

Item 7 - Correspondence

From: [Rob Byrne](#)
To: [MCP-Chair](#)
Cc: [Joseph Byrne](#); [Patrick Byrne](#); [R. L. A. Joshua Sloan](#); [Wallace, Scott C.](#)
Subject: WSCCR 23-TRV-05A - Letter From Applicant
Date: Tuesday, February 27, 2024 4:40:36 PM
Attachments: [WSCCR 23-TRV-05A - Letter to the Planning Board - CHI.pdf](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Chair Harris,

Please see our attached letter regarding WSCCR 23-TRV-05A, one of the cases before the Planning Board for your determination.

Thanks,

Rob Byrne
703-307-0894
Community Housing Initiative, Inc.
<https://chidc.org/>

DATE: February 27, 2024

TO: Chair Artie Harris
Montgomery County Planning Board
2425 Reddie Drive 14th Floor
Wheaton, MD 20902

VIA: Electronic submission

RE: WSCCR 23-TRV-05A: February 29, 2024 Agenda Item 7, Montgomery County
Comprehensive Water Supply and Sewerage Systems Plan

Dear Chair Harris and Planning Board Members,

We write as the applicants for the site in question and would like start by thanking your Staff for their diligent and detailed review of WSCCR 23-TRV-05A, one of the several cases before you for a determination. The case is complicated and has a significant history that they methodically reviewed in their analysis resulting in their ultimate recommendation of approval of the category change.

We would like to reiterate several key points and have provided our background analysis completed by VIKA on our behalf that provides further details and aligns with your Staff's recommendations.

Provision of Residential Senior Housing

First and foremost, the proposed category change will allow the implementation of sorely needed senior housing in a building product that is not readily available in the County. Whereas most senior living housing is provided as apartments, this townhouse development provides an alternative for those wishing to downsize but retain independence and a home of their own in their community. Where senior living townhomes have come up for sale in the County, they are some of the best performers of all unit types, confirming the strong demand.

Environmental Improvement & Protection

Second and equally important, the current site is in poor environmental condition with no stormwater facilities and little forest cover of the stream running through the site. Water quality improvements and reforestation of these environmentally sensitive areas cannot be achieved without redevelopment. And as the Master Plan points out, such improvements are a key element allowing a conversion of the existing commercial uses to residential. To this end, the Applicant has already submitted an application to the Maryland Department of Environment for Brownfield Remediation created by the previous commercial use of the property, in our efforts to ensure improvement of the environmental condition of the site.

Further, as we have shown in our submitted Conditional Use Plan, this can be achieved with a sewer system that runs to an existing mainline in Travilah Road and will not require a pump station or any environmental buffer encroachments.

Master Plan Conformance

As noted by Staff, the Master Plan considered the subject property as part of a larger tract of land that included property on the other side of the stream that would not be able to build proper sewer lines without significant impacts and a pump station. The current proposal, however, is only focused on an area that is much more appropriate for redevelopment and meets the goals of the Master Plan. Specifically, 1) the subject property confronts property within the existing sewer service envelope, 2) the private sewer lines will tie into an existing main along the subject property's frontage, 3) the private sewer avoids streams, stream valley buffers, and environmentally sensitive areas. To be clear, there is no sewer main extension proposed, the proposed private lines will connect to an existing main in Travilah Road.

As noted, we appreciate Staff's recommendation and respectfully request the Planning Board's adoption of their findings and conclusions. We will be present at the February 29 hearing and happily provide additional information or answer any questions you may have.

Sincerely,

Community Housing Initiative, Inc.

Summary of Travilah Road Sewer Category Change

VIKA Maryland, LLC
20251 Century Blvd.
Suite 400
Germantown, MD 20874
301.916.4100
vika.com

Date: February 1, 2024

To: Community Housing Initiative, Inc.

The purpose of this memorandum is to summarize the support for necessary water and sewer category changes for the subject property.

Property

The property includes Parcels P804, P709, and B (N765) along Travilah Road approximately 350 feet east of the intersection with Potomac Riding Lane. All three parcels total approximately 11 acres in the RE-2 Zone.



