Thank you for the opportunity to comment on behalf of the Civic League of Brookmont and Vicinity on proposed plan amendments for the High Acres project in Bethesda. As I/we understand it, these proposed plan amendments respond to notices of violations issued by your organization. I understand, also based on our conversation, that other county organizations that oversee this project (e.g., stormwater management) also have notified the High Acres developers of violations. Unfortunately, I have been unable to gain access any of the specific the violations, so my comments are, unfortunately, very limited in nature at this time. In addition, no details have been available describing the county's directions to the developer, so it is impossible to comment on the details of any of the proposed remedies.

I also appreciate your taking the time last week to speak with me about the process and concerns of your office, and for me to offer some insights to you about the concerns of our community.

Our community association has expressed our concerns about this project, including at a Planning Board hearing on the project, over the years. Some of the concerns we discussed at the hearing and with staff continue to this day, and other concerns have arisen during the construction phase of the High Acres project. Other of our concerns arise from the very nature of the High Acres project, the retaining wall and structures of which tower at total of about 80 feet in height, contrasting tremendously with the single-family homes in our neighborhood. Brookmont sits at a lower elevation than all of the High Acres construction, which towers more than 125 feet above most of the neighborhood! It is very important to our community for the Planning Board to relieve our neighborhood of the imposition of this out-of-character development by requiring the developer to make the improvements and remedies to violations suggested below.

We consider our concerns to be serious in nature and so we ask that the Planning Board hold an open and public hearing at which we can learn more about the county's concerns, outline for the Planning Board our concerns, and hear the Board's responses to them. As reinforcement, I will note, too, that despite our best efforts we have been unable to learn of the details of the violations cited by the county, county instructions given to the developer, and the details of the proposed changes. Our comments follow:

1. Stormwater management and sediment control: During the construction phase and continuing, (a) stormwater and sediment has not been managed effectively and (b) certain conditions of the sediment control and, perhaps, stormwater permit have not been met. The project has released quantities of stormwater to Brookes Hill Court and Maryland Avenue during rainfall events. And, this stormwater has left sediment on our streets, especially at the intersection of Brookes Hill Court and Maryland

Avenue and has blocked a county drain at Maryland Avenue and MacArthur Boulevard, leading to icing conditions at the intersection during winter months and pooled water in the intersection when the water is not frozen. The county has had to clean out the storm drain at least two occasions.

2. Construction of the storm drain for High Acres: First, using an easement through a privately owned property in Brookmont, the High Acres developers installed their storm drain through this property, down the length of Brookes Hill Court, and most of the way to MacArthur Boulevard on Maryland Avenue. The developers never, as far as we are aware, installed a sediment trap to remove silt from stormwater running from a large pile of dirt piled on the High Acres property above the easement area. Sediment from High Acres ran down Brookes Hill Court and Maryland Avenue all the way to MacArthur Boulevard, where it blocked a storm drain inlet and caused dangerous conditions at the intersection. Also, the contractor left construction materials – including heavy metal and concrete structures – alongside Maryland Avenue for more than a year. The work damaged the recently repaved street and newly replaced curbs for many months, and new inlets installed in the street by High Acres' contractor were placed in locations that did not capture the stormwater, exacerbating flooding problems at the intersection of Maryland Avenue and MacArthur Boulevard. Despite numerous requests to the developer to repair the damage and properly install the inlets, we finally had to ask the county to make repairs. Thanks to the Depot, repairs were made. Until that point, residents had to remove accumulations of mud and debris from our two streets on numerous occasions. There still is no sediment trap, as far as we can see, but it should be built immediately to forestall future runoff and sedimentation problems.

3. Lighting: In condition #5 of the May 2, 2013, final "Limited Site Plan Amendment, High Acres, 82006022A," the Planning Board directed the High Acres developers to limit the escape of light from the site to "0.5 footcandles at any property line…." One of the reasons this requirement was very reasonable is that the Palisades area is very hilly. More specifically, the buildings, amenity lighting, and street lighting at High Acres are uphill of every home in Brookmont. Bright lights from all three of these types of lighting at High Acres shine into homes in Brookmont and illuminate brightly the conservation area within High Acres and rear yards of Brookmont homes. A 6-foot-tall privacy fence does nothing to block street lights on 16-foot poles and security lights on buildings. We believe that the 0.5 footcandles restriction is being violated in numerous places on the High Acres site and off it, and we believe the problem will only be worse once the construction trailer is removed; this trailer presently blocks some light from the overly bright street lighting, which we request be replaced by downward-facing lights. It is very important to reduce the escape of light from the High Acres project, which is out of character to the single-family residential area we live in and intrusive in our neighborhood. The woods glow at night from excessively bright lighting on High Acres. The Brookes Lane neighborhood has also raised concerns about this problem, largely without effective response. Please enforce condition #5, including by ordering the High Acres developers to replace the street lighting with downward-facing lights.

