

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
 SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
 WASHINGTON REGIONAL DISTRICT IN
 MONTGOMERY COUNTY, MARYLAND
 Office of Zoning and Administrative Hearings
 100 Maryland Avenue, Room 200
 Rockville, Maryland 20850
 (240) 777-6660

IN THE MATTER OF:

Germantown, LLC, Applicant *

David Fink *

Kevin A. Foster, ASLA, AICP *

James Oltmann, President, *

 Cinnamon Woods Home Association *

Steve Traylor, Member *

 Cinnamon Woods Home Association *

In Support of Application *

Cindy Bar, Esquire *

Robert Harris, Esquire *

Zoning Application No. G-878

Attorneys for the Applicant *

Martin Klauber *

 People's Counsel *

In Support of the Application *

Victoria Bullard-Vinson *

In Opposition to the Application *

Before: Philip J. Tierney, Hearing Examiner

HEARING EXAMINER'S SUPPLEMENTAL REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Application No. G-878, filed on October 1, 2008, initially requested reclassification from the Commercial, local (C-1) Zone to the Residential Townhouse, fifteen dwelling units per acre (RT-15) Zone of 8.46 acres known as Germantown Park, Lot 685, Subdivision 21, located at 18451 Mateny Road, Germantown, in the 9th Election District.

The Application was filed under the Optional Method authorized by Code §59-H-2.5, which permits a schematic development plan (SDP), with binding limitations for land use, density, development standards, and staging. The SDP initially called for 112 townhouse units plus 14 moderately priced dwelling units (MPDUs).

The Technical Staff of the Maryland National Capital Park and Planning Commission (MNCPPC) reviewed the application twice, on February 23 and April 6, 2009, and recommended approval on both occasions. The Montgomery County Planning Board unanimously recommended approval on April 16, 2009. A public hearing was held on April 28, 2009 and testimony was presented in support of and in opposition to the application. The record closed on May 12, 2009. The hearing examiner's report and recommendation was issued on June 25, 2009, and recommended approval.

The Opposition filed a request for oral argument, which took place on July 28, 2009. The District Council remanded the case to the hearing examiner on September 15, 2009 for further proceedings. On the same date, the District Council adopted a resolution to permit the Applicant and other interested parties to present evidence on remand about specific economic and land use issues outlined in the resolution, Ex. 78 (attached hereto). On December 11, 2009, the Applicant filed an amended application to replace the RT-15 Zone with the RT-12.5 Zone and add more binding elements, Ex. 67 (a).

The Office of Zoning and Administrative Hearings proceeded to schedule a hearing with notice of all parties of record as well as posting and other public notice. The Technical Staff continued to recommend approval of the amended application. The hearing was conducted on May 17, 2010 by Hearing Examiner Françoise M. Carrier due the unavailability of the original hearing examiner. The record closed on June 28, 2010. Due to the appointment of Ms. Carrier to another position, the original hearing examiner was designated to review the entire record, including all exhibits and transcripts, and prepare this supplemental report and recommendation.

II. FINDINGS AND CONCLUSIONS

General background findings of fact are delineated in the hearing examiner's report and recommendation, dated June 25, 2009, and do not need to be repeated here except to update the record and address matters specified by the District Council to be evaluated during the remand period. Therefore, the earlier report and recommendation is incorporated into this report by reference and made a part of this report. All testimony during the remand hearing was presented under oath.

A. Economic performance of the current tenants in the shopping center

David Fink is President of Finmarc Management, Inc., which was founded in 1987 with offices in Bethesda. Mr. Fink is the managing partner and he owns the subject property. He and his partner grew up in Silver Spring and they have participated in a number of commercial real estate ventures in the county. The management company owns and operates six million square feet of commercial property in the Washington, D.C. area. This property is used for retail and commercial uses. For example, Finmarc purchased property in White Oak at four corners and redeveloped the site with Trader Joe's and a number of other retail uses. This

property is one of the highest grossing locations in the metro region based on sales per square foot.

Mr. Fink's company purchased the Germantown Park site in the first quarter of 2005 with the expectation of adding ten to fifteen thousand square feet of additional retail uses on the site. Indeed, they anticipated that the expansion of retail uses would add value to the property and serve as an amenity to this area of the county.

Mr. Fink made initial efforts to secure a better mix of tenants at the shopping center. Experience has taught him that a well known anchor store is critical to the success of a shopping center as small tenants will be drawn to the center by the market success of the anchor store and a synergy will develop where the anchor pulls in buyers for both the anchor store and other tenants. For this reason, anchor stores expect and receive lower rents than other tenants. He made on-going efforts to attract a well known anchor as well as retailers to the center. His solicitations included drug stores such as CVS, Walgreen's and Rite Aid, Hair Cuttery, Starbucks, Domino's Pizza and others.

Mr. Fink, despite his efforts, was unable to secure the desired new anchor or upscale retailers. The two prior anchors, Weis and Grand Mart, lost money. A new anchor, Amigo Market, has experienced revenue problems since it recently located at the center. The dry cleaners recently ceased to operate at the center. As result the shopping center has become a failed business entity. Mr. Fink believes that the new grocery store anchor will not survive much longer. His company has been forced to lower rents and absorb losses and its current expenses now exceed rental income by \$27,000 per month. The evidence supports a finding that the shopping center is an economic failure and its continued operation is doubtful.

B. Economic viability of the center in light of larger, newer nearby centers

Mr. Fink concluded that the failure of the shopping center is due to a number of factors. In retrospect, the site is too small and has a visibility problem from the street because ongoing traffic cannot see the available retail uses. The site also has too much competition. For example, there are some 16 other retail properties within a three mile radius of the site. There are three strong shopping centers within one mile of the site and they all contain well known and popular grocery store anchors. The better retail uses have gravitated to these centers rather than the subject property. As a result, these centers are able to charge rents that are three to four times the rent the Applicant receives.

Since the remand the Applicant has lost two tenants, the dry cleaners and Grand Mart. The new anchor is receiving a reduced rent and has not demonstrated economic viability. Mr. Fink indicated that these factors have had a negative impact on the company's ability to charge rents and he presented a market area study, Ex. 79, as well as a rent comparison chart, Ex. 80. His two remaining retail tenants are obligated to pay \$6.00 and \$11.00 per square foot as compared to a range of \$18 to \$44 per square foot for the competitors. The deterioration of the shopping center means that it is no longer a benefit to the community. The company has been forced to lower rents and absorb losses and its current expenses exceed rental income by \$27,000 per month. As result the shopping center is failing as a business entity.

C. The effects on the environment of converting the property to residential use

The SDP will provide a form of development that is compatible and consistent with the surrounding area. Stoneridge is the densest development followed by Williamsburg Square. Neither development has large open space areas. Cinnamon Woods, on the other hand, has large open space areas.

The SDP proposes more open space at this location. For example, the SDP includes a village green, recreational open space, pocket parks and an enlarged storm water management (SWM) facility. The plan also proposes the preservation of the Graft-Musser family cemetery. The updated SWM facility will add to the open space for the project. The tree canopy will be significantly enlarged from 0.98 acres to 4.43 acres. Impervious surfaces will decrease from 4.93 acres to 4.42 acres. Existing green space shows 3.7 acres and the plan is to increase this to 4.68 acres.

D. Proposed density, green space, open space and recreational facilities

The Applicant submitted a comparison chart to show the differences between the existing use and the proposed use. The Applicant has reduced density from 13.2 dwelling units per acre to 12.4 dwelling units per acre and amended the application to replace the RT-15 Zone with the RT- 12.5 Zone. The developed density is reduced from 112 townhouse units to a maximum of 105 units¹. The revisions will add more open space, recreational areas and allow for pedestrian links as shown on Ex. 84, a pedestrian circulation plan. A concept SWM plan was approved that will improve water quality and quantity.

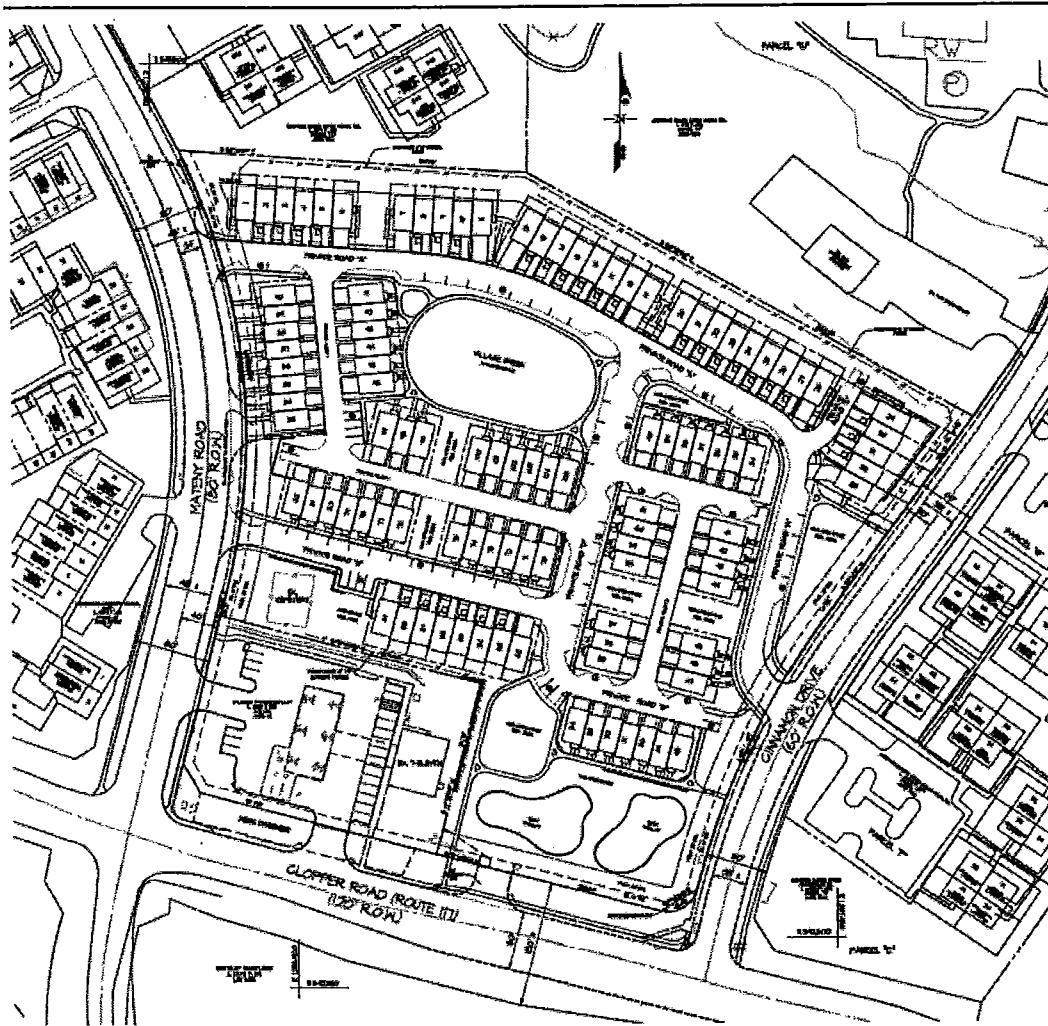
The comparison with existing and proposed development also reveals benefits in terms of increased tree canopy, reduced impervious surface and increased green space. The comparison chart, Ex. 87, shows that tree canopy will increase to 52.4% of the site. Impervious surface will be reduced by 6.0%. The green space will be increased by 11.6%. The overall open space is shown on the plan to reflect about 55% of the site.

¹ The Applicant's evidence indicates that the density of 105 units includes MPDUs, Ex. 70 (a).