Proposed Redevelopment

The proposed redevelopment will include protection of a stream and wetland within approximately 2.23 acres of Forest Conservation planting area included in at least 60% green area spread throughout the community. Within this well-landscaped area, up to 60 fee-simple independent living townhouses for seniors are proposed.



2002 Potomac Subregion Master Plan

As noted in the Executive's Recommendation letter Dated January 22, 2024, MNCPPC Staff noted that residential uses would be more compatible with the surrounding area than current uses. They further state that rezoning of this property could substantially upgrade



the area, enable assemblage of unrecorded parcels, and eliminate commercial special exceptions and nonconforming uses in the area. Oddly, they reference the Public Hearing Draft of the Master Plan rather than the Approved Plan. Regardless, the Johnson property is discussed as one property and the proposed application is only for a portion. Thus, several recommendations that may not have applied to the entire property can be met by this application. For example, the Master Plan notes that service should be limited to properties that can be served by sewer extensions within the public rights-of-way. The site has been carefully graded to ensure that water and sewer service will run along internal private roads and easements to the public system already within the Travilah Road Frontage. No public extension is required.

The Master Plan also recommends against public sewer where increased density can damage the environment and water resources. Of course, the Master Plan was written well before current stormwater regulations, which will be implemented through proposed Environmental Site Design stormwater facilities. Further, the full stream valley buffer will be placed into a conservation easement with forest plantings over large swaths that are currently mown lawn. It's for reasons such as this that the Notice to the Reader at the beginning of the Master Plan says, "Master plans generally look ahead about 20 years from the date of adoption, although they are intended to be updated and revised every 10 years. It is recognized that circumstances will change following adoption of a plan and that the specifics of a master plan may become less relevant over time." With contemporary sustainable design solutions, limited increases to density are not incompatible with improved environmental conditions. In fact, this redevelopment is one of the few means to improve a severely degraded site. Given that this site is a brownfield, cleanup to improve water quality is expensive but important. The cleanup and implementation of stormwater facilities and reforestation of the buffer will address the Master Plan's recommendations for this area.

Finally, the Master Plan fold-out map of the Council-approved sewer envelope has been updated several times since 2002, as described in the next section.

[2018-2027 Comprehensive Water Supply and Sewerage Systems Plan](#)

The 2018-2027 Comprehensive Water Supply and Sewerage Systems Plan (the "Plan") includes the following section on pages C-15-C-16:

II.M.: POTOMAC AREA RE-1 AND RE-2-ZONED PROPERTIES

Special Community Sewer Service Policy: Recommended by the 2002 Potomac Subregion Master Plan

Subject Area: Properties zoned RE-1 or RE-2 at the edge or "periphery" of the master plan's recommended community sewer service envelope