4. Retaining wall: The Planning Board limited the height of the retaining wall that supports the High Acres townhomes to 17 feet and required the developers to install it in two steps, the lower of which was limited to 4 feet in height. By building a much taller wall and base, the developer violated both of these restrictions by a significant margin. The developer recently used heavy equipment to add rocks and dirt on top of ground level in the conservation area to bring the height of the wall into compliance. This approach put a fig leaf over a fundamental problem; the effective height of the wall is too great. Further, in the project to make the wall shorter (and during the original construction), the

developer damaged the conservation area by clearing all trees, bushes, and ground cover in the conservation area out to about 20 feet from the base of the wall, reducing the conservation area by a total of than one acre. The only ground cover in this 20-foot-wide area now is grass, which will not do well due to shade from the surrounding forest, the tall wall, and the taller townhomes above the wall. The Planning Board required the developers to "maintain at least 3 feet of clearance between the wall foundation and the forest conservation easement/limits of disturbance (LOD)," presumably to assure the wall's stability, but by building such a tall wall and such tall townhomes, and by clearing all plants to roughly 20 feet from the base of the wall, the developer has encroached significantly on the conservation easement area and reduced the screening it provides to Brookmont residents and travelers on MacArthur Boulevard. At this point, the developer appears to have no plans to plant in this totally damaged area in the conservation easement area, and there is similarly no indication that the Planning Board staff will require extensive plantings there. It should. Since it's too late to restrict the height of the wall and townhomes, it is critical that the Planning Board direct the developer to plant trees and bushes to replace and intensify the screening effect of the conservation area by filling the area closer to the wall with bushes and trees! We note our request at the previous hearing that the wall be stone-faced to make it blend into the natural setting of the conservation easement, which the Board did not see fit to require. Now, we have been left to live with this ugly concrete wall towering behind the damaged conservation area. The wall is uniformly concrete in color, and texture in the wall is not visible from MacArthur Blvd and points closer to the wall. We hope that the Planning Board will now require the developer to mitigate this severe problem. A more extensive planting program, starting with the 20-foot denuded area in the forest conservation area, would be a great place to start.

5. Management of stormwater from the townhomes: Two points here: First, downspouts on many of the High Acres townhomes terminate well above ground level – in some cases at the second floor. Stormwater from all of the townhomes flows downhill across the conservation area and some of it flows onto two privately owned properties in Brookmont. It is causing erosion, both in the conservation easement and the private properties. It should not flow this way and it should not be permitted to cause erosion and other damage to properties downhill of High Acres. Proposed revision #4 on the drawings provided by the High Acres engineers is construction of "storm drain in the rear of the houses"; this storm drain would connect to the main storm drain for the project, which traverses a private property in Brookmont and flows under Brookes Hill Court and Maryland Avenue. The would be a good one except that it does not comply with the county's improved stormwater management policy that encourages or requires dry wells or other water-detaining and groundwater recharge systems. It appears that no dry wells or other water-detaining and groundwater recharge systems are being required at High Acres, but they should be. It is very important for the Planning Board and other county agencies to take action to resolve this serious problem because, if this plan goes ahead as proposed, High Acres will have added about three acres of impervious surface to our well-developed part of the county, without providing for recharge at all. Paradoxically, since the developer cleared about one acre of the forest conservation zone at the base of the retaining wall in the 20-foot-wide space it used for the heavy equipment, as discussed above, it would be a piece of cake to install a groundwater recharge system in that area at the same time as it connects the townhomes to the storm drain and before it replants trees and bushes in this important area. Overflow from the dry wells could be directed to the storm drain. We highly recommend that you all require the developer to add stormwater recharge prior to connecting with the storm drain. For Brookmont, improved stormwater management is a necessity because our homes lie downhill – directly downhill

– from the High Acres townhomes. Second, the former entrance of the High Acres property drains across a property on Brookes Lane, with the drainage flowing down a county right of way onto Maryland Avenue. It would be a simple project to regrade this driveway and the former entrance so that runoff flows onto Brookes Lane, instead of down the county right of way. Maryland Avenue is frequently choked with mud and debris from the right of way because of this uncontrolled runoff situation. An informal path on this right of way that is Brookmont's access to the shopping center the Waldorf School, and other venues up the hill is eroding. We repeat our request from 2013 that the Planning Board require the developer coordinate with its neighbors on Brookes Lane to keep runoff off of the path.