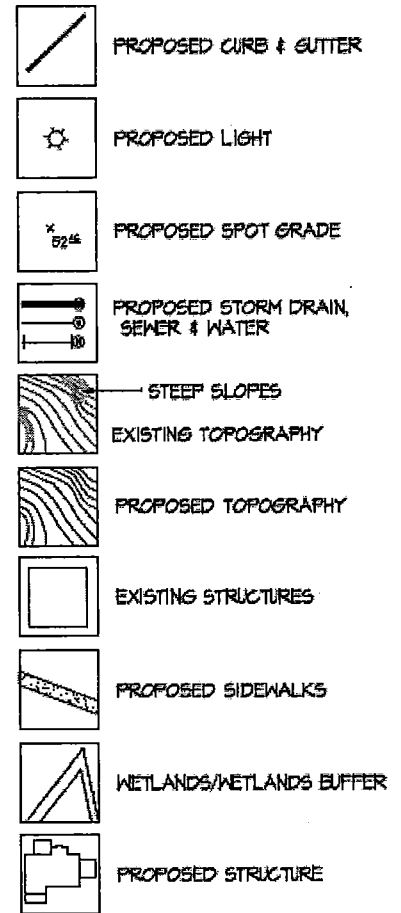
E. Compatibility of the proposed residential development with existing and proposed land use in the surrounding area

The subject property is surrounded by mature residential town houses that are the same age as the shopping center. The surrounding area currently is home to 1,395 townhouse units, Ex. 86. The proposed development represents only 7% of the total surrounding area density. Located north of the shopping center is the large Cinnamon Woods townhouse community developed as an R-60 cluster with four-plex back to back townhouse units. This community has large open space areas and reflects a density of 8.5 dwelling units per acre. Located northeast of the shopping center is the Stoneridge townhouse community developed under the R-T 12.5 zone with two and three story townhouse units and some garage units at 12.6 dwelling units per acre. Located to the southwest is the Williamsburg Square townhouse community also developed under the R-T 12.5 zone without garages and at a density of 12.3 dwelling units per acre. The SDP, as revised by Ex. 91, is reproduced on pages 9 - 10. The SDP also includes binding elements with the following points:

1. Density limited to 105 dwelling units
2. MPDUs will be provided at 12.5% of total density
3. The Applicant or its' successors in interest will preserve and professionally maintain the existing cemetery
4. The setbacks will reflect 30 feet from north property line; 25 feet from the western property line; 100 feet from the southern property line; and 30 feet from the eastern property line.
5. Minimum parking will provide 3.0 parking spaces per unit;
6. Maximum building height will be 35 feet; and
7. Minimum green space of 50%



LEGEND



DEVELOPMENT STANDARDS RT-12.5

	REQUIRED/ALLOWED	PROPOSED
Tract Area	Minimum 40,000 sf (0.92 Ac.)	8.16 Acres
Density	128 DU - (8.15 DU/Ac.) (5.46 Ac. X 125 DU/Ac. = 109 DU, X 122 MPDU Density Density Bonus = 128 DU)	105 DU (12.41 DU/Ac.)
Moderately Priced Dwelling Units (MPDU)	min. 12.5% of total units up to 8% of max. density	12.5% of total units (14 DU)
Building Setbacks:		
- From any detached dwelling lot or lot classified in a SPD residential zone	30 feet min.	30 feet min.
- From any public right-of-way	25 feet min.	100 feet min. from ROW of Clopper Road 50 feet min. from ROW of Cinnamon Drive 25 feet min. from ROW of Matersy Road
- From an adjoining lot: - Side (and min.) - Rear	10 feet min. 20 feet min.	10 feet min. 20 feet min. 50 feet min. from property line adjacent to Cinnamon Road
Building Height		
Main Building	35 feet max.	35 feet max.
Accessory Building	25 feet max.	25 feet max.
Maximum Lot Coverage	35% max.	35% max.
Green Area	min. 30%	min. 30%
Off-street Parking	min. 210 spaces (3.0 spaces / DU)	424 Spaces (4.08 Spaces / DU)
Parking Provided:		
76 units w/ 2 garage + 2 driveway visitor spaces =		304 Spaces
24 units w/ 1 garage + 1 driveway space =		36 Spaces
Private on-street + surface visitor parking =		87 Spaces
Total on-site parking proposed (4.08 Spaces / DU)		424 Spaces

GENERAL NOTES

- OWNER/DEVELOPER: GERHANTOWN LLC,
c/o FINMARC MANAGEMENT, INC.
4700 BETHESDA AVENUE
BETHESDA, MARYLAND 20814
ATTN: MR. HARC P. SOLOMON & MR. DAVID PINK
PHONE: 301-456-4111
- BOUNDARY SURVEY BY: GUTSCHICK, LITTLE, & NEBER, P.A., FEBRUARY, 2006.
- TOPOGRAPHY BY: GUTSCHICK, LITTLE, & NEBER, P.A., NOVEMBER, 2007.
- NR/PSD BY: GUTSCHICK, LITTLE, & NEBER, P.A.
DR/PSOIA: 420081430; APPROVED: MAY 5, 2008
- TRAFFIC STUDY BY: KIMLEY-HORN AND ASSOCIATES, INC., 2006
- WATERSHED:
USE CLASS: MIDDLE GREAT SENEGA CREEK
CLASS I-P
- DEVELOPMENT PROGRAM: THIS PLAN WILL BE DEVELOPED IN ONE PHASE
- PROPOSED WATER AND SEWER SERVICE WILL BE PUBLIC. THE EXISTING WATER
AND SEWER CATEGORIES ARE MH, S-1.
- NO KNOWN RARE, THREATENED OR ENDANGERED SPECIES ON SITE.
- NO KNOWN HISTORIC FEATURES ON SITE. THE ORAFF-MESSER FAMILY CEMETERY IS
LOCATED ON THE SITE. (THE CEMETERY WAS REMOVED FROM THE LOCATIONAL
ATLAS AND INDEX OF HISTORIC SITES IN MONTGOMERY COUNTY, STATUS IN 1984.)
- THERE IS NO 100-YEAR FLOODPLAIN ON THIS SITE.
- THERE ARE NO KNOWN TREES ON THE SUBJECT PROPERTY THAT ARE COUNTY AND
OR STATE CHAMPION TREES. THERE ARE NO TREES ON THE PROPERTY THAT HAVE
A DBH OF 10% OR MORE OF THE DBH OF THE CURRENT COUNTY AND OR STATE
CHAMPION TREE.
- ALL UTILITIES ARE CONCEPTUAL AND SUBJECT TO CHANGE. SEE APPROPRIATE
APPROVED UTILITY DRAWINGS.

BINDING ELEMENTS

1. DENSITY IS LIMITED TO NO MORE THAN 105 DWELLING UNITS
2. MPDU UNITS WILL BE PROVIDED AT 12.5 % OF TOTAL DENSITY
3. THE APPLICANT, ITS SUCCESSORS OR ASSIGNS, WILL PRESERVE AND PERPETUALLY MAINTAIN THE EXISTING GRAFF-MUSSER CEMETERY ON THE PROPERTY
4. THE PROJECT WILL INCLUDE THE FOLLOWING MINIMUM BUILDING SETBACKS:

North property boundary-	30 feet from the property line
West property boundary-	25 feet from the Motory Road right-of-way
South property boundary-	100 feet from the Clopper Road right-of-way
East property boundary-	30 feet from the Cinnamon Drive right-of-way
5. THE PROJECT WILL INCLUDE PARKING AT A MINIMUM OF 5.0 SPACES PER DWELLING UNIT
6. THE PROJECT WILL HAVE A MAXIMUM BUILDING HEIGHT OF 35 FEET.
7. THE PROJECT WILL PROVIDE A MINIMUM OF 50% GREENSPACE.

SITE DATA

1. EXISTING ZONING:	C-1
2. PROPOSED ZONING:	RT-12.5
3. SITE AREA:	8.46 AC. (LOT 685, PLAT NO. 21254)
4. EXISTING USE:	RETAIL (46,875 SQUARE FEET)
5. PROPOSED USE:	RESIDENTIAL - SINGLE FAMILY TOWNHOUSE

The People's Counsel raised a legitimate point that the early versions of the SDP contained too many illustrative specifications. However, the applicant has continued to offer more binding elements and the remaining nonbinding elements of the SDP gives the Applicant some leeway as the plan is reviewed at the site plan and subdivision stages by the Planning Board. The Applicant is reluctant to commit to exact development standards beyond the stated binding elements because market conditions may change and larger units may be needed. Also more parking may be required which could cut into either open space or impervious surface. These issues are better evaluated at the site plan and subdivision stages. The Planning Board possesses authority to balance density reduction against increased parking or higher impervious surface requirements. The public benefits of the overall layout are clear and serve as a guide to balance public interest requirements.

The evidence supports a finding that the proposed development as reflected by the SDP and its binding elements will provide a form of development that is compatible and consistent with the surrounding area. The Technical Staff concluded that the density proposed is appropriate and compatible. The People's Counsel also supports the project as currently proposed.

F. School capacity for the proposed development

A school facility payment along with capital improvements indicate that the project will not cause an adverse impact on area schools. Both the Applicant's expert and the Technical

Staff concluded that the Applicant could satisfy adequate public facility (APF) requirements and this issue will be reviewed again at the post-zoning stages.

The latest requirements for school capacity are found in exhibits 96, 96 (a) and (b), 97 and 97 (a). These requirements confirm that CIP funding for the Northwest Cluster will provide additional capacity that keeps the Cluster from going into moratorium. With the reduction of density, fewer students will be generated by the development. Under these circumstances, the APF review provides sufficient safeguards to allow the zoning request.

G. The public interest benefits in approving requested land use

The evidence supports a finding that the proposed development conforms to the objectives of the master plan. The plan does not provide specific recommendations for the site, but the proposed zoning is in general conformity with the plan's objectives. The plan recommends an increase in housing stock and encourages a mix of housing types.

The redevelopment of the site with residential use is a natural transition that will reinforce existing residential uses in the area. The proposed use will also transition higher activity levels along Clopper Road away from adjacent residential areas and provide added protection to these areas. The master plan's recommendations for shopping centers in this area have already been achieved by the success of nearby centers which contributed to the failure of the existing center at this location.

The site is an appropriate location for development at the density proposed and includes amenities that better achieve zoning and planning objectives for this area of the County. The project provides public benefits in the form of improved SWM control, increased green space and tree cover, reduced impervious surfaces, preservation of existing cemetery, and removal of vehicular access to the site from Clopper Road.

H. The Owner's original intent in purchasing the subject property and the relevance of that intent to the rezoning application

Mr. Fink and his partner have worked exclusively with retail projects throughout the Washington metropolitan area and did not consider any residential use for the site at the time of its purchase. The owner originally intended to provide a successful shopping center. The owner's testimony was under oath and there is no evidence to the contrary on the issue of the owner's original intent to operate a successful shopping center at the site.

I. Feasibility of a mixed retail/residential development on the site

The evidence supports a finding that use of the site for mixed uses is not feasible for several reasons. Many of the mixed use zones require master plan site designation. The applicable master plan does not designate the site for mixed uses. Mixed uses also rely on higher buildings and floor area ratios to provide for the economic stimulus necessary for this type of project. Mixed uses generate increased density and traffic. Any mixed use project at this location would raise serious compatibility problems and the Technical Staff concluded that mixed use at this location is not permissible.

III. SUMMARY OF HEARING

Testimony presented at the remand hearing consists of the Applicant's case in chief, community participation both for and against the application, and comments of the People's Counsel.

A. Applicant's Case in Chief

David Fink is President of Finmarc Management, Inc., which was founded in 1987 with offices in Bethesda. Mr. Fink is the managing partner and he owns the subject property. He and his partner grew up in Silver Spring and they have participated in a number of commercial

real estate ventures in the county. The management company owns and operates six million square feet of commercial property in the Washington, D.C. area. This property is mostly used for retail. For example, Finmarc purchased property in White Oak at four corners and redeveloped the site with Trader Joe's and a number of other retail uses. This property is one of the highest grossing locations in the metro region based on sales per square foot.

Mr. Fink's company purchased the Germantown Park site in the first quarter of 2005 with the expectation of adding ten to fifteen thousand square feet of additional retail uses on the site. He and his partner have worked exclusively with retail projects and did not consider any residential use for the site. Indeed, they anticipated that the expansion of retail uses would add value to the property and provide a community amenity to this area of the county.

Mr. Fink indicated that he made initial efforts to secure a better mix of tenants in the shopping center. Experience has taught him that a well known anchor store is critical to the success of a shopping center as small tenants will be drawn to the center by the market success of the anchor store and a synergy will develop where the anchor pulls in buyers for both the anchor and other tenants. For this reason, anchor stores expect and receive lower rents than the tenants. He made ongoing efforts to attract a well known anchor as well as retailers to the center and sought drug stores such as CVS, Walgreen's and Rite Aid, Hair Cuttery, Starbucks, Domino's Pizza and others.

Mr. Fink, despite his efforts, was unable to secure desired new anchor or upscale retailers. The two prior anchors, Weis and Grand Marc, lost money. A new anchor, Amigo Market, has experienced revenue problems since its' recent location at the center. The shopping center has lost two of the four last remaining retail tenants since the last hearing and it is likely that its grocery store anchor will not survive much longer. The company has been

forced to lower rents and absorb losses and its current expenses exceed rental income by \$27,000 per month. As result the shopping center is failing as a business entity.