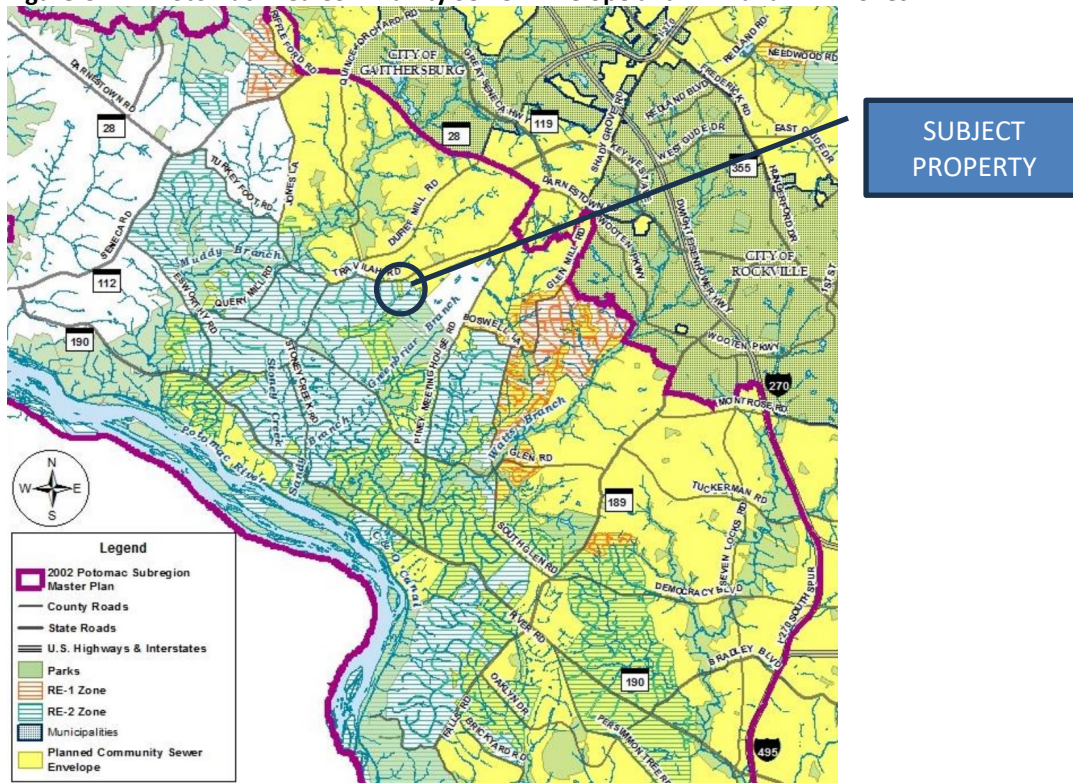
Service Recommendation & Comments: The master plan's recommendations concerning for community sewer service properties zoned for rural estate development (RE-1 and RE-2) depart from those in the 1980 master plan. The previous master plan had allowed for the



consideration of sewer service for rural estate zones. The 2002 master plan follows in line with the Water and Sewer Plan's general service policies for rural estate zones. However, the new master plan also recognizes that before 2002, the approval and provision of community sewer service within these zones occurred on a case-by-case basis, resulting in an irregular sewer service envelope. The master plan recommends that RE-1- and RE-2-zoned properties located at the edge or periphery of the recommended community sewer envelope may be considered for community sewer service on a case-by-case basis. In such cases:

- The property under consideration must abut or confront another property within the master plan's designated sewer service envelope.
- The extension of community sewer service is intended to follow existing public rights-of-way and must not affect streams, stream valley buffers, or other environmentally-sensitive areas.

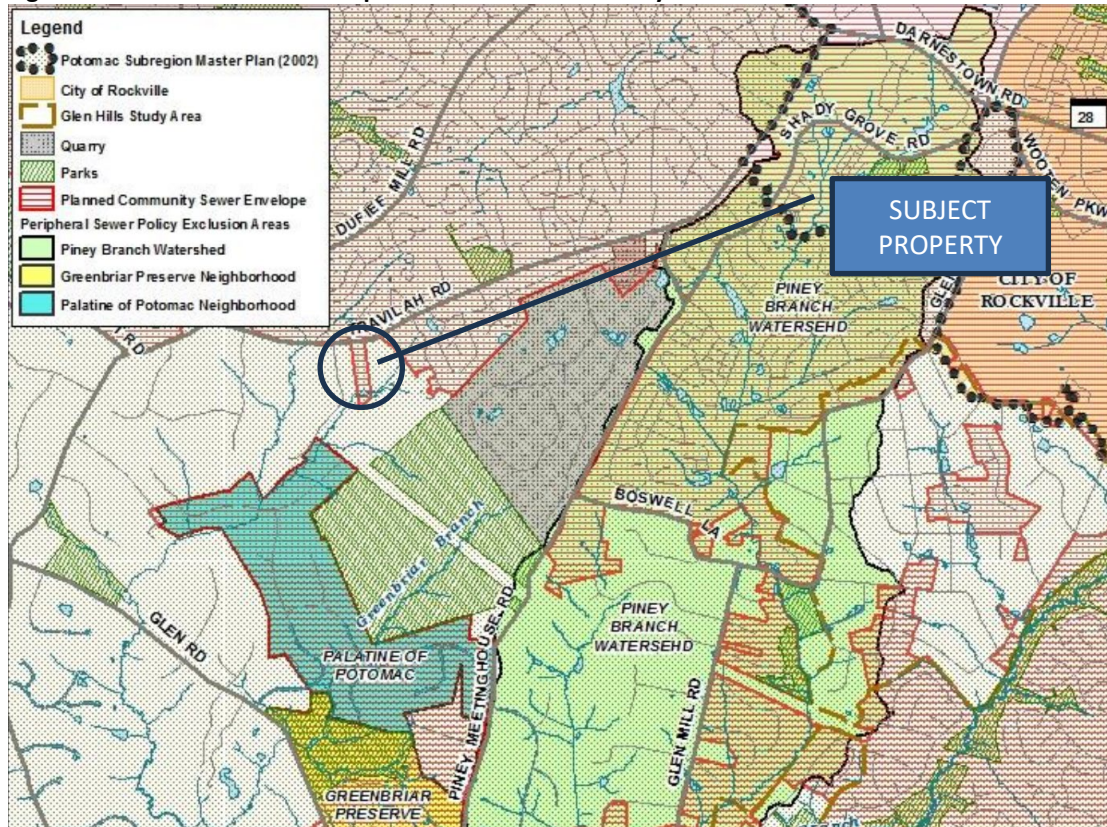
Figure C-F12: Potomac Area Community Sewer Envelope and RE-1 and RE-1 Zones