6. Plantings in, but not limited to, the conservation easement: Five discrete points here:
   a. First, the developer has already planted some trees and bushes in the conservation easement area and removed some, but far from all, invasive species of trees, bushes, and vines. We applaud the progress that has been made. However, the Planning Board required in condition 7.a. of the final "Limited Site Plan Amendment, High Acres, 82006022A" dated May 2, 2013, that "retaining wall and associated landscaping shall be completed as the construction of the townhouse units are finished, but no later than six months after the occupancy *of townhouse units*" (emphasis added). Exterior construction is all but complete, and the first townhouse units were occupied about six months ago, but the landscaping work is far from complete. The May 2013 language does not contemplate that ALL of the townhomes must be occupied – only that some townhomes be occupied. We encourage the Planning Board to enforce the requirement to complete this work *now*, as it takes years for trees and bushes to fill in and grow taller. We appreciate the need for the developer to generate cash flows to finance the completion of this project. Yet, by waiting until the end of the project to complete critical landscaping elements, the developer has failed to meet the Board's timing requirements and, instead, has defied common sense.
   b. Second and importantly, according to proposed revision #6, the developer will make additional plantings, and the project's engineer drawings show that these future plantings will be highly focused on the south property line, particularly the property line adjoining one home in Brookmont. Some of the trees already planted are directly on or very close to the property line, so their growth is sure to go over the adjoining property, instead of enhancing the heart of the conservation easement. By placing as many of the new plantings along the property line as possible, the developer is undermining the integrity of the conservation easement area and placing as much of the burden of new growth on surrounding neighbors' properties. Growing a hedge around the edge of the conservation easement undermines the Planning Board's goal of having a conservation area and making it healthy, tall, and dense to shield the wall and protect the Palisades. Plantings under proposed revision 6 should be spread out with an emphasis on making the forest conservation area as dense as possible, increasing the ultimate height of the forest, and screening the ugly wall. For example, the one beech tree planted so far is directly on the border, where it will spread quickly into a neighboring yard in Brookmont, rather than hiding the wall by making the forest denser. The purpose of the forest conservation area is not to grow a hedge to screen views into High Acres from Brookmont and MacArthur Boulevard. It is to enhance the forest in the conservation area by removing invasives, improve the health of the forest, and make the forest denser to screen the wall. The current plan undermines these objectives, rather than implementing them.

c. Third, proposed revision #5 on the engineer's drawing is shown at the extreme northwestern end of the forest conservation area and retaining wall and no specific locations for plantings are shown. As we have been commenting, it is very important to screen the wall and intensify plantings throughout the conservation easement, as well as remove invasives, but there is no indication in the drawing that the plantings associated with proposed revision #5 will accomplish these objectives.

d. Fourth, we also note that the requirement to complete "supplemental plantings" in the conservation area was supposed to have been completed within "2 growing seasons after the pre-construction meeting date"; that requirement was missed a long time ago! We certainly hope that the Planning Board will take action to expedite plantings throughout the conservation area!

e. The fifth point is discussed in the point below on "topography."

7. Topography: The area uphill of the stormwater easement on a property that adjoins the High Acres site has been denuded of trees and bushes. (The word "dense" was typed in black on the High Acres engineer's drawing that shows the proposed revisions. For additional clarity, two sides of the area in question are two borders of the High Acres property; one is 176.52 feet long and the other is 113.79 feet long.) It appears based on the red outlines showing where the developer plans to plant trees that only one tree will be planted in this area, despite the fact that the developer cleared *all* of the plants (trees and bushes) and regraded the area during and post-construction of the High Acres stormwater management system. We also note with concern that the topographic lines in this area have been altered significantly and apparently without permission from the county, and because no proposed revision is shown, it appears that no plans exist to restore the land to its natural repose. This area should be regraded to the natural repose, planted densely, and returned to forest. Please require the developer to do this.