Mr. Fink concluded that the failure of the shopping center is due to a number of factors. In retrospect, the site is too small and has a visibility problem from the street because ongoing traffic cannot see the available retail uses. The site has too much competition. For example, there are some 16 other retail properties within a three mile radius of the site. There are three strong shopping centers within one mile of the site and they all contain well known and popular grocery store anchors. The better retail uses have gravitated to these centers rather than the subject property. As a result, these centers are able to charge rents that are three to four times the rent the Applicant receives.

Mr. Fink indicated that these factors have had a negative impact on the company's ability to charge rents and he presented a market area study, Ex. 79 as well as a rent comparison chart, Ex. 80. His two remaining retail tenants are obligated to pay \$6.00 and \$11.00 per square foot as compared to a range of \$18 to \$44 per square foot for the competitors. The deterioration of the shopping center means that it is no longer a benefit to the community. For this reason, the rezoning is supported by the Cinnamon Woods Homes Association.

Mr. Fink testified that he did not evaluate the residential potential of the site until it became clear that the shopping center project was a failure. He believes that residential use at this location will produce high quality homes that will raise property values for the entire community. He has met with community groups and the technical staff and agreed to limitations on the proposed development that will enhance the environment, increase green space to a minimum of 50% of the site, provide MPDUs and limit develop to 105 dwelling units.

Kevin Foster qualified as an expert witness in the fields of land planning and landscape architecture. He described the surrounding area as he did in the first hearing. The center of a predominately residential community is developed with a 46,000 square foot commercial retail shopping center on an 8.46 acre parcel which currently contains a grocery store and beer and wine shop. Next to the shopping center is a combination gas station and convenience store and cemetery. At the south east corner of the site is an older storm water management facility which only handles water quantity.

Mr. Foster testified that this area is surrounded by a mature residential town house community that is the same age as the shopping center. Located north of the shopping center is the large Cinnamon Woods townhouse community developed as an R-60 cluster with fourplex back to back townhouse units. This community has large open space areas and reflects a density of 8.5 dwelling units per acre. Located northeast of the shopping center is the Stoneridge townhouse community developed under the RT-12.5 zone with two and three story townhouse units and some garage units at 12.6 dwelling units per acre. Located to the southwest is the Williamsburg Square townhouse community also developed under the RT-12.5 zone without garages and at a density of 12.3 dwelling units per acre.

Mr. Foster explained some of the changes to the SDP since the last hearing. The Applicant has reduced density from 13.2 dwelling units per acre to 12.4 dwelling units per acre and amended to application to replace the R-T 15 zone with the R-T 12.5 zone. The developed density is reduced from 112 townhouse units to a maximum of 105 units. The revisions will add more open space, recreation facilities and allow for pedestrian links as shown on Ex. 84, a pedestrian circulation plan. A concept SWM plan was approved.

Mr. Foster concluded that the revised SDP with its binding elements will provide a form of development that is compatible and consistent with the surrounding area. Stoneridge is the

densest community followed by Williamsburg Square. Both have individual open space areas that are connected in and through the units. Neither community has large open space areas. Cinnamon Woods, on the other hand, has large open space areas. The SDP seeks to provide a hybrid between the two forms of development.

Mr. Foster indicated that the SDP provides for a village green and a pocket park adjacent to the cemetery. The updated SWM facility will add to the open space for the project. The tree canopy will be significantly enlarged and impervious surfaces will decrease. Existing green space shows 3.7 acres and the plan is to increase this to 4.68 acres or a 11.6% increase. The overall open space is shown on the plan to reflect 55% of the site.

Mr. Foster testified that use of the site for mixed uses is not practical for several reasons. Many of the mixed use zones require master plan site designation. Mixed use also relies on higher buildings and floor area ratios to provide for the economic stimulus necessary for this type of project. Mixed uses generate increased density and traffic. Any mixed use project at this location would have serious compatibility problems and the Technical Staff concluded that mixed use at this location is not permissible.

Mr. Foster concluded that the proposed development conforms to the objectives of the master plan. The plan does not provide specific recommendations for the site, but the proposed zoning is in general conformity with the plan's objectives. The plan recommends an increase in housing stock and mix of housing types.

Mr. Foster indicated that the redevelopment of the site is a natural transition that will reinforce existing residential uses in the area. The proposed use will also transition away from the higher activity levels along Clopper Road and provide added protection to adjacent residential areas. The master plan's recommendations for shopping centers have already by

achieved and the success of nearby centers contributed to the failure of the existing center at this location.

Mr. Foster also concluded that the proposed development complies with the requirements of the zoning ordinance. The site is an appropriate location for development at the density proposed and includes amenities that better achieve zoning and planning objectives for this area of the County. The project also provides public benefits in the form of improved SWM control, increased green space and tree cover, reduced impervious surfaces, preservation of existing historic cemetery, and removal of vehicular access along Clopper Road. While school facilities reflect congestion, a facility payment along with capital improvements indicate that the project will not cause an unmitigated adverse impact on area schools.

B. Community Support

James Oltmann is President of the Cinnamon Woods Home Association and served on the Board of Directors off and on for 16 years since 1991. The Association represents 684 homeowners and it resolved to go on record and support the application for rezoning as necessary to maintain community stability. The association is very concerned about the plight of the shopping center as it is a failing enterprise and the community does not want the site to become a magnet for crime or trigger deterioration of property values. When the Grand Mart was closed for a year trash and debris accumulated on the site.

Mr. Oltmann testified that he was involved in the initial efforts to locate a police satellite facility in the shopping center. For a number of years the police substation was instrumental in reducing the crime rate in the area. This facility was also used by several home associations for their meetings. He was involved with the founding of the Seneca Cluster Community Partnership, which was made up of several area associations and worked to support the police facility at this location.

Mr. Oltmann met with the Applicant's representatives to learn about the proposed development. The majority of Association members believe the proposed development will be beneficial to the community and help increase property values. The community has concluded that the shopping center is not viable at this location. Mr. Oltmann submitted a letter in support of the rezoning, Ex. 69.

Steve Traylor is a resident of Cinnamon Woods and was very surprised to learn that the proposed zoning was not approved. The community has invested time and money to improve the community's appearance through street repairs. He indicated that the street repair project alone is budgeted at \$1,500,000. Property values in the community have dropped significantly and he believes the approval of the proposed zoning will be a step toward neighborhood improvement.

C. Opposition Testimony

Victoria Bullard-Vinson has resided on Metz Drive in the Heritage Preserve community for the past 16 years. Heritage Preserve is a townhouse community of 117 homes located directly across Clopper Road from the subject property. Ms. Bullard-Vinson does not oppose development on the Applicant's property but she does oppose too much density. She commented that the SDP proposes a configuration that looks like a sardine can. She believes the townhouse communities in the area were developed with inadequate parking and too little green space. She has shopped at the Applicant's shopping center and has found items that are unavailable elsewhere. She finds an unmet need in the community for specialty shops.

In addition, Ms. Ballard-Vinson believes the police substation provides an important community service with its location in the shopping center. The substation is regularly used by the county police and the MNCPPC. She recommended that a height limit be imposed for new construction.

D. Applicant's Rebuttal

David Fink was recalled as a rebuttal witness. He rebutted Ms. Bullard-Vinson's characterization of the project as looking like a sardine can. The SDP exceeds many of the minimum requirements of the R-T 12.5 zone and proposes 50% or more of the site will be devoted to green space.

Mr. Fink also rebutted her contention that he could have gotten more viable tenants. He spent much time trying to convince CVS to locate a drug store in the shopping center but without success. He observed that retail will go where the money is. It is clear that retail outlets concluded that the subject property was not conducive to their business.

Mr. Fink indicated that a mixed use was examined in detail but he concluded that it was not feasible at this location. Office uses would require building that would exceed the height limit. In addition, parking restrictions could not be met because mixed uses would generate traffic that could not be accommodated on the road network. He concluded that mixed uses were not functional or cost effective at this location.

E. People's Counsel Recommendation

Martin Klauber, People's Counsel for Montgomery County, attended both hearings and participated in several discussions about the public interest factors that affect the proposed zoning approval. He initially opposed the approval of the proposed development without further binding elements and revisions to the density.

Mr. Klauber indicated that the revisions to the SDP and the additional binding elements convinced him that the proposed zoning would be in the public interest. He recommended that the proposed rezoning be approved.

IV. Zoning Issues

My previous report indicated that the Applicant had met all the requirements of the RT-15 Zone. The revised application to a lower density and more binding elements only serves to further support the previous conclusions.

The Applicant has demonstrated that the request for the RT-12.5 Zone at the proposed location meets the purpose clause of the RT Zones and is an appropriate density and use. The Application is supported by evidence that shows the proposed use to be compatible with existing and planned uses in this area. Finally, the application meets the public interest requirements.

While the Opposition raised concerns about traffic and school capacity, the preponderance of the evidence indicates that the application will likely pass the APF review, which is a public process before the Planning Board and the Opposition may participate. Other concerns dealt with questions about the Applicant's good faith efforts to make the project work. The evidence is clear that the Applicant made reasonable efforts to make the shopping center work but, in fact, it has not and for reasons largely beyond the control of the Applicant.

On balance, the public interest factors show that the approval of the application is the best alternative. This view is supported the majority of the area residents, the People's Counsel, the Planning Board and the Technical Staff.

Based on the foregoing analysis and after a thorough review of the entire record, I conclude as follows:

1. The application satisfies the requirements and the purpose clause of the RT-12.5 Zone;
2. The application proposes a form of development that would be compatible with existing and planned uses in the surrounding area; and

3. The requested reclassification to the RT-12.5 Zone bears sufficient relationship to the public interest to justify its approval.

V. Recommendations

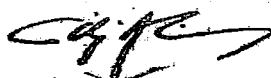
I, therefore, recommend that Zoning Application No. 878, seeking reclassification from the C-1 Zone to the RT-12.5 Zone of 8.46 acres known as Germantown Park, Lot 685, Subdivision 21, located at 18451 Mateny Road, Germantown, in the 9th Election District, be approved in the amount requested and subject to the specifications and requirements of the final Schematic Development Plan (SDP), Ex. 91;

Provided that, the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the SDP within 10 days of approval, in accordance with Code § 59-D-1.64 of the Zoning Ordinance; and

Further provided that, the Applicant submits prior to certification a fully executed copy of the Declaration of Covenants, Ex. 98, which has been revised to include the most recent binding elements specified in the revised SDP, Ex. 91, and to file such covenants in the land records of the county in accordance with Code §59-H-2.54 of the Zoning Ordinance within the aforementioned 10 day period, and present a suitable receipt of filing to the Hearing Examiner prior to the certification.

Dated: July 15, 2010

Respectfully Submitted,



Philip J. Tierney
Hearing Examiner

Resolution No.: 16-1102
Introduced: September 15, 2009
Adopted: September 15, 2009

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
WITHIN MONTGOMERY COUNTY, MARYLAND**

By District Council

**SUBJECT: APPLICATION NO. G-878, FOR AMENDMENT TO ZONING ORDINANCE
MAP, Remand to the Hearing Examiner**

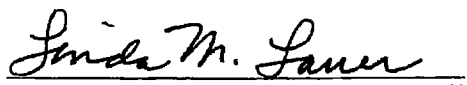
The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-878, seeking reclassification from the C-1 Zone to the RT-15 zone of 8.46 acres known as Germantown Park, Lot 685, Subdivision 21, located at 18451 Mateny Road, Germantown, in the 9th Election District, is hereby remanded to the Hearing Examiner for the reasons given in the Council's deliberations to permit the applicant and other interested parties to submit additional evidence on the following:

- 1) the economic performance of the current tenants in the shopping center;
- 2) the economic viability of the center in light of larger, newer nearby centers;
- 3) the effects on the environment of converting the property to residential use;
- 4) proposed density, green space, open space, and recreational facilities;
- 5) the compatibility of the proposed residential development with existing and proposed land uses in the surrounding area;
- 6) school capacity for the proposed development;
- 7) the public interest in approving the requested land use; and
- 8) the owner's original intent in purchasing the subject property and the relevance of that intent to the rezoning application.

The applicant may revise Zoning Application No. G-878 on remand to address concerns about density, green space, open space, and recreational facilities or other elements of compatibility. The applicant is requested to consider the feasibility of a mixed retail/residential development on the subject site.

This is a correct copy of Council action.


Linda M. Lauer
Linda M. Lauer, Clerk of the Council

Holland & Knight

ATTACHMENT 2

3 Bethesda Metro Center, Suite 800 | Bethesda, MD 20814 | T 301.654.7800 | F 301.656.3...
Holland & Knight LLP | www.hklaw.com

Cindy Bar
301.664.7606
cindy.bar@hklaw.com



June 14, 2010

VIA HAND DELIVERY AND ELECTRONIC MAIL

Francoise Carrier, Esquire
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, MD 20850

Re: Case No. G-878

Dear Ms. Carrier:

This letter is to address the recently published School Test results for FY 2011 which will be adopted by the Planning Board effective July 1, 2010. The results of the School Test for FY 2011 showed that the Northwest Cluster will require the payment of a School Facilities Payment at the elementary and middle school level.