In addition to the preceding essential requirements, several years of experience implementing this policy have resulted in the acceptance of guidelines that further refine the evaluation of and recommendations for potential cases.

- Properties that confront the sewer envelope across broad public rights-of-way should also be in relatively close proximity to other properties approved for sewer service on their own side of that right-of-way.
- The selection of sewer main extensions, wherever possible, should minimize the number of properties abutting new sewer main extensions

Figure C-F13: Potomac Area Peripheral Sewer Service Policy Exclusion Areas



With regard to these provisions and exclusions, the subject property meets all standards and is not within the three Exclusion Areas.

1. One of the three parcels is within the sewer service envelope in the Plan and two of the parcels are within the proposed sewer envelop in the Potomac Subregion Master Plan “Potomac Sewer Services Envelope 2002 Map D” (see excerpt below). All of the parcels abut or are within or abut the sewer envelope.
2. The extension of community sewer service will run along utility easements within new private roads directly to the existing lines within the Travilah Road public right-of-way. All utilities are proposed to run north through the property away from and not affecting streams, stream valley buffers, or other environmentally-sensitive areas.
3. The property does not confront the sewer envelope across a broad public right-of-way; it directly abuts or is within the envelope.
4. No new properties will abut the new sewer lines; they are all internal to the property with residential lots around the periphery.

From: [Naomi Yount \(NPCA\)](#)
To: [MCP-Chair](#)
Subject: NPCA Support CHI Travilah Road
Date: Tuesday, February 27, 2024 9:54:59 AM
Attachments: [BoardChair.pdf](#)

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Best Regards,

Naomi Yount
President NPCA



Please find us at www.northpotomacnews.org and on
Facebook <https://www.facebook.com/northpotomaccitizensassociation>

Never doubt that a small group of thoughtful, committed citizens can change the world:
indeed, it's the only thing that ever has.

-Margaret Mead

From: [Naomi Yount \(NPCA\)](#)
To: [MCP-Chair](#)
Subject: Mailing address
Date: Tuesday, February 27, 2024 10:09:31 AM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

North Potomac Citizens Association
P.O. Box 4216
North Potomac, MD 20885

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Best Regards,

Naomi Yount
President NPCA



Please find us at www.northpotomacnews.org and on
Facebook <https://www.facebook.com/northpotomaccitizensassociation>

Never doubt that a small group of thoughtful, committed citizens can change the world:
indeed, it's the only thing that ever has.