8. Tree on Brookes Hill Court: In 2013, we requested that the large silver maple tree on the county's right of way at the end of Brookes Hill Court closest to the High Acres property be retained. The developer proposed to remove it to make way for its storm drain and sanitary sewer (which it later moved to a far-away location). The basis for the need was the claim that they had to connect to a *nonexistent* county storm drain at the location of a *nonexistent* manhole in the middle of Brookes Hill Court. A cooperative Brookes Hill Lane resident offered to let the developer bypass the tree by running the lines on his property instead of the one with the existing easement. The Planning Board did not support our request to save the tree, despite the non-existence of the storm drain and manhole, and given a free pass, the developer never even explored the way to bypass the tree. Since the tree was lost, we have requested several times for the county to plant a replacement tree (that will grow to a tall and to a large size) in this location, which is not encumbered by power lines or other obstructions. The neighbors would like to a tree to be planted now since it will take years and years to grow large. Perhaps the Planning Board can help such a tree to be planted on county? We would appreciate your help in this matter.

9. Perimeter privacy fence: Proposed revision #2 specifies that the developer will erect a 6-foot-tall privacy fence along the High Acres property line with one home in Brookmont. It is unclear to us that this privacy fence makes sense. We can speculate that the developer's desire to erect it stems from an antagonistic relationship with the adjacent property owner, rather than to serve a useful purpose. A privacy fence 6 feet tall will not provide privacy to any person because the elevation of the High Acres townhomes is so much greater than the elevation of the adjacent property, and no privacy fence is proposed for the next-door neighbors of this one property in Brookmont. Also, the

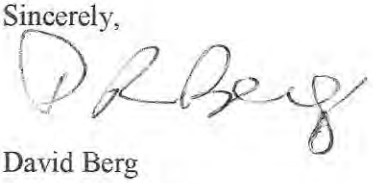
privacy fence would be erected in the conservation area where the developer has already planted a number of trees, including some right on the property line. We ask that the developer instead erect a black iron fence, as it has along adjacent property in Brookmont.

10. Page 11 of the May 2013 Planning Board document states that staff "a condition of approval is recommended to adjust the wall coloring specifications to include various shades of color and also to include gray tones in addition to brown. Additionally, the applicant has agreed to plant beech trees within the conservation easement." Neither condition has been met, and the wall is highly visible from both MacArthur Boulevard and homes on Brookes Hill Court. We ask that the Planning Board enforce these two conditions.
11. Page 12 of the May 2013 Planning Board document placed three requirements on the High Acres project to redress concerns about the immensity of the retaining wall. Two of these requirements have not been met: (a) "added plantings to break up the visual impacts of the expanded wall" and (b) "Added supplemental plantings within the forest conservation easement area as shown on the FFCP to screen the wall when viewed from MacArthur Boulevard." Although some plantings have been added within the conservation area, the destruction of about 1 acre in a roughly 20-foot-wide strip just below the wall and the added effective height of the wall have resulted in the retaining wall being highly visible from MacArthur Boulevard and homes in Brookmont adjacent to the High Acres site. We ask that the Planning Board enforce these two conditions.
12. Page 13 of the May 2013 Planning Board document states that "the applicant added several trees along Brooke's Hill Court to screen vehicle headlights leaving the site from nearby residences." No trees have been added to Brookes Hill Court by the developer or the county, despite Brookmont's request that a tree that will grow large and tall was requested multiple times. See previous point.
13. Page 14 in the "Landscaping" section of the May 2013 document states that "Beech trees will be added to the conservation easement to adequately and effectively screen the proposed retaining wall from adjacent residential properties south of the site." At this point, we have identified only 1 beech tree in this area, and it is located in a spot so close to the property line of a home in Brookmont that its branches will quickly spread onto the adjacent property, impinging on open space.
14. Transparency: The Planning Board required a number of reports and plans covering diverse aspects of the High Acres project. These planning documents include, but are not limited to, such items as the invasive species management plan, planting details, tree protection plans, and conservation easement plans. County agencies also have found a number of violations in a number of separate areas, including but not limited to stormwater management, sediment control, forest conservation, and other areas, and the county has issued requirements for the development to remedy these violations. Under the county's sunshine requirements, we request access to all of these documents now and prior to any further actions taken by any county agency. Our community has suffered damage from the High Acres project, and the project has adversely affected property values in our community. Greater transparency is of the utmost importance now. We have asked above for the Planning Board to hold a public hearing, and we again request access to all of the relevant documents as we prepare to testify. We greatly appreciate the dedication and competence of the Planning Board's staff and experts across the county's agencies that oversee this project. We would like to be better able to represent our community's interests as these county experts help bring the High Acres project to a successful and speedy conclusion.