When the Hearing Examiner addressed this issue in his earlier report, a School Facilities Payment was also required at the elementary school level. The Hearing Examiner noted this, and that the elementary school was projecting enrollment at close to the 120% level. Despite this, he recommended approval of the rezoning request, noting that the relatively small number of students generated by the proposed development (24 elementary, 13 middle and 11 high school) would not have sufficient adverse impact to warrant a denial of the rezoning. He concluded that this was an appropriate finding since the school system has tools available to make adjustments to address capacity issues. He also noted that there would be a subsequent Adequate Public Facilities (APF) review of the application at the time of subdivision when the school capacity issue would be fully evaluated.

The recently published FY 2011 figures (attached) show the middle school projected at 105.6% of capacity, just above the 105% level which requires a School Facilities Payment. The elementary school is projected at 119.1% of capacity, which is below the 120% which would place the cluster in moratorium, but will also require a School Facilities Payment. The High School requires no payment since it is below the 105% level.

EXHIBIT NO. 96
APPLICATION NO. G-878

Francoise Carrier, Esquire
June 14, 2010
Page 2

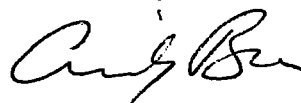
The measures which the Hearing Examiner outlined in his earlier report are still appropriate to address any issues of school capacity in the Cluster. In fact, since the time of the original filing, the County Council funded additional capacity in the CIP in order to bring the Bethesda-Chevy Chase and Seneca Valley Clusters out of moratorium, and keep the Northwest cluster from going into moratorium (see attached Mid-Cycle Adoption of School Test Results, FY 2010). This is exactly the type of measure which the Hearing Examiner noted in his report is available to address school capacity issues.

Further, as the Hearing Examiner noted, the APF test which will be administered at the time of subdivision review of this plan, would make denial of the application on the basis of school inadequacy inappropriate at the zoning stage. This is particularly the case in light of the fact that the revised zoning application will yield fewer students at the elementary level than the previous one (19 instead of 24). It should also be noted that at the time of the Hearing Examiner's earlier report the County's projection for the elementary school was actually slightly higher than the current projection. Despite the higher number of elementary students which would have resulted from the previous application, and the higher County projections regarding capacity at that time, the Hearing Examiner concluded that denial of the rezoning on the basis of school capacity was inappropriate. This conclusion should certainly not change for the revised application which actually has a lesser impact at the elementary and middle school levels.

The County adopted a system through its Annual Growth Policy and Adequate Public Facilities testing which requires an annual review of school capacity. It has followed and administered this system for many years. The regulations provide that as long as a cluster does not exceed 120% of capacity an applicant can move forward with its development with the payment of a School Facilities Fee. This application is within this legal test and should not be denied on the basis of inadequate school capacity.

We appreciate your consideration of our views.

Sincerely,



Cindy Bar

Attachments


cc: Martin Klauber, Esquire
Victoria Vinson-Bullard
Mr. Jim Oltmann



June 8, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Richard DeBose, Chief, Center for Research & Information Systems 

FROM: Pamela Dunn, Planner Coordinator, Center for Research & Information Systems

SUBJECT: FY2011 Growth Policy: Adoption of School Test Results

Recommendation: Adopt FY 2011 School Test Results

The Montgomery County Growth Policy is not revisited by the County Council on an annual basis. However, there continues to be an annual component of the revised growth policy: a review of the results of the school test. The school test determines if residential subdivisions in any school clusters should be subject to either a school facilities payment or a moratorium.

Staff will be requesting the Planning Board's acceptance of the attached school test results for FY2011. These results find that eight school clusters exceed the 105 percent program capacity ceiling; six clusters exceed at the elementary level, one cluster exceeds at the middle school level, and one school cluster exceeds at the high school level. Two of the school clusters that exceed 105 percent at the elementary level also exceed this threshold at the middle school level. Residential development in these eight clusters will be subject to a school facility payment:

In addition, one school cluster exceeds the 120 percent program capacity ceiling. Residential subdivisions will be in moratorium for FY2011 in the Richard Montgomery school cluster.

Acceptance of School Test Results

As in the past, the School Test analysis is prepared by Montgomery County Public Schools staff using the methodology adopted by the County Council. Planning staff has reviewed the results of the MCPS analysis and we endorse the findings outlined above.

The school test compares projected 2015 enrollment with 2015-2016 classroom capacity for each of the 25 high school clusters at the elementary, middle and high school levels. At all three levels, elementary, middle, and high school, enrollment

EXHIBIT NO. 96(a)
APPLICATION NO. 9-878

must not exceed 105 percent of program capacity and "borrowing" from adjacent clusters is not permitted. If projected enrollment at any level exceeds 105 percent of program capacity, residential subdivisions in the affected cluster will be required to make a school facility payment.

In addition, at all three levels, elementary, middle and high school, projected enrollment must not exceed 120 percent of program capacity and "borrowing" from adjacent clusters is not permitted. If projected enrollment at any level exceeds 120 percent of program capacity, residential subdivisions in the affected cluster will be under moratorium.

According to the analysis, enrollment does exceed 105 percent of program capacity in six school clusters at the elementary school level: Bethesda-Chevy Chase, Northwest, Northwood, Paint Branch, Quince Orchard and Rockville. Enrollment exceeds 105 percent of capacity at the middle school level in the Whitman cluster. And, enrollment exceeds 105 percent of capacity at the high school level in the Wootton cluster. Enrollment exceeds 105 percent of program capacity at both the elementary and middle school level for both the Bethesda-Chevy Chase and Northwest cluster. Residential subdivisions in the previously listed clusters will be required to make a school facility payment at each school level found to be inadequate.

During FY2010, eight school clusters exceeded the 105 percent capacity ceiling. The difference between FY2010 and FY2011 is the removal of the Walter Johnson, Richard Montgomery and Wheaton clusters from this group and the addition of the Wootton cluster.

The Richard Montgomery cluster is the only cluster to be placed in moratorium in FY2011; at the elementary school level projected enrollment is forecast to be 126.5% of program capacity in 2015. The FY2011 school test moves the Clarksburg cluster out of moratorium for the first time in several years. For any proposed residential development of three units or less (*de minimis*), a project may move forward under a moratorium but will be required to make a school facility payment at each school level deemed inadequate. For the Richard Montgomery cluster a *de minimis* project will be required to make a school facility payment at both the elementary and middle school level.

Planning staff recommends that Planning Board accept the results of the school test as calculated by Montgomery County Public Schools staff, for FY2011. These findings are attached on pages 4 and 5.

Once accepted by the Planning Board, this table (along with the resolution adopted by the Council in November 2009) will constitute Montgomery County's growth policy for FY2011 as relates to school capacity.

Growth Policy FY 2011 School Test: Cluster Utilizations in 2015-2016

Reflects County Council Adopted FY 2011-2016 Capital Improvements Program (CIP)

Elementary School Test: Percent Utilization >105% School Facility Payment and >120% Moratorium					
Cluster Area	Projected August 2015 Enrollment	100% MCPS Program Capacity With CC Adopted FY11-16 CIP	Cluster Percent Utilization in 2015	Growth Policy Test Result Capacity	Cluster Status
Bethesda-Chevy Chase	3,608	3,321	108.6%	Inadequate	School Payment
Montgomery Blair	4,061	4,368	93.0%	Adequate	Open
James Hubert Blake	2,516	2,508	100.3%	Adequate	Open
Winston Churchill	2,636	2,728	96.6%	Adequate	Open
Clarksburg	3,772	3,919	96.2%	Adequate	Open
Damascus	1,920	2,075	92.5%	Adequate	Open
Albert Einstein	2,625	2,723	96.4%	Adequate	Open
Galthersburg	3,879	3,898	99.5%	Adequate	Open
Walter Johnson	3,728	3,706	100.6%	Adequate	Open
John F. Kennedy	2,650	2,858	92.7%	Adequate	Open
Col. Zadok Magruder	2,577	2,635	97.8%	Adequate	Open
Richard Montgomery	2,897	2,132	126.5%	Inadequate	Moratorium
Northwest	4,297	3,609	119.1%	Inadequate	School Payment
Northwood	3,067	2,581	118.8%	Inadequate	School Payment
Paint Branch	2,441	2,313	105.6%	Inadequate	School Payment
Poolesville	522	755	69.1%	Adequate	Open
Quince Orchard	2,992	2,679	111.7%	Inadequate	School Payment
Rockville	2,531	2,216	114.2%	Inadequate	School Payment
Seneca Valley	2,262	2,173	104.1%	Adequate	Open
Sherwood	2,050	2,408	85.1%	Adequate	Open
Springbrook	3,027	3,188	94.9%	Adequate	Open
Watkins Mill	2,629	2,769	94.9%	Adequate	Open
Wheaton	2,863	2,792	102.5%	Adequate	Open
Wall Whitman	2,484	2,367	104.1%	Adequate	Open
Thomas S. Wootton	2,922	3,118	93.7%	Adequate	Open

Middle School Test: Percent Utilization >105% School Facility Payment and >120% Moratorium					
Cluster Area	Projected August 2015 Enrollment	100% MCPS Program Capacity With CC Adopted FY11-16 CIP	Cluster Percent Utilization in 2015	Growth Policy Test Result Capacity	Cluster Status
Bethesda-Chevy Chase	1,192	1,037	114.9%	Inadequate	School Payment
Montgomery Blair	2,111	2,266	93.2%	Adequate	Open
James Hubert Blake	1,189	1,329	89.5%	Adequate	Open
Winston Churchill	1,433	1,609	89.1%	Adequate	Open
Clarksburg	1,547	2,113	73.2%	Adequate	Open
Damascus	865	954	90.7%	Adequate	Open
Albert Einstein	1,317	1,460	90.2%	Adequate	Open
Galthersburg	1,638	1,751	93.5%	Adequate	Open
Walter Johnson	1,760	1,852	95.0%	Adequate	Open
John F. Kennedy	1,201	1,356	88.6%	Adequate	Open
Col. Zadok Magruder	1,155	1,816	71.5%	Adequate	Open
Richard Montgomery	1,154	986	117.0%	Inadequate	Moratorium at ES Level
Northwest	2,079	1,968	105.6%	Inadequate	School Payment
Northwood	1,152	1,362	84.6%	Adequate	Open
Paint Branch	1,248	1,271	98.2%	Adequate	Open
Poolesville	236	480	49.8%	Adequate	Open
Quince Orchard	1,389	1,648	84.3%	Adequate	Open
Rockville	980	981	99.9%	Adequate	Open
Seneca Valley	1,201	1,464	82.0%	Adequate	Open
Sherwood	1,127	1,476	76.4%	Adequate	Open
Springbrook	1,162	1,230	94.5%	Adequate	Open
Watkins Mill	1,232	1,251	98.5%	Adequate	Open
Wheaton	1,549	1,646	94.1%	Adequate	Open
Wall Whitman	1,347	1,260	107.8%	Inadequate	School Payment
Thomas S. Wootton	1,516	1,806	94.4%	Adequate	Open

High School Test: Percent Utilization >105% School Facility Payment and >120% Moratorium					
Cluster Area	Projected August 2015 Enrollment	100% MCPS Program Capacity With CC Adopted FY11-16 CIP	Cluster Percent Utilization in 2015	Growth Policy Test Result Capacity	Cluster Status
Bethesda-Chevy Chase	1,723	1,656	104.0%	Adequate	Open
Montgomery Blair	2,515	2,839	88.6%	Adequate	Open
James Hubert Blake	1,787	1,724	103.7%	Adequate	Open
Winston Churchill	1,907	1,928	98.9%	Adequate	Open
Clarksburg	1,979	1,971	100.4%	Adequate	Open
Damascus	1,310	1,532	85.5%	Adequate	Open
Albert Einstein	1,593	1,570	101.5%	Adequate	Open
Galthersburg	1,948	2,284	85.3%	Adequate	Open
Walter Johnson	2,173	2,230	97.4%	Adequate	Open
John F. Kennedy	1,557	1,847	84.3%	Adequate	Open
Col. Zadok Magruder	1,678	1,919	87.4%	Adequate	Open
Richard Montgomery	1,848	1,957	94.3%	Adequate	Moratorium at ES Level
Northwest	2,200	2,151	102.3%	Adequate	Open
Northwood	1,439	1,481	97.2%	Adequate	Open
Paint Branch	1,801	1,899	94.8%	Adequate	Open
Poolesville	1,087	1,107	98.2%	Adequate	Open
Quince Orchard	1,787	1,741	101.5%	Adequate	Open
Rockville	1,334	1,539	86.7%	Adequate	Open
Seneca Valley	1,334	1,481	89.5%	Adequate	Open
Sherwood	1,789	2,004	89.3%	Adequate	Open
Springbrook	1,600	2,090	76.8%	Adequate	Open
Watkins Mill	1,615	1,885	85.7%	Adequate	Open
Wheaton	1,284	1,416	90.7%	Adequate	Open
Wall Whitman	1,830	1,873	97.7%	Adequate	Open
Thomas S. Wootton	2,236	2,073	107.8%	Inadequate	School Payment

Summary of School Test for FY 2011

Based on County Council Adopted FY 2011-2016 Capital Improvements Program (CIP)
Effective July 1, 2010

School Test Level	Description	Cluster Outcomes by Level		
		Elementary Inadequate	Middle Inadequate	High Inadequate
Clusters over 105% utilization School facility payment required in inadequate clusters to proceed.	5-year test Effective July 1, 2010 Test year 2015-16	B-CC (108.6%) Northwest (119.1%) Northwood (118.8%) Paint Branch (105.5%) Quince Orchard (111.7%) Rockville (114.2%)	B-CC (114.9%) Northwest (105.6%) Whitman (107.8%)	Woodton (107.8%)
Clusters over 120% utilization Montgomery County Cluster Middle School Facility Payment	School District Montgomery County Test year 2015-16	Richard Montgomery (121.5%)		

* Richard Montgomery cluster middle school utilization is at 117%. A project of three or fewer residential units will require a school facility payment at both the elementary and middle school level.