-Margaret Mead



Travilah Senior Townhomes

Board Chair Artie Harris
Montgomery Planning Board
2425 Reddie Drive, 14th Floor
Wheaton, MD 20902

RE: Water/Sewer Category Change: WSCCR 23-TRV-05A (Hurst, Ennis, Johnson, and Blackman)

Dear Chairman Harris,

The North Potomac Citizens Association is writing to you to voice our support for the Water & Sewer Category Change for Travilah Senior Townhomes, a proposed 60-unit age-restricted townhouse community, located off Travilah Road in Rockville, MD.

The developer, Community Housing Initiative, worked with staff and the council to create a text amendment that allows for townhouse communities to be included in the definition of Independent Living Facility for Seniors or Persons with Disabilities to help create this type of product. This site was contemplated through the negotiations of the Text Amendment with staff and Council. The Text Amendment passed unanimously.

The proposed project is allowed by conditional use; however, the property has a condition to its Water & Sewer Category that only allows for one connection, most likely, dating back to the approval for the current use as a landscape yard.

We are requesting that you support the removal of the restriction on the Sewer Category that limits the sewer to a single connection and the Water category change from a W-6 to a W-1.

Below are some of the benefits to the community provided by this develop:

- This housing product allows for senior Montgomery County residents to stay within the county they currently call home, while downsizing to a smaller residence.
- Seniors downsizing allows for housing turnover in the market, beneficial for new home buyers.
- This proposed project provides significant on-site environmental clean-up utilizing a Brownfield Voluntary Clean-Up Program (VCP) through the Maryland Department of the Environment.
- With this VCP plan, CHI is committing to eliminate the hazardous material from the site and remove it to a safe location. This Cleanup Plan will not only benefit the site but have a positive impact on the environment close to the site.
- Proposed significant yards, parks, & amenity spaces with a fully connected sidewalk system.

We hope the County Council recognizes the community benefit this project will provide and supports the Water & Sewer Category change presented.

Sincerely,

Sherlock Wright, VP

The North Potomac Citizens Association

From: maryyakaitis@gmail.com
To: [MCP-Chair](#)
Subject: RE: Question About Materials for submission re Feb 29 Hearing
Date: Wednesday, February 28, 2024 11:20:00 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[Yakaitis Testimony to Planning Board 2 29 24.pptx](#)

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Thank you Ms. Coello. I have attached the PowerPoint presentation that I plan to present. Also, Mr. Doherty and I have changed our plans and we both will attend the meeting.

Please let me know if there is anything else needed from us. For example, do we need to revise our sign up?

I appreciate your assistance.

Mary

From: MCP-Chair <mcp-chair@mncppc-mc.org>
Sent: Wednesday, February 28, 2024 11:03 AM
To: maryyakaitis@gmail.com
Subject: RE: Question About Materials for submission re Feb 29 Hearing

Good morning,

Thank you for contacting the Planning Board Chair's office. I am confirming we received your online form to testify on Item 7 (Comprehensive Water Supply and Sewerage Systems...). Please submit your PowerPoint to this e-mail address (MCP-Chair@mncppc-mc.org). A copy will be distributed to the Planning Board and staff to review, and will be included in the record. We will also save a copy to display for you during your testimony in the event you have any technical issues with sharing your screen.

Thank you,



Catherine Coello
Administrative Assistant III

Montgomery County Planning Board, Chair's Office
2425 Reddie Dr 14th Floor, Wheaton, MD 20902

catherine.coello@mncppc-mc.org
m: 301.495.4605 | d: 301.495.4608



From: maryyakaitis@gmail.com <maryyakaitis@gmail.com>

Sent: Wednesday, February 28, 2024 10:42 AM

To: MCP-Chair <mcp-chair@mncppc-mc.org>

Subject: Question About Materials for submission re Feb 29 Hearing

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

I am signed up to testify virtually and have a question about submitting a a few Power Point slides I would like to use. I don't see any way to provide these materials on the sign up page. Would you please let me know how to provide them so that Board Members can view them?