Thank you for the opportunity to submit these comments. We are concerned that we were unable to obtain a complete written or electronic listing of the violations, which makes us worry that we could not

comment on all of the current issues. We encourage the Planning Board to hold a public hearing so that it and the community can further explore solutions to the many remaining issues listed above and caused by the High Acres project, as well as any violations and issues we are not yet aware of, that continue to affect Brookmont. We also ask that we be offered an opportunity to see the violations that county agencies have found and the proposed remedies to those violations. We wish to comment on any violations and proposed remedies that we have not yet seen and offer to work with the county to resolve these issues and concerns.

Sincerely,



David Berg
Board Member
On behalf of the Civic League of Brookmont and Vicinity

cc: Peter Hobby, President, and Brad Northrup, Vice President

From: Edwina Rogers [mailto:edwinarogers@surryhill.us]
Sent: Friday, August 25, 2017 8:05 PM
To: David Berg <bergdavidr@gmail.com>
Cc: Isensee, Derek <Derek.Isensee@montgomerycountymd.gov>; Peck, Stephen <stephen.peck@montgomeryplanning.org>; james.scakett@montgomerycountymd.gov; Reilly, Kathy <kathy.reilly@montgomeryplanning.org>
Subject: Re: You Phone Call About The Mudslide From Brookes Ridge Townhomes

Thanks David for your concerning update below. Yes I know what and where you are talking about now. I could only see a google translation of your voicemail message as I did not have wifi in Kathmandu. There is substantial runoff directed through the Forest Conservation down to MacArthur Blvd. I have that filmed and photographed too. Montgomery County Planning did not approve that plan for sediment control. You were at the hearing that I did not attend. Attached is the approved plan which centers around a required "trap or pond" but the loose dirt is stored where the storm water trap was required to be. It has been this way for nearly four years. I am completely beside myself as to how this could happen and continue to happen? No one will tell me why the approved requirement of a trap was ignored and the sediment has been allowed to be directed at my home and the public right away on MacArthur Boulevard. I believe you corresponded with Kathy Reilly with Montgomery County Planning maybe before maybe she knows and is copied above. I have attached the approved plan from their public files. The approved sediment control plan also is completely based on a trap to catch sediment but the trap was never installed to this day and in its place is the complete opposite of a trap - a big dirt pile.

I returned yesterday to find a backhoe in the Forest Conservation Area and new additional piles of fresh dirt here and there. See photo from yesterday and the sediment control plans attached. I have many more photos and videos but I cannot attach them as it will cause the email to be too large.

Edwina Rogers
6507 Brookes Hill Court
Bethesda, MD 20816
+1 202 674 7800
edwinarogers@surryhill.us

On Aug 25, 2017, at 2:09 PM, David Berg <bergdavidr@gmail.com> wrote:

> Mr. Isensee --
> I'm wondering what has come of your investigation of the mudslide event emanating from the Brookes Ridge site.
> I pass the muddy mess alongside of MacArthur Blvd. just about daily, and I have to report that nothing has been done to remove the mud and restore the swale. I can't imagine what the hillside on the Brookes Ridge site looks like uphill of this mess.
> Could you please let me know what action the county is taking to have this mess cleaned up and to prevent it from happening again?
> Thanks in advance. --
> David
>
> -----Original Message-----
> From: Isensee, Derek [mailto:Derek.Isensee@montgomerycountymd.gov]
> Sent: Tuesday, August 15, 2017 7:40 AM
> To: David Berg <bergdavidr@gmail.com>; 'Edwina Rogers' <edwinarogers@surryhill.us>
> Cc: 'Stephen Peck Forest Conservation Inspector Montgomery County MD' <stephen.peck@montgomeryplanning.org>; james.scakett@montgomerycountymd.gov
> Subject: RE: You Phone Call About The Mudslide From Brookes Ridge Townhomes
>
> All,
>
> We will investigate the issue and take any necessary steps to address sediment runoff.
>
> Thank you,
>
> Derek Isensee, Field Supervisor
> Montgomery County Department of Permitting Services Sediment Control and Stormwater Management Inspections
> 255 Rockville Pike, 2nd Floor
> Rockville, MD 20850
> (301) 370-3634 (cell)
>
> -----Original Message-----
> From: David Berg [mailto:bergdavidr@gmail.com]
> Sent: Tuesday, August 15, 2017 6:58 AM
> To: 'Edwina Rogers' <edwinarogers@surryhill.us>
> Cc: Isensee, Derek <Derek.Isensee@montgomerycountymd.gov>; 'Stephen Peck Forest Conservation Inspector Montgomery County MD' <stephen.peck@montgomeryplanning.org>; james.scakett@montgomerycountymd.gov
> Subject: RE: You Phone Call About The Mudslide From Brookes Ridge Townhomes
>
> Edwina --
>
> I'm sorry if my email was unclear. Specifically, I did not talk in my email about fresh sediment on Brookes Hill Court or Maryland Avenue, although there is some.

I was trying to alert you and the county to a new sediment field along MacArthur Boulevard. Sediment has washed through the forest conservation area on the High Acres site and accumulated along MacArthur without passing through your property or the adjacent properties on Brookes Hill Court. So, the sediment I was trying to describe likely originates on the High Acres property and has come to rest outside that property's border onto the MacArthur Blvd. right-of-way. It partially fills and blocks the swale alongside MacArthur.

Where exactly this sediment originates on the High Acres property I do not know, as I have not explored that property to see, but I think it is highly likely that it passed through the forest conservation area, if it did not originate there, after it was caused by stormwater from areas at a higher elevation on the High Acres property. There is no property between High Acres and the MacArthur Blvd. right-of-way in this area. To be clear, the sediment in this field is unlikely from what I can see to have passed through your property or the adjacent properties on the Court.

I am not saying anything about sediment on your property, as I have not gone there to look.

If the county staff whom you included as a "cc" on your email (and whom I am including as a "cc" on my email) would like me to show them what sediment field I am trying to describe, I would be happy to show them. My phone number is 301-229-1399.

Thanks for getting back to me with the names of the responsible county staff. I'm concerned. --

David

-----Original Message-----
From: Edwina Rogers [mailto:edwinarogers@surryhill.us]
Sent: Monday, August 14, 2017 11:53 PM
To: bergdavidr@gmail.com
Cc: Derek Montgomery County Isensee <Derek.Isensee@montgomerycountymd.gov>; Stephen Peck Forest Conservation Inspector Montgomery County MD <stephen.peck@montgomeryplanning.org>; james.scakett@montgomerycountymd.gov
Subject: You Phone Call About The Mudslide From Brookes Ridge Townhomes

Dear David:

I got your voicemail message about the mudslide that washed down the hill from High Acres - Brookes Ridge Townhomes and has covered our street. I am sure that my patio is covered too and it is most likely in my daughter's bedroom also. The mud can only reach our street through my property. I had a temporary corrugated tin barrier up that held back the silt from late June until July 24th. This temporary fix was developed by a civil engineer and an architect that I hired. The permanent solution will cost me over $250,000 for a series of cement retaining walls and an elaborate drainage systems.

The developers of Brookes Ridge reported the tin barrier as a fence violation and I had to remove it under a Montgomery County permit violation order and the 2006 fence by July 24. Now the flooding has started again and it got much worst last week since the digging started again and a large mound of loose soil was placed at the edge of the hillside again (photo below) from late last week. The developer is digging up the storm water system again to tie in the downspouts from the 11 Townhomes. The flat roofs are like large bowls that collect enormous amounts of water that was being dumped behind the 17 feet of retaining walls. The footers of the walls were being compromised and there are now significant cracks in the wall. The damn could break and my home will cease to exist.

Unfortunately we are out of the country until August 23rd. Did you say it is six inches deep by MacArthur Blvd now and the forest conservation area is covered also? Can you please take photos for me? You are welcome onto my property too look around and take photos.

I have copied the sediment control manager Derek Isensee and the Forest Conservation Inspector Stephen Peck. We hope they can stop the mudslides that have been a constant problem since October 2013 when the construction started. Also I copied the building inspector Jim Scakett.