Excerpt from Resolution 16-1187: 2009-2011 Growth Policy

Public School Facilities

S1 Geographic Areas

For the purposes of public school analysis and local area review of school facilities at time of subdivision, the County has been divided into 25 areas called high school clusters. These areas coincide with the cluster boundaries used by the Montgomery County Public School system.

The groupings used are only to administer the Adequate Public Facilities Ordinance and do not require any action by the Board of Education in exercising its power to designate school service boundaries.

S2 Grade Levels

Each cluster must be assessed separately at each of the 3 grade levels -- elementary, intermediate/middle, and high school.

S3 Determination of Adequacy

Each year, not later than July 1, the Planning Board must evaluate available capacity in each high school cluster and compare enrollment projected by Montgomery County Public Schools for each fiscal year with projected school capacity in 5 years. If at any time during fiscal year 2010 the County Council notifies the Planning Board of any material change in the Montgomery County Public Schools Capital Improvements Program, the Planning Board may revise its evaluation to reflect that change.

S4 Moratorium on Residential Subdivision Approvals

In considering whether a moratorium on residential subdivisions must be imposed, the Planning Board must use 120% of Montgomery County Public Schools program capacity as its measure of adequate school capacity. This capacity measure must not count relocatable classrooms in computing a school's permanent capacity. If projected enrollment at any grade level in that cluster will exceed 120% of capacity, the Board must not approve any residential subdivision in that cluster during the next fiscal year. If the Planning Board revises its measure of utilization during fiscal year 2010 because of a material change in projected school capacity, that revision must be used during the rest of that fiscal year in reviewing residential subdivisions.

Table 3 shows the result of this test for July 1, 2009, to July 1, 2010. Table 3 also shows the remaining capacity, in students, at each grade level in each cluster. Using average student generation rates developed from the most recent Census Update Survey, the Planning Board must limit residential subdivision approvals in any cluster during the

fiscal year so that the students generated by the housing units approved do not exceed the remaining capacity for students at any grade level in that cluster.

S5 Imposition of School Facilities Payment

In considering whether a School Facilities Payment must be imposed on a residential subdivision, the Planning Board must use 105% of Montgomery County Public Schools' program capacity as its measure of adequate school capacity. This capacity measure must not count relocatable classrooms in computing a school's permanent capacity. If projected enrollment at any grade level in that cluster will exceed 105% of capacity but not exceed 120%, the Board may approve a residential subdivision in that cluster during the next fiscal year if the applicant commits to pay a School Facilities Payment as provided in County law before receiving a building permit for any building in that subdivision. If the Planning Board revises its measure of utilization during fiscal year 2010 because of a material change in projected school capacity, that revision must be used during the rest of that fiscal year in reviewing residential subdivisions.

Table 4 shows the result of this test for July 1, 2009, to July 1, 2010. Table 4 also shows the remaining capacity, in students, at each grade level in each cluster. Using average student generation rates developed from the most recent Census Update Survey, the Planning Board must limit residential subdivision approvals in any cluster during the fiscal year so that the students generated by the housing units approved do not exceed the remaining capacity for students at any grade level in that cluster.

S6 Senior Housing

If public school capacity is inadequate in any cluster, the Planning Board may nevertheless approve a subdivision in that cluster if the subdivision consists solely of multifamily housing and related facilities for elderly or handicapped persons or multifamily housing units located in the age-restricted section of a planned retirement community.

S7 De Minimis Development

If public school capacity is inadequate in any cluster, the Planning Board may nevertheless approve a subdivision in that cluster if the subdivision consists of no more than 3 housing units and the applicant commits to pay a School Facilities Payment as otherwise required before receiving a building permit for any building in that subdivision.

S8 Development District Participants

The Planning Board may require any development district for which it approves a provisional adequate public facilities approval (PAPF) to produce or contribute to infrastructure improvements needed to address inadequate school capacity.

S9 Allocation of Staging Ceiling to Preliminary Plans of Subdivision

The Planning Board must allocate available staging ceiling capacity in a high school cluster based on the queue date of an application for preliminary plan of subdivision approval.

S9.1 Assignment of queue date

The queue date of a preliminary plan of subdivision is the date:

- a complete application is filed with the Planning Board; or
- 6 months after the prior queue date if the prior queue date expires under S9.4.

S9.2 Calculation of available staging ceiling capacity

The Planning Board must determine whether adequate staging ceiling capacity is available for a project by subtracting the capacity required by projects with earlier queue dates from the remaining capacity on Table 3 as updated periodically. Based on this calculation, the Planning Board may:

- approve a project for which there is sufficient capacity;
- approve part of a project for which there is sufficient capacity, leaving the remainder of the project in the queue until additional capacity becomes available;
- deny an application for a project for which there is insufficient capacity; or
- defer approval of a project and leave the project in the queue until sufficient capacity becomes available for all or part of the project. If insufficient capacity is available, the Board must not schedule a hearing on the application unless the applicant requests one.

If sufficient capacity is available for a project based on the queue date, the Planning Board must not deny an application based on pipeline (but not staging ceiling) changes while the queue date is in effect.

S9.3 Applicability of School Facilities Payment

The Planning Board must determine whether a project is required to pay a School Facilities Payment by subtracting the capacity required by projects with earlier queue dates from the remaining capacity on Table 4 as updated periodically. Based on this calculation, the Planning Board may:

- approve a project for which there is sufficient capacity;
- approve part of a project for which there is sufficient capacity, requiring the remainder of the project to pay the applicable School Facilities Payment until additional capacity becomes available; or
- defer approval of a project and leave the project in the queue until sufficient capacity becomes available for all or part of the project. If insufficient capacity is available, the Board must not schedule a hearing on the application unless the applicant requests one.

If a project must pay a School Facilities Payment, the Planning Board must not deny an application based on pipeline (but not staging ceiling) changes while the Payment requirement is in effect.

S9.4 Expiration of queue date

A queue date for an application for preliminary plan of subdivision approval expires:

- 6 months after the queue date if sufficient staging ceiling capacity was available for the entire project on the queue date and the Planning Board has not approved the application or granted an extension of the queue date; or
- 6 months after sufficient capacity becomes available for the entire project.

The Planning Board may grant one or more 6-month extensions of a queue date if the applicant demonstrates that a queue date expired or will expire because of governmental delay beyond the applicant's control.



Item #10

January 7, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Dan Hardy, Chief, Transportation Planning *DEH*

FROM: Pamela Dunn, Planner Coordinator, Research & Technology Center *PK*

SUBJECT: Mid-Cycle Adoption of School Test Results, FY2010

Recommendation: Adopt Mid-Cycle FY2010 School Test Results to Bring Bethesda-Chevy Chase and Seneca Valley Clusters out of Moratorium Status

The County Council Resolution (No. 16-1187) adopting the 2009-2011 Growth Policy allows the Planning Board to make a mid-cycle finding on adequacy during FY2010. Following adoption of the 2009-2011 Growth Policy, the County Council amended the FY2009-2014 Capital Improvements Program increasing programmed funding for three school clusters. These additional funds provide sufficient capacity within the next five years to bring the Bethesda-Chevy Chase (B-CC) and Seneca Valley clusters out of moratorium, as well as prevent the Northwest Cluster from entering moratorium. However, development approvals within these three clusters will be required to make school facilities payment at time of building permit.

Background:

Typically, the Planning Board conducts an annual review of the school test results in June of each year. The school test results, compiled by the Montgomery County Public School Division of Long Range Planning, compares projected enrollment five years into the future with projected capacity for each of the 25 high school clusters at the elementary, middle and high school levels. The school test results are finalized in May of each year upon the Council's adoption of the Capital Improvements Program. The school test determines if residential subdivisions in any school cluster should be subject to either a school facilities payment or a moratorium.

The annual school test review process has three milestone dates:

- In November, MCPS releases preliminary enrollment forecasts and a Superintendent's Recommended Capital Budget
- The following May, the County Council adopts an MCPS Capital Budget

- In June, based on the November enrollment forecast and the adopted MCPS budget, the Planning Board adopts the school test results that define moratoria and school facility payment status for residential development applications submitted during the fiscal year beginning on July 1.

If projected enrollment at any level exceeds 105 percent of program capacity, residential subdivisions in the affected cluster will be required to make a school facility payment. In addition, if projected enrollment at any level exceeds 120 percent of program capacity, residential subdivisions in the affected cluster will be under moratorium.

Effective July 1, 2009 nine school clusters exceeded the 105 percent program capacity ceiling; eight clusters exceed at the elementary level and one cluster exceeded at both the elementary and middle school level. Thus, residential development in these nine clusters has been subject to a school facility payment. In addition, three school clusters exceeded the 120 percent program capacity ceiling; B-CC, Clarksburg and Seneca Valley school clusters. Residential subdivisions have been in moratorium for FY10 in these three clusters.

During review of the 2009-2011 Growth Policy, the methodology for calculating utilization rates was modified such that rates must be calculated without rounding. This change, upon review by the Planning Board would put the Northwest cluster into moratorium. However, in anticipation of this event, the Council programmed additional capacity for the Northwest cluster in its recent CIP amendment.

The Clarksburg cluster, however, remains in moratorium. The *Superintendent's Recommended FY2011 Capital Budget and FY2011-2016 Capital Improvements Program*, if adopted, would program sufficient capacity to bring the Clarksburg cluster out of moratorium with approval of the FY2011 school test (effective July 1, 2010).

Acceptance of Mid-cycle FY2010 School Test Results:

Planning staff recommends that the Planning Board accept the amended school test results removing the Bethesda-Chevy Chase and Seneca Valley clusters from moratorium and placing them under the requirement of a school facilities payment. These findings are attached on pages 4 and 5 which reflect the Growth Policy resolution Tables 3 and 4 regarding the FY 2010 test (for enrollment conditions in the 2014-2015 school year), modified to incorporate the Council's November 25, 2009 actions on the school CIP amendments.

Once accepted by the Planning Board, these tables (along with the resolution adopted by the Council in November 2009) will constitute Montgomery County's Growth Policy for the remainder of FY2010 as it relates to school capacity.

Preview of FY 2011 School Capacity Conditions

A further review of the *Superintendent's Recommended FY2011 Capital Budget and FY2011-2016 Capital Improvements Program* indicates that, if adopted, eight school clusters would require a school facility payment and one school cluster, Richard Montgomery, would enter moratorium with approval of the FY2011 school test results.

The tables on page 6 summarize the moratorium and school facility payment status for three alternatives:

- A. The current condition for FY 2010, approved by the Planning Board in June 2009,
- B. The proposed condition for the second half of FY 2010 if the Planning Board accepts the staff recommendation in this memorandum
- C. The forecasted condition for FY 2011 if the Council were, in spring 2010, to approve the Superintendent's proposed FY2011-2016 CIP.