Virus-free. www.avg.com

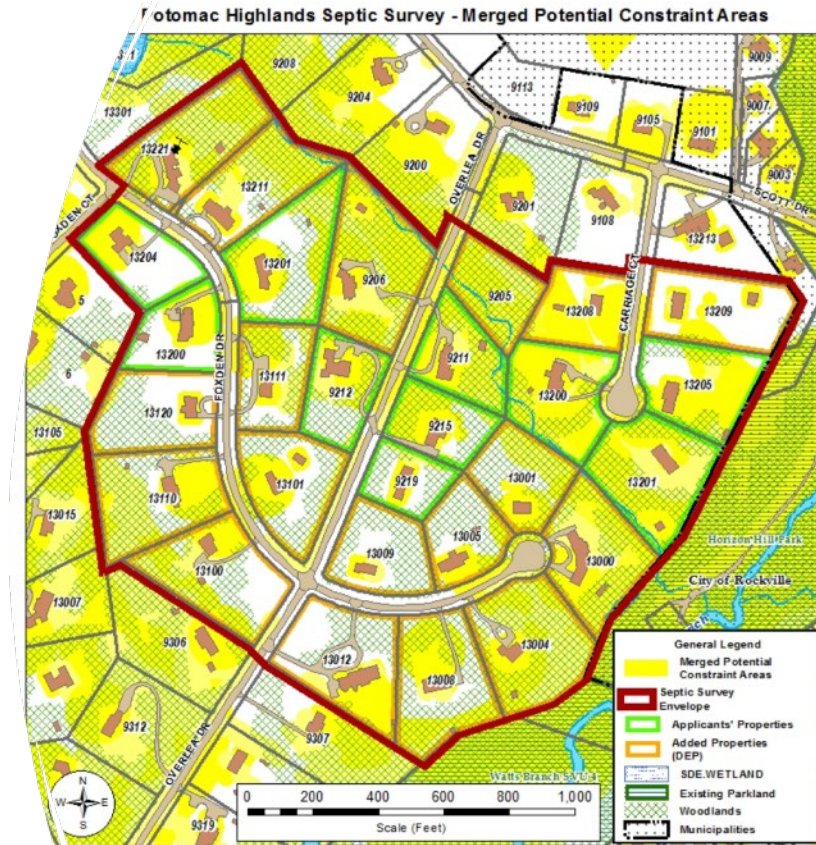
Presentation by Overlea Sewer Consortium

Mary Yakaitis, President

February 29, 2024

DEP Study Finding: Four Applicant Homes Need Sewer Service

- Results of DEP's North Overlea Study show virtually entire area where these homes are located is not suitable for continued septic system use.
- How can applications be denied by the Planning Board and Council when they conflict directly with serious concerns raised by the DEP's own study?



Applicant Properties in “Constrained Area”

- WSCCR-22TRV-15A-2 Foxden Dr
- WSCCR-22TRV-05A-13205 Carriage Ct.
- WSCCR-22TRV-06A-13201 Carriage Ct.
- WSCCR-22TRV-09A-13209 Carriage Ct.

WHY RESTRICT RIGHTS OF APPLICANTS?

- **Annexation of applicant Carriage Ct properties into Rockville could be delayed for decades; septic system failure concerns are immediate.**
- **Restrictions on sewer service in remainder of Glen Hills are unacceptable**
 - **No undeveloped areas exist in community**
 - **Some homes already have sewer service**
 - **Zoning rules out subdivision of lots**

Restrictions Contradict Key National, State, & County Priorities

- **Environmental initiatives**—Our old septic systems are dangerous; don't meet current standards
- **Public health policy and regulations**—Threats to wells and lawns; open ponds also used for waste disposal
- **Maryland State priority initiatives for Chesapeake Bay Cleanup**—Effluent discharged into directly into Watts Branch Creek and the Potomac
- **Findings of 3 DEP county sanitary sewer-related studies**—Much of area “not suitable” for on site waste disposal

Restrictions Also Violate Constitutional Law*

- The US Constitution's *Takings Clause* stipulates that the State may not “*take*” private property without just compensation.
- Per the Supreme Court,
 - Government authorized harm to a landowner = viable claim of “taking” (e.g. policy preventing us from protecting our health, environment & property value)
 - Government actions that reduce a property's economic value is “categorically considered a “taking.”

*See Cedar Point Nursery V. Hassaid, 141 S.Ct.2063 (2021)

Key Legal Determinants of “Taking” *

“Character of the governmental action”

- Policy violates key MD and US environmental policy

“Magnitude of the deprivation” (i.e., financial impact)

- Salability and value of property seriously decreased by denial of sewer service

• “Interference in an owner’s reasonable, investment-backed expectations”

- Some homes acquired before 2002 Restrictions enacted
- Owners aware of neighboring properties with sewer and have reasonable expectation they will not be denied.

- *Peperdine Law Review, Vol.50:579,2022

What is the Rationale for Opposition?

- Interests of developers to keep property values low for future acquisitions?
 - Concerns that zoning isn't used appropriately to control growth?
 - Political pressure from vocal no-growth opponents?
 - Misinformation and lack of knowledge about the health threat?
 - Lack of concern for interests of people you represent?
-
- HUNDREDS OF VOTERS IN GLEN HILLS DESERVE AN ANSWER THAT MAKES SENSE

Necessary Remedial Actions

Approve these requests for sewer category changes in an area identified by DEP as unsuitable for septic system use.

Other Requests for Planning Board Consideration

- Urge DEP to take action on the North Overlea Study that was COMPLETED prior to enactment of restrictions.
- Support our request for a limited Text Amendment to the 2002 Potomac Subregion Plan that removes restrictions for any properties identified in DEP studies as located in “areas of concern (i.e., septic system use deemed unsustainable).

Thank You

- We appreciate being able to share our community's urgent need for relief.

Mary Yakaitis

President, Overlea Sewer Consortium

**PHCA PETER DOHERTY TESTIMONY RE:
Sewer Category Category Change Requests**

**WSSCC-22TRV-05A-13205 Carriage Ct.
WSSCC-22TRV-06A-13201 Carriage Ct.
WSSCC-22TRV-09A-13209 Carriage Ct.
WSSCC-22TRV-15A-2 Foxden Dr**

Thank you for hearing my testimony.

I am here today urging you to approve sewer category changes for

**WSSCC-22TRV-05A-13205 Carriage Ct.
WSSCC-22TRV-06A-13201 Carriage Ct.
WSSCC-22TRV-09A-13209 Carriage Ct.
WSSCC-22TRV-15A-2 Foxden Dr.**

I and my neighbors requested a septic survey in 2017 for these properties and others. Although the County Council voted in 2018 to retroactively stop the survey, they were too late. The preliminary results had already been sent to the affected homeowners. That DEP survey showed that these properties are “constrained”.

The DEP term constrained means that the land is not suitable for replacement septic systems, and the existing systems are likely to fail. These homeowners need a solution and we ask your support to make that happen.

Our existing septic systems were built in the 1950s, 60s and 70s before modern standards. DEP has told us they are likely to fail in the near future.

Because we are concerned about the environmental and health dangers of failed septic, we encouraged our neighbors to submit these applications.

Beyond the DEP’s determination that septic is not feasible on these properties going forward, there are other considerations.

When the three applications on Carriage Court involving the Rockville Expansion Zone were submitted in late 2021, they conformed with the Potomac Peripheral Policy in the Water Sewer Plan then in effect.

A Revised October 2022 Plan changed the text specifically to target these properties in the Rockville Zone. But a WSSC design concept showed a connection directly to WSSC’s system, avoiding Rockville. These applications should be grandfathered.

Science and engineering principles should be the ONLY consideration in dealing with the inevitable failures of aging septic systems next to the Watts Branch creek; which happens to empty into the Potomac River just upstream from the WSSC water intake

facility.

Instead the County Council has yielded to political pressure from groups concerned with development. But the reality is that under the County's own water/Sewer plan governing the installation of sewer service by homeowners, the systems can only be sized to serve the existing homes and subdivision of the property is prohibited. A section of the last sentence bears repeating - installation of sewer service by homeowners. We have to pay for this ourselves. No tax dollars will be harmed.

The fact alone that these applications submitted in late 2021 are just now being considered speaks volumes about how skewed sewer policy has been impacted by politics.

I urge you to support to these applications and put science and engineering ahead of politics.