This possible outcome for FY 2011 could change if the Council acts on a Richard Montgomery ES Solution PDF prior to July 1, 2010. Staff will bring recommendations on the Executive's proposed FY2011-2016 CIP to the Planning Board on February 4 and will incorporate a separate item regarding school capacity in that worksession.

Table 3: 2014-2015 Test @ 120% Program Capacity

Reflects Amended FY 2009-2014 Capital Improvements Program (CIP), B-CC Cluster ES Solution, Seneca Valley Cluster ES Solution, Northwest Cluster ES Solution, and MCPS Enrollment Forecast, November 2009

Elementary School Enrollment and MCPS Capacity @ 120%

Cluster Area	Projected August 2014 Enrollment	100% MCPS Program Capacity With	120% MCPS Program Capacity With	Capacity Remaining @ 120% MCPS capacity	Growth Policy 120% Test Result Capacity Is:	Cluster Moratorium?
		CC Adopted FY09-14 Amended CIP and ES Solution PFDs	CC Adopted FY09-14 Amended CIP			
B-CC	3,588	3,077	3,692	104	Adequate	No
Blair	3,932	4,282	5,138	1,206	Adequate	No
Blake	2,462	2,556	3,067	605	Adequate	No
Churchill	2,552	2,784	3,341	789	Adequate	No
Clarksburg	3,712	3,303	3,984	252	Adequate	No
Damascus	1,889	2,105	2,526	637	Adequate	No
Einstein	2,487	2,587	3,104	617	Adequate	No
Gallthersburg	3,855	3,932	4,718	863	Adequate	No
Waller Johnson	3,649	3,444	4,133	484	Adequate	No
Kennedy	2,601	2,593	3,112	511	Adequate	No
Magnuder	2,610	2,493	2,992	382	Adequate	No
R. Montgomery	2,586	2,171	2,605	19	Adequate	No
Northwest	4,178	3,852	4,394	216	Adequate	No
Northwood	2,968	2,657	3,168	220	Adequate	No
Paint Branch	2,452	2,309	2,771	319	Adequate	No
Poolesville	571	754	905	334	Adequate	No
Quince Orchard	2,889	2,691	3,229	340	Adequate	No
Rockville	2,570	2,237	2,684	114	Adequate	No
Seneca Valley	2,296	1,993	2,392	96	Adequate	No
Sherwood	2,136	2,416	2,899	763	Adequate	No
Springbrook	2,894	3,200	3,840	946	Adequate	No
Watkins Mill	2,561	2,807	3,368	807	Adequate	No
Wheaton	2,816	2,407	2,888	72	Adequate	No
Whitman	2,272	2,061	2,473	201	Adequate	No
Wootton	2,910	3,072	3,686	776	Adequate	No

Middle School Enrollment and MCPS Capacity @ 120%

Cluster Area	Projected August 2014 Enrollment	100% MCPS Program Capacity With	120% MCPS Program Capacity With	Capacity Remaining @ 120% MCPS capacity	Growth Policy 120% Test Result Capacity Is:	Cluster Moratorium?
		CC Adopted FY09-14 Amended CIP	CC Adopted FY09-14 Amended CIP			
B-CC	1,187	1,037	1,244	57	Adequate	No
Blair	2,015	2,261	2,713	698	Adequate	No
Blake	1,165	1,332	1,598	433	Adequate	No
Churchill	1,458	1,550	1,850	402	Adequate	No
Clarksburg	1,508	1,188	1,366	-142	Inadequate	Yes
Damascus	908	941	1,129	221	Adequate	No
Einstein	1,209	1,461	1,753	544	Adequate	No
Gallthersburg	1,583	1,771	2,125	542	Adequate	No
Waller Johnson	1,875	1,863	2,236	561	Adequate	No
Kennedy	1,248	1,384	1,661	415	Adequate	No
Magnuder	1,110	1,607	1,828	818	Adequate	No
R. Montgomery	1,123	973	1,168	45	Adequate	No
Northwest	2,036	1,966	2,359	323	Adequate	No
Northwood	1,136	1,391	1,669	533	Adequate	No
Paint Branch	1,271	1,308	1,570	299	Adequate	No
Poolesville	284	472	566	282	Adequate	No
Quince Orchard	1,300	1,648	1,978	678	Adequate	No
Rockville	898	972	1,166	268	Adequate	No
Seneca Valley	1,225	1,471	1,765	536	Adequate	No
Sherwood	1,202	1,475	1,770	568	Adequate	No
Springbrook	1,068	1,218	1,459	391	Adequate	No
Watkins Mill	1,074	1,247	1,496	422	Adequate	No
Wheaton	1,546	1,646	1,975	429	Adequate	No
Whitman	1,208	1,267	1,520	312	Adequate	No
Wootton	1,407	1,598	1,918	511	Adequate	No

High School Enrollment and MCPS Capacity @ 120%

Cluster Area	Projected August 2014 Enrollment	100% MCPS Program Capacity With	120% MCPS Program Capacity With	Capacity Remaining @ 120% MCPS capacity	Growth Policy 120% Test Result Capacity Is:	Cluster Moratorium?
		CC Adopted FY09-14 Amended CIP	CC Adopted FY09-14 Amended CIP			
B-CC	1,735	1,656	1,987	252	Adequate	No
Blair	2,327	2,876	3,451	1,124	Adequate	No
Blake	1,700	1,715	2,058	358	Adequate	No
Churchill	1,928	1,972	2,366	438	Adequate	No
Clarksburg	1,844	1,593	1,912	68	Adequate	No
Damascus	1,291	1,589	1,907	616	Adequate	No
Einstein	1,553	1,613	1,936	383	Adequate	No
Gallthersburg	1,806	2,067	2,480	574	Adequate	No
Waller Johnson	2,087	2,275	2,730	643	Adequate	No
Kennedy	1,565	1,838	2,206	641	Adequate	No
Magnuder	1,606	1,958	2,350	744	Adequate	No
R. Montgomery	1,969	1,949	2,339	370	Adequate	No
Northwest	2,173	2,151	2,581	408	Adequate	No
Northwood	1,474	1,517	1,820	346	Adequate	No
Paint Branch	1,956	1,899	2,279	323	Adequate	No
Poolesville	1,054	1,107	1,328	274	Adequate	No
Quince Orchard	1,788	1,774	2,129	341	Adequate	No
Rockville	1,263	1,584	1,901	638	Adequate	No
Seneca Valley	1,320	1,478	1,774	454	Adequate	No
Sherwood	1,790	2,022	2,426	636	Adequate	No
Springbrook	1,572	2,095	2,514	942	Adequate	No
Watkins Mill	1,438	1,913	2,296	858	Adequate	No
Wheaton	1,222	1,386	1,678	456	Adequate	No
Whitman	1,650	1,891	2,269	619	Adequate	No
Wootton	2,170	2,086	2,503	333	Adequate	No

Table 4: 2014-2015 Test @ 105% Program Capacity

Reflects Amended FY 2009-2014 Capital Improvements Program (CIP), B-CC Cluster ES solution, Northwest Cluster ES Solution, Seneca Valley Cluster ES Solution, and MCPS Enrollment Forecast, November 2009

Elementary School Enrollment and MCPS Capacity @ 105%						
Cluster Area	Projected August 2014 Enrollment	100% MCPS Program Capacity With CC Adopted FY09-14 Amended CP and ES Solution PDFs	105% MCPS Program Capacity With CC Adopted FY09-14 Amended CP	Capacity Remaining @ 105% MCPS capacity	Growth Policy 105% Test Result Capacity Is:	School Facility Payment Required To Proceed?
B- CC	3,588	3,077	3,231	-357	Inadequate	Yes
Blair	3,932	4,282	4,496	564	Adequate	No
Blake	2,462	2,556	2,684	222	Adequate	No
Churchill	2,552	2,784	2,923	371	Adequate	No
Clarksburg	3,712	3,303	3,468	-244	Inadequate	Moratorium
Damascus	1,889	2,105	2,210	321	Adequate	No
Einstein	2,487	2,587	2,716	229	Adequate	No
Galtersburg	3,855	3,932	4,129	274	Adequate	No
Walter Johnson	3,649	3,444	3,616	-33	Inadequate	Yes
Kennedy	2,601	2,593	2,723	122	Adequate	No
Magnuder	2,610	2,493	2,618	8	Adequate	No
R. Montgomery	2,586	2,171	2,280	-306	Inadequate	Yes
Northwest	4,178	3,662	3,845	-333	Inadequate	Yes
Northwood	2,968	2,657	2,790	-178	Inadequate	Yes
Paint Branch	2,452	2,309	2,424	-28	Inadequate	Yes
Poolesville	571	754	792	221	Adequate	No
Quince Orchard	2,889	2,691	2,826	-63	Inadequate	Yes
Rockville	2,570	2,237	2,349	-221	Inadequate	Yes
Seneca Valley	2,296	1,993	2,093	-203	Inadequate	Yes
Sherwood	2,136	2,416	2,537	401	Adequate	No
Springbrook	2,894	3,200	3,360	466	Adequate	No
Watkins Mill	2,561	2,807	2,947	386	Adequate	No
Wheaton	2,816	2,407	2,527	-289	Inadequate	Yes
Whitman	2,272	2,061	2,164	-108	Inadequate	Yes
Wootton	2,910	3,072	3,226	316	Adequate	No
Middle School Enrollment and MCPS Capacity @ 105%						
Cluster Area	Projected August 2014 Enrollment	100% MCPS Program Capacity With CC Adopted FY09-14 Amended CP	105% MCPS Program Capacity With CC Adopted FY09-14 Amended CP	Capacity Remaining @ 105% MCPS capacity	Growth Policy 105% Test Result Capacity Is:	School Facility Payment Required To Proceed?
B- CC	1,187	1,037	1,089	-98	Inadequate	Yes
Blair	2,015	2,261	2,374	359	Adequate	No
Blake	1,165	1,332	1,399	234	Adequate	No
Churchill	1,458	1,550	1,628	170	Adequate	No
Clarksburg	1,508	1,138	1,195	-313	Inadequate	Moratorium
Damascus	908	941	988	80	Adequate	No
Einstein	1,209	1,461	1,534	325	Adequate	No
Galtersburg	1,583	1,771	1,880	277	Adequate	No
Walter Johnson	1,675	1,863	1,956	281	Adequate	No
Kennedy	1,246	1,384	1,453	207	Adequate	No
Magnuder	1,110	1,607	1,687	577	Adequate	No
R. Montgomery	1,123	973	1,022	-101	Inadequate	Yes
Northwest	2,036	1,966	2,064	28	Adequate	No
Northwood	1,136	1,391	1,461	325	Adequate	No
Paint Branch	1,271	1,308	1,373	102	Adequate	No
Poolesville	284	472	496	212	Adequate	No
Quince Orchard	1,300	1,648	1,730	430	Adequate	No
Rockville	896	972	1,021	123	Adequate	No
Seneca Valley	1,229	1,471	1,545	316	Adequate	No
Sherwood	1,202	1,475	1,549	347	Adequate	No
Springbrook	1,068	1,216	1,277	209	Adequate	No
Watkins Mill	1,074	1,247	1,309	235	Adequate	No
Wheaton	1,546	1,646	1,728	182	Adequate	No
Whitman	1,208	1,267	1,330	122	Adequate	No
Wootton	1,407	1,598	1,678	271	Adequate	No
High School Enrollment and MCPS Capacity @ 105%						
Cluster Area	Projected August 2014 Enrollment	100% MCPS Program Capacity With CC Adopted FY09-14 Amended CP	105% MCPS Program Capacity With CC Adopted FY09-14 Amended CP	Capacity Remaining @ 105% MCPS capacity	Growth Policy 105% Test Result Capacity Is:	School Facility Payment Required To Proceed?
B- CC	1,735	1,856	1,739	-117	Adequate	No
Blair	2,327	2,876	3,020	693	Adequate	No
Blake	1,700	1,715	1,801	101	Adequate	No
Churchill	1,828	1,972	2,071	143	Adequate	No
Clarksburg	1,844	1,593	1,673	-171	Inadequate	Moratorium
Damascus	1,291	1,589	1,668	377	Adequate	No
Einstein	1,553	1,813	1,894	141	Adequate	No
Galtersburg	1,906	2,067	2,170	264	Adequate	No
Walter Johnson	2,087	2,275	2,389	302	Adequate	No
Kennedy	1,565	1,838	1,930	365	Adequate	No
Magnuder	1,606	1,958	2,058	450	Adequate	No
R. Montgomery	1,869	1,949	2,046	77	Adequate	No
Northwest	2,173	2,151	2,259	86	Adequate	No
Northwood	1,474	1,517	1,593	119	Adequate	No
Paint Branch	1,956	1,899	1,994	38	Adequate	No
Poolesville	1,054	1,107	1,162	108	Adequate	No
Quince Orchard	1,788	1,774	1,863	75	Adequate	No
Rockville	1,263	1,584	1,663	400	Adequate	No
Seneca Valley	1,320	1,478	1,552	232	Adequate	No
Sherwood	1,790	2,022	2,123	333	Adequate	No
Springbrook	1,572	2,095	2,200	628	Adequate	No
Watkins Mill	1,438	1,913	2,009	571	Adequate	No
Wheaton	1,222	1,398	1,468	246	Adequate	No
Whitman	1,650	1,891	1,986	336	Adequate	No
Wootton	2,170	2,086	2,190	20	Adequate	No

School Clusters Requiring a School Facility Payment		
July 1, 2009 – January 1, 2010	January 1, 2010 – June 30, 2010*	Tentative Results July 1, 2010 – June 30, 2011
Elementary Level	Elementary Level	Elementary Level
Walter Johnson Richard Montgomery Northwest Northwood Paint Branch Quince Orchard Rockville Wheaton Whitman	Bethesda-Chevy Chase Walter Johnson Richard Montgomery Northwest Northwood Paint Branch Quince Orchard Seneca Valley Rockville Wheaton Whitman	Bethesda-Chevy Chase Northwest Northwood Paint Branch Quince Orchard Rockville
Middle School Level	Middle School Level	Middle School Level
Richard Montgomery	Bethesda-Chevy Chase Richard Montgomery	Bethesda-Chevy Chase Northwest Whitman
High School Level	High School Level	High School Level
		Wootton

School Clusters under Moratorium		
July 1, 2009 – January 1, 2010	January 1, 2010 – June 30, 2010*	Tentative Results July 1, 2010 – June 30, 2011
Elementary Level	Elementary Level	Elementary Level
Bethesda-Chevy Chase Seneca Valley		Richard Montgomery
Middle School Level	Middle School Level	Middle School Level
Clarksburg	Clarksburg	
High School Level	High School Level	High School Level

* - with Board acceptance of staff recommendation

ATTACHMENT A: Excerpt from Resolution 16-1187: 2009-2011 Growth Policy

Public School Facilities

S1 Geographic Areas

For the purposes of public school analysis and local area review of school facilities at time of subdivision, the County has been divided into 25 areas called high school clusters. These areas coincide with the cluster boundaries used by the Montgomery County Public School system.

The groupings used are only to administer the Adequate Public Facilities Ordinance and do not require any action by the Board of Education in exercising its power to designate school service boundaries.

S2 Grade Levels

Each cluster must be assessed separately at each of the 3 grade levels -- elementary, intermediate/middle, and high school.

S3 Determination of Adequacy

Each year, not later than July 1, the Planning Board must evaluate available capacity in each high school cluster and compare enrollment projected by Montgomery County Public Schools for each fiscal year with projected school capacity in 5 years. If at any time during fiscal year 2010 the County Council notifies the Planning Board of any material change in the Montgomery County Public Schools Capital Improvements Program, the Planning Board may revise its evaluation to reflect that change.

S4 Moratorium on Residential Subdivision Approvals

In considering whether a moratorium on residential subdivisions must be imposed, the Planning Board must use 120% of Montgomery County Public Schools program capacity as its measure of adequate school capacity. This capacity measure must not count relocatable classrooms in computing a school's permanent capacity. If projected enrollment at any grade level in that cluster will exceed 120% of capacity, the Board must not approve any residential subdivision in that cluster during the next fiscal year. If the Planning Board revises its measure of utilization during fiscal year 2010 because of a material change in projected school capacity, that revision must be used during the rest of that fiscal year in reviewing residential subdivisions.

Table 3 shows the result of this test for July 1, 2009, to July 1, 2010. Table 3 also shows the remaining capacity, in students, at each grade level in each cluster. Using average student generation rates developed from the most recent Census Update Survey, the Planning Board must limit residential subdivision approvals in any cluster during the fiscal

year so that the students generated by the housing units approved do not exceed the remaining capacity for students at any grade level in that cluster.

S5 Imposition of School Facilities Payment

In considering whether a School Facilities Payment must be imposed on a residential subdivision, the Planning Board must use 105% of Montgomery County Public Schools' program capacity as its measure of adequate school capacity. This capacity measure must not count relocatable classrooms in computing a school's permanent capacity. If projected enrollment at any grade level in that cluster will exceed 105% of capacity but not exceed 120%, the Board may approve a residential subdivision in that cluster during the next fiscal year if the applicant commits to pay a School Facilities Payment as provided in County law before receiving a building permit for any building in that subdivision. If the Planning Board revises its measure of utilization during fiscal year 2010 because of a material change in projected school capacity, that revision must be used during the rest of that fiscal year in reviewing residential subdivisions.

Table 4 shows the result of this test for July 1, 2009, to July 1, 2010. Table 4 also shows the remaining capacity, in students, at each grade level in each cluster. Using average student generation rates developed from the most recent Census Update Survey, the Planning Board must limit residential subdivision approvals in any cluster during the fiscal year so that the students generated by the housing units approved do not exceed the remaining capacity for students at any grade level in that cluster.

S6 Senior Housing

If public school capacity is inadequate in any cluster, the Planning Board may nevertheless approve a subdivision in that cluster if the subdivision consists solely of multifamily housing and related facilities for elderly or handicapped persons or multifamily housing units located in the age-restricted section of a planned retirement community.

S7 De Minimis Development

If public school capacity is inadequate in any cluster, the Planning Board may nevertheless approve a subdivision in that cluster if the subdivision consists of no more than 3 housing units and the applicant commits to pay a School Facilities Payment as otherwise required before receiving a building permit for any building in that subdivision.

S8 Development District Participants

The Planning Board may require any development district for which it approves a provisional adequate public facilities approval (PAPF) to produce or contribute to infrastructure improvements needed to address inadequate school capacity.

S9 Allocation of Staging Ceiling to Preliminary Plans of Subdivision

The Planning Board must allocate available staging ceiling capacity in a high school cluster based on the queue date of an application for preliminary plan of subdivision approval.

S9.1 Assignment of queue date

The queue date of a preliminary plan of subdivision is the date:

- a complete application is filed with the Planning Board; or
- 6 months after the prior queue date if the prior queue date expires under S9.4.

S9.2 Calculation of available staging ceiling capacity

The Planning Board must determine whether adequate staging ceiling capacity is available for a project by subtracting the capacity required by projects with earlier queue dates from the remaining capacity on Table 3 as updated periodically. Based on this calculation, the Planning Board may:

- approve a project for which there is sufficient capacity;
- approve part of a project for which there is sufficient capacity, leaving the remainder of the project in the queue until additional capacity becomes available;
- deny an application for a project for which there is insufficient capacity; or
- defer approval of a project and leave the project in the queue until sufficient capacity becomes available for all or part of the project. If insufficient capacity is available, the Board must not schedule a hearing on the application unless the applicant requests one.

If sufficient capacity is available for a project based on the queue date, the Planning Board must not deny an application based on pipeline (but not staging ceiling) changes while the queue date is in effect.

S9.3 Applicability of School Facilities Payment

The Planning Board must determine whether a project is required to pay a School Facilities Payment by subtracting the capacity required by projects with earlier queue dates from the remaining capacity on Table 4 as updated periodically. Based on this calculation, the Planning Board may:

- approve a project for which there is sufficient capacity;
- approve part of a project for which there is sufficient capacity, requiring the remainder of the project to pay the applicable School Facilities Payment until additional capacity becomes available; or
- defer approval of a project and leave the project in the queue until sufficient capacity becomes available for all or part of the project. If insufficient capacity is available, the Board must not schedule a hearing on the application unless the applicant requests one.

If a project must pay a School Facilities Payment, the Planning Board must not deny an application based on pipeline (but not staging ceiling) changes while the Payment requirement is in effect.

S9.4 Expiration of queue date

A queue date for an application for preliminary plan of subdivision approval expires:

- 6 months after the queue date if sufficient staging ceiling capacity was available for the entire project on the queue date and the Planning Board has not approved the application or granted an extension of the queue date; or
- 6 months after sufficient capacity becomes available for the entire project.

The Planning Board may grant one or more 6-month extensions of a queue date if the applicant demonstrates that a queue date expired or will expire because of governmental delay beyond the applicant's control.



June 15, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Richard Debose, Chief, Research & Technology Center

FROM: Pamela Dunn, Planner Coordinator, Research & Technology Center

SUBJECT: Amendment to the FY2011 School Test Results

Amendment:

In your packet compiled last Friday, the FY2011 School Test results were enclosed. This morning the Montgomery County Public Schools' Division of Long Range Planning, provided an update to the capacity figure for the Richard Montgomery cluster.

Following adoption of the Capital Improvement Program for MCPS, the Montgomery County Council passed an amendment to the CIP, a Richard Montgomery ES Solution PDF. This amendment designates capital funds for the purpose of constructing eight additional elementary classrooms in the Richard Montgomery cluster.

This action changes the elementary level utilization rate for the cluster from 126.5 percent to 116.5 percent. Thus, the Richard Montgomery cluster will not enter a moratorium on residential development on July 1, 2010 but will instead require a School Facility Payment at both the elementary and middle school level. The School Facility Payment is levied on each residential unit at each school level where enrollment is greater than 105percent of program capacity.

All other enrollment and capacity figures remain unchanged from the memo dated June 4, 2010. Thus, to recap, enrollment does exceed 105 percent of program capacity in seven school clusters at the elementary school level: Bethesda-Chevy Chase, Richard Montgomery, Northwest, Northwood, Paint Branch, Quince Orchard and Rockville. Enrollment exceeds 105 percent of capacity at the middle school level in the Bethesda-Chevy Chase, Richard Montgomery, Northwest, and Whitman cluster. And, enrollment exceeds 105 percent of capacity at the high school level in the Wootton cluster. Residential subdivisions in the previously listed clusters will be required to make a school facility payment at each school level found to be inadequate.

Planning staff recommends that Planning Board accept the results of the school test as calculated by Montgomery County Public Schools staff, for FY2011. These amended findings are attached on pages 3 and 4.

Once accepted by the Planning Board, this table (along with the resolution adopted by the Council in November 2009) will constitute Montgomery County's growth policy for FY2011 as relates to school capacity.

Growth Policy FY 2011 School Test: Cluster Utilizations in 2015-2016
Reflects County Council Adopted FY 2011-2016 Capital Improvements Program (CIP)

Elementary School Test: Percent Utilization >105% School Facility Payment and >120% Moratorium

Cluster Area	Projected August 2015 Enrollment	100% MCPS Program Capacity With CC Adopted FY11-16 CIP	Cluster Percent Utilization in 2015	Growth Policy Test Result Capacity is	Cluster's
Bethesda-Chevy Chase	3,606	3,321	108.6%	Inadequate	School Payment
Montgomery Blair	4,061	4,368	93.0%	Adequate	Open
James Hubert Blake	2,516	2,508	100.3%	Adequate	Open
Winston Churchill	2,636	2,728	96.6%	Adequate	Open
Clarksburg	3,772	3,919	96.2%	Adequate	Open
Damascus	1,920	2,075	92.5%	Adequate	Open
Albert Einstein	2,625	2,723	96.4%	Adequate	Open
Galthersburg	3,879	3,898	99.5%	Adequate	Open
Walter Johnson	3,728	3,706	100.6%	Adequate	Open
John F. Kennedy	2,650	2,858	92.7%	Adequate	Open
Col. Zadok Magruder	2,577	2,635	97.8%	Adequate	Open
Richard Montgomery	2,697	2,132	126.5%	Inadequate	School Payment
Northwest	4,297	3,609	119.1%	Inadequate	School Payment
Northwood	3,067	2,581	118.8%	Inadequate	School Payment
Paint Branch	2,441	2,313	105.5%	Inadequate	School Payment
Poolesville	522	755	69.1%	Adequate	Open
Quince Orchard	2,992	2,679	111.7%	Inadequate	School Payment
Rockville	2,531	2,216	114.2%	Inadequate	School Payment
Seneca Valley	2,262	2,173	104.1%	Adequate	Open
Sherwood	2,050	2,408	85.1%	Adequate	Open
Springbrook	3,027	3,188	94.9%	Adequate	Open
Watkins Mill	2,629	2,769	94.9%	Adequate	Open
Wheaton	2,863	2,792	102.5%	Adequate	Open
Walt Whitman	2,464	2,367	104.1%	Adequate	Open
Thomas S. Wootton	2,922	3,118	93.7%	Adequate	Open

Middle School Test: Percent Utilization >105% School Facility Payment and >120% Moratorium

Cluster Area	Projected August 2015 Enrollment	100% MCPS Program Capacity With CC Adopted FY11-16 CIP	Cluster Percent Utilization in 2015	Growth Policy Test Result Capacity is	Cluster's
Bethesda-Chevy Chase	1,192	1,037	114.9%	Inadequate	School Payment
Montgomery Blair	2,111	2,266	93.2%	Adequate	Open
James Hubert Blake	1,189	1,329	89.5%	Adequate	Open
Winston Churchill	1,433	1,609	89.1%	Adequate	Open
Clarksburg	1,547	2,113	73.2%	Adequate	Open
Damascus	865	954	90.7%	Adequate	Open
Albert Einstein	1,317	1,460	90.2%	Adequate	Open
Galthersburg	1,638	1,751	93.5%	Adequate	Open
Walter Johnson	1,760	1,852	95.0%	Adequate	Open
John F. Kennedy	1,201	1,356	88.6%	Adequate	Open
Col. Zadok Magruder	1,155	1,616	71.5%	Adequate	Open
Richard Montgomery	1,154	986	117.0%	Inadequate	School Payment
Northwest	2,079	1,968	105.6%	Inadequate	School Payment
Northwood	1,152	1,362	84.6%	Adequate	Open
Paint Branch	1,248	1,271	98.2%	Adequate	Open
Poolesville	238	480	49.6%	Adequate	Open
Quince Orchard	1,389	1,648	84.3%	Adequate	Open
Rockville	980	981	99.9%	Adequate	Open
Seneca Valley	1,201	1,464	82.0%	Adequate	Open
Sherwood	1,127	1,476	76.4%	Adequate	Open
Springbrook	1,162	1,230	94.5%	Adequate	Open
Watkins Mill	1,232	1,251	98.5%	Adequate	Open
Wheaton	1,549	1,646	94.1%	Adequate	Open
Walt Whitman	1,347	1,250	107.8%	Inadequate	School Payment
Thomas S. Wootton	1,516	1,606	94.4%	Adequate	Open

High School Test: Percent Utilization >105% School Facility Payment and >120% Moratorium

Cluster Area	Projected August 2016 Enrollment	100% MCPS Program Capacity With CC Adopted FY11-16 CIP	Cluster Percent Utilization in 2015	Growth Policy Test Result Capacity is	Cluster's
Bethesda-Chevy Chase	1,723	1,656	104.0%	Adequate	Open
Montgomery Blair	2,515	2,839	88.6%	Adequate	Open
James Hubert Blake	1,787	1,724	103.7%	Adequate	Open
Winston Churchill	1,907	1,928	98.9%	Adequate	Open
Clarksburg	1,979	1,971	100.4%	Adequate	Open
Damascus	1,310	1,532	85.5%	Adequate	Open
Albert Einstein	1,593	1,570	101.5%	Adequate	Open
Galthersburg	1,948	2,284	85.3%	Adequate	Open
Walter Johnson	2,173	2,230	97.4%	Adequate	Open
John F. Kennedy	1,557	1,847	84.3%	Adequate	Open
Col. Zadok Magruder	1,678	1,919	87.4%	Adequate	Open
Richard Montgomery	1,846	1,957	94.3%	Adequate	Open
Northwest	2,200	2,151	102.3%	Adequate	Open
Northwood	1,439	1,481	97.2%	Adequate	Open
Paint Branch	1,801	1,899	94.8%	Adequate	Open
Poolesville	1,087	1,107	98.2%	Adequate	Open
Quince Orchard	1,767	1,741	101.5%	Adequate	Open
Rockville	1,334	1,539	86.7%	Adequate	Open
Seneca Valley	1,334	1,491	89.5%	Adequate	Open
Sherwood	1,789	2,004	89.3%	Adequate	Open
Springbrook	1,600	2,090	76.6%	Adequate	Open
Watkins Mill	1,615	1,885	85.7%	Adequate	Open
Wheaton	1,284	1,416	90.7%	Adequate	Open
Walt Whitman	1,830	1,873	97.7%	Adequate	Open
Thomas S. Wootton	2,235	2,073	107.8%	Inadequate	School Payment

Summary of School Test for FY 2011

Based on County Council Adopted FY 2011–2016 Capital Improvements Program (CIP)
Effective July 1, 2010

School Test Level	Description	Cluster Outcomes by Level		
		Elementary Inadequate	Middle Inadequate	High Inadequate
Clusters over 105% utilization School facility payment required in inadequate clusters to proceed.	5-year test Effective July 1, 2010 Test year 2015-16	B-CC (108.6%) Richard Montgomery (116.5%) Northwest (119.1%) Northwood (118.8%) Paint Branch (105.5%) Quince Orchard (111.7%) Rockville (114.2%)	B-CC (114.9%) Richard Montgomery (117.0%) Northwest (105.6%) Whitman (107.8%)	Woodton (107.8%)
Clusters over 120% utilization Moratorium required in clusters that are inadequate.	5-year test Effective July 1, 2010 Test year 2015-16			

* Richard Montgomery cluster elementary utilization includes eight classrooms approved by the County Council in the FY2011–2016 CIP. The location of these classrooms will be determined in a future CIP. These classrooms are sufficient to avoid placement of the cluster in moratorium at the elementary school level.



June 15, 2010

MEMORANDUM

TO: Montgomery County Planning Board
VIA: Richard Debose, Chief, Research & Technology Center
FROM: Pamela Dunn, Planner Coordinator, Research & Technology Center
SUBJECT: Amendment to the FY2011 School Test Results

Amendment:

In your packet compiled last Friday, the FY2011 School Test results were enclosed. This morning the Montgomery County Public Schools' Division of Long Range Planning, provided an update to the capacity figure for the Richard Montgomery cluster.

Following adoption of the Capital Improvement Program for MCPS, the Montgomery County Council passed an amendment to the CIP, a Richard Montgomery ES Solution PDF. This amendment designates capital funds for the purpose of constructing eight additional elementary classrooms in the Richard Montgomery cluster.

This action changes the elementary level utilization rate for the cluster from 126.5 percent to 116.5 percent. Thus, the Richard Montgomery cluster will not enter a moratorium on residential development on July 1, 2010 but will instead require a School Facility Payment at both the elementary and middle school level. The School Facility Payment is levied on each residential unit at each school level where enrollment is greater than 105 percent of program capacity.

All other enrollment and capacity figures remain unchanged from the memo dated June 4, 2010. Thus, to recap, enrollment does exceed 105 percent of program capacity in seven school clusters at the elementary school level: Bethesda-Chevy Chase, Richard Montgomery, Northwest, Northwood, Paint Branch, Quince Orchard and Rockville. Enrollment exceeds 105 percent of capacity at the middle school level in the Bethesda-Chevy Chase, Richard Montgomery, Northwest, and Whitman cluster. And, enrollment exceeds 105 percent of capacity at the high school level in the Wootton cluster. Residential subdivisions in the previously listed clusters will be required to make a school facility payment at each school level found to be inadequate.

Planning staff recommends that Planning Board accept the results of the school test as calculated by Montgomery County Public Schools staff, for FY2011. These amended findings are attached on pages 3 and 4.

Once accepted by the Planning Board, this table (along with the resolution adopted by the Council in November 2009) will constitute Montgomery County's growth policy for FY2011 as relates to school capacity.

Growth Policy FY 2011 School Test: Cluster Utilizations in 2015-2016
Reflects County Council Adopted FY 2011-2016 Capital Improvements Program (CIP)

Elementary School Test: Percent Utilization >105% School Facility Payment and >120% Moratorium

Cluster/Area	Projected August 2015 Enrollment	100% MCPS Program Capacity With CC Adopted FY11-16 CIP	Cluster Percent Utilization in 2015	Growth Policy Test Result Capacity:	Cluster is/
Bethesda-Chevy Chase	3,606	3,321	108.6%	Inadequate	School Payment
Montgomery Blair	4,061	4,368	93.0%	Adequate	Open
James Hubert Blake	2,516	2,508	100.3%	Adequate	Open
Winston Churchill	2,636	2,728	96.6%	Adequate	Open
Clarksburg	3,772	3,919	96.2%	Adequate	Open
Damascus	1,920	2,075	92.5%	Adequate	Open
Albert Einstein	2,625	2,723	96.4%	Adequate	Open
Galthersburg	3,879	3,898	99.5%	Adequate	Open
Walter Johnson	3,728	3,706	100.6%	Adequate	Open
John F. Kennedy	2,650	2,858	92.7%	Adequate	Open
Col. Zadok Magruder	2,577	2,635	97.8%	Adequate	Open
Richard Montgomery	2,697	2,132	126.5%	Inadequate	School Payment
Northwest	4,297	3,609	119.1%	Inadequate	School Payment
Northwood	3,067	2,581	118.8%	Inadequate	School Payment
Paint Branch	2,441	2,313	105.5%	Inadequate	School Payment
Poolesville	522	755	69.1%	Adequate	Open
Quince Orchard	2,992	2,679	111.7%	Inadequate	School Payment
Rockville	2,531	2,216	114.2%	Inadequate	School Payment
Seneca Valley	2,282	2,173	104.1%	Adequate	Open
Sherwood	2,050	2,408	85.1%	Adequate	Open
Springbrook	3,027	3,188	94.9%	Adequate	Open
Watkins Mill	2,629	2,769	94.9%	Adequate	Open
Wheaton	2,863	2,792	102.5%	Adequate	Open
Walt Whitman	2,464	2,367	104.1%	Adequate	Open
Thomas S. Wootton	2,922	3,118	93.7%	Adequate	Open

Middle School Test: Percent Utilization >105% School Facility Payment and >120% Moratorium

Cluster/Area	Projected August 2016 Enrollment	100% MCPS Program Capacity With CC Adopted FY11-16 CIP	Cluster Percent Utilization in 2015	Growth Policy Test Result Capacity:	Cluster is/
Bethesda-Chevy Chase	1,192	1,037	114.9%	Inadequate	School Payment
Montgomery Blair	2,111	2,266	93.2%	Adequate	Open
James Hubert Blake	1,189	1,329	89.5%	Adequate	Open
Winston Churchill	1,433	1,609	89.1%	Adequate	Open
Clarksburg	1,547	2,113	73.2%	Adequate	Open
Damascus	865	954	90.7%	Adequate	Open
Albert Einstein	1,317	1,460	90.2%	Adequate	Open
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Walter Johnson	1,760	1,852	95.0%	Adequate	Open
John F. Kennedy	1,201	1,356	88.6%	Adequate	Open
Col. Zadok Magruder	1,155	1,616	71.5%	Adequate	Open
Richard Montgomery	1,154	986	117.0%	Inadequate	School Payment
Northwest	2,079	1,968	105.6%	Inadequate	School Payment
Northwood	1,152	1,362	84.6%	Adequate	Open
Paint Branch	1,248	1,271	98.2%	Adequate	Open
Poolesville	238	480	49.6%	Adequate	Open
Quince Orchard	1,389	1,648	84.3%	Adequate	Open
Rockville	980	981	99.9%	Adequate	Open
Seneca Valley	1,201	1,464	82.0%	Adequate	Open
Sherwood	1,127	1,476	76.4%	Adequate	Open
Springbrook	1,162	1,230	94.5%	Adequate	Open
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Albert Einstein	1,593	1,570	101.5%	Adequate	Open
Galthersburg	1,948	2,284	85.3%	Adequate	Open
Walter Johnson	2,173	2,230	97.4%	Adequate	Open
John F. Kennedy	1,557	1,847	84.3%	Adequate	Open
Col. Zadok Magruder	1,678	1,919	87.4%	Adequate	Open
Richard Montgomery	1,846	1,957	94.3%	Adequate	Open
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Rockville	1,334	1,539	86.7%	Adequate	Open
Seneca Valley	1,334	1,491	89.5%	Adequate	Open
Sherwood	1,789	2,004	89.3%	Adequate	Open
Springbrook	1,600	2,090	76.6%	Adequate	Open
Watkins Mill	1,615	1,885	85.7%	Adequate	Open
Wheaton	1,284	1,416	90.7%	Adequate	Open
Walt Whitman	1,830	1,873	97.7%	Adequate	Open
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Clusters over 120% utilization Moratorium required in clusters that are inadequate.	5-year test Effective July 1, 2010 Test year 2015-16			

* Richard Montgomery cluster elementary utilization includes eight classrooms approved by the County Council in the FY2011–2016 CIP. The location of these classrooms will be determined in a future CIP. These classrooms are sufficient to avoid placement of the cluster in moratorium at the elementary school